

Jurisdiction Survey HB21-1222

Conducted by Shaunna Mozingo

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Question: How are other jurisdictions going to handle HB-21-1222? Does State House Bill 21-1222 supersede section R101.2 Exception 5 2021 IRC limiting day care to 5 persons being cared for in single family residence?

Responses:

1. Since the act says the following, and our authority to be a jurisdiction comes from the State, I believe the State must be followed first, and then local adoptions. So I would say the State law overrides the local building code.

LOCAL GOVERNING AUTHORITIES SHALL NOT IMPOSE ANY ADDITIONAL REGULATIONS GOVERNING FAMILY CHILD CARE HOMES THAT DO NOT ALSO APPLY TO OTHER RESIDENTIAL PROPERTIES, PROVIDED THAT THE FOREGOING

2. We are currently reviewing this with Planning, Fire and Legal staff, for appropriate changes to our codes to comply with state law.
3. We had upper management and Attorney Office review this and it has been determined that this new legislation will supersede the code sections in IRC
4. We are in the process of amending our Land Development Code to allow childcare as a Use By Right in Residential Zones. It has not gone through the hearings yet. The Planning and Zoning Commission thought process was that it would be up to the state to govern that the residents are abiding by the maximum allowed. The Town does still require a business license for such daycares and would require that all proper certificates be included with the business license application.
5. Because we knew this was in the works and our commissioners wanted to lower barriers to providing family daycare, with our 2021 code adoptions, we
 - (1) adopted IRC Appendix M "Home Day Care - R-3 Occupancy"
 - (2) amended IRC Section R101.2 Exceptions ("The following shall be permitted to constructed in accordance with this code") by combining the somewhat redundant #s 3 & 4 into #3 to read: "A care facility with five or fewer persons receiving custodial or medical care with a dwelling unit, where provided with an automatic sprinkler system complying with Section P2904 or International building Code Section 903.2.8," adding two other local exceptions numbered 4 and 5, then adding/altering #6 (the old #5) to read: "Family childcare homes complying with Appendix M and Colorado state licensing requirements."
 - (3) amended IBC Section 310.4.1 ("Care facilities within a dwelling") by adding one sentence at the end to read "Day care facilities for children within a dwelling unit shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code."

In essence, we took out the 5 child limit to keep daycares under the IRC so that our code is aligned with state law.

In my opinion, HB21-1222 does override local building code rules that it may be in conflict with.

HB21-1222 SECTION 2 (b) amending CRS 26-6-104.5.

LOCAL GOVERNING AUTHORITIES SHALL TREAT FAMILY CHILD CARE HOMES AS RESIDENTIAL PROPERTY USE IN THE APPLICATION OF LOCAL REGULATIONS, INCLUDING ZONING, LAND USE DEVELOPMENT, FIRE AND LIFE SAFETY, SANITATION, AND BUILDING CODES.