



Legislation Details (With Text)

**File #:** 21-2031      **Version:** 1      **Name:**  
**Type:** Action Item      **Status:** Agenda Ready  
**File created:** 1/12/2021      **In control:** Town Council Meeting  
**On agenda:** 2/1/2021      **Final action:**  
**Title:** Public hearing on proposed text amendments to add Family Day Home provisions to Sections 18-4, 18-13, 18-210 of Chapter 18 of the Town Code.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. 1. Proposed Town Code Family Day Home Ordinance, 2. 2. Background Information - Board of Zoning Appeals Memo to Town Attorney - November 6, 2019, 3. 3. Background Information - Town Attorney Memo to Board of Zoning Appeals - December 16, 2019, 4. 4. Background Information - Family Day Homes Zoning Administrator Determination - December 17, 2019, 5. 5. Background Information - Board of Zoning Appeals Letter to Town Council - February 26, 2020, 6. 6. Regulatory Requirements for Zoning Text Ordinance Amendment, 7. 7. Planning Commission Memo - Family Day Homes

Date	Ver.	Action By	Action	Result
2/1/2021	1	Town Council Meeting	approved	Pass

**Subject:**

Public hearing on proposed text amendments to add Family Day Home provisions to Sections 18-4, 18-13, 18-210 of Chapter 18 of the Town Code.

**EXPLANATION AND SUMMARY:**

Currently the Town's zoning ordinance does not specifically give the Board of Zoning Appeals (BZA) the authority to grant conditional use permits for Family Day Home activities that are not part of nursery or kindergarten school programs. Recent cases involving child day care have led BZA members to question the BZA's jurisdiction to issue CUPs for Family Day Homes. Under the current Town ordinance, nursery or kindergarten school programs are specifically listed as a use for which the BZA can grant a CUP, but Family Day Homes are not listed.

In 2013, the then director of planning & zoning and zoning administrator issued an opinion regarding state code provisions of Virginia Code §15.2- 2292, stating that Fairfax County has allowed a maximum of seven (7) children within a single-family home and “(t)he Town has chosen to follow this interpretation” (memorandum from GMH, June 19, 2013).The enabling statute for Family Day Homes set forth by the Code of Virginia has been amended by the General Assembly several times since 2013 and currently allows up to 12 children per Code of Virginia section §15.2-2292.

The BZA held a work session on February 19, 2020 to discuss an amendment of the zoning ordinance to specify Family Day Homes as a conditional use permit process. BZA members recommended that Town Council amend the Town's zoning ordinances to specifically give the BZA the authority to grant conditional use permits for Family Day Home activities that are not part of

nursery or kindergarten school programs.

Town Council held a work session on September 28, 2020 to discuss the matter and stressed the need for continued public input through the CUP process by amending Town Code section §18-13 and §18-20 to specifically include Family Day Home as an enumerated use.

The Planning Commission held a work session on December 9, 2020 to discuss draft amendments prepared by staff. After a brief discussion, the Planning Commission concurred with the recommended changes.

The Planning Commission held a public hearing on the matter on January 13, 2021; one resident spoke in support of the proposed text amendments. After closing the hearing, the Planning Commission voted 9-0 in favor of recommending approval of the proposed text amendments as presented.

The proposed revisions to Sections 18-4, 18-13, and 18-210 are attached to this item and shown in bold and italics.

**Strategic Plan Initiative:** *Vienna is an influential and well-governed community*

**Departmental Recommendation :** The Planning and Zoning Department recommends approval of text amendments as recommended by the Planning Commission.

**Finance Recommendation :** N/A

**Purchasing Recommendation :** N/A

**Town Attorney Recommendation :** The Town Council may consider, in its discretion, recommendations of the Planning Commission and hold a public hearing to consider proposed amendments to Chapter 18 of the Town Code.

**Town Manager's Recommendation :** I recommend the Town Council approve Planning Commission-recommended text amendments to sections 18-4, 18-13 and 18-210 of the Vienna Town Code related to Family Day Homes, as presented.

Cost and Financing: N/A

Account Number: N/A

Decision Needed by This date: N/A

## **PROPOSED/SUGGESTED MOTION**

"I move to close the public hearing."

And

"I move to approve Planning Commission-recommended text amendments to sections 18-4, 18-13, and 18-210 of the Vienna Town Code related to Family Day Homes. I further move to direct the Town Clerk to advertise a Notice of Intent to Adopt the ordinance changes."

Or

Other action deemed necessary by the Town Council.