



CITY OF POMONA COUNCIL REPORT

March 6, 2017

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Subject: **Provide Direction on the City's Role in Offering Childcare at Renacimiento Community Center**

OVERVIEW

Recommendations - That the City Council direct Staff regarding what role, if any, the City should take in providing childcare during the City's community recreation classes, and specifically, during the City's English as a Second Language (ESL) classes at Renacimiento Community Center

Fiscal Impact – This item does not carry an immediate fiscal impact. The potential for fiscal impacts depends on the City Council's direction. For example, with regard to childcare during ESL classes at Renacimiento Community Center:

- If the Council chooses not to provide childcare services, or allow childcare services, at Renacimiento Community Center, then there is no fiscal impact.
- If the Council allows an applicant to rent the Renacimiento Community Center to operate a childcare cooperative, the City will receive a rental fee in the amount of \$5,193, unless the Council waives the fee after making a finding of extreme hardship.
- If the Council directs staff to create a City-operated childcare program as a component of the ESL class at Renacimiento, Staff has not yet fully analyzed the fiscal impacts, but impacts will likely include the direct cost of hiring or contracting with a licensed childcare provider, conducting background checks on any childcare program staff, making facility improvements to ensure the space is suitable for childcare, and meeting ADA accommodations, as well as indirect costs of significantly increased exposure to liability by taking on a high-stakes role in a context in which the City has no expertise.

Previous Council Action – None

EXECUTIVE SUMMARY

City Staff has received a request to implement a childcare program at Renacimiento Community Center. The program would provide childcare services for the children of students taking ESL classes at Renacimiento. Staff seeks guidance from the Council due to the significant exposure to liability that accompanies matters relating to the care of minors in a context outside of the City's purview. City staff has reviewed options for providing or allowing childcare at Renacimiento, but has not fully analyzed the many inherent risks in offering childcare services. Staff will pursue further analysis if that is the City Council's direction.

DISCUSSION

The City provides ESL classes at Renacimiento Community Center. City Staff has been asked to establish a childcare program so that students in the ESL class can put their children in on-site childcare during the class. The City does not have experience with running a childcare program for the community, nor does the City currently employ licensed childcare service providers. Staff presents a few options below for the City Council's consideration. This list of options is not exhaustive. With Council's direction and further Staff analysis, other solutions may be presented.

The City Council should note that Staff's concerns about liability are not unfounded. Staff has obtained confirmation from Pomona Unified School District Superintendent Martinez that the School District does not offer childcare to its adult school students because of the cost and exposure to liability. The School District does, however, provide childcare for specific events.

In discussing options and providing direction to Staff, the City Council should also keep in mind that the more involved the City becomes in the role of providing childcare, the more extensive the City's exposure to liability.

Option 1 – City-operated childcare program *(With this option, the City is immersed in the operation of childcare services. This option, therefore, presents the greatest risk.)*

By City Council action, the City may establish a City-operated childcare program as a component of this ESL class, as well as other community education or recreation classes. The City will not need a license from the State to provide childcare, but may need to comply with operational restrictions set by State law (hours of operation, age limits, accommodations, facilities, etc.). If the City implements a childcare program, parents that place their children in the City's childcare program will have the rightful expectation that the City will provide competent childcare, and will be responsible for the care and wellbeing of the children in the program.

The City will have a duty to take necessary precautions to provide competent childcare services. Facilities used for the childcare program may need upgrades to make the space suitable for childcare services, including but not limited to supplies, furniture, safety measures, and ADA accommodations. The City should employ licensed or certified childcare providers, or contract with a business that provides childcare services. All caregivers must pass background checks. Caregivers must meet qualifying criteria that the City has in place

safeguard vulnerable populations, such as children. Caregivers cannot provide childcare as part of the City's program simply on the basis of being a relative or volunteer.

In the event of an injury, the City is self-insured and under the City's general liability claims program, the City is responsible for the first \$1,000,000 for each occurrence. This is known as a self-insured retention (deductible). Thus, should a claim be filed against the City for injuries allegedly arising from a City-run childcare program, the City is liable for the first \$1,000,000 of the loss or damage. If the value of an alleged claim exceeds \$1,000,000, coverage for the amount in excess of \$1,000,000 would be provided by the excess liability pool to which the City is member.

Option 2 – Childcare Cooperative *(This option presents less risk than Option 1 above, but still carries some exposure due to the City's role in permitting the use of City property for childcare services.)*

The City may allow an individual to apply for a facilities use permit to rent the Renacimiento Community Center for the applicant's operation of a childcare cooperative. The following requirements would apply:

- The rental applicant shall be responsible for use of City property.
- The application includes a Hold Harmless Agreement.
- The applicant shall comply with the City's rules and regulations for facilities use.
- The applicant may only apply for a rental permit for use of City facilities for a childcare cooperative if the City has deemed the facility suitable for such use.
- The applicant shall pay the rental fee unless the fee is waived by the City Council due to a finding of extreme hardship.
- The applicant shall be required provide insurance for the operation of the Cooperative and provide a certificate of insurance that confirms the existence of insurance coverage. Additionally, the applicant will also be required to provide an additional insured endorsement that names the City, its officers, employees, etc. as additionally insured on that insurance policy. This is a standard requirement for all facility rental applications.
- The applicant shall provide a copy of the agreement between the participants of the childcare cooperative.
- The rental applicant's operation of childcare services that exceeds the restrictions of a childcare cooperative triggers State licensing requirements, which is a misdemeanor and is subject to a fine of \$200 per day.
- In the event of a violation of local, State, or Federal laws, including failure to comply with the criteria for childcare cooperatives discussed below, the City may immediately terminate the rental to mitigate the City's exposure to liability which arises from allowing an illegal childcare service to operate from a City facility.

California law allows parents to enter into a cooperative arrangement for the care of their children. Childcare cooperatives do not need a license from the State of California to provide childcare. Childcare cooperatives must meet the requirements of the law, including the following:

- A childcare cooperative shall not provide childcare to more than 12 children at a time.
- Any person caring for children in a childcare cooperative shall be a parent, legal guardian, stepparent, grandparent, aunt, uncle, or adult sibling of at least one of the children in the cooperative.
- Childcare cooperatives shall not have payment in exchange for childcare services, but the childcare cooperative may have in-kind contributions of snacks, games, toys, blankets for napping, pillows, and other materials parents deem appropriate for their children.
- Parents shall combine their efforts so that each parent, or set of parents, rotates as the responsible caregiver with respect to all the children in the cooperative.
- Childcare cooperatives operating on City property must comply with all local, State, and Federal laws.

Option 3 – Refrain from Engaging in Childcare Services *(This option requires no involvement from the City, and therefore, presents the least amount of risk.)*

Due to the City's lack of expertise in the area of childcare services, the significant risk that arises from taking on a role of caring for minors, and the resources required to implement a childcare program, the City may decide not to pursue a childcare program. If Pomona Unified School District—in its role as an educational entity serving adults *and children* in the City—hesitates to provide childcare services to their students, then the City of Pomona—as a municipal corporation—may also be wary of the liability that accompanies taking on a childcare role.

CONCLUSION

In response to a request to implement childcare services for ESL students at Renacimiento Community Center, Staff presents the options above for the City Council's review. Staff recognizes that while supporting parents in pursuing their education is a noble cause, Staff looks to the City Council for guidance on whether the inherent risk from providing childcare without the expertise to do so outweighs the desire to support parents that need childcare in order to participate in educational programs. Staff requests the City Council's direction on whether or how to proceed. In general, implementation of a successful program requires consideration of the following:

- An approved budget for appropriate staffing levels, taking into consideration appropriate staffing to participant ratios for the different age groups and activities;
- An approved budget for supplies, equipment, furnishings and operations;
- Appropriate space made available to carry out the appropriate programming;
- Appropriate curriculum (if applicable) for the population served;
- Volunteers that go through a process to be vetted for the safety of participants, if volunteers are suitable for the nature of the program (which may not be the case for childcare programs);
- Staff that is trained to work with program participants;
- The City covers liability for program and property; and
- Compliance with any local, state, federal and programmatic regulations