



► Prepared for Oregon Department of  
Land Conservation and Development

**Final Report**  
DECEMBER 2024

# Reducing Barriers to Developing Child Care Facilities Across Oregon



# Acknowledgments

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# Executive Summary

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An Oregon Early Learning Division report found that, as of 2022, 89 percent of Oregon families with children under five years old live in a child care desert, and 97 percent of families with children under two live in a child care desert.<sup>1 2</sup> In response to the critical need for child care access in the state, the Oregon legislature passed House Bill 2727 in 2023, requiring a study to examine strategies for reducing the regulatory barriers to expanding early learning and care facilities. Under the direction of this bill, the Department of Land Conservation and Development (DLCD) convened a diverse work group to conduct a study and prepare a report that (1) examines regulatory barriers to developing and expanding child care facilities in Oregon and (2) proposes recommendations to address identified challenges. For the scope of this study, child care includes the care of children ages 0-5 years old.

The study involved extensive research, community engagement, and input from the work group, comprised of child care providers, regulators, advocacy partners, and other affected groups. Members were tasked with analyzing the complex interplay of regulations across agencies that impact the development of child care facilities, and they provided invaluable insights and recommendations to mitigate these challenges, support expansion efforts, and address racial and regional disparities.

Home-based and center-based providers engage with various state and local agencies throughout the development and licensing process. These agencies' collective requirements can act as barriers for potential child care providers navigating the process, but they are also critical for ensuring the safety and well-being of children and serve an essential purpose by protecting vulnerable populations, maintaining public health standards, and safeguarding community interests. While recognizing the importance of regulatory agencies and their

## ➤ Making an Impact

**Expanding access to affordable child care is a multifaceted challenge that requires a holistic approach, encompassing comprehensive policy, funding, and coordination efforts. While increasing child care facility development is a crucial step in providing communities with diverse options, its effectiveness depends on alignment and coordination across various regulating agencies to standardize language, streamline processes, and establish consistent standards across agencies. Without synchronization in all areas related to child care, even well-intentioned interventions may struggle to achieve their full potential impact.**

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<sup>1</sup> A child care desert is defined as a community with more than three children for every regulated child care slot.

<sup>2</sup> Megan Pratt and Michaela Sektnan, Oregon State University, College of Public Health and Human Services Oregon Child Care Research Partnership, [Oregon's Child Care Deserts 2022: Mapping Supply by Age Group and Percentage of Publicly Funded Slots](#) (May 2023)

protections, this report aims to offer a clear understanding of the obstacles and identify safe, appropriate, and actionable solutions to support the development of more child care facilities.

## Key Barriers to the Development of Child Care Facilities in Oregon

- » **Complex and layered regulatory framework across multiple agencies.** Providers face a maze of requirements from state, county, and city agencies. This complexity makes it difficult for providers to navigate the process effectively, often leading to confusion, delays, and unexpected costs. A lack of coordination between agencies exacerbates this issue, leaving child care providers to act as intermediaries, some of whom struggle to find resources available in their primary language.
- » **Lack of suitable locations for child care facilities.** Requirements of zoning, building codes, and licensing regulations limit the number of suitable sites and buildings for child care, particularly child care centers. Scarcity of qualifying locations is further compounded by a lack of consistent coordination and understanding of current state law by regulatory agencies, making it difficult to obtain comprehensive information about a potential location's viability.
- » **Disparate impacts to providers that are non-native English speakers, Black, Indigenous, or People of Color (BIPOC), or are located in rural areas.** Language barriers can make navigating the complex development process even more challenging for non-English speakers. BIPOC households also have lower homeownership rates, often the result of historically discriminatory housing and banking practices. Renters often have fewer opportunities for establishing in-home child care businesses, particularly due to the challenges of siting child care in apartment units. Rural areas often face additional zoning hurdles, a lack of access to knowledgeable staff, and fewer development resources.
- » **Financial risks for providers.** Providers often face unexpected costs due to building upgrades, remediation efforts, renovations, and the need for professionally prepared building plans. These financial burdens can put existing funding streams at risk or render projects infeasible, particularly for smaller and less-resourced providers. In addition, a National Children's Facilities Network [study](#) found that child care providers have lower access to typical forms of capital than other small business owners.
- » **Inconsistent zoning and land use regulations.** Despite recent state legislation intending to streamline the process, many jurisdictions have yet to update their codes to reflect new regulations. This leads to varying processes and requirements across Oregon, some of which may not comply with state law.
- » **Challenging building code requirements and change of occupancy processes.** Changing a building's occupancy for a child care use often triggers expensive upgrades, such as installing sprinklers or seismic retrofits. While intended to meet safety requirements, the process can be complex, costly, and vary significantly across jurisdictions.

» **Difficulties in co-locating child care with other uses, particularly affordable housing.**

Co-location projects face unique challenges, including conflicting regulations, design complexities, and financing issues. For affordable housing co-location projects, prevailing wage requirements can significantly increase development costs.

These barriers collectively create a challenging environment for developing and expanding child care facilities in Oregon, affecting our ability to meet the growing demand for child care services across the state.

## **OREGON AS A NATIONAL LEADER**

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Oregon is already a national leader in child care policy, allowing certified in-home providers to care for up to 16 children—a capacity that surpasses many other states. Oregon law also requires that local governments consider in-home child care a residential use, which more broadly allows in-home child care by right in areas where residential development is allowed. This commitment to child care extends to local communities across the state, with several municipalities implementing innovative policies, including:

- ◆ The City of Bend waives transportation system development charges (SDC) for child care to incentivize facility development.
- ◆ The City of Portland allows child care facilities to co-locate in structures with existing or former schools, religious institutions, and other similar uses, without a conditional use review.
- ◆ The City of Redmond is part of a local Child Care Task Force, which offers specialized support to child care providers in navigating permitting processes.

## **Recommendations to Reduce Barriers across Oregon Communities**

Throughout the project, the work group developed a comprehensive set of recommendations to address the barriers uncovered during the study. The work group also developed a set of priority recommendations that could:

- ◆ Be effective in reducing racial and regional disparities
- ◆ Offer relative feasibility compared to other recommendations
- ◆ Present potential for meaningful impact on mitigating barriers

As a result, the work group prioritized seven key policy recommendations, presented below in order of priority.

PRIORITY RECOMMENDATIONS	IMPLEMENTATION
<p>1. Develop a comprehensive guide for local jurisdictions that includes:</p> <ul style="list-style-type: none"> <li>◆ A model zoning code for child care development regulations.</li> <li>◆ Best practices to streamline the permitting process for child care facilities.</li> <li>◆ Policies and programs local jurisdictions can choose to implement to incentivize and prioritize the development of child care facilities.</li> </ul>	State agency action
<p>2. Develop and issue official guidance for cities and counties on implementing ORS 329A.440.<sup>3</sup>  <i>This could occur as a stand-alone measure but would be required as an initial first step to complete priority 1 above.</i></p>	Legislative action
<p>3. Create and/or expand dedicated grant funding programs for child care facilities development.</p>	Legislative action
<p>4. Create positions for local or regional “navigators” to provide technical assistance to providers during the licensing and development process.</p>	Legislative or local action
<p>5. Establish a streamlined building permit process for in-home child care.</p>	Legislative or local action
<p>6. Permit child care centers by right in residential zones.</p>	Legislative or local action
<p>7. Develop a comprehensive guide translated into multiple languages for child care providers looking to establish or expand a child care facility.</p>	State agency action
<p>8. Exempt certain types of site changes from triggering the Conditional Use Modification review.</p>	Legislative or local action
<p>9. Develop and issue official guidance for implementing ORS 215.283(2)(dd) (child care centers in resource zones) and ORS 215.448 (home occupations) to encourage a consistent approach to permitting rural child care facilities statewide.</p>	State agency action
<p>10. Expedite permitting procedures and offer fee reductions for child care facilities.</p>	Local action
<p>11. Provide funding to local governments to translate materials and forms and provide technical interpretation services.</p>	Legislative action

<sup>3</sup> ORS 329A.440 encompasses the application of land use regulations related to family child care homes and certified child care centers. It requires that family child care homes be regulated as residential use and allowed by right in all residential zones. The statute also requires certified child care centers to be permitted by right in commercial and industrial zones, unless designated as “heavy” industrial.



These recommendations aim to streamline processes, clarify regulations, provide enhanced resources for providers, and create a more collaborative and supportive environment for child care facility development across Oregon. Implementing these recommendations will require coordinated efforts from state agencies, local governments, child care advocates, and providers working in this important sector. By addressing the identified barriers and enacting these policy priorities, Oregon can work toward increasing the availability of quality child care facilities and improving access for families across the state.

### ➤ **Strategic Funding**

**The timing and distribution of funding play crucial roles in addressing child care facility challenges. Early access to grants can allow providers to navigate complex permitting processes by hiring expert assistance. Reducing barriers to funding, such as simplifying application procedures and addressing language and technology hurdles, is essential for improving equity.**

**A coordinated approach that combines facility development funds with workforce development and operating subsidies is necessary to ensure both the creation of new facilities and the affordability of care for families. While increased funding can stimulate new programs, targeted support is vital to ensure their long-term sustainability. This requires striking a balance between supporting existing programs and investing in new businesses through business operations coaching and support, addressing both immediate needs and long-term viability in the child care sector.**

# 1. Project Overview and Purpose

## A NOTE ON RESEARCH METHODOLOGY AND INTENT

*Much of the research presented in this report is derived from conversations and survey responses provided by child care providers, advocates, architects, and regulating agencies. It is important to note that the findings from this qualitative data are based on the experiences and perspectives shared by these participants.*

***The project team emphasizes that the purpose of this report is not to criticize or undermine anyone's work or efforts related to the development of child care facilities, and our team recognizes and appreciates the dedication and good intentions of all individuals and organizations involved in providing and supporting child care in Oregon.***

*However, to effectively address the challenges facing the development of child care facilities, it is crucial to have an open and honest discussion about the processes, obstacles, and experiences encountered by those directly involved. By accurately reflecting the insights shared by engagement participants, the project team aims to identify areas for improvement and foster constructive dialogue to find solutions and create a more supportive environment for the development of child care facilities. The project team approaches this report with respect for the work being done in the sector and with the shared intention of enhancing the quality*

## The Need

Communities in Oregon and across the country are facing significant gaps in access to early childhood care and education. The shortage of quality, accessible, and affordable child care facilities can impose substantial burdens on working parents, often forcing difficult choices between career advancement and family care. More broadly, accessible child care contributes to stronger, more vibrant communities with reduced poverty rates and improved quality of life. When quality care is accessible and affordable, it can enable greater workforce participation, boost household incomes, and reduce gender disparities in career advancement. For businesses, it means a more stable and productive workforce with lower turnover rates. Moreover, quality early childhood education contributes to better educational outcomes and social skills development, providing opportunities for children to develop and thrive.<sup>4</sup>

An Oregon Early Learning Division report found that, as of 2022, 89 percent of Oregon families with children under five years old live in a child care desert and 97 percent of

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<sup>4</sup> Children's HealthWatch, [Access to High-Quality, Affordable Child Care](#) (April 2020).

families with children under two live in a child care desert.<sup>5 6</sup> While child care access is an issue across the state, access issues become more acute within certain communities and populations, particularly for low-income families, rural communities, Hispanic communities, families with children with disabilities, and families with infants and toddlers. This is not an exhaustive list; however, existing research suggests these groups often face significant barriers to access.<sup>7 8</sup> It is also worth noting that proximity and availability of child care facilities are not the only barriers; even if residents live near a child care facility with openings available, they may face financial barriers, transportation or schedule constraints, a lack of culturally relevant care, or language differences. Additionally, workforce challenges, such as difficulty recruiting and retaining qualified staff, have created significant barriers for starting new child care businesses or expanding existing ones, further limiting the supply of available care. Like child care deserts, these issues do not affect all residents equally, with more marginalized communities facing greater obstacles.

Increasing child care facility development is just one piece of the puzzle to mitigating barriers, providing communities with a broader range of price points, program types, and language options. Equitable access to child care is a complex issue requiring comprehensive policy, funding, and coordination efforts to address holistically. It's crucial to recognize that the effectiveness of such interventions hinge on alignment and coordination across the many regulating agencies. This includes standardizing language used in policies and procedures, better aligning processes across different agencies, and establishing consistent standards. Without comprehensive alignment in all areas related to child care, even well-intentioned efforts may fall short of their potential impact. It's important to note that the recommendations presented in this report will need to be complemented by additional funding to address affordability for families and comprehensive workforce strategies to ensure a sustainable and high-quality child care system.

## House Bill 2727

In response to the gaps in child care access across the state, the Oregon legislature passed House Bill 2727 in 2023, requiring a study to examine strategies for reducing the regulatory barriers of expanding early learning and care facilities. The bill directs the Department of Land Conservation and Development (DLCD) to convene a work group to review information and research concerning the impact of zoning regulations, state and local building codes, and permitting practices on inhibiting or supporting the expansion of early learning and care facilities. The legislature asked that this review include:

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<sup>5</sup> A child care desert is defined as a community with more than three children for every regulated child care slot.

<sup>6</sup> Megan Pratt and Michaela Sektnan, Oregon State University, College of Public Health and Human Services Oregon Child Care Research Partnership, [Oregon's Child Care Deserts 2022: Mapping Supply by Age Group and Percentage of Publicly Funded Slots](#) (May 2023).

<sup>7</sup> Ibid.

<sup>8</sup> The Center for American Progress, [America's Child Care Deserts in 2018](#) (2018).

- ◆ Specific barriers and challenges to siting, building, or renovating early learning and care facilities, including barriers and challenges for co-locating early learning and care facilities with affordable housing and other entities.
- ◆ Potential and actual disparate impacts that zoning regulations, building codes, and permitting practices have on providers based upon diversity factors, including but not limited to race, ethnicity, language, provider type, and geographic location.
- ◆ Promising local, state, and national standards for promoting the expansion of early learning and care facilities.

In addition to this research, House Bill 2727 directed the work group to prepare a report summarizing its findings and provide recommendations to reduce barriers to expanding early learning and care facilities, support the expansion of early learning and care facilities in Oregon, and reduce disproportionate racial and regional disparities in access to early learning and care facilities. This report presents a summary of the study, including the recommendations for the legislature to consider.

## Project Overview

Following the direction of House Bill 2727, the Department of Land Conservation and Development began convening a work group in 2023. Per the bill, this work group contained a range of perspectives and experiences, including:

- ◆ Regulators from five cities and counties across Oregon, representing Benton County, Clatsop County, City of Coos Bay, City of Bend, and City of Portland.
- ◆ Child care providers with recent collective experience in zoning regulations, building codes, and permitting processes across a range of provider types.
- ◆ Representatives from advocacy and policymaking organizations working with providers.
- ◆ Representatives from the Department of Land Conservation and Development with expertise in land use regulations.
- ◆ Representatives from the Department of Consumer and Business Services with expertise in state and local building codes.
- ◆ Representatives from the Department of Early Learning and Care with expertise in licensing requirements.
- ◆ Individuals reflecting the geographic, racial, ethnic, and gender diversity of Oregon.

The Department of Land Conservation and Development hired ECONorthwest to support the project by leading research, facilitating community engagement, and preparing this final report. Together, the Department of Land Conservation and Development, ECONorthwest (“the project team”), and the work group engaged in the project from January to December 2024.

## Project Process

Over the course of the project, the project team met with the work group five times to solicit feedback and project direction. Before each meeting, the project team provided the work group a deliverable for context, review, and consideration. Deliverables included:

**A background memo** to provide project context prior to the first work group meeting and establish a shared understanding of Oregon's child care regulatory framework and promising local, state, and national standards for reducing barriers to child care facility development.

**A High-Impact Barriers to Early Care and Education Facility Development report** summarizing high-impact barriers uncovered from research and community engagement efforts that child care providers may face during the development process, including land use and zoning, building codes, and permitting procedures. This report informed the discussion for the second work group meeting, and a revised report was provided before the third meeting.

**A matrix of proposed recommendations** containing a brief description and possible actions for implementation, an explanation of which barriers the recommendation addresses, a list of intended outcomes, and which agency or organization could implement the action. Each recommendation also outlined potential agencies needed for implementation and indicated whether the recommendation (1) addressed barriers for urban/rural communities or equity considerations and (2) would reduce barriers for co-locating child care with affordable housing, as required by the bill. An initial matrix was provided for the third work group meeting, and a revised matrix was provided for the fourth meeting.

**A draft of this final report** was provided prior to the fifth and final work group meeting.

Throughout the project, work group members shared their expertise, provided technical assistance, and supported developing and prioritizing of the proposed recommendations.

## Research Methods

In addition to engaging with the work group, the project team utilized qualitative research methods necessary to address the complex landscape of child care facility development, which includes varied geographic contexts, facility types, local regulatory frameworks, and the wide-ranging experiences of both regulators and providers in navigating the development process.

Much of this research was done through engagement, which included:

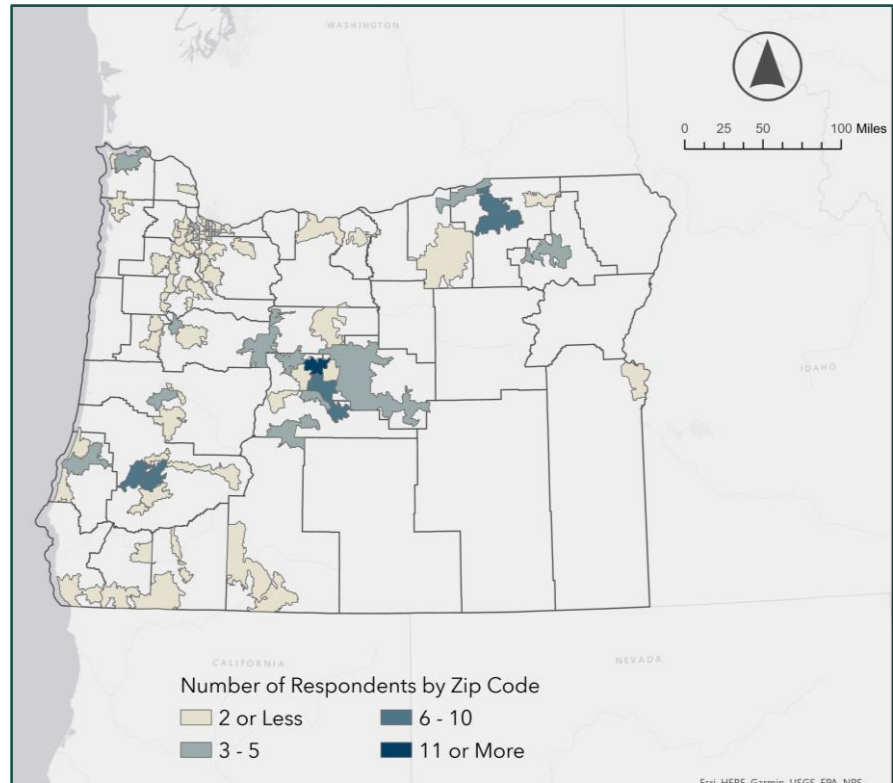
**Interviews and Focus Groups:** The project team conducted two phases of community engagement: one informing the High-Impact Barriers report and the other informing the proposed recommendations. In the first phase, the project team held eight interviews with providers, architects, and regulators and three virtual focus groups (one for providers and two for different types of regulators across Oregon, including staff from local and state agencies). In the second engagement phase, the project team held twelve interviews with

providers, nonprofits, advocacy groups, and regulators from the jurisdictions represented in the work group.

**Surveys:** The project team conducted two surveys: one for providers and one for local jurisdiction regulators.

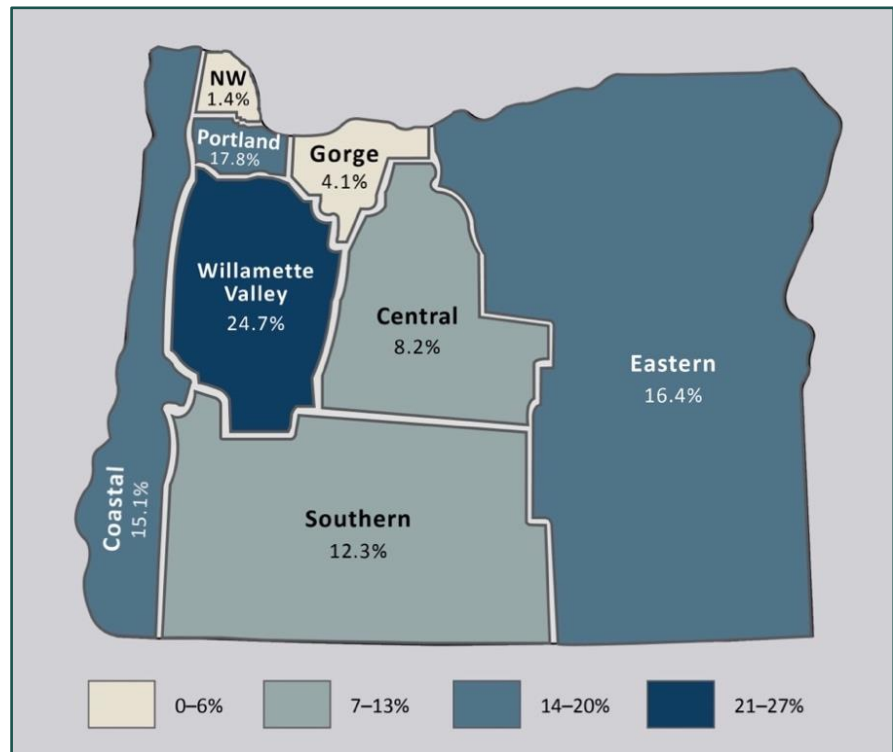
To ensure a broad group of providers were engaged, the team conducted a survey to understand trends related to providers' experience with land use regulations, building codes, and permitting procedures. Ultimately, the project team received 217 responses from providers across Oregon. The distribution is shown in the map to the right.

**Exhibit 1: Provider Survey Responses by Zip Code**



For regulators, the Department of Land Conservation and Development crafted a set of development scenarios to allow local government staff to indicate how they would approach land use review and permitting for various child care facilities under different circumstances. The survey received 73 responses from local staff across Oregon, with the distribution shown in the map to the right.

**Exhibit 2: Local Jurisdiction Survey Responses by Region**



**Additional methods:** In addition to community engagement, the project team researched promising standards from around the country; performed a high-level audit of zoning, building code, and permitting policies for the five jurisdictions represented on the work group; and prepared case studies for real and hypothetical development situations encountered by providers.

The following chapters present the work group’s findings and recommendations. These findings include a review of legislative efforts in Oregon and across the country, a summary of the regulatory framework for child care facility development, and a summary of barriers to development and expansion. Using these findings as the foundation, the report’s final chapter presents the work group’s proposed recommendations for supporting equitable development and expansion opportunities for child care providers.

# 2. Legislative Efforts to Increase Child Care Access

## CHAPTER 2 OVERVIEW

House Bill 2727 is not the first measure taken to reduce barriers to affordable child care in Oregon or the United States. This section summarizes recent legislative action in Oregon while recognizing that Oregon is not alone in these efforts. This chapter also summarizes promising local and state standards nationwide, with more detail available in the **Best Practices** memo in Appendix B.

## Legislative Action in Oregon

In addition to House Bill 2727, the Oregon legislature has passed several other bills in recent years, directly relating to this project's scope and broader access to early childhood care and education. Notable legislation includes:

- ◆ **House Bill 2991 (2023)** directed the Department of Early Learning and Care to (1) commission a study on barriers to entry into the early learning workforce, (2) address barriers in the Oregon Registry for translating and accrediting foreign language degrees, and (3) adopt rules that address barriers that impede entry into early childhood workforce by early childhood professionals.
- ◆ **House Bill 3005 (2023)** directed the Oregon Business Development Department to administer a \$50 million financial assistance program for child care providers to cover the costs of expanding and improving child care facilities and services and established the Early Childhood Infrastructure Fund.
- ◆ **Senate Bill 599 (2023)** required landlords to allow tenants to operate family child care uses, with stipulations.
- ◆ **House Bill 2717 (2023)** added outdoor child care programs to the definition of "child care facility" and required the Early Learning Council to adopt rules governing the operation of outdoor child care programs.
- ◆ **Senate Bill 1040 (2023)** directed the Department of Early Learning and Care to establish and administer a pilot program for child care micro-centers. The intent of this bill is to explore solutions for expanding center-based care in rural areas.<sup>9</sup>

<sup>9</sup> The primary goal of this pilot is to identify and reduce licensing barriers for small-capacity programs serving fewer than 30 children. The statute required one program to be selected from each of the following areas: the Oregon Coast, Eastern Oregon, and the Willamette Valley. The data collected from program interviews, exceptions, and CCLD site visits during the pilot will guide future regulations and internal policy changes within CCLD to support small-capacity programs' viability.



- ◆ **House Bill 3109 (2021)** required jurisdictions to allow centers in commercial and industrial zones. It also prohibited local governments from applying standards beyond those that would apply to other permitted uses in those zones. The intent of this bill was to eliminate lengthy conditional use or other special land use processes for child care facilities.
- ◆ **House Bill 5011 (2021)** commissioned a report to research and propose recommendations to respond to acute housing and child care shortages simultaneously by co-locating child care spaces within or on the grounds of affordable housing developments.
- ◆ **Measure 26-214 (2020)** was approved by voters to establish the Preschool for All initiative in Multnomah County. This legislation directed the Department of County Human Services to administer the program, which provides free, culturally responsive, quality preschool education to all three- and four-year-olds in the county. The initiative also includes provisions for increasing wages for preschool teachers and expanding the number of available preschool slots.
- ◆ **Long-standing statute:** Since at least 1995, Oregon law has required local governments to treat family child care homes as residential uses and permit them outright in residential zones.

In addition to this legislation, in 2007 the Oregon legislature passed a law stating that the state’s policy is to reduce greenhouse gas pollution 75 percent below 1990 levels by 2050. In 2022, the Oregon Land Conservation and Development Commission adopted the Climate Friendly and Equitable Communities program and rules, working toward meeting the legislative direction. In part, these rules require local governments in Oregon’s metropolitan areas that have opted to retain parking mandates to eliminate minimum parking requirements for certain uses, including child care facilities.<sup>10</sup>

## Legislative Action Across the Country

Oregon is not alone in its efforts to address child care access. Across the United States, states and local jurisdictions are experiencing child care shortages and passing legislation to reduce barriers to development and expansion, much of which resembles the Oregon legislature's actions. A summary of this legislation is included here, with more detail in Appendix B.

Promising standards for statewide legislation include:

- ◆ **Oklahoma:** In 2023, Oklahoma approved House Bill 2452, which prevents local authorities from enacting regulatory requirements greater than those established by the Department of Human Services for family child care home licensees.
- ◆ **Colorado:** In 2021, Colorado passed House Bill 1222, which requires local governments to treat licensed home-based child care providers as residences under local zoning, land use, and fire safety decisions. The bill also requires local

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<sup>10</sup> Rule found in OAR 660-012-0430.

jurisdictions to align with state regulations for the maximum number of enrollees (nine) rather than setting local limits.

- ◆ **Washington:** In 2023, the Washington State legislature approved House Bill 1199, which prevents homeowners' associations and landlords from unreasonably restricting family home providers.
- ◆ **California:** In response to an “extreme shortage” of regulated family daycare homes, the 2005 California Child Day Care Facilities Act established a statewide system for licensing child care and prohibited local regulation of small and large family child care homes. The act also supersedes local zoning, building, and fire codes that conflict with its provisions. In 2020, Senate Bill 234 made several important changes to how local jurisdictions regulate family child care homes, including:
  - Local jurisdictions cannot require a zoning permit or business license, fee, or tax to operate a family child care home.
  - A child care provider expanding from a small to a large family child care home no longer needs to get permission from the local jurisdiction unless physical changes are made to the building.
  - Child care homes are considered residential uses and uses by right for the purposes of all ordinances; using the home as a family child care home does not constitute a change of occupancy for local building codes.
  - Child care homes must still pass an initial fire inspection, but annual fire inspections are not required.
  - Landlords and homeowner associations cannot restrict or limit the use of the home as a child care home.

At the local level, promising efforts to increase child care facility development and expansion include:

- ◆ **New Orleans, Louisiana:** In 2020, New Orleans City Council passed an ordinance amending the use permissions and standards for child daycares in nonresidential districts, including reducing conditional use requirements and establishing by-right designations in many districts.
- ◆ **Austin, Texas:** In 2018, the Austin City Council approved a resolution to evaluate fee and zoning regulations for child care facilities (referring to both home- and center-based care). Following an evaluation by the City Manager's office, the Austin City Council approved an ordinance to update land use allowances for child care facilities in 2023, including facilities enrolling up to 24 children in child care deserts and areas where they were previously restricted, allowing facilities with twelve children or fewer as an accessory use in residential zones and adjusting enrollee limits to align with state regulations. Additionally, the Council removed minimum parking requirements citywide, including for child care facilities.
- ◆ **Santa Monica, California:** Santa Monica has a child care linkage fee program, where developers of new residential and workplace development projects either pay fees or

participate in the construction of child care facilities. The goal of the program is to address the increased demand for child care that results from development projects by requiring that developers provide an equitable share of child care facility spaces to help the local community meet its child care needs. Since 2003, the City of Santa Monica has charged developers of commercial and multifamily residential projects over 7,500 square feet a child care linkage fee to address increased demand for child care.

- ◆ **New York, New York:** In 2022, Local Law 43 convened an Office Adaptive Reuse Task Force to develop recommendations for repurposing outdated office buildings. In part, the task force recommended providing a property tax abatement to incentivize retrofitting space for child care centers.
- ◆ **Los Angeles County:** The County developed a tool kit, [Childcare for All: How to Develop and Renovate Early Care & Education Facilities in Los Angeles County](#), that has served as a helpful guide for agency staff and child care providers.
- ◆ **Seattle, Washington:** In 2020, the City of Seattle implemented the Childcare Near You ordinance, which permitted the use of child care centers in neighborhood residential zones.
- ◆ **Bend, Oregon:** In 2020, Bend exempted new or expanding child care facilities from transportation system development charges (SDCs) for providers looking to open or expand child care facilities in Bend.

Overall, legislation in Oregon and across the country reflects a growing recognition of the critical role that affordable and accessible child care plays in supporting families and local economies. However, despite these initiatives, the regulatory context for developing child care facilities remains complex, and understanding the layers of requirements is essential to addressing the scope of challenges that providers and developers face. The following chapter provides an overview of the development process and outlines the regulatory landscape providers engage in when opening or expanding a child care facility.

# 3. Child Care Regulatory Context

## CHAPTER 3 OVERVIEW

While there are many other barriers to establishing and operating a successful child care facility, House Bill 2727 tasks the work group with reviewing information and research concerning the impact of zoning regulations, state and local building codes, and permitting practices on inhibiting or supporting expansion of early learning and care facilities. The review must include specific barriers and challenges to siting, building, or renovating early learning and care facilities, including barriers and challenges for co-locating early learning and care facilities with affordable housing and other entities, among other requirements addressed in the coming chapters.

To establish a shared understanding of these processes, this chapter summarizes the different types of child care providers, the regulatory framework, and the development and licensing process for child care facility development. For additional details, please see the **Background Memo** in Appendix A.

## Types of Child Care Facilities

In Oregon, there are two main types of licensed child care facilities and three main types of child care providers that engage with the development process:

**Center-based providers** care for children in a commercial building, such as a nursery, dedicated child care center, or outdoor child care program. These providers must have a Certified Child Care Center license, in which capacity is determined by floor space and staff.

**Home-based providers** care for children within a residential home (“family child care homes”). There are two types of licenses available for home-based providers:

- ◆ **Registered Family Child Care** licenses are for providers caring for a small group of up to ten children in a home setting, usually cared for by one person.
- ◆ **Certified Family Child Care** licenses are for providers caring for a larger group of up to 16 children in a home setting, usually cared for by one or more people.

Certain requirements and characteristics for these facility types are summarized below and discussed in more detail in Chapter 4: Key Barriers to Development.

### Exhibit 3: Summary of Child Care Facility Characteristics by License Type

	REGISTERED FAMILY	CERTIFIED FAMILY	CERTIFIED CENTER	ENFORCING AGENCY
<b>Enrollees</b>	Up to 10 children	Up to 16 children	Depends on total space and number of staff	Department of Early Learning and Care
<b>Space requirements (ft<sup>2</sup> per child)</b>	None	35 to 50 ft <sup>2</sup> of indoor space and 75 ft <sup>2</sup> of outdoor space	35 ft <sup>2</sup> of indoor space and 75 ft <sup>2</sup> of outdoor space	Department of Early Learning and Care
<b>Provider must live on-site?</b>	Yes	No	Not applicable	Department of Early Learning and Care, local planning departments
<b>Allowed dwelling types</b>	Any	Single-family dwelling, duplex, or townhome <sup>11</sup>	Not applicable	Department of Early Learning and Care, Oregon Building Codes Division
<b>Building Occupancy</b>	Group R-3		Group E or I-4	Oregon Building Codes Division
<b>Land use</b>	Considered a residential use, allowed in residential and commercial zones		Allowed in commercial and industrial zones	Department of Land Conservation and Development

There are also providers and child care programs not required to be licensed through the Care Child Care Licensing Division, including child care provided by public school districts, license-exempt caregivers, and Recorded Programs.<sup>12</sup> These programs play an important role in child care access and community-based care. However, while these provider types

<sup>11</sup> Based on OAR 414-350-000 that stipulates Certified Family Care Homes can only locate in dwellings constructed as a single-family dwelling. The Oregon Building Code Division does not have a definition for “single-family dwelling” and instead considers structures that fall under the scope of the Oregon Residential Specialty Code, defined as “detached one- and two-family dwellings and townhouses” classified as Group R-3 in R101.2.1. However, the Early Learning Council adopted a rule change in 2024 that would allow certified family care homes in all dwelling types; this change will be effective starting July 2025.

<sup>12</sup> Recorded Programs are recorded (but not licensed) with the Care Child Care Licensing Division and include preschool programs that operate less than four hours a day and youth development activities for school-aged children.

can face unique barriers to licensing and operating, because they generally do not engage with the development process, they are largely outside the scope of this study.

## Child Care Regulatory Framework

Home-based and center-based providers engage with various state and local agencies throughout the development and licensing process. It is important to note that these regulatory agencies and requirements governing child care facilities in Oregon are critical for ensuring the safety and well-being of children and serve an essential purpose by protecting vulnerable populations, maintaining public health standards, and safeguarding community interests. However, the complexity and breadth of these requirements can also act as barriers for potential child care providers navigating the process. While recognizing the importance of regulatory agencies and their protections, this report aims to offer a clear understanding of the obstacles and identify safe, appropriate, and actionable solutions to support the development of more child care facilities.

This section provides a brief overview of Oregon's regulatory landscape, including child care licensing processes, zoning regulations, building codes, and permitting requirements, to contextualize the barriers and recommendations discussed in the following chapters.

### Child Care Licensing

Licensing is the process by which child care providers are granted legal permission to operate a facility, ensuring they meet specific health, safety, and operational standards set by state or local authorities. This process involves a review of the facility's physical environment, staff qualifications, and compliance with regulations designed to protect the well-being of children. In Oregon, the Department of Early Learning and Care administers, licenses, and monitors child care facilities in Oregon. This includes issuing and overseeing licenses for providers and facilities, providing technical assistance, supporting communication and referrals between local agencies, and administering state child care licensing requirements and rules. Specifically, the Child Care Licensing Division issues licenses, provides technical assistance, and ensures licensed child care programs meet health and safety standards.

### Zoning and Land Use Regulations

Zoning and land use regulations determine how land can be used in different zones, such as whether certain types of residential development (e.g., single-family homes or apartments) or commercial businesses (e.g., child care centers) are allowed. Zoning regulations also regulate certain physical aspects of the building, including dimensions, parking, landscaping, and architectural style.

In Oregon, the Department of Land Conservation and Development assists local governments in implementing statewide rules for land use. The Department also reviews local plans for compliance with statewide planning goals. In recent years, Oregon's legislature has also

become more active concerning child care, writing statutes directly affecting land use and zoning for child care facilities. At the local level, local governments (defined here as counties and cities) establish zoning codes that align with the statewide planning goals. While local governments generally follow state guidance, their planning departments and local councils or commissioners maintain significant influence over local land use and development decisions.

## Building Codes

Building codes are standards that ensure the building and site are structurally sound, appropriately built, energy efficient, and safe for its intended occupants. At a high level, building codes can include requirements for structural integrity, building exits and accessibility, mitigating fire risk, electricity, plumbing and sanitation, and energy efficiency and insulation.

The state building code governs child care facilities in Oregon. It is a model code developed by the International Code Council and adopted by the Oregon Building Codes Division. Local jurisdictions can implement building requirements to address location-specific issues, so long as they meet the minimum and maximum requirements established in the state building code. Locally, building codes are typically administered by a jurisdiction's building department. The Oregon Building Codes Division and the state building code afford local building officials discretionary authority when implementing the building code locally if the intent and life safety equivalent of the code is still met. However, regulators and architects shared that building officials are often uncomfortable exercising that discretion because of a perceived liability risk when doing so. Others noted that there is a wide spectrum of how requirements within the building code are interpreted by local building officials. Where inconsistent interpretations of a specialty code provision are encountered locally, the Oregon Building Codes Division can provide technical interpretation guidance.

## Permitting Requirements and Procedures

Permits are official approvals that allow for construction or renovation projects, and permitting *procedures* are the processes required to obtain those permits. Types of permits could include land use entitlements (e.g., zoning, site plan approval, etc.), building permits, public works–related permits, or county health or environmental approvals. Permits and their corresponding procedures vary across jurisdictions and could require various levels of documentation (e.g., property records, studies related to environmental impacts, engineering and design plan sets, etc.), review rounds, and plan revisions to ensure projects meet the requirements of all necessary agencies. Fees and review timelines for different types of permits vary greatly across jurisdictions in Oregon.

Land use procedures have state-mandated time frames due to their complexity and time-consuming nature. However, local jurisdictions retain significant control over the specific procedures and requirements for different land uses. Local jurisdictions can establish

requirements impacting permit review timelines, such as public hearings and appeal periods, particularly for conditional use procedures.

## Other Requirements

Child care facilities are also subject to other regulations that can impact development that don't neatly fall into land use, building requirements, and the permit process. For example, public works departments or environmental agencies may also have requirements related to public streets, utilities, and sanitation systems that are triggered during the land use or building permit process depending on the location of the project or the scale of project proposed. In Oregon, these requirements are governed by multiple state and local agencies, including the Oregon Department of Transportation, the Department of Environmental Quality, local city or county public works departments, and the Oregon Health Authority. These agencies oversee the implementation of standards that ensure facilities have access to safe drinking water, effective waste management systems, and proper septic tank inspections, if applicable. Providers may also have to obtain permits for and bear the cost of modifications to existing on- and off-site infrastructure, and inspections are conducted to verify compliance with health and safety standards established by local authorities.

## The Development and Licensing Process

For family child care homes and child care centers, the development and licensing process is a multistep journey that involves navigating a range of regulatory agencies and their individual requirements. Once a site or building is identified, providers generally begin by verifying or securing the proper zoning and land use approvals to ensure the facility can operate legally in the chosen location. From there, providers must comply with the building code to ensure the physical space is safe and suitable for child care. Once the facility is built or renovated (if necessary), providers must obtain their operating licenses, which include meeting facility building standards for health and safety. Many factors, including the type of facility, building type, age, previous use, and project scale, can impact the intensity of the requirements a child care facility is subject to.

Throughout this process, child care providers often face major barriers that complicate and often hinder their ability to develop or expand their facilities successfully. The following chapter describes these barriers in depth, focusing on zoning regulations, building codes, and permitting practices.



# 4. Key Barriers to Development

## CHAPTER 4 OVERVIEW

This chapter summarizes the major barriers child care providers often encounter when trying to establish new facilities or expand existing ones. These challenges were identified through research and engagement with providers and regulatory agencies. The barriers highlighted here serve as the basis for the recommendations presented in Chapter 5; for more details, see the [High-Impact Barriers to Early Care and Education Facility Development](#) report in Appendix C. The primary topics in this chapter are:

- ◆ Overarching Barriers to Development
- ◆ Land Use and Zoning
- ◆ Building Codes
- ◆ Facility Requirements for Licensing
- ◆ Child Care Co-Location Barriers
- ◆ Potential and Disparate Impacts

This chapter is supplemented with provider and jurisdiction survey findings throughout.

The barriers summarized in this chapter are generally organized according to the development and licensing process providers experience. However, it is important to note that barriers are often not contained to a single step in the development process and do not affect all providers equally.

## Overarching Barriers to Development

A few themes emerged across provider types, development stages, and jurisdictions throughout community engagement. Providers, architects, and regulators all emphasized the difficulty of navigating the regulatory framework, the lack of viable sites for child care facilities, and the significant financial risk to providers.

## Complex and Layered Regulatory Framework

Providers, architects, and regulators all highlighted the challenge of navigating a complex web of requirements across multiple agencies at state, county, and city levels. This regulatory system often features overlapping and conflicting rules, making the development process for child care facilities particularly difficult to navigate.

For child care providers, this means they struggle to conduct their own effective research due to confusing resources and regulations. Agencies operate in silos, leaving providers to

coordinate among them, with no central point of contact to address questions across licensing, zoning, and building requirements. While hiring consultants like architects or planners may streamline the process, the cost is often prohibitive. Adding to the complexity, requirements and customer service experiences vary widely across jurisdictions, project types, and licensors, making it difficult for providers to apply experience to new projects. These hurdles are particularly daunting for first-time, low-income, and non-English-speaking providers, who face even greater obstacles in understanding and meeting requirements.

There are implications for regulators and their agencies too, impacting their ability to effectively support providers through the development process. Local staff often lack the capacity or expertise to provide guidance to providers on different aspects of their projects. Jurisdictions with multiple departments (e.g., planning, building, transportation, etc.) may provide conflicting or incomplete information, especially during crucial early stages. Additionally, local jurisdictions frequently struggle with implementing state laws or building code changes due to insufficient guidance or lack of resources, resulting in varied interpretations across locations. This fragmentation is exacerbated by agencies' limited awareness of each other's requirements.

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**“The most difficult part is understanding the codes and complying with the intent of the codes. Each official potentially interprets the code differently therefore if you speak to multiple officials, you could potentially get **multiple interpretations which becomes confusing and costly.**”**

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The complex maze of requirements and lack of interagency coordination often leave child care providers unaware of necessary approvals, exposing them to potential liability if found operating out of compliance. Importantly, local governments struggle to accurately track the number of active facilities and, therefore, their compliance status with local regulations.

## **Lack of Suitable Locations for Child Care**

Even before beginning the development process, the extent and complexity of requirements can make it difficult to identify ready-to-go spaces for child care that do not require extensive renovations or land use processes. Together, land use, zoning, building code regulations and procedures, and licensing requirements significantly limit the number of suitable sites and buildings eligible for child care, particularly centers. This scarcity of suitable locations is exacerbated by the difficulty in obtaining comprehensive information up front due to the number of regulations and agencies involved. As a result, providers often risk entering into ownership or lease agreements without fully understanding the extent of necessary upgrades and processes, exposing themselves to considerable financial and operational risks.

## Financial Risk for Child Care Providers

The shortage of suitable spaces, coupled with an incomplete understanding of regulatory requirements, often leads to significant unforeseen costs for child care providers. These expenses can include building upgrades, remediation efforts, extensive renovations, and the need for professionally prepared building plans. Such unexpected financial burdens can jeopardize existing funding streams or prove insurmountable, especially when providers lack the ability to plan for them in advance. The high up-front costs may delay facility openings or, in some cases, render projects entirely unfeasible, resulting in unrecoverable expenses. This situation is compounded by the limited availability of funding for child care facility construction and expansion, with providers struggling to access capital for such projects. The financial risks are particularly acute for smaller and less-resourced providers, who often lack the financial security to absorb unexpected costs.

## Land Use and Zoning

Child care providers typically begin with the land use and zoning process to determine whether a facility can legally operate in a given location. In some cases, this process can be complicated, time-consuming, and expensive to navigate. While state legislation was passed to streamline this process, local discrepancies, special procedures, and permitting requirements that can pose barriers to development often remain.

## State Land Use Regulations for Child Care Facilities

As updated in 2021, ORS329A.440 requires local jurisdictions to allow child care more broadly in residential, commercial, and industrial zones:

- ◆ Requires local governments to allow residential dwellings located in an area zoned for residential or commercial uses to be used as family child care homes. Registered Family and Certified Family child care homes are considered residential uses for zoning purposes.
- ◆ Requires local governments to allow child care centers as a permitted use in all areas zoned for commercial or industrial use, except areas specifically designated by the local government for heavy industrial use.
- ◆ Prohibits local governments from imposing land use regulations, special fees, or conditions on the establishment or maintenance of a child care facility in an allowed zone if they are more restrictive than those imposed for other uses in the same zone. Notwithstanding this clause, the statute allows counties to impose “reasonable conditions” on the establishment of family child care homes in farm zones.

## ORS 329A.440 Implementation Challenges

The intent of HB 3109 (ORS 329A.440) was to allow in-home child care by right in residential zones and centers by right in commercial and industrial zones, thereby

eliminating lengthy conditional use or other special land use processes for child care facilities. However, many jurisdictions are unaware of this change in state law or do not have a clear understanding of how to implement it and have yet to update their codes to reflect new regulations. This creates confusion when trying to understand the process a child care facility may need to navigate and the level of scrutiny the project may face. As a result, there is some discrepancy regarding the requirements of ORS 329A.440 and jurisdictions across Oregon have varying processes and requirements for permitting child care facilities. Not all jurisdictions comply with the new laws, and while local jurisdictions are required to directly apply the statute if their code is outdated, many local staff as well as providers are unaware of the statute.



## LAND USE REGULATIONS FOR CERTIFIED FAMILY HOMES ACROSS OREGON

In the jurisdiction survey, only **56 percent** of jurisdictions responded that a new certified family child care home is allowed by their development code as a permitted use in a residential zone.

### MISALIGNED DEFINITIONS

In addition, many jurisdictions have yet to align their permitted use definitions for child care facilities with state licensing definitions as part of ORS329A.440. If jurisdictions do not update their permitted use definitions, misalignment with state land use rules and Department of Early Learning and Care requirements and allowances could cause confusion and even artificially limit capacity in child care facilities. For example, some definitions limit family child care homes to 12 children rather than the 16 allowed by state licensing.

### SPECIAL PROCEDURES

Many cities in Oregon have yet to update their permitted uses and procedures to reflect new state requirements. In some cases, child care facilities may still require a special procedure,

**37 percent** of home-based and **40 percent** of center-based survey respondents said that **conditional use permits** made it difficult or impossible to locate or expand their business.

such as a conditional use permit, to be approved in a particular location. Obtaining these permits usually involves a longer and more intense land use review process and can include additional fees, neighborhood meetings, public hearings, and approval or denial by review bodies, as well as the possibility that an approval could be appealed. The permit may also contain expiration dates, requiring providers to go through the process again to continue using the property with no approval guarantee.

However, special procedures may still pose barriers to providers, even in jurisdictions aligned with ORS329A.440. The bill limits a jurisdiction's ability to place additional zoning restrictions on early childhood care and education facilities in certain zones, but they still have some ability to subject facilities to special procedures or restrictions (such as conditional use permits) if they regulate other uses in the zone in the same way.

Outside of the requirements established by ORS329A.440, providers shared common circumstances that trigger special procedures. Some of these scenarios include:

- ◆ **Centers in residential zones:** Many jurisdictions require conditional use permits for child care centers in residential zones.
- ◆ **Sites with existing conditional uses:** If a provider would like to use a space with an existing conditional use, they may have to modify their conditional use permit if they need to make any site changes, such as converting parking to an outdoor play area or adding a child care to a different conditional use such as a church.
- ◆ **Expiring nonconforming use status:** New providers taking over an existing child care business are often not granted a continuation of the building’s lawful nonconforming status for building or site conditions, even if it was previously used for child care. Many jurisdictions have a provision that revokes the legal nonconforming status of a use if it sits vacant or unused for more than a year.

## REGULATING FAMILY CHILD CARE HOMES

Even if jurisdictions have updated their code to comply with ORS329A.440, inconsistent interpretation of the statute has created confusion about how to properly implement these requirements locally. Classifying in-home child care as a residential use has created confusion for local jurisdictions. Many are unsure how to process permit applications for child care facilities, including whether to impose requirements for home occupation permits or commercial businesses. This confusion is compounded by the statute contradicting state building code regulations, which categorize in-home child care as a different use from a typical residential dwelling.

“The county planning department was unaware that home daycares existed within the county, or that the ORS define **home daycares as a residential use**. As I built my home intending to open a CF facility, the county **required me to meet commercial building and sanitation codes.**”

## Rural Land Use Regulations

While rural residential and commercial zones are subject to the requirements of ORS329A.440, these regulations do not apply to rural resource zones (farm or forest zones) outside the urban growth boundary. In these zones, child care facilities and many other uses are often still subject to restrictive or discretionary zoning regulations intended to support Oregon land use goals to protect farm and forest lands. Family child care homes in resource zones may be allowed by a home occupation permit, which is typically a conditional use; current law does not provide for any other path to allow these uses in resource zones. Child care facilities are typically not permitted on their own in these areas, but there may be instances where they are permitted as an accessory to a residential use via a home occupation permit. Under ORS 215.283(2)(dd) child care centers in exclusive farm zones

can be conditionally allowed if they are primarily for the children of local residents and workers and are co-located with a community center or school.

## Land Use Permitting Procedures and Requirements

Even if a jurisdiction allows child care by right, obtaining the necessary permits can be difficult for providers. Permit processes vary widely by jurisdiction and can be complex,

.....  
“The **time** it took to get permits, **lack of clarity** around the review process, and a system that seemed **severely backed up and disjointed**. Even lucking into a child care specialist [...] there was little support.”  
.....

time-consuming, and costly. Understanding requirements for specific sites often requires significant up-front investment, which may be lost if the project can’t proceed. Some jurisdictions offer or require pre-application meetings before submitting a permit application with the intent to discuss potential regulations and project requirements. However, some jurisdictions charge a high fee for these meetings and the information provided is often incomplete, generic, and nonbinding.

Many providers noted the need to hire architects, attorneys, or consultants to help them navigate the process, and throughout the application process, they may receive conflicting or surprising information from officials

that lead to unexpected costs and delays.

## Permit Timelines

While Oregon has set maximum timelines for issuing land use decisions, they can still be unpredictable and vary by jurisdiction depending on the permit type, project scale, and staff capacity. Providers often do not have an adequate sense of how long a permit process will ultimately take. Many providers are also first-time permit applicants and lack experience navigating the process, which may result in additional time to understand and provide the necessary information. The lengthy and unpredictable permitting process can financially strain providers through increased holding costs (such as mortgage or rent payments) during the time it takes to receive permit approvals before opening. Delayed projects might also impact a provider’s ability to retain staff hired in anticipation of opening or jeopardize potential funding that is contingent on a certain development timeline.

.....  
**46 percent** of home-based and **47 percent** of center-based survey respondents said **long permit timelines** made it difficult or impossible to locate or expand their business.  
.....



## PORTLAND PERMIT TIMELINES FOR CHILD CARE FACILITIES<sup>13</sup>

The City of Portland provided permit data for five child care facilities that applied for a conditional use permit between 2022 and 2024. The data shows that the average number of review days for these facilities was 221 days.

### Permit Fees

.....  
**49 percent** of home-based and **42 percent** of center-based survey respondents said **permit fees** made it difficult or impossible to locate or expand their business.  
.....  
of a project.

Permit fees can also vary significantly by jurisdiction, project scale, and procedure type. Generally, the more complicated or lengthy a land use process is, the greater the cost to the provider. Fees associated with land use processes can include pre-application meetings, conditional use permits, or site plan review, in addition to the costs of completing the land use application itself, including plan sets and any special studies required. Jurisdictions generally develop their own fee schedules, which are updated annually. Fees can be calculated based on a range of variables such as square footage or total project costs, which can be difficult to predict at the beginning

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<sup>13</sup> While the project team asked the jurisdictions represented on the work group to share their permit review timelines, only Portland provided it. Most jurisdictions don't track how long permit reviews take, making it hard to pinpoint actual processing times. However, child care providers consistently cited lengthy permit reviews as a major barrier.



## PERMIT FEES ACROSS OREGON

The project team gathered information on current permit application fees for nineteen local jurisdictions across Oregon regions, including cities and counties and rural and urban areas of varying sizes.<sup>14</sup> Average and median fees by permit type are summarized below.

- ◆ Conditional use permits: An average fee of \$3,200 and a median fee of \$2,000, ranging from \$400 to \$14,000.
- ◆ Site plan review permits: An average fee of \$2,800 and a median fee of \$2,500, ranging from \$500 to \$5,900.
- ◆ Building permit for a project valuation of \$500,000:<sup>15</sup> an average fee of \$2,700 and a median fee of \$2,800.
- ◆ Building permit for a project valuation of \$10,000:<sup>16</sup> an average and median fee of \$200.

This review is limited to the initial application fee a provider could be charged when first submitting their application for review. For the building permit fees above, assumptions are made for project valuation for illustrative purposes only, and the fees above do not include additional fees jurisdictions typically charge for application review time.

Fee schedules can also be difficult to interpret, and it can be unclear which fees may be required. Some larger jurisdictions may offer a fee calculator, but these can be inaccurate and difficult to use, even for experienced development professionals. For many child care providers, even those with prior development experience, accurately calculating permit fees for a specific project can be challenging. For fees required up front, providers risk paying expensive application fees for projects that ultimately may not be approved or be viable.

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<sup>14</sup> Jurisdictions were Salem, Eugene, Corvallis, Lane County, Harney County, John Day, Pendleton, Baker City, Medford, Ashland, Klamath County, Prineville, Bend, Deschutes County, Coos County, Newport, The Dalles, Astoria, and Portland.

<sup>15</sup> A project valuation of \$500,000 assumes renovation of a commercial space for a child care center.

<sup>16</sup> A project valuation of \$10,000 assumes renovation of existing home to accommodate in-home child care.



## SUMMARY OF LAND USE AND ZONING BARRIERS

Overall, providers emphasized zoning and land use permits as a source of risk and uncertainty, with unclear requirements, discretionary approvals, and unexpected costs and delays. Barriers identified by both regulators and providers include:

- » **ORS329A.440 implementation:** There is a lack of clarity regarding recent changes to state law related to the land use and zoning of child care facilities and how they can be implemented locally. Misalignment between state and local land use regulations can create administrative challenges for local staff processing applications and providers researching the feasibility of opening or expanding a child care business.
- » **Permitting requirements:** Land use and zoning permitting procedures are not intuitive and are often confusing, especially for providers without development experience. Special procedures and requirements (e.g., conditional use permits) can also make the development process time-consuming, costly, and risky, especially for smaller providers or those with fewer resources.

## Building Codes

Once providers obtain any required land use permits, they must ensure the facility meets any relevant building requirements. Providers may need to work with the local building department to confirm an existing building's legal occupancy, apply for and receive permits for renovations, undergo inspections, and obtain a final Certificate of Occupancy to use the building for child care.

Building department requirements and procedures vary by jurisdiction, leading to confusion and potential unexpected costs. The Oregon Building Codes Division and the state building code afford local building officials discretionary authority when implementing the building

code locally, so long as the intent and life safety equivalent of the code are still met under any adjustments. However, regulators and architects shared that building officials are often uncomfortable allowing adjustments because of a perceived liability risk. Others noted that there is a broad spectrum of how local building officials interpret requirements within the building code. Where inconsistent interpretations of a specialty code provision are encountered locally, the Oregon Building Codes Division can provide technical interpretation guidance.

.....  
**49 percent** of home-based and **44 percent** of center-based survey respondents said that **confusing and unclear building code requirements** were a barrier to development.  
.....

## Change of Occupancy

Providers consistently noted that changing a building's occupancy is a major barrier to development. Even if the provider does not need to make any building renovations to meet

facility licensing requirements, opening a new facility typically requires a change of occupancy, including for existing homes. The [Barriers report](#) provides more detail regarding how early childhood care and education facilities are classified.

If a provider would like to occupy a space that is not already classified as the appropriate occupancy for the facility, the provider will need to obtain a change of occupancy from their local building department to ensure the space meets safety and structural requirements for a child care facility. A provider might be required to submit building plans prepared by a licensed professional, obtain a building permit for the new occupancy, and pass building department inspections, regardless of whether they are making physical changes to the space. However, requirements depend on the scope of alterations and process varies across jurisdictions and facility types.

**53 percent** of home-based and **57 percent** of center-based survey respondents said the **costs of building updates** made it difficult or impossible to locate or expand their business.

## Changes of Occupancy for Certified Centers

**37 percent** of center-based survey respondents estimated that it would cost them **\$100,000** to meet building codes.

If a certified center would like to occupy a building not currently classified as Group E or I-4, it will need to obtain a change of occupancy for all or part of the building, which can include installing sprinklers, seismic retrofits (if required by the local jurisdiction), and accessibility upgrades. Modifying a building's designated use can be complex and costly, often requiring consultants, multiple rounds of plan review, substantial building upgrades, and inspections before obtaining their child care license. This process can also be very expensive, with providers reporting that building upgrades triggered by a change of occupancy can cost hundreds of thousands of dollars in fees, materials, and architect and contractor costs. Variation in requirements for a change in occupancy across jurisdictions can make total costs difficult to predict.



### SEISMIC UPGRADE REQUIREMENTS ACROSS OREGON

In the jurisdiction survey, **12 percent** of jurisdictions surveyed indicated they would require seismic upgrades and an additional **23 percent** of jurisdictions reported they might be required depending on the scope of renovations being done.

However, providers shared that it can be difficult to find available commercial spaces with an E or I-4 occupancy that are zoned for child care. Because of the limited number of viable spaces, many providers may face significant expenses or cannot open at all. Providers also shared that even determining whether a building meets the requirements for the desired occupancy can be challenging and expensive. Historical use and occupancy classifications can be very difficult to find documentation for, particularly in rural areas, so providers may not be able to easily identify whether the building will require significant updates, sometimes even if the building was previously used for child care.

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“Child care requires the **highest level of retrofitting, highest level of sprinklers, and other costly changes** like multiple exits and increasing bathrooms (plumbing is expensive). And **MOST places for sale require an occupancy change**, which requires money to do research on the viability of the building, to find out, frequently, that it won't work. **This alone is a huge cost and barrier.**”

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## Family Child Care Regulations

While ORS 329A.440 considers family child care homes a residential use for land use compliance purposes, use of an existing residence as a new family child care home is considered a change of occupancy under the state building code. Obtaining this change of occupancy might require a building permit, inspection, and new certificate of occupancy, even if there are no renovations. However, the Oregon Building Codes Division grants discretion to local officials to determine the appropriate process for verifying compliance. Some only require an inspection or an expedited permit in the case where no physical changes to the home are required or proposed. In particular, the provider must verify their home meets the fire safety requirements outlined in the Oregon Structural Specialty Code Section 420.12.<sup>17</sup> This code, updated in 2022, requires either fire sprinklers in the home or direct exterior exit from the level of the home used for child care. In practice, regulators shared uncertainty about what might be considered a proper procedure for verification and noted that further guidance from the Building Codes Division would be useful. Additionally, while the Building Codes Division does not have any requirements that the provider live on-site, local regulators shared uncertainty as to whether the home must be used as a residence in addition to the child care facility.

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<sup>17</sup> This section of the Oregon Structural Specialty Code specifies that these homes may be built under the Oregon Residential Specialty Code, so long as they meet the required fire safety provisions in this section.



## CHANGE OF OCCUPANCY REQUIREMENTS ACROSS OREGON

The survey of local jurisdictions revealed:

- » **Change of Occupancy:** Only 41 percent of jurisdictions considered a new certified family child care in an existing home (without fire sprinklers) a change in occupancy.
- » **Inspection Only:** 25 percent stated they would only require a building inspection to confirm compliance with Oregon Structural Specialty Code Section 420.12 without necessitating a building permit.
- » **Building Permit:** 44 percent would require a building permit and inspection to confirm compliance with Oregon Structural Specialty Code Section 420.12.

Providers are also often unaware of change of occupancy or other building department requirements they may need to meet when adding a child care business to their home. If other regulators do not refer the provider to the building department or verify that they meet requirements, providers may not obtain appropriate documentation and risk noncompliance with the building code, which could have financial or legal ramifications.

### CHILD CARE IN MULTIFAMILY DWELLINGS

Locating in-home child care in multifamily dwelling units (such as apartments or condominiums) faces regulatory barriers from both licensing and building code requirements. While registered family care homes can operate in any building type, certified family care homes are restricted to buildings “constructed as a single-family dwelling” under current licensing regulations, effectively preventing their operation in multifamily units such as an apartment.<sup>18</sup> The building code equivalent is *one or two-unit* dwellings that are constructed under the Oregon Residential Specialty Code, which includes detached homes, duplexes, and townhomes. The inconsistent terminology can lead to confusion, especially for duplexes and townhomes.

The Oregon Structural Specialty Code requires fire sprinklers for all new buildings, which would lead a provider to believe that they could meet the requirements for a registered family child care home. However, child care licensing prohibits care above the ground floor altogether. Thus, the only legal paths for child care in multifamily building environments are either a registered family care home in a ground-floor unit or a child care center on the ground floor. This combination of building code and licensing regulations creates complexity and ultimately significantly limits the ability to provide in-home child care in apartment units and other multifamily dwellings, limiting options for both providers and families in these housing types.<sup>19</sup>

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<sup>18</sup> Currently established in OAR 414-350-0000; however, the Early Learning Council adopted a rule change in 2024 that would allow certified family care homes in all dwelling types; this change will be effective starting July 2025.

<sup>19</sup> The Building Code Structures Board recommended changes to the Oregon Specialty Structural Code in 2025 that would add provisions regarding licensed child care facilities in structures containing more than two

## Other Related Barriers

Providers noted, and additional research uncovered, additional challenges that often occur as part of land use permitting or building codes. These items included system development charges, frontage improvements, and site upgrades that are often tied to public works standards and infrastructure, including:

**System development charges:** These and other development fees are often unpredictable, creating financial strain for providers with limited capital. System development charges can be triggered for new buildings as well as for changes to existing buildings' uses or occupancies. Transportation system development charges are often assessed for child care centers. Many jurisdictions base these fees on the number of “trips” generated by different uses established in the Institute of Transportation Engineers Trip Generation Manual. Fees are assessed if the new land use generates more trips than the previous land use; however, the manual lists child care as generating more trips than many other land uses, including private schools, medical clinics, and churches.<sup>20</sup> The figures in the manual can also be inappropriate for individual cases, especially for providers with pick up times that don't coincide with rush hour or that are in particular neighborhoods (in more urban locations, many parents might walk or bike their kids to care).

### TRANSPORTATION SDCS ACROSS OREGON

Approximately **30 percent** of surveyed jurisdictions would charge a transportation SDC because trip estimates from child care uses are higher than from retail or business uses.

**Frontage improvements:** Many jurisdictions require new businesses to upgrade public infrastructure, including street frontage. These requirements can also be based on the Institute of Transportation Engineers Trip Generation Manual, or on the cost of the building improvements for the new business. Frontage improvements can add significant costs and make projects infeasible for providers, especially those with fewer resources.

### FRONTAGE IMPROVEMENT REQUIREMENTS ACROSS OREGON

Approximately **38 percent** of jurisdictions surveyed indicated they would review the street frontage and may require frontage improvements to sidewalks, curbs, trees, or other right-of-way improvements.

**Site upgrades:** Building permit applications can unexpectedly trigger broader site upgrade requirements under local zoning codes, catching many providers off guard with additional costs and compliance requirements. Even if the project only proposes building-related changes, jurisdictions use the permit process to enforce site-wide development standards

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dwelling units such as apartments. While child care would still not be allowed above the ground floor per licensing requirements, this change would establish clearer guidelines for child care facilities in ground-floor units.

<sup>20</sup> Institute of Transportation Engineers Trip Generation Manual, Common Trip Generation Rates (11th Edition), Peak Hours for Daycare Center.

that may have been adopted after the original site development. These requirements could include pedestrian infrastructure like sidewalks and crosswalks, enhanced landscaping to meet current standards, or bicycle parking facilities. The scope and cost of site upgrades can significantly impact project budgets and timelines, particularly when they weren't anticipated in the initial planning phase.

**Septic capacity:** Homes with septic systems adding child care facilities are treated as schools regarding sewer capacity requirements and are often required to expand their systems. An upgrade or replacement of an existing residentially sized septic tank can cost tens of thousands of dollars.<sup>21</sup>

**Fire inspections:** Prior to licensing, certified family care homes and centers must demonstrate that their facility meets the Oregon Fire Code requirements. The building code sets the foundational fire and life safety requirements. Once construction is complete and a Certificate of Occupancy is issued, jurisdiction typically shifts to the fire marshal or official. At this point, the Oregon Fire Code (or locally adopted fire code, if approved by the Department of the State Fire Marshal) takes precedence and functions as the maintenance code.

During work group discussions, providers raised concerns about experiencing unexpected fire safety violations during annual inspections of child care centers—issues that had gone unnoticed in previous years due to varying interpretations of code and safety requirements by different inspectors. In some cases, this has led to providers needing to close classrooms or the business altogether to address these issues. The Oregon State Fire Marshal acknowledged this challenge, noting that while striving for consistency, there are hundreds of fire departments across Oregon, and some jurisdictions adopt more stringent fire and life safety codes than are required by the state, so achieving consistency will likely continue to be a challenge. The work group acknowledged this will need to be an ongoing conversation between DELC and the Oregon State Fire Marshall.

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<sup>21</sup> [Large-Capacity Septic Systems](#), Environmental Protection Agency.

## SUMMARY OF BUILDING CODE BARRIERS

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Providers highlighted building code requirements as barriers that can add significant expenses and limit potential spaces. Regulators also shared uncertainty regarding how to regulate certain facilities. Key barriers include:

- » **Building upgrade costs:** Renovations required to comply with the building code can be expensive and unpredictable. In particular, costs from change of occupancy requirements effectively require providers to move into buildings already classified as Group E or Group I-4; however, providers shared that very few buildings qualify.
- » **Family Child care homes:** There is a general lack of clarity and consistency in building permit procedures for new family child care homes.
- » **Multifamily buildings:** Incongruent language between land use regulations, the building code, and licensing requirements limits the potential to provide child care in a multifamily dwelling unit.

## Licensing Requirements

In addition to land use and building code requirements, child care facilities are subject to various other building requirements established across multiple agencies. The Department of Early Learning and Care establishes child care facility requirements for classroom and outdoor space that must be met as part of the licensing process. Other agencies, including the Oregon Health Authority and the Oregon Department of the State Fire Marshal and local fire officials, administer or inspect some other requirements, including lead testing, sanitation, and fire safety. These regulations are based on supporting and enforcing an environment for healthy and safe child development in the facility. However, providers shared that these requirements limit the number of suitable spaces for child care facilities and may result in major renovation costs to meet requirements.

The Department of Early Learning and Care requires a precertification visit to discuss licensing requirements with prospective providers before scheduling fire, sanitation, and licensing inspections but after local planning and building requirements are met. However, some providers shared that it can be difficult to know if their facility will meet Department of Early Learning and Care requirements during development. If the building does not meet licensing facility requirements, the provider may need to submit (or resubmit) building plans and obtain a building permit from the building department to make any required alterations.

## Key Licensing Facility Requirements

Providers and architects identified space and plumbing fixture requirements as key issues that arise when searching for or renovating a space for child care. While the Department of Early Learning and Care can issue waivers or alternatives for some requirements (such as

outdoor space), they may still create barriers for providers based on their specific situation or licenser.

## Outdoor Space

Many providers shared that outdoor requirements are one of the most restrictive barriers to finding a viable facility site. The Department of Early Learning and Care requires child care centers and certified family care homes to provide at least 75 square feet of outdoor space per child, access to shade, and fencing at least four feet high. While providers can submit an alternative proposal to use nearby parks or school outdoor spaces, providers shared that these spaces may not meet standards for access or safety. For centers, providers emphasize that it can be very difficult to find a potential center location with adjacent outdoor space large enough to be used as or converted into a play space, particularly in urban areas. For certified family care homes, outdoor space requirements can be especially limiting for providers in apartments or other homes without a dedicated yard.

## Indoor Space

DELC licensing requirements require 35 square feet of indoor activity space per child for up to 12 children for both homes and centers. If a home-based provider cares for more than 12 children, they must provide 50 square feet per child for each of the additional children after the first 12. Home-based providers noted equity concerns related to this stricter standard for in-home child care and a barrier to expansion in some cases.

## Plumbing Fixtures

Both architects and providers reported difficulties in meeting and configuring the required number of toilets and sinks in a facility. Providers shared that there are a limited number of buildings (both residential and commercial) that are already equipped with sufficient plumbing fixtures to meet child care facility requirements. If facilities expand, providers must add additional toilets and sinks to meet the child-to-toilet ratio requirements, which can require expensive plumbing renovations.

Architects shared that designing bathroom layouts that adhere to building code and licensing requirements can be challenging. While some architects have developed efficient alternative bathroom layout ideas that meet the intent of both regulations, local building officials may not feel comfortable using their discretion to approve alternatives due to liability concerns.

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**42 percent** of home-based and **55 percent** of center-based survey respondents said **plumbing requirements** are a barrier.

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## SUMMARY OF FACILITY LICENSING BARRIERS

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Licensing facility requirements can limit the pool of existing buildings that can be feasibly used for child care. Requirements noted by providers include:

- » **Space Requirements:** Many buildings do not have adequate indoor or outdoor space, especially in urban settings.
- » **Plumbing Fixtures:** Providing and configuring the required toilets and sinks can be a challenge, both financially and spatially.

Additional barriers related to the licensing process were identified during this process that fell outside the work group's scope. These issues have been shared with DELC, which is actively working to address many of them through separate initiatives.

## Co-Locating Child Care with Other Uses

While development of all types can be difficult to navigate successfully due to many of the same barriers discussed in this chapter, co-locating child care with other uses can present some unique additional challenges. However, co-location can be an effective strategy for meeting community needs and promoting economic development. This section primarily focuses on barriers to three common child care co-location types: affordable housing, churches, and schools. However, the obstacles discussed throughout this section are often true across all kinds of co-location projects.

### Co-Locating with Affordable Housing

Like child care, access to affordable housing supports economic mobility, creates a more robust workforce, and improves educational outcomes. Co-locating child care and housing can also promote walkable communities and reduce vehicle miles traveled by eliminating additional trips to drop off and pick up children. As the state focuses on addressing its pressing housing needs, co-locating housing and child care can be an opportunity to address both needs simultaneously. However, many of the barriers discussed above can also present unique challenges for developing both housing and child care, including:

- ♦ **Zoning and land use policies** often require lengthy conditional use permit processes to allow child care in residential zones.
- ♦ **Child care licensing requirements** present limitations for multifamily units, especially for home-based providers in apartments.
- ♦ **Unique design needs** for child care facilities, including classrooms, bathrooms, kitchens, and outdoor space requirements can be challenging to incorporate in housing developments if not planned for well in advance.

- ◆ **Lack of expertise** on both sides of a provider–housing developer partnership can present barriers. Developers may lack knowledge on child care licensing and facility requirements, and providers may lack expertise in facilities development, fundraising, and complex legal and financial agreements needed for co-location projects.

To navigate these layers of regulations, developers will typically need to find an architect with expertise in child care facilities. They may also need to hire an early childhood consultant to guide the process, which adds additional project costs.

## **Additional Barriers to Co-Locating Child Care with Affordable Housing**

In addition to these development barriers, co-location projects can have additional nuances that fall outside of the regulatory framework studied for House Bill 2727. In 2021, the Oregon legislature passed House Bill 5011, commissioning a study to research and propose recommendations to respond to acute housing and child care shortages simultaneously by co-locating child care spaces within or on the grounds of affordable housing developments. In response to the bill, the Low-Income Investment Fund and EConorthwest prepared a 2022 report entitled [\*Co-Locating Early Care and Education Facilities with Affordable Housing in Oregon\*](#) on behalf of Oregon Housing and Community Services and the Oregon Early Learning Division. The report highlights the complexity of co-location projects, including the difficulty of financing and coordinating successful partnerships.

### **FINANCING**

Affordable housing construction can be very costly, with limited funding sources available relative to need. To support development, Oregon exempts most affordable housing projects from paying higher wage rates to contractors because of the severe housing need. However, when any commercial space is added to plans—whether a child care center or residential family child care home—developers must pay prevailing wage rates on the entire development, including residential space. This can make co-location prohibitively expensive for developers, sometimes adding 10 percent to 20 percent to total development costs. For providers, because child care businesses generally operate on thin margins, taking on debt or long-term leases during development may be infeasible. However, there is limited funding available for child care facility construction and expansion, and both providers and developers often struggle to access capital for facilities projects.

### **COORDINATION**

Many developers and providers share a common interest in co-locating, but there is no central authority tracking affordable housing and child care facility development pipelines, so developers and providers may not be aware of ongoing projects they could take part in. Even if developers and providers successfully find each other, they may require technical assistance to obtain funding, navigate the different regulatory requirements, and complete the project successfully. Timelines for housing development and child care operations funding often don't align well, and income eligibility for affordable housing residents may not match eligibility for subsidized child care programs located on-site.

However, if developers and providers can overcome these barriers, co-located affordable housing and child care can reduce commuting costs, support parents' employment and financial stability, and promote community economic development. Additionally, the *Co-Locating Early Care and Education Facilities with Affordable Housing in Oregon* report notes that communities of color, low-income children, and children living in limited English proficiency or single-parent households tend to be the most negatively impacted by housing and child care shortages, but they will also benefit the most from targeted investments and new developments.

## Co-Locating with Other Development Types

Beyond housing, communities can also benefit from co-locating child care with other types of development, including workplaces, schools, and religious institutions. Co-locating child care with these types of facilities can increase convenience for parents, improve access to care, and potentially share resources and spaces. Providers also shared certain buildings, such as churches and schools, are often well poised to integrate a child care facility. However, co-locating with these uses often poses many of the same barriers as co-locating with housing.

### Churches

Providers shared that churches are often set up well for child care—many have existing child care programs during church services as well as sufficient indoor and outdoor space. However, churches are frequently permitted as conditional uses, or in the case of older churches, the use may predate local land use regulations. If a provider would like to co-locate, they would be required to apply for a modification of the conditional or nonconforming use to add child care on the site. These approvals can be impermanent; several providers shared that when church-based centers sought to reopen following the COVID-19 pandemic, they learned their previously nonconforming use had expired. Churches and child care facilities also have different use and occupancy thresholds and requirements, which means that creating a dedicated space for child care within a church or on church property requires a change of occupancy (and building upgrades) for that specific area.

### Schools

Schools are also obvious choices for co-locating child care programs. Existing schools already have E occupancy classifications, are already an approved land use, and have outdoor play facilities. However, a few differences between schools and child care facilities can make integration a challenge. Oregon Administrative Rules (OAR) Chapter 414 outlines facility requirements for child care centers, including provisions related to the location of bathrooms and the toilets within them. Provisions include:

- ◆ Toilets and sinks must be on the same floor as care areas and easily accessible and safe for children.

- ◆ Toilets must be located in or adjacent to classrooms. If they are not, an alternative plan must be approved by CCLD.
- ◆ Toilet doors must be unlockable from the outside by staff.

Depending on the location of the child care space in a school building, these requirements may be challenging to meet and add time and cost to projects. However, with no occupancy change needed, this could still be a more affordable solution compared to other commercial spaces. Overall, co-locating schools and child care centers on the same property can streamline resources, reduce operational costs, and provide convenience for families with children of different ages. However, public-private partnerships would be required to allow private child care providers to locate within public institutions.

## SUMMARY OF CO-LOCATION BARRIERS

Developing child care facilities with another development type can often impose unique challenges for both developers and providers. Key barriers highlighted include:

- » **Affordable Housing:** In addition to zoning, building, and permitting barriers, these projects can also face unique development, financing, and coordination challenges.
- » **Churches:** Churches are often conditional or nonconforming uses with a different building occupancy classification, and integrating child care can require expensive and lengthy permits and renovations.
- » **Schools:** Adapting school classroom spaces to meet child care center licensing requirements related to bathrooms could be a challenge depending on the space within the school building.

## Potential and Actual Disparate Impacts

Starting or expanding a child care business in Oregon can be a complex and challenging process, and providers may encounter a wide variety of barriers along the way. However, the nature and severity of these barriers can vary significantly depending on several factors, including the geographic location (rural or urban areas), the provider's primary language, and their income and race and ethnicity.

### Regional Disparities

A 2018 Center for American Progress study examining child care access across different areas and demographics found that 68 percent of rural Oregon residents live in child care deserts, compared to 59 percent of urban residents and 50 percent of suburban residents.<sup>22</sup> Oregon faces significant regional disparities in the development of child care facilities, with

<sup>22</sup> The Center for American Progress, [America's Child Care Deserts in 2018](#) (2018).

rural areas often experiencing more complex challenges compared to urban areas. These disparities manifest in several key areas:

- ◆ **Zoning and Land Use:** Rural areas often encounter additional barriers related to permitting. They are more likely to be subject to special approval processes, such as conditional use permits. Additionally, in areas outside urban growth boundaries (UGBs), there are limited options for permitting child care facilities in resource zones, even within existing residences, as development is intentionally restricted to farm and forest uses in these areas.
- ◆ **Staff Knowledge and Capacity:** The availability of knowledgeable staff to assist providers varies greatly across regions. Smaller jurisdictions, typically found in rural areas, often have limited staff capacity, resulting in less familiarity with state rules and regulations related to child care facilities and an inability to offer specialized assistance to providers.
- ◆ **Development Resources:** Rural areas face unique challenges related to development resources. These include:
  - Limited access to utilities such as water, sewer/adequate septic systems, and electricity, particularly in undeveloped areas.
  - Difficulty finding experienced local contractors, especially for co-location or mixed-use projects.
  - Higher costs for transporting materials to remote areas, compounded by already high material costs affecting the national market.
- ◆ **Technology Infrastructure:** The lack of robust technology infrastructure, particularly in rural regions, can impede access to financial and technical assistance.
- ◆ **Seasonal Employment Patterns:** Rural areas often experience seasonal work patterns, which can create fluctuating demand for child care slots.

## Access to Child Care for Farmworkers

Farmworkers may face challenges accessing child care due to their location in rural areas and the challenges associated with developing or finding suitable spaces for child care in those areas. Rural and agricultural zoning regulations often restrict the establishment of child care centers in areas where farmworkers live and work, which can contribute to the higher rates of child care deserts in rural areas. Developing in rural areas can be costly due to many reasons discussed above, which may require child care providers to charge higher tuition rates to cover capital and operating costs that many farmworker households may be unable to afford. The seasonal nature of farm work also requires more flexible child care options, which may not be readily available in areas with limited availability.

## Language Barriers

Many child care providers noted difficulty navigating the development and licensing process because of language barriers. Technical zoning, building code, and permitting processes and requirements can be even more difficult to understand for non-native English speakers. The landscape of regulators may not speak languages other than English or have written resources, applications, or other forms available in multiple languages, making it more difficult for non-English speakers to get connected to the technical assistance and resources necessary to navigate the development process.

## Child Care That Fits Household Needs & Preferences

A study by the Urban Institute on the child care patterns of White, Black, and Hispanic children found differences in the types of child care used by the three groups. According to the study, Black children are the most likely of the three groups to be enrolled in child care and are much more likely to be enrolled in a child care center than White or Hispanic children. Hispanic children are less likely to be enrolled in a center than White and Black children and are the most likely to attend home-based child care.

These findings underscore the importance of lowering barriers to access for both center-based and home-based child care options so families from diverse backgrounds have equal opportunities to choose the type of child care that aligns with their household needs and cultural preferences. In particular, in-home child care often plays a vital role in providing culturally specific programs. These settings are more likely to be operated by individuals from the same community or cultural background as the families they serve and offer several benefits related to language preservation, cultural practices, and traditions: Home-based care can more easily incorporate cultural customs, celebrations, and traditions into daily routines and foster community connection.

## Homeownership Rates among BIPOC Households in Oregon

Homeownership plays a crucial role in the establishment of home-based child care businesses in Oregon. Survey results showed that 77 percent of respondents who were home-based child care providers operate their businesses out of a single-family home they own. However, significant disparities in homeownership rates exist among different racial and ethnic groups. In Oregon, Native Hawaiian and other Pacific Islander, Black, and Native Alaskan/Native American households have the lowest homeownership rates, limiting the opportunity to start in-home child care businesses. While SB 599 (2023) prohibits landlords from restricting or banning the use of their properties as family child care homes, there are other limitations to operating in rental housing. First, tenants may be hesitant to make any necessary updates or renovations in a home they do not own, even if the landlord allows modifications to the unit. Second, as discussed earlier in this chapter, operating a family child care home in a dwelling not constructed as a one- or two-unit dwelling (essentially single-family homes, duplexes, and townhomes) can be much more difficult or impossible for providers, depending on the type of dwelling unit. In Oregon, rental housing is much

more likely to be in multifamily dwelling (i.e., apartments); 60 percent of rental units are in buildings with three or more units.<sup>23</sup>

## **SUMMARY OF POTENTIAL AND DISPARATE IMPACTS**

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The barriers discussed in this chapter do not affect all providers equally, and these disparities can lead to unequal access to development opportunities. In particular, rural providers, providers with limited English proficiency, and providers of color face greater barriers to navigating the development process.

As discussed in this chapter, from navigating intricate zoning and land use regulations to meeting stringent building code requirements and licensing standards, providers encounter numerous hurdles that can be time-consuming, costly, and unpredictable. These barriers are not isolated to a single step in the development process but rather permeate throughout, affecting providers differently based on their location, resources, and background. Using these barriers as the basis, the next chapter of this report provides recommendations for mitigating these development barriers, supporting the expansion of child care facilities, and reducing disproportionate racial and regional disparities to child care access.

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<sup>23</sup> American Community Survey Data Table B25032, Oregon State, 2023 1-Year Estimate.

# 5. Recommendations

## REQUIREMENTS OUTLINED IN HB 2727

HB 2727 requires this report to include recommendations for:

- ◆ Reducing barriers to expanding early learning and care facilities.
- ◆ Supporting the expansion of early learning and care facilities in this state, including recommendations developed specifically for:
  - Expansion in the five cities or counties represented by the work group.
  - Statewide expansion in cities and counties throughout Oregon.
  - The Legislative Assembly to consider legislative changes the work group deems necessary or advisable in support of expansion efforts.
  - The Office of the Governor and relevant state agencies for possible administrative improvements.
- ◆ Reducing disproportionate racial and regional disparities in access to early learning and care facilities.

This chapter presents a comprehensive set of recommendations to address barriers to developing and expanding child care facilities in Oregon. The recommendations are organized into four categories based on the primary level of government responsible for implementation:

- ◆ State Legislative Recommendations
- ◆ State Agency Administrative Recommendations
- ◆ State Legislative *or* Local Recommendations
- ◆ Local Government Recommendations

Each recommendation presented below is a summary that includes a brief description and possible actions for implementation (where applicable) and an icon to indicate if the recommendation meets requirements related to equity, geography, and co-location with affordable housing.



**Does this address disproportionate racial disparities?**



**Does this support the co-location of child care with affordable housing & other uses?**



**Does this support child care facilities in rural areas?**



The full recommendations matrix can be found in Appendix H and includes associated barriers, detailed descriptions, possible actions, intended outcomes, and agencies responsible for implementing each recommendation.

Each recommendation that addresses disproportionate racial and regional disparities also includes a summary of equity considerations related to how the recommendation could address equity concerns in the process. However, it's important to note that the actual impact on equity would depend on how these outcomes are implemented. To fully address equity considerations, implementation should include:



- ◆ Outreach and education efforts to ensure all providers, especially those from underserved communities, are aware of and can benefit from these changes
- ◆ Consideration of language barriers and providing materials in multiple languages
- ◆ Ensuring that any new regulations or processes don't inadvertently create new barriers for certain groups of providers

During this project, the work group utilized a matrix to track and refine the draft recommendations until they were finalized. The final matrix is included in Appendix H and provides more detail for each recommendation, expanding on the description, possible actions, an outline of potential agencies needed for implementation, equity considerations outlined in HB 2727, and analyses of whether the recommendation would reduce barriers for co-locating child care with affordable housing and address barriers for urban or rural communities, as required by the bill.

It's important to note that many state-level recommendations will require local implementation, potentially necessitating state funding to support local capacity in doing so. Additionally, many recommendations offer multiple implementation pathways, requiring close coordination among state agencies to ensure effective execution that does not compromise important health and safety standards that protect Oregon's children and households. These recommendations provide a roadmap for policymakers, administrators, and local officials for easing the regulatory burden for new or expanding child care businesses, but a more detailed action and implementation plan for how to achieve each recommendation will be necessary.




## State Legislative Recommendations

The following section outlines recommendations that may require state legislative action to address key challenges child care providers and regulators brought attention to through this process. These recommendations include clarifying existing regulations, expanding zoning allowances, increasing funding opportunities, addressing wage requirements for co-located projects, and exploring options to override restrictive covenants. By targeting specific legislative changes, these recommendations aim to create a more supportive regulatory environment for child care providers, increase the availability of suitable locations for facilities, and alleviate financial burdens associated with development.

RECOMMENDATION	SUMMARY	EQUITY, CO-LOCATION & GEOGRAPHY	EQUITY CONSIDERATIONS	IMPLEMENTING AGENCY
<p><b>Develop and issue official guidance for cities and counties on implementing ORS 329A.440.<sup>24</sup></b></p>	<p>Provide legislative clarification on ORS 329A.440 and develop a joint department technical bulletin outlining implementation obligations, roles, and responsibilities for local governments.</p>		<p>Can reduce barriers to entry, especially for home-based and small providers, and increase access to child care in residential areas.</p>	<p>DLCD, DOJ, Legislature</p>
<p><b>Allow child care by right in existing residences in all zones, including resource zones.<sup>25</sup></b></p>	<p>Seek legal review and clarification of ORS 215.283(2)(dd) to determine a clear path forward for permitting in-home child care in existing residences in resource zones. If clarity is not sufficient, consider legislation.</p>		<p>Creates more consistent treatment of rural child care providers statewide, potentially reducing disparities in access to child care services in resource zones and home-based settings, benefiting underserved rural communities.</p>	<p>DLCD, DOJ, Legislature</p>




<sup>24</sup> ORS 329A.440 encompasses the application of land use regulations related to family child care homes and certified child care centers. It requires that family child care homes be regulated as residential use and allowed by right in all residential zones. The statute also requires certified child care centers to be permitted by right in commercial and industrial zones, unless designated as "heavy" industrial.



<sup>25</sup> The Department of Land Conservation & Development raised concerns related to the expansion of uses in resource zones, where farm and forest operations are protected, by allowing child care businesses in existing residences. Concerns related to potential safety and welfare of children due to the proximity to industrial activities were also raised.

RECOMMENDATION	SUMMARY	EQUITY, CO-LOCATION & GEOGRAPHY	EQUITY CONSIDERATIONS	IMPLEMENTING AGENCY
<p><b>Create and/or expand dedicated grant funding programs to support the development of child care facilities.</b><sup>26</sup></p>	<p>Grant funds should be flexible and include allowances for a wide range of development related costs, including for technical assistance (e.g., consultants, engineers, architects), development fees, tenant improvements, and more to allow providers to respond to unexpected costs during the development process. Create a single centralized website that hosts all existing grant programs throughout the state.</p>		<p>Can provide targeted financial resources to providers who may otherwise struggle to access capital, including those in rural or underserved areas, as well as historically marginalized communities.</p>	<p>Legislative action</p>
<p><b>Provide funding to local governments to translate materials and forms and provide technical interpretation services.</b></p>	<p>Improve language accessibility in local government services by providing funding and grants to local authorities for interpretation and translation services of key materials.</p>		<p>By translating permitting materials and providing interpretation services, it ensures that individuals with limited English proficiency can understand and navigate the process, leveling the playing field.</p>	<p>Legislative action</p>
<p><b>Create a property tax abatement for retrofitting space for child care centers</b><sup>27</sup></p>	<p>Create a temporary reduction in property taxes for properties converted to child care uses. Considerations include:</p> <ul style="list-style-type: none"> <li>• setting clear eligibility criteria such as prioritizing areas with underutilized commercial spaces</li> <li>• limiting the abatement period to balance incentives and tax revenues</li> </ul>		<p>Can help lower-income providers establish child care centers, especially if the eligibility criteria included income restrictions.</p>	<p>Legislative action</p>

<sup>26</sup> There are a few existing grant programs available for this type of work today, such as the Business Oregon Child Care Infrastructure Program.


<sup>27</sup> This would require legislative change to first create a tax abatement program for child care, then it could be a locally implemented program.



RECOMMENDATION	SUMMARY	EQUITY, CO-LOCATION & GEOGRAPHY	EQUITY CONSIDERATIONS	IMPLEMENTING AGENCY
<p><b>Allow waivers or split determinations for prevailing wage requirements on co-located projects</b></p>	<p>Allow waivers or split determinations for prevailing wage requirements to enable developers to pay standard wages for the affordable housing portion of the project while potentially applying prevailing wages only to the commercial or child care spaces to increase project feasibility.</p>		<p>Can increase access to quality child care in low-income communities, along with economic opportunities for residents. However, policymakers would need to carefully balance benefits against potential impacts on construction workers' wages to ensure the policy program doesn't disadvantage other marginalized groups.</p>	<p>Legislative action</p>
<p><b>Override CC&amp;Rs that do not allow for in-home child care in certain neighborhoods/developments</b></p>	<p>Investigate if legal and policy options exist to override restrictive covenants, conditions, and restrictions (CC&amp;Rs) that prohibit in-home child care in specific neighborhoods or developments.</p>		<p>Can help desegregate child care services across diverse neighborhoods, addressing historical practices of racial and economic segregation.</p>	<p>Legislative action</p>
<p><b>Revise regulations or create a new license type that allows for larger capacity Certified Family care homes</b></p>	<p>Create a new license or revise regulations to allow for larger Certified Family care homes, provided they meet basic space requirements to bridge the gap between family child care homes and child care centers, easing the transition for providers looking to expand.</p>		<p>Can benefit BIPOC providers who often operate home-based child care.</p>	<p>DELC, BCD, DLCD, DEQ, OSFM</p>

RECOMMENDATION	SUMMARY	EQUITY, CO-LOCATION & GEOGRAPHY	EQUITY CONSIDERATIONS	IMPLEMENTING AGENCY
<p><b>Create an interagency child care facility oversight board with authority to coordinate across state and local jurisdictions, expedite decision-making, and resolve regulatory barriers for providers developing or expanding child care facilities in Oregon</b></p>	<p>Serve as a centralized authority to address complex regulatory challenges, streamline processes, and make binding decisions to resolve obstacles providers face when developing child care facilities. With representatives from key state and local agencies, the board would meet regularly to review cases, interpret conflicting requirements, and provide clear direction to both providers and regulatory staff.</p>		<p>Establish accessible processes and diverse representation while ensuring its decisions support historically underserved providers and communities, including those facing language barriers, resource constraints, and geographic challenges.</p>	<p>DLCD, BCD, DELC, OSFM, but will require legislative action for the decision-making component</p>
<p><b>Establish a work group to oversee recommendation implementation, including developing a detailed action plan with specific steps, timelines, resource needs, and success metrics.</b></p>	<p>The implementation work group, comprising of state and local regulators, agency representatives, advocates, and providers, would serve as a coordinated body tasked with translating policy recommendations and applicable legislative directives into actionable steps.</p>		<p>Creates opportunity to include representation from historically underserved communities and developing solutions that address barriers that child care providers face across different cultural, geographic, and economic contexts.</p>	<p>DLCD, BCD, DELC, in partnership with local governments and child care providers</p>





## State Agency Administrative Recommendations

The following section presents recommendations for administrative improvements that can be implemented by the Office of the Governor and relevant state agencies to reduce barriers to child care facility development. These recommendations focus on actions that can be taken within existing administrative frameworks, without necessarily requiring new legislation. By leveraging the expertise and authority of agencies such as the Department of Early Learning and Care, Oregon Housing and Community Services, Department of Land Conservation and Development, Department of Environmental Quality, and Oregon Building Codes Division, these proposals aim to streamline processes, clarify regulations, and provide enhanced support for child care providers. These administrative improvements can potentially lead to significant positive changes in the child care landscape, addressing issues ranging from licensing procedures to building code interpretations and fostering a more conducive environment for the expansion of child care facilities across Oregon.

RECOMMENDATION	SUMMARY	EQUITY, CO-LOCATION & GEOGRAPHY	EQUITY CONSIDERATIONS	IMPLEMENTING AGENCY
<b>Establish state agency coordination agreements between DLCD and DELC and other agencies involved that do not already have agreements.</b>	Establish defined processes and agreement regarding areas of overlap and potential coordination on issues related to child care.			DLCD, DELC, BCD
<b>Develop a comprehensive permitting guide for local jurisdictions for facilitating the development of child care facilities at the local level.</b>	The guide should include a model code for local jurisdictions to align zoning regulations with state law (including standardized definitions and permitted use tables), best practices for streamlining the approval process, and policies and programs local jurisdictions can choose to implement to incentivize and prioritize the development of child care facilities.		Builds capacity for smaller rural jurisdictions to implement codes and procedures that simplify the process, and can provide best practices for developing child care facilities in rural contexts to address the unique challenges these communities often face.	DLCD, BCD, DELC, DEQ, OSFM, local planning and building






RECOMMENDATION	SUMMARY	EQUITY, CO-LOCATION & GEOGRAPHY	EQUITY CONSIDERATIONS	IMPLEMENTING AGENCY
<p><b>Develop and issue official guidance for implementing ORS 215.283(2)(dd) (child care centers in resource zones) and ORS 215.448 (home occupations)</b></p>	<p>Develop official guidance for implementing state laws related to child care centers in resource zones and home occupations in rural areas to create a consistent statewide approach for permitting rural child care facilities. Key actions include creating best practices for counties to follow, using standardized child care definitions from state law, and eliminating time limits on home occupation approvals for child care.</p>		<p>Can reduce regional disparities and make it easier for providers in underserved areas to establish child care services, particularly for families who work in agricultural trades.</p>	<p>DLCD</p>
<p><b>Create a standard statewide department coordination form that local jurisdictions can use to provide documentation that a child care provider has met local planning and building requirements.</b></p>	<p>Utilize and adapt an existing form that may already be in use in some cases, such as the Land Use Compatibility Statement form, or develop a new standardized form that can be used across local departments, not just planning and zoning.</p>	<p></p>	<p></p>	<p>DLCD, BCD, DELC, in partnership with local governments</p>
<p><b>Develop and maintain a statewide database of child care providers and housing developers interested in co-location partnerships.<sup>28</sup></b></p>	<p>Establish an online platform connecting developers and child care providers for co-location projects, and sync projects with grant funding opportunities based on project readiness and potential impact on underserved communities.</p>		<p>By deploying grant funds based on equity-focused criteria projects that serve low-income and BIPOC families, rural communities and areas with severe shortage can be prioritized.</p>	<p>OHCS</p>

<sup>28</sup> This recommendation was included in the OHCS report on Co-Locating Early Care and Education Facilities with Affordable Housing in Oregon and was a specific recommendation for how to manage the Co-Location Fund outlined under HB 5011. Funds are managed by Build Up Oregon. At this time, to our knowledge, this inventory has not been developed.






RECOMMENDATION	SUMMARY	EQUITY, CO-LOCATION & GEOGRAPHY	EQUITY CONSIDERATIONS	IMPLEMENTING AGENCY
<b>Add co-location as a scoring criterion for Low Income Housing Tax Credit (LIHTC) allocations</b>	Add co-location with child care facilities as a scoring criterion in the state’s Qualified Allocation Plan (QAP), which governs funding rounds for LIHTC awards.		Can improve access to quality child care for low-income families who often face the greatest barriers to finding affordable, convenient care options.	OHCS
<b>Develop technical guidance on acceptable alternative bathroom layouts for child care facilities in child care centers</b>	Design professionals collaborate with BCD (Building Codes Division) to develop flexible, code-compliant bathroom layout options for child care facilities, providing clear guidance for local building officials to streamline approvals.			BCD, design professionals
<b>BCD and local building officials should collaborate to identify necessary revisions to the Oregon Structural Specialty Code (OSSC) that establish clear guidelines for permitting child care facilities in ground-floor apartment units of multiunit buildings.<sup>29</sup></b>	Identify a path for allowing child care facilities in ground-floor apartment units of multiunit buildings by addressing barriers in the Oregon Structural Specialty Code (OSSC).	  	Can create more access to child care in multiunit and affordable housing developments.	BCD and local building officials

<sup>29</sup> The Building Code Structures Board recommended changes to the Oregon Specialty Structural Code in 2025 that would add provisions regarding licensed child care facilities in Group R-2 occupancies. Group R-2 occupancies are structures containing more than two dwelling units, such as apartments. Similar to provisions for group R-3 occupancies, this provision would clarify child care as part of the primary residential use.





RECOMMENDATION	SUMMARY	EQUITY, CO-LOCATION & GEOGRAPHY	EQUITY CONSIDERATIONS	IMPLEMENTING AGENCY
<p><b>Revise septic capacity thresholds and exceptions related to in-home daycare facilities.<sup>30</sup></b></p>	<p>Work with the Department of Environmental Quality to develop new, right-sized septic capacity thresholds specific to in-home child care uses and consider granting exceptions for child care serving children under 2 years old, as they typically use diapers and don't significantly impact septic system capacity.</p>		<p>Can level the playing field for providers who operate in rural settings.</p>	<p>DEQ, DELC, BCD</p>
<p><b>Develop open-source standard design specifications and best practice guidelines for new child care centers, including new commercial spaces in ground-floor mixed-use buildings</b></p>	<p>Create a freely available set of design specifications and guidelines that can be used to develop new child care centers. It could include detailed design specifications, best practice guidelines, CAD drawings, and implementation guides and documentation.</p>	  	<p>Can level the playing field for providers with limited financial resources.</p>	<p>DELC, design professionals</p>
<p><b>Establish a comprehensive precertification consultation program within the Child Care Licensing Division (CCLD) to provide more consistent guidance and support to potential child care providers before their precertification visit.</b></p>	<p>Enhance CCLD's precertification support through increased consultations, virtual inspections, preliminary document reviews, improved interagency communication, and expanded training for licensing specialists on local processes.</p>		<p>Can help level the playing field for providers who may have less experience or fewer resources to navigate the licensing process, particularly benefiting low-income and BIPOC providers who may face systemic barriers in establishing child care businesses, especially if language access is ensured.</p>	<p>DELC</p>

<sup>30</sup> Some agencies, including DEQ and OBOA, raised concerns related to this recommendation because current child care licenses do not limit licenses to only serving ages two and less, so a provider could change the range of ages they care for without additional confirmation that the septic system is adequate.

RECOMMENDATION	SUMMARY	EQUITY, CO-LOCATION & GEOGRAPHY	EQUITY CONSIDERATIONS	IMPLEMENTING AGENCY
<p><b>Develop a comprehensive guide for child care providers looking to establish or expand a child care facility and/or business translated into multiple languages.</b></p>	<p>The guides should include a guide on step-by-step processes, including both licensing and likely permitting requirements, statutory obligations that cities and counties must follow when processing child care facility applications, and best practices for establishing and permitting different types of child care facilities.</p>		<p>Can help level the playing field for providers who may have less experience or fewer resources to navigate the licensing process, particularly benefiting low-income and BIPOC providers who may face systemic barriers in establishing child care businesses, especially if language access is ensured.</p>	<p>DELIC, BCD, DLCD, DEQ, OSFM, local governments</p>
<p><b>Revise administrative rules to allow certified family child care in all dwelling types, consistent with existing state statute.<sup>31</sup></b></p>	<p>State statute permits in-home child care in any type of dwelling, but current administrative rules specify certified family child care must be in a "single-family dwelling." Though statute supersedes administrative rules, the terminology should align to ensure regulatory clarity.</p>	 	<p>By removing potentially restrictive terminology, it could expand opportunities for diverse providers and increase child care options in a wider range of housing types and neighborhoods.</p>	<p>DELIC</p>
<p><b>Create more flexible options for providers for meeting Department of Early Learning and Care (DELIC) outdoor space requirements for child care facilities.<sup>32</sup></b></p>	<p>Revise outdoor space regulations to allow flexible alternatives and promote agreements with local parks departments for shared use of public spaces by child care facilities.</p>	 	<p>Allowing for innovative solutions creates opportunities for providers in diverse settings, particularly those in urban or resource-limited areas, leading to a more equitable distribution of child care facilities across different neighborhoods.</p>	<p>DELIC, local governments</p>

<sup>31</sup> The Early Learning Council adopted a rule change in 2024 that would allow certified family care homes in all dwelling types; this change will be effective starting July 2025.

<sup>32</sup> DELIC currently allows for alternative outdoor spaces for certified centers on a case-by-case basis and is proposing adopting similar rule language for Certified Family homes. However, because these alternatives are often approved through individual requests, it would be helpful to formalize a broader range of acceptable alternatives within the child care licensing rules.

RECOMMENDATION	SUMMARY	EQUITY, CO-LOCATION & GEOGRAPHY	EQUITY CONSIDERATIONS	IMPLEMENTING AGENCY
<b>Amend facility standards to eliminate the additional toilet requirement for Certified Family homes caring for up to 16 children.</b> <sup>33</sup>	Review current licensing plumbing fixture requirements and assess the necessity of the additional toilet.			DEQ, DELC, BCD
<b>Update licensing language to allow certified family child care homes in a range of residential units other than single-family.</b> <sup>34</sup>	Allow certified family child care to occur within different types of residential units, including apartments, duplexes, triplexes, accessory dwelling units, or townhomes as long as the space can meet licensing standards for classroom and outdoor space.		Can create more entrepreneurship opportunities for individuals in multiunit dwellings (particularly benefiting women and people of color), enables a wider distribution of child care options, and could improve access for families in urban and lower-income areas where single-family homes are more unaffordable.	DELC
<b>Revise the requirement for an additional 50 square feet per child, after 12 children, for certified family child care.</b>	Revise indoor activity center square footage requirements to only require 35 square feet per child, up to 16 kids, to be in line with requirements for child care centers.		Can level the playing field for BIPOC providers who more often operate in residential settings.	DELC



<sup>33</sup> DELC has proposed amending this requirement for certified family homes. The proposal is currently under review.

<sup>34</sup> Per DELC, DELC is currently recommending administrative rule changes to match statute language.

## Legislative or Local Recommendations

This section outlines recommendations that can be implemented either as an exercise of state preemption or adopted voluntarily by local jurisdictions. If the state believes certain standards require uniformity, it may elect to pursue legislative changes at the state level. Otherwise, these could be offered as best practice recommendations for local jurisdictions to adopt voluntarily and tailor to their local context and needs.







These proposals address key barriers identified in zoning, permitting, and development processes for child care facilities. By suggesting changes such as expanding permitted uses in residential zones, revising parking requirements, streamlining plan reviews, modifying conditional use processes, and improving transparency in permitting timelines, these recommendations aim to create a more supportive regulatory environment for child care providers.

RECOMMENDATION	SUMMARY	EQUITY, CO-LOCATION & GEOGRAPHY	EQUITY CONSIDERATIONS	IMPLEMENTING AGENCY
<b>Permit child care centers by right in residential zones.</b> <sup>35</sup>	Expand child care center allowances in residential zones through various options, ranging from by-right permitting regardless of size to more limited approaches like accessory use designations or streamlined conditional use processes within the confines of existing state laws related to floodplains and tsunami inundation zones. <sup>36</sup>		Can lead to more equitable distribution of child care options across different neighborhoods and increase accessibility for underserved communities.	Local planning and public works, DLCD, DELC, BCD, OSFM
<b>Reduce or eliminate off-street parking requirements for child care facilities.</b> <sup>37</sup>	Review current off-street parking standards and propose amendments to reduce or eliminate parking requirements for child care centers and in-home child care businesses.			Legislature or local planning

<sup>35</sup> Members of some local governments participating in the work group expressed concerns over a loss of local control over development regulations related to this recommendation.

<sup>36</sup> The work group recommends the implementation process for this recommendation should specifically evaluate impacts associated with allowing child care centers in rural residential zones as a permitted use (rather than a conditional use).






<sup>37</sup> Some members of the work group expressed concern related to limiting parking requirements, reminding that on-street parking can become a contentious issue in many neighborhoods. Loss of local control was also voiced related to this recommendation.

RECOMMENDATION	SUMMARY	EQUITY, CO-LOCATION & GEOGRAPHY	EQUITY CONSIDERATIONS	IMPLEMENTING AGENCY
<b>Exempt certain types of site changes from triggering the Conditional Use Modification review.</b>	Exempt specific site changes from requiring a full Conditional Use Modification review to allow providers to make minor alterations or improvements to their sites without facing lengthy and costly review procedures.	 		Legislature or local planning
<b>Reduce the time and cost for building plan review for new or expanded in-home child care businesses.</b>	Streamline building review processes for in-home child care facilities through simplified procedures, preparation checklists, and tiered fee structures based on project complexity. BCD could declare that no change of use or building permit is required when a building already complies with the requirements of 2022 Oregon Structural Specialty Code Section 420.12.2.	 	Can make establishing or expanding child care services more accessible to diverse providers, including those with limited resources.	Legislature, BCD, local building departments
<b>Track and publicly report actual average and median permit timelines.<sup>38</sup></b>	Track the duration of each permit application from first submittal to issuance and publicly report monthly or quarterly median and average processing timelines by permit type; or consider establishing goals for turnaround time to increase transparency so providers understand—and can plan for—the process.			Legislature or local planning and building
<b>Create a position for local or regional navigators to provide technical assistance to providers during the licensing and development process.</b>	Local or regional navigator positions can be established to offer dedicated technical assistance to child care providers across different regions in Oregon. This role would serve as a central point of contact for providers, offering guidance on state and local regulations related to child care, including best practices and licensing requirements.	 	Bilingual navigators would significantly promote equity by ensuring that providers with limited English proficiency can receive assistance in their primary language.	Legislature, DELC, DLCD, local governments

<sup>38</sup> This recommendation refers to both land use and building permit timelines; while land use permits have a statutory deadline, providers shared that the range of actual timelines can vary and that increased transparency would be useful for preparing for the permitting process.



## Local Recommendations

The following section presents recommendations that local jurisdictions can voluntarily adopt to facilitate the development and expansion of child care facilities in their communities. These recommendations offer a range of strategies that local governments can tailor to their specific needs and circumstances without requiring state-level mandates. By focusing on areas such as streamlining permitting processes, identifying co-location opportunities, fostering public-private partnerships, providing financial incentives, and adjusting development standards, these recommendations aim to create a more supportive local environment for child care providers.

RECOMMENDATION	SUMMARY	EQUITY, CO-LOCATION & GEOGRAPHY	EQUITY CONSIDERATIONS	IMPLEMENTING AGENCY
<b>Reduce the time and cost of the permitting process for child care providers.</b> <sup>39</sup>	Local jurisdictions can offer waived or reduced-cost pre-application meetings and permit fees (including system development charges [SDCs] when applied) and an expedited review process for child care facility applications.	 	Can make establishing or expanding child care services more accessible to diverse providers, including those with limited resources.	Local planning and building
<b>Establish a local tenant improvement program for child care providers.</b>	Local jurisdictions can establish a tenant improvement program specifically designed for child care providers using urban renewal funds, other local funding mechanisms, or grant programs such as Community Development Block Grants.			Local planning
<b>Reduce or remove frontage improvement standards for a change in occupancy in an existing building for child care businesses.</b> <sup>40</sup>	Exempt child care providers from these standards or change thresholds for triggering the upgrades.	 	Can lower financial barriers for providers, especially benefiting small or minority-owned businesses.	Local building and public works

<sup>39</sup> Many local jurisdictions already waive fees for policy priorities such as housing; however, legislative funds for this action would be helpful and sometimes necessary to either assist providers in paying them or for local governments to backfill waived fees from another funding source.

<sup>40</sup> Some members of the work group reminded that these types of requirements are typically handled by developers because local governments may not have funding for frontage improvements.

RECOMMENDATION	SUMMARY	EQUITY, CO-LOCATION & GEOGRAPHY	EQUITY CONSIDERATIONS	IMPLEMENTING AGENCY
<p><b>Create an inventory of community facilities with co-location potential.</b><sup>41</sup></p>	<p>Create a centralized online platform to showcase available spaces for child care (e.g., churches, community centers, schools, etc.), integrating with grant information and education materials for real estate agents to help identify suitable properties. This can be statewide or regional that local jurisdictions report into, or it can be developed locally.</p>			<p>Local governments</p>
<p><b>Support public-private partnerships for child care facilities.</b></p>	<p>Local government can work to incorporate child care facilities into public buildings, such as libraries or community centers, or they can encourage developers or nonprofits to incorporate child care facilities into affordable or workforce housing developments and mixed-use buildings through incentives and/or subsidies.</p>		<p>Potential to enhance accessibility and reduces costs for low-income families and underserved communities.</p>	<p>Local governments</p>

<sup>41</sup> Some work group members expressed concern for the capacity that would be needed to create and maintain this inventory.

# Next Steps

To help keep momentum and move toward implementation, the work group has identified key priorities to address barriers in child care facility development across Oregon. During the fourth meeting, the project work group members engaged in a polling exercise to prioritize and elevate a set of recommendations for immediate implementation. The prioritization exercise placed particular emphasis on identifying recommendations with the potential to reduce racial and regional disparities. The prioritization process focused on several key factors.

As a result, the work group prioritized seven key policy recommendations. These recommendations are presented in order of priority, starting with the one the work group identified as most effective in addressing regional and racial disparities. Those recommendations are presented below.

PRIORITY RECOMMENDATIONS	IMPLEMENTATION
1. Develop a comprehensive guide for local jurisdictions that includes: <ul style="list-style-type: none"> <li>◆ A model zoning code for child care development regulations.</li> <li>◆ Best practices to streamline the permitting process for child care facilities.</li> <li>◆ Policies and programs local jurisdictions can choose to implement to incentivize and prioritize the development of child care facilities.</li> </ul>	State agency action
2. Develop and issue official guidance for cities and counties on implementing ORS 329A.440. <sup>42</sup> <i>This could occur as a stand-alone measure but would be required as an initial first step to complete priority 1 above.</i>	Legislative action
3. Create and/or expand dedicated grant funding programs for child care facilities development.	Legislative action
4. Create positions for local or regional “navigators” to provide technical assistance to providers during the licensing and development process.	Legislative or local action
5. Establish a streamlined building permit process for in-home child care.	Legislative or local action
6. Permit child care centers by right in residential zones.	Legislative or local action

<sup>42</sup> ORS 329A.440 encompasses the application of land use regulations related to family child care homes and certified child care centers. It requires that family child care homes be regulated as residential use and allowed by right in all residential zones. The statute also requires certified child care centers to be permitted by right in commercial and industrial zones, unless designated as “heavy” industrial.



PRIORITY RECOMMENDATIONS	IMPLEMENTATION
7. Develop a comprehensive guide translated into multiple languages for child care providers looking to establish or expand a child care facility.	State agency action
8. Exempt certain types of site changes from triggering the Conditional Use Modification review.	Legislative or local action
9. Develop and issue official guidance for implementing ORS 215.283(2)(dd) (child care centers in resource zones) and ORS 215.448 (home occupations) to encourage a consistent approach to permitting rural child care facilities statewide.	State agency action
10. Expedite permitting procedures and offer fee reductions for child care facilities.	Local action
11. Provide funding to local governments to translate materials and forms and provide technical interpretation services.	Legislative action

## Forming a Group to Guide Implementation

To move from recommendations to action, a helpful next step will be to assemble a new group focused on implementation. This group should be similar in composition to the HB 2727 work group and include regulators at the state and local levels, representatives from various relevant agencies, child care policy advocates, and child care providers.

The primary task of this implementation group would develop a detailed action plan for implementing the top priority recommendations. This plan should include:

- Specific steps for each recommendation
- Implementation lead and necessary groups for collaboration
- Timelines for implementation
- Resource requirements and priorities
- Potential challenges and mitigation strategies
- Metrics for measuring success

By bringing together a diverse group, the work group can ensure that the recommendations are translated into effective policies and practices that address the complex challenges in child care facility development across Oregon. Through these next steps, Oregon can move closer to creating a more supportive environment for child care providers and increasing access to affordable and quality child care for families throughout the state.

# Appendix A: Background Memo

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In 2023, the Oregon Legislature passed Oregon House Bill (HB) 2727 directing the Department of Land Conservation and Development (DLCD) to convene a work group to examine strategies for expanding early learning and care facilities in Oregon. Per the requirements of HB 2727, the Department has convened this work group to review specific barriers to siting, building or renovating child care facilities and prepare a report summarizing its findings. This report must also include recommendations to:

- ◆ Reduce barriers to expanding early learning and care (ECE) facilities.
- ◆ Support the expansion of ECE facilities in Oregon.
- ◆ Reduce disproportionate racial and regional disparities in access ECE facilities.

The Department hired ECONorthwest to support the work group by conducting research, facilitating community engagement, and preparing the final report. Throughout the course of the project, the work group will meet up to five times to provide guidance on the research and engagement, along with feedback on the proposed recommendations that will be included in the final report. This memo has been prepared prior to the first work group meeting to provide context and establish a shared understanding of:

- ◆ The different types of ECE facilities and providers.<sup>43</sup>
- ◆ The role of different agencies in regulating and permitting the development of ECE facilities.

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<sup>43</sup> In this memo, we will use ECE to refer to the range of child care provider types, including home- and center-based providers.

## WORK GROUP AND REPORT SCOPE

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While there are many different types of barriers to establishing and operating an ECE facility, HB 2727 tasks the work group and final report with understanding barriers and impacts specifically related to the following:



**Zoning Regulations:** Standards that determine how land can be used and specific site and building characteristics as they relate to a particular site and zone (e.g., height, lot size, and parking requirements).



**Building Codes:** Standards that ensure the building and lot are structurally sound, appropriately built, and safe for its intended occupants (e.g., requirements for fire or earthquake resistance).



**Permitting and Procedures:** Standards that determine which approvals are required for construction and how to obtain them (e.g., building, plumbing, or electrical).

## Access to Child Care in Oregon

A child care desert is defined as a community with more than three children for every regulated child care slot. Child care deserts are related to the supply of child care facilities; with insufficient ECE facilities, there are fewer provider jobs available and slots open, creating increased competition for existing slots which are often too expensive for the broad range of parents in need of child care. A 2018 study by the Center for American Progress found that 60% of Oregon residents live in a child care desert.<sup>44</sup> However, while child care access is an issue across the state, access issues become more acute within certain communities and populations, including by:

- ◆ **Age of Child:** A 2021 study by the Oregon Child Care Research Partnership determined every county in Oregon is a child care desert for families with infants and toddlers (under three years), and 25 of 36 Oregon counties are child care deserts for families with preschool-age children (ages three to five).<sup>45</sup>
- ◆ **Race and ethnicity:** The Center for American Progress study found 62% of Oregon Hispanic and Latino residents live in child care deserts, compared to 60% of non-Hispanic White residents who live in child care deserts, and 53% of non-Hispanic Black residents.<sup>46</sup>
- ◆ **Location:** The Center for American Progress study found 68% of rural Oregon residents live in child care deserts, compared to 59% of urban residents and 50% of suburban residents.<sup>47</sup>

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<sup>44</sup> The Center for American Progress, [America's Child Care Deserts in 2018](#) (2018)

<sup>45</sup> Oregon State University College of Public Health and Human Sciences, Oregon Child Care Research Partnership, [Oregon's Child Care Deserts 2020: Mapping Supply by Age Group and Percentage of Publicly Funded Slots](#) (2021)

<sup>46</sup> The Center for American Progress, [America's Child Care Deserts in 2018](#) (2018)

<sup>47</sup> The Center for American Progress, [America's Child Care Deserts in 2018](#) (2018)

- ◆ **Income:** The Center for American Progress study found 60% of neighborhood residents earning the lowest 20% of incomes in each census tract live in child care deserts, compared to 52% of neighborhood residents with the highest 20% of incomes.<sup>48</sup>

It is also worth noting that proximity and availability of child care slots are not the only barriers to ECE access. Even if residents live near an ECE facility with slots available, they may face financial barriers, transportation or schedule constraints, a lack of culturally relevant care, or language differences. Like child care deserts, these barriers do not affect all residents in the same way, with more marginalized communities facing greater obstacles.

## Barriers to ECE Facility Development

While this report focuses on regulatory barriers specifically related to developing or expanding ECE facilities (via zoning regulations, building codes, and permitting practices), it is worth noting that providers can face many compounding barriers to establishing ECE facilities. Lack of access to capital and financing (including small business loans, grants, and tax incentives), difficulty obtaining required insurances, land or real estate availability, staffing challenges, and licensing requirements can all also pose significant barriers to development.

## Types of Child Care Providers

### Licensed Providers

Licensed Providers are licensed through the Department of Early Learning and Care Child Care Licensing Division (CCLD). For licensed providers, there are two main types of providers and three types of licenses:

**Home-based Providers** care for children within a residential home. There are two types of licenses available for this type of provider:

- ◆ **Registered Family Child Care** licenses are for providers caring for a small group of up to ten children in a home setting, usually cared for by one person.
- ◆ **Certified Family Child Care** licenses are for providers caring for a larger group of up to 16 children in a home setting, usually cared for by one or more people.

### ECE FACILITY TYPES

#### Family Child Care Homes

An ECE facility in a dwelling that is caring 16 children or less and has either a Registered Family Child Care license or a Certified Family Child Care license, if required.

#### Child Care Centers

An ECE facility, other than a family child care home, that has a Certified Child Care Center License.

<sup>48</sup> The Center for American Progress, [America's Child Care Deserts in 2018](#) (2018)

**Center-based Providers** care for children within a commercial building, including a nursery, dedicated child care center, or outdoor child care program.

- ◆ These providers must have a Certified Child Care Center license, in which licensed capacity is determined by floor space and number of staff.

## License Exempt Providers

Certain types of providers and ECE programs are not required to be licensed through the Care Child Care Licensing Division.

**License Exempt** caregivers provide child care in their homes on an informal basis for three children or fewer. These providers are often friends, neighbors, or relatives. License exempt providers can become **Regulated Subsidy Providers** who are eligible to care for families receiving Employment Related Day Care, a subsidy program that pays part of the child care costs for families who are working, in school, or receiving Temporary Assistance for Needy Families. To become eligible for payment through Employment Related Day Care, license exempt providers must complete a background check, complete certain trainings and pass a site visit to ensure the provider's home meets all health and safety requirements; however, these requirements are generally related to operating procedures.<sup>49</sup>

**Recorded Programs** are recorded (but not licensed) with the Care Child Care Licensing Division and include preschool programs that operate less than four hours a day and youth development activities for school aged children (such as religious institution programs or after school tutoring, music lessons or sports programs). These programs have just two requirements: all staff and volunteers must be enrolled in the Central Background Registry, and providers must notify parents about a provider's recorded status.

License exempt providers and recorded programs play an important role in ECE access and community-based care. However, while these provider types can often face unique barriers to licensing and operating, because they generally do not engage with the development process they will largely fall outside the scope of this project.

## Child Care Patterns by Race and Ethnicity

A study by the Urban Institute on the child care patterns of White, Black and Hispanic children found differences in the types of ECE used by the three groups. According to the study, Black children are the most likely of the three groups to be enrolled in ECE and are much more likely to be enrolled in a child care *center* than White or Hispanic children. On the flipside, Hispanic children are much less likely to be enrolled in a center than White and Black children, and are the most likely to attend home-based child care of the three groups.

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<sup>49</sup> The Urban Institute, [Caring for Children of Color: The Child Care Patterns of White, Black, and Hispanic Children under 5](#) (2006).

## Department of Early Learning and Care

Administering, licensing, and monitoring ECE facilities in Oregon falls under the Department of Early Learning and Care. This department was established in July 2023 to consolidate ECE policy and program administration in Oregon, bringing together the Oregon Early Learning Division (previously under the Department of Education) and the Employment Related Day Care program (previously under the Department of Human Services).<sup>50</sup> Per ORS 329A.010, the Department of Early Learning and Care has four main mandates:

- ◆ Issue licenses for providers and facilities, including regional Child Care Resource and Referral programs to recruit and support ECE programs and providers.
- ◆ Provide technical assistance, support communication and referrals between local agencies, data collection and monitoring related to child care.
- ◆ Establish and maintains a Central Background Registry for ECE providers.
- ◆ Implement and administers state ECE licensing requirements and rules.

### Department of Early Learning and Care Facility Requirements

In addition to operating and licensing, the Department of Early Learning and Care also has its own facility requirements for licensing that often overlap with building codes requirements. As part of the licensing application, facilities must show proof of compliance via:

**Fire Inspections:** Center-based facilities must pass a fire inspection, completed by the local fire marshal. The fire marshal will check that the building meets the Oregon Structural Specialty Code, has clear exits and stairwells, and sufficient fire extinguishers and smoke detectors.<sup>51</sup>

**Sanitation Inspections:** Both center- and home-based facilities must pass a sanitation inspection, completed by the local environmental health specialist. Inspectors will check the water supply, heat and ventilation systems, waste disposal and cleaning practices in the facility, as well as ensure bathrooms and kitchens have the required number of toilets and sinks for how many children will be enrolled. These requirements typically extend beyond the requirements of the general building code.<sup>52</sup>

**Lead testing:** Both center- and home-based facilities must have the building's water tested for lead by an accredited drinking water laboratory.<sup>53</sup>

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<sup>50</sup> DELC was established by House Bill 3073, passed by the Oregon Legislature in 2021.

<sup>51</sup> DELC [Rules for Certified Centers](#), page 101 (2024)

<sup>52</sup> DELC [Rules for Certified Centers](#), pages 111-121 (2024)

<sup>53</sup> DELC [Lead Testing Instructions](#) (2024)

## Development Regulations for ECE Facilities

While the Department of Early Learning and Care oversees many of the licensing and operating requirements for ECE facilities, other agencies oversee the development of these facilities related to land use, zoning and building code compliance, and permitting. In Oregon, both state and local governments have a role in regulating the development of ECE facilities.

## KEY TERMS & CONCEPTS

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### ZONING REGULATIONS

Zoning regulations determine where different types of ECE facilities can and can't be located (e.g., residential or commercial zone), along with their scale and appearance. In general, zoning regulations determine:

**Land use:** Determines how land can be used in different zones; for example, whether certain types of residential development (such as single-family homes or apartments) or commercial businesses (such as ECE centers) are allowed.

**Building and site characteristics:** Regulates building size, including height and square footage as well as any required parking, landscaping, and architectural style guidelines.



### BUILDING CODES

Building codes are standards that ensure the building and lot are structurally sound, appropriately built, energy efficient, and safe for its intended occupants.

At a high level, building codes can include requirements for building exits and accessibility, mitigating fire risk, plumbing and sanitation in kitchens and bathrooms, and energy efficiency and insulation.



### PERMITS AND PROCEDURES

Standards that determine which approvals are required for construction and how to obtain them.

**Permits** are official approvals that allow for construction or remodeling projects. Developments may require a few different permits, including building and zoning permits (verifying compliance with building and zoning codes), plumbing permits, electrical, mechanical, and grading permits. Applicants may also need additional permits approving any code variances, conditional use permits, zoning ordinance amendments, or other permits that require additional studies (e.g., traffic, environmental, or cultural resource studies). Permits require a range of fees to obtain, and the fees vary substantially between different jurisdictions.

**Procedures** are the processes required for obtaining any necessary permits, including various levels of documentation, rounds of review and plan revisions.

These different types of regulations are imposed by both the state and local governments through various layers of processes. The section below outlines the roles state and local governments play in regulating the development of ECE facilities.



## State Regulations

In general, state regulations set broad requirements for how and where ECE facilities can be developed locally. When state requirements are updated, jurisdictions must amend their relevant municipal code chapters to comply with new regulations within a determined time frame.

### ZONING REGULATIONS

In Oregon at the state level, the Department of Land Conservation and Development sets statewide rules for local zoning regulation decisions and reviews local plan amendments for compliance with statewide planning goals. This department also provides technical assistance and grants to local jurisdictions for land use planning support.

#### STATE-LEVEL ZONING REQUIREMENTS FOR ECE FACILITIES

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##### House Bill 3109 (ORS 329A.440)

This bill became effective on January 1, 2022, and implemented several changes for both child care centers and family child care homes to streamline local regulations and processes for ECE zoning. The bill set forth several new requirements for local jurisdictions:

- » Require local governments to allow residential dwellings located in an area zoned for residential or commercial uses to be used as a family child care home. Home-based ECE facilities are be considered residential uses for zoning purposes.
- » Require local governments to allow child care centers as a permitted use in all areas zoned for commercial or industrial use, except areas specifically designated by the local government for heavy industrial use or farm use.
- » Prohibits local governments from imposing land use regulations, special fees, or conditions on the establishment or maintenance of an ECE facility in an allowed zone that are more restrictive than those imposed for other uses in the same zone.

##### Senate Bill 599 (ORS 90.385)

This bill became effective on January 1, 2024, requiring landlords to allow tenants to operate licensed or registered family day care uses in rental units.

In Oregon, each city is surrounded by an urban growth boundary which delineates where the city can expand over a 20-year period. Inside the urban growth boundary, growth can occur through building new housing, industrial facilities, businesses or public infrastructure. Outside the boundary, restrictions protect farmlands and forests, prohibiting urban development. Land use regulations for any kind of development, including ECE facilities, vary greatly depending on whether the zoning is an urban or rural designation and whether it's in or outside of an urban growth boundary. This has caused some complexity for local jurisdictions implementing HB 3109.

## BUILDING CODES

ECE facilities in Oregon are governed by a model building code generated and adopted by the State Building Code Division. One relevant commercial code is based on the International Building Code with Oregon amendments, known as the Oregon Structural Specialty Code and the Oregon Energy Efficiency Specialty Code. Home based ECE facilities are permitted to comply with the construction standards of the Oregon Residential Specialty Code, based on the International Residential Code, where specific parameters of the Structural Specialty Code are met. Together, these two codes provide minimum design and performance standards for safety and sanitation components in the building. These include:

- ◆ **Building egress design**, including stairs, hallways, doors and hardware, exit courts, and exterior paths to a safe dispersal area away from the building in case of a fire or other emergency.
- ◆ **Fire safety components**, including fire alarm and sprinkler design, building material flammability ratings, smoke propagation and mitigation measures.
- ◆ **Minimum health and sanitation requirements**, including toilet, sink, and plumbing requirements.
- ◆ **Minimum standards for energy performance**, including insulation and energy efficiency standards to regulate building temperatures and reduce operating costs.

Building code requirements vary between home- and center-based ECE facilities. For example, in April 2021 the Oregon Building Code Division updated its code to align with the national standard of care for in-home care facilities, requiring new home-based ECE providers to install sprinkler systems for fire safety. However, following additional community engagement during the public process, the Division amended the rule in January 2022 allowing home-based providers alternative options for meeting the fire safety requirements, including locating child care areas of the home at grade level with an exit, preventing access to kitchen appliances.

## PERMITS AND PROCEDURES

While permitting procedures and review timelines are generally set by local jurisdictions, the Oregon legislature and the Land Use Board of Appeals have passed several laws limiting permitting timelines. State law requires that cities and counties make a final decision on permit applications, limited land use decisions or zone changes within 120 days after the application is completed.<sup>54 55 56 57</sup>

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<sup>54</sup> ORS 227.178

<sup>55</sup> ORS 215.427

<sup>56</sup> [https://oregon.public.law/statutes/ors\\_215.427](https://oregon.public.law/statutes/ors_215.427)

<sup>57</sup> Under this state law, if the local jurisdiction fails to issue a decision within this period, the applicant has three options: 1) Receive a refund of 50% of any application fees and deposits paid and withdraw the application. 2) Receive a refund of 50% of any application fees and deposits paid and continue with the

## Local Regulations

While the state has established some standards for how local jurisdictions can or cannot regulate the development of ECE facilities, local jurisdictions still have substantial influence over the development process when it comes to accessibility, time, and cost. On one end of the spectrum, local governments can broadly allow ECE facilities by right across many zones, limit permitting requirements and shorten permit approval timelines as much as possible. On the other end, local governments might impose conditional use requirements or design standards, adhere to stricter building code regulations, or other procedures that can increase waiting periods for permit approvals.

## ZONING REGULATIONS

At the local level, local governments (including cities and counties) establish zoning codes that align with the Division of Land Conservation and Development statewide land use goals. However, while local governments generally follow state guidance, their city departments and city councils can maintain significant influence over local land use and development decisions. Because HB 3109 only became effective in early 2022, many cities in Oregon have yet to update their permitted use tables and procedures to reflect new state requirements, which can create administrative challenges for both city staff processing applications and providers researching the feasibility of opening a new center or home-based care facility. In addition, while HB 3109 limits local jurisdictions from imposing *more* stringent conditional use requirements on ECE facilities specifically, if local jurisdictions rely on the conditional use process across uses, ECE facilities can still be subject to lengthy and expensive approval processes.

## BUILDING CODES

While most ECE building code requirements originate at the state level, some jurisdictions (cities and counties) add additional building code requirements at the local level to address location-specific building safety and sanitation requirements.

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application. 3) File a “writ of mandamus” to compel the local government to approve the permit or prove to the circuit court that approval would violate its land use regulations.

## EXAMPLE

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### Local Building Code Regulations

Within the City of Portland, all repurposed commercial buildings are subject to more stringent seismic criteria to account for older buildings in the City that may be more at risk of earthquake damage. Any change in a building's occupancy could trigger seismic retrofit requirements, which can be cost prohibitive for many providers.

## PERMITTING AND PROCEDURES

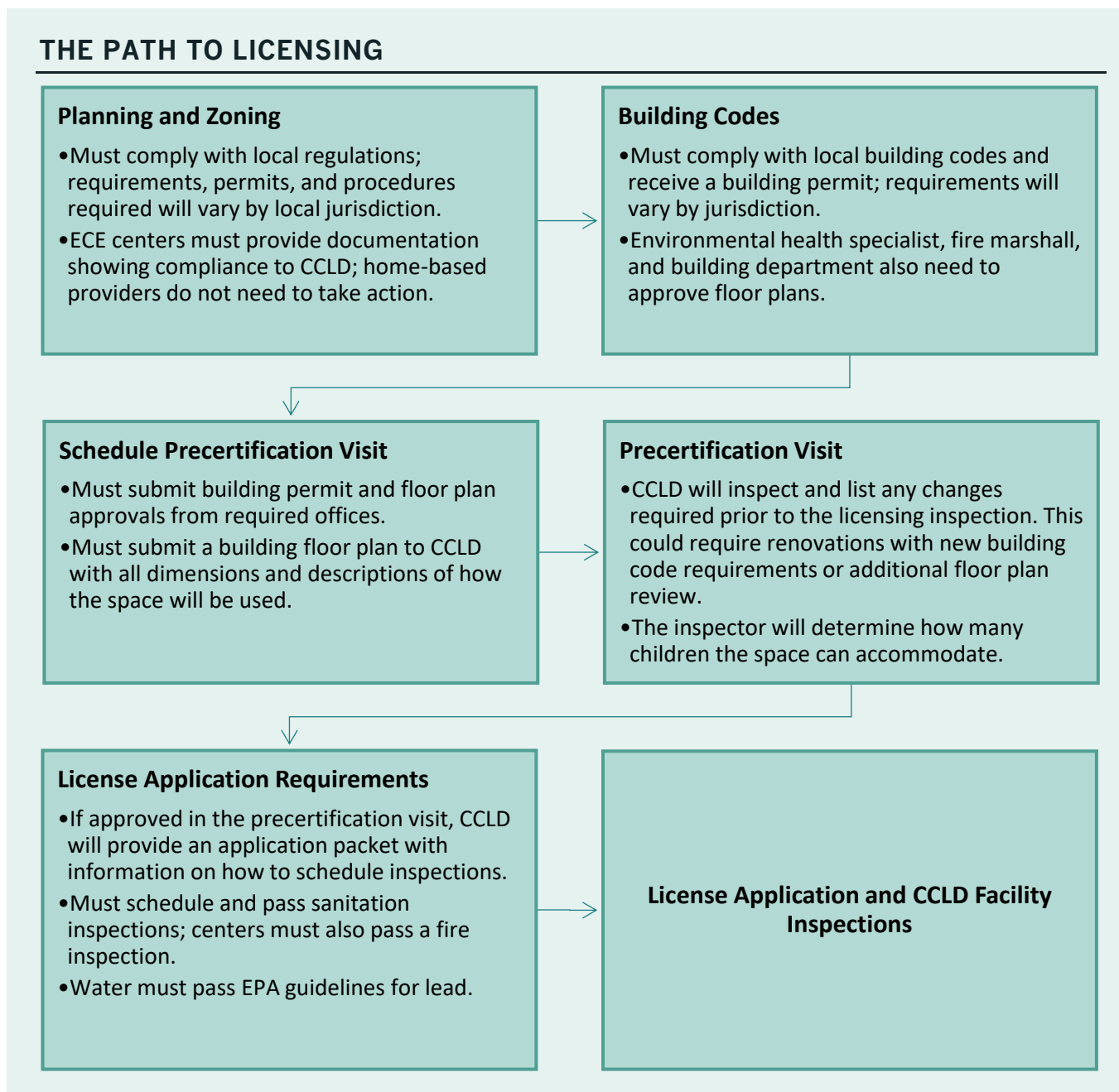
Within the state-mandated timeframes for procedures, local jurisdictions have influence over permitting timelines and requirements. Local jurisdictions can establish requirements that can impact permit review timelines such as neighborhood meetings, public hearings, appeal periods, conditional use procedures. Local governments can also choose to streamline processes and increase transparency and reporting in an effort to reduce permitting timelines and procedures. Requirements can vary significantly between jurisdictions and navigating the different requirements between state and local requirement can be a significant deterrent to development, especially for smaller or less resourced applicants.

The required permits and procedures a provider will be required to follow is based on the type of ECE facility they are looking to open or expand, as well as the type of property and project they are working with. For example, providers are likely to be subject to land use review processes for new construction projects, whereas projects that utilize existing buildings or tenant spaces may only be subject to building permit requirements. The types of permits and review procedure and their associated requirements vary greatly between jurisdictions.

### Process Overview

Below, Exhibit 4 shows the development steps an ECE facility must complete prior to applying for licensing. Applicants must submit all licensing requirements at least 45 days prior to when they plan to operate.

## Exhibit 4: ECE Development Requirements Prior to Licensing



Source: DELC [Application Process for Centers and Home-Based Providers](#)

Note: CCLD stands for the Department of Early Learning and Care's Child Care Licensing Division

### Other Regulatory Agencies

Beyond the agencies discussed above, ECE providers will likely need to engage with additional agencies while establishing an ECE facility, including:

- ◆ Americans with Disabilities Act: Requirements for making facilities and services accessible to children with disabilities.

- ◆ Oregon Department of Revenue: Filing business taxes; also offers a tax credit for ECE agencies.
- ◆ United States Department of Agriculture: Guidelines for snacks and meals<sup>58</sup>. Food subsidy programs are available through the Oregon Department of Education.
- ◆ Oregon Health Authority: Health and safety requirements for immunizations and child care restrictable diseases.
- ◆ Oregon Department of Human Services: Child abuse and neglect reporting requirements for providers.
- ◆ Oregon Department of Transportation: Vehicle child safety systems and seat belt requirements for transporting children, as well as bicycle safety and helmet laws.
- ◆ Bureau of Labor and Industries: Anti-discrimination laws protecting enrollees and employees.

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<sup>58</sup> Children must be fed snacks and meals regularly per Or. Admin. R. 414-305-1110.

# Appendix B: National Best Practices

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HB 2727 requires the project team to develop specific recommendations for expanding early learning and care facilities in the five jurisdictions from which work group members are selected. These recommendations were developed based on conversations with local government staff and a high-level audit of their respective codes. It's important to note that while the bill requires the creation of these recommendations, their implementation is entirely voluntary for the jurisdictions involved.

- ◆ The City of Portland implements regulations that comply with **ORS 329A.440**, so much of their code has been updated related to child care. In 2023, the City eliminated parking mandates citywide. In addition, the City has recently consolidated development review staff from its various infrastructure bureaus into one single Permitting and Development department, which should help improve review timelines as well as the level of coordination among the city review team staff. Below are some additional recommendations the City of Portland could consider for continuing their efforts to reduce barriers for child care providers opening new businesses or expanding existing ones.

## Conditional Use Modifications

Portland's zoning code triggers a conditional use modification review on sites with an existing conditional use<sup>59</sup>. Since Portland is no longer allowed to require parking for any uses, the section of code that pertains to the removal of parking as a trigger for a conditional use modification review should be removed. This trigger has created challenges for child care businesses converting parking spaces into outdoor play areas, among other issues.

- ◆ Recommendation: Since parking mandates no longer exist, allow removal of parking areas on existing conditional use sites without a conditional use modification review.

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<sup>59</sup> 815.040.B.h Proposals that alter the development of an existing conditional use. Alterations to the development on a site with an existing conditional use and reducing the boundary of a conditional use site may be allowed, require an adjustment, modification, or require a conditional use review, as follows: Remove parking spaces is allowed as follows: • On sites with 5 or more parking spaces, up to 1 space or 4 percent of the total number of existing parking spaces, whichever is greater, may be removed; parking spaces removed to create accessible spaces as specified in the Oregon Specialty Code are exempt from this limitation; or • Up to 50 percent of the total number of existing parking spaces may be removed when the removal is for an outdoor shelter or housing that is affordable.

## Pre-Application Process

Portland has two tiers of pre-application meetings. A “pre-application conference” is for projects that will need to go through a public hearing and is designed to set those projects up for successful hearings, such as a conditional use. This meeting requires attendance of all reviewing agencies and departments. The fee is \$7,994 and covers the cost of one meeting early in the process. The second tier is an “early assistance meeting”, which are not required for any applicants or permit processes. Applicants can request an early assistance meeting that includes only a city planner, or both a city planner and staff from other infrastructure bureaus, but building code reviewers do not attend these meetings, and the city notes that SDC estimates are not provided. There are two fees associated with early assistance, a meeting which costs \$1,677, or information in written form only (without a meeting) is \$1,390. The early assistance meeting could be missing key information from other departments or agencies and the fee is still high for child care providers, relative to other cities and counties who offer this service.

- ◆ Recommendation: Provide pre-application conference meetings, where all agencies and departments are required to attend and SDC estimates are provided, for child care providers at free or reduced cost.

## Building Permits

City of Portland currently requires a building permit for in-home child care. The City is working to implement a simplified child care permit program for in-home child care that would only require an inspection, with a minimal fee to cover inspector’s time.

- ◆ Recommendation: Implement the simplified permit program for in-home child care when no alterations are proposed to the dwelling. Only require only a fire safety inspection to ensure compliance with the Residential Oregon Structural Specialty Code Section 420.12.<sup>6061</sup>

The City’s building permit review process includes a question asking if someone lives in the residence for in-home child care. While the building code language is silent on this matter, the city’s interpretation has been that a resident is required to live in the home in addition to the child care use. State statute - ORS 329A.440 - deems a family child care facility itself to be a residential use. Therefore, local requirements for a resident to be living in the home might be in conflict with the statute.

- ◆ Recommendation: Discontinue the practice of asking if someone lives in the family child care home during the permit review process.

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<sup>60</sup> A building permit should still be required for any proposed structural alterations or when converting spaces not originally designed for occupancy (e.g., unfinished basements or attics) into child care areas.

<sup>61</sup> City of Portland staff mentioned this recommendation is potentially underway but not complete yet.



## Nonconformance Upgrades

Nonconformance upgrades are triggered when a building or other development permit is submitted and the value of proposed alterations on a site exceed a specified dollar valuation. These upgrades often include things like parking lot landscaping or screening of refuse and recycling areas. During the COVID-19 pandemic, the city of Portland issued a temporary ordinance that no longer required daycares to make non-conforming site upgrades, potentially saving child care providers time and money on new projects. It also addressed some of the challenges that come with co-locating with other uses and eased tensions between tenants and landlords. The ordinance was temporary and has since expired, although the city made the exemption permanent for housing.

- ◆ Recommendation: Create a permanent exemption for daycare uses triggering nonconforming site upgrades.

## Change in Occupancy

Seismic upgrades for a building are triggered if more than 1/3 of the floor area is changing to a higher hazard classification, which typically occurs when moving to E or I-4 for child care. These upgrades can be costly for providers to comply with and limit the number of suitable, ready-to-go spaces for child care.

- ◆ Recommendation: Establish a grant program and/or connect child care providers with existing grant programs (such as the Business Oregon Child care Infrastructure grant) for seismic and fire protection system upgrades to existing commercial space for low-income providers, small or minority-owned child care businesses.

## SDC and Frontage Improvement Waivers

System Development Charges (SDCs), particularly transportation SDCs and frontage improvement requirements often come as a surprise to child care providers. Many jurisdictions, including Portland, base fees on the number of “trips” generated by different uses established in the Institute of Transportation Engineers Trip Generation Manual. Fees are assessed if the new land use generates more trips than the previous land use; however, the manual lists child care as generating more trips than many other land uses<sup>62</sup> including private schools, medical clinics, and churches.<sup>63</sup> Frontage improvements may be triggered for similar reasons, but may be attached to building valuation, location of proposal, or other factors. The city does provide a number of exemptions and offers opportunities to re-evaluate SDCs or requirements if additional documentation is provided.

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<sup>62</sup> Institute of Transportation Engineers Trip Generation Manual, Common Trip Generation Rates (11<sup>th</sup> Edition), Peak Hours for Daycare Center

<sup>63</sup> Institute of Transportation Engineers Trip Generation Manual, Common Trip Generation Rates (11<sup>th</sup> Edition), Peak Hours for Daycare Center

- ◆ Recommendation: Offer waivers or exemptions for transportation SDCs and frontage improvements for child care centers, especially those moving into existing buildings, and consider new construction projects as well.



# Appendix C: High-Impact Barriers to Early Care and Education Facility Development

## Chapter 1: Introduction & Context

### A NOTE ON RESEARCH METHODOLOGY AND INTENT

*Much of the research presented in this report is derived from conversations and survey responses provided by child care providers, advocates, architects, and regulating agencies. It is important to note that the findings from this qualitative data are based on the experiences and perspectives shared by these participants. The project team emphasizes that the purpose of this report is not to criticize or undermine anyone's work or efforts related to the development of child care facilities, and the team recognizes and appreciates the dedication and good intentions of all individuals and organizations involved in providing and supporting child care in Oregon.*

*However, to effectively address the challenges facing the development of child care facilities, it is crucial to have an open and honest discussion about the processes, obstacles, and experiences encountered by those directly involved. By accurately reflecting the insights shared by engagement participants, the project team aims to identify areas for improvement and foster constructive dialogue to find solutions and create a more supportive environment for the development of child care facilities. The project team approaches this report with respect for the work being done in the sector and with the shared intention of enhancing the quality and accessibility of child care services for families and communities.*

The purpose of this project, established by House Bill (HB) 2727 (2023), is to review specific barriers to siting, building, or expanding child care facilities and to prepare a report summarizing findings and recommendations. The bill directs the Department of Land Conservation and Development (DLCD) to do this work in consultation with the Department of Early Learning and Care (DELCD) and to convene a work group of child care providers, regulators, advocacy partners, and other affected groups that represent the geographic, racial, ethnic, and gender diversity of Oregon.

The project includes three key phases:

- ◆ **Establishing background** and context and providing an overview of regulatory agencies involved in the development of child care facilities in Oregon.

- ◆ **Researching barriers** related to land use and zoning and building codes through a review of state and local regulations and through engagement with regulatory agencies and child care providers.
- ◆ **Developing recommendations to reduce barriers**, expanding early learning and care facilities, and reducing disproportionate racial and regional disparities in accessing early childhood care and education facilities.

The work group held their first meeting in February 2024. The meeting focused on confirming the role of the work group, setting group agreements, reviewing the project scope, providing feedback on a [background memo](#), and engaging in the first discussion on barriers encountered during the development process of child care facilities.

Once a shared understanding of the child care regulatory framework was established, the DCLD project team shifted their focus to understanding barriers within the regulatory context through the lens of child care providers and regulatory agencies. This report has been prepared for the second work group meeting. It summarizes high-impact barriers uncovered from research and outreach efforts that child care facilities may face during the development process, including land use and zoning, building codes, and permitting procedures. This research phase included the following components:

- ◆ A high-level local code review of development regulations in five jurisdictions in Oregon represented on the work group: the cities of Bend, Portland, and Coos Bay, along with Benton and Clatsop Counties.
- ◆ Insights from two surveys, focus groups, and interviews with child care providers and regulatory agencies.
- ◆ Case studies that highlight unique provider experiences and the regulatory challenges they faced during the process.

The information within this report and the feedback received during the second work group meeting in late May 2024 will serve as the basis for developing recommendations to address barriers during the next phase of work. Staff will present preliminary recommendations during the third work group meeting in late July 2024.

## KEY TAKEAWAYS FROM BACKGROUND MEMO

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The background memo provided context and established a shared understanding of the different types of early childhood care and education facilities and providers and the role of different agencies in regulating and permitting these facilities.<sup>1</sup> This study focuses on three core types of licensed child care facilities due to their inherent interaction with the development process. They include:

- ◆ **Registered family care homes:** An early childhood care and education facility in a dwelling with a registered family child care license that may enroll up to 10 children.
- ◆ **Certified family care homes:** An early childhood care and education facility in a dwelling with a certified family child care license that may enroll up to 16 children.
- ◆ **Child Care Centers:** An early childhood care and education facility—other than a family child care home—that has a Certified Child Care Center License.

## KEY TAKEAWAYS FROM BACKGROUND MEMO (CONTINUED)

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- ◆ Certain types of providers and early childhood care and education programs are not required to be licensed through the Care Child Care Licensing Division and generally do not engage with the development process, so they will largely fall outside the scope of this project.

The background memo provides an overview of the research topics outlined in HB 2727, which includes **zoning or land use regulations** (e.g., height, lot size, and parking requirements), **building codes** (e.g., requirements for fire or earthquake resistance), and **permitting and procedures** (e.g., building permits, planning department permits such as design or conditional use review, etc.). The background memo establishes key regulators at both the state and local levels to provide an understanding on where layers of regulations interact and who administers them.

## Summary of High-Impact Barriers

- ◆ **Layers of regulatory agencies:** Providers need to navigate the requirements of several agencies (state, county, city, and child care licensing) to get necessary approvals. Agencies are often separate from each other, with different or conflicting interpretations of statutory requirements.
- ◆ **Regulatory discrepancies:** Land use and zoning regulations, building codes, and licensing requirements contradict each other in ways that make implementing regulations a challenge for each regulatory agency. This can lead to risk, additional costs, and construction delays for providers.

- ◆ **Site Suitability:** Land use, zoning, and building code regulations and procedures—along with state child care licensing requirements—put significant limitations on the amount of suitable sites and buildings eligible for child care, particularly centers. When a site or building lacks key zoning and occupancy designations, providers are often required to go through lengthy and expensive land use processes and building renovations.
- ◆ **Comprehensive understanding of requirements:** Complex and sometimes inaccessible regulatory landscapes often require providers to hire consultants to help them navigate an early due diligence process to obtain comprehensive information on the requirements related to their site, building, or home. However, even when hiring consultants or attorneys, providers perceived a lack of commitment from local staff when requesting early information on requirements needed to make well-informed decisions, creating risk for providers. This may stem from a lack of confidence in inconsistent legal interpretations of development regulations across local departments.

## Zoning and Land Use

- ◆ Zoning codes and process requirements are not typically user-friendly, they are inconsistent across jurisdictions, and local staff often do not have capacity to offer technical support to providers through the process.
- ◆ The recent classification of in-home child care as a residential use outlined in House Bill 3109 (ORS 329A.440, which became effective on January 1, 2022) has created significant confusion for how jurisdictions should process permit applications for child care facilities, including requirements for home occupation permits, business licenses, and more. This statute also contradicts state building code regulations, which do not categorize child care as a residential use.
- ◆ Many jurisdictions haven't updated their local zoning codes to comply with new regulations outlined in ORS 329A.440. This has caused confusion for local implementation related to:
  - Definitions that do not consistently align with state land use and state licensing definitions. For example, some definitions artificially limit capacity for child care businesses by placing lower thresholds on the number of children allowed per facility.
  - Many jurisdictions that have not updated their permitted use tables and procedures to reflect child care uses allowed by right under ORS 329A.440.
- ◆ Child care centers are typically a conditional use in residential zones. These permits frequently have additional land use requirements, such as extra documentation or studies, higher fees, or infrastructure improvements.
- ◆ Special regulations or processes, such as conditional use permits, do not provide certainty that a provider will receive their permit. Special processes often require site control (typically ownership of the site, but could also encompass a long-term lease),

which can create risk for providers when there is uncertainty in the outcome of the development process.

- ◆ The location of a child care facility in a rural (outside an urban growth boundary) versus urban environment can impact its development in different ways. In rural areas, there may be more restrictions on permitted uses and additional approval processes. In urban areas, child care may be allowed more broadly but may be subject to more stringent design and development standards.

## Licensing Requirements and Building Codes

- ◆ Oregon's child care licensing limit of 16 children for in-home facilities, regardless of home size or provider capacity, prevents providers from expanding their businesses without moving to a certified center, which can present substantial barriers for providers looking to grow their businesses in smaller ways.
- ◆ Incongruent definitions between the Department of Early Learning and Care, the Oregon Structural Specialty Code, and new requirements under ORS 329A.440. In particular, regulating in-home child care as a residential use has caused confusion for local jurisdictions attempting to permit in-home child care in structures other than a detached single-family home. Currently, there is no clear path for allowing child care in multifamily housing units.
- ◆ Challenging building code and child care licensing facility requirements, particularly related to a change in occupancy. These requirements often render surplus and practical buildings for child care, such as schools or churches—or more affordable commercial spaces, such as older buildings—out of reach for many providers due to the expensive processes and renovations required.
  - Changing a building to meet either E or I-4 occupancy standards can trigger building renovation requirements based on the increase in risk categorization. Requirements could include installing sprinklers and implementing seismic and accessibility upgrades.<sup>64</sup>
- ◆ Child care facilities are subject to a range of building requirements, regulated across multiple agencies at the state and local level, including the Department of Early Learning and Care, Oregon Building Codes Division, the Oregon Health Authority, and the Oregon Department of the State Fire Marshal, along with county and city building departments. Providers noted that requirements—particularly for open space, plumbing fixtures, and fire safety—can also require expensive building renovations for

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<sup>64</sup> In the 2022 Oregon Structural Specialty Code, early childhood care and education facilities are classified under three occupancy groups. Education Group E day care facilities include buildings occupied by more than five children older than 2 1/2 years of age who receive educational, supervision, or personal care services for fewer than 24 hours per day. Institutional Group I-4 day care facilities include buildings occupied by more than five persons of any age who receive custodial care in a place other than their primary homes for fewer than 24 hours per day. Residential Group R-3 buildings include home-based registered or certified family child care facilities located within a dwelling.

both homes and centers. Even if providers can afford renovations, finding space that has the potential to meet licensing facility requirements can be difficult.

- ◆ Since building code provisions are separate from the land use process, building code and associated fee and process requirements may not be clearly communicated to child care providers during the land use process. Providers may be overwhelmed when confronted with these additional steps, underscoring the importance of obtaining comprehensive information early in the planning stages.
- ◆ Other requirements that are directly or indirectly associated with the building permit process—including septic system capacity upgrades, environment mitigation, and frontage improvements—often take providers by surprise during the development process and have significant costs associated with them, rendering a project financially infeasible for some.

## Potential and Disparate Impacts

- ◆ Rural jurisdictions may have less capacity to offer providers the technical assistance needed to navigate the development process efficiently. However, survey results showed that providers in urban areas—particularly in the Portland metro area—reported more challenges with zoning, building codes, and permitting processes than in rural areas due to the complex nature of the regulations and the many departments involved in the development process.
- ◆ Child care centers, particularly those in churches, tend to have greater difficulty complying with land use and building codes compared to child care homes, burdening households who seek child care within their religious institutions and Black families who more often utilize centers for child care.<sup>65</sup>
- ◆ Racial disparities in Oregon’s homeownership rates limit opportunities for communities of color—especially Native Hawaiian/Pacific Islander and Black households and Native Alaskan/Native American households—to start home-based child care businesses.<sup>66</sup>

## Research Methods

To gain a comprehensive understanding of the barriers and challenges faced by early childhood care and education providers in Oregon, the project team employed a range of research methods, including:

- ◆ **Local Code Review:** Provider experiences with the development process vary significantly from jurisdiction to jurisdiction. To better understand the range of regulations for early childhood care and education facilities across the state, a high-

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<sup>65</sup> The Urban Institute, [Caring for Children of Color: The Child Care Patterns of White, Black, and Hispanic Children under 5](#) (2006). According to the study, Black children are the most likely of the three groups to be enrolled in early childhood education and are much more likely to be enrolled in a child care center than White or Hispanic children.

<sup>66</sup> Oregon 2021 1-year PUMS.



level review of zoning, building code, and permitting policies was prepared for the five jurisdictions represented on the work group (Coos Bay, Benton County, Clatsop County, Bend, and Portland).<sup>67</sup>

- ◆ **Hypothetical Scenarios and Case Studies:** To demonstrate the unique experiences child care providers face when engaging in the development process, four hypothetical scenarios were outlined to illustrate common hurdles and four real case studies of child care providers in Oregon who have encountered barriers or challenges resulting from regulatory process were included. Case studies were identified through engagement with the work group and community outreach with providers across the state.
- ◆ **Interviews and Focus Groups:** To hear directly from regulators and providers impacted by the regulatory process of developing or expanding a child care business, in-depth interviews and focus groups were conducted. Ultimately, the project team held six interviews with providers and architects and three virtual focus groups (one for providers and two for different types of regulators across Oregon, including staff from local and state agencies).
- ◆ **Surveys:** Two surveys were conducted: one for providers and one for local jurisdictions.
  - **Provider survey:** To ensure a broad group of providers were engaged, a survey was distributed to better understand trends related to provider experience with land use regulations, building codes, and permitting procedures. Two hundred and seventeen responses were received from providers across Oregon.
  - **Local jurisdiction survey:** The Department of Land Conservation and Development crafted a set of scenarios to give local government staff the opportunity to indicate how they would approach land use review and permitting for various child care facilities under different circumstances. The survey received 73 responses from local staff across Oregon.
  - By gathering data from various sources and perspectives, the project team aimed to identify the range of regulations, policies, and experiences that impact providers across Oregon.

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<sup>67</sup> House Bill 2727 requires the work group to develop recommendations that support the expansion of early learning and care facilities in Oregon, specifically for expansion in the five jurisdictions represented on the work group: Clatsop County, Benton County, Coos Bay, Bend, and Portland. To develop future recommendations, the project team conducted a local review of each jurisdiction represented on the work group to understand any nuanced barriers that exist within them.

# Chapter 2: Land Use and Zoning

## CHAPTER 2 OVERVIEW

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New early childhood care and education facilities are subject to many state and local land use regulations and procedures. This section describes the following elements:

- ◆ State land use regulations for early childhood care and education facilities
- ◆ Role of site control
- ◆ Land use definitions and permitted uses
- ◆ Special procedures, permit timelines, and permit application requirements
- ◆ Differences between urban and rural designations

## CHAPTER 2 KEY TAKEAWAYS

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Providers emphasized zoning and land use permits as a source of risk and uncertainty, with unclear requirements, discretionary approvals, and unexpected costs and delays.

- » **State Law:** There is a lack of clarity for how recent changes to state law related to the land use and zoning of child care facilities are to be implemented locally.
- » **Due diligence:** Understanding whether a parcel will require additional upgrades or permits to comply with zoning requirements can take significant time and up-front costs that cannot be recovered if they are unable to occupy the space.
- » **Unclear requirements:** Permitting procedures and requirements are not intuitive and often confusing, especially for providers without development experience.
- » **Policy discrepancies:** Misalignment between state and local land use regulations can create administrative challenges for both city and county staff processing applications and providers researching the feasibility of opening a new center or home-based care facility.
- » **Special procedures and requirements:** Special procedures and requirements (e.g., conditional use permits) can make the development process time-consuming, costly, and risky—especially for providers who are smaller or have less resources.
- » **Urban and rural development:** Rural areas (outside the UGB) may impose more restrictions on permitted uses, have limited infrastructure, and require additional approvals, while urban zones may allow child care facilities more broadly but have more stringent design and development standards that can increase costs.

Land use refers to the way in which land is utilized and managed, including how land should be allocated for purposes such as residential, commercial, industrial, agricultural,

recreational, or conservation areas. Land use planning envisions future development in specific areas, while zoning regulates local land use with guidelines and restrictions to regulate property development in cities, towns, and counties. Communities are divided into districts or zones, each with specific regulations governing permitted uses, building size, density, parking, open space, and other development standards.

In Oregon, the Department of Land Conservation and Development (DLCD) sets statewide rules for land use decisions; for implementation of these rules, DLCD reviews local plan amendments for compliance with statewide planning goals. At the local level, local governments (defined here as counties, cities, and smaller jurisdictions such as towns) establish zoning codes that align with the statewide land use goals. While local governments generally follow state guidance, their planning departments and local councils or commissioners can maintain significant influence over local land use and development decisions. In recent years, Oregon's legislature has also become more active with respect to child care specifically, writing statutes directly affecting land use and zoning for child care facilities.

## State Land Use Regulations for Early Childhood Care and Education Facilities

In 2021, the Oregon legislature passed legislation intended to expand allowances and streamline processes for the development of early childhood care and education facilities, and House Bill 3109 (ORS 329A.440) became effective on January 1, 2022. This bill implemented several changes for both child care centers and family child care homes to allow child care uses more broadly without additional permitting requirements. The statute sets forth several requirements for local jurisdictions:

- ◆ Requires local governments to allow residential dwellings located in an area zoned for residential or commercial uses to be used as a family child care home for up to 16 children; defines home-based early childhood care and education facilities as residential uses for zoning purposes. The statute also prohibits local governments from imposing land use regulations, special fees, or conditions on the establishment or maintenance of a family child care home if they are more restrictive than those imposed on other residential dwellings in the same zone.
- ◆ Requires local governments to allow child care centers for more than 16 children as a permitted use in all areas zoned for commercial or industrial use, except in industrial zones designated as heavy industrial or farm use. The statute also prohibits local governments from imposing land use regulations, special fees, or conditions on the establishment or maintenance of a child care center in an area zoned for commercial or industrial use if they are more restrictive than those imposed for other uses in the same zone.

These changes are intended to allow child care more broadly and ease the procedural burden on providers and regulators. However, requiring in-home child care facilities to be regulated as a residential use has created confusion for jurisdictions processing child care permit applications, including requirements for home occupation permits or businesses. This statute also contradicts state building code regulations and environmental quality, which do not categorize child care as a residential use.

Additionally, the bill and subsequent changes to state law were not consistently obvious to local land use officials because the rule change is in ORS Chapter 329 – Child Care rather than typical land use rule locations like ORS 195, 197, 197A, 227, and 215. As a result, many jurisdictions have yet to update their municipal codes, which has led to confusion for both local planning staff and providers looking to start or expand a child care business.

## Site Control

To start the process of obtaining the required permits for a site, a provider will likely need to have control over the site—either through ownership or a lease agreement with the property owner. This concept is often referred to as site control. However, prior to purchasing or leasing a property, it’s important to ensure that it can be used for the intended purpose, which can often require expensive due diligence. Doing so can also take time, during which owners or landlords may sell or lease to another party. Due diligence may include:

- » **Zoning and Land Use Regulations:** Providers need to confirm land use allowance and permitting procedures to understand if and what kind of early childhood care and education is permissible on the property and what on- and off-site improvements or permits might be required.
  - » **Building plans:** Child care facilities must adhere to specific building codes and requirements to ensure the safety and well-being of children. Verifying that the property can be modified to meet these standards is critical. This may require initial research and drawings provided by an architect or engineer, which can cost tens of thousands of dollars in consulting fees.<sup>68</sup>
  - » **Studies:** Providers may need to commission various studies or inspections to understand what upgrades or requirements the property may need, such as tests for lead, asbestos, or environmental impacts.
- 37%** of home-based providers and **39%** of center-based providers said that city or county staff either did not have capacity or were unable to resolve their zoning issues.

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<sup>68</sup> The Oregon State Board of Examiners for Engineering and Land Surveying (OSBEELS) and the Oregon State Board of Examiners for Architecture (OSBAE) require building changes for changes of use and structures over 4,000 square feet to be overseen by a registered design professional per the 2022 Reference Manual for Building Officials, provided by OSBEELS, OSBAE, and the State Building Code Division.

- » **Cost estimates:** Providers often must commission cost estimates for the work once they understand the range of upgrades required by the local jurisdiction and child care licensing agency. Studies to estimate a project’s total cost can be thousands of dollars.

The up-front research on a property can require substantial investment of time and resources to ensure its suitability for child care. Providers must have access to timely and comprehensive information to make well-informed decisions about a potential location before securing site control to begin the development process. However, even after conducting thorough research, providers may still need to invest in a site without any guarantee of obtaining approvals or being able to afford the necessary modifications and requirements. This uncertainty can pose significant financial risks, particularly for providers with limited resources.

## Definitions and Permitted Uses

Zoning codes often define each use identified in a jurisdiction’s permitted use table (e.g., “day care center”). The Department of Early Learning and Care has specific definitions for early childhood care and education facilities related to how each are or are not licensed; however, local jurisdictions do not always use these same definitions in their local zoning codes and permitted use tables. The differences in definitions can intentionally or unintentionally limit the scale of facilities otherwise allowed by state law.



## LOCAL CODE REVIEW

House Bill 2727 requires the work group to develop recommendations that support the expansion of early learning and care facilities in Oregon, specifically for expansion in the five jurisdictions represented on the work group: Clatsop County, Benton County, Coos Bay, Bend, and Portland. To develop future recommendations, the project team conducted a local review of each jurisdiction represented on the work group to understand any nuanced barriers that exist within them.

### Definitions

Of the five jurisdictions, Clatsop County, Bend, and Portland’s definitions for early childhood care and education facilities align with the definitions set by the Department of Early Learning and Care that are used in ORS 329A.440.

Per the Department of Early Learning and Care, home-based early childhood care and education facilities can serve up to 16 children; however, both Benton County and Coos Bay consider any facility with more than 13 children a child care center.

Using different or outdated definitions is an issue because licensing and building requirements for centers are much more stringent than the requirements for family child care homes. More restrictive definitions also disincentivize registered family child care providers from expanding their businesses to certified family homes because enrolling a few more children—rather than up to 16 per state licensing—would require investing significant time and money to meet new requirements.

**49%** of home-based and **36%** of center-based survey respondents said **permitting requirements and procedures were confusing or unclear.**

Although compliance with ORS 329A.440 is required by state law, it is unclear whether jurisdictions are required to align their definitions of early childhood care and education facilities with state licensing definitions. However, misalignment between definitions, state land use rules, and Department of Early Learning and Care requirements can complicate and limit child care facility development and expansion. On occasion, jurisdictions use terms in their permitted use table that are either undefined or not specific enough to clearly identify the type of facility that is permitted. In some cases, it appears this misalignment might also artificially constrain capacity for in-home facilities.



## LOCAL JURISDICTION SURVEY RESULTS

- ◆ **Definitions:** Some of the jurisdictions surveyed indicated that their code definitions are outdated, allowing only up to 12 children for in-home child care. Some also noted they require conditional use processes for a variety of thresholds (e.g., 6-15 children) that do not align with the Department of Early Learning and Care's definitions and thresholds for registered and certified family child care.

This misalignment can create confusion for providers attempting to conduct their own preliminary research and can complicate matters for staff trying to determine if a specific use is allowed on a particular property. While these issues can sometimes be resolved with a phone call or email to city and county staff, many jurisdictions in Oregon lack staff capacity to handle miscellaneous queries from providers with questions about facility development. Additionally, local staff may be unaware of conflicts with state law and the differences in statutory obligations of zoning and building departments.

### Permitted Uses by Right

Generally, zoning will either allow a use outright with no additional restrictions, prohibit the use entirely, or subject the use to special requirements or procedures, such as design review or a conditional use permit. When a use is allowed "by right," typically, it is allowed without the need for any special procedures or discretionary land use approvals from local planning authorities. If the land use is not allowed by right, providers may need to seek variances, special permits, or undergo a discretionary review process to obtain approval from local authorities, often adding substantial time and cost to the development process.

The intent of HB 3109 (ORS 329A.440) was to allow in-home child care by right in residential zones and centers by right in commercial and industrial zones to eliminate lengthy conditional use or other special land use processes. However, many jurisdictions have yet to revise their codes to reflect updated laws, creating confusion when trying to understand the process a child care facility may need to navigate and the level of scrutiny the project may face.

It is important to note that other permits from building, public works, and on-site departments and others may still be required following confirmation of zoning use being permitted outright. This is discussed further below.

## LOCAL JURISDICTION SURVEY RESULTS

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Even though state statute requires registered and certified family child care to be considered a residential use and to be allowed by right in all residential zones, many jurisdictions still require conditional use permits for in-home child care.

- ◆ **Permitted Use:** Only 56 percent of jurisdictions surveyed noted that a new certified family child care home is a permitted use in a residential zone. Several jurisdictions noted this would be considered a conditional use.

## LOCAL CODE REVIEW

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### Family Child Care Homes

All five jurisdictions represented on the work group allow family child care homes by right in all residential and commercial zones; Coos Bay and Benton County limit the number of enrollees to 12.

### Child Care Centers

In residential zones:

- ◆ All five jurisdictions allow child care centers as a conditional use or with limitations in all or most residential zones.

In commercial zones:

- ◆ Three jurisdictions—Clatsop County, Bend, and Portland—allow child care centers by right in all commercial zones.
- ◆ Two jurisdictions—Coos Bay and Benton County—allow child care centers (either by right or conditionally) in some commercial zones.

In industrial zones:

- ◆ Clatsop County allows child care centers by right in all industrial zones.
- ◆ Bend and Portland allow child care centers (either by right or conditionally) in all industrial zones not designated as heavy industrial.
- ◆ Coos Bay and Benton allow child care centers in some industrial zones, but not all.



# Special Procedures and Permit Timelines

If a use is not allowed by right or prohibited entirely, it may be allowed through a special procedure. Special procedures are discretionary processes and often come with subjective approval criteria, longer review times, and additional application requirements and fees.<sup>69</sup>

## Special Procedures

While ORS 329A.440 limits the ability of local governments to place additional zoning restrictions on early childhood care and education facilities in certain zones, jurisdictions still maintain some ability to subject early childhood care and education facilities to special procedures or restrictions if they regulate other uses in the zone in the same way. The types of required permits, permitting procedures, and their associated requirements vary greatly between jurisdictions.

**Conditional use permits**<sup>70</sup> are a land use requirement commonly placed on early childhood care and education facilities and are the most significant land use barrier for new early childhood care and education facilities. Obtaining conditional use permits usually involves a longer and more intense land use review process and can include additional fees, neighborhood meetings, public hearings, and approval or denial by relevant authorities. While jurisdictions outline the criteria for how they will evaluate a conditional use application, approvals are ultimately at the discretion of the jurisdiction.

.....  
**37%** of home-based and **40%** of center-based survey respondents said that **conditional use permits** made it difficult or impossible to locate or expand their business.  
.....

Even if a conditional use application is approved, the applicant may still face challenges with meeting all conditions specified in the permit. These conditions could involve various aspects of the development process and may be regulated by different departments, such as building or public works. Conditions may include:

- ◆ Specific site design standards
- ◆ Operating limitations
- ◆ Additional systems development charges
- ◆ Environmental protection measures
- ◆ Public infrastructure and utility improvements
- ◆ Street and sidewalk improvements or accessibility upgrades

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<sup>69</sup> Throughout this report, the term "special procedures" is used to refer to additional regulatory or design requirements that child care facilities must navigate beyond the standard processes for developing a new facility, including but not limited to the conditional use process.

<sup>70</sup> Although not independently addressed in the report, nonconforming use verification/alteration land use permitting requirements are another example of special procedures and are similar to the conditional use process. They commonly present similar barriers as those discussed in this section.

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“The county planning department was unaware that home daycares existed within the county, or that the ORS define **home daycares as a residential use**. As I built my home intending to open a CF facility, the county **required me to meet commercial building and sanitation codes**. I acquired a HO and CU permit...”

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Conditional use permit packages require substantial effort to prepare, as the applicant may be required to prepare more detailed site development plans. They can also have lengthy review timelines relative to other permits, with no guarantee the permit will be approved and issued. Conditional use procedures can be complicated and obscure, disadvantaging small businesses and early childhood care and education providers who may be less familiar with land use processes, especially those who may not be fluent in English.

## CHILD CARE IN CHURCHES

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Providers shared that churches are often set up well for child care—many have existing child care programs during church services as well as sufficient indoor and outdoor space. However, churches are frequently permitted as conditional uses on their own, so if a provider would like to co-locate inside the church or on the same property, they might be required to apply for a modification of a conditional use to add child care as a permitted use on the site.

Each jurisdiction is likely to approach regulating child care in existing churches (or other institutions) differently, though. For example, Portland does allow child care by right in a residential zone even when incorporated into a church. If the church already has indoor and outdoor space that can accommodate child care, they are able to move in from a zoning perspective. However, major exterior changes to the church could trigger a conditional use.

## Permit Timelines

A variety of factors influence the timeline for developing a child care facility, such as the type of facility (in-home or a center), the complexity of the site and/or building, project scope and size, and whether the project is allowed by right. During the development process, early childhood care and education facilities are required to undergo routine levels of permitting, such as site plan review and building permits, and occasionally special review processes like a conditional use. Land use processes are typically the longest of the regulatory review processes, so states often establish maximum timelines for jurisdictions to reach land use decisions. Pursuant to ORS 215.42, counties are generally limited to 150 days and cities are limited to 120 days, beginning once the land use permit application is deemed complete and ready for formal review. These timelines also include exhausting local appeal options. However, these timelines do not always reflect the reality of the overall time it takes to receive a land use permit once an application has been submitted.

.....  
**46%** of home-based and **47%** of center-based survey respondents said **long permit timelines** made it difficult or impossible to locate or expand their business.  
.....

Permit review timelines often do not account for the time the land use clock stops and restarts during the completeness review. Jurisdictions statutorily have thirty days to review a land use application to ensure it is complete and ready to begin the actual land use review. The thirty days for completeness review is not included in the 120- or 150-day limit jurisdictions are subject to. If the

application is not complete upon initial review, the thirty-day clock stops while the applicant makes revisions and starts again with another thirty days for a second completeness review.

A few aspects of the land use process can increase a project's timeline, including:

- ◆ **Neighborhood meetings:** Jurisdictions may require developers to notify and hold a pre-application neighborhood meeting to gather feedback from potential nearby residents.
- ◆ **Public hearings:** Jurisdictions may require a public hearing regarding the land use application in front of a designated body (such as a hearings officer or planning commission).
- ◆ **Appeal periods:** The timeline to receive a permit for a project can be significantly extended if the decision is appealed, as the appeal process often involves additional hearings, reviews, and potential court proceedings.
- ◆ **Lack of staff capacity:** A shortage of staff at a local jurisdiction can often lead to delays in application reviews.

Many of these factors are intended to occur within the 120- or 150-day timeline for cities and counties, respectively. However, the applicant has the right to extend the timeline to safeguard against a jurisdiction issuing a decision with incomplete information, missing studies, or less robust staff reports. An incomplete application can result in a denial, or a poorly written staff report could succumb to litigation if there are community concerns about the project. Therefore, applicants typically opt to extend review timelines when staff suggest doing so. Many providers are also first-time permit applicants and lack experience navigating the process, which requires time to learn what's needed and to obtain the necessary information. This can result in delays during permit review.

While Oregon has set review times for issuing land use decisions, there is no guarantee that these limits are maintained. Long review times can cause financial strain for providers through increased holding costs during the time it takes to receive permit approvals prior to opening. Holding costs might include mortgage or rent payments, property taxes, and insurance premiums. Delayed projects might also impact a provider's ability to retain staff who were hired in anticipation of opening.

## LOCAL CODE REVIEW

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All five jurisdictions represented in the work group require conditional use permits for child care facilities in at least one zone:

- ◆ In **Coos Bay**, conditional uses require either a Type II or Type III procedure, depending on the project's scale.
  - Type II procedures require public notice and that a decision is made within 120 days of application. Appeals must be filed within 15 days of the decision.
  - Type III procedures require public notice and a public hearing, resulting in a decision that can take a minimum of 34 days and a maximum of 120 days. The appeal process is the same as for a Type II decision.
- ◆ In **Benton County**, conditional uses require public notice and approval by the planning official. Additional information is needed to understand how long this process can take.
- ◆ In **Clatsop County**, conditional use permits are either a Type II or Type IIa procedure determined by the community development director.
  - Type II procedures do not have additional requirements, and notice of decision is typically given within 45 days. Appeals must be filed within 12 days of the decision.
  - Type IIa procedures follow the same process as Type II procedures but also require public notice and a public hearing, resulting in a longer timeline.
- ◆ In **Bend**, conditional use permits are a Type II procedure requiring public notice. The notice of decision is given within 120 days, and applicants have 12 days to file an appeal.
- ◆ In **Portland**, conditional use permits are either a Type II or Type III procedure. A new conditional use is Type III, although changes to an existing conditional use may be allowed through a Type II procedure.
  - Type II procedures require a 28-day process with a public notice and comment period. Appeals must be filed within 14 days of the decision.
  - Type III procedures are 68-day processes requiring public notice and a

## PORTLAND PERMIT TIMELINES FOR CHILD CARE FACILITIES

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The City of Portland provided permit data for five child care facilities that applied for a conditional use permit between 2022 and 2024. The data shows that the average number of review days for these facilities was 221 days.

## Permit Application Requirements and Fees

Land use application requirements can vary significantly by jurisdiction, project scale, and procedure type. Requirements, depending on the type of land use permit, can include site plans, architectural drawings, environmental impact assessments, traffic studies, and Land Use Compatibility Statements.<sup>71</sup> Permitting fees are often assessed at various points in the development process, depending on various aspects of the project. Fees associated with land use and zoning could include:

- ◆ **Pre-application meeting fees:** Often charged when submitting high-level project proposals for an initial review and meeting to outline key project requirements.
- ◆ **Application fees:** Often charged when submitting for a land use review (e.g., site plan review or conditional use)
- ◆ **Review fees:** Some jurisdictions may charge for the time it takes staff to review submitted plans; others may just charge the application fee.
- ◆ **Inspection fees:** Charged for various inspections throughout the construction process to ensure compliance with items related to land use and zoning, such as setbacks, landscaping, parking, etc.

.....  
**49%** of home-based and  
**42%** of center-based survey  
respondents said **permit  
fees** made it difficult or  
impossible to locate or  
expand their business.  
.....

Throughout permitting, providers may also need to pay for any special studies, assessments, or public hearings. In general, the more complicated or lengthy a land use process is, the greater the cost to the provider.

## Urban and Rural Development

Development in Oregon is subject to a complex set of rules and regulations that vary depending on whether the facility is located inside or outside of an urban growth boundary (UGB) and its specific zoning designation. This has caused some complexity for local jurisdictions implementing ORS 329A.440.

Oregon is a managed growth state. UGBs are used to separate urban areas from rural areas. Each city is surrounded by a UGB, which delineates where the city can expand over time based primarily on housing and employment demand. Inside the urban growth boundary, growth can occur through building housing, industrial facilities, commercial areas, or public infrastructure. Outside the boundary, development is limited, and restrictions protect farmlands and forests.

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<sup>71</sup> Land Use Compatibility Statements (LUCS) are proposals that assess how well a proposed land use will align with existing land uses and zoning regulations in a specific area. These statements consider factors such as adjacent properties, environmental impact, required infrastructure, and community input.

Urban zoning designations in Oregon are more diverse and specific than rural zoning designations. In urban areas, zones may include residential, commercial, industrial, mixed use, or public use. Each zone has its own set of permitted uses, development standards, and design requirements. Rural zoning designations, on the other hand, are generally broader and more focused on preserving resource lands. Common rural zones include exclusive farm use (EFU), forest use, and rural residential. These zones have fewer permitted uses and more restrictive development standards than urban zones. Below is a brief and general summary of zoning and process requirements for child care facilities inside and outside the UGB and how that varies by urban and rural designations. Local codes may provide exceptions, and some processes will vary by jurisdiction.

Under state law, the following differences exist between urban and rural areas:

- ◆ **Urban residential zones inside the UGB:** Family day cares are allowed by right without land use review or a home occupation permit from the planning department. Centers are often allowed as a conditional use, but some may allow centers by right in multifamily zones, particularly in conjunction with another permitted use. Traffic studies are usually required for conditional use permits.
- ◆ **Urban commercial/mixed-use zones inside UGB:** Child care centers are allowed, usually with site plan review, and sometimes through conditional use review. System Development Charges (paid with building permit fees) may be required and can be costly. With the site plan review, there is potential for public improvement requirements, such as sidewalks and curbs. Traffic studies are often required.
- ◆ **Rural residential zones outside UGB:** Family child care allowed outright without land use review or home occupation permit. Centers are allowed usually through a conditional use permit as part of a school or religious institution. Traffic studies are typically required for conditional use permits.
- ◆ **Rural commercial zones outside UGB:** Child care centers are allowed, typically with a site plan review, and sometimes through conditional use review.
- ◆ **Farm/Forest zones outside UGB:** Family child care homes may be allowed by a home occupation permit, which might be a Type I or Type II review depending on the scale, county, and building type. Child care centers are typically not permitted on their own in these areas, but there may be instances where they are permitted as an accessory to a residential use via a home occupation permit.

Properties outside the urban growth boundary (UGB) face significant challenges when establishing in-home child care businesses. Existing homeowners in these areas can encounter burdensome requirements, including the need for conditional use permits and compliance with home occupation regulations. This becomes even more complex for homes located in nonresidential zones, such as farm and forest zones. Attempting to rezone a property located outside of the UGB is much more complicated than rezoning a property within the UGB. Rezoning property outside the UGB requires an exception process that would make amendments to the county's comprehensive plan.

This is not likely an option for most child care providers, so they will likely need to proceed with the process using their current zoning designation.

- The location of a child care facility inside or outside of a UGB and its zoning designation can have significant implications for its development.
- ◆ **Permitted Use:** In rural areas, child care facilities may not be permitted at all in certain zones such as farm use or forest zones, or they may require special approvals or circumstances more often because development is intended to be very limited outside the UGB.
- ◆ **Development and Design Standards:** While urban zones may more broadly allow child care facilities, they typically have more detailed design and development standards, such as setbacks, lot coverage, landscaping, and parking requirements. These can impact the design and layout of a child care facility and increase development costs.

## Other Land Use Barriers

During community outreach, the project team discovered other barriers that relate to zoning and land use. While they are important nuances to highlight, they do not necessarily relate to the topics covered in the above sections. These barriers include:

- ◆ **Conflict with licensing requirements:** Providers and architects reported that specific state licensing requirements can sometimes conflict with local land use regulations. For example, the Department of Early Learning and Care requires outdoor area fencing to be at least four feet tall; however, many jurisdictions limit fencing to three and a half feet in many zones. Providers may be required to seek a variance that will likely add time and cost to the process. Similar to conditional use processes, zoning variance reviews are discretionary in nature. Therefore, there is no guarantee a request will be approved.
- ◆ **Community associations:** In Oregon, homeowner associations and other planned community associations cannot prohibit the use of an owner's unit or lot as a certified or registered family child care home *unless* the unit shares a wall, floor, or ceiling surface with another unit, potentially limiting multifamily family care homes.<sup>72</sup> Community outreach with both regulators and providers revealed that this regulation is not common knowledge and many still perceive community associations as a high-impact barrier for in-home child care in detached units.

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<sup>72</sup> [ORS 94.779](#) Unenforceability of certain irrigation requirements and restrictions on family child care, [ORS 100.023](#) Voice and unenforceable provisions of condominium governing document

## Clatsop County Land Use Regulations

Clatsop County specifically prohibits planned communities or condominiums from disallowing early childhood care and education facilities in their governing documents.

Source: Clatsop County Code of Regulations [Article 3 – Structure Siting and Development Standards](#) 3.9570

### Summary of Implications

**Recent changes in state law related to the land use and zoning of child care facilities requires local jurisdictions to allow child care more broadly in residential, commercial, and industrial zones. However, inconsistent interpretation of the statute has led to varied implementation across Oregon, creating confusion about how to properly enact these requirements at the local level. ►**

Classifying in-home child care as a residential use has created significant confusion for local jurisdictions. Many are unsure how to process permit applications for child care facilities, particularly regarding requirements for home occupation permits or business licenses. This confusion is compounded by the fact that the statute contradicts state building code regulations, which do not categorize child care as a residential use. These conflicting standards have left local officials struggling to determine the proper procedures for approving and regulating in-home child care facilities.

**Gaining a preliminary understanding of the range of permits or upgrades a site will require to comply with development regulations can take significant time and money. However, providers shared that much of this up-front due diligence does not guarantee the desired result. Often, if a provider is unable to move forward with their chosen space or property, they are unable to recover their initial investment in due diligence. ►**

During community outreach, providers shared many stories of having to hire architects and consultants to help understand what a potential site might need. Providers also shared

.....  
“The **time** it took to get permits, **lack of clarity** around the review process, and a system that seemed **severely backed up and disjointed**.  
.....

Even lucking into a child care specialist [...] there was little support.”  
.....

experiences of receiving conflicting information from different officials and departments and being faced with unexpected costs or procedures far into the process, even after spending significant time and money on due diligence.

**Permitting procedures and requirements are often confusing, especially for providers without development experience. ►**



Providers who went through the permitting process shared that it required substantial time and research to understand and get through the permitting process, acquiring knowledge they often felt they would not be able to use again. Even if providers do establish additional facilities, because each jurisdiction has different zoning and permitting expectations, expanding into new communities may take substantial effort. Many experienced providers also shared that they would like to help other providers better understand the process but felt they couldn't because of procedural differences between jurisdictions.

**Misalignment between state and local land use regulations can create administrative challenges for both city staff processing applications and providers researching the feasibility of opening a new center-based or home-based care facility. ►**

**48%** of home-based and **53%** of center-based survey respondents said **zoning requirements were confusing or unclear.**

As reflected by the variety of regulations in the five jurisdictions that participate in the work group, many cities in Oregon have yet to update their permitted uses and procedures to reflect new state requirements. If cities have not updated their land use codes—either by choice or from lack of awareness of changes made to state law—and fail to administer

the state regulations, the provider could appeal to the state Land Use Board of Appeals. However, doing so often takes time and resources that providers may not have. Providers would also need to know state land use regulations well enough to understand the appeal options and procedures.

**Special permitting processes can make the development process time-consuming, costly, and risky—especially for providers who are smaller or have less resources. ►**

Conditional use procedures also involve varying degrees of discretionary review depending on the type of permit, making approval criteria for conditional use permits subjective. Interpretation of development standards or design criteria can become political, relating to issues like community character and need. In addition, the permit may contain expiration dates, requiring providers to reapply and go through the review process again to continue using the property with no guarantee that the permit will be approved. Many providers shared that they did not want to risk their

“They **first said I needed a conditional use permit** [...] only to tell me two months later I did not need a conditional use permit! It was a huge amount of work and time.”

“I tried for **several years** to get a conditional use permit to grow in the 5,000 square foot home I lived in. I **could not get the city to give me a conditional use permit** in order to expand my program. I eventually [...] rented a commercial space. I have grown and expanded since then, but I do not own my building. It has been **very expensive.**”

resources setting up an early childhood care and education facility that they might not be able to occupy long term.

**The location of a child care facility inside or outside of an urban growth boundary (UGB) and its zoning designation significantly impact its development. ►**

In rural areas, child care facilities may face more restrictions on permitted uses and require additional approval processes. In contrast, urban zones may allow child care facilities more broadly but have more stringent design and development standards. Both of these implications often increase the time and cost for providers opening or expanding their child care business.

## Chapter 3: Licensing Requirements & Building Codes

### CHAPTER 3 OVERVIEW

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Child care facilities must meet the building requirements of multiple regulatory agencies. This chapter describes the following elements:

- ◆ Department of Early Learning and Care facility requirements for licensing.
- ◆ Building code requirements and process, including building permit uses, change in occupancy, and fire safety.

### CHAPTER 3 KEY TAKEAWAYS

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Providers universally highlighted building codes and permits for new facilities and required renovations as high-impact development barriers. Especially in conjunction with Department of Early Learning and Care building requirements, required building upgrades can add significant expenses, limit available space, and add layers of separate and sometimes conflicting levels of review.

- » **Significant Costs:** Child care providers face significant financial burdens due to required upgrades in areas such as outdoor spaces, plumbing fixtures, fire safety systems, and hazardous material remediation. These expenses can make facility development or expansion prohibitively expensive, especially for smaller providers.
- » **Limited Suitable Spaces:** The combination of facility requirements and renovation costs severely restricts the pool of existing buildings that can be feasibly converted for child care use.
- » **Discrepancies Among Regulators:** Providers experienced conflicting requirements from different agencies, leading to multiple rounds of costly upgrades and inspections. Incongruent language used among the different regulators creates confusion regarding where different child care facilities are allowed to operate.

The building of an early learning and care facility is generally regulated by two primary sets of requirements:

- ◆ **Facility requirements for licensing:** Child care facilities are subject to a range of building requirements established across multiple agencies, including the Department of Early Learning and Care, the Oregon Health Authority, and the Oregon Department of the State Fire Marshal. Generally, the Department of Early Learning and Care requires proof of compliance with these regulations prior to licensing to ensure that the facility meets the necessary standards for providing safe and quality care to children.<sup>73</sup> These requirements can relate to building code requirements but are not administered by the local building department.
- ◆ **State building code:** These are regulations that specify the minimum standards for the design, construction, and operation of buildings to ensure public health, safety, and general welfare. Child care facilities must comply with these codes, which may include requirements related to fire safety, occupancy, accessibility, and other aspects of the physical structure.

In Oregon, the state building code is a model code developed by the International Building Code. The state building code is adopted by the Oregon Building Division and applies statewide. While the state building code does not require local adoption, local jurisdictions can implement building requirements to address location-specific issues, so long as they meet the minimum and exceed the maximum requirements set forth in the state building code.

Building codes are typically administered by a jurisdiction's building division or building department. The Oregon Building Codes Division and the state building code afford local building officials discretionary authority when implementing the building code locally, as long as the intent and life safety equivalent of the code is still met under any adjustments. However, regulators and architects shared that building officials are often uncomfortable making adjustments because of a perceived liability risk when doing so. Others noted that there is a wide spectrum of how requirements within the building code are interpreted by local building officials. Where inconsistent interpretations of a specialty code provision are encountered locally, the Oregon Building Codes Division can provide technical interpretation guidance.

## Facility Requirements for Licensing

The Department of Early Learning and Care establishes licensing requirements for child care facilities, which include rules regarding building amenities and characteristics that child care facilities must meet as part of the licensing process.<sup>74</sup> These regulations are based on supporting and enforcing an environment for healthy and safe child development in the

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<sup>73</sup> Department of Early Learning and Care requirements are outlined in the Oregon Administrative Code, Chapter 414.

<sup>74</sup> Additional details on the Department of Early Learning and Care facility requirements can be found in the Appendix E.

facility. Some other requirements, such as sanitation and fire safety, are also administered or inspected by other agencies, including the Oregon Health Authority and the Oregon Department of the State Fire Marshal. These requirements are summarized below in Exhibit 5.

**Exhibit 5: Department of Early Learning and Care Required Inspections for Licensing**

Floor Plan Review	Fire Inspections	Sanitation Inspections	Lead Testing
<ul style="list-style-type: none"> <li>• <i>Submit building plans to DELC for approval</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Centers must pass inspection by local fire marshal</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Certified family care homes and centers must pass inspection by environmental health specialist</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Water testing by drinking water laboratory</i></li> </ul>

Source: The Department of Early Learning and Care

The Department of Early Learning and Care requires a precertification visit to discuss licensing requirements with prospective providers prior to scheduling inspections but after building and zoning permits are approved. However, some providers shared that it can be difficult to know if their facility will meet Department of Early Learning and Care requirements during the development process. Providers noted a range of experience when engaging with Department of Early Learning and Care licensing agents, with some engaged throughout the development process and others only becoming involved once the facility had been approved by the local city or county.<sup>75</sup> The later a Department of Early Learning and Care inspector gets involved, the greater the chance a provider will fail the inspection, meaning additional renovations and delays in opening.

**Child Care Facility Requirements**

Child care facilities are licensed based on their setting and capacity. Registered family and certified family child care licenses are typically found in residential homes, while certified center licenses are generally found in commercial buildings.

- ◆ A registered family child care home operates within the licensed provider's residence, specifically in the "family living quarters," as designated by the Child Care and Licensing Division (CCLD).
- ◆ Certified family child care homes, on the other hand, are located in buildings "constructed as a single-family dwelling" and can care for up to 16 children.
- ◆ Child care centers are usually situated in commercial or nonresidential settings.

<sup>75</sup> Licensing specialists often serve as unofficial guides for child care providers navigating planning, zoning, and building codes. This role falls outside their primary responsibilities, leading to inconsistent service levels across the licensing system.

- Child care facility requirements for licensing can limit the number of suitable spaces for child care facilities and result in major renovation costs to meet requirements. Even if providers can afford to renovate a building to meet facility requirements, providers pointed out that finding a potential space capable of meeting key facility requirements can be very difficult. In particular, providers and architects identified outdoor space, plumbing fixture requirements, and mitigation of hazardous materials as some of the greatest barriers to development. While the Department of Early Learning and Care can issue waivers or alternatives for some requirements (such as outdoor space or sanitation), these facility requirements may still create barriers for providers based on their specific situation or licensor.

## OUTDOOR SPACE

The Department of Early Learning and Care requires child care centers and certified family care homes to provide at least 75 square feet of outdoor space per child, access to shade, and fencing at least four feet high. While providers can submit an alternative proposal to the Department of Early Learning and Care to use nearby park or school outdoor space for activities, providers shared that these spaces may not meet Department of Early Learning and Care licensing standards for access or safety. For centers, providers emphasize that it can be very difficult to find a potential center location large enough to be used as or converted to an outdoor play space, particularly in urban areas. Architects also pointed out that even if providers had the funds to convert a building’s parking lot into a play area, the building might then be out of compliance with the jurisdiction’s parking requirements. For certified family care homes, outdoor space requirements can be especially limiting for providers in apartments or other homes without a dedicated yard.

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Many providers shared that **open space requirements** are one of the most, if not the most, restrictive barrier to development.

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## PLUMBING FIXTURES

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**42%** of home-based and **55%** of center-based survey respondents said **plumbing requirements** are a barrier.

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According to the facility regulations for certified family child care, providers must have two toilets if there are more than 15 children or 12 toddlers in care.<sup>76</sup> For certified centers, providers must provide one toilet per 15 children over the age of three and one toilet (either child-size or with a training seat) per 10 children between 24 and 35 months old.<sup>77</sup> For every two toilets, providers must provide a handwashing sink. If facilities expand, providers will have to add additional toilets and sinks to meet the child-to-toilet ratio requirements. Architects reported that installing additional fixtures can require major plumbing renovations, and providers shared that there are limited buildings (both residential and commercial) that are already

<sup>76</sup> Oregon Administrative Rule 414-350-0140

<sup>77</sup> Oregon Administrative Rule 414-305-0800

equipped with sufficient plumbing fixtures. In addition, many facilities may not have enough space to add additional restrooms while also maintaining space requirements for classrooms.

## HAZARDOUS MATERIALS

Providers shared that the costly removal of hazardous materials in existing buildings—such as mold, asbestos, dry rot, pest removal, and lead remediation—are expensive though necessary. While providers can invest in costly studies to test for hazardous materials before committing to a building, especially in older structures, these assessments do not guarantee that all hazardous substances will be identified during the initial inspection. The risk of uncovering additional hazardous materials during renovations or after occupying the space is a significant concern.

## Building Code Requirements and Process

Separate from the Department of Early Learning and Care’s licensing building requirements, providers may need to work with the local jurisdiction to confirm an existing building’s legal occupancy, apply for and receive permits for renovations, undergo inspections, and obtain a final Certificate of Occupancy to use the building for the new proposed use.

### Building Permits

From a building code standpoint, opening any new child care facility (including in an existing home) typically requires a change of occupancy at a minimum, and applicants will likely need to file a change of use with their local building department to ensure the space meets safety and structural requirements for its new purpose as a child care facility (discussed in more detail below). Depending on the scale of the project, they may need to obtain land use permits (previously discussed) and other building-related permits such as electrical and plumbing permits.

While the process for obtaining building permits varies by jurisdiction, in general, the provider will need to complete:

- ◆ **Building plans:** Where required by law, the provider will first need to hire an architect and/or engineer to draw up building plans in compliance with building codes and zoning regulations.
- ◆ **Plan review:** The provider then submits the project plans to the local building department, along with permit fees, permit application forms, and any other required materials.
- ◆ **Inspections:** During construction, the provider will need to schedule and pass building inspections throughout various phases of the process to verify that the

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**37%** of home-based and **61%** of center-based survey respondents reported that they needed to get a **building permit** as part of the development process.

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project meets all applicable codes and standards and is constructed in accordance with the approved plans.

- ◆ **Certificate of Occupancy:** Once the project passes final inspections, the building department will issue a Certificate of Occupancy, allowing the building to be used for the new use and occupancy. Even if the facility receives a Certificate of Occupancy, this does *not* mean that the facility meets the Department of Early Learning and Care requirements for licensing outlined above.

## LOCAL JURISDICTION SURVEY RESULTS

In practice, building permit requirements for child care vary significantly across Oregon's jurisdictions. The survey of local jurisdictions revealed:

- ◆ **Change of Use:** Only 41 percent considered a new certified family child care in an existing home (without fire sprinklers) as a change in use.
- ◆ **Building Permit:** 44 percent would require a building permit and inspection to confirm compliance with Oregon Structural Specialty Code Section 420.12.
- ◆ **Inspection Only:** 25 percent stated they would only require a building inspection to confirm compliance with Oregon Structural Specialty Code Section 420.12 without necessitating a building permit.

## Building Occupancy and Change in Use

All uses and corresponding spaces within a building, formally designated as its occupancy classifications, dictate the applicable building code standards and requirements that must be met. Per the 2022 Oregon Structural Specialty Code, there are ten different occupancy groups. Early childhood care and education facilities are classified under three occupancy groups.<sup>78</sup>

- ◆ **Residential Group R-3** buildings include home-based registered or certified family child care facilities located within a one- or two-unit dwelling.
- ◆ **Education Group E day care facilities** include buildings occupied by more than five children older than 2<sup>1</sup>/<sub>2</sub> years of age who receive educational, supervision, or personal care services for fewer than 24 hours per day.
- ◆ **Institutional Group I-4 day care facilities** include buildings occupied by more than five persons of any age who receive custodial care in a place other than their primary homes for fewer than 24 hours per day.

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<sup>78</sup> 2022 Oregon Structural Specialty Code, [Chapter 3 Occupancy Classification and Use](#)

## GROUP R-3 REGULATIONS

The International Building Code does *not* allow home-based child care with more than five children enrolled to be classified as Group R-3; all child care is classified under either Group E or Group I-4. In April 2021, the Oregon Building Code Division updated its code to align with the national standard for in-home care facilities, requiring Group R-3 facilities to meet the construction standards of the Oregon Structural Specialty Code (OSSC), which requires residential dwelling sprinkler systems for fire safety.

In January 2022, following stakeholder engagement during the public process, the Division and the appropriate advisory board amended its rule regarding Group R-3 child care facilities. This amendment allows in-home child care facilities (in a one- or two-unit dwelling) to be constructed in accordance with the Oregon Residential Specialty Code standards, provided they meet the fire safety requirements outlined in OSSC Section 420.12, which offers an alternative to the installation of residential dwelling fire sprinklers. In accordance with the Federal America Disabilities Act, they will also need to meet applicable accessibility requirements in OSSC Chapter 11.

While ORS 329A.440 mandated that family child care homes be treated as a residential use under land use regulations, in-home child care is still subject to some of the building code requirements of commercial uses.

## CERTIFIED FAMILY CARE HOMES IN MULTIFAMILY BUILDINGS

According to the Department of Early Learning and Care, a registered family child care facility can be located in the provider's "family living quarters" and a certified family child care home can be located in a building "*constructed as a single family dwelling.*" This essentially means that registered family child care can be located in any type of living quarters, whether for a single-family home, a duplex, or an apartment.

However, it becomes more complicated for certified family child care. The OSSC does not use or define the term "single-family dwelling." Instead, when interpreting the Department of Early Learning and Care's requirements for a building constructed as a single-family dwelling, the OSSC looks at structures that can be built under single-family dwelling standards using the Oregon Residential Structural Code. This interpretation includes one- or two-unit dwellings such as detached single-family homes, duplexes, and townhomes. These structures are grouped together because they all adhere to the same construction standards set forth in the Oregon Residential Specialty Code. Other building types (except for townhomes or any building with greater than two units) are classified as group Residential-2 buildings under the Oregon Structural Specialty Code. These buildings are often already constructed with sprinklers depending on the age of the building and the number of units. However, if a provider would like to provide care in one of these units without sprinklers, they would need to install them. While the local building official could technically choose to grant an alternate fire safety method (within the state-determined minimum and maximum), this is highly dependent on the situation and local building official practices.



## CHANGE IN OCCUPANCY FOR CERTIFIED CENTERS

Child care centers are typically established in commercial buildings, which can have a wide variety of previous uses. Due to this broad range of potential commercial uses, opening a new child care center often requires a change of occupancy. This change is necessary to ensure the building meets the specific safety and structural requirements for child care facilities, which may differ significantly from its previous commercial use. If a certified center would like to occupy a building not currently classified as Group E or I-4, it will need to obtain a change of occupancy for all or part of the building.

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29% of home-based and 49% of center-based survey respondents reported needing a change of use for their building.

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To meet the requirements for a change of occupancy, the provider must submit building plans stamped by a licensed professional architect or engineer to the local building department. These plans must demonstrate compliance with the current life safety requirements of the Oregon Structural Specialty Code for that occupancy group.<sup>79</sup> Throughout construction, inspections are made in accordance with the approved construction documents. Once construction is approved, the building department will do a final inspection and issue a new Certificate of Occupancy if approved.<sup>80,81</sup> Major requirements for a change in occupancy to Groups E or I-4 include:

- ◆ **Sprinklers:** Adding a sprinkler system to Group E areas greater than 12,000 square feet and to all Group I areas, unless every room where care is provided is on ground level with an exit.
- ◆ **Seismic:** Changes in a building's use could result in being assigned to a higher-risk category, and the building may be required to satisfy the seismic requirements for the new risk category.<sup>82</sup> Buildings containing either Group E or I-4 occupancies are in risk category two of four if they have fewer than 250 *total* occupants, or they would be assigned risk category three if they exceed 250 *total* occupants.<sup>83</sup> So if a child care facility would like to move into a risk category two building with more than 250 occupants, the entire building would become a risk category three building and need to undergo seismic upgrades. Seismic upgrades can be cost prohibitive for many early childhood care and education facilities and often restrict the number of potential spaces a provider could occupy.
- ◆ **Accessibility:** In addition to life safety requirements, Group E, Group I, and Group R-3 building uses for child care may be subject to accessibility upgrades. If the provider makes alterations to an area of primary function in the building, they will also need to allocate 25% of the construction costs for the alteration of the building's primary function area to make accessibility improvements, including upgrades to parking,

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<sup>79</sup> Professionals must be licensed in accordance with the architectural and engineering professional licensure laws.

<sup>80</sup> Oregon Structural Specialty Code, [Section 3410 Change of Occupancy](#)

<sup>81</sup> Regional Solutions & Early Learning Division Child care Workgroup Executive Summary (January 2020)

<sup>82</sup> Oregon Structural Specialty Code, [Section 3410.6.3 Change of Occupancy](#)

<sup>83</sup> Oregon Structural Specialty Code, Table 1604.5

entrance and building routes, hardware and controls, restrooms, and common use areas in accordance with Oregon Revised Statutes.<sup>84</sup>

Providers reported that building upgrades triggered by a change of occupancy can cost hundreds of thousands of dollars in fees, materials, and architect and contractor costs. According to providers, the highest upgrade costs typically come from seismic upgrades and fire safety requirements such as outfitting the building with sprinklers or additional exits. Providers also shared that it can be very difficult to find available spaces that already have an E or I-4 occupancy and that are zoned for child care.

## LOCAL JURISDICTION SURVEY RESULTS

- ◆ For child care centers in an existing commercial building space:
- ◆ **Seismic Upgrades:** 12 percent of jurisdictions surveyed indicated they would require seismic upgrades and that they might be required for an additional 23 percent of jurisdictions depending on the scope of renovations being done.

Historical use and occupancy classifications can be very difficult to find documentation for, so providers may not be able to easily identify whether the building will require a change of occupancy or will show proof of the current occupancy classification, even if the building has previously been used for child care. Providers shared stories of having to drive several hours to look at records in person, submitting public records requests, and needing to hire architects to have new building plans drawn up.

## Fire Safety

Fire and life safety requirements for child care facilities are regulated by both the Oregon Structural Specialty Code and Oregon Fire Code. The building code sets the foundational fire and life safety requirements, particularly those related to interior spaces of buildings, which are then maintained through the Oregon Fire Code. Building officials enforce the building code, issue building permits, and direct change of use processes. During the building permit review process, these integrated fire safety requirements are verified to ensure compliance. While building departments maintain primary jurisdiction during construction, they are required to coordinate with fire marshals or officials throughout the permitting process.<sup>85</sup> This coordination may involve sharing pre-application notes and conducting joint plan reviews, although some jurisdictions may charge an additional fee to include fire marshals or officials in pre-application meetings. Once construction is complete and a Certificate of Occupancy is issued, jurisdiction typically shifts to the fire marshal or official. At this point, the Oregon Fire Code (or locally adopted fire code, if one has been approved by the Department of the State Fire Marshal) takes precedence and functions as the maintenance code. The maintenance code confirms that the ongoing operational fire and life safety requirements approved by the building official through the building code are being

<sup>84</sup> 2022 Oregon Structural Specialty Code, [Section 3403.6.5 Accessibility for Existing Buildings](#)

<sup>85</sup> Some jurisdictions may have their own fire officials, while others rely on the state fire marshal.

maintained. Prior to licensing, certified family care homes and centers must demonstrate that their facility meets the Oregon Fire Code requirements.

## FIRE AND LIFE SAFETY REQUIREMENTS

Fire and life safety requirements for child care facilities vary depending on the type of day care and the building they occupy, as required in the building code. These requirements consider factors such as the age and number of children served, the layout and size of the facility, and whether the day care operates in a dedicated building or a shared space.

Requirements include:

- ◆ Certified centers generally must install sprinklers unless all rooms are on the ground floor *and* have an exterior exit door or are under 12,000 square feet *and* do not enroll children under 2.5 years of age. If the center serves infants and toddlers, it must include exterior ramp exits for evacuation of cribs.
- ◆ Child care homes must either install an automatic residential dwelling sprinkler system *or* provide proof that the facility has met other safety measures, including care being located at the level of a ground-level exit at grade.<sup>86</sup>

While acknowledging their necessity, providers and architects reported that fire safety requirements are often the most complex, difficult, and expensive to meet. In particular, providers identified sprinklers as a major expense that is often cost prohibitive. While centers do not need to install sprinklers if all rooms are on the ground floor and have exits, most buildings do not have exits from every room and would still require renovations to meet code.

.....  
**49%** of home-based and  
**61%** of center-based  
survey respondents  
reported **fire safety**  
**requirements** as a barrier.  
.....

.....  
“My issue with my split level home was usable fire exits from the second floor deck and the inability of my state licensor, local fire and city officials to help me find the correct answers to my questions and acceptable corrections to the issues.”  
.....

sprinklers. However, the Department of Early Learning and Care generally does not allow care on upper stories.

Fire and life safety requirements are also more stringent if providing child care in a multistory structure. Per OSSC 420.12.2, the building code would require sprinklers in all areas where child care is provided if all the rooms where care is provided are not located on a floor with an exit leading directly outside at grade. Therefore, if a provider wanted or needed to utilize space in the second story of their home for child care, they would generally need to install fire

<sup>86</sup> 2022 Oregon Structural Specialty Code, [Section 420.12](#)

## Other Related Barriers

Providers noted and additional research uncovered other challenges that extend beyond the straightforward application of building codes or child care facility requirements. These additional barriers frequently surface during the building permit process.

### Septic Systems

Homes and facilities relying on septic systems to meet wastewater needs are subject to compliance with OAR 340-071-0205, which requires the provider to seek an Authorization Notice from their county on-site wastewater program that acknowledges any change in occupancy and confirms sufficient capacity of the system. This administrative rule evaluates wastewater needs of early learning and care facilities comparable to that of a school. Many homes, particularly older homes, do not have existing septic capacity to meet these requirements, resulting in the need to replace or expand the septic system and drain field. This can be a very costly improvement and often is not discovered until the final stages of permitting.

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“Home purchase to expand my in-home child care business from RF to CF, the county wanted to make my well a public water supply claiming my daycare was a school.”

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### Environmental Protection Requirements

- ◆ Depending on the location and nature of the proposed facility, early childhood providers may need to comply with environmental regulations related to issues such as stormwater management, mitigation for hazardous materials (such as lead and asbestos), and wildlife protection.

### System Development Charges

- ◆ System Development Charges (SDCs) are fees imposed by jurisdictions to cover the potential infrastructure and service costs created by the new development. Some common types of SDCs are for water, sewer, stormwater management, transportation, parks and recreation, schools, and public safety SDCs. These charges are typically due prior to building permit issuance (though timing varies by jurisdiction) and can total up to tens of thousands of dollars and can be difficult to predict at the beginning of a development projec

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“A week before moving in I was told I had to pay \$78,000 [in system development charges] before I could move in... that wasn't going to work.”

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## LOCAL JURISDICTION SURVEY RESULTS

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- For child care centers in an existing commercial building space:
- ◆ **System Development Charges:** 30% of jurisdictions would charge a transportation SDC because trip estimates from a child care use are higher than trips from a retail or business use.

## Frontage Improvement Requirements

- ◆ In addition to SDCs, many jurisdictions require projects to make upgrades to public infrastructure, including the street frontage. These typically apply to centers, but there may be instances where they impact in-home facilities too. These requirements can add significant costs to the project. For early childhood care and education providers, especially those with fewer resources, these costs can make projects infeasible.

## LOCAL JURISDICTION SURVEY RESULTS

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- ◆ For child care centers in an existing commercial building space:
- ◆ **Frontage Improvements:** 38 percent of jurisdictions surveyed indicated they would review the street frontage and may require improvements to sidewalks, curbs, street trees, or other right-of-way improvements.

## LOCAL CODE REVIEW

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### Portland Frontage Improvements

In Portland, each time there is a change in occupancy of a building, the Portland Bureau of Transportation (PBOT) assesses whether or not the development will cause an increase in traffic. Projects that increase the number of trips generated by a site are required to provide “frontage improvements,” which can include upgrading loading zones, driveways, parking, sidewalks, accessibility requirements (such as ADA-compliant curb ramps), light poles, and trees. While not specific to early childhood care and education facilities, providers reported these improvements can cost hundreds of thousands of dollars and were often the largest expense faced by providers. These improvements can also be triggered by total construction costs; however, providers told us that it can be unclear what construction costs count toward this threshold or if improvements may be required during the project.

Source: Portland Policy Documents [TRN-1.30 – Thresholds for Frontage Improvements and Dedication Requirements](#)

## Discrepancies Among Regulatory Agencies

Many providers shared experiences of disconnects between the different agencies involved in the development of their child care facility. For example, one provider shared that while the fire marshal or official noted they would approve their facility without sprinklers, the building department required them. Providers reported general difficulty in identifying and understanding fire safety requirements, which has, in some cases, led to multiple rounds of upgrades and inspections, increasing project costs and causing construction delays.

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**49%** of home-based and **44%** of center-based survey respondents said that **confusing and unclear building code requirements** were a barrier to development.

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Some providers and architects also highlighted discrepancies between licensing and building codes. In particular, architects referenced plumbing fixture requirements: per the building code, toilets (with the exception of urinals) must be fully enclosed with separate facilities per person.<sup>87</sup> However, licensing regulations do not allow children to be out of sight of the teachers, resulting in providers taking large groups of children to the bathroom at a time.<sup>88</sup> Architects report that best practices for these facilities, especially for younger children, favor more open toilet rooms. However, they have faced difficulties obtaining waivers or modifications from the local building department to implement these designs.

## Summary of Implications

**The Department of Early Learning and Care’s facility requirements for licensing can result in high-cost renovations and limit the number of potential spaces for child care. ►**

Outdoor space requirements per child are particularly difficult to achieve for child care centers in urban settings and for home-based providers with limited yard space. Additionally, meeting child-to-fixture ratios for plumbing often necessitates extensive and expensive renovations. The potential need for hazardous material remediation in older buildings can pose substantial financial risks for providers due to the high costs associated with removing asbestos, lead, mold, and other hazardous substances.

**Building upgrades required to comply with the building code can be expensive and unpredictable. ►**

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<sup>87</sup> 2022 Oregon Structural Specialty Code, [Section 1210.3 Privacy](#)

<sup>88</sup> Oregon Administrative Rules, 414-305-0400 Staff-to-Child Ratio and Group Size

Providers emphasized the challenge of accurately predicting total project costs. Beyond the substantial up-front capital required for securing a site and building renovations to meet licensing requirements, providers face other costs and potential delays related to necessary upgrades, inspections, and occupancy paperwork to comply with the building code. These setbacks can significantly postpone the facility's opening date, putting the provider at risk of lost revenue, difficulty meeting loan repayment obligations, and jeopardizing grant funding. For example, a bank may require proof of project readiness, such as building permits or occupancy certificates. Requirements will vary depending on the bank and the type of loan.

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**53%** of home-based and **57%** of center-based survey respondents said the **costs of building updates** made it difficult or impossible to locate or expand their business. **37%** of center-based survey respondents estimated that it would cost them **\$100,000** to meet building codes.

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**Costs from change of occupancy requirements effectively require providers to move into buildings already classified as Group E or Group I-4; however, providers shared that there are very few buildings already classified as Group E or Group I-4. ►**

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“Child care requires the **highest level of retrofitting, highest level of sprinklers, and other costly changes** like multiple exits and increasing bathrooms (plumbing is expensive). And **MOST places for sale require an occupancy change**, which requires money to do research on the viability of the building, to find out, frequently, that it won't work. This alone is a huge cost and barrier.”

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Providers consistently pointed to changes of occupancy as a limiting factor for development. However, because of the limited number of spaces that would not require a change, many providers are either faced with significant expenses or are not able to open at all.

Modifying a building's designated use often involves a complex and costly process, including hiring consultants, multiple rounds of plan review, making substantial building upgrades, and completing inspections prior to even obtaining their

child care license. Moreover, providers expressed that simply determining whether a building requires a change of use can be a challenging and expensive endeavor.

**There is a general lack of clarity and common understanding of where child care facilities are allowed to operate and under which set of regulations. ►**

Incongruent language between land use regulations, the building code, and licensing requirements may be artificially limiting the potential to provide child care in a multifamily dwelling unit. Some jurisdictions have found a path forward through live-work unit provisions in the building code, but regulators acknowledge the complications and note that possible code changes would likely be necessary to more broadly allow child care in multifamily units.

**Providers report frustration with disconnects between licensing, building code, and fire safety requirements, leading to multiple rounds of costly upgrades and inspections. ►**

Providers reported challenges navigating the regulatory landscape for child care facilities, including disconnects between the different agencies involved. Varying interpretations and requirements among agencies increase the risk of failing various inspections, leading to additional costs and delays in opening.

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**“The most difficult part is understanding the codes and complying with the intent of the codes. Each official potentially interprets the code differently therefore if you speak to multiple officials, you could potentially get multiple interpretations which becomes confusing and costly.”**

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## Chapter 4: Regulatory Framework in Action

This section provides both hypothetical scenarios and actual case studies to demonstrate the real-world impact of regulations on child care providers. From zoning and licensing issues, among other challenges, these scenarios reveal the complexities of regulatory compliance for child care providers.

### How Providers Could Be Impacted

This section will explore three hypothetical scenarios in which providers might encounter regulatory barriers to starting or expanding a child care business based on the type of license and facility, including:

- ◆ Opening a new child care center or family care home.
- ◆ Expanding from a registered to a certified family care home.
- ◆ Owning multiple family care homes.

Please note these scenarios are meant to illustrate high-impact barriers that providers might encounter in these common circumstances, rather than a comprehensive look at the development process.

### STARTING A NEW CHILD CARE BUSINESS

Engagement with providers offered insight into how different regulations, agencies, and requirements for opening or expanding an early childhood care and education facility are extremely difficult, if not impossible, for some to navigate. Understanding and meeting requirements can take significant time, connections, and money, and many providers are not able to overcome barriers when they arise during the process. This section provides illustrative examples of the barriers child care providers may face when opening a new in-home or center-based facility.



## Family Child Care Homes

Providers often face several challenges when opening a registered or certified family home.

- ◆ **Opening a child care facility in a current residence:** A provider would need to verify that their property is properly zoned for the child care they intend to provide. If the property is located in a residential or commercial zone, registered and certified family homes should be allowed uses by right per state law. However, many zoning codes do not reflect these new state requirements, which could cause confusion for both providers and jurisdictions verifying a property's zoning allowances. If the property is not located in a residential or commercial zone, the provider may need to apply for a conditional use permit if the in-home child care is allowed conditionally within the zone. After zoning is confirmed, the provider must also confirm the requirements of all other permitting and licensing agencies, including the local building department, to determine whether a change of occupancy is required.<sup>89</sup>
  - Note: If the provider does not live in the home, the Department of Early Learning and Care may require a completed Land Use Compatibility Statement form. A provider must first submit this form for approval by their local jurisdiction.
- ◆ **Verifying the home meets licensing requirements:** A provider will need to check Department of Early Learning and Care licensing requirements to ensure the home and the space within the home intended to be used for child care meet facility requirements. Key requirements to verify include confirming there is enough classroom and outdoor space per child if the facility is a certified family care home and ensuring plumbing fixtures (primarily toilets and sinks) and fire safety standards can be met. If the home and space do not meet Department of Early Learning and Care requirements, the provider may be limited in their enrollment capacity or may need to do renovations to comply, which could require a building permit.
- ◆ **Renting a home to open a child care business:** If a provider is renting a home and would like to utilize it for child care, they will need approval from their landlord if the home requires renovations to comply with licensing requirements. While landlords cannot technically prohibit tenants from operating licensed in-home child care in rental units, community outreach revealed that many landlords prefer not to lease to child care providers, citing building upgrades, noise, wear and tear, or liability risk.
- ◆ **Capacity limits:** Oregon's child care licensing division imposes a limit of 16 children for in-home child care facilities regardless of the home's size or the provider's capacity to care for more children. Any child care operation seeking to accommodate more than 16 children must become a certified child care center. Many in-home child care providers feel that this limit is arbitrary and restrictive, as they often have homes spacious enough to safely care for a larger number of children. This regulation poses a significant barrier for providers who wish to expand their businesses without

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<sup>89</sup> According to OAR 414-350-0130(2)(2), a home that is not the residence of the provider or a home located in a zone other than residential or commercial shall meet all state and local planning and zoning, occupancy, and building code requirements for a child care facility.

transitioning to a child care center, which comes with its own set of complications and challenges discussed below.

## Child Care Centers

Finding the right space or property to buy or lease is often the first step for many providers. Even if a provider already has a family child care home, it is very unlikely that the home could be modified into a center. This is primarily because a change of use would be required, triggering extensive upgrades to the home driven by building codes and center licensing requirements (e.g., fire sprinklers, accessibility standards, plumbing, exits). Additionally, centers are typically not allowed by right in residential zones, and it would be very difficult to meet the conditional use requirements for a zoning permit. Given these challenges, a provider would most likely need to find a new space better suited for a child care center.

- ◆ **Locating a *site* zoned for a child care center:** A provider would need to consult the jurisdiction's zoning code or staff to see where child care centers are allowed by right. If a provider is not able to find an available property zoned for child care by right, they may need to settle on a property that allows child care centers as a conditional use, which can add substantial time and cost to the project. However, to apply for a conditional use permit, the provider would need to have site control or partner with the property owner to sign permit applications. This introduces a significant level of risk, as there is no guarantee that the conditional use permit will be approved or that the provider will be able to meet the conditions attached to the permit.
- ◆ **Locating a *building* suitable for a child care center:** Assuming the provider is planning to utilize an existing building rather than building new, a provider will need to identify a space that meets both building code and licensing requirements for a child care center. This means the building's existing use will need to be classified as either E or I-4. If the building has a different classification, a change of occupancy is required. This will likely require hiring a consultant (i.e., an engineer or an architect) to draw up building plans that demonstrate upgrades that comply with E or I-4 building standards, often triggering substantial building upgrades. The building will also need to comply with licensing requirements for outdoor space; while the provider can submit a request for an alternative outdoor space, they would still need to be safely located near a qualifying park.
- ◆ **Leasing space in a mixed-use building:** Some providers shared that finding a space in a newer mixed-use building might be ideal because the space is newer and built to more stringent and modern safety standards. Many of the necessary upgrades can be accomplished through tenant improvements (TIs), which are less burdensome. Additionally, in order to get the space leased, property owners are motivated to help navigate the building permitting process on behalf of the tenant. However, if the space isn't initially built out for child care, it may lack essential *licensing* requirements (such as open space or sufficient plumbing fixtures), still require major renovations, or be entirely unsuitable. While some buildings have allowances for tenant improvements, the amount available will vary by property, and providers are

often hesitant to invest in a space they do not own. Additionally, providers shared experiences of having difficulty finding a landlord to lease to them, citing building upgrades, noise, wear and tear, or liability risk.

- With enough time and access to capital, some providers will be able to overcome these challenges. But they are often insurmountable for many, particularly first-time providers. Combined with zoning requirements, building codes, and licensing requirements, there are very few buildings on the market that could be used without major renovations.

## REGISTERED TO CERTIFIED FAMILY HOME

If a registered family care provider would like to become a certified family care provider, they may need to make several upgrades to their space to meet Department of Early Learning and Care requirements.

- ◆ **Potential building upgrades:** Providers may need to upgrade their homes to meet indoor and outdoor activity space requirements, add additional toilets and sinks, or add additional exits.
  - While registered family homes only need to provide “a balance of indoor and outdoor play space,” certified family homes must provide at least 35 square feet of indoor activity space per child (not including bathrooms, hallways, or staff areas), at least 75 square feet of outdoor activity space per child, and fencing.
  - While registered family homes only need one flush toilet and handwashing sink available, the provider will have to add a second if they intend to enroll more than 12 toddlers or 15 children.<sup>90</sup>
  - While registered family homes only need two usable exits per floor, certified family homes must have at least two usable exits per room.<sup>91</sup>
- ◆ **Additional staff:** Depending on the children’s ages, one provider can only care for up to 10 children at once, so a provider looking to expand will need to hire additional staff. The number of staff a certified family care home must have depends on the total number of children in care and the total number of children under two. Depending on the provider’s planned enrollment, they may need to hire between one and three additional providers.
- ◆ **Experience limitations during the first year:** Unless the registered care provider has qualifying education or prior experience in a school, center, or Head Start program, they can only enroll up to 12 children during the first year of being a certified care provider. After the first year, the provider can enroll the full 16 children.<sup>92</sup> Unless the provider’s home already meets Department of Early Learning and Care requirements for certified family care homes, costs associated with potential building upgrades and

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<sup>90</sup> This rule is currently under review for potential revision.

<sup>91</sup> This rule is currently under review for potential revision.

<sup>92</sup> The Department of Early Learning and Care, [The Certified Family License](#) (2024)

staffing may outweigh the potential revenue of additional enrollees, especially in the year following the renovations.

Even if the provider would like to grow their business, the additional requirements for certified family care homes may be a major barrier for expansion. This specifically poses challenges for child care providers when operating in existing homes outside the urban growth boundaries.

## **MULTIPLE FAMILY CARE HOMES**

Discussions with child care providers revealed that instead of attempting to open a single larger child care center, some may opt to establish multiple certified in-home day cares across several housing units. This approach allows providers to expand their business without navigating the complexities and regulations associated with opening a child care center. Many providers shared that running only one registered or certified family child care home may not necessarily be able to cover all of the business expenses of space costs, staffing, and other program expenses. However, these providers often do not have the time or capital required to find, permit, occupy, and license a new center, even if it could eventually be a more sustainable business model. As an intermediate solution, providers may look to rent or own additional homes to be used for child care.

Owning multiple family certified child care homes can come with additional challenges. Some jurisdictions require someone to live in the dwelling unit, even if the Department of Early Learning and Care does not. Finding suitable tenants or staff members willing to live in units shared with child care spaces has proven difficult in some instances. The periods of vacancy that occur between tenants can also create both perceived and real risks for child care providers by potentially jeopardizing their compliance with residential occupancy requirements.

## **Case Studies in Oregon**

The following case studies, drawn from experiences of child care providers and architects, offer tangible examples of the challenges faced in starting or expanding child care facilities. The case studies presented below were identified through engagement with the work group and community outreach with providers and underscore the range and depth of barriers to expanding access to child care in Oregon.

## CASE STUDY #1: CONDITIONAL USE FOR EARLY CHILD EDUCATION (ECE) FACILITIES

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### OREGON CHILD DEVELOPMENT COALITION (OCDC) JOSE PEDRO CHILD CARE FACILITY

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- » **Type of provider:** Early and Migrant Head Start Child Care Provider
- » **Provider location:** Cornelius, OR
- » **Project overview:** A 17,000-square-foot facility that serves approximately 180 children in the infant, toddler, and preschooler age ranges. The facility includes 12 classrooms, an on-site commercial kitchen, indoor studios for preschool-age children, outdoor creative play areas for age-appropriate play spaces, and on-site office space for approximately 25 site and countywide child care staff.

Looking to expand their services, the Oregon Child Development Coalition (OCDC) began searching for available land in Cornelius. Like many rural and agricultural communities statewide, available land that would allow for child care on-site was rare, but OCDC eventually purchased a four-acre parcel.

The base zoning for the parcel allowed for low-density residential uses outright, with a Type III Conditional Use requirement for any school-related uses (including child care). Given the 120-day codified timeline for conditional use review and the limited window to apply for and allocate federal Health and Human Services project funding, OCDC immediately submitted the application.

Although public testimony was broadly understanding of the need for child care services in this largely agricultural community, there was also a general

perception that placing this type of use in a residential neighborhood would increase traffic congestion, on-site parking overflow onto adjacent streets, noise to abutting properties, and an unacceptable level of disturbance in the neighborhood. On this basis, the application was initially denied by the City's planning staff, citing too many impacts to the surrounding area.

Given the essential need to expand services, OCDC appealed this decision to the planning commission. In the appeal, OCDC provided an additional comprehensive traffic analysis showing that peak traffic counts and flow patterns at the subject site were well within the ability of the neighborhood collector standard. Based on this additional study presented, the planning commission approved the conditional use on appeal and the project was ultimately permitted and built.

**The conditional use and appeal process added approximately six months to the permitting process and risked project funding during a critical juncture in its development. Fortunately, the project survived the additional land use review scrutiny. Overall, conditional use requirements can make developing new facilities for early child care services more difficult than uses that are permitted outright or with prescriptive limitations in place.**

## CASE STUDY #2: PLUMBING CODE IMPACT ON EARLY CHILD CARE EDUCATION FACILITIES

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### OREGON CHILD DEVELOPMENT COALITION (OCDC) HERMISTON HEAD START FACILITY

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- » **Type of provider:** Early Head Start
- » **Provider location:** Hermiston, OR
- » **Project overview:** A 12,000-square-foot facility offering eight classrooms and indoor and outdoor play areas for infants, toddlers, and preschool-age children.

The Oregon Child Care Development Coalition (OCDC) operates more than 25 facilities statewide, mostly featuring classroom pairs that share a common core with shared toilet rooms for the toddler and preschool age groups. These toilet room designs typically include a half wall, plus half-height toilet partitions for each water closet so staff can monitor the children from either classroom and easily assist if the children need help with toilet training.

This layout has been used almost universally for many decades and is found in many widely used child care design

guidelines. Since these children are very young and have not yet developed the need for greater privacy, this is a good solution to meet their needs without compromising their safety or privacy. However, it is not directly supported in the State building code requiring the local building official to review and approve the configuration during plan review. The code does allow for a single open water closet for use in child care toilet rooms, but realistically these toilet rooms need closer to four water closets and lavatories to serve all the children in the classrooms. In practice, most building officials have understood the efficiency of the semi-open shared toilet rooms arrangement.

However, in the case of OCDC's Hermiston facility, the local building department did not allow this configuration for the children's shared toilet rooms, citing a loss of privacy for the toddlers and preschool-age children. The code gives some discretion on layout to the local officials, so OCDC was ultimately required to redesign the common core for that project. In addition to adding project costs, this configuration requires much greater staff attention and time to attend to the children's toileting needs, which takes away from other tasks and priorities in the classroom.

**Local officials must review and approve any deviation from a strict adherence to the code requirements for toilet room designs for child care settings. This puts the discretion on the local official who, by right, can deny this configuration if they feel it is at odds with the intent of the code and the local community standards. In practice, this puts an undue burden on both the local building official and the child care providers, who may face greater obstacles in designing common sense solutions to meet the needs of very young children in those settings.**

## CASE STUDY #3: CONSOLIDATING MULTIPLE CERTIFIED FAMILY CHILD CARE HOMES ONTO A SINGLE SITE

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### FOUR DAY CARES ON A SINGLE LOT

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- » **Type of provider:** Certified family child care home
- » **Provider location:** Portland, OR
- » **Project overview:** Four certified family child care homes on a single lot, housed within a triplex and a detached single-family home.

Two Portland-based child care providers encountered barriers when attempting to consolidate their four certified family care homes (two in detached single-family rental homes and two in single-family homes they owned) into a single commercial center.

The search for a suitable commercial space for the center brought to light several challenges, particularly related to a required change of occupancy. The provider toured numerous potential

locations but found that very few had the required E occupancy rating, which is essential for operating a child care center. They identified a promising space where a child care center was allowed under current zoning regulations, but the building's occupancy would need to be changed. After consulting with the city, they learned there was no guarantee the change could be approved and the initial process could cost between \$27,000 and \$50,000. After determining they could not afford to take on this level of risk and financial investment, they decided not to pursue expanding into a center and to remain as certified family homes. The providers noted that the only viable spaces for centers, outside of building something new, are former school buildings with the existing necessary E occupancy rating.

The providers then explored other options, including two duplexes where teachers would reside in one unit and utilize the other unit for child care. At the time, the city did not allow for a residential unit to be utilized only for child care; someone must reside in the home as well. The providers then found a single family-home on a double lot for sale and considered briefly exploring the possibility of rezoning the lot to commercial in order to build a center. However, they found that process would take too long and cost too much. Ultimately, the providers built a triplex next to the existing home, where each housing unit is a condo and maintains a separate provider license. This approach allowed them to consolidate their business onto one site as originally intended, but this process still uncovered several barriers and ultimately places limitations on their ability to further expand their business.

- ◆ **Triplex units:** Due to site constraints, the units needed to be small to fit three on site and provide enough space for a classroom in each unit. The small one-bedroom apartment can limit the pool of people who may want to live there. Additionally, the building code did not allow for total separation of the residential space and the classroom, so they were required to provide access between them. The providers were informed that Portland has an additional provision in its building code prohibiting a

residential unit from having two full kitchens, so the classroom is limited to a kitchenette that does not include a kitchen range.<sup>93</sup>

- ◆ **Capped capacity:** The single-family home + triplex arrangement limits the provider to the four certified family licenses on the site, so their capacity is capped to 64 kids, which also limits the amount of revenue the business can generate. The providers found that a residential mortgage is more expensive than leasing a center space, possibly as much as just one of their mortgages. Therefore, the ongoing costs are higher than a center, and their gross income is capped because of their limit of four licenses.
- ◆ **Financing:** The providers found it was very difficult to find a bank that understood using a Small Business Association loan for a business in a residential unit. Banks they met with often tried to equate it to an elderly care home.
- ◆ **Toilets:** To have sixteen children in a certified family home, there must be two toilets in the classroom. However, if there are only fifteen children, only one toilet is required. Therefore, the second toilet the providers were required to add is essentially for one child.<sup>94</sup>

**After navigating several challenges, such as finding a suitable space, navigating zoning restrictions, and securing financing, the providers ultimately found a path for consolidating their business onto one site. However, this arrangement still poses limitations on their ability to further expand their business due to capacity constraints, and they likely incurred more costs compared to buying or leasing a suitable center space.**

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<sup>93</sup> The triplex meets the definition of a “townhome” in the building code, so it was constructed in accordance with the Oregon Residential Specialty Code.

<sup>94</sup> This rule is currently under review for potential revision.



## CASE STUDY #4: LOCATING A CHILD CARE CENTER ON A CHURCH PROPERTY

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### CHILD CARE IN CHURCH'S ACCESSORY STRUCTURE

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- » **Type of provider:** Certified family child care home
- » **Location:** Outside the urban growth boundary
- » **Project overview:** Provider wants to locate and expand existing child care business into a certified child care center in an accessory building on a church property.

A provider would like to expand her business to become a certified child care center. A church agreed to let her use a secondary building on their property that was originally built as a classroom annex in the 1960s. However, the property is located outside the urban growth boundary and is zoned Rural Residential. Rural zoning classifications have significant limitations placed on them based on state statutes and administrative rules for development outside of urban growth boundaries. The Rural Residential zoning classification essentially only allows the development of low-density residential with a five-acre minimum lot size.

The provider was required to submit a Type I lawful existing use determination since the church and the classroom are not permitted uses per current zoning. This required the provider to obtain property records to demonstrate that the use was legally established and to determine if the classroom space had been used for child care. While county staff had access to these records, the provider was required to submit a public records request, only to submit them back to another county department. This process also required fees the provider was not expecting.

Original building plans labeled the accessory building as an Education and Administrative Building, with classrooms labeled (among other rooms). The records also indicated that the most recent occupancy classification for the accessory building was Group A-3 (church assembly) and B (businesses and offices). The building official noted that regardless of what the actual uses were when construction was completed, the most recent classification of A-3 does not align with a certified family child care center, which would require Group E occupancy. The provider was notified that building permits are required when an existing building undergoes a change of occupancy or a change of use, cited under the Oregon Structural Specialty Code 105.1, and that she would likely need to hire a designer to prepare floor plans and other necessary documentation for the county to review.

**Despite the accessory building's prior documented use as an educational space, the provider faced several barriers that have caused unexpected expenses and delays, including obtaining records, hiring an attorney to help navigate the process, and eventually hiring a designer to prepare and submit for a building permit.**

# Chapter 6: Potential and Actual Disparate Impacts

## CHAPTER 5 OVERVIEW

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House Bill 2727 requires the work group to examine how zoning regulations, state and local building codes, and permitting practices inhibit new and expanded child care across the state. The final report prepared for the legislature is required to identify and describe any potential and actual disparate impacts that zoning regulations, building codes, and permitting practices have on providers, in consideration of diversity factors such as race, ethnicity, language, and geographic location of such providers. This chapter provides a summary of disparate impacts uncovered during the research, particularly during community engagement. Impacts related to the following topics are described in this section include:

- ◆ Regional disparities
- ◆ Language barriers
- ◆ Child care centers in religious institutions
- ◆ Impacts of homeownership by race and ethnicity in Oregon

Starting or expanding a child care business in Oregon can be a complex and challenging process, and providers may encounter a wide variety of barriers along the way. However, the nature and severity of these barriers can vary significantly depending on several factors, including the type of facility (in-home or center-based), geographic location (rural or urban areas), the provider's race and/or ethnicity, and their primary language. This chapter will examine the potential and actual disparate impacts that providers face based on some of these factors, drawing upon insights gathered from survey results, work group discussions, focus groups, and interviews.

Understanding child care patterns by race and ethnicity is helpful for identifying potential disparities and barriers faced by providers and families related to the development and expansion of child care in Oregon. A study by the Urban Institute on the child care patterns of White, Black, and Hispanic children found differences in the types of child care used by the three groups. Black children are the most likely to be enrolled in early childhood education and are much more likely to attend a child care *center* compared to White or Hispanic children. Conversely, Hispanic children are less likely to be enrolled in a center and are more likely to attend home-based child care.<sup>95</sup>

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<sup>95</sup> The Urban Institute, [Caring for Children of Color: The Child care Patterns of White, Black, and Hispanic Children under 5](#) (2006)

## SUMMARY OF SURVEY DEMOGRAPHICS

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The providers survey results provide additional context for highlighting the importance of considering the unique challenges and barriers faced by providers across Oregon.

- » Most providers that responded to the survey are located within a city's limits, teach their programs in English and Spanish (23% teach their programs in Spanish), and are White and Hispanic or Latino.
- » BIPOC respondents are more represented among center-based providers.
- » There is almost an equal number of survey respondents who rent vs. own their child care facility. Respondents in center-based programs are more often renters, where home-based are more often owners.

## Regional Disparities

Access to resources and support for child care providers can significantly impact their ability to navigate the complex process of establishing or expanding facilities. While the survey aimed to gather insights from providers across Oregon, it is important to acknowledge the limitations in the data collected. The survey distribution and the level of engagement from providers were skewed toward urban areas, particularly in the Portland metropolitan region. Most survey respondents were located in Multnomah, Clackamas, or Washington County, which may not fully represent the experiences and challenges faced by providers in other parts of the state, especially in rural areas. Despite these limitations, the survey results, along with insights from interviews and focus groups, highlight some key regional disparities that can influence the development and expansion of child care facilities in Oregon.

## Local Staff Capacity and Technical Expertise

Local staff capacity and technical assistance plays a crucial role in helping child care providers navigate the complex process of establishing or expanding their facilities in an efficient manner. However, access to knowledgeable staff with capacity to assist providers varies greatly across different regions and localities. Engagement with local regulators, including city and county staff, revealed they had some experience with informally designating staff members who specialize in the intricacies of child care facility development (e.g., land use and zoning, building code, and state child care licensing requirements). These experts can serve as a valuable resource **when accessible** to providers, but this appeared to occur more frequently in more urban areas with larger departments. By contrast, smaller jurisdictions with limited staff capacity may be less versed on state rules and regulations related to child care facilities and may be unable to offer specialized assistance. This appears to result in different experiences and requirements placed on urban and rural providers.

- However, survey results indicate that respondents who faced zoning, building code, and permitting barriers are primarily from more urban areas. Among survey respondents:
  - ◆ 32 percent of home-based providers and 25 percent of center-based providers reported that city or county staff lacked the capacity to offer technical assistance on zoning issues.
  - ◆ 30 percent of home-based providers and 24 percent of center-based providers reported similar challenges with building codes.
  - ◆ 34 percent of home-based providers and 27 percent of center-based providers reported challenges with permitting and procedures.
    - Respondents noted that these barriers either prevented them from moving forward with their projects or made the process more costly and difficult.
    - Additionally, 46 percent of home-based and 47 percent of center-based respondents noted that the time required to obtain a permit had a significant impact on their ability to open or expand their facilities.

## Infrastructure and Market Factors

Rural areas may also face barriers to accessing development resources. Contractors and tradespeople can be in short supply with long wait lists to receive bids and/or complete projects. Access to utilities such as water, sewer/adequate septic, and electricity can be a significant barrier, especially in rural or undeveloped areas. In addition, the lack of technology infrastructure, especially in rural regions, can also be a barrier to receiving financial and technical assistance supports, staff training, and completion of necessary documentation that can delay the process of expansion.

## Language Barriers

Technical zoning, building code, and permitting processes and requirements can be even more difficult to understand for non-native English speakers. The landscape of regulators may not speak languages other than English or have written resources, applications, or other forms available in multiple languages, making it more difficult for non-English speakers to get connected to the technical assistance and resources necessary to navigate the development process. This creates obstacles to building relationships with local agencies that can help providers navigate the process more efficiently.

Survey results showed that about five percent of home-based providers indicated that not having information on requirements in their primary language stopped them from opening or expanding their business entirely, while three percent of center-based providers indicated that not having development information (including information on zoning, permit requirements, and building codes) in their primary language made it difficult and/or costly to open or expand.

Although many efforts are being made to provide child care training and child care licensing resources in multiple languages, providers noted a gap in these resources within local community development departments, which can result in inequitable access to establishing child care businesses for some communities.

## Child Care Centers in Religious Institutions

Center-based child care facilities, particularly those located in churches, face unique and disproportionate challenges in opening or expanding. Engagement with providers and other key community members noted that the COVID-19 pandemic had a substantial impact on center-based programs, primarily due to their size and operating costs. The pandemic led to reduced enrollment, increased operating costs, and (in some cases) permanent closures for many child care centers across the country and Oregon. Several providers shared that when centers sought to reopen following the pandemic, they learned their previously nonconforming use had expired, requiring new conditional use permits and upgrades to current building code requirements. For many long-time centers that closed during the pandemic, the financial barrier alone proved to be too much, and they have not reopened.

Center-based programs also face significant barriers in securing suitable facilities. The limited availability of buildings on the market that meet both the necessary use and occupancy requirements and licensing standards makes it difficult for centers to find appropriate spaces, both in urban and rural areas. Furthermore, centers are more often subject to land use reviews, particularly the conditional use process when located in a residential zone.

For centers operating within churches, the barriers are even more challenging. Churches and day cares have different use and occupancy thresholds and requirements, which means that creating a dedicated space for a day care within a church or on church property requires a change of use for that specific area. Navigating this process can be complex, as it involves ensuring compliance with several layers of regulations for both the church and day care use classification.

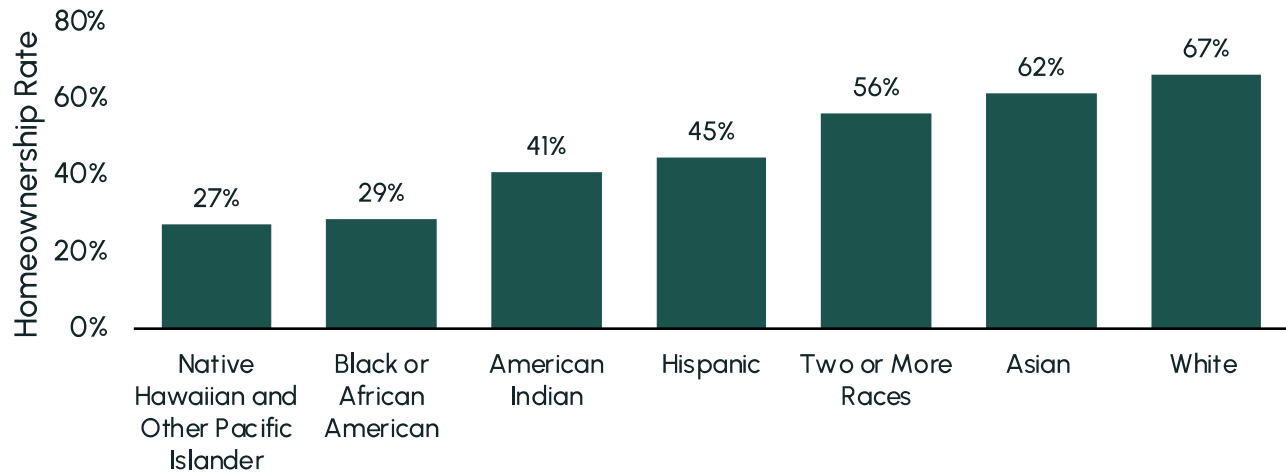
The barriers faced by center-based child care programs overall may disproportionately affect Black families, who rely more heavily on these programs for child care. Additionally, the barriers for centers in religious institutions greatly impact families who seek child care opportunities connected with their religious communities.

## Homeownership Rates among BIPOC Households in Oregon

Homeownership plays a crucial role in the establishment of home-based child care businesses in Oregon. Survey results showed that 77 percent of respondents who were home-based child care providers operate their businesses out of a single-family home they own. However, significant disparities in homeownership rates exist among different racial and ethnic groups in Oregon. As shown in Exhibit 2 below, Native Hawaiian and other Pacific

Islander, Black, and Native Alaskan/Native American households in Oregon have the lowest homeownership rates, limiting the opportunity to start in-home child care businesses.

### Exhibit 6: Rate of Homeownership in Oregon



Source: 2021 1-year PUMS

The barriers faced by child care providers seeking to start a child care business in a rental unit, as discussed throughout the report, further compound the challenges for low-income and/or BIPOC households seeking to enter the child care industry. If the homeownership gap persists, BIPOC households will continue to face significant obstacles and disproportionate impacts in starting and operating home-based child care businesses.

## Chapter 7: Other Barriers and Next Steps

Through community engagement, the project team discovered barriers beyond the scope of House Bill 2727. However, it is important to note that these challenges significantly impact child care facility establishment and expansion. Acknowledging these interconnected barriers is crucial for developing comprehensive strategies to support child care growth and sustainability in Oregon. The following section briefly highlights other significant barriers that emerged during our engagement process. Providers emphasized that these barriers impact their ability to operate and expand as much as the development process covered in this report.

- ◆ **Workforce development:** Attracting, training, and retaining qualified staff is a significant challenge for child care providers. Low wages, limited benefits, and high turnover rates have made it difficult for child care business owners to build a stable and skilled workforce.
- ◆ **Funding:** Insufficient funding, complicated grant requirements, and a lack of sufficient government subsidies can make it challenging for child care providers to cover capital investments and ongoing operating costs.
- ◆ **Mental health and well-being:** Child care providers often experience high levels of stress and burnout due to the emotional demands of their work.

## Next Steps

The next phase of this study will focus on developing recommendations to address the barriers to developing and expanding child care facilities in Oregon as outlined in this report. The recommendations will be informed by the findings from the local review research, case studies, interviews, focus groups, and survey results presented in the previous chapters.

To create effective recommendations, DLCD and the project team will develop a high-level framework to prioritize the identified barriers based on their impact and the level of effort required to address them. This framework will help guide the development of targeted solutions that can make the most significant difference in facilitating the expansion of child care facilities across the state.

Developing recommendations will involve further engagement with key community members, including child care providers, regulatory agencies, and policymakers. This engagement will ensure that the proposed solutions are well-informed, feasible, and responsive to the needs of those most affected by the identified barriers.

Preliminary recommendations will be presented during the third work group meeting in late July 2024.

# Appendix D: Jurisdiction Review

## City of Coos Bay

### Key Findings

- ◆ Across child care definitions provided by the City, none of the uses are allowed in all commercial or industrial zones as required by ORS 329A.440.
- ◆ Department of Early Learning and Care allows certified home-based providers to care for up to 16 children; however, Coos Bay limits smaller facilities to twelve children or fewer. The city also defines child care facilities as “established by state licensure to provide supervisory or day care services for 13 or more children”; it is not clear how establishments serving twelve or fewer children are defined. The City also defines educational opportunities and home occupations, but it is not clear what overlap, if any, these uses have with early childhood care and education facilities.

### Land Use

Exhibit 7: City of Coos Bay Land Use Allowances

	RESIDENTIAL				COMMERCIAL			INDUSTRIAL			INSTITUTIONAL
	SLR	LDR	MDR	C	MX	WH	HP	I-C	W-I	MP	UPD
<b>Child care facility for &lt;13 children</b>	P	P	P	P	P	P		P			
<b>Child care facility for &gt;14 children</b>	C	C	P	P	P			P			
<b>Educational service</b>	P	P	P	P	C	X		P			P
<b>Home occupation</b>	P	P									

Source: City of Coos Bay [Development Code](#) Section 2 Zoning 17.220 to 17.270

P: Permitted use; C: Conditional use; S: Permitted uses that are subject to special standards; X: Prohibited

### DEFINITIONS<sup>96</sup>

**Child care facility:** Establishments authorized by state licensure or certification to provide supervisory or day care services for 13 or more children, excluding uses classified as educational facilities or medical facilities, and where communal kitchen/dining facilities may be provided. Typical uses include day care centers, day care facilities, or drop-in centers.

<sup>96</sup> City of Coos Bay [Development Code Chapter 17.150 Definitions](#)



**Educational institution:** A facility customarily associated with public, private, charter, and/or alternative educational facilities, including nurseries and preschools (ages zero through five) and “preschools providing primarily instruction, supplemented by daytime care, for four or more children between the ages of two and five years, and which operate on a regular basis.”

**Home occupation:** An occupation, profession, or craft secondary to the use of a dwelling unit for residential purposes and is carried on by a dwelling resident.

## Building Code

Coos Bay has adopted the Oregon state building codes and does not have any city-specific building code provisions.<sup>97</sup>

## Permits and Procedures<sup>98</sup>

All applications for land uses are subject to review prior to building permits. Permitted uses require a Type I procedure, nonresidential conditional uses under 20,000 square feet require a Type II permit, and nonresidential conditional uses over 20,000 square feet require a Type III permit. All home occupation applications are subject to director review using a Type I procedure review, and they are subject to a Type II procedure if the business will have more than one nonresident employee. The home occupation may not use more than 30% of building coverage.

### Exhibit 8: City of Coos Bay Conditional Use Procedures

	TYPE I	TYPE II	TYPE III
<b>Review Authority</b>	Director	Director	Director
<b>Appeal Authority</b>	Planning Commission	Planning Commission	City Council
<b>Notice of application</b>	None	Noticing 20 days prior to director decision	Noticing and public hearing 20 days prior to director decision
<b>Notice of decision</b>	30 days from complete application	120 days from complete application	14 days from complete application
<b>Appeal period</b>	15 days from decision	15 days from decision (appeal period is included within the 120-day review)	15 days from decision (appeal period is included within the 120-day review)

<sup>97</sup> Coos Bay [Current Adopted Building Codes](#)

<sup>98</sup> City of Coos Bay Development Code [Chapter 17.130 Procedures](#) 17.130.020 Application Types

<b>Notice of appeal decision</b>	28 days from appeal	No more than 60 days after the appeal is filed	No more than 60 days after the appeal is filed
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Source: City of Coos Bay Development Code [Chapter 17.130 Procedures](#)

## Benton County

### Key Findings

- ◆ Benton County does not meet the requirements of ORS 329A that require early childhood care and education centers to be allowed in commercial and industrial zones.
- ◆ Per the Department of Early Learning and Care, home-based early childhood care and education facilities can serve up to 16 children; however, the County requires “day care centers” serving 13 or more children to comply with state building regulations for early childhood care and education *centers*, which are much more stringent than requirements for home-based facilities.
- ◆ The County requires early childhood care and education facilities to provide two parking stalls per teacher, which can add costs and limit potential available sites.
- ◆ Conditional use permits are generally only valid for two years, after which the provider would need to resubmit for a new conditional use permit.

### Land Use

#### Exhibit 9: Benton County Land Use Allowances

	RESIDENTIAL				COMMERCIAL						INDUSTRIAL				SPECIAL USES
	RR	UR	PR	VR	UC	PC	RC	VC	P	RSC	UI	PLI	RI	FPA	CFH <sup>99</sup>
<b>Day care for &lt; 13 children</b>	P	P	P	P	P	P	P*	P*	P	P				P	
<b>Day care center</b>	C	C	C	C					C	P**				C	P

Source: [Benton County Development Code](#)

\* Must be less than 4,000 square feet.

\*\* Permitted pending an approved site development plan.

P: Permitted; C: Allowed by conditional use permit

<sup>99</sup> Children’s Farm Home Subzone

## DEFINITIONS

**Day care center:** an establishment providing specialized group care for 13 or more children.<sup>100</sup>

## LAND USE REGULATIONS

Chapter 91 of the Benton County Development Code outlines specific use standards for day care centers, which must:<sup>101</sup>

- ◆ Comply with the occupancy requirements of the Benton County Building Code.
- ◆ Comply with State regulations for **a day care center**.
- ◆ Provide two parking spaces per teacher.

## Building Codes

Benton County has adopted the state building code and does not have any city-specific child care building codes.<sup>102</sup>

## Permits and Procedures<sup>103</sup>

Conditional uses require public notice and approval by the planning official.

In addition, on-site and off-site conditions may be imposed. Conditions may address but are not limited to (1) size and location of site, (2) road capacities in the area, (3) number and location of road access points, (4) location and amount of off-street parking, (5) internal traffic circulation, (6) fencing, screening, and landscape separations, (7) height and square footage of a building, (8) signs, (9) exterior lighting, (10) noise, vibration, air pollution, and other environmental influences, (11) water supply and sewage disposal, and (12) law enforcement and fire protection. An applicant may be required to post a bond to ensure compliance with a condition of approval.

The conditional use permit is valid for ten years for a single-family dwelling and two years for all other structures.

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<sup>100</sup> Benton County Development Code [Chapter 51 Development Code Administration](#)

<sup>101</sup> Benton County Development Code [Chapter 91.105 Specific Use Standards](#)

<sup>102</sup> Benton County [Building Code](#)

<sup>103</sup> Benton County Development Code [Chapter 53.200](#)

# Clatsop County

## Key Findings

- ◆ Clatsop County meets the land use allowance requirements of ORS 329A.440.
- ◆ The County’s early childhood care and education definitions align with state licensing definitions.

## Land Use

**Exhibit 10: Clatsop County Land Use Allowances**

ZONE	Residential				Commercial			Industrial			Agriculture						
	RC R	SF R	MF R	CB R	C R	R A	RC C	N C	G C	T C	RC I	LC C	L I	EF U	A F	F	M R
<b>Family child care home</b>	P	P	P	P	P	P	P	P	P	P				P	P	P	P
<b>Child care center</b>	C	C	C	C	C	C	P	P	P	P	P	P	P				P

Source: Clatsop County Code of Regulations [Article 4 – Zone Regulations](#)

### DEFINITIONS<sup>104</sup>

**Child care center:** A child care facility that is certified by the Oregon Department of Education Office of Child care as a child care center.

**Family child care home:** A home that is registered or certified by the Oregon Department of Education Office of Child care to provide child care in the provider’s home to not more than 16 children, including children of the provider, regardless of full-time or part-time status. A family child care home is defined as a residential use and not regulated as home occupations. In addition, they cannot be prohibited by the governing documents of planned communities or condominiums.<sup>105</sup>

### LAND USE REGULATIONS

Clatsop County has the following parking regulations for early childhood care and education facilities:<sup>106</sup>

<sup>104</sup> Clatsop County Code of Regulations [Article 1 – Cover and TOC](#)

<sup>105</sup> Clatsop County Code of Regulations [Article 3 – Structure Siting and Development Standards](#) 3.9570

<sup>106</sup> Clatsop County Code of Regulations [Article 3 – Structure Siting and Development Standards](#) 3.0060

- ◆ Family child care homes require no additional parking spaces beyond the two spaces required for the dwelling unit.
- ◆ Child care centers are exempt from off-street parking requirements.

## Building Codes

Clatsop County has adopted the Oregon state building codes and does not have any city-specific building code provisions.<sup>107</sup>

## Permitting Procedures

Permitted uses are nondiscretionary and require a Type I procedure. In general, conditional use requirements for child care centers in residential zones require a discretionary Type II conditional use procedure.<sup>108</sup> However, the Community Development Director can determine that the application should be heard by additional parties and treat the application as a Type IIA procedure.<sup>109</sup>

### Exhibit 11: Clatsop County Procedures for Land Use Applications

	Type I	Type II	Type IIA
<b>Review Authority</b>	Community Development Director	Community Development Director	Hearings Officer
<b>Appeal Authority</b>	Hearings Officer	Hearings Officer	Board of Commissioners
<b>Notice of application</b>	None	None	Noticing 20 days prior to public hearing
<b>Notice of decision</b>	45 days from complete application	45 days from complete application	45 days from complete application
<b>Appeal period</b>	12 days from notice of decision	12 days from notice of decision	12 days from notice of decision
<b>Notice of appeal decision</b>	150 days from complete application	150 days from complete application	150 days from complete application

Source: Clatsop County Code of Regulations [Article 2 – Procedures for Land Use Applications](#)

<sup>107</sup> Clatsop County [Building Codes](#)

<sup>108</sup> Clatsop County Code of Regulations [Article 4 – Zone Regulations](#)

<sup>109</sup> Clatsop County Code of Regulations [Article 2 – Procedures for Land Use Applications](#)

# City of Bend

## Key Findings

- ◆ Bend meets the land use allowance requirements of ORS 329A.440.
- ◆ The City’s early childhood care and education definitions align with state licensing definitions.

## Land Use

### Exhibit 12: City of Bend Land Use Allowances

Zone type	Residential				Comm-ercial	Mixed Use	Indust-rial	Instit-utional	Urban-izable Area District	
	RL	RS, RM-10	RM, RH	UAR	CB, CC, CL, CG	ME, MR, PO, MU, MN	IG, IL	SM***	PF	UA
Family day care	P	P	P	P	P	P	P	P	P	
Child care facility/day care	C	C	C	C	P	P	C**			
Neighborhood commercial	C*	P*	P	N						

Source: Bend Development Code [Title 2 Land Use Districts](#) Chapters 2.1 to 2.8

P: Permitted use; C: Conditional use; N: Not permitted

\* Not permitted if adjacent to a commercial or mixed-use Comprehensive Plan Map Update.

\*\* Limited to properties located at the perimeter of the Industrial Districts with frontage on arterial or collector streets unless they are an accessory to a primary permitted use. This restriction will be removed in the 2024 update of the Bend Development Code.

\*\*\* Heavy industrial use

## DEFINITIONS

**Child care facility:** Any facilities that provide care to 17 or more children, including a day nursery, nursery school, and child care center or similar unit operating under any name.

**Family day care:** See “Registered or certified family child care home” and “Child care facility.”

**Registered or certified family child care home** means a location where child care is offered in the home of the provider to not more than 16 children, including children of the provider,

regardless of full-time or part-time status. Registered or certified family child care homes shall be considered a permitted residential use of the property for zoning purposes.

**Neighborhood commercial** means certain types of small-scale neighborhood commercial uses identified in BDC Table 2.1.200, Permitted and Conditional Uses, that serve the neighborhood. Neighborhood commercial child care facilities provide care to 13 or more children.<sup>110</sup>

## Building Code

There are no city-specific child care requirements in the Bend building code. As noted by city staff, some Building Department interpretations of the Oregon adopted codes are that in-home child care is intended for someone to reside in the home and cannot be used as child care use only.

## Permitting Procedures

Permitted uses are required to be processed through Minimum Development Standards (MDS).<sup>111</sup> In this review, city staff will confirm that the application meets minimum development criteria. If a proposed change in use is found to increase demand on public facilities, the application is either processed as an MDS exemption (showing the site complies and will remain in compliance with the building code) or a Type I MDS review by the Community and Economic Development Director.

Conditional uses are classified as a Type II procedure.<sup>112</sup>

### Exhibit 13: City of Bend Development Review and Procedures

	Type II
<b>Review Authority</b>	Community and Economic Development Director
<b>Appeal Authority</b>	Hearings Officer or Planning Commission
<b>Completeness Check</b>	30 days from application submittal
<b>Notice of application</b>	Minimum of 14 days prior to notice of decision
<b>Notice of decision</b>	120 days from complete application. Application extensions (no more than 245 days) can be requested in accordance with BDC 4.1.412.D. The applicant can ask for a reconsideration (not an appeal) within 12 days from notice of decision; the 120-day review period does not run during this period of reconsideration.
<b>Appeal period</b>	Must file the appeal within 12 days of the notice of decision

<sup>110</sup> City of Bend Development Code Section 3.6.300(J) Neighborhood Commercial Sites

<sup>111</sup> City of Bend Development Code [Section 4.4.400](#) Minimum Development Standards

<sup>112</sup> City of Bend Development Code [Section 4.4.200](#) Conditional Use Permits

Source: City of Bend [Section 4.1](#) Development Review and Procedures



# City of Portland

## Key Findings

- ◆ Portland meets the land use allowance requirements of ORS 329A.440.
- ◆ The City’s early childhood care and education definitions align with state licensing definitions.
- ◆ The City’s seismic upgrade requirements are more stringent than the state building code.
- ◆ Permitted uses do not require a land use permit; conditional uses require a Type II or III procedure.

## Land Use

**Exhibit 14: City of Portland Land Use Allowances**

	RESIDENTIAL			COMMERCIAL	EMPLOYMENT AND INDUSTRIAL			CAMPUS		
	RF, R20, R10, R7, R5, R2.5	RM1, RM2, RM3, RM4, RMP**	RX	CR, CM1, CM2, CM3, CE, CX	EG1, EG2	EX	IG1, IG2, IH	CI1	CI2	IR
<b>Household Living Uses</b>	Y	Y	Y	Y	N	Y	CU***	N	Y	Y
<b>Day Care</b>	L/CU*	L/CU**	Y	Y	Y	Y	L/CU****	Y	Y	CU

Source: Portland City Code [Title 33.110 to 33.150 Base Zones](#)

Y = Yes, allowed; L = Allowed, but special limitations; CU = Conditional Use Review Required, N = No, Prohibited

\* Allowed by right if locating within a building that contains a College, Medical Center, School, Religious Institution, or a Community Service use.

\*\* Allowed if the day care is located on the ground floor and 3,000 square feet or less.

\*\*\* Only allowed if on a houseboat.

\*\*\*\* Allowed if 3,000 square feet or less, otherwise conditional use.

## ZONING CODE DEFINITIONS<sup>113</sup>

**Day care:** Includes day or evening care of two or more children outside of the children's homes for a fee. Day care uses also include preschools, nursery schools, latchkey programs, and the daytime care of teenagers or adults who need assistance or supervision. Accessory uses include offices, food membership distribution, play areas, and parking.

<sup>113</sup> Portland City Code Title [33.910 Definitions](#)

Day care use does *not* include registered or certified family child care homes as specified in ORS 329A. Registered or certified family child care homes for up to 16 or fewer children, including the children of the provider, that also meet the State’s requirements are classified as **Household Living uses**.

## OTHER LAND USE CONSIDERATIONS<sup>114</sup>

- ◆ Building alterations that cost over a certain amount may require installation or upgrading of parking, bike parking, pedestrian amenities, and landscaping depending on use and location.
- ◆ Alterations to the building’s exterior may require Design Review or Historic Resource Review in certain locations.
- ◆ Changes that cause an increase of customers, traffic, or resources have additional Systems Development Charges assessed by the Portland Bureau of Transportation, Portland Water Bureau, Portland Parks, and Portland Bureau of Environmental Services.

## Seismic Upgrades

While the Oregon Structural Specialty Code (OSSC) requires seismic upgrades only in the case of a change in an occupancy’s risk category, Portland has more stringent seismic upgrade thresholds. In addition to the OSSC requirements, Portland occupancy changes can also trigger seismic upgrade requirements based on the City’s hazard classification shown in Exhibit 15.<sup>115</sup> The entire building must be improved to meet the relevant seismic improvement standard below if relative to the Baseline Occupancy of the buildings as of October 1, 2004, either:<sup>116</sup>

- ◆ The occupancy is changed to a higher hazard classification, *and* if *either* more than 1/3 of the building net floor area changes occupancy classification *or* if the occupant load increases by more than 149 occupants, *or*
- ◆ The occupancy is changed to the same or lower hazard classification, *and* the occupant load increases by more than 149 occupants.

**Exhibit 15: Portland Relative Hazard Classifications by Occupancy (early childhood care and education uses in bold)**

RELATIVE HAZARD CLASSIFICATION	OSSC OCCUPANCY CLASSIFICATION	SEISMIC IMPROVEMENT STANDARD
6 (Highest)	A, <b>E</b> , I-2, I-3, H-1, H-2, H-3, H-4, H-5	Oregon Structural Specialty Code or American Society of Civil Engineers (ASCE), Standard ASCE 41-Basic Performance
5	R-1, SR, I-1, <b>I-4</b>	

<sup>114</sup> Portland, [Change of Use or Change of Occupancy](#)

<sup>115</sup> Please note that the Relative Hazard Classifications are different from the risk categories established by the OSSC.

<sup>116</sup> The City also has a few other less common triggers for seismic upgrades, including unreinforced masonry cost triggers, unreinforced masonry reroof projects, and/or building alterations or additions.

		Objective Equivalent to New Buildings (Tier 3 Retrofit)
4	R-2	American Society of Civil Engineers 41-Basic Performance Objective for Existing Buildings (Tier 1 or Tier 2 Retrofit)
3	B, M	
2	F-1, F-2, S-1, S-2	
1 (Lowest)	R-3, U	

Source: Portland City Code [24.85.040 Change of Occupancy or Use](#) Table 24.85-A

## Permits and Procedures

A “permitted” child care proposal does not need a land use permit, and the applicant can go straight to building permitting, with the exception that a proposal not meeting standards or in a design overlay zone could be required to go through an Adjustment or Design Review. If day care is in a conditional use zone, the provider will need to go through one of the processes shown in Exhibit 16:

- ◆ If the day care is an additional conditional use in the same category or changing of a use in a similar use category, then it generally falls under the Type II process.
- ◆ If the day care is a new conditional use, it generally falls under a Type III process.

### Exhibit 16: City of Portland Land Use Review Procedures

	TYPE II	TYPE III
<b>Review Authority</b>	Bureau of Development Services staff	Hearings Officer, Design Commission, or Historic Landmarks Commission
<b>Appeal Authority</b>	Hearings officer	City Council
<b>Completeness Check</b>	14 days	21 days
<b>Notice of application</b>	Noticing for public comment 21 days prior to notice of review	Noticing 20 days prior to public hearing, to be held within 51 days of complete application
<b>Notice of decision</b>	28 days from complete application	68 days from complete application
<b>Appeal period</b>	14 days from notice of decision	14 days from notice of decision
<b>Notice of appeal decision</b>	Approximately six weeks after appeal is filed	Approximately six weeks after appeal is filed

Source: City of Portland [Land Use Review Fees and Land Use Review Types](#)

# Appendix E: Department of Early Learning and Care Licensing Requirements

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Both child care homes and centers must show proof of compliance with the following steps:

- ◆ **Floor plan review:** Providers must submit a building floor plan or drawing of the facility showing the dimensions of all rooms to be used (length and width), the placement of the kitchen and bathrooms, the locations of toilets, handwashing sinks, and fixtures and plumbing in the kitchen. It must also include a description of how each room will be used.
- ◆ **Fire and Life Safety Inspections:** Center-based facilities must pass a fire inspection, completed by the local fire marshal or official. The fire marshal or official will check that the building meets the Oregon Fire Code, has clear exits and stairwells, and has sufficient fire extinguishers and smoke detectors.<sup>117</sup>
- ◆ **Sanitation Inspections:** Center-based facilities must pass a sanitation inspection completed by the local environmental health specialist. Inspectors will check the water supply, heat and ventilation systems, and waste disposal and cleaning practices in the facility, as well as ensure bathrooms and kitchens have the required number of toilets and sinks for how many children will be enrolled. These requirements typically extend beyond the requirements of the general building code.<sup>118</sup>
- ◆ **Lead testing:** Both center- and home-based facilities must have the building's water tested for lead by an accredited drinking water laboratory every six years.<sup>119</sup>

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<sup>117</sup> Department of Early Learning and Care [Rules for Certified Centers](#), page 101 (2024)

<sup>118</sup> Department of Early Learning and Care [Rules for Certified Centers](#), pages 111-121 (2024)

<sup>119</sup> Department of Early Learning and Care [Lead Testing Instructions](#) (2024)

# Appendix F: Building Requirements

**Exhibit 17: Licensing Facility Requirements for Certified Child Care Centers**

	SPACE REQUIREMENTS	OTHER REQUIREMENTS
<b>Activity Space</b> (OAR 414-305-0800)	<ul style="list-style-type: none"> <li>At least 35 square feet of activity space per child.</li> </ul>	
<b>Outdoor space</b> (OAR 414-305-0920)	<ul style="list-style-type: none"> <li>Must have at least 75 square feet of outdoor activity space per child.               <ul style="list-style-type: none"> <li>Play equipment must have adequate fall zones with a minimum of 6 feet of clearance from the perimeter of play equipment and twice the height of any swings.</li> </ul> </li> <li>Must have access to shade.</li> <li>Can provide an alternative plan describing how the center will safely provide outdoor access.</li> </ul>	<ul style="list-style-type: none"> <li>Must be fenced off or otherwise enclosed; the fence must be at least 4 feet high with openings no larger than 3.5 inches.</li> <li>If a program has a playground, it must maintain a protective surfacing of 18 inches or higher such as mulch; however, loose materials cannot be over concrete or asphalt (which must be covered in rubber).</li> </ul>
<b>Toilets</b> (OAR 414-305-0800)	<ul style="list-style-type: none"> <li>For children aged 2 to 3 years, must have at least one child-size toilet or toilet with training seat for every 10 children.</li> <li>For children over 3 years, must provide one toilet for every 15 children.</li> </ul>	<ul style="list-style-type: none"> <li>If the toilet is not located in or adjacent to the classroom, the center must submit a written alternative plan.</li> </ul>
<b>Sinks</b> (OAR 414-305-0800)	<ul style="list-style-type: none"> <li>Must provide at least one handwashing sink for every two toilets.</li> </ul>	<ul style="list-style-type: none"> <li>Handwashing sinks must meet ORS chapter 455 requirements.</li> </ul>
<b>Kitchen</b> (OAR 414-305-1100)	<ul style="list-style-type: none"> <li>Must be separate from any child care areas.</li> </ul>	<ul style="list-style-type: none"> <li>Dishwashing equipment must meet Oregon Health Authority rules.</li> </ul>
<b>Plumbing</b>	<ul style="list-style-type: none"> <li>Water must be tested for lead.</li> </ul>	♦
<b>Exits</b> (OSSC 1006)	<ul style="list-style-type: none"> <li>Exits must be within 75 feet of any child care areas.</li> </ul>	<ul style="list-style-type: none"> <li>Must comply with <a href="#">OSSC Chapter 10</a> egress requirements</li> </ul>

<b>Fire Safety</b>	<ul style="list-style-type: none"> <li>• Comply with fire and life safety plans for Group E and Group I occupancies. OSSC 107.3.5, including sprinklers if Group E over 12,000 square feet or Group I-4.</li> </ul>	♦
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Source: Oregon Administrative Code [Section 414-305](#), OSSC

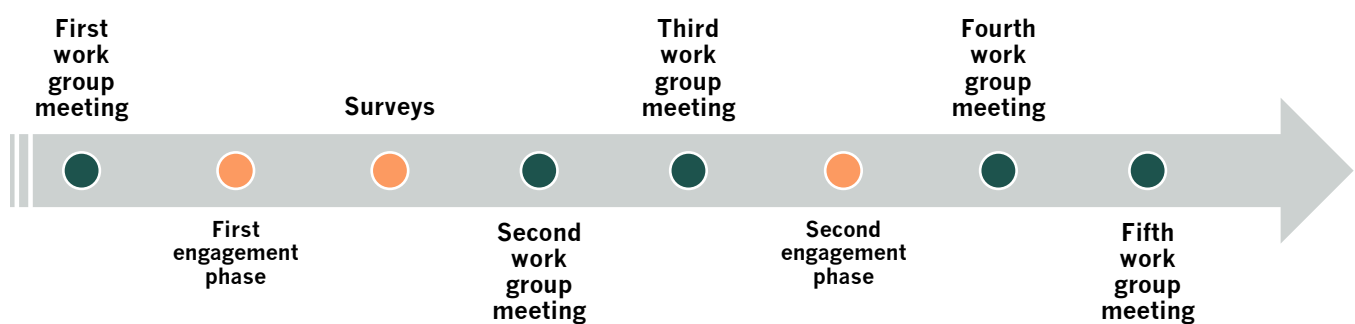
**Exhibit 18: Licensing Facility Requirements for Registered and Certified Family Care Homes**

	<b>REGISTERED FAMILY CARE HOME</b>	<b>CERTIFIED FAMILY CARE HOME</b>
<b>Activity Space</b>	<ul style="list-style-type: none"> <li>• None</li> </ul>	<ul style="list-style-type: none"> <li>• At least 35 square feet of activity space for up to 12 children; 50 square feet per additional child. (OAR 414-350-140)</li> </ul>
<b>Outdoor space</b>	<ul style="list-style-type: none"> <li>• Must provide a balance of indoor and outdoor play, no space requirements. (OAR 414-205-0090)</li> </ul>	<ul style="list-style-type: none"> <li>• Must have safe access to at least 75 square feet of outdoor activity space per child, with a barrier at least 4 feet high. (OAR 414-350-0150)</li> </ul>
<b>Toilets</b>	<ul style="list-style-type: none"> <li>• At least one flush toilet available. (OAR 414-205-0100)</li> </ul>	<ul style="list-style-type: none"> <li>• At least one flush toilet for up to 12 children; an additional toilet if up to 16 children. (OAR 414-350-0140)</li> </ul>
<b>Sinks</b>	<ul style="list-style-type: none"> <li>• At least one handwashing sink available. (OAR 414-205-0100)</li> </ul>	<ul style="list-style-type: none"> <li>• At least one handwashing sink for up to 12 children; an additional handwashing sink if up to 16 children. (OAR 414-350-0140)</li> </ul>
<b>Kitchen</b>	<ul style="list-style-type: none"> <li>• None</li> </ul>	<ul style="list-style-type: none"> <li>• Does not apply to activity area requirements. (OAR 414-350-0010)</li> </ul>
<b>Plumbing</b>	<ul style="list-style-type: none"> <li>• Water must be tested for lead.</li> </ul>	<ul style="list-style-type: none"> <li>• Water must be tested for lead.</li> </ul>
<b>Exits</b>	<ul style="list-style-type: none"> <li>• All floor levels must have at least two usable exits, including windows. (OAR 414-205-0110)</li> </ul>	<ul style="list-style-type: none"> <li>• All rooms must have at least two usable exits, including windows. (OAR 414-350-0170)</li> </ul>
<b>Fire Safety</b>	<ul style="list-style-type: none"> <li>• In addition to fire extinguishers and smoke alarms, the home must either have a sprinkler system or demonstrate the home has met other safety measures, such as locating care at the level of exit discharge. (OSSC 420.12)</li> </ul>	<ul style="list-style-type: none"> <li>• In addition to fire extinguishers and smoke alarms, the home must either have a sprinkler system or demonstrate the home has met other safety measures, such as locating care at the level of exit discharge. (OSSC 420.12)</li> </ul>

Source: Oregon Administrative Code [Section 414-350](#) and [Section 414-205](#), OSSC

# Appendix G: Summary of Community Engagement

The project team used various qualitative research methods to address the complex landscape of child care facility development, including varied geographic contexts, facility types, local regulatory frameworks, and the wide-ranging experiences of regulators and providers in navigating the development process. To achieve this, the project team used three main avenues for engagement: the project work group, online surveys, and interviews and focus groups. A rough schedule for this engagement is shown below:



This memo summarizes the work group meetings, survey findings, and the community engagement scope and themes throughout this project, organized by the engagement type.

## Work Group Meetings

During the project, work group members contributed their knowledge, offered technical assistance, and helped develop and prioritize the proposed recommendations. Throughout the project, the team convened with the work group five times to gather feedback and set the project direction. Below is a summary of the structure and topics discussed in these meetings.

### First Meeting (February 2024)

The first work group meeting intended to connect the group members, set the foundation for the project, and establish a shared understanding of Oregon's child care regulatory framework. To provide context, the project team provided two background memos prior to the meeting on the development regulatory framework and promising local, state, and national standards for reducing barriers to child care facility development. During the meeting, the group members introduced themselves, established group agreements for engaging and navigating disagreements, and shared project goals, priorities, and direction. Major discussion questions included:

- ◆ Any initial reactions to the background memos or meeting?
- ◆ What does the final report need to include in order for you to call it a success?
- ◆ During engagement, what should we be asking providers? What should we be asking local government staff?

## Second Meeting (May 2024)

During the second meeting, members reviewed the findings from the first round of community engagement and provided feedback on the Barriers report. Before this meeting, the project team provided the High-Impact Barriers to Early Care and Education Facility Development report, summarizing high-impact barriers uncovered from research and community engagement efforts that child care providers may face during the development process, including land use and zoning, building codes, and permitting procedures. During the meeting, the project team shared key findings from the provider and local jurisdiction survey and summarized major themes from the Barriers report. Following this discussion, work group members discussed disparate impacts for different communities, including BIPOC and Latine providers, non-English speaking providers, religious or other culturally specific providers, rural and urban areas, and tribal nations. The discussion questions for this conversation were:

- ◆ What specific development barriers might these communities face? How can we make the development process more accessible?
- ◆ Are there considerations in the report that are missed or incorrect?
- ◆ Have we left out any communities? Are there other considerations we should include?

Based on the feedback received in this meeting, the project team revised the Barriers report and provided the updated draft prior to the third meeting.

## Third Meeting (July 2024)

For the third meeting, members primarily provided feedback to the list of preliminary recommendations. Prior to this meeting, members received a matrix of proposed recommendations containing a brief description and possible actions for implementation, an explanation of which barriers the recommendation addresses, and a list of intended outcomes. Each recommendation also outlines potential agencies needed for implementation and indicates whether the recommendation addresses barriers for urban/rural communities or equity considerations and if the recommendation would reduce barriers to co-locating child care with affordable housing, as required by the bill. Following a review of these recommendations by the project team, work group members gathered in small groups to share reactions, workshop recommendations, and discuss how to prioritize the recommendations for the final report. Discussion questions included:



- ◆ What are your initial thoughts on the recommendations list? Do the recommendations adequately address the barriers we have been discussing? Is there anything missing? Any that need to be refined or removed?
- ◆ How should we prioritize the recommendations? Which recommendations stand out as top priorities for the state, cities, and other agencies?
- ◆ Which recommendations address the goal of reducing racial and regional disparities? How could the recommendations be refined to support equitable access better?

## Fourth Meeting (September 2024)

Prior to this meeting, the project team shared a revised recommendations list with any changes tracked. During the fourth meeting, the project team asked work group members to prioritize the proposed recommendations using a live polling platform (Vevox) to gather and share real-time feedback. Members shared responses through the polling website, which were aggregated and displayed following each question:

- ◆ Which topic area do you think will have the biggest impact on addressing equity concerns?
- ◆ Which of the following do you believe would be most effective in reducing racial disparities in access to early learning and care facilities?
- ◆ Which of the following do you believe would be most effective in reducing barriers to providers in rural areas?
- ◆ Enter the numbers (first matrix column) of 2 to 3 draft recommendations you believe would be most effective in reduce disproportionate racial and regional disparities in accessing early learning and care facilities.
- ◆ Enter the numbers of 2-3 other recommendations you think should be considered highest priority.
- ◆ Which recommendations could be the most feasible to implement? Enter the numbers of the recommendations.
- ◆ Which recommendations do you think would be most impactful? Enter the numbers of the recommendations.
- ◆ Which recommendations do you think would be the most cost-effective to implement? Enter the numbers of the recommendations.

## Fifth Meeting (November 2024)

During the fifth and final work group meeting, members shared feedback on the draft of the final report, which was provided for review ahead of the meeting. The project team asked work group members to provide expertise on several final questions to clarify the final report content, review and discuss the draft priority recommendation list, and discuss any additional research or recommendations needed to meet the requirements of House Bill 2727. Finally, the project team and two work group members (Dana Hepper of the

Children’s Institute and Lindsey Cochran of Business Oregon) gave closing remarks reflecting on the project process and work group experience. Following this meeting, work group members were invited to send any final feedback to the project team via email.

## Surveys

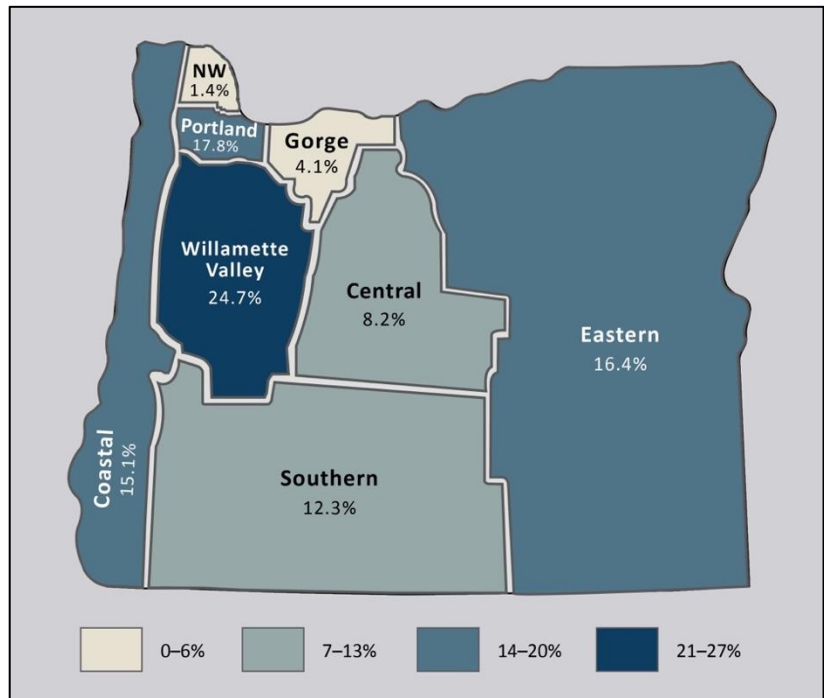
The project team conducted two surveys: one for providers and one for local jurisdiction regulators. These surveys were administered during the first round of engagement, between the first and second work group meetings.

### Provider Survey

To ensure a broad group of providers were engaged, the team surveyed to understand trends related to providers' experience with land use regulations, building codes, and permitting procedures. Ultimately, the project team received 217 responses from providers across Oregon.

### Regulator Survey

For regulators, the Department of Land Conservation and Development crafted a set of development scenarios to allow local government staff to indicate how they would approach land use review and permitting for various child care facilities under different circumstances. The survey received 73 responses from local staff across Oregon, shown by region in the map to the right.



Key takeaways for each scenario included:

### Family Child Care

- ◆ For a certified family child care (up to 16 kids) in a residential zone, 57% of respondents indicated their jurisdiction treats this use as a permitted use. Other jurisdictions responded that a conditional use permit would be required, even though

state statute dictates that such uses should be treated as residential and only be governed by regulations that also apply to typical residences.

- ◆ Several jurisdictions indicated that their code definitions are outdated, allowing only up to 12 children in a family child care home.
- ◆ Almost half of jurisdictions said they require a business license for a family child care.
- ◆ 44% of jurisdictions said they would require a building permit for a new certified family child care, while 26% indicated they would only require a building inspection.

## Church-Based Child Care Centers in Residential Zones

- ◆ 35% of jurisdictions said their review process would require a traffic study review if an existing church wanted to host a preschool serving up to 40 kids.
- ◆ 54% of jurisdictions' processes include a public hearing for the addition of the preschool or child care center
- ◆ One jurisdiction indicated that the preschool is outright permitted in residential zones and no land use review would be required, another indicated a Type I review process would apply, and two indicated they consider child care as accessory to places of worship, and are thus permitted provided place of worship has received appropriate land use. Most others indicated some type of conditional use or nonconforming use review would be required, depending on the circumstances.
- ◆ Just over half of jurisdictions said their building official would require a change in occupancy for the child care portion of the building to achieve an E or I-4 occupancy.
- ◆ At least 20% of jurisdictions would require a Type III review for conversion of parking lot spaces to outdoor play area; another 23% have at least Type II review.

## Child Care Centers in Existing Commercial Buildings

- ◆ 83% of jurisdictions offer a pre-application conference or early assistance meeting for this type of project
- ◆ 71% would conduct a land use review (site plan review in most cases) for the conversion of a loading area behind the building to an outdoor play area. Three cities indicated their land use review would be for a conditional use permit, even in a commercial zone.
- ◆ 30% of jurisdictions would charge a transportation SDC because trip estimates from a child care use are higher than trips from a retail or business use
- ◆ Seismic upgrades would be required in 12% of jurisdictions; and might be required for an additional 23% of jurisdictions, depending on the scope of renovations being done

- ◆ 61% of jurisdictions would review vehicular parking spaces and may require additional parking if the jurisdictions' minimum parking standards are not already met.
- ◆ 41% of jurisdictions review the street frontage and might require improvements to sidewalks, curb, street trees, etc.

## Interviews and Focus Groups

The project team conducted two phases of community engagement: the first phase informed the High-Impact Barriers report, and the second informed the proposed recommendations. The scope and themes of this engagement are summarized below.

### First Engagement Phase

The first engagement phase was held between the first and second work group meetings to inform the Barriers report. This phase included eight interviews and two focus groups.

#### Interviews

In the first phase, the project team conducted eight interviews with providers, architects, and regulators to understand barriers to child care facility development and potential solutions. Major themes from these interviews include:

**Development Barriers:** Providers face significant challenges due to zoning regulations, strict building codes, and landlord reluctance. Conditional use permits and seismic upgrade requirements add delays and costs, while inconsistent regulations across jurisdictions complicate the process. Building codes, such as requirements for sprinkler systems and restrooms, create high financial barriers, particularly for small providers. Landlords are often unwilling to rent to child care businesses due to liability concerns and the extensive modifications required for compliance. Additionally, navigating local bureaucracy and securing funding adds further complications, with long timelines hindering project progress.

**Challenges for Rural Areas:** Rural providers struggle with limited land availability, inconsistent support from local governments, and community pushback against child care facilities. Zoning issues are often more challenging in rural areas, and the approval processes can be unpredictable. Rural providers also face difficulties in accessing the necessary information and resources to navigate building requirements, and the community's resistance can further delay or block facility expansion efforts.

**Architectural and Design Barriers:** Architects face difficulties balancing child care design needs with strict building codes, often needing to make trade-offs due to occupancy and other restrictions. Retrofitting existing buildings is particularly challenging, as compliance with both child care-specific and general building codes adds complexity and cost. Larger facilities are easier to design economically, while small centers face disproportionately high

development hurdles. Municipal processes are siloed across departments, making approvals cumbersome and fragmented.

**Potential Solutions:** Stakeholders suggest statewide consistency in building codes and zoning to simplify the development process. Streamlined permitting and proactive city support, even before leases are signed, would help providers avoid costly delays. Additional financial support through grants and subsidies, particularly for expensive requirements like seismic upgrades, would help smaller and rural providers. Allowing child care centers by right in more areas and reducing conditional use permit requirements could also improve access to suitable spaces, encouraging the expansion of child care facilities across Oregon.

## Focus Groups

The project team held two focus groups in the first engagement phase: one with providers and one with local regulators, including building officials, licensing specialists, and economic development managers. The themes from these focus groups, summarized below, were similar to the findings raised during interviews.

Key themes from the provider focus group included:

**Zoning and Land Use Challenges:** Providers face costly and complex zoning issues, particularly when a change of occupancy is required, which can trigger expensive upgrades like seismic retrofits and frontage improvements. Right-of-way improvements, which include parking, sidewalks, and accessibility features, add significant financial burdens. Historical building documentation can be challenging to find, leading to delays and increased costs. Providers also noted that navigating these issues without pre-application support often jeopardizes their ability to secure funding or begin operations on time.

**Building Code Challenges:** Building codes, especially fire and sanitation requirements, create significant financial and logistical hurdles. Installing sprinklers, adding toilets and sinks, and ensuring proper fire exits for infants and toddlers can cost hundreds of thousands of dollars. Providers reported inconsistent application and interpretation of fire codes by different inspectors, further complicating compliance. These issues, coupled with the high cost of necessary improvements like exhaust systems and hazardous waste removal, make development and expansion difficult for many child care providers.

**Permitting and Bureaucracy:** Navigating various agencies and obtaining permits is a slow, unclear process, with costs and requirements often being difficult to predict. Providers expressed frustration with overlapping and inconsistent requirements between city departments, especially in Portland, where costs for renovations and improvements often exceed thresholds that trigger further compliance obligations. Delays in obtaining certificates of occupancy or resolving zoning issues frequently stall projects and can result in financial losses due to missed revenue or forfeited grants.

**Potential Solutions:** Providers suggest better coordination between city departments and more uniform building code and zoning requirements across jurisdictions. Having a

dedicated point person to guide smaller providers through the development process, as well as financial assistance or exemptions for right-of-way and system development charges (SDCs), would alleviate many of the financial and logistical barriers. There is also a call for reinstating programs like Portland's Small Business Empowerment Program, which helped minority businesses navigate permitting processes, and creating funds to help cover expensive renovations and upgrades required for child care facilities.

Key themes from the regulator focus group included:

**Zoning and Building Code Challenges:** Key challenges in siting child care facilities include delays in obtaining state approval, lack of experience among home-based providers, and difficulties related to occupancy changes. Providers often secure spaces only to later discover they need a change of occupancy, which triggers costly upgrades. In some cases, providers are often unaware of the zoning requirements until after securing a lease, leading to financial and operational setbacks.

**State-Level Regulations and Building Permits:** In 2019, Oregon's building code was adjusted to require home-based child care facilities to comply with commercial building codes, including expensive upgrades like sprinklers. This created barriers for providers, especially in cases where compliance with fire safety or accessibility rules is needed. While the rules were partially reversed in 2021, confusion remains about how regulations apply to different facilities, especially those in multifamily or upper-floor locations. The need for occupancy permits and inconsistent application of state regulations across jurisdictions adds further complexity.

**Potential Solutions:** Simple permit programs, such as streamlined bathroom permits and grants for tenant improvements, have been successfully implemented in some areas. Other suggestions to improve the process include more uniform regulations across jurisdictions, reducing system development charges (SDCs), and exempting smaller child care providers from overly stringent requirements. Regulators also noted a need for better communication between state and local regulators and suggested creating model codes at the state level and providing educational handouts to clarify requirements. Regulators also raised equity concerns particularly regarding outreach to non-English-speaking providers and the high permitting costs, which disproportionately impact lower-income providers.

## Second Engagement Phase

The second engagement phase occurred between the third and fourth work group meetings to discuss proposed recommendations. This phase included twelve interviews and one focus group.

### Interviews

In the second engagement phase, the project team held twelve interviews: seven with providers, non-profits, advocacy groups, and regulators, and five with the jurisdictions represented in the work group. The goal of these interviews was to discuss potential

recommendations. In general, the recommendations received aligned with the barriers identified in the previous phase:

**Zoning and Permitting Recommendations:** Providers and regulators recommended creating clearer, standardized definitions for terms like “home-based” child care across jurisdictions to reduce confusion. There’s a strong push for a state-level collaboration to align zoning and building regulations, which could provide clearer guidance to local governments and streamline processes for providers. Establishing a simplified building permit process for home-based providers, where architectural drawings are not always required, would reduce costs and make it easier for smaller providers to navigate the system. Additionally, implementing universal zoning rules, such as allowing providers to operate without living onsite, would provide more consistency across cities.

**Building Code and Licensing Recommendations:** Regulators recommended developing a model code for child care facilities, which local jurisdictions could adapt to their specific needs. This model could include clear guidelines for when a change of occupancy is necessary and what modifications are required for compliance, reducing the uncertainty providers face. Simplifying the licensing process by offering prescriptive guidance for things like bathroom layouts and minimizing the need for building permits for minor changes, would also help streamline the development of child care facilities.

**Equity and Access Recommendations:** To address equity, providers recommend removing the 16-child cap for certified family homes, allowing them to maximize space like small centers. Additionally, revising the rule requiring a provider to live onsite in some cities would help expand opportunities. Increasing support for BIPOC providers by hiring more licensors of color, removing biases in the licensing process, and improving access to training and resources in multiple languages would also promote more equitable child care facility development. Offering child care providers tax credits or system development charge (SDC) reductions would lower financial barriers, especially for smaller, home-based businesses.

**Policy and Funding Recommendations:** Providers and regulators recommended that policymakers should consider child care facilities a public benefit, making it easier to reduce costs through exemptions and financial incentives. Other recommendations included providing transparent fee schedules and predictable cost estimates for building permits and inspections, tax credits for building upgrades and SDC reductions, especially for low-income and BIPOC communities, integrating workforce development programs that accommodate non-traditional hours, and providing legal and technical support for small providers.

## Building Regulator Focus Group

In the second engagement phase, the project team also held a focus group with building officials to clarify any outstanding questions on building and fire codes and discuss potential recommendations. Overall, the focus group emphasized the need for clearer definitions, better cross-agency communication, and standardized processes to ensure that child care providers can navigate building codes, fire safety requirements, and zoning regulations more easily:

**Zoning and Building Code Recommendations:** There is a need for clearer guidelines on the interaction between local and state building codes, particularly in defining when local jurisdictions can adopt more rigid standards. Many participants suggested developing a technical guide for building officials to standardize interpretations of building codes across jurisdictions, especially in cases involving child care facilities. This would help eliminate inconsistencies around issues like change of occupancy requirements for home-based child care and the interaction between residential (R-3) and commercial (E) building codes. A model code that outlines acceptable alternatives for compliance, especially for smaller home-based providers, could reduce the confusion that exists around permitting processes.

**Fire Safety and Occupancy Recommendations:** Clarification is needed on fire safety regulations and the handoff between building officials and fire marshals. Fire departments are often involved only after the certificate of occupancy (COO) is issued, which can lead to conflicting requirements between the two agencies. A recommendation is to improve coordination between building and fire departments early in the process, including having fire safety officials attend pre-application meetings. This would ensure alignment between the building code and fire safety requirements, streamlining the process and avoiding costly retrofits for providers after they've already invested in renovations.

**Home-Based Child Care Recommendations:** For home-based child care, stakeholders recommend revising the rules around residential (R-3) occupancy to simplify the process. There is confusion about when a change of occupancy is required and whether home-based providers need to live on-site. Clearer guidelines on when and how providers can use their homes for child care without triggering commercial code requirements (e.g., sprinklers) would make it easier for smaller providers to comply. Additionally, defining the conditions under which child care can operate in multi-family units or non-residential zones would help expand access to suitable locations.

**Cross-Agency Coordination Recommendations:** A recurring recommendation is establishing a formal process for cross-agency collaboration, particularly between zoning, building departments, and licensing agencies like DELC. This would streamline the process for child care providers by ensuring they receive consistent information from all departments involved in the development process. For example, agencies could develop a shared portal or documentation process that tracks compliance across departments, helping to reduce the administrative burden on providers and ensuring nothing is overlooked.

**Equity and Accessibility Recommendations:** There is a need to address barriers for smaller providers and those in underrepresented communities. Standardizing processes and offering technical assistance to providers, especially those without access to legal or architectural resources, would promote equity. Simplifying the application process and reducing the requirement for costly architectural drawings could also lower financial barriers for home-based providers.





# Appendix H: Recommendations Matrix

Barrier	Recommendation	Description & Possible Actions	Intended Outcomes	Who is responsible for implementation?	Does this recommendation support urban or rural facilities?	Does this address disproportionate racial and regional disparities?	Does this support the co-location of child care with affordable housing?
<b>Category #1: Land Use &amp; Zoning</b>							
1.1	Recent changes to Oregon's laws related to child care facilities have created confusion for local jurisdictions implementing new rules due to a lack of official interpretations and potential conflicts with existing regulations.	<b>Develop and issue official guidance for cities and counties on implementing ORS 329A.440.</b>	Provide legislative clarification on ORS 329A.440 and develop a joint-department technical bulletin outlining implementation obligations, roles, and responsibilities for local governments.	<ul style="list-style-type: none"> <li>Provide clarity on regulating in-home care as a residential use so local zoning codes and regulations treat in-home daycares as a residential use, not a commercial business.</li> <li>Align local definitions with DELC licensing definitions to create consistency in language between agencies regulating child care.</li> <li>Gain clarity on how child care facilities can be regulated at the local level for jurisdictional staff and child care providers.</li> </ul>	DLCD, DOJ, Legislature	Urban, Rural	x
1.2	Resource zones (timber and farm zones) provide local jurisdictions with the option of allowing registered and certified family child care homes as Home Occupations under ORS 215.448. This use is not allowed "by-right" and requires a compatibility test with farm and timber operations occurring in the area. Because the compatibility test requires the exercise of discretion, home occupation permits are typically a conditional use permit. ORS 215.283(2)(dd) also provides a conditional use path for new child care centers in exclusive farm use zones when the center serves rural populations and is co-located in an existing school or community center. In both cases a jurisdiction must consider the compatibility of the childcare facility with industrial timber and farm operations being conducted in the area which are the focus of these zones.	<b>Develop and issue official guidance for implementing ORS 215.283(2)(dd) (childcare centers in resource zones) and ORS 215.448 (home occupations) to encourage a consistent approach to permitting rural child care facilities, statewide.</b>	<ul style="list-style-type: none"> <li>Develop guidance and best practices for a consistent approach amongst counties (e.g. use the definitions of child care in state law).</li> <li>Remove temporal limits (e.g. 2-year validity) on home occupation approvals for child care.</li> </ul>	Make it easier for providers to get approval for a home occupation in resource zones.	DLCD	Rural	x

Barrier	Recommendation	Description & Possible Actions	Intended Outcomes	Who is responsible for implementation?	Does this recommendation support urban or rural facilities?	Does this address disproportionate racial and regional disparities?	Does this support the co-location of child care with affordable housing?
1.3 Conditional Use Permit requirements for child care centers in residential zones in some jurisdictions can pose significant costs and delays to the opening of new facilities within the communities and/or neighborhoods they serve.	<b>Permit child care centers by right in residential zones.</b>	<ul style="list-style-type: none"> <li>Allow child care centers by right in residential zones, regardless of zone and size.</li> <li>Allow child care centers up to a maximum size to be permitted by right in all residential zones.</li> <li>Allow child care centers as a permitted use or accessory use in multifamily (high density residential) zones.</li> <li>Add child care facilities as accessory uses for existing schools, religious institutions, community centers and allow those accessory uses by right. This would mean that a conditional use modification or update would not be necessary to co-locate a child care facility with these uses.</li> <li>Only require a minor or administrative conditional use permit for centers in residential zones.</li> </ul> <p><i>Note: The implementation process for this recommendation should specifically evaluate impacts associated with allowing child care centers in rural residential zones as a permitted use (rather than conditional use).</i></p>	<ul style="list-style-type: none"> <li>Increased availability of child care options in residential areas.</li> <li>Reduced barriers for establishing new child care centers.</li> <li>Utilize more existing infrastructure in residential areas for child care such as schools and churches.</li> <li>Shorter and more predictable approval processes for child care center projects.</li> <li>Reduced transportation needs for families accessing child care.</li> </ul>	Local planning and public works, DLCD, DELC, BCD, OSFM	Urban, Rural	x	x
1.4 Legally established residences in resource zones often face challenges when opening or expanding in-home child care businesses in resource zones due to the limitations of use allowances.	<b>Allow child care by right in existing residences located in resource zones.</b>	<ul style="list-style-type: none"> <li>Seek legal review of ORS 215.283(2)(dd) first.</li> <li>Requires legislative direction to change rules in ORS 215.</li> </ul> <p><i>Note: If previous recommendations don't sufficiently clarify procedures for permitting child care facilities within and outside Urban Growth Boundaries (UGBs), consider proposing state-level legislation to allow child care by right in existing residences.</i></p>	<ul style="list-style-type: none"> <li>Generally create more opportunity for child care in rural areas.</li> <li>Create more opportunity for providing child care for working land professions, including migrant workers and families.</li> </ul>	DLCD, DOJ, Legislature	Rural	x	
1.5 Parking requirements and child care outdoor space requirements often conflict, potentially limiting the number of children child care facilities can serve while still accommodating on-site parking spaces.	<b>Revise zoning codes to reduce or eliminate off-street parking requirements for daycare facilities.</b>	Review current off-street parking standards and propose amendments to reduce or completely eliminate parking requirements for daycare centers and in-home child care businesses.	<ul style="list-style-type: none"> <li>Allows for more flexibility in meeting outdoor space minimums for child care facilities, including use of existing parking lots/spaces.</li> <li>Better alignment of parking requirements with actual need, particularly for smaller facilities.</li> <li>Greater flexibility for providers in choosing site for new or expanded business.</li> </ul>	Legislature or local planning	Urban, Rural		x

Barrier	Recommendation	Description & Possible Actions	Intended Outcomes	Who is responsible for implementation?	Does this recommendation support urban or rural facilities?	Does this address disproportionate racial and regional disparities?	Does this support the co-location of child care with affordable housing?	
<b>Category #2: Design &amp; Building Code</b>								
2.1	Building permits are often required when adding a child care business to a residence, as it's considered a change of use. This process can be challenging, time-consuming, and costly for providers, even for minor home modifications.	<b>Establish a streamlined building permit process for in-home child care.</b>	<ul style="list-style-type: none"> <li>• BCD (Building Codes Division) could issue a clarification stating that when a building already complies with the requirements of 2022 Oregon Structural Specialty Code Section 420.12.2, no change of use or building permit is required.</li> <li>• Create a simplified, expedited building review and inspection process specifically for in-home child care facilities, particularly when minimal or no construction is proposed or required.</li> <li>• Develop a checklist of common requirements to help providers prepare for inspections more efficiently.</li> <li>• Implement a tiered fee structure based on the size and complexity.</li> </ul>	<ul style="list-style-type: none"> <li>• Easier processes may encourage more providers to enter the market.</li> <li>• Lower fees and less time spent navigating permit process can decrease startup costs.</li> <li>• Clearer, simpler processes may lead to better understanding and adherence to regulations.</li> <li>• Focused, efficient reviews can ensure safety standards are met without extended delays.</li> <li>• Forgo the need for providers to have building plans drawn up by licensed professionals when little to no construction is proposed or necessary.</li> </ul>	BCD to lead, local building	Urban, Rural	x	
2.2	Providers face challenges in identifying acceptable bathroom layouts for child care centers that adheres to building code requirements and licensing requirements. Additionally, local building officials have the discretion to interpret plumbing and sanitation standards differently, which can result in a lack of clarity for designers and operators of child care facilities.	<b>Development of technical guidance on acceptable alternative bathroom layouts for child care facilities in child care centers.</b>	<ul style="list-style-type: none"> <li>• Design professionals, particularly those who are experts in child care facilities, can collaborate with BCD to analyze current bathroom requirements and identify potential flexible solutions that broadly maintain the intent of safety and hygiene standards.</li> <li>• Develop a range of acceptable layouts that could reasonably address various facility sizes and configurations, potentially including options for lower stall walls, unisex facilities, and space-saving designs. The guidance could include diagrams, specifications, and explanations of how each alternative can broadly meet code requirements. Guidance can be used by local building officials when evaluating proposals.</li> </ul>	<ul style="list-style-type: none"> <li>• Increased flexibility in designing child care facility bathrooms.</li> <li>• Improved consistency in interpreting bathroom requirements across jurisdictions.</li> <li>• Potential cost savings for child care providers through more efficient bathroom designs.</li> <li>• Enhanced clarity for architects and builders working on child care projects.</li> </ul>	Design professionals, BCD	Urban, Rural		
2.3	Child care providers often face high costs related to hiring design and engineering professionals to design new spaces.	<b>Develop open source standard design specifications and best practice guidelines for new child care centers, including new commercial spaces in ground floor mix-used buildings.</b>	<p>Creating a freely available set of design specifications and guidelines that can be used to develop new child care centers. This resource could include:</p> <ul style="list-style-type: none"> <li>• Detailed design specifications (e.g., spatial requirements, safety features, bathrooms, kitchen/food prep areas, outdoor play areas, accessibility requirements, etc).</li> <li>• Best practice guidelines (e.g., age-appropriate design, flexible/adaptable spaces, outdoor connection/spaces, health and hygiene, circulation, staff space, etc).</li> <li>• CAD drawings of key design elements.</li> <li>• Implementation guides and documentation.</li> </ul>	<ul style="list-style-type: none"> <li>• Reduces start-up/design costs for providers.</li> <li>• Could create more accessible opportunity for moving from in-home to center-based model.</li> <li>• Can help deliver higher quality spaces.</li> </ul>	Design professionals, DELC	Urban, Rural	x	x

Barrier	Recommendation	Description & Possible Actions	Intended Outcomes	Who is responsible for implementation?	Does this recommendation support urban or rural facilities?	Does this address disproportionate racial and regional disparities?	Does this support the co-location of child care with affordable housing?	
2.4	Requirements related to fire safety and egress in the OSSC pose barriers to locating child care in apartment units, or at the very least, do not provide a clear pathway for meeting requirements and permitting projects.	<b>BCD and local building officials should collaborate to identify necessary revisions to the Oregon Structural Specialty Code (OSSC) that establish clear guidelines for permitting child care facilities in ground-floor apartment units of multi-unit buildings.</b>	<p>Aims to address barriers in the OSSC that may prevent or complicate the establishment of child care facilities in ground-floor apartment units of multi-unit buildings.</p> <ul style="list-style-type: none"> <li>Form a joint task force between BCD and local building officials to review current OSSC regulations.</li> <li>Develop specific code amendments that address safety, accessibility, and operational requirements for child care in these settings.</li> <li>Draft clear guidelines for occupancy classification, fire safety, and egress requirements.</li> <li>Provide training to local building officials on the new code interpretations and applications.</li> <li>Establish a streamlined process for reviewing and approving child care facility plans in these settings.</li> </ul>	<ul style="list-style-type: none"> <li>Facilitate the expansion of child care options in urban and high-density areas.</li> <li>Facilitating different approaches to co-locating child care with affordable housing.</li> </ul>	BCD and local building officials	Urban, Rural	x	x
<b>Category #3: Licensing</b>								
3.1	The Child Care Licensing Division (CCLD) oversees child care licensing requirements which often don't align seamlessly with local zoning and building permit approvals. Child care licensors represent a central point of contact for providers navigating the licensing process, but they lack comprehensive knowledge of local jurisdictional requirements, making it challenging for providers to efficiently establish/expand their business while meeting all necessary state and local regulations.	<b>Establish a comprehensive pre-certification consultation program within the Child Care Licensing Division (CCLD) to provide more consistent guidance and support to potential child care providers before their pre-certification visit.</b>	<ul style="list-style-type: none"> <li>Schedule more consultation meetings between CCLD and providers to thoroughly review licensing requirements, facility standards, and operational guidelines.</li> <li>Utilize video conferencing tools to conduct preliminary virtual inspections of proposed child care spaces, allowing CCLD to provide early feedback on potential issues.</li> <li>Offer a preliminary review of required documentation to identify any gaps or areas needing improvement before the official certification process begins.</li> <li>Introduce early communication between CCLD, local planning, and building departments to ensure alignment on requirements and reduce potential conflicts or delays.</li> <li>Implement more training for licensing specialists on the variety of local processes so they're able to help providers get in contact with the right local departments for permitting.</li> </ul> <p>The guidance document should include:</p> <ul style="list-style-type: none"> <li>A high-level step-by-step guide for establishing each type of child care facility, including both licensing and likely permitting requirements, such as which licenses would likely require permissions from the location jurisdiction for planning or building permits, etc.</li> <li>Educational materials that outline statutory obligations that cities and counties must follow when processing child care facility applications (e.g., where child care must be allowed by right, HOAs can no longer prohibit child care facilities).</li> <li>Information on common pitfalls and best practices for navigating the permitting and licensing process</li> </ul> <p><i>Note: The barriers report drafted in response to HB 2727 would be a good starting point for developing this guidance</i></p>	<ul style="list-style-type: none"> <li>Earlier identification of potential licensing issues.</li> <li>Reduced financial risk for child care providers.</li> <li>Improved alignment between zoning, building, and licensing requirements.</li> <li>Improved communication between licensing officials and providers.</li> <li>Improved understanding of land use and building regulations among licensors.</li> </ul>	DELCD	Urban, Rural		
3.2	Many local jurisdictions aren't in compliance with state laws related to child care facilities due to outdated codes or lack of awareness, potentially misinforming providers who rely on them for guidance. Providers must also navigate multiple regulatory agencies throughout the development process, further complicating and prolonging facility establishment.	<b>Develop a comprehensive guide for child care providers looking to establish or expand a child care facility and/or business.</b>	<p>The guidance document should include:</p> <ul style="list-style-type: none"> <li>A high-level step-by-step guide for establishing each type of child care facility, including both licensing and likely permitting requirements, such as which licenses would likely require permissions from the location jurisdiction for planning or building permits, etc.</li> <li>Educational materials that outline statutory obligations that cities and counties must follow when processing child care facility applications (e.g., where child care must be allowed by right, HOAs can no longer prohibit child care facilities).</li> <li>Information on common pitfalls and best practices for navigating the permitting and licensing process</li> </ul> <p><i>Note: The barriers report drafted in response to HB 2727 would be a good starting point for developing this guidance</i></p>	<ul style="list-style-type: none"> <li>Providers are more informed and can better advocate for themselves when navigating local development processes.</li> <li>Ensure more providers are in compliance with local regulations to reduce risk of receiving violations.</li> <li>Enhanced ability for providers to schedule and budget more accurately for development process.</li> </ul>	DELCD, BCD, DLCD, DEQ, OSFM, local governments	Urban, Rural		

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3.3	Lack of coordination between regulatory requirements causing confusion, delays and added costs.	<b>Revise administrative rules to allow certified family child care in all dwelling types, consistent with existing state statute.</b>	State statute permits in-home child care in any type of dwelling but current administrative rules specify certified family child care must be in a "single-family dwelling." Though statute supersedes administrative rules, the terminology should align to ensure regulatory clarity and a clear path to permitting child care in all types of residential structures. <i>Note: The Early Learning Council is scheduled to vote on this rule change in December 2024.</i>	<ul style="list-style-type: none"> <li>• More consistent language between agencies regulating child care uses.</li> <li>• Clearer path for how building officials can permit different types of child care licenses in residential structures.</li> </ul>	DELC, BCD	Urban	x	x
3.4	Outdoor space requirements can limit the number of viable sites.	<b>Create more flexible options for providers for meeting Department of Early Learning and Care (DELC) outdoor space requirements for child care facilities.</b>	<ul style="list-style-type: none"> <li>• Review current outdoor space regulations and identify areas where flexibility can be introduced without compromising children's safety or developmental needs. Develop guidelines for alternative outdoor space options, such as rooftop gardens, indoor/outdoor convertible spaces, or shared community areas.</li> <li>• Local jurisdictions can establish formal agreements with parks and recreation departments that allow child care facilities to use adjacent parks to satisfy their outdoor space requirements.</li> </ul> <i>Note: DELC currently allows for exceptions to outdoor space requirements on a case-by-case basis, recognizing that urban environments or unique facility layouts may necessitate alternative solutions. However, these exceptions are often granted through individual requests, which can create uncertainty for providers during the planning stages. To address this, there's a need to formalize a broader range of acceptable alternatives within the child care licensing rules.</i>	<ul style="list-style-type: none"> <li>• Increased feasibility of establishing child care facilities in urban or space-constrained areas.</li> <li>• Enhanced ability to adapt existing buildings for child care use.</li> <li>• Provide clearer guidance on potential solutions that meet DELC's standards.</li> <li>• Reduced need for individual exception requests, streamlining the licensing process.</li> <li>• Potential cost savings for providers by allowing more efficient use of available space.</li> </ul>	DELC, local governments	Urban	x	x
3.5	Adding one additional toilet to a provider's home can result in expensive plumbing renovations.	<b>Amend facility standards to eliminate the additional toilet requirement for Certified Family homes caring for up to 16 children.</b>	Review current DELC plumbing fixture requirements and assess the necessity of the extra toilet. Could also consider whether alternative solutions that maintain hygiene and safety are necessary. <i>Note: DELC has proposed amending this requirement for certified family homes. The proposal is currently under review.</i>	<ul style="list-style-type: none"> <li>• Reduced renovation costs for Certified Family providers expanding their capacity.</li> <li>• Greater flexibility in home layouts for child care purposes.</li> </ul>	DEQ, DELC, BCD	Urban, Rural		

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3.6	Providers report that transitioning from a home-based certified family child care to a commercial center is challenging due to unpredictable permitting processes and potential financial investment.	<b>Revise regulations or create a new license type that allows for larger capacity Certified Family care homes that can meet basic space requirements.</b>	Create a new license or revise regulations to allow for larger Certified Family care homes, provided they meet basic space requirements to bridge the gap between family child care homes and child care centers, easing the transition for providers looking to expand.	<ul style="list-style-type: none"> <li>Identify and ease barriers to licensing that make it harder for successful operations of small capacity programs.</li> <li>Help small capacity programs' financial viability.</li> </ul>	DELC, BCD, DLCD, DEQ, OSFM	Urban, Rural	
3.7	OAR 414-350-0000 indicates that licenses can only be obtained by Certified Family Child Care (CF) homes if they are operating in a single-family dwelling.	<b>Update licensing language to allow certified family child care homes in a range of residential units other than single-family.</b>	Allow certified family child care to occur within different types of residential units, including apartments, duplexes, triplexes, accessory dwelling units, or townhomes as long as the space can meet licensing standards for classroom and outdoor space.	<ul style="list-style-type: none"> <li>More accessible child care options within affordable housing complexes.</li> <li>Entrepreneurship opportunities within affordable housing communities.</li> <li>Access child care without additional travel, saving time and money.</li> <li>* Further co-location with affordable housing development outside of ground floor commercial centers.</li> </ul>	DELC	Urban, Rural	x
3.8	DELC licensing requirements require 35 square feet of indoor activity space per child for up to 12 children for certified centers. However, if a home-based provider cares for more than 12 children, they must provide 50 square feet per child for each of the additional children after the first 12. In-home child care providers noted that this is a stricter standard for in home child care.	<b>Revise the requirement for an additional 50 square feet per child, after 12 children, for certified family child care.</b>	Revise indoor activity center square footage requirements to only require 35 square feet per child, up to 16 kids, to be in line with requirements for child care centers.	<ul style="list-style-type: none"> <li>Create more flexibility for in-home child care providers setting aside space for child care in their homes.</li> <li>Address equity concerns for BIPOC providers who more often provide child care in residential settings.</li> </ul>	DELC	Urban, Rural	x

Barrier	Recommendation	Description & Possible Actions	Intended Outcomes	Who is responsible for implementation?	Does this recommendation support urban or rural facilities?	Does this address disproportionate racial and regional disparities?	Does this support the co-location of child care with affordable housing?
<b>Category #4: Permitting &amp; Procedures</b>							
<b>4.1</b> Local jurisdictions often have varying definitions, procedures, and requirements for child care facilities that may conflict with state laws. This inconsistency creates confusion, potential non-compliance, and challenges for providers in navigating the development process efficiently.	<b>Develop a comprehensive guide for local jurisdictions that includes:</b> <ul style="list-style-type: none"> <li>• A model zoning code for child care development regulations</li> <li>• Best practices to streamline the permitting process for child care facilities</li> <li>• Policies and programs local jurisdictions can choose to implement to incentivize and prioritize the development of child care facilities</li> </ul>	<b>Develop a model code to efficiently update local zoning codes with state law:</b> <ul style="list-style-type: none"> <li>• Align definitions of child care facilities with those used by the Department of Early Learning and Care (DELIC), ensuring distinctions between types of child care (e.g., registered or certified child care center).</li> <li>• Update permitted use tables, replacing any undefined or inconsistently defined child care uses and revising the tables to fully comply with the requirements set forth in ORS 329.</li> <li>• Child care should be defined separately from education, institution and group facility definitions.</li> </ul> <b>Best practice guidance might include:</b> <ul style="list-style-type: none"> <li>• Standard forms and checklists by license/facility type.</li> <li>• Guidelines for coordinated reviews between departments and agencies (zoning, building, fire, licensing, etc).</li> <li>• Recommendations for providing clear, accessible information to applicants on the permitting process, timelines, fees, and requirements.</li> <li>• Recommendations for conducting pre-application meetings with child care providers, including guidance for distributing pre-application notes with detailed process and regulatory requirements.</li> <li>• Easy approval processes for standard variances for regulations that might conflict with child care licensing requirements (e.g., fence height).</li> <li>• Develop a simple plan review process for in home child care when no construction is required.</li> <li>• Recommendations for structuring user-friendly fee schedules so providers can account for development fees earlier in the process.</li> <li>• Recommendations for adopting local policies and programs that incentivize and prioritize child care such as incorporating child care-specific policies into the city's Comprehensive Plan.</li> <li>• Guidance for translating materials into multiple languages to reflect local communities</li> </ul> Guidance documents should be made available in multiple languages, particularly the languages that DELIC makes available to their child care providers.	<ul style="list-style-type: none"> <li>• Ensure that local codes align with state regulations.</li> <li>• Create a consistent framework that local governments can adopt or adapt, ensuring more uniform practices across various jurisdictions.</li> <li>• Help create more user friendly codes for child providers to navigate.</li> <li>• Create a clearer path to permitting for regulating agencies and providers by facility type.</li> </ul>	DLCD, BCD, DELC, DEQ, OSFM, Local planning and building			
<b>4.2</b> Child care providers face significant financial and timing challenges when developing facilities. Pre-application meetings require variable fees across jurisdictions (System Development Charges can be especially unpredictable), lengthy permitting process can drain providers' resources, and certain timelines and development fees put funding at risk. This lack of cost certainty creates substantial financial strain for providers operating with limited capital.	<b>Expedite permitting procedures and offer fee reductions for child care facilities.</b>	<ul style="list-style-type: none"> <li>• Offer free or reduced-cost pre-application meetings for eligible child care provider applicants.</li> <li>• Offer waived or reduced permit fees for child care facilities, including System Development Charges (SDCs) when applied.</li> <li>• Offer an expedited review process for child care facility applications.</li> </ul> <i>Note: Many local jurisdictions already waive fees for policy priorities such as housing. Legislative funds for this action would be helpful and sometimes necessary to either assist providers in paying them or for local governments to backfill waived fees from another funding source.</i>	<ul style="list-style-type: none"> <li>• Increased accessibility to local staff to ask questions about their project.</li> <li>• Alleviate some financial burden to starting the application process.</li> <li>• Encouragement of more providers to consider opening or expanding a child care business.</li> <li>• More predictability in the application process for child care providers.</li> <li>• Reduced processing time for child care facility permits.</li> </ul>	Local planning and building	Urban, Rural	X	



Barrier	Recommendation	Description & Possible Actions	Intended Outcomes	Who is responsible for implementation?	Does this recommendation support urban or rural facilities?	Does this address disproportionate racial and regional disparities?	Does this support the co-location of child care with affordable housing?
4.3	Permit timelines can be unpredictable and vary across jurisdictions in Oregon. Providers do not have an adequate sense of how long a permit process will take.	<b>Track and publicly report actual average and median permit timelines.</b>	Track the duration of each permit application from first submittal to issuance and publicly report monthly or quarterly median and average processing timelines by permit type.	<ul style="list-style-type: none"> <li>• Create more transparency on how long permit processes typically take.</li> <li>• Identify inefficiencies in the permitting process by analyzing the data.</li> <li>• Help applicants better plan for permitting based on more realistic timelines.</li> </ul>	Local planning and building	Urban, Rural	
4.4	Time consuming and expensive reviews for changes on sites with existing conditional uses such as converting parking spaces to an outdoor play area.	<b>Exempt certain types of site changes from triggering the Conditional Use Modification review.</b>	Streamline the approval process for child care facilities by exempting specific site changes from requiring a full Conditional Use Modification review to allow providers to make minor alterations or improvements to their sites without facing lengthy and costly review procedures.	<ul style="list-style-type: none"> <li>• Reduce the regulatory burden.</li> <li>• Accelerate the development process.</li> <li>• Create more suitable sites for child care.</li> </ul>	Local planning	Urban, Rural	
<b>Category #5: Coordination</b>							
5.1	A lack of consistent and close coordination between regulating agencies has created incongruencies within the child care regulatory framework.	<b>Establish state agency coordination agreements between DLCD and DELC, and other agencies involved that do not already have agreements.</b>	Bringing together key stakeholders on a regular basis to: <ul style="list-style-type: none"> <li>• Streamline regulations.</li> <li>• Identify opportunities for improvement.</li> <li>• Develop concrete steps for implementing actions.</li> </ul>	<ul style="list-style-type: none"> <li>• Improved regulatory efficiency.</li> <li>• Better coordination among different agencies.</li> <li>• More consistent application of regulations across the state.</li> <li>• Develop shared responsibility for working to address barriers.</li> </ul>	DLCD, DELC, BCD	Urban, Rural	
5.2	Conflicting regulations, inconsistent requirements and implementation, and complex approval processes.	<b>Establish a work group to develop a detailed action plan with specific steps, timelines, resource needs, and success metrics for implementing priority recommendations.</b>	The implementation work group, comprising of state and local regulators, agency representatives, advocates, and providers, would serve as a coordinated body responsible for and tasked with translating policy recommendations into actionable steps.	<ul style="list-style-type: none"> <li>• Streamline child care facility development by coordinating efforts across agencies, standardizing processes, and creating practical solutions informed by diverse expertise.</li> <li>• Clear accountability and ownership for implementing recommendations.</li> <li>• Coordinated approach across agencies and jurisdictions to reduce conflicting regulations.</li> <li>• Practical solutions that reflect child care provider needs.</li> <li>• More efficient use of resources through aligned efforts.</li> </ul>	DLCD, BCD, DELC, in partnership with local governments and child care providers	Urban, Rural	X
5.3	No centralized decision-making authority to help resolve conflicts between agencies and regulatory requirements, which currently leaves providers stuck in lengthy delays with no clear path to resolution when they encounter complex regulatory issues.	<b>Create an interagency child care facility oversight board with authority to coordinate across state and local jurisdictions, expedite decision-making, and resolve regulatory barriers for providers developing or expanding child care facilities in Oregon.</b>	Serve as a centralized authority to address complex regulatory challenges, streamline processes, and make binding decisions to resolve obstacles providers face when developing child care facilities. With representatives from key state and local agencies, the board would meet regularly to review cases, interpret conflicting requirements, and provide clear direction to both providers and regulatory staff.	<ul style="list-style-type: none"> <li>• Expedited resolution of regulatory conflicts and barriers.</li> <li>• Clear, binding decisions when requirements conflict.</li> <li>• Single point of authority for complex facility issues.</li> <li>• Precedents for handling regulatory challenges.</li> </ul>	DLCD, BCD, DELC, OSFM, but will require legislative action for the decision-making component	Urban, Rural	X

Barrier	Recommendation	Description & Possible Actions	Intended Outcomes	Who is responsible for implementation?	Does this recommendation support urban or rural facilities?	Does this address disproportionate racial and regional disparities?	Does this support the co-location of child care with affordable housing?
5.4	CCLD, along with providers, may not be aware of local regulatory requirements for establishing a child care business, whether it's in a home or a center.	<b>Create a standard statewide department coordination form that local jurisdictions can indicate a provider has met local planning and building requirements.</b>	<ul style="list-style-type: none"> <li>Utilize and adapt an existing form that may already be in use in some cases.</li> <li>Develop a new standardized form.</li> </ul>	<ul style="list-style-type: none"> <li>Ensure more providers are in compliance with local regulations to reduce risk of receiving violations.</li> </ul>	DLCD, BCD, DELC, in partnership with local governments	Urban, Rural	
5.5	Providers often face challenges in identifying ready to go spaces for child care that do not require extensive renovations or land use processes.	<b>Create an inventory of community facilities with collocation potential (e.g., churches, schools, community centers, etc).</b>	<ul style="list-style-type: none"> <li>Develop an online platform where communities can promote these types of spaces available for child care. This information should be located on the same central website where grant opportunities are also made available and promoted. This can be statewide or regional and can be developed locally or available for local jurisdictions to report into.</li> <li>Create educational opportunities to commercial and residential real estate agents to help them more efficiently identify usable spaces/properties for child care.</li> </ul>	<ul style="list-style-type: none"> <li>Help identify opportunities in underserved areas.</li> <li>Ease the burden on providers to find adequate, ready-to-go spaces.</li> <li>Creates potential for targeted investments.</li> <li>Facilitate unique partnerships to develop child care, including co-locating with affordable housing.</li> </ul>	Local governments	Urban, Rural	x
5.6	Limited funding exists for child care facility construction and expansion. Providers struggle to access capital for facilities projects.	<b>Develop and maintain a statewide database of child care providers and housing developers interested in co-location partnerships so they're able to partner, create viable co-location projects, and apply for funding.</b>	<ul style="list-style-type: none"> <li>Create an online inventory of developers and child care providers looking for co-location opportunities so they're able to connect and create new project opportunities.</li> <li>Deploy grant funds throughout the inventory based on project readiness and potential impact. Evaluating impact should focus on the development's commitment to serving low-income and BIPOC families, rural communities, and other areas with severe housing and child care supply shortages.</li> <li><i>Note: This recommendation was included in the OHCS report on Co-Locating Early Care and Education Facilities with Affordable Housing in Oregon and was a specific recommendation for how to manage the Co-Location Fund outlined under HB 5011. Funds are managed by Build Up Oregon. At this time, to our knowledge, this inventory has not been developed.</i></li> </ul>	<ul style="list-style-type: none"> <li>Increase the number of child care centers near/with affordable housing developments to make child care more accessible.</li> <li>Address child care shortages in traditionally underserved areas/communities</li> <li>Utilize child care funding resources more efficiently.</li> </ul>	OHCS	Urban, Rural	x
5.7	Many child care providers often struggle to access specialized knowledge and guidance on various aspects of the development and licensing process. Local staff don't have the time and/or expertise to support providers through the full process.	<b>Create a position for "regional coordinators" to provide technical assistance to providers during the licensing and development process.</b>	<ul style="list-style-type: none"> <li>A regional coordinator position can be established to offer dedicated technical assistance to child care providers across different regions in Oregon. This role would serve as a central point of contact for providers, offering guidance on state and local regulations related to child care, including best practices and licensing requirements.</li> <li>Leverage existing agencies that can offer technical assistance rather than just simply giving out grant.</li> </ul>	<ul style="list-style-type: none"> <li>Enhanced regulatory compliance.</li> <li>Streamlined communication for providers navigating regulatory challenges</li> <li>Cross-jurisdictional coordination.</li> </ul>	DELC & DLCD	Urban, Rural	
5.8	Finding ready-to-go, appropriate, or affordable space for child care is a big barrier to providers, particularly first-time providers.	<b>Support public-private partnerships for child care facilities.</b>	Partnerships can include a local government working to incorporate child care facilities into public buildings such as libraries or community centers, or encouraging developers or non-profits to incorporate child care facilities into affordable or workforce housing developments and mixed-use buildings.	<ul style="list-style-type: none"> <li>Potentially lower operational costs for providers, which could be passed on to families.</li> <li>Better accessibility if child care is more widely dispersed throughout an area and in public buildings.</li> <li>Repurposing of underutilized areas in public buildings.</li> </ul>	Local governments	Urban, Rural	x

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<b>Category #6: Funding &amp; Financing</b>							
6.1 Child care providers highlighted the complexity of budgeting for new or expanded child care facilities, emphasizing the frequent occurrence of unforeseen expenses, which can pose significant financial risks. Unexpected expenses can include building upgrades, remediation, renovations, drawings by licensed engineers and/or architects, etc.	<b>Create and/or expand dedicated grant funding programs for child care facilities development.</b>	<ul style="list-style-type: none"> <li>Grant funds should be flexible and include allowances for a wide range of development related costs including for technical assistance such as consultants/engineers/architects, development fees, etc. to allow providers to respond to unexpected costs during the development process.</li> <li>Grants could be targeted to areas where child care gaps are the largest, such a rural areas that may face higher costs for developing centers related to sourcing labor and materials.</li> <li>There are a few existing grant programs available for this type of work today such as the Business Oregon Child Care Infrastructure Program. A potential solution to address this recommendation is to create a single, centralized website that contains list all existing grant programs, providing links to apply for each grant and instructions on how to access the various funding opportunities.</li> </ul> <p><i>Note: A version of this recommendation was included in the Co-Locating Early Care and Education Facilities with Affordable Housing in Oregon and was a specific recommendation for how to manage the Co-Location Fund outlined under HB 5001. However, there is still a demonstrated need access to grant funding for these types of projects across the range of child care providers, Family and Certified child care as well as Certified Centers, in and outside affordable housing developments.</i></p>	<ul style="list-style-type: none"> <li>Reduce out of pocket costs for child care providers opening or expanding child care businesses.</li> <li>Create a flexible source of capital that child care providers can use to meet local development requirements and licensing requirements.</li> </ul>	Legislative action	Urban, Rural		x
6.2 Oregon exempts most affordable housing projects from having to pay higher wage rates to contractors because of the severe need for housing, but when any commercial space is added to plans – whether it be an ECE center or residential family child care home – developers must pay PWR on all elements of the project, including residential space. This can make co-location prohibitively expensive for developers, in some cases adding 10-20% to total development costs.	<b>Offer waivers or split determinations for prevailing wage requirements on co-located projects.</b>	Allow waivers or split determinations for prevailing wage requirements to enable developers to pay standard wages for the affordable housing portion of the project while potentially applying prevailing wages only to the commercial or child care spaces to increase project feasibility.	<ul style="list-style-type: none"> <li>Reduce cost barriers to facilitate more projects combining affordable housing with child care facilities.</li> <li>Increase child care capacity in areas of need.</li> <li>Potentially reduce the cost of child care.</li> <li>Improve access to child care for low-income families.</li> </ul>	Legislative action	Urban	x	x
6.3 There is a lack of effective incentives that allow for more co-location of affordable housing and child care facilities.	<b>Add co-location as a scoring criterion for Low Income Housing Tax Credit (LIHTC) allocations.</b>	Add co-location with child care facilities as a scoring criterion in the state's Qualified Allocation Plan (QAP), which governs funding rounds for LIHTC awards. Especially to complement OHCS' focus on incentivizing projects with larger, family oriented units, adjusting QAP scoring criteria to support those that provide space for ECE facilities could be a natural evolution in policy.	<ul style="list-style-type: none"> <li>Incentivize co-location of child care and affordable housing through existing housing programs.</li> </ul>	OHCS	Urban	x	x
6.4 The cost of renovating existing buildings for child care is high and unpredictable for many providers, particularly those navigating the process for the first time.	<b>Establish a local tenant improvement program for child care providers.</b>	Local governments can establish a tenant improvement program specifically designed for child care providers, using urban renewal funds, grant programs such as CDBG, or other local funding mechanisms.	<ul style="list-style-type: none"> <li>Reduced financial burden for child care providers.</li> <li>Facilitate local economic development through support for local workforce and small businesses.</li> <li>Revitalize underutilized commercial spaces.</li> </ul>	Local planning	Urban, Rural		x

Barrier	Recommendation	Description & Possible Actions	Intended Outcomes	Who is responsible for implementation?	Does this recommendation support urban or rural facilities?	Does this address disproportionate racial and regional disparities?	Does this support the co-location of child care with affordable housing?
6.5	Retrofitting existing commercial spaces to meet requirements for child care can be too costly for providers to take on.	<b>Implement a targeted property tax abatement program for retrofitting spaces into child care centers, with priority given to lower-income neighborhoods and BIPOC-owned or operated facilities.</b>	Offer a temporary reduction in property taxes for properties converted to child care uses. Considerations include: <ul style="list-style-type: none"> <li>Setting clear eligibility criteria such as prioritizing lower-income areas or areas with underutilized commercial spaces.</li> <li>Prioritize offering abatements for low-income, BIPOC, or culturally specific child care providers.</li> <li>Limit the abatement period to balance incentives and tax revenues.</li> </ul>	<ul style="list-style-type: none"> <li>Repurpose vacant or underused commercial property.</li> <li>Reduce start up costs for providers.</li> </ul>	Legislative action	Urban, Rural	x
6.6	DELIC offers child care licensing materials in multiple languages. However, many local governments lack the resources and expertise to translate their own child care-related documents, such as guidance materials and forms, into the diverse languages spoken by child care providers in their communities.	<b>Provide funding to local governments to translate materials related to the permitting process.</b>	<ul style="list-style-type: none"> <li>Allocate funding to local governments for translation services.</li> <li>Create a grant program for local governments to apply for translation funds.</li> <li>Establish partnerships and develop guidelines for identifying essential materials to translate.</li> <li>Set up a centralized resource hub for sharing translated documents across jurisdictions.</li> </ul>	<ul style="list-style-type: none"> <li>Increased accessibility of information for non-English speaking child care providers.</li> <li>More diverse participation in child care.</li> <li>Reduced barriers to entry for potential providers from various backgrounds.</li> </ul>	Legislative action	Urban, Rural	x
<b>Category #7: Miscellaneous</b>							
7.1	Currently, homes with septic systems adding child care facilities are often required to expand their systems, as they're treated the same as schools in terms of capacity requirements. This approach likely mandates more capacity than necessary, imposing significant costs on providers.	<b>Establish specific septic capacity thresholds for in-home daycare facilities and create capacity upgrade exceptions for child care providers serving children under 2 years old.</b>	<ul style="list-style-type: none"> <li>Work with DEQ to develop new, right-sized septic capacity thresholds specific to in-home child care uses.</li> <li>Consider granting exceptions for child care serving children under 2 years old, as they typically use diapers and don't significantly impact septic system capacity.</li> </ul>	<ul style="list-style-type: none"> <li>Reduce costs associated with septic system upgrades for in-home child care providers.</li> </ul>	DEQ, DELC, BCD	Rural	
7.2	Street frontage improvements are too costly for a small business opening in an existing building or tenant space.	<b>Reduce or remove frontage improvement standards for a change in occupancy in an existing building for child care businesses.</b>	Exempt child care providers from these standards, or change thresholds for triggering the upgrade (currently, these requirements can be triggered by the value of building upgrades, or trip generation).	<ul style="list-style-type: none"> <li>Lower startup and renovation costs.</li> <li>More options for locating child care.</li> <li>Revitalization of underutilized commercial spaces.</li> </ul>	Local building and public works	Urban	x
7.3	Existing homeowners associations prevent in-home child care through codes, covenants, and restrictions (predating 2018 - ORS 94.779 addresses these from 2018 forward but was not retroactive).	<b>Override CC&amp;Rs that do not allow for in home child care in certain neighborhoods/developments.</b>	Investigate if legal and policy options exist to override restrictive covenants, conditions, and restrictions (CC&Rs) that prohibit in-home child care in specific neighborhoods or developments.	<ul style="list-style-type: none"> <li>Expanding allowances for in-home child care.</li> </ul>	Legislature	Urban	x

# Appendix I: Recommendations for Local Jurisdictions

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HB 2727 requires specific recommendations for expanding early learning and care facilities specifically for the five cities or counties that have representatives on the work group. In developing these recommendations, the project team conducted individual meetings with each jurisdiction's staff to review their existing code and identify specific areas requiring updates to align with current statute. These consultations also provided valuable insights into which policy changes and recommendations could be supported within each jurisdiction's political and administrative context.

<b>DATE:</b>	October 21, 2024
<b>TO:</b>	Clatsop County; Gail Henrikson
<b>FROM:</b>	ECOnorthwest
<b>SUBJECT:</b>	Clatsop County – HB 2727 Final Local Recommendations

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HB 2727 requires the project team to develop specific recommendations for expanding early learning and care facilities in the five jurisdictions from which work group members are selected. These recommendations were developed based on conversations with local government staff and a high-level audit of their respective codes. It's important to note that while the bill requires the creation of these recommendations, their implementation is entirely voluntary for the jurisdictions involved.

Clatsop County contains a substantial amount of forest land along with coastal land along the Pacific Ocean on its western border and the Columbia River along its northern border. Within some communities there is a mix of commercial, industrial, and residential uses. Clatsop County provides zoning areas outside of urban growth boundaries and city limits, including rural service areas.

- ◆ In 2022, Clatsop County worked with DLCDC to coordinate local recommendations for Clatsop County to comply with **ORS 329A.440** so much of their code has been updated related to child care.

## Child Care Centers in Residential Zones

- ◆ Clatsop County currently allows child care centers in residential zones as a conditional use. The county noted that this is a useful tool for being able to evaluate the adequacy of infrastructure, as many of the residential areas are on septic systems, roads may be unpaved or substandard in size in some areas. However, there

is likely an opportunity to evaluate certain residential areas and/or zones where child care centers could be more broadly allowed by right.

- ◆ Recommendation: Make child care centers permitted uses in specified residential areas and/or zones, subject to meeting established criteria. Evaluation criteria for where to make this allowance might include areas where there are existing community facilities (schools, parks, libraries), nearby employment centers, higher presence of younger families, and/or adequate road and sidewalk conditions.

## Permit Process and Fees

- ◆ A conditional use permit fee for a Type II process, according to the County's 2023-2024 fee schedule, is \$1,200, and \$1,500 for a Type IIa or Type III. An applicant can apply to the Board of Commissioners to waive this fee.
- ◆ Recommendation: Waive or reduce the fee for conditional use permits for lower-income, small business child care providers outright without requiring an application to the Board to waive the fee.

The County has not received many applications for child care businesses for either in-home or centers in the last several years. However, as more money becomes available for child care across Oregon, streamlined processes to get facilities permitted and opened will be necessary.

- ◆ Recommendation: Offer an expedited permit review process for both in-home and child care centers.

## Building Permits

Clatsop County currently requires a building permit for in-home child care.

- ◆ Recommendation: Eliminate the requirement for a building permit for in-home child care when no alterations are proposed to the dwelling; instead require only an inspection to ensure compliance with the Residential Oregon Structural Specialty Code Section 420.12.<sup>120</sup>

## Tenant Improvement Program

If the state provides funding for local grants that provide targeted investment in the development of child care facilities, Clatsop County could set up a local program to administer grant funds to child care providers.

- ◆ Recommendation: Implement a local tenant improvement grant program that offers funding to child care providers to help cover the cost of renovating or upgrading facilities to meet building code, zoning code or licensing requirements.

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<sup>120</sup> A building permit should still be required for any proposed structural alterations or when converting spaces not originally designed for occupancy (e.g., unfinished basements or attics) into child care areas.

**DATE:** October 21, 2024  
**TO:** City of Coos Bay; Chelsea Schnabel  
**FROM:** EConorthwest  
**SUBJECT:** City of Coos Bay – HB 2727 Final Local Recommendations

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HB 2727 requires the project team to develop specific recommendations for expanding early learning and care facilities in the five jurisdictions from which work group members are selected. These recommendations were developed based on conversations with local government staff and a high-level audit of their respective codes. It's important to note that while the bill requires the creation of these recommendations, their implementation is entirely voluntary for the jurisdictions involved.

## Definitions

The City of Coos Bay has not fully updated its code based on requirements under ORS 329.A.440, so the city's thresholds for registered family child care and certified family child care are not aligned with definitions found in state law.

- ◆ Recommendation: Revise existing definitions related to child care to align with those found in ORS 329.A.440, provided below:
  - Child care center” means a child care facility, other than a family child care home, that is certified under [ORS 329A.280 \(When certification required\)](#).
  - “Family child care home” means a child care facility in a dwelling that is caring for not more than 16 children and is certified under [ORS 329A.280 \(When certification required\)](#) or is registered under [ORS 329A.330 \(Registration requirements\)](#)

## Permitted Use Table

- ◆ Remove “day care for <13 children” from the residential and commercial zones permitted use tables and replace with term that encompasses both registered family and certified family child care (up to 16 children)
- ◆ Amend permitted use table to allow certified child care centers by right in all commercial zones, including WH, HP, and the UPD zones.
- ◆ Amend permitted use table to allow certified child care centers by right in all industrial zones<sup>121</sup>, including the MP zone.

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<sup>121</sup> With the exception of zones designated for heavy industrial uses which is assumed to be the W-I zone.

## Home Occupation Permits

- ◆ Remove the requirement for a home occupation permit for in-home child care in residential zones.

## Parking

The City of Coos Bay requires one off-street parking spot per employee.

- ◆ Reduce or eliminate the minimum parking standard.

## Suitable Child Care Spaces

- ◆ Identify properties and spaces with co-location potential with child care (e.g., churches, schools, or community centers) to submit to a broader tracking system used to pair providers with suitable spaces for new or expanded businesses.





**DATE:** December 2, 2024  
**TO:** City of Bend; Brad Mandal & Michelle Patrick  
**FROM:** EConorthwest  
**SUBJECT:** City of Bend – HB 2727 Final Local Recommendations

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◆  
HB 2727 requires the project team to develop specific recommendations for expanding early learning and care facilities in the five jurisdictions from which work group members are selected. These recommendations were developed based on conversations with local government staff and a high-level audit of their respective codes. It's important to note that while the bill requires the creation of these recommendations, their implementation is entirely voluntary for the jurisdictions involved.

- ◆ The City of Bend implements regulations that comply with **ORS 329A.440**, so much of their code has been updated related to child care. Bend has also waived transportation SDCs for child care and removed parking mandates citywide, offering a best practice example for other local jurisdictions in Oregon. Below are some additional recommendations the City of Bend could consider for continuing their efforts to reduce barriers for child care providers opening new businesses or expanding existing ones.

## Child Care Centers in Residential Zones

- ◆ The city of Bend currently allows child care centers in residential zones as a conditional use. However, there may be an opportunity to evaluate certain residential areas and/or zones where child care centers could be more broadly allowed by right.
- ◆ Recommendation: Make child care centers permitted uses in all residential zones, subject to meeting established criteria. Evaluation criteria for this use might include sidewalk construction, compliant bike parking, compliant vehicular access, and adequate public utilities.

## Pre-Application Process

Bend does not currently charge a fee for pre-application meetings according to the city's 2024-2025 fee schedule; however, Bend is in the process of re-evaluating its pre-application practices, and fees for pre-application meetings may be assessed in the future. The city offers these as optional meetings for applicants and developers; they are not required. However, in conversations with staff, attendance of those meetings by the fire official is not always consistent or specifically requested.

- ◆ Recommendation: Implement a policy of requiring the fire official and building official to attend every pre-application meeting for in-home child care and child care centers to ensure providers understand the requirements related to fire safety.

- ◆ Recommendation: Suggest all prospective child care providers request a pre-application conference option early in their development process.

## Tenant Improvement Program

If the state provides funding for local grants that provide targeted investment in the development of child care facilities, the City of Bend could set up a local program to administer grant funds to child care providers.<sup>122</sup>

- ◆ Recommendation: Implement a local tenant improvement grant program that offers funding to child care providers to help cover the cost of renovating or upgrading facilities to meet building code, zoning code or licensing requirements.

## Resident Requirements for In-Home Child Care

Both the planning and building department hold requirements that a resident must live in a dwelling with an in-home child care business. However, state statute - ORS 329A.440 - deems a family child care facility itself to be a residential use. Staff with the city of Bend have interpreted this to mean that since a dwelling is defined as a space intended for living, a building used solely for child care (with no resident) must be classified as an E (Educational) or I (Institutional) occupancy under the building code. This creates uncertainty about whether local requirements for occupancy align with state statute.

- ◆ Recommendation: Remove planning and building requirements that require someone to live in the family child care home. Note that the City has requested state determinations on building and land use in this matter, specifically requesting that Oregon Building Codes Division issue a statewide interpretation clarifying whether occupancy of the dwelling is required to meet ORS 329A.440's requirements.

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<sup>122</sup> The city could also opt to source grant funds locally, provided the state does not create a funding source.

**DATE:** December 2, 2024  
**TO:** Benton County; Petra Schuetz  
**FROM:** EConorthwest  
**SUBJECT:** Benton County – HB 2727 Final Local Recommendations

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HB 2727 requires the project team to develop specific recommendations for expanding early learning and care facilities in the five jurisdictions from which work group members are selected. These recommendations were developed based on conversations with local government staff and a high-level audit of their respective codes. It's important to note that while the bill requires the creation of these recommendations, their implementation is entirely voluntary for the jurisdictions involved.

## Definitions

Benton County has not fully updated its code based on requirements under ORS 329.A.440, so the county's thresholds for registered family child care and certified family child care are not aligned with definitions found in state law.

- ◆ Recommendation: Revise existing definitions related to child care to align with those found in ORS 329.A.440, provided below.
  - Child care center” means a child care facility, other than a family child care home, that is certified under [ORS 329A.280 \(When certification required\)](#).
  - “Family child care home” means a child care facility in a dwelling that is caring for not more than 16 children and is certified under [ORS 329A.280 \(When certification required\)](#) or is registered under [ORS 329A.330 \(Registration requirements\)](#)

## Permitted Use Table

- ◆ Remove “day care for <13 children” from the permitted use table and replace with term that encompasses both registered family and certified family child care (up to 16 children)
- ◆ Removed the 4,000 square foot maximum for in-home child care facilities in the RC and VC zones.
- ◆ Amend permitted use table to allow certified child care centers by right in all commercial zones, including UC, PC, RC, VC, and P zones.<sup>123</sup>
- ◆ Amend permitted use table to allow certified child care centers by right in all industrial zones<sup>124</sup>, including UI, PLI and RI zones.

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<sup>123</sup> Day care centers are already allowed by right in the RSC zone.

<sup>124</sup> With the exception of zones designated for heavy industrial uses.

## Parking

Benton County currently required two off-street parking spots per teacher.

- ◆ Reduce or eliminate the minimum parking standard.
- ◆ Consider exemptions for small in-home facilities (e.g., those with 10 or fewer children) from additional parking requirements beyond what's typical for a single-family home
- ◆ Consider allowing facilities to meet parking requirements with on-street parking, where available.
- ◆ Permit providers to implement staggered drop-off and pick-up times to reduce simultaneous parking needs.
- ◆ Allow for parking requirement variances based on individual site conditions and constraints. Consider factors such as lot size, street width, and proximity to other parking options.

## Conditional Use Permits

- ◆ Increase the renewal timeframe from 2 years to a longer period, such as 5 or 10 years or base renewal frequency on the type of use or its potential impact.
- ◆ Allow for permit staff-level renewal without requiring a full review process for uses that have maintained compliance and haven't been the subject of violations or complaints.
- ◆ Replace the renewal process with less formal periodic reviews that don't jeopardize the continuation of the use unless significant issues are found.

**DATE:** December 2, 2024  
**TO:** City of Portland; Chanel Horn and Suzan Poisner  
**FROM:** ECOnorthwest  
**SUBJECT:** City of Portland – HB 2727 Final Local Recommendations

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HB 2727 requires the project team to develop specific recommendations for expanding early learning and care facilities in the five jurisdictions from which work group members are selected. These recommendations were developed based on conversations with local government staff and a high-level audit of their respective codes. It's important to note that while the bill requires the creation of these recommendations, their implementation is entirely voluntary for the jurisdictions involved.

- ◆ The City of Portland implements regulations that comply with **ORS 329A.440**, so much of their code has been updated related to child care. In 2023, the City eliminated parking mandates citywide. In addition, the City has recently consolidated development review staff from its various infrastructure bureaus into one single Permitting and Development department, which should help improve review timelines as well as the level of coordination among the city review team staff. Below are some additional recommendations the City of Portland could consider for continuing their efforts to reduce barriers for child care providers opening new businesses or expanding existing ones.

## Conditional Use Modifications

Portland's zoning code triggers a conditional use modification review on sites with an existing conditional use<sup>125</sup>. Since Portland removed minimum parking requirements for all uses citywide, the section of code that pertains to the removal of parking as a trigger for a conditional use modification review should be removed. This trigger has created challenges for child care businesses converting parking spaces into outdoor play areas, among other issues.

- ◆ Recommendation: Since parking mandates no longer exist, allow removal of parking areas on existing conditional use sites without a conditional use modification review.

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<sup>125</sup> 815.040.B.h Proposals that alter the development of an existing conditional use. Alterations to the development on a site with an existing conditional use and reducing the boundary of a conditional use site may be allowed, require an adjustment, modification, or require a conditional use review, as follows: Remove parking spaces is allowed as follows: • On sites with 5 or more parking spaces, up to 1 space or 4 percent of the total number of existing parking spaces, whichever is greater, may be removed; parking spaces removed to create accessible spaces as specified in the Oregon Specialty Code are exempt from this limitation; or • Up to 50 percent of the total number of existing parking spaces may be removed when the removal is for an outdoor shelter or housing that is affordable.

## Pre-Application Process

Portland has two tiers of pre-application meetings. A “pre-application conference” is for projects that will need to go through a public hearing and is designed to set those projects up for successful hearings, such as a conditional use. This meeting requires attendance of all reviewing agencies and departments. The fee is \$7,994 and covers the cost of one meeting early in the process. The second tier is an “early assistance meeting”, which are not required for any applicants or permit processes. Applicants can request an early assistance meeting that includes only a city planner, or both a city planner and staff from other infrastructure bureaus, but building code reviewers do not attend these meetings, and the city notes that SDC estimates are not provided. There are two fees associated with early assistance, a meeting which costs \$1,677, or information in written form only (without a meeting) is \$1,390. The early assistance meeting could be missing key information from other departments or agencies and the fee is still high for child care providers, relative to other cities and counties who offer this service.

- ◆ Recommendation: Provide pre-application conference meetings, where all agencies and departments are required to attend and SDC estimates are provided, for child care providers at free or reduced cost.

## Building Permits

City of Portland currently requires a building permit for in-home child care. The City is working to implement a simplified child care permit program for in-home child care that would only require an inspection, with a minimal fee to cover inspector’s time.

- ◆ Recommendation: Implement the simplified permit program for in-home child care when no alterations are proposed to the dwelling. Only require only a fire safety inspection to ensure compliance with the Residential Oregon Structural Specialty Code Section 420.12.<sup>126127</sup>

The City’s building permit review process includes a question asking if someone lives in the residence for in-home child care. While the building code language is silent on this matter, the city’s interpretation has been that a resident is required to live in the home in addition to the child care use. State statute - ORS 329A.440 - deems a family child care facility itself to be a residential use. Therefore, local requirements for a resident to be living in the home might be in conflict with the statute.

- ◆ Recommendation: Discontinue the practice of asking if someone lives in the family child care home during the permit review process.

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<sup>126</sup> A building permit should still be required for any proposed structural alterations or when converting spaces not originally designed for occupancy (e.g., unfinished basements or attics) into child care areas.

<sup>127</sup> City of Portland staff mentioned this recommendation is potentially underway but not complete yet.

## Nonconformance Upgrades

Nonconformance upgrades are triggered when a building or other development permit is submitted and the value of proposed alterations on a site exceed a specified dollar valuation. These upgrades often include things like parking lot landscaping or screening of refuse and recycling areas. During the COVID-19 pandemic, the city of Portland issued a temporary ordinance that no longer required daycares to make non-conforming site upgrades, potentially saving child care providers time and money on new projects. It also addressed some of the challenges that come with co-locating with other uses and eased tensions between tenants and landlords. The ordinance was temporary and has since expired, although the city extended the exemption until January 1, 2029 for housing.

- ◆ Recommendation: Create a permanent exemption for all day care and child care uses triggering nonconforming site upgrades.<sup>128</sup>

## Change in Occupancy

Seismic upgrades for a building are triggered if more than 1/3 of the floor area is changing to a higher hazard classification or if the occupant load increases by more than 149 occupants relative to the baseline occupancy of the building as of October 1, 2004, which typically occurs when moving to E or I-4 for child care centers. These upgrades can be costly for providers to comply with and limit the number of suitable, ready-to-go spaces for child care.

- ◆ Recommendation: Establish a grant program and/or connect child care providers with existing grant programs (such as the Business Oregon Child care Infrastructure grant) for seismic and fire protection system upgrades to existing commercial space for low-income providers, small or minority-owned child care businesses.

## SDC and Frontage Improvement Waivers

System Development Charges (SDCs), particularly transportation SDCs and frontage improvement requirements often come as a surprise to child care providers. Many jurisdictions, including Portland, base fees on the number of “trips” generated by different uses established in the Institute of Transportation Engineers Trip Generation Manual. Fees are assessed if the new land use generates more trips than the previous land use; however, the manual lists child care as generating more trips than many other land uses<sup>129</sup> including

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<sup>128</sup> Portland’s zoning code uses the term “daycare” which refers to commercial child care facilities and programs. In-home child care, including certified and registered family child care homes serving up to 16 children as defined in ORS 329A, are categorized under Household Living uses rather than Daycare uses. The exemption is intended to apply to all child care uses.

<sup>129</sup> Institute of Transportation Engineers Trip Generation Manual, Common Trip Generation Rates (11<sup>th</sup> Edition), Peak Hours for Daycare Center

private schools, medical clinics, and churches.<sup>130</sup> Frontage improvements may be triggered for similar reasons, but may be attached to building valuation, location of proposal, or other factors. The city does provide a number of exemptions and offers opportunities to re-evaluate SDCs or requirements if additional documentation is provided.

- ◆ Recommendation: Offer waivers or exemptions for transportation SDCs and frontage improvements for child care centers, especially those moving into existing buildings, and consider applying the waiver or exemption to new child care construction projects as well.

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<sup>130</sup> Institute of Transportation Engineers Trip Generation Manual, Common Trip Generation Rates (11<sup>th</sup> Edition), Peak Hours for Daycare Center