

TOWN OF VIENNA

MEMORANDUM

TO: Town Staff and All Interested Parties

FROM: Gregory M. Hembree, AICP, Director of Planning & Zoning and Zoning Administrator 

DATE: June 19, 2013

SUBJECT: Zoning Administrator's Determination Regarding Family Day Homes – Updated

This memorandum was originally created in response to an extraordinary amount of confusion that has recently developed with respect to home day care or – as the Code of Virginia calls them – “family day homes.”

The Commonwealth of Virginia Department of Social Services established an administrative change effective July 1, 2012, requiring providers renewing their State license or seeking their first State license for a Family Day Home (home child care facility) to have the local Zoning Administrator sign a form acknowledging the provider's plan to seek a child care license. Because I have been signing these forms while also noting the Town's current limitations, this change has highlighted an apparent inconsistency between the provisions of the Town's zoning ordinance with respect to family day homes and those administrative regulations now used at the state level.

Please be aware that the Town's regulations have not changed and we operate in accord with the current zoning provisions for family day homes as set out in § 15.2-2292 of the Code of Virginia (see attachment). Those provisions state, in part, that providers with five (5) or fewer unrelated children – and exclusive of the provider's own children – can operate under the same zoning provisions as that of a single-family home. Because many of these same providers also have school-aged children at their homes, Fairfax County has allowed – and continues to allow, even with changes to its family day care provisions as of June 19, 2013 – **a maximum of seven (7) such children within a single-family home, five (5) children within a townhouse and has determined such use to be accessory to that of its primary use as a dwelling. Anyone desiring to establish a family day home with a greater number of children is required to obtain a special permit (referred to as a conditional use permit here in Vienna).** The Town has chosen to follow this current interpretation from Fairfax County, Virginia, just as we have for many years in the past.

Because a family day home is also a business, the **home occupation** provisions as set forth in § 18-173 of the Vienna Town Code have been and remain applicable to their operation within the Town.

Many have also asked if their current home occupancy permits are valid even if the permit refers to a different number of children than that in the preceding paragraph. If the conditions remain the same as when the occupancy permit was issued, the answer is, clearly, yes.

FAMILY DAY HOMES – BACKGROUND INFORMATION

Applicable provisions from the Code of Virginia:

15.2-2292. Zoning provisions for family day homes.

A. Zoning ordinances for all purposes shall consider a family day home as defined in § [63.2-100](#) serving one through five children, exclusive of the provider's own children and any children who reside in the home as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed upon such a home. Nothing in this section shall apply to any county or city which is subject to § [15.2-741](#) or § [15.2-914](#).

B. A local governing body may by ordinance allow a zoning administrator to use an administrative process to issue zoning permits for a family day home as defined in § [63.2-100](#) serving six through twelve children, exclusive of the provider's own children and any children who reside in the home. The ordinance may contain such standards as the local governing body deems appropriate and shall include a requirement that notification 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 thirty 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 may issue the permit sought. The ordinance shall provide a process whereby an applicant for a family day home that is denied a permit through the administrative process may request that its application be considered after a hearing following public notice as provided in § [15.2-2204](#). The provisions of this subsection shall not prohibit a local governing body from exercising its authority, if at all, under subdivision A 3 of § [15.2-2286](#).

(1994, cc. [781](#), [798](#), § 15.1-486.5; 1997, c. [587](#).)

Family Day Home definition within § 63.2-100: "Family day home" means 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. The provider of a licensed or registered family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving six 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. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.

Background Information—Applicable Legislation for Family Day Homes

February 28, 2013

Page 2 of 2

§ 15.2-914. Regulation of child-care services and facilities in certain counties and cities.

Any (i) county that has adopted the urban county executive form of government, (ii) city adjacent to a county that has adopted the urban county executive form of government, or (iii) city which is completely surrounded by such county may by ordinance provide for the regulation and licensing of persons who provide child-care services for compensation and for the regulation and licensing of child-care facilities. "Child-care services" means provision of regular care, protection and guidance to one or more children not related by blood or marriage while such children are separated from their parent, guardian or legal custodian in a dwelling not the residence of the child during a part of the day for at least four days of a calendar week. "Child-care facilities" includes any commercial or residential structure which is used to provide child-care services.

Such local ordinance shall not require the regulation or licensing of any child-care facility that is licensed by the Commonwealth and such ordinance shall not require the regulation or licensing of any facility operated by a religious institution as exempted from licensure by § [63.2-1716](#).

Such local ordinances shall not be more extensive in scope than comparable state regulations applicable to family day homes. Such local ordinances may regulate the possession and storage of firearms, ammunition, or components or combination thereof at child-care facilities so long as such regulation remains no more extensive in scope than comparable state regulations applicable to family day homes. Local regulations shall not affect the manner of construction or materials to be used in the erection, alteration, repair or use of a residential dwelling.

Such local ordinances may require that persons who provide child-care services shall provide certification from the Central Criminal Records Exchange and a national criminal background check, in accordance with §§ [19.2-389](#) and [19.2-392.02](#), that such persons have not been convicted of any offense involving the sexual molestation of children, the physical or sexual abuse or rape of a child or any offense identified in § [63.2-1719](#), and such ordinances may require that persons who provide child-care services shall provide certification from the central registry of the Department of Social Services that such persons have not been the subject of a founded complaint of abuse or neglect. If an applicant is denied licensure because of any adverse information appearing on a record obtained from the Central Criminal Records Exchange, the national criminal background check, or the Department of Social Services, the applicant shall be provided a copy of the information upon which that denial was based.

(1990, cc. 605, 609, § 15.1-37.3:12; 1997, c. [587](#); 2010, c. [649](#); 2011, c. [251](#).)

2/28/2013 9:38:45 AM