

Sec. 18-209. - Use permit subject to certain conditions.

The board of zoning appeals may issue a use permit for any of the uses enumerated in section 18-210 in response to an application therefor, provided the use for which the permit is sought:

- (1) Will not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;
- (2) Will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood; and
- (3) Will be in accord with the purposes of the Town's master plan.

In granting any use permit, the board of zoning appeals may impose such conditions as it may deem in the public interest, including limiting the duration of a permit, and as will ensure that the use will conform to the foregoing requirements and that it will continue to do so, and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with. The board may revoke a use permit if the board determines that there has not been compliance with the terms and conditions of the permit. No permit may be revoked except after notice and hearing as provided by Code of Virginia, § 15.2-2204.

(Code 1969, § 18-209; Ord. of 12-2-1991)

Sec. 18-210. - Use permits required.

A use permit is required for any of the following uses (see regulations for zone in which the use is proposed to be located):

- A. Amusement enterprises, if conducted wholly within an enclosed building, provided that the existence and location of the same shall not impose a deleterious effect upon the Town and that permits therefor shall ensure compatibility with land use policies embodied in this chapter.
- B. Auditoriums and halls.
- C. Auto sales.
- D. Bowling alley.
- E. Carpenter or general woodworking shop (excluding outdoor storage).
- F. Cemeteries.
- G. Colleges and schools (private, elementary and high) of a noncommercial nature.
- H. Concrete mixing plants.
- I. Consumption of meals on a roof garden of an enclosed building in which a restaurant is located, or at sidewalk tables directly adjoining such building.
- J. Contractor's equipment storage yard or plant, or rental of equipment commonly used by contractors
- K. Draying, freighting, or trucking yard or terminal.
- L. Farm or gardening implement, sales and service.
- M. Feed and fuel yard.
- N. Funeral homes.
- O. Golf courses, country clubs, private clubs, including community buildings and similar recreational uses not owned and/or operated by a public agency (does not include golf driving ranges).
- P. Hospitals, sanitariums and clinics which are an integral part of such hospitals and clinics providing treatment for mental or behavioral disorders as out-patient counseling or therapeutic facilities only; and provided that such clinics, if not an integral part of a hospital or sanitarium, are formally affiliated with such hospital or sanitarium or such other governmentally sponsored organization that provides counseling for mental or behavioral disorders.

Notwithstanding any of the above, all clinics and facilities not an integral part of a hospital or sanitarium and treating contagious diseases, drug or alcohol addicts or abusers, sex offenders, felons, or persons suffering from psychosis, anti-social personality disorders or explosive personality disorders are not permitted, regardless of whether such facility operates an in-patient or out-patient facility, counseling or therapeutic facility or otherwise.

Animal hospitals not providing boarding facilities other than for hospitalization to provide medical and/or surgical care for the patient are likewise subject to procurement of a use permit. However, animal hospitals providing boarding facilities not directly associated with immediate medical and/or surgical care for the patient are not permitted.

- Q. Hotel and motel.
- R. Institutional home and institutions of an educational or philanthropic nature, except those of a correctional nature or for mental cases.
- S. Live entertainment and patron dancing in restaurants.
- T. Manufacture, compounding, processing, packaging, or treatment of such products as bakery goods, candy, cosmetics, dairy products, drugs, perfumes, pharmaceuticals, perfumed toilet soap, toiletries and food products, except fish and meat products, sauerkraut, vinegar, yeast and the rendering or refining of fats and oils.
- U. Massage therapists.
- V. Minute car wash stations.
- W. Nursery and kindergarten schools (private).
- X. Reserved.
- Y. Outdoor amusement enterprises.
- Z. Pet shop.
- AA. Plumbing yard or storage.
- BB. Public buildings and uses.
- CC. Public parking area in transitional use.
- DD. Public parks, playgrounds, and other recreational uses.
- EE. Public utilities, as defined and regulated in section 18-13.
- FF. Taxi stand (only private property).
- GG. Theater, indoor or outdoor.
- HH. Transitional parking lots.
- II. Drive-through facility, with the following submittal requirements and evaluation criteria:
 - 1. Application submittal requirements:
 - A. A written statement describing the proposed use and providing all information pertinent to the review of the application. Such information would include, but not be limited to: the type of product or service to be offered; the proposed hours of operation and employee staffing; plans for the control of litter and the disposal and recycling of waste material; effects on air quality at the site and in adjacent areas; and estimates of sound levels that would be generated by the proposed use at site boundary lines.
 - B. A traffic analysis providing information that would include, but not be limited to: estimates of the number of vehicle trips and the amount of vehicular stacking that would occur daily and during a.m./p.m. peak hours; trip generation by use type; estimated internal and external traffic flows; parking and vehicular stacking spaces that would be provided on-site; and data on existing traffic conditions and the traffic-handling capacity of roads fronted by the proposed use. In addition, the analysis would discuss sight distances at points of ingress and egress, pedestrian and bicycle traffic, and any other site-specific traffic factors or public safety issues associated with the application.
 - 2. Applications for drive-through facilities will be evaluated on the basis of the following criteria, with emphasis given to potential adverse effects on adjoining or nearby properties:
 - A. Location and arrangement of any drive-through window in relation to adjoining properties and public rights-of-way.
 - B. Appropriateness of proposed hours of operation.
 - C. Traffic circulation patterns, including safe ingress and egress, and a clear designation of drive-through aisles through the use of paving materials, pavement markings or landscaping.
 - D. Pedestrian circulation and safety.
 - E. Adequacy of screening of vehicle use and parking areas.
 - F. Noise impact associated with, but not limited to, exterior speakers and motor vehicles.
 - G. Compliance with federal, commonwealth and local pollution standards.
 - H. Other factors, as deemed appropriate, that affect the health, safety, and general welfare of the community.
 - 3. Drive-through facilities adjacent to residentially-zoned properties shall meet the following applicable criteria:

- A. A drive-through facility operating later than 10:00 p.m. shall not have any portion of its operation (including, but not limited to, the stacking lane, menu boards or speaker boxes) located closer than 75 feet from any residentially-zoned property.
- B. No speaker box or other audio mechanism, regardless of operating hours, shall be located closer than 35 feet from any residentially-zoned property.

(Code 1969, § 18-210; Ord. of 3-1969; Ord. of 2-6-1971; Ord. of 5-10-1971; Ord. of 6-2-1980; Ord. of 4-4-1983; Ord. of 11-8-1994; Ord. of 7-10-1995)

TOWN OF VIENNA

MEMORANDUM

TO: Town Staff and All Interested Parties

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

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.

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

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.



VIRGINIA DEPARTMENT OF SOCIAL SERVICES

Assistance Foster Care & Adoption Child Care Community Support Child Support Abuse & Neglect Careers

Click Here for Additional Resources

Child Day Care



Not all child day care programs in Virginia are required to be licensed. A child day care program in Virginia refers to 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 twenty-four-hour period.

There are two types of child day care programs: Out-of-home care (Center-Based) and in-home care (*Family-Based*) in a private home. These two types of care can be further broken down into:

- Licensed
- Unlicensed (but regulated)
- Approved; and
- Unlicensed and Unregistered

Licensed child day care programs are inspected at least twice per year. They have requirements for background checks, training/orientation, and health and safety.

Note: Some programs offering child day care obtain a general business license to operate from the county within which they do business; however, that license is not the same as a child day care license obtained from the Virginia Department of Social Services (VDSS), which holds the child day care provider accountable to the health and safety standards set forth by the Commonwealth of Virginia.

Unlicensed but Regulated child day care programs vary in their requirements.

- *Voluntarily registered family day homes* are required to be inspected prior to certification, and every two years thereafter, to complete background checks and meet certain health and safety standards.
- *Religiously exempt child day centers* are required to complete background checks and must self-certify annually that the program is in compliance with background checks and health and safety requirements.
- *Certified preschools* are operated by an accredited private school and are required to complete background checks and must self-certify prior to certification, and annually thereafter, regarding criminal record clearances on all employees, a list of staff qualifications, and health and fire inspection reports.

Religious exempt child day centers and certified preschool programs are not inspected by VDSS unless there is a complaint.

Approved child day care programs are regulated by an entity other than VDSS. These programs include certain northern Virginia localities - Arlington, Alexandria and Fairfax who have the authority to approve by local ordinance certain family day homes and child day centers.

Unlicensed and unregistered child day care programs *do not* have any of the following requirements: background checks, training/orientation, or health and safety requirements; and only minimal Code of Virginia requirements. Unlicensed centers must meet an exemption in the Code of Virginia in § 63.2-1715. Unlicensed family day homes must follow requirements in §§ 63.2-1727 and 63.2-1704.1 of the Code. VDSS **does not inspect these programs**.

The chart below allows you to explore the types of child care available, how they are regulated and provide you with related forms and applications. If you need further assistance selecting child care, [Child Care Aware of Virginia](#) can help.

As you seek to make one of the most important decisions you will ever make, review the [Choosing Quality Child Care](#) brochure to gain insight in selecting child care that can promote healthy social, emotional, physical and intellectual development for your child. In addition, you are also encouraged to take time to explore the [Learn About Child Day Care](#) chart which explains the various types of child care available in Virginia and how they are regulated.

Related Links

- [Child Care Assistance](#)
- [Search for Child Day Care](#)

LEARN ABOUT CHILD DAY CARE

	CENTER-BASED		FAMILY-BASED		
LICENSED	Child Day Center	Short-Term Child Day Center	Family Day Home		
UNLICENSED REGULATED	Religiously Exempt Child Day Centers	Certified Preschools	Voluntary Registered		Family Day System
APPROVED	Approved by Local Ordinance (Arlington)		Approved by Local Ordinance (Alexandria)	Approved by Local Ordinance (Arlington)	Approved by Local Ordinance (Fairfax County)
UNLICENSED UNREGISTERED	License Exempt Centers		Family Day Home		



[Expenses](#)

[CommonHelp](#)

[Mission & Strategic Plan](#)

[Org Chart](#)

[Civil Rights Policy & Procedures](#)

Contact Us
801 E. Main Street
Richmond, VA 23219



VIRGINIA DEPARTMENT
OF SOCIAL SERVICES

© 2017 - Commonwealth of Virgin
Privacy Poli



VIRGINIA DEPARTMENT OF SOCIAL SERVICES

- Assistance
- Foster Care & Adoption
- Child Care
- Community Support
- Child Support
- Abuse & Neglect
- Careers

Click Here for Additional Resources

Family Day Homes (FDH)



Family day home care is the most common form of child care in this country, especially for younger children. Parents may choose family child care for its intimate, home-like setting, flexible hours, consistency of care-giver, and small group size.

The Code of Virginia mandates the licensure of family day homes that provide care for five through twelve children (exclusive of the provider's own children and any children who reside in the home). The care may be offered in the home of the provider or in the home of any of the children in care.

A family day home caring for more than four children under the age of two, including the provider's own children and any children who reside in the home, shall be 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.

During the (less than 24 hour) absence of a parent or guardian, the licensed family day home provider assumes responsibility for the supervision protection, and well-being of a child under 13 years of age.

Licensing standards, which are proposed by the State Board of Social Services and enforced by the Division of Licensing Programs, ensure that the activities, services, and facilities of the family day home are conducive to the welfare of the children in care

Contract All | Expand All

- ▶ Regulations & Code References
- ▶ Background Investigations
- ▶ New FDH Applicants
- ▶ Current FDH Providers (includes forms)
- ▶ Licensed FDH Receiving Child Care Subsidy Assistance (forms)
- ▶ Licensed FDH Receiving Child Care Subsidy Assistance - Inspection Requirements

Related Links

- Child Care Assistance
- Licensing Programs - Injury of a Child Requiring Outside Medical Treatment/Death Report (IROMT) - For Providers Only
- Online Complaint Form
- Search for Child Day Care



- Expenses
- CommonHelp
- Mission & Strategic Plan
- Org Chart
- Civil Rights Policy & Procedures

Contact Us
801 E. Main Street
Richmond, VA 23219



VIRGINIA DEPARTMENT OF SOCIAL SERVICES

© 2017 - Commonwealth of Virginia
Privacy Policy

Child Day Centers (CDC)



Child day centers are child day programs offered to (i) two or more children under the age of 13 years 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. A child day program is 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 years for less than a 24-hour period.

Licensed programs must meet the standards promulgated by the State Board of Social Services. The Virginia Department of Social Services enforces these standards by inspecting centers at least twice a year and investigating complaints.

Contract All | Expand All

Regulations & Code References

Regulations

- Background Checks for Child Welfare Agencies (PDF)
- General Procedures and Information for Licensure (PDF)
- Replacement Pages for General Procedures and Information for Licensure (PDF)
- Standards for Licensed Child Day Centers (PDF)
- Standards for Licensed Child Day Centers Exempt Action Replacement Pages (PDF)

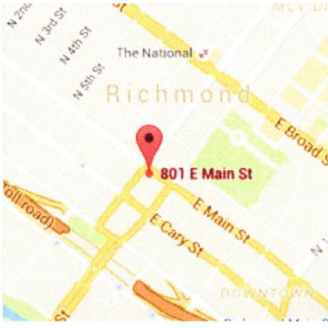
Applicable Code of Virginia References

- 2019 Code of Virginia - Title 63.2 (PDF)

- Background Investigations
- New CDC Applicants
- Current CDC Providers (includes forms)
- Licensed CDC Receiving Child Care Subsidy Assistance (forms)
- Licensed CDC Receiving Child Care Subsidy Assistance - Inspection Requirements

Related Links

- Child Care Assistance
- Licensing Programs - Injury of a Child Requiring Outside Medical Treatment/Death Report (IROMT) - For Providers Only
- Online Complaint Form
- Search for Child Day Care



Expenses

CommonHelp

Mission & Strategic Plan

Org Chart

Civil Rights Policy & Procedures





VIRGINIA DEPARTMENT OF SOCIAL SERVICES

© 2017 - Commonwealth of Virginia
Privacy Policy

Contact Us

801 E. Main Street

Richmond, VA 23219



VIRGINIA DEPARTMENT OF SOCIAL SERVICES

- Assistance
- Foster Care & Adoption
- Child Care
- Community Support
- Child Support
- Abuse & Neglect
- Careers

Click Here for Additional Resources

Certified Preschools (CP)



Section 63.2-1717 of the *Code of Virginia* allows preschool programs operated by private schools that are accredited by a statewide accrediting organization (or another accrediting organization recognized by the Board of Education) to be exempt from licensure.

The State Board of Education recognizes the accreditation process for private schools administered through the Virginia Council for Private Education (VCPE) Commission on Accreditation. Accrediting organizations that are approved by VCPE administer their own *accrediting process for schools in their organizations*.

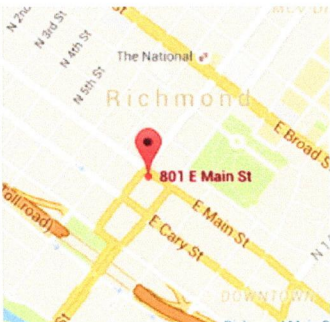
In order for preschool and nursery school programs operated by accredited private schools to be certified, certain information must be filed with VDSS before the beginning of the school year or calendar year. That information must be filed annually thereafter. The information includes, but is not limited to, verification of accreditation or accreditation candidacy, a statement of intent, documentation that the parents or guardians of children in care have received written notification that the preschool is exempt from licensure, documentation that the school requires criminal record clearances on all employees of the preschool, a list of staff qualifications and health and fire inspections reports.

Contract All | Expand All

- Code of Virginia References
- Current CP Providers

Related Links

- Child Care Assistance
- Search for Child Day Care



Contact Us
801 E. Main Street
Richmond, VA 23219

- Expenses
- CommonHelp
- Mission & Strategic Plan
- Org Chart
- Civil Rights Policy & Procedures



VIRGINIA DEPARTMENT OF SOCIAL SERVICES

© 2017 - Commonwealth of Virginia
Privacy Policy