



## Dane County Planning & Development Department

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### Planning

(608) 266-4251, Rm. 116

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### Zoning

(608) 266-4266, Rm. 116

**TO:** Town Board Supervisors & Plan Commissioners (Via Town Clerks)  
Dane County Board of Supervisors  
County Executive Joe Parisi  
Other Interested Parties

**FROM:** Todd Violante, AICP, Director

**DATE:** January 28, 2022

**RE:** Staff Review of 2021 OA-058, Amending Chapter 10 of the Dane County Code of Ordinances Regarding the Definition of “Day Care Center”

**CC:** Majid Allan, Senior Planner  
Roger Lane, Zoning Administrator  
Renee Lauber, Planning Consultant, Dane County Towns Association

This memo describes attached Ordinance Amendment 2021 OA-058 regarding the definition of “Day Care Center” in Chapter 10, *Zoning*, of the Dane County Code of Ordinances. To assist town and county officials in decision making, the Planning & Development Department prepares written descriptions of each proposed amendment to land use and development related ordinances. The Zoning & Land Regulation (ZLR) Committee will hold a public hearing on OA-058 on Tuesday, February 22, 2022. This meeting will be held remotely via the Zoom meeting platform. Information about accessing this meeting is included at the end of this memo. Please feel free to let me know of any questions or comments you may have at either (608) 266-4021, or [violante@countyofdane.com](mailto:violante@countyofdane.com).

### I. BACKGROUND AND SUMMARY

Ordinance Amendment (OA) 58 was introduced by County Board Supervisor and Zoning & Land Regulation (ZLR) Committee member Tim Kiefer following committee action in 2021 on a conditional use permit (CUP) for an in-home day care center. At that time, it was discovered that there is a slight inconsistency between the Dane County Zoning Code and Wisconsin Statutes in the county’s definition of “day care center.” State law limits local regulation of in-home day care centers with eight (8) or fewer children, and this OA simply brings Dane County’s ordinance into compliance with state law. A copy of OA 58 is attached to this memo.

**The Zoning & Land Regulation Committee Public Hearing on 2021 OA-058 will be on Tuesday, February 22, 2022. Town action on OA 58 is due to the zoning office by the end of the day on Thursday, March 24.**

## II. DESCRIPTION

OA 58 changes the definition of “day care center” in DCO § 10.004(50) to coincide with the Wisconsin Statutes definition of “family child care home” under Wis. Stat. § 66.1017. OA 58 has only two articles:

- A. Article 1 simply notes that, “Unless otherwise expressly stated herein, all references to section and chapter numbers are to those of the Dane County Code of Ordinances.”
- B. Article 2 is the brief substance of the OA that changes the county definition of *Day care center*: “10.004 DEFINITIONS. (50) Day care centers. A place or home which provides care for ~~eight (8)~~ nine (9) or more children under the age of seven (7) years for less than 24 hours a day and is licensed as provided for in s. 48.65 of the Wisconsin Statutes.”

## III. ANALYSIS

Small, in-home childcare operations serving eight (8) or fewer children are addressed under Wisconsin Statutes § 66.1017. The statute limits local regulation of such operations. A municipality cannot, “. . .prevent a family child care home from being located in a zoned district in which a single-family residence is a permitted use.” The Wisconsin Department of Children and Families licenses small in-home day cares as “family child care homes” under Wis. Stat. § 48.65.

Section 10.004(50) of Chapter 10, *Zoning*, of the Dane County Code of Ordinances defines “Day care center” as “*A place or home which provides care for eight (8) or more children. . .*” [*Emphasis added*] Day care centers are listed as a conditional use in the following zoning districts: AT-5, RM-8, RM-16, all RR districts, SFR, TFR, MFR, HAM-R, and HAM-M. They’re listed as a permitted use in the GC and HC districts.

Wis. Stat. § 66.1017(1)(a) defines a “family child care home” as “a dwelling licensed as a child care center by the department of children and families under s. 48.65 where care is provided for not more than 8 children.” [*Emphasis added*]

Dane County ordinance is at odds with Wisconsin statutes. As noted above, state law places limitations on the ability of local units of government to regulate small daycare operations providing care for not more than eight (8) children if they’re located in a zoning district that allows single-family residences as a permitted use and they are licensed by the state. But Dane County ordinance currently requires a CUP for day care centers providing care for eight (8) or more children; state law essentially allows by right family child care homes to provide care for up to eight (8) children, while Dane County requires a CUP for eight (8) or more children . OA 58 simply changes the definition of *day care center* to be consistent with state law by only requiring a CUP for centers that provide care for nine (9) or more children. Given that OA 58 brings the Dane County code into conformity with state statutes, staff strongly recommends approval and adoption of OA 58.

## IV. ZLR PUBLIC HEARING & TOWN BOARD ACTION TIMELINE

**ZLR Public Hearing.** The Dane County Zoning and Land Regulation (ZLR) Committee will hold a public hearing on 2021 OA-058 on Tuesday, February 22, 2022 at 6:30pm. A virtual meeting will

be held using the ZOOM meeting app. All persons wishing to speak on this item must pre-register for the meeting at least two hours in advance of the meeting. Please call 608-266-4266 or email [plandev@countyofdane.com](mailto:plandev@countyofdane.com) to obtain a registration slip. Any written testimony must be submitted within one week prior to the public hearing (February 15th) by emailing it to [plandev@countyofdane.com](mailto:plandev@countyofdane.com).

To attend the meeting by computer: <https://us02web.zoom.us/j/94094784464>. To attend the meeting by phone: Dial 1-888-788-0099 and enter Webinar ID: 940 9478 4464. If you would like to obtain more details regarding an agenda item, please call 608-266-4266. You may also review the application materials at: <https://dane.legistar.com/Legislation.aspx> and search for the rezone/CUP/ordinance amendment number in the “Legislative text” or “File/enactment #” boxes.

**Town Board Action and Timeline.** Under state statutes, town boards have until 30 days after the public hearing to complete action on zoning ordinance text amendments. In this case, 30 days following the February 22 public hearing is March 24. If towns choose to act on OA 58, action must be received by the end of the day on Thursday, March 24, 2022. Towns are not required to act. The state statutes regarding ordinance text amendments place the emphasis on disapproval, i.e. if a majority of towns within the jurisdiction of Chapter 10, *Zoning*, DCO object to OA 58, it will not pass, and if less than a majority of towns object to OA 58, it will pass and be enacted subject to County Board and County Executive approval. If towns choose to take formal action on OA 58, town clerks may use the online Town Board Action Report portal to submit their actions via the following link:

<https://townboardactionreport.countyofdane.com/Login.aspx?ReturnUrl=%2f>

Again, please feel free to let me know of any questions or comments you may have at either (608) 266-4021, or [violante@countyofdane.com](mailto:violante@countyofdane.com).

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2  
3 **2021 OA-058**

4 AMENDING CHAPTER 10 OF THE DANE COUNTY CODE OF ORDINANCES,  
5 REGARDING THE DEFINITION OF A "DAY CARE CENTER."

6 The County Board of Supervisors of the County of Dane does ordain as follows:  
7

8 ARTICLE 1. Unless otherwise expressly stated herein, all references to section  
9 and chapter numbers are to those of the Dane County Code of Ordinances.

10  
11 ARTICLE 2. Sections 10.004(50) is amended to read as follows:

12 **10.004 DEFINITIONS.**

13 **(50) Day care centers.** A place or home which provides care for ~~eight (8)~~ nine  
14 (9) or more children under the age of seven (7) years for less than 24 hours a  
15 day and is licensed as provided for in s. 48.65 of the Wisconsin Statutes.  
16

17 *[EXPLANATION: This amendment conforms the ordinance with state statute.]*