



ALL OUR KIN

## **Obstacles to Affordable Child Care in Connecticut: Policy Report**

Prepared for All Our Kin

Yale Law School Community & Economic Development Clinic

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### **I. Executive Summary**

- Family child care and group child care homes serve the needs of children, parents, and providers: they provide a safe early learning environment for children, affordable and accessible child care for working parents, and economic opportunities for home-based entrepreneurs. In short, they are a win-win-win for Connecticut communities.
- Connecticut state law prohibits local governments from imposing zoning restrictions on family child care homes and requires that they be treated like other residential uses. Connecticut should seek to increase access to child care by prohibiting local governments from banning both family child care and group child care homes in residential areas.
- Despite these clear benefits and official state support, family child care and group child care providers face obstacles including (1) local zoning barriers that make it difficult for family and group child cares to operate in residential districts, (2) prohibitive lease provisions that may lead to eviction by landlords and public housing authorities, and (3) restrictions imposed by condominium and homeowner associations that exclude family and group child care businesses.
- These obstacles make it costly and difficult to open or maintain family and group child care businesses in many parts of Connecticut, limiting access to much-needed child care services and harming the interests of children and working parents. Current Connecticut law permits the discriminatory behavior of municipalities, landlords, and residential associations. These laws impose a great hurdle to Connecticut's goal of a regulated, safe, and accessible child care market.
- To address this problem, Connecticut should enact new legislation that provides stronger statutory safeguards for family and group child care businesses, further protecting them from zoning restrictions and barriers posed by landlords and condominium and homeowner associations. Connecticut may want to emulate stronger statutory protections for family and group child care enacted by other states, including New York and California.

### **II. Introduction**

There are two types of home-based child care businesses in Connecticut: family child care homes and group child care homes. Family child care homes are based in a private residence and generally may care for up to six children (although they may be permitted to care for up to nine children, as long as the additional three children are enrolled in school full-time).<sup>1</sup> Group child care homes serve seven to twelve children in a private residence, or may be smaller child cares of fewer than seven children that operate in a facility other than a private family home.<sup>2</sup> Both family child care homes and group child care homes are distinct from larger commercial child care centers that serve more than twelve children.<sup>3</sup>

Connecticut has long had a public policy in favor of increasing access to family and group child care. In a series of legislative acts from 1987 to 1990, the Connecticut General Assembly enacted statutory protections to facilitate the development of family child care homes and group child care homes,<sup>4</sup> noting that they have a positive impact on residential communities<sup>5</sup> and serve an important need by providing affordable, high-quality child care to working families in a setting that is safe and beneficial for children.<sup>6</sup> Family child care homes and group child care homes serve an important function by meeting the needs of children and parents while providing economic opportunities for home-based entrepreneurs.

Unfortunately, providers who operate family child care and group child care homes face persistent obstacles in many Connecticut municipalities. These include (1) zoning barriers that make it difficult for family and group child care providers to obtain permits to operate in residential districts, including special exception requirements for group child care homes, (2) landlords and public housing authorities who evict providers from rental housing or refuse to rent to them in the first place, and (3) restrictions imposed by condominium and homeowner associations that prevent the establishment of family and group child care businesses even when a provider owns the residence. These barriers result in the loss of economic and social benefits provided by family and group child care and contribute to an ongoing shortage of affordable child care options for working parents in Connecticut.

This report describes the state of Connecticut legal protections for family and group child care providers with respect to each of these areas and the current obstacles that exist in many localities. The report then discusses legal models from other states and proposes policy reforms that would strengthen legal protections for family and group child care providers. These changes will help increase the supply of licensed child care businesses so that Connecticut children from all backgrounds can benefit from safe, affordable, and community-based child care.

<sup>1</sup> Conn. Gen. Stat. § 19a-77 (a)(3).

<sup>2</sup> Conn. Gen. Stat. § 19a-77(a)(2).

<sup>3</sup> Conn. Gen. Stat. § 19a-77(a)(1).

<sup>4</sup> See Senate Bill 441/Public Act 232; 1990 Conn. Pub. Acts No. 90-286; Connecticut General Statutes §§ 8-2, 8-3j.

<sup>5</sup> The 1987 Connecticut House of Representatives legislative history for Senate Bill 441/Public Act 232 concerning child daycare zoning highlights that family daycare is a small home business, seen as a positive contribution to residential communities.

<sup>6</sup> The 1987 House of Representatives transcript for Senate Bill 441/Public Act 232 notes that there is a pressing need for licensed family daycare facilities. The Connecticut Permanent Commission on the Status of Women asserts in the transcript from the 1987 Human Services Joint Standing Committee Hearings on SB 441/PA 232 that children should be cared for in residential areas and that the provision of home child care helps fulfill the State's interest in improving the quality and quantity of daycare options.

### **III: The Importance of Family and Group Child Care**

Home-based child care is a foundational element of a functional child care system that meets the diverse needs of all families. The state’s failure to ensure accessibility and affordability of family and group child care hinders workforce participation, entrepreneurial efforts, and child development.

#### **A. Family and Group Child Care is Important for Parents**

The cost of child care places a serious financial burden on parents. Families must often choose whether to pay for regulated child care, forego employment to care for the child themselves, or place their children in unregulated care in order to remain in the workforce. For single-parent families, the time until children start school is even more difficult. Millions of Americans struggle with the same challenge—finding an appropriately situated solution for their child care needs that is reasonably priced.<sup>7</sup>

The first part of the challenge is that child care is often difficult to find. A 2018 report found that 44% of Connecticut’s population lives in a “child care desert,” defined as a census tract with “little or no access to quality child care.”<sup>8</sup> The problem is even more serious for families with parents who work non-traditional hours. The Urban Institute reports that there are 37,500 low-income children under the age of six in Connecticut who receive subsidies from the federal Child Care and Development Block Grant (CCDBG).<sup>9</sup> Of those children, 25,900 have parents who work at least some non-traditional hours.<sup>10</sup> Family and group child care is the best-positioned solution to this problem, reaching the most overburdened, under-resourced families with small, locally-oriented child care services within neighborhoods that do not have other options. Family and group child care also helps generate more flexible arrangements for a community’s particular needs, such as evening or early morning child care.

The second part of the challenge is that child care is often prohibitively expensive. In Connecticut, child care costs for an infant absorb over 15% of the median family income.<sup>11</sup> Child care costs are approximately 44% of the median single mother’s income.<sup>12</sup> However, family and group child care is often thousands of dollars cheaper per year than care provided by large day care centers (the annual cost of home-based child care in Connecticut is \$10,556, compared to \$15,132 for larger

<sup>7</sup> See, e.g., Mallon, Maggie, “Elizabeth Warren Once Struggled to Find Child Care—and Every Working Mother Can Relate,” *Glamour*, Oct. 19, 2017, <https://www.glamour.com/story/elizabeth-warren-struggled-child-care-nwlc-speech>.

<sup>8</sup> Malik, Rasheed et al., “America’s Child Care Deserts in 2018,” Center for American Progress, Dec. 2018, <https://www.americanprogress.org/issues/early-childhood/reports/2018/12/06/461643/americas-child-care-deserts-2018/>.

<sup>9</sup> “Low-Income Working Families,” Urban Institute, <https://www.urban.org/policy-centers/cross-center-initiatives/low-income-working-families/projects/who-might-face-barriers-accessing-quality-child-care>.

<sup>10</sup> Id.

<sup>11</sup> Heinrich, Martin, “The State of Child Care in America,” U.S. Congress Joint Economic Committee, May 2017, [https://www.jec.senate.gov/public/\\_cache/files/e288a79b-f0ad-4a50-bfdf-a1a2d8e794b5/child-care-report-final.pdf](https://www.jec.senate.gov/public/_cache/files/e288a79b-f0ad-4a50-bfdf-a1a2d8e794b5/child-care-report-final.pdf), 2.

<sup>12</sup> Id.

day care centers).<sup>13</sup> This makes family and group child care a more realistic financial option for many Connecticut families. In addition, encouraging the creation of family and group child care businesses will help to bring the overall cost of child care down by better matching demand with supply.

Because affordable child care is so difficult to access in Connecticut, many parents choose to leave their jobs and handle child care themselves, which can seriously impede parents' careers if and when they return to the labor market. Parents forego earnings for years and then face a "wage penalty" upon their return. The Center for American Progress reported that even a short time out of the labor force could result in hundreds of thousands of dollars of lost income, wage growth, and retirement assets.<sup>14</sup> Family and group child care increases the chance that parents—especially women—will remain in the labor force and contribute to the economy in a career better suited to their education and skills.<sup>15</sup> Beyond this, parents agree that child care has a positive impact on their jobs, their stress levels and physical health, and their relationships both with their spouse and with their child.<sup>16</sup>

New parents face tremendous tradeoffs. If they or someone in their lives cannot care for the child, and the market has not provided an affordable option, parents may be forced to place their children with lower quality, often unlicensed child care providers.<sup>17</sup> This option is undesirable for the state, the parents, and the children.

## **B. Family and Group Child Care is Important for Children**

The importance of a child's first few years of development cannot be overstated. Studies show that enrollment in high quality child care can have a profound effect on outcomes such as the likelihood of enrollment in higher education and juvenile criminal activity.<sup>18</sup> The positive effect of quality group child care lasts for years and is evidenced by advanced cognitive and linguistic skills, improved test scores, and even a higher likelihood of high school graduation.<sup>19</sup> There is significant

<sup>13</sup> Child Care Aware of America, *The US and the High Cost of Child Care: A Review of Prices and Proposed Solutions for a Broken System* (2018), <http://usa.childcareaware.org/advocacy-public-policy/resources/research/costofcare/>.

<sup>14</sup> Madowitz, Michael, Alex Rowell, and Katie Hamm, "Calculating the Hidden Cost of Interrupting a Career for Child Care," Center for American Progress, June 21, 2016, <https://www.americanprogress.org/issues/early-childhood/reports/2016/06/21/139731/calculating-the-hidden-cost-of-interrupting-a-career-for-child-care/>.

<sup>15</sup> "Child Care in State Economies," Committee for Economic Development, Aug. 2015, <https://www.ced.org/pdf/Report%20-%20Child%20Care%20in%20State%20Economies.pdf>, 45.

<sup>16</sup> "Child Care and Health in America," National Public Radio, Oct. 2016, <https://www.npr.org/documents/2016/oct/Child-Care-and-Development-Report-2016.pdf>, 12.

<sup>17</sup> Neighmond, Patti, "Poll: Cost of Child Care Causes Financial Stress for Many Families," NPR, Oct. 26, 2016, <https://www.npr.org/sections/health-shots/2016/10/26/499166418/poll-cost-of-child-care-causes-financial-stress-for-many-families>.

<sup>18</sup> Korjenevitch, Maria and Rachel Dunifon, "Child Care Center Quality and Child Development," Cornell University College of Human Ecology, 2010, [https://www.human.cornell.edu/sites/default/files/PAM/Parenting/Child-20Care-20Center-20Quality-20-20Development-20Brief\\_FINAL.pdf](https://www.human.cornell.edu/sites/default/files/PAM/Parenting/Child-20Care-20Center-20Quality-20-20Development-20Brief_FINAL.pdf).

<sup>19</sup> Kaminer, Debbie, *The Child Care Crisis and the Work Family Conflict: A Policy Rationale for Federal Legislation*, 28 BERKELEY J. OF EMP. & AND LAB. LAW 495, 500-501 (2007).

value when children are placed in licensed facilities, allowing for the state to regulate for basic health and safety standards, and ensuring a baseline level of quality for young children.<sup>20</sup>

In Connecticut and across the country, family and group child care businesses are providing high-quality child care to children—particularly infants and toddlers—from the most overburdened, under-resourced families, reaching children during their earliest years when that care matters most. Beyond factors like safety, affordability and setting the foundations for children to thrive, parents may favor family and group child care because the community-centric model allows them to place their children in an environment better approximating their own home. This might mean finding a family or group child care provider from the same background as the family or one who can offer a particular service for the children. That service may be speaking a family’s language, offering non-traditional hours, or offering care for mixed-age groups, allowing siblings to be cared for in the same setting. Because of the cap on enrollment, family and group child care may also be an effective model for addressing the individualized needs of children, particularly for children with special needs.

### **C. Family and Group Child Care is Important for Providers and the Connecticut Economy**

In addition to keeping parents in the workforce, the child care industry also creates thousands of stable jobs for the state of Connecticut. People who would otherwise be stay-at-home parents often fill these jobs. Family and group child care, in particular, enables entrepreneurs to work from their residence and provide a crucial service for their community.

Many providers began working in the family child care sector after caring for their own children. These providers often continue to care for their own children while they run a family or group child care business. In joining this field, they cultivate an in-demand and highly transferrable skill set. This is particularly important for family and group child care providers, who are often women of color or immigrants who experience difficulty entering the workforce. Providers typically earn significantly more than minimum wage—an opportunity that may not be available to them in other industries. In 2018, licensed family child care providers in Connecticut charged an average of \$212 per week for full-time care of infants and toddlers, \$201 for preschoolers, and \$101 for school-aged children.<sup>21</sup> In a 2011 report, All Our Kin, a nonprofit organization that trains and supports family child care providers, followed up with licensed providers who had participated in its Tool Kit Licensing Program from 2006–2009.<sup>22</sup> All Our Kin found that 60% of providers reported earning at least \$5,000 more the first year after licensure.<sup>23</sup> More than 45% of providers reported earning at least \$10,000 more by the second year after licensure.<sup>24</sup>

<sup>20</sup> Kovner, Joshua, “For State, Illegal Child-Care An Elusive Target,” *Hartford Courant*, Sep. 18, 2016, <http://www.courant.com/news/connecticut/hc-childcare-enforcement-violations-0904-20160917-story.html>.

<sup>21</sup> Connecticut Office of Early Childhood, *Market Rate Methodology & Analysis* (2018), [https://www.ct.gov/oec/lib/oec/market\\_rate\\_survey\\_2018\\_ct\\_.pdf](https://www.ct.gov/oec/lib/oec/market_rate_survey_2018_ct_.pdf)

<sup>22</sup> “The Economic Impact of the All Our Kin Family Child Care Tool Kit Licensing Program,” All Our Kin, 2011, [http://www.allourkin.org/sites/default/files/All%20Our%20Kin\\_CCEARreport.pdf](http://www.allourkin.org/sites/default/files/All%20Our%20Kin_CCEARreport.pdf), 7.

<sup>23</sup> Id.

<sup>24</sup> Id.

Some 1.57 million Americans worked in the child care industry in 2012, including more than 20,000 in Connecticut.<sup>25</sup> As of 2018, there are approximately 2,000 licensed family child care homes in Connecticut, providing at least 11% of the available child care “spaces” for Connecticut children.<sup>26</sup> Further, the indirect economic effects of the child care industry are estimated to provide for more than 7,000 jobs in the state.<sup>27</sup> Estimates place the value of family and group child care to the Connecticut economy at more than \$500 million.<sup>28</sup> Removing barriers to family and group child care businesses will expand this industry. Accessible, affordable child care options will encourage parents to place their children with licensed providers instead of with off-the-books operations. The state has a public policy interest in all children receiving care from licensed providers—both because this generates more tax revenue and because it allows the state to monitor child care environments and practices.

Expanded family and group child care enables Connecticut to leverage federal child care subsidies, such as CCDBG, to serve a greater number of children with high-quality licensed care. CCDBG is a federal program that allows low-income families to access child care. CCDBG provides significant funding for Connecticut’s child care subsidy program, Care4Kids. The grant makes clear the importance the federal government places on supervising child care businesses. CCDBG requires that states implement monitoring systems for all child care operations that receive CCDBG funds.<sup>29</sup> Increasing the number of family and group child care businesses will allow more families to use this federal funding to access licensed child care. This is particularly important, as the child care subsidy is often the only funding assistance available to low-income parents of infants and toddlers. Increasing access to subsidized child care settings means that children gain access to high-quality early learning environments during the critical early years when that access matters most.

## **IV. Zoning Barriers to Family Child Care**

### **A. State of the Law**

Connecticut law prohibits the use of zoning to restrict the operation of family child care homes or group child care homes in areas zoned for residential use. Section 8-2 of the Connecticut General Statutes, which outlines the zoning authority of municipalities, provides that “[n]o such [zoning] regulations shall prohibit the operation of any family day care home or group day care home in a residential zone.”<sup>30</sup> Legislative history indicates that these statutory provisions were expressly intended to increase the availability of licensed home-based child care, in light of the need for

<sup>25</sup> “Child Care in State Economies,” 33.

<sup>26</sup> Child Care Aware of America, 2018 State Child Care Facts in Connecticut, [https://cdn2.hubspot.net/hubfs/3957809/State%20Fact%20Sheets/Connecticut\\_Facts.pdf?\\_\\_hssc=122076244.1.1541049414434&\\_\\_hstc=122076244.7f001095b36f4ea1a512c77575660574.1541035656779.1541035656779.1541049414434.2&\\_\\_hsfp=4011424800&hsCtaTracking=1ef355f0-73fa-4203-afe0-e37ae986ceaa%7Cf53aff26-aa33-463d-b62d-34bece3114bc](https://cdn2.hubspot.net/hubfs/3957809/State%20Fact%20Sheets/Connecticut_Facts.pdf?__hssc=122076244.1.1541049414434&__hstc=122076244.7f001095b36f4ea1a512c77575660574.1541035656779.1541035656779.1541049414434.2&__hsfp=4011424800&hsCtaTracking=1ef355f0-73fa-4203-afe0-e37ae986ceaa%7Cf53aff26-aa33-463d-b62d-34bece3114bc).

<sup>27</sup> “Child Care in State Economies,” 43.

<sup>28</sup> Id.

<sup>29</sup> Matthews, Hannah, Karen Schulman, Julie Vogtman, Christine Johnson-Staub, and Helen Blank, “Implementing the Child Care and Development Block Grant Reauthorization: A Guide for States,” National Women’s Law Center, June 2017, [https://nwlc.org/wp-content/uploads/2017/06/final\\_nwlc\\_CCDBGUpdate2017.pdf](https://nwlc.org/wp-content/uploads/2017/06/final_nwlc_CCDBGUpdate2017.pdf), 15.

<sup>30</sup> Conn. Gen. Stat. § 8-2.

affordable child care options that meet the diverse needs of all working parents.<sup>31</sup> However, the current state of Connecticut law has drawn an artificial distinction between family child care homes and larger group child care homes. Unlike family child care homes, group child care homes are not protected through explicit statutory provisions, allowing for prohibitive practices that strain the already limited supply of child care in the state.

Family day cares are expressly protected through two statutory provisions. Section 8-3j provides that “[n]o zoning regulation shall treat any family day care home registered pursuant to section 17b-733 in a manner different from single or multifamily dwellings.”<sup>32</sup> This provision effectively preempts local regulation of family child care homes. Similarly, Section 19a-87b provides that “[a] licensed family child care home shall not be subject to any conditions on the operation of such home by local officials, other than those imposed by the [Office of Early Childhood] pursuant to this subsection, if the home complies with all local codes and ordinances applicable to single and multifamily dwellings.”<sup>33</sup>

A 1990 Connecticut Attorney General Opinion interpreted the above provisions as prohibiting towns from imposing any special exception or special permit zoning requirements on registered family child care homes, concluding that “[l]ocal zoning authorities have no authority to condition the use of a single or multi-family dwelling as a family day care home upon compliance with special exception regulations.”<sup>34</sup> The 1990 Opinion also failed to explicitly address group child care homes.

Taken together, these state law provisions make clear that towns may not require family child care homes to obtain special exceptions or special permits, as the Attorney General opinion concludes, and may not require family child cares to meet additional parking requirements or other conditions that do not apply to residences. Unfortunately, the only explicit protection for group child care homes is that towns may not ban them outright.

## **B. Zoning Barriers in Practice**

Despite Connecticut’s statutory protections, both family and group child care businesses continue to face obstacles in the form of zoning requirements imposed by local governments. Municipalities across the state frequently impose zoning restrictions on family child cares in violation of state law, and often impose restrictions on group child cares that amount to a de facto ban.

<sup>31</sup> Speaking in favor of the zoning statutes, one of the sponsoring representatives of Senate Bill 441/Public Act 232 stated that the legislature found “that there's an extreme need for day care for single family parents and/or for two parents that are working.”

<sup>32</sup> Conn. Gen. Stat. § 8-3j. This provision was added by amendment in 1990 Conn. Pub. Acts No. 90-286. Conn. Gen. Stat. § 17b-733 (referenced in § 8-3j) describes the state Office of Early Childhood’s authority over child care services.

<sup>33</sup> Conn. Gen. Stat. Ann. § 19a-87b(a) (formerly Conn. Gen. Stat. e 17-31q(b)). The Office of Early Childhood issues licenses for family child care homes and administers regulations governing their operation. Initial license issuance requires an inspection visit to the premises and an examination for evident lead paint hazards.

<sup>34</sup> Connecticut Attorney General Opinion, August 13, 1990. Available at <https://portal.ct.gov/AG/Opinions/1990-Formal-Opinions/Honorable-Elliott-A-Ginsberg--Commissioner-Department-of-Human-Resources-1990027-Formal-Opinion-Attor>.

## *1. Zoning Barriers to Family Child Care Homes*

Many Connecticut municipalities continue to use zoning to restrict family child care homes in violation of Connecticut General Statutes Sections 8-3j and 19a-87b.

For example, the town of Woodbridge requires special permits for family child care homes (and group child care homes), enumerates a number of supporting documents that applicants must submit to obtain a special permit, and requires that these special permits be renewed every five years.<sup>35</sup> Woodbridge's zoning regulations also impose additional off-street parking requirements on family child care homes (and group child care homes) which exceed those required for a residence,<sup>36</sup> require that the provider reside on the premises, and limit the hours of operation.<sup>37</sup> Furthermore, Woodbridge sets out a number of other conditions for special permit approval:

(c) The existence of one or more Family Day Care Homes or Group Day Care Homes in the neighborhood may be considered sufficient reason for denial of a new Family Day Care Home or Group Day Care Home application, if in the judgment of the Commission the cumulative impact of an additional facility would have a detrimental effect on the neighborhood.

(d) The site shall be so situated, developed and utilized so as to minimize the detrimental effect on the privacy and/or tranquility of surrounding properties. Outdoor lighting, play areas and landscaping shall be designed and maintained so as to minimize adverse impacts on the residential character of the neighborhood.<sup>38</sup>

Woodbridge's restrictions violate the state's statutory protections for family child care homes in Connecticut General Statutes Sections 8-3j and 19a-87b, which prohibit the imposition of special permit requirements or any other conditions beyond those imposed on single family or multifamily homes.

Many other Connecticut municipalities illegally restrict family child care homes as well. For example, Enfield's zoning regulations provide that, while family child care homes are permitted as of right in single family residential zones, "[w]hen Family Day Care Facilities are proposed in buildings containing more than one dwelling unit, a Special Permit from the Commission is required."<sup>39</sup> This contradicts Section 8-3j of the Connecticut General Statutes, which explicitly covers multifamily dwellings. Hartford permits family child care homes in all residential districts, but subjects them to certain conditions applicable to all "home occupations," including restrictions

<sup>35</sup> Woodbridge Zoning Regulations, §3.2.4.1; §3.2.4.2. The special permit application must include "[a] narrative report describing the proposed facility including a site plan...prepared by a licensed Land Surveyor showing lot lines, lot area, location of residence, off-street parking, a safe drop-off area for children, landscaping, fenced outdoor play area and the topography of the site" and "[a] letter from the Quinnipiac Valley Health District certifying the safety and adequacy of the water supply and sewage disposal system for the contemplated facility."

<sup>36</sup> Woodbridge Zoning Regulations, §3.1.2 (9)(a) requires "one space for each employee part or full time, one space for one child, two spaces for two-five children, three spaces for six-ten children, [and] four spaces for 11-12 children."

<sup>37</sup> Woodbridge Zoning Regulations, §3.2.4.

<sup>38</sup> Woodbridge Zoning Regulations, §3.2.4.

<sup>39</sup> Enfield Zoning Regulations, §4.20.1(4) (2018), <https://www.enfield-ct.gov/DocumentCenter/View/12704/Zoning-Regulations-Amended-to-April-5-2018-PDF>

on floor area used for the home occupation within the residence, a maximum of one non-resident employee, vehicle parking requirements, and limits on hours of operation.<sup>40</sup>

The restrictions imposed on family child care homes vary widely in specifics and stringency. The town of Winchester permits family child care in residential zones as of right but imposes additional parking requirements beyond those applicable to single-family homes.<sup>41</sup> Bridgeport's zoning regulations provide that family child care homes are accessory uses in residential districts, and require a certificate of zoning compliance.<sup>42</sup> Stratford permits family child care homes in residential districts "subject to administrative review by the Zoning Commission" (and makes no mention of group day care homes).<sup>43</sup> Norwalk permits "family day-care homes in single-family and two-family dwellings and group day-care homes in single-family dwellings [in residential districts], subject to the conditions that...outdoor play areas shall be fenced and/or adequately screened from adjacent properties to the satisfaction of the Zoning Inspector."<sup>44</sup> All of these restrictions on family child care violate Section 8-3j of the Connecticut General Statutes, which bars towns from imposing any additional regulations on family child care homes beyond those applied to other residences.

## *2. Zoning Restrictions on Group Child Care Homes*

Larger group child care homes face even greater obstacles, as they do not enjoy the same level of explicit state protection as family child care homes. It is more common for municipalities to restrict group child care homes, and these restrictions are often so stringent as to constitute a de facto ban, in violation of state law. Many municipalities require group child care homes to obtain special exceptions or special permits. For example, zoning ordinances in West Haven, Stamford, Norfolk, Branford, Winchester, and Kent provide that group child care homes in residential districts require a special exception or special permit, while family child care homes do not.<sup>45</sup> New Haven's zoning ordinance requires special exceptions for group child care homes in some types of residential

<sup>40</sup> Hartford Zoning Regulations, §3.5.1 Accessory Residential Uses (2018),

[http://www.hartford.gov/images/DDS\\_Files/Plan\\_Zoning/Zoning\\_Regs/ZoningRegulations.pdf](http://www.hartford.gov/images/DDS_Files/Plan_Zoning/Zoning_Regs/ZoningRegulations.pdf)

<sup>41</sup> Winchester Zoning Regulations, Appendix A (2017),

[https://www.townofwinchester.org/sites/winchesterct/files/uploads/7-24-17\\_zoning\\_regs.pdf](https://www.townofwinchester.org/sites/winchesterct/files/uploads/7-24-17_zoning_regs.pdf).

<sup>42</sup> Bridgeport Zoning Regulations, §6.4.3 (2018),

[https://www.bridgeportct.gov/filestorage/341650/341652/345965/343658/2018\\_Zoning\\_Regulations.pdf](https://www.bridgeportct.gov/filestorage/341650/341652/345965/343658/2018_Zoning_Regulations.pdf)

<sup>43</sup> Stratford Zoning Ordinance, §4.1 (2018),

[http://www.townofstratford.com/filestorage/39879/40866/ZONING\\_REGS\\_DRAFT\\_REVISION\\_09012015.pdf](http://www.townofstratford.com/filestorage/39879/40866/ZONING_REGS_DRAFT_REVISION_09012015.pdf)

<sup>44</sup> Norwalk Zoning Ordinance, §118-310-350 (2018),

<https://norwalkct.org/DocumentCenter/View/349/ARTICLE-30?bidId=>

<sup>45</sup> West Haven Zoning Ordinance, Table 39.1 (2017),

<http://www.cityofwesthaven.com/DocumentCenter/View/1199/Zoning-Regulations-to-08-17-PDF?bidId=>;

Branford Zoning Regulations, §3.3 (a)(4); §3.3(b)(2) (2015),

<https://branford-ct.gov/filestorage/285/287/466/BRANFORDZR.pdf>; Kent Zoning Regulations 3134(6),

[https://www.townofkentct.org/sites/kentct/files/uploads/kent\\_zoning\\_regulations\\_-\\_effective\\_070118\\_1\\_1.pdf](https://www.townofkentct.org/sites/kentct/files/uploads/kent_zoning_regulations_-_effective_070118_1_1.pdf); City

of Stamford Zoning Regulations, AA – District Regulations, §§1.2(d); 1.3(e); 2.2(d); 3.2(d); 3.3(c) (2017),

[https://www.stamfordct.gov/sites/stamfordct/files/pages/zoning\\_regulations\\_2017.pdf](https://www.stamfordct.gov/sites/stamfordct/files/pages/zoning_regulations_2017.pdf); Norfolk Zoning Regulations

3.03-1(D), <https://norfolkct.org/wp-content/uploads/2018/07/PZZoningRegs.pdf>; Winchester Zoning Regulations,

Appendix A (2017), [https://www.townofwinchester.org/sites/winchesterct/files/uploads/7-24-17\\_zoning\\_regs.pdf](https://www.townofwinchester.org/sites/winchesterct/files/uploads/7-24-17_zoning_regs.pdf).

districts, and outright prohibits them in others.<sup>46</sup> Danbury imposes the same parking requirements on group child care homes as those required for larger commercial day care centers.<sup>47</sup>

Even when municipalities do not require special permits or special exceptions for group child care homes, they often restrict them in other ways. Group child care homes in Hartford are permitted in residential districts but subject to certain conditions, including a requirement that they provide a fenced outdoor play area, are limited to one group child care per zoning lot (i.e. there cannot be two child care businesses in a multifamily building on one lot), and can have their permits revoked by the city, using a discretionary standard, if they pose a nuisance to neighbors.<sup>48</sup> Bridgeport treats group child care homes the same as larger day care centers, which are permitted in some residential districts, and require a special permit in others.<sup>49</sup>

Special permit or special exception requirements can pose a significant obstacle to group child care providers, who typically must pay an application fee, assemble documents in support of their application, and appear before the local zoning board or zoning board of appeals. The provider may also need to hire a lawyer if the application is particularly complex or if there is opposition. The cost and administrative process can impose a major burden on low-income group child care providers. Moreover, as the Woodbridge example suggests, zoning boards may refuse to grant the special exception for a variety of reasons, weighing general criteria such as public convenience and welfare. These special exception requirements are often so stringent that they constitute a de facto ban, in violation of Connecticut General Statutes Section 8-2.

When group child care providers attempt to obtain special exceptions, they often face intense opposition from neighbors and are ultimately denied permits. For example, one All Our Kin provider in southern Connecticut, Esther Lambert,<sup>50</sup> was twice denied a special exception after seeking to enlarge her existing family child care home to a group child care home in a residential district. After being denied a special exception to operate the business at her first home, Esther moved to a larger property because of its suitability for a group child care business and invested significant time and money in developing the new home for use as a child care.

After spending months meeting with various local officials, Esther eventually received the support of the city's Engineering Bureau, the Transportation, Traffic & Parking Department, and the Planning Board. She hired an attorney, at significant personal expense, to represent her at a zoning board of appeals meeting. Despite the support of the city's professional planning staff, a dozen neighbors, some represented by an attorney, appeared at the hearing to oppose the expansion of Esther's child care, citing unfounded concerns about parking, noise, neighborhood character, and property values.

<sup>46</sup> New Haven Zoning Ordinance, Article III, Table 1 (2018),

[https://library.municode.com/ct/new\\_haven/codes/zoning?nodeId=ZOOR\\_ARIIREDIDIRE](https://library.municode.com/ct/new_haven/codes/zoning?nodeId=ZOOR_ARIIREDIDIRE).

New Haven's zoning ordinance permits family daycare homes as of right in residential districts.

<sup>47</sup> Danbury Zoning Regulations §8.C.4 (c)(6b). Group day care homes must have "1 [parking space] per 10 children, plus 1 per employee." <http://danbury-ct.gov/wp-content/uploads/2017/06/Zoning-Regulations.pdf>.

<sup>48</sup> Hartford Zoning Regulations, §3.5.1 Accessory Residential Uses (2018),

[http://www.hartford.gov/images/DDS\\_Files/Plan\\_Zoning/Zoning\\_Regs/ZoningRegulations.pdf](http://www.hartford.gov/images/DDS_Files/Plan_Zoning/Zoning_Regs/ZoningRegulations.pdf)

<sup>49</sup> Bridgeport Zoning Regulations, §6.4.3 (2018),

[https://www.bridgeportct.gov/filestorage/341650/341652/345965/343658/2018\\_Zoning\\_Regulations.pdf](https://www.bridgeportct.gov/filestorage/341650/341652/345965/343658/2018_Zoning_Regulations.pdf).

<sup>50</sup> All provider names have been changed to preserve anonymity.

As became evident at the hearing, most neighbors had not been aware that Esther already operated a smaller family child care at the site without any adverse effects on the neighborhood. The opposition only learned of her business when she sought to expand to a group child care home. At that point, a few neighbors began monitoring and taking photos of cars parked near her home, soliciting statements in opposition, and looking for other reasons to limit her business. Esther's application, despite moving to a new home and investing significant time and money to process her application, was ultimately denied a second time.

As in Esther's case, one of the arguments commonly used by local opponents of family and group child cares is that they will increase traffic congestion on local roads. However, there is little evidence to support this concern. Traffic engineering models used by state and local transportation planners estimate that child care businesses with six children generate only twelve vehicle trips during peak commuting hours (i.e. six cars arriving at the property and six leaving).<sup>51</sup> For child care businesses with twelve children, traffic models estimate that sixteen vehicle trips (eight cars arriving and eight leaving) are generated during peak commuting hours.<sup>52</sup>

Moreover, these models likely overestimate the traffic impacts of family and group child care homes, as they do not distinguish between day care centers and home-based child care businesses, which are likely to generate fewer vehicle trips for several reasons. First, family and group child care businesses typically have fewer employees who drive to work. The provider often lives in the residence (and so does not commute) and may have few or no employees. Second, family and group child care often offer more flexible hours and accommodations for parents. Flexible hours allow parents to drop off children earlier or pick them up later than might be possible at day care centers, decreasing the number of trips to the business during peak commuting hours. Third, family and group child care providers are also more likely to accommodate mixed-age groups of children. This enables parents with multiple children in different age groups to drop all children off in one place, rather than having to drive to multiple care settings for their infants, preschool, and school-age children. Finally, because family and group child care is located in residential neighborhoods, many parents will walk their child to a home child care business if it is close enough. Parents who do drive to family or group child care often avoid driving further from their home to center-based child care businesses (which often are not permitted in residential zones). Because child care services located in or near residential neighborhoods help reduce traffic, prohibiting or restricting family or group child cares is counter-productive and may make traffic worse.

If Connecticut's legal protections for group child care homes were strengthened to match those for family child care homes or amended to match those of other, more protective states, this might have enabled Esther to obtain a special exception, saved her considerable frustration, money, and time, and permitted her to expand her business to serve more children.

### **C. Zoning and Family and Group Child Care in Other States**

New York, California, and a few other states have enacted statutory protections for family and group child care by limiting the ability of localities to impose zoning restrictions. As in

<sup>51</sup> Institute of Transportation Engineers, Trip Generation Manual, 10<sup>th</sup> Edition (2017).

<sup>52</sup> Id.

Connecticut, some states provide stronger protections to smaller family child care homes than for larger group child care homes, while other states do not make distinctions based on size.

#### New York:

New York State has statutory protections for family child care similar to those in Connecticut. New York law goes further, however, by extending equal protections to larger group child care homes. New York Social Services Law Section 390 provides that “[n]o village, town (outside the area of any incorporated village), city or county shall prohibit or restrict use of a one or two family dwelling, or multiple dwelling for family or group family day care where a license or registration for such use has been issued in accordance with regulations issued pursuant to this section.”<sup>53</sup> Under New York law, registered “family day care homes” for three to six children and “group family day care homes” for seven to ten children are protected from local zoning restrictions.<sup>54</sup> Section 390 also mandates that localities shall not “adopt or enact any law, ordinance, rule or regulation which would impose, mandate or otherwise enforce standards for sanitation, health, fire safety or building construction on a one or two family dwelling or multiple dwelling used to provide group family day care or family day care than would be applicable were such child day care not provided on the premises.”<sup>55</sup>

Notably, New York extends the same protections to large “group family day care homes” (of seven to ten children) that are extended to smaller “family day care homes.” New York thus goes further than Connecticut, which provides weaker protections to group child care homes than for family child care homes. In Connecticut, these limitations frustrate provider efforts to meet demand in their communities by expanding to a group child care home—even if the state fully supports their effort.

New York’s statutory protections provide a useful tool that has enabled family and group child care advocates to overturn unduly restrictive local zoning ordinances. New York courts have repeatedly struck down local zoning laws that restrict the operation of family child care homes in residential districts, finding that these laws are preempted by state statute.<sup>56</sup> These court decisions make clear that localities cannot impose special parking requirements, minimum lot size or minimum floor space requirements for both family child care homes and group child care homes, beyond those imposed on other residences.<sup>57</sup> If Connecticut had the same statutory protections for

<sup>53</sup> N.Y. Soc. Serv. Law § 390 (12)(a). See also Chapter 875 of the Laws of 1986; NY Department of State, General Counsel Legal Memorandum LU-16 (“The Regulation of Daycare Facilities”) (2002), <https://www.dos.ny.gov/cnsl/lu16.htm>.

<sup>54</sup> NY Department of State, General Counsel Legal Memorandum LU-16 (“The Regulation of Daycare Facilities”) (2002).

<sup>55</sup> N.Y. Soc. Serv. Law § 390 (12)(a).

<sup>56</sup> *People v. Town of Clarkstown*, 160 A.D.2d 17, 559 N.Y.S.2d 736 (1990) (finding that local zoning law restricting family day care homes was impliedly preempted by state law, although there was not yet an express preemption provision for family day care homes at the time); *People v. Thorner*, 29 Misc. 3d 51, 909 N.Y.S.2d 864 (App. Term 2010) (finding that local restrictions on group family day care provider in multifamily building was preempted by state law despite fact that provider did not reside in the building); *Town of Throop v. Cordway*, 109 A.D.3d 1214, 971 N.Y.S.2d 917 (2013) (finding that locality could not require family day care provider to obtain a town zoning permit or pay an application fee).

<sup>57</sup> *People v. Town of Clarkstown*, 160 A.D.2d 17, 559 N.Y.S.2d 736 (1990); NY Department of State, General Counsel Legal Memorandum LU-16 (“The Regulation of Daycare Facilities”) (2002).

larger group child care homes as those in New York, providers would face fewer obstacles to their efforts to expand child care businesses.

### California:

The California Child Day Care Facilities Act limits local regulation of family child care homes and preempts local zoning ordinances that prohibit them.<sup>58</sup> California Health and Safety Code Section 1597.40 provides that family day care homes should be encouraged in residential areas as a matter of state policy “[t]he Legislature declares this policy to be of statewide concern with the purpose of occupying the field to the exclusion of municipal zoning...governing the use or occupancy of family day care homes for children...and to prohibit any restrictions relating to the use of single-family residences for family day care homes for children...”

California’s protections for child care homes of up to eight children are similar to Connecticut’s protections for family child care homes of up to six children, but extend only to single-family homes. California Health and Safety Code Section 1597.45 (a) stipulates that “[t]he use of a single-family residence as a small family day care home [of up to eight children] shall be considered a residential use of property for the purposes of all local ordinances.” California localities must treat small family day cares like other single family homes and cannot require them to obtain zoning permits.

California localities may impose zoning permit requirements on large family day care homes of nine to fourteen children, but only under limited conditions. California Health and Safety Code Section 1597.46 (a) provides that cities and counties “shall not prohibit large family day care homes on lots zoned for single-family dwellings,” and instead must either

- (1) Classify these homes as a permitted use of residential property for zoning purposes[.]
- (2) Grant a nondiscretionary permit [without a hearing] to use a lot zoned for a single-family dwelling to a large family day care home that complies with local ordinances prescribing reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control relating to those homes...[or]
- (3) Require a large family day care home to apply for a [special/conditional use] permit to use a lot zoned for single-family dwellings... [with a hearing only upon request, provided that the] use permit shall be granted if the large family day care home complies with local ordinances...<sup>59</sup>

California’s statutory protections for larger in-home child care are stronger than Connecticut’s protections, because California limits the types of restrictions that localities can impose and mandates a nondiscretionary permitting process.<sup>60</sup> California requires localities to either permit

<sup>58</sup> California Health and Safety Code § 1597.30 et seq.

<sup>59</sup> California Health and Safety Code § 1597.46 (a).

<sup>60</sup> California’s legal protections make it easier for providers to establish their businesses; still, providers continue to face zoning obstacles imposed by localities seeking to inhibit in-home child care. The obstacles imposed, on their face are compliant with the laws, but are in fact insurmountable barriers. Examples include permit fees that cost

these larger day cares as of right in residential areas, grant a nondiscretionary permit without a hearing, or grant a use permit subject to a hearing only upon request.<sup>61</sup> If Connecticut had similar protections, Esther Lambert would likely not have been denied a special permit to expand her child care business. Under California law, Esther would have had to meet rules reasonably set by the town, but her permit—and her livelihood—would not have been subject to veto by irrational neighbors.

#### Other States: Washington, Oregon, Minnesota, and Illinois

In addition to New York and California, several other states also protect home-based family child cares from local zoning restrictions. Washington State extends protections similar to, but stronger than, those in Connecticut, by protecting in-home providers serving larger groups of children. Washington's protections provide that "no county or city may enact, enforce, or maintain an ordinance, development regulation, zoning regulation, or official control, policy, or administrative practice that prohibits the use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care" facility of up to twelve children.<sup>62</sup> Washington's statutory protections go on to specify that localities may impose "zoning conditions on the establishment and maintenance of a family day-care provider's home in an area zoned for residential or commercial use, so long as such conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone and the establishment of such facilities is not precluded."<sup>63</sup> Oregon has similar statutory protections, which extend to family child care homes of up to sixteen children.<sup>64</sup>

Minnesota state law also protects in-home providers serving larger groups of children. Minnesota regulations provide that "a group family day care facility licensed under Minnesota Rules...to serve 14 or fewer children shall be considered a permitted single-family residential use of property for the purposes of zoning and other land use regulations."<sup>65</sup>

Illinois does not have explicit statutory protections that prevent municipalities from banning family and group child care. However, Illinois courts have repeatedly struck down local zoning

thousands of dollars or parking requirements that make it impossible to site in-home child care in many residential areas. Most important, California's statutory protections extend only to single-family homes and there are no equivalent protections for child care businesses in multifamily homes. Interview with Laurie Furstenfeld, Senior Staff Attorney, Child Care Law Center, November 14, 2018

<sup>61</sup> Laurie Furstenfeld, Child Care Law Center: Know the Law for Planners: Is Your City or County Compliant with California Law for Family Child Care Homes? 5 (2017).

<sup>62</sup> Revised Code of Washington (R.C.W.) [36.70A.450](#) (1).

<sup>63</sup> R.C.W. [36.70A.450](#) (4).

<sup>64</sup> O.R.S. § 329A.440 provides that "(1) A registered or certified family child care home [of up to 16 children] shall be considered a residential use of property for zoning purposes. The registered or certified family child care home shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single-family dwellings. A city or county may not enact or enforce zoning ordinances prohibiting the use of a residential dwelling, located in an area zoned for residential or commercial use, as a registered or certified family child care home... (2) A city or county may impose zoning conditions on the establishment and maintenance of a registered or certified family child care home in an area zoned for residential or commercial use if the conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone."

<sup>65</sup> M.S.A. § 245A.14.

ordinances that have the effect of excluding state-licensed family and group child care or limiting them in ways that go beyond state regulations.<sup>66</sup>

#### Lessons for Connecticut:

New York and California state protections for family and group child care provide instructive examples that Connecticut should consider emulating. As noted, New York goes further than Connecticut by extending the same protections to larger group child care homes as are extended to smaller family child care homes. California's statutory protections also go further than Connecticut's by imposing limitations on the kind of zoning restrictions or permit requirements that localities can place on larger child care homes. The experiences of these states suggest that—while barriers to child care homes still remain—stronger state protections have meaningfully reduced obstacles for child care providers that are more likely to face restrictions. This is especially true for larger child care homes. Connecticut should extend protections for group child care to track Connecticut's existing protections for family child care.

#### **D. Policy Reform Proposals: Zoning**

In light of the ongoing municipal noncompliance described above, Connecticut should take additional steps to ensure municipalities abide by the current permissive zoning requirements. As discussed above in Section IV.B of the report, localities in Connecticut continue to impose zoning barriers to family and group child care homes that make it difficult to establish child care businesses. These roadblocks create heavy burdens on providers and limit the available child care supply. Parents, including the 43.6% of the Connecticut population that lives in a “child care desert,” may need to travel to other towns if child care is not available nearby.<sup>67</sup> In light of the urgent need for additional affordable child care in Connecticut, the state legislature should enact stronger statutory protections for family and group child care businesses.

First, Connecticut should amend Section 8-3j and Section 19a-87b of the Connecticut General Statutes to include group child care homes. This would confer the same protections on group child care homes that are currently provided for family child care homes, and prevent localities from imposing special exception requirements or other conditions on group child care homes. To avoid ambiguity, language should be added to Section 8-2 or Section 8-3 explicitly stating that municipalities may not impose any special zoning permit requirements on family child care homes or group child care homes. This would be an important step in removing local barriers to family and group child care, as it would provide stronger grounds for enforcement against noncompliant towns.

Second, Connecticut should add a new provision to Connecticut General Statutes Section 8-2 requiring municipalities to report to the state on their compliance with their statutory obligation to permit family and group child care free of any special restrictions. In addition, the state should add enforcement language to Section 8-2 providing that where a municipality is noncompliant with

<sup>66</sup> *Hawthorne v. Vill. of Olympia Fields*, 204 Ill. 2d 243, 790 N.E.2d 832 (2003) (locality “partially” preempted from regulating day care homes in any manner that conflicts with Illinois Child Care Act or state regulations); *Rheams v. Village of Flossmoor*, No. 95 CH 3485 (Cir. Ct. Cook County, Oct. 17, 1995) (municipality preempted by Illinois Child Care Act and state regulations from regulating family day care homes “in any manner whatsoever.”).

<sup>67</sup> Malik, *supra* note 8.

statutory obligations regarding family and group child care (or the state becomes aware of such noncompliance by other means), that municipality may be ineligible for discretionary state funding. Provisions along these lines would create stronger local incentives to comply with state law and consequences for localities that do not.

Third, Connecticut's Office of Early Childhood should take steps to educate family and group child care providers about the scope of allowable local zoning restrictions, so that providers are aware of their rights. Providers should be made aware that illegal zoning restrictions in violation of state law are not enforceable so that providers are not deterred from moving to noncompliant municipalities because of such provisions.

Another possible model for legislative reforms might be California's efforts to promote construction of Accessory Dwelling Units (ADUs), small backyard residential structures that share a lot with an existing (often single-family) home.<sup>68</sup> Despite a 2002 state law preventing municipalities from banning ADUs and limiting the restrictions that could be placed upon them,<sup>69</sup> California localities had long imposed onerous zoning and other restrictions that made it difficult to construct ADUs.<sup>70</sup> To help address the state's affordable housing shortage, in 2016 and 2017 the California legislature passed a series of measures to further preempt local restrictions on ADUs.<sup>71</sup> These enactments required cities to approve ADUs via a nondiscretionary administrative process rather than discretionary review as permitted before, limited the parking requirements that cities can impose on ADUs, and eliminated localities' ability to assess utility connection fees for the structures.<sup>72</sup> Since the adoption of these legislative reforms, the number of ADU permit applications and approvals in California has increased dramatically.<sup>73</sup> Connecticut should follow this model by making approval of group child care a nondiscretionary process and sharply curtailing the ability of localities to impose parking and other requirements.

## **V. Barriers Posed by Landlords, Condominium Associations, and Homeowner Associations**

Even when fully licensed by the state and approved by the municipality, child care providers' businesses often operate at the whim of others. Landlords, condominium associations, and homeowner associations hold undue power and influence over providers' ability to run child care businesses. Because providers offer child care from their homes, they frequently must appease landlords and residential associations—a burden other businesses do not face. This hurdle hampers the affordability and accessibility of child care in Connecticut but it does not need to be this way. Other states have already demonstrated the power and effectiveness of provider-friendly public policies. A legislative solution can offer relief from unjust restrictions to providers and simultaneously address the concerns of landlords, condominium associations, and homeowner associations.

<sup>68</sup> Margaret F. Brinig and Nicole Stelle Garnett, *A Room of One's Own? Accessory Dwelling Unit Reforms and Local Parochialism*, 45 URB. LAW. 519 (2013).

<sup>69</sup> Act of Sept. 29, 2002, ch. 1062, § 2, 2002 Cal. Stat. 6847, 6852-55; Cal. Gov't Code § 65852.2.

<sup>70</sup> Brinig and Garnett, *supra* note 73.

<sup>71</sup> California Senate Bill 1069/ Assembly Bill No. 2299 (2016), [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB2299](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB2299); Senate Bill 229/ Assembly Bill 494 (2017), [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB229](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB229).

<sup>72</sup> *Id.*

<sup>73</sup> David Garcia, ADU Update: Early Lessons and Impacts of California's State and Local Policy Changes (December 2017), [http://turnercenter.berkeley.edu/uploads/ADU\\_Update\\_Brief\\_December\\_2017\\_.pdf](http://turnercenter.berkeley.edu/uploads/ADU_Update_Brief_December_2017_.pdf).

## A. State of the Law in Connecticut: Landlords and Residential Associations

Current Connecticut law is mostly silent on protections for family and group child care businesses outside of the zoning provisions discussed in Section IV of the report. Landlords and residential associations enjoy largely unfettered power to extort providers or to refuse to allow child care businesses on their property. Providers may invest substantial time, money, and energy in preparing their business and receiving approval from the state only to find that they cannot proceed in the face of landlord or residential association disapproval.

Connecticut General Statutes Sections 8-2 and 8-3j demonstrate a statewide policy interest in supporting family and group child care businesses. State courts have recognized this clear mandate with regard to restrictive zoning imposed by municipalities.<sup>74</sup> Egregiously, the courts have failed to extend protection to providers from similar restrictions enforced by landlords, condominium associations, and homeowner associations. This is unusual. In New York, the state courts read similar statutory language to require landlords and residential association boards to permit residents to run child care out of their residences.<sup>75</sup> As such, providers in Connecticut face an unfortunate hurdle not faced by providers in other states—a hurdle that the legislature can readily address.

Until this is addressed, landlords, including public housing authorities, may prohibit their tenants from operating businesses, including child care, on their properties. Some tenants even face eviction because of their attempts to offer child care in their home. Many providers do not know how to check their lease for provisions that might affect their ability to start a child care business. Or they understandably assume that the state licensing requirements are inclusive. Providers report being forced out of their residences because landlords do not want to allow a family and group child care business on the site.

For example, one All Our Kin provider in southern Connecticut, Camila Madera,<sup>76</sup> faced eviction proceedings when her landlord arbitrarily decided to stop allowing her to run a child care business in her rental apartment. Camila operated a licensed family child care in her apartment, and understood that she had her landlord's express permission to operate the child care business in the apartment before signing the lease. She moved to this particular town in order to open a family child care business and serve a Spanish-speaking community. Over the course of several years, Camila lived in three different apartments owned by the landlord, moving to a larger unit in order to expand her child care business, and with each move, she understood that she would be allowed to continue operating. Camila depended on the child care business as her sole source of income, and relied on the landlord's promises as she developed relationships with local clients and invested in her business, paying to construct a fenced outdoor play area in the yard of the apartment complex. The landlord ultimately sought to evict Camila from her apartment because of her family

<sup>74</sup> *Ridgefield Planning and Zoning Comm'n v. Ridgefield Zoning Bd. of Appeals*, 2002 WL 799774 (Conn. Super. Ct. Apr. 2, 2002).

<sup>75</sup> See, e.g., *Quinones v. Bd. of Managers of Regalwalk Condo. I*, 242 A.D.2d 52, at 55 (1998) (finding that condominium prohibitions on day care businesses are in violation of public policy); *Alpha Dynamics Ltd. v. Martinez*, 2005 N.Y. Misc. LEXIS 3323, 2, 233 N.Y.L.J. 90 (N.Y. Civ. Ct. 2005) (holding that lease provision barring day care in apartment is void).

<sup>76</sup> Provider names have been changed to preserve anonymity.

child care business, despite the years of implicitly approving the business, even though the lease contained no prohibition on operating an in-home child care, and there was no indication that the child care had adverse impacts on any neighbors. This story highlights the particular vulnerability of family and group child care providers who are tenants in rental housing, where not only their businesses but their stable home life may be upended at the whim of their landlord.

Due to the current state of Connecticut law, the operation of unlicensed family and group child care businesses may be encouraged. Providers who realize their landlord or residential association will not agree to a business on their premises may choose to forego licensure in order to avoid notifying their landlord. In the short term, this may help providers bring in needed income without notifying the landlord, condominium association, or homeowner association. However, unlicensed facilities and providers may endanger children. These providers may also face sudden eviction if their landlord or neighbors learn about the business. Landlords and residential associations may also pressure the provider into operating without a license, assuming that—if they can plead ignorance and show the restrictive lease provision—they are not liable. All of these options are antithetical to the state’s goals of monitoring and ensuring safe child care environments.

Connecticut’s current position is particularly egregious with regard to the state’s public housing program. Some public housing authorities expressly prohibit the operation of in-home business from subsidized units. This barriers to family and group child care businesses should be removed because Connecticut has a clear interest in promoting public housing residents’ participation in the workforce. Put simply, housing authorities can charge more in rent when residents earn more because public housing rent is determined by income.<sup>77</sup> Additional rent then eases the burden on the state to subsidize housing authorities. Providers also serve an important role for their community. An affordable and on-site child care location enables other public housing residents to leave their child in safe hands while they seek employment or educational opportunities. Despite this, affordable housing developers often shortsightedly prohibit child care to the detriment of their residents’ livelihood.

Condominium and homeowner associations may also target providers. Restrictive covenants can impose limitations or outright bans on family and group child care businesses. Some providers may not understand these restrictions until after they have committed to the property, on the assumption that they will be able to operate their business. Other condominium owners who later decide to open a child care business due to changed life circumstances might find themselves facing a choice: look for a new home or abandon your livelihood. While case law on this issue is not entirely settled, providers’ challenges to these restrictions are unlikely to succeed unless they can prove that the rule is arbitrary and capricious or that the rule was adopted despite procedural irregularities.

This is not to say that landlords and residential associations do not have legitimate interests in the businesses run on their property. But legislation can readily address those legitimate interests while also accommodating local and regional child care needs. Currently, landlords, homeowner associations, and condominium associations undermine the ability of communities to provide and stimulate local child care. Restrictive leases, covenants, and other mechanisms raise the cost of

<sup>77</sup> Conn. Gen. Stat. § 8-72 (“At the annual recertification, the authority or developer shall base rent levels on such family's average income throughout the preceding twelve months.”).

child care—if it is available at all—and frustrate entrepreneurial child care providers. The Connecticut legislature can pass legislation that takes into consideration any reasonable concerns landlords, homeowner associations, and condominium associations might have. For example, Connecticut can follow other states in allowing landlords to request an additional security deposit from providers. In doing so, however, the legislation should also clearly state Connecticut’s policy preference for permitting family and group child care as of right.

## **B. Practical Barriers and Potential Solutions**

Landlords, condominium associations, and homeowner associations raise a number of limited concerns, each of which may be addressed while allowing for family and group child care providers. The first issue is that a child care business may increase demand for parking and street traffic. This concern is largely overblown. Family and group child care businesses serve a small number of children—up to six or twelve, depending on the type of license. The number of additional trips this generates is negligible from a traffic perspective. Family and group child care businesses are also likely to attract families in the immediate vicinity, further reducing the number of trips. Regardless, landlords and residential associations should work with providers to determine the most appropriate means for handling child pick-up and drop-off. Providers may then communicate with parents about the best arrangement for all parties.

Another potential issue is an increase in noise levels and trash. Again, the first recourse should always be for landlords and residential associations to work with the provider to find a mutually agreeable solution. To backstop this, the state should direct the Office of Early Childhood to promulgate reasonable regulations concerning noise levels and trash disposal with which providers must comply.

Landlords, homeowner associations, and condominium associations may also believe that a family or group child care business exposes them to increased liability. First, the Office of Early Childhood is responsible for determining the safety of the premises for children. Both scheduled and unannounced inspections help ensure that children are not at risk of injury. Second, as discussed below, California has adopted a simple system that lets any worried landlord or residential association opt in to a provider’s liability insurance. Affordable liability insurance is readily available in Connecticut.

A final issue is that landlords may not want to pay to fix hazardous situations on their property. Providers struggle to convince their landlords to remove or repair abandoned and rusted vehicles, standing pools of water, dilapidated fences, and other risks to children. The state may refuse to license a provider because the landlord fails to maintain the property. This situation encourages property owners to neglect their property and deprives providers of business opportunities.

Lead is a similarly contentious issue. Connecticut law requires that child care inspectors evaluate the property for “evident sources of lead poisoning” (which can include the soil and water at the residence) and test any paint chips.<sup>78</sup> While this issue is difficult for all parties involved, withholding permission for a family or group child care business because of this concern is

<sup>78</sup> Conn. Gen. Stat. § 19a-87b.

inappropriate. The state already requires abatement of lead in all properties with a child under the age of six.<sup>79</sup> This means that a large portion of family and group child care businesses—all those in which a provider has their own young children—are already covered. The legislature should not permit landlords to discriminate against providers on this basis. Instead, additional funding and expanded programming can help provide a safe environment for Connecticut’s children, both while at home and while at child care.

### **C. The New York Model**

New York courts have repeatedly found that landlords and condominium associations may not prohibit family and group child care. As in Connecticut, New York family and group child care providers have often faced discrimination, and in the past, landlords and residential associations made an effort to prohibit family and group child care on their premises. Eventually, family and group child care providers brought suit to enforce their right to operate a duly licensed business. In *Quinones v. Board of Managers of Regalwalk Condominium I*, the State Supreme Court, Appellate Division, held that condominium associations could not prohibit family and group child care through the use of restrictive covenants.<sup>80</sup> The court grounded its opinion in New York Social Services Law Section 390: “the clear intent of the statute is to expand the availability and accessibility of such day care facilities.”<sup>81</sup>

New York courts later expanded these protections, in the name of public policy, to residential leases.<sup>82</sup> As such, New York providers have much greater leeway to pursue family and group child care business opportunities—whether they are renters or owners.

### **D. The California Model**

California leads the nation in offering a clear, effective endorsement of in-home child care businesses. During the 1990s, the state faced a crisis as child care costs spiked and providers struggled to open businesses even with state approval. The legislature amended the family child care laws in 1996 to read: “[i]t is the intent of the Legislature that family day care homes for children should be situated in normal residential surroundings so as to give children the home environment which is conducive to healthy and safe development.”<sup>83</sup> California Health and Safety Code Section 1597.40 goes on to state, “[t]he Legislature declares this policy to be of statewide concern [...] and to prohibit any restrictions” on residences that concern family and group child care.

California law provides a model for many of the concerns raised by Connecticut landlords and residential associations. The law is designed to favor providers but it also offers landlords, condominium associations, and homeowner associations information about family and group child

<sup>79</sup> Conn. Gen. Stat. § 19a-111c.

<sup>80</sup> 242 A.D.2d 52 (1998).

<sup>81</sup> *Id.* at 57.

<sup>82</sup> E.g., *Carroll St. Properties v. Puente*, 4 Misc. 3d 896 (Civ. Ct. Kings Co., 2004) (violation of lease provision prohibiting home child care businesses is not grounds for eviction because state policy favors allowing these licensed businesses).

<sup>83</sup> California Health and Safety Code § 1597.40.

care facilities and the opportunity to reasonably address concerns they might have with a proposed business.

First, California voids all restrictive provisions concerning child care in written agreements related to real property.<sup>84</sup> Similarly, the state voids covenants, conditions upon use or occupancy, or conditions upon transfer of title that restrict child care.<sup>85</sup> Landlords and residential associations may not prohibit tenants and residents from using their home for a child care business. Providers do not have to fear eviction or other reprisal. Because of this, providers are more likely to seek a full license from the state instead of operating under the table to avoid confrontation with their landlord or residential association.

The California law does require the provider send written notice to the landlord thirty days prior to beginning operations.<sup>86</sup> This provision serves to bring the process and the business into the open. The state has an interest in encouraging landlord awareness of the situation. Doing so allows landlords to educate themselves about family and group child care and communicate with the provider.

Landlords concerned about the business also receive protections. The statute permits landlords to require an increased security deposit (subject to the maximum allowable under California law) because of the child care business.<sup>87</sup> In a similar vein, California requires that providers maintain liability insurance.<sup>88</sup> The law then permits the landlord or residential association to request to be added as an additional insured party if the landlord or residential association is willing to pay for any additional premium.<sup>89</sup> This system offers security for landlords, homeowner associations, and condominium associations. In addition, it does not substantially burden providers—a result that would be counterproductive to the interests of all involved.

In September 2018, California passed a bill that, in part, directed the State Water Resources Control Board to offer “grants for testing drinking water lead levels in licensed child day care centers, remediating lead in drinking water systems of child day care centers... and providing technical assistance to child care centers requiring help applying for the grants.”<sup>90</sup> The state is still in the process of rolling out these programs. When implemented, the protections will address landlords’ concerns regarding lead.

Despite California’s strong protections for family and group child care providers, landlords continue to impose restrictions that pose significant barriers for providers. While the state protections are effective in safeguarding existing providers from eviction at a particular site, they are less successful at protecting providers seeking to establish new family child care businesses or relocate an existing business to another home or apartment.<sup>91</sup> California landlords frequently

<sup>84</sup> California Health and Safety Code § 1597.40(b).

<sup>85</sup> California Health and Safety Code § 1597.40(c).

<sup>86</sup> California Health and Safety Code § 1597.40(d)(1).

<sup>87</sup> California Health and Safety Code § 1597.40(d)(4).

<sup>88</sup> California Health and Safety Code § 1597.531(a).

<sup>89</sup> California Health and Safety Code § 1597.531(b).

<sup>90</sup> A.B. 2370 (2018).

<sup>91</sup> Interview with Laurie Furstenfeld, Senior Staff Attorney, Child Care Law Center, November 14, 2018.

refuse to rent to prospective tenants who are family child care providers.<sup>92</sup> Rental applications typically require prospective tenants to indicate their source of income. While landlords cannot compel providers to disclose their intention to operate a family and group child care business before renting to them, providers may struggle to demonstrate their source of income unless they disclose. California's existing statutory protections protect providers in existing rental agreements, but not prospective rental applications. Finally, providers seeking to purchase a home for their business sometimes encounter discrimination from banks, which may refuse to lend to them.<sup>93</sup>

#### **E. Policy Proposals for Landlords and Homeowner/Condominium Associations:**

Building on the law in California and New York, Connecticut has a unique opportunity to become the most forward-thinking state in the nation with regard to in-home child care. Doing so will expand access, make child care more affordable, and empower entrepreneurs across the state.

Despite similar statutory language, Connecticut has not extended protections against restrictive leases and covenants in the same way as New York courts. This leaves providers in a bind and limits the capacity of communities to meet their child care needs. As a starting point, Connecticut should adopt clarifying statutory language that explicitly establishes the state policy preference for family and group child care.

Beyond this, Connecticut should look to the model in California with regard to leases, residential covenants, and other restrictions. First, the Connecticut legislature should prohibit the use of provisions restricting child care in leases and other documents related to real property. Second, the state should prohibit the use of covenants and other restrictions by residential associations that limit child care facilities.

Connecticut can also seek to enforce these ideas by restricting the ability of state-financed housing entities to prohibit family and group child care businesses. Connecticut should make the provision of state funds dependent on the revocation of any covenants or lease provisions that limit family and group child care.

While favoring providers' right to open and operate a licensed family or group child care business, Connecticut should also seek to create a process that informs and protects landlords and residential associations. As such, Connecticut law should require child care providers to notify their landlord, condominium association, or homeowners association of the business so that those parties may raise reasonable concerns. As in California, Connecticut should allow for landlords to request a reasonable increase in the security deposit to allay concerns about the business. Similarly, the state should permit landlords and residential associations to be named as additional insured parties if they are willing to pay any additional associated premium.

Connecticut should prohibit landlords from discriminating against renters because they earn their income as a child care provider. Connecticut's Discriminatory Housing Practices Act already prohibits landlords from discriminating based on a tenant's source of income (this provision is

<sup>92</sup> Id.

<sup>93</sup> Id.

often invoked to prevent landlords from refusing Section 8 vouchers.)<sup>94</sup> This statute should be extended to explicitly prohibit landlords from refusing to rent to family day care providers. These changes to Connecticut law will go a long way toward establishing an effective provider-friendly system. In addition, Connecticut should increase funding for, and expand the scope of, the Connecticut Children’s Healthy Homes Program to offer lead remediation for in-home child care facilities throughout the state.<sup>95</sup>

Each of these steps helps to further family and group child care in Connecticut. Tenants and property owners alike should be able to use their residences for child care operations. The legislature intended this when it provided in Connecticut General Statutes Section 8-2 and 8-3j for the special treatment of these businesses. Enacting these changes will open the door for providers to meet the child care demands of their communities while still satisfying property owner concerns by allowing reasonable increases in security deposits, provider insurance for the premises and property owners to be named as additional insured parties, provided they pay any associated increases in the premium.

Beyond this, the Office of Early Childhood is best positioned to determine appropriate regulations concerning the operation of family and group child care facilities. California provides a successful model for reform—albeit one that the Connecticut legislature should improve upon.

Connecticut also has a longstanding commitment to mitigating children’s lead exposure. Connecticut Agencies Regulations Section 19a-111 evidences this position. That regulation provides for the inspection and remediation of lead paint in all group child care homes and any property in which a child under the age of six resides. The problem persists, however, and landlords may cite the probability of lead exposure as justification when they deny permission to operate a family or group child care business on the premises. Presumably the state wishes both to expand family and group child care services and not expose additional children to lead poisoning. The best solution to this conundrum is to expand funding for remediation when children would be present—whether that is as a client at a family or group child care business or while living in a residence with their family.

The law in Connecticut today supports the “not-in-my-backyard” behavior of landlords and residential associations. Unfortunately, the cost of this behavior is borne by Connecticut’s children and economy. The state should make clear that children and child care providers are important—part of achieving that goal means ensuring that duly licensed providers can operate their child care businesses without fear of reprisal or eviction.

## **VI. Conclusion**

<sup>94</sup> Conn. Gen. Stat. § 46a-64c.

<sup>95</sup> The Connecticut Children’s Healthy Homes Program, which is funded jointly by the HUD Office of Lead Hazard Control, the State of Connecticut Department of Housing, and the Connecticut Children’s Medical Center, previously identified its goal as “promoting the optimal development of vulnerable children” through the reduction of exposure to lead and other toxic substances. Connecticut Children’s Healthy Homes Press Release, Feb. 18, 2015, <https://www.connecticutchildrens.org/news/connecticut-childrens-medical-centers-lampp-healthy-homes-program-announces-new-name/>.

An initial push between 1987 and 1990 recognized the importance of family and group child care. Since then, Connecticut law has failed to protect family and group child care. This failure has created an untenable situation for many families, limited the ability of providers to start their own businesses, and inhibited children's access to the quality early learning settings that lay the foundation for success in school and beyond.

Two immediate problems face the state. The first is the insufficient easing of zoning with regard to family and group child care and the inability of the state to ensure municipal compliance with the law. The second is the unchecked ability of landlords and residential associations to block entrepreneurs fully in compliance with and licensed by the state. Each of these issues allows parties—local governments, landlords, and residential associations—to pass the buck. Providing for children becomes someone else's problem. The legislature can and should remedy this situation quickly and effectively and at minimal cost to the people of Connecticut. Doing so is a concrete step toward a more efficient and effective child care system.