Legislation Details (With Text)

File #:	230300	**Version:** 2	**Name:**		
Type:	Ordinance		**Status:**	Passed	
File created:	4/3/2023		**In control:**	Council	
On agenda:	5/25/2023		**Final action:**	5/25/2023	
Title:	Sponsor: Director of the Health Department and Councilmember Andrea Bough Amending Chapter 34, Code of Ordinances, “Health and Sanitation,” by enacting a new Article XX, entitled “Childcare Facilities,” consisting of Section 34-875 through 34-982, for the purpose of creating a childcare facility inspection program; and establishing an effective date.				
Sponsors:	Director of Health Department, Andrea Bough, Eric Bunch				
Indexes:					
Code sections:					
Attachments:	1. 230300 Docket Memo, 2. Childcare Ordinance 2023 - Docket Memo, 3. Childcare Code Proposal 2023, 4. Childcare Revenue Estimate 2023, 5. Authenticated Ordinance 230300 C.S.				

Date	Ver.	Action By	Action	Result
5/25/2023	1	Council	Passed as Substituted	Pass
5/24/2023	1	Transportation, Infrastructure and Operations Committee	Adv and Do Pass as Cmte Sub, Debate	Pass
5/10/2023	1	Transportation, Infrastructure and Operations Committee	Hold on Agenda	
4/24/2023	1	Transportation, Infrastructure and Operations Committee	Hold on Agenda	
4/12/2023	1	Transportation, Infrastructure and Operations Committee	Hold on Agenda	
4/6/2023	1	Council	referred	

[COMMITTEE SUBSTITUTE FOR] ORDINANCE NO. 230300

Sponsor: Director of the Health Department and Councilmember Andrea Bough

Amending Chapter 34, Code of Ordinances, “Health and Sanitation,” by enacting a new Article XX, entitled “Childcare Facilities,” consisting of Section 34-875 through 34-982, for the purpose of creating a childcare facility inspection program; and establishing an effective date.

WHEREAS, by creating and implementing a local ordinance, the Health Department will have the capability to conduct inspections of these facilities to ensure that children are cared for in a safe and healthful environment; and

WHEREAS, the new Chapter 34, Article XX will allow for inspections at childcare facilities focusing on areas such as disease prevention, safe food handling, safe storage of toxic agents, cleaners, and medication, as well as establishing a focus on Elijah's law; and

WHEREAS, Elijah's law is the incorporation of preventing, recognizing, and responding to life-threatening anaphylactic reactions for children in childcare facilities. This law is named after 3-year-old Elijah

Silvera from New York City who was given a grilled cheese sandwich despite having a known severe dairy allergy. Elijah went into anaphylaxis and died in November of 2017. The implementation of Elijah's law into a local ordinance could provide potentially life-saving measures to prevent further tragedies; and

WHEREAS, the Health Department will allocate existing appropriations to fund this program for the balance of Fiscal Year 2023-24 and will include a request for funding in future budgets for costs not covered by reinspection and reinstatement fee revenue; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 34, Code of Ordinances, "Health and Sanitation," is hereby amended by enacting a new Article XX, entitled "Childcare Facilities," consisting of Section 34-875 through 34-982, said sections to read as follows:

ARTICLE XX.
CHILDCARE FACILITIES

DIVISION 1: GENERALLY.

Sec 34-875. Purpose and Intent of Article.

The purpose of the Childcare Inspection Program is to protect the public health, safety and welfare in childcare operations through the establishment of minimum health and safety standards. This article:

(1) establishes minimum standards that may include:

(a) basic utilities and facilities;

(b) ventilation and heating;

(c) safety from fire;

(d) safe and sanitary maintenance of all childcare facilities; and

(e) life-saving measures;

(2) provides for the registration and permitting for childcare facilities; and

(3) provides for administration and enforcement.

Sec. 34-876. 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:

Caregiver is the facility director, childcare provider, or other childcare staff whether they are paid or volunteering.

Childcare is the care of a child away from their own home for any part of the day or night.

Childcare facility means any residence, building, group of buildings, structure, establishment, place, or places of business where care is provided for children not related to the childcare provider for any part of the twenty-four (24) hour day.

Childcare Provider or Provider is the person(s) permitted or required to be permitted in order to establish, conduct, or maintain a childcare facility. This person(s) shall have the following rights and responsibilities:

(1) Ultimate responsibility for making and implementing decisions regarding the operation of the facility and;

(2) Ultimate financial control of the operation of the facility.

Code, when used in the context of this article, refers to both this article and the *Rules and Regulations Handbook* for childcare facilities in Kansas City, Missouri.

Daycare is a synonymous term for childcare.

Director is the director of the Kansas City, Missouri Health Department or his or her designee.

Employee means the permit holder, person in charge, childcare employee, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a childcare facility.

Health hazard violation means a violation when in noncompliance, is more likely than other violations to contribute to injury, illness, or environmental health hazards.

Law means applicable local, state, and federal statutes, regulations, and ordinances.

Non-health hazard violation means a violation that poses a lesser threat to health and safety, but negatively affects health, and if left unaddressed, could become a health hazard violation.

Permit means a permit issued by the Director that authorizes a person to operate a childcare facility.

Permit Holder means the entity that 1) is legally responsible for the operation of the childcare facility such as the owner, the owner's agent, or other person; and 2) possesses a valid permit to operate a childcare facility.

Person means an association, corporation, individual, firm, partnership, other legal entity, government, governmental subdivision or agency.

Premises is a house(s), dwelling(s), or building(s) and its adjoining land.

Regulatory Authority means the Director of Health or his or her authorized representative.

Re-inspection means an inspection conducted by the director to ensure corrective action is taken by fee permit holder subsequent to a previous inspection where noncompliance or violations of this article were found.

Related is any of the following relationships by marriage, blood, or adoption between the provider and the children in care: parent, grandparent, great-grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, niece, nephew, or first cousin.

Summer Day camp is a program operated from May to September by a person or organization with the primary function of providing a summer recreational program for children no younger than five (5) years of age and providing no day care for children younger than five (5) years of age in the same building or in the same outdoor play area.

DIVISION 2.
APPLICATION AND PERMITTING PROCESS

Sec. 34-877. Permit Required.

A person may not offer childcare services without a valid childcare permit issued by the Director. All entities now or hereafter owning, operating, or managing a childcare facility, shall obtain a childcare permit for each childcare facility from the Director. The Director shall issue the permit only after the applicant has submitted the application in its entirety with required documentation.

The Provisions of this article do not apply to any person who has been duly appointed guardian by a court of competent jurisdiction of the person of the child or children, or the person who has legal custody of the child or children;

Sec. 34-878. Conditions on Permits.

The Director is authorized and directed to endorse on the childcare permit such conditions and requirements which in their best judgement and discretion are necessary for the protection of the health and safety of the childcare facilities in Kansas City and which carry out the scope, purpose, and intent of this article. Such conditions and requirements shall conform as closely as possible to the rules and regulations promulgated by the Director but shall not be so strictly construed as to cause hardship upon any applicant.

Sec. 34-879. Duties of Permit Holder.

Upon receipt of a permit issued by the Director, in order to retain the permit, the permit holder shall:

(1) Comply with all provisions of this article and the rules and regulations promulgated by the Director, as such provisions, rules and regulations may be amended from time to time, and also each and every condition and requirement endorsed upon such permit or any renewal thereof issued, as such conditions and requirements may be amended by the Director;

(2) Immediately notify the Director if a life-threatening violation may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, gross unsanitary occurrence or condition, or other circumstance that may endanger health;

(3) Subject to subsection Section 34-883, allow representatives of the Director access to the childcare facility for inspections, emergencies, and when a life-threatening violation may exist;

(4) Comply with directives of the Director including time frames for corrective actions specified in

inspection reports, notices, orders, warnings, and other directives issued by the Director in regard to the permit holder's childcare facility, or in response to community emergencies;

(5) Accept notices issued and served by the Director according to law;

(6) Be subject to the regulatory, civil, injunctive, and criminal remedies authorized in law for failure to comply with this article or a directive of the Director, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

Sec. 34-880. Qualifications and Responsibilities of Applicant.

To qualify for a permit, the applicant shall:

(1) Be an owner of the childcare facility, or owner's agent who is responsible for the operation of the childcare facility;

(2) Comply with the requirements of this article;

(3) Agree to allow representatives of the Director access to the childcare facility for the purpose of inspections made pursuant to this article;

(4) Pay the applicable permit fees at the time the application is submitted.

Sec. 34-881. Denial of Application for Permit; Notice.

If an application for a permit or permit renewal to operate is denied, the Director shall provide the applicant with a notice that includes:

(1) The specific reasons and Code or regulations citations, if any, for the permit denial;

(2) The actions, if any, that the applicant must take to qualify for a permit; and

(3) Notice of the applicant's right of appeal and the process and time frames for appeal.

Sec. 34-882. Fees.

(1) Fee Schedule. All fees shall be paid in accordance with the current fee schedule. The below fees are the fees current at the time of passage.

Active Childcare	**Initial Application Fee**	**Annual Permit Fee**	**Reinspection Fee**	**Reinstatement Fee**
0-50 Children	$0.00	$0.00	$75.00	$75.00
51-100 Children	$0.00	$0.00	$100.00	$100.00

101-300 Children	$0.00	$0.00	$120.00	$120.00
301 + Children	$0.00	$0.00	$150.00	$150.00
Home Childcare	$0.00	$0.00	$75.00	$75.00

(2) A*nnual permit fee.* All permits are annual permits and shall be valid from January 1 through December 31.

(3) Payment of fee. All fees must be paid when due by the permit holder.

(4) Permit renewals. Permit holders that have not paid fees within 90 days of the date due may be subject to permit suspension until all fees have been paid.

(5) Re-inspection Fee: The regulatory authority shall assign a fee when a re-inspection is assigned based on the number of children.

(6) Reinstatement fees. For properties that have had a permit suspended following action taken by a provision of this article, a reinstatement fee shall be assessed to reinstate the permit.

(7) CPI adjustments. The Director shall have the authority to annually adjust all fees in this article to reflect an increase equal to an increase in the consumer price index (all items/all urban consumers/Kansas City, Missouri-Kansas) published by the United States Department of Labor, Bureau of Labor Statistics. The authorization for the Director to annually increase fees shall be cumulative and the failure of the Director to raise fees in any one year shall not waive the Director's authority to cumulatively raise fees by the consumer price index for missed years. The adjustments, if made, shall be made by the Director of Health in conjunction with the adoption of the annual budget of the city.

(8) Renewals. The Director will renew an existing permit regardless of whether an inspection has occurred. Suspended permits shall not be renewed until all conditions that warranted the suspension are abated. Revoked permits cannot be renewed.

(9) Refunds. There shall be no refund of any fee paid pursuant to this section.

DIVISION 3.
INSPECTIONS AND ENFORCEMENT

Sec. 34-883. Inspections.

(1) Inspection and reporting required. The Director shall cause periodic inspections to be made of all childcare facilities regulated under this article to ensure that the holder of the operating permit issued under this article is complying with its provisions, the rules and regulations promulgated by the Director, as they may be amended from time to time, and the conditions and requirements set forth in the operating permit issued for the particular facility for which the permit was issued or renewed.

(2) The person operating a childcare facility shall, upon the request of the Director and after proper

identification, permit access to all parts of the facility at any reasonable time for the purpose of inspecting and shall exhibit a copy of records or information to check or show compliance with these regulations.

(3) Allowed access at reasonable times after due notice. After the Director presents official credentials and provides notice of the purpose of, and an intent to conduct an inspection, the person in charge shall allow the Director to determine if the childcare facility is in compliance with this Code by allowing access to the facility, allowing inspection, and providing information and records specified in this Code and to which the Director is entitled according to law, during the childcare facility's hours of operation and other reasonable times.

(4) Refusal; notification of right to access; final request for access. If a person denies access to the Director, the Director shall:

a. Inform the person that the permit holder is required to allow access to the Director as specified under this Code;

b. Access is a condition of the acceptance and retention of a childcare facility permit to operate; and

c. If access is denied, an order issued by the appropriate authority allowing access, hereinafter referred to as an inspection order, may be obtained according to law; and

d. Make a final request for access.

(5) Refusal; reporting. If after the Director presents credentials and provides notice, explains the authority upon which access is requested, and makes a final request for access, the person in charge continues to refuse access, the Director shall provide details of the denial of access on an inspection report form.

(6) Inspection order to gain access. If denied access to a childcare facility for an authorized purpose, the Director may:

a. Issue, or apply for the issuance of, an inspection order to gain access as provided in law; or

b. Issue permit summary suspension order.

Sec. 34-884. Inspection Frequency Interval.

(1) The Director shall inspect a childcare facility at intervals averaging 12 months.

(2) The Director may inspect more frequently than 12-month averages based on:

a. Past performance, for nonconformance with Code;

b. Past performance, for numerous or repeat violations of Code;

c. Past performance, for repeat complaints; or

d. Type of operation.

Sec. 34-885. Non-health-hazardous or non-life-threatening Violations; Opportunity to Correct.

During an inspection, if the Director discovers that a permit holder has failed to comply with this article or the rules and regulations established by the Director, and the violation is not life-threatening or a potentially serious health hazard, they shall:

(1) Inform the permit holder, their agent, or employee in writing that violation(s) exist;

(2) Allow the permit holder an opportunity to correct the violations within a reasonable period, as determined by the Director; and,

(3) Re-inspect the childcare facility to determine if the violation(s) still exist.

Sec. 34-886. Health-hazardous violations; Opportunity to Correct.

During an inspection, if the Director discovers that a permit holder has failed to comply with this article or the rules and regulations established by the Director, and the violation is a health hazardous violation, they shall:

(1) Inform the permit holder, their agent, or employee in writing that violation(s) exist;

(2) Allow the permit holder an opportunity to correct the violations within a reasonable period, as determined by the Director; and,

(3) Re-inspect the childcare facility to determine if the violation(s) still exist.

Sec. 34-887. Life-threatening Violations; Opportunity to Correct.

During an inspection, if the Director discovers that a permit holder has failed to comply with this article or the rules and regulations established by the Director, and the violation is life-threatening, they shall:

(1) Inform the permit holder or their agent, or employee in writing that a violation exists;

(2) Allow the permit holder to immediately correct cited violations and eliminate the existing life-threatening violation; or

(3) Suspend the permit and/or immediately lock, secure or close the area of violation;

(4) Re-inspect the childcare facility to determine if the violation still exists;

a. In lieu of permit suspension after considering the nature of the potential hazard involved and the complexity of the corrective action needed, the Director may specify a longer time frame for the permit holder to correct health hazardous or life-threatening violations.

Sec. 34-888. Notice of Suspension; Conditions Warranting Action.

(1) Suspension. The Director may summarily suspend a facility's permit by providing written notice of the summary suspension to the permit holder or person in charge, without prior warning, notice of hearing, or a hearing if and when:

a. The Director determines through inspection or other means as specified in the Rules and Regulations Handbook, that an actual or imminent health hazard exists;

b. Operations, facilities, or equipment in the childcare facility fail to comply with conditions specified in the Rules and Regulations Handbook;

c. The permit holder does not comply with regulations specified in this ordinance or the Rules and Regulations Handbook; or

d. Interference with the Director in the performance of his or her duties has occurred.

(2) Term of suspension; reinstatement of permit. A summary of suspension shall remain in effect until the conditions cited in the notice of suspension no longer exist and their elimination has been confirmed by the Director through re-inspection and other means as appropriate. The Director may initiate any one of, or a combination of compliance methods that include but are not limited to:

a. Holding a regulatory conference with the provider or the person in charge;

b. Placing the childcare facility on probation;

c. Setting conditions for continued operation of the childcare facility by the permit holder, during the probation period.

(3) Time frame for reinstatement. After receiving a written request from the permit holder stating that the conditions cited in the summary suspension order no longer exist, the Director shall conduct a reinstatement inspection of the childcare facility for which the permit was summarily suspended within two business days, which means two days during which the Director's office is open to the public.

Sec. 34-889. Revocation; Conditions Warranting Action.

(1) The Director may revoke a childcare facility's permit after providing the permit holder an opportunity for a hearing if:

a. Serious and repeated violation(s) of any requirement of this ordinance according to the Rules and Regulations Handbook have occurred;

b. Repeated interference with, or assault upon the Director in the performance of their duty; or

c. Permit holder fails to comply with a permit suspension order.

(2) Revocation procedure; reinstatement of permit. Before revocation, the Director shall notify, in writing, the permit holder of the specific reason(s) why the permit is to be revoked. The notice will state:

a. The permit was revoked at the end of ten calendar days following the notice unless a written request for a hearing is filled with the Director by the permit holder within such a ten-day period;

b. If a request for a hearing is not filed by the permit holder within the ten-day period, the revocation of the permit becomes final;

c. Any person whose childcare facility permit has been revoked by the Director, after a period of six months, may make written application for a new permit and request a hearing with the Director to determine whether a new permit will be issued; and,

(3) Director may adopt and use a permit revocation process different than specified under provisions of this ordinance.

Sec. 34-890. Elijah's Law-Allergy Safety and Emergency

Childcare facilities must take concrete steps to manage food allergies for the children in their care. This includes, but is not limited to, developing emergency protocols, having communication plans for discussing food allergies with parents or guardians, having plans for preventing exposure and maintaining a current supply of epinephrine auto-injectors in accordance with the regulations issued by the Director.

Sec. 34-891. Duties of the Director.

The Director shall have the duty and responsibility of enforcing the provisions of this article and the rules and regulations promulgated by them, or any amendments in requirements or conditions of any permit issued under this article; and, in addition thereto, shall keep records of all operating permits issued or renewed and any changes thereof, prepare a form of application for such permit, cause an inspection of the premises to be made at any reasonable time of any permit holder, make any amendments to the conditions and requirements either before or after an operating permit is issued, or do any other matter or thing necessary to carry out the intent, purpose and scope of this article and the rules and regulations promulgated under this article.

Sec. 34-892. Authority to Prescribe Additional Rules and Regulations.

(1) Scope of authority. The Director shall formulate rules and regulations that will include provisions for food allergies and anaphylaxis policies and procedures, in alignment with Elijah's Law, inspection process, method, and guidelines. Such rules, regulations, and policies shall be filed with the city clerk, and, when so filed, shall be in effect as part of this ordinance. Such rules may be modified or superseded by other rules and regulations filed by the Director from time to time.

(2) Scope of regulations. The Director shall have power and authority to make provisions in such rules and regulations for health, sanitation and adequate childcare facility standards as such rules and regulations may appertain to each and every person required to be a holder of a permit under this article; and such provisions, conditions or requirements shall be subject to modification, deletions, additions or other changes or alterations as to any person required to be a holder of a

permit as the Director may find and determine at any time.

Sec. 34-893-Sec. 34-899. Reserved.

Section 2. Effective Date. Due to the effectiveness of this article occurring after the regular permit year begins, the effective date of this new Article XX shall be January 1, 2024.

Approved as to form:

Joseph A. Guarino
Senior Associate City Attorney