



Dane County Planning & Development Department

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TO: Town Board Supervisors & Plan Commissioners (Via Town Clerks)
Dane County Board of Supervisors
(Including members of the Zoning & Land Regulation Committee)
County Executive Joe Parisi
Other Interested Parties

FROM: Todd Violante, AICP, Director

DATE: March 17, 2022

RE: UPDATE on 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 offers an update to interested parties on comments received thus far regarding 2021 OA-58. It is intended as a supplement to the original staff memo dated January 28, 2022. Please refer to the [original memo](#) in Legistar (note hyperlink) for an overview of the proposed OA itself.

The amendment was postponed at the February 22 ZLR public hearing, and the committee will take it up again at their April 12 work meeting (which is the first available meeting after the March 24 date by which towns have to respond).

ZLR has only received one set of comments on OA-58 posing the following three questions:

1. How does the ordinance address day care centers for eight (8) or fewer children in non-residential areas, namely in the GC General Commercial and HC Heavy Commercial districts, where they're allowed as a permitted use?
2. How would the ordinance treat setbacks for adult bookstores from day care centers for eight (8) or fewer children?
3. How would the county address and enforce CUPs already granted under the current definition of day care center?

While all of these are good, thoughtful questions, the bottom line is that the primary need and intended objective of the OA still exists, i.e. to correct the discrepancy between county ordinance and state law, which is very simply and directly addressed by way of the current OA language.

The Zoning & Land Regulation Committee Public Hearing on 2021 OA-058 was 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, if the town chooses to act, and ZLR will next take it up on Tuesday, April 12.

In response to the questions raised, in a nutshell, the county ordinance does not attempt to regulate smaller day care centers, i.e. those with fewer than eight (8) children under the current ordinance, or those with fewer than nine (9) children under the proposed ordinance. All of the questions raised are questions that essentially exist now and apply under the current ordinance, independent of OA-58. OA-58 simply changes the number of children that define a *day care center* under the ordinance by one child, from eight(8) or more to nine (9) or more.

1. Under OA-58, how would the ordinance address day care centers for eight (8) or fewer children in non-residential areas, namely in the GC General Commercial and HC Heavy Commercial districts, where they're allowed as a permitted use?

As noted in the original staff memo, we are pre-empted from regulating in-home day care centers of eight (8) or fewer children under state law in residential districts where single-family residences are a permitted use. For nine (9) or more children, under the proposed OA-58, a CUP would be needed in residential districts. In the commercial districts of GC and HC, again, the county does not attempt to regulate small day care centers, and those that have nine (9) or more children would simply be allowed as a permitted use in GC and HC. This is the case now under the current ordinance for day cares of fewer than eight (8) children. In concept, it stands to reason that if larger day care centers would be allowed as a permitted use, then smaller, less impactful day care centers would also be permitted. It is important to remember that under state law a state license is needed for day cares with four (4) or more children, regardless of what local zoning district they may be located in. In the context of the GC and HC districts especially, day care centers are a relatively much less impactful and offensive use compared to the other types of uses allowed in GC and HC, and these are the only two districts where day care centers are a permitted use. The question of how smaller day care centers are treated under the ordinance in the GC and HC districts is a fair question. *Generally* speaking, uses not clearly listed as permitted in a district are presumed to be prohibited. It poses a good question for possible future consideration: should the county and towns consider adding a definition that recognizes smaller day cares as a distinct use? This is a question that exists independent of OA-58, and it's an issue that extends beyond the intended limited scope of the OA, i.e. to simply bring county ordinance into conformity with state law.

2. How would the ordinance treat setbacks for adult bookstores from day care centers for eight (8) or fewer children?

The ordinance requires that adult bookstores be set back 1,000 feet from a number of different uses, including day care centers. Clearly the setbacks would apply for day care centers with CUPs for which we have record. The setback language in the ordinance for adult bookstores doesn't specify day care centers of a particular size or number of children, and it doesn't distinguish only day care centers for which local CUPs have been issued. It simply says 'day care centers.' This is a question requiring some administrative interpretation and discretion. One factor to keep in mind is that adult bookstores are only allowed in the HC Heavy Commercial and MI Manufacturing & Industrial districts, so they're somewhat limited in possible extent. Given that we do not presently attempt to regulate the smaller day care centers, we would have limited record of those that are fewer than eight (8) (current) or nine (9) (proposed) children. However, the state would have record of all licensed daycares that are four (4) or more children, so conceivably this information could come into play in making an administrative decision on adult bookstore setbacks under county ordinance. There is minimal if any record of very small day care centers of three (3) or fewer children, which would make it very hard in all practicality to enforce such a setback from them. Again, while this is a thoughtful question, it exists under the current ordinance with or without OA-58, it is

limited in scope and impact, and it is an issue beyond the intended focus of the OA to simply make the county ordinance more consistent with state law.

3. How would the county address and enforce CUPs already granted under the current definition of day care center?

There has only been a small handful of CUPs granted for day care centers since the new ordinance was adopted in 2019, and most of those were very probably for larger operations. We would need to do a complete inventory of day care center CUPs that have been granted, for how many children, determine if any were conditioned on this narrow line between eight (8) and nine (9) children, and then make an appropriate administrative call. The only time the question would be called is if there was a complaint that a day care center for which a CUP had been granted was alleged to be in violation of the approved conditions. Staff would investigate the complaint, assess it against the approved conditions, and make an informed administrative determination as to whether or not a violation existed. Until such a time, it is presumed that recipients of granted CUPs are in compliance with their approved conditions. Any issues that arise can be addressed on a case-by-case basis, and if additional action may be warranted, the particular CUP can be raised for discussion and possible action by the respective town and county. Again, there are probably very few examples that would fall into this category, and it does not detract from the immediate need for the OA to correct the noted discrepancy between county and state law.

Lastly, it is important to keep in mind that if there are any additional amendments made by ZLR to OA-58, which could first occur at the April 12 ZLR meeting, then a substitute ordinance amendment would need to be moved and acted upon by the county, which would of course go back to the towns for final action, and the towns would then have 40 days after county action to vote the substitute OA up or down. Also, it is important to remember that if we collectively – towns and county – feel additional issues need to be addressed in the future related to day care centers beyond this discrepancy being corrected in OA-58, we can always initiate another separate OA as we have more information.

II. TOWN BOARD ACTION TIMELINE & NEXT ZLR MEETING

Town Board Action and Timeline. As a reminder, as noted in the original staff memo, 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, clerks may use the Town Board Action Report portal to submit their actions via the following link:

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

The Dane County Zoning & Land Regulation Committee (ZLR) will next take up 2021 OA-58 at its work meeting scheduled for Tuesday, April 12 at 6:30 p.m.

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.