

## ARTICLE XVII: DAY CARE CENTERS

### § 16-420 PURPOSE.

The purpose of this article is to supplement state statutes and regulations governing day care centers by providing standards for operation of day care centers in the City of Fort Worth to protect the health, safety and welfare of the occupants and patrons of day care centers.

(Ord. 11209, § 3, passed 11-24-1992)

### § 16-421 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.

**CHILD.** A person under 18 years of age.

**CITY.** The City of Fort Worth.

**CITY CODE.** The code of the City of Fort Worth, as amended from time to time.

**CITY MANAGER.** The city manager of the City of Fort Worth, Texas or his or her duly authorized representative, such as an assistant city manager.

**DAY CARE CENTER.** A facility that provides care for more than 12 children under 14 years of age, who are not the natural or adopted children of the owner or operator of the day care center, for less than 24 hours a day.

**DEPARTMENT.** The City of Fort Worth department of public health.

**DIRECTOR.** The director of the City of Fort Worth Public health department or his or her designee.

**FOOD SERVICE.** The preparation or serving of meals or snacks.

**HANDWASHING LAVATORY.** A basin with hot and cold running water for the washing of hands.

**HEALTH DEPARTMENT CERTIFICATE OF INSPECTION.** A certificate issued by the City of Fort Worth department of public health upon application and inspection of a day care center at the time the facility complies with applicable city ordinances.

**INFANT.** A child younger than 18 months old.

**ISOLATION AREA.** An area or room apart from other facilities which shall be available for use by children who become sick or injured.

**OWNER.** A person having any legal or equitable interest in the business or operation of a day care center. A person is deemed to be an **OWNER** for purposes of this chapter if that person operates, conducts, manages, maintains or controls, either directly or indirectly, a day care center.

**PERSON.** An individual or any other legal entity.

**PREMISES.** A tract of land with the buildings thereon, or a building or part of a building with its grounds or other appurtenances.

**PRESCHOOLERS.** Children between two and five years of age.

**REFUSE.** All wastes resulting from domestic, commercial or industrial operations incident to urban life, except sewage, but including garbage, brush and trash.

**REGULATORY AUTHORITY.** The City of Fort Worth public health department.

**RESTROOM.** A self-contained enclosure with a door on it, containing at least one lavatory and one commode.

**SEWAGE.** The liquid waste, which may or may not contain solids, from the plumbing facilities or sanitary conveniences of a building, dwelling unit, business building or unit, factory or institution.

**SINGLE-PURPOSE SINK.** A sink that is used for only one purpose, said purpose being specifically designated by the facility and approved by the Department. Types of **SINGLE-PURPOSE SINKS** include, but are not limited to: handwashing lavatories at diaper changing stations, handwashing lavatories in restrooms, wastewater disposal sinks and sinks required for food service preparation in accordance with the rules on food service sanitation.

**TODDLER.** Any child between 18 and 23 months of age.

(Ord. 11209, § 3, passed 11-24-1992)

#### **§ 16-422 HEALTH DEPARTMENT CERTIFICATE OF INSPECTION; INSPECTION AND COMPLIANCE.**

(a) A day care center shall be inspected by the director or his or her representative prior to issuance of a certificate of inspection.

(b) No person shall operate or cause to be operated a day care center in the City of Fort Worth without first obtaining a health department certificate of inspection issued by the director.

(c) The director is hereby authorized to issue a health department certificate of inspection in the City of Fort Worth when he or she finds that the owner or operator of the day care center has complied with the requirements of this article and all other applicable sections of the city code. If the day care center is in compliance, the owner or operator of the day care center as provided above shall be issued a certificate of inspection.

(d) If at the time of inspection, a day care center is found to not be in compliance with this code, a certificate of inspection will be denied and will not be issued. After notification of the violations or deficiencies which were detected, the owner shall be required to remedy the conditions of violation or deficiencies within a reasonable period of time as prescribed by the director, but not to exceed 30 days.

(e) If a certificate of inspection is denied by the director, the applicant may appeal the director's determination by following the procedure specified in § 16-439(4)(c).

(f) The director shall keep on file in the department reports of inspections made of the day care center as well as appropriate notices or directives to the owner or operator of any violations or deficiencies observed in the inspection.

(g) The owner or operator of the day care center shall operate the facility or cause it to be operated at all times in compliance with the provisions of this article and other applicable sections of the city code. The owner or operator of the day care center shall correct or cause to be corrected within the time period specified any violation or deficiency that is identified by the department director.

(Ord. 11209, § 3, passed 11-24-1992)

#### **§ 16-423 HEALTH DEPARTMENT CERTIFICATE OF INSPECTION APPLICATION.**

(a) Application for a certificate of inspection which indicates compliance with the day care center standards specified in this ordinance shall be submitted to the department by the owner of a day care center on a form specified by the department.

(b) The application for a certificate of inspection shall state the name(s), address(es), telephone number(s), driver's license number(s) of all persons having an ownership interest in the day care center, as well as any other information requested by the department.

(c) The application for a certificate of inspection of a day care center shall state the date that the current valid certificate of occupancy was obtained from the City of Fort Worth building inspection division or, if not yet obtained, the date that application for a certificate of occupancy was made.

(Ord. 11209, § 3, passed 11-24-1992)

#### **§ 16-424 HEALTH DEPARTMENT CERTIFICATE OF INSPECTION DURATION AND RENEWAL.**

(a) A health department certificate of inspection for a day care center shall be valid for one year from the date of issuance, unless the certificate of inspection is suspended or revoked for cause as provided in this article. The certificate of inspection shall be valid until expiration takes place or until revoked; provided, however, that possession of a certificate of inspection shall not exempt the day care center from reinspection or citation for violations occurring during the period of time between inspections. A certificate of inspection shall not be transferable, and any change in use, occupancy, ownership or operation shall require a new health department certificate of inspection.

(b) Application for renewal of a health department certificate of inspection shall be made on a form specified by the department. The owner shall submit an application for renewal to the department no later than four weeks prior to the impending expiration date of the current certificate. The renewal procedure shall require that the owner of the day care center confirm the accuracy of the records of the health department. Any incorrect information or changes to the information in the records of the department for the day care center shall be corrected or made by the owner before the certificate of inspection will be renewed.

(Ord. 11209, § 3, passed 11-24-1992)

### **§ 16-425 CONDITIONS OF A CERTIFICATE OF INSPECTION.**

(a) The issuance or granting of a certificate of inspection shall not be deemed or construed to be a permit for, or an approval of, any violation of any of the provisions of this code. No certificate presuming to give authority to violate or cancel the provisions of this code shall be valid, except insofar as the work or use which it authorizes is lawful.

(b) Acceptance of a certificate of inspection for a day care center is an express acknowledgment and consent to comply with the terms and conditions set by this ordinance and the regulatory authority. The grant and usage of such certificate is a privilege, not a right, subject to reasonable restrictions as set out herein or as may be promulgated by the regulatory authority.

(c) As an express condition of the acceptance of a certificate hereunder, the owner agrees to comply with any and all reasonable requests, orders or demands of the regulatory authority.

(Ord. 11209, § 3, passed 11-24-1992)

### **§ 16-426 INSPECTION FEE.**

The owner of a day care center shall pay a non-refundable fee to the department in an amount established by city council for a new or renewal health department certificate of inspection at the time application is made. All day care centers shall comply with all other applicable city code requirements, including inspection and fee requirements. This section shall not prohibit inspections of a day care center from occurring more often than once per year.

(Ord. 11209, § 3, passed 11-24-1992)

### **§ 16-427 DISPLAY OF HEALTH DEPARTMENT CERTIFICATE OF INSPECTION.**

The current certificate of inspection for the day care center designated therein shall at all times be conspicuously posted in public view on an inside wall of the main facility and shall be subject to inspection by representatives of the health department or other authorized persons.

(Ord. 11209, § 3, passed 11-24-1992)

### **§ 16-428 MINIMUM REQUIREMENTS.**

Each day care center for which an application for a certificate of inspection is submitted shall be required to meet the minimum standards set forth in this article in the following areas:

- (a) General facility design;
- (b) Interior design for activity areas;
- (c) Outdoor play areas and playground equipment;

- (d) Sanitation and hygiene for personnel;
- (e) Food service requirements; and
- (f) Animal care.

(Ord. 11209, § 3, passed 11-24-1992)

## § 16-429 GENERAL FACILITY DESIGN STANDARDS.

### (a) *General requirements.*

(1) All stairs, porches, platforms and step elevations greater than 24 inches shall provide handrails or guardrails for usage by children in accordance with the city building code.

(2) All glazing (including windows and doors) shall be installed and maintained in accordance with the city building code.

(3) All electrical outlets which are or may be accessible to or by children younger than five years old shall be protected by child-proof covers or safety outlets. All 220-volt electrical connections which are or may be accessible to or by children younger than five years old shall be protected by a screen or guard.

(4) The lead level of the water from each water tap and water cooler in the facility, which water is accessible to or consumed by children, must be at or below the maximum levels allowed by the Texas Safe Drinking Water Act, as amended, and a copy of which is on file with the city secretary. The regulatory authority shall cause water from such water taps and water coolers to be collected and sampled:

- a. Prior to issuance of an original certificate of inspection by the department;
- b. Upon repair or replacement of water supply lines or fixtures or the extension of such lines in the facility; or
- c. As needed in the determination of the regulatory authority.

### (b) *Room finishes.*

(1) All surfaces of kitchen and restroom doors shall be smooth and easily cleanable. All splash areas in kitchens and bathrooms and the walls immediately adjacent thereto, shall have smooth and easily cleanable surfaces. **EASILY CLEANABLE** shall mean that surfaces are readily accessible and made of such materials and finish and so fabricated that residue may be effectively removed by normal methods.

(2) All floors shall be smooth, easily cleanable and free of the following: cracks, bare concrete, splinters, sliding rugs, telephone jacks and electrical outlets.

(3) Carpets shall be closely woven, of short nap and kept clean and in good repair. All carpets and carpeted areas shall be vacuumed daily and shampooed as needed. Carpet use prohibited in restrooms and kitchens.

### (c) *Sanitation control measures for fixtures and facilities.*

(1) All toilet fixtures and facilities shall be installed and maintained in accordance with the city plumbing code.

a. Commodes and urinals shall be located inside bathrooms and equipped so that children are able to use them independently in accordance with the city plumbing code. Bathroom doors must have no locks within the children's reach.

b. Handicap access and toilet facilities must be installed and maintained in accordance with the city building code.

(3) a. There shall be at least one toilet and one handwashing lavatory for every 17 children.

b. There shall be separately designated restrooms for male and female.

c. For the purposes of this section, for facilities subject to licensing by the Texas department of human resources, the number of children is the maximum number of children that may attend the facility according to the state license, regardless of the actual number of children in attendance. For the purposes of this section, for a facility not subject to licensing by the Texas department of human resources, the number of children is the actual number of children enrolled at the facility.

(4) All handwashing lavatories shall be provided with hot and cold water under pressure, tempered by means of a mixing valve or combination faucet. The facility must ensure that the temperature of hot water available to children is no

higher than 120°F. Self-closing or metering faucets shall provide a flow of water for at least 15 seconds without having to be reactivated. Soap and a hand-drying device or disposable towels shall be provided for use by both staff and children.

(5) Restroom facilities shall be cleaned and sanitized at least once daily and more often if necessary. Carpet use is prohibited in restrooms. Restrooms shall be mechanically ventilated to control odors. Installation and maintenance of mechanical vents shall be in accordance with the city mechanical code.

(6) All toilets shall be equipped with open front toilet seats in accordance with the city plumbing code.

(7) Each sink shall be designated as a "single-purpose use" sink. Combination fixtures, such as faucet/water fountains, are prohibited. Each day care center shall have the following sinks.

a. There shall be at least one handwashing lavatory in each restroom or immediately adjacent to each restroom.

b. If the facility has a diaper changing station, there must be a handwashing lavatory in every room where there is at least one diaper changing station.

c. If the facility engages in food preparation, there must be a three-compartment sink in the food preparation area.

(8) The source of potable water shall be from a public water supply or a private water system which has been approved by the regulatory authority or the Texas department of health, maintained and operated according to Texas department of health drinking water standards. Water under pressure shall be provided in adequate supply to meet the provisions of the Texas department of health drinking water standards. A copy of the Texas department of health water standards is on file with the city secretary.

(9) All sewage shall be discharged into a public sanitary sewer system or into a private sewage disposal system approved by the Texas department of health.

(10) All refuse shall be kept in containers constructed and maintained of durable material with tight fitting lids or covers, and shall be nonabsorbent and free from leaks. All containers shall be kept covered when not in use. A sufficient number of containers shall be available to hold all refuse. Refuse shall be stored in clean areas, away from the children and shall be inaccessible by flies, insects, rodents and other pests.

(11) All outer openings of a facility shall be protected against the entrance of flies, insects, rodents and other pests by outward opening and self-closing doors, closed windows, screens or other effective means of protection and control as approved by the regulatory authority.

(12) Toxic substances, both indoors and out, shall be inaccessible to children at all times. All containers holding toxic substances shall be clearly labeled to identify the toxic substance contents.

(13) All toxic substances shall be dispensed and used in such a manner so as to prevent the toxic substance from constituting a hazard to the children or staff.

(14) In the event that laundering is done on the premises, all clothes dryers shall be vented to the exterior of the building in accordance with the city mechanical code.

(15) In all day care centers, all light fixtures shall either be properly shielded or shall contain only shatterproof light bulbs. At least 50 foot candles of light shall be provided in all areas of any room to which children have access.

(Ord. 11209, § 3, passed 11-24-1992)

## **§ 16-430 INTERIOR DESIGN, ACTIVITY AREAS.**

### *(a) General requirements.*

(1) All equipment, materials and furnishings shall be of sturdy and safe construction, easy to clean, free of sharp points or corners, splinters, protruding nails, loose rusty parts and paint which contains lead or other poisonous materials.

(2) Each child shall be provided with individual storage space for personal belongings.

(3) Sleeping space and play areas may be used interchangeably so long as adequate space for orderly storage of cots, bedding and play equipment is provided. All cots, cribs and mats shall be maintained in a safe and sanitary manner. Hand contact areas of cribs shall be sanitized daily. Each child shall have his or her own sleeping apparatus, which shall be placed in such a manner so as to allow at least one foot of open space on all sides of the apparatus except where such apparatus is adjacent to a wall or partition.

(4) Individual cribs, portable cribs or playpens used for sleeping shall be of safe and sturdy construction and equipped with mattresses covered with waterproof material that can be cleaned. Crib sides shall have secure latching devices. Vertical slats on cribs shall not be spaced more than two and one-half inches apart. There shall be no more than one and one-half inches of space between the mattress and bed frame when the mattress is pushed flush to any one corner of the crib.

(5) Linens shall be laundered at least once per week and more often if necessary. Linens shared by children shall be laundered after each use. Linens used exclusively by one child shall be stored separately from those of other children.

(b) *Isolation area.* All day care centers shall provide an isolation area or room for the use and comfort of any child who becomes ill or is injured while at the facility. While the isolation area or room is in use by an ill or injured child, the area or room must be kept free of other children.

(c) *Diapering and toileting.*

(1) Infants and toddlers shall be diapered in their own individual cribs or at a diaper station which is in a central diapering area on a sanitized surface.

(2) Diaper changing stations shall be located adjacent to handwashing lavatories equipped with hot and cold water through mixing faucets as required in the city plumbing code and supplied with soap and disposable towels. Hands of the diapered child and persons changing the diaper shall be washed before and after each diaper change. The surface of all diapering areas shall be sanitized after each use.

(3) Disposable diapers, once used, shall be placed in a cleanable container with a tight fitting lid. The container shall be lined with a moisture-proof disposable liner which may not be reused. When the container is full, the liner and the used diapers shall be removed to a clean area, away from the children, and shall be inaccessible by flies, insects, rodents and other pests. Cloth diapers, once used, shall be laundered or removed from the facility daily.

(4) Diaper changing stations shall be used only for the purpose of diaper changing.

(d) *Feeding.*

(1) A child's hands shall be washed immediately prior to and immediately after consuming any food or beverage.

(2) Food and beverages shall be served in separate containers for each infant or child. Food and beverages shall not be served directly to a child from the original container, unless it is a single portion, single-use container. Once served to a person, portions of leftover food or beverages shall not be served again, except that packaged foods or beverages, other than potentially hazardous food, that are still packaged and are still in sound condition, may be reserved.

(3) Bottled infant formula shall be properly capped when not in use and shall be identified with the child's name. Formula, once prepared or opened, shall be refrigerated. Any formula prepared but not utilized on the day it is opened or mixed shall be discarded at the end of that day.

(Ord. 11209, § 3, passed 11-24-1992)

## **§ 16-431 EXTERIOR PREMISES.**

General requirements shall be as follows.

(a) Exterior premises shall be well-drained and maintained free of high grass, poisonous plants and pest harborages and breeding sites.

(b) Exterior premises shall be free from cisterns and cesspools, and from unprotected wells, grease traps, utility equipment, nuisances and any other object or condition which may be hazardous to children.

(c) Outdoor play areas shall be surrounded by a fence. The fence shall be so constructed as not to have openings, holes or gaps larger than four inches in any dimension except for doors and gates; and if a picket or iron fence is erected or maintained, the horizontal dimension shall not exceed four inches. The fence shall have at least two exits. An entrance to the building may count as one exit, but one exit must be away from the building. Such fence shall comply with provisions of the zoning ordinance and other applicable city codes and ordinances.

(d) Playground equipment constructed with protruding nails, screws, sharp edges, splinters (rough, unsanded wood or other materials) and toxic paints (e.g., lead-based paints) is strictly prohibited.

(e) All playground equipment shall be securely assembled and, where applicable, securely anchored with unexposed anchors. Such equipment shall be installed, situated and maintained so as to prevent accidents and collisions.

(f) Swimming and wading pools more than 24 inches deep shall be enclosed by a fence no less than six feet in height which has a self-closing, self-locking gate. When a swimming or wading pool is not in use, it must be kept out of the reach of children.

(g) A minimum free residual chlorine of 1.0 part per million units of water shall be maintained in every swimming pool and wading pool when in use. No water in any swimming pool or wading pool when in use shall be permitted to show an acid reaction to a standard pH test.

(h) All pool chemicals and equipment shall be stored in a place and manner which are at all times inaccessible to children.

(Ord. 11209, § 3, passed 11-24-1992)

#### **§ 16-432 SANITATION AND HYGIENE STANDARDS FOR DAY CARE CENTER PERSONNEL.**

General requirements shall be as follows.

(a) No owner, employee or volunteer who has a communicable disease, as defined by the Communicable Disease Prevention and Control Act, or who is in a contagious state, or who is afflicted with boils, infected wounds, sores or acute diarrhea shall be permitted to care for children, come into contact with children, prepare food or be allowed to work in any capacity where he or she can transmit the communicable disease or infect other individuals in the facility.

(b) Owners, employees and volunteers shall wear clean clothing and maintain a state of personal cleanliness while at the facility.

(c) Owners, employees and volunteers shall thoroughly wash their hands with soap and warm water before starting work, during work as often as necessary to keep them clean, after smoking, eating, drinking or using the toilet.

(Ord. 11209, § 3, passed 11-24-1992)

#### **§ 16-433 FOOD SERVICE REQUIREMENTS.**

General requirements shall be as follows.

(a) All day care centers in which food is prepared for human consumption shall comply with the pertinent food service regulations set forth in the city code and in the Rules on Food Service Sanitation (1977), as amended, set forth by the Texas department of health, and a copy of which is on file with the city secretary. While day care centers in which food is prepared on site must comply with all applicable food service regulations, such centers need not obtain food service establishment permits, nor temporary food service establishment permits. Further, employees of such day care centers need not obtain food handler's certificates, nor must the day care manager obtain a food manager's certificate.

(b) Food service establishment permits or temporary food service establishment permits shall not be required in day care centers which do not prepare food on site, which have children bring their own lunches, which serve only prepackaged single-service snacks, or which prepare no food other than infant formula.

(c) All off-site food services used by a day care center must be permitted as a food service facility by an appropriate health department or authority in the jurisdiction wherein the food is prepared. Furthermore, facilities receiving food from such food service entities must have adequate and appropriate provisions for the holding and serving of food and for the washing of utensils in accordance with the requirements of the city code.

(d) (1) At all day care centers where food is prepared for human consumption, residential type refrigerators, freezers and ranges shall not be used for food preparation or storage in the food preparation area. Only equipment that meets or exceeds the standards established by the National Sanitation Foundation (NSF) will be approved for use, except that, in areas other than food preparation areas, residential type refrigerators may be used for storage of infant formula, juices and medications requiring refrigeration. Day care centers in operation upon adoption of this ordinance which were equipped with residential type equipment may continue to use such equipment until such time as replacement of such equipment becomes necessary due to obsolescence or malfunction. All replacement equipment must meet or exceed the standards established by the NSF.

(2) Day care centers which do not prepare food on site, which serve only prepackaged single-service snacks, or which prepare no food other than infant formula may use a residential type refrigerator for the purpose of storing infant formula, prepackaged snacks or medications requiring refrigeration.

(Ord. 11209, § 3, passed 11-24-1992)

#### **§ 16-434 ANIMAL CARE.**

General requirements shall be as follows.

(a) Animals kept on or brought to day care center premises shall be in compliance with Chapter 6 of this Code, including that each animal over four months of age has a registered microchip or license in compliance with § 6-19; and that each animal over six months of age is spayed, neutered or subject to an intact pet permit in compliance with § 6-22; and shall be vaccinated against rabies if required by the city code. Documentation of such vaccinations and microchipping or licensing shall be kept on file at the facility.

(b) The day care center and premises shall be kept free of stray animals.

(c) Animals and their living spaces at a day care center shall be kept clean.

(d) Turtles and psittacine birds shall not be kept at or brought to day care center premises. No “prohibited animals,” as that term is defined by the city code, shall be kept at or brought to day care center premises.

(Ord. 11209, § 3, passed 11-24-1992; Ord. 23295-06-2018, § 3, passed 6-26-2018, eff. 7-6-2018)

#### **§ 16-435 CHILD CARE WORKER CERTIFICATE REQUIRED.**

(a) Every owner, employee and volunteer who cares for, controls or supervises children at a day care center, except for persons whose exclusive responsibilities do not include the care, control or supervision of children, such as janitorial and transportation duties, and who do not in fact care for, control or supervise children, shall obtain a child care worker certificate issued by the department. If a child care worker applies for a certificate and class but the worker is unable to schedule a class before starting his or her job due to a lack of space in a class, the worker may obtain a 30-day extension and work without a certificate for those 30 days.

(b) It shall be unlawful for any owner or operator to permit any person to care for, control or supervise children at the day care center without the person first obtaining and holding a valid child care worker certificate issued by the department or without obtaining a 30-day extension.

(c) Every applicant for a child care worker certificate:

(1) Shall submit an application on a form specified by the department which shall state the name, residence address, date of birth and such other information as may be specified;

(2) Shall, each year, whether the application is an original application or a renewal application, submit to the department a record of the applicant’s tuberculosis examination completed no earlier than 12 months before the applicant begins work at a day care center or applies for a renewal application, and shall maintain a copy of the record of the tuberculosis examination at the day care center;

(3) Shall attend an orientation class provided by the department at a site specified by the department before a child care worker certificate, either original or renewal, will be issued to the person; and

(4) Shall pay the child care worker certificate fee.

(d) A child care worker certificate shall be valid for two years from the date of its issuance unless revoked as provided hereunder. Application by a certificate holder for a new certificate shall be made prior to impending expiration of the certificate in the manner described above in § 16-435(c).

(e) The director is authorized to revoke a child care worker certificate upon a finding that the holder failed to report a communicable disease in the holder to the health department. A proposed request for revocation of a certificate shall be made to the director by the department’s consumer health administrator of the regulatory authority after investigation and an opportunity for a hearing with the certificate holder.

(f) A nonrefundable fee for a child care worker certificate shall be paid to the department by an applicant in an amount established by city council.

(g) A copy of the current child care worker certificate shall be maintained at the day care center for each of its owners, employees and volunteers who cares for, controls or supervises children at the facility, and for whom a certificate is



required by this section. Certificate records shall be available for review upon the request of the director or his or her designee.

(h) No child care worker certificate issued by the director shall be used for any purpose other than the purpose for which it was issued, nor be transferred or assigned to, or in any manner used by, any person other than the person to whom it was issued by the director.

(Ord. 11209, § 3, passed 11-24-1992; Ord. 13749, § 1, passed 3-23-1999)

### **§ 16-436 APPLICABLE BUILDING CODE PERMITS.**

(a) Prior to the construction, alteration, repair, conversion, improvement or enlargement of any building or structure to be used as a day care center, the owner of the day care center shall make application for and obtain a building permit as required by the city building code.

(b) A “letter of intent” to operate a day care center shall be submitted to the department at the same time the plans and specifications are submitted for review to the Fort Worth department of planning and development. The department of planning and development shall receive a copy of the “letter of intent.” Any change or modification to the original “letter of intent” shall cause the owner to submit a revised “letter of intent” to the department with a copy to the department of planning and development. The “letter of intent,” whether original or revised, shall include the following information:

- (1) Proposed hours and days of operation of the day care center;
- (2) Proposed number of children and age groups to be served by the center;
- (3) Identification or designation of the type of day care center to be operated at the site;
- (4) If food preparation or service, as defined by the city code, will be provided at the facility, a sample menu for one month; and
- (5) If food preparation or service, as defined by the city code, will not be provided at the facility, a statement from the owner that no such food preparation or service will take place at the facility; if the owner subsequently desires to add food preparation or service, as defined the city code, to the facility, then the owner shall comply with all applicable requirements of said code, excluding paying for and obtaining a food service establishment permit for the facility.

(c) Nothing in this section shall be construed to exempt the owner of a day care center or permit applicant from complying with all other applicable permits, inspection or review by any other city department.

(Ord. 11209, § 3, passed 11-24-1992; Ord. 17522, § 5, passed 4-24-2007)

### **§ 16-437 REQUIREMENTS FOR CHANGE OF OWNERSHIP OF BUSINESS.**

(a) For purposes of this section, ***CHANGE OF OWNERSHIP OF THE BUSINESS OF ANY DAY CARE CENTER*** is defined as the sale, transfer or exchange of any legal or equitable interest in the business of operating a day care center to another person. It shall not be considered a “change of ownership of the business of any day care center” for purposes of complying with the requirements of this section if the owner of the business changes only the type of business entity holding ownership and the owner remains a controlling partner or officer in the new entity.

(b) Whenever a change in the ownership of the business of any day care center occurs, the existing certificate of inspection shall be automatically revoked, and the new owner:

- (1) Shall submit to the director a scale drawing of the floor plan of the facility indicating, but not limited, to the following proposed room usage, equipment schedule, room finish schedule, plumbing schedule and outdoor play area and play equipment;
- (2) Shall pay the applicable floor plan review fee; and
- (3) Shall obtain a new certificate of inspection.

(c) The requirements of § 16-437(b) are in addition to building permit or any applicable inspections or reviews by any other city department.

(d) In the event of a change of ownership of the business of any day care center, it shall be unlawful for a new owner to operate or cause to be operated a day care center without first complying with all the requirements of § 16-437(b).

(e) Whenever a change in the ownership of the business of any day care center occurs, the new owner of the business shall pay a nonrefundable fee for review of the floor plan to the department in an amount established by city council.

(Ord. 11209, § 3, passed 11-24-1992)

### **§ 16-438 APPLICABILITY OF OTHER CITY PERMITS AND CERTIFICATES.**

It shall be unlawful for any person to operate or cause to be operated a day care center in the City of Fort Worth without first obtaining a building code permit, certificate of occupancy, certificate of inspection or any other certificate or permit which may be required by any applicable article or chapter of the city code of the City of Fort Worth. It shall be unlawful for any person to operate or cause to be operated a food service establishment or temporary food service establishment at a day care center without adhering to all rules for operation of such food service establishment, although said facility need not obtain a separate permit for said use from the city public health department. An owner of a day care center shall also comply with all applicable city code requirements before a permit is issued.

(Ord. 11209, § 3, passed 11-24-1992)

### **§ 16-439 ENFORCEMENT.**

The director shall have the authority and responsibility to enforce the provisions of this article and applicable state statutes regarding day care centers.

(a) The director or his or her representative shall have the authority to inspect or visit all day care centers at all reasonable times and as he or she determines necessary to ascertain if they are being maintained and operated in conformity with this article or if any conditions exist at a facility which require correction. An inspection shall be made at least once each year to ensure that the facilities, grounds and equipment are maintained in compliance with this article and in a safe sanitary and healthy condition for the welfare of the occupants and patrons of the day care center.

(b) (1) The director or his or her representative shall have the authority to give written notice to the owner of a day care center of any violation of this article and/or requirement to comply with the provisions of this article.

(2) If a day care center is found to be in operation without a certificate of inspection, the director shall have the authority to give written notice to the owner of said facility to cease child caring activities immediately, irrespective of how the facility is maintained or operated. The director may permit the day care center to remain in operation with the proviso that the facility obtain a certificate of inspection within a reasonable time, but said reasonable time may not exceed 30 days.

(c) The director or his or her representative shall have the authority after giving written notice to suspend the certificate of inspection if he or she ascertains any violation causing immediate danger to a child regarding: construction of the facility and on-premises buildings, rest rooms, sanitation of the facility, preparation, storage and handling of food, storage of chemicals or any harmful solution, infectious diseases and hazards in outdoor play areas. Suspension of the certificate of inspection shall require the operator to cease all child-caring immediately and to bring the day care center into compliance with the directives from the department within a prescribed time period. Failure to rectify designated problems at the day care center within the prescribed time period shall lead to revocation of the certificate.

(d) The director shall have the authority to revoke any certificate if he or she ascertains that an owner or operator has failed or refused to comply with the minimum requirements set forth in this chapter for a day care center, providing that the following procedure is adhered to.

(1) The director, in writing by certified mail or by personal service, shall notify the owner of the manner in which the owner or the day care center fails to comply with the provisions of this chapter, and shall specify a reasonable time by which the owner shall remedy said failure.

(2) If the owner fails to comply with the provisions of this chapter within the time specified, the director shall give notice in writing to the owner of the day care center that the certificate issued for the operation of the day care center is revoked. This action of revocation is in addition to any criminal enforcement of this article.

(3) The notice of revocation or a denial of a certificate shall become final after the expiration of ten days from the date of service upon the owner or operator of the day care center in question, unless on or before the expiration of ten calendar days the owner or his or her duly authorized agent shall file with the office of the city manager a written letter of appeal briefly stating therein the basis for such appeal. A hearing shall be held on a date no more than 15 days after receipt of the letter of appeal unless extended by mutual agreement of the parties. The owner appellant shall be given at least five days' notice of the date, time and place of the hearing. The city manager shall give the appellant, and any other affected party, a

reasonable opportunity to be heard, in order to show cause why the determination of the regulatory authority should not be upheld. In all such cases the burden of proof shall be upon the appellant to show that there was no substantial evidence to support the action taken by the regulatory authority. The city manager shall make his or her determination and shall notify the appellant of his or her determination. The decision of the city manager is final.

(e) The director shall have the authority to revoke any certificate, if he or she determines, after affording the owner of a certificate an opportunity to be heard, that:

- (1) The certificate is used or was used by a person other than the person to whom the certificate was issued;
- (2) The certificate is used for a location other than that for which it was issued;
- (3) Any of the conditions or limitations set forth in the certificate have been violated; and

(4) There has been any false statement or misrepresentation as to a material fact in the plans, specifications or documentation on which the certificate was based.

(f) Any suspension or revocation of a certificate of inspection by the city shall be reported to the Texas department of human services. The city shall also report a day care center operating without a valid certificate of inspection to the Texas department of human services.

(g) Any person aggrieved by a finding, determination, notice or action taken under the provision of codes or ordinances other than health shall follow the appeal process designated in the applicable code or ordinance.

(Ord. 11209, § 3, passed 11-24-1992)

#### **§ 16-440 PENALTY FOR VIOLATIONS.**

(a) Any person violating any provision of this article shall be guilty of a misdemeanor and upon conviction in municipal court shall be fined not more than \$2,000, and each separate violation shall constitute a separate offense, and each and every day the offense occurs shall constitute a distinct and separate offense.

(b) If, after revocation of a certificate of inspection, a person continues to operate a day care center, he or she shall be subject to the penalties described in § 16-440(a).

(Ord. 11209, § 3, passed 11-24-1992)

#### **§§ 16-441—16-455 RESERVED.**