Home Daycare, Child Care And Daycare Facilities Operations and Requirements

Provided by City of Chesapeake Neighborhood Services Department
ZONING REQUIREMENTS

Certain home occupations including child care, may require a conditional use permit per Section 13-501(b) 1 of the City Zoning Ordinance.

A conditional use permit is required for home daycare when state licensing is required or structural building changes are required by the Uniform Statewide Building Code (USBC). Section 14-302(b) 4 of the City Zoning Ordinance

For specific determinations for your home or business, contact the Zoning Office of the Department of Neighborhood Services at (757) 382-8454 or email to www.neighborserv@cityofchesapeake.net.

TYPES OF CHILD CARE

The Virginia Department of Social Services provides oversight and regulations for child care programs in Virginia. A child care program in Virginia provides supervision and protection for a child who is younger than 13 years old. The general categories are in-home care and out-of-home care in a private home or center. For more details on state requirements, visit their web site at www.dss.virginia.gov.
Commercially Operated Centers

- A **licensed child day center** provides care for 2 or more children in a setting other than a private home for 13 or more children.
- An **unlicensed child day care center** provides care for two or more children in a setting other than a private home and is not required to be licensed. Religiously exempt programs and certified preschools are two types of unlicensed care.
- An **unregulated child day center** provides care for 2 or more children in a setting other than a private home and is not required to be licensed, religiously exempt, or certified. Examples of unlicensed centers would be certain short-term programs such as some camps and some recreation programs.

Private Homes and Residences

- A **licensed family day home** provides care for up to 12 children, in addition to the provider’s own children or children residing in a private home that is licensed.
- A **voluntary registered family day home** is a home that can serve up to 5 children, in addition to the provider’s own children or children residing in the home.
- A **family day system home** provides child care to no more than 12 children, in addition to the provider’s own children or children residing in the home.
- An **unregulated family day home** is not inspected by the state or its designee. It can legally provide care for no more than 5 children in addition to the provider’s own children or children residing in the home, or no more than 4 children under the age of 2, including the provider’s own children or children residing in the home at any one time.

BUILDING CODES AND REGULATIONS

The Virginia Uniform Statewide Building Code (USBC) establishes regulations applicable to all dwellings and structures, existing and newly constructed, to protect the health and safety of all individuals. Regardless of your desire to select a licensed or unlicensed facility for child care, the USBC provides minimum standards for the structure which may require permitting and inspections by the City. Child care of five or less children in a residence is not regulated by state licensing requirements and the zoning ordinance. Child care of more than five children may dictate a change of use for the structure and enforcement of the USBC and all zoning and state licensing requirements are necessary. The information provided below is meant to provide a general guide for you to assess your obligations or requirements under the law.
STEP 1 – Determine the use group classification of your day care facility.

The USBC classifies all buildings and structures by use groups to determine the code requirements for the use. Select the most appropriate use based on the table below.

<table>
<thead>
<tr>
<th>Age of Children</th>
<th>Number of Children</th>
<th>Use Group</th>
</tr>
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<tbody>
<tr>
<td>Older than 2 ½ Years</td>
<td>More than 5</td>
<td>E</td>
</tr>
<tr>
<td>2 ½ years or younger</td>
<td>More than 5</td>
<td>I-4 or E</td>
</tr>
<tr>
<td>All ages*</td>
<td>5 to 12</td>
<td>R-2, 3 and 5</td>
</tr>
</tbody>
</table>

**USE GROUP CLASSIFICATION OF DAY CARE AND CHILD CARE FAILITIES**

* Maximum of 4 children less than 2-1/2 years of age.

**Use Group E – Educational** - A building or structure or a portion thereof, for educational, supervision or personal care services for more than five children older than 2-1/2 years of age. A maximum of 5 children are allowed under the age of two and one-half except when a child day care facility that provides care for more than five but no more than 100 children 2-1/2 years or less of age, when rooms where such children are cared for are located on the level of exit discharge and each of these child care rooms has an exit door directly to the exterior can also be classified as Group E. (USBC/IBC 305.2 and 308.5.2)

**Use Group I-4 – Institutional** - A child care facility either residential or commercial (other than a Family Day Home) that provides supervision and personal care on less than a 24-hour basis for more than five children 2-1/2 years of age or less, for any length of time. (USBC/IBC 308.5.2)

**Use Group R – Residential** - Family day homes where program oversight is provided by the Virginia Department of Social Services shall be classified as Group R-2, R-3, or R-5.

- **Use Group R-2**: Is a residential occupancy containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature.
- **Use Group R-3**: Is a residential occupancy where the occupants are primarily permanent in nature and not classified as Group R-1,R-2, R-4, or I, including:
  - Buildings that do not contain more than two dwelling units.
  - Adult facilities that provide accommodations for five or fewer persons of any age for less than 24 hours.
  - Child care facilities that provide accommodations for 5 or fewer persons of any age for less than 24 hours.
  - Congregate living facilities with 16 or fewer persons.
• **Use Group R-5:** Is a residential detached one and two family dwellings, townhouses and their accessory structures. (USBC 310)

**STEP 2 - Do I need a city or state license or a conditional use permit?**

If you are required to obtain licensing through the city or state or a conditional use permit per the Zoning Ordinance contact their offices listed at the end of this handout.

**STEP 3 – Do you have a current and valid certificate of occupancy for the building?**

Verify there is a current and valid certificate of occupancy and use for the building being considered for the child care operations. The certificate of occupancy will show the use group, construction type, allowable occupant loads and date of issuance for the building. The Department's records do not have every building's certificate of occupancy, especially for buildings constructed prior to 1994, and you may be required to obtain a new one through the building permit process.

**STEP 4 – Can I prepare the plans myself or do I need to contact an architect or engineer to assist me with this?**

Most residential plans may be prepared by the tenant or owner. Plans should be drawn to scale and accurately detail the building dimensions, number and layout of the interior rooms, number of children (including the owner’s) and total number of occupants, and other details as needed to evaluate the buildings acceptability. All plans for educational or institutional structures must be prepared by a registered design professional licensed in the Commonwealth of Virginia.

**Step 5 – Will I have to make significant changes to my building?**

Generally, yes. The USBC and state licensing regulations mandate minimum acceptable safety features and standards for all child care facilities. It is important to review both regulations to determine which apply to you. Interior and exterior painted surface of existing dwellings, childcare and daycare facilities, including fences and outbuildings must be tested for lead. Those which contain lead levels equal to or greater than 1.0 milligram per square centimeter or in excess of 0.50 percent lead by weight shall be maintained in a condition free from peeling, chipping and flaking paint or removed or covered in an approved manner. Any surface to be covered shall be marked with warnings as to the lead content of such surface.

Examples of other typical code requirements for educational or institutional use groups are shown below:

- Automatic fire suppression systems are typically required.
- A fire alarm system shall be installed and maintained.
- All egress doors shall swing in the directions of egress where serving 50 or more persons.
- Panic hardware is required on exit doors with an occupant load of 50 or more persons.
- A high-low drinking fountain is required and must meet ICC/ A117.1 compliance.
- In all buildings, room or spaces required to have more than one exit shall have exit signs located at exit access areas and exit doors.
- Emergency electrical systems are required to operate emergency equipment, such as, means of egress lighting in the event of power failure.
Accessibility to physically disabled persons is required for daycare and childcare facilities. Door openings shall not be less than 32-inches clear width. This will require the frame and door to be 36-inches to have a finish opening of 32 inches between the stops. Lever door handles shall be used for all doors on the accessibility route including toilet room doors.

- Accessible restroom facilities must be provided.
- A portable fire extinguisher shall be installed in a visible location and available to the occupants.
- All exit corridors in an unsprinklered-space or building with a total occupancy of more than 30 persons shall have a fire rating of one-hour. This shall include doors and their assemblies, ceiling, walls, glazing and fire dampers.
- New or altered sprinkler systems or fire alarms shall first be reviewed and approved by the Fire Prevention Bureau. A mechanical permit is required for such installations. Any building, plumbing, electrical, gas, mechanical or sign installations also require permits and inspections. All uses shall be compatible with zoning regulations.

References:

2006 Virginia Uniform Statewide Building Code Amendments
ICC/ A117.1 Accessibility Codes
City of Chesapeake Zoning Ordinance

If you have any questions, the listed phone numbers may be helpful:
Department of Inspections - 382-6018
email: neighborserv@cityofchesapeake.net
Fire Prevention Bureau - 382-6297
Email: firedept@cityofchesapeake.net
Business License - 382-6455
Health Department - 382-8600
Social Services Dept. - 491-3990

Updated – February 2009
“Child day center” means a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.


1. A child day center that has obtained an exemption pursuant to §63.1-196.3 of the Code of Virginia;

2. A program where, by written policy given to and signed by a parent or guardian, children are free to enter and leave the premises without permission or supervision. A program that would qualify for this exemption except that it assumes responsibility for the supervision, protection and well-being of several children with disabilities who are mainstreamed shall not be subject to licensure;

3. A program of instructional experience in a single focus, such as, but not limited to computer science, archaeology, sport clinics, or music, if children under the age of six do not attend at all and if no child is allowed to attend for more than 25 days in any three-month period commencing with enrollment. This exemption does not apply if children merely change their enrollment to a different focus area at a site offering a variety of activities and such children’s attendance exceeds 25 days in a three-month period;

4. Programs of instructional or recreational activities wherein no child under age six attend for more than six hours weekly with no class or activity period to exceed 1½ hours, and no child six years of age or above attends for more than six hours weekly when school is in session or 12 hours weekly when school is not in session. Competition, performances and exhibitions related to the instructional or recreational activity shall be excluded when determining the hours of program operation;

5. A program that operates no more than a total of 20 program days in the course of a calendar year provided that programs serving children under age six operate no more than two consecutive weeks without a break of at least a week;

6. Instructional programs provided by public schools which are not exempt pursuant to subdivision 6 under the child day center definition in this section shall regulated by the State Board of Education using regulations that incorporate, but may exceed, the regulations for child day centers licensed by the commissioner;

7. Education and care programs provided by public schools which are not exempt pursuant to subdivision 6 under the child day center definition in this section shall be regulated by the State Board of Education using regulations that incorporate, but may exceed, the regulations for child day centers licensed by the commissioner;

8. Early intervention programs for children eligible under Part H of the Individuals with Disabilities Education Act (20 USC § 1470 et seq.), wherein no child attends for more than a total of six hours per week;
9. Practice or competition in organized competitive sports leagues;

10. Programs of religious instruction, such as Sunday schools, vacation, Bible schools, and Bar Mitzvah or Bat Mitzvah classes, and child-minding services provided to allow parents or guardians who are on site to attend religious worship or instructional services;

11. Child-minding services which are not available for more than three hours per day for any individual child offered on site in commercial or recreational establishments if the parent or guardian (i) is not an on-duty employee, (ii) can be contacted and can resume responsibility for the child’s supervision within 30 minutes, and (iii) is receiving services or participating in activities offered by the establishment;

12. A certified preschool or nursery school program operated by a private school which is accredited by a statewide accrediting organization recognized by the State Board of Education or accredited by the National Association for the Education of Young Children’s National Academy of Early Childhood Programs and which complies with the provisions of §63.1-196.3:1 of the Code of Virginia; or

13. By policy, child day center that is required to be programmatically licensed by another state agency for that service.

“Child day program” means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being or a child under the age of 13 for less than a 24-hour period.

Note: This does not include programs such as drop-in playgrounds or clubs for children when there is no service arrangement with the child’s parent.

“Children with disabilities” means those children evaluated as having autism, deaf-blindness, a developmental delay, a hearing impairment which may include deafness, mental retardation, multiple disabilities, an orthopedic impairment, a serious emotional disturbance, a severe or profound disability, a specific learning disorder, a speech or language impairment, a traumatic brain injury, or a visual impairment which may include blindness.

“Commissioner” means the Commissioner of Social Services, also known as the Director of the Virginia Department of Social Services.

“Department” means the Virginia Department of Social Services.

“Department’s representative” means an employee or designee of the Virginia Department of Social Services, acting as the authorized agent of the commissioner.

“Evening care,” means care provided in a center after 7 p.m. but not through the night.
PUBLIC NOTICE
EMERGENCY REGULATIONS
Effective March 10, 1999

This emergency change is a result of research by the Attorney General’s Office concerning the authority of the Virginia Departments of Social Services; Mental Health, Mental Retardation and Substance Abuse Services; Education and Juvenile Justice to promulgate any fire prevention regulations. The Virginia Departments of Social Services; Mental Health, Mental Retardation and Substance Abuse Services; Education and Juvenile Justice have promulgated fire prevention regulations which they have been instructed cannot be enforced.

Currently, the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code do not have provisions to deal with retrofitting of residential buildings with smoke detectors and fire extinguishers and requiring unannounced fire exit drills as was required by the Virginia Departments of Social Services. Mental Health. Mental Retardation and Substance Abuse Services, Education and Juvenile Justice regulations.

Because of the above, a potentially unsafe situation may have been created with regard to newly licensed child care programs in existing residences not equipped with smoke detectors and in any newly licensed child care programs in any residential building with regard to fire extinguishers and fire exit drills.

The emergency amendments to the Virginia Uniform Statewide Building Code, through section 3402.15, and the Virginia Statewide Fire Prevention Code, through section 13 VAC 5-51-20 -D; will require each existing building when defined as a “State Regulated Care Facility” to have installed and maintained at least one portable tire extinguisher on each floor and at least one smoke detector (i) in each bedroom hallway, (ii) at the top of each interior stairway, (iii) in each area designated for smoking and (iv) in or immediately adjacent to each room with a furnace or other heat source. Smoke detectors will be required to be tested monthly and the records of such tests maintained for two years.
And section 13 VAC 5-51-136 of the Virginia Statewide Fire Prevention Code will require a “State Regulated Care Facility” to conduct fire exit drills not less than twelve times per year with not less than six of the drills required to be unannounced.

Questions regarding these emergency regulations should be directed to the State Fire Marshal’s Regional Office in your area. For the office in your area, you may call (804) 371-7153.

Division of Building and Fire Regulation
Department of Housing and Community Development