

PROPOSED

ORDINANCE NO. 2019-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO CHILD CARE FACILITIES AND FAMILY CHILD CARE HOMES; AMENDING VARIOUS SECTIONS OF CHAPTERS 7 AND 20 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE") RELATING TO THE REORGANIZATION OF THE CHILD CARE LICENSING AND ENFORCEMENT SECTION ("CCLE") AND RELOCATION OF CCLE FROM THE COMMUNITY PARTNERSHIPS DIVISION, HUMAN SERVICES DEPARTMENT, TO THE ENVIRONMENTAL AND CONSUMER PROTECTION DIVISION, ENVIRONMENTAL PROTECTION AND GROWTH MANAGEMENT DEPARTMENT; EXPRESSLY AUTHORIZING CCLE TO ENTER INTO SETTLEMENT AGREEMENTS AND TO ESTABLISH RELATED POLICIES; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

WHEREAS, child care licensing is regulated under Section 402.301, et seq., Florida Statutes;

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

WHEREAS, effective October 1, 2017, the Board approved relocating the Child Care Licensing and Enforcement Section ("CCLE") from the Community Partnerships

1 Division, Human Services Department, to the Environmental and Consumer Protection
2 Division, Environmental Protection and Growth Management Department;

3 WHEREAS, in order to offer providers increased access to information that could
4 encourage a higher level of performance of child care facilities and family child care
5 homes in Broward County, the Board seeks to expressly authorize CCLE (i) to enter into
6 settlement agreements generally, and (ii) to establish written policies setting forth the
7 conditions and circumstances under which settlement agreements may include a
8 reduction in administrative fines in exchange for completion of an in-person training
9 course; and

10 WHEREAS, the Board desires to amend various sections of Chapter 7 and
11 Chapter 20, Article XV of the Code relating to child care, to provide for the transferring of
12 CCLE from the Community Partnerships Division, Human Services Department, to the
13 Environmental and Consumer Protection Division, Environmental Protection and Growth
14 Management Department, to revise certain food-related health and safety standards to
15 reflect the combination of the child care food inspection program and the child care
16 licensing and enforcement program, and to expressly authorize CCLE to enter into
17 settlement agreements and to establish policies related to settlement,

18
19 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
20 BROWARD COUNTY, FLORIDA:

21
22 Section 1. Section 7-3 of the Broward County Code of Ordinances is hereby
23 amended to read as follows:

24

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1 **Sec. 7-3. Definitions.**

2 ...

3 (11) ~~Department~~ DCF shall mean the State of Florida, Department of Children
4 and Families, ~~abbreviated and referred to in this Ordinance as "DCF."~~

5 ...

6 (14) ~~Division~~ shall mean the ~~Children's Services Administration Division, Human~~
7 Services Environmental and Consumer Protection Division, Environmental
8 Protection and Growth Management Department, Broward County, Florida.

9 ...

10 (25) *Local licensing agency* shall mean the Child Care Licensing and
11 Enforcement Section, ~~Children's Services Administration Division, Human~~
12 Services Environmental and Consumer Protection Division, Environmental
13 Protection and Growth Management Department, Broward County, Florida.

14 ...

15
16 Section 2. Section 7-7 of the Broward County Code of Ordinances is hereby
17 repealed in its entirety, and a new Section 7-7 is hereby created to read as follows:

18 [Underlining omitted]

19 **Sec. 7-7. Nutrition, food preparation, and food service.**

20 (a) This section establishes the minimum standards for nutrition, food
21 preparation, and food service in child care facilities.

22 (b) The owner of a child care facility must ensure that any meals, snacks, and
23 beverages served to children that are not provided by the parents are in compliance with
24 the minimum standards for food preparation and food service set forth in Section 3.9 of

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1 the DCF Child Care Facility Handbook, incorporated by reference into
2 Chapter 65C-22.001 of the *Florida Administrative Code*, and in Section 3.9 of the DCF
3 School-Age Child Care Licensing Handbook, incorporated by reference into
4 Chapter 65C-22.008 of the *Florida Administrative Code*, in addition to the more stringent
5 requirements set forth in this Code. In the case of a conflict between any provision of this
6 Code and any provision of other applicable federal, state, or local law, rule, regulation, or
7 standard, the more stringent provision shall apply.

8 (c) The owner of a child care facility must ensure that any meals, snacks, and
9 beverages served to children that are not provided by the parents are in compliance with
10 the minimum standards for food and nutrition incorporated by reference into
11 Chapters 65C-22.001 and 65C-22.008 of the *Florida Administrative Code*, in addition to
12 the more stringent requirements set forth in this Code. In the case of a conflict between
13 any provision of this Code and any provision of other applicable federal, state, or local
14 law, rule, regulation, or standard, the more stringent provision shall apply.

15 (d) In the case of child care facilities that prepare or serve food on the premises,
16 a food inspection shall be included as a component of each of the inspections required
17 pursuant to Section 7-11.10 of this chapter during each licensure year.

18 (e) At least once every twelve (12) months, the owner or director of a child care
19 facility must sign and have executed a notarized affidavit certifying that the meals, snacks,
20 and beverages served to the children are in compliance with the requirements set forth in
21 this Section 7-7, et seq. In the event that a catering service is used to provide any meals,
22 snacks, or beverages, the owner or director of a child care facility must ensure that, at
23 least once every twelve (12) months, an authorized representative of the catering service
24 provides a signed and notarized affidavit certifying that the items provided to the facility

1 comply with requirements set forth in this Section 7-7, et seq. The affidavits required
2 under this section shall be maintained on file at the facility.

3
4 Section 3. Section 7-7.01 of the Broward County Code of Ordinances is hereby
5 amended to read as follows:

6 **Sec. 7-7.01. Food and nutrition.**

7 ~~This subsection establishes the minimum standards for the provision of food and~~
8 ~~nutrition in child care facilities. The owner of a child care facility must ensure that any~~
9 ~~meals, snacks, or beverages served to children that are not provided by the parents are~~
10 ~~in compliance with the minimum standards for food and nutrition set forth in~~
11 ~~Rule 65C-22.005, Florida Administrative Code, relating to preschool child care~~
12 ~~programs, and Rule 65C-22.008(p), Florida Administrative Code, relating to school-age~~
13 ~~child care programs, in addition to the more stringent requirements set forth in this~~
14 ~~subsection.~~

15 (a) ~~Meals, snacks, or beverages served to infants, or children one (1) to two (2)~~
16 ~~years of age, shall be in compliance with the rules and regulations for meal pattern~~
17 ~~requirements under the *Child and Adult Care Food Program* ("Program"), promulgated by~~
18 ~~the United States Department of Agriculture ("USDA") in the Code of Federal Regulations~~
19 ~~("C.F.R.") at 7 C.F.R. Part 226.20, regardless of whether a child care facility participates~~
20 ~~in the Program and is qualified for reimbursement of costs associated with food service~~
21 ~~operations.~~

22 (b) ~~The owner or director must sign and have executed a notarized affidavit~~
23 ~~certifying that the meals, snacks, or beverages served to the children are in compliance~~
24 ~~with the requirements set forth in this subsection. In the event that a catering service is~~

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1 used to provide any meals, snacks, or beverages, the owner or director must ensure that
2 an authorized representative of the catering service provides a signed and notarized
3 affidavit certifying that the items provided to the facility comply with requirements set forth
4 in this subsection. The affidavits required under this subsection shall be maintained on
5 file at the facility.

6 ~~(e)~~ (a) Milk provided to children two (2) years of age and older shall be fat-free milk
7 (marketed as skim or nonfat milk), ~~or~~ low fat milk (marketed as 1% milk), or reduced fat
8 milk (marketed as 2% milk). Additionally, ~~2% milk may be offered.~~ The requirement under
9 this ~~sub~~Section 7-7.01(a) is not applicable to a child if there is ~~documentation on file at~~
10 ~~the facility of an alternate nutrition plan for the child in accordance with Section 7-7.02 of~~
11 ~~this Ordinance, or for whom~~ a special diet has been prescribed by the child's physician in
12 accordance with Section 7-7.04 of this ~~Ordinance~~ Code.

13 ~~(d)~~ (b) Meals or snacks furnished by a parent for sharing with other children shall
14 be limited to commercially prepared foods, which shall exclude any foods cooked or
15 prepared in the home.

16 ~~(e)~~ (c) Notwithstanding Section 7-7.01(b) above, Aa child may participate in
17 multicultural learning events that involve the sharing of home-prepared foods if the child's
18 parent signs a permission form prior to the child's participation ~~signed parental permission~~
19 ~~form is required prior to a child's participation in multicultural learning events that involve~~
20 ~~the sharing of home prepared foods.~~ A permission form may include one (1) or more
21 individual events, or all multicultural events for the year, if known. Signed permission
22 forms must be kept on file by the child care facility for at least twenty-four (24) months
23 from the date the forms are signed.

24

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1 (f) ~~Child care personnel shall promote table manners and reinforce healthy~~
2 ~~food choices during meal times.~~

3 (g) ~~In the event that food, beverages, or snacks are provided to children~~
4 ~~enrolled in a child care facility pursuant to a contract with a catering service entered into~~
5 ~~prior to January 1, 2015, the owner or director shall not be required to comply with the~~
6 ~~requirements set forth in Subsections (a), (b), and (c) above until the end of the current~~
7 ~~term of the contract; however, any renewal option exercised under the terms of the~~
8 ~~contract shall require the owner or director to ensure compliance with such requirements.~~

9
10 Section 4. Section 7-7.02 of the Broward County Code of Ordinances is hereby
11 repealed in its entirety.

12
13 Section 5. Sections 7-7.09(a) and 7-7.09(c) of the Broward County Code of
14 Ordinances are hereby repealed in their entirety and the remaining sections shall be
15 relettered to reflect the deletion of Sections 7-7.09(a) and 7-7.09(c).

16
17 Section 6. The current paragraph (m) of Section 7-7.09 of the Broward County
18 Code of Ordinances (to be relettered as provided in Section 4 above) is hereby amended
19 to read as follows:

20 (m) ~~All readily perishable food and drink shall be kept at or below forty-one~~
21 ~~degrees (41°) Fahrenheit or above one hundred forty degrees (140°) Fahrenheit, except~~
22 ~~when being prepared or served~~ Cold food must be kept at or below forty-one degrees
23 (41°) Fahrenheit, and hot foods must be kept at or above one hundred thirty-five degrees
24 (135°) Fahrenheit.

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1 Section 7. Section 7-8.04(d) of the Broward County Code of Ordinances is
2 hereby repealed in its entirety.

3
4 Section 8. Section 7-11.01 of the Broward County Code of Ordinances is
5 hereby amended to read as follows:

6 **Sec. 7-11.01. License.**

7 . . .

8 (h) Renewal applications received less than ~~fifteen (15)~~ forty-five (45) days
9 before the expiration date of the license shall be assessed a late processing fee as set
10 forth in the Broward County Administrative Code.

11 . . .

12
13 Section 9. Section 7-11.12 of the Broward County Code of Ordinances is
14 hereby amended to read as follows:

15 **Sec. 7-11.12. Administrative fines.**

16 . . .

17 (d) All requests for hearings shall be ~~addressed and~~ furnished to the Broward
18 County Child Care Licensing and Enforcement Section, ~~2995 North Dixie Highway, Fort~~
19 ~~Lauderdale, Florida 33334~~, Attention: Hearings.

20 . . .

21
22 Section 10. Section 7-11.13 of the Broward County Code of Ordinances is
23 hereby amended to read as follows:

24
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1 **Sec. 7-11.13. Disciplinary action.**

2 (a) In determining the appropriate disciplinary action to be taken for a
3 violation(s), the local licensing agency shall consider, but not be limited to, the following
4 factors:

5 (a) (1) Action(s) taken by the owner or director of the facility to correct the
6 violation(s) or to remedy previous complaints.

7 (b) (2) The severity and nature of the violation(s) including the probability that
8 death or serious harm to any person may result or has resulted, the severity
9 of the actual or potential harm, and the extent to which the provisions of this
10 Ordinance Code were violated.

11 (c) (3) Any previous violation(s) issued to the owner or director of the facility.

12 (b) The local licensing agency is authorized to enter into voluntary settlement
13 agreements with respect to violations and administrative fines when it determines it is in
14 the best interest of Broward County to do so. Any settlement agreement between the
15 local licensing agency, on behalf of Broward County, and the applicable child care facility
16 shall be in writing and approved as to form and legal sufficiency by the Office of the
17 County Attorney. The settlement agreement may be entered into at any time prior to a
18 hearing relating to the violations and/or administrative fines that are the subject of the
19 settlement agreement. The local licensing agency may establish written policies setting
20 forth the circumstances and conditions pursuant to which the child care facility being fined
21 may enter into a settlement agreement allowing for a reduction of the imposed
22 administrative fine upon the child care facility owner's or director's successful completion
23 of an in-person training course.

24
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1 Section 11. Section 7-11.17 of the Broward County Code of Ordinances is
2 hereby amended to read as follows:

3 **Sec. 7-11.17. Findings and recommendations of the hearing officer:**

4 (a) *Hearing on Notices of Violations, Imposition of Administrative Fines, and*
5 *Denial of Licensure.*

6 . . .

7 (5) The Findings and Recommendations shall include a statement providing
8 that (i) either party has a right to file "Exceptions" to the findings of fact and
9 conclusions of law contained in the Findings and Recommendations within
10 fifteen (15) business days ~~of~~ after the date the hearing officer entered the
11 Findings and Recommendations and (ii) either party may file a "Response"
12 to the other party's "Exceptions" within ten (10) business days ~~of~~ after the
13 date the Exceptions were served on that party. For purposes of this section,
14 service of the Exceptions can be made by certified mail, return receipt
15 requested, or personal service. All Exceptions and Responses to
16 Exceptions shall be filed with the Director of the County's ~~Department of~~
17 ~~Human Services~~ Environmental and Consumer Protection Division within
18 the required time frames. Thereafter, the Director or Director's designee
19 shall review the hearing officer's Findings and Recommendations and any
20 Exceptions and Responses to Exceptions timely filed by either party, and
21 issue the local licensing agency's final agency action ("Final Agency
22 Action"). The local licensing agency's Final Agency Action shall be issued
23 within ninety (90) days ~~from~~ after the date of the Hearing Officer's Findings
24 and Recommendations. The owner or director of the child care facility has

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1 the right to appeal the Final Agency Action to a representative of DCF in
2 accordance with the hearing procedures established in Chapter 120, Florida
3 Statutes, and as provided for in the Final Agency Action.

4 . . .

5
6 Section 12. Paragraph (5) of Section 20-293 of the Broward County Code of
7 Ordinances is hereby repealed in its entirety and existing paragraphs (6) through (22)
8 shall be renumbered to reflect the deletion of paragraph (5).

9
10 Section 13. The current paragraph (14) of Section 20-293 of the Broward County
11 Code of Ordinances (to be relettered as provided in Section 12 above) is hereby amended
12 to read as follows:

13 **Sec. 20-293. Definitions.**

14 For purposes of this article, the following terms shall have the meanings indicated.

15 . . .

16 (14) *Local licensing agency:* The Child Care Licensing and Enforcement
17 Section, ~~Bureau of Children and Family Services, Department of Human~~
18 ~~Services~~ Environmental and Consumer Protection Division, Environmental
19 Protection and Growth Management Department, Broward County, Florida.

20 . . .

21
22 Section 14. Section 20-297 of the Broward County Code of Ordinances is hereby
23 amended to read as follows:

24
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underscored type are additions.

1 **Sec. 20-297. Nutritional practices Food preparation, storage, and nutrition.**

2 I. This section establishes the minimum standards for food preparation, food
3 storage, and nutrition in family child care homes. The operator of a family child care home
4 must ensure compliance with the minimum standards set forth in Section 6 and
5 Sections 7.13 through 7.16 of the State of Florida, Department of Children and Families'
6 Family Day Care Home/Large Family Child Care Home Handbook, relating to food
7 preparation and storage, food and nutrition, and hygiene and sanitation, in addition to the
8 more stringent requirements set forth in this Code. In the case of a conflict between any
9 provision of this Code and any provision of other applicable federal, state, or local law,
10 rule, regulation, or standard, the more stringent provision shall apply.

11 II. In the case of family child care homes that prepare or serve food on the
12 premises, a food inspection shall be included as a component of each of the inspections
13 required pursuant to Section 20-303 of this chapter during each licensure year.

14 ~~I. *Menu.* The family child care home shall provide nutritionally adequate~~
15 ~~meals and snacks of a quantity and quality to supplement food served at the child's home~~
16 ~~so that the daily nutritional needs of the children are met according to recognized~~
17 ~~nutritional standards. The standards accepted are the National Research Council's~~
18 ~~Recommended Dietary Allowances and United States Dietary Guidelines for Americans.~~
19 ~~Meal patterns which meet these standards are provided by the local licensing agency as~~
20 ~~a guide.~~

21 ~~II. *Supplies from Parent.* If food or formula is to be supplied by the child's~~
22 ~~parents, there shall be a written agreement on file at the home with a copy given to the~~
23 ~~parent. Department Form 5019, Alternate Nutrition Plan Agreement (May 82), which is~~
24 ~~incorporated herein by reference, shall define the responsibilities of the parent and the~~

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1 family child care home in meeting the child's nutritional needs and shall be signed by the
2 parent and the operator of the family child care home.

3 III. ~~Water.~~ Drinking water shall be freely available to all children.

4 IV. Modified Diet. Arrangements shall be made between the operator/provider
5 and parent for a child's modified diet when prescribed by a physician. A copy of the diet
6 and sample meal plan for the modified diet shall be kept on file at the family child care
7 home in the child's record.

8 V. ~~Feeding.~~ Children shall be individually fed or supervised at feedings and
9 offered foods appropriate for their age. There shall be no propped bottles for infants.
10 Formula shall be refrigerated and handled in a sanitary manner. Bottles shall not be
11 warmed in microwave appliances.

12 VI III. Seating. Homes shall provide sufficient age-appropriate seating at tables,
13 such as highchairs, chairs, and benches so that all children can sit safely at tables
14 whenever eating.

15 VII IV. Equipment and Utensils Disposal of Garbage.

16 (a) All multi-use eating and drinking utensils shall be thoroughly cleansed using
17 a dishwasher or hot water and an effective detergent, sanitized, rinsed and air dried. If
18 disposable items (i.e., plates, cups, utensils, etc.) are used, the items shall be properly
19 disposed of and not reused.

20 (b) Until properly disposed of, all litter, waste, garbage, and rubbish shall be
21 placed in suitable leakproof and plastic-lined covered receptacles.

22 VIII V. Food Supplies.

1 (a) All food and drink shall be clean, ~~wholesome,~~ free from spoilage, and so
2 prepared as to be safe for human consumption. Appropriate food handling practices must
3 be followed.

4 (b) ~~All readily perishable food and drink shall be kept at or below 45°F., except~~
5 ~~when being prepared or served~~ Cold food must be kept at or below forty-one degrees
6 (41°) Fahrenheit, and hot foods must be kept at or above one hundred thirty-five degrees
7 (135°) Fahrenheit.

8 (c) ~~Each refrigerator and/or freezer used for the storage of foods shall be~~
9 ~~provided with an accurate thermometer located in the warmest part of the appliance. The~~
10 ~~thermometer must be easily and readily observed.~~

11 (d) (c) All milk must be served from the original container.

12 ~~IX~~ VI. *Food Preparation and Service.*

13 (a) ~~At least one person working in the family child care home who prepares and~~
14 ~~serves food shall have read the Broward County Health Department food hygiene~~
15 ~~pamphlet entitled "Disease Free Food."~~

16 (b) (a) All family child care personnel shall wear clean garments and shall keep
17 their hands clean at all times while engaged in preparing and serving food and drink.

18 (c) (b) Family child care personnel in the food preparation and food service area
19 shall have access to hand washing facilities that are equipped with clean water, soap,
20 and paper towels in the food preparation area.

21
22 Section 15. Section 20-305 of the Broward County Code of Ordinances is hereby
23 amended to read as follows:

24
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underscored type are additions.

1 **Sec. 20-305. Disciplinary actions; administrative fines.**

2 . . .

3 IV. The local licensing agency is authorized to enter into voluntary settlement
4 agreements with respect to violations and administrative fines when it determines it is in
5 the best interest of Broward County to do so. Any settlement agreement between the
6 local licensing agency, on behalf of Broward County, and the applicable family child care
7 home shall be in writing and approved as to form and legal sufficiency by the Office of the
8 County Attorney. The settlement agreement may be entered into at any time prior to a
9 hearing relating to the violations and/or administrative fines that are the subject of the
10 settlement agreement. The local licensing agency may establish written policies setting
11 forth the circumstances and conditions pursuant to which the family child care home being
12 fined may enter into a settlement agreement allowing for a reduction of the imposed
13 administrative fine upon the family child care home operator's successful completion of
14 an in-person training course.

15
16 Section 16. Severability.

17 If any portion of this Ordinance is determined by any court to be invalid, the invalid
18 portion will be stricken, and such striking will not affect the validity of the remainder of this
19 Ordinance. If any court determines that this Ordinance, in whole or in part, cannot be
20 legally applied to any individual, group, entity, property, or circumstance, such
21 determination will not affect the applicability of this Ordinance to any other individual,
22 group, entity, property, or circumstance.

23
24
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1 Section 17. Inclusion in the Broward County Code of Ordinances.

2 It is the intention of the Board of County Commissioners that the provisions of this
3 Ordinance become part of the Broward County Code of Ordinances as of the effective
4 date. The sections of this Ordinance may be renumbered or relettered and the word
5 "ordinance" may be changed to "section," "article," or such other appropriate word or
6 phrase to the extent necessary in order to accomplish such intention.

7
8 Section 18. Effective Date.

9 This Ordinance is effective as of the date provided by law.

10
11 ENACTED

PROPOSED

12 FILED WITH THE DEPARTMENT OF STATE

13 EFFECTIVE

14
15 Approved as to form and legal sufficiency:
Andrew J. Meyers, County Attorney

16
17 By /s/ Alicia C. Lobeiras 12/18/18
18 Alicia C. Lobeiras (date)
Assistant County Attorney

19
20 By /s/ Jeffrey S. Siniawsky 12/18/18
21 Jeffrey S. Siniawsky (date)
Assistant County Attorney

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