



**STAFF REPORT TO THE PLANNING COMMISSION**

To: Clackamas County Planning Commission  
From: Jennifer Hughes, Planning Director ([jenniferh@clackamas.us](mailto:jenniferh@clackamas.us))  
Date: April 1, 2024  
RE: Planning File ZDO-288: *Zoning and Development Ordinance Amendments Related to Utility Facilities*

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**BACKGROUND**

It has recently been determined that the county's Zoning and Development Ordinance (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. (Individual service lines that are accessory to specific uses are an exception.) In addition, there is a lack of clarity regarding which utility lines must be underground.

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, some or all of these permits may 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.

The Board of County Commissioners (Board) held a policy session last November to consider the land use regulations applicable to utility facilities. After a staff presentation and related discussion, the Board voted to initiate amendments to the ZDO that, if adopted, would do the following:

1. Adopt a more comprehensive definition of "utility facility"
2. Limit the requirement for underground utilities to utility facilities that have a need for other utilities' services, rather than utility facilities that provide service to others
3. Allow the following outright: all utility facilities inside road rights-of-way and utility lines outside road rights-of-way. No changes would be made in EFU, TBR or AG/F zones where the ZDO already implements state law.

Ordinance ZDO-288 contains the amendments to the ZDO that are needed to implement the Board's initial direction. The Board recognized during the November policy session discussion that the scope of the proposal may be narrowed during public hearing review. However,

beginning with the most expansive potential proposal allowed for the most accurate public notice of what the county may consider for adoption.

On February 26, 2024, the Planning Commission (PC) held a study session on ZDO-288, which provided an opportunity for the PC to discuss the potential ZDO amendments and ask related questions of staff.

There will be at least two public hearings on this proposal: one before the PC on Monday, April 8, 2024, and another before the Board on Wednesday, June 12, 2024. The PC provides a recommendation to the Board, which will ultimately decide whether the ordinance is adopted.

## **PROPOSAL**

ZDO-288 proposes text amendments to 16 separate sections of the ZDO<sup>1</sup>. The amendments are included in **Attachment A**.

Generally, these amendments would:

- Adopt a comprehensive definition of utility facility
- Clarify the types of utility lines that, in most cases, must be underground
- 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

## **1. Definitions**

The ZDO definition of “public utility”, adopted substantially in its current form in 1982, presents practical difficulties in administration.

*PUBLIC UTILITY: A utility regulated by the Public Utility Commission under ORS 757 or any other utility that provides electrical energy directly to consumers within the State of Oregon, including, but not limited to, municipalities, cooperatives and people's utility districts.*

Based on staff’s review of ORS 757, this definition appears to exclude, for example, telecommunications, sanitary sewer, surface water management and municipal water facilities. The ZDO has a separate “government uses” category that provides a pathway for *some* of these utilities. The ZDO also provides for “similar use” determinations in many zones through an additional layer of land use review.

The proposal is to adopt a definition of “utility facility” that covers the full range of what is typically considered to be a utility. This will provide clarity for users of the ZDO, including Planning staff charged with administering the code. Also proposed are definitions of utility line and utility service line, as well as other minor amendments for clarity and consistency.

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<sup>1</sup> Each ZDO section proposed for amendment is listed in the “List of Attachments” section, found on page 10 of this report.

## 2. Underground utilities

Section 1006 of the ZDO, which applies to many types of 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 this 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 specify that utility *service* lines must be underground unless prohibited by the utility district or company.

## 3. Primary or conditional use

In most zones, public utility facilities are a conditional use except where they are accessory to the main use on a lot (e.g., service lines for a dwelling or commercial building). In several zones, utilities are listed only as an accessory use. The term "facilities" is a broad one and seems to encompass not just structures such as electrical substations and water reservoirs but also transmission, distribution and service lines and associated poles. In the Exclusive Farm Use, Timber and Ag/Forest zones, state law applies and establishes several different utility use categories, some of which are outright allowed and some of which require land use review.

Of note, road rights-of-way are zoned in the same manner as other land, with the zoning adjacent to the right-of-way most often extending to the centerline; hence, even utilities in rights-of-way are regulated by the ZDO. Utilities are commonly placed underground and overhead in rights-of-way; state law seemingly recognizes this by establishing the following as outright allowed in EFU, TBR and AG/F zones:

*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.*

In other zones, the ZDO makes no such distinction. As a result, utility facilities in rights-of-way (unless they qualify as an accessory use) seemingly require conditional use permits in all other zones where utilities are permitted, and there are several zones where such facilities may be prohibited altogether.

The proposal is to allow outright all utility facilities in road rights-of-way and all utility lines outside rights-of-way, both above- and belowground. As proposed to be defined by ZDO 202, utility lines could include support poles or towers and equipment (with some limits) for monitoring and operation of the line. What would remain as a conditional use in most zones are non-linear utility facilities outside rights-of-way, such as sewer pump stations, electrical substations and water reservoirs. Also included is a proposal to allow these non-linear facilities as a conditional use in the VR-4/5 and VR-5/7 zones. Currently utility facilities are not permitted in these zones, which is inconsistent with other low density residential zones.

The amendments would not apply in EFU, TBR or AG/F zones where the ZDO already implements state law. In addition, even if utility facilities are identified as a primary use, review requirements associated with environmental or hazard areas (e.g., streams, wetlands, floodplains) would continue to apply.

## **PUBLIC NOTICE & COMMENTS**

Notice of the proposed amendments in ZDO-288 was sent to:

- All cities within the County;
- All County Community Planning Organizations (CPOs) and Hamlets; and
- Oregon Department of Land Conservation & Development (DLCD), Metro, Oregon Department of Transportation (ODOT), and other interested agencies.

Notice was also published in the newspaper and online. Written testimony received to date is included in ***Attachment B***.

## **ANALYSIS & FINDINGS**

The proposed ZDO text amendments are legislative in nature and are subject to the relevant Statewide Planning Goals, the Metro Urban Growth Management Functional Plan (UGMFP), County Comprehensive Plan policies, and procedural standards identified in the county's Zoning & Development Ordinance (ZDO). Compliance with the relevant portions of each is discussed in subsections 1 through 4, below.

### **1. Statewide Planning Goals:**

This section of the report includes findings on the consistency of ZDO-288 with Statewide Planning Goals.

- a. **Goal 1 – *Citizen Involvement*:** Goal 1 calls for “the opportunity for citizens to be involved in all phases of the planning process” and requires the County to have a citizen involvement program with certain features.

ZDO-288 does not propose to change the *Citizen Involvement* chapter (Chapter 2) of the County's Comprehensive Plan. ZDO Section 1307 implements policies of Comprehensive Plan Chapter 2, and contains adopted and acknowledged procedures for citizen involvement and public notification of land use applications. Notice of ZDO-288 has been provided consistent with the requirements of Chapter 2 and Section 1307, including to all Community Planning Organizations, DLCD, other agencies, and a list of utility providers and other interested parties. Notice of the Planning Commission (PC) and Board of County Commissioners' (Board) hearings were published in the newspaper and on the county's webpage. Before a final decision on ZDO-288 can be made, there

will have been at least two public hearings: one before the PC and another before the Board.

**This proposal is consistent with Goal 1.**

- b. **Goal 2 – Land Use Planning:** Goal 2 requires the County to have and to follow a comprehensive land use plan and implementing regulations. Comprehensive plan provisions and regulations must be consistent with Statewide Planning Goals, but Goal 2 also provides a process by which exceptions can be made to certain Goals.

ZDO-288 does not require an exception to any Statewide Planning Goal, and no amendments are proposed to the county's Comprehensive Plan. With the proposed amendments, the County's adopted and acknowledged Comprehensive Plan will continue to be consistent with Statewide Planning Goals, and the implementing regulations in state law. As detailed in Section 3, below, the amendments proposed in ZDO-288 are consistent with all applicable goals and policies of the county's Comprehensive Plan.

**This proposal is consistent with Goal 2.**

- c. **Goal 3 – Agricultural Lands:** The ZDO-288 text amendments would not change the Plan agricultural land policies or implementing regulations for compliance with Goal 3.

**This proposal is consistent with Goal 3.**

- d. **Goal 4 – Forest Lands:** The ZDO-288 text amendments would not change the Plan forest lands policies or implementing regulations for compliance with Goal 4.

**This proposal is consistent with Goal 4.**

- e. **Goal 5 – Open Spaces, Scenic and Historic Areas, and Natural Resources:** Goal 5 requires the County to have programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. It requires an inventory of natural features, groundwater resources, energy sources, and cultural areas, and encourages the maintenance of inventories of historic resources.

ZDO-288 would not make any change to the County's Comprehensive Plan goals, policies, or inventories of Goal 5 resources, or implementing regulations. Utility facilities may be allowed within areas protected under Goal 5, subject to the same Goal 5 implementing regulations and processes that currently apply.

**This proposal is consistent with Goal 5.**

- f. **Goal 6 – Air, Water and Land Resources Quality:** Goal 6 instructs the County to consider the protection of air, water, and land resources from pollution and pollutants when developing its Comprehensive Plan. ZDO-288 would not change any Comprehensive Plan goal or policy, or implementing regulation, affecting a Goal 6 resource, nor would it modify the mapping of any protected resource.

**This proposal is consistent with Goal 6.**

- g. **Goal 7 – Areas Subject to Natural Disasters and Hazards:** Goal 7 requires the County's Comprehensive Plan to address Oregon's natural hazards. ZDO-288 would not change the County's acknowledged Comprehensive Plan policies or implementing

regulations regarding natural disasters and hazards, nor would it modify the mapping of any hazard.

**This proposal is consistent with Goal 7.**

- h. **Goal 8 – Recreational Needs:** The ZDO-288 text amendments do not propose to change Plan policies or implementing regulations related to recreational needs.

**This proposal is consistent with Goal 8.**

**Goal 9 – Economy of the State:** Goal 9 requires the County to provide an adequate supply of land for commercial and industrial development. ZDO-288 would not change the Comprehensive Plan or zoning designation of any property. It also would not add any new restriction to land uses in areas of the County reserved for commercial and industrial development.

Adequate utility infrastructure is essential for commercial and industrial development; providing a clear permitting pathway for such infrastructure is supportive of Goal 9.

**This proposal is consistent with Goal 9.**

- i. **Goal 10 – Housing:** Goal 10 requires Oregon’s county plans to “*encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.*”

Adequate utility infrastructure is essential for residential development; providing a clear permitting pathway for such infrastructure is supportive of Goal 10.

**This proposal is consistent with Goal 10.**

- j. **Goal 11 – Public Facilities and Services:** The purpose of Goal 11 is to ensure that local governments plan and develop a timely, orderly, and efficient arrangement of public facilities and services to act as a framework for urban and rural development. ZDO-288 would provide a clear permitting pathway for water, sanitary sewer, and other utility services infrastructure. Consistent with the Goal 11 implementing Oregon Administrative Rules, the ZDO will continue to restrict the development of sanitary sewer facilities outside urban areas and unincorporated communities.

**This proposal is consistent with Goal 11.**

- k. **Goal 12 – Transportation:** Goal 12 is implemented by Oregon Administrative Rules (OAR) Chapter 660, Division 12. Local governments are required to adopt a transportation system plan (TSP) and land use regulations to implement the TSP. This proposal does not include amendments to the County’s TSP or transportation-related land use regulations.

OAR 660-012-0060 also requires any comprehensive plan and land use regulation amendment to be evaluated according to the terms outlined in that OAR to demonstrate whether they will have a significant impact on the transportation system. Utility facilities in road rights-of-way and utility lines are unmanned. Therefore, transportation demand is limited to intermittent repair/maintenance needs. In the zones affected by ZDO-288, a conditional use permit or Type II review for institutional development will continue to be required for manned utility facilities, as it is currently. The conditional use and Type II

review processes require compliance with the county's transportation concurrency regulations, which ensure that development is consistent with the county's Goal 12 implementing standards for vehicular traffic congestion. As such, no additional analysis of the transportation system is needed.

**This proposal is consistent with Goal 12.**

- i. **Goal 13 – Energy Conservation:** Goal 13 encourages land use plans to consider lot size, building height, density, and other measures in order to help conserve energy. ZDO-288 would not change any policy or implementing regulation regarding energy conservation.

**This proposal is consistent with Goal 13.**

- m. **Goal 14 – Urbanization:** The purpose of Goal 14 is to provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities. The Goal primarily concerns the location of UGBs, the establishment of "urbanizable areas" and unincorporated communities, exception lands, and rural industrial uses.

ZDO-288 would not modify any UGB or the status or boundaries of any unincorporated community. The ordinance would not modify any urban or rural reserve boundary, allow any new land use in such reserve areas in a manner inconsistent with state law, or change the land use plan designation or zoning of any property.

**This proposal is consistent with Goal 14.**

- n. **Goal 15 – Willamette River Greenway:** ZDO-288 would not change any existing requirement related to development in the Willamette River Greenway (WRG). Utility facilities would be allowed within the WRG, subject to the same WRG regulations and processes as currently apply.

**This proposal is consistent with Goal 15.**

- o. **Goals 16-19:** These four Statewide Planning Goals address estuarine resources, coastal shorelands, beaches and dunes, and ocean resources, respectively, and are **not applicable to Clackamas County**.

## **2. Metro Urban Growth Management Functional Plan (UGMFP)**

The purpose of the Functional Plan is to implement certain regional goals and objectives adopted by the Metro Council as the Regional Urban Growth Goals and Objectives (RUGGO), including the Metro 2040 Growth Concept and the Regional Framework Plan.

ZDO-288 does not propose to change the County's residential, commercial, or industrial land supply or regulations related to protection of the county's habitat and water quality areas, to allow new retail or assembly uses in designated industrial areas, or to modify the UGB.

Title 8 of the UGMFP establishes a process for ensuring compliance with requirements of the UGMFP. An amendment to the county's comprehensive plan or land use regulations is deemed to comply with the UGMFP only if the county provided notice to Metro as required by section 3.07.820(a). Notice of this proposal was provided to Metro on March 4, 2024 - 35 days prior to the first evidentiary hearing. Metro has not submitted any comment.

**The proposal is consistent with the Metro Urban Growth Management Functional Plan.**

**3. Clackamas County's Comprehensive Plan**

ZDO-288 proposes amendments that would allow a broader range of utility facilities without requiring a separate "authorization of similar use" process, clarify requirements for underground utility lines, allow some utility facilities as primary uses rather than conditional uses, and newly allow utility facilities in the VR-4/5 and VR-5/7 zones.

There are no Comprehensive Plan policies that prohibit utility facilities in any zones or that require utility facilities to be reviewed as conditional uses.

Staff finds that policies in only the following two chapters of the County's Comprehensive Plan are applicable to this proposal.

**a. Chapter 2 – Citizen Involvement:**

Chapter 2 aims to promote public participation in the County's land use planning. Its policies largely focus on the County's Community Planning Organization (CPO) program and methods for informing and involving the public. Chapter 2 includes these specific policies:

*2.A.1 – Require provisions for opportunities for citizen participation in preparing and revising local land use plans and ordinances. Insure opportunities for broad representations, not only of property owners and Countywide special interests, but also of those persons within the neighborhood or areas in question.*

*2.A.6 – Seek citizens' input not only through recognized community organizations, but also through service organizations, interest groups, granges, and other ways.*

*2.A.13 – Insure that the County responds to citizen recommendations through appropriate mechanisms and procedures.*

Consideration of ZDO-288 has proceeded according to the noticing and public hearing requirements of ZDO Section 1307, which implements Chapter 2 of the Plan.

The public, Community Planning Organizations, and affected agencies have an opportunity to provide input to this proposal to revise the ZDO through written and verbal testimony before the Planning Commission and Board of County Commissioners.

**This proposal is consistent with Chapter 2.**

**b. Chapter 3 – Natural Resources and Energy:**

Section 3.K identifies Wildlife Habitat and Distinctive Resource Area policies and includes:

*3.K.9 Improve scenic quality of areas impacted by urban blight, working toward the following objectives:*

- 3.K.9.1 Regulation and/or removal of advertising billboards*
- 3.K.9.2 Screening junkyards and other unsightly areas*
- 3.K.9.3 Placing of utility lines underground*



*3.K.9.4 Requiring landscape buffers (berms, trees, etc.) between incompatible uses and in visually sensitive areas.*

ZDO-288 includes an amendment to ZDO 1006 to clarify that only utility service lines are required to be underground unless prohibited by the utility provider. It is unclear whether ZDO 1006 currently requires larger utility lines to be underground. Regardless, this policy commits the county to work toward the list of objectives, not that the objectives be achieved within a specific timeframe or solely as a result of land use review.

**This proposal is consistent with Chapter 3.**

**c. Chapter 4 – Land Use:**

Chapter 4 includes 10 policies that require underground utilities in various urban Plan designations/zoning districts. Specifically, these policies apply in the MR-1, PMD, MR-2, HDR, SHD, R-2.5 through R-30, C-2, OC, OA, C-3, RTL, BP, LI and GI Districts and read as follows:

- 4.Q.9 Develop all Medium, Medium High, High, and Special High Density Residential areas with public sewer, public water, curbs, drainage controls, pedestrian/bikeway facilities, underground utilities, and street lighting.*
- 4.R.10 Develop all land divisions in urban areas with public sewer, public water, drainage controls, pedestrian/bikeway facilities, and underground utilities. Street lighting and street trees may be required. Implementing ordinances shall set standards in which street lighting and street trees will be encouraged or required.*
- 4.Y.1 Require curbs, drainage controls, underground utilities, and street lighting.*
- 4.Z.1 Require sidewalks, drainage controls, underground utilities, and street lighting.*
- 4.AA.6.6 Sidewalks, drainage controls, underground utilities, and street lighting shall be required.*
- 4.BB.5 Require curbs, drainage controls, underground utilities, and street lighting.*
- 4.CC.7 Require curbs, drainage controls, underground utilities, and street lighting.*
- 4.DD.5 Require curbs, sidewalks, drainage controls, underground utilities and street lighting.*
- 4.EE.9 Require underground utilities and street lighting.*
- 4.FF.10 Require curbs, underground utilities and street lighting.*

These policies are embedded in lists of other policies related to standards for new development. Requiring underground utilities for utility service lines for new development is consistent with these policies.

**This proposal is consistent with Chapter 4.**

**d. Chapter 5 – Transportation System Plan:**

Section 5.I identifies Rural Scenic Roads policies and includes:

5.1.2 *Promote the protection of recreation values, scenic features and an open, uncluttered character along designated scenic roads.*

*Developments adjacent to scenic roads shall be designed with sensitivity to natural conditions and:*

[...]

5.1.2.8 *Underground placement of utilities shall be encouraged.*

This policy is embedded in a list of other policies related to standards for new development. Requiring underground utilities for utility service lines for new development is consistent with this policy.

**This proposal is consistent with Chapter 5.**

e. **Chapter 11 – *The Planning Process*:**

Chapter 11 of the Comprehensive Plan includes policies requiring inter-governmental and inter-agency coordination, public involvement, and noticing. As explained previously in this report, all required entities have been notified in accordance with law and have been invited to participate in duly-advertised public hearings.

Chapter 11 of the Comprehensive Plan also contains the specific requirement that the Comprehensive Plan and ZDO be consistent with Statewide Planning Goals and with Metro's Urban Growth Management Functional Plan; Chapter 11 is what requires the ZDO itself to be consistent with the Comprehensive Plan. This report's *Analysis & Findings* outline how ZDO-288 is consistent with all of these requirements.

**This proposal is consistent with Chapter 11.**

**5. Zoning and Development Ordinance (ZDO):**

The proposed text amendments are legislative. Section 1307 of the ZDO establishes procedural requirements for legislative amendments, which have been or are being followed in the proposal and review of ZDO-288. Notice of this proposal was provided at least 35 days before the first scheduled public hearing to DLCD, all active CPOs and Hamlets, and other interested parties and agencies, to allow them an opportunity to review and comment on the proposed amendments. Advertised public hearings are being held before the Planning Commission and the BCC to consider the proposed amendments. The ZDO contains no further specific review criteria that must be applied when considering an amendment to the text of the ZDO.

**RECOMMENDATION**

**Staff recommends approval of ZDO-288, as proposed in *Attachment A*.** Staff finds the proposed ZDO text amendments are consistent with all applicable criteria.

**LIST OF ATTACHMENTS**

A. Proposed ZDO Amendments

1. **ZDO Section 202, *Definitions***
2. **ZDO Section 315, *Urban Low Density Residential (R-2.5, R-5, R-7, R-8.5, R-10, R-15, R-20, and R-30), Village Standard Lot Residential (VR-5/7), Village Small Lot Residential (VR-4/5), Village Townhouse (VTH), Planned Medium Density Residential (PMD), Medium Density Residential (MR-1), Medium High Density Residential (MR-2),***

- High Density Residential (HDR), Village Apartment (VA), Special High Density Residential (SHD), and Regional Center High Density Residential (RCHDR) Districts*
3. **ZDO Section 316**, *Rural Area Residential 1-Acre (RA-1), Rural Area Residential 2-Acre (RA-2), Recreational Residential (RR), Rural Residential Farm Forest 5-Acre (RRFF-5), Farm Forest 10-Acre (FF-10), and Future Urban 10-Acre (FU-10) Districts*
  4. **ZDO Section 317**, *Mountain Recreational Resort (MRR) and Hoodland Residential (HR) Districts*
  5. **ZDO Section 510**, *Neighborhood Commercial (NC), Community Commercial (C-2), Regional Center Commercial (RCC), Retail Commercial (RTL), Corridor Commercial (CC), General Commercial (C-3), Planned Mixed Use (PMU), Station Community Mixed Use (SCMU), Office Apartment (OA), Office Commercial (OC), and Regional Center Office (RCO) Districts*
  6. **ZDO Section 511**, *Village Community Service District (VCS)*
  7. **ZDO Section 512**, *Village Office District (VO)*
  8. **ZDO Section 513**, *Rural Tourist Commercial (RTC) and Rural Commercial (RC) Districts*
  9. **ZDO Section 602**, *Business Park, Light Industrial, and General Industrial Districts (BP, LI and GI);*
  10. **ZDO Section 604**, *Rural Industrial District (RI),*
  11. **ZDO Section 702**, *Open Space Management District (OSM)*
  12. **ZDO Section 711**, *Government Camp Open Space Management District (GCOSM)*
  13. **ZDO Section 830**, *Utility Carrier Cabinets*
  14. **ZDO Section 1001**, *General Provisions*
  15. **ZDO Section 1006**, *Utilities, Street Lights, Water Supply, Sewage Disposal, Surface Water Management, and Erosion Control*
  16. **ZDO Section 1102**, *Design Review*

B. Exhibit List and Exhibits