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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 **Virginia** code:
 - a. **A felony violation of §16.1-253 to §16.1-253.4 Violation of provisions of protective order;**
 - b. **Any violation of the following sections of Title 18.2, Chapter 4, Article 1.**
 - Homicide:**
 - i. **18.2-31 Capital Murder;**

- ii. 18.2-32 First and Second Degree Murder;
 - iii. 18.2-32.1 Murder of a Pregnant woman;
 - iv. 18.2-32.2 Killing a Fetus;
 - v. 18.2-33 Felony Homicide;
 - vi. 18.2-35 How Voluntary Manslaughter Punished;
 - vii. 18.2-36 How Involuntary Manslaughter Punished;
 - viii. 18.2-36.1 Certain Conduct Punishable as Involuntary Manslaughter;
 - ix. 18.2-36.2 Involuntary Manslaughter; Operating a Watercraft While under the influence;
- c. Any violation of the following sections of Title 18.2, Chapter 4 Article 2. Crimes by Mobs:
- i. 18.2-41 Shooting, Stabbing, etc., with Intent to Maim, kill, etc., by Mob;
 - ii. 18.2-42 Assault or Battery by Mob;
- d. Any felony violation of the following sections of Title 18.2, Chapter 4 Article 2.1. Crimes by Gang:
- i. 18.2-46.2 Prohibited Criminal Street Gang Participation;
 - ii. 18.2-46.3 Recruitment of Persons for Criminal Street Gang;
 - iii. 18.2-46.3:1 Third or Subsequent Conviction of criminal Street Gang Crimes;
 - iv. 18.2-46.3:3 Enhanced Punishment for Gang Activity Taking Place in a Gang-Free Zone;
- e. Any violation of the following sections of Title 18.2, Chapter 2, Article 2.2. Terrorism Offenses:
- i. 18.2-46.5 Committing, Conspiring and Aiding and abetting Acts of Terrorism;
 - ii. 18.2-46.6 Possession, manufacture, distribution, etc. of weapon of terrorism or hoax device prohibited;
 - iii. 18.2-46.7 Act of bioterrorism against agricultural crops or animals;
- f. Any violation of the following sections of Title 18.2, Chapter 4, Article 3. Kidnapping and Related Offenses:
- i. 18.2-47 Abduction and Kidnapping, any violation of subsection A or B;
 - ii. 18.2-48 Abduction with intent to extort money or for immoral purpose;
 - iii. 18.2-49 Threatening, attempting or assisting in such abduction ;
 - iv. 18.2-50 Enticing, etc., another into a dwelling house with intent to commit certain felonies 3;
- g. Any violation of the following sections of Title 18.2, Chapter 4, Article 4. Assaults and Bodily Wounding:
- i. 18.2-51 Shooting, stabbing, etc., with intent to maim, kill, etc. ;

- ii. **18.2-51.1 Malicious bodily injury to law-enforcement officers, firefighters, search and rescue personnel, or emergency medical services personnel;**
 - iii. **18.2-51.2 Aggravated malicious wounding;**
 - iv. **18.2-51.3 Prohibition against reckless endangerment of others by throwing objects from places higher than one story;**
 - v. **18.2-51.4 Maiming, etc., of another resulting from driving while intoxicated;**
 - vi. **18.2-51.5 Maiming, etc., of another resulting from operating a watercraft while intoxicated;**
 - vii. **18.2-51.6 Strangulation of another;**
 - viii. **18.2-52 Malicious bodily injury by means of any caustic substance or agent or use of any explosive or fire;**
 - ix. **18.2-52.1 Possession of infectious biological substances or radiological agents;**
 - x. **18.2-53 Shooting, etc., in committing or attempting a felony;**
 - xi. **18.2-54.1 Attempts to poison,**
 - xii. **18.2-54.2 Adulteration of food, drink, drugs, cosmetics, etc.;**
 - xiii. **18.2-55 Bodily injuries caused by prisoners, state juvenile probationers and state and local adult probationers or adult parolees;**
 - xiv. **18.2-55.1 Hazing of youth gang members unlawful;**
 - xv. **18.2-56 Hazing unlawful; civil and criminal liability; duty of school, etc., officials;**
 - xvi. **18.2-56.1 Reckless handling of firearms; reckless handling while hunting;**
 - xvii. **18.2-56.2 Allowing access to firearms by children;**
 - xviii. **18.2-57 Assault and battery;**
 - xix. **18.2-57.01 Pointing laser at law-enforcement officer unlawful;**
 - xx. **18.2-57.02 Disarming a law-enforcement or correctional officer;**
 - xxi. **18.2-57.2 Assault and battery against a family or household member;**
- h. Any violation of the following sections of Title 18.2, Chapter 4, Article 5. Robbery:**
- i. **18.2-58 How punished;**
 - ii. **18.2-58.1 Carjacking;**
- i. Any violation of the following sections of Title 18.2, Chapter 4, Article 6. Extortion and Other Threats:**
- i. **18.2-59 Extortion of money, property or pecuniary benefit;**
 - ii. **18.2-60 Threats of death or bodily injury to a person or member of his family; threats to commit serious bodily harm to persons on school property**
 - iii. **18.2-60.1 Threatening the Governor or his immediate family;**
 - iv. **any felony violation of § 18.2-60.3 Stalking;**
 - v. **any felony violation of 18.2-60.4 Violation of protective orders;**

- j. Any violation of the following sections of Title 18.2, Chapter 4, Article 7.**
Criminal Sexual Assault:

 - i. 18.2-61 Rape;**
 - ii. 18.2-63 Carnal knowledge of child between thirteen and fifteen years of age;**
 - iii. 18.2-64.1 Carnal knowledge of certain minors;**
 - iv. 18.2-64.2 Carnal knowledge of an inmate, parolee, probationer, detainee, or pretrial or posttrial offender;**
 - v. 18.2-67.1 Forcible sodomy;**
 - vi. 18.2-67.2 Object sexual penetration;**
 - vii. 18.2-67.3 Aggravated sexual battery;**
 - viii. 18.2-67.4 Sexual battery;**
 - ix. 18.2-67.4:1 Infected sexual battery;**
 - x. 18.2-67.4:2 Sexual abuse of a child under 15 years of age;**
 - xi. 18.2-67.5 Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual battery;**
 - xii. 18.2-67.5:1 Punishment upon conviction of third misdemeanor offense;**
 - xiii. 18.2-67.5:2 Punishment upon conviction of certain subsequent felony sexual assault;**
 - xiv. 18.2-67.5:3 Punishment upon conviction of certain subsequent violent felony sexual assault;**

- k. Any violation of the following of sections of Title 18.2, Chapter 5, Article 1.**
Arson and Related Crimes:

 - i. 18.2-77 Burning or destroying dwelling house, etc.;**
 - ii. 18.2-79 Burning or destroying meeting house, etc.;**
 - iii. 18.2-80 Burning or destroying any other building or structure;**
 - iv. 18.2-81 Burning or destroying personal property, standing grain, etc.;**
 - v. 18.2-82 Burning building or structure while in such building or structure with intent to commit felony ;**
 - vi. 18.2-83 Threats to bomb or damage buildings or means of transportation; false information as to danger to such buildings, etc.;**
 - vii. 18.2-84 Causing, inciting, etc., commission of act proscribed by §18.2-83;**
 - viii. 18.2-85 Manufacture, possession, use, etc., of fire bombs or explosive materials or devices;**
 - ix. 18.2-86 Setting fire to woods, fences, grass, etc.;**
 - x. 18.2-87 Setting woods, etc., on fire intentionally whereby another is damaged or jeopardized;**
 - xi. 18.2-87.1 Setting off chemical bombs capable of producing smoke in certain public buildings;**
 - xii. 18.2-88 Carelessly damaging property by fire;**

- l. Any violation of the following sections of Title 18.2, Chapter 5, Article 2.**
Burglary and Related Offenses:

- i. 18.2-89 Burglary;
 - ii. 18.2-90 Entering dwelling house, etc., with intent to commit murder, rape, robbery or arson;
 - iii. 18.2-91 Entering dwelling house, etc., with intent to commit larceny, assault and battery or other felony;
 - iv. 18.2-92 Breaking and entering dwelling house with intent to commit other misdemeanor;
 - v. 18.2-93 Entering bank, armed, with intent to commit larceny;
 - vi. 18.2-94 Possession of burglarious tools, etc.;
- m. any felony violation of the following sections of Title 18.2, Chapter 7, Crimes Involving Health and Safety Article 1 Drugs:
- i. 18.2-248 Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance prohibited;
 - ii. 18.2-248.01 Transporting controlled substances into the Commonwealth;
 - iii. 18.2-248.02 Allowing a minor or incapacitated person to be present during manufacture or attempted manufacture of methamphetamine prohibited;
 - iv. 18.2-248.1 Penalties for sale, gift, distribution or possession with intent to sell, give or distribute marijuana;
 - v. 18.2-248.5 Illegal stimulants and steroids;
 - vi. 18.2-250 Possession of controlled substances unlawful;
 - vii. 18.2-251.2 Possession and distribution of flunitrazepam;
 - viii. 18.2-251.3 Possession and distribution of gamma-butyrolactone; 1, 4-butanediol;
 - ix. 18.2-255 Distribution of certain drugs to persons under 18 prohibited;
 - x. 18.2-255.2 Prohibiting the sale or manufacture of drugs on or near certain properties;
 - xi. 18.2-258 Certain premises deemed common nuisance;
 - xii. 18.2-258.02 Maintaining a fortified drug house;
 - xiii. 18.2-258.1 Obtaining drugs, procuring administration of controlled substances, etc., by fraud, deceit or forgery;
 - xiv. 18.2-258.2 Assisting individuals in unlawfully procuring prescription drugs;
- n. Any violation of the following of sections of Title 18.2, Chapter 7, Article 4. Dangerous Use of Firearms or Other Weapons:
- i. 18.2-279 Discharging firearms or missiles within or at building or dwelling house;
 - ii. 18.2-280 Willfully discharging firearms in public places;
 - iii. 18.2-281 Setting spring gun or other deadly weapon;
 - iv. 18.2-282 Pointing, holding, or brandishing firearm, air or gas operated weapon or object similar in appearance;

- v. **18.2-282.1 Brandishing a machete or other bladed weapon with intent to intimidate ;**
 - vi. **18.2-286.1 Shooting from vehicles so as to endanger persons;**
 - vii. **18.2-287.2 Wearing of body armor while committing a crime;**
- o. Any violation of the following sections of Title Chapter 7, Article 5 Uniform Machine Gun Act:**
- i. **18.2-289 Use of machine gun for crime of violence;**
 - ii. **18.2-290 Use of machine gun for aggressive purpose;**
- p. Any violation of the following sections of Title 18.2, Chapter 7, Article 6. "Sawed-Off" Shotgun and "Sawed-Off" Rifle Act:**
- i. **18.2-300 Possession or use of "sawed-off" shotgun or rifle.**
- q. Any violation of the following sections of Title 18.2, Chapter 7, Article 8. Miscellaneous Dangerous Conduct:**
- i. **18.2-314 Failing to secure medical attention for injured child;**
- r. Any violation of the following of sections of Title 18.2, Chapter 8, Article 3. Commercial Sex Trafficking, Prostitution, Etc.:**
- i. **any felony violation of § 18.2-346 Prostitution; commercial sexual conduct; commercial exploitation of a minor;**
 - ii. **any violation of 18.2-355 Taking, detaining, etc., person for prostitution, etc., or consenting thereto; human trafficking;**
 - iii. **any violation of 18.2-356 Receiving money for procuring person;**
 - iv. **any violation of 18.2-357 Receiving money from earnings of male or female prostitute; penalties;**
 - v. **any violation of 18.2-357.1 Commercial sex trafficking;**
 - vi. **any violation of subsection B of § 18.2-361 Crimes against nature;**
- s. Any violation of the following of sections of Title 18.2, Chapter 8, Article 4. Family Offenses; Crimes Against Children etc. codes:**
- i. **18.2-366 Adultery and fornication by persons forbidden to marry; incest;**
 - ii. **18.2-369 Abuse and neglect of incapacitated adults;**
 - iii. **18.2-370 Taking indecent liberties with children;**
 - iv. **18.2-370.1 Taking indecent liberties with child by person in custodial or supervisory relationship;**
 - v. **18.2-370.2 Sex offenses prohibiting proximity to children;**
 - vi. **18.2-370.3 Sex offenses prohibiting residing in proximity to children;**
 - vii. **18.2-370.4 Sex offenses prohibiting working on school property;**
 - viii. **18.2-370.5 Sex offenses prohibiting entry onto school or other property;**
 - ix. **18.2-370.6 Penetration of mouth of child with lascivious intent;**
 - x. **18.2-371 Causing or encouraging acts rendering children delinquent, abused, etc.; abandoned infant;**

- t. Any violation of the following of sections of Title 18.2, Chapter 8, Article 5. Obscenity and Related Offenses:**

 - i. 18.2-374 Production, publication, sale, possession, etc., of obscene items;**
 - ii. 18.2-374.1:1 Possession, reproduction, distribution, solicitation, and facilitation of child pornography;**
 - iii. 18.2-374.3 Use of communications systems to facilitate certain offenses involving children;**
 - iv. 18.2-374.4 Display of child pornography or grooming video or materials to a child unlawful;**
 - v. 18.2-379 Employing or permitting minor to assist in offense under article;**
 - vi. 18.2-386.1 Unlawful creation of image of another;**
 - vii. 18.2-386.2 Unlawful dissemination or sale of images of another;**

- u. Any violation of the following of sections of Title 18.2, Chapter 9, Crimes Against Peace and Order Article 1 Riot and Unlawful Assembly:**

 - i. any felony violation of 18.2-405 What constitutes a riot;**
 - ii. any felony violation of 18.2-406 What constitutes an unlawful assembly;**
 - iii. any violation of 18.2-408 Conspiracy; incitement, etc., to riot ;**
 - iv. any violation of 18.2-413 Commission of certain offenses in county, city or town declared by Governor to be in state of riot or insurrection;**
 - v. any violation of 18.2-414 Injury to property or persons by persons unlawfully or riotously assembled;**

- v. Any violation of the following of sections of Title 18.2, Chapter 9, Article 5. Activities Tending to Cause Violence:**

 - i. 18.2-423 Burning cross on property of another or public place with intent to intimidate ;**
 - ii. 18.2-423.01 Burning object on property of another or a highway or other public place with intent to intimidate ;**
 - iii. 18.2-423.1 Placing swastika on certain property with intent to intimidate;**
 - iv. 18.2-423.2 Displaying noose on property of another or a highway or other public place with intent to intimidate;**

- w. Any violation of the following of sections of Title 18.2, Chapter 9, Article 8. Unlawful Paramilitary Activity:**

 - i. 18.2-433.2 Paramilitary activity prohibited;**

- x. Any violation of the following of sections of Title 18.2, Chapter 10, Article 6. Interference with Administration of Justice:**

 - i. 18.2-472.1 Providing false information or failing to provide registration information;**
 - ii. 18.2-474.1 Delivery of drugs, firearms, explosives, etc., to prisoners or committed persons ;**

- iii. 18.2-477 Prisoner escaping from jail;
 - iv. 18.2-477.1 Escapes from juvenile facility;
 - v. 18.2-477.2 Punishment for certain offenses committed within a secure juvenile facility or detention home;
 - vi. 18.2-478 Escape from jail or custody by force or violence without setting fire to jail;
 - vii. 18.2-479 Escape without force or violence or setting fire to jail ;
 - viii. 18.2-480 Escape, etc., by setting fire to jail;
- y. Any violation of the following of sections of Title 18.2, Chapter 11, Article 1. Treason and Related Offenses:
- i. 18.2-481 Treason defined; how proved and punished;
 - ii. 18.2-484 Advocacy of change in government by force, violence or other unlawful means;
 - iii. 18.2-485 Conspiring to incite one race to insurrection against another race;
- z. Any violation of the following of sections of Title 37.2, Chapter 9;
- i. 37.2-917 Escape of persons committed;
- aa. Any violation of the following of sections of Title 53.1, Chapter 7:
- i. 53.1-203 Felonies by prisoners;
- bb. Any substantially similar offense to those listed above under the laws of another jurisdiction;
- cc. Any offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 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 an offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 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.

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 Fairfax County Department of Health.

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 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, § 63.2-1715;
- (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 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.

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 identity 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 **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** 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) A sworn statement from the applicant, and each adult who resides in the proposed facility stating whether each has **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 30.4.2(b)(iii). The applicant must pay any fee required in connection with such criminal history investigation for each** persons making disclosures and providing consent forms
- (6) **A sworn statement 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 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; 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 or child abuse or neglect and consent forms signed parent, guardian or legal custodian of all minors age 14 and older who reside 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 for any founded complaint of child abuse or neglect,**
- (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 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 **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. Otherwise, the director may request a criminal records search if three 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) 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 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. Otherwise, the director may request a copy of the central registry maintained pursuant to Va. Code § 63.2-1515 if three 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) *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, recognition and prevention of the spread of communicable diseases, emergency preparedness, and business practices of family child care. **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 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 four;
- (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 40 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.
- (f) 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 feet 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.
 - (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)

(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 upon adoption.

1st Reading: June 25, 2018

2nd Reading: July 23, 2018

Adopted: July 23, 2018