



City of Boise
Ordinance
First Reading

City Clerk's Office
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Boise, ID 83702
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TO: Mayor and Council
FROM: Craig Croner, City Clerk's Office
NUMBER: **ORD-29-17**
DATE:
SUBJECT: Minor Updates and Amendments to Boise City Code Title 5, Ch. 33 (entitled "Child Care Facilities")

BACKGROUND:

Idaho Code authorizes cities to adopt and enforce ordinances governing the licensing of child care facilities and child care workers. To qualify for this local option, municipal child care licensing ordinances must include criminal history and background check standards that are at least as stringent as those required by the state. Earlier this year, the Idaho Legislature amended several Idaho Code sections related to those standards. The proposed ordinance brings Boise City's criminal history and background check standards into compliance with Idaho Code. Additional minor amendments to Title 5, Chapter 33, Boise City Code are based on ongoing discussions with child care providers, City staff recommendations, and a recent child care hearing held during a meeting of the Mayor and Council.

FINANCIAL IMPACT:

None

CITY OF BOISE

Ordinance NO. ORD-29-17

BY THE COUNCIL

CLEGG , JORDAN, LUDWIG, MCLEAN,
QUINTANA, AND THOMSON

AN ORDINANCE AMENDING TITLE 5, CHAPTER 33, BOISE CITY CODE, ENTITLED “CHILD CARE FACILITIES,” TO ADD A NEW DEFINED TERM, “ENHANCED CLEARANCE CHECK”; TO REQUIRE APPLICANTS TO PAY THE COST OF ENHANCED CLEARANCE CHECKS; TO ADD UNCONDITIONAL DENIAL OF A LICENSE TO THE POTENTIAL PENALTIES FOR SUBMITTING AN APPLICATION CONTAINING MATERIALLY FALSE, UNTRUE, OR MISLEADING INFORMATION; TO ADD A REFERENCE TO TITLE 5, CHAPTER 2, BOISE CITY CODE; TO REQUIRE BACKGROUND CHECKS TO INCLUDE A SEARCH OF ALL SEX OFFENDER REGISTRIES AND CHILD ABUSE REGISTRIES IN EACH STATE IN WHICH THE APPLICANT RESIDED DURING THE FIVE YEARS IMMEDIATELY PRIOR TO APPLICATION; TO AUTHORIZE ANY AGENCY, EMPLOYER, OR THE CITY CLERK’S OFFICE TO REQUIRE A NEW CRIMINAL HISTORY AND BACKGROUND CHECK; TO REQUIRE CHILD CARE FACILITY OWNERS TO RETAIN A COPY OF EMPLOYEES’ CHILDCARE LICENSES; TO PROHIBIT THE ISSUANCE OF A LICENSE TO AN APPLICANT WITH A CONVICTION FOR CERTAIN CRIMES; TO UPDATE AND CORRECT INTERNAL CODE REFERENCES; TO RENUMBER SUBSECTIONS, AS NEEDED, BASED UPON THESE AMENDMENTS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, federal law mandates that state child care regulations require enhanced criminal history and background checks for certain child care license applicants; and

WHEREAS, federal law also requires state child care licensing regulations to prohibit the issuance of a child care license to a person convicted of certain crimes; and

WHEREAS, Idaho Code was amended, effective July 1, 2017, to comply with federal child care licensing requirements; and

WHEREAS, as a result of the recent amendments to Idaho Code, Boise City Code Title 5, Chapter 33 does not meet the updated standards for criminal history and background checks contained in Idaho Code; and

WHEREAS, from time-to-time, City staff reviews the Boise City Code to ensure it is numbered correctly and internal code references are current and correct.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF

CITY OF BOISE

THE CITY OF BOISE CITY, IDAHO:

Section 1. That Title 5, Chapter 33, Section 02, Boise City Code, shall be, and hereby is, amended to add the defined term “Enhanced Clearance Check” as Subsection L., and to renumber subsequent subsections accordingly. New Subsection L. shall read as follows:

L. ENHANCED CLEARANCE CHECK:
A search of confidential databases or registries in states or jurisdictions other than the state of Idaho in which the licensee or applicant resided during the five (5) years preceding his application or renewal of a license.

Section 2. That Boise City Code Title 5, Chapter 33, Section 04, Subsection A.5.b. shall be, and hereby is, amended to read as follows:

- b. The required fee, pursuant to the City Clerk’s License Fee Schedule. Applicants and licensees also are responsible for any additional costs incurred by the City Clerk’s Office for enhanced clearance checks. The City Clerk’s Office shall collect, at the time of application, a non-refundable license fee in an amount established by the Boise City Council and listed on the most current City Clerk License Fee Schedule and the amount of any additional costs incurred for enhanced clearance checks.

Section 3. That Boise City Code Title 5, Chapter 33, Section 04, Subsection A.5.d. shall be, and hereby is, amended to read as follows:

- d. Copies of certificates of attendance, training logs, or college transcripts showing completion of the number of training hours required by § 5-33-~~1011~~ shall be submitted with the application for license renewal for all continuing education required during the license term.

Section 4. That Boise City Code Title 5, Chapter 33, Section 04, Subsection A.5.e. shall be, and hereby is, amended to read as follows:

- e. If there has been any lapse of licensure for any reason within the preceding two (2) years prior to reinstatement, the person must meet all requirements for licensure, including all training requirements. Copies of certificates of attendance, training logs, or college transcripts showing completion of the number of training hours required by § 5-33-~~1011~~ shall be required for the entire period of licensure and lapse. Example - If a licensed child care worker’s license expired in 2012, and the worker wanted to reapply in 2014, they must complete all training requirements for 2013 and 2014 prior to being eligible for licensure in 2014.

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Section 5. That Boise City Code Title 5, Chapter 33, Section 04, Subsection B.4. shall be, and hereby is, amended to read as follows:

4. The City Clerk shall collect, at the time of application, a non-refundable license fee in an amount established by the Boise City Council and listed on the most current City Clerk License Fee Schedule, and the amount of any additional costs incurred for enhanced clearance checks.

Section 6. That Boise City Code Title 5, Chapter 33, Section 04, Subsection B.5.b. shall be, and hereby is, amended to read as follows:

- b. The required fee, pursuant to the City Clerk's License Fee Schedule and the amount of any additional costs incurred for enhanced clearance checks.

Section 7. That Boise City Code Title 5, Chapter 33, Section 04, Subsection B.5.d. shall be, and hereby is, amended to read as follows:

- d. Copies of certificates of attendance, training logs, or college transcripts showing completion of the number of training hours required by § 5-33-~~1011~~ shall be submitted with the application for license renewal for all continuing education required during the license term.

Section 8. That Boise City Code Title 5, Chapter 33, Section 04, Subsection B.5.e. shall be, and hereby is, amended to read as follows:

- e. If there has been any lapse of licensure for any reason within the preceding two (2) years prior to reinstatement, the person must meet all requirements for licensure, including all training requirements. Copies of certificates of attendance, training logs, or college transcripts showing completion of the number of training hours required by § 5-33-~~1011~~ shall be required for the entire period of licensure and lapse. Example - If a licensed child care worker's license expired in 2012, and the worker wanted to reapply in 2014, they must complete all training requirements for 2013 and 2014 prior to being eligible for licensure in 2014.

Section 9. That Boise City Code Title 5, Chapter 33, Section 04, Subsection C.2. shall be, and hereby is, amended to read as follows:

2. Every application containing materially false, untrue, or misleading information in connection with the criminal history and background check or enhanced clearance check shall be unconditionally denied, be returned to the applicant without refund or consideration, and may result in criminal charges ~~or~~ and penalties as prescribed by law.

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Section 10. That Boise City Code Title 5, Chapter 33, Section 05 shall be, and hereby is, amended to read as follows:

Section 5-33-05 INVESTIGATION AND INSPECTION UPON APPLICATION FOR LICENSING

- A. Upon the receipt of an application for a license, the Licensing Officer, or a person designated by the City Clerk shall conduct an investigation to determine whether the standards established by §§ 5-33-04 through 5-33-~~11~~12 are met.
- B. The Licensing Officer shall conduct an investigation on any resident in a child care facility who is thirteen (13) years of age or older consistent with this Chapter and Boise City Code §§ 5-33-04(D), 5-33-04(E), and 5-33-11 Title 5, Chapter 02.
- C. The Licensing Officer shall obtain from the applicant a criminal history check on each of the owners, officers, child care workers, directors, and employees of a child care facility who have direct contact with children, and on all other individuals thirteen (13) years of age or older who have unsupervised direct contact with children or are regularly on the premises of a child care facility. The criminal history check consistent with §§ 5-33-04(D)05, 5-33-04(E), and 5-33-~~11~~12 shall include the following for all persons subject to the provisions of this Section who are eighteen (18) years of age or older:
1. Statewide Criminal Identification Bureau;
 2. Federal Bureau of Investigation (FBI) criminal history;
 3. National Crime Information Center;
 4. ~~State of Idaho~~ Sex Offender Registry in the state where the applicant or licensee resides and each state where he resided during the five (5) years preceding his application or renewal of a license; and
 5. ~~Statewide~~ Child Abuse Registry in the state where the applicant or licensee resides and each state where he resided during the five (5) years preceding his application or renewal of a license.
- D. Prior to issuing or renewing a child care facility license, the City Clerk shall conduct an inspection of the premises at which the applicant will operate the child care facility, to ensure that the premises are in compliance with the requirements of this Chapter.
- E. Any agency, the employer, or the City Clerk's Office, at its discretion, may require an individual to complete a new criminal history and background check or enhanced clearance check at any time.

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Section 11. That Boise City Code Title 5, Chapter 33, Section 06, Subsection B. shall be, and hereby is, amended to read as follows:

- B. Every licensee shall continue to have and maintain all of the qualifications and none of the disqualifications provided in this Chapter throughout the license period or, in addition to the criminal penalties prescribed therefor, the Licensing Officer shall suspend or revoke all licenses issued pursuant to this Chapter that are held by the licensee. The procedures for suspension and revocation, including the right of appeal are as set forth in §§ ~~5-33-14, 5-33-15~~ 5-33-16 and Title 5, Chapter 2, Boise City Code.

Section 12. That Boise City Code Title 5, Chapter 33, Section 07 shall be, and hereby is, amended to add a new Subsection C., and to renumber subsequent subsections accordingly. New Subsection C. shall read as follows:

C. Criminal History and Background Check Records.

Every child care facility owner shall maintain a copy of the printed, signed and notarized childcare license for all individuals required to obtain a criminal history and background check or enhanced clearance check. This copy must be readily available for inspection to verify compliance with the criminal history and background check clearance requirement and enhanced clearance check. An employer who chooses to use a criminal history and background check or enhanced clearance check obtained for a previous employer must comply with all criminal history and background check requirements as set forth in Title 5, Chapter 2 of the Boise City Code and this Chapter.

Section 13. That Boise City Code Title 5, Chapter 33, Section 12, Subsection A.1. shall be, and hereby is, amended to read as follows:

1. Each applicant seeking licensure for a child care facility must submit evidence to the City Clerk that the following individuals have successfully completed a criminal history and background check as set forth in this Chapter and in Boise City Code Title 5, Chapter 02 § ~~5-33-04(D)~~ for every:

Section 14. That Boise City Code Title 5, Chapter 33, Section 12, Subsection A.2. shall be, and hereby is, amended to add a new subsection d. and subsection e., to read as follows:

- d. Shall not have pleaded guilty to, been convicted of, regardless of the form of judgment, or received a withheld judgment within the five (5) years preceding the date of application of any crime set forth in Idaho Code § 39-1113(3) and Idaho Administrative Procedures Act 16.05.06.210.02 and as may be amended from time to time.

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- e. Is currently listed in any state or federal child abuse or neglect registry or database.

Section 15. That Boise City Code Title 5, Chapter 33, Section 12, Subsection A.3. shall be, and hereby is, amended to read as follows:

3. No person who pleads guilty to, has been found guilty of, or has received a withheld judgment for any offense involving neglect or any physical injury to, or other abuse of a child, including the offenses set forth in Idaho Code § 39-1113(2) and Idaho Administrative Procedures Act 16.05.06.210.02, as each may be amended from time to time, or a similar provision in another jurisdiction, shall be eligible for a license under the provisions of this Chapter, including, but not limited to:

Section 16. That Boise City Code Title 5, Chapter 33, Section 13 shall be, and hereby is, amended to read as follows:

The Licensing Officer or health inspector may, upon presentation of proper identification, enter immediately and inspect any child care facility at any time during the business hours of such facility, with or without advance notice. This inspection may include all portions of the premises or facility whether or not used regularly for child care purposes or is child accessible. The Licensing Officer shall have the absolute right to enter the premises of any child care facility as often as necessary to secure compliance with, or to prevent a violation of, this Chapter. The failure of a licensee or other person to grant access to the Licensing Officer shall be express grounds for revocation of all Boise City licenses held by the licensee, in addition to any criminal penalties that may be assessed. Violation of this provision is a criminal offense pursuant to Boise City Code § 5-33-17 and punishable as stated in Boise City Code § 5-33-~~19~~18.

Section 17. That Boise City Code Title 5, Chapter 33, Section 14 shall be, and hereby is, amended to read as follows:

Any parent or legal guardian shall have the absolute right to enter the premises of any child care facility during the period of care for the parents' or guardians' child or children. Any failure or refusal to allow entry to a parent or guardian may be grounds for revocation of the license pursuant to §§ ~~5-02-20~~ and 5-02 5-33-15, Boise City Code. If a parent or guardian has been granted limited visitation or has been denied visitation rights by a court of competent jurisdiction, this Section shall not confer a right to visitation. Violation of this provision shall be a criminal offense pursuant to Boise City Code § 5-33-17 and punishable as stated in Boise City Code § 5-33-~~19~~18.

Section 18. That this Ordinance shall be in full force and effect from and after its passage, approval, and publication.