

AGENDA

HB 2727 Work Group #2

5/31/2024

9:00 AM to 11:00 AM

Streaming link: <https://www.youtube.com/user/OregonDLCD>

9:00 – 9:10 a.m.	Project updates	DLCD & ECO
9:10 – 9:15 a.m.	Summary of survey results	ECO
9:15 – 9:30 a.m.	Overview of barriers report	ECO
9:30 – 10:00 a.m.	Barriers report feedback and discussion	All
10:00 – 10:30 a.m.	Disparate impacts discussion <i>Breakout rooms</i>	All
10:30 – 10:45 a.m.	Small group report outs to whole group	All
10:45 – 11:00 a.m.	Moving toward recommendations and next steps	DLCD & ECO

Additional Information:

Please review the draft Barriers and Opportunities report prior to this meeting.

The background memo reviewed at the first Work Group meeting can be found [here](#).

Attachment: Work Group Members

Work Group Members

NAME	ORGANIZATION
Patrick Wingard	DLCD
Leigh McIlvaine	DLCD
Tony Rocco	Building Codes Division
Miriam Cecilia	DELC
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Chelsea Schnabel	City of Coos Bay
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Gail Henrikson	Clatsop County
Chanel Horn	City of Portland BDS
Brad Mandal	City of Bend
Rod Walker	Oregon Child Development Coalition
Mandy Johnson	Sillie Billies Childcare
Fernanda Lucas De La Torre	Little Creek Bilingual School
Dawn Crawford	Head Start
Rionna Ruley	AFSCME union local 132
Dana Hepper	Children's Institute
Virginia Garcia	Latino Network
Chad Hawkins	Oregon State Fire Marshal
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May 2024

Major Barriers to Early Care and Education Facility Development

DRAFT

ECOnorthwest

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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 childcare 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 childcare facilities, and the team recognizes and appreciates the dedication and good intentions of all individuals and organizations involved in providing and supporting childcare in Oregon.

However, to effectively address the challenges facing the development of childcare 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 childcare 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 childcare 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 childcare facilities and 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 (DELC) and to convene a work group of child care providers, regulators, advocacy partners and other affected groups that together, represent the geographic, racial, ethnic, and gender diversity of Oregon.

The project includes three key phases:

- ◆ **Establishing background**, context and providing an overview of regulatory agencies involved in the development of childcare facilities in Oregon.
- ◆ **Researching barriers** relating to land use and zoning and building codes through a review of state and local regulations and engagement with regulatory agencies and childcare providers.
- ◆ **Developing recommendations to reduce barriers** and expanding early learning and care facilities and reducing disproportionate racial and regional disparities in access 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 major barriers encountered during the development process of childcare facilities.

Once a shared understanding of the childcare regulatory framework was established, the DCLD project team shifted focus to understanding barriers within the regulatory context through the lens of childcare providers and regulatory agencies. This report has been prepared for the second work group meeting. It summarizes the major barriers uncovered from ongoing research and outreach efforts that childcare 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, Coos Bay, along with Benton and Clatsop counties.
- ◆ Insights from a survey, focus groups, and interviews with childcare 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

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 the development of the varieties of early childhood care and education facilities.¹ There are three core types of licensed childcare facilities this study focuses on 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 Childcare 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 Childcare License that may enroll up to 16 children.
- ◆ **Childcare Centers:** An early childhood care and education facility—other than a family childcare home—that has a Certified Childcare Center License.



KEY TAKEAWAYS FROM BACKGROUND MEMO (CONTINUED)

Certain types of providers and early childhood care and education programs are not required to be licensed through the Care Childcare 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 Major Barriers

- ◆ **Layers of regulatory agencies:** Providers need to navigate the requirements of several agencies (state, county, city, and childcare 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 continue to 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 childcare licensing requirements put significant limitations on the amount of suitable sites and buildings eligible for childcare, 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 or 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 a consultant, 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, inconsistent across jurisdictions, and local staff often do not have capacity to offer technical support to providers through the process.
- ◆ Many jurisdictions haven't updated their local zoning codes to comply with new regulations outlined in House Bill 3109 (ORS 329A.440, which became effective on January 1, 2022). 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 childcare businesses by placing lower thresholds on the number of children allowed per facility.
 - Lists of uses allowed without review have not been consistently updated to reflect the by procedural allowance required by HB 3109 (2022).
- ◆ Childcare 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 encompass a long-term leased as well) which can create risk for providers when there is uncertainty in the outcome of the process.
- ◆ The location of a childcare facility in a rural (outside and Urban Growth Boundary) versus urban environment can impact its development in different ways. In rural areas, there may be more restrictions on permitted use, limited infrastructure, and additional approval processes. In urban areas, childcare may be allowed more broadly, but may be subject to more stringent design and development standards.

Licensing Requirements and Building Codes

- ◆ Challenging building code and licensing requirements, particularly related to a change in occupancy, often renders surplus and practical buildings for childcare such as school 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 typically triggers major building renovations such as sprinklers, seismic retrofits, and accessibility upgrades.¹

¹ 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



- ◆ Childcare licensing requirements, particularly for open space, sanitation, and fire safety also often require expensive building renovations for both homes and centers. Even if providers can afford renovations, finding space that has the potential to meet licensing requirements, particularly outdoor space requirements, can be difficult.
- ◆ Building codes and associated requirements may not be clearly communicated to childcare providers during the land use process, overwhelming providers when confronted with these additional steps, underscoring the importance of obtaining comprehensive information early in the planning stages.
- ◆ Oregon's childcare 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.

Potential and Disparate Impacts

- ◆ Rural jurisdictions may have less capacity to offer providers 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.
- ◆ Childcare centers, particularly those in churches, tend to face greater difficulties than childcare homes in complying with land use and building codes, burdening households who seek childcare within their religious institutions and Black families who more often utilize centers for childcare.²
- ◆ Racial disparities in homeownership rates in Oregon limit opportunities for communities of color —especially Native Hawaiian/Pacific Islander and Black households, and Native Alaskan/Native American —to start home-based childcare businesses.³

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:

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 childcare facilities located within a dwelling.

² 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 ECE and are much more likely to be enrolled in a childcare center than White or Hispanic children.

³ Oregon 2021 1-year PUMS.



- ◆ **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-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).⁴
- ◆ **Hypothetical Scenarios and Case Studies:** To demonstrate the unique experiences childcare providers face when engaging in the development process, four hypothetical scenarios were outlined to illustrate common hurdles and three real case studies of childcare providers in Oregon who have encountered major 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.
 - *Note: The project team is working to identify and detail two additional case studies to be presented in the final report.*
- ◆ **Interviews and Focus Groups:** To hear directly from regulators and providers impacted by the regulatory process of developing or expanding a childcare business, in-depth interviews and focus groups were conducted. Ultimately, six interviews with providers and architects were held, as well as two virtual focus groups: one for providers and one for different types of regulators across Oregon, including staff from local and state agencies.
- ◆ **Survey:** To ensure a broad group of providers, 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.

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.

⁴ House Bill 2727 requires the work group to develop recommendations that support the expansion of early learning and care facilities in this state, and 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.



2. Land Use and Zoning

CHAPTER 2 OVERVIEW

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
- ◆ Other land use barriers

CHAPTER 2 KEY TAKEAWAYS

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

- » **Due diligence:** Understanding whether a parcel will require additional upgrades or permits to comply with zoning requirements can take significant time and upfront expenditures 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 introduce significant time, costs, and risk into the development process, especially for smaller or less resourced providers.
- » **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 childcare 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, as well as 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 childcare specifically, writing statutes directly affecting land use and zoning for childcare 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 childcare centers and family childcare homes to allow childcare 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 childcare home for up to 16 children. Home-based early childhood care and education facilities are considered 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 childcare home more restrictive than those imposed on other residential dwellings in the same zone.
- ◆ Requires local governments to allow childcare 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 childcare center in an area zoned for commercial or industrial use that are more restrictive than those imposed for other uses in the same zone.



The bill and subsequent changes to state law were not consistently obvious to local land use officials in the way most land use bills are because the change to rule is in ORS Chapter 329 – Childcare, not ORS 195, 197, 197A, 227, 215 or other more typical land use rule locations. 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 childcare 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, it's important prior to purchasing or leasing a property to ensure it can be used for the intended purpose, which can often require substantial due diligence at a high cost. Doing so can also take time, during which landlords or sellers 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 parcel, and what on and off-site improvements or permits might be required.
 - » **Building plans:** Childcare 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.
 - » **Studies:** Providers may need to commission various studies or inspections to understand what upgrades or requirements the property may need, such as tests for asbestos or environmental impacts.
 - » **Cost estimates:** Providers often must commission cost estimates for the work once they understand the range of upgrades required by the local jurisdiction and childcare licensing agency. Studies to estimate a project's total cost can be thousands of dollars.
- 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.**

The upfront research on a property requires a significant investment of time, research, and resources to ensure its suitability for childcare. 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.

LOCAL CODE REVIEW

House Bill 2727 requires the work group to develop recommendations that support the expansion of early learning and care facilities in this state, and 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 also utilized 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 childcare 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 childcare homes. More restrictive definitions also disincentivize registered family childcare providers from expanding their business to certified family homes, as they would have to invest time and money to meet new requirements to only enroll a few more children, rather than up to 16 as allowed by state licensing.

**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 early childhood care and education development and expansion. Jurisdictions typically 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.

This misalignment can create confusion for providers attempting to conduct their own preliminary research and 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. It may also be that local staff are unaware of conflicts with state law as well as the differences in statutory obligations of zoning and building departments.

Zoning - 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 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 care by right in residential zones and centers by right in commercial and industrial zones to eliminate lengthy conditional use or other special processes. However, many jurisdictions have yet to revise their codes to reflect updated laws, creating confusion when trying to understand the process a childcare 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 onsite departments and others may still be required following confirmation of zoning use being permitted outright. This is discussed further below.

LOCAL CODE REVIEW

Family Childcare Homes

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

LOCAL CODE REVIEW (CONTINUED)

Childcare Centers

In residential zones:

- ◆ All five jurisdictions allow childcare centers in residential zones but only as a conditional use in all or most zones.

In commercial zones:

- ◆ Three jurisdictions, Clatsop County, Bend, and Portland, allow childcare centers by right in all commercial zones.
- ◆ Two jurisdictions, Coos Bay and Benton County allow childcare centers (either by right or conditionally) in some commercial zones, but not all.

In industrial zones:

- ◆ Clatsop County allows childcare centers by right in all industrial zones.
- ◆ Bend and Portland allow childcare centers (either by right or conditionally) in all industrial zones not designated as heavy industrial.
- ◆ Coos Bay and Benton allow childcare 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.⁵

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.

⁵ Throughout this report, the term "special procedures" is used to refer to additional regulatory or design requirements that childcare facilities must navigate beyond the standard processes for developing a new facility, including but not limited to the conditional use process.

Conditional use permits⁶ 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 these proposals, 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.

As part of the process, providers may also need to meet additional land use requirements, which could include:

- ◆ Providing engineering plans or other documentation
- ◆ Specific site design standards
- ◆ Operating limitations
- ◆ Additional studies, such as traffic, infrastructure, or environmental impact studies
- ◆ Additional systems development charges
- ◆ Environmental protection measures
- ◆ Public infrastructure and utility improvements
- ◆ Street and sidewalk improvements or accessibility upgrades

Conditional use permit packages require substantial effort to prepare and can have lengthy timelines relative to other permit processes, with no guarantee that they will eventually be issued a permit or that they will be able to meet the conditions placed upon the project. These 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 whose may not be fluent in English.

CHILDCARE IN CHURCHES

Providers shared that churches are often well set up for childcare — many have existing childcare programs offered during church services and have 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 childcare as a permitted use on the site.

⁶ Although not independently addressed in the report, Non-Conforming 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.



Permit Timelines

A variety of factors influence the timeline for developing a childcare 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,

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.

such as site plan review and building permits, and occasionally special review processes like a conditional use that acts as an extra level of review in the development process. 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.

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.

Many other factors can cause a project to extend beyond the required timeline to reach a decision, including:

- ◆ **Notice of application:** Jurisdictions may require mailed notice of the land use application to property owners within a certain distance of the application site. Notices often have an invitation for written public comments on the proposed application.
- ◆ **Neighborhood meetings:** Jurisdictions may require developers 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.

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. Oregon has set review times for making land use decisions, but there is no guarantee that these limits are strictly followed.

LOCAL CODE REVIEW

All five jurisdictions represented in the work group require conditional use permits for childcare 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 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 public hearing. The appeal process is the same as for a Type II decision.



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.

Zoning Permit Application Requirements and Fees

.....

**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.**

.....

Application requirements can vary significantly by jurisdiction, project scale, and procedure type. Requirements can include site plans, architectural drawings, environmental impact assessments, traffic studies, utilities and stormwater management plans, and Land Use Compatibility Statements.⁷ Throughout permitting, providers will also need to pay multiple review and application fees beyond the actual zoning permit fee. For example, the provider will likely need to pay fees for the hours different departments spend reviewing their applications, any special assessments, and the costs of any public hearings. In general, the more complicated or

lengthy a land use process is, the greater the cost to the provider.

To comply with land use requirements, the provider may also need to pay Systems Development Charges, or SDCs. These are fees imposed by jurisdictions to cover the potential infrastructure and service costs created by the new development (such as parks, water pipes or sewer systems use). Some common types of SDCs are water, sewer, stormwater management, transportation, parks and recreation, schools, and public safety SDCs. These charges can total up to tens of thousands of dollars and can be difficult to predict at the beginning of a development project.

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 within, or outside of, an Urban Growth Boundary (UGB) and its specific zoning designation. This has caused some complexity for local jurisdictions implementing HB 3109.

Oregon is a managed growth state. Urban Growth Boundaries (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,

⁷ 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.



commercial areas or public infrastructure. Outside the boundary, restrictions protect farmlands and forests, and development is limited.

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 childcare facilities in 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 areas, inside the UGB:** Family daycares are allowed by right without land use review or 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 areas, inside UGB:** Childcare 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 areas, outside UGB:** Family childcare 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 area, outside UGB:** Childcare centers are allowed, typically with a site plan review, and sometimes through conditional use review.
- ◆ **Farm/Forest zones, outside UGB:** Family childcare homes are often allowed via a home occupation permit, which might be a Type I or Type II review depending on the county and building type. Childcare 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.

The location of a childcare facility within or outside of a UGB and its zoning designation can have significant implications for its development.

- ◆ **Permitted Use:** In rural areas, childcare facilities may not be permitted at all in certain zones, such as farm use or forest zones or they may more often require special approvals or circumstances since development is intended to be very limited outside the UGB.



- ◆ **Development and Design Standards:** While urban zones may more broadly allow childcare 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 childcare 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, 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 childcare home *unless* the unit shares a wall, floor or ceiling surface in common with another unit, potentially limiting multifamily family care homes.⁸ Community outreach with both regulators and providers revealed that this regulation is not common knowledge and many still perceive community associations as a major barrier for in-home childcare in detached units.

📍 LOCAL CODE REVIEW

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

- ◆ **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.
- ◆ **Public improvement requirements:** In addition to system development charges, many jurisdictions require projects to make upgrades to public infrastructure as part of the

⁸ [ORS 94.779](#) Unenforceability of certain irrigation requirements and restrictions on family childcare, [ORS 100.023](#) Voice and unenforceable provisions of condominium governing document



land use permit. 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 CODE REVIEW

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 towards 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](#)

Summary of Implications

Gaining a preliminary understanding of the range of permits or upgrades a site will require to comply with zoning and development regulations can take significant time and money. However, providers shared that much of this upfront 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 experiences of receiving conflicting information from different officials and departments and being faced with unexpected costs or procedures far into the process,

“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. 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.”



even after spending significant time and money on due diligence.

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

“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 childcare specialist [...] there was little support.”

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 or home-based care facility. ►

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 by lack of awareness of changes made to state law, and fail to administer the state regulations, the provider would need to appeal the land use denial 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.

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

Special permitting processes can introduce significant time, costs, and risk into the development process, especially for smaller or less resourced providers. ►



“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.**”

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

The location of a childcare facility within or outside of an Urban Growth Boundary (UGB) and its zoning designation significantly impact its development. ►

In rural areas, childcare facilities may face more restrictions on permitted uses and require additional approval processes. In contrast, urban zones may allow childcare 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 childcare business.



3. Licensing Requirements & Building Codes

CHAPTER 3 OVERVIEW

Early Childhood Care and Education facilities must meet the building requirements of multiple regulatory agencies. This chapter describes the following elements:

- ◆ Department of Early Learning and Care building requirements for licensing.
- ◆ Building code requirements and process, including building permits, use and change in occupancy.

CHAPTER 3 KEY TAKEAWAYS

Providers universally highlighted building codes and permits for new facilities as well as required renovations as a major development barrier. 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.

- » **Licensing requirements:** The Department of Early Learning and Care's building requirements for licensing can impose major renovation costs and limit the available inventory of suitable spaces.
- » **Significant costs:** Building upgrades required to comply with building codes can be extremely expensive and in some cases, unpredictable.
- » **Changes of occupancy:** 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.
- » **Regulatory discrepancies:** Providers experienced disconnects between the building department, other inspecting agencies, and licensing requirements, which can result in additional costs, construction delays, and renovation needs.



The building of an early learning and care facility is generally regulated by two sets of requirements: licensing requirements set by the Department of Early Learning and Care and the local building code.

The building (rather than the site) of an early learning and care facility is typically governed by two primary sets of requirements:

- ◆ Licensing requirements: These are established and enforced by the Department of Early Learning and Care to ensure that the facility meets the necessary standards for providing safe and quality care to children.⁹
- ◆ Local building codes: These are regulations set by the local jurisdiction that specify the minimum standards for the design, construction, and operation of buildings to ensure public health, safety, and general welfare. Childcare 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. Local jurisdictions must, at a minimum, adopt the state building code. While most local jurisdictions only adopt the state building code, some add additional requirements to address location-specific issues. Building codes are typically administered by a jurisdiction's building division or building department, who have little discretion over how the code is applied.

Department of Early Learning and Care Licensing Requirements

The Department of Early Learning and Care establishes licensing requirements for childcare facilities, which include rules regarding building amenities and characteristics. All early childhood care and education facilities must meet these building requirements as part of the licensing process.¹⁰ These requirements can relate to building code requirements but are administered by the Department of Early Learning and Care, not a local building department. However, the Department of Early Learning and Care does require providers to pass certain inspections before obtaining a license. These inspections are carried out by other agencies such as the fire marshal and environmental health specialist for the local jurisdiction and verified by the Department of Early Learning and Care.¹¹ These inspections are summarized below in Exhibit 1.

⁹ Department of Early Learning and Care requirements are outlined in the Oregon Administrative Code, Chapter 414.

¹⁰ Full Department of Early Learning and Care Requirements can be found in the Appendix.

¹¹ Full requirements are located in the Appendix.



Exhibit 1: 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">• <i>Submit building plans to DELC for approval</i>	<ul style="list-style-type: none">• <i>Inspection by local fire marshall.</i>	<ul style="list-style-type: none">• <i>Inspection by environmental health specialist</i>	<ul style="list-style-type: none">• <i>Water testing by drinking water laboratory</i>

Source: The Department of Early Learning and Care

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 through the development process and some only becoming involved once the facility is approved by the local city or county and essentially ready to open. The later a Department of Early Learning and Care inspector gets involved, the more risk the provider might not pass the Department of Early Learning and Care inspection and have to do additional renovations and delay opening.

Building Requirements for Licensing

Building requirements for licensing can limit the number of suitable spaces for childcare facilities and result in major renovation costs to meet requirements. Renovations can result in the need for additional inspections from the building department and other inspecting agencies, adding cost and time. Even if providers can afford to renovate a building to meet Department of Early Learning and Care licensing requirements, providers pointed out that finding a potential space able to meet key licensing requirements, particularly sufficient outdoor space, can be very difficult. In particular, providers and architects identified outdoor space, sanitation requirements, fire codes, and mitigation of hazardous materials as Department of Early Learning and Care building requirements that often impose the greatest barriers to development.

OUTDOOR SPACE

Childcare centers and Certified Family Care Homes must provide at least 75 square feet of outdoor space per child, as well as play equipment with safe fall zone areas, access to shade,

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

and fencing at least four feet high. For centers, providers emphasize that it can be very difficult to find a potential center location with enough area 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. While providers can submit an alternative proposal to the Department of Early Learning and Care to use nearby park or school outdoor space, these spaces may not meet Department of Early Learning and Care licensing standards for play equipment, fencing, and safety.

FIRE SAFETY

Regardless of whether the provider does any renovations, the Department of Early Learning and Care requires providers to meet building code fire requirements and pass a fire marshal inspection. Fire safety requirements for childcare facilities vary depending on the type of daycare and the building they occupy. These requirements consider factors such as the age and number of children served, the layout and size of the facility, and whether the daycare operates in a dedicated building or a shared space. Early childhood care and education facilities must meet the state building code for fire safety:

- ◆ Early childhood care and education centers generally must install sprinklers unless either a) all rooms are on the ground floor *and* have an exterior exit door or b) are under 5,000 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.
- ◆ Childcare homes must either install an automatic sprinkler system *or* provide proof that the facility has safe and accessible ground floor exits.¹²

While acknowledging their necessity, providers and architects reported that fire codes 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 codes as a barrier.

Fire code requirements can also be a major barrier to providers in multi-story buildings. While all providers can provide childcare on higher floors if also connected to childcare on the ground floor (such as in a two-story home), they would need to install sprinklers on the upper floor to meet fire safety requirements. Home-based providers can technically provide childcare in an upper story unit if they obtain a change of use to either Group E or Group I-4; however, they also have to install sprinklers.¹³

¹² 2022 Oregon Structural Specialty Code, [Section 420.12](#)

¹³ Group E uses over 5,000 square feet and all Group I-4 uses require sprinkler installation; while Group E uses under 5,000 square feet would not require sprinklers, the provider would not be able to care for children under 2.5 years of age unless they changed to a Group I-4 occupancy.



SANITATION

The Department of Early Learning and Care requires providers to have one toilet per 15 children over the age of three, and one toilet per 10 children aged 24 to 35 months. For every two toilets, providers must provide a handwashing sink. If facilities expand, providers

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

will have to add additional toilets and sinks to meet the child to toilet ratio requirements. Architects reported that installing additional facilities can require major plumbing renovations, and providers shared that there are limited buildings (both residential and commercial) that are already equipped with sufficient plumbing capacity. In addition, many facilities may not have enough

space to add additional restrooms while also maintaining space requirements for classrooms.

Rural homes and facilities relying on septic systems to meet wastewater needs are subject to compliance with OAR 340-071-0205, requiring the provider to seek approval of an Authorization Notice, from their county onsite wastewater program, acknowledging the change in occupancy and confirming sufficient capacity of the system. This administrative rule evaluates wastewater needs of early learning and care facilities comparable to that of a school. Many 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.

KITCHENS

Early childhood care and education centers must have a commercial kitchen to prepare meals and comply with USDA food program requirements, which includes proper ventilation, grease traps, separate handwashing/food preparation sinks, and required appliances. These requirements can significantly increase construction costs due to the need for these specialized systems. Commercial kitchens also require dedicated space within the facility, which may reduce the available space for classrooms or other learning areas and impact the overall design and layout of the center. Family childcare homes are exempt from commercial kitchen requirements, but certified family care homes cannot count kitchen space towards indoor activity space requirements. This may limit area available in a home for childcare activity space if the kitchen is located on the first floor.

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

In addition to the Department of Early Learning and Care's licensing building requirements, providers will need to work with the local jurisdiction to confirm the building's occupancy, apply for and receive permits for renovations, undergo inspections, and obtain a final Certificate of Occupancy to use the building.

Building Permits

If the provider is building a new facility or renovating an existing building, they will need to acquire a building permit prior to any construction. Depending on the scale of the project, they will likely need to obtain additional permits such as site development, electrical, and plumbing permits.

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

- ◆ **Building plans:** The provider will first need to hire an architect and/or an 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 appropriate office (likely 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 project meets all applicable codes and standards.
- ◆ **Certificate of Occupancy:** Once the project passes final inspections the building department will issue a Certificate of Occupancy, allowing the building to be used. 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.

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.

Discrepancies Among Regulatory Agencies

Many providers shared experiences of disconnects between the building department and other inspecting agencies; for example, one provider shared that while the fire marshal approved their facility without sprinklers, the building department required them. Providers also noted that there is no easily accessible fire code, so it can be difficult to understand what is required to comply, often resulting in multiple rounds of upgrades and inspections. Providers shared that in addition to the initial cost of installing sprinklers or other fire safety



upgrades, uncertainty around fire code requirements can result in additional costs and construction delays to redo fire upgrades.

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

Some providers and architects also highlighted discrepancies between licensing and building codes. In particular, architects referenced sanitation requirements: per the building code, bathrooms must be fully enclosed with separate facilities per person.¹⁴ 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.¹⁵ Architects shared that the building code also conflicts with best practices for

bathrooms in childcare facilities (which include more open toilet rooms, especially for younger children), but there is often little room for flexibility in the building code.

Building Occupancy and Change in Use

The primary use of a building, formally designated as its occupancy classification, significantly influences the applicable building code standards and requirements that must be met. Per the 2022 Oregon Structural Specialty Code, there are ten different occupancy groups and early childhood care and education facilities are classified under three.¹⁶

- ◆ **Education Group E, day care facilities** include buildings occupied by more than five children older than 2½ 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 childcare facilities located within a dwelling.

The International Building Code does *not* allow home-based childcare with more than five children enrolled to be classified as Group R-3; all childcare 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 of care for in-home care facilities, moving Group R-3 facilities to the commercial building code and requiring sprinkler systems for fire safety. However, following additional stakeholder 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.

¹⁴ 2022 Oregon Structural Specialty Code, [Section 1210.3 Privacy](#)

¹⁵ Oregon Administrative Rules, 414-305-0400 Staff-to-Child Ratio and Group Size,

¹⁶ 2022 Oregon Structural Specialty Code, [Chapter 3 Occupancy Classification and Use](#)



Currently, Group R-3 early childhood care and education facilities fall under the Residential code *if* they are located within a detached one or two-family dwelling or townhouse.¹⁷ However, as a compromise between the residential and commercial code, these R-3 buildings will still need to meet certain fire and accessibility requirements from the commercial code, including locating childcare areas of the home at grade level with an exit. So, while ORS329A.440 mandated that family childcare homes be treated as a residential use under land use regulations, providers are still subject to some of the building code requirements of commercial uses.

CHANGE IN OCCUPANCY

A change in the building's use (for example, a Group A [assembly, such as a church] building becoming a Group E building) requires a change of occupancy analysis and approval by the building department. A change of occupancy is most commonly required for early childhood care and education centers (rather than residential facilities) because most homes are already a residential use. However, if an early childhood care and education facility 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. 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 building department showing that the upgrades will comply with the current life safety requirements of the Oregon Structural Specialty Code for that group. Following construction, the building department will do an inspection and issue a new certificate of occupancy if approved.^{18 19} Major requirements for a change to groups E or I-4 include:

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

- ◆ **Sprinklers:** Adding a sprinkler system for group E areas greater than 5,000 square feet and all group I areas, unless every room is on the ground floor and has at least one exterior exit door.
- ◆ **Seismic:** Changes in a building's use could result in being assigned to a higher risk category, and the building will be required to satisfy the seismic requirements for the new risk category.²⁰ Buildings containing either Group E or I-4 occupancies are generally in risk category three of four, along with "other structures that represent a substantial hazard to human life in the event of failure" including high occupancy buildings, medical facilities, and public utility facilities. Because early childhood care and education facilities are in a higher risk category than many other uses, changes of

¹⁷ 2022 Oregon Structural Specialty Code, [Chapter 3 Occupancy Classification and Use Section 310.4.2](#)

¹⁸ Oregon Structural Specialty Code, Section 34.10

¹⁹ Regional Solutions & Early Learning Division Childcare Workgroup Executive Summary (January 2020)

²⁰ The Department of Early Learning and Care, [The Certified Family License](#) (2024)



use can often trigger cost prohibitive seismic upgrades for early childhood care and education facilities.

- ♦ **Accessibility:** In addition to life safety requirements, both group E and group I are subject to accessibility upgrades, including parking, entrance and building routes, hardware and controls, restrooms and common use areas.

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 retrofits 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 childcare.

Historical use and occupancy classifications can be very difficult to find documentation for, so providers may not be able to easily find out if the building will require a change of occupancy or show proof of the current occupancy classification, even if the building has previously been used for childcare. 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.

Summary of Implications

The Department of Early Learning and Care’s building requirements for licensing can impose major renovation costs and limit potential spaces. ►

Even if providers can afford to renovate the building to meet Department of Early Learning and Care licensing requirements, providers pointed out that finding a potential space that could meet licensing requirements, particularly outdoor space requirements, can be very difficult. In addition to open space requirements, providers highlighted fire safety, accessibility, and sanitation requirements as major barriers to finding or updating a space.

Building upgrades required to comply with building codes can be extremely expensive and unpredictable. ►

Providers emphasized the challenge of accurately predicting total project costs. Beyond the substantial upfront capital required for securing a site and building renovations to meet licensing requirements, providers face other costs and potential delays arising from necessary upgrades, inspections, and occupancy paperwork to comply with state and local building codes. These setbacks can significantly postpone the

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.



facility's opening date, putting the provider at risk of lost revenue, difficulty meeting loan repayment obligations, and jeopardizing grant funding.

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. ►

“Childcare 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.”

Providers consistently pointed to changes of occupancy as a limiting factor for development. However, because of the limited number of potential 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. This may include engaging an architect to create new building plans, undergoing multiple rounds of plan reviews, making substantial building upgrades, and completing inspections. Moreover, providers expressed that simply determining whether a building requires a change of use can be a

challenging and expensive endeavor in itself.

Providers experienced disconnects between the building department, other inspecting agencies, and licensing requirements, which can result in additional costs, construction delays, and renovation needs. ►

Providers reported challenges navigating the regulatory landscape for childcare facilities, including disconnects between the building department and other agencies. Some conflicts are between the building department and other building inspection agencies, such as the planning department, the fire marshal or environmental health department, resulting in difficulties understanding and meeting requirements. Other conflicts arose between the building department and Department of Early Learning and Care licensing regulations, potentially requiring additional or more costly renovations. Overall, varying interpretations and requirements among departments increases the risk of failing various inspections leading to additional costs and delays in opening.

“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.**”



4. Regulatory Framework in Action

This section provides both hypothetical scenarios and actual case studies to demonstrate the real-world impact of regulations on childcare providers. From zoning and licensing issues among other challenges, these scenarios reveal the complexities of regulatory compliance for childcare 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 childcare business based on the type of license and facility, including:

- ◆ Opening a new childcare 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 major barriers providers might encounter in these common circumstances, rather than a comprehensive look at the development process.

Starting a New Childcare Business

Engagement with providers provided 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 childcare providers may face when opening a new in-home or center-based facility.

FAMILY CHILDCARE HOMES

Providers often face several challenges when opening a registered or certified family home. Challenges more often relate to meeting building requirements required through the Department of Early Learning and Care, which can trigger state and local building code requirements as well.

- ◆ **Opening a childcare facility in a current residence:** A provider would need to verify their property is properly zoned for the childcare 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 your property is not located in a residential or commercial zone, you may need to apply for a conditional use permit if the in-home childcare is allowed conditionally within the zone. After zoning is confirmed, the provider must also confirm the requirements of all other permitting and licensing agencies.

- ◆ **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 childcare meets building requirements. Key requirements to verify include ensuring there is enough classroom and outdoor space per child and that sanitation (primarily toilets and sinks), fire safety, and accessibility standards can be met. If the home and space do not meet Department of Early Learning and Care requirements, the space will need to be renovated to comply which will likely require a building permit. If the cost to renovate is too high, the provider may need to look for another space that better meets licensing requirements.
- ◆ **Separation of uses:** Providers might find it more desirable to separate the private living area from the in-home childcare business. This scenario might arise more often when the homeowner is renting out the living unit to another provider or resident. State and local building codes typically do not allow a single residential unit to be divided into two separate uses, such as a residence and a daycare. The building code considers the structure as a whole, and it must comply with either residential or commercial building code requirements in its entirety. For example, the home could not have two separate full kitchens and the structure would need to comply with ingress and egress requirements.
- ◆ **Renting a home to open a childcare business:** If a provider is renting a home and would like to utilize it for childcare, 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 childcare in rental units, community outreach revealed that many landlords prefer not to lease to childcare providers, citing building upgrades, noise, wear and tear, or liability risk.
- ◆ **Building code compliance review:** The provider would need to have the building official sign off on compliance with R-3 occupancy fire safety and accessibility requirements. In many cases, this will require the provider to get a building permit and pass a building department inspection.
- ◆ **Capacity limits:** Oregon's childcare licensing division imposes a limit of 16 children for in-home childcare facilities, regardless of the home's size or the provider's capacity to care for more children. Any childcare operation seeking to accommodate more than 16 children must become a certified childcare center. Many in-home childcare 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



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

CHILDCARE 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 childcare home, it is very unlikely that the home would be able to 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 childcare center.

- ◆ **Locating a *site* zoned for a childcare center:** A provider would need to consult the jurisdiction's zoning code or staff to see where childcare centers are allowed by right. If a provider is not able to find an available property zoned for childcare by right, they may need to settle on a property that allows childcare 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 childcare 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 childcare 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 and other amenities; 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 since 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 childcare it may lack essential *licensing* requirements (such as adjacent open space, sufficient plumbing or a commercial kitchen) and still require major renovations or be entirely unsuitable. While some buildings have allowances for



tenant improvements, the amount available will vary by property. Additionally, providers shared experiences of difficulty finding a landlord to lease to them, citing building upgrades, noise, wear and tear, or liability risk.

Some providers, with enough time and access to capital, will be able to overcome these challenges, but they are often insurmountable for many, particularly first-time providers. Combined with zoning requirements, building code 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, and at least 75 square feet of outdoor activity space per child, as well as 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 children.
 - While registered family homes only need two useable exits per floor, certified family homes must have at least two useable exits per room.
- ◆ **Additional staff:** One provider can only care for up to 10 children at once, so a provider looking to expand will need to hire additional staff. If more than three children are under the age of two, the provider will need to hire two more providers, and if more than nine children are under two the provider will need three additional providers.
- ◆ **Experience limitations during the first year:** Unless the registered care provider has 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.²¹ Unless the provider’s home already meets Department of Early Learning and Care requirements for certified family care homes, upgrade costs 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.

²¹ The Department of Early Learning and Care, [The Certified Family License](#) (2024)



Multiple Family Care Homes

Discussions with childcare providers revealed that instead of attempting to open a single larger childcare center, many opt to establish multiple registered or certified in-home daycares across several housing units. This approach allows providers to expand their business without navigating the complexities and regulations associated with opening a dedicated childcare center. Many providers shared that running only one registered or certified family childcare 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 more sustainable business model. As an intermediate solution, providers may look to rent or own additional homes to be used for childcare.

Owning multiple family childcare homes can come with additional licensing and building code challenges. For example, registered family care homes must be in the same residence as the licensed provider.²² Because the provider cannot live in multiple homes, they would need to hire additional staff to both live and work in the childcare homes, which limits the pool of staff to hire. In addition, the residential and childcare portions of the homes cannot be fully separated in order to meet the residential building code (as discussed above).

Case Studies in Oregon

The following case studies, drawn from experiences of childcare providers and architects, offer tangible examples of the challenges faced in starting or expanding childcare 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 childcare in Oregon.

Note: The project team is working to identify and detail two additional case studies to be presented in the final report.

²² ²² [ORS 414-205-0035](#): The home in which childcare is provided must be the residence of the provider.



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

OREGON CHILD DEVELOPMENT COALITION (OCDC) JOSE PEDRO CHILDCARE FACILITY

- » **Type of provider:** Early and Migrant Head Start Childcare 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 onsite commercial kitchen, indoor studios for the preschool age children, outdoor creative play areas for age-appropriate play spaces, and onsite office space for approximately 25 site and countywide childcare 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 childcare onsite 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 childcare). 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 childcare 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, onsite 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 childcare services more difficult than uses that are permitted outright or with prescriptive limitations in place.



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

OREGON CHILD DEVELOPMENT COALITION (OCDC) HERMISTON HEAD START FACILITY

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

The Oregon Childcare 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 that 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 childcare 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 childcare 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 preschooler 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.

Without better guidance in the State Building Code, local officials must review and approve any deviation from a strict adherence to the code requirements for toilet room designs for childcare 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 childcare 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 CHILDCARE HOMES ONTO A SINGLE SITE

FOUR DAYCARES ON A SINGLE LOT

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

Two Portland-based childcare 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 childcare center. They identified a promising space where a childcare 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 such as two duplexes, where teachers would reside in one unit and utilize the other unit for childcare. At the time the city did not allow for a residential unit to be utilized only for childcare; 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, but 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 the building code also prohibits a residential unit from having two full



kitchens, so the classroom is limited to a kitchenette which does not include a kitchen range.

- ◆ **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 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.
- ◆ **Navigating commercial fire code exemption:** During construction of the triplex, the fire code was changed to move in-home daycares into the commercial code which would require sprinklers and other costly fire safety requirements. However, the providers were ultimately able to navigate a new local exemption process by hiring a building code consultant. This added unexpected costs to the project while it was already under construction.
- ◆ **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.

The provider shared a few helpful regulatory and process details that helped them navigate this challenging process:

- ◆ **Childcare city liaison:** There was a staff person working for the City of Portland that acted as liaison with DELC, who was particularly helpful when navigating the fire code exemption.
- ◆ **Parking requirements:** Since the site was located near frequent transit, no on-site parking for the home or the childcare was required which allowed them more building and play area.

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 likely incurred more costs compared to buying or leasing a suitable center space.



5. Potential and Actual Disparate Impacts

CHAPTER 5 OVERVIEW

House Bill 2727 requires the work group to examine how zoning regulations, state and local building codes and permitting practices inhibit new and expanded childcare 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 including but not limited to 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
- ◆ Childcare centers in religious institutions
- ◆ Impacts of homeownership by race and ethnicity in Oregon

Starting or expanding a childcare 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 childcare 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 childcare in Oregon. A study by the Urban Institute on the childcare patterns of White, Black and Hispanic children found differences in the types of childcare 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 childcare *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 childcare.²³

SUMMARY OF SURVEY DEMOGRAPHICS

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), 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 childcare 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 childcare 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 towards 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 childcare facilities in Oregon.

Local Staff Capacity and Technical Expertise

Local staff capacity and technical assistance plays a crucial role in helping childcare providers navigate the complex process of establishing or expanding their facilities in an efficient manner. However, access to knowledgeable staff with capacity to assist provider varies greatly

²³ The Urban Institute, [Caring for Children of Color: The Childcare Patterns of White, Black, and Hispanic Children under 5](#) (2006)



across different regions and localities. Engagement with local regulators, including city and county staff, discussed some experience with informally designating staff members who specialize in the intricacies of childcare facility development from the variety of development angles, including land use and zoning, building code and state childcare 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 childcare facilities and 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, such as Multnomah, Deschutes, and Washington Counties. 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 waitlists 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 childcare training and childcare 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 childcare businesses for some communities.

Childcare Centers in Religious Institutions

Center-based childcare 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 childcare centers across the country and Oregon as well. 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, in both 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 daycares have different use and occupancy thresholds and requirements, which means that creating a dedicated space for a daycare 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 daycare use classification.

The barriers faced by center-based childcare programs overall may disproportionately affect Black families, who rely more heavily on these programs for childcare. Additionally, the

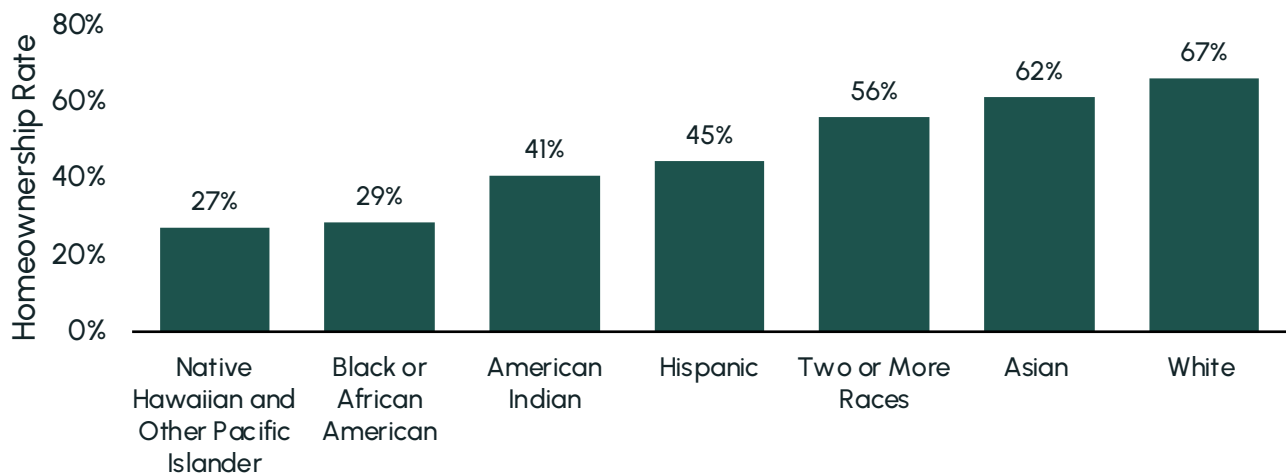


barriers for centers in religious institutions greatly impact families who seek childcare opportunities connected with their religious communities.

Homeownership Rates Among BIPOC Households in Oregon

Homeownership plays a crucial role in the establishment of home-based childcare businesses in Oregon. Survey results showed that 77 percent of respondents that were home-based childcare 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 in Oregon have the lowest homeownership rates, as shown in Exhibit 2 below, limiting the opportunity to start in-home childcare businesses.

Exhibit 2: Rate of Homeownership in Oregon



Source: 2021 1-year PUMS

The barriers faced by childcare providers seeking to start a childcare 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 childcare industry. If the homeownership gap persists, BIPOC households will continue to face significant obstacles and disproportionate impacts in starting and operating home-based childcare businesses.



6. 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 childcare facility establishment and expansion. Acknowledging these interconnected barriers is crucial for developing comprehensive strategies to support childcare 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 childcare providers. Low wages, limited benefits, and high turnover rates have made it difficult for childcare business owners build a stable and skilled workforce.
- ♦ **Funding:** Insufficient funding, complicated grant requirements, and a lack of sufficient government subsidies can make it challenging for childcare providers to cover capital investments and on-going operating costs.
- ♦ **Mental health and well-being:** Childcare 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 childcare 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 childcare facilities across the state.

Developing recommendations will involve further engagement with key community members including childcare 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



Appendix A: Jurisdiction Research

City of Coos Bay

Key Findings

- ◆ Across childcare 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 childcare 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 3: City of Coos Bay Land Use Allowances

	RESIDENTIAL				COMMERCIAL			INDUSTRIAL			INSTITUTIONAL
	SLR	LDR	MDR	C	MX	WH	HP	I-C	W-I	MP	UPD
Childcare facility for <13 children	P	P	P	P	P	P		P			
Childcare facility for >14 children	C	C	P	P	P			P			
Educational service	P	P	P	P	C	X		P			P
Home occupation	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

DEFINITIONS²⁴

Childcare 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.

Educational institution: A facility customarily associated with public, private, charter, and/or alternative educational facilities, including nurseries and pre-schools (ages zero through five)

²⁴ City of Coos Bay [Development Code Chapter 17.150 Definitions](#)



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.²⁵

Permits and Procedures²⁶

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 occupations applications are subject to director review using a Type I procedure review, and 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 4: City of Coos Bay Conditional Use Procedures

	TYPE I	TYPE II	TYPE III
Review Authority	Director	Director	Director
Appeal Authority	Planning Commission	Planning Commission	City Council
Notice of application	None	Noticing 20 days prior to director decision	Noticing and public hearing 20 days prior to director decision
Notice of decision	30 days from complete application	120 days from complete application	14 days from complete application
Appeal period	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)

²⁵ Coos Bay [Current Adopted Building Codes](#)

²⁶ City of Coos Bay Development Code [Chapter 17.130 Procedures](#) 17.130.020 Application Types



Notice of appeal decision	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 5: 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 ²⁷
Day care for < 13 children	P	P	P	P	P	P	P*	P*	P	P				P	
Day care center	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

²⁷ Children's Farm Home Subzone



DEFINITIONS

Day care center: an establishment providing specialized group care for 13 or more children.²⁸

LAND USE REGULATIONS

Chapter 91 of the Benton County Development Code outlines specific use standards for day care centers, which must:²⁹

- ◆ 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 childcare building codes.³⁰

Permits and Procedures³¹

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. (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.

²⁸ Benton County Development Code [Chapter 51 Development Code Administration](#)

²⁹ Benton County Development Code [Chapter 91.105 Specific Use Standards](#)

³⁰ Benton County [Building Code](#)

³¹ 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 6: 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
Family childcare home	P	P	P	P	P	P	P	P	P	P				P	P	P	P
Childcare center	C	C	C	C	C	C	P	P	P	P	P	P	P				P

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

DEFINITIONS³²

Childcare center: A childcare facility that is certified by the Oregon Department of Education Office of Childcare as a childcare center.

Family childcare home: A home that is registered or certified by the Oregon Department of Education Office of Childcare to provide childcare 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 childcare 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.³³

LAND USE REGULATIONS

Clatsop County has the following parking regulations for early childhood care and education facilities:³⁴

- ◆ Family childcare homes require no additional parking spaces beyond the two spaces required for the dwelling unit.

³² Clatsop County Code of Regulations [Article 1 – Cover and TOC](#)

³³ Clatsop County Code of Regulations [Article 3 – Structure Siting and Development Standards](#) 3.9570

³⁴ Clatsop County Code of Regulations [Article 3 – Structure Siting and Development Standards](#) 3.0060



- ♦ Childcare 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.³⁵

Permitting Procedures

Permitted uses are nondiscretionary and require a Type I procedure. In general, conditional use requirements for childcare centers in residential zones fall require a discretionary Type II conditional use procedure.³⁶ 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.³⁷

Exhibit 7: Clatsop County Procedures for Land Use Applications

	Type I	Type II	Type IIA
Review Authority	Community Development Director	Community Development Director	Hearings Officer
Appeal Authority	Hearings Officer	Hearings Officer	Board of Commissioners
Notice of application	None	None	Noticing 20 days prior to public hearing
Notice of decision	45 days from complete application	45 days from complete application	45 days from complete application
Appeal period	12 days from notice of decision	12 days from notice of decision	12 days from notice of decision
Notice of appeal decision	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](#)

³⁵ Clatsop County [Building Codes](#)

³⁶ Clatsop County Code of Regulations [Article 4 – Zone Regulations](#)

³⁷ 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 8: City of Bend Land Use Allowances

Zone type	Residential				Comm-ercial	Mixed Use	Indust-rial	Instit-utional	Urban-izable Area District	
Zone	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	
Childcare 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

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

Family day care: See “Registered or certified family childcare home” and “Childcare facility.”

Registered or certified family childcare home means a location where childcare 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 childcare 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 childcare facilities provide care to 13 or more children.³⁸

Building Code

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

Permitting Procedures

Permitted uses are required to be processed through Minimum Development Standards (MDS).³⁹ In this review, city staff will confirm 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.⁴⁰

Exhibit 9: City of Bend Development Review and Procedures

	Type II
Review Authority	Community and Economic Development Director
Appeal Authority	Hearings Officer or Planning Commission
Completeness Check	30 days from application submittal
Notice of application	Minimum of 14 days prior to notice of decision
Notice of decision	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.
Appeal period	Must file the appeal within 12 days of the notice of decision

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

³⁸ City of Bend Development Code Section 3.6.300(J) Neighborhood Commercial Sites

³⁹ City of Bend Development Code [Section 4.4.400](#) Minimum Development Standards

⁴⁰ City of Bend Development Code [Section 4.4.200](#) Conditional Use Permits



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 10: 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
Household Living Uses	Y	Y	Y	Y	N	Y	CU***	N	Y	Y
Daycare	L*	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 daycare 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 DEFINITIONS⁴¹

Daycare: Includes day or evening care of two or more children outside of the children's homes, for a fee. Daycare 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.

⁴¹ Portland City Code Title [33.910 Definitions](#)



Daycare use does *not* include registered or certified family childcare homes as specified in ORS 329A. Registered or certified family childcare 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 CONSIDERATIONS⁴²

- ◆ 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 by 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 11.⁴³ The entire building must be improved to meet the relevant seismic improvement standard below if, relative to the Baseline Occupancy, either:⁴⁴

- ◆ 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 11: 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, E , 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, I-4	

⁴² Portland, [Change of Use or Change of Occupancy](#)

⁴³ Please note that the Relative Hazard Classifications are different from the risk categories established by the OSSC.

⁴⁴ 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” childcare 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 daycare is in a conditional use zone, the provider will need to go through one of the processes shown in Exhibit 12:

- ◆ If the daycare 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 daycare is a new conditional use, it generally falls under a Type III process.

Exhibit 12: City of Portland Land Use Review Procedures

	TYPE II	TYPE III
Review Authority	Bureau of Development Services staff	Hearings Officer, Design Commission, or Historic Landmarks Commission
Appeal Authority	Hearings officer	City Council
Completeness Check	14 days	21 days
Notice of application	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
Notice of decision	28 days from complete application	68 days from complete application
Appeal period	14 days from notice of decision	14 days from notice of decision
Notice of appeal decision	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 B: Department of Early Learning and Care Licensing Requirements

Both childcare 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, hand washing sinks, and fixtures and plumbing in the kitchen. It must also include a description of how each room will be used.
- ◆ **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.⁴⁵
- ◆ **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.⁴⁶
- ◆ **Lead testing:** Both center- and home-based facilities must have the building's water tested for lead by an accredited drinking water laboratory.⁴⁷

⁴⁵ Department of Early Learning and Care [Rules for Certified Centers](#), page 101 (2024)

⁴⁶ Department of Early Learning and Care [Rules for Certified Centers](#), pages 111-121 (2024)

⁴⁷ Department of Early Learning and Care [Lead Testing Instructions](#) (2024)



Appendix C: Building Requirements

Exhibit 13: Building Requirements for Certified Childcare Centers

	SPACE REQUIREMENTS	OTHER REQUIREMENTS
Activity Space (OAR 414-305-0800)	<ul style="list-style-type: none"> At least 35 square feet of activity space per child. 	
Outdoor space (OAR 414-305-0920)	<ul style="list-style-type: none"> Must have at least 75 square feet of outdoor activity space per child. 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. Must have access to shade. Can provide an alternative plan describing how the center will safely provide outdoor access. 	<ul style="list-style-type: none"> Must be fenced off or otherwise enclosed; the fence must be at least 4 feet high with openings no larger than 3.5 inches. 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).
Toilets (OAR 414-305-0800)	<ul style="list-style-type: none"> For children aged 2 to 3 years, must have at least one child-size toilet or toilet with training seat for every 10 children. For children over 3 years, must provide one toilet for every 15 children. 	<ul style="list-style-type: none"> If the toilet is not located in or adjacent to the classroom, the center must submit a written alternative plan.
Sinks (OAR 414-305-0800)	<ul style="list-style-type: none"> Must provide at least one handwashing sink for every toilet. 	<ul style="list-style-type: none"> Handwashing sinks must meet ORS chapter 455 requirements.
Kitchen (OAR 414-305-1100)	<ul style="list-style-type: none"> Must be separate from any childcare areas. 	<ul style="list-style-type: none"> Dishwashing equipment must meet Oregon Health Authority rules.
Plumbing	<ul style="list-style-type: none"> Water must be tested for lead. 	
Exits (OSSC 1006)	<ul style="list-style-type: none"> No more than 75 feet from any exit 	<ul style="list-style-type: none"> Must comply with OSSC Chapter 10 egress requirements
Fire Safety	<ul style="list-style-type: none"> Comply with fire and life safety plans for Group E and Group I occupancies. (OSSC 107.3.5), including sprinklers if Group E over 5,000 square feet or Group I-4. 	

Source: Oregon Administrative Code [Section 414-305](#), OSSC



Exhibit 14: Building Requirements for Registered and Certified Family Care Homes

	REGISTERED FAMILY CARE HOME	CERTIFIED FAMILY CARE HOME
Activity Space	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • At least 35 square feet of activity space for up to 12 children; 50 square feet per additional child. (OAR 414-350-140)
Outdoor space	<ul style="list-style-type: none"> • Must provide a balance of indoor and outdoor play, no space requirements. (OAR 414-205-0090) 	<ul style="list-style-type: none"> • Must have safe access at least 75 square feet of outdoor activity space per child, with a barrier at least 4 feet high. (OAR 414-350-0150)
Toilets	<ul style="list-style-type: none"> • At least one flush toilet available. (OAR 414-205-0100) 	<ul style="list-style-type: none"> • At least one flush toilet for up to 12 children; an additional toilet if up to 16 children. (OAR 414-350-0140)
Sinks	<ul style="list-style-type: none"> • At least one handwashing sink available. (OAR 414-205-0100) 	<ul style="list-style-type: none"> • At least one handwashing sink for up to 12 children; an additional handwashing sink if up to 16 children. (OAR 414-350-0140)
Kitchen	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Does not apply to activity area requirements. (OAR 414-350-0010)
Plumbing	<ul style="list-style-type: none"> • Water must be tested for lead. 	<ul style="list-style-type: none"> • Water must be tested for lead.
Exits	<ul style="list-style-type: none"> • All floor levels must have at least two useable exits, including windows. (OAR 414-205-0110) 	<ul style="list-style-type: none"> • All rooms must have at least two useable exits, including windows. (OAR 414-350-0170)
Fire Safety	<ul style="list-style-type: none"> • In addition to fire extinguishers, and smoke alarms, the home must either have a sprinkler system or demonstrate the home has sufficient exits. (OSSC 420.12) 	<ul style="list-style-type: none"> • In addition to fire extinguishers, and smoke alarms, the home must either have a sprinkler system or demonstrate the home has sufficient exits. (OSSC 420.12)

Source: Oregon Administrative Code [Section 414-350](#) and [Section 414-205](#), OSSC

