

**PINELLAS COUNTY LICENSE BOARD
IN AND FOR PINELLAS COUNTY, FLORIDA**

In Re: Kids Park Oldsmar,

No: 19-001(V)

Petitioner.

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ORDER ON PETITION FOR VARIANCE

Petitioner, Kids Park Oldsmar, has requested a variance of section VI.B.4 of the Licensing Regulations Governing Pinellas County Children's Centers/ 3.8.4(A) of the Child Care Facility Handbook, which is incorporated by reference in Rule 65-C-22.001(6), Florida Administrative Code. The applicable portion requires that during the children's center licensure year, fire drills utilizing the approved alarm system must be conducted at various times when children are in care. Petitioner requests a variance from the pertinent part above so that for fire drills Petitioner be permitted to use a recording of the same alarm sound that would be heard in the event on an actual alarm as the fire alarm approved by the Fire Marshall does not have a pull mechanism.

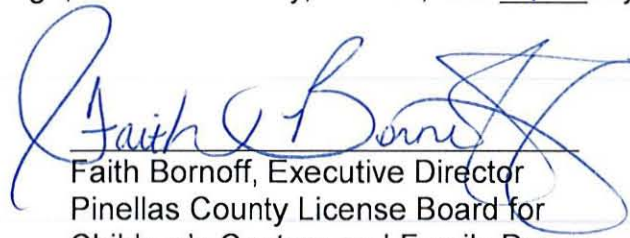
Section 120.542, Florida Statutes, permits a person who is adversely affected by an agency rule to request a waiver or variance of the application of the rule. PCLB is granted discretion to grant waivers and variances consistent with applicable law. PCLB cannot waive statutory requirements and must consider whether a requested waiver or variance from a particular rule will permit the purpose of the underlying statute to be fulfilled.

Section 120.542, F.S. requires Petitioner to demonstrate a substantial hardship or violation of principles of fairness that would justify a waiver or

variance for the Petitioner. "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waive. "Principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. Petitioner has demonstrated that adherence to the applicable rule and its requirements creates a hardship or violates principles of fairness as its system does not have a pull mechanism to trigger the alarm for the drill and would be an economic hardship to switch out the approved system. By Petitioner using a recording of the alarm system sound during the monthly fire drills, the purpose of the underlying statute and rule will be met by the granting of this variance.

Accordingly, Petitioner's request for variance of the Licensing Regulations Governing Pinellas County Children's Centers/ 3.8.4(A) of the Child Care Facility Handbook, Rule 65-C-22.001(6), Florida Administrative Code, is **GRANTED**; Petitioner is permitted to use a recording of the actual alarm system sound during monthly fire drills. This variance will remain in effect as long as there is no lapse in license or a change of ownership.

DONE AND ORDERED at Largo, Pinellas County, Florida, this 1st day
of July 2019.


Faith Bornoff, Executive Director
Pinellas County License Board for
Children's Centers and Family Day
Care Homes

RIGHT TO ADMINISTRATIVE PROCEEDING

IF YOU BELIEVE THIS DECISION IS IN ERROR, YOU MAY REQUEST AN ADMINISTRATIVE HEARING IN ACCORDANCE WITH THE ENCLOSED "NOTIFICATION OF RIGHTS UNDER CHAPTER 120, FLORIDA STATUTES."

Copies furnished to the following via U.S. Mail on date of Rendition of this Order.

Larry Bays
Kids Park Oldsmar
3130 Tampa Road
Suite #3
Oldsmar, FL 34677


Faith Bornoff, Executive Director

NOTIFICATION OF RIGHTS UNDER CHAPTER 120, FLORIDA STATUTES

IF YOU BELIEVE PCLB'S DECISION IS IN ERROR, YOU MAY REQUEST AN ADMINISTRATIVE HEARING UNDER SECTIONS 120.569 AND 120.57, FLORIDA STATUTES, TO CONTEST THE DECISION. YOUR REQUEST FOR AN ADMINISTRATIVE HEARING MUST BE RECEIVED BY PCLB BY 5:00 P.M., NO LATER THAN 21 CALENDAR DAYS AFTER YOU RECEIVED NOTICE OF THE DEPARTMENT'S DECISION.

You must submit your request for an administrative hearing to PCLB at the following address:

PCLB
8751 Ulmerton Road
Suite 2000
Largo, FL 33771

IF YOUR REQUEST FOR AN ADMINISTRATIVE HEARING IS NOT RECEIVED BY PCLB BY THE ABOVE DEADLINE, YOU WILL HAVE WAIVED YOUR RIGHTS TO A HEARING AND THE DEPARTMENT'S PROPOSED ACTION WILL BE FINAL.

If you disagree with the facts stated in PCLB's decision, you may request a formal administrative hearing under Section 120.57(1), Florida Statutes. At a formal hearing, you may present evidence and arguments on all issues involve, and question the witnesses called by PCLB.

If you do not disagree with the facts stated in the notice, you may request an informal administrative hearing under Section 120.57(2), Florida Statutes. At an informal hearing, you may present your argument or a written statement for consideration by PCLB.

Your request for an administrative hearing must meet the requirements of Rule 28-106.201(2) or Rule 28-106.301(2), Florida Administrative Code, depending on whether you request a formal hearing or an informal hearing. In either event, your request for an administrative hearing must:

1. Include a copy of the decision received from PCLB;
2. Be prepared legibly on 8½ by 11 inch white paper; and
3. Include all of the following items:
 - a. PCLB's file or identification number, if known;

- b. Your name, address, email address (if any) and telephone number and the name, address, email address (if any) and telephone number of your representative, if any;
- c. An explanation of how your rights or interest will be affected by the action described in the notice of PCLB's decision;
- d. A statement of when and how you received notice of PCLB's decision;
- e. A statement of all facts in the notice of PCLB's decision with which you disagree. If you do not disagree with any of the facts stated in the notice, you must say so;
- f. A statement of the facts you believe justify a change in PCLB's decision;
- g. A statement of the specific rules or statutes you believe require reversal or modification of PCLB's proposed action;
- h. A statement explaining how the facts you have alleged above relate to the specific rules or statutes you have identified above; and
- i. A statement of the relief you want, including precisely the action you want PCLB to take.

Section 120.569, Florida Statutes, and rule 28-106.201(4), Florida Administrative Code, require the Department to dismiss your request if it is not in substantial compliance with the requirements above.

Mediation as described in Section 120.573, Florida Statutes, is not available. However, other forms of mediation or informal dispute resolution may be available after a timely request for an administrative hearing has been received, if agreed to by all parties; and on such terms as agreed to by all parties. The right to an administrative proceeding is not affected when mediation or informal dispute resolution does not result in a settlement.