

# Daycare



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## DAYCARE

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A daycare provides the care of a child, within a qualified space, during the day. This is typically performed by someone outside the child's immediate family and is an ongoing service during specific periods, such as the parents' time at work. These programs may be located within homes or in a specialized child care facility. Some employers provide nursery provisions for their employees at or near the place of employment. The NYC Building Code (BC) does not regulate daycare programs, but compliance with the Code is required as part of the program's license.

### **New York City Health Code and New York State Social Services Law**

Together, the NYC Health Code and NYS Social Services Law (SSL) regulate most types of child care settings. Article 47 of the NYC Health Code outlines the requirements for childcare services, which is defined as **any program providing child care for five or more hours per week, for more than 30 days in a 12 month period, to three (3) or more children under six years of age** in a separate facility outside of a residence. Section 390 of the NYS SSL outlines requirements for family day care and group-family day care, which are both provided within residences. Separate applications to the NYC Department of Health and Mental Hygiene (DOHMH) and the NYS Office of Children and Family Services (NYS OCFS) are required to be a child care provider. Licensed daycare programs are located within spaces or buildings that comply with the New York City Building Code (NYC BC) and Fire Code (FC).

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## New York City Zoning Resolution

Under the Zoning Resolution, daycare establishments are included in the definition of 'school,' where **operating under a permit issued pursuant to section 47.03 of the New York City Health Code**. 'Schools' are considered Zoning Use Group 3, but daycares may be Use Group 4 if located within a building that is primarily used as a 'community facility' such as a house of worship or community halls. Daycare may also be Use Group 6 if a privately owned business except when operated within residences, which are considered to be an accessory use to the dwelling unit under the NYC BC.

## New York City Construction Codes

The NYC BC does not directly regulate daycare programs, but spaces or buildings for daycare programs shall be in compliance with applicable building and construction code requirements. New construction or alterations to existing buildings where a change of use or occupancy is included shall be filed with the Department.

*The **Code Notes** series has been developed to provide a general overview of the NYC Department of Buildings (DOB) project requirements for the construction industry. The information in this document is only a summary and overview and is not intended to substitute for the full text and meaning of any law, rule or regulation. Users may also consult with a registered design professional for more specific guidance on Construction Codes requirements, other regulatory laws and rules, and technical site-specific requirements.*

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## FIRST STEPS

- Provide PW1 and identify scope of work in [Sec. 11] and work on floor(s) [Sec.1] are consistent with the scope of work stated on the plans submitted for review job description

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- Zoning district and site designations must be provided on forms and plans  
*(community board district, special purpose districts, fire district, landmark district, environmental restrictions (DEP little 'e') designated block, wetlands)*
- Lot diagram  
*(dimensions of lot, building, yards, distance to corner street intersection, street names, zoning use group, building occupancy group, construction classification, number of stories, buildings on adjacent lots, distance to nearest fire hydrant, curb cut application numbers)*
- Existing legal use and conditions
- Borough Commissioner determinations, if applicable

## ADMINISTRATIVE

### DOB Forms

- [PW1](#) Plan/Work Approval Application
- [TR1](#) – List of required items
- [PW1A](#) – Filed if there is a change to the CO of an existing building or if a new building with a daycare is being filed
- [PW1B](#) – Plumbing schedule showing new fixtures as well as fixtures to be relocated. This includes sprinkler work (if applicable).
- [PW3](#) Cost Affidavit
- [PD1](#) – Showing zoning lot metes and bounds
- [TPP1](#) Tenant Protection Plan
- [ACP5](#) – Asbestos Assessment Report
- [ACP7](#) – Asbestos Project Notification, if a significant amount of asbestos will be disturbed as part of the project

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## Related Applications

- Sprinkler – as applicable
- Fire alarm

## BIS Required Items

- Check all required related work types have been filed (SP or PL work type)

## ZONING

- ZR 12-10 (Definitions) “School “(b) includes Nursery School or Kindergarten, and (c) a child care service operating under a permit issued pursuant to Section 47.03 of the New York City Health Code.
- Per ZR 22-13 (A), “School” is a community facility and is classified under Zoning Use Group 3A.

## MULTIPLE DWELLING LAW

- N/A

## FIRE CODE

- Fire protection systems – FC 901
- Drills and education for fire and non-fire emergencies – FC 401.7.6
- Emergency preparedness – FC 410
- Maintenance of the means of egress – FC 1027.5

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## BUILDING CODE

### General

- Optional use of 1968 Building Code for prior code buildings with exceptions to conform with 2014 Building Code – [AC 28-101.4.3](#), Exceptions 1 through 19

### Occupancy Group

The building occupancy group shall be used to determine the requirements of Egress, Fire Protection, etc., unless otherwise noted in the Code.

In determining the building occupancy group, daycares may be one of the following based on the current Building Code or Prior Codes:

Building Code	Building Occupancy Group (Zoning Use Group)	Definitions
1938 BC	Public Buildings under <i>schools</i> (Use group 3)	
	Residential (Use group 1 or 2)	Dwelling units where the resident of the unit provides child custodial care as a <i>family day care</i> or <i>group-family day care</i> home registered with the New York City Department of Health and Mental Hygiene in accordance with the New York State Social Services Law.
1968 BC	E* – Business under <i>family care centers</i> (Use group 6)	Where a daycare is a private business
	G* – Educational/Institutional under <i>schools</i> (Use group 3)	

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	J-2 Residential <i>(Use group 2)</i>	Dwelling units where the resident of the unit provides child custodial care as a <i>family day care</i> or <i>group-family day care</i> home registered with the New York City Department of Health and Mental Hygiene in accordance with the New York State Social Services Law.
	J-3 Residential <i>(Use group 1 or 2)</i>	Dwelling units where the resident of the unit provides child custodial care as a <i>family day care</i> or <i>group-family day care</i> home registered with the New York City Department of Health and Mental Hygiene in accordance with the New York State Social Services Law.

2014 BC	A-3 – Assembly under <i>custodial care facilities with more than 75 person</i> <i>(Use Group 3 or 4)</i>	
	B – Business under <i>custodial care facilities with fewer than 75 persons</i> <i>(Use Group 6)</i>	Where a daycare is a private business providing care to children over the age of 2, where no more than four occupants are incapable of responding to an emergency situation without physical assistance from staff
	E – Educational under <i>day care facilities</i> <i>(Use Group 3 or 4)</i>	Where no more than two children will be under the age of two.  BC 305.1, Exception 3 allows custodial care facilities with up to 30 children under the age of 2 to be classified as Group E when the rooms where such children are cared for are located on the level of exit discharge and each of these child care rooms has an exit door directly to the exterior.

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	I-4 – Institutional under <i>custodial care facilities</i> <i>(Use Group 4)</i>	Where there are more two children under the age of 2, or to more than four persons over the age of 2 who are not capable of responding to an emergency situation without physical assistance from the staff
	R-2 Residential <i>(Use group 2)</i>	Dwelling units where the resident of the unit provides child custodial care as a <i>family day care</i> or <i>group-family day care</i> home registered with the New York City Department of Health and Mental Hygiene in accordance with the New York State Social Services Law.
	R-3 Residential <i>(Use group 1 or 2)</i>	Dwelling units where the resident of the unit provides child custodial care as a <i>family day care</i> or <i>group-family day care</i> home registered with the New York City Department of Health and Mental Hygiene in accordance with the New York State Social Services Law.

\* Not clearly indicated under RS 3.3 of Title 27, but as outlined under 27-268 this occupancy most closely resembles the aforementioned with respect to life safety and fire hazard.

\*\* NOTE: the designations on the Certificate of Occupancy shall be as outlined per the current Building Code.

## Fire Protection

- Alterations shall be governed by BC Chapter 9 of the 2014 BC and special provisions may apply – [AC 28-101.4.3](#), Exception 2; [BC 901.9](#)
- Required fire alarm system shall comply with NFPA 72 as modified by Appendix Q – [BC 907.2](#) and be based on occupancy group

## Accessibility

- Alterations shall be governed by [BC Chapter 11](#) of the 2014 BC and requirements shall be based on change of occupancy/use or value of alterations – [AC 28-101.4.3](#), Exception 5; [BC 1101.3](#)



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- Accessible route and entrances – [BC 1104](#), [BC 1105](#)
- Other features, including toilet rooms, elevators/lifts on accessible route – [BC 1109](#)
- ANSI A117.1, 2009 edition

## Letters of No Objection (LNO)

A LNO does not attest to the safe occupancy of the space or building, but instead indicates that the Department does not object to the use of the space as a daycare based upon evidence submitted to the Department.

A Letter of No Objection may only be issued when:

- a. There is no Certificate of Occupancy (CO) because the building was in existence prior to January 1, 1938 OR the CO does not indicate Daycare, but use listed is consistent with daycare use and supported by sufficient documentation;
- b. The requested use is permitted; and
- c. The legal construction meets the requirements of the occupancy

Keep in mind that violations may prevent a LNO from being granted. In addition to building documentation to verify occupancy and use, a DOB Field Inspection may also be needed to confirm present conditions for all child related special occupancies as part of a LNO.

## ENERGY CODE

- See Code Notes on Energy Code

## ELECTRICAL CODE

- As applicable

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## APPLICABLE BULLETINS, DIRECTIVES, PPNS, MEMOS

- [Directive 2 of 1976](#) – Day care centers and day nurseries in existing buildings
- [TPPN 13 of 1993](#) – Accessory Day Care Centers and Day Nurseries

## OTHER AGENCY APPROVALS CODE

- NYC Health Department: Day care program to be permitted per Article 47 of NYC Health Code
- NYS Office of Children and Family Services: Day care program to be registered per NYS SSL Section 390
- NYC Fire Department: Ansul systems and fire alarms
- NYC Landmark Preservation Commission: LPC approval if in landmarked district or landmarked building