

October 20, 2009

The Honorable
Members of the Zoning, Neighborhoods and Development Committee

Honorable Members:

Pursuant to s. 295-307-7-b of the Milwaukee Code of Ordinances, the Zoning Code Technical Committee, on October 14, 2009, reviewed Common Council File Number 090705, an ordinance relating to the location of the outdoor play space of a family day care home or day care center.

Based on this review, the Committee found as follows:

- With respect to legality and enforceability, the City Attorney's representative on the Committee indicated that the application of the proposed ordinance to family day care homes is pre-empted by State law and would thus be illegal. According to s. 66.1017(2), Wis. Stats., no municipality shall establish standards or requirements on family day care homes that provide care for up to 8 children that differ from the licensing standards established by the state under s. 48.65, Wis. Stats. The State has a requirement for play areas, but with no restriction on location. State law does not however prevent the City from establishing a different standard for day care centers.
- With respect to administrative efficiency, the Committee found that the ordinance would create regulatory issues for both the City and the State, in that there would be more requests for approval of off-premise play areas.
- With respect to consistency with the format of the zoning code, the proposed ordinance meets this standard.

The Committee also recommended that this legislation be referred back to the sponsor for additional information and clarification, specifically with respect to the rationale for prohibiting day care play areas in front yards.

Respectfully Submitted,

Teodros W. Medhin, Ph.D.
Chair, Zoning Code Technical Committee

cc: Ald. Willie Wade