

MUNICIPAL LAND USE LAW CHILDREN-FAMILY DAY CARE HOMES

(commonly known as “Family Day Care Zoning Law”)
N.J.S.A. 40:55D-66.5 ET SEQ. Law of 1991, CHAPTER 278
EFFECTIVE – SEPTEMBER 13, 1991
AMENDED – MAY 28, 1992
BY P.L. 1992, C.13
AMENDED – December 29, 1993
BY P.L. 1993, C. 350

An Act allowing the location of certain family day care homes in all residential zones of a municipality and in certain condominiums, cooperatives and horizontal property regimes supplementing P.L. 1975, c. 291 (c. 40:55D –1 et seq.), and amending P. L. 1987, c. 27 and supplementing various parts of the statutory law.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. The Legislature finds and declares that:

- a. With over 50 percent of working-age women now in the workforce, the need for high quality child care is of vital importance;
- b. Not only does the availability of child care allow parents the peace of mind to pursue their careers and lead active, productive, professional lives, but it is also a necessity given the high cost of living in this state and the ever increasing need for families to bring home two income just to get by;
- c. A significant number of people in this state, recognizing the tremendous need for quality child care, and who in some cases, are already staying home caring for their own children, are providing child care services for a few additional children, thereby augmenting the supply of child care and providing a vital service that might otherwise not be available elsewhere; and
- d. Given the paucity of decent, affordable child care combined with the current labor shortage in this state, it seems unreasonable to erect zoning barriers which effectively prevent the establishment of or, in some cases, continuation of these valuable and vitally necessary family day care homes.
- e. It is therefore in the public interest and a valid public policy for this Legislature to eliminate those barriers which currently exist which prevent the establishment, or continued operation of, family day care homes in residential neighborhoods.

2.

- a. Family day care homes shall be a permitted use in all residential districts of a municipality. The requirements for family day care homes shall be the same as for single family dwelling units located within such residential districts. Any need restriction that would prohibit the use of a single family dwelling unit as a family day care home shall not be enforceable unless that restriction is necessary for the preservation of the health, safety and welfare of the other residents in the

neighborhood. The burden of proof shall be on the party seeking to enforce the deed restriction to demonstrate, on a case-by –case basis, that the restriction is necessary for the preservation of neighborhood who were meant to benefit from the restriction.

b. In condominiums, cooperatives and horizontal property regimes that represent themselves as being primarily for retirees or elderly persons, or which impose a minimum age limit tending to attract persons who are nearing retirement age, deed restrictions or bylaws may prohibit family day care homes from being a permitted use.

c. In condominiums, cooperatives and horizontal property regimes other than those permitted to prohibit family day care homes from being a permitted use under the subsection b. of this section, deed restrictions or bylaws may prohibit family day care homes from being a permitted use; however, if such condominiums, cooperatives, or horizontal property regimes prohibit such use, the burden of proof shall be on the condominium association, cooperative association, or council of co-owners to demonstrate, on a case-by-case basis, that the prohibition is reasonably related to the health, safety, and welfare of the residents. The burden of proof also shall be on the condominium association, cooperative association, or council of co-owners to demonstrate, on a case-by-case basis, that any other restrictions imposed upon a family day care home, including but not limited to noise restrictions and restrictions on the use of interior common areas, are reasonably related to the health, safety and welfare of the residents.

d. For the purposes of this act:

"Family day care home" means the private residence of a family day care provider which is registered as a family day care home pursuant to the "Family Day Care Provider Registration Act," P.L. 1987, c. 27 (C. 30:58-16 et seq.);

"Applicant" means a person who applies for a certificate of registration pursuant to the "Family Day Care Provider Registration Act," P.L. 1987, c. 27 (C. 30:58-16 et seq.);

"Commissioner" means the Commissioner of Human Services;

"Condominium" means a condominium formed under the "Condominium Act," P.L. 1969, c. 257 (C. 46:8B-1 et seq.);

"Cooperative" means a cooperative as defined under "The Cooperative Recording Act of New Jersey," P.L. 1987, c. 381 (C. 46:8D-1 et seq.); and

"Horizontal property regime" means a horizontal property regime formed under the "Horizontal Property Act", P.L. 1963, c. 168 (C. 46:8A-1 et seq.).

3. Section 3 of P.L. 1987, c. 27 (C. 30:5B-18) is amended to read as follows

3. As used in this act:

a. "Certificate of registration" means a certificate issued by the division to a family day care provider, acknowledging that the provider is registered pursuant to the provisions of this act.

b. "Division" means the Division of Youth and Family Services in the State Department of Human Services.

c. "Family day care home" means a private residence in which child care services are provided for a fee to no less than three and no more than five children at any one time for no less than 15 hours per week; except that the division shall not exclude a family day care home with less than three children from voluntary registration. A child being cared for under the following circumstances is not included in the total number of children receiving child care services:

(1) The child being cared for is legally related to the provider; or

(2) Care is being provided as part of an employment agreement between the family day care provider and an assistant or substitute provider where no payment for the care is being provided.

d. "Family day care provider" means a person at least 18 years of age who is responsible for the operation and management of a family day care home.

e. "Family day care sponsoring organization" means an agency or organization which contracts with the division to assist in the registration of family day care providers in a specific geographical area.

f. "Monitor" means to visit a family day care provider to review the provider's compliance with the standards established pursuant to this act.

(Section 4 contained provisions for municipal involvement in the family day care registration process that were deleted by amendment, P.L. 1992, c. 13).

(Section 5 contains amendments to the Family Day Care Registration Law, N.J.S.A. 30:5B-16 et seq.)

(Sections 6 through 13 repealed by P.L. 1993, c. 350, Section 8)

14. This act shall take effect immediately, except that sections 6 through 12, inclusive, of P.L. 1991, c. 278 (C. 30:5B23.1 through 30:5B-23.7); section 13 of P.L. 1991, c. 278 (C. 53:1-20.9); and subsection e. of section 8 of P.L. 1987, c. 27 (C. 30:5B-23) were deemed inoperative until the first day of the 19th month following the enactment of P.L. 1992, c. 13, and were later repealed by P.L. 1993, c. 350.

15. Any actions pending or taken by the Commissioner of Human Services, the Department of Human Services, the Division of Youth and Family Services or the Division of State Police pursuant to the provisions of sections 6 through 12, inclusive, of P.L. 1991, c. 278 (C. 30:58-23.1 through 30:5B-23.7); section 13 of P.L. 1991, c. 278 (C. 53:1-20.9); and subsection e. of section 8

of P.L. 1987, c. 27 (C. 30:58-23) prior to the enactment of P.L. 1992, c. 13, shall be void and of no effect.