

THE CITY OF NEW YORK
HOUSING AND DEVELOPMENT ADMINISTRATION
DEPARTMENT OF BUILDINGS
DIRECTIVE NO. 2 OF 1976

DEPARTMENTAL MEMORANDUM

DATE: July 6, 1976

TO: Borough Superintendents

FROM: Director of Operations Irving E. Minkin

SUBJECT: DAY CARE CENTERS AND DAY NURSERIES IN EXISTING BUILDINGS

Subsequent to issuance of Directive No. 6/71, it has been necessary to issue a revision on November 28, 1973, and, to now again revise it to reflect the discontinuance of interim funding and preliminary inspections, as well as to itemize specific requirements for interior fire alarm systems, and to be more definitive as to when no filing or permit is necessary, and when no inspection of any kind is necessary.

Accordingly, Department of Buildings Directive No. 6 of 1971, relating to day care centers and day nurseries in existing buildings, dated April 16, 1971, is superseded by the following:

1. Under the provisions of the Zoning Resolution, the designation of a "School" shall include day care centers and day nurseries. Schools are in use group 3. However, where the day care center or the day nursery is located in a building, the existing use which consists primarily of a community facility which meets the criteria of a use in use group 4, such as churches, community centers, settlement houses, etc., such day care centers or day nurseries shall be considered as accessory to the community use (use group 4) and may be located in a C8 and M1 zoning district.
2. A day nursery is a day care center in which any participating child in attendance has not reached his or her second birthday. A day care agency may have jurisdiction over one or more day care centers, one or more day nurseries, or any combination of both. An agency is the administrative branch of a day care center or day nursery and may be located independent of or together with either the center or the nursery with which it is associated. For the purpose of Section C26-1704.1(a)(3) Administrative Code, the day care agency is the location of the day care center or the day nursery associated with the agency and will include the day care agency when they are located together.
3. Day care centers shall be considered as schools under the provisions of the 1938 Building Code and shall be considered in occupancy classification G (Educational) under the provisions of the 1968 Building Code.

1135

Day nurseries shall be considered as Public Buildings in Use Classification 3 in the table of Section C26-254.0 of the 1938 Building Code, and shall be considered in occupancy classification 1H-1 (Institutional) under the provisions of the 1960 Building Code.

4. Applications for day care agencies or nurseries may be filed by an architect or engineer representing the owner. Such applications shall be processed in the usual manner.

5. Requests for inspection made in the course of construction work or after completion of work on an approved application shall be made by the construction inspector and processed in the normal manner.

Additional inspections after completion of work may be requested by the Department of Social Services or the Department of Health for the re-issuance of a license. These inspections are also to be made by the construction inspector (see memorandum dated 11/13/74).

6. No premises may be occupied as day care center or a day nursery unless an alteration application for the proposed use is filed by a registered architect or professional engineer and approved, a permit to build is obtained, and the final report of completed work and the issuance of a certificate of occupancy, if required, is obtained.

Where there is no proposed change of use and certificate of occupancy is not required by item 8, either an altered building or building notice application may be required.

In an existing building, where the existing use is a public use and similar to school use, and no work is involved except work of a minor nature, an alteration application and plans need not be filed. In such case, when a certificate of occupancy is not required by item 8 and the Borough Superintendent deems it advisable to waive the requirement of a new or amended certificate of occupancy, a letter of compliance will be issued to permit day care use in specified areas after approval and completion of any required work.

7. An interior fire alarm and signal system shall be installed when required by the provisions of C26-1704.1(a)(3) Administrative Code. (Day care agencies accommodating more than 30 children). If the day care facility is located at other than grade level, the fire alarm system shall be provided throughout the building.

8. The requirement for a new or amended certificate of occupancy may be waived by the Borough Superintendent where he deems it advisable. Under the following conditions, a new or amended certificate of occupancy must be obtained:

1136

- a. When an interior fire alarm and signal system is required.
- b. In a residential or commercial district when a non-residential commercial or manufacturing use is changed to a day care center or day nursery.
- c. When a residential use is changed to a day care center or day nursery.

9. Under the provisions of the 1938 Building Code, Class 1 fireproof buildings may be used for day care centers and day nurseries without limitation as to height or area of the building, or the floor on which the use may be located.

10. Under the provisions of the 1938 Building Code, Class 3 non-fireproof buildings either whose heights or area or both exceed those permitted by section C26-254.0 Administrative Code, including residential and commercial buildings, may be used as day care centers or day nurseries provided:

- a. If the height limitation is exceeded, for day care centers, only the first story may be used. For day nurseries, only the first story may be used provided (1) at least one of the required exits shall open directly from the floor area so occupied to the street and (2) the entire floor area so occupied is sprinklered.
- b. If the area limitation is exceeded for day care centers only, 5,000 square feet of area on the first story may be used. For day nurseries, only 5,000 square feet of area may be used provided (1) there is at least one direct exit of the required exits from the floor area so occupied to the street, and (2) the entire floor so occupied is sprinklered.
- c. The ceiling below and above the day care center or day nursery use shall be fire retarded. In addition, when the occupancy of a floor contains a use in addition to the day care center or day nursery use, such areas shall be separated from each other by one-hour fire retarded partitions.
- d. The integrity of fire walls and fire provisions shall be maintained.

11. Under the provisions of the 1938 Building Code, the use of an existing Class 4 wood frame structure approved for public use shall generally not be accepted for use as a day care center or day nursery except upon specific recommendation by the Borough Superintendent.

1137

12. When a new or amended certificate of occupancy is required, or, when no change of use is involved and a certificate of occupancy is not required, but an altered building or building notice application is required, the Human Resources Administration has indicated it is making every attempt to comply with requirements of the Department of Buildings. However, in certain instances, for locations which are being phased out in one or two years, they may seek re-evaluation of this department's objections, whether in a filed application or in the preliminary evaluation letter sent out by the Borough Superintendent in accordance with item 4.

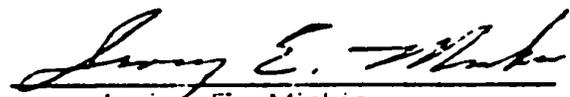
In such instances, if such review indicates that occupancy as a day care center or day nursery is hazardous or detrimental to the health, safety or well-being of children, the writer (from H.R.A.) is to be so informed, without delay. When violations of the Building Code or Zoning Resolution preclude approval, a letter to that effect is to be sent by you to the writer. It shall include a provision that such letter shall in no way be deemed an authorization for continued occupancy, nor a basis for cessation of prosecution of any violations.

13. Requests for inspections shall not be required where the proposed occupancy as a day care center will be in a room approved by this department as a school or classroom, and so indicated on the last existing certificate of occupancy.

The above is subject to the following restrictions:

- a. Occupancy is limited to the number of persons permitted in the certificate of occupancy.
- b. Proposed use does not include children under 2 year old.

Requests for day care centers in community centers, churches, settlement houses, etc. will require that an inspection request be made and a letter of compliance issued in accordance with item 6.



Irving E. Minkin
Director of Operations

IEM/df

CC: Exec. Staff
Industry
Agency for Child Development
Dept. of Health

1138