

House Bill 2524

Sponsored by Representatives MARSH, ZIKA, POWER (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Places limits on certain restrictions by local governments, planned communities and condominiums on use of property for child care facilities. Allows development of child care facilities as conditional use on lands zoned for exclusive farm use.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to child care facilities; amending ORS 94.779, 100.023, 215.213, 215.283, 329A.030, 329A.250,
3 329A.280 and 329A.440; and prescribing an effective date.

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

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

6 329A.440. (1) **As used in this section:**

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

9 (b) **“Family child care home” means a child care facility in a dwelling that is caring for**
10 **not more than 16 children and is certified under ORS 329A.280 (2) or is registered under ORS**
11 **329A.330.**

12 (c) **“Land use regulations” and “local government” have the meanings given those terms**
13 **in ORS 197.015.**

14 [(1)] (2)(a) [A *registered or certified*] **A family child care home** [shall be] **is** considered a resi-
15 dential use of property for zoning purposes. [The *registered or certified family child care home shall*
16 *be*] **A family child care home is** a permitted use in all areas zoned for residential or commercial
17 purposes, including areas zoned for single-family dwellings.

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

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

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

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

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

30 [(c) Allow a division of land for a registered or certified family child care home in an exclusive

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 *farm use zone only as provided in ORS 215.263 (9).]*

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

5 (4)(a) **A child care center is a permitted use in all commercial or industrial zoned areas.**

6 (b) **A local government may not impose land use regulations or conditions on the estab-**
 7 **lishment or maintenance of a child care center in an area zoned for commercial or industrial**
 8 **use more restrictive than imposed on other uses in the same zone.**

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

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

13 329A.280. (1) A person may not operate a child care facility, except a facility subject to the
 14 registration requirements of ORS 329A.330, without a certification for the facility from the Office
 15 of Child Care.

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

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

29 (4) Any person seeking to operate a child care facility may apply for a certification for the fa-
 30 cility from the Office of Child Care and receive a certification upon meeting certification require-
 31 ments.

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

34 **SECTION 3.** ORS 94.779 is amended to read:

35 94.779. (1) A provision of a planned community’s governing document or landscaping or archi-
 36 tectural guidelines that imposes irrigation requirements on an owner or the association is void and
 37 unenforceable while any of the following is in effect:

38 (a) A declaration by the Governor that a severe, continuing drought exists or is likely to occur
 39 in a political subdivision within which the planned community is located;

40 (b) A finding by the Water Resources Commission that a severe, continuing drought exists or is
 41 likely to occur in a political subdivision within which the planned community is located;

42 (c) An ordinance adopted by the governing body of a political subdivision within which the
 43 planned community is located that requires conservation or curtailment of water use; or

44 (d) A rule adopted by the association under subsection (2) of this section to reduce or eliminate
 45 irrigation water use.

1 (2) Notwithstanding any provision of a planned community’s governing documents or landscaping
 2 or architectural guidelines imposing irrigation requirements on an owner or the association, an as-
 3 sociation may adopt rules that:

4 (a) Require the reduction or elimination of irrigation on any portion of the planned community.

5 (b) Permit or require the replacement of turf or other landscape vegetation with xeriscape on
 6 any portion of the planned community.

7 (c) Require prior review and approval by the association or its designee of any plans by an
 8 owner or the association to replace turf or other landscape vegetation with xeriscape.

9 (d) Require the use of best practices and industry standards to reduce the landscaped areas and
 10 minimize irrigation of existing landscaped areas of common property where turf is necessary for the
 11 function of the landscaped area.

12 (3) Except as provided in subsections (4) [*and (5)*] **to (6)** of this section, the following provisions
 13 of a planned community’s governing document are void and unenforceable:

14 (a) A provision that prohibits or restricts the use of the owner’s unit or lot as the premises of
 15 an exempt family child care provider participating in the subsidy program under ORS 329A.500; or

16 (b) [*If the unit does not share a wall, floor or ceiling surface in common with another unit,*] A
 17 provision that prohibits or restricts the use of the owner’s unit or lot as a certified or registered
 18 family child care home pursuant to ORS 329A.250 to 329A.450.

19 (4) Subsection (3) of this section does not prohibit a homeowners association from adopting or
 20 enforcing a provision of the planned community’s governing document that regulates parking, noise,
 21 odors, nuisance, use of common property or activities that impact the cost of insurance policies held
 22 by the planned community, provided the provision:

23 (a) Is reasonable; and

24 (b) Does not have the effect of prohibiting or restricting the use of a unit or lot as the premises
 25 of an exempt family child care provider participating in the subsidy program under ORS 329A.500
 26 or as a certified or registered family child care home pursuant to ORS 329A.250 to 329A.450.

27 (5)(a) Subsection (3) of this section does not apply to planned communities that provide housing
 28 for older persons.

29 (b) As used in this subsection, “housing for older persons” has the meaning given that term in
 30 ORS 659A.421.

31 **(6) Subsection (3)(b) of this section does not apply to a provision in a governing document**
 32 **adopted before the effective date of this 2021 Act that applies to a unit that shares a wall,**
 33 **floor or ceiling surface in common with another unit.**

34 **SECTION 4.** ORS 100.023 is amended to read:

35 100.023. (1) A provision of a condominium’s governing document or landscaping or architectural
 36 guidelines that imposes irrigation requirements on a unit owner or the association is void and
 37 unenforceable while any of the following is in effect:

38 (a) A declaration by the Governor that a severe, continuing drought exists or is likely to occur
 39 in a political subdivision within which the condominium is located;

40 (b) A finding by the Water Resources Commission that a severe, continuing drought exists or is
 41 likely to occur in a political subdivision within which the condominium is located;

42 (c) An ordinance adopted by the governing body of a political subdivision within which the
 43 condominium is located that requires conservation or curtailment of water use; or

44 (d) A rule adopted by the association under subsection (2) of this section to reduce or eliminate
 45 irrigation water use.

1 (2) Notwithstanding any provision of a condominium’s governing document or landscaping or
 2 architectural guidelines imposing irrigation requirements on a unit owner or the association, an
 3 association may adopt rules that:

4 (a) Require the reduction or elimination of irrigation on any portion of the condominium.

5 (b) Permit or require the replacement of turf or other landscape vegetation with xeriscape on
 6 any portion of the condominium.

7 (c) Require prior review and approval by the association or its designee of any plans by a unit
 8 owner or the association to replace turf or other landscape vegetation with xeriscape.

9 (d) Require the use of best practices and industry standards to reduce the landscaped areas and
 10 minimize irrigation of existing landscaped general common elements where turf is necessary for the
 11 function of the general common elements.

12 (3) Except as provided in subsections (4) [*and (5)*] **to (6)** of this section, the following provisions
 13 of a condominium’s governing document are void and unenforceable:

14 (a) A provision that prohibits or restricts the use of the unit owner’s condominium unit or any
 15 limited common element designated for exclusive use by the occupants of the unit as the premises
 16 of an exempt family child care provider participating in the subsidy program under ORS 329A.500;
 17 or

18 (b) [*If the condominium unit does not share a wall, floor or ceiling surface in common with another*
 19 *unit,*] A provision that prohibits or restricts the use of the unit owner’s condominium unit or any
 20 limited common element designated for exclusive use by the occupants of the unit as a certified or
 21 registered family child care home pursuant to ORS 329A.250 to 329A.450.

22 (4) Subsection (3) of this section does not prohibit an association of unit owners from adopting
 23 or enforcing a provision of the condominium’s governing document that regulates parking, noise,
 24 odors, nuisance, use of common elements or activities that impact the cost of insurance policies held
 25 by the condominium, provided the provision:

26 (a) Is reasonable; and

27 (b) Does not have the effect of prohibiting or restricting the use of a unit as the premises of an
 28 exempt family child care provider participating in the subsidy program under ORS 329A.500 or as
 29 a certified or registered family child care home pursuant to ORS 329A.250 to 329A.450.

30 (5)(a) Subsection (3) of this section does not apply to condominiums that provide housing for
 31 older persons.

32 (b) As used in this subsection, “housing for older persons” has the meaning given that term in
 33 ORS 659A.421.

34 **(6) Subsection (3)(b) of this section does not apply to a provision in a governing document**
 35 **adopted before the effective date of this 2021 Act that applies to a unit that shares a wall,**
 36 **floor or ceiling surface in common with another unit.**

37 **SECTION 5.** ORS 329A.250 is amended to read:

38 329A.250. As used in ORS 329A.030 and 329A.250 to 329A.450, unless the context requires oth-
 39 erwise:

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

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

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

1 (4)(a) [Subject to ORS 329A.440,] “Child care” means the care, supervision and guidance on a
 2 regular basis of a child, unaccompanied by a parent, guardian or custodian, provided to a child
 3 during a part of the 24 hours of the day, in a place other than the child’s home, with or without
 4 compensation.

5 (b) “Child care” does not include care provided:

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

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

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

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

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

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

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

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

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

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

22 (a) Preschool recorded program.

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

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

27 (d) Facility operated by:

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

29 (B) A political subdivision of this state; or

30 (C) A governmental agency.

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

32 (f) Babysitters.

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

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

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

37 (6) “Family” has the meaning given that term in ORS 329.145.

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

39 (8) “Parent cooperative” means a child care program in which:

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

41 (b) Membership in the cooperative includes parents;

42 (c) There are written policies and procedures; and

43 (d) A board of directors that includes parents of the children cared for by the cooperative con-
 44 trols the policies and procedures of the program.

45 (9) “Preschool recorded program” means a facility providing care for preschool children that is

1 primarily educational for four hours or less per day and where no child is present at the facility for
 2 more than four hours per day.

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

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

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

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

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

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

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

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

19 **SECTION 6.** ORS 329A.030 is amended to read:

20 329A.030. (1) The Office of Child Care shall establish a Central Background Registry and may
 21 maintain information in the registry through electronic records systems.

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

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

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

30 (B) The child abuse occurred on or after September 1, 2019, and involved any child for whom
 31 the individual was providing child care, as defined in ORS 329A.250 (4), or care identified in ORS
 32 329A.250 [(4)(a), (c), (f), (g), (h) or (i)] **(4)(b)(A), (C), (F), (G), (H) or (I)**.

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

36 (3)(a) Upon receiving an application for enrollment in the Central Background Registry, the of-
 37 fice shall complete:

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

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

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

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

45 (b) In addition to the information that the office is required to check under paragraph (a) of this

1 subsection, the office may consider any other information obtained by the office that the office, by
2 rule, determines is relevant to enrollment in the Central Background Registry.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (b) The operator or an employee of an Oregon prekindergarten program under ORS 329.170 to
41 329.200;

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

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

1 (e) A contractor or an employee of the contractor who provides early childhood special educa-
 2 tion or early intervention services pursuant to ORS 343.455 to 343.534;

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

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

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

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

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

19 (b) Information provided to a private agency or organization facilitating the provision of respite
 20 services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney
 21 under ORS 109.056 about the enrollment status of the persons described in subsection (10)(h) of this
 22 section shall be subject to an agreement with the private agency or organization. The agreement
 23 must provide for the recovery of administrative, including direct and indirect, costs incurred by the
 24 office from participation in the agreement. Any moneys collected under this paragraph shall be de-
 25 posited in the Child Care Fund established under ORS 329A.010.

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

32 **SECTION 7.** ORS 215.213 is amended to read:

33 215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991
 34 Edition), the following uses may be established in any area zoned for exclusive farm use:

35 (a) Churches and cemeteries in conjunction with churches.

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

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

41 (A) ORS 215.275; or

42 (B) If the utility facility is an associated transmission line, as defined in ORS 215.274 and
 43 469.300.

44 (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the
 45 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,

1 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm
2 operator does or will require the assistance of the relative in the management of the farm use and
3 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.
4 Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS
5 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or
6 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-
7 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure
8 shall operate as a partition of the homesite to create a new parcel.

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

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

14 (g) Operations for the exploration for and production of geothermal resources as defined by ORS
15 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of
16 compressors, separators and other customary production equipment for an individual well adjacent
17 to the wellhead. Any activities or construction relating to such operations shall not be a basis for
18 an exception under ORS 197.732 (2)(a) or (b).

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

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

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

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

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

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

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

43 (o) Creation, restoration or enhancement of wetlands.

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

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

1 215.291.

2 (r) Farm stands if:

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

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

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

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

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

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

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

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

34 (A) A public right of way;

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

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

38 (y) Subject to the issuance of a license, permit or other approval by the Department of Envi-
39 ronmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with
40 rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application
41 of reclaimed water, agricultural or industrial process water or biosolids, or the onsite treatment of
42 septage prior to the land application of biosolids, for agricultural, horticultural or silvicultural pro-
43 duction, or for irrigation in connection with a use allowed in an exclusive farm use zone under this
44 chapter. For the purposes of this paragraph, onsite treatment of septage prior to the land application
45 of biosolids is limited to treatment using treatment facilities that are portable, temporary and

1 transportable by truck trailer, as defined in ORS 801.580, during a period of time within which land
 2 application of biosolids is authorized under the license, permit or other approval.

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

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

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

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

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

11 (2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),
 12 the following uses may be established in any area zoned for exclusive farm use subject to ORS
 13 215.296:

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

17 (A) Consists of 20 or more acres; and

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

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

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

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

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

32 (d) Operations conducted for:

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

35 (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface re-
 36 sources subject to ORS 215.298;

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

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

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

1 provide by rule for an increase in the number of yurts allowed on all or a portion of the
2 campgrounds in a county if the commission determines that the increase will comply with the stan-
3 dards described in ORS 215.296 (1). A public park or campground may be established as provided
4 under ORS 195.120. As used in this paragraph, "yurt" means a round, domed shelter of cloth or
5 canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appli-
6 ance.

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

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

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

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

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

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

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

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

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

43 (n) Home occupations as provided in ORS 215.448.

44 (o) Transmission towers over 200 feet in height.

45 (p) Construction of additional passing and travel lanes requiring the acquisition of right of way

1 but not resulting in the creation of new land parcels.

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

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

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

9 (t) Room and board arrangements for a maximum of five unrelated persons in existing resi-
10 dences.

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

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

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

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

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

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

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

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

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

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

38 **(aa) Child care facilities or preschool recorded programs authorized under ORS 329A.250**
39 **to 329A.450.**

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

1 showing all of the following:

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

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

8 (c) Complies with such other conditions as the governing body or its designee considers neces-
9 sary.

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

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

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

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

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

24 (a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be es-
25 tablished; and

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

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

37 (7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1,
38 1948, and July 1, 1983. For the purposes of this section:

39 (a) Only one lot or parcel exists if:

40 (A) A lot or parcel described in this section is contiguous to one or more lots or parcels de-
41 scribed in this section; and

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

45 (b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including

1 but not limited to, lots, parcels or lots and parcels separated only by a public road.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (i) Planned hours of operation;

35 (ii) Access, egress and parking;

36 (iii) A traffic management plan that identifies the projected number of vehicles and any antic-
 37 ipated use of public roads; and

38 (iv) Sanitation and solid waste.

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

1 standards that apply, and the agri-tourism or other commercial event or activity:

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

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

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

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

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

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

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

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

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

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

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

20 (D) Must comply with ORS 215.296;

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

23 (F) Must comply with conditions established for:

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

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

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

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

33 (v) Sanitation and solid waste.

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

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

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

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

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

45 (12) A holder of a permit authorized by a county under subsection (11)(d) of this section must

1 request review of the permit at four-year intervals. Upon receipt of a request for review, the county
2 shall:

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

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

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

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

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

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

24 **SECTION 8.** ORS 215.283 is amended to read:

25 215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

26 (a) Churches and cemeteries in conjunction with churches.

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

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

32 (A) ORS 215.275; or

33 (B) If the utility facility is an associated transmission line, as defined in ORS 215.274 and
34 469.300.

35 (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the
36 farm operator or the farm operator’s spouse, which means a child, parent, stepparent, grandchild,
37 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm
38 operator does or will require the assistance of the relative in the management of the farm use and
39 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
40 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or
41 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-
42 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure
43 shall operate as a partition of the homesite to create a new parcel.

44 (e) Subject to ORS 215.279, primary or accessory dwellings and other buildings customarily
45

1 provided in conjunction with farm use.

2 (f) Operations for the exploration for and production of geothermal resources as defined by ORS
3 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of
4 compressors, separators and other customary production equipment for an individual well adjacent
5 to the wellhead. Any activities or construction relating to such operations shall not be a basis for
6 an exception under ORS 197.732 (2)(a) or (b).

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

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

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

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

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

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

23 (m) Creation, restoration or enhancement of wetlands.

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

25 (o) Farm stands if:

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

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

35 (p) Alteration, restoration or replacement of a lawfully established dwelling, as described in ORS
36 215.291.

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

1 used or intended to be used for flight and is controlled by radio, lines or design by a person on the
2 ground.

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

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

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

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

11 (A) A public right of way;

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

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

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

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

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

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

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

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

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

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

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

40 (b) Operations conducted for:

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

43 (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface re-
44 sources subject to ORS 215.298;

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

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

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

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

14 (e) Community centers owned by a governmental agency or a nonprofit community organization
15 and operated primarily by and for residents of the local rural community. A community center au-
16 thorized under this paragraph may provide services to veterans, including but not limited to emer-
17 gency and transitional shelter, preparation and service of meals, vocational and educational
18 counseling and referral to local, state or federal agencies providing medical, mental health, disability
19 income replacement and substance abuse services, only in a facility that is in existence on January
20 1, 2006. The services may not include direct delivery of medical, mental health, disability income
21 replacement or substance abuse services.

22 (f) Golf courses on land:

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

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

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

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

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

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

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

41 (i) Home occupations as provided in ORS 215.448.

42 (j) A facility for the primary processing of forest products, provided that such facility is found
43 to not seriously interfere with accepted farming practices and is compatible with farm uses de-
44 scribed in ORS 215.203 (2). Such a facility may be approved for a one-year period which is
45 renewable. These facilities are intended to be only portable or temporary in nature. The primary

1 processing of a forest product, as used in this section, means the use of a portable chipper or stud
 2 mill or other similar methods of initial treatment of a forest product in order to enable its shipment
 3 to market. Forest products, as used in this section, means timber grown upon a parcel of land or
 4 contiguous land where the primary processing facility is located.

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

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

16 (m) Transmission towers over 200 feet in height.

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

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

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

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

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

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

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

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

37 (u) Room and board arrangements for a maximum of five unrelated persons in existing resi-
 38 dences.

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

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

42 (x) A living history museum related to resource based activities owned and operated by a gov-
 43 ernmental agency or a local historical society, together with limited commercial activities and fa-
 44 cilities that are directly related to the use and enjoyment of the museum and located within
 45 authentic buildings of the depicted historic period or the museum administration building, if areas

1 other than an exclusive farm use zone cannot accommodate the museum and related activities or if
2 the museum administration buildings and parking lot are located within one quarter mile of an ur-
3 ban growth boundary. As used in this paragraph:

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

7 (B) "Local historical society" means the local historical society recognized by the county gov-
8 erning body and organized under ORS chapter 65.

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

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

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

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

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

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

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

24 **(dd) Child care facilities or preschool recorded programs authorized under ORS 329A.250**
25 **to 329A.450.**

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

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

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

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

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

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

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

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

45 (D) The maximum number of motor vehicles parked at the site of the agri-tourism or other

1 commercial event or activity does not exceed 250 vehicles;

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

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

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

8 (i) Planned hours of operation;

9 (ii) Access, egress and parking;

10 (iii) A traffic management plan that identifies the projected number of vehicles and any antic-
11 ipated use of public roads; and

12 (iv) Sanitation and solid waste.

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

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

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

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

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

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

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

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

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

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

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

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

39 (D) Must comply with ORS 215.296;

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

42 (F) Must comply with conditions established for:

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

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

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

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

7 (v) Sanitation and solid waste.

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

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

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

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

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

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

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

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

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

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

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

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

43 **SECTION 9. This 2021 Act takes effect on the 91st day after the date on which the 2021**
 44 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**