



Notice of Land Use Public Hearings

for Community Planning Organizations, Hamlets, and Other Interested Parties

Subject: Ordinance ZDO-288, Zoning & Development Ordinance (ZDO) Amendments
Related to Utility Facilities

Notice Date: March 4, 2024

Contact: Joy Fields, Principal Planner
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Email: jfields@clackamas.us

It has recently been determined that the county's ZDO likely requires a conditional use permit for most utility facilities, even underground utility lines and even in road rights-of-way where utility lines commonly are developed. Historically, utility facilities inside road rights-of-way have proceeded through a utility permit process without review and analysis by Planning and Zoning. Given the new awareness of the scope of the needed land use review and the significant number of annual utility permits in road rights-of-way, a practical difficulty exists in administering the ZDO in its current form. From a policy perspective, many of these permits likely do not warrant review through a land use application. In addition, it may be appropriate for some utility facilities outside road rights-of-way to be permitted outright.

Although the scope of the amendments may be narrowed during public hearing review, key elements of the initial proposal, discussed in more detail below, would:

- Adopt a comprehensive definition of utility facility
- Allow utility facilities inside road rights-of-way as an outright permitted use
- Allow utility lines both inside and outside road rights-of-way, both underground and overhead, as an outright permitted use
- Clarify the types of utility lines that, in most cases, must be underground

The Planning Commission and Board of County Commissioners (BCC) have scheduled hearings to receive testimony from the public and other interested parties on the proposed amendments. Because the amendments may affect your community or area of interest, we are giving you and your organization advance notice of the opportunity to review and comment on them before or at the public hearings.

Additional background information and the full text of the proposed amendments is available online at www.clackamas.us/planning/zdo288, by contacting Joy Fields directly at the number or email listed above, or by contacting Planning & Zoning at 503-742-4500 or zoninginfo@clackamas.us.

Public Hearings and Testimony

Interested parties are welcome to provide testimony in advance of or at the hearings listed below. Planning Commission public hearings are held virtually using the Zoom platform. Board of County Commissioners public hearings are held both virtually using the Zoom platform and in person. One week before the hearing dates, a Zoom link to the public hearing and details on how to observe and testify will be posted at the hearing web address.

Public Hearing Dates and Times:

Planning Commission: Monday, April 8, 2024, 6:30 p.m.

www.clackamas.us/planning/planning-commission

Board of County Commissioners: Wednesday, June 12, 2024, 10:00 a.m.

Public Services Building, 4th Floor Board Hearing Room, 2051 Kaen Rd, Oregon City, OR 97045

www.clackamas.us/meetings/bcc/landuse

Written testimony may be submitted before the hearings to Joy Fields at jfields@clackamas.us or 150 Beaver Creek Road, Oregon City, OR 97045.

- Written testimony received by 4 p.m., Thursday, March 28, 2024, will be included in the information packet provided to the Planning Commission one week before its scheduled hearing; written testimony received after that time and before 8 a.m., Monday, April 8, 2024, will be emailed to the Planning Commission before the hearing.
- Written testimony received by 4 p.m., Monday, June 3, 2024, will be included in the information packet provided to the Board of County Commissioners (BCC) one week before its scheduled hearing; written testimony received after that time and before 4 p.m., Tuesday, June 11, 2024, will be emailed to the BCC before the hearing.

Interested parties who want to present **verbal testimony** at either hearing will be asked to sign up and/or indicate their interest in testifying at the beginning of the hearing.

Proposed Amendments

Ordinance ZDO-288 proposes the following key amendments to ZDO provisions related to utility facilities. Refer to the drafts of the proposed amendments to review the full scope of the proposal.

1. **Adopt a definition of utility facility.** Currently, the ZDO defines public utility and limits it to utilities regulated by the Public Utility Commission under Oregon Revised Statutes chapter 757, as well as any utility that provides electrical energy directly to consumers. The ZDO also separately defines hydroelectric facilities. There are also code references to telephone exchanges and water, stormwater, and sanitary sewer facilities. In addition, the ZDO has a separate “government uses” category that provides a pathway for *some* utilities. Finally, the ZDO provides for “similar use” determinations in many zones through an additional layer of land use review. However, utility facilities are not referred to consistently across zones, and the overarching definition of public utility that applies in all zones is not sufficiently comprehensive to address the full range of what is typically considered to be a utility.
2. **Adopt definitions of utility line and utility service line.** These definitions are intended to allow these types of utility facilities to be regulated differently.
3. **Repeal definitions of hydroelectric facility, public utility and public water system.** These facilities will be encompassed by the new definition of utility facility.

4. **Revise the definition of right-of-way.** The intent is to more accurately define the term. As it pertains to utility facilities, the term is proposed for use in distinguishing utility facilities to be regulated differently.
5. **Move definition of small power production facility.** This use is singled out only in the Rural Industrial District, so the definition is proposed to be relocated to Section 604, which regulates the RI zone.
6. **Specify that utility service lines are an accessory use in all zones.**
7. **Allow utility facilities inside road rights-of-way as an outright permitted use in all residential, commercial, industrial and open space zones.**
8. **Allow utility lines both inside and outside road rights-of-way, both underground and overhead, as an outright permitted use in all residential, commercial, industrial and open space zones.**
9. **Allow certain utility facilities as a conditional use in certain commercial zones.** In some commercial zones, some utility facilities require a similar use determination or are prohibited. The proposal is to allow most utility facilities as a conditional use, except as enumerated in items 6 through 8, above. Refer to the drafts of the proposed amendments for greater detail.
10. **Clarify the types of utility lines that, in most cases, must be underground.** Section 1006 of the ZDO, which applies to development, including institutional uses such as utility facilities, includes the following standard:

All development that has a need for electricity, natural gas, and communications services shall install them pursuant to the requirements of the utility district or company serving the development. Except where otherwise prohibited by the utility district or company, all such facilities shall be installed underground.

Arguably, the requirement applies only to utility facilities that have a need for other utilities' services (e.g., a sewer pump station that requires electrical service), not utility facilities that provide service to others (e.g., an electric transmission line). Alternatively, a utility provider that proposes to establish an aboveground utility facility may be able to "prohibit" itself from an underground installation. However, it could also be argued that the requirement applies to all utility facilities and that "prohibited" requires something more substantial than a simple choice on the utility's part.

Applying the underground installation standard to major utility lines, rather than just on-site service lines, potentially could result in substantially increased costs for utilities and ultimately ratepayers. The proposal is to limit the requirement for underground utilities to service lines rather than larger lines, such as distribution and transmission lines.

11. **Exempt utility cabinets that comply with Section 830, utility facilities in road rights-of-way and utility lines from the development standards in Section 1000 and from the requirement to file a Design Review application.**

Additional Information and Staff Report

For general Planning & Zoning information:

www.clackamas.us/planning

For additional information about ZDO-288 and its public hearings (and for a copy of the staff report available Monday, April 1, 2024):

www.clackamas.us/planning/zdo288

or

Joy Fields-742-4510, jfields@clackamas.us

or

Planning & Zoning Customer Service, 503-742-4500, zoninginfo@clackamas.us

Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at 503-742-4545 or email DRenhard@clackamas.us.

503-742-4545: ¿Traducción e interpretación? |Требуется ли вам устный или письменный перевод? | 翻译或口译 ? | Cần Biên dịch hoặc Phiên dịch? | 번역 또는 통역?