

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance (via-email)
From: Sharon S. Schellin 
Secretary to the Zoning Commission
Date: April 14, 2009
Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on April 24, 2009:

1. Z.C. Notice of Final Rulemaking & Order No. 08-05 (Case No. 08-05);
2. Z.C. Notice of Final Rulemaking & Order No. 08-16/08-16A (Case Nos. 08-16 & 08-16A); and
3. Z.C. Notice of Final Rulemaking & Order No. 08-23 (Case No. 08-23).

Attachment

ZONING COMMISSION
District of Columbia

CASE NO. 08-16A
EXHIBIT NO. 9

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ZONING COMMISSION
District of Columbia
CASE NO.08-16A
EXHIBIT NO.9

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 08-16/08-16A
Z.C. Case Nos. 08-16 and 08-16A
(Text Amendment - 11 DCMR)
(Text Amendments to Modify Definitions of Child Development Home and Child
Development Center)
February 9, 2009**

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing as required by § 3 of the Act (D.C. Official Code § 6-641.03); and having referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District of Columbia Charter; hereby gives notice of the adoption of the following amendments to the definitions of "Child development home" and "Child/Elderly development center" in § 199 of the Zoning Regulations, (Title 11 District of Columbia Municipal Regulations ("DCMR")).

The proposed text amendments modify the definitions of "Child development home" and "Child/Elderly development center" to make the zoning definitions consistent with the definitions found in the regulations governing the licensure and inspection of these facilities found in Title 29 of the DCMR, Chapter 3.

A Notice of Proposed Rulemaking was published in the *D.C. Register* ("DCR") on December 26, 2008, at 55 DCR 12965. No comments were received and no changes were made to the text of the proposed amendments.

This final rulemaking is effective upon publication in the *D.C. Register*.

Existing Regulations

The Zoning Regulations currently define "Child development home" as:

Child development home - a dwelling unit used in part for the licensed care, education, or training of no more than five (5) individuals fifteen (15) years of age or less. Those individuals receiving care, education, or training who are not related by blood, marriage, or adoption to the caregiver shall be present for less than twenty-four (24) hours per day. This definition encompasses facilities generally known as a child care center, day-care center, pre-school, nursery school, before-and-after school programs, and similar programs and facilities.

The Zoning Regulations currently define "Child/Elderly development center" as:

Child/Elderly development center - a building or part of a building, other than a child development home or elderly day care home, used for the non-residential licensed care,

education, counseling, or training of individuals two (2) years old or older but under the age of fifteen (15) years of age and/or for the non-residential care of individuals age 65 or older, totaling six (6) or more persons, who are not related by blood or marriage to the caregiver and who are present for less than twenty-four (24) hours per day. This definition encompasses facilities generally known as child care centers, pre-schools, nursery schools, before-and-after school programs, senior care centers, elder care programs, and similar programs and facilities. A child/elderly development center includes the following accessory uses: counseling, education, training, and health and social services for the person or persons with legal charge of individuals attending the center, including, but not limited to, any parent, spouse, sibling, child, or legal guardian of such individuals.

Description of Text Amendments

The amendments change the definition of "Child development home" by increasing the maximum number of individuals permitted in the dwelling unit from five (5) to six (6).

The amendments change the definition of "Child/Elderly development center" by increasing the maximum number of individuals permitted in the facility from six (6) to seven (7), and by deleting the requirement that the individuals be over the age of two (2) years old.

Relationship to the Comprehensive Plan

The amendments would not be inconsistent with the Comprehensive Plan.

Set Down Proceeding

The Office of Planning ("OP") initiated this rulemaking case by filing a report dated May 30, 2008, requesting amendments the definitions of Child development home and Child/Elderly development center to increase the maximum number of individuals permitted in the home or facility by one individual. The report stated the amendments harmonize the definitions found in the Zoning Regulations consistent with the substantive regulations governing child development facilities found in chapter 3 of DCMR Title 29, which had been recently changed. The Commission set down the case for a public hearing at its June 9, 2008 public meeting and assigned the matter case number 08-16.

OP then submitted a second report dated July 18, 2008, suggesting an additional change to the definition of Child/Elderly development center, eliminating the minimum age requirement. The report stated the reason for this additional change was to fully harmonize the regulations, and the additional change was inadvertently left out of the original OP report. At a properly noticed special public meeting the Commission set the matter down for a public hearing, assigned it case number 08-16A, and suggested consolidating the hearings for the convenience of interested persons.

Public Hearing and Proposed Action

The Commission held a public hearing on October 2, 2008. OP testified in favor of the amendments.

The Commission took proposed action to approve the amendments at the conclusion of the public hearing.

As noted, a Notice of Proposed Rulemaking was published in the *D.C. Register* ("DCR") on December 26, 2008, at 55 DCR 12965.

No comments were received.

The proposed rulemaking was referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter. NCPC, through two delegated actions, both dated November 25, 2008, found that the proposed text amendments would not adversely affect the identified federal interests, not be inconsistent with the Comprehensive Plan for the National Capital.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

Great Weight Given to ANC Issues and Concerns

The Commission is required under D.C. Official Code § 1-309.10(d) to give great weight to issues and concerns raised in the affected ANC's written recommendation. No ANC comments were received.

Final Action

At its properly noticed February 9, 2009 public meeting, the Commission took final action to approve the proposed text amendments.

Based on the above, the Commission finds that the proposed amendments to the Zoning Regulations are in the best interests of the District of Columbia, consistent with the purpose of the Zoning Regulations and the Zoning Act.

In consideration of the reasons set forth herein, the Zoning Commission hereby **APPROVES** the following amendments to § 199 of the Zoning Regulations, Title 11 DCMR.

CHAPTER 1, THE ZONING REGULATIONS, § 199 Definitions, is amended by modifying the definitions of Child development home and Child/Elderly development center as follows (new text is shown bolded and underlined, deleted language is shown in strikethrough text):

Child development home - a dwelling unit used in part for the licensed care, education, or training of no more than ~~five (5)~~ six (6) individuals fifteen (15) years of age or less. Those individuals receiving care, education, or training who are not related by blood, marriage, or adoption to the caregiver shall be present for less than twenty-four (24) hours per day. This definition encompasses facilities generally known as a child care center, day-care center, pre-school, nursery school, before-and-after school programs, and similar programs and facilities.

Child/Elderly development center - a building or part of a building, other than a child development home or elderly day care home, used for the non-residential licensed care, education, counseling, or training of individuals ~~two (2) years old or older but~~ under the age of fifteen (15) years of age and/or for the non-residential care of individuals age 65 or older, totaling ~~six (6)~~ seven (7) or more persons, who are not related by blood or marriage to the caregiver and who are present for less than twenty-four (24) hours per day. This definition encompasses facilities generally known as child care centers, pre-schools, nursery schools, before-and-after school programs, senior care centers, elder care programs, and similar programs and facilities. A child/elderly development center includes the following accessory uses: counseling, education, training, and health and social services for the person or persons with legal charge of individuals attending the center, including, but not limited to, any parent, spouse, sibling, child, or legal guardian of such individuals.

On October 30, 2008, upon motion of Chairman Hood, as seconded by Vice Chairman Jeffries, the Zoning Commission **APPROVED** the petitions at the end of the hearings on these cases by a vote of **4-0-1** (Anthony J. Hood, Gregory N. Jeffries, Peter G. May, and Michael G. Turnbull to approve; third Mayoral appointee position vacant at the time of the hearing, not voting).

On February 9, 2009, upon motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to approve; Gregory N. Jeffries, not present, not voting; third Mayoral appointee position vacant at the time of the hearing, not voting).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in *the D.C. Register*; that is, on APR 24 2009.

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The full text of this Zoning Commission Order is published in the “Final Rulemaking” section of this edition of the *D.C. Register*.