

House Bill 3109

Sponsored by Representative ZIKA

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**.

Limits certain restrictions by local governments, planned communities and condominiums on use of property for child care facilities.

A BILL FOR AN ACT

1
2 Relating to child care facilities; amending ORS 94.779, 100.023, 329A.030, 329A.250, 329A.280 and
3 329A.440 and section 7, chapter 221, Oregon Laws 2017.

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 regulation” 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, special fees or** conditions on the establishment [and] **or** maintenance of a [registered
23 or certified] family child care home [in an area zoned for residential or commercial use if the condi-
24 tions are no] more restrictive than [conditions] **those** imposed on other residential dwellings in the
25 same zone.

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

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

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

31 [(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, special fees or conditions**
 7 **on the establishment or maintenance of a child care center in an area zoned for commercial**
 8 **or industrial use more restrictive than those 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) of this section, the following provisions of a
13 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 **SECTION 4.** ORS 100.023 is amended to read:

32 100.023. (1) A provision of a condominium's governing document or landscaping or architectural
33 guidelines that imposes irrigation requirements on a unit owner or the association is void and
34 unenforceable while any of the following is in effect:

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (a) Is reasonable; and

24 (b) Does not have the effect of prohibiting or restricting the use of a unit as the premises of an
25 exempt family child care provider participating in the subsidy program under ORS 329A.500 or as
26 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 condominiums that provide housing for
28 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 **SECTION 5.** Section 7, chapter 221, Oregon Laws 2017, as amended by section 7d, chapter 423,
32 Oregon Laws 2017, is amended to read:

33 **Sec. 7.** The amendments to ORS 93.270 by section 1, chapter 221, Oregon Laws 2017[*and the*
34 *amendments to sections 3 and 7 of this 2017 Act by sections 3b and 7b of this 2017 Act*] apply to[:]

35 [(1)] instruments conveying fee title to real property executed on or after January 1, 2018[;
36 *and*]

37 [(2) *Provisions of governing documents and guidelines adopted on or after January 1, 2018*].

38 **SECTION 6. The amendments to ORS 94.779 and 100.023 by sections 3b and 7b, chapter**
39 **423, Oregon Laws 2017, and by sections 3 and 4 of this 2021 Act apply to provisions of gov-**
40 **erning documents adopted before, on or after the effective date of this 2021 Act.**

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

42 329A.250. As used in ORS 329A.030 and 329A.250 to 329A.450, unless the context requires oth-
43 erwise:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (a) Preschool recorded program.

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

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

31 (d) Facility operated by:

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

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

34 (C) A governmental agency.

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

36 (f) Babysitters.

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

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

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

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

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

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

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

45 (b) Membership in the cooperative includes parents;

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

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

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

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

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

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

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

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

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

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

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

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

24 329A.030. (1) The Office of Child Care shall establish a Central Background Registry and may
25 maintain information in the registry through electronic records systems.

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

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

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

34 (B) The child abuse occurred on or after September 1, 2019, and involved any child for whom
35 the individual was providing child care, as defined in ORS 329A.250 (4), or care identified in ORS
36 329A.250 [(4)(a), (c), (f), (g), (h) or (i)] **(4)(b)(A), (C), (F), (G), (H) or (I)**.

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

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

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

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

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

1 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (b) The operator or an employee of an Oregon prekindergarten program under ORS 329.170 to
 45 329.200;

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

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

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

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

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

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

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

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

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

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

36