

## ORDINANCE NO. 1364

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF TONGANOXIE, KANSAS; RELATING TO DAYCARES AND PRESCHOOLS.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TONGANOXIE, KANSAS:

Section 1: That Section 22-020(c)12 Special Uses of the Zoning Ordinance is deleted in its entirety and replaced with:

(c)(12) Daycares, specifically a Licensed Daycare Home or a Group Daycare Home (See Appendix A-Use Group by Category).

Section 2: That Section 22-020(c) Special Uses of the Zoning Ordinance is reordered to incorporate the following:

- Child Care Center, except in the business district(s) (See Appendix A-Use Group by Category).
- Preschool, except in the business district(s) (See Appendix A-Use Group by Category).

Section 3: That Section 32 Definitions is amended to remove the definition for 'Day Care Center or Nursery' in its entirety.

Section 4: That Section 32 Definitions is reordered to incorporate the following additional definitions to read:

Child Care Center - A facility which provides care and educational activities for 13 or more children two weeks to 16 years of age for more than three (3) hours and less than 24 hours per day including daytime, evening and nighttime care; or provides before and after school care for school-age children, and where the facility is not a residence. Child care centers may have less than 13 children if all other requirements are met as set out in this ordinance and as required by State licensing.

Care provider (or provider) – Means a person, association, corporation or other organization who has control or custody of one or more children under 16 years of age who are unattended by a parent or guardian for the purpose of providing those children with care for less than 24 hours a day, except children related to the person by blood, marriage or legal adoption.

Group Daycare – The premises in which care is provided for a maximum of 12 children under 16 years of age, with a limited number of children under kindergarten age in accordance with KAR 28-4-114(f)(1), where this is the primary use of the land or within the daycare provider's household.

Home Based Daycare - A daycare provided within a dwelling unit for up to 2 children and meets the requirements for an exception to licensing as authorized by KSA 65-501 et seq and CCL 008. (See Section 22-030(b) for exceptions).

Licensed Daycare Home – the premises in which care is provided for a maximum of 10 children under 16 years of age, with a limited number of children under kindergarten age in accordance with KAR 28-4-114(e)(1).

Floor Area, Net: The horizontal area of a floor or several floors of a building or structure, excluding those areas not directly devoted to the principal or accessory use of the building or structure, such as storage areas or stairwells, measured from the exterior faces of exterior or interior walls.

Preschool-a facility with 13 or more children which provides learning experiences for children who have not attained the age of eligibility to enter kindergarten; who are 30 months of age or older; which conducts sessions not exceeding three hours per session; which does not enroll any child more than one session per day; does not serve a meal; and the facility is not used as a residence. Includes educational preschools, Montessori schools, nursery schools, church-sponsored preschools and cooperatives. Preschools may have less than 13 children if all other requirements are met as set out in this ordinance and as required by State licensing.

Related (Relative, or Family)-The following relationships by marriage, blood, or legal adoption: parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, aunt; it also means the relationship of a legal guardian or ward.

Section 5: That a new Section 22-030 Daycares shall be added to the Zoning Ordinance to read as follows:

#### Section 22-030 Daycares

- a. Home Based Daycares must provide all of the following additional requirements. These do not supersede any State requirements that may apply.
  - i. The predominant use of the premises must be residential.
  - ii. The use be primarily carried on or conducted by members of a family residing in the dwelling.
  - iii. All open play areas must be completely enclosed with a fence (chain link, wood, or vinyl) at least 4 feet in height and in good repair.
- b. Home Based Daycares-Exceptions to Special Use Permit Requirements  
Home Based Daycares are considered a use by right in certain districts when ANY of the following apply: These do not supersede any State requirements that may apply.
  - i. Childcare is provided for not more than two children unrelated to the provider for not more than 40 hours a week and the home has not been closed as a result of enforcement action by the State. Total time is determined by adding the hours each child is cared for weekly.
  - ii. Irregular child care is arranged between friends and neighbors on an exchange basis.
  - iii. Child care is provided in the child's own home.
  - iv. Child care is provided in the home of the child's relative.
- c. Licensed Daycares, Group Daycares, and Child Care Centers must provide all of the following additional requirements. (These do not supersede any State requirements that may apply.)

- i. The property must have a minimum lot area of 6,000 square feet and a minimum lot width of 65 feet.  
*(Note: These dimensions are consistent with the R-SF zoning, and are less than the Multi-family zoning districts).*
- ii. In any residential zoning, side setbacks must be at least 100% greater than the minimum side setback required in the district except where the interior side yard is attached to another residential unit.
- iii. At least 75 square feet of outdoor play space must be provided on the lot for each child using the space at a given time. The total outdoor space shall accommodate not less than one-half of the licensed capacity, or shall include a minimum of 750 square feet, whichever is greater.
- iv. All open play areas must be completely enclosed with a fence (chain link, wood, or vinyl) at least 4 feet in height and in good repair.
- v. The Council may impose additional requirements such as (but not limited to),
  - Limitations on the number of children
  - Additional fence requirements or setbacks
  - Hours of Operation
  - Other requirements that may affect the neighborhood or the health and safety of the children being cared for.

d. Preschools-Exceptions

- i. A Special Use Permit is not required when Preschools are an accessory use to any of the following:
  1. Elementary/Grade School
  2. Middle/Junior High School
  3. Senior High School

e. Daycares – Legal Conforming prior to adoption of this ordinance.

Daycares that were previously legal conforming uses prior to the adoption of this ordinance April 22, 2013, are licensed, in good standing with the State, and are no longer a permitted use in the district in which it exists upon passage of this ordinance, may continue until at any time the use is discontinued for a period of at least 30 days. Any future use of the structure must meet the requirements of the ordinance herein.

Section 6: That Section 20-011 Parking Regulations be amended to the Zoning Ordinance to add the following:

x. Daycares	1-2 Children	Same as the residential district in which it occurs.
Daycares (Licensed Daycares, Group Daycares, Child Care Centers, and non-accessory use Preschools.	Net floor area of facility is 2500 square feet or less.	1 space for every 300 square feet used for child care, plus 1 space for each provider on duty at any one time.
Daycares (Licensed Daycares, Group Daycares, Child Care Centers, and non-accessory use Preschools.	Net floor area of facility is greater than 2500 square feet.	8 spaces for the first 2500 square feet used for child care, plus one space for every additional 5000 square feet used for child care, plus 1 space for each

		provider on duty at any one time.
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**Section 7:** That Appendix A-Use Group by Category of the Zoning Ordinance be amended and reordered to include the following:

**Use Categories Changes:**

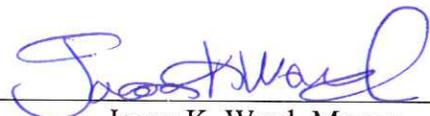
CATEGORY	DEFINITION	USES	RR	R-E	R-SF	R-1	R-MF1	R-MF2	R-MFS	MHP	PUD-R	HBD	LBD	GBD	PUD-C	BP	ILT	IMD	IH	Com. Plan	
Daycare: Child Care Center (or) Preschool	Care, protection, tutelege and/or supervision for children on a regular basis away from their primary residence for less than 24 hours per day	13 or more children for more than three hours and less than 24 hours. See section 22-030 For additional requirements.	X (S)		X (S)	X (S)	X	X	X	X					X (S)						
Daycare: Home Based	Care, protection, tutelege and/or supervision for children on a regular basis away from their primary residence for less than 24 hours per day	Up to 2 children unrelated to the provider for not more than 20 hours a week.	X	X	X	X	X	X	X	X	X										X
Daycare: Licensed Daycare (or) Group Daycare	Care, protection, tutelege and/or supervision for children on a regular basis away from their primary residence for less than 24 hours per day	Up to 10 or 12 children under the age of 16. See Sections 22-030 for additional requirements.	X (S)	X (S)	X (S)	X (S)	X (S)	X (S)			X (S)										X (S)
Personal Care Facilities	Care, protection, tutelege and/or supervision for adults on a regular basis away from their primary residence for less than 24 hours per day	Adult Care Facility	X (S)	X (S)	X (S)	X (S)	X (S)	X (S)			X (S)	X	X	X	X						
Education, School	Institution offering education for children and youth from the pre-school level through college preparatory. Includes	to any of the following; Elementary/Grade School; Middle/Junior High School;	X	X	X	X	X	X			X		X	X	X						X

**Section 8.** This ordinance shall take effect upon publication in the official city newspaper.

PASSED BY THE GOVERNING BODY OF THE CITY OF TONGANOXIE, KANSAS,  
THIS 13TH DAY OF MAY, 2013.

ATTEST:

  
Nathan D. McCommon, City Clerk

  
Jason K. Ward, Mayor

