


City of Alexandria, Virginia

MEMORANDUM

DATE: SEPTEMBER 4, 2008

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 

SUBJECT: CONSIDERATION OF CHANGES UPDATING THE CITY CHILD CARE ORDINANCE

ISSUE: Consideration of changes in the City's child care ordinance (Section 12, Chapter 3 of the Alexandria City Code) to reflect changes in State law, and to clarify, and to improve upon language.

RECOMMENDATION: That City Council pass the ordinance on first reading and schedule it for public hearing, second reading and final passage on Saturday, September 13

BACKGROUND: On May 18, 1985, City Council adopted the City's original child care ordinance to ensure safety and quality in family (home-based) child care and provide information for parents on the availability of regulated child care. The ordinance defines "child care services" as the regular provision of care, protection and guidance to from one, to and including, five children. Family child care providers caring for more than five children, or for more than four children under the age of two, are required to be licensed through the Virginia Department of Social Services.

DISCUSSION: The proposed amendments will update the language in the ordinance. They will not change the definition of child care services. Specific changes include:

- Sec. 12-3-1 (4) Definitions – "Division of Social Services" changed to "Department of Human Services" to reflect the organizational changes in City government.
- Sec. 12-3-1 (6) Definitions - deletion of the term "nursery school" because the City no longer has regulatory authority for those part-day programs that were once known as "nursery schools." The State is now responsible for licensing all child care programs that are center-based, regardless of the number of hours of care provided per day.
- Sec. 12-3-4 - Child Care Home Regulations - "day care" is changed to "child care" throughout this document to reflect the more common professional usage.

- Sec. 12-3-63 (a)(4) - addition of "national criminal history check" to reflect a change in State law and agency policy to require fingerprinting and a national criminal history search for all caregivers used as vendors by the Department of Human Services.
- Sections 12-3-63 (a)(4), 12-3-65 (a) and 12-3-69 – updating language referring to barrier crimes and the appropriate section of the Virginia Code. Barrier crimes are those crimes that are specified in section 63.2-1719 of the Virginia Code (1950) as amended, which bar an individual from providing child care in the Commonwealth of Virginia. Barrier crimes range from serious felonies such as kidnapping, abuse and neglect, drug distribution to some misdemeanors such as pandering and reckless endangerment.
- Sec. 12-3-63 (a)(5) and 12-3-67 (b) - change in language to reflect a change in State law that requires child protective services clearances on all individuals, age 14 and older, not just adults, who reside in a home where child care services are provided.
- Sec. 12-3-68 – change in language allowing City staff to inspect any child care home “at any time child care services are scheduled to be provided” replacing “...on weekdays between 8 a.m. and 5 p.m.” This change reflects the fact that many parents need child care during evening and overnight hours and will ensure that the City has access to child care homes during all hours that care is being provided.

FISCAL IMPACT: None

ATTACHMENT: Proposed Amended Childcare Ordinance

STAFF:

Debra R. Collins, Assistant City Manager for Community and Human Services

Leticia Lacomba, Deputy Director of Human Services

Carol M. Farrell, Director, Office for Early Childhood Development, DHS

Jill A. Schaub, Senior Assistant City Attorney

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| Introduction and first reading: | 9/9/08 |
| Public hearing: | 9/13/08 |
| Second reading and enactment: | 9/13/08 |

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain TITLE 12 (Education, Social Services, and Welfare), CHAPTER 3 (Child Care) ARTICLE A (General Provisions) and ARTICLE B (Day Care Homes) of the Code of the City of Alexandria, Virginia, 1981, amended.

Summary

The proposed ordinance will amend the requirements for child care providers to provide that all such providers used as vendors by the Department of Human Services must be fingerprinted and have a national criminal history search, and all individuals, age 14 and older, not just adults, who reside in a home where child care services are provided must have child protective services clearance, as required by a change in State law. In addition, no individual who has been convicted of a "barrier crime", as defined by State law, may serve as a child care provider. The proposed ordinance also clarifies and improves upon certain language in the current ordinance.

Sponsor

Staff

Debra R. Collins, Assistant City Manager for Community and Human Services
Leticia Lacomba, Deputy Director of Human Services
Carol M. Farrell, Director, Office for Early Childhood Development, DHS
Jill A. Schaub, Senior Assistant City Attorney

Authority

Sec. 2.04(h), Alexandria City Charter

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

ORDINANCE NO. _____

AN ORDINANCE to amend and reordain TITLE 12 (Education, Social Services, and Welfare), CHAPTER 3 (Child Care) ARTICLE A (General Provisions) and ARTICLE B (Day Care Homes) of the Code of the City of Alexandria, Virginia, 1981, amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Title 12, Chapter 3, Article A of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

ARTICLE A
General Provisions

Sec. 12-3-1 Definitions.

For purposes of this chapter, the following terms shall have the meanings provided below:

- (1) "Adult" means any natural person of at least 18 years of age.
- (2) "Child" means any natural person under 18 years of age.
- (3) "Child care services" means the regular provision, ~~in exchange for compensation,~~ of care, protection and guidance to at least one, and up from one to and including five children for compensation, while such children are separated from their parents, guardians or legal custodians, in a dwelling not the residence of one or more of the children, during a part of the day for at least four days of a calendar week. ~~provided, that~~ The provision of such care, protection and guidance by a grandparent solely to his or her grandchildren shall not constitute child-care services for the purposes of this chapter. Providers caring for six or more children or more than four children under the age of two shall be licensed by the Virginia Department of Social Services.
- (4) ~~"Division of social Department of Human Services or Department"~~ means the ~~component of is~~ the City of Alexandria department of ~~human services~~ responsible for administering the provisions of article B of this chapter.
- (5) ~~"Day~~ Child care home" means any residential building, or portion thereof, which is used to provide child care services.
- (6) ~~"Nursery school" means a child day care program for children from two to and including five years of age at which children two through four years of age attend no more than four hours per day and children five years of age attend no more than six and one half hours per day, and which is operated primarily for the educational development and instruction of two or more children who also are receiving care, protection, and guidance while separated from their parents.~~

1 Sec. 12-3-2 Zoning.

2
3 No ~~day-~~ child care home shall be registered under this chapter unless the land upon which
4 the ~~day-~~ child care home is to be operated, or is operated, is zoned to permit such use.

5
6 Sec. 12-3-3 Performance of duties imposed by chapter.

7
8 It shall be unlawful for any person to fail, refuse or neglect to perform any duty imposed
9 upon such person by this chapter.

10
11 Sec. 12-3-4 ~~Day-~~ Child care home regulations.

12
13 The ~~division of social~~ Department of Human Services shall issue regulations for ~~day-~~
14 child care homes which shall be designed to ensure that such homes are operated in a manner
15 conducive to the health, safety and welfare of the children who receive their services; provided,
16 that such regulations shall not be more extensive in scope than state regulations applicable to
17 family day ~~care~~ homes, as defined in section 63.2-100 of the Virginia Code (1950), as amended.

18
19 Secs. 12-3-5 through 12-3-60 reserved.

20
21 Section 2. That Title 12, Chapter 3, Article B of The Code of the City of Alexandria,
22 Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as
23 follows:

24
25 ARTICLE B
26 ~~Day-~~ Child Care Homes

27
28 Sec. 12-3-61 Purpose of article.

29
30 The purpose of this article is to ensure that child care services provided in ~~day-~~ child care
31 homes in the city are safe and of good quality.

32
33 Sec. 12-3-62 Registration required.

34
35 It shall be unlawful for any person to operate a ~~day-~~ child care home in the city without a
36 registration issued by the ~~division of social~~ Department of Human Services pursuant to this
37 article or in a manner not expressly authorized by such registration.

38
39 Sec. 12-3-63 Application for registration.

40
41 (a) Any person desiring to operate a ~~day-~~ child care home shall apply for registration to
42 the ~~division of social~~ Department of Human Services. In applying for registration, the applicant
43 shall provide:

44 (1) The applicant's name, birth date, address and phone number;

1 (2) The name, birth date and address of every person who will provide or assist the
2 applicant in the provision of child care services in the proposed ~~day-~~ child care home;

3 (3) The name, birth date and relationship to the applicant (e.g., spouse, child) of every
4 person living in the residence where the child care services are to be provided;

5 (4) Certification of a national criminal record check from the Central Criminal Records
6 Exchange for the applicant, for all persons who will provide or assist in the provision of child
7 care services in the proposed ~~day-~~ child care home and for all adults who live in the proposed
8 ~~day-~~ child care home establishing that such persons have never been convicted of any barrier
9 crime or offense as defined in section 63.2-1719 of the Virginia Code (1950), as amended.
10 ~~involving the sexual molestation of a child or the physical or sexual abuse or rape of a child, or~~
11 ~~of murder, abduction for immoral purposes, sexual assault, failure to secure medical attention for~~
12 ~~an injured child, pandering, crimes against nature involving children, taking indecent liberties~~
13 ~~with children, neglect of children, obscenity or any offense identified in section 63.1-198.1 of the~~
14 ~~Virginia Code (1950), as amended;~~

15 (5) Certification from the Virginia Department of Social Services for the applicant, for
16 all persons who will provide or assist in the provision of child care services in the proposed ~~day-~~
17 child care home and for all ~~adults~~ persons, age 14 and older, who live in the proposed ~~day-~~ child
18 care home establishing that such persons have never been the subject of a founded complaint of
19 child abuse or neglect;

20 (6) A completed self-certification form provided by the ~~division of social~~ Department
21 of Human Services stating attesting that the proposed ~~day-~~ child care home complies with the
22 regulations issued pursuant to section 12-3-4;

23 (7) Such additional information required by the ~~division of social~~ Department of
24 Human Services to enable it to determine whether the proposed ~~day-~~ child care home will
25 comply with all requirements imposed by the regulations issued pursuant to section 12-3-4; and

26 (8) A registration fee of \$5.

27
28 Sec. 12-3-64 Processing of application.

29
30 After receipt of an application for registration, the ~~division of social~~ Department of
31 Human Services shall examine the information provided therein and seek clarification or
32 explanation if necessary, and the city shall inspect the proposed ~~day-~~ child care home to ensure
33 that it complies with fire and building code regulations. The ~~division~~ Department may also
34 inspect and investigate the proposed ~~day-~~ child care home to determine whether it will comply
35 with the regulations issued pursuant to section 12-3-4 and will adequately provide for the health,
36 safety and welfare of the children for whom child care services will be provided.

37
38 Sec. 12-3-65 Action on registration.

39
40 (a) An application for registration under section 12-3-63 shall be denied if the ~~division~~
41 ~~of social~~ Department of Human Services finds that the applicant, any person who will provide or
42 assist in the provision of child care services or any adult who lives in the proposed child ~~day-~~ care
43 home has been convicted of any barrier crime or any of the offenses described in section 12-3-
44 63(4) 63.2-1719 of the Virginia Code (1950) as amended or has been the subject of a founded

1 case of child abuse or neglect. An application for registration under section 12-3-63 shall also be
2 denied if the Department determines that the proposed child care home fails to comply with all
3 requirements proposed by the regulations issued pursuant to section 12-3-4, or determines that
4 the applicant will not adequately provide for the health, safety and welfare of the children for
5 whom child care services are to be provided, unless the division Department determines, after
6 careful investigation, that, notwithstanding such conviction or founded case, the applicant is
7 capable of providing child care services consistent with the health, safety and welfare of the
8 children who will be served and that the proposed home complies with all requirements imposed
9 by the regulations issued pursuant to section 12-3-4. If an application for registration is denied
10 under this subsection because of any adverse information appearing on a record obtained by the
11 ~~division of social~~ Department of Human Services from the Central Criminal Records Exchange
12 or the Virginia Department of Social Services, the ~~division~~ Department shall provide the
13 applicant a copy of the information upon which the denial was based.

14 (b) An application for registration under section 12-3-63 shall be granted if the ~~division~~
15 ~~of social~~ Department of Human Services makes no finding under subsection (a), determines that
16 the proposed ~~day-~~ child care home complies with all requirements imposed by the regulations
17 issued pursuant to section 12-3-4 and determines that the applicant will adequately provide for
18 the health, safety and welfare of the children for whom child care services are to be provided. A
19 registration issued under this section shall, at a minimum, contain the name of the applicant-
20 operator of the registered ~~day-~~ child care home, the address of the home, the names of all persons
21 authorized to provide or assist in the provision of child care services at the home, the names of
22 all persons who live in the home, and the maximum number of children to be served at any one
23 time at the home.

24
25 Sec. 12-3-66 Display of registration; provision of child care information.

26
27 Any ~~day-~~ child care home registered under this chapter shall display its registration
28 conspicuously. In addition, any such ~~day-~~ child care home shall provide to the parent, guardian
29 or legal custodian of each child for whom child care services is provided a pamphlet on child
30 care evaluation and standards prepared and provided by the ~~division of social~~ Department of
31 Human Services.

32
33 Sec. 12-3-67 Change in operator, address or personnel; amendments to registration.

34
35 (a) No change in the operator or address of a registered ~~day-~~ child care home may
36 occur without the approval of the ~~division of social~~ Department of Human Services. If, following
37 the registration of a ~~day-~~ child care home, the person identified as the applicant-operator in the
38 home's registration proposes to be replaced with another operator, or proposes to move the ~~day-~~
39 care home from the address stated in the home's registration, the original applicant-operator shall
40 immediately notify the ~~division of social~~ Department of Human Services of the proposal in
41 writing on a form provided by the ~~division~~ Department. With respect to the proposed new
42 operator, the original operator shall provide the information described in subsections (4), (5) and,
43 if applicable, (7) of section 12-3-63. If the proposed new operator has not been convicted of any
44 barrier crime or any of the offenses described in section 12-3-63(4) and has not been the subject

1 of a founded case of child abuse or neglect, and the ~~division~~ Department determines that the
2 child day-care home will continue under the proposed new operator to provide child care
3 services consistent with the health, safety and welfare of the children it is serving, the ~~division~~
4 Department shall approve the proposed new operator and shall amend the registration of the
5 home accordingly. With respect to the proposed new address, if the ~~division~~ Department
6 determines that the new address meets the requirement of section 12-3-2, it shall approve the
7 change in address and shall amend the registration of the home accordingly and issue a new
8 certificate.

9 (b) An operator of a registered day child care home may not, without the approval of
10 the ~~division of social~~ Department of Human Services, continue to provide child care services if a
11 person not identified in the registration of the ~~day-~~ child care home provides or assists in the
12 provision of child care services at the home, or if a person, age 14 and older, ~~adult~~ not identified
13 in the registration lives in the home. If an operator proposes that one or more persons not
14 identified in the registration provide or assist in the provision of child care services at a
15 registered home, or that one or more ~~adults~~ persons, age 14 and older, not identified in the
16 registration live in the home, the operator of the home shall immediately notify the ~~division of~~
17 social Department of Human Services in writing on a form provided by the ~~division-~~ Department.
18 With respect to each such person, the operator shall provide the information described in
19 subsections (4), (5) and, if applicable, (7) of section 12-3-63. If such persons have not been
20 convicted of any barrier crime or any of the offenses described in section 12-3-63(4) and have
21 not been the subject of a founded case of child abuse or neglect, and the ~~division~~ Department
22 determines that, with such persons, the ~~day-~~ child care home will continue to provide child care
23 services consistent with the health, safety and welfare of the children it is serving, the division
24 shall approve the continued operation of the ~~day-~~ child care home and shall amend the
25 registration of the home accordingly.

26
27 Sec. 12-3-68 Inspection of ~~day-~~ child care home.

28
29 The city may inspect any day- child care home registered under this article ~~on weekdays~~
30 between 8:00 a.m. and 5:00 p.m. at any time child care services are scheduled to be provided.
31

32 Sec. 12-3-69 Revocation of registration.

33
34 (a) The registration of a ~~day-~~ child care home may be revoked by the ~~division of social~~
35 Department of Human Services if it is determined that the home is in violation of applicable fire
36 or building codes, that any person providing or assisting in the provision of child care services or
37 an adult living in the home has been convicted of an barrier crime or offense described in section
38 12-3-63(4) 63.2-1719 of the Virginia Code (1950) as amended, or any person living in the home,
39 age 14 or older, has been the subject of a founded case of child abuse or neglect, that the home
40 has served more children than the maximum number listed in its registration, that permission to
41 inspect the home ~~on a weekday between 8:00 a.m. and 5:00 p.m.~~ during any time the home is
42 scheduled to provide child care has been denied, that the home has represented its registration as
43 constituting official city approval of the child care services it is providing, that the applicant has
44 misrepresented or provided false information on or in conjunction with the application for the

1 home, that the home is not complying with all requirements imposed by the regulations issued
2 pursuant to section 12-3-4, or that the home is not being operated in a manner consistent with the
3 health, safety and welfare of the children it is serving.

4 (b) No registration may be revoked without 10 days written notice to the ~~applicant-~~
5 operator, at the address listed on the registration, which shall contain a statement of the reasons
6 why the registration is being revoked. Unless the health, safety and welfare of the children being
7 served by the home is immediately threatened, the notice shall inform the applicant-operator that
8 he or she has 10 days within which to remove the reasons for the revocation or to establish that
9 such reasons either do not exist or do not warrant the revocation of the registration. The notice
10 shall also inform the applicant-operator that, prior to the expiration of this 10-day period, he or
11 she may meet with the ~~chief of the division of social services~~ Director of the Department of
12 Human Services, or a designee, in order to present reasons why the registration should not be
13 revoked. In the event that the reasons for the revocation have not been removed or negated
14 within the 10-day period, the ~~division~~ Department shall revoke the registration.

15
16 Sec. 12-3-70 Penalties.

17
18 Any person who violates section 12-3-62 shall be guilty of a class 4 misdemeanor. For
19 purposes of this article, each day a person operates a ~~day-~~ child care home without a registration
20 or in a manner not authorized by a registration shall constitute a separate offense.

21
22 Sec. 12-3-71 Business license not required.

23
24 Persons operating a ~~day-~~ child care home under a registration issued pursuant to this
25 article shall not come within the provisions of article C, chapter 1, title 9 of this code.

26
27 Section 3. That this ordinance shall become effective _____, 2008.

28
29 WILLIAM D. EUILLE
30 Mayor

31
32 Introduction: 9/9/08
33 First Reading: 9/9/08
34 Publication:
35 Public Hearing:
36 Second Reading:
37 Final Passage:

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