



Memorandum:

To: City of Florence Planning Commission
From: Clare Kurth, Assistant Planner
Meeting Date: January 9, 2024
Subject: Childcare Centers Location: HB 3109

Introduction

The City of Florence 2023 – 2025 Biennium [Work Plan](#) adopted by the City of Florence City Council March of 2023 includes an objective to update land use codes as needed as a result of State legislative requirements (pg. 20). This objective includes a task related to House Bill 3109 which establishes that child care facilities are permitted in all commercial or industrial zoned areas, except heavy industrial zones. This memo includes a summary of City zoning districts that will require updates for compliance and consistency with HB 3109 and those that may not. There are 25 zoning districts in the city whose criteria can be found in [Title 10](#) of Florence City Code. HB 3109 went into effect January 1, 2022 and amended ORS 215.213, 215.283, 329A.030, 329A.250, 329A.280, and 329.440

League of Oregon Cities Bill Summary 2022 (LOC Summary pg. 10):

HB 3109: Childcare Facility Siting

Effective Date: January 1, 2022

HB 3109 establishes childcare facilities as a permitted use in all commercial or industrial zoned areas, except in areas zoned for heavy industrial use. The bill prohibits local governments from enacting, enforcing, or imposing any land use regulations or fees that prohibit or place conditions on childcare facilities that are more restrictive than those imposed for other uses in the same zone. A local government may impose reasonable conditions upon the establishment or maintenance of a childcare facility in an area zoned for industrial uses, including but not limited to, siting restrictions for properties designated on the Oregon Department of Environmental Quality's statewide list of contaminated properties as having known or suspected releases of hazardous substances. The LOC worked with the bill sponsors on technical amendments to clarify local government implementation. Governor Brown signed HB 3109 into law on July 7, 2021 and the bill goes into effect on January 1, 2022.

FCC 10-2-13: Definitions of Daycare and Day Nurseries:

- Day Nursery An institution, establishment or place in which are commonly received at one time three (3) or more children not of common parentage, under the age of six (6) years, for the purpose of being given board, care or training apart from their parents or guardians for compensation or reward.
- Day Care Daycare use includes day or evening care of two or more children outside of the children's homes, for a fee. Daycare uses also include the daytime care of teenagers or adults who need assistance or supervision.

Zoning District Summary:

Below is a list of 14 Florence City Code (FCC) zoning districts and a brief summary of whether child care is permitted outright, permitted conditionally, or not permitted in each zoning district. Based on HB 3109 a local jurisdiction shall permit childcare centers in all commercial and industrial zones other than heavy industrial uses, which Florence does not have. The section below will be organized into 1. Residential zones, 2. Mixed Use zones, 3. Commercial Zones, and 4. Industrial Zones. Zones listed under numbers 3 and 4 should be the focus as they may require code updates to be in compliance with HB 3109.

1. Residential Zones:

- FCC 10-10: Residential Districts: All residential districts require a condition use permit for child care uses.
- FCC 10-29: Coast Village: permits home occupations that do not require customer roadway traffic.
 - Effectively prohibits in home childcare

2. Mixed Use Zones:

- FCC 10-17: Old Town Districts: Area A prohibits Daycare for adults and children
 - Area B and C allow daycares for children with a conditional use permit
- FCC 10-25: Professional Office / Institutional: Daycare centers and preschools permitted conditionally
- FCC 10-24: Waterfront / Marine: No uses are permitted outright, uses only permitted conditionally

3. Commercial Zones:

- FCC 10-14: Neighborhood Commercial: Day nurseries are a permitted use.
- FCC 10-15: Commercial District: Day nurseries are a permitted use.
- FCC 10-16: Highway District: All uses permitted outright or conditionally in the Commercial District
- FCC 10-27: Mainstreet District: Day nurseries are a permitted use in both Mainstreet Area A and B
- FCC 10-30: North Commercial: Day nurseries are permitted outright with design review.

4. Industrial Zones:

- FCC 10-20: Limited Industrial: Childcare is not listed as either a permitted or conditional use.
- FCC 10-18: Marine District: All uses in this district are only permitted conditionally
- FCC 10-28: Pacific View Business Park: onsite daycare serving employees only is permitted conditionally
- FCC 10-31: Service Industrial: Daycares and day nurseries are not listed as an approved or conditional use.

Analysis of and Considerations:

HB 3109 Section 1(4)(b) states that a “local government may not impose land use regulations, special fees, or conditions on the establishment or maintenance of a child care center in an area zoned for commercial or industrial use that are more restrictive than those imposed for other uses in the same zone.” However, “reasonable conditions” are permitted.

All commercial zoning districts, number 3 above, permit child care facilities outright with the current code. While additional updates may be beneficial, the use is permitted outright and are not regulated more than other uses in the same district. Commercial zoning districts appear to be in compliance and are a low priority for code updates.

The four chapters listed under number 4, “Industrial Uses”, will require code updates to bring them into compliance with HB 3109 and remove language that makes the childcare use more restrictive than other uses in the district (move them from conditionally approved to permitted outright), with the possible exception of the

Marine District. The Marine district only allows uses through a conditional use permit, but may need to be updated to include childcare as a conditional use permitted.

Residential zone updates are not included on the Work Plan. The focus of this bill and the 2023-2025 Biennial Work Plan is removing land use restriction on commercial and industrial zones. Section 1[(2)](c) states land use regulations for a family child care home may not be more restrictive than other residential dwellings in the same zone. All residential zoning districts, except Coast Village, permit child care facilities conditionally. Coast Village prohibits all home occupation that include roadway traffic. This effectively prohibits childcare facilities in the Coast Village zoning district. This item may require additional research and work when appropriate and included on the workplan.

Summary:

HB 3109 went into effect January 1, 2022 and prohibits local jurisdiction from enforcing regulation on childcare facilities in most zoning districts that are more restrictive than other permitted uses in the same zoning district. Updating codes for the City's commercial and industrial zones is a land use and planning item. Commercial zoning districts appear to be largely in compliance with current code, but code updates will be required to bring the City's industrial zoning districts into compliance with HB 3109. At the work session the Planning Commission will discuss this item and any possible reasonable conditions that may be imposed on childcare facilities or properties abutting childcare facilities in industrial zoning districts.

Attachment:

- [HB 3109](#)

Enrolled
House Bill 3109

Sponsored by Representatives ZIKA, MARSH; Representatives BYNUM, GRAYBER, KROPF, LEIF, MORGAN, NOBLE, REYNOLDS, SMITH DB

CHAPTER

AN ACT

Relating to child care facilities; amending ORS 215.213, 215.283, 329A.030, 329A.250, 329A.280 and 329A.440.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 329A.440 is amended to read:

329A.440. (1) As used in this section:

(a) "Child care center" means a child care facility, other than a family child care home, that is certified under ORS 329A.280 (3).

(b) "Family child care home" means a child care facility in a dwelling that is caring for not more than 16 children and is certified under ORS 329A.280 (2) or is registered under ORS 329A.330.

(c) "Land use regulation" and "local government" have the meanings given those terms in ORS 197.015.

[(1)] (2)(a) [A registered or certified] A family child care home [shall be] is considered a residential use of property for zoning purposes. [The registered or certified family child care home shall be] A family child care home is a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single-family dwellings.

(b) [A city or county] A local government may not enact or enforce [zoning ordinances] a land use regulation prohibiting the use of a residential dwelling, located in an area zoned for residential or commercial use, as a [registered or certified] family child care home.

[(2)] (c) [A city or county may impose zoning] A local government may not impose land use regulations, special fees or conditions on the establishment [and] or maintenance of a [registered or certified] family child care home [in an area zoned for residential or commercial use if the conditions are no] more restrictive than [conditions] those imposed on other residential dwellings in the same zone.

(3) Notwithstanding subsection (2)(c) of this section, a county may[:]

[(a) Allow a registered or certified family child care home in an existing dwelling in any area zoned for farm use, including an exclusive farm use zone established under ORS 215.203;]

[(b) impose reasonable conditions on the establishment of a [registered or certified] family child care home in an area zoned for farm use.]; and]

[(c) Allow a division of land for a registered or certified family child care home in an exclusive farm use zone only as provided in ORS 215.263 (9).]

[(4) This section applies only to a registered or certified family child care home where child care is offered in the home of the provider to not more than 16 children, including children of the provider, regardless of full-time or part-time status.]

(4)(a) A child care center is a permitted use in all areas zoned for commercial or industrial use, except areas specifically designated by the local government for heavy industrial use.

(b) A local government may not impose land use regulations, special fees or conditions on the establishment or maintenance of a child care center in an area zoned for commercial or industrial use that are more restrictive than those imposed for other uses in the same zone.

(5) Notwithstanding subsection (4) of this section, a local government may impose reasonable conditions upon the establishment or maintenance of a child care center in an area zoned for industrial uses.

(6) As used in this section, “reasonable conditions” includes, but is not limited to, siting restrictions for properties designated on the Department of Environmental Quality’s statewide list of contaminated properties as having known or suspected releases of hazardous substances.

SECTION 2. ORS 329A.280 is amended to read:

329A.280. (1) A person may not operate a child care facility, except a facility subject to the registration requirements of ORS 329A.330, without a certification for the facility from the Office of Child Care.

(2) The Early Learning Council shall adopt rules for the certification of a family child care home caring for not more than 16 children. *[The rules shall be specifically]* **Rules may be adopted specifically** for *[the regulation of]* certified child care facilities operated in *[a facility constructed as]* a single-family dwelling **or other dwelling**. Notwithstanding fire and other safety regulations, the rules that the council adopts for certified child care facilities shall set standards that can be met without significant architectural modification *[of a typical home]*. In adopting the rules, the council may consider and set limits according to factors including the age of children in care, the ambulatory ability of children in care, the number of the provider’s children present, the length of time a particular child is continuously cared for and the total amount of time a particular child is cared for within a given unit of time.

(3) In addition to rules adopted for and applied to a certified family child care home providing child care for not more than 16 children, the council shall adopt and apply separate rules appropriate for any child care facility that is a child care center.

(4) Any person seeking to operate a child care facility may apply for a certification for the facility from the Office of Child Care and receive a certification upon meeting certification requirements.

(5) A facility described in ORS 329A.250 (5)(d) may, but is not required to, apply for a certification under this section and receive a certification upon meeting certification requirements.

NOTE: Sections 3 through 6 were deleted by amendment. Subsequent sections were not renumbered.

SECTION 7. ORS 329A.250 is amended to read:

329A.250. As used in ORS 329A.030 and 329A.250 to 329A.450, unless the context requires otherwise:

(1) “Babysitter” means a person who goes into the home of a child to give care during the temporary absence of the parent or legal guardian or custodian.

(2) “Certification” means the certification that is issued under ORS 329A.280 by the Office of Child Care to a family child care home, child care center or other child care facility.

(3) “Child” means a child under 13 years of age or a child under 18 years of age who has special needs or disabilities and requires a level of care that is above normal for the child’s age.

(4)(a) *[Subject to ORS 329A.440,]* “Child care” means the care, supervision and guidance on a regular basis of a child, unaccompanied by a parent, guardian or custodian, provided to a child

during a part of the 24 hours of the day, in a place other than the child's home, with or without compensation.

(b) "Child care" does not include care provided:

[(a)] (A) In the home of the child;

[(b)] (B) By the child's parent, guardian, or person acting in loco parentis;

[(c)] (C) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;

[(d)] (D) On an occasional basis by a person not ordinarily engaged in providing child care;

[(e)] (E) By providers of medical services;

[(f)] (F) By a babysitter;

[(g)] (G) By a person who cares for children from only one family other than the person's own family;

[(h)] (H) By a person who cares for no more than three children other than the person's own children; or

[(i)] (I) By a person who is a member of the child's extended family, as determined by the office on a case-by-case basis.

(5) "Child care facility" means any facility that provides child care to children, including a day nursery, nursery school, child care center, certified or registered family child care home or similar unit operating under any name, but not including any:

(a) Preschool recorded program.

(b) Facility providing care for school-age children that is primarily a single enrichment activity, for eight hours or less a week.

(c) Facility providing care that is primarily group athletic or social activities sponsored by or under the supervision of an organized club or hobby group.

(d) Facility operated by:

(A) A school district as defined in ORS 332.002;

(B) A political subdivision of this state; or

(C) A governmental agency.

(e) Residential facility licensed under ORS 443.400 to 443.455.

(f) Babysitters.

(g) Facility operated as a parent cooperative for no more than four hours a day.

(h) Facility providing care while the child's parent remains on the premises and is engaged in an activity offered by the facility or in other nonwork activity.

(i) Facility operated as a school-age recorded program.

(6) "Family" has the meaning given that term in ORS 329.145.

(7) "Occasional" means that care is provided for no more than 70 days in any calendar year.

(8) "Parent cooperative" means a child care program in which:

(a) Care is provided by parents on a rotating basis;

(b) Membership in the cooperative includes parents;

(c) There are written policies and procedures; and

(d) A board of directors that includes parents of the children cared for by the cooperative controls the policies and procedures of the program.

(9) "Preschool recorded program" means a facility providing care for preschool children that is primarily educational for four hours or less per day and where no child is present at the facility for more than four hours per day.

(10) "Record" means the record that is issued under ORS 329A.255 to a preschool recorded program or under ORS 329A.257 to a school-age recorded program.

(11) "Registration" means the registration that is issued under ORS 329A.330 by the Office of Child Care to a family child care home where care is provided in the family living quarters of the provider's home.

(12) "School age" means of an age eligible to be enrolled in kindergarten or above on or before the first day of the current school year.

(13) "School-age recorded program" means a program for school-age children:

(a) That is not operated by a school district as defined in ORS 332.002;

(b) That is not required to be certified under ORS 329A.280 or registered under ORS 329A.330;
and

(c) In which youth development activities are provided to children during hours that school is not in session and does not take the place of a parent's care.

(14) "Youth development activities" means care, supervision or guidance that is intended for enrichment, including but not limited to teaching skills or proficiency in physical, social or educational activities such as tutoring, music lessons, social activities, sports and recreational activities.

SECTION 8. ORS 329A.030 is amended to read:

329A.030. (1) The Office of Child Care shall establish a Central Background Registry and may maintain information in the registry through electronic records systems.

(2)(a) A subject individual shall apply to and must be enrolled in the Central Background Registry as part of the individual's application to operate a program or serve in a position described in subsection (10) of this section.

(b) An individual who has been the subject of a founded or substantiated report of child abuse shall apply to and be enrolled in the Central Background Registry prior to providing any of the types of care identified in ORS 329A.250 [(4)(a), (g) or (h)] **(4)(b)(A), (G) or (H)** if:

(A) The child abuse occurred on or after January 1, 2017, and involved a child who died or suffered serious physical injury, as defined in ORS 161.015; or

(B) The child abuse occurred on or after September 1, 2019, and involved any child for whom the individual was providing child care, as defined in ORS 329A.250 (4), or care identified in ORS 329A.250 [(4)(a), (c), (f), (g), (h) or (i)] **(4)(b)(A), (C), (F), (G), (H) or (I)**.

(c) Notwithstanding paragraph (a) of this subsection, an individual described in paragraph (b)(B) of this subsection is not required to enroll in the Central Background Registry if more than seven years has elapsed since the date of the child abuse determination.

(3)(a) Upon receiving an application for enrollment in the Central Background Registry, the office shall complete:

(A) A criminal records check under ORS 181A.195;

(B) A criminal records check of other registries or databases in accordance with rules adopted by the Early Learning Council;

(C) A child abuse and neglect records check in accordance with rules adopted by the council;
and

(D) A foster care certification check and an adult protective services check in accordance with rules adopted by the council.

(b) In addition to the information that the office is required to check under paragraph (a) of this subsection, the office may consider any other information obtained by the office that the office, by rule, determines is relevant to enrollment in the Central Background Registry.

(4)(a) The office shall enroll the individual in the Central Background Registry if the individual:

(A) Is determined to have no criminal, child abuse and neglect, negative adult protective services or negative foster home certification history, or to have dealt with the issues and provided adequate evidence of suitability for the registry;

(B) Has paid the applicable fee established pursuant to ORS 329A.275; and

(C) Has complied with the rules of the Early Learning Council adopted pursuant to this section.

(b) Notwithstanding subsection (3) of this section and paragraph (a) of this subsection, the office may enroll an individual in the registry if the Department of Human Services has completed a background check on the individual and the individual has received approval from the department for purposes of providing child care.

(5)(a) Notwithstanding subsections (3) and (4) of this section, the office may not enroll an individual in the Central Background Registry if:

(A) The individual has a disqualifying condition as defined in rules adopted by the council; or

(B) The individual is an exempt prohibited individual, as provided by ORS 329A.252.

(b) If an individual prohibited from enrolling in the registry as provided by this subsection is enrolled in the registry, the office shall remove the individual from the registry.

(6)(a) The office may conditionally enroll an individual in the Central Background Registry pending the results of a nationwide criminal records check through the Federal Bureau of Investigation if the individual has met other requirements of the office for enrollment in the registry.

(b) The office may enroll an individual in the registry subject to limitations identified in rules adopted by the council.

(7) An enrollment in the Central Background Registry may be renewed upon application to the office, payment of the fee established pursuant to ORS 329A.275 and compliance with rules adopted by the Early Learning Council pursuant to this section. However, an individual who is determined to be ineligible for enrollment in the registry after the date of initial enrollment shall be removed or suspended from the registry by the office.

(8)(a) A child care facility shall not hire or employ an individual if the individual is not enrolled in the Central Background Registry.

(b) Notwithstanding paragraph (a) of this subsection, a child care facility may employ on a probationary basis an individual who is conditionally enrolled in the Central Background Registry.

(9) The Early Learning Council may adopt any rules necessary to carry out the purposes of this section, including but not limited to rules regarding expiration and renewal periods and limitations related to the subject individual's enrollment in the Central Background Registry.

(10) For purposes of this section, "subject individual" means a subject individual as defined by the Early Learning Council by rule, an individual subject to subsection (2)(b) of this section or a person who applies to be:

(a) The operator or an employee of a child care or treatment program;

(b) The operator or an employee of an Oregon prekindergarten program under ORS 329.170 to 329.200;

(c) The operator or an employee of a federal Head Start program regulated by the United States Department of Health and Human Services;

(d) An individual in a child care facility who may have unsupervised contact with children as identified by the office;

(e) A contractor or an employee of the contractor who provides early childhood special education or early intervention services pursuant to ORS 343.455 to 343.534;

(f) A child care provider who is required to be enrolled in the Central Background Registry by any state agency;

(g) A contractor, employee or volunteer of a metropolitan service district organized under ORS chapter 268 who may have unsupervised contact with children and who is required to be enrolled in the Central Background Registry by the metropolitan service district;

(h) A provider of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056 who is providing respite services as a volunteer with a private agency or organization that facilitates the provision of such respite services; or

(i) The operator or an employee of an early learning program as defined in rules adopted by the council.

(11)(a) Information provided to a metropolitan service district organized under ORS chapter 268 about the enrollment status of the persons described in subsection (10)(g) of this section shall be subject to a reciprocal agreement with the metropolitan service district. The agreement must provide for the recovery of administrative, including direct and indirect, costs incurred by the office from participation in the agreement. Any moneys collected under this paragraph shall be deposited in the Child Care Fund established under ORS 329A.010.

(b) Information provided to a private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056 about the enrollment status of the persons described in subsection (10)(h) of this section shall be subject to an agreement with the private agency or organization. The agreement must provide for the recovery of administrative, including direct and indirect, costs incurred by the

office from participation in the agreement. Any moneys collected under this paragraph shall be deposited in the Child Care Fund established under ORS 329A.010.

(c) Information provided to a private agency or organization about the enrollment status of the persons described in subsection (10)(i) of this section shall be subject to an agreement with the private agency or organization. The agreement must provide for the recovery of administrative, including direct and indirect, costs incurred by the office from participation in the agreement. Any moneys collected under this paragraph shall be deposited in the Child Care Fund established under ORS 329A.010.

SECTION 9. ORS 215.213 is amended to read:

215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use:

(a) Churches and cemeteries in conjunction with churches.

(b) The propagation or harvesting of a forest product.

(c) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in:

(A) ORS 215.275; or

(B) If the utility facility is an associated transmission line, as defined in ORS 215.274 and 469.300.

(d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(e) Nonresidential buildings customarily provided in conjunction with farm use.

(f) Subject to ORS 215.279, primary or accessory dwellings customarily provided in conjunction with farm use. For a primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm operation and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.

(g) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(h) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(i) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under paragraph (q) of this subsection.

(j) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(k) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(L) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(m) Minor betterment of existing public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(n) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(o) Creation, restoration or enhancement of wetlands.

(p) A winery, as described in ORS 215.452 or 215.453.

(q) Alteration, restoration or replacement of a lawfully established dwelling, as described in ORS 215.291.

(r) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(s) An armed forces reserve center, if the center is within one-half mile of a community college. For purposes of this paragraph, "armed forces reserve center" includes an armory or National Guard support facility.

(t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(u) A facility for the processing of farm products as described in ORS 215.255.

(v) Fire service facilities providing rural fire protection services.

(w) Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.

(x) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(y) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids, or the onsite treatment of septage prior to the land application of biosolids, for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter. For the purposes of this paragraph, onsite treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.

(z) Dog training classes or testing trials, which may be conducted outdoors or in farm buildings in existence on January 1, 2019, when:

(A) The number of dogs participating in training does not exceed 10 dogs per training class and the number of training classes to be held on-site does not exceed six per day; and

(B) The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site is limited to four or fewer trials per calendar year.

(aa) A cider business, as described in ORS 215.451.

(bb) A farm brewery, as described in ORS 215.449.

(2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use subject to ORS 215.296:

(a) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(A) Consists of 20 or more acres; and

(B) Is not smaller than the average farm or woodlot in the county producing at least \$2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

(b) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than required under paragraph (a) of this subsection, if the lot or parcel:

(A) Has produced at least \$20,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least \$20,000 in annual gross farm income; or

(B) Is a woodlot capable of producing an average over the growth cycle of \$20,000 in gross annual income.

(c) Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(K) or 215.255.

(d) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, not otherwise permitted under subsection (1)(g) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community, hunting and fishing preserves, public and private parks, playgrounds and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation.

Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). A public park or campground may be established as provided under ORS 195.120. As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(f) Golf courses on land determined not to be high-value farmland as defined in ORS 195.300.

(g) Commercial utility facilities for the purpose of generating power for public use by sale. If the area zoned for exclusive farm use is high-value farmland, a photovoltaic solar power generation facility may be established as a commercial utility facility as provided in ORS 215.447. A renewable energy facility as defined in ORS 215.446 may be established as a commercial utility facility.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(j) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(k)(A) Commercial dog boarding kennels; or

(B) Dog training classes or testing trials that cannot be established under subsection (1)(z) of this section.

(L) Residential homes as defined in ORS 197.660, in existing dwellings.

(m) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(n) Home occupations as provided in ORS 215.448.

(o) Transmission towers over 200 feet in height.

(p) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(q) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(r) Improvement of public road and highway related facilities such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(s) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(t) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(u) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of the metropolitan urban growth boundary. As used in this paragraph:

(A) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

(B) "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

(v) Operations for the extraction and bottling of water.

(w) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(x) A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

(y) Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.

(z) Equine and equine-affiliated therapeutic and counseling activities, provided:

(A) The activities are conducted in existing buildings that were lawfully constructed on the property before January 1, 2019, or in new buildings that are accessory, incidental and subordinate to the farm use on the tract; and

(B) All individuals conducting therapeutic or counseling activities are acting within the proper scope of any licenses required by the state.

(aa) Child care facilities, preschool recorded programs or school-age recorded programs that are:

(A) Authorized under ORS 329A.250 to 329A.450;

(B) Primarily for the children of residents and workers of the rural area in which the facility or program is located; and

(C) Colocated with a community center or a public or private school allowed under this subsection.

(3) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), a single-family residential dwelling not provided in conjunction with farm use may be established on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval of the governing body or its designee in any area zoned for exclusive farm use upon written findings showing all of the following:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

(b) The dwelling is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.

(c) Complies with such other conditions as the governing body or its designee considers necessary.

(4) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), one single-family dwelling, not provided in conjunction with farm use, may be established in any area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that is not larger than three acres upon written findings showing:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;

(b) If the lot or parcel is located within the Willamette River Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by local ordinances relating specifically to the Willamette River Greenway, floodplains or geological hazard areas, whichever is applicable; and

(c) The dwelling complies with other conditions considered necessary by the governing body or its designee.

(5) Upon receipt of an application for a permit under subsection (4) of this section, the governing body shall notify:

(a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

(b) Persons who have requested notice of such applications and who have paid a reasonable fee imposed by the county to cover the cost of such notice.

(6) The notice required in subsection (5) of this section shall specify that persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or activities associated with it would force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is received, the governing body or its designee shall approve or disapprove the application. If an objection is received, the governing body shall set the matter for hearing in the manner prescribed in ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of this section.

(7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1, 1948, and July 1, 1983. For the purposes of this section:

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

(B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels or lots and parcels by the same person, spouses or a single partnership or business entity, separately or in tenancy in common.

(b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including but not limited to, lots, parcels or lots and parcels separated only by a public road.

(8) A person who sells or otherwise transfers real property in an exclusive farm use zone may retain a life estate in a dwelling on that property and in a tract of land under and around the dwelling.

(9) No final approval of a nonfarm use under this section shall be given unless any additional taxes imposed upon the change in use have been paid.

(10) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

(11) The following agri-tourism and other commercial events or activities that are related to and supportive of agriculture may be established in any area zoned for exclusive farm use:

(a) A county may authorize a single agri-tourism or other commercial event or activity on a tract in a calendar year by an authorization that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract, if the agri-tourism or other commercial event or activity meets any local standards that apply and:

(A) The agri-tourism or other commercial event or activity is incidental and subordinate to existing farm use on the tract;

(B) The duration of the agri-tourism or other commercial event or activity does not exceed 72 consecutive hours;

(C) The maximum attendance at the agri-tourism or other commercial event or activity does not exceed 500 people;

(D) The maximum number of motor vehicles parked at the site of the agri-tourism or other commercial event or activity does not exceed 250 vehicles;

(E) The agri-tourism or other commercial event or activity complies with ORS 215.296;

(F) The agri-tourism or other commercial event or activity occurs outdoors, in temporary structures, or in existing permitted structures, subject to health and fire and life safety requirements; and

(G) The agri-tourism or other commercial event or activity complies with conditions established for:

(i) Planned hours of operation;

(ii) Access, egress and parking;

(iii) A traffic management plan that identifies the projected number of vehicles and any anticipated use of public roads; and

(iv) Sanitation and solid waste.

(b) In the alternative to paragraphs (a) and (c) of this subsection, a county may authorize, through an expedited, single-event license, a single agri-tourism or other commercial event or activity on a tract in a calendar year by an expedited, single-event license that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. A decision concerning an expedited, single-event license is not a land use decision, as defined in ORS 197.015. To approve an expedited, single-event license, the governing body of a county or its designee must determine that the proposed agri-tourism or other commercial event or activity meets any local standards that apply, and the agri-tourism or other commercial event or activity:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not begin before 6 a.m. or end after 10 p.m.;

(C) May not involve more than 100 attendees or 50 vehicles;

(D) May not include the artificial amplification of music or voices before 8 a.m. or after 8 p.m.;

(E) May not require or involve the construction or use of a new permanent structure in connection with the agri-tourism or other commercial event or activity;

(F) Must be located on a tract of at least 10 acres unless the owners or residents of adjoining properties consent, in writing, to the location; and

(G) Must comply with applicable health and fire and life safety requirements.

(c) In the alternative to paragraphs (a) and (b) of this subsection, a county may authorize up to six agri-tourism or other commercial events or activities on a tract in a calendar year by a limited use permit that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. The agri-tourism or other commercial events or activities must meet any local standards that apply, and the agri-tourism or other commercial events or activities:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not, individually, exceed a duration of 72 consecutive hours;

(C) May not require that a new permanent structure be built, used or occupied in connection with the agri-tourism or other commercial events or activities;

(D) Must comply with ORS 215.296;

(E) May not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern in the area; and

(F) Must comply with conditions established for:

(i) The types of agri-tourism or other commercial events or activities that are authorized during each calendar year, including the number and duration of the agri-tourism or other commercial events and activities, the anticipated daily attendance and the hours of operation;

(ii) The location of existing structures and the location of proposed temporary structures to be used in connection with the agri-tourism or other commercial events or activities;

(iii) The location of access and egress and parking facilities to be used in connection with the agri-tourism or other commercial events or activities;

(iv) Traffic management, including the projected number of vehicles and any anticipated use of public roads; and

(v) Sanitation and solid waste.

(d) In addition to paragraphs (a) to (c) of this subsection, a county may authorize agri-tourism or other commercial events or activities that occur more frequently or for a longer period or that do not otherwise comply with paragraphs (a) to (c) of this subsection if the agri-tourism or other commercial events or activities comply with any local standards that apply and the agri-tourism or other commercial events or activities:

(A) Are incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area;

(B) Comply with the requirements of paragraph (c)(C), (D), (E) and (F) of this subsection;

(C) Occur on a lot or parcel that complies with the acknowledged minimum lot or parcel size; and

(D) Do not exceed 18 events or activities in a calendar year.

(12) A holder of a permit authorized by a county under subsection (11)(d) of this section must request review of the permit at four-year intervals. Upon receipt of a request for review, the county shall:

(a) Provide public notice and an opportunity for public comment as part of the review process; and

(b) Limit its review to events and activities authorized by the permit, conformance with conditions of approval required by the permit and the standards established by subsection (11)(d) of this section.

(13) For the purposes of subsection (11) of this section:

(a) A county may authorize the use of temporary structures established in connection with the agri-tourism or other commercial events or activities authorized under subsection (11) of this section. However, the temporary structures must be removed at the end of the agri-tourism or other event or activity. The county may not approve an alteration to the land in connection with an agri-tourism or other commercial event or activity authorized under subsection (11) of this section, including, but not limited to, grading, filling or paving.

(b) The county may issue the limited use permits authorized by subsection (11)(c) of this section for two calendar years. When considering an application for renewal, the county shall ensure compliance with the provisions of subsection (11)(c) of this section, any local standards that apply and conditions that apply to the permit or to the agri-tourism or other commercial events or activities authorized by the permit.

(c) The authorizations provided by subsection (11) of this section are in addition to other authorizations that may be provided by law, except that "outdoor mass gathering" and "other gathering," as those terms are used in ORS 197.015 (10)(d), do not include agri-tourism or other commercial events and activities.

SECTION 10. ORS 215.283 is amended to read:

215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

(a) Churches and cemeteries in conjunction with churches.

(b) The propagation or harvesting of a forest product.

(c) Utility facilities necessary for public service, including wetland waste treatment systems but not including commercial facilities for the purpose of generating electrical power for public use by sale or transmission towers over 200 feet in height. A utility facility necessary for public service may be established as provided in:

(A) ORS 215.275; or

(B) If the utility facility is an associated transmission line, as defined in ORS 215.274 and 469.300.

(d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild, grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm operator does or will require the assistance of the relative in the management of the farm use and the dwelling is located on the same lot or parcel as the dwelling of the farm operator. Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel.

(e) Subject to ORS 215.279, primary or accessory dwellings and other buildings customarily provided in conjunction with farm use.

(f) Operations for the exploration for and production of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of compressors, separators and other customary production equipment for an individual well adjacent to the wellhead. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(g) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or construction relating to such operations shall not be a basis for an exception under ORS 197.732 (2)(a) or (b).

(h) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(i) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(j) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(k) Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways.

(L) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has been listed in a county inventory as historic property as defined in ORS 358.480.

(m) Creation, restoration or enhancement of wetlands.

(n) A winery, as described in ORS 215.452 or 215.453.

(o) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

(p) Alteration, restoration or replacement of a lawfully established dwelling, as described in ORS 215.291.

(q) A site for the takeoff and landing of model aircraft, including such buildings or facilities as may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this paragraph. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this paragraph. An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this paragraph, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and is controlled by radio, lines or design by a person on the ground.

(r) A facility for the processing of farm products as described in ORS 215.255.

(s) Fire service facilities providing rural fire protection services.

(t) Irrigation reservoirs, canals, delivery lines and those structures and accessory operational facilities, not including parks or other recreational structures and facilities, associated with a district as defined in ORS 540.505.

(u) Utility facility service lines. Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(A) A public right of way;

(B) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(C) The property to be served by the utility.

(v) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids, or the onsite treatment of septage prior to the land application of biosolids, for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter. For the purposes of this paragraph, onsite treatment of septage prior to the land application of biosolids is limited to treatment using treatment facilities that are portable, temporary and transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land application of biosolids is authorized under the license, permit or other approval.

(w) A county law enforcement facility that lawfully existed on August 20, 2002, and is used to provide rural law enforcement services primarily in rural areas, including parole and post-prison supervision, but not including a correctional facility as defined under ORS 162.135.

(x) Dog training classes or testing trials, which may be conducted outdoors or in preexisting farm buildings, when:

(A) The number of dogs participating in training does not exceed 10 dogs per training class and the number of training classes to be held on-site does not exceed six per day; and

(B) The number of dogs participating in a testing trial does not exceed 60 and the number of testing trials to be conducted on-site is limited to four or fewer trials per calendar year.

(y) A cider business, as described in ORS 215.451.

(z) A farm brewery, as described in ORS 215.449.

(2) The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

(a) Commercial activities that are in conjunction with farm use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(K) or 215.255.

(b) Operations conducted for:

(A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas as defined by ORS 520.005 not otherwise permitted under subsection (1)(f) of this section;

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298;

(C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

(D) Processing of other mineral resources and other subsurface resources.

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

(d) Parks and playgrounds. A public park may be established consistent with the provisions of ORS 195.120.

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community. A community center authorized under this paragraph may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

(f) Golf courses on land:

(A) Determined not to be high-value farmland, as defined in ORS 195.300 (10); or

(B) Determined to be high-value farmland described in ORS 195.300 (10)(c) if the land:

(i) Is not otherwise described in ORS 195.300 (10);

(ii) Is surrounded on all sides by an approved golf course; and

(iii) Is west of U.S. Highway 101.

(g) Commercial utility facilities for the purpose of generating power for public use by sale. If the area zoned for exclusive farm use is high-value farmland, a photovoltaic solar power generation facility may be established as a commercial utility facility as provided in ORS 215.447. A renewable energy facility as defined in ORS 215.446 may be established as a commercial utility facility.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport, as used in this section, means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(i) Home occupations as provided in ORS 215.448.

(j) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment

to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an existing building, in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. The governing body or its designee shall provide for periodic review of the hardship claimed under this paragraph. A temporary residence approved under this paragraph is not eligible for replacement under subsection (1)(p) of this section.

(m) Transmission towers over 200 feet in height.

(n)(A) Commercial dog boarding kennels; or

(B) Dog training classes or testing trials that cannot be established under subsection (1)(x) of this section.

(o) Residential homes as defined in ORS 197.660, in existing dwellings.

(p) The propagation, cultivation, maintenance and harvesting of aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(q) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(r) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(s) Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels.

(t) A destination resort that is approved consistent with the requirements of any statewide planning goal relating to the siting of a destination resort.

(u) Room and board arrangements for a maximum of five unrelated persons in existing residences.

(v) Operations for the extraction and bottling of water.

(w) Expansion of existing county fairgrounds and activities directly relating to county fairgrounds governed by county fair boards established pursuant to ORS 565.210.

(x) A living history museum related to resource based activities owned and operated by a governmental agency or a local historical society, together with limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. As used in this paragraph:

(A) "Living history museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events; and

(B) "Local historical society" means the local historical society recognized by the county governing body and organized under ORS chapter 65.

(y) An aerial fireworks display business that has been in continuous operation at its current location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks.

(z) A landscape contracting business, as defined in ORS 671.520, or a business providing landscape architecture services, as described in ORS 671.318, if the business is pursued in conjunction with the growing and marketing of nursery stock on the land that constitutes farm use.

(aa) Public or private schools for kindergarten through grade 12, including all buildings essential to the operation of a school, primarily for residents of the rural area in which the school is located.

(bb) Equine and equine-affiliated therapeutic and counseling activities, provided:

(A) The activities are conducted in existing buildings that were lawfully constructed on the property before January 1, 2019, or in new buildings that are accessory, incidental and subordinate to the farm use on the tract; and

(B) All individuals conducting therapeutic or counseling activities are acting within the proper scope of any licenses required by the state.

(cc) Guest ranches in eastern Oregon, as described in ORS 215.461.

(dd) Child care facilities, preschool recorded programs or school-age recorded programs that are:

(A) Authorized under ORS 329A.250 to 329A.450;

(B) Primarily for the children of residents and workers of the rural area in which the facility or program is located; and

(C) Colocated with a community center or a public or private school allowed under this subsection.

(3) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.

(4) The following agri-tourism and other commercial events or activities that are related to and supportive of agriculture may be established in any area zoned for exclusive farm use:

(a) A county may authorize a single agri-tourism or other commercial event or activity on a tract in a calendar year by an authorization that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract, if the agri-tourism or other commercial event or activity meets any local standards that apply and:

(A) The agri-tourism or other commercial event or activity is incidental and subordinate to existing farm use on the tract;

(B) The duration of the agri-tourism or other commercial event or activity does not exceed 72 consecutive hours;

(C) The maximum attendance at the agri-tourism or other commercial event or activity does not exceed 500 people;

(D) The maximum number of motor vehicles parked at the site of the agri-tourism or other commercial event or activity does not exceed 250 vehicles;

(E) The agri-tourism or other commercial event or activity complies with ORS 215.296;

(F) The agri-tourism or other commercial event or activity occurs outdoors, in temporary structures, or in existing permitted structures, subject to health and fire and life safety requirements; and

(G) The agri-tourism or other commercial event or activity complies with conditions established for:

(i) Planned hours of operation;

(ii) Access, egress and parking;

(iii) A traffic management plan that identifies the projected number of vehicles and any anticipated use of public roads; and

(iv) Sanitation and solid waste.

(b) In the alternative to paragraphs (a) and (c) of this subsection, a county may authorize, through an expedited, single-event license, a single agri-tourism or other commercial event or activity on a tract in a calendar year by an expedited, single-event license that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. A decision concerning an expedited, single-event license is not a land use decision, as defined in ORS 197.015. To approve an expedited, single-event license, the governing body of a county or its designee must determine that the proposed agri-tourism or other commercial event or activity meets any local standards that apply, and the agri-tourism or other commercial event or activity:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not begin before 6 a.m. or end after 10 p.m.;

(C) May not involve more than 100 attendees or 50 vehicles;

(D) May not include the artificial amplification of music or voices before 8 a.m. or after 8 p.m.;

(E) May not require or involve the construction or use of a new permanent structure in connection with the agri-tourism or other commercial event or activity;

(F) Must be located on a tract of at least 10 acres unless the owners or residents of adjoining properties consent, in writing, to the location; and

(G) Must comply with applicable health and fire and life safety requirements.

(c) In the alternative to paragraphs (a) and (b) of this subsection, a county may authorize up to six agri-tourism or other commercial events or activities on a tract in a calendar year by a limited use permit that is personal to the applicant and is not transferred by, or transferable with, a conveyance of the tract. The agri-tourism or other commercial events or activities must meet any local standards that apply, and the agri-tourism or other commercial events or activities:

(A) Must be incidental and subordinate to existing farm use on the tract;

(B) May not, individually, exceed a duration of 72 consecutive hours;

(C) May not require that a new permanent structure be built, used or occupied in connection with the agri-tourism or other commercial events or activities;

(D) Must comply with ORS 215.296;

(E) May not, in combination with other agri-tourism or other commercial events or activities authorized in the area, materially alter the stability of the land use pattern in the area; and

(F) Must comply with conditions established for:

(i) The types of agri-tourism or other commercial events or activities that are authorized during each calendar year, including the number and duration of the agri-tourism or other commercial events and activities, the anticipated daily attendance and the hours of operation;

(ii) The location of existing structures and the location of proposed temporary structures to be used in connection with the agri-tourism or other commercial events or activities;

(iii) The location of access and egress and parking facilities to be used in connection with the agri-tourism or other commercial events or activities;

(iv) Traffic management, including the projected number of vehicles and any anticipated use of public roads; and

(v) Sanitation and solid waste.

(d) In addition to paragraphs (a) to (c) of this subsection, a county may authorize agri-tourism or other commercial events or activities that occur more frequently or for a longer period or that do not otherwise comply with paragraphs (a) to (c) of this subsection if the agri-tourism or other commercial events or activities comply with any local standards that apply and the agri-tourism or other commercial events or activities:

(A) Are incidental and subordinate to existing commercial farm use of the tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area;

(B) Comply with the requirements of paragraph (c)(C), (D), (E) and (F) of this subsection;

(C) Occur on a lot or parcel that complies with the acknowledged minimum lot or parcel size; and

(D) Do not exceed 18 events or activities in a calendar year.

(5) A holder of a permit authorized by a county under subsection (4)(d) of this section must request review of the permit at four-year intervals. Upon receipt of a request for review, the county shall:

(a) Provide public notice and an opportunity for public comment as part of the review process; and

(b) Limit its review to events and activities authorized by the permit, conformance with conditions of approval required by the permit and the standards established by subsection (4)(d) of this section.

(6) For the purposes of subsection (4) of this section:

(a) A county may authorize the use of temporary structures established in connection with the agri-tourism or other commercial events or activities authorized under subsection (4) of this section. However, the temporary structures must be removed at the end of the agri-tourism or other event or activity. The county may not approve an alteration to the land in connection with an agri-tourism or other commercial event or activity authorized under subsection (4) of this section, including, but not limited to, grading, filling or paving.

(b) The county may issue the limited use permits authorized by subsection (4)(c) of this section for two calendar years. When considering an application for renewal, the county shall ensure compliance with the provisions of subsection (4)(c) of this section, any local standards that apply and conditions that apply to the permit or to the agri-tourism or other commercial events or activities authorized by the permit.

(c) The authorizations provided by subsection (4) of this section are in addition to other authorizations that may be provided by law, except that "outdoor mass gathering" and "other gathering," as those terms are used in ORS 197.015 (10)(d), do not include agri-tourism or other commercial events and activities.

Passed by House April 15, 2021

Repassed by House June 8, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 7, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State