

ORDINANCE NO. 2016-21

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO CHILD CARE FACILITIES AND FAMILY CHILD CARE HOMES; AMENDING OR REPEALING VARIOUS SECTIONS OF CHAPTERS 7 AND 20 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE") RELATING TO MINIMUM STANDARDS FOR CHILD CARE PERSONNEL AND FAMILY CHILD CARE HOME PERSONNEL ("CHILD CARE PERSONNEL"); REPLACING REQUIREMENTS FOR BROWARD COUNTY TO PERFORM BACKGROUND SCREENING ON CHILD CARE PERSONNEL TO PROVIDE FOR SCREENING IN ACCORDANCE WITH APPLICABLE STATE LAWS AND ADMINISTRATIVE RULES; PROVIDING DEFINITIONS; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

WHEREAS, child care licensing is regulated under Section 402.305 of the Florida Statutes; and

WHEREAS, the Broward County Board of County Commissioners ("Board"), pursuant to its authority under Chapter 402, Florida Statutes, and Rules 65C-20 and 65C-22, Florida Administrative Code, previously enacted the "Broward County Child Care Ordinance," and the "Family Child Care Home Ordinance," codified in Chapter 7 and Chapter 20, Article XV, respectively, of the Broward County Code of Ordinances ("Code"), to administer, enforce, and regulate the operation of child care facilities and family child care homes in Broward County through a licensure or registration process; and

WHEREAS, the Board desires to amend or repeal various sections of the Code relating to minimum standards for child care personnel and family child care home personnel ("child care personnel"), replacing provisions which provide for Broward

1 County to perform background screening of child care personnel with provisions for
2 background screening to be performed by the State of Florida in accordance with
3 Section 402.305(a), Florida Statutes; and

4 WHEREAS, the Board desires to establish minimum standards for background
5 screening of all child care personnel consistent with applicable statutory and rule
6 requirements; and

7 WHEREAS, the Board finds that amending the Code as provided herein is in the
8 best interest of the health, safety, and welfare of the people in Broward County, Florida,
9

10 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
11 BROWARD COUNTY, FLORIDA:

12
13 Section 1. Section 7-3 of the Broward County Code of Ordinances is hereby
14 amended to read as follows:

15 **Sec. 7-3. Definitions.**

16 For the purposes of this Ordinance chapter, the following terms shall have the
17 meaning indicated in this section. ~~No attempt is made to define ordinary words that are~~
18 ~~used in accordance with their established dictionary meaning except when necessary to~~
19 ~~avoid misunderstanding.~~

20 ...

21 (9) *Child care personnel* shall mean all ~~owners, directors, employees,~~
22 ~~volunteers, part time workers, and substitutes working in a child care~~
23 ~~facility. The term does not include persons who work in a child care~~
24 ~~facility after hours when children are not present. The term "child care~~

1 personnel" shall also include any reference herein to "staff," "staff
2 member," or "employee." For purposes of background screening, the term
3 "child care personnel" includes: (a) any member of a child care facility
4 director's family who is over the age of twelve (12) years, or (b) any
5 person over the age of twelve (12) years residing with a child care facility
6 director, if the child care facility is located in or adjacent to the home of the
7 director, or if the family member of, or person residing with, the child care
8 facility director has any direct contact with the children in the facility during
9 its hours of operation individuals as defined in Section 402.302(3), Florida
10 Statutes.

11 Members of the director's family, or persons residing with the director who
12 are between the ages of twelve (12) years and eighteen (18) years shall
13 not be required to be fingerprinted, but shall be screened for delinquency
14 records.

15 For purposes of background screening, the term shall also include
16 persons who work in child care programs that provide care for children
17 fifteen (15) hours or more each week in public or non-public schools,
18 summer day camps, family child care homes, and religious affiliated child
19 care facilities otherwise exempt under Section 402.316, Florida Statutes.
20 The term does not include persons who work in public and non-public
21 school programs during regular school hours, or after hours for activities
22 related to a school's program for grades kindergarten through 12 pursuant
23 to Section 1006.25, Florida Statutes.
24

1 A volunteer who assists on an intermittent basis for less than forty (40)
2 hours per month is not included in the term "child care personnel" for the
3 purposes of background screening and training, provided that the
4 volunteer is under the direct and constant supervision of the director or a
5 designee of the director who meets the requirements set forth in Sec. 7-4
6 of this Ordinance. Students who observe and participate in a child care
7 facility as part of their required course work shall not be considered child
8 care personnel, if such observation and participation are on an intermittent
9 basis and the students are under the direct and constant supervision of
10 child care personnel.

11 ...

12 (35) *Screening* shall mean the act of assessing the background of child care
13 personnel, which includes, but is not limited to, review of local criminal
14 records checks through local law enforcement agencies, fingerprinting for
15 all purposes and records checks required in this Ordinance, statewide
16 criminal records checks through the Florida Department of Law
17 Enforcement, federal criminal records checks through the Federal Bureau
18 of Investigation, and employment history checks in accordance with
19 Section 402.302(15), Florida Statutes.

20 Screening for volunteers included under the definition of "child care
21 personnel" includes only local criminal records checks through local law
22 enforcement agencies for current residence and residence immediately
23 prior to employment as a volunteer, if prior residence is different than the
24 current one. If prior residence was outside of Broward County, statewide

1 ~~criminal records correspondence checks through the Department of Law~~
2 ~~Enforcement must be submitted to the local licensing agency.~~

3 ...

4 Section 2. Section 7-4 of the Broward County Code of Ordinances is hereby
5 repealed in its entirety, and a new Section 7-4 is hereby created to read as follows:

6 [Underlining omitted]

7 **Sec. 7-4. Minimum standards for child care personnel.**

8 This section establishes the minimum standards for child care personnel. The
9 owner of a child care facility must ensure compliance with the minimum standards for
10 good moral character based on screening of all child care personnel, as provided under
11 Section 402.305(2), Florida Statutes, and the applicable rules and regulations
12 promulgated under Rule 65C-22.006(4), Florida Administrative Code, relating to
13 preschool child care programs, and Rule 65C-22.008, Florida Administrative Code,
14 relating to school-age child care programs, in addition to any more restrictive
15 requirements set forth in this section. In the case of a direct conflict between any
16 provision of this section and a provision of any other applicable federal, state, or local
17 law, rule, or regulation, the more restrictive provision shall apply.

18 (a) The owner of a child care facility must ensure that all child care personnel
19 are in compliance with the screening requirements under this section and that they have
20 been determined to be eligible for employment in child care prior to working in a child
21 care facility.

22 (b) If any child care facility is owned by a corporation, including a limited
23 liability company, all corporate officers, or members of the limited liability company who
24 reside locally, or are involved in the operation of the child care facility and have the

1 authority to be at the facility during any hours of operation when children are present
2 shall comply with the screening requirements under this section. For the purpose of this
3 chapter, persons who reside in Broward, Miami-Dade, Palm Beach, Collier, or Hendry
4 counties shall be deemed to reside locally. If any child care facility is owned by a
5 partnership, all partners shall comply with the screening requirements under this
6 section.

7 (c) Documentation evidencing eligibility of all child care personnel to work in a
8 child care facility pursuant to screening required under this section and documentation
9 of compliance with all other child care personnel requirements under this chapter shall
10 be maintained in the individual's personnel file at the child care facility.

11 (d) The owner or director of a child care facility must sign, have executed, and
12 submit to the local licensing agency, at the time of submittal of any new or renewal
13 license or registration application in accordance with the provisions of this chapter, a
14 notarized affidavit certifying that all child care personnel are in compliance with the
15 screening requirements under this section and are eligible to work in a child care facility.

16 (e) Any child care personnel may take a leave of absence, as described in
17 Rule 65C-22.006(4)(e)(5), Florida Administrative Code, relating to preschool child care
18 programs, and Rule 65C-22.008, Florida Administrative Code, relating to school-age
19 child care programs, for up to one hundred eighty (180) days without the requirement
20 for rescreening, unless the required five (5) year rescreening for that individual occurs
21 during the leave of absence. The owner or director of the child care facility shall
22 maintain written verification of the leave of absence in the individual's personnel file at
23 the child care facility. Written verification shall include the individual's name, signature,
24 and specific dates of the leave of absence.

1 Section 3. Section 20-293 of the Broward County Code of Ordinances is
2 hereby amended to read as follows:

3 **Sec. 20-293. Definitions.**

4 For the purposes of this article, the following terms shall have the meanings
5 indicated in this section. ~~No attempt is made to define ordinary words which are used in~~
6 ~~accordance with their established dictionary meaning except when necessary to avoid~~
7 ~~misunderstanding.~~

8 ...

9 (17) *Operator* ~~/provider~~: The person or business entity that holds a license to
10 operate the family child care home issued in accordance with the
11 provisions of this article. If ~~the~~ a license is issued in the name of an
12 individual, the operator~~/provider~~ shall ~~refer to~~ mean the person who
13 resides in the family child care home and is ~~on-site and~~ responsible for the
14 operation of the home. If ~~the~~ a license is issued in the name of a ~~business~~
15 ~~entity~~ corporation, including a limited liability company, or a partnership,
16 the operator~~/provider~~ shall ~~refer to, whenever possible,~~ mean the
17 corporate officer, member, or partner of the entity who resides ~~on-site at~~ in
18 the family child care home and is designated on the license as the
19 individual responsible for the operation of the home. Any use of the term
20 operator or provider in this article shall refer to the operator.

21 ...

22 (20) *Screening*: The act of assessing the background of family child care
23 home personnel and, ~~if the license is held in the name of a business~~
24 ~~entity, all owners and corporate officers, including the designated~~

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underscored type are additions.

individual described in Subsection 20-299(c), who are on-site at the family child care home at any time during hours of operation of the home. Screening shall include, but not be limited to, local criminal records checks through local law enforcement agencies; fingerprinting for all purposes and checks in this article; statewide criminal records checks through the Florida Department of Law Enforcement; and federal criminal records checks through the Federal Bureau of Investigation in accordance with Section 402.302(15), Florida Statutes.

...

Section 4. Section 20-294, Subsection I of the Broward County Code of Ordinances is hereby repealed in its entirety, and a new Section 20-294, Subsection I is hereby created to read as follows:

[Underlining omitted]

Sec. 20-294. Minimum standards for family child care home personnel.

This section establishes the minimum standards for family child care home personnel. The operator of a family child care home must ensure compliance with the minimum standards for good moral character based on screening of all family child care home personnel, as required under Section 402.305(2), Florida Statutes, and the applicable rules and regulations promulgated under Rules 65C-20.008(3) and (5), and 65C-20.009(2)(c), Florida Administrative Code, relating to all family child care homes, and Rule 65C-20.013(4), Florida Administrative Code, relating to large family child care homes, in addition to the more stringent requirements set forth in this section. In the case of a direct conflict between any provision of this section and a provision of

1 any other applicable federal, state, or local law, rule, or regulation, the more restrictive
2 provision shall apply.

3 I. *Background and Screening Requirements.*

4 (a) The operator of a family child care home must ensure that all family child
5 care home personnel are in compliance with the screening requirements under this
6 section and that they have been determined to be eligible to reside or work in a family
7 child care home prior to residing or working in the family child care home.

8 (b) If any family child care home is owned by a corporation, including a limited
9 liability company, all corporate officers or members of the limited liability company who
10 reside locally, or are involved in the operation of the family child care home and have
11 the authority to be at the home during any hours of operation when children are present
12 shall comply with the screening requirements under this section. For the purpose of this
13 chapter, persons who reside in Broward, Miami-Dade, Palm Beach, Collier, or Hendry
14 counties shall be deemed to reside locally. If any family child care home is owned by a
15 partnership, all partners shall comply with the screening requirements under this
16 section.

17 (c) Documentation evidencing eligibility of all family child care personnel to
18 reside or work in a family child care home pursuant to screening required under this
19 section, and documentation of compliance with all other family child care home
20 personnel requirements under this article shall be maintained in the individual's
21 personnel file at the family child care home.

22 (d) The operator of a family child care home must sign, have executed, and
23 submit to the local licensing agency, at the time of submittal of any new or renewal
24 license application in accordance with the provisions of this article, a notarized affidavit

1 certifying that all family child care home personnel are in compliance with the screening
2 requirements under this section and are eligible to reside or work in a family child care
3 home.

4 Any operator, substitute, or other employee caring for children in a family child
5 care home may take a leave of absence, as described in Rule 65C-20.008(3)(d)(5),
6 Florida Administrative Code, for up to one hundred eighty (180) days without the
7 requirement for rescreening, unless the required five (5) year rescreening for that
8 individual occurs during the leave of absence. The operator of the family child care
9 home shall maintain written verification of the leave of absence in the individual's
10 personnel file at the family child care home. Written verification shall include the
11 individual's name, signature, and specific dates of the leave of absence.

12 Section 5. Section 20-309 of the Broward County Code of Ordinances is
13 hereby created to read as follows:

14 [Underlining omitted]

15 **Sec. 20-309. Adoption of Florida Statutes and Florida Administrative Code.**

16 Chapter 402, Florida Statutes, Rule 65C-20, Florida Administrative Code, and
17 any other applicable federal, state, or local law, rule, or regulation, relating to the
18 minimum standards for licensure of family child care homes are hereby adopted and
19 incorporated into this Ordinance by reference. In the case of a direct conflict between
20 any provision of this Ordinance and a provision of any other applicable federal, state, or
21 local law, rule, or regulation, the more restrictive provision shall apply.

22 Section 6. SEVERABILITY.

23 If any portion of this Ordinance is determined by any Court to be invalid, the
24 invalid portion shall be stricken, and such striking shall not affect the validity of the

1 remainder of this Ordinance. If any Court determines that this Ordinance, or any portion
2 hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies),
3 or circumstance(s), such determination shall not affect the applicability hereof to any
4 other individual, group, entity, property, or circumstance.

5 Section 7. INCLUSION IN CODE.

6 It is the intention of the Board of County Commissioners that the provisions of
7 this Ordinance shall become and be made a part of the Broward County Code; and that
8 the sections of this Ordinance may be renumbered or relettered and the word
9 "ordinance" may be changed to "section," "article," or such other appropriate word or
10 phrase in order to accomplish such intentions.

11 Section 8. EFFECTIVE DATE.

12 This Ordinance shall become effective as provided by law.
13

14 ENACTED August 16, 2016

15 FILED WITH THE DEPARTMENT OF STATE August 19, 2016

16 EFFECTIVE August 19, 2016
17

18 Approved as to form and legal sufficiency:
Joni Armstrong Coffey, County Attorney

19
20 By /s/ Patrice M. Eichen 08/17/16
Patrice M. Eichen (date)
21 Assistant County Attorney
22

23 PME/dp
08/17/16
24 Background Screening Ord
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