

**TOWN OF VIENNA, VIRGINIA
EMERGENCY ORDINANCE TO PERMIT TEMPORARY WAIVERS OF ZONING
REGULATIONS AND REVIEW FOR CHILD CARE OPERATIONS IN
COMMERCIAL ZONED PROPERTIES IN RESPONSE TO THE ONGOING
PANDEMIC DISASTER.**

WHEREAS, on March 12, 2020, Governor Ralph S. Northam issued Executive Order Fifty-One declaring a state of emergency for the Commonwealth of Virginia arising from the novel Coronavirus (COVID-19) pandemic; and

WHEREAS, Executive Order Fifty-One acknowledged the existence of a public health emergency which constitutes a disaster as defined by Virginia Code § 44-146.16 arising from the public health threat presented by a communicable disease anticipated to spread; and

WHEREAS, Executive Order Fifty-One ordered implementation of the Commonwealth of Virginia Emergency Operations Plan, activation of the Virginia Emergency Operations Center to provide assistance to local governments, and authorization for executive branch agencies to waive “any state requirement or regulation” as appropriate; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency, beginning March 1, 2020, in response to the spread of COVID-19; and

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic; and

WHEREAS, on March 24, 2020, the Fairfax County Board of Supervisors confirmed the declaration of local emergency made by the County Executive/Director of Emergency Management on March 17, 2020 and adopted a Continuity of Government Ordinance in accordance with Virginia Code § 15.2-1431; and

WHEREAS, On March 31, 2020, in recognition of the local, state and nationwide emergency, the Town Council for the Town of Vienna adopted an emergency continuity of

operations ordinance to provide modifications to the public meeting and public hearing practices and procedures necessary to permit continued operation of the governing body, and to permit the timely adoption of ordinances necessary to address the Covid-19 pandemic disaster; and

WHEREAS, the Town of Vienna, pursuant to Virginia Code §44-146.14, *et seq.* the Town of Vienna coordinates its emergency response with the Fairfax County Director of Emergency Management; and

WHEREAS, the Town Council for the Town of Vienna (“Town Council”) finds that COVID-19 constitutes a real and substantial threat to public health and safety and constitutes a “disaster” as defined by Virginia Code §44-146.16 being a “communicable disease of public health threat;” and

WHEREAS, On July 1, 2020, the Governor of Virginia released the Safer at Home: Phase 3 guidelines, and Executive Orders issued by the Governor identify the business restrictions that remain in place, and any continued required closures; and

WHEREAS, the Fairfax County Schools Superintendent announced on July 21, 2020 that “the 2020-21 school year will begin with virtual learning for all students” until health conditions can be reassessed to determine when in-person instruction can resume safely; and

WHEREAS, the Virginia Code § 15.2-914 regulates child-care services and facilities; and

WHEREAS, the Town Code of Vienna currently only allows for “family day homes” and child day care centers as a Home Occupation Permit for 7 or fewer children or as a Conditional Use Permit for more than 7 children in RS-16 Single Family Residential, RS-12.5 Single Family Residential, RS-10 Single Family Residential, and RM-2 Multi-Family Residential zones; and

WHEREAS, this emergency ordinance in response to the disaster caused by the COVID-19 pandemic is deemed a reasonable, temporary and prudent method to enable Vienna businesses to operate consistent with the Governor's Executive Orders and further mitigate the adverse economic impact of the COVID-19 has had on Vienna businesses.

NOW, THEREFORE, BE IT ORDAINED by the Town Council for the Town of Vienna, Virginia:

1. That the Virginia Department of Labor and Industry (DOLI), Virginia Occupational Safety and Health (VOSH), has adopted an emergency temporary standard (ETS) 16VAC25-220 to establish requirements for employers to control, prevent, and mitigate the spread of the coronavirus (COVID-19) that became effective on July 27, 2020, with a permanent standard expected to be adopted within six months.
2. That upon submission of an application promulgated by the Department of Planning and Zoning, the Town Manager shall have the authority to issue temporary emergency commercial child day care use permits to existing Town of Vienna Businesses in the Town's commercially zoned districts with a current and valid business license, a child day care (CDC) license from the Virginia Department of Social Services, as well as a diagram showing the onsite location of the available parking and pick/up drop-off locations; and, in doing so, may waive parts of the Town Code as they relate to the engaging of child day care activity inside or outside of a wholly enclosed building. Specific regulations regarding signs, reviews required by the Board of Architectural Review, required parking spaces, and requirements for amended certificate of occupancy, may be waived in the discretion of the Town Manager. The commercial childcare shall be conducted only by licensed commercial businesses located on the site for which the permit is being issued. Additionally, the Town

Manager may revoke any temporary emergency commercial child day care permit for violations of its terms or violations of any state and/or local zoning, health and safety requirements.

3. OPERATION OF COMMERCIAL CHILDCARE

This emergency approval is valid only for establishments located in commercial zoning districts where they are already approved to operate by right.

- a. No further Town of Vienna administrative approval or conditional use permit, or any other approval is required as long as the commercial child day care operation complies with all of the terms and conditions of this emergency ordinance. To qualify under this emergency ordinance, an establishment must have a valid Business License, compliance with all County of Fairfax child day care regulations, and child day care (CDC) license from the Virginia Department of Social Services.
- b. As set forth below, this emergency approval automatically expires on October 30, 2020, or if otherwise extended or repealed by the Town Council.
- c. Consultation with Fairfax County Health Department for guidance on specific situations on whether it is appropriate for your program to open or reopen if there is a confirmed case of COVID-19.
- d. Follow the group size limit guidelines set by the Virginia Department of Social Services.
- e. Any changes to interior layout of the commercial space must be reviewed and approved by the Fairfax County Building Code Department and Fire Marshal.
- f. Except as waved under this Emergency Ordinance, all business operations must otherwise comply with all other state, local and Executive Orders issued by the Governor related to health and safety requirements.

IT IS FURTHER ORDAINED, that the provisions of this Emergency Ordinance shall remain in full force and effect until October 30, 2020, unless extended, amended, rescinded or readopted by the Town Council in conformity with the notice provisions set forth in Town Code §9.1.1, this ordinance will expire within sixty days of its effective date, upon expiration of the Governor’s State of Emergency, or when superseded by a permanent standard, whichever occurs first. Upon rescission by the Town Council or automatic expiration as described herein, this emergency ordinance shall terminate and normal practices and procedures of government shall resume.

IT IS FURTHER ORDAINED that notwithstanding any provision of law, regulation or policy to the contrary, an emergency is deemed to exist, and this ordinance shall be effective upon its adoption.

ADOPTED by the Town Council for the Town of Vienna, Virginia, this 19th day of August 2020.

APPROVED

Linda Colbert, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Steven D. Briglia, Town Attorney