

WSR 23-23-038

PROPOSED RULES

BUILDING CODE COUNCIL

[Filed November 3, 2023, 3:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-05-017.

Title of Rule and Other Identifying Information: WAC 51-51-0202 and 51-51-0331; amendments to 2021 International Residential Code to modify provisions for family home child care. This adoption increases the maximum children allowed in a family home child care scenario from 12 to 16. Additional safety features are also included in this rule making to be used when the children present exceed 12. Applicable sections in chapters 51-50 and 51-54A WAC will also be amended with expedited rule making for consistency across codes.

Hearing Location(s): On January 12, 2024, at 10:00 a.m., at 1500 Jefferson Street S.E., Olympia, WA 98504. Please access the meetings in-person, or via Zoom or conference call. The Zoom link and phone will be provided in the agenda at sbcc.wa.gov.

Date of Intended Adoption: January 19, 2024.

Submit Written Comments to: State Building Code Council, P.O. Box 41449, Olympia, WA 98509-1449, email sbcc@des.wa.gov, by January 19, 2024.

Assistance for Persons with Disabilities: Contact Annette Harworth, phone 360-407-9255, by January 12, [2024].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule adopts changes to the provisions for "Family Home Childcare" in the 2021 International Residential Code. The changes are necessary to align with SB [E2SSB] 5237 which allows the department of children, youth, and families to issue a waiver to the limit of 12 children. The changes allow up to 16 children to be placed in a family home child care scenario while still using code requirements within the International Residential Code. Additional safety considerations are added as well.

Amendments to Chapter 51-51 WAC For Family Home Child Care Provisions

WAC	Section	Specific Change	Rationale/Discussion
51-51-0202	Definition	The definition of "Family Home Childcare" is amended to allow up to 16 children in a family home child care scenario.	Increases definition from 12 children to 16 children and still permits the family home child care to remain in the scoping of the residential code.
51-51-0331	Section R331	Section R331 is renumbered to R331.1	Change to include new sections 331.2 and 331.3.
	Section 331.1 #4	"A residential sprinkler system is provided throughout the entire building in accordance with NFPA 13d." is changed to "An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D."	Allows use of P2904 for sprinkler design which is considered equivalent to NFPA 13D.
	Section 331.1 Exception #2.3	"A residential sprinkler system is provided throughout the entire building in accordance with NFPA 13d." is changed to "An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D."	Allows use of P2904 for sprinkler design which is considered equivalent to NFPA 13D.

WAC	Section	Specific Change	Rationale/Discussion
	Section 331.1 (at end)	Smoke alarms and heat detectors shall be installed in accordance with the requirements of new construction per IRC 314. Provide an additional heat detector in each kitchen.	In the event of fire, occupant notification will be faster than out of date systems. The addition of kitchen heat detectors adds an additional location of detection.
	New Section 331.2	R331.2 Additional requirements for family home child care with 13 to 16 children. In addition to the requirements of Section 331.1, the provisions of this section shall apply to <i>family home child care</i> with 13 to 16 children.	This section and its subparts identify additional requirements for "Family Home Childcare" when more than 12 children are receiving care.
	New Section 331.2.1	R331.2.1 Illumination in the event of power failure. In addition to illumination requirements of Section R311.7.9, provide an artificial light source that activates upon termination of building power supply at all interior stairs serving child care areas.	This section requires additional emergency lighting when there are more than 12 children receiving care in a "Family Home Childcare."
	New Section 331.2.2	R331.2.2 Exterior exit doors serving child care areas. Exterior exit doors serving child care areas shall comply with the requirements of Sections R311.2 and R311.3.	Doors serving "Family Home Childcare" with more than 12 children receiving care will need to comply with these sections to facilitate egress in the event of an emergency.
	New Section 331.3 (Option 1)	(OPTION 1) R331.3 Sprinklers. An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.	This first option would require a P2904 or NFPA 13D sprinkler system for "Family Home Childcare" when more than 12 children receive care.
	New Section 331.3 (Option 2)	(OPTION 2) R331.3 Sprinklers. An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D. Exception: Subject to approval of the <i>code official</i> , a sprinkler system is not required where all of the following conditions are met: 1. Child care areas are located on a floor within four feet of grade level; and 2. Each child care area shall have a door compliant with Section R311.2 and R311.3, leading directly to the exterior of the building.	This second option would require a P2904 or NFPA 13D sprinkler system for "Family Home Childcare" when more than 12 children receive care. It also allows for an exception to the sprinkler requirement based on code official approval, exiting door requirements, and proximity to grade requirements.

Reasons Supporting Proposal: RCW 19.27.031, 19.27.074.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

Statute Being Implemented: RCW 19.27.031, 19.27.074.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of children, youth, and families, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dustin Curb, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-972-4158; Enforcement: Local jurisdictions.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Exempt under RCW 34.05.328 (5) (b) (iii).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

October 20, 2023

Tony Doan
Council Chair

OTS-5065.1

AMENDATORY SECTION (Amending WSR 23-02-058, 23-12-104, and 23-20-024 [21-12-102], filed 1/3/23, 6/7/23, and 9/25/23 [6/2/21], effective 3/15/24 [7/3/21])

WAC 51-51-0202 Section R202—Definitions.

ADULT FAMILY HOME. A dwelling, licensed by the state of Washington department of social and health services, in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services. An existing adult family home may provide services to up to eight adults upon approval from the department of social and health services in accordance with RCW 70.128.066.

BUILDING. Any one- or two-family *dwelling* or *townhouse*, or portion thereof used or intended to be used for human habitation, for living, sleeping, cooking or eating purposes, or any combination thereof, or any accessory structure.

BUILDING, EXISTING. A *building* or structure erected prior to the adoption of this code, or one that has passed a final inspection.

CHILD CARE, FAMILY HOME. A child care facility, licensed by Washington state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of (~~twelve~~) sixteen or fewer children, including children who reside at the home.

CHILD DAY CARE, shall, for the purposes of these regulations, mean the care of children during any period of a 24 hour day.

CONDITIONED SPACE. An area, room or space that is enclosed within the building thermal envelope and that is directly or indirectly heated or cooled. Spaces are indirectly heated or cooled where they communicate through openings with conditioned spaces, where they are separated from conditioned spaces by uninsulated walls, floors or ceilings, or where they contain uninsulated ducts, piping or other sources of heating or cooling.

DISTRIBUTED WHOLE-HOUSE VENTILATION. A whole-house ventilation system shall be considered distributed when it supplies outdoor air directly (not transfer air) to each dwelling or sleeping unit habitable space (liv-

ing room, den, office, interior adjoining spaces or bedroom), and exhausts air from all kitchens and bathrooms directly outside.

DWELLING UNIT. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Dwelling units may also include the following uses:

1. Adult family homes, foster family care homes and family day care homes licensed by the Washington state department of social and health services.
2. Offices, mercantile, food preparation for off-site consumption, personal care salons or similar uses which are conducted primarily by the occupants of the dwelling unit and are secondary to the use of the unit for dwelling purposes, and which do not exceed 500 square feet (46.4 m²).

EGRESS ROOF ACCESS WINDOW. A skylight or roof window designed and installed to satisfy the *Emergency Escape and Rescue Opening* requirements of Section R310.2.

ENCLOSED KITCHEN. A kitchen whose permanent openings to interior adjacent spaces do not exceed a total of 60 square feet (6 m²).

FIRE SEPARATION DISTANCE. The distance measured from the foundation wall or face of the wall framing, whichever is closer, to one of the following:

1. To the closest interior *lot line*; or
2. To the centerline of a street, an alley or public way; or
3. To an imaginary line between two buildings on the *lot*.

The distance shall be measured at a right angle from the wall.

FLOOR AREA. The area within the inside perimeter of exterior walls of the building. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.

LANDING PLATFORM. A landing provided as the top step of a stairway accessing a *Loft*.

LOCAL EXHAUST. An exhaust system that uses one or more fans to exhaust air from a specific room or rooms within a residential dwelling or sleeping unit.

LOFT. A space on an intermediate level or levels between the floor and ceiling of a dwelling or sleeping unit, open on one or more sides to the room or space in which the loft is located, and in accordance with Section R333.

LOT LINE. The line which bounds a plot of ground described as a *lot* in the title to the property.

SALT WATER COASTAL AREA. Those areas designated as salt water coastal areas by the local jurisdiction.

SMALL BUSINESS. Any business entity (including a sole proprietorship, corporation, partnership or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has fifty or fewer employees.

TOWNHOUSE UNIT. A single-family *dwelling unit* in a *townhouse* that extends from foundation to roof and that has a yard or public way on not less

than two sides that extends at least 50 percent of the length of each of these two sides.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

WAC 51-51-0331 Section R331—Family home child care.

R331.1 Family home child care. For family home child care with more than six children, each floor level used for family child care purposes shall be served by two remote means of egress. Exterior exit doors shall be operable from the inside without the use of keys or any special knowledge or effort.

Basements located more than 4 feet below grade level shall not be used for family home child care unless one of following conditions exist:

1. Stairways from the basement open directly to the exterior of the building without entering the first floor;
2. One of the two required means of egress discharges directly to the exterior from the basement level, and a self-closing door is installed at the top or bottom of the interior stair leading to the floor above;
3. One of the two required means of egress is an operable window or door, approved for emergency escape or rescue, that opens directly to a public street, public alley, yard or exit court; or
4. ~~((A residential sprinkler system is provided throughout the entire building in accordance with NFPA 13d.))~~ An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.

Floors located more than 4 feet above grade level shall not be occupied by children in family home child care.

EXCEPTIONS:

1. Use of toilet facilities while under supervision of an adult staff person;
2. Family home child care may be allowed on the second story if one of the following conditions exists:
 - 2.1. Stairways from the second story open directly to the exterior of the building without entering the first floor;
 - 2.2. One of the two required means of egress discharges directly to the exterior from the second story level, and a self-closing door is installed at the top or bottom of the interior stair leading to the floor below; or
 - 2.3. ~~((A residential sprinkler system is provided throughout the entire building in accordance with NFPA 13d.))~~ An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.

Every sleeping or napping room in a family home child care shall have at least one operable window for emergency rescue.

EXCEPTION: Sleeping or napping rooms having doors leading to two separate means of egress, or a door leading directly to the exterior of the building.

Rooms or spaces containing a commercial-type cooking kitchen, boiler, maintenance shop, janitor closet, laundry, woodworking shop, flammable or combustible storage, or painting operation shall be separated from the family home child care area by at least 1-hour ~~((fire-resistive))~~ fire-resistant construction.

EXCEPTION: A ~~((fire-resistive))~~ fire-resistant separation shall not be required where the food preparation kitchen contains only a domestic cooking range, and the preparation of food does not result in the production of smoke or grease laden vapors.

Smoke alarms and heat detectors shall be installed in accordance with the requirements of new construction per IRC 314. Provide an additional heat detector in each kitchen.

R331.2 Additional requirements for family home child care with thirteen to sixteen children. In addition to the requirements of Section

331.1 the provisions of this section shall apply to family home child care with thirteen to sixteen children.

R331.2.1 Illumination in the event of power failure. In addition to illumination requirements of Section R311.7.9, provide an artificial light source that activates upon termination of building power supply at all interior stairs serving child care areas.

R331.2.2 Exterior exit doors serving child care areas. Exterior exit doors serving child care areas shall comply with the requirements of Sections R311.2 and R311.3.

(OPTION 1)

R331.3 Sprinklers. An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.

(OPTION 2)

R331.3 Sprinklers. An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.

EXCEPTION:

Subject to approval of the code official, a sprinkler system is not required where all of the following conditions are met:

1. Child care areas are located on a floor within 4 feet of grade level; and

2. Each child care area shall have a door compliant with Section R311.2 and R311.3, leading directly to the exterior of the building.