PLANNING COMMISSION REGULAR SESSION AGENDA
Monday, April 25, 2022 - 7:00 PM
City Hall, Council Chambers, 169 SW Coast Hwy, Newport, OR 97365

All public meetings of the City of Newport will be held in the City Council Chambers of the Newport City Hall, 169 SW Coast Highway, Newport. The meeting location is accessible to persons with disabilities. A request for an interpreter, or for other accommodations, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder at 541.574.0613, or p.hawker@newportoregon.gov.

All meetings are live-streamed at https://newportoregon.gov, and broadcast on Charter Channel 190. Anyone wishing to provide written public comment should send the comment to publiccomment@newportoregon.gov. Public comment must be received four hours prior to a scheduled meeting. For example, if a meeting is to be held at 3:00 P.M., the deadline to submit written comment is 11:00 A.M. If a meeting is scheduled to occur before noon, the written comment must be submitted by 5:00 P.M. the previous day.
To provide virtual public comment during a city meeting, a request must be made to the meeting staff at least 24 hours prior to the start of the meeting. This provision applies only to public comment and presenters outside the area and/or unable to physically attend an in person meeting.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting.

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1. CALL TO ORDER AND ROLL CALL

Commission Members: Jim Patrick, Bill Branigan, Bob Berman, Jim Hanselman, Gary East, and Braulio Escobar.

2. APPROVAL OF MINUTES

2.A Approval of the Planning Commission Work Session Meeting Minutes of March 28, 2022.
Draft PC Work Session Minutes 03-28-2022

2.B Approval of the Planning Commission Regular Session Meeting Minutes of March 28, 2022.
Draft PC Reg Session Minutes 03-28-2022

3. CITIZENS/PUBLIC COMMENT

A Public Comment Roster is available immediately inside the Council Chambers. Anyone who would like to address the Planning Commission on any matter not on the agenda will be given the opportunity after signing the Roster. Each speaker should limit comments to three minutes. The normal disposition of these items will be at the next scheduled Planning Commission meeting.

4. ACTION ITEMS

5. PUBLIC HEARINGS

5.A File 1-Z-22: Amendments Related to the Implementation of 2021-2022 State of Oregon Land Use Related Statutory Amendments.
Memorandum
Attachment A
Attachment B
Attachment C
Attachment D

6. NEW BUSINESS

6.A Commissioner Lee Hardy Resignation.
Lee Hardy Email

7. UNFINISHED BUSINESS

8. DIRECTOR COMMENTS

8.A File 7-CUP-21-A: City Council Final Order and Decision for the Lincoln County

Animal Shelter Conditional Use Permit.
Notice of Decision
Order 2022-1

9. ADJOURNMENT

***Draft* MINUTES**
City of Newport Planning Commission
Work Session
Newport City Hall Council Chambers by Video Conference
March 28, 2022
6:00 p.m.

Planning Commissioners Present by Video Conference: Jim Patrick, Bob Berman, Lee Hardy, Braulio Escobar, Jim Hanselman, Gary East, and Bill Branigan.

PC Citizens Advisory Committee Members Present by Video Conference: Greg Sutton, and Dustin Capri.

City Staff Present by Video Conference: Community Development Director (CDD), Derrick Tokos; and Executive Assistant, Sherri Marineau.

1. **Call to Order.** Chair Patrick called the Planning Commission work session to order at 6:01 p.m.

2. **Unfinished Business.**

A. **Receipt of Adoption Draft of Newport Transportation System Plan.** Tokos reviewed the executive summary that the TSP Project Advisory Committee had recommended, the upcoming process, and the changes that needed to be done by the end of the process. He noted the maps for the projects would be placed outside of the executive summary because the committee determined they were unnecessary to include in the summary.

Hanselman and East entered the meeting at 6:07 p.m.

Tokos reviewed the additional implementation actions to be taken. Berman pointed out that there would be policy options in a couple of very key areas where the consensus of public input was not in synch with the technical analysis and feasibility studies. This needed to be resolved at some point in the future. Berman felt the Commission needed to be aware that in those particular areas there were options that needed to be considered. Tokos reminded that they would want to reach out as best as they could to make sure the public was engaged as much as possible in the outreach process. People will be able to see the policy options in a more finished and refined form than what they saw in rounds one and two of the previous public outreach.

Tokos reviewed the additional changes that needed to be done before things were completed. He noted that Item 5 was added due to Nyla Jebousek's comments concerning San-Bay-O Circle. This was one thing they could choose to do. They tried to make the language as targeted to those intersections where the neighborhoods had no other alternative route to get onto US 101. Tokos listed San-Bay-O Circle, 73rd Street, and Wade Way as streets that had the same circumstance in the context of Item 5. A project would be added to address this. Tokos reminded that if through the public hearing process they ended up making a change to the Plan they would want to stop and capture it so it was reflected on the document before the Commission made a recommendation to the City Council.

Tokos reviewed the schedule moving forward for the hearings and adoption of the TSP. He then reviewed the project advisory committee recommendation that they made at their last meeting.

Berman commented that as they approached the work sessions and hearings it would be useful to have something higher level than the executive summary that would highlight the areas that were most important and critical to get public input on. He wanted to see the major areas pointed out where they came up with one or multiple solutions that would have a long-term impact. This should be summarized and generalized for the general public so they could understand what they were talking about and what they wanted input from the community on. Tokos thought they could do a one to two page FAQ. He also thought they needed to point out the shared use concept as well as the projects. Hanselman thought that it would be the first time for some people to engage during the public hearings. He liked Berman's suggestion and thought that highlighting areas where there were strong feelings about different options would be useful. Branigan thought they should direct people to the city website to take a look at the high level document beforehand when doing outreach for hearings. This could ameliorate some of the confusion for the public hearings.

Tokos thought that one of the challenges would be to tease out from testimony what the real concern was. They would need to look behind the initial reaction to find out what the core concerns were.

Patrick wanted to know what the existing standards were for shared street standards. Tokos explained the shared street standards were close to what they did have in a number of areas in the city. They were able to call these out in a prior work session to see how the standard they were looking at related to things on the ground. Patrick noted that he was thinking about properties in town, especially where the sidewalks didn't actually exist currently.

Tokos read Carla Perry's comments into the record concerning the TSP.

B. **Draft Housing Capacity Analysis and Production Strategy Public Engagement Plan.** Tokos reviewed the draft copy of the Public Engagement Plan for the Housing Capacity Analysis (HCA) and Housing Production Strategy Project noting it would be shared with the project advisory committee at their first meeting at April 4th. He reviewed the purpose and desired outcomes of the engagement, community engagement groups, the roles and responsibilities, and the project schedule.

Hardy asked at what point would they take a look at local economics and consider livable minimal wage to address the actual houses for affordable housing shortages as opposed to putting on band aids. Tokos noted the socioeconomic conditions of the community would be part of the housing needs assessment. This would happen early in the process to look at demographics and socioeconomic circumstances both current and projected. Hardy asked how this would be documented. Tokos explained it would be a component to the plan itself. The housing needs projection would be a memo that would come out and would be documented on the data sources. The Commission would have a chance to look at this in terms of what data was that they were pulling in and what assumptions they had based on the data. Tokos noted that as a member of the project advisory committee, Hardy would have a chance to question the data that ECONorthwest came up with. Hardy pointed out that the assumptions were what drove the questions and the conclusions were derived from the data. Escobar noted that traditionally the free market addressed the housing needs and what they learned was if they were going to have affordable housing it would need funding from an outside source, mainly the government. Capri agreed that affordable housing was nearly impossible to do without subsidies. He noted that the City could only do so much to upfront the costs of these projects. Escobar noted this dovetailed back to Hardy's concerns that the city needed to have more living wage jobs in order to have housing. Hardy thought they needed trade schools, skill enhancement, a better education system and better parenting. Carpi agreed and questioned how they could fixe these from a planning

standpoint. Tokos noted part of the process was educating the public on what they could and couldn't do.

Berman noted that the list of members on the policy advisory committee didn't show an alternate from Hardy. He wanted to nominate Escobar for this position. Escobar agreed to take on the role as the alternate for Hardy on the committee. Tokos noted the Commission would do a motion to appoint Escobar as the alternate during the night's regular session meeting.

Branigan asked if there would be an opportunity to see what other communities similar to ours were doing, how their projects were moving along, and possibly get insight on what had been overlooked. Tokos noted they would see a bit of this when they looked at strategies discussion. They would start upfront going through a range of strategies they were already pursuing, what had been implemented, and how they were working to see if they needed to make adjustments.

C. Updated Planning Commission Work Program. Tokos noted there had been a couple of hearing items that were shifted on the program schedule. This was a living document that was continually adjusted. Tokos noted that the work program was on the website for the public to see.

3. New Business. None were heard.

4. Adjourn. The meeting adjourned at 6:54 p.m.

Respectfully submitted,

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Sherri Marineau,
Executive Assistant

***Draft* MINUTES**
City of Newport Planning Commission
Regular Session
Newport City Hall Council Chambers
March 28, 2022

Planning Commissioners Present by Video Conference: Jim Patrick, Lee Hardy, Braulio Escobar, Jim Hanselman, Gary East, and Bill Branigan.

Planning Commissioners Absent: Bob Berman (excused).

City Staff Present by Video Conference: Community Development Director (CDD), Derrick Tokos; and Executive Assistant, Sherri Marineau.

1. Call to Order & Roll Call. Chair Patrick called the meeting to order in the City Hall Council Chambers at 7:00 p.m. On roll call, Commissioners Patrick, Branigan, Hardy, Hanselman, Escobar, and East were present.

Chair Patrick requested an addition to the agenda to include a motion to designate a Planning Commission alternate for the Housing Capacity Project Advisory Committee. The Commissioners were in agreement to do so.

2. Approval of Minutes.

A. Approval of the Planning Commission Work Session Meeting Minutes of March 14, 2022.

MOTION was made by Commissioner Branigan, seconded by Commissioner Escobar to approve the Planning Commission Work Session meeting minutes of March 14, 2022 as written. The motion carried unanimously in a voice vote.

B. Approval of the Planning Commission Regular Session Meeting Minutes of March 14, 2022.

MOTION was made by Commissioner Branigan, seconded by Commissioner Escobar to approve the Planning Commission Regular Session meeting minutes of March 14, 2022 as written. The motion carried unanimously in a voice vote.

3. Action Items.

A. Initiate Public Hearings Process for Transportation System Plan Updates.

MOTION was made by Commissioner Escobar, seconded by Commissioner Branigan to the initiate the public hearings process for Transportation System Plan updates. The motion carried unanimously in a voice vote.

5. Public Hearings. None were heard.

6. New Business.

MOTION was made by Commissioner Escobar, seconded by Commissioner Hardy to appoint Braulio Escobar to serve as the alternate Planning Commission representative on the Housing Capacity Project Advisory Committee. The motion carried unanimously in a voice vote.

7. **Unfinished Business.** None were heard.

8. **Director Comments.** None were heard.

9. **Adjournment.** Having no further business, the meeting adjourned at 7:04 p.m.

Respectfully submitted,

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Sherri Marineau
Executive Assistant

Case File: 1-Z-22
Hearing Date: April 25, 2022/Planning Commission

PLANNING STAFF MEMORANDUM
FILE No. 1-Z-22

I. **Applicant:** Initiated by motion of the Newport Planning Commission on March 14, 2022.

II. **Request:** Amendments to Newport Municipal Code (NMC) Chapter 3.2, Affordable Housing Construction Excise Tax; Chapter 14.01, Purpose and Definitions; Chapter 14.03, Zoning Districts; Chapter 14.06, Manufactured Dwellings and Recreational Vehicles; Chapter 14.09, Temporary Uses; Chapter 14.15, Residential Uses in Nonresidential Zoning Districts; Chapter 14.28, Iron Mountain Impact Area; Chapter 14.32, Nonconforming Uses, Lots, and Structures; and Chapter 14.46, Tsunami Hazards Overlay Zone, related to the implementation of 2021-2022 State of Oregon land use related statutory amendments.

III. **Findings Required:** This is a legislative action whereby the City Council, after considering a recommendation by the Newport Planning Commission, must determine that the changes to the Municipal Code are necessary and further the general welfare of the community (NMC 14.36.010).

IV. **Planning Staff Memorandum Attachments:**

Attachment "A" – April 21, 2022 mark-up of revisions to the listed NMC chapters
Attachment "B" – Minutes from the 3/14/22 Planning Commission work session
Attachment "C" – Copies of the 2021/22 Oregon Legislative bills being implemented
Attachment "D" – Notice of public hearing

V. **Notification:** The Department of Land Conservation & Development was provided notice of the proposed legislative amendment on March 21, 2022. Notice of the public hearing was provided in the Newport News-Times on Friday, April 15, 2022 (Attachment "D").

VI. **Comments:** No comments were received in response to the notice.

VII. **Discussion of Request:** During its 2021 regular session, and 2022 short session, the legislature of the State of Oregon adopted a number of land use and related bills amending state laws that are implemented by local governments such as the City of Newport. As a consequence, there are provisions in the Newport Municipal Code that are no longer in sync with these laws. This package of amendments to the Newport Municipal Code implements the 2021 and 2022 legislation so that the City can rely upon its codes in lieu of having to apply the statutes directly. The following is a brief summary of the bills being implemented:

- HB 2008 (2021), requires local governments allow non-profit religious organizations to construct affordable housing on commercial property where it is adjacent to a residentially zoned parcel/lot. Property zoned for industrial use is excluded.

- SB 8 (2021), similar to the above; however, the definition for "affordable housing" is 80% of median family income and it expands the locations where affordable housing must be allowed to include land owned by a public body, including publicly owned industrial sites, and property zoned for public use. Allows cities to prohibit affordable housing on non-residential properties in hazard areas.

- HB 4051 (2022), a technical fix to SB 8 clarifying that eligibility is based on ownership of the property not the housing unit.
- HB 2583 (2021), prohibits local governments from imposing occupancy limits based upon familial or non-familial relationships.
- HB 3261 (2021), requires local governments allow hotels and motels to be converted for affordable housing or emergency shelter use. As with SB 8, the City can prohibit conversions in hazard areas.
- HB 3109 (2021), requires local governments allow child care centers in all commercial and industrial zones, except heavy industrial zoned areas.
- HB 2607 (2021), provides that construction excise taxes cannot be applied to residential housing being constructed to replace housing destroyed or damaged by natural disaster.
- HB 2809 (2021), requires that local governments allow a recreational vehicle on a lot/parcel where the dwelling has been destroyed or damaged by natural disaster.
- SB 405 (2021), prohibits local governments from barring the reestablishment of a non-conforming use due to discontinuance if a state or local emergency order limits or prohibits reestablishment of the use.
- HB 4064 (2022), allows siting of prefabricated structures in mobile home or manufactured dwelling parks. It also limits the standards local governments may apply to the siting of manufactured homes and prefabricated structures in residential areas outside of parks.

The Planning Commission met in a work session on February28, 2022 to review the above referenced bills and an outline of potential Newport Municipal Code changes to implement the legislation. They then reconvened at a March 14, 2022 work session to review a detailed set of the Municipal Code revisions. A mark-up copy of the proposed code changes, including the rationale for each, is enclosed (Attachment "A"). Minutes from the Commission's 3/14/22 work session and copies of the legislation being implemented are also included as Attachments "B" and "C".

VIII. **Conclusion and Recommendation:** The Planning Commission should review the proposed amendments and make a recommendation to the City Council as to whether or not they are necessary and further the general welfare of the community. This would be done by motion and vote of the Commission members present. The Commission recommendation can include suggested changes to the proposed amendments. If the Commission is not prepared to make a recommendation, or desires additional information before it does so, then it may continue the hearing to a date certain. The Commission's next regular meeting will be held on May9, 2022 at 7pm.

Derrick I. Tokos, AICP
Community Development Director
City of Newport

April 21, 2022

April 21, 2022, Implementation of 2021/22 Legislative Amendments

(Unless otherwise specified, new language is shown in double underline, and text to be removed is depicted with ~~strikethrough~~. Staff comments, in *italics*, are for context and are not a part of the revisions.)

CHAPTER 3.20 AFFORDABLE HOUSING CONSTRUCTION EXCISE TAX

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3.20.025 Exemptions

A. The construction excise tax shall not apply to the following improvements:

1. Private school improvements.
2. Public improvements as defined in ORS 279A.010.
3. Public or private hospital improvements.
4. Improvements to religious facilities primarily used for worship or education associated with worship.
5. Agricultural buildings, as defined in ORS 455.315(2)(1).
6. Facilities operated by a non-profit corporation and that are:
   a. Long term care facilities, as defined in ORS 442.015.
   b. Residential care facilities, as defined in ORS 443.400
   c. Continuing care retirement communities, as defined in ORS 101.020.

7. Affordable housing projects that satisfy the following:

   a. each unit is made available to own or rent to families with incomes of 80 percent or less of the area median income as determined by the Oregon Housing Stability Council based on information from the United States Department of Housing and Urban Development; or

   b. units that are made available to families with incomes of 60 percent or less of the area median income, is equal to or greater than the average number of units in the project.

c. Affordability under either of the above metrics is enforceable, including as described in ORS 456.270 to 456.295, for a duration of no less than 30 years.

8. Residential housing being constructed on a lot or parcel of land to replace residential housing on the lot or parcel of land that was destroyed or damaged by wildfire or another event or circumstance that is the basis for a state of emergency declared under ORS 401.165 or 401.309 or for the exercise of authority under ORS 476.510 to 476.610.

9. Any other exemption required by Oregon statute.

10. Any improvement funded by Construction Excise Tax proceeds, or other dedicated affordable housing funding through the City of Newport. Such exemption is limited to the amount of the city's investment in the improvement.

Staff: Revisions implement HB 2607 as it relates to residential housing replaced as a result of a disaster. CET exemption for affordable housing projects exists in statute for those with a 60 year affordability guarantee. Proposed language aligns with SB 8 definition being added to NMC Chapter 14, which utilizes a 30 year affordability guarantee. At a 3/14/22 work session, the Commission requested that language under 7(b) be clarified.

CHAPTER 14.01 PURPOSE AND DEFINITIONS**

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14.01.020 Definitions

As used in this ordinance, the masculine includes the feminine and neuter, and the singular includes the plural. The following words and phrases, unless the context otherwise requires, shall mean:

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Affordable Housing. Means residential property in which:

(a) each unit on the property is made available to own or rent to families with incomes of 80 percent or less of the area median income as determined by the Oregon Housing Stability Council based on information from the United States Department of Housing and Urban Development; or

(b) The average of all units on the property is made available to families with incomes of 60 percent or less of the area median income.

Affordability under either of the above metrics is enforceable, including as described in ORS 456.270 to 456.295, for a duration of no less than 30 years.

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Child Care Center. means a child care facility, other than a family child care home, that is certified under ORS 329A.280.

~~**Child Care Facility**. A day care provider who regularly provides day care to 12 or fewer children under the age of 13 in the provider's home in the family living quarters.~~

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

(a) preschool recorded program.

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

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

(d) Facility operated by:
(A)A school district as defined in ORS 332.002;
(B)A political subdivision of this state; or
(C)A governmental agency.

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

(e) Babysitters.

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

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

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

~~**Day Care Facility**. Any facility that provides care, supervision, and guidance on a regular basis to more than 12 children under the age of 13 unaccompanied by a parent, guardian, or custodian during a part of the 24 hours of the day in a place other than the child's home, with or without compensation. A day care facility does not include any of the following:~~

~~A. A facility providing care that is primarily educational, unless provided to a preschool child for more than four (4) hours a day. Such facilities shall be considered a school.~~

~~B. A facility providing care that is primarily supervised training in a specific subject, including but not limited to dancing, drama, music, or religion. Such facilities shall be considered the same as a school.~~

~~C. A facility providing care that is primarily an incident of group athletic or social activities sponsored by or under the supervision of an organized club or hobby group.~~

~~D. A facility operated by a school district, signs subdivision of the State of Oregon, Lincoln County, the City of Newport, or another governmental agency.~~

~~E. Day care facilities are subject to (1) the rules and regulations established by the State of Oregon Children's Services Division and (2) the following:~~

~~1. Compliance with the requirements of Section 14.33.~~

~~2. The provision of off-street parking at one (1) space per staff member.~~

~~3. A solid fence or hedge at least six (6) feet in height around the rear yard.~~

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

~~**Family**. An individual or two or more persons related by blood, marriage, adoption, or legal guardianship, or not more than five persons not related by blood, marriage, or adoption living together in a dwelling unit. A family is also five or fewer physically or mentally handicapped persons living as a single housekeeping unit in a dwelling.~~

Family or Household. An individual or two or more persons living together in a dwelling unit.

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Prefabricated Structure. A building or subassembly, other than a manufactured dwelling or small home, that has been in whole or substantial part manufactured or assembled using closed construction at an off-site location to be wholly or partially assembled on-site, is relocatable, more than eight and one-half feet wide, and designed for use as a single family dwelling.

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Small Home. A dwelling that is not more than 400 square feet in size and, if equipped with wheels and tongue or hitch, has had those components removed.

Staff: Definition for "affordable housing" matches the definition contained in SB 8 (2021), which is more permissive then that which is contained within HB 2008 in terms of income threshold (80% versus 60% median area income) and the tenure of the affordability covenant (i.e. 30 years versus 60 years). Family definition revised to remove occupancy limit based upon familial or non-familial relationship, which is banned per HB 2583. Occupancy limits for group quarters are addressed under "residential Facility" and "Residential Care Home" definitions are not needed under the family definition. The terms family and household are both used in the zoning code and are understood to have the same meaning. Definitions of "child care facility" and "Day Care facility" replaced with current stator definitions in order to implement HB 3109. Definitions for prefabricated structures and small homes added to implement HB 4064 (2022), and draw from ORS Chapter 455. A small home with wheels and a tongue or hitch is by definition a recreational vehicle, and that definition does not need to be revised.

CHAPTER 14.03 ZONING DISTRICTS

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14.03.020 Establishment of Zoning Districts.

This section separates the City of Newport into four (4) basic classifications and thirteen (13) use districts as follows:

A. Districts zoned for ~~Residential~~residential use(s).

1. R-1 Low Density Single-Family Residential.
2. R-2 Medium Density Single-Family Residential.
3. R-3 Medium Density Multi-Family Residential.
4. R-4 High Density Multi-Family Residential.

B. Districts zoned for ~~Commercial~~commercial use(s).

1. C-1 Retail and Service Commercial.
2. C-2 Tourist Commercial.
3. C-3 Heavy Commercial.

C. Districts zoned for ~~Industrial~~industrial use(s).

1. I-1 Light Industrial.
2. I-2 Medium Industrial.
3. I-3 Heavy Industrial.

~~D. Water Related.~~

~~1~~4. W-1 Water Dependent.

~~2~~5. W-2 Water Related.

~~E~~D. Districts zoned for ~~Public~~public use(s).

1. P-1 Public Structures.
2. P-2 Public Parks.
3. P-3 Public Open Space.

Staff: The City has several mixed use zone districts, including the R-4, C-1, C-2, C-3, I-1, and W-2 zones. HB 2008, SB 8, and other state legislation apply changes to state law to property that is "zoned for residential, commercial, or industrial use." These revisions clarify what those statutory terms mean as it relates to the City's zone districts.

14.03.050 Residential Uses.

The following list sets forth the uses allowed within the residential land use classification. Uses not identified herein are not allowed. Short-term rentals are permitted uses in the City of Newport's R-1, R-2, R-3 and R-4 zone districts subject to requirements of Section 14.25.

"P" = Permitted uses.
"C" = Conditional uses; permitted subject to the approval of a conditional use permit.
"X" = Not allowed.

		R-1	R-2	R-3	R-4
A.	Residential				
	1. Single-Family	P	P	P	P
	2. Two-family	P	P	P	P
	3. Townhouse	X	P	P	P
	4. Cottage Cluster	X	X	P	P
	5. Multi-family	X	X	P	P
	6. Manufactured Homes [1]	P	P	P	P
	7. Manufactured Dwelling Park	X	P	P	P
B.	Accessory Dwelling Units	P	P	P	P
	(B. was added on the adoption of Ordinance No 2055 on June 17, 2013; and subsequent sections relettered accordingly. Effective July 17, 2013.)				
C.	Accessory Uses	P	P	P	P
D.	Home Occupations	P	P	P	P
E.	Community Services				
	1. Parks	P	P	P	P
	2.Publicly Owned Recreation Facilities	C	C	C	C
	3. Libraries	C	C	C	C
	4.Utility Substations	C	C	C	C
	5.Public or Private Schools	C	C	C	P
	6. ~~Child Care Facilities~~Family Child Care Home	P	P	P	P
	7. ~~Day Care Facilities~~Child Care Center	C	C	C	C
	8. Religious Institutions/Places of Worship	C	C	C	C
F.	Residential Care Homes	P	P	P	P
G.	Nursing Homes	X	X	C	P
H.	Motels and Hotels [3.]	X	X	X	C
I.	Professional Offices	X	X	X	C
J.	Rooming and Boarding Houses	X	X	C	P
K.	Beauty and Barber Shops	X	X	X	C
L.	Colleges and Universities	C	C	C	C
M.	Hospitals	X	X	X	P
N.	Membership Organizations	X	X	X	p
O.	Museums	X	X	X	P
P.	Condominiums [2]	X	P	P	P

Q.	Hostels	X	X	X	C
R.	Golf Courses	C	C	C	X
S.	Recreational Vehicle Parks	X	X	X	C
T.	Necessary Public Utilities and Public Service Uses or Structures	C	C	C	C
U.	Residential Facility*	X	X	P	P
V.	Movies Theaters**	X	X	X	C
W.	Assisted Living Facilities***	X	C	P	P
X.	Bicycle Shop****	X	X	X	C
Y.	Short-Term Rentals (subject to requirements of Chapter 14.25)	P	P	P	P

[1] Manufactured homes may be located on lots, parcels or tracts outside of a manufactured dwelling park subject to the provisions listed in NMC 14.06.020.

[2] Condominiums are a form of ownership allowed in all zones within dwelling types otherwise permitted pursuant to subsection (A).

3. Hotels/motels units may be converted to affordable housing provided they are outside of the Tsunami Hazard Overlay Zone

** Added by Ordinance No. 1622 (10-7-91).*
*** Added by Ordinance No. 1680 (8-2-93).*
**** Added by Ordinance No. 1759 (1-21-97).*
***** Added by Ordinance No. 1861 (10-6-03).*
****** Amended by Ordinance No. 1989 (1-1-10).*

(Section 14.03.050 was amended by Ordinance No. 2182 adopted on May 17, 2021: effective June 16, 2021.)
(Section 14.03.050 was amended by Ordinance No. 2144, adopted on May 6, 2019: effective May 7, 2019.)

Staff: Hotel/motel conversion allowed per HB 3261. HB 3109 now allows up to 16 children in a "Family Child Care Home." Previous limit was 12 children. Child Care Centers, which are not in a dwelling, remain conditional in residential zones.

14.03.070 Commercial and Industrial Uses.

The following list sets forth the uses allowed within the commercial and industrial land use categories.

"P" = Permitted uses.
"C" = Conditional uses; allowed only after the issuance of a conditional use permit.

"X" = Not allowed.

		C-1	C-2[1]	C-3	I-1	I-2	I-3
1.	Office	P	X	P	P	P	X
2.	Retails Sales and Service						

	a. Sales-oriented, general retail	P	P	P	P	P	C
	b. Sales-oriented, bulk retail	C	X	P	P	P	C
	c. Personal Services	P	C	P	P	C	X
	d. Entertainment	P	P[2]	P	P	C	X
	e. Repair-oriented	P	X	P	P	P	X
3.	Major Event Entertainment	C	C	P	P	C	X
4.	Vehicle Repair	X	X	P	P	P	X
5.	Self-Service Storage	X	X	P	P	P	X
6.	Parking Facility	P	P	P	P	P	P
7.	Contractors and Industrial Service	X	X	P	P	P	P
8.	Manufacturing and Production						
	a. Light Manufacturing	X	X	C	P	P	P
	b. Heavy Manufacturing	X	X	X	X	C	P
9.	Warehouse, Freight Movement, & Distribution	X	X	P	P	P	P
10.	Wholesale Sales	X	X	P	P	P	P
11.	Waste and Recycling Related	C	C	C	C	C	C
12.	Basic Utilities and Roads [3]	P	P	P	P	P	P
13.	Utility, Road and Transit Corridors	C	C	C	C	C	C
14.	Community Service	P	C	P	P	C	X
15.	~~Daycare Facility~~Family Child Care Home	P	~~C~~P	P	~~P~~X	~~P~~X	X
16.	Child Care Center	P	P	P	P	P	X
~~16~~17.	Educational Institutions						
	a. Elementary & Secondary Schools	C	C	C	X	X	X
	b. College & Universities	P	X	P	X	X	X
	c. Trade/Vocational Schools/Other	P	X	P	P	P	P
~~17~~18.	Hospitals	C	C	C	X	X	X
~~18~~19.	Courts, Jails, and Detention Facilities	X	X	P	C	X	X
~~19~~20.	Mining						
	a. Sand & Gravel	X	X	X	X	C	P
	b. Crushed Rock	X	X	X	X	X	P
	c. Non-Metallic Minerals	X	X	X	X	C	P
	d. All Others	X	X	X	X	X	X
~~20~~21.	Communication Facilities [4]	P	X	P	P	P	P
~~21~~22.	Residences on Floors Other than Street Grade	P	P~~*~~	P	X	X	X
23.	Affordable Housing [5]	P	P	P	P	X	X

1. Any new or expanded outright permitted commercial use in the C-2 zone district that exceeds 2,000 square feet of gross floor area. New or expanded uses in excess of 2,000 square feet of gross floor area may be permitted in accordance with the provisions of Chapter 14.34, Conditional Uses. Residential uses within the C-2 zone are subject to special zoning standards as ~~setforth~~set forth in Section 14.30.100.

2. Recreational Vehicle Parks are prohibited on C-2 zoned property within the Historic Nye Beach Design Review District.

3. Small wireless facilities shall be subject to design standards as adopted by City Council resolution.

4. Communication facilities located on historic buildings or sites, as defined in Section 14.23, shall be subject to conditional use review for compliance with criteria outlined in Sections 14.23 and 14.34.

5. Permitted as outlined in Chapter 14.15 or, in the case of hotels/motels the units may be converted to affordable housing provided they are outside of the Tsunami Hazard Overlay Zone.

14.03.060 Commercial and Industrial Districts.

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E. Institutional and Civic Use Categories

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4. ~~Daycare~~Child Care Center

a. Characteristics. ~~Daycare~~ Child Care Center use is a child care facility, other than a family child care home, that is certified under ORS 329A.280. Such facilities provide ~~includes~~ day or evening care ~~of~~ to ~~more than 12~~ children under the age of 13 outside of the children's homes, with or without compensation. ~~Daycare uses also include the daytime care of teenagers or adults who need assistance or supervision.~~Child Care Centers may also provide care to children under 18 years of age who has special needs or disabilities and requires a level of care that is above normal for the child's age.

b. Examples. Pre-schools, nursery schools, latch key programs, and ~~adult daycare programs~~residential facilities.

c. Exceptions.

i. ~~Daycare~~ Child Care Center use does not include care given by a "~~Child Care Facility~~Family Child Care Home" ~~as defined by ORS 657A.250 if the care is given to 12 or~~

~~fewer~~that is caring for not more than 16 children ~~at any one time including the children of the provider~~and is certified under ORS 329A.280(2) or is registered under ORS 329A.330. ~~Child care facilities~~Family Child Care Homes are located in ~~the provider's home~~a dwelling and are permitted ~~as a home occupation in non-residential districts~~on residential and commercial property developed with a dwelling.

Staff: Implements HB 2008, HB 3261, and SB 8 (2021). Limit on number of children that can be care for out of the home increased from 12 to 16 and definitions updated (i.e. now a "family child care home"). HB 3109 (2021) requires they be permitted outright in residential and commercial zones. Child Care Centers must also be allowed in all zones except heavy industrial. The description of a "Child Care Center" aligns with statute.

CHAPTER 14.06 MANUFACTURED DWELLINGS, PREFABRICATED STRUCTURES, SMALL HOMES AND RECREATIONAL VEHICLES

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14.06.020 Manufactured Dwellings, Prefabricated Structures, and Small Homes on Individual Lots

A. ~~In addition to the uses permitted in the underlying zone, a~~ A ~~single~~ manufactured dwelling, prefabricated structure, or small home may be placed on an individual lot or parcel in any area zoned to allow the development of ~~residential district where~~ single-family dwellings ~~residences are allowed~~ subject to the same Chapter 14 development standards that apply to single-family dwellings. ~~following provisions:~~

~~1. Conform to the definition of a manufactured dwelling in Section 14.01.010 of this Code.~~

~~2. Have the wheels and tongue or hitch removed.~~

~~3. Be placed on an excavated and backfilled foundation and enclosed at the perimeter such that the manufactured home is located not more than 12 inches above grade.~~

~~4. Have a pitched roof of at least two and one half feet for each 12 feet in width and be provided with gutters and down-spouts consistent with the standards contained~~

~~in the current State of Oregon amended Council of American Building Officials.~~

~~5. Have exterior siding and roofing which, in color, material, and appearance, is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on adjacent dwellings as determined by the Building Official.~~

~~6. Have a garage or carport constructed of like materials if an adjacent lot or parcel is developed with a dwelling that has a garage or carport.~~

~~7. Be multisectional and enclose a space of not less than 1,000 square feet as determined by measurement of exterior dimensions of the unit. Space within accessory structures, extensions, or additions shall not be included in calculating space.~~

~~8. Be connected to the public water system and an approved sewage disposal system.~~

~~9. Be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce heat loss to levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.010.~~

~~B. A manufactured dwelling constructed in accordance with current Federal Manufactured Home Construction and Safety Standards that does not meet criteria listed in subsection (A), may be approved by the Planning Commission as a Conditional Use pursuant to Section 14.33 of this Ordinance. Requests of this nature shall be reviewed under a Type III decision making process consistent with Section 14.52, Procedural Requirements.~~

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14.06.040 Manufactured Dwelling Parks

Manufactured dwelling parks are permitted subject to the following:

A. Construction of the manufactured dwelling park and placement of manufactured dwellings shall comply with

the Oregon Manufactured Dwelling and Park Specialty Code, 2002 Edition, as amended.

B. Streets within the manufactured dwelling park shall adhere to the standards outlined in Newport Municipal Code Chapter 13.05.040 where the construction or extension of such street is identified in the City of Newport Transportation System Plan.

C. The maximum density allowed in a manufactured dwelling park is one unit for every 2,500 sq. ft. of lot area in the R-2 zoning district and one unit for every 1,250 sq. ft. of lot area in R-3 and R-4 zoning districts.

D. Prefabricated structures, small homes, and ~~Recreational~~ recreational vehicles may be occupied as a residential unit provided they are connected to the manufactured dwelling parks water, sewage, and electrical supply systems. In such cases, the ~~recreational vehicles~~units shall be counted against the density limitations of the zoning district.

E. Any manufactured dwelling park authorized under this section shall have a common outdoor area of at least 2,500 sq. ft. or 100 sq. ft. per unit, whichever is greater. Common outdoor areas shall be landscaped and available for the use of all park residents.

F. If the park provides spaces for 50 or more manufactured dwelling units, each vehicular way in the park shall be named and marked with signs that are similar in appearance to those used to identify public streets. A map of the vehicular ways shall be provided to the fire department for appropriate naming.

G. Public fire hydrants shall be provided within 250 feet of manufactured dwelling spaces or permanent structures within the park. If a manufactured dwelling space or permanent structure in the park is more than 250 feet from a public fire hydrant, the park shall have water supply mains designed to serve fire hydrants. Each hydrant within the park shall be located on a vehicular way and shall conform in design and capacity to the public hydrants in the city.

H. The manufactured dwelling park may have a community or recreation building and other similar amenities.

I. All dead end streets shall provide an adequate turn around for emergency vehicles.

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14.06.050 Recreational Vehicles: General Provisions

A. Recreational vehicles may be stored on property within the City of Newport provided they are not used as a place of habitation while so stored unless the recreational vehicle is located within.

1. A manufactured dwelling or recreational vehicle park; or

2. A local or state park where authorized in an adopted parks master plan; or

3. A property where the recreational vehicle is ~~authorized~~ utilized as temporary living quarters ~~pursuant to Chapter 14.09~~while a dwelling is being repaired or replaced, provided such use is terminated by the date an occupancy is issued for the dwelling or within 24-months, whichever is sooner; or

4. An area where overnight vehicle camping is permitted pursuant to Section 9.50.050(A)(2) through 9.50.050(A)(4).

Staff: Changes to Sections 14.06.020 and 14.06.040 implement HB 4064 (2022) which revised ORS 197.314, removing most standards that cities can impose on manufactured dwellings and prefabricated structures being placed upon lots or parcels outside of parks. They must be treated, for the most part, in the same manner as single-family dwellings. Please note, that a tiny house on wheels is a recreational vehicle, and would not be allowed on a lot or parcel outside of a park. Prefabricated structures must be approved by the Oregon Building Codes Division, which administers a Prefabricated Structures Program pursuant to ORS 455.705. That is a building code though, so there is no need to address it under this section. HB 4064 (2022) allows cities to require that manufactured dwellings and prefabricated structures meet the exterior thermal envelope performance standards that apply to a single-family dwelling. This is addressed in the state building codes and there is no need to replicate the requirement in the City's land use regulations. Revisions to Section 14.06.050 implement requirements of HB 2809 (2021). The proposed language is more permissive than the bill in that it allows a recreational vehicle to be used as temporary living quarters while a dwelling is being built or repaired, irrespective of whether or not the need for the work is related to a natural disaster. A corresponding change is

being made to NMC Chapter 14.09 to remove the temporary use permit requirement that is currently required.

CHAPTER 14.09 TEMPORARY USES

***

~~14.09.030 Temporary Living Quarters~~

~~Notwithstanding any other restrictions and prohibitions in this code, a recreational vehicle may be used as a temporary living quarters subject to the following conditions:~~

~~A. The request for temporary living quarters must be in conjunction with a valid, active building permit.~~

~~B. The time limit shall be no longer than one (1) year from issuance. After the expiration of the time limit, the recreational vehicle used for the temporary living quarters must no longer be used for on-site living purposes.~~

~~C. The recreational vehicle used as the temporary living quarters must be self-contained for sanitary sewer.~~

~~D. Temporary living situations for non-residential projects may use a job shack or other such structure instead of a recreational vehicle as the living quarters and may have a portable toilet instead of a self-contained unit.~~

~~E. The location of the temporary living quarters on the site shall satisfy the vision clearance requirements as set forth in Section 14.21 of the zoning code.~~

~~F. Prior to the issuance of a temporary living quarters permit, the applicant shall sign an agreement that the applicant shall comply with the provisions of this subsection.~~

Staff: Companion to the above revisions to NMC 14.06.050. Removes the requirement that a temporary use permit be obtained in order to reside in an RV on a lot or parcel while a dwelling is being built or repaired.

CHAPTER 14.15 RESIDENTIAL USES IN NONRESIDENTIAL ZONING DISTRICTS

14.15.010 Purpose

It is the intent of this section to regulate the placement of residences in nonresidential zoning districts.

14.15.020 Residential Uses in Nonresidential Zoning Districts

Residences shall be allowed in nonresidential zones as follows:

A. **C-1 zones:** Residences are prohibited at street grade. For floors other than street grade, residences are allowed as an outright permitted use.

B. **C-2 zones:** For areas outside of the Historic Nye Beach Design Review District, residences are prohibited at street grade. For floors other than street grade, residences are allowed as an outright permitted use. On lands zoned C-2 that are within the Historic Nye Beach Design Review District, residential uses shall be allowed as specified in Chapter 14.30, Design Review Standards.

C. **C-3 zones:** Same as the C-1 zone.

D. **For all I zones:** One residence for a caretaker or watchman as an accessory use is allowed as a permitted use.

E. **W-2 zones:** Residences are prohibited at street grade. For floors other than street grade, residences are allowed subject to the issuance of a conditional use permit in accordance with the provisions of Section 14.34, Conditional Uses, and Section 14.52, Procedural Requirements.

F. **For all other nonresidential zones:** Residences are prohibited.

G. **Affordable Housing**: Notwithstanding other provisions of this section, Affordable Housing on property owned by a public body, or non-profit corporation, shall be permitted at street grade provided:

1. It is situated outside of the Tsunami Hazards Overlay Zone; and

a. The property is zoned for commercial or public use, as outlined in Section 14.03.020; or

b. The property is zoned I-1, is publicly owned, and is adjacent to land zoned for residential use or a school.

2. Development standards for Affordable Housing under this sub-section shall be the same as those that apply to the adjacent residentially zoned property. If there is no adjacent land zoned for residential use, then the development standards of the R-4 zone shall apply.

3. Affordable Housing on property within the Historic Nye Beach Design Review District, shall satisfy the development standards specified in Chapter 14.30, Design Review Standards.

Staff: Implements requirements of HB 2008 and SB 8(2021). Prohibited in tsunami hazards overlay zone areas per discussion with the Planning Commission on February 28, 2022. That is an option allowed under the legislation. At 3/14/22 work session, Commission requested that non-profit corporations be open to entities other than those organized as religious corporations, and that formatting under G(1) be clarified.

CHAPTER 14.28 IRON MOUNTAIN IMPACT AREA

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14.28.100 Uses Permitted in an I-2/"Medium Industrial" Zoning District with Conditions for the IMIA

The following land use categories authorized by the I-2 zoning in Section 14.03.070 (Commercial and Industrial Uses) either as uses permitted outright or conditionally may be allowed within the impact area subject to the underlying zone requirements and any applicable standard of Section 14.28.140 (Iron Mountain Impact Area Development Requirements), including the noise standards for residential development provided in Section 14.28.140(D):

A. Office;

B. Retail Sales and Service (Personal Services);

C. Retail Sales and Service (Entertainment);

D. ~~Day Care Facility~~Child Care Center;

E. Educational Institutions (Trade/Vocational Only).

Staff: Addresses terminology change from "day care facility" to "child care center" as part of the HB 3109 (2021) implementation.

CHAPTER 14.32 NONCONFORMING USES, LOTS, AND STRUCTURES

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14.32.060 Verification of Status of Nonconforming Use or Structure

A. Upon receiving an application to alter, expand, or replace a nonconforming use or structure, the approval authority shall determine that the use or structure is nonconforming. Such determination shall be based on findings that:

1. The use or structure was legally established at the time the Zoning Ordinance was enacted or amended; and

2. The use has not been discontinued for a continuous 12-month period.

The approval authority may require the applicant provide evidence that a use has been maintained over time. Evidence that a use has been maintained may include, but is not limited to, copies of utility bills, tax records, business licenses, advertisements, and telephone or trade listings.

B. The approval authority shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the approval authority shall consider:

1. Description of the use;

2. The types and quantities of goods or services provided and activities conducted;

3. The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;

4. The number, location, and size of physical improvements associated with the use;

5. The amount of land devoted to the use; and

6. Other factors the approval authority may determine appropriate to identify the nature and extent of the particular use.

7. A reduction of scope or intensity of any part of the use as determined under this subsection for a period of 12 months or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.

8. For the purpose of this section, discontinuance of a use, including a reduction of scope or intensity of any part of the use, shall not be deemed to have occurred during the time that a federal, state, or local emergency order limits or prohibits repair or replacement of the use.

Staff: Implements requirements of SB 405. Is a bit discretionary; however, the language shown is taken almost verbatim out of the legislation.

CHAPTER 14.46 TSUNAMI HAZARDS OVERLAY ZONE

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14.46.050 Prohibited Uses

A. Unless authorized in accordance with section 14.46.060, the following uses are prohibited in the Tsunami Hazard Overlay Zone:

1. Hospitals and other medical facilities having surgery and emergency treatment areas;

2. Fire and police stations;

3. Emergency vehicle shelters and garages;

4. Structures and equipment in emergency preparedness centers;

5. Standby power generating equipment for essential facilities;

6. Structures and equipment in government communication centers and other facilities required for emergency response;

7. Medical, assisted, and senior living facilities with resident incapacitated patients. This includes residential facilities, but not residential care homes, as defined in ORS 443.400;

8. Jails and detention facilities;

~~9. Day care facilities;~~

~~10~~9. Hazardous facilities; and

~~11~~10. Tanks or other structures used for fire suppression purposes to protect uses listed in this sub-section.

14.46.060 Use Exceptions

A use listed in section 14.46.050 may be permitted upon authorization of a Use Exception issued in accordance with a Type III decision-making procedure as outlined in Chapter 14.52, Procedural Requirements, provided the following requirements are satisfied:

A. Public schools may be permitted upon findings that there is a need for the school to be within the boundaries of a school district and fulfilling that need cannot otherwise be accomplished.

B. Fire or police stations may be permitted upon findings that there is a need for a strategic location.

C. Uses otherwise prohibited, ~~such as child or day care facilities,~~ are allowed when accessory to a permitted use, provided a plan is submitted outlining the steps that will be

taken to evacuate occupants to designated assembly areas.

D. Other uses prohibited section 14.46.050 may be permitted upon the following findings:

1. There are no reasonable, lower-risk alternative sites available for the proposed use; and

2. Adequate evacuation measures will be provided such that life safety risk to building occupants is minimized; and

1. The structures will be designed and constructed in a manner to minimize the risk of structural failure during the design earthquake and tsunami event.

Staff: HB 3109 (2021) requires that local governments allow child care facilities in all areas zoned for commercial and industrial use, except heavy industrial zones. There isn't an exception for areas where there are natural hazard risks, so the City will need to lift the prohibition that was put in place relative to tsunami hazards areas.

MINUTES
City of Newport Planning Commission
Work Session
Newport City Hall Council Chambers by Video Conference
March 14, 2022
6:00 p.m.

Planning Commissioners Present by Video Conference: Jim Patrick, Bob Berman, Lee Hardy, Braulio Escobar, Jim Hanselman, Gary East, and Bill Branigan.

PC Citizens Advisory Committee Members Present by Video Conference: Greg Sutton.

PC Citizens Advisory Committee Members Absent: Dustin Capri (excused).

City Staff Present by Video Conference: Community Development Director (CDD), Derrick Tokos; and Executive Assistant, Sherri Marineau.

1. **Call to Order.** Chair Patrick called the Planning Commission work session to order at 6:01 p.m.

2. **Unfinished Business.**

A. **Housekeeping Amendments Addressing 2021/22 Legislation.** Tokos reviewed the draft set of amendments to the Newport Municipal Code starting with Chapter 3.20.025(7) and (8), Affordable Housing Construction Excise Tax. Hardy asked what the phrase "the average of all units on the property" meant. Tokos explained this meant there could be some units that were above median area income and some that were below, but the average would have to come out as 60 percent or less median area income. Hardy thought this needed to be reworded. Hanselman asked if Chapter 3.20.025(8) required a state of emergency to be declared. Tokos confirmed it would unless the Commission wanted it to be more lenient than the House Bill. Hanselman thought it seemed unfair because people didn't purposefully burned their houses down and were made homeless whether or not an emergency was declared. He thought they should be more generous or not generous at all. Tokos explained they had to do this as a minimum. He thought the distinction here was when there was a state of emergency the degree of impact was beyond the immediate impact to the owner. A state if emergency tended to be an impact that was more than what an individual house with insurance could address. Patrick didn't think they could be more lenient because it wasn't the city's tax, it was the Lincoln County School District's excise tax. Tokos explained what this was in the context of the affordable housing tax that the city collected. He thought Patrick had a good point because if the city did something more lenient and the school district didn't, it would put staff in the position where they were applying it differently depending on the excise tax on the table. The city collected the taxes for the school district but they didn't set the rules for the school district. If the city chose to be more lenient in terms of the affordable housing excise tax, it would be more awkward to explain it to the general public. Berman thought it was a bad idea to make it a general provision and thought making it be by emergency was appropriate. He was worried about making it too general. Berman thought having two different excise taxes that were enforced differently could be a problem for staff. He thought as a general principle, a house burning down was in some way something normal that happened and didn't see waiving the tax working. Tokos would plan on leaving the language as it was with the thought that they could bring it up at the hearings process.

Escobar entered the meeting at 6:10 pm.

Tokos reviewed amendments to Chapter 14.01.020, Definitions. He noted that the changes to how they had to approach childcare. Childcare facilities, childcare centers, and childcare homes would have different definitions. What they would see was that childcare in the home used to be 12 or fewer children and now they were talking up to 16 children.

Sutton thought the excise taxes should be for primary homes. Tokos noted that anytime anyone rebuilt they were generally building something that was new and in better condition than what was there previously. Sometimes it boiled down to the level at which someone insured their property. Excise taxes fell in the general category along with building permit fees as being typical costs that insurance agencies would expect to pay for an overall payout. Tokos thought confirming if it was a primary dwelling would be difficult to do.

Tokos reviewed the definitions for prefabricated structures and small homes. He reminded that a small home with wheels was considered an RV and why they added "if the hitch and tongue was removed" to the language. Sutton asked if there was a width for them. Tokos explained there was a width component to the prefabricated structures but not so much on the small homes. He thought there were DMV rules for tiny homes on wheels, but he didn't know the exact number.

Tokos reviewed amendments to Chapter 14.03, Zoning District. Patrick asked where the information on what they could do for childcare facilities in W-1 and W-2 zones was. Tokos explained W-1 and W-2 zones were in industrial zones but they weren't adding them as permissible. When he looked at the W-1 zone it allowed for heavy industrial uses and he thought they would be okay. The W-2 also allowed for some heavy industrial uses. Tokos thought this would be okay and they could float this up with the state, otherwise they would have to allow childcare centers. Because there were some heavy industrial water type uses, they should be okay. The exception here called out family childcare homes because they were allowed in a dwelling.

Tokos reviewed amendments to Chapter 14.06, Manufactured Dwellings, Prefabricated Structures, and Small Homes and Recreational Vehicles. He pointed out that prefabricated structures had to be registered with the State Building Code Division and green lighted for building codes. Escobar asked if CC&R's in a subdivision would be subject to the same codes or if they could be more restrictive. Tokos explained CC&R's could be more restrictive. What they were talking about was a city code, not a CC&R. He noted that when the HB2001 discussions happened the legislature put in some restrictions that barred new CC&R's from being single family detached only. Patrick noted that under the new rules they could do storage container homes on foundation and manufactured dwellings could be placed on tall foundations that had been currently forbidden. Tokos confirmed that all manufactured dwelling still had the state tie down codes. Premanufactured homes would have to have foundations under the Oregon Specialty Code and there was a range of options for foundations. Prefabricated structures would have normal reviews for utilities and foundation. The structures that were on the State's approved list could be shipped to Oregon and assembled on the foundations in short order.

Tokos reviewed amendments to Chapter 14.06.040, Manufactured Dwelling Parks. Patrick asked how the amendments applied to the mobile home park on 3rd Street. Tokos confirmed the amendments meant they could now install park models in parks if they were connecting to services.

Tokos reviewed amendments to Chapter 14.06.050, Recreational Vehicles: General Provisions. He then reviewed amendments to Chapter 14.15, Residential Uses in Nonresidential Zoning Districts. Berman questioned if the amendments had to be limited to religious entities. He thought it should be reworded. Hanselman thought every door should be a welcome door and to only allow religious

corporations was unfair and unequitable. He felt it was against the first amendment of the constitution and thought this single piece would cause him to vote against the package. Escobar asked if they could strike "organized as religious corporation" from the language. Tokos confirmed they could, but wanted to emphasize that what they were talking about was affordable housing in commercial and industrial areas. Any nonprofit could do affordable housing in residential areas. Hanselman didn't think the zone should matter. Patrick didn't think they would get much for affordable housing anyway in commercial areas. Hanselman asked why religious was placed in this particular bill. Tokos noted that if a bill was drafted with a very specific form of ownership, that form of ownership had been having a hard time or couldn't do a housing project somewhere and why the bill was drafted. He would remove "organized as religious corporation" from the language. Berman noted that the subsections were ambiguous saying "and" and "or." He thought 2 and 3 should be the "or" statements. Berman thought that the way it was written was confusing. Tokos would update it.

Hanselman asked what the word "adjacent" to schools meant. Tokos explained adjacent was next to and immediately across the street from a school. Escobar thought this should be contiguous. Tokos noted he tried to stick to the exact language of the bill as possible, but they could clarify the word "adjacent." Berman reminded there were other uses in parts of the code that also used the kind of language that included next to, across the street, but not kiddy corner. He thought they all should be consistent. Hanselman agreed it wasn't the best word to use. Tokos noted the legislature's intent was to open the door for industrial lands, recognizing industrial lands typically weren't particularly compatible with residential use. This was why the language was crafted as it was. Berman asked if the city owned any I-1 properties. Tokos didn't think they did currently but that could change.

Tokos reviewed amendments to Chapter 14.28, Iron Mountain Impact Area. Berman asked what the Iron Mountain impact area was. Tokos explained it applied to a bit of property east of US 101 in the vicinity of the quarry and was to limited to uses in conflict to the quarry.

Tokos reviewed amendments to Chapter 14.32, Nonconforming Uses, Lots, and Structures. He then reviewed amendments to Chapter 14.46, Tsunami Hazard Overlay Zone. No comments were heard.

3. **New Business.**

A. **Updated Planning Commission Work Program.** Tokos reported that it was looking good for the Commission to do the review of the final version of the Transportation System Plan. The Project Advisory Committee would be making their recommendation sometime around March 24th. The Commission would then look at a consolidated TSP on March 28th with whatever recommendations the Committee made.

Tokos noted that he had received a draft of the public engagement plan for housing that the Commission would look at as well. There would also be a draft of a car camping ordinance being drafted for the City Council that dealt with the Martin B. Boise limitations for police which limited their ability to ask those who were homeless to move when they were sleeping in tents and cars. Berman asked why the Commission was looking at this. Tokos explained this was land use related and reminded the Commission that they had looked at things like the car camping code before. The Commission was being shown this so they could make comments to the City Council. Tokos noted that the Commission wouldn't hold a hearing on this.

4. **Adjourn.** The meeting adjourned at 7:06 p.m.

Respectfully submitted,

Sherri Marineau,
Executive Assistant

81st OREGON LEGISLATIVE ASSEMBLY--2021 Regular Session

Enrolled
House Bill 2008

Sponsored by Representative KOTEK; Representatives CAMPOS, DEXTER, FAHEY, GRAYBER, HAYDEN, KROPF, LEIF, MCLAIN, NOBLE, NOSSE, OWENS, PHAM, PRUSAK, RAYFIELD, REYNOLDS, SCHOUTEN, SMITH DB, SMITH G, STARK, VALDERRAMA, WILLIAMS, WRIGHT, Senator KNOPP

CHAPTER .....

AN ACT

Relating to affordable housing provided by religious organizations; creating new provisions; amending ORS 197.311, 215.441, 227.500, 307.140 and 307.162; and prescribing an effective date.

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

SECTION 1. ORS 307.140 is amended to read:

307.140. Upon compliance with ORS 307.162, the following property owned or being purchased by religious organizations shall be exempt from taxation:

(1) All houses of public worship and other additional buildings and property used solely for administration, education, literary, benevolent, charitable, entertainment and recreational purposes by religious organizations, the lots on which they are situated, and the pews, slips and furniture therein. However, any part of any house of public worship or other additional buildings or property which is kept or used as a store or shop or for any purpose other than those stated in this section shall be assessed and taxed the same as other taxable property.

(2) Parking lots used for parking or any other use as long as that parking or other use is permitted without charge for no fewer than 355 days during the tax year.

(3) Land and [*the*] buildings [*thereon*] **on the land** held or used solely for cemetery or crematory purposes, including any buildings solely used to store machinery or equipment used exclusively for maintenance of such lands.

(4)(a) Land and buildings on the land held or used solely to provide affordable housing to low-income households including, but not limited to, any portion of the property for any period during which the portion of the property is rented out as affordable housing to low-income households.

(b) As used in this subsection:

(A) "Affordable housing" has the meaning given that term in ORS 197.311.

(B) "Low-income households" means households described in ORS 197.311 (1).

(5) ORS 315.037 does not apply to this section.

SECTION 2. ORS 307.162 is amended to read:

307.162. (1)(a) Before any real or personal property may be exempted from taxation under ORS 307.092, 307.110 (3)(h), 307.115, 307.118, 307.130 to 307.140, 307.145, 307.147, 307.150, 307.160, 307.181 (3), 307.513 or 307.580 for any tax year, the institution or organization entitled to claim the exemption must file a claim with the county assessor, on or before April 1 preceding the tax year for

which the exemption is claimed. The claim must contain statements, verified by the oath or affirmation of the president or other proper officer of the institution or organization, that:

(A) List all real property claimed to be exempt and show the purpose for which the real property is used; and

(B) Cite the statutes under which exemption for personal property is claimed.

(b)**(A) Notwithstanding paragraph (a) of this subsection, a claim for an initial year of exemption under ORS 307.140 (4) must be filed with the Department of Revenue.**

(B) If the ownership of all property, other than property described in ORS 307.110 (3)(h) **or 307.140 (4)**, included in the claim filed with the county assessor for a prior year remains unchanged, a new claim is not required.

(c) When the property designated in the claim for exemption is acquired after March 1 and before July 1, the claim for that year must be filed within 30 days from the date of acquisition of the property.

(2)(a) Notwithstanding subsection (1) of this section, a claim may be filed under this section for the current tax year:

(A) On or before December 31 of the tax year, if the claim is accompanied by a late filing fee of the greater of $200, or one-tenth of one percent of the real market value as of the most recent assessment date of the property to which the claim pertains.

(B) On or before April 1 of the tax year, if the claim is accompanied by a late filing fee of $200 and the claimant demonstrates good and sufficient cause for failing to file a timely claim, is a first-time filer or is a public entity described in ORS 307.090.

(b)(A) Notwithstanding subsection (1) of this section, a claimant that demonstrates good and sufficient cause for failing to file a timely claim, is a first-time filer or is a public entity described in ORS 307.090 may file a claim under this section for the five tax years prior to the current tax year:

(i) Within 60 days after the date on which the county assessor mails notice of additional taxes owing under ORS 311.206 for the property to which the claim filed under this subparagraph pertains; or

(ii) At any time if no notice is mailed.

(B) A claim filed under this paragraph must be accompanied by a late filing fee of the greater of $200, or one-tenth of one percent of the real market value as of the most recent assessment date of the property to which the claim pertains, multiplied by the number of prior tax years for which exemption is claimed.

(c) If a claim filed under this subsection is not accompanied by the late filing fee or if the late filing fee is not otherwise paid, an exemption may not be allowed for the tax years sought by the claim. A claim may be filed under this subsection notwithstanding that there are no grounds for hardship as required for late filing under ORS 307.475.

(d) The value of the property used to determine the late filing fee under this subsection and the determination of the county assessor relative to a claim of good and sufficient cause are appealable in the same manner as other acts of the county assessor.

(e) A late filing fee collected under this subsection must be deposited in the county general fund.

(3)(a) In a claim for exemption of property described in ORS 307.110 (3)(h), the county or city, town or other municipal corporation or political subdivision of this state that is filing the claim must substantiate that the property is used for affordable housing or that it is leased or rented to persons of lower income, as applicable.

(b) A claim filed under this subsection must be filed annually on a form prescribed by the Department of Revenue.

(4) As used in this section:

(a) "First-time filer" means a claimant that:

(A) Has never filed a claim for the property that is the subject of the current claim; and

(B) Did not receive notice from the county assessor on or before December 1 of the tax year for which exemption is claimed regarding the potential property tax liability of the property.

(b)(A) "Good and sufficient cause" means an extraordinary circumstance beyond the control of the taxpayer or the taxpayer's agent or representative that causes the failure to file a timely claim.

(B) "Good and sufficient cause" does not include hardship, reliance on misleading information unless the information is provided by an authorized tax official in the course of the official's duties, lack of knowledge, oversight or inadvertence.

(c) "Ownership" means legal and equitable title.

(5)(a) Notwithstanding subsection (1) of this section, if an institution or organization owns property that is exempt from taxation under a provision of law listed in subsection (1) of this section and fails to file a timely claim for exemption under subsection (1) of this section for additions or improvements to the exempt property, the additions or improvements may nevertheless qualify for exemption.

(b) The organization must file a claim for exemption with the county assessor to have the additions or improvements to the exempt property be exempt from taxation. The claim must:

(A) Describe the additions or improvements to the exempt property;

(B) Describe the current use of the property that is the subject of the application;

(C) Identify the tax year and any preceding tax years for which the exemption is sought;

(D) Contain any other information required by the department; and

(E) Be accompanied by a late filing fee equal to the product of the number of tax years for which exemption is sought multiplied by the greater of $200 or one-tenth of one percent of the real market value as of the most recent assessment date of the property that is the subject of the claim.

(c) Upon the county assessor's receipt of a completed claim and late filing fee, the assessor shall determine for each tax year for which exemption is sought whether the additions or improvements that are the subject of the claim would have qualified for exemption had a timely claim been filed under subsection (1) of this section. Any property that would have qualified for exemption had a timely claim been filed under subsection (1) of this section is exempt from taxation for each tax year for which the property would have qualified.

(d) A claim for exemption under this subsection may be filed only for tax years for which the time for filing a claim under subsections (1) and (2)(a) of this section has expired. A claim filed under this subsection, however, may serve as the claim required under subsection (1) of this section for the current tax year.

(e) A late filing fee collected under this subsection must be deposited in the county general fund.

(6) For each tax year for which an exemption granted pursuant to subsection (2) or (5) of this section applies:

(a) Any tax, or interest attributable thereto, that was paid with respect to the property that is declared exempt from taxation must be refunded. Refunds must be made without interest from the unsegregated tax collections account established under ORS 311.385.

(b) Any tax, or interest attributable thereto, that remains unpaid as of the date the exemption is granted must be abated.

(7) If an institution or organization owns property that is exempt from taxation under a provision of law listed in subsection (1) of this section and changes the use of the property to a use that would not entitle the property to exemption from taxation, the institution or organization must notify the county assessor of the change to a taxable use within 30 days.

SECTION 2a. The amendments to ORS 307.140 and 307.162 by sections 1 and 2 of this 2021 Act apply to property tax years beginning on or after July 1, 2021.

SECTION 2b. A religious organization may file a claim, under ORS 307.162 (2)(a)(A), for exemption for property under ORS 307.140 (4) for the property tax year beginning on July 1, 2021, without paying a filing fee.

SECTION 3. ORS 197.311 is amended to read:

197.311. (1) As used in this section:

(a) "Affordable housing" means housing that is affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the development is built or for the state, whichever is greater, **that is subject to an affordable housing covenant, as**

provided in ORS 456.270 to 456.295, that maintains the affordability for a period of not less than 60 years from the date of the certificate of occupancy.

(b) "Multifamily residential building" means a building in which three or more residential units each have space for eating, living and sleeping and permanent provisions for cooking and sanitation.

(2) Notwithstanding ORS 215.427 (1) or 227.178 (1), a city with a population greater than 5,000 or a county with a population greater than 25,000 shall take final action on an application qualifying under subsection (3) of this section, including resolution of all local appeals under ORS 215.422 or 227.180, within 100 days after the application is deemed complete.

(3) An application qualifies for final action within the timeline described in subsection (2) of this section if:

(a) The application is submitted to the city or the county under ORS 215.416 or 227.175;

(b) The application is for development of a multifamily residential building containing five or more residential units within the urban growth boundary; **and**

(c) At least 50 percent of the residential units included in the development will be sold or rented as affordable housing. [*; and*]

[*(d) The development is subject to a covenant appurtenant that restricts the owner and each successive owner of the development or a residential unit within the development from selling or renting any residential unit described in paragraph (c) of this subsection as housing that is not affordable housing for a period of 60 years from the date of the certificate of occupancy.*]

(4) A city or a county shall take final action within the time allowed under ORS 215.427 or 227.178 on any application for a permit, limited land use decision or zone change that does not qualify for review and decision under subsection (3) of this section, including resolution of all appeals under ORS 215.422 or 227.180, as provided by ORS 215.427 and 215.435 or by ORS 227.178 and 227.181.

(5) With respect to property within an urban growth boundary owned by a nonprofit corporation organized as a religious corporation, a local government:

(a) May apply only restrictions or conditions of approval to the development of affordable housing that are, notwithstanding ORS 197.307 (5) or statewide land use planning goals relating to protections for historic areas:

(A) Clear and objective as described in ORS 197.307 (4); or

(B) Discretionary standards related to health, safety, habitability or infrastructure.

(b) Shall approve the development of affordable housing on property not zoned for housing if:

(A) The property is not zoned for industrial uses; and

(B) The property is contiguous to property zoned to allow residential uses.

(6) Affordable housing allowed under subsection (5)(b) of this section may be subject only to the restrictions applicable to the contiguously zoned residential property as limited by subsection (5)(a) of this section and without requiring that the property be rezoned for residential uses. If there is more than one contiguous residential property, the zoning of the property with the greatest density applies.

SECTION 4. ORS 215.441 is amended to read:

215.441. (1) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship is allowed on real property under state law and rules and local zoning ordinances and regulations, a county shall allow the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including:

(a) Worship services.

(b) Religion classes.

(c) Weddings.

(d) Funerals.

(e) Meal programs.

(f) Child care, but not including private or parochial school education for prekindergarten through grade 12 or higher education.

[*(g) Providing housing or space for housing in a building or buildings that are detached from the place of worship, provided:*]

[*(A) At least 50 percent of the residential units provided under this paragraph are affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located;*]

[*(B) The real property is in an area zoned for residential use that is located within the urban growth boundary; and*]

[*(C) The housing or space for housing complies with applicable land use regulations and meets the standards and criteria for residential development for the underlying zone.*]

(2) A county may:

(a) Subject real property described in subsection (1) of this section to reasonable regulations, including site review or design review, concerning the physical characteristics of the uses authorized under subsection (1) of this section; or

(b) Prohibit or restrict the use of real property by a place of worship described in subsection (1) of this section if the county finds that the level of service of public facilities, including transportation, water supply, sewer and storm drain systems is not adequate to serve the place of worship described in subsection (1) of this section.

(3) Notwithstanding any other provision of this section, a county may allow a private or parochial school for prekindergarten through grade 12 or higher education to be sited under applicable state law and rules and local zoning ordinances and regulations.

[*(4) Housing and space for housing provided under subsection (1)(g) of this section must be subject to a covenant appurtenant that restricts the owner and each successive owner of a building or any residential unit contained in a building from selling or renting any residential unit described in subsection (1)(g)(A) of this section as housing that is not affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located for a period of 60 years from the date of the certificate of occupancy.*]

SECTION 5. ORS 227.500 is amended to read:

227.500. (1) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship is allowed on real property under state law and rules and local zoning ordinances and regulations, a city shall allow the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including:

(a) Worship services.

(b) Religion classes.

(c) Weddings.

(d) Funerals.

(e) Meal programs.

(f) Child care, but not including private or parochial school education for prekindergarten through grade 12 or higher education.

[*(g) Providing housing or space for housing in a building or buildings that are detached from the place of worship, provided:*]

[*(A) At least 50 percent of the residential units provided under this paragraph are affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located;*]

[*(B) The real property is in an area zoned for residential use that is located within the urban growth boundary; and*]

[*(C) The housing or space for housing complies with applicable land use regulations and meets the standards and criteria for residential development for the underlying zone.*]

(2) A city may:

(a) Subject real property described in subsection (1) of this section to reasonable regulations, including site review and design review, concerning the physical characteristics of the uses authorized under subsection (1) of this section; or

(b) Prohibit or regulate the use of real property by a place of worship described in subsection (1) of this section if the city finds that the level of service of public facilities, including transportation, water supply, sewer and storm drain systems is not adequate to serve the place of worship described in subsection (1) of this section.

(3) Notwithstanding any other provision of this section, a city may allow a private or parochial school for prekindergarten through grade 12 or higher education to be sited under applicable state law and rules and local zoning ordinances and regulations.

[*(4) Housing and space for housing provided under subsection (1)(g) of this section must be subject to a covenant appurtenant that restricts the owner and each successive owner of a building or any residential unit contained in a building from selling or renting any residential unit described in subsection (1)(g)(A) of this section as housing that is not affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located for a period of 60 years from the date of the certificate of occupancy.*]

SECTION 6. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by House May 20, 2021

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate June 17, 2021

.....
Peter Courtney, President of Senate

Received by Governor:

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

Approved:

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

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

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

.....
Shemia Fagan, Secretary of State

Enrolled
Senate Bill 8

Sponsored by Senator COURTNEY; Senator MANNING JR, Representatives BYNUM, DEXTER, FAHEY, KOTEK, KROPF, ZIKA

CHAPTER .....

AN ACT

Relating to land use planning for housing; creating new provisions; amending ORS 197.830, 197.850, 215.441 and 227.500; and repealing ORS 197.779.

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

SECTION 1. (1) As used in this section, "affordable housing" means residential property:

(a) In which:

(A) Each unit on the property is made available to own or rent to families with incomes of 80 percent or less of the area median income as determined by the Oregon Housing Stability Council based on information from the United States Department of Housing and Urban Development; or

(B) The average of all units on the property is made available to families with incomes of 60 percent or less of the area median income; and

(b) Whose affordability is enforceable, including as described in ORS 456.270 to 456.295, for a duration of no less than 30 years.

(2) A local government shall allow affordable housing, and may not require a zone change or conditional use permit for affordable housing on property if:

(a) The housing is owned by:

(A) A public body, as defined in ORS 174.109; or

(B) A nonprofit corporation that is organized as a religious corporation; or

(b) The property is zoned:

(A) For commercial uses;

(B) To allow religious assembly; or

(C) As public lands.

(3) Subsection (2) of this section:

(a) Does not apply to the development of housing not within an urban growth boundary.

(b) Does not trigger any requirement that a local government consider or update an analysis as required by a statewide planning goal relating to economic development.

(c) Applies on property zoned to allow for industrial uses only if the property is:

(A) Publicly owned;

(B) Adjacent to lands zoned for residential uses or schools; and

(C) Not specifically designated for heavy industrial uses.

(d) Does not apply on lands where the local government determines that:

(A) The development on the property cannot be adequately served by water, sewer, storm water drainage or streets, or will not be adequately served at the time that development on the lot is complete;

(B) The property contains a slope of 25 percent or greater;

(C) The property is within a 100-year floodplain; or

(D) The development of the property is constrained by land use regulations based on statewide land use planning goals relating to:

(i) Natural disasters and hazards; or

(ii) Natural resources, including air, water, land or natural areas, but not including open spaces or historic resources.

(4) A local government shall approve an application at an authorized density level and authorized height level, as defined in ORS 227.175 (4), for the development of affordable housing, at the greater of:

(a) Any local density bonus for affordable housing; or

(b) Without consideration of any local density bonus for affordable housing:

(A) For property with existing maximum density of 16 or fewer units per acre, 200 percent of the existing density and 12 additional feet;

(B) For property with existing maximum density of 17 or more units per acre and 45 or fewer units per acre, 150 percent of the existing density and 24 additional feet; or

(C) For property with existing maximum density of 46 or more units per acre, 125 percent of the existing density and 36 additional feet.

(5)(a) Subsection (4) of this section does not apply to housing allowed under subsection (2) of this section in areas that are not zoned for residential uses.

(b) A local government may reduce the density or height of the density bonus allowed under subsection (4) of this section as necessary to address a health, safety or habitability issue, including fire safety, or to comply with a protective measure adopted pursuant to a statewide land use planning goal. Notwithstanding ORS 197.350, the local government must adopt findings supported by substantial evidence demonstrating the necessity of this reduction.

SECTION 1a. Section 1 of this 2021 Act is added to and made a part of ORS 197.286 to 197.314.

SECTION 2. (1) The Land Use Board of Appeals shall award attorney fees to an applicant whose application is only for the development of affordable housing, as defined in section 1 of this 2021 Act, or publicly supported housing, as defined in ORS 456.250, if the board affirms a quasi-judicial land use decision approving the application or reverses a quasi-judicial land use decision denying the application.

(2) A party who was awarded attorney fees under this section or ORS 197.850 shall repay the fees plus any interest from the time of the judgment if the property upon which the fees are based is developed for a use other than affordable housing.

(3) As used in this section:

(a) "Applicant" includes:

(A) An applicant with a funding reservation agreement with a public funder for the purpose of developing publicly supported housing;

(B) A housing authority, as defined in ORS 456.005;

(C) A qualified housing sponsor, as defined in ORS 456.548;

(D) A religious nonprofit corporation;

(E) A public benefit nonprofit corporation whose primary purpose is the development of affordable housing; and

(F) A local government that approved the application of an applicant described in this paragraph.

(b) "Attorney fees" includes prelitigation legal expenses, including preparing the application and supporting the application in local land use hearings or proceedings.

SECTION 2a. Section 2 of this 2021 Act is added to and made a part of ORS 197.830 to 197.845.

SECTION 3. ORS 197.830 is amended to read:

197.830. (1) Review of land use decisions or limited land use decisions under ORS 197.830 to 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals.

(2) Except as provided in ORS 197.620, a person may petition the board for review of a land use decision or limited land use decision if the person:

(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and

(b) Appeared before the local government, special district or state agency orally or in writing.

(3) If a local government makes a land use decision without providing a hearing, except as provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision that is different from the proposal described in the notice of hearing to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

(a) Within 21 days of actual notice where notice is required; or

(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

(4) If a local government makes a land use decision without a hearing pursuant to ORS 215.416 (11) or 227.175 (10):

(a) A person who was not provided notice of the decision as required under ORS 215.416 (11)(c) or 227.175 (10)(c) may appeal the decision to the board under this section within 21 days of receiving actual notice of the decision.

(b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who is adversely affected or aggrieved by the decision may appeal the decision to the board under this section within 21 days after the expiration of the period for filing a local appeal of the decision established by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

(c) A person who receives notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may appeal the decision to the board under this section within 21 days of receiving actual notice of the nature of the decision, if the notice of the decision did not reasonably describe the nature of the decision.

(d) Except as provided in paragraph (c) of this subsection, a person who receives notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the decision to the board under this section.

(5) If a local government makes a limited land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

(a) Within 21 days of actual notice where notice is required; or

(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

(6) The appeal periods described in subsections (3), (4) and (5) of this section:

(a) May not exceed three years after the date of the decision, except as provided in paragraph (b) of this subsection.

(b) May not exceed 10 years after the date of the decision if notice of a hearing or an administrative decision made pursuant to ORS 197.195 or 197.763 is required but has not been provided.

(7)(a) Within 21 days after a notice of intent to appeal has been filed with the board under subsection (1) of this section, any person described in paragraph (b) of this subsection may intervene in and be made a party to the review proceeding by filing a motion to intervene and by paying a filing fee of $100.

(b) Persons who may intervene in and be made a party to the review proceedings, as set forth in subsection (1) of this section, are:

(A) The applicant who initiated the action before the local government, special district or state agency; or

(B) Persons who appeared before the local government, special district or state agency, orally or in writing.

(c) Failure to comply with the deadline or to pay the filing fee set forth in paragraph (a) of this subsection shall result in denial of a motion to intervene.

(8) If a state agency whose order, rule, ruling, policy or other action is at issue is not a party to the proceeding, it may file a brief with the board as if it were a party. The brief shall be due on the same date the respondent's brief is due and shall be accompanied by a filing fee of $100.

(9) A notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a statement identifying when, how and to whom notice was provided under ORS 197.615 does not render the notice defective. Copies of the notice of intent to appeal shall be served upon the local government, special district or state agency and the applicant of record, if any, in the local government, special district or state agency proceeding. The notice shall be served and filed in the form and manner prescribed by rule of the board and shall be accompanied by a filing fee of $200 and a deposit for costs to be established by the board. If a petition for review is not filed with the board as required in subsections (10) and (11) of this section, the filing fee and deposit shall be awarded to the local government, special district or state agency as cost of preparation of the record.

(10)(a) Within 21 days after service of the notice of intent to appeal, the local government, special district or state agency shall transmit to the board the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding the record may be shortened. The board may require or permit subsequent corrections to the record; however, the board shall issue an order on a motion objecting to the record within 60 days of receiving the motion. If the board denies a petitioner's objection to the record, the board may establish a new deadline for the petition for review to be filed that may not be less than 14 days from the later of the original deadline for the brief or the date of denial of the petitioner's record objection.

(b) Within 10 days after service of a notice of intent to appeal, the board shall provide notice to the petitioner and the respondent of their option to enter into mediation pursuant to ORS 197.860. Any person moving to intervene shall be provided such notice within seven days after a motion to intervene is filed. The notice required by this paragraph shall be accompanied by a statement that mediation information or assistance may be obtained from the Department of Land Conservation and Development.

(11) A petition for review of the land use decision or limited land use decision and supporting brief shall be filed with the board as required by the board under subsection (13) of this section.

(12) The petition shall include a copy of the decision sought to be reviewed and shall state:

(a) The facts that establish that the petitioner has standing.

(b) The date of the decision.

(c) The issues the petitioner seeks to have reviewed.

(13)(a) The board shall adopt rules establishing deadlines for filing petitions and briefs and for oral argument.

(b) At any time subsequent to the filing of a notice of intent and prior to the date set for filing the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of the respondent's brief, the local government or state agency may withdraw its decision for purposes of reconsideration. If a local government or state agency withdraws an order for purposes of reconsideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision.

If the petitioner is dissatisfied with the local government or agency action after withdrawal for purposes of reconsideration, the petitioner may refile the notice of intent and the review shall proceed upon the revised order. An amended notice of intent is not required if the local government or state agency, on reconsideration, affirms the order or modifies the order with only minor changes.

(14) The board shall issue a final order within 77 days after the date of transmittal of the record. If the order is not issued within 77 days the applicant may apply in Marion County or the circuit court of the county where the application was filed for a writ of mandamus to compel the board to issue a final order.

(15) Upon entry of its final order, the board:

(a) May, in its discretion, award costs to the prevailing party including the cost of preparation of the record if the prevailing party is the local government, special district or state agency whose decision is under review. The board shall apply the deposit required by subsection (9) of this section to any costs charged against the petitioner.

(b) Shall award reasonable attorney fees and expenses to the prevailing party against any other party who the board finds presented a position or filed any motion without probable cause to believe the position or motion was well-founded in law or on factually supported information.

[*(c) Upon affirming a quasi-judicial land use decision approving an application that is only for the development of publicly supported housing, as defined in ORS 456.250, shall award reasonable attorney fees and expenses to a prevailing respondent that is the applicant or local government.*]

(c) Shall award costs and attorney fees to a party as provided in section 2 of this 2021 Act.

(16) Orders issued under this section may be enforced in appropriate judicial proceedings.

(17)(a) The board shall provide for the publication of its orders that are of general public interest in the form it deems best adapted for public convenience. The publications shall constitute the official reports of the board.

(b) Any moneys collected or received from sales by the board shall be paid into the Board Publications Account established by ORS 197.832.

(18) Except for any sums collected for publication of board opinions, all fees collected by the board under this section that are not awarded as costs shall be paid over to the State Treasurer to be credited to the General Fund.

(19) The board shall track and report on its website:

(a) The number of reviews commenced, as described in subsection (1) of this section, the number of reviews commenced for which a petition is filed under subsection (2) of this section and, in relation to each of those numbers, the rate at which the reviews result in a decision of the board to uphold, reverse or remand the land use decision or limited land use decision. The board shall track and report reviews under this paragraph in categories established by the board.

(b) A list of petitioners, the number of reviews commenced and the rate at which the petitioner's reviews have resulted in decisions of the board to uphold, reverse or remand the land use decision or limited land use decision.

(c) A list of respondents, the number of reviews involving each respondent and the rate at which reviews involving the respondent have resulted in decisions of the board to uphold, reverse or remand the land use decision or limited land use decision. Additionally, when a respondent is the local government that made the land use decision or limited land use decision, the board shall track whether the local government appears before the board.

(d) A list of reviews, and a brief summary of the circumstances in each review, under which the board exercises its discretion to require a losing party to pay the attorney fees of the prevailing party.

SECTION 3a. ORS 197.850 is amended to read:

197.850. (1) Any party to a proceeding before the Land Use Board of Appeals under ORS 197.830 to 197.845 may seek judicial review of a final order issued in those proceedings.

(2) Notwithstanding the provisions of ORS 183.480 to 183.540, judicial review of orders issued under ORS 197.830 to 197.845 is solely as provided in this section.

(3)(a) Jurisdiction for judicial review of proceedings under ORS 197.830 to 197.845 is conferred upon the Court of Appeals. Proceedings for judicial review are instituted by filing a petition in the Court of Appeals. The petition must be filed within 21 days following the date the board delivered or mailed the order upon which the petition is based.

(b) Filing of the petition, as set forth in paragraph (a) of this subsection, and service of a petition on all persons identified in the petition as adverse parties of record in the board proceeding is jurisdictional and may not be waived or extended.

(4) The petition must state the nature of the order the petitioner desires reviewed. Copies of the petition must be served by first class, registered or certified mail on the board and all other parties of record in the board proceeding.

(5) Within seven days after service of the petition, the board shall transmit to the court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. The court may tax a party that unreasonably refuses to stipulate to limit the record for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the court may not tax the cost of the record to the petitioner or any intervening party. However, the court may tax such costs and the cost of transcription of record to a party filing a frivolous petition for judicial review.

(6) Petitions and briefs must be filed within time periods and in a manner established by the Court of Appeals by rule.

(7)(a) The court shall hear oral argument within 49 days of the date of transmittal of the record.

(b) The court may hear oral argument more than 49 days from the date of transmittal of the record provided the court determines that the ends of justice served by holding oral argument on a later day outweigh the best interests of the public and the parties. The court may not hold oral argument more than 49 days from the date of transmittal of the record because of general congestion of the court calendar or lack of diligent preparation or attention to the case by any member of the court or any party.

(c) The court shall set forth in writing a determination to hear oral argument more than 49 days from the date the record is transmitted, together with the reasons for its determination, and shall provide a copy to the parties. The court shall schedule oral argument as soon as practicable thereafter.

(d) In making a determination under paragraph (b) of this subsection, the court shall consider:

(A) Whether the case is so unusual or complex, due to the number of parties or the existence of novel questions of law, that 49 days is an unreasonable amount of time for the parties to brief the case and for the court to prepare for oral argument; and

(B) Whether the failure to hold oral argument at a later date likely would result in a miscarriage of justice.

(8) Judicial review of an order issued under ORS 197.830 to 197.845 must be confined to the record. The court may not substitute its judgment for that of the board as to any issue of fact.

(9) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but error in procedure is not cause for reversal or remand unless the court finds that substantial rights of the petitioner were prejudiced thereby;

(b) The order to be unconstitutional; or

(c) The order is not supported by substantial evidence in the whole record as to facts found by the board under ORS 197.835 (2).

(10) The Court of Appeals shall issue a final order on the petition for judicial review with the greatest possible expediency.

(11) If the order of the board is remanded by the Court of Appeals or the Supreme Court, the board shall respond to the court's appellate judgment within 30 days.

(12) A party must file with the board an undertaking with one or more sureties insuring that the party will pay all costs, disbursements and attorney fees awarded against the party by the Court of Appeals if:

(a) The party appealed a decision of the board to the Court of Appeals; and

(b) In making the decision being appealed to the Court of Appeals, the board awarded attorney fees and expenses against that party under ORS 197.830 (15)(b) or (c).

(13) Upon entry of its final order, the court shall award attorney fees and expenses to a party who:

(a) Prevails on a claim that an approval condition imposed by a local government on an application for a permit pursuant to ORS 215.416 or 227.175 is unconstitutional under section 18, Article I, Oregon Constitution, or the Fifth Amendment to the United States Constitution; or

(b) Is entitled to attorney fees under [*ORS 197.830 (15)(c)*] **section 2 of this 2021 Act.**

(14) The undertaking required in subsection (12) of this section must be filed with the board and served on the opposing parties within 10 days after the date the petition was filed with the Court of Appeals.

SECTION 4. ORS 215.441 is amended to read:

215.441. (1) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship is allowed on real property under state law and rules and local zoning ordinances and regulations, a county shall allow the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including:

(a) Worship services.

(b) Religion classes.

(c) Weddings.

(d) Funerals.

(e) Meal programs.

(f) Child care, but not including private or parochial school education for prekindergarten through grade 12 or higher education.

[*(g) Providing housing or space for housing in a building or buildings that are detached from the place of worship, provided:*]

[*(A) At least 50 percent of the residential units provided under this paragraph are affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located;*]

[*(B) The real property is in an area zoned for residential use that is located within the urban growth boundary; and*]

[*(C) The housing or space for housing complies with applicable land use regulations and meets the standards and criteria for residential development for the underlying zone.*]

(2) A county may:

(a) Subject real property described in subsection (1) of this section to reasonable regulations, including site review or design review, concerning the physical characteristics of the uses authorized under subsection (1) of this section; or

(b) Prohibit or restrict the use of real property by a place of worship described in subsection (1) of this section if the county finds that the level of service of public facilities, including transportation, water supply, sewer and storm drain systems is not adequate to serve the place of worship described in subsection (1) of this section.

(3) Notwithstanding any other provision of this section, a county may allow a private or parochial school for prekindergarten through grade 12 or higher education to be sited under applicable state law and rules and local zoning ordinances and regulations.

[*(4) Housing and space for housing provided under subsection (1)(g) of this section must be subject to a covenant appurtenant that restricts the owner and each successive owner of a building or any residential unit contained in a building from selling or renting any residential unit described in subsection (1)(g)(A) of this section as housing that is not affordable to households with incomes equal to*

or less than 60 percent of the median family income for the county in which the real property is located for a period of 60 years from the date of the certificate of occupancy.]

SECTION 5. ORS 227.500 is amended to read:

227.500. (1) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship is allowed on real property under state law and rules and local zoning ordinances and regulations, a city shall allow the reasonable use of the real property for activities customarily associated with the practices of the religious activity, including:

(a) Worship services.

(b) Religion classes.

(c) Weddings.

(d) Funerals.

(e) Meal programs.

(f) Child care, but not including private or parochial school education for prekindergarten through grade 12 or higher education.

[*(g) Providing housing or space for housing in a building or buildings that are detached from the place of worship, provided:*]

[*(A) At least 50 percent of the residential units provided under this paragraph are affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located;*]

[*(B) The real property is in an area zoned for residential use that is located within the urban growth boundary; and*]

[*(C) The housing or space for housing complies with applicable land use regulations and meets the standards and criteria for residential development for the underlying zone.*]

(2) A city may:

(a) Subject real property described in subsection (1) of this section to reasonable regulations, including site review and design review, concerning the physical characteristics of the uses authorized under subsection (1) of this section; or

(b) Prohibit or regulate the use of real property by a place of worship described in subsection (1) of this section if the city finds that the level of service of public facilities, including transportation, water supply, sewer and storm drain systems is not adequate to serve the place of worship described in subsection (1) of this section.

(3) Notwithstanding any other provision of this section, a city may allow a private or parochial school for prekindergarten through grade 12 or higher education to be sited under applicable state law and rules and local zoning ordinances and regulations.

[*(4) Housing and space for housing provided under subsection (1)(g) of this section must be subject to a covenant appurtenant that restricts the owner and each successive owner of a building or any residential unit contained in a building from selling or renting any residential unit described in subsection (1)(g)(A) of this section as housing that is not affordable to households with incomes equal to or less than 60 percent of the median family income for the county in which the real property is located for a period of 60 years from the date of the certificate of occupancy.*]

SECTION 6. ORS 197.779 is repealed.

Passed by Senate April 21, 2021

Repassed by Senate June 8, 2021

.....
Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 3, 2021

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Tina Kotek, Speaker of House

Received by Governor:

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

Approved:

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

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Kate Brown, Governor

Filed in Office of Secretary of State:

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

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Shemia Fagan, Secretary of State

Enrolled
House Bill 2583

Sponsored by Representative FAHEY; Representatives CAMPOS, DEXTER, MARSH, MORGAN
(Presession filed.)

CHAPTER .....

AN ACT

Relating to maximum occupancy of residential dwelling units.

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

SECTION 1. A maximum occupancy limit may not be established or enforced by any local government, as defined in ORS 197.015, for any residential dwelling unit, as defined in ORS 90.100, if the restriction is based on the familial or nonfamilial relationships among any occupants.

Passed by House April 10, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 3, 2021

.....
Peter Courtney, President of Senate

Received by Governor:

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

Approved:

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

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

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

.....
Shemia Fagan, Secretary of State

Enrolled
House Bill 2607

Sponsored by Representatives GOMBERG, POST, Senator GIROD; Representatives BONHAM, BOSHART DAVIS, BREESE-IVERSON, CATE, DRAZAN, HAYDEN, MARSH, MEEK, MOORE-GREEN, MORGAN, NOBLE, REARDON, RESCHKE, SMITH DB, STARK, WITT, WRIGHT, ZIKA (Presession filed.)

CHAPTER .....

AN ACT

Relating to construction taxes; creating new provisions; amending ORS 320.173; and prescribing an effective date.

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

SECTION 1. ORS 320.173 is amended to read:

320.173. Construction taxes may not be imposed on the following:

(1) Private school improvements.

(2) Public improvements as defined in ORS 279A.010.

(3) Residential housing that is guaranteed to be affordable, under guidelines established by the United States Department of Housing and Urban Development, to households that earn no more than 80 percent of the median household income for the area in which the construction tax is imposed, for a period of at least 60 years following the date of construction of the residential housing.

(4) Public or private hospital improvements.

(5) Improvements to religious facilities primarily used for worship or education associated with worship.

(6) Agricultural buildings, as defined in ORS 455.315 (2)(a).

(7) Facilities that are operated by a not-for-profit corporation and that are:

(a) Long term care facilities, as defined in ORS 442.015;

(b) Residential care facilities, as defined in ORS 443.400; or

(c) Continuing care retirement communities, as defined in ORS 101.020.

(8) Residential housing being constructed on a lot or parcel of land to replace residential housing on the lot or parcel of land that was destroyed or damaged by wildfire or another event or circumstance that is the basis for a state of emergency declared under ORS 401.165 or 401.309 or for the exercise of authority under ORS 476.510 to 476.610.

SECTION 2. The amendments to ORS 320.173 by section 1 of this 2021 Act apply to residential housing damaged or destroyed on or after January 1, 2020.

SECTION 3. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by House April 9, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 10, 2021

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Peter Courtney, President of Senate

Received by Governor:

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

Approved:

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

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Kate Brown, Governor

Filed in Office of Secretary of State:

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

.....
Shemia Fagan, Secretary of State

Enrolled
House Bill 2809

Sponsored by Representatives SMITH DB, GOMBERG; Representatives CATE, HAYDEN, LEIF, MOORE-GREEN, MORGAN, RESCHKE, WILDE, WRIGHT, ZIKA, Senator KENNEMER (Pre-session filed.)

CHAPTER .....

AN ACT

Relating to temporary siting of recreational vehicles on properties with dwellings destroyed by natural disasters; amending ORS 197.493.

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

SECTION 1. ORS 197.493 is amended to read:

197.493. (1) A state agency or local government may not prohibit the placement or occupancy of a recreational vehicle, or impose any limit on the length of occupancy of a recreational vehicle **as a residential dwelling**, solely on the grounds that the occupancy is in a recreational vehicle, if the recreational vehicle is:

(a)**(A)** Located in a manufactured dwelling park, mobile home park or recreational vehicle park;

[*(b)*] **(B)** Occupied as a residential dwelling; and

[*(c)*] **(C)** Lawfully connected to water and electrical supply systems and a sewage disposal system[.]; **or**

(b) Is on a lot or parcel with a manufactured dwelling or single-family dwelling that is uninhabitable due to damages from a natural disasters, including wildfires, earthquakes, flooding or storms, until no later than the date:

(A) The dwelling has been repaired or replaced and an occupancy permit has been issued;

(B) The local government makes a determination that the owner of the dwelling is unreasonably delaying in completing repairs or replacing the dwelling; or

(C) Twenty-four months after the date the dwelling first became uninhabitable.

(2) Subsection (1) of this section does not limit the authority of a state agency or local government to impose other special conditions on the placement or occupancy of a recreational vehicle.

Passed by House April 15, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 28, 2021

.....
Peter Courtney, President of Senate

Received by Governor:

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

Approved:

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

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

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

.....
Shemia Fagan, Secretary of State

Enrolled
House Bill 3109

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

CHAPTER .....

AN ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Preschool recorded program.

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

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

(d) Facility operated by:

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

(B) A political subdivision of this state; or

(C) A governmental agency.

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

(f) Babysitters.

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

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

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

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

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

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

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

(b) Membership in the cooperative includes parents;

(c) There are written policies and procedures; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 9. ORS 215.213 is amended to read:

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

(a) Churches and cemeteries in conjunction with churches.

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

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

(A) ORS 215.275; or

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

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

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

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

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

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

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

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

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

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

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

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

(o) Creation, restoration or enhancement of wetlands.

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

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

(r) Farm stands if:

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

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

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

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

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

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

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

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

(A) A public right of way;

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

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

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

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

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

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

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

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

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

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

(A) Consists of 20 or more acres; and

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

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

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

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

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

(d) Operations conducted for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) Home occupations as provided in ORS 215.448.

(o) Transmission towers over 200 feet in height.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Only one lot or parcel exists if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Planned hours of operation;

(ii) Access, egress and parking;

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

(iv) Sanitation and solid waste.

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

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

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

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

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

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

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

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

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

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

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

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

(D) Must comply with ORS 215.296;

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

(F) Must comply with conditions established for:

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

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

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

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

(v) Sanitation and solid waste.

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 10. ORS 215.283 is amended to read:

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

(a) Churches and cemeteries in conjunction with churches.

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

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

(A) ORS 215.275; or

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

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

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

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

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

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

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

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

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

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

(m) Creation, restoration or enhancement of wetlands.

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

(o) Farm stands if:

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

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

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

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

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

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

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

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

(A) A public right of way;

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

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

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

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

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

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

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

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

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

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

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

(b) Operations conducted for:

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

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

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

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

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

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

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

(f) Golf courses on land:

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

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

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

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

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

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

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

(i) Home occupations as provided in ORS 215.448.

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

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

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

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

(m) Transmission towers over 200 feet in height.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Planned hours of operation;

(ii) Access, egress and parking;

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

(iv) Sanitation and solid waste.

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

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

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

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

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

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

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

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

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

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

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

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

(D) Must comply with ORS 215.296;

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

(F) Must comply with conditions established for:

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

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

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

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

(v) Sanitation and solid waste.

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

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

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

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

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

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

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

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

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

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

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

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

Passed by House April 15, 2021

Repassed by House June 8, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 7, 2021

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Peter Courtney, President of Senate

Received by Governor:

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

Approved:

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

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Kate Brown, Governor

Filed in Office of Secretary of State:

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

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Shemia Fagan, Secretary of State

Enrolled
House Bill 3261

Sponsored by Representative MARSH; Senator GOLDEN

CHAPTER .....

AN ACT

Relating to conversion of properties for living spaces; and declaring an emergency.

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

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 197.

SECTION 2. (1) Except as provided in this section and notwithstanding any statewide land use planning goals or land use regulations, a local government shall unconditionally allow the conversion of the lawful use of a property:

(a) From use as a hotel or motel, to use as an emergency shelter.

(b) From use as a hotel or motel, or a hotel or motel that was converted to an emergency shelter under paragraph (a) of this subsection, to use as affordable housing.

(2) This section applies only to areas:

(a) Within an urban growth boundary;

(b) Not designated by the local government as specifically for heavy industrial uses;

(c) With adequate transportation access to commercial and medical services; and

(d) Not within an area designated for a statewide land use planning goal relating to natural disasters or hazards, including flood plains or mapped environmental health hazards, unless the converted use complies with regulations directly related to the disasters or hazards.

(3) A local government may require a converted use under this section to comply with:

(a) Applicable building codes;

(b) Occupancy limits; or

(c) For uses under subsection (1)(b) of this section, reasonable standards relating to siting or design, if the standards do not, individually or cumulatively, prohibit the conversion through unreasonable costs or delay.

(4) A conversion under this section is not a land use decision as defined in ORS 197.015.

(5) A local government is not required to consider whether the conversion significantly affects an existing or planned transportation facility for the purposes of implementing a statewide land use planning goal relating to transportation.

(6) As used in this section:

(a) "Affordable housing" means housing in which all units are affordable to households with incomes equal to or less than 60 percent of the area median income as defined in ORS 458.610 and whose affordability is enforceable by an affordable housing covenant, as described in ORS 456.270 to 456.295, for a duration of no less than 30 years.

(b) "Conversion" includes an alteration to a building that changes the number of units but does not expand the building footprint.

(c) "Emergency shelter" means a building that provides shelter on a temporary basis for individuals and families who lack permanent housing.

(d) "Lawful use" includes a nonconforming use as described in ORS 215.130 (6) or any other local land use regulation allowing for the continuation of a use that was lawful when first enacted.

SECTION 3. Section 2 of this 2021 Act applies to conversions or applications for conversions on or after January 1, 2021.

SECTION 4. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by House March 31, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate April 26, 2021

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Peter Courtney, President of Senate

Received by Governor:

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

Approved:

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

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Kate Brown, Governor

Filed in Office of Secretary of State:

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

.....
Shemia Fagan, Secretary of State

Enrolled
House Bill 4064

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of House Interim Committee on Housing for Representative Pam Marsh)

CHAPTER .....

AN ACT

Relating to manufactured structures; creating new provisions; amending ORS 62.803, 90.230, 174.101, 197.286, 197.307, 197.312, 197.314, 197.485, 197.492, 215.010, 307.651, 446.003, 458.352, 458.356 and 458.358 and section 18, chapter 401, Oregon Laws 2019; repealing ORS 446.007; and declaring an emergency.

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

SITING MANUFACTURED HOMES AND PREFABRICATED STRUCTURES

SECTION 1. ORS 197.314 is amended to read:

197.314. (1) [*Notwithstanding ORS 197.296, 197.298, 197.299, 197.301, 197.302, 197.303, 197.307, 197.312 and 197.313, within urban growth boundaries each city and county shall amend its comprehensive plan and land use regulations for all land zoned for single-family residential uses to allow for siting of manufactured homes as defined in ORS 446.003. A local government may only subject the siting of a manufactured home allowed under this section to regulation as set forth in ORS 197.307 (8).*] **Notwithstanding any other provision in ORS 197.286 to 197.314, within an urban growth boundary, a local government shall allow the siting of manufactured homes and prefabricated structures on all land zoned to allow the development of single-family dwellings.**

[*(2) Cities and counties shall adopt and amend comprehensive plans and land use regulations under subsection (1) of this section according to the provisions of ORS 197.610 to 197.651.*]

[*(3)*] **(2)** [*Subsection (1) of*] This section does not apply to any area designated in an acknowledged comprehensive plan or land use regulation as a historic district or residential land immediately adjacent to a historic landmark.

[*(4) Manufactured homes on individual lots zoned for single-family residential use in subsection (1) of this section shall be in addition to manufactured homes on lots within designated manufactured dwelling subdivisions.*]

(3) Manufactured homes and prefabricated structures allowed under this section are in addition to manufactured dwellings or prefabricated structures allowed within designated manufactured dwelling subdivisions.

(4) A local government may not subject manufactured homes or prefabricated structures within an urban growth boundary, or the land upon which the homes or structures are sited, to any applicable standard that would not apply to a detached, site-built single-family dwelling on the same land, except:

(a) As necessary to comply with a protective measure adopted pursuant to a statewide land use planning goal; or

(b) To require that the manufacturer certify that the manufactured home or prefabricated structure has an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single-family dwellings constructed under the Low-Rise Residential Dwelling Code as defined in ORS 455.010.

(5) Within any residential zone inside an urban growth boundary where a manufactured dwelling park is otherwise allowed, a city or county [*shall*] **may** not adopt[*, by charter or ordinance,*] a minimum lot size for a manufactured dwelling park that is larger than one acre.

[*(6) A city or county may adopt the following standards for the approval of manufactured homes located in manufactured dwelling parks that are smaller than three acres:*]

[*(a) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.*]

[*(b) The manufactured home shall have exterior siding and roofing that, in color, material and appearance, is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or that is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.*]

[*(7)*] **(6)** This section [*shall*] **may** not be construed as abrogating a recorded restrictive covenant.

SECTION 2. ORS 197.307, as amended by section 14, chapter 401, Oregon Laws 2019, is amended to read:

197.307. (1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers, is a matter of statewide concern.

(2) Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable, decent, safe and sanitary housing.

(3) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.

(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:

(a) May include, but are not limited to, one or more provisions regulating the density or height of a development.

(b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

(5) The provisions of subsection (4) of this section do not apply to:

(a) An application or permit for residential development in an area identified in a formally adopted central city plan, or a regional center as defined by Metro, in a city with a population of 500,000 or more.

(b) An application or permit for residential development in historic areas designated for protection under a land use planning goal protecting historic areas.

(6) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

(a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;

(b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and

(c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.

(7) Subject to subsection (4) of this section, this section does not infringe on a local government's prerogative to:

(a) Set approval standards under which a particular housing type is permitted outright;

(b) Impose special conditions upon approval of a specific development proposal; or

(c) Establish approval procedures.

[*(8) In accordance with subsection (4) of this section and ORS 197.314, a jurisdiction may adopt any or all of the following placement standards, or any less restrictive standard, for the approval of manufactured homes located outside mobile home parks:*]

[*(a) The manufactured home shall be multisectional and enclose a space of not less than 1,000 square feet.*]

[*(b) The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured home is located not more than 12 inches above grade.*]

[*(c) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.*]

[*(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.*]

[*(e) The manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.010.*]

[*(f) The manufactured home shall have a garage or carport constructed of like materials. A jurisdiction may require an attached or detached garage in lieu of a carport where such is consistent with the predominant construction of immediately surrounding dwellings.*]

[*(g) In addition to the provisions in paragraphs (a) to (f) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, architectural requirement and minimum size requirement to which a conventional single-family residential dwelling on the same lot would be subject.*]

SECTION 3. ORS 197.485 is amended to read:

197.485. (1) A jurisdiction may not prohibit placement of a manufactured dwelling, due solely to its age, in a mobile home or manufactured dwelling park in a zone with a residential density of eight to 12 units per acre.

(2) A jurisdiction may not prohibit placement of a manufactured dwelling, due solely to its age, on a buildable lot or parcel located outside urban growth boundaries or on a space in a mobile home or manufactured dwelling park, if the manufactured dwelling is being relocated due to the closure of a mobile home or manufactured dwelling park or a portion of a mobile home or manufactured dwelling park.

(3) A jurisdiction may not prohibit the placement of a prefabricated structure in a mobile home or manufactured dwelling park.

[*(3)*] **(4)** A jurisdiction may impose reasonable safety and inspection requirements for homes that were not constructed in conformance with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5403).

SECTION 4. ORS 197.312 is amended to read:

197.312. (1) A [*city or county*] **local government** may not [*by charter*] prohibit from all residential zones attached or detached single-family housing, multifamily housing for both owner and renter occupancy, [*or*] manufactured homes **or prefabricated structures**. A city or county may not [*by*

charter] prohibit government assisted housing or impose additional approval standards on government assisted housing that are not applied to similar but unassisted housing.

(2)(a) A single-family dwelling for a farmworker and the farmworker's immediate family is a permitted use in any residential or commercial zone that allows single-family dwellings as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of a single-family dwelling for a farmworker and the farmworker's immediate family in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other single-family dwellings in the same zone.

(3)(a) Multifamily housing for farmworkers and farmworkers' immediate families is a permitted use in any residential or commercial zone that allows multifamily housing generally as a permitted use.

(b) A city or county may not impose a zoning requirement on the establishment and maintenance of multifamily housing for farmworkers and farmworkers' immediate families in a residential or commercial zone described in paragraph (a) of this subsection that is more restrictive than a zoning requirement imposed on other multifamily housing in the same zone.

(4) A city or county may not prohibit a property owner or developer from maintaining a real estate sales office in a subdivision or planned community containing more than 50 lots or dwelling units for the sale of lots or dwelling units that remain available for sale to the public.

(5)(a) A city with a population greater than 2,500 or a county with a population greater than 15,000 shall allow in areas within the urban growth boundary that are zoned for detached single-family dwellings the development of at least one accessory dwelling unit for each detached single-family dwelling, subject to reasonable local regulations relating to siting and design.

(b) As used in this subsection:

(A) "Accessory dwelling unit" means an interior, attached or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.

(B) "Reasonable local regulations relating to siting and design" does not include owner-occupancy requirements of either the primary or accessory structure or requirements to construct additional off-street parking.

(6) Subsection (5) of this section does not prohibit local governments from regulating vacation occupancies, as defined in ORS 90.100, to require owner-occupancy or off-street parking.

SECTION 5. ORS 197.286 is amended to read:

197.286. As used in ORS 197.286 to 197.314 and 197.475 to 197.490:

(1) "Buildable lands" means lands in urban and urbanizable areas that are suitable, available and necessary for residential uses. "Buildable lands" includes both vacant land and developed land likely to be redeveloped.

[*(2) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.*]

[*(3)*] **(2)** "Government assisted housing" means housing that is financed in whole or part by either a federal or state housing agency or a housing authority as defined in ORS 456.005, or housing that is occupied by a tenant or tenants who benefit from rent supplements or housing vouchers provided by either a federal or state housing agency or a local housing authority.

(3) "Manufactured dwelling," "manufactured dwelling park," "manufactured home" and "mobile home park" have the meanings given those terms in ORS 446.003.

[*(4) "Manufactured homes" has the meaning given that term in ORS 446.003.*]

[*(5) "Mobile home park" has the meaning given that term in ORS 446.007.*]

[*(6)*] **(4)** "Periodic review" means the process and procedures as set forth in ORS 197.628 to 197.651.

(5) "Prefabricated structure" means a prefabricated structure, as defined in ORS 455.010, that is relocatable, more than eight and one-half feet wide and designed for use as a single-family dwelling.

[*(7)*] **(6)** "Urban growth boundary" means an urban growth boundary included or referenced in a comprehensive plan.

SECTION 6. Section 18, chapter 401, Oregon Laws 2019, as amended by section 1c, chapter 422, Oregon Laws 2019, is amended to read:

Sec. 18. [*Section 9, chapter 401, Oregon Laws 2019,*] **ORS 455.616,** the amendments to ORS [*197.307,*] 446.003, 455.010, 455.135, 455.156 and 455.610 by sections 10 to [*14*] **13**, chapter 401, Oregon Laws 2019, and section 1b**, chapter 422, Oregon Laws 2019,** [*of this 2019 Act,*] and the repeal of section 2, chapter 401, Oregon Laws 2019, by section 17, chapter 401, Oregon Laws 2019, become operative on January 2, 2026.

NOTE: Sections 7 and 8 were deleted by amendment. Subsequent sections were not renumbered.

MANUFACTURED DWELLING REPLACEMENT PROGRAM

SECTION 9. ORS 458.356 is amended to read:

458.356. **(1) As used in ORS 458.356 to 458.362:**

(a) "Manufactured dwelling" means:

(A) A manufactured dwelling, as defined in ORS 446.003; or

(B) A prefabricated structure, as defined in ORS 455.010, that is relocatable, more than eight and one-half feet wide and designed for use as a single-family dwelling.

(b) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.

[*(1)*] **(2)** The Housing and Community Services Department shall establish a program to provide loans to individuals to buy and site manufactured dwellings that replace older and less energy efficient manufactured dwellings, or manufactured dwellings destroyed by a natural disaster. The department may contract with local governments or public or private housing sponsors to carry out the department's responsibilities under this program.

[*(2)*] **(3)** The department may make loans under the program only to individual borrowers who:

(a) Are members of households with income that complies with income restrictions determined at the advice and consent of the Oregon Housing Stability Council, but not to exceed the greater of 100 percent of the statewide or local area median income adjusted for household size as determined annually by the Housing and Community Services Department using United States Department of Housing and Urban Development information; and

(b) Will purchase a manufactured dwelling that:

(A) Meets energy efficiency standards as prescribed by the Housing and Community Services Department;

[*(B)(i) Will be sited in a manufactured dwelling park that has registered with the department and either has entered into a regulatory agreement with the department or is negotiating a regulatory agreement that is at least partially conditioned upon the replacement of the dwelling;*]

[*(ii) Will be sited on land owned or purchased under a land sale contract by the individual borrower; or*]

[*(iii) Will be sited in a manufactured dwelling park that has been affected by a natural disaster and the department has, pursuant to rule, provided the borrower with a waiver of the requirement that the park enter into an agreement under sub-subparagraph (i) of this subparagraph; and*]

(B) Will be sited as required under subsection (4) of this section; and

(C) Will be the primary residence of the borrower throughout the term of the loan.

(4) To be eligible for a loan under this section, the borrower must site the replacement manufactured dwelling on land that is:

(a) Owned by the borrower or being purchased by the borrower under a land sale contract;

(b) In a manufactured dwelling park that has registered with the department and either has entered into a regulatory agreement with the department or is negotiating a regulatory agreement that is at least partially conditioned upon the replacement of the dwelling; or

(c) In any location, provided that the borrower has obtained a waiver from the department and is replacing a manufactured dwelling that was destroyed by a natural disaster.

[*(3)*] **(5)** The department shall prescribe by rule the maximum loan amount per individual, lending requirements and terms for loans made under this program, including:

(a) Interest rates charged to borrowers, if any;

(b) Repayment requirements, if any;

(c) Loan forgiveness opportunities, if any;

(d) Affordability requirements; and

(e) Remedies upon transfer or default.

[*(4)*] **(6)** In servicing loans under the program, the department shall deposit all moneys received into the Manufactured Home Preservation Fund established in ORS 458.366.

[*(5)*] **(7)** The council may establish priorities for evaluating loan applications and shall give consideration to prioritizing loans to borrowers who are:

(a) From low income households; and

(b) Decommissioning and replacing manufactured dwellings that are older or less resource or energy efficient.

STANDARDIZING DEFINITIONS

SECTION 10. ORS 62.803 is amended to read:

62.803. As used in ORS 62.800 to 62.815, unless the context requires otherwise:

(1) "Lienholder" means the holder of a manufactured dwelling lien:

(a) That is recorded in the deed records of the county in which the manufactured dwelling is located;

(b) That is perfected with the Department of Consumer and Business Services pursuant to ORS 446.611; or

(c) Of which a manufactured dwelling park nonprofit cooperative has actual knowledge.

(2) "Manufactured dwelling" [*has the meaning given that term in ORS 446.003*] **means:**

(a) A manufactured dwelling, as defined in ORS 446.003; or

(b) A prefabricated structure, as defined in ORS 455.010, that is relocatable, more than eight and one-half feet wide and designed for use as a single-family dwelling.

(3) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.

(4) "Manufactured dwelling park nonprofit cooperative" means a cooperative corporation that:

(a) Is organized to acquire or develop, and to own, an interest in one or more manufactured dwelling parks that are primarily used for the siting of manufactured dwellings owned and occupied by members of the cooperative;

(b) Limits the use of all income and earnings to use by the cooperative and not for the benefit or profit of any individual; and

(c) Elects to be governed by ORS 62.800 to 62.815.

SECTION 11. ORS 90.230 is amended to read:

90.230. (1) If a tenancy is for the occupancy of a recreational vehicle in a manufactured dwelling park[,] **or** mobile home park**, as defined in ORS 446.003,** or recreational vehicle park, [*all*] as defined in ORS 197.492, the landlord shall provide a written rental agreement for a month-to-month, week-to-week or fixed-term tenancy. The rental agreement must state:

(a) If applicable, that the tenancy may be terminated by the landlord under ORS 90.427 without cause upon 30 or 60 days' written notice for a month-to-month tenancy or upon 10 days' written notice for a week-to-week tenancy.

(b) That any accessory building or structure paid for or provided by the tenant belongs to the tenant and is subject to a demand by the landlord that the tenant remove the building or structure upon termination of the tenancy.

(c) That the tenancy is subject to the requirements of ORS 197.493 (1) for exemption from placement and occupancy restrictions.

(2) If a tenant described in subsection (1) of this section moves following termination of the tenancy by the landlord under ORS 90.427, and the landlord failed to provide the required written

rental agreement before the beginning of the tenancy, the tenant may recover the tenant's actual damages or twice the periodic rent, whichever is greater.

(3) If the occupancy fails at any time to comply with the requirements of ORS 197.493 (1) for exemption from placement and occupancy restrictions, and a state agency or local government requires the tenant to move as a result of the noncompliance, the tenant may recover the tenant's actual damages or twice the periodic rent, whichever is greater. This subsection does not apply if the noncompliance was caused by the tenant.

(4) This section does not apply to a vacation occupancy.

SECTION 12. ORS 174.101 is amended to read:

174.101. (1) As used in the statutes of this state, "manufactured structure" has the meaning given that term in this section only if the statute using "manufactured structure" makes specific reference to this section and indicates that the term used has the meaning given in this section. As used in the statutes of this state, "recreational vehicle" has the meaning given that term in this section only if the statute using "recreational vehicle" makes specific reference to this section [*or ORS 446.007*] and thereby indicates that the term used has the meaning given in this section.

(2) "Manufactured structure" means a manufactured dwelling, as defined in ORS 446.003, or a recreational vehicle, as defined in this section.

(3) "Recreational vehicle" means a vehicle with or without motive power that is designed for use as temporary living quarters and as further defined by rule by the Director of Transportation.

SECTION 13. ORS 197.492 and 197.493 are added to and made a part of ORS 197.475 to 197.490.

SECTION 14. ORS 197.492 is amended to read:

197.492. As used in this section and ORS 197.493:

[*(1) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.*]

[*(2) "Mobile home park" and "recreational vehicle" have the meanings given those terms in ORS 446.007.*]

(1) "Recreational vehicle" has the meaning given that term in ORS 174.101.

[*(3)*] **(2)** "Recreational vehicle park":

(a) Means a place where two or more recreational vehicles are located within 500 feet of one another on a lot, tract or parcel of land under common ownership and having as its primary purpose:

(A) The renting of space and related facilities for a charge or fee; or

(B) The provision of space for free in connection with securing the patronage of a person.

(b) Does not mean:

(A) An area designated only for picnicking or overnight camping; or

(B) A manufactured dwelling park or mobile home park.

SECTION 15. ORS 215.010 is amended to read:

215.010. As used in this chapter:

(1) The terms defined in ORS 92.010 shall have the meanings given therein, except that "parcel":

(a) Includes a unit of land created:

(A) By partitioning land as defined in ORS 92.010;

(B) In compliance with all applicable planning, zoning and partitioning ordinances and regulations; or

(C) By deed or land sales contract, if there were no applicable planning, zoning or partitioning ordinances or regulations.

(b) Does not include a unit of land created solely to establish a separate tax account.

(2) "Tract" means one or more contiguous lots or parcels under the same ownership.

(3) The terms defined in ORS chapter 197 shall have the meanings given therein.

(4) "Farm use" has the meaning given that term in ORS 215.203.

(5) "Recreational structure" means a campground structure with or without plumbing, heating or cooking facilities intended to be used by any particular occupant on a limited-time basis for recreational, seasonal, emergency or transitional housing purposes and may include

yurts, cabins, fabric structures or similar structures as further defined, by rule, by the Director of the Department of Consumer and Business Services.

[*(5)*] **(6)** "Recreational vehicle" has the meaning given that term in ORS 174.101.

[*(6)*] **(7)** "The Willamette Valley" is Clackamas, Linn, Marion, Multnomah, Polk, Washington and Yamhill Counties and the portion of Benton and Lane Counties lying east of the summit of the Coast Range.

SECTION 16. ORS 307.651 is amended to read:

307.651. As used in ORS 307.651 to 307.687, unless the context requires otherwise:

(1) "Governing body" means the city legislative body having jurisdiction over the property for which an exemption may be applied for under ORS 307.651 to 307.687.

(2) "Qualified dwelling unit" means a dwelling unit that, at the time an application is filed pursuant to ORS 307.667, has a market value for the land and improvements of no more than 120 percent, or a lesser percentage as adopted by the governing body by resolution, of the median sales price of dwelling units located within the city.

(3) "Single-unit housing" means a structure having one or more dwelling units that:

(a) Is, or will be, upon purchase, rehabilitation or completion of construction, in conformance with all local plans and planning regulations, including special or district-wide plans developed and adopted pursuant to ORS chapters 195, 196, 197 and 227.

(b) If newly constructed, is completed within two years after application for exemption is approved under ORS 307.674.

(c) Is designed for each dwelling unit within the structure to be purchased by and lived in by one person or one family.

(d) Has one or more qualified dwelling units within the single-unit housing.

(e) Is not a floating home, as defined in ORS 830.700, or a manufactured structure, other than a manufactured home described in ORS 197.307 (8)(a) to (f) **(2021 Edition)**.

(4) "Structure" does not include the land or any site development made to the land, as those terms are defined in ORS 307.010.

SECTION 17. ORS 446.003 is amended to read:

446.003. As used in ORS 446.003 to 446.200 and 446.225 to 446.285, [*and for the purposes of ORS chapters 195, 196, 197, 215 and 227, the following definitions apply,*] unless the context requires otherwise[,] or unless administration and enforcement by the State of Oregon under the existing or revised National Manufactured Housing Construction and Safety Standards Act would be adversely affected[*, and except as provided in ORS 197.746 or 446.007*]:

(1) "Accessory building or structure" means any portable, demountable or permanent structure established for use of the occupant of the manufactured dwelling and as further defined by rule by the Director of the Department of Consumer and Business Services.

(2)(a) "Alteration" means any change, addition, repair, conversion, replacement, modification or removal of any equipment or installation that may affect the operation, construction or occupancy of a manufactured dwelling.

(b) "Alteration" does not include:

(A) Minor repairs with approved component parts;

(B) Conversion of listed fuel-burning appliances in accordance with the terms of their listing;

(C) Adjustment and maintenance of equipment; or

(D) Replacement of equipment or accessories in kind.

(3) "Approved" means approved, licensed or certified by the Department of Consumer and Business Services or its designee.

[*(4) "Board" means the Residential and Manufactured Structures Board.*]

[*(5)*] **(4)** "Cabana" means a stationary, lightweight structure that may be prefabricated, or demountable, with two or more walls, used adjacent to and in conjunction with a manufactured dwelling to provide additional living space.

[*(6)*] **(5)** "Certification" means an evaluation process by which the department verifies a manufacturer's ability to produce manufactured dwellings to the department rules and to the department approved quality control manual.

[*(7)*] **(6)** "Dealer" means any person engaged in the business of selling, leasing or distributing manufactured dwellings or equipment, or both, primarily to persons who in good faith purchase or lease manufactured dwellings or equipment, or both, for purposes other than resale.

[*(8)*] **(7)** "Department" means the Department of Consumer and Business Services.

[*(9)*] **(8)** "Director" means the Director of the Department of Consumer and Business Services.

[*(10)*] **(9)** "Distributor" means any person engaged in selling and distributing manufactured dwellings or equipment for resale.

[*(11)*] **(10)** "Equipment" means materials, appliances, subassembly, devices, fixtures, fittings and apparatuses used in the construction, plumbing, mechanical and electrical systems of a manufactured dwelling.

[*(12)*] **(11)** "Federal manufactured housing construction and safety standard" means a standard for construction, design and performance of a manufactured dwelling promulgated by the Secretary of Housing and Urban Development pursuant to the federal National Manufactured Housing Construction and Safety Standards Act of 1974 (Public Law 93-383).

[*(13) "Fire Marshal" means the State Fire Marshal.*]

[*(14)*] **(12)** "Imminent safety hazard" means an imminent and unreasonable risk of death or severe personal injury.

[*(15)*] **(13)** "Insignia of compliance" means the HUD label for a manufactured dwelling.

[*(16)*] **(14)** "Inspecting authority" or "inspector" means the Director of the Department of Consumer and Business Services or representatives as appointed or authorized to administer and enforce provisions of ORS [*446.111, 446.160, 446.176*] **446.003 to 446.200**, 446.225 to 446.285, 446.310 to 446.350[,] **and** 446.990 [*and this section*].

[*(17)*] **(15)** "Installation" in relation to:

(a) Construction means the arrangements and methods of construction, fire and life safety, electrical, plumbing and mechanical equipment and systems within a manufactured dwelling.

(b) Siting means the manufactured dwelling and cabana foundation support and tiedown, the structural, fire and life safety, electrical, plumbing and mechanical equipment and material connections and the installation of skirting and temporary steps.

[*(18)*] **(16)** "Installer" means any individual licensed by the director to install, set up, connect, hook up, block, tie down, secure, support, install temporary steps for, install skirting for or make electrical, plumbing or mechanical connections to manufactured dwellings or cabanas or who provides consultation or supervision for any of these activities, except architects registered under ORS 671.010 to 671.220 or engineers registered under ORS 672.002 to 672.325.

[*(19)*] **(17)** "Listed" means equipment or materials included in a list, published by an organization concerned with product evaluation acceptable to the department that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or materials meets appropriate standards or has been tested and found suitable in a specified manner.

[*(20)*] **(18)** "Lot" means any space, area or tract of land, or portion of a manufactured dwelling park, mobile home park or recreation park that is designated or used for occupancy by one manufactured dwelling.

[*(21)(a)*] **(19)(a)** "Manufactured dwelling" means a residential trailer, mobile home or manufactured home.

(b) "Manufactured dwelling" does not include any building or structure constructed to conform to the State of Oregon Structural Specialty Code, the Low-Rise Residential Dwelling Code adopted pursuant to ORS 455.020 or 455.610 or the Small Home Specialty Code adopted under section 2, chapter 401, Oregon Laws 2019.

[*(22)(a)*] **(20)(a)** "Manufactured dwelling park" means any place where four or more manufactured dwellings or prefabricated structures, as defined in ORS 455.010, that are relocatable and more

than eight and one-half feet wide, are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent or lease space or keep space for rent or lease to any person for a charge or fee paid or to be paid for the rental or lease or use of facilities or to offer space free in connection with securing the trade or patronage of such person.

(b) "Manufactured dwelling park" does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured dwelling per lot if the subdivision was approved by the local government unit having jurisdiction under an ordinance adopted pursuant to ORS 92.010 to 92.192.

[*(23)(a)*] **(21)(a)** "Manufactured home," except as provided in paragraph (b) of this subsection, means a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction.

(b) For purposes of implementing any contract pertaining to manufactured homes between the department and the federal government, "manufactured home" has the meaning given the term in the contract.

[*(24)*] **(22)** "Manufacturer" means any person engaged in manufacturing, building, rebuilding, altering, converting or assembling manufactured dwellings or equipment.

[*(25)*] **(23)** "Manufacturing" means the building, rebuilding, altering or converting of manufactured dwellings that bear or are required to bear an Oregon insignia of compliance.

[*(26)*] **(24)** "Minimum safety standards" means the plumbing, mechanical, electrical, thermal, fire and life safety, structural and transportation standards prescribed by rules adopted by the director.

[*(27)*] **(25)** "Mobile home" means a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.

[*(28)*] **(26)** "Mobile home park":

(a) Means any place where four or more manufactured dwellings, recreational vehicles as defined in ORS 174.101, or a combination thereof, are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person.

(b) Does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured dwelling per lot if the subdivision was approved by the municipality unit having jurisdiction under an ordinance adopted pursuant to ORS 92.010 to 92.192.

[*(29)*] **(27)** "Municipality" means a city, county or other unit of local government otherwise authorized by law to enact codes.

[*(30)*] **(28)** "Residential trailer" means a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed before January 1, 1962.

[*(31)*] **(29)** "Sale" means rent, lease, sale or exchange.

[*(32)*] **(30)** "Skirting" means a weather resistant material used to enclose the space below a manufactured dwelling.

[*(33)*] **(31)** "Tiedown" means any device designed to anchor a manufactured dwelling securely to the ground.

[*(34) "Transitional housing accommodations" means accommodations described under ORS 197.746.*]

[*(35)*] **(32)** "Utilities" means the water, sewer, gas or electric services provided on a lot for a manufactured dwelling.

SECTION 18. ORS 446.003, as amended by section 1b, chapter 422, Oregon Laws 2019, and section 7, chapter 260, Oregon Laws 2021, is amended to read:

446.003. As used in ORS 446.003 to 446.200 and 446.225 to 446.285, [*and for the purposes of ORS chapters 195, 196, 197, 215 and 227, the following definitions apply,*] unless the context requires otherwise[,] or unless administration and enforcement by the State of Oregon under the existing or revised National Manufactured Housing Construction and Safety Standards Act would be adversely affected[, *and except as provided in ORS 197.746 or 446.007*]:

(1) "Accessory building or structure" means any portable, demountable or permanent structure established for use of the occupant of the manufactured dwelling and as further defined by rule by the Director of the Department of Consumer and Business Services.

(2)(a) "Alteration" means any change, addition, repair, conversion, replacement, modification or removal of any equipment or installation that may affect the operation, construction or occupancy of a manufactured dwelling.

(b) "Alteration" does not include:

(A) Minor repairs with approved component parts;

(B) Conversion of listed fuel-burning appliances in accordance with the terms of their listing;

(C) Adjustment and maintenance of equipment; or

(D) Replacement of equipment or accessories in kind.

(3) "Approved" means approved, licensed or certified by the Department of Consumer and Business Services or its designee.

[*(4) "Board" means the Residential and Manufactured Structures Board.*]

[*(5)*] **(4)** "Cabana" means a stationary, lightweight structure that may be prefabricated, or demountable, with two or more walls, used adjacent to and in conjunction with a manufactured dwelling to provide additional living space.

[*(6)*] **(5)** "Certification" means an evaluation process by which the department verifies a manufacturer's ability to produce manufactured dwellings to the department rules and to the department approved quality control manual.

[*(7)*] **(6)** "Dealer" means any person engaged in the business of selling, leasing or distributing manufactured dwellings or equipment, or both, primarily to persons who in good faith purchase or lease manufactured dwellings or equipment, or both, for purposes other than resale.

[*(8)*] **(7)** "Department" means the Department of Consumer and Business Services.

[*(9)*] **(8)** "Director" means the Director of the Department of Consumer and Business Services.

[*(10)*] **(9)** "Distributor" means any person engaged in selling and distributing manufactured dwellings or equipment for resale.

[*(11)*] **(10)** "Equipment" means materials, appliances, subassembly, devices, fixtures, fittings and apparatuses used in the construction, plumbing, mechanical and electrical systems of a manufactured dwelling.

[*(12)*] **(11)** "Federal manufactured housing construction and safety standard" means a standard for construction, design and performance of a manufactured dwelling promulgated by the Secretary of Housing and Urban Development pursuant to the federal National Manufactured Housing Construction and Safety Standards Act of 1974 (Public Law 93-383).

[*(13) "Fire Marshal" means the State Fire Marshal.*]

[*(14)*] **(12)** "Imminent safety hazard" means an imminent and unreasonable risk of death or severe personal injury.

[*(15)*] **(13)** "Insignia of compliance" means the HUD label for a manufactured dwelling.

[*(16)*] **(14)** "Inspecting authority" or "inspector" means the Director of the Department of Consumer and Business Services or representatives as appointed or authorized to administer and enforce provisions of ORS [*446.111, 446.160, 446.176*] **446.003 to 446.200**, 446.225 to 446.285, 446.310 to 446.350[,] **and** 446.990 [*and this section*].

[*(17)*] **(15)** "Installation" in relation to:

(a) Construction means the arrangements and methods of construction, fire and life safety, electrical, plumbing and mechanical equipment and systems within a manufactured dwelling.

(b) Siting means the manufactured dwelling and cabana foundation support and tiedown, the structural, fire and life safety, electrical, plumbing and mechanical equipment and material connections and the installation of skirting and temporary steps.

[*(18)*] **(16)** "Installer" means any individual licensed by the director to install, set up, connect, hook up, block, tie down, secure, support, install temporary steps for, install skirting for or make electrical, plumbing or mechanical connections to manufactured dwellings or cabanas or who provides consultation or supervision for any of these activities, except architects registered under ORS 671.010 to 671.220 or engineers registered under ORS 672.002 to 672.325.

[*(19)*] **(17)** "Listed" means equipment or materials included in a list, published by an organization concerned with product evaluation acceptable to the department that maintains periodic inspection of production of listed equipment or materials, and whose listing states either that the equipment or materials meets appropriate standards or has been tested and found suitable in a specified manner.

[*(20)*] **(18)** "Lot" means any space, area or tract of land, or portion of a manufactured dwelling park, mobile home park or recreation park that is designated or used for occupancy by one manufactured dwelling.

[*(21)(a)*] **(19)(a)** "Manufactured dwelling" means a residential trailer, mobile home or manufactured home.

(b) "Manufactured dwelling" does not include any building or structure constructed to conform to the State of Oregon Structural Specialty Code or the Low-Rise Residential Dwelling Code adopted pursuant to ORS 455.020, 455.610 or 455.616.

[*(22)(a)*] **(20)(a)** "Manufactured dwelling park" means any place where four or more manufactured dwellings or prefabricated structures, as defined in ORS 455.010, that are relocatable and more than eight and one-half feet wide, are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent or lease space or keep space for rent or lease to any person for a charge or fee paid or to be paid for the rental or lease or use of facilities or to offer space free in connection with securing the trade or patronage of such person.

(b) "Manufactured dwelling park" does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured dwelling per lot if the subdivision was approved by the local government unit having jurisdiction under an ordinance adopted pursuant to ORS 92.010 to 92.192.

[*(23)(a)*] **(21)(a)** "Manufactured home," except as provided in paragraph (b) of this subsection, means a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction.

(b) For purposes of implementing any contract pertaining to manufactured homes between the department and the federal government, "manufactured home" has the meaning given the term in the contract.

[*(24)*] **(22)** "Manufacturer" means any person engaged in manufacturing, building, rebuilding, altering, converting or assembling manufactured dwellings or equipment.

[*(25)*] **(23)** "Manufacturing" means the building, rebuilding, altering or converting of manufactured dwellings that bear or are required to bear an Oregon insignia of compliance.

[*(26)*] **(24)** "Minimum safety standards" means the plumbing, mechanical, electrical, thermal, fire and life safety, structural and transportation standards prescribed by rules adopted by the director.

[*(27)*] **(25)** "Mobile home" means a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.

[*(28)*] **(26)** "Mobile home park":

(a) Means any place where four or more manufactured dwellings, recreational vehicles as defined in ORS 174.101, or a combination thereof, are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person.

(b) Does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured dwelling per lot if the subdivision was approved by the municipality unit having jurisdiction under an ordinance adopted pursuant to ORS 92.010 to 92.192.

[*(29)*] **(27)** "Municipality" means a city, county or other unit of local government otherwise authorized by law to enact codes.

[*(30)*] **(28)** "Residential trailer" means a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed before January 1, 1962.

[*(31)*] **(29)** "Sale" means rent, lease, sale or exchange.

[*(32)*] **(30)** "Skirting" means a weather resistant material used to enclose the space below a manufactured dwelling.

[*(33)*] **(31)** "Tiedown" means any device designed to anchor a manufactured dwelling securely to the ground.

[*(34) "Transitional housing accommodations" means accommodations described under ORS 197.746.*]

[*(35)*] **(32)** "Utilities" means the water, sewer, gas or electric services provided on a lot for a manufactured dwelling.

SECTION 19. ORS 446.007 is repealed.

SECTION 20. ORS 458.352 is amended to read:

458.352. (1) As used in this section:

(a) "Average income" means an income that complies with income restrictions determined at the advice and consent of the Oregon Housing Stability Council, but not to exceed the greater of 100 percent of the statewide or local area median income adjusted for household size as determined annually by the Housing and Community Services Department using United States Department of Housing and Urban Development information.

(b) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.

[*(b)*] **(c)** "Nonprofit corporation" means a corporation that is exempt from income taxes under section 501(c)(3) or (4) of the Internal Revenue Code as amended and in effect on December 31, 2016.

(2) The Housing and Community Services Department shall provide one or more loans to nonprofit corporations to create manufactured dwelling park preservation programs that invest in, and provide loans for, the preservation and affordability of manufactured dwelling parks in this state, including through:

(a) The repair or reconstruction of parks destroyed by natural disasters; or

(b) The acquisition and development of land for parks or for the expansion of parks in areas that have been affected by a natural disaster.

(3) To be eligible for a loan under this section, a nonprofit corporation shall demonstrate to the satisfaction of the department that the nonprofit corporation:

(a) Is a community development financial institution operating statewide to support investment in, and acquisition, renovation and construction of, affordable housing;

(b) Has the ability and capacity to provide the services and reporting required of the program described in subsections (4) and (6) of this section; and

(c) Meets other requirements established by the department regarding financial risk and availability or accessibility of additional resources.

(4) An eligible nonprofit corporation, with input from the department, shall develop a manufactured dwelling park preservation program that:

(a) Invests in, and loans funds to, other nonprofit corporations, housing authorities, manufactured dwelling park nonprofit cooperatives as defined in ORS 62.803, local units of government as

defined in ORS 466.706, agencies as defined in ORS 183.310, or any entity in which a nonprofit corporation has a controlling share, to:

(A) Purchase or refinance manufactured dwelling parks that will maintain the parks as parks long term; or

(B) Develop, expand, repair or reconstruct parks destroyed by natural disasters;

(b) Emphasizes, when providing loans under paragraph (a) of this subsection, the financing of parks whose residents are predominantly members of households with income less than average income; and

(c) Preserves the affordability of the park space rent to park tenants who are members of households with income less than average income.

(5) An eligible nonprofit corporation shall create a park preservation account to be used by the nonprofit corporation for the manufactured dwelling park preservation program and shall deposit the moneys loaned by the department into the account.

(6) An eligible nonprofit corporation shall ensure that all financial activities of the program are paid from and into the park preservation account created under subsection (5) of this section. Each nonprofit corporation shall report to the department no less than semiannually, showing the expenses and incomes of the park preservation account and the results of the manufactured dwelling park preservation program.

(7) A loan made by the department under this section:

(a) May require the nonprofit corporation to pay interest.

(b) May not require the nonprofit corporation to make any loan payments before the maturity date of the loan.

(c) Must have a maturity date of no later than September 15, 2036.

(d) May have its maturity date extended by the department.

(e) Shall have all or part of the unpaid balance forgiven by the department in an amount not to exceed the losses incurred on investments or loans made by the nonprofit corporation under subsection (4)(a) of this section.

(f) May include such agreements by the nonprofit corporation practical to secure the loan made by the department and to accomplish the purposes of the program described in subsection (4) of this section.

(8) The department or the State Treasurer shall deposit moneys received in servicing the loan into the General Housing Account of the Oregon Housing Fund created under ORS 458.620.

SECTION 21. ORS 458.358 is amended to read:

458.358. (1) The Housing and Community Services Department shall establish a program to provide grants to persons for safely decommissioning and disposing of a manufactured dwelling [*as defined in ORS 446.003*].

(2) The department may award grants under the program only to a person that is:

(a)(A) An individual who owns a manufactured dwelling sited:

(i) In a manufactured dwelling park that has registered with the department and either has entered into a regulatory agreement with the department or is negotiating a regulatory agreement that is at least partially conditioned upon the replacement of the dwelling;

(ii) On land owned by the individual; or

(iii) On land being purchased by the individual under a land sale contract as defined in ORS 18.960; or

(B) An entity described in paragraph (b)(B) of this subsection that has a controlling interest, including a controlling interest in a general partner of a limited partnership, in:

(i) The manufactured dwelling; or

(ii) A manufactured dwelling park where the manufactured dwelling slated for disposal is sited; and

(b)(A) An individual who is a member of a household with income that complies with income restrictions determined at the advice and consent of the Oregon Housing Stability Council, and not exceeding the greater of 100 percent of the statewide or local area median income adjusted for

household size as determined annually by the Housing and Community Services Department using United States Department of Housing and Urban Development information; or

(B) A nonprofit corporation as defined in ORS 317.097, a manufactured dwelling park nonprofit cooperative as defined in ORS 62.803, a housing authority as defined in ORS 456.005, a local unit of government as defined in ORS 466.706 or a state governmental entity.

(3) Grants awarded under the program may not exceed $15,000 or the cost of decommissioning and disposing of the manufactured dwelling.

(4) The Oregon Housing Stability Council may establish priorities for the evaluation of grant applications and shall consider prioritizing grant awards:

(a) For the safe remediation of dwellings with environmental and public health hazards and risks, including asbestos, lead paint and mold;

(b) To owners from low income households; and

(c) For the decommissioning of manufactured dwellings that are older or less resource and energy efficient.

UNIT CAPTIONS

SECTION 22. The unit captions used in this 2022 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2022 Act.

EMERGENCY CLAUSE

SECTION 23. This 2022 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2022 Act takes effect on its passage.

Passed by House February 14, 2022

Repassed by House March 2, 2022

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Dan Rayfield, Speaker of House

Passed by Senate February 28, 2022

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2022

Approved:

.....M.,....., 2022

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2022

.....
Shemia Fagan, Secretary of State

Enrolled
Senate Bill 405

Sponsored by Senators PROZANSKI, GIROD, Representative CATE; Senator KENNEMER, Representatives HAYDEN, LEIF, LEWIS, MEEK, MORGAN, STARK, WILDE, WRIGHT (Presession filed.)

CHAPTER .....

AN ACT

Relating to nonconforming uses; creating new provisions; amending ORS 215.130, 215.215 and 215.297; and declaring an emergency.

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

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS chapter 227.

SECTION 2. City land use regulations that allow the resumption of a nonconforming use after its interruption or abandonment may not consider a use interrupted or abandoned during the time that a federal, state or local emergency order limits or prohibits the use or the repair or replacement of the use.

SECTION 3. ORS 215.130 is amended to read:

215.130. (1) Any legislative ordinance relating to land use planning or zoning shall be a local law within the meaning of, and subject to, ORS 250.155 to 250.235.

(2) An ordinance designed to carry out a county comprehensive plan and a county comprehensive plan shall apply to:

(a) The area within the county also within the boundaries of a city as a result of extending the boundaries of the city or creating a new city unless, or until the city has by ordinance or other provision provided otherwise; and

(b) The area within the county also within the boundaries of a city if the governing body of such city adopts an ordinance declaring the area within its boundaries subject to the county's land use planning and regulatory ordinances, officers and procedures and the county governing body consents to the conferral of jurisdiction.

(3) An area within the jurisdiction of city land use planning and regulatory provisions that is withdrawn from the city or an area within a city that disincorporates shall remain subject to such plans and regulations which shall be administered by the county until the county provides otherwise.

(4) County ordinances designed to implement a county comprehensive plan shall apply to publicly owned property.

(5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted subject to subsection (9) of this section. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS 215.215, a county shall not place conditions upon the continuation or alteration of a use described under this subsection when necessary to comply with state or local health or safety re-

quirements, or to maintain in good repair the existing structures associated with the use. A change of ownership or occupancy shall be permitted.

(6) Restoration or replacement of any use described in subsection (5) of this section may be permitted when the restoration **or replacement** is made necessary by fire, other casualty or natural disaster. Restoration or replacement [*shall*] **must** be commenced within one year from the occurrence of the fire, casualty or natural disaster. If restoration or replacement is necessary under this subsection, restoration or replacement [*shall*] **must** be done in compliance with ORS 195.260 (1)(c).

(7)(a) Any use described in subsection (5) of this section may not be resumed after a period of interruption or abandonment unless the resumed use conforms with the requirements of zoning ordinances or regulations applicable at the time of the proposed resumption.

(b) Notwithstanding any local ordinance, a surface mining use continued under subsection (5) of this section [*shall not be deemed to be*] **is not considered** interrupted or abandoned for any period after July 1, 1972, provided:

(A) The owner or operator was issued and continuously renewed a state or local surface mining permit, or received and maintained a state or local exemption from surface mining regulation; and

(B) The surface mining use was not inactive for a period of 12 consecutive years or more.

(c) For purposes of **paragraph (b) of** this subsection, "inactive" means no aggregate materials were excavated, crushed, removed, stockpiled or sold by the owner or operator of the surface mine.

(d) A use continued under subsection (5) of this section is not considered interrupted or abandoned for any period while a federal, state or local emergency order temporarily limits or prohibits the use or the restoration or replacement of the use.

(8) Any proposal for the verification or alteration of a use under subsection (5) of this section, except an alteration necessary to comply with a lawful requirement, for the restoration or replacement of a use under subsection (6) of this section or for the resumption of a use under subsection (7) of this section shall be subject to the provisions of ORS 215.416. An initial decision by the county or its designate on a proposal for the alteration of a use described in subsection (5) of this section shall be made as an administrative decision without public hearing in the manner provided in ORS 215.416 (11).

(9) As used in this section, "alteration" of a nonconforming use includes:

(a) A change in the use of no greater adverse impact to the neighborhood; and

(b) A change in the structure or physical improvements of no greater adverse impact to the neighborhood.

(10) A local government may adopt standards and procedures to implement the provisions of this section. The standards and procedures may include but are not limited to the following:

(a) For purposes of verifying a use under subsection (5) of this section, a county may adopt procedures that allow an applicant for verification to prove the existence, continuity, nature and extent of the use only for the 10-year period immediately preceding the date of application. Evidence proving the existence, continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of application[*;*].

(b) Establishing criteria to determine when a use has been interrupted or abandoned under subsection (7) of this section[*; or*].

(c) Conditioning approval of the alteration of a use in a manner calculated to ensure mitigation of adverse impacts as described in subsection (9) of this section.

(11) For purposes of verifying a use under subsection (5) of this section, a county may not require an applicant for verification to prove the existence, continuity, nature and extent of the use for a period exceeding 20 years immediately preceding the date of application.

SECTION 4. Section 2 of this 2021 Act and the amendments to ORS 215.130 by section 3 of this 2021 Act apply to uses limited or prohibited by federal, state or local emergency orders issued on or after January 1, 2020.

SECTION 5. **Restoration or replacement of a use under ORS 215.130 (5) or under city land use regulations that allow the restoration or reestablishment of a nonconforming use, including under section 2 of this 2021 Act, must commence no later than September 30, 2025, notwithstanding the time limitation under ORS 215.130 (6) or any other local land use regulation if the restoration is for uses that between September 1 and September 30, 2020, were damaged or destroyed by wildfires that were:**

(1) The subject of a federal or state major disaster declaration; or

(2) Subject to a Governor's executive order invocating the Emergency Conflagration Act under ORS 476.510 to 476.610.

SECTION 6. **Section 5 of this 2021 Act is repealed January 2, 2026.**

SECTION 7. ORS 215.215 is amended to read:

215.215. (1) Notwithstanding ORS 215.130 [*(6)*] **(5) to (11)**, if a nonfarm use exists in an exclusive farm use zone and is unintentionally destroyed by fire, other casualty or natural disaster, the county may allow by its zoning regulations such use to be reestablished to its previous nature and extent, but the reestablishment shall meet all other building, plumbing, sanitation and other codes, ordinances and permit requirements.

(2) Consistent with ORS 215.243, the county governing body may zone for the appropriate nonfarm use one or more lots or parcels in the interior of an exclusive farm use zone if the lots or parcels were physically developed for the nonfarm use prior to the establishment of the exclusive farm use zone.

SECTION 8. ORS 215.297 is amended to read:

215.297. (1) As part of the conditional use approval process under ORS 215.296, for the purpose of verifying the existence, continuity and nature of the business described in ORS 215.213 (2)(w) or 215.283 (2)(y), representatives of the business may apply to the county and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies.

(2) [*Alteration, restoration or replacement of*] A use authorized in ORS 215.213 (2)(w) or 215.283 (2)(y) may be altered, restored or replaced pursuant to ORS 215.130 (5)[*, (6) and (9)*] **to (11)**.

SECTION 9. **This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.**

Passed by Senate March 31, 2021

.....
Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 4, 2021

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Tina Kotek, Speaker of House

Received by Governor:

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

Approved:

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

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

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

.....
Shemia Fagan, Secretary of State

Enrolled
House Bill 4051

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of House Interim Committee on Rules for Representative Julie Fahey)

CHAPTER .....

AN ACT

Relating to housing; creating new provisions; amending ORS 197.308 and section 4, chapter 18, Oregon Laws 2021, and section 8, chapter 448, Oregon Laws 2021; and prescribing an effective date.

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

SECTION 1. (1) The Task Force on Homelessness and Racial Disparities shall provide a report, to an appropriate committee or interim committee of the Legislative Assembly in the manner provided in ORS 192.245, specifically identifying implementation pathways for changes to the state's funding structure, modifications for contracting processes and solutions regarding the eligibility and funding of services under section 7 (3)(b), (d) and (e), chapter 448, Oregon Laws 2021.

(2) The task force shall deliver an interim report by September 15, 2022, and a final report by March 31, 2023.

(3) The task force shall deliver a copy of the interim report and final report to the Oregon Housing Stability Council.

(4) This section and section 7, chapter 448, Oregon Laws 2021, do not prohibit the task force from developing additional reports or delivering those reports to the Legislative Assembly or council.

SECTION 2. Section 8, chapter 448, Oregon Laws 2021, is amended to read:

Sec. 8. Section 7**, chapter 448, Oregon Laws 2021, and section 1 of this 2022 Act are** [*of this 2021 Act is*] repealed on [*July 1, 2022*] **January 2, 2026**.

SECTION 2a. Notwithstanding any other provision of law, the General Fund appropriation made to the Housing and Community Services Department by section 1, chapter 556, Oregon Laws 2021, for the biennium ending June 30, 2023, is increased by $362,977 for professional services costs of the Task Force on Homelessness and Racial Disparities.

SECTION 3. Section 4, chapter 18, Oregon Laws 2021, is amended to read:

Sec. 4. (1) Section 3**, chapter 18, Oregon Laws 2021,** [*of this 2021 Act*] is repealed on July 1, [*2022*] **2023**.

(2) The repeal of section 3**, chapter 18, Oregon Laws 2021,** [*of this 2021 Act*] by subsection (1) of this section does not affect an application for the development of land for an emergency shelter that was completed and submitted before the date of the repeal.

SECTION 4. ORS 197.308 is amended to read:

197.308. (1) As used in this section, "affordable housing" means residential property:

(a) In which:

(A) Each unit on the property is made available to own or rent to families with incomes of 80 percent or less of the area median income as determined by the Oregon Housing Stability Council based on information from the United States Department of Housing and Urban Development; or

(B) The average of all units on the property is made available to families with incomes of 60 percent or less of the area median income; and

(b) Whose affordability is enforceable, including as described in ORS 456.270 to 456.295, for a duration of no less than 30 years.

(2) A local government shall allow affordable housing, and may not require a zone change or conditional use permit for affordable housing**, if the proposed affordable housing is** on property [*if*] **that is**:

(a) [*The housing is*] Owned by:

(A) A public body, as defined in ORS 174.109; or

(B) A nonprofit corporation that is organized as a religious corporation; or

(b) [*The property is*] Zoned:

(A) For commercial uses;

(B) To allow religious assembly; or

(C) As public lands.

(3) Subsection (2) of this section:

(a) Does not apply to the development of housing not within an urban growth boundary.

(b) Does not trigger any requirement that a local government consider or update an analysis as required by a statewide planning goal relating to economic development.

(c) Applies on property zoned to allow for industrial uses only if the property is:

(A) Publicly owned;

(B) Adjacent to lands zoned for residential uses or schools; and

(C) Not specifically designated for heavy industrial uses.

(d) Does not apply on lands where the local government determines that:

(A) The development on the property cannot be adequately served by water, sewer, storm water drainage or streets, or will not be adequately served at the time that development on the lot is complete;

(B) The property contains a slope of 25 percent or greater;

(C) The property is within a 100-year floodplain; or

(D) The development of the property is constrained by land use regulations based on statewide land use planning goals relating to:

(i) Natural disasters and hazards; or

(ii) Natural resources, including air, water, land or natural areas, but not including open spaces or historic resources.

(4) A local government shall approve an application at an authorized density level and authorized height level, as defined in ORS 227.175 (4), for the development of affordable housing, at the greater of:

(a) Any local density bonus for affordable housing; or

(b) Without consideration of any local density bonus for affordable housing:

(A) For property with existing maximum density of 16 or fewer units per acre, 200 percent of the existing density and 12 additional feet;

(B) For property with existing maximum density of 17 or more units per acre and 45 or fewer units per acre, 150 percent of the existing density and 24 additional feet; or

(C) For property with existing maximum density of 46 or more units per acre, 125 percent of the existing density and 36 additional feet.

(5)(a) Subsection (4) of this section does not apply to housing allowed under subsection (2) of this section in areas that are not zoned for residential uses.

(b) A local government may reduce the density or height of the density bonus allowed under subsection (4) of this section as necessary to address a health, safety or habitability issue, including fire safety, or to comply with a protective measure adopted pursuant to a statewide land use plan-

ning goal. Notwithstanding ORS 197.350, the local government must adopt findings supported by substantial evidence demonstrating the necessity of this reduction.

SECTION 5. This 2022 Act takes effect on the 91st day after the date on which the 2022 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by House February 28, 2022

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Dan Rayfield, Speaker of House

Passed by Senate March 2, 2022

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2022

Approved:

.....M.,....., 2022

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2022

.....
Shemia Fagan, Secretary of State

CITY OF NEWPORT

NOTICE OF A PUBLIC HEARING

The Newport Planning Commission will hold a public hearing on Monday, April 25, 2022, at 7:00 p.m. in the City Hall Council Chambers to consider File No. 1-Z-22, amendments to Newport Municipal Code (NMC) Chapter 3.2, Affordable Housing Construction Excise Tax; Chapter 14.01, Purpose and Definitions; Chapter 14.03, Zoning Districts: Chapter 14.06, Manufactured Dwellings and Recreational Vehicles; Chapter 14.09, Temporary Uses; Chapter 14.15, Residential Uses in Nonresidential Zoning Districts; Chapter 14.28, Iron Mountain Impact Area; Chapter 14.32, Nonconforming Uses, lots, and Structures; and Chapter 14.46, Tsunami Hazards Overlay Zone, related to the implementation of 2021-2022 State of Oregon land use related statutory amendments. Pursuant to Newport Municipal Code (NMC) Section 14.36.010: Findings that the amendment to the Newport Municipal Code is required by public necessity and the general welfare of the community. Testimony and evidence must be directed toward the request above or other criteria, including criteria within the Comprehensive Plan and its implementing ordinances, which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from the applicant and proponents, testimony from opponents, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 12:00 p.m. (Noon) the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. The proposed code amendments, additional material for the amendments, and any other material in the file may be reviewed or a copy purchased at the Newport Community Development Department (address above). Contact Derrick Tokos, Community Development Director (541) 574-0626 (address above).

(FOR PUBLICATION ONCE ON FRIDAY, April 15, 2022)

eryone's time is donated."

While the original banner theme celebrates the arts in Nye Beach, during the year of the solar eclipse, that event was chosen as an additional theme, an idea that was well received.

Now each year, the main theme continues to highlight the arts, both performing and visual, with the goal of identifying Nye Beach as the arts focal point for Newport. This year, Lundell chose sunflowers for the additional theme, to honor the people of Ukraine and their struggles. The theme highlights the colors of the Ukrainian flag

She said many artists create a banner each year. Local artist Jill Pridgeon has contributed banners to the project for about six years, and this year's Ukraine theme caught her attention right away, coincidentally as she was sprouting sunflowers at home.

"A lot of times with a project, I don't know what I am going to paint," Pridgeon said. "But this one came pretty quick. I've been really disturbed by this war. We've lived through Vietnam and the worries about nuclear bombs. And I'm from the Midwest, and remember the acres and acres of yel-

State in 1970. The back of her banner is inspired by Ukraine's national anthem.

"Every year people say that when the banners go up, it's one of their favorite times," Lundell said. "It's inspired other communities to do something similar. It's a public art installation that people really enjoy. And the idea is for people to discover Nye Beach."

Look for this year's Nye Beach banners starting the first week of June. To donate to the project, contact Lundell at Jovi or leave a note for the project at the visual arts center.

04/15/2022

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announce the availability of a Draft Environmental Assessment (Draft EA) for the proposed Obstruction Removal Project at the Newport Municipal Airport. The City proposes to remove approximately 30 acres of vegetation and trees that area obstructions to the approach surfaces of Runways 16, 20, and 34. Removing these trees and vegetation will allow for a clear 20:1 approach surface for Runways 20 and 34, and a clear 34:1 approach surface for Runway 16. The approach surface is critical in allowing aircraft to execute landings in a manner that is safe to the aircraft, nearby environmental resources, residences, and the general public. The obstructions consist mostly of tall trees that are potential hazards to airplanes approaching the airport to land safely due to their height. Many of the trees to be removed are located off airport property, on surrounding parcels. The Draft EA examines the potential environmental impacts of the proposed project and is available for public review and comment. The Draft EA will be available for public review and comment beginning on April 11, 2022. Copies of the Draft EA may be viewed during regular business hours at the following locations: Newport City Hall, 169 SW Coast Hwy, Newport, OR 97365. Newport Municipal Airport, 135 S.E. 84th Street South, Newport, OR 97366. The Draft EA will also be made available in electronic format on the Airport's website at https://www.newportoregon.gov/dept/onp/projects.asp. To request a hard copy or CD of the Draft EA, please contact Lance Vanderbeck at 541.867.7422 or via email at L.Vanderbeck@NewportOregon.gov. Public Comment Period Public comment on the Draft EA is invited for a 30-day period extending from April 11, 2022, through May 10, 2022. The purpose of the Public Comment period is to allow comments on the adequacy of the Draft EA for the proposed obstruction removal project. A public meeting will be held from 4 p.m. to 6 p.m. on April 19, 2022. The meeting will be held at City Hall and live-streamed at https://newportoregon.gov. The public meeting will provide the public an opportunity to discuss the proposed project with representatives of the City. Anyone wishing to provide written public comment should send the comment to publiccomment@newportoregon.gov. The e-mail must be received at least four hours prior to the scheduled meeting. Written comments can also be submitted to: Lance Vanderbeck, Airport Director, Newport Municipal Airport, 135 S.E. 84th Street South, Newport, OR 97366 L.Vanderbeck@NewportOregon.gov Anyone requesting a public hearing should contact:Ilon Logan, Regional Environmental Protection Specialist, Federal Aviation Administration, Airports Division, Northwest Mountain Region, 2200 S. 216th Street, Des Moines, WA. 98198. 206-231-4220 Ilon.Logan@faa.gov All comments on the Draft EA must be received by the City no later than 5:00 pm on May 10, 2022, to be considered. Please be advised that your entire comment, including such personal identifying information as address, phone number, and e-mail address, may be publicly available at any time. While you can ask in your comment to withhold from public review any personal identifying information, we cannot guarantee that we will be able to do so. A15 (54-15)

NOTICE OF BUDGET COMMITTEE MEETINGS

Public meetings of the Budget Committee of the Yachats Rural Fire Protection District, Lincoln County, State of Oregon, to discuss the budget for the fiscal year July 1, 2022 through June 30, 2023, will be held at 2056 Hwy 101 N. Yachats, Oregon. The meetings will take place on April 25, 2022 and May 23, 2022 at 10:30 AM. The purposes of the meetings are to receive the budget message and to receive comment from the public on the budget. These are public meetings where deliberation of the Budget Committee will take place. Any person may appear at the meetings and discuss the proposed programs with the Budget Committee. A copy of the budget document may be inspected or obtained on or after April 18, 2022 at 2056 Hwy 101 N, Yachats Oregon. A copy may also be requested by calling 541-547-3266 and it can be sent via USPS or email. This notice along with the proposed budget will be posted on yrfpd.org. A15 (53-15)

NOTICE OF PUBLIC HEARING

CITY OF NEWPORT NOTICE OF A PUBLIC HEARING The Newport Planning Commission will hold a public hearing on Monday, April 25, 2022, at 7:00 p.m. in the City Hall Council Chambers to consider File No. 1-Z-22, amendments to Newport Municipal Code (NMC) Chapter 3.2, Affordable Housing Construction Excise Tax; Chapter 14.01, Purpose and Definitions; Chapter 14.03, Zoning Districts: Chapter 14.06, Manufactured Dwellings and Recreational Vehicles;Chapter14.09, Temporary Uses; Chapter 14.15, Residential Uses in Nonresidential Zoning Districts; Chapter 14.28, Iron Mountain Impact Area; Chapter 14.32, Nonconforming Uses, lots, and Structures; and Chapter 14.46, Tsunami Hazards Overlay Zone, related to the implementation of 2021-2022 State of Oregon land use related statutory amendments. Pursuant to Newport Municipal Code (NMC) Section 14.36.010: Findings that the amendment to the Newport Municipal Code is required by public necessity and the general welfare of the community. Testimony and evidence must be directed toward the request above or other criteria, including criteria within the Comprehensive Plan and its implementing ordinances, which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral testimony and written testimony will be taken during the course of the public hearing. The hearing may include a report by staff, testimony from the applicant and proponents, testimony from opponents, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Written testimony sent to the Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 12:00 p.m. (Noon) the day of the hearing to be included as part of the hearing or must be personally presented during testimony at the public hearing. The proposed code amendments, additional material for the amendments, and any other material in the file may be reviewed or a copy purchased at the Newport Community Development Department (address above). Contact Derrick Tokos, Community Development Director (541) 574-0626 (address above). A15 (44-15)

PUBLIC SALE

On April 26th , 2022 at 11:00 AM, a public sale will be held at Ideal Storage . 5441 W. Hwy 20, Toledo, OR 97391: T0183 - Nanette Hartman . On April 28th , 2022 at 2:00 PM, a public sale will be held at Ideal Storage. 235 SW Dahl Ave. Waldport, OR 97394: WE106 – Tom O'Connell . Minimum bid $50.00 Cash only. A08 A15 (42-15)

NOTICE TO INTERESTED PERSONS

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF LINCOLN In the Matter of the Estate of CHERYL YVONNE PETERSON, Deceased. Case No. 22PB02152 NOTICE TO INTERESTED PERSONS NOTICE IS HEREBY GIVEN that Adam Joseph Peterson has been appointed personal representative of the Estate of Cheryl Yvonne Peterson. All persons having claims against the estate are required to present them, with vouchers attached to the personal representative through the personal representative's attorney at PO Box 1987, Newport, OR 97365, within four months after the date of first publication of this notice, or the claims may be barred. All persons whose rights may be affected by the proceedings may obtain additional information from the records of the Court, the personal representative, or the attorney for the personal representative, Traci P. McDowall. Dated and first published on April 8, 2022. YAQUINA LAW, LLC /s/ Traci P. McDowall Traci P. McDowall, OSB #184063 Attorney for Personal Representative PERSONAL REPRESENTATIVE: Adam Joseph Peterson PO Box 115 Toledo, OR 97391 LAWYER FOR PERSONAL REPRESENTATIVE: Traci P. McDowall, OSB #184063 PO Box 1987 Newport, OR 97365 Telephone: (541) 272-5500 Fax: (541) 265-7633 Email: traci@yaquinalaw.com A08 A15 A22 (40-22)

LEGAL DEADLINES:
WEDNESDAY EDITION: 2:00pm Friday
FRIDAY EDITION: 2:00pm Tuesday

Sherri Marineau

From: Lee Hardy <lee@yaquinabayproperties.com>
Sent: Friday, April 22, 2022 9:23 AM
To: Derrick Tokos; Sherri Marineau
Subject: my resignation from the Planning Commission

Importance: High

Derrick & Sherri,
I will not be able to attend the meeting Monday night. This is my formal resignation from the Planning Commission, effective immediately.
I regret having to do this but I am experiencing evolving health issues that impact my energy level and possibly mobility.
It has been a great pleasure to work with you both over the years as well as with the excellent membership of the Commission.
I also resign from the housing advisory committee. I believe my alternate, Braulio Escobar, will do a good job.

Thanks and sorry to have to go,

Lee Hardy

NEWPORT
OREGON

169 SW COAST HWY
NEWPORT, OREGON 97365

COAST GUARD CITY, USA

www.newportoregon.gov

MOMBETSU, JAPAN, SISTER CITY

COMMUNITY DEVELOPMENT DEPARTMENT
(541) 574-0626
FAX: (541) 574-0644

NOTICE OF DECISION

The Newport City Council, by Order No. 2022-1, affirmed the Newport Planning Commission's decision to approve a Conditional Use Permit application from Lincoln County to construct a 12,000+/- sq. ft. animal shelter and 10,000 +/- sq. ft. of storage on 5-acres at the Newport Municipal Airport. The subject site is situated south of Runway 2-20 and the U.S. Coast Guard Station on property owned by the City and identified by the Lincoln County Assessor as Tax Lot 200, on Tax Map 11-11-32-00. A copy of the adopted order is enclosed, and additional copies may be reviewed or obtained at the Community Development Department located in the Newport City Hall (169 SW Coast Highway, Newport, OR 97365).

Order No. 2022-1 is the City of Newport's final decision on this Conditional Use Permit application. The decision may be appealed to the Oregon Land Use Board of Appeals (LUBA). The time allowed to file a notice of intent to appeal with LUBA is 21 days from the date the decision is final. A decision becomes final when it is reduced to writing and bears the necessary signatures of the decision maker(s). The Newport City Council approved Order No. 2022-1 at its evening meeting on April 18, 2022, and the document was signed by the Mayor and attested by the City Recorder on April 19, 2022. Information about filing an appeal with LUBA is available on their website at: www.oregon.gov/luba.

If you have questions regarding the City's decision in this matter, please contact Derrick Tokos, Community Development Director, City of Newport, 169 SW Coast Highway, Newport, OR 97365. Phone: (541) 574-0626; email: d.tokos@newportoregon.gov.

THE CITY COUNCIL OF THE CITY OF NEWPORT, COUNTY OF LINCOLN, STATE OF OREGON

In the Matter of:

APPEAL OF NEWPORT PLANNING COMMISSION'S FINAL ORDER AND FINDINGS OF FACT APPROVING A CONDITIONAL USE PERMIT APPLICATION FOR THE LINCOLN COUNTY ANIMAL SHELTER	)))))	ORDER NO. 2022-1

WHEREAS:

A. On December 22, 2021, the City of Newport ("City") received a complete conditional use permit application with an application narrative (titled: Lincoln County Conditional Use Application for an Animal Shelter and Storage Buildings at the Newport Municipal Newport) from Lincoln County for a 12,000 +/- square foot animal shelter and 10,000+/- square feet of storage to be built on land designated for non-aeronautical use at the Newport Municipal Airport (File No. 7-CUP-21); and

B. The subject site is 5-acres in size and is situated south of Runway 2-20 and the U.S. Coast Guard Station on property owned by the City and identified by the Lincoln County Assessor as Tax Lot 200, on Tax Map 11-11-32-00; and

C. Lincoln County has entered into a non-binding Memorandum of Understanding with the City to lease the 5-acres for the animal shelter project and that document, which indicates the County is responsible for obtaining a conditional use permit for the use, serves as evidence that the City authorized submittal of this application; and

D. Pursuant to Newport Municipal Code (NMC) Section 14.34.030, an application for approval of a conditional use permit is subject to review and approval by the Newport Planning Commission ("Commission") after notice and a public hearing in cases, such as this, where the property exceeds one (1) acre in size; and

E. The Commission held a de novo (full evidentiary) hearing on January 24, 2022 to consider the conditional use permit application and, after taking testimony and considering evidence and information in the record, the Commission closed the hearing, deliberated, and voted to approve the conditional use permit application with conditions; and

F. On February 14, 2022, the Commission adopted a final order and findings of fact approving the conditional use permit application with conditions; and

G. On February 28, 2022, Dan McCrea ("Appellant") appealed the Commission's decision and requested that the appeal be heard "on the record with additional facts." Mr. McCrea attended and provided testimony at the Commission's January 24, 2022 hearing and, therefore, has standing to appeal and the appeal was filed in a timely manner; and

H. City understood Appellant's desire to submit additional facts to be a request for a de novo appeal hearing and, consistent with the process set out in NMC Section 14.52.100, the City Council ("Council") met on March 7, 2022 to decide whether or not the circumstances warranted a de novo appeal hearing or if the scope of review should be limited to the same record of evidence that was before the Commission. After due deliberation, the Council concluded that the appeal hearing would be limited to the same record that was available to the Commission; and

I. Appellant was given until March 14, 2022 to supplement his appeal petition to include references or items in the record to support his arguments and he submitted an updated appeal brief by the deadline; and

J. Lincoln County ("Respondent") was then given until March 21, 2022 to prepare a brief responding to appellant's arguments, and they were also required to correlate their arguments and analysis to information contained in the record. Respondent's brief was submitted by the deadline; and

K. On April 4, 2022 the Council held an on the record hearing where argument was accepted from the appellant and respondent along with comments from staff. Council members had an opportunity to ask questions and, after accepting rebuttal arguments from both parties, the Council closed the hearing, deliberated, and voted to affirm the Commission's decision to approve the conditional use permit application with conditions; and

L. In affirming the Commission's decision the Council made clear that its action was limited to the question of whether or not a limited set of conditional use permit approval criteria had been met, and should not be construed to suggest that the Council would necessarily conclude that it is in the public interest for the City to execute a lease with Lincoln County, which will require a separate decision at a future meeting.

The City of Newport orders as follows:

1. The foregoing recitals are hereby confirmed and adopted as findings in support of this order, along with the supplemental findings of fact attached as Exhibit "A."

2. The Newport City Council hereby enters this final order denying the appeal, and affirming the Newport Planning Commission's decision to approve the conditional use permit application, including the listed conditions of approval, as the City's final decision.

So ordered this 18th day of April, 2022.

Dean H. Sawyer, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

EXHIBIT "A"

Case File No. 7-CUP-21

SUPPLEMENTAL FINDINGS OF FACT

The findings of fact outlined below supplement those made by the Newport Planning Commission in support of its February 14, 2022 decision, and support Newport City Council Final Order No. 2022-1.

1. At issue is a conditional use permit application filed by Lincoln County, by and through its authorized representative Chris Keane, Dangermond and Keane Architecture, on December 22, 2021 for a 12,000 +/- square foot animal shelter and 10,000+/- square feet of storage on land designated for non-aeronautical use at the Newport Municipal Airport. The application was approved by the Newport Planning Commission ("Commission") following an evidentiary hearing on January 24, 2022. The Commission's decision, distilled to writing on February 14, 2022, was appealed by Dan McCrea ("Appellant"), and the Newport City Council ("Council") conducted an "on the record" appeal hearing on April 4, 2022 where it considered appellants arguments and those by M. Gerard Herbage, Assistant Lincoln County Legal Counsel, on behalf of Lincoln County ("Respondent"), before voting to affirm the Commission's decision.

2. At the April 4, 2022 hearing, Appellant argued that Lincoln County, and by extension County staff, lacked standing to act as respondent because the County did not file the permit application. They pointed to the land use application form (Exhibit H-1) which lists Chris Keane, Dangermond and Keane Architecture, as both the applicant and applicant's authorized representative. There is no reference on the application form to Lincoln County. Respondent noted the application narrative submitted with the application form (Exhibit H-2) is titled "Lincoln County Conditional Use Application for an Animal Shelter and Storage Buildings at the Newport Municipal Airport" which makes it clear the animal shelter is a County project and the County is the applicant, as reflected also by County staff participation throughout the process including the Planning Commission public hearing (Exhibit H-19). The City Council is satisfied the County is the applicant and that County staff has standing to act as respondent with respect to the appeal of the Planning Commission decision.

3. Approval criteria for a Conditional Use Permit are listed in Newport Municipal Code (NMC) Section 14.34.050 and 14.22.100(F)(1). They read as follows: (1) The public facilities can adequately accommodate the proposed use; (2) the request complies with the requirements of the underlying zone or overlay zone; (3) the proposed use does not have an adverse impact greater than existing uses on nearby properties, or impacts can be ameliorated through imposition of conditions of approval; (4) a proposed building or building modification is consistent with the overall development character of the area with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright; and (5) demonstrate that the uses will not create a safety hazard or otherwise limit existing and/or approved airport uses.

In their briefs, both Respondent and Appellant accept that these are the applicable approval criteria. Other city standards referenced in the Commission's decision, and by the parties, relate back to these five (5) approval criteria and the Council finds that there are no other relevant criteria that need to be addressed with this decision.

4. With respect to the first criterion, that public facilities can adequately accommodate the proposed use, the Council finds that the Commission's decision was supported by evidence in the record. Public facilities needed to serve the animal shelter facility include sanitary sewer, water, streets and electricity, and the parties accepted that this is the scope of public services that must be addressed under this criterion.

a. Appellant's principal argument relates to the adequacy of sanitary sewer service, where he argues that evidence relied upon by the Commission is insufficient to establish that it is feasible a shared sub-surface septic system can be constructed to serve the animal shelter facility. He points to the preferred location of the system, a large grassy area between the two runways, as a location that requires FAA approval, an approval that has yet to be obtained. While the Commission acknowledged that the City is looking to construct a Large On-site Septic System (LOSS) at this location, it did not dictate that it be placed there nor did it rely upon such placement when determining that it is feasible that a septic system could be built to support the animal shelter use. Rather, the Commission found that analysis by the engineering firm Murraysmith (Exhibit H-22 Attachment "K") was sufficient to establish that a LOSS can accommodate the effluent demand from the animal shelter and other airport uses, and that the presence of four separate septic systems on airport property, serving the Fixed Base Operator (FBO) building, FedEx building, U.S. Coast Guard building, and the Airport Rescue and Firefighting (ARFF) building, is evidence that soil conditions are such that it is feasible a LOSS can be built on airport property. It is relevant to note that the FBO, FedEx, and U.S. Coast Guard buildings are all proximate to the proposed lease area, and that those systems could be connected to the LOSS and decommissioned. Further, the record reflects that there is ample land area upon which to place a LOSS, which Murraysmith indicates will require a drainfield that is 1.4 acres in size (Exhibit H-22, Attachment "K"), considering the 273.11 acre size of the airport parent parcel (Exhibit H-22, Attachment "B").

b. With respect to water service, Appellant asserts that it has been a chronic issue at the airport in the past, but provides no evidence to establish that it is inadequate to support Respondent's project. The subject property is within the jurisdiction of the Seal Rock Water District, and the Commission appropriately relied upon Respondent's analysis quantifying the anticipated maximum daily water demand of the proposed animal shelter (Exhibit H-22, Attachment "J"), coupled with correspondence from the Seal Rock Water District, confirming that they can meet the anticipated demand (Exhibit H-22, Attachment "P"), in determining that water service is adequate.

c. Regarding the adequacy of street service, Appellant argues in his petition that it is not adequate because the road serving the proposed lease area must be widened to allow emergency access to the site. The Commission relied upon the presence of that road, an existing 16-foot wide paved driveway, and Respondent's willingness to widen the road to 22-feet from its intersection at SE 84th Street to the proposed animal shelter site, as evidence that street service can be made adequate for emergency responders. NMC 14.34.020(D) requires that a conditional use

application be approved if it satisfies the applicable criteria or can be made to meet the criteria through imposition of reasonable conditions of approval. The Commission's decision, which included a road widening condition, is consistent with this requirement. Appellant, in his brief, also argues that US 101 is inherently unsafe, but failed to provide evidence establishing that to be the case. At the Commission hearing, city staff indicated that the proposed use will not generate enough traffic to warrant improvements at 84th and US 101 where there are existing deceleration lanes for north/southbound traffic. (Exhibit H-19, pg. 5). NMC Chapter 14.45 sets out the City's traffic impact analysis requirements. It provides that an applicant must conduct the analysis if their project will generate 100 PM peak hour trips or more onto city streets such as SE 84th Street (NMC 14.45.010(C)). The Municipal Code further notes that when traffic impact analysis is required, the applicable review process shall be the same as that accorded to the underlying land use proposal (NMC 14.45.040). The underlying land use proposal in this case is the Conditional Use Permit, and given the staff comments at the hearing, noted above, and the fact that traffic impact analysis was not required with the Conditional Use permit application, it is reasonable that the Commission did not assess the adequacy of streets serving the subject site beyond the intersection of the site access road and SE 84th Street.

d. As to the adequacy of stormwater services, Appellant's arguments are directed at the method Respondent will use to manage run-off from impervious surfaces, rather than whether or not the service is adequate. The Commission's decision notes the City requires that development with new impervious surfaces demonstrate storm run-off can be managed on-site or that the downstream conveyance system has capacity for the volume and velocity of stormwater attributed to a 25-year, 24-hr storm (Exhibit H-22). The Commission cites to Policy 1, Goal 2, Storm Drainage, in the Public Facilities Element of the Newport Comprehensive Plan, a policy that must be applied directly since it has not been implemented as part of the Municipal Code. Respondent's analysis identified that a 3,075 sq. ft. storm basin is needed for the 51,250 sq. ft. (1.2 acres) of impervious surfaces attributed to the project (Exhibit H-22, Attachment "H"). While this basin size may not exactly comport with what is ultimately needed for a 25-year, 24-hr storm, the Commission found that a 1.2-acre development on a 5-acre site, will leave an ample amount of land area where appropriately sized drainage basins can be built to manage runoff. Appellant takes issue with the use of drainage basins, which will be surface water impoundments that can attract birds and create safety risks to pilots. The Commission acknowledged that the animal shelter site is within the visual approach surface of Runway 2-20, where the Airport Restricted Area Overlay limits individual surface water impoundments to less than ¼ acre in size (ref: NMC 14.22.080(E)) because larger impoundments are a safety risk for the reason noted by Appellant. They then reasonably concluded that it is feasible Respondent will be able to construct one or more storm basins smaller than ¼ acre in size on the 5-acre site given that the amount of water to be impounded is relatively modest relative to the land area available to Respondent to construct the requisite drainage facilities.

e. Appellant acknowledges in his brief that electrical service is available to the airport, but notes that it will need to be extended to the site at an unknown cost. This approval criterion requires the Commission establish that electric service can adequately accommodate the proposed use. It is not an assessment of whether or not Respondent can afford to acquire the service. If it is not cost effective for Respondent to obtain electric service, or to pay for other improvements needed to ensure that public facilities are adequate, then the animal shelter project will not be constructed.

Plans prepared by Respondent show that Central Lincoln PUD, the local electric service provider, has extended power along the access drive to the property such that it is proximate to the proposed development (Ref: Sheet CU-1, Exhibit H-22, Attachment "H"). Respondent acknowledged that they are responsible for ensuring the property is properly hooked up to the electric lines, and it was reasonable for the Commission to rely upon this statement and the plan information to conclude that electric service is adequate to support the project.

5. With respect to the second criterion, that the request complies with the requirements of the underlying zone or overlay zone, the Council finds that the Commission's decision was supported by evidence in the record.

a. Appellant correctly notes that Airport Restricted Area and Airport Development Overlay zones apply to the property and that Respondent is responsible for satisfying the overlay requirements. He then indicates that Respondent failed to satisfy the purpose of these overlays, described in NMC 14.22.010 as follows:

> "The purpose of the Airport Restricted Area and Airport Development Zone overlays is to encourage and support the continued operation and vitality of the Newport Municipal Airport by establishing compatibility and safety standards to promote air navigational safety and to reduce potential safety hazards for persons living, working, or recreating near the airport."

Most of Appellant's arguments relate to this purpose statement. He argues that animals and aircraft are inherently incompatible; that the location selected for the shelter will place pilots, workers, volunteers, and the public at risk of a plane collision; that constructing buildings at this location deprives planes of an emergency landing space; and that birds attracted by the stormwater basins will create safety hazards for pilots. Collectively, appellant asserts that these factors fail to promote air navigational safety or reduce potential safety hazards for persons living, working, or recreating near the airport in violation of NMC 14.22.010.

In making these arguments, Appellant misconstrues the purpose language to be open ended where he or a policy making body can hold an applicant to whatever compatibility or safety standard they wish to assert. The plain language of the purpose statement demonstrates that this is not the case. The language states that the purpose of the overlays is to "encourage and support the continued operation and vitality of the Newport Municipal Airport by establishing compatibility and safety standards to promote air navigational safety and to reduce potential safety hazards for persons living, working, or recreating near the airport." It is only the compatibility and safety standards spelled out in NMC Chapter 14.22 that Respondent is required to meet, and the Council is satisfied that they have been adequately addressed in the Commission's decision.

b. The Airport Development Zone Overlay limits the range of uses permitted within its boundaries, replacing those otherwise identified as permitted uses in the underlying zone (NMC 14.22.100(D)). Non-aviation related uses, such as an animal shelter, are permitted in areas designated for non-aeronautical use subject to conditional use approval (NMC 14.22.100(E)(5)), and the record shows that the proposed lease area is designated for non-

aviation related use (Exhibit H-22, Attachment "M"). Appellant argues that the location where the animal shelter is proposed is an inherent safety risk to both pilots and building occupants because it is located within the Runway 2-20 visual approach surface. The Commission considered Appellant's argument and found that the question of what is or isn't a compatible use of the subject site had been answered with the adoption of the 2018 Airport Master Plan and its implementing provisions in the Newport Municipal Code. The Commission was correct in taking this stance, and in its view that had the area where the animal shelter is proposed been viewed as an inherent safety risk to new development then it would not have been designated as being appropriate for non-aviation related uses, or the list of permissible uses within the Airport Development Zone Overlay would have been significantly pared back. Given that is not the case, the Council is satisfied with the Commission's determination that placement of the animal shelter at the subject site does not, in of itself, constitute a safety hazard because it is identified as a permitted conditional use at that location provided the safety and compatibility standards in NMC Chapter 14.22 are satisfied.

c. The conditional use process is a mechanism for ensuring safety and compatibility standards are met, or can be met through the imposition of reasonable conditions of approval. One such safety standard is a height limitation that prohibits new development or vegetation from penetrating airport imaginary surfaces, the relevant one in this case being the visual approach surface for Runway 2-20. New development or vegetation that penetrates a visual approach surface is a safety risk to planes, whereas development or vegetation below the visual approach surface is not considered an aviation related safety risk. In rendering its decision, the Commission appropriately relied upon map and profile drawings in the 2018 Airport Master Plan (Exhibit H-22, Attachment "Q") and Respondent's scaled elevation drawings (Exhibit H-22, Attachment "H") to establish that the new animal shelter and storage buildings will be situated below the visual approach surface. It was also reasonable for the Commission to impose a condition of approval requiring Respondent provide a landscape plan with the building permit since the peak height at maturity of various tree species is typically well understood and documented such that City staff can verify that the plantings will not eventually penetrate the visual approach surface.

d. NMC Section 14.22.080, Land Use Compatibility Requirements, sets out the specific compatibility standards that Respondent was required to address. They include limitations on the use of outdoor lighting to prevent such lighting from imitating or impeding the ability of pilots to distinguish between airport lighting and other lighting (NMC 14.22.080(A)); a prohibition on glare producing materials that could impede a pilot's vision (NMC 14.22.080(B)); and a prohibition on water impoundments ¼ acre or more in size on lands within 5,000 feet from the end of a runway within an approach surface (NMC 14.22.080(E)). This is due to the risk of impoundments attracting birds. The Commission addresses each of these criteria in the decision, and has imposed reasonable conditions of approval to ensure that they are fully complied with through the building permitting process. Compatibility standards that were not addressed by the Commission, including uses with industrial emissions that could obscure visibility within airport approach surfaces (NMC 14.22.080(C)); communication and related facilities that could cause or create electrical interference with aircraft navigational signals or radio communications equipment (NMC 14.22.080(D));

prohibited uses within runway protection zones to avoid conflicts with aircraft departing or landing at the airport (NMC 14.22.080(F)); and limitations on landfills, another use that attracts birds, were clearly unrelated to Respondent's project and; therefore, it was not necessary for the Commission to address them. The 2018 Airport Master Plan On-Airport Land Use Map (Exhibit H-22, Attachment "M") illustrates that the subject site is not within a runway protection zone.

e. Appellant does not assert that there are overlays other than the Airport Restricted Area and Airport Development Zone Overlays that apply to the project or that the project failed to satisfy requirements of the underlying zone, and the Council finds that there are no additional provisions of the underlying zone or overlay zones that Respondent was required to address in order to demonstrate compliance with this criterion.

6. With respect to the third criterion, the proposed use does not have an adverse impact greater than existing uses on nearby properties, or impacts can be ameliorated through imposition of conditions of approval; the Council finds that the Commission's decision was supported by evidence in the record.

a. Appellant argues that dog barking attributed to the animal shelter is likely to be exacerbated by helicopter/airplane noise, startling dogs and causing excessive barking. He then argues that the barking will contribute to a cumulative level of noise that results in an adverse impact greater than existing uses on nearby properties. This criterion is not directed at cumulative impacts of a proposed use in conjunction with nearby uses. Rather, it requires a finding that the proposed use, in of itself, will not result in an adverse impact greater than existing uses on nearby properties. Consequently, it was appropriate for the Commission to limit its evaluation to impacts that can be reasonably attributed to the animal shelter use. The Commission found that Respondents plan to partially soundproof the animal shelter building, in conjunction with its isolated location and the substantial vegetated buffer between the shelter location and nearby residences, is sufficient to ensure that noise from the animal shelter will not result in an adverse impact greater than existing uses on nearby properties. That finding is supported by evidence in the record included as attachments in the Commission's decision (Exhibit H-22). The record further reflects that existing uses on nearby properties, an airport and US 101, are also noise generators and it is reasonable to conclude that noise from the shelter will be no greater than noise generated by those uses, particularly US 101 which is closer to established residential uses.

b. Appellant further argues that a subsurface septic drainfield will result in bacteria in the grass that will attract birds creating a safety risk to pilots; that the addition of 20,000 square feet of buildings with relatively low roof pitches and overhangs will increase bird roosting, resting, and nesting habitat; and that allowing the Respondent to plant trees in cleared portions of the proposed lease area will allow them to grow to the point that they are a safety hazard. He does not relate these arguments to this approval criterion, and the Council does not find them to be relevant to this criterion. Additionally, as discussed earlier, the City' consideration of compatibility and safety standards attributed to Respondents project are limited to those outlined in NMC Chapter 14.22. Bacterial impacts of septic drainfields, the nesting habits of birds on buildings with low pitched roofs, and the introduction of landscaping that will not grow to the point that it breaches a runway approach surface, are not among the listed compatibility and safety standards.

7. With respect to the fourth criterion, a proposed building or building modification is consistent with the overall development character of the area with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright; the Council finds that the Commission's decision was supported by evidence in the record.

a. Appellant's arguments in his brief and at the appeal hearing speak to compatibility and safety of the proposed use, and alternative uses that might be more appropriate at this location. These arguments do not relate to this approval criterion, which is focused on the compatibility of the proposed animal shelter and storage buildings with the overall development character of the area relative to building size and height. It was reasonable for the Commission to define the development character of the area to be the leased private airplane hangars and other buildings at the airport given the proximity of the proposed lease area to those buildings. They then compared Respondent's proposed architectural elevations (Exhibit H-22, Attachment "H") to existing airport buildings, noting that the size of the shelter and storage structures, palette of likely exterior materials, and the single-story pitched roof characteristics of the proposed buildings is consistent with the size and height of structures elsewhere at the airport. The Council concurs with the Commission's reasoning in this regard.

8. With respect to the fifth and final criterion, that an applicant demonstrate that proposed uses will not create a safety hazard or otherwise limit existing and/or approved airport uses; the Council finds that the Commission's decision was supported by evidence in the record.

a. There are two components to this criterion. First, will the animal shelter use create a safety hazard for existing and/or approved airport uses and second, will the animal shelter use otherwise limit existing and/or approved airport uses. It was reasonable for the Commission to concur with Respondent that the topographically isolated location of the proposed lease area, coupled with the single-story nature of the proposed buildings, would allow the shelter to operate without limiting existing or approved airport uses. Evidence in the record illustrates that the lease site is roughly 13-feet below the runway/taxiway surfaces and about 350-feet from the closest taxiway (Exhibit H-22, Attachment "Q"). Additionally, it has been established that the height of the single-story buildings will not protrude into the visual approach surface of Runway 2-20, which is a threshold for establishing whether a building will be close enough to flying aircraft that it constitutes a safety hazard. The Commission further reasonably relied upon testimony from the Airport Committee who conveyed support for the animal shelter project moving forward, considering that the Committee represents pilots and other interests at the airport, (Exhibit H-18).

b. The Airport Committee expressed a concern that large animals boarded at this location could create a safety hazard to airport uses because they might be frightened by aircraft noise and break through the perimeter fence surrounding the airport operation area. Appellant echoed this concern. Respondent has advised that it is not their intent to board large animals at this location, but that there may be a need in the event of an emergency. The Commission concurred with the Airport Committee and Appellant that boarding large animals at this location, outside the shelter on the undeveloped portion of the lease area, could create a safety hazard of the type described. They were also sensitive to the needs of the County and broader community to accommodate displaced animals during an emergency. The Commission noted that should a state of emergency be declared, then additional resources would be brought to bear by federal, state, and/or local

authorities to address the issue, and that associated planning and logistics might leverage or at least take into consideration airport operations given the location of the shelter. It is evident in this analysis that the Commission carefully weighed the arguments and evidence and that their ultimate decision, with a carefully crafted condition to narrowly define the scope of what constitutes an emergency where the boarding of large animals would be permissible, reasonably mitigates the concerns raised by the Airport Committee and Appellant.

9. In their response brief, Respondent takes issue with information contained in Appellant's appeal petition that they believe to be new "evidence" that was not in the record before the Planning Commission. This includes a conversation Appellant indicates that they had with Warren Ferrell and Valerie Thorsen from the FAA Flight Standards District Office regarding septic, storm drains, water impoundments and safety concerns; discussion on the amount of funds that the Newport Municipal Airport has to provide for infrastructure; more specific discussion on Animal Shelter and Airport budgets; information regarding the FAA 163 letter and FAA Advisory Circular 150/5200-33C; assertions related to the impact that Jet A fuel exhaust has on animals; reference to studies about dogs and stress and the International Five Freedoms for Companion Animals in care standards; and data on planes using the airport, and airport safety statistics. Respondent is correct that this information is not in the Planning Commission record. The referenced documents were not provided to the Planning Commission, and no one cited these conversations, data, or related information in their arguments so that members of the Commission could respond to them. Accordingly, the City Council has not relied upon this information in determining whether or not the conditional use permit approval criteria have been met.