

# CITY OF CHARLOTTESVILLE

*"A Great Place to Live for All of Our Citizens"*

Department of Neighborhood Development Services

City Hall Post Office Box 911  
Charlottesville, Virginia 22902  
Telephone 434-970-3182  
Fax 434-970-3359

[www.charlottesville.org](http://www.charlottesville.org)



TO: Charlottesville Planning Commission  
FROM: Read Brodhead, Zoning Administrator  
Craig Fabio, Assistant Zoning Administrator  
Missy Creasy, AICP, Assistant Director NDS  
Lisa Robertson, Chief Deputy City Attorney  
DATE: August 31, 2020  
SUBJECT: **Family Day Home Ordinance Discussion**

---

At the July 2020 Planning Commission meeting, the following Zoning Text Amendment request was initiated:

*A Zoning Text Initiation to make both family day homes for up to 12 children by right uses in all zoning districts and exempt them from off street parking requirements, and to also ask staff to develop standard drop off and pick up code to ensure safety given this change. In addition, make all efforts to administratively speed up childcare applications.*

Staff took two different routes for review of this item including state and local actions. Ms. Robertson contacted the City Council's legislative subcommittee about this matter and worked to develop more specific recommendations for Delegate Hudson and Senator Deeds, as to which of the state regulations the City contemplates might be most easily [and safely] relaxed during COVID. Though legislative items must come from Council directly, this is likely an item to receive their support.

In addition, Ms. Robertson put together an informational/ background memo for the PC and council subcommittee on this issue which was sent to you on July 22, 2020 and included with these materials.

The request for changes required at the state level has been submitted and feedback is forthcoming.

In addition to state level consideration, staff reviewed the city code provisions and state code updates and drafted language for consideration that would bring our local ordinance up to date and provide for additional allowances for larger family day homes. Please note that any state code requirement currently in place is allowable regardless of the outdated language we have in the current city code.

The attached draft code language is proposed for your consideration. It provides for compliance with the number of children per state code, allowances in all areas allowing for residential use and provisional use permit requirements for Family Day Home (5-12 children).

Staff is requesting that the Commission review the proposal and provide feedback. Questions for consideration include:

Are there variations needed to the areas where Family Day Home (5-12 children) is allowable by right or by provisional use permit?

Are there updates need to the provisional permit regulations proposed?

Following this discussion, determination can be made concerning a schedule for public hearing.

Attached:

Proposed Ordinance updates

Background data on Daycare regulations

## ***Family Day home - Draft language for discussion***

*Family day home* means a child care program serving one (1) to twelve (12) children under the age of thirteen (13) (exclusive of the provider's own children and any children who reside in the home), where such program is offered in the residence of the provider or the residence of any of the children in care. Any program serving more than twelve (12) children shall be considered a child daycare facility.

*Occupancy, residential* for purposes of this zoning ordinance, this term refers to the number of persons who may reside together within one (1) dwelling unit, as a single housekeeping unit. Each of the following shall be deemed a single housekeeping unit: (i) one (1) person; (ii) two (2) or more persons related by blood or marriage, together with any number of their children (including biological children, stepchildren, foster children, or adopted children); (iii) two (2) persons unrelated by blood or marriage, together with any number of the children of either of them (including biological children, stepchildren, foster children, or adopted children); (iv) within certain designated university residential zoning districts: up to three (3) persons unrelated by blood or marriage; (v) within all other residential zoning districts: up to four (4) persons unrelated by blood or marriage; (vi) group homes, residential facilities and assisted living facilities, as defined in the Code of Virginia, § 15.2-2291, which are licensed by the department of social services or the department of behavioral health and developmental services and which are occupied by no more than eight (8) mentally ill, mentally retarded, developmentally disabled, aged, infirm, or disabled persons together with one (1) or more resident counselors; (vii) a group of persons required by law to be treated as a single housekeeping unit, in accordance with the Federal Fair Housing Act, or a similar state law. A family day home that serves one (1) to (4) four children shall be considered part of a residential occupancy by a single family.

Update 34-420 Use Matrix, 34-480 Use Matrix, and 34-796 Use Matrix

Family Day Home

1-4 Children - "B" in all districts which allow single family residential

5-12 Children – "B" to remain for B-1, B-2 and B-3 to mirror current allowances

5-12 Children - "P" in all districts besides B-1, B-2 and B-3 which allow residential

Add this section under Article IX. Generally Applicable Regulations, Division 9. Standards for Provisional Use

Sec. 34-XXXX. Family Day Home (5-12 children)

A provisional use permit that authorizes a Family Day Home (5-12 children) shall be subject to the following regulations:

1. Each provisional use permit for a family day home will be valid from January 1 (or such other date during a calendar year on which such permit is issued) through December 31 of the calendar year in which the permit is issued.
2. The operator of the Family Day Home must reside at the property as his/her primary residence, or must be caring for children who reside within the residence.
3. No clients or employees shall be allowed to visit the property on which a family day home is conducted earlier than 7:00 a.m. or later than 6:00 p.m.
4. Applicants for a family day home provisional use permit must obtain, and provide to the zoning administrator:
  - a. A copy of a valid city business license (or a statement from the commissioner of revenue that no city business license is required)

- b. A copy of a valid state license. Following initial issuance of the provisional use permit, the operator shall keep the zoning administrator supplied with a valid state license at all times while the provisional use permit is valid.
  - c. A traffic safety plan that addresses drop-off and pick-up procedures related to automotive traffic.
- 5. In addition to the resident(s) of the dwelling, not more than one (1) other individual may be engaged in the activities of the family day home on the property at any given time.
- 6. One (1) exterior sign, of dimensions no greater than two (2) square feet, may be placed on the exterior of the dwelling or an accessory structure to indicate the presence of the family day home. The sign shall not be lighted.
- 7. A provisional use permit for a family day home may be revoked by the Zoning Administrator should a permit holder fail to maintain compliance with any of the regulations set forward in this section. An operator whose provisional use permit has been revoked pursuant to this paragraph shall not be permitted to apply for a new permit for any location for one calendar year after the end of the permit term.
- 8. Once an application requesting a provisional use permit is received by the Zoning Administrator, notification shall be sent by registered or certified letter to the last known address of each adjacent property owner. If the zoning administrator receives no written objection from a person so notified within 30 days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of the ordinance and all other applicable local ordinances, the zoning administrator shall issue the permit. If the zoning administrator receives a written objection from a person so notified within 30 days of the date of sending the letter and determines that the family day home otherwise complies with the provisions of the ordinance, the zoning administrator shall consider such objection and may (i) issue or deny the permit or (ii) refer the permit to the local governing body for consideration.

## Background data on Daycare regulations

Provided by Lisa Robertson, Chief Deputy City Attorney on July 22, 2020

Following is a compilation of information regarding the layers of regulation for the two categories of child care facilities: “family day homes” and “child day centers”. At your meeting on July 14, 2020, several of you expressed interest in having a summary of state enabling legislation and regulations (to help understand how you might want to amend zoning ordinance provisions), and also for the City to ask its legislators to consider bringing forward proposals within the August 2020 special session—to make it easier for new day care facilities to quickly be established, particularly if schools cannot be reopened in the Fall during the continuing COVID emergency. We will also share all of this information with the City’s legislators.

### **General Background Information about Regulation of Child Care Providers and Facilities**

Daycare for children is regulated at the state level, currently by the Virginia Department of Social Services. Beginning in 2021 the state regulating authority will become the State Board of Education, *see* Va. Acts of Assembly (2020), ch. 860. Generally, daycare services are provided in operations referred to as “Family day homes” or “child day centers”. Regulatory authority falls into three categories:

**Zoning regulations [local]**--Under state law, *see* Va. Code §15.2-2292, the City’s zoning ordinance, for all purposes, must treat a “family day home” serving 1-4 children in a provider’s home, exclusive of the provider’s own children) as a residential occupancy by a single family (as a practical matter, that means “family day home” is a lawful accessory use everywhere in the City that is lawfully occupied as a person’s residence). No conditions can be imposed on the family day home use can be more restrictive than conditions/ regulations applicable to the residential occupancy by a single family. Separately, however, the family day home use may constitute taxable business activity; Religious institutions are not per se exempt from zoning regulations (but see the reference to a federal law known as “RLUIPA”, below in this email). [note: the City’s current zoning regulations are outdated; if you review the Use Matrix for each zoning district, “family day home 1-5 children” is allowed by right; according to the current provisions of 15.2-2292, that should be “family day home 1-4 children”.]

**State regulation of operations**—State regulations vary, depending on whether child care is provided in (i) a “family day home” (no license is required; providers may go through a process to voluntarily become registered with the state, after demonstrating compliance with certain standards) or (ii) a “child day center” (state license is required) and (iii) whether or not the operator of a “child day center” is exempted from state licensure, but still subject to state-mandated minimum standards. Religious institutions are exempt from state licensing requirements for “child day centers”.

**Local regulation and licensing of providers and facilities**—(i) state law allows the City, and certain counties, to enact ordinances regulating and requiring licensing of persons who provide “child care services” for compensation and regulation and licensing of “child care facilities” (*see* Va Code §15.2-914). Charlottesville does not regulate daycare under the authority of Va. Code §15.2-914, which contains some limitations (localities cannot regulate or require licensing of any facility already licensed by the state, cannot license or regulate any facility operated by a religious institution, and cannot enact regulations more extensive than state regulations of “family day homes”); and (ii) “Family day homes” or “child day centers” may constitute business activity that is taxable under the City’s business license tax ordinance. If so, then the annual fee for a business license is \$35 (or, if the provider realizes annual revenues of \$50K to \$100K, the fee is \$50).

### **Planning Commission Recommendations Relating to the COVID emergency**

At the planning commission meeting July 14, 2020, the Commission expressed interest in asking legislators to discuss, at the upcoming August 2020 special session, the possible relaxing some of the state requirements that may apply to the establishment of new providers of child care services, as may be necessary to meet families’ needs during the continuing COVID emergency (especially if schools do not open in the Fall). The City’s legislative positions and agenda is set by City Council. **I have made Council’s legislative subcommittee aware of the Commission’s discussion and recommendations.** The most difficult task will be identifying specific state regulations that could be waived or relaxed, without compromising safety (perhaps waiver of application fees, inspection fees, background check fees, etc.?) for persons seeking to quickly establish new “**child day center**” operations. We will keep you informed of any developments with legislators during the August 2020 Special Session.

### **References to state regulations**

When the City’s zoning ordinance is rewritten, one of the topics that requires updating are the City’s regulations of “family day homes”. Also, the Planning Commission may want to consider proposing updates to the City’s regulations governing where “child day centers” can be located, what local regulations would be in the public’s best interests, and whether or not an administrative approval (zoning permit)—rather than a special use permit—is the preferred mechanism for review of the

impacts of a child day center at a particular location. As you move forward, please keep the following terminology and laws in mind when discussing regulation of daycare:

**Va. Code §63.2-100:** “**Family day home**”, is defined as a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation....**Family day homes serving five through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed.** However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered....[A] family day home where the children in care are all related to the provider by blood or marriage shall not be required to be licensed.

**Va. Code §63.2-100:** “**Child day center**” is defined as a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location. (“Child day program” means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period). *See* Va. Code §63.2-100.

**Va. Code §63.2-1716:** A child day center operated by a religious institution is exempt from state licensure requirements, but must satisfy a statutory list of criteria (including building and fire code inspection of facilities, mandatory staff ratios, physician certification of supervisors’ ability to care for children, background checks, CPR training for at least one person, etc.). *See* Va. Code 63.2-1716, <https://law.lis.virginia.gov/vacode/title63.2/chapter17/section63.2-1716/> . Information regarding the documentation required from religious institutions for the exemption can be found at [https://www.dss.virginia.gov/files/division/licensing/recdc/intro\\_page/applicants/guidance\\_procedures/documentation\\_for\\_religiously\\_exempt\\_cdc.pdf](https://www.dss.virginia.gov/files/division/licensing/recdc/intro_page/applicants/guidance_procedures/documentation_for_religiously_exempt_cdc.pdf)

**RLUIPA:** Child day centers operated by religious institutions are not exempt from local zoning ordinance requirements. However, Planning Commissioners, Councilors and state legislators should be cognizant of a federal law called the Religious Land Use and Institutionalized Persons Act, 42 USC 2000ccc (“RLUIPA”). One section of RLUIPA specifies that a government may not impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a religious assembly or institution, unless the government regulation is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. “Secular activities do not become acts of faith just because they occur on church property.” *Calvary Christian Center v. City of Fredericksburg*, 800 F.Supp.2d 760, 774 (E. Dist. Va., 2011). Whether or not a particular zoning requirement imposed or implemented relative to a particular property will result in a substantial burden on religious exercise is a fact-specific determination.