ORDINANCE 1890

ORDINANCE TO AMEND CHAPTER 8, ARTICLE VI, OF THE CODE OF THE CITY OF FALLS CHURCH, "PRIVATE SCHOOLS, SPECIAL SCHOOLS AND DAYCARE FACILITIES."

THE CITY OF FALLS CHURCH, VIRGINIA, HEREBY ORDAINS THAT Chapter 8, Article VI, "Private Schools, Special Schools and Daycare Care Facilities," Incorporation Amendments, Additions And Deletions to this section of Code of the City of Falls Church, VA, be amended and reenacted as follows:

## ARTICLE VI. - PRIVATE SCHOOLS, SPECIAL SCHOOLS AND HOME CHILD CARE FACILITIES [30]

(30) **State Law reference**— Social services, Code of Virginia, § 63.2-100 et seq.


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### Sec. 8-678. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

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

(1) If the provider or any person who resides in the home is convicted of any of the following offenses set out in the state code:

a. Murder or manslaughter, Code of Virginia, § 18.2-30 et seq.;

b. Malicious wounding by mob, Code of Virginia, § 18.2-41;

c. Abduction, Code of Virginia, § 18.2-47 A;

d. Abduction for immoral purposes, Code of Virginia, § 18.2-48;

e. Assaults and bodily woundings, Code of Virginia, § 18.2-51 et seq.;

f. Robbery, Code of Virginia, § 18.2-58;

g. Carjacking, Code of Virginia, § 18.2-58.1;

h. Extortion by Threat, Code of Virginia,§ 18.2-59;

i. Threats of death or bodily injury Code of Virginia, § 18.2-60;

j. Felony stalking, Code of Virginia, § 18.2-60.3;

k. A Felony violation of a protective order, Code of Virginia, § 18.2-60.4;

l. Sexual assault, Code of Virginia, § 18.2-61 et seq.;

m. Arson and Related Crimes, Code of Virginia, § 18.2-77 through 18.2-88 et seq.;

n. Burglary, Code of Virginia, § 18.2-89 et seq.;

o. Any felony violation relating to possession or distribution of drugs, Code of Virginia, §

18.2-247 et seq.;

p. Drive by shooting, Code of Virginia, § 18.2-286.1;

q. Use of a machine gun in a crime of violence, Code of Virginia, § 18.2-289;

r. Aggressive use of a machine gun, Code of Virginia, § 18.2-290;

s. Use of a sawed-off shotgun in a crime of violence, Code of Virginia, § 18.2-300 A;

t. Pandering, Code of Virginia, § 18.2-355;

u. Crimes against nature involving children, Code of Virginia, § 18.2-361;

v. Incest, Code of Virginia, § 18.2-366;

w. Taking indecent liberties with children, Code of Virginia, §§ 18.2-370 or 18.2-370.1;

x. Abuse and neglect of children, Code of Virginia, § 18.2-371.1;

y. Failure to secure medical attention for an injured child, Code of Virginia, § 18.2-314;

z. Obscenity offenses, Code of Virginia, § 18.2-374.1;

aa. Possession of child pornography, Code of Virginia, § 18.2-374.1:1;

bb. Electronic facilitation of pornography, Code of Virginia, § 18.2-374.3;

cc. Abuse and neglect of incapacitated adults, Code of Virginia, § 18.2-369;

dd. Employing or permitting a minor to assist in an act constituting an offense under Code of Virginia, § 18.2-372 et seq., in Code of Virginia, § 18.2-379;

ee. Delivery of drugs to prisoners, Code of Virginia, § 18.2-474.1;

ff. Escape from jail, Code of Virginia, § 18.2-477;

gg. Felonies by prisoners, Code of Virginia, § 53.1-203;

hh. An equivalent offense in another state; or

ii. 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; or

(3) If the provider makes a false statement regarding a material fact on an application for a home child care permit under this article; this bar shall remain in effect for a period of one year from the time the permit is denied or revoked.

*Director of health* means the director of the county department of health or the authorized agent of the director of the county department of health.

*Director of the office for children* means the director of the county office for children or the authorized agent of the director of the county office for children.

*Home child care permit* means authorization from the city, issued through the county office for children, to operate a home child care facility for the care, guidance, education, training or protection of children in compliance with this article.

*Home child care facility* means any facility located in a dwelling where a person, for compensation, regularly provides care, protection, supervision and guidance during a part of the day for at least four days of a calendar week 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. 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, 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:

(1) Any family day home licensed by the commonwealth pursuant to Code of Virginia, § 63.2-1701 or any facility exempted from licensure by Code of Virginia, § 63.2-1716;

(2) Any dwelling where a person provides care solely for children who reside there; or

(3) Any dwelling 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 and who are not attended by a parent, guardian or legal custodian while they are in that dwelling during a part of the day for at least four days of a calendar week, and a home child care facility is established, then any children who are related to the person who provides such care and are present in that dwelling 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 article.

*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 Code of Virginia, §§ 63.2-1716 or 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 24 hours in any 24-hour period, one or more children under the age eligible for enrollment in the city 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.

*Occasional child care* means care provided on an hourly basis, for one or more children between the ages of six weeks and twelve 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 nor more than ten days within a calendar month.

*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 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.

*Special use permit* means permits referenced herein and issued pursuant to chapter 48, pertaining to zoning, for private schools, special schools and day care facilities licensed by the commonwealth or exempted from licensure from the commonwealth.

**Sec. 8-679. - Reserved**

**Sec. 8-680. – Zoning Compliance Required.**

(a) It shall be unlawful for any person to maintain or operate a private school, special school or day care facility within the city for more than five nonresident children, unless the provisions of Chapter 48 Zoning are complied with.

(b) Applicants for permission to operate a private school, special school or day care facility shall submit a letter of intent to the zoning administrator setting forth the name, type of school or center, owner and operator, number of rooms used, number of children and a site plan as required under chapter 48, article V, division 7, along with floor plans of the building.

(c) The zoning administrator shall provide forms and all necessary data to the applicants.

(d) The zoning administrator shall review the application and, when required by Chapter 48, submit the application and all necessary data to the planning commission which will forward its recommendation to the board of zoning appeals for its consideration for the issuance of a special use permit.

**Section 8-681 – 8-686. Reserved.**

**Sec. 8-687. - Fire prevention.**

Fire Prevention section shall follow the code requirements under Chapter 18-19 of the City of Falls Church Code. The City of Falls Church Fire Prevention Code incorporates the Virginia Statewide Fire Prevention Code. Operators of these facilities shall be familiar with and agree with the requirements of this code. Fire prevention code permits are granted by virtue of the party listed having made application. The conditions found in the opinion of the fire official are based upon the observations at the time of the inspection. The fire prevention code inspection does not take the place of any license required by law and is not transferable. Any alterations or additions to the facility shall require a new fire prevention code inspection.

(1) Private schools, special schools:

(a) Fire drills shall be held as required in accordance with the Virginia Statewide Fire Prevention Code and the City fire code official. The school operator shall keep a record of the date and of the time required for the evacuation of the building.

(b) Provisions must be made for sounding fire alarms throughout the building, and personnel must be properly instructed to call fire departments in case of fire. The fire department telephone number 911 must be posted at each telephone along with the address of the facility location.

(c) Fire extinguishers shall be mounted on the walls as directed by the fire code official, and all personnel shall be instructed in their use by the owner. Fire extinguishers must be checked at least once a year by a certified contractor using NFPA standards and a record card kept as to the date of filling.

(d) All exit doors, corridors and stairs must be kept free from obstructions and in good condition at all times.

(e) All furnace rooms shall be provided with a fixed louver or other approved opening permanently open to the outdoors for supplying air for combustion and ventilation.

(f) Attics, basements, furnace rooms, and areas under stairs, storage rooms and similar spaces shall be kept free from the accumulation of waste paper, rubbish, old furniture and other combustible materials.

(2) Home day care:

(a) Telephone service shall be available, operable and accessible during the home child care facility's hours of operation.

(b) All landline telephones shall be labeled with 911 stickers approved by the fire code official.

(c) Address numbers or building numbers shall be placed in a position that is plainly legible and visible from the street or road fronting the property.

(d) Combustible waste material, lint, and dust creating a fire hazard shall not be allowed to accumulate in or on dryers, heating appliances, and furnaces.

(e) Kitchen ranges, ovens, and exhaust hoods, grease removal devices, fans, ducts, and other appurtenances shall be free of excessive grease.

(f) All exit stairs, interior or exterior shall be in good repair and shall be provided with handrails and guard rails as required by the Virginia Uniform Statewide Building Code.

(g) All egress pathway and exit doors shall be unlocked and free from obstructions that would prevent their use, including debris, storage, and accumulations of snow and ice.

(h) Closet and bathroom doors shall be unlocked and designed to permit opening of the locked door from the outside with a readily accessible opening device.

(i) Electrical hazards identified by the fire code official shall be abated in accordance with the City of Falls Church Fire Prevention Code.

(j) Extension cords, temporary wiring and flexible cords shall not be substituted for permanent wiring. Extension cords and flexible cords shall not be affixed to structures, extended through walls, ceilings, or floors, or under doors or floor coverings, or be subject to environmental or physical damage.

(k) A working space of not less than 36 inches shall be provided around electrical, gas, and mechanical service equipment. No storage of any materials shall be located within the designated working space.

(l) Kitchen ranges, other cooking equipment and other appliances shall be kept in good working order and free from grease, dust, lint, and combustible materials.

(m) The use of portable unvented fuel-fired heating equipment is prohibited except in single family dwellings classified R-5 by the Virginia Uniform Statewide Building Code. Where allowed, such equipment must be listed and approved by a nationally recognized testing laboratory.

(n) Where portable unvented fuel-fired heating equipment is allowed, the heating element or the combustion chamber shall be permanently guarded so as to prevent accidental contact by persons or combustible material.

(o) Fireplace screens, glass, or doors shall be in good condition and designed to guard against accidental contact with the combustion chamber contents. The fireplace screen, glass, or door shall be affixed to prevent accidental release of embers or products of combustion.

(p) Wood stoves shall be listed and approved by a nationally recognized testing laboratory. Wood stoves shall be used and installed in accordance with the manufacture's specification. The provider shall have the manufacture's specifications available on site for the fire code official's review upon request.

(q) Fireplaces, wood stoves, and chimneys shall be inspected and cleaned annually or as often as necessary to remove the buildup of creosote and other flammable residues. The provider shall have proof of inspection available on site for the fire code official's review upon request.

(r) Ashes from fireplaces and wood stoves shall be removed to the outside and stored in a noncombustible container, with a tight fitting lid, which has been listed and has been approved by the fire code official.

(s) Heating systems and associated ductwork shall be clean and in good working order. Adequate combustion air must be provided as required by the virginia uniform statewide building code. Flues for the exhaust of carbon monoxide and other byproducts or combustion shall be free of leaks and in good repair. Except for those rooms used by children while sleeping under covers, all rooms used for child care shall be maintained at a temperature of not less than 68 degrees Fahrenheit.

(t) An operable smoke detector shall be provided both outside of each sleeping area and inside each sleeping area, with at least one such device on each floor. Each smoke alarm shall be tested at least once a month and records of testing provided to the fire code official upon request. Smoke alarms may be of the fixed-wired or battery type.

(u) An operable carbon monoxide alarm shall be installed in homes according to the

manufacturer's specifications where appliances may produce carbon monoxide. Each carbon monoxide alarm shall be tested at least once a month and records of testing provided to the fire code official upon request.

(v) Portable fire extinguishers, having a minimum rating of 1A10BC shall be properly mounted, and readily accessible within 30 feet of cooking equipment; and in areas where flammable liquids are stored, used, or dispensed.

(w) Portable fire extinguishers shall be selected, installed, and maintained in accordance with the manufacturer's specifications. All fire extinguishers shall be replaced at least every six years.

(x) Storage of flammable or combustible liquids inside buildings in containers and portable tanks shall be in accordance with the Virginia Statewide Fire Prevention Code and the manufacturer's recommendations. Areas of flammable and combustible liquid storage shall be secured to prevent access during the home child care facility's hours of operation.

(1) Combustible waste material creating a fire hazard shall not be allowed to accumulate in building, structures, or upon premises.

(2) Areas of storage of machinery such as lawn mowers and power tools shall be inaccessible to the children in care.

(y) The furnace and other heating appliances shall maintain clearance from ignition sources as specified by the equipment manufacturer unless the provider can establish cause for an exception.

(z) Storage of combustible materials in buildings shall be orderly. Storage shall be separated from heaters or heating devices by distance or shielding so that ignition cannot occur.

(aa) The provider shall prepare an emergency evacuation plan, which shall include the preferred method to notify employees, children, and other occupants of an emergency situation; emergency egress routes from each room where child care is permitted; procedures for accounting for employees, children, and other occupants; and the preferred and alternate plans to notify emergency response organizations.

(bb) Fire evacuations drills shall be conducted monthly in all home child care facilities. Records shall be maintained on site and provided to the fire code official upon request. Each record shall include the identify of the person conducting each drill; the date and time of each drill; the notification/initiating method used; the number of occupants evacuated; special conditions simulated, problems encountered; weather conditions when occupants were evacuated; and the time required to accomplish a complete evacuation.

(cc) Rooms used for sleeping must provide two means of exit, one which leads directly to the outside, as required by the Virginia Uniform Statewide Building Code.

**Sec. 8-688. - Inspections; enforcement.**

It shall be the duty of the city fire code official and building official to inspect child care facilities prior to the issuance of any special use permits under this article and as often as it shall be necessary for the adequate control and supervision of same. The city fire code official and building official or their designee shall have the right to enter all such facilities at any reasonable time for the purpose of making necessary inspections and investigations and shall be charged with the responsibility of enforcing and administering their code requirements.

**Sec. 8-689. - Deviation from age and number of children prohibited.**

It shall be unlawful for a person to keep or congregate, in any facility to which this article applies, a greater number of children or children of less or greater age than set forth in the occupancy permit.

**Sec. 8-690. - Administration and enforcement home child care facility.**

Pursuant to agreement with Fairfax County as authorized by the Code of Virginia, § 15.2-1300, the director of the Fairfax County Office for Children shall administer and enforce the provisions of sections 8-691 through 8-698.

**Sec. 8-691. - Operation without permit prohibited.**

It is unlawful to operate a home child care facility within the city without a valid permit. Permits shall be issued by the director of the office for children on an annual basis. Permits shall be valid for a period of one year from the date of issuance.

**Sec. 8-692. - Requirements for annual permit application, issuance or denial of home child care facility.**

(a) *Application contents.* A person proposing to operate a home child care facility shall submit an application on a form prepared by the director of the office for children, which shall include:

(1) The name and address of the home child care facility;

(2) The name of the applicant;

(3) A statement of whether the applicant currently holds or previously held a home child care facility permit in the county; or a family day care home voluntary registration in the city;

(4) The names of all persons who reside in the home;

(5) Disclosures from the applicant, and each adult who resides in the proposed facility stating whether each has committed any barrier offense; consent forms signed by the applicant, and each adult who resides in the proposed facility allowing the director of the office for children to 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 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 shall also require that the applicant or such adult who resides in the proposed facility consent to and pay for a national criminal background check;

(6) Statements from the applicant, and each adult who resides in the proposed facility and statements from a parent, guardian or legal custodian on behalf of all minors age 14 and older, who reside in the proposed facility, consenting to the release of information to the director of the office for children from child protective services investigating agencies reflecting whether any such individual has been the subject of a founded complaint of abuse or neglect, the terms "child protective services" shall have the meaning defined by Virginia state law;

(7) Copies of the applicant's current certifications in first aid and cardiopulmonary resuscitation (CPR);

(8) Proof of the applicant's compliance with the training requirements established in section 8-694, which shall consist of records provided by the trainer or, if none are provided by the trainer, records maintained by the applicant;

(9) 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;

(10) The proposed hours of operation;

(11) A statement of whether the applicant is 18 years of age or older;

(12) A certificate from a physician, physician's designee or a department of health 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 members 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;

(13) A written policy describing what the applicant will do with children in the applicant's care who are sick and a written emergency preparedness plan;

(14) Such other information, including, but not limited to, information concerning the applicant's child care training and special skills, as the director of the office for children may deem appropriate;

(15) The application fee of $14.00, which is in addition to any business or occupation license tax imposed by the city and any other taxes or fees that may be required to engage in the business.

If the information the provider submits in accordance in with subsections (5), (6), (7), and (12) 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) *Submission procedures.* Upon submission of an application to the office for children:

(1) 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 state law that may affect the health and safety of the children who may attend or be present at the facility.

(2) The fire code official or designee 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 state law that may affect the health and safety of the children who may attend or be present at the facility. An inspection fee shall be paid directly to the office of the fire marshal in accordance with Chapter 15 of the City Code.

(3) 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 request a search of the central criminal records exchange 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 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.

(4) The director of the office for children shall request 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.

(c) *Factors for consideration.* 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:

(1) The applicant is an adult;

(2) Neither the applicant, nor or any person who resides in the facility has committed any barrier offense; and

(3) Both the applicant and the proposed facility is 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) *Denial.* 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:

(1) The applicant is not an adult;

(2) The applicant, or any person who resides in the facility has committed any barrier offense; or

(3) Either the applicant or the proposed facility is not in compliance with this article and all applicable state 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 or the department of social services, the director shall provide the applicant a copy of the information upon which the denial was based.

**Sec. 8-693. - Temporary family day care permits.**

(a) A person proposing to operate a home child care facility that is not in compliance with the requirements of this article may apply to the director of the office for children for a temporary permit to operate a home child care facility for a period of not more than six months; provided that a search of the criminal history records and child protective services records of the applicant reveals no barrier offenses. The director of the office for children may grant such a temporary permit for a period of not more than six months if the applicant:

(1) Is an adult;

(2) Certifies that all the requirements of this article will be met within six months from the date of issuance of the temporary permit or within such lesser period as may be approved by the director;

(3) Agrees to apply for a regular permit as soon as the facility is able to comply with the requirements of this article;

(4) Certifies that neither the applicant, nor any adult who resides in the proposed facility has committed any barrier offense; and

(5) The director of the office for children has no information which is contrary to the applicant's certification.

(b) If the holder of a temporary home child care facility permit is unable to comply with the requirements of this article within the period authorized by the temporary permit period, the holder of the temporary permit may apply to the director of the office for children for an extension of the temporary permit for an additional period of not more than six months. If, in the judgment of the director of the office for children, the failure to comply with the provisions of this article was the result of circumstances beyond the control of the holder of the temporary permit, then the director of the office for children may extend the temporary permit for an additional period of not more than six months.

**Sec. 8-694. –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, ~~or~~ recognition and prevention of the spread of communicable diseases, emergency preparedness, and business practices of family child care. From April 1, 2013, through December 31, 2013, any applicant granted an initial or renewal permit must attend 12 hours of training by an approved trainer during the term of the permit. From January 1, 2014, until December 31, 2014, any person granted an initial or renewal permit must attend 14 hours of training by an approved trainer during their term of the permit. Any applicant granted an initial or renewal permit at any time on or after January 1, 2015, 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 8.696 (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.

**Sec.8-694.1 - Substitute Care Providers**

(a) When a provider must be away from the home child care facility, a substitute care provider may be used. Substitute care shall not exceed 240 hours per calendar year. Any substitute care provider must be an adult.

(b) The substitute care provider shall submit to the director of the office for children the disclosure and statement required of providers by Section 8-692 (a) subsections (5) and (6) along with payment of the applicable fees. A provider shall not use a substitute care provider until the director has notified the provider that the substitute care provider has not committed a barrier offense.

(c) The substitute care provider must be currently certified in first aid and certified cardiopulmonary resuscitation (CPR). The provider must maintain copies of the certifications.

(d) The substitute care provider must have a tuberculosis screening in accordance with Section 8-692 (a) subsection (12). The provider must maintain copies of the screenings.

**Sec. 8-695. - Permitted numbers of children.**

No home child care facility shall care for more children than specified in each of the following provisions:

(1) The total number of nonresident children at a home child care facility at any one time shall not exceed five;

(2) The total number of children at a home child care facility at any one time who are less than two years of age, including any resident children, shall not exceed four;

(3) The total number of children at a home child care facility at any one time who are under the age at which they are required to be enrolled in a public or private school pursuant to Code of Virginia, § 22.1-254, including any resident children, shall not exceed six; and

(4) The total number of children at a home child care facility at any one time, including any resident children who are less than ten years of age, shall not exceed eight.

**Sec. 8-696. - Physical facilities, equipment and operation.**

(a) Providers shall supervise children in a manner which ensures that the provider is aware of what the children are doing at all times and can promptly assist or redirect activities when necessary. In deciding how closely to supervise children, providers shall consider the ages of the children, individual differences and abilities, layout of the house and play area, neighborhood circumstances or hazards and risk activities in which children are engaged.

(b) All rooms used for child care shall be dry, well-lighted and have adequate ventilation and shall be smoke free when any child in care is present. Windows that can be opened shall be screened from April 1 through November 1 of each year.

(c) The provider shall provide each child with adequate space to allow free movement and active play indoors and out. Indoor and outdoor areas shall provide developmentally appropriate activities, supplies, and materials that are safe and accessible. All areas shall be free of dangerous and hazardous conditions.

(d) Covered, washable waste receptacles shall be provided for all waste materials, diapers, garbage, and refuse. Trash and other waste materials shall be removed as often as necessary to prevent excessive accumulations and shall be deposited in approved trash or waste disposal containers.

(e) Toxic or dangerous materials shall be disclosed at the time of each inspection. These shall be stored in areas that are inaccessible to children and separate from food supplies and areas in which food is prepared.

(f) Dogs and cats four months old or older that regularly are present at the facility shall be immunized for rabies, and records of such immunizations shall be kept available at the facility for inspection by the director of the office for children.

(g) A refrigerator shall be used for perishable food and that refrigerator shall maintain a constant temperature of 41 degrees Fahrenheit or less. Food brought into any home child care facility for consumption by nonresident children shall be clearly marked for consumption by the children for whom the food is intended. Meals or snacks shall be offered to the children at least once every three hours. Home child care facilities that provide meals or snacks to children in care shall follow the most recent, age-appropriate nutritional guidelines set forth by the United States Department of Agriculture, Food and Nutrition Services.

(h) Each home child care facility that is not served by a public water supply shall have a

private water supply approved by the department of health. Each home child care facility that is not served by a public sewage disposal system shall have a private sewage disposal system approved by the department of health. Drinking water from a public water supply, well permitted by the department of health, or other source acceptable to the department of health shall be available for all children.

(i) Except for those rooms used by children while sleeping under covers, all rooms used for child care shall be maintained at a temperature of not less than 68 degrees Fahrenheit.

(j) Providers shall not use or allow any other person to use corporal punishment, physical, verbal, or emotional punishment, or any humiliating or frightening methods of discipline.

(k) Firearms of every type and purpose shall be stored unloaded in a locked container, compartment, or cabinet, and apart from ammunition. Ammunition shall be stored in a locked container, compartment, or cabinet during the home child care facility's hours of operation. If a key is used to lock the container, compartment, or cabinet, the key shall be inaccessible to children.

(l) Providers shall handle blood, bodily fluids, and other potentially infectious materials as if known to be infectious for human immunodeficiency virus, hepatitis B virus, and other blood-borne pathogens.

(m) During rest times the provider shall provide appropriate sleeping equipment that meets the current standards of the United States Consumer Product Safety Commission for children birth through 12 months of age and for children over 12 months of age who are not developmentally ready to sleep on a cot or bed. If children are in care overnight on a regular or frequent basis, then the provider shall provide cribs that meet the current standards of the United States Consumer Product Safety Commission for full-size baby cribs for children from birth through 12 months of age and for children over 12 months of age who are not developmentally ready to sleep on a cot or bed.

(n) All home child care facilities shall be maintained free from insects and rodents infestation.

(o) Except as set forth in subsection (o) below, whenever the home child care facility has agreed to administer prescription medications or non-prescription medications, the medication shall be administered in compliance with the Virginia Drug Control Act by a provider who has satisfactorily completed the training required by Section 8-694 (d).

(p) Notwithstanding subsection (o) above, a provider may administer nonprescription topical skin products such as sunscreen, diaper ointment and lotion, oral teething medicine, and insect repellent, provided the following requirements are met:

(1) The provider has obtained written authorization, at least annually, from a parent or guardian noting any known adverse reactions;

(2) The product is in the original container and, if the product is provided by the parent, labeled with the child's name;

(3) The product is applied in accordance with the manufacturer's instructions;

(4) Parents are informed immediately of any adverse reaction;

(5) The product shall not be used beyond the expiration date of the product;

(6) Sunscreen must have a minimum sunburn protection factor (SPF) of 15; and

(7) The product does not need to be kept locked, but shall be inaccessible to children.

(q) The home child care facility shall annually obtain written permission from the parent of each child who participates in swimming or wading activities, and a written statement from the parent advising of a child's swimming skills before the child is allowed in water above the child's shoulder height.

(1) The provider shall have a system for accounting for all children in the water.

(2) Outdoor swimming activities shall occur only during daylight hours.

(3) When one or more children are in water that is more than two feet deep in a pool, lake, or other swimming area on or off the premises of the home child care facility;

(a) The provider and another person 15 years or older shall be present at all times and either the provider or the other person must be currently certified in basic water rescue, community water safety, water safety instruction, or lifeguarding. The certification shall be obtained from a national organization such as the American Red Cross or the YMCA.

(r) Access to the water in above-ground swimming pools shall be prevented by locking and securing the ladder in place or storing the ladder in a place inaccessible to children.

(1) A non-climbable barrier at least four fee high such as, but not limited to, a fence or impenetrable hedge shall surround outdoor play areas located within 30 feet of drowning hazards such as, but not limited to, in-ground swimming or wading pools, ponds, or fountains not enclosed by safety fences. Facilities permitted prior to the effective date of this ordinance must comply fully with the requirement of this subsection by July 1, 2013.

(2) Portable wading pools without integral filter systems shall be emptied, rinsed, and filled with clean water after use by each group of children or more frequently as necessary; and shall be emptied, sanitized, and stored in a position to keep them clean and dry when not in use during the home child care facility's hours of operation. Portable wading pools shall not be used by children who are not toilet trained. Bathtubs, buckets, and other containers of liquid accessible to children shall be emptied immediately after use.

(3) Hot tubs, spas, and whirlpools shall not be used by children in care, and shall be covered with safety covers while children are in care.

**Sec. 8-697. - Immunizations.**

The provider shall not accept into care any child who has not been immunized, or exempted

from mandatory immunization, in accordance with Code of Virginia, § 32.1-46. The provider shall maintain for each child a copy of the child's immunization records; or a statement from the parents certifying that they object on religious grounds but that, to the best of the parents' knowledge, the child is in good health; or a statement from a physician indicating that immunization is not currently advisable for specific health reasons and an estimated date when immunizations can be safely administered.

**Sec. 8-698. - Inspection of facilities.**

In addition to the inspections required by section 8-692 with the consent of the owner, provider or agent in charge of the facility or pursuant to a duly issued inspection warrant, the director of the office for children shall have the right at all reasonable times to inspect all areas of any home child care facility that are accessible to children for compliance with this article. Warrants to inspect any such facility shall be based upon a demonstration of probable cause and supported by affidavit.

**Sec. 8-699. - Enforcement.**

(a) Any person operating a home child care facility without the permit required by this article shall be guilty of a class 2 misdemeanor. In addition, the continuance of violations under the Virginia Statewide Fire Prevention Code is punishable as a class 1 misdemeanor.

(b) Any person subject to this article who fails to comply with any other requirement of this article or the permit shall be subject to such administrative action as prescribed in this section. Administrative action by the director of the office for children shall not preclude any other administrative, civil or criminal proceedings authorized by law as a result of the same conduct.

(c) The director of the office for children may revoke any permit granted under this article if, during the term of the permit, the home child care facility is found by the director to be in violation of the permit or this article; or if any circumstances exist which, if existing at the time of the permit application, would have warranted denial of the application. The director of the office for children may suspend any permit granted under this article if during the term of the permit the director reasonably suspects a violation of the permit, this article, or any applicable state laws that may affect the health and safety of the children who may attend or be present at the facility. Prior to suspending or revoking any permit, unless in the judgment of the director of the office for children there are exigent health and safety conditions which justify immediate suspension of a permit, the director of the office for children shall give the provider at least ten calendar days' written notice of the proposed suspension or revocation. In the case of exigent health and safety conditions which in the judgment of the director of the office for children justify the immediate suspension of the permit, the director of the office for children shall suspend the permit immediately and notify the provider as soon as is practicable.

(d) If a permit to operate a home child care facility is revoked or suspended by the director of the office for children, the provider shall notify all clients. Evidence of such notification shall be submitted to the director of the office for children.

**Sec. 8-700. - Appeals from permit denials, revocations and suspensions.**

Any applicant for a home child care facility permit whose application is denied and any provider

whose permit is suspended or revoked may submit a written request to the director of the office for children for a hearing on the matter. Any request for hearing must be submitted to the director of the office for children within ten business days of the time the provider receives notice of the action regarding which the provider seeks a hearing, and must specify the grounds for appeal.

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.

That the provisions of this ordinance shall take effect on March 1, 2013.

1st Reading: 2-11-13
2nd Reading: 2-25-13
Adoption: 2-25-13
(TO13-04)

IN WITNESS WHEREOF, the foregoing was adopted by the City Council of the City of Falls Church, Virginia on February 25, 2013 as Ordinance 1890.

Kathleen Clarken Buschow
City Clerk