

*ADOPTION OF AN AMENDMENT TO CHAPTER 30  
(MINIMUM PRIVATE SCHOOL AND  
CHILD CARE FACILITY STANDARDS)  
OF THE 1976 CODE OF THE COUNTY OF FAIRFAX, VIRGINIA*

*At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center at Fairfax, Virginia, on Tuesday, June 19, 2018 the Board after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment regarding Chapter 30 (Minimum Private School and Child Care Facility Standards) of the 1976 Code of the County of Fairfax, Virginia, said amendment so adopted being in the words and figures following, to-wit:*

*BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FAIRFAX  
COUNTY, VIRGINIA:*

*That Chapter 30 (Minimum Private School and Child Care Facility  
Standards) is amended as follows:*

**AN ORDINANCE AMENDING  
ARTICLES 1 AND 3 OF CHAPTER 30 OF THE FAIRFAX COUNTY CODE,  
RELATING TO HOME CHILD CARE FACILITIES**

**Draft of April 12, 2018**

**AN ORDINANCE** to amend the Fairfax County Code by amending and readopting Sections 30-1-1, 30-3-2 and 30-3-4, relating to barrier offenses and home child care facilities.

**Be it ordained by the Board of Supervisors of Fairfax County:**

- 1. That Sections 30-1-1, 30-3-2 and 30-3-4 are amended and readopted as follows:**

**Article 1. – In General.**

**Section 30-1-1. - Definitions.**

For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

*Adult* means a person 18 years of age or older.

*Barrier offense* means offenses which bar an applicant from obtaining a home child care facility permit pursuant to this Chapter or mandate revocation of an outstanding permit. Barrier offenses are:

- (1) \_\_\_\_\_ If the provider or any person who resides in the home is convicted of (i) any of the following offenses set out in the Virginia Code: a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, or 18.2-42; any felony violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 18.2-46.3:3; any violation of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any violation of subsection A or B of § 18.2-47; any violation of § 18.2-48, 18.2-49, or 18.2-50.3; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-55.1, 18.2-56, 18.2-56.1, 18.2-56.2, 18.2-57, 18.2-57.01, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59, 18.2-60, or 18.2-60.1; any felony violation of § 18.2-60.3 or 18.2-60.4; any violation of § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-67.5:1, 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83, 18.2-84, 18.2-85, 18.2-86, 18.2-87, 18.2-87.1, or 18.2-88; any felony violation of § 18.2-279, 18.2-280, 18.2-281, 18.2-282, 18.2-282.1, 18.2-286.1, or 18.2-287.2; any violation of § 18.2-289, 18.2-290, 18.2-300, 18.2-308.4, or 18.2-314; any felony violation of § 18.2-346; any violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; any violation of subsection B of § 18.2-361; any violation of § 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-370.3, 18.2-

370.4, 18.2-370.5, 18.2-370.6, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-374.4, 18.2-379, 18.2-386.1, or 18.2-386.2; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1, 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917, or 53.1-203; any violation of § 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-94; any felony violation of § 18.2-248, 18.2-248.01, 18.2-248.02, 18.2-248.03, 18.2-248.1, 18.2-248.5, § 18.2-250, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, or 18.2-258.2; (ii) any substantially similar offense under the laws of another jurisdiction; (iii) any offense set forth in Va. Code § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to Va. Code § 9.1-901, including any finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of the Virginia Code of an offense set forth in Va. Code § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to Va. Code § 9.1-901, or any substantially similar offense under the laws of another jurisdiction, or any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted; (iv) any other felony not included in clause (i), (ii), or (iii), unless five years have elapsed from the date of the conviction; or (v) any offense listed as a "Barrier crime" in Va. Code § 19.2-392.02, including all subsequent amendments or modifications thereto. (a) any of the following offenses set out in the *Virginia Code*: a felony violation of a protective order as set out in § 16.1-253.2; murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in § 18.2-47(A) or (B); abduction for immoral purposes as set out in § 18.2-48; assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery as set out in § 18.2-58; carjacking as set out in § 18.2-58.1; extortion by threat as set out in § 18.2-59; threats of death or bodily injury as set out in § 18.2-60; felony stalking as set out in § 18.2-60.3; a felony violation of a protective order as set out in § 18.2-60.4; sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as set out in § 18.2-289; aggressive use of a machine gun as set out in § 18.2-290; use of a sawed-off shotgun in a crime of violence as set out in § 18.2-300(A); pandering as set out in § 18.2-355; crimes against nature involving children as set out in § 18.2-361; incest as set out in § 18.2-366; taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1; abuse and neglect of children as set out in § 18.2-371.1; failure to secure medical attention for an injured child as set out in § 18.2-314; obscenity offenses as set out in § 18.2-374.1; possession of child pornography as set out in § 18.2-374.1:1; electronic facilitation of pornography as set out in § 18.2-374.3; abuse and neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out

~~in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or (b) an equivalent offense in another state; or (c) any other felony unless five years have elapsed since the conviction.~~ Convictions shall include prior adult convictions and juvenile convictions and adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth.

- (2) If the provider or a person who resides in the home is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; and
- (3) If the provider makes a false statement regarding a material fact on an application for a home child care permit under this Chapter; this bar shall remain in effect for a period of one year from the time the permit is denied or revoked on this basis.

*Director of Health* means the Director of the Fairfax County Health Department or the authorized agent of the Director of the Fairfax County Health Department.

*Director of the Office for Children* means the Director of the Fairfax County Office for Children or the authorized agent of the Director of the Fairfax County Office for Children.

*Home child care facility* means any facility located in a dwelling or mobile home, as defined in Article 20 of Chapter 112 of the Fairfax County Code (the Zoning Ordinance), where a person, for compensation, regularly provides care, protection, supervision and guidance to one or more children who do not reside in the facility and who are not attended by a parent, guardian or legal custodian while they are in that facility, during a part of the day for at least four days of a calendar week. If, on a regular basis, a person receives compensation for the care, protection, supervision and guidance of one or more children in a structure other than a dwelling or mobile home, as defined in the Zoning Ordinance, that facility shall be deemed to be a child care center and included within those facilities defined in this Section. A home child care facility does not include: (i) any family day home licensed by the Commonwealth pursuant to *Virginia Code* § 63.2-1701 or any facility exempted from licensure by *Virginia Code* § 63.2-1715; (ii) any dwelling or mobile home where a person provides care solely for children who reside there; or (iii) any dwelling or mobile home where a person provides care solely for relatives of the resident owner or tenant. However, if on a regular basis, a person receives compensation for the care, protection, supervision and guidance of one or more children who do not reside in that dwelling or mobile home and who are not attended by a parent, guardian or legal custodian while they are in that dwelling or mobile home during a part of the day for at least four days of a calendar week, and a home child care facility is established thereby, then any children who are related to the person who provides such care and are present in that dwelling or mobile home and any other children who reside in that dwelling or mobile home shall be counted and considered in determining whether the facility complies with the provisions of this Chapter.

*Occasional child care* means care provided on an hourly basis, for one or more children between the ages of six weeks and 12 years of age, for a period not to exceed four hours within any one day, which is contracted for by a parent, guardian, or legal custodian for the same child not more than ten days within a calendar month.

*Permit* means authorization from the County to operate a private school, nursery school, child care center or home child care facility for the care, guidance, education, training or protection of children in compliance with this Chapter.

*Private school, nursery school, or child care center* means any place, home, facility, or institution, however designated, or any part thereof, that (1) is eligible for an exemption from state licensure pursuant to *Virginia Code* §§ 63.2-1716 and 63.2-1717; (2) is operated for the purposes of providing care, guidance, education or training; and (3) receives on a regular basis, for any period of more than one hour but less than twenty-four hours in any twenty-four-hour period, one or more children under the age eligible for enrollment in the Fairfax County Public Schools who are not attended by a parent, guardian or person with legal custody. A home child care facility, as defined in this Section, shall not be included within this definition.

*Provider* means the adult responsible for obtaining the permit and for the day-to-day operation of the home child care facility. The provider is responsible for providing care, protection, supervision, and guidance to children in a home child care facility.

*Substitute Care Provider* means any person who provides care, protection, supervision, and guidance to children when the provider is away from the home child care facility.

### **Article 3. – Home Child Care Facilities.**

#### **Section 30-3-2. - Annual permit application, issuance or denial.**

- (a) A person proposing to operate a home child care facility, and each adult who resides in the proposed facility, shall submit to fingerprinting and shall provide personal descriptive information to be forwarded along with each individual's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding each such person. The applicant shall also submit an application on a form prepared by the Director of the Office for Children, which shall include:
- (i) The name and address of the home child care facility;
  - (ii) The name of the applicant;
  - (iii) A statement of whether the applicant currently holds or previously held a home child care facility permit in the County;
  - (iv) The names of all persons who reside in the home;
  - (v) A sworn statement from the applicant and each adult who resides in the proposed facility stating whether he or she has ~~committed any barrier offense, ever been convicted of or is the subject of any pending charges for any offense within or outside the Commonwealth~~ and consent forms signed by the applicant and each adult who resides in the proposed facility allowing the Director of the Office for Children to obtain the results of the criminal history record search conducted in accordance with Section 30-3-2(b)(iii).~~request a search of the Central Criminal Records Exchange for files on each such person, and payment of an investigation fee in an amount equal to the fee established by the Virginia State Police for conducting a records search multiplied by the number of~~ The applicant must pay any fee required in connection with such criminal history investigation for each persons making disclosures and providing consent forms; ~~When the Central Criminal Records Exchange records indicate that any such person has a criminal record in another state, or when the Director otherwise deems appropriate, the~~

~~Director may also require that the applicant or such adult who resides in the proposed facility consent to and pay for a national criminal background check;~~

- (vi) ~~A sworn~~ Sworn statements from the applicant and each adult who resides in the proposed facility stating the names of all states in which he or she has lived in the 5 years prior to the date of the application and stating whether he or she has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth of Virginia and consent forms signed by the applicant and each adult who resides in the proposed facility giving consent to the Director of the Office for Children to obtain a copy of the results of a search of the central registry maintained pursuant to Va. Code § 63.2-1515, and any child abuse and neglect registry or equivalent registry maintained by any other state in which the applicant or any adult who resides in the proposed facility has resided in the previous five years for any founded complaint of child abuse or neglect; ~~and the applicant shall also provide sworn~~ statements from a parent, guardian or legal custodian on behalf of all minors age 14 and older who reside in the proposed facility, stating whether the minor has been the subject of a founded complaint of child abuse or neglect and consent forms signed the parent, guardian or legal custodian of all minors age 14 and older who reside in the proposed facility, giving ~~consenting to the release of information to the Director of the Office for Children to obtain a copy of the results of a search of the central registry maintained pursuant to Va. Code § 63.2-1515 for any from child protective services investigating agencies reflecting whether any such individual has been the subject of a founded complaint of child abuse or neglect; the term "child protective services" shall have the meaning defined by Virginia law;~~
- (vii) Copies of the applicant's current certifications in first aid and cardiopulmonary resuscitation (CPR);
- (viii) ~~Proof of the applicant's compliance with the training requirements established in Section 30-3-4(b), which shall consist of records provided by the trainer or, if none are provided by the trainer, records maintained by the applicant;~~
- (ix) A description of the structure in which the home child care facility is proposed to be operated, including a description of all places and areas to which the children shall have access;
- (x) The proposed hours of operation;
- (xi) A statement of whether the applicant is 18 or more years old;
- (xii) A certificate from a physician, physician's designee, or Health Department official stating that acceptable screening methods (tuberculin skin test and/or tuberculosis risk and symptom screen and/or chest X-ray), singly or in combination as determined appropriate by the signatory, indicate that the applicant and all adult household residents are currently free from communicable tuberculosis. The screen must be performed every two years or more frequently as recommended by a physician or the local health department;
- (xiii) ~~A written policy describing what the applicant will do with children in care who are sick and a written emergency preparedness plan;~~
- (xiv) ~~Such other information, including, but not limited to, information concerning applicant's child care training and special skills, as the Director of the Office for Children may deem appropriate;~~



- (xv) The application fee of \$14, which is in addition to any business or occupation license tax imposed by the County, and any other taxes or fees that may be required to engage in the business.

If the information the provider submits in accordance with subsections (iv), (v), (vi), and (xii) changes during the term of the permit, the provider must report the change to the Director of the Office for Children within 21 days and must promptly submit updated information and documents.

(b) Upon submission of an application to the Office for Children:

- (i) The Director of the Office for Children shall inspect the proposed facility to determine whether it is in compliance with this Article and all applicable Virginia law that may affect the health and safety of the children who may attend or be present at the facility.
- (ii) The Fire Code Official shall conduct a fire safety inspection of the proposed facility and advise the Director of the Office for Children of any noncompliance with this Article or any applicable Virginia law that may affect the health and safety of the children who may attend or be present at the facility.
- (iii) If the applicant does not hold a permit under this Article at the time of the application, the Director of the Office for Children shall require that the fingerprints and personal descriptive information for the applicant and each adult who resides in the proposed facility be forwarded to the Central Criminal Records Exchange and request a search of the Central Criminal Records Exchange and a national criminal history search by the Federal Bureau of Investigation to determine whether the applicant or any persons who reside in the home have committed any crimes that constitute barrier offenses. ~~When the Central Criminal Records Exchange records indicate that any such person has a criminal record in another state, or when the Director otherwise deems appropriate, the Director may also require that the applicant or such adult who resides in the proposed facility consent to and pay for a national criminal background check.~~ Otherwise, the Director may request a criminal records search if ~~three~~five or more years have passed since the last records search on an individual, or upon receipt of new information submitted in accordance with this section, or as the Director deems appropriate in extenuating circumstances.
- (iv) ~~If the applicant does not hold a permit under this Article at the time of the application, the~~The Director of the Office for Children shall request a copy of the results of a search of the central registry maintained pursuant to Va. Code § 63.2-1515 for the applicant and all individuals age 14 and older that reside in the proposed facility, and a copy of the results of a search of any child abuse and neglect registry or equivalent registry maintained by any other state in which the applicant or any adult who resides in the proposed facility has resided in the preceding five years for the applicant and all adults who reside in the proposed facility, for any founded complaint of child abuse or neglect. information from child protective services investigating agencies as deemed necessary to determine whether the applicant or any person age 14 and older who resides in the proposed facility has been the subject of a founded complaint of abuse or neglect. Otherwise, the Director may request a copy of the central registry maintained pursuant to Va. Code § 63.2-1515 if five or more years have passed since the last records search on an individual, or upon receipt of new information submitted in accordance with this section, or as the Director deems appropriate in extenuating circumstances.

- (c) The Director of the Office for Children shall issue a permit to an applicant if the Director determines from the information contained in the permit application, the facility inspections, and the records searches that (i) the applicant is an adult; (ii) neither the applicant nor any person who resides in the facility has committed any barrier offense; and (iii) both the applicant and the proposed facility are in compliance with this Article and all applicable Virginia laws that may affect the health and safety of the children who may attend or be present at the proposed facility. The permit shall be displayed in the home child care facility by the provider.
- (d) The Director of the Office for Children shall deny a permit to any applicant if the Director determines from the information contained in the permit application, the facility inspections, and the records searches that (i) the applicant is not an adult; (ii) the applicant or any person who resides in the facility has committed any barrier offense; or (iii) either the applicant or the proposed facility is not in compliance with this Article and all applicable Virginia laws that may affect the health and safety of the children who may attend or be present at the proposed facility. If the denial is based on the results of the searches of the records of the Central Criminal Records Exchange, the national criminal background check, or the Department of Social Services, the Director shall provide the applicant a copy of the information upon which the denial was based.

#### **Section 30-3-4. - Provider Qualifications.**

- (a) The provider must be an adult.
- (b) The provider must be trained in areas such as physical, intellectual, social, and emotional child development; behavior management and discipline techniques; health and safety in the home child care environment; art and music activities for children; nutrition; child abuse detection and prevention; recognition and prevention of the spread of communicable diseases; emergency preparedness; and business practices of family child care. ~~From January 1, 2014, through December 31, 2014, any person granted an initial or renewal permit must attend 14 hours of training by an approved trainer during the term of the permit. Any applicant granted an initial or renewal permit at any time on or after January 1, 2015, All providers~~ must attend 16 hours of training by an approved trainer during the term of the permit. The Director of the Office for Children shall maintain a list of entities that are approved as trainers. Upon request from the provider, accompanied by information about the entity and/or the course, the Director of the Office for Children may approve additional trainers or a specific course.
- (c) The provider must be currently certified in first aid and cardiopulmonary resuscitation (CPR).
- (d) In addition to the training required in subsection (b) above, and except as set forth in Section 30-3-6(o) and (p), a provider who administers prescription medications or non-prescription medications to children in care must satisfactorily complete a training program for this purpose developed or approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist. Providers required to complete the training program shall be retrained at three-year intervals.

**2. All providers that are permitted under Article 3 of Chapter 30 of the Fairfax County Code on the effective date of this ordinance, and all adults who reside in the provider's**



facility, must submit to fingerprinting and provide the personal descriptive information required in Fairfax County Code Section 30-3-2(a) and the sworn statements and consent forms required in Fairfax County Code Section 30-3-2(a)(v), as well as any applicable fee required thereunder, to the Office for Children by September 30, 2018. The failure to comply with this requirement will result in a suspension of the provider's permit. Upon receipt of the sworn statements and forms, the Director will request the criminal history search set forth in Section 30-3-2(b)(iii).

3. That the provisions of this ordinance are severable, and if any provision of this ordinance or any application thereof is held invalid, that invalidity shall not affect the other provisions or applications of this ordinance that can be given effect without the invalid provision or application.

4. That this Ordinance will become effective on July 1, 2018.

*GIVEN under my hand this 19<sup>th</sup> day of June, 2018.*

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CATHERINE A. CHIANESE  
Clerk to the Board of Supervisors