

MEMORANDUM

TO: Clackamas County Planning Commission

FROM: Glen Hamburg, Planner II (Tel: 503.742.4523, Email: ghamburg@clackamas.us)

DATE: December 2, 2019
(With updates and additional information, dated January 6, 2020, in red,
following the Planning Commission Study Session on December 9, 2020)

RE: Study Session on ZDO-276, FY 2020 Minor Amendments

I – BACKGROUND

The adopted Long-Range Planning Work Program for 2019-2021 includes a project titled “Minor and Time-Sensitive ZDO Amendments”, an effort intended to make relatively minor changes to the Zoning and Development Ordinance (ZDO) that are necessary to comply with new and pending state and federal mandates, clarify existing language, correct errors, and adopt optional provisions that require only minimal analysis.

The Work Program also expressly includes consideration of the following:

- Existing land use regulations on dog daycare/boarding businesses in rural residential areas;
- Opportunities for small-scale manufacturing in community commercial areas; and
- Increasing the distance for property owner notice of land use applications in rural areas.

This memo summarizes new state and federal mandates that Staff finds warrant amendments to the ZDO. In the case of new state mandates, the summaries consider the amended *statutory* language, language that is likely to be refined and clarified with implementing state administrative rules drafted in December 2019 and January 2020. Therefore, the full requirements of the County under recent state legislation, and the specific language to be used in accompanying ZDO amendments, won’t be fully determined until early next year.

In this memo, Staff have also summarized some recommended clarifications of existing ZDO language, and corrections necessary for the ZDO to align with existing state statutes.

Finally, this memo summarizes some options the County has to address 11 narrowly-scoped policy questions. They address the three matters bulleted above and on the Work Program, as well as choices the County has been offered by new and existing state laws in how it chooses to address other land uses. The summaries of these options do not provide an extensive analysis of the pros and cons, but do introduce them and offer some initial Staff perspectives to inform further direction from the Planning Commission.

Staff intends to introduce minor amendments for FY 2020 as Ordinance ZDO-276 in February.

II – NEW STATE & FEDERAL MANDATES

There are eight mandates that Staff recommend addressing with ZDO-276.

1. Forest template dwelling requirements (HB 2225):

The County already permits forest template dwellings in the AG/F and TBR Districts according to applicable criteria in ZDO Subsection 406.05(D)(3) and Table 407-1. Approval requires a determination of the geographic “center” of the subject tract. HB 2225 requires the County to define the center of the tract as “the mathematical centroid of the tract”. This is the way the County defines the center of the tract already, so the new mandate will not change current County requirements or procedures; nonetheless, clarifying amendment to ZDO Section 406 is warranted to ensure consistency with statutory text.

HB 2225 also prohibits the use of property line adjustments to qualify a lot/parcel for a forest template dwelling. The County already has this prohibition in ZDO Subsection 1107.04(A), but Staff finds that a clarifying amendment to Section 406 would again be warranted for consistency of wording.

HB 2225 does include one mandate that would require a substantive change to current ZDO rules. Right now, Subsection 406.05(D)(3) effectively allows the owner of multiple adjacent lots of record in the AG/F or TBR Districts to put one or more of those lots into separate ownership so that the lot(s) could also qualify for a forest template dwelling. HB 2225 phases in a prohibition on this: according to a DLCD interpretation of the bill’s language, up until November 2023, Clackamas County will be allowed to approve only one additional forest template dwelling on a lot that was adjacent to another lot already with a dwelling and under the same ownership; after 2023, no additional forest template dwellings on lots comprising a tract on January 1, 2019, may be permitted.

Staff have not, and likely practically could not, conduct the extensive County-wide spatial analyses, property ownership history research, and dwelling history research that would be necessary to determine *how many* fewer lots of record in the AG/F and TBR Districts will qualify for a forest template dwelling under HB 2225; however, Staff believe some properties will indeed no longer qualify for new dwellings under HB 2225 and members of the public have reached out with those concerns.

2. Small-scale farm processing (HB 2844):

HB 2844 requires the County allow facilities for processing farm products that are under 2,500 square feet on lands zoned AG/F or EFU, without regard to “siting standards”. Conforming amendments to ZDO Section 401 may be warranted. The County has no specific siting standards for any farm crop processing facility in the AG/F or EFU Districts already, regardless of the facility’s size, other than the generally applicable

setback requirements for accessory structures. HB 2844 is ambiguous as to whether “siting standards” include setbacks, but Staff are hopeful that implementing regulations drafted by the state in December and January will provide clarification.

The small-scale farm processing allowed outright by HB 2844 does not include marijuana processing, which may still be regulated through local siting standards.

3. Consideration of property tax status of EFU replacement dwellings (HB 3024):

ZDO Subsection 401.05(C)(1)(b) only allows a lawful dwelling in the EFU District that is no longer on the subject property (i.e., because it has been destroyed by fire) to be replaced if the dwelling had been assessed as a dwelling “until the value of the dwelling was eliminated.” HB 3024 prohibits the County from considering the property tax classification of dwellings that were previously removed, destroyed, demolished, or converted to nonresidential uses when reviewing an application for the dwelling’s replacement on lands zoned EFU. This new prohibition warrants amendment to Subsection 401.05(C).

4. Expansions of nonconforming secondary schools in EFU District (HB 3384):

ZDO Subsection 401.05(J) already allows a school that is lawfully nonconforming to EFU District requirements to be expanded, under certain circumstances. HB 3384 increases the potential cases in which nonconforming secondary schools in the EFU District may be expanded on to additional EFU-zoned property. HB 3384 requires the County to allow a legally non-conforming secondary school to expand on to additional property, without regard to the maximum capacity of a school structure, distance between structures, or density of structures per acre, so long as:

- The school was established on or before January 1, 2009;
- The additional property is contiguous and on the same tax lot on which the school was established; and
- The additional property was, on January 1, 2015, under the same ownership as the tax lot on which the school was established.

This new mandate warrants amendments to ZDO Subsection 401.05(J).

5. Farm breweries in AG/F or EFU Districts (SB 287):

Under SB 287, a “farm brewery” is a facility, located on or contiguous to the hop farm, used primarily for the commercial production, shipping and distribution, wholesale or retail sales, or tasting of malt beverages made with ingredients grown on the hop farm.

Currently, ZDO Sections 401 and 406 only allow such uses on property zoned AG/F or EFU as a commercial activity in conjunction with a farm use, requiring approval of a conditional use permit by the County’s Hearings Officer after project-specific analysis of potential land use impacts.

SB 287 requires the County to allow the establishment of a farm brewery on land zoned AG/F or EFU, if the farm brewery: produces less than 150,000 barrels of malt beverages annually; produces less than 15,000 barrels on the farm brewery site; and either owns an on-site hop farm of 15 acres or obtains hops from contiguous properties. Unless the County approves a variance, the farm brewery and all associated public gathering places must be setback at least 100 feet from all property lines. The farm brewery must have direct road access and internal circulation.

Wineries are already allowed in these same zoning districts under similar rules; cideries are also allowed in these zones under current state rules that Staff propose to incorporate into the ZDO with ZDO-276 (See item 2.a of “Clarifications and Corrections” on Page 6).

Under SB 287, the County must also allow the opportunity for agri-tourism and other commercial events in association with a permitted farm brewery, such as: malt beverage tastings in a tasting room on the property; brewer luncheons and dinners; and farm brewery and hop farm tours.

6. ADU off-street parking and owner occupancy requirements (HB 2001):

ZDO Table 1015-1 requires an accessory dwelling unit (ADU) to have one paved off-street vehicle parking space, in addition to the number of parking spaces required for the primary dwelling. ZDO Subsection 839.02(C) also requires the owner of the subject property to occupy either the primary dwelling or the ADU.

However, beginning January 1, 2020, the County will be prohibited by HB 2001 from requiring the additional off-street parking space, and from applying an owner occupancy requirement, for an ADU within a UGB and in a zone where a detached single-family dwelling is a primary use. Amendments to ZDO Sections 839 and 1015 would ensure the ZDO is consistent with this mandate.

7. Nonconforming licensed marijuana production premises (SB 365):

SB 365 requires the County to allow licensed marijuana production premises, and licensed future owners of such premises, to continue to operate under the County land use rules that had applied to the premises for which the production license was first issued, notwithstanding any new restrictions the County may have adopted since the premises was lawfully established (e.g., a new restriction on the number of licensed premises per tract). This mandate is consistent with the County’s current application of nonconforming use requirements, but clarifying text amendments may be warranted for consistency with the wording of state law.

The bill also expressly allows the County to evaluate additional adverse impacts to the surrounding area when considering applications to optionally *alter* (e.g., expand) a nonconforming marijuana production premises. Amendments to ZDO Section 1206,

Nonconforming Uses could clarify that alterations of nonconforming production premises that are not required by law are reviewed through a Type II land use procedure.

8. Small wireless facilities:

This topic relates to the only federal policies that Staff finds necessary to address with ZDO-276. With what is effectively a mandate, the Federal Communications Commission (FCC) requires the County to allow small wireless facilities in public rights-of-way and on private property, subject only to certain prescribed limitations that the FCC finds would not unduly hinder small wireless facility deployment.

“Small wireless facilities”, also known as “small cell wireless facilities” and “small cells”, are relatively compact devices that use often box-shaped or tube-shaped antenna to wirelessly transmit signals over short distances (typically 50-500 feet apart). Despite their smaller size, the facilities allow for more efficient wireless data transmission than the large, standard “macro towers”, and are seen as critical to the development of 5G wireless networks.

Small cells allow for better coverage in denser urban areas, in areas with many users such as grocery stores and shopping malls, and to users inside of energy efficient buildings. They help address acute capacity needs in focused areas, and can provide better coverage to areas “shaded” by topography from a macro tower’s signal. Small cells are cheaper than macro towers, less visually obtrusive, require less power, and interfere with each other’s signals less often.

In order to minimize obstructions to signal transmission, carriers generally look to develop small cell wireless facilities in rights-of-way, often on utility poles or lampposts, but also on bus shelters or other existing structures. There are also instances when it makes sense to have the unit inside, on the side of, or on top of an existing structure on private property. However, it is expected that the most immediate demand for new small wireless facilities will be in commercial and industrial areas, and areas of denser development and sufficient electrical service.

The federal government, but also many individual states, have set 5G development – and, therefore, the prompt deployment of small wireless facilities – as a priority. In 2018, the FCC issued a *Declaratory Ruling and Third Report and Order* (the Order), which defines shot clocks for jurisdictional review and describes local regulatory standards that it would not challenge, practically serving as a mandate.

The “shot clock” is the time that the County has to approve a proposed wireless facility, and shot clocks are established to help ensure that approval processes do not slow appropriate small cell deployment. Under the Order, the County has 60 days to respond to a permit proposing collocation and 90 days for review of a new structure.

The order also says that the County’s standards for small cell facilities (e.g., aesthetic standards) must be reasonable, no more burdensome than apply to other infrastructure, and published in advance.

Staff will likely propose amendments to ZDO Section 835 that would not subject small wireless facilities, as specifically defined in the order, that are in County rights-of-way to *any* ZDO regulations, and propose instead for them to be regulated separately under the County’s roadway standards consistent with the Order’s (effectively mandatory) guidance.

Other amendments to Section 835 could establish standards for small wireless facilities on private property (e.g., on the roofs of office buildings). On Page 7 of this memo in the review of “Options for Consideration”, Staff address possible standards for small wireless facilities that would be within the limited project scope of ZDO-276.

III – CLARIFICATIONS & CORRECTIONS

In a review of the ZDO so far, Staff have identified the following clarifications and corrections that should be made with ZDO-276.

1. Repeal of Campus Industrial (CI) District provisions:

With the recent annexation of a property by the City of Lake Oswego, the County no longer has any land within its jurisdiction that is designated in the Comprehensive Plan Map as Campus Industrial (CI) or in the implementing CI zoning district. The Comprehensive Plan also does not allow the CI zoning district to be applied to additional properties in the future. Accordingly, Staff finds that it is unnecessary to continue to reference the CI designation in Comprehensive Plan Chapter 4, Comprehensive Plan Table 4-1, and ZDO Sections 601, 1007, and 1009.

2. Amendments related to AG/F, EFU, and TBR Districts:

- a. Identify cideries as an allowed use in the AG/F and EFU Districts, as already authorized by ORS 215.283(1)(y);
- b. Correct a reference to “residential home” as an allowable use in the AG/F and EFU District, consistent with ORS 197.660;
- c. Clarify language in ZDO Tables 401-1 and 407-1 related to the processing of farm crops in the EFU and AG/F Districts, respectively;

- d. Rearrange the language in ZDO Subsection 406.05(D)(3) related to forest template dwellings in order to mirror the authorizing language in state law, but without changing the subsection’s current requirements;
- e. Remove unnecessary citations in Tables 406-1 and 407-1 related to temporary forest labor camps in the TBR and AG/F Districts, respectively, and repeal a reference to a one-year time limit on the use that is not supported by current state law;
- f. Identify \$40,000, rather than \$32,500, in ZDO Subsections 401.05(C)(7)(a) and 401.05(C)(13)(f)(i) as the farm income requirement for approval of a primary or accessory farm dwelling on Low Value Farmland in the AG/F or EFU Districts, consistent with OAR 660-033-0130(24)(b)(A)(i) and OAR 660-033-0135(3)(a)(A);
- g. In ZDO Section 401, define various terms and criteria to be consistent with HB 2844 and repeal certain definitions (e.g., of “Farm Stand”) that are unnecessary or not fully consistent with state statute; and
- h. Amend ZDO Subsections 401.11(B), 406.11(B), 407.10, and 1310.01 to require that the single two-year time extension on certain approved residential development in natural resource zones be reviewed through a Type I procedure, rather than a Type II procedure, consistent with ORS 215.417(2).

IV – OPTIONS FOR CONSIDERATION

Finally, Staff have identified 11 issues with options for the County on which the Planning Commission may wish to provide direction.

1. Parking and owner occupancy for ADUs in Mt. Hood Corridor:

The County is not required by state law to allow ADUs in the MRR and HR Districts of the Mt. Hood Corridor, but the County does so optionally with the same County standards for ADUs in rural residential areas within a UGB, including the requirement for one off-street vehicle parking space for the ADU, except that there is no owner-occupancy requirement for ADUs in the HR District. Because HB 2001 would prohibit additional off-street parking and owner occupancy requirements for mandatory ADUs, as described back on Page 4 of this memo, Staff recommends the Planning Commission consider repealing the off-street parking for ADUs in the MRR and HR Districts, and the owner-occupancy requirements for the MRR District, in order to be consistent with urban areas. This would necessitate amendments to ZDO Section 839 and Table 1015-1. Staff believes that consistent provisions will be easier for administration.

At its December 9, 2019, Study Session, the Planning Commission suggested that it would be appropriate to repeal the ADU owner-occupancy requirement for the MRR District in order to be consistent with state-mandates for ADUs in urban growth

boundaries. However, the Planning Commission advised that the off-street vehicle parking space requirement be continued in the MRR and HR Districts because the streets in these zoning districts in the Mt. Hood area may often be narrower and crowded by snow, thereby limiting opportunities for safe, unobtrusive on-street parking.

Planning Commissioners requested maps of the HR and MRR Districts, which are identified on the *Mt. Hood Corridor Zoning Map* [online here](#).

2. Accessory historic dwelling owner occupancy:

Since 2018, and as authorized – but not mandated – by HB 3012, the County has also allowed “accessory historic dwellings” (i.e., dwellings built between 1850 and 1945 that become accessory to new primary dwellings on the same property) in rural residential zoning districts *outside* of UGBs and urban reserves, subject to standards in ZDO Section 843. Subsection 843.05 has an owner occupancy requirement mirroring that for ADUs. Considering that accessory historic dwellings are functionally similar to that of ADUs, and that HB 2001 will prohibit owner occupancy requirements for ADUs within UGBs as noted back on Page 4, the Planning Commission may wish to pursue repealing the owner occupancy requirement for these other accessory dwellings as well. As with the option above, Staff believes that consistent provisions for accessory dwellings will be easier for administration.

3. Kennel setbacks in rural residential zoning districts:

A former Planning Commission member suggested amending the County’s standards to provide a better pathway for approval of commercial dog kennels in rural residential zoning districts, but was not specific about *how*. Consideration of the matter was specifically identified in the Work Program as included with this ZDO amendments project.

ZDO Table 316-1 allows kennels, as defined in Section 202, in the RA-1, RA-2, RRFF-5, and FF-10 Districts with a conditional use permit, provided the portion of the premises used for the kennel is located a minimum of 200 feet from all property lines.

In preparing the Work Program, the County received testimony that the 200-foot setback may be overly restrictive on properties that, even without the setback, could accommodate a commercial kennel without unduly impacting neighbors and could satisfy conditional use criteria.

For comparison, Multnomah County Zoning Code and the Washington County Community Development Code also allow commercial dog kennels in rural residential areas, but both require the use to be set back just 100 feet from property lines. Washington County only allows kennels on properties that are at least five acres, while Clackamas County currently allows the kennels without specific regard to lot/parcel size, provided the property’s size can accommodate the required 200-foot setback and doesn’t indirectly prohibit the proposal from satisfying the conditional use criteria.

Staff's proposal is to consider repealing or modifying the County's setback requirement for commercial dog kennels in rural residential zoning districts.

Commercial dog kennels have the potential to produce noise, odor, and lighting impacts that are out of character with residential areas. Evidence suggests that a single dog bark generally ranges from 80 to 100 decibels, which is between the sound level of loud highway noise at close range and that of a jackhammer at close range. Groups of dogs and their waste may produce foul odors if not properly managed, and lighting of outdoor areas (e.g., fenced play areas) may be visible to neighbors.

However, staff notes that the RA-2, RRFF-5, and FF-10 Districts also already allow farm uses outright, without requiring additional setbacks from property lines for, say, livestock, hemp production, or chicken farms. The keeping of non-commercial livestock is also permitted in the RA-1 District subject to ZDO Section 821, without additional setbacks.

The 200-foot setback for commercial dog kennels is four times as deep as the minimum setback required for indoor commercial marijuana production in the RRFF-5 District. However, ZDO Subsection 841.02 has certain noise mitigation, odor control, and lighting restrictions on marijuana production that are not mandated by the ZDO for commercial dog kennels. According to those requirements, the cumulative noise level of all mechanical equipment associated with marijuana production, where allowed in rural residential areas, cannot exceed 50 decibels at property lines, as figured by a licensed engineer in a formal acoustical study.

Home occupations may be permitted in all rural residential zones through a Type II process, subject to standards in ZDO Section 822. Subsection 822.04 states that, from 8:00 a.m. until 6:00 p.m., the average peak sound pressure level, when measured off the subject property, of noise created by the home occupation shall not exceed the greater of 60 decibels or the ambient noise level; during all other hours, the home occupation cannot "create noise detectable to normal sensory perception off the subject property".

The Planning Commission may wish to repeal the setback requirement for commercial dog kennels in rural residential zoning districts, reduce the setback requirement, or leave it as it is. Even if the setback requirement were to be repealed or reduced, the conditional use process would include an evaluation of a specific project's location, the site's topography, and abutting uses, and the County could still apply conditions to mitigate the kennel's impacts. Compliance with the County's noise ordinance is also required, regardless of any setback requirement. **However, the "noise ordinance" in Chapter 6.05 of the County Code has a specific exemption in Subsection 6.05.050(G) for noise caused by animals outside of urban residential zoning districts. This means that the generally-applicable noise restrictions in Section 6.05.040 of the County Code would not apply to dogs in rural residential zoning districts.**

Animal noise is also regulated under Chapter 5.01 of the County Code. However, Subsection 5.01.020(B) states that this chapter does not regulate kennel operators who, for a period of not more than 90 days, maintain on their property dogs owned by other persons.

Planning Commissioners were curious if there was any exception in County Code to restrictions on dog barking noise during day-time hours. Staff has not identified any such exemption in Chapters 6.05 or 5.01, but the provisions in 6.05.050(G) mentioned above would nonetheless exempt commercial dog kennels in rural residential zones from the generally applicable noise limits anyway.

Staff has looked for examples of approved conditional use permits for dog kennels in rural residential zones and has so far only found one, which was approved back in 1982 for a property near the corner of SE Kelso Rd and Hwy 26. That conditional use permit required a 200-foot setback.

The County has had a kennel setback requirement since first zoning in 1960. Initially, the setback requirement was 200 feet from a residence (not property lines); it was later changed to 500 feet from another residence, then to 350 feet from property lines. The current 200-foot setback from property lines has been in place since 1980.

A conditional use permit is not the only way that a commercial dog kennel can be authorized in rural residential zones. A kennel could potentially be approved as a home occupation, without a conditional use permit and without being 200 feet from property lines, provided the operator of the kennel resides at the subject property and meets other applicable home occupation standards in ZDO Section 822. The “default” standards require the home occupation abide by the noise limitations summarized above and require the home occupation be conducted entirely indoors, precluding outdoor play areas for dogs. However, Subsection 822.05 allows the County’s Hearings Officer to approve an exception to these and certain other generally applicable standards following a public hearing.

The Hearings Officer *may* approve a kennel home occupation that is louder than standard limits, as well as associated outdoor activities, without necessarily requiring the kennel to be set back 200 feet from property lines. In order for the Hearings Officer to approve exemptions to the “default” noise and indoor operations requirements, however, the Hearings Officer would, Per ZDO Subsection 822.05(A), need to consider: the character of the neighborhood, including proximity of off-site dwellings to the proposed home occupation; the ability to mitigate impacts caused by the home occupation (e.g., with screening, building location, building design); potential environmental impacts; and the number of other default standards the applicant is requesting.

So, it is true that the home occupation provisions in Section 822 already provide another opportunity to property owners to establish a commercial dog kennel in rural residential zoning districts even if they cannot meet the 200-foot setback that would be required if the same operation were proposed as a conditional use. However, just like with a

conditional use permit application, the County’s Hearings Officer would need to evaluate a home occupation seeking an exception to either or both the noise and outdoor operations standards after a public hearing, and would need to consider the proposal in relation to existing nearby uses and the use’s impacts, similar to how conditional use permits are evaluated. The home occupation exception path simply does not mandate a 200-foot setback like the conditional use path does. Home occupation applications, even when requesting an exception from the Hearings Officer to certain default standards, are also cheaper.

4. Small-scale manufacturing in Community Commercial zoning districts:

The Community Commercial (C-2) and Rural Tourist Commercial (RTC) zoning districts implement the Community Commercial (CC) Comprehensive Plan designation. ZDO Table 510-1 and Section 513 prohibit the primary processing of raw materials in those zoning districts, including of raw ingredients that might be used in products that are otherwise allowed to be retailed in those same zones.

The County received testimony in the development of the Work Program that these restrictions can prohibit small-scale manufacturing involved in operating a bakery or even local brewery in association with a restaurant, bar, or pub in the C-2 or RTC Districts. The Work Program includes a specific intention to consider limited changes to the ZDO that would be necessary to allow these and similar uses.

On November 21, Staff met with representatives of the Oak Grove Community Council (OGCC), a Community Planning Organization (CPO) whose area of the County includes C-2-zoned property where a local brew pub has been of interest. Support was expressed for narrowly-scoped amendments that would allow for manufacturing/processing of consumable goods (e.g., baked goods, juices, beer, wine, cider), or even of craft items such as glasswork, in conjunction with a neighborhood-oriented retail business. The use would be similar to the concept of “makers’ spaces”, and would allow for distribution of the manufactured/processed goods off-site, provided some of the goods are also retailed on the same site.

This type of use may promote employment and commerce at more periods of the day on the same property. At the same time, the multi-purpose nature of the use may not necessarily require more off-street parking: a brew pub may need more of its parking in the day for its brewers, but less so in the evening, when those same spaces can then be used for customers.

The OGCC representatives did not think the potential uses would produce noise, odor, or lighting impacts that would be excessive, offensive, or otherwise inappropriate for the C-2-zoned areas of the Oak Grove neighborhood. The four other areas with C-2 zoning are at the intersections of:

- King Rd and Linwood Ave;
- Thiessen Rd and Webster Rd;

- Sunnyside Rd and 122nd Ave; and
- Hwy 212 and 135th Ave.

These areas are already largely developed with or nearby existing pubs, restaurants, delis, cafes, markets, liquor stores, automobile service stations, clinics, banks, feed and pet supply stores, and some large-footprint commercial uses, such as grocery stores and drug stores.

The smaller size of properties zoned C-2 might practically limit the development of larger, industrial-like manufacturing and processing operations, without the need for explicit square-footage limitations. Further, the obligation to have an on-site retail component and the focus on consumable goods and crafts may help the business be more integrated with the local area, consistent with the intent of the Community Commercial Comprehensive Plan designation.

The Planning Commission may wish to direct Staff in what new uses to consider allowing, and in which specific zoning districts. It may be appropriate to propose that whatever new small-scale manufacturing uses are allowed for the C-2 District also be allowed for the RTC District in the Mt. Hood Corridor, given that the two zoning districts implement the same Comprehensive Plan designation, just in different regions of the County. We have also had interest in brewing in the RTC District in Government Camp in conjunction with a pub.

Staff notes that any new development related to proposed small-scale manufacturing would still have to follow the same general design review requirements as other new commercial development, with necessary consideration given to site access, parking, utility services, and building design.

The City of Estacada allows outright in its Downtown Commercial Zone “manufacturing in conjunction with a retail trade establishment”, provided that the use does not involve processing or packaging of explosive chemicals or environmentally hazardous materials, and provided that retail trade exclusively fronts the street “most likely to receive the most pedestrian traffic”. The City does not have a minimum square-footage requirement for either the manufacturing or associated retail use. The City adopted this allowance as part of a Downtown revitalization plan, with the hope that it would encourage more development and activity in the Downtown area and support, rather than detract from, retail uses. The provision has allowed the City to have breweries Downtown, including one that retails both on-site and distributes brewed beer to other locations.

Similarly, the City of Sandy allows breweries, distilleries, and wineries with pub/tasting rooms in its Central Business District, General Commercial District, and Village Commercial District outright, and even allows those *without* a pub/tasting room as “minor conditional uses” in the Central Business District. Sandy’s Development Code does not appear to have square-footage requirements for the manufacturing components of the use or for the associated pub/tasting rooms.

The City of Oregon City requires a conditional use permit for “industrial uses including food and beverage production” in its Willamette Falls Downtown District. While retail trade is generally permitted outright in most of the City’s commercial zones, retail trade in a store exceeding 60,000 square feet, as well “distributing, wholesaling, and warehousing”, in the Mixed-Use Downtown District, Mixed-Use Corridor District, and other zoning districts requires a conditional use permit.

Washington County allows eating and drinking establishments in its Neighborhood Commercial District, as well as “Fabrication, processing, and repair facilities” if those facilities are retailing the processed goods on the same premises. There are no automatic square footage requirements for these uses in this zone. However, Washington County’s General Commercial District only allows manufacturing as an accessory use to a permitted use if the manufacturing component does not use more than twenty-five (25) percent of the building’s total floor area.

Multnomah County’s Pleasant Home Rural Center and Springdale Rural Center “base zones” are intended to:

“...encourage concentrations or rural residential development, together with small-scale low impact commercial industrial uses that primarily serve the population of the immediate surrounding rural area and tourists traveling through the area.”

The zones allow as conditional uses restaurants, taverns, and retail bakeries, as well as the manufacturing of “food and kindred products”. Multnomah County does not have automatic requirements for how big/small manufacturing operations can be in these zones, nor of any associated restaurant/tavern/bakery.

In Clackamas County, without any maximum on the amount of building floor space that can be devoted to manufacturing/processing in association with an on-site retail component, it may be possible for a business to satisfy the on-site retail requirement with only a small portion of the building truly being for customers coming in “off the street”. However, the nature of the County’s C-2 and RTC Districts, neighboring uses, and the size of available lots in these zones may already incentivize those doing manufacturing/processing to provide a meaningful amount of on-site retail space without mandating (and enforcing) any specific floor area ratio.

If Clackamas County’s Planning Commission is interested in allowing small-scale manufacturing in its C-2 and RTC Districts, staff recommends the language in the ZDO for the C-3 (General Commercial) District allow the same use.

5. Increasing notice radius in rural areas:

Notice of most land use applications, and copies of those applications’ decisions, are mailed to the owners of properties within a specified distance of the subject property, according to notice radius requirements in ZDO Subsection 1307.09(A)(1)(b). The

current notice radius for properties that are outside of a UGB and zoned AG/F, EFU, or TBR is 750 feet; the notice radius for all other properties outside of a UGB and *not* zoned MRR, HR, or RTC is 500 feet; the notice radius for any property in a UGB or zoned MRR, HR, or RTC is 300 feet. Those varying distances reflect the typical density of lots in the different areas.

While the Planning Commission didn't find a need to increase the notice radius in discussions earlier this year, the Board of County Commissioners (BCC) included formal consideration of a notice radius increase in rural areas (i.e., for those properties whose current notice radius is 500 or 750 feet) in the Work Program.

Accordingly, Staff have estimated annual costs associated with increasing the notice radius of applications in rural areas to 1,000 feet, a quarter mile, and a half mile. The estimates are based on the following:

- The total number of noticed applications in CY 2018, per zoning district;
- The average number of properties within specified distances of 25 semi-randomly selected CY 2018 rural zone applications that required notice;
- The average printed pages in those applications' notices and their decisions; and
- The current costs of paper, copying, envelopes, and postage.

Assuming the number and size of noticed applications were to remain the same as those in CY 2018, and assuming the associated supply costs do not change, staff estimates the following additional annual costs for increasing the notice radius of applications for rural properties:

<i>If the notice radius only for natural resource (AG/F, EFU, TBR) properties were increased from 750 feet to...</i>	<i>Estimated additional annual notice costs:</i>
1,000 feet	\$2,573.62
¼ Mile	\$7,238.90
½ Mile	\$39,500.92

<i>If the notice radius for rural residential (e.g., RRFF-5), Rural Commercial (RC), Rural Industrial (RI), and natural resource (AG/F, EFU, TBR) properties were increased to...</i>	<i>Estimated additional annual notice costs:</i>
1,000 feet	\$9,170.21
¼ Mile	\$19,619.75
½ Mile	\$87,617.41

The above estimates assume increasing the notice radius of *all* Type II and Type III land use applications – including applications for temporary dwellings for care, home

occupations, partitions, subdivisions, farm processing, forest dwellings, design review, floodplain development, and conditional uses. However, at the December Study Session, Planning Commissioners suggested that it may not be necessary to increase the notice radius of all Type II and Type III applications, but perhaps just those that are less routine and that typically generate more public interest.

Accordingly, staff have worked to figure a reasonable estimate of what the additional annual cost would be to increase only the notice radius of applications brought before the County’s Hearings Officer. This would include subdivisions (land divisions creating four or more lots), conditional uses, and home occupation exceptions, as well as any appealed decision on a Type II application, such as appealed decisions on nonconforming use verification/alteration applications.¹

Staff’s estimates, shown in the table below, are based on the actual applications brought to the Hearings Officer in the last 12 months. The estimates consider how much was spent in sending out notices at the distances currently required by the ZDO, compared to what would have been the cost if notice was sent to more properties with wider noticing distances. The estimates include the cost of postage, envelopes, paper, and printing.

<i>If the notice radius of rural land use applications before the Hearings Officer were increased to...</i>	<i>Estimated additional annual notice costs:</i>
1,000 feet	\$556.96
¼ Mile	\$1,002.33
½ Mile	\$3,994.58

While the numbers in the table above appear precise, it’s important to underscore that they are just estimates based on the prior 12 months’s applications; it is unknown how many applications will require Hearings Officer decisions in the future, or the location of those future applications’ subject properties and the number of nearby property owners.

Moreover, while notice of *public hearings* before the Hearings Officer are sent to all property owners within the specified distance, the multi-page and sometimes lengthy written *decisions* of the Hearings Officer are only mailed to those who have commented on the application in writing or specifically asked to receive a copy of the decision. Staff cannot predict how many people in an increased notice radius will comment on any future application or request a paper copy of the decision, and therefore cannot fully know what the cost of printing and mailing these decisions in the future will be. However, staff have assumed in the above estimates that the same *percentage* of parties who have commented on the respective applications in the last 12 months, compared to the number of properties notified of the public hearings, will remain the same, even if the number of those notified of the public hearings is increased.

¹ In the last 12 months, by far the majority of conditional use applications and appealed land use decisions related to properties in rural zones (e.g., the EFU, TBR, RRF-5, FF-10 Districts), where noticing concerns have been focused.

Despite the limitations in predicting the cost of increasing the application notice radius, staff's analysis suggests that the cost of increasing who is notified of public hearings before the Hearings Officer, rather than increasing who is notified of all Type II and Type III applications, will be significantly cheaper, while helping to ensure that a greater number of people in rural areas are mailed notice of more subjective proposals, and projects that have generated more public concern (i.e., conditional uses and appealed Type II decisions).

One issue with this approach that the Planning Commission should consider, however, is that by not increasing the notice radius for all Type II *applications*, but increasing the number of properties notified of appealed Type II *decisions*, more property owners will receive notice of the appeal hearing than received notice of the initial application. In other words, property owners who receive notice of an appeal of a staff decision on a Type II application may never have received notice of that application before staff made that decision. This may create confusion, and lead to additional inquiries with the Planning and Zoning office.

In addition to considering an increase in the noticing radius of only certain applications in rural areas, the members of the Planning Commission were curious what it would take to expand the number of properties noticed based on whether they share the same road frontage as a property that is the subject of a land use application.

After discussing the idea with those who compile the noticing lists, staff believes that this approach would require significantly more application processing time and improvements to existing GIS systems, and could make the County more vulnerable to concerns that a particular property owner should have been noticed but was not, for the following reasons.

Currently, the noticing list is generated automatically by a GIS program that instantly identifies the owners of properties within a set distance from the boundaries of a selected property. The program does not have a feature to identify properties within a set distance along any selected roadway, so staff would need to measure by hand (on the computer) the distance from a property to another along a selected road, however the relevant road is determined. This would take additional staff time.

Staff would also need to record these hand measurements in the official record to justify which properties were notified. The hand measurements are not precise and could inadvertently miss properties that are within a required noticing distance, leading to costly and time-consuming procedural challenges.

In order to notice properties based on shared road frontage, the County would also need that address cases where properties lack any frontage on public rights-of-way or even access easements, as well as properties with double frontage and corner lots.

Staff are scheduled to meet with colleagues in the County's Public & Government Affairs division in January to further consider ways to increase opportunities to learn of pending land use applications in rural areas, beyond increasing the number of property owners who receive mailed paper notices.

6. Road frontage improvement FILO requirements:

ZDO Subsection 1007.08 allows a fee to be paid in lieu of construction of frontage improvements that are required with partitions (i.e., land divisions creating no more than three parcels) and with approval of certain dwellings, when those frontage improvements are within the Portland Metropolitan UGB. In order to qualify for the FILO option, the required improvements must also:

- Be located on a local, connector, or collector road that is *not* identified on Comprehensive Plan Map 5-3, *Essential Pedestrian Network*; or
- Be located on a road identified on the Essential Pedestrian Network, but the County's Department of Transportation and Development has deemed FILO to be an acceptable alternative to construction for reasons listed in Subsection 1007.08(B) (e.g., there are significant topographical constraints to building the improvements or the improvements are already included in the Five-Year Capital Improvement Program for County construction).

The fees, which are established by separate order of the BCC, are placed in a "Sidewalk Improvement Fund" and spent on sidewalk or pedestrian pathway construction on roads within the Portland Metropolitan UGB.

Representatives of the Development Review Team and the Transportation Engineering Division have been reviewing these existing FILO rules. They have the following recommendations, which are aimed at making FILO a more widely available option for developers, as well as making the FILO criteria more consistent, easier to administer, and easier for developers to understand.

Firstly, they recommend expanding the defined cases under which FILO can be paid to include: instances when the improvements would be located on a road where there are public storm drainage constraints; and instances when the improvements would be located on public street frontage that is 200 feet or less and there is no existing sidewalk or pathway that the new improvements would connect to.

Secondly, they recommend allowing FILO to be paid for required frontage improvements to all road classifications within the Portland Metropolitan UGB, not just improvements to local, connector, and collector roads, and regardless of whether the improvements are to roads on the Essential Pedestrian Network, with all cases evaluated according to the same criteria.

County counsel has also recommended clarifying, with amendments to Subsection 1007.04(F)(3)(a), that new frontage improvements are not required when the only development on the subject property is the alteration, restoration, or replacement of *any* lawfully established two-family dwelling, detached single-family dwelling, manufactured dwelling, or an attached single-family dwelling with two dwelling units, not just the replacement of such a dwelling destroyed by an unplanned fire or natural disaster. This change is proposed because a replacement dwelling is not statistically likely to create greater transportation impacts on average than the existing uses.

Members of the Planning Commission were interested in knowing where arterials and other road classifications are in the County. A detailed road systems map is available [online here](#); the map identifies road classifications according to a key [online here](#).

7. Small wireless facilities on private property:

As noted beginning on Page 5, the County is required under an effective FCC mandate to review proposals for small wireless facilities (small cells) within certain time frames, and is limited to applying standards that are reasonable, no more burdensome than those for other utility facilities, and published in advance (i.e., with clear and objective standards that can be understood by potential developers beforehand).

While Staff are proposing for small cell facilities in rights-of-way to be regulated under County roadway standards, ZDO Section 835 could:

1. Define small cell wireless facilities consistent with the FCC Order;
2. Establish a review process that can be completed within the “shot clocks”; and
3. Set standards for small cell facilities on private property, within the limitations of the FCC order and the scope of this ordinance.

According to the FCC definitions, a “small wireless facility” (small cell) meets all of these criteria:

- Is mounted on a structure 50 feet or less in height including their antennas; or is mounted on a structure no more than 10 percent taller than other adjacent structures; or does not extend existing structures on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- Each antenna associated with the deployment, excluding antenna equipment, is no more than three cubic feet in volume; and
- All other wireless equipment associated with the structure is no more than 28 cubic feet in volume.

These definitional limitations, as well as the short-distance function of small cells, will already control the height and volume of new facilities even on private property. The

facilities would typically include the box- or tube-shaped antenna that is between one and five feet tall/wide and cables connected to an equipment box.

As noted previously, all of the equipment could be inside of some buildings, but there will be instances when they would be better placed on roofs and the sides of existing structures. Therefore, it is appropriate to consider some aesthetic standards, within the limitations of the FCC Order, to apply to new small cell facilities on private property.

In commercial and industrial areas where small cell facilities are likely to be of greatest demand and most feasible, it may be appropriate to have standards requiring the facilities be the same color as the building section they are on, and for all connecting cables to be run internally or otherwise be of the same color as the portion of the structure they cross. In residential areas, the regulations could require that roof-mounted small cell facilities be setback from the edge of the roof by a distance no greater than the height of the facility, thereby helping to limit its obtrusiveness.

Regulations could also include a prohibition on manufacturer decals or advertisements on equipment, and on static or flashing lights visible from outside an equipment box. The City of Tigard also requires equipment related features (e.g., cooling system fans) to not exceed 50 decibels during the day and 40 decibels at night.

Staff is still reviewing the degree to which the County can impose limitations on small wireless facilities. However, the Planning Commission can indicate what their major concerns, if any, are with the deployment of small cell wireless facilities on private property. Staff can then conduct further research and address them with the other amendments proposed with ZDO-276.

Staff has reached out to industry representatives who have already expressed interest in deploying small wireless facilities in Clackamas County, and will hold a meeting with them in January or February to understand: what small wireless facilities deployed in Clackamas County might actually look like; where they will likely be located (e.g., in rights-of-way, inside buildings, on commercial roof tops); and how aesthetic regulations, such as restrictions on the visibility of equipment lights, might impact their operations.

According to the state's Building Codes Division, an electrical permit is required to install or alter any permanent wiring or electrical device and to install or alter many low-voltage systems, such as security systems. These permit requirements would presumably apply to the hard-wiring of small wireless facilities, which staff will confirm with a County electrical inspector supervisor.

8. Accessory forest worker dwellings:

HB 2469 allows the County to permit a second dwelling on property zoned AG/F or TBR, near to an existing dwelling on the same lot/parcel, so that a relative can live on the property and assist in the harvesting, processing, or replanting of forest products or in the

management, operation, planning, acquisition, or supervision of forest lots/parcels of the owner.

These “accessory forest worker dwellings”, if the County chooses to allow them, would have to be:

- On a lot of record that is at least 80 acres;
- Accessory to an existing, lawfully established primary dwelling on the same lot/parcel;
- Within 200 feet of the primary dwelling; and
- In compliance with the Oregon residential specialty code relating to wildfire hazard mitigation.

The property owner and the owner’s successors would have to manage the lot/parcel as a working forest under a written forest management plan, as defined in ORS 526.455, and state law expressly prohibits the accessory dwelling from being used for “vacation occupancy” as defined in ORS 90.100.

Only 58 tax lots in the County are properly zoned, at least 80 acres in area, and with a dwelling already. Staff assumes that not all of these tax lots are currently used for forestry and could accommodate a second dwelling within 200 feet of the existing dwelling, while still meeting all other dimensional standards; Staff also assumes that not every tax lot could demonstrate a need for additional housing on the property to assist a relative in forest work, as would be required. Accordingly, Staff believes that the number of qualifying properties in the County is less than 58, and therefore allowing accessory forest work dwellings may have minimal impacts on the County’s natural resource areas.

Allowing accessory forest work dwellings may also help ensure there is housing available for forest workers in the County’s natural resource areas, and would require minimal text amendments to the ZDO.

With the Planning Commission’s support, Staff could propose such amendments to allow, through a Type II procedure, accessory forest worker dwellings in AG/F and TBR Districts as authorized by HB 2469.

Planning Commissioners were curious what drove the support for HB 2469’s adoption by the state legislature. Staff reviewed the public testimony on HB 2469 ([online here](#)) and found that those in favor of allowing accessory forest worker dwellings, including some land owners in Clackamas County, believed that the option would help families in the timber industry house needed family workers and keep property and operations within the family in the future.

Opponents of the bill, however, including 1000 Friends of Oregon, noted that: there is no language stating how an accessory forest worker dwelling can be used after succession occurs and ownership changes; there is no income test for an accessory forest worker dwelling like there is for an accessory farm work dwelling; and the accessory dwellings

could bring more activity to timber lands and may cause greater wildfire risk. As previously noted, the final, adopted version of the bill requires accessory forest worker dwellings to comply with the Oregon residential specialty code relating to wildfire hazard mitigation.

9. EFU land divisions for siting utilities:

Generally, new lots of record in the EFU District must be at least 80 acres each, but state and County rules provide a number of exceptions. One existing exception allows the creation of smaller lots of record when one of the resulting lots is used for certain approved “nonfarm uses” that are not dwellings (e.g., a fire service facility). The exception allows a service provider to acquire only a portion of an otherwise larger piece of farmland, while still requiring the same land use approval requirements (e.g., a conditional use permit) for the “nonfarm use” itself.

SB 408 allows the County to approve these nonfarm use land divisions now also for utility facilities that are necessary for public service, provided such utility facilities are themselves approved according to existing relevant criteria. Staff recommends amending ZDO Subsection 401.09(D) to clearly allow EFU District land divisions for the siting of approved utility facilities.

10. Additional one-year time extensions for approved dwellings in AG/F, EFU, and TBR Districts:

As previously mentioned on Page 7, the County is required by ORS 215.417(2) to provide a single two-year time extension on the initial approvals of certain new dwellings in the AG/F, EFU, and TBR Districts, including lot of record dwellings, dwellings in conjunction with a farm use, and forest template dwellings. The initial approval period for these dwellings is four years, and with the two-year time extension, the applicant effectively already has up to six years to implement their dwelling approval.

“Implemented” means obtaining and maintaining a building or manufactured dwelling placement permit for the new dwelling; it does not mean the dwelling has necessarily even received its final Certificate of Occupancy.

HB 2106 allows the County to approve up to five *more* one-year time extensions of the dwelling approval – in addition to the single required two-year time extension allowance – if the state hasn’t amended the applicable residential development statutes and if the dwelling complies with the County’s current requirements.

Staff, however, believes the six years already available to obtain necessary permits for the approved dwelling is sufficient, and that allowing additional time extensions would create some administrative complexity.

11. Aligning requirements for forest template dwelling approval with state minimums:
Earlier discussion back on Page 2 explained how HB 2225 will phase in new, mandatory restrictions on transferring ownership of lots of record comprising a tract in order to qualify for a forest template dwelling.

At the same time, the ZDO is already more restrictive in some regards than state law requires for the establishment of forest template dwellings, and the County could choose to be less restrictive in order to reduce certain barriers to forest template dwellings. The County made the decision to be more restrictive than state law when the template test provisions were adopted in the 1990s.

For example, the County requires in ZDO Subsection 406.05(D)(3)(f)(ii) that, as of January 1, 1993, a portion of at least seven lots of record for a property capable of producing 50-85 cubic feet per acre per year of wood fiber, or of at least 11 lots of record for a property capable of producing more than 85 cubic feet per acre per year and a minimum of five lawfully established dwellings, fall within a 160-acre template centered on the subject property. However, OAR 660-006-0027(3)(a) only requires portions of three lots of record dwellings within that template. Decreasing the number of lots of record dwellings that existed in 1993 within the template to the state minimums may allow more properties in the AG/F or TBR Districts to qualify for a forest template dwelling in areas of reduced parcelization relative to current rules; however, quantifying the number of properties that would newly qualify with a reduction in the number of required lots of record dwellings would be difficult, in part because the County's GIS systems reference tax lots and not lots of record, making it difficult to assess the total number of properties in the County that would qualify for a template dwelling in the first place.

Another opportunity to not be more restrictive on forest template dwellings than state law requires would be to repeal Subsections 406.05(D)(3)(f)(iii)(A) and 406.05(D)(3)(f)(iii)(C). Repealing these provisions would allow lots of record that are larger than 80 acres, and dwellings on lots larger than 80 acres, that fall within the template to be counted toward the minimums necessary to qualify. Staff expects that the number of properties that would newly qualify for a forest template dwelling with these amendments would be minimal, but that the amendments would help ZDO language more closely resemble the specific enabling language in statute.

On the other hand, the County consciously chose to be more restrictive than state law on qualifications for forest template dwellings since template dwellings were first legalized in the 1990s, and the sentiments and priorities that drove that County choice back then may not have changed.

In the beginning, the County opted to require that applicants for forest dwellings on property with the most productive soil show that there were six (not just three) lawfully established dwellings within the template area on January 1, 1993. The County heard testimony both against this more restrictive rule, and testimony in favor of it.

Those against being more restrictive than state law requires argued that: (1) attempts to restrict forest dwellings were an inappropriate way to preserve open space, rather than protect the timber industry; (2) there wasn't sufficient rationale to be more restrictive than the state; and (3) allowing some more housing in timber areas that are already more parcelized and develop could help, rather than hurt, the timber industry. Those in favor of six dwellings within the template generally argued that Clackamas County uniquely needed greater restrictions on development in timber zones.

Shortly after adoption of the six-dwelling requirement, the County reduced the dwelling minimum to the current *five*, which is still two more than the state minimum has ever required.

Staff notes that, in most all cases, when someone who is interested in a forest template dwelling learns that a property does not qualify, it is because there is not the minimum number (e.g., 11) *lots of record* within the template, rather than an insufficient number of dwellings. Therefore, staff believes that reducing the number of required dwellings will not itself meaningfully increase the number of approvable template dwellings. Because of the existing lot of record requirement, newly approved template dwellings would also continue to be sited in areas where there was already increased parcelization in 1993, rather than in areas of larger timber acreage.

While reducing the number of 1993-era dwellings that are required by the County to be within the template to state minimums may not itself lead to many (if any) more properties being approvable for template dwellings, staff does find that there is some administrative value in having the text of the County's ZDO read as similar to enabling state statutes and regulations as possible. Doing so helps the County to notice, track, and implement changes to those statutes and regulations in the future.

Albeit a small number, staff does expect that more properties would newly qualify for template dwellings if the County chose to count lots of record larger than 80 acres, and dwellings on those lots. This rule change could be more impactful than simply reducing the number of qualifying dwellings to the state minimum, because they would allow more proposals to meet the minimum required number of lots within the template and, as noted above, it's almost always the case that a property does not qualify for a template dwelling because of an insufficient number of lots. The rule change could also encourage new residential development nearer to or on the edge of more sparsely populated areas.

Staff therefore recommends that the Planning Commission consider reducing the number of 1993-era dwellings required for template dwelling approvals, but keep the existing, optional provisions that preclude an applicant from including larger lots, and dwellings on those lots, to meet applicable minimums. Whether or not the Planning Commission is interested in pursuing optional changes to template dwelling requirements as part of this project, staff believes it is useful for the Planning Commission to be aware that the County is currently choosing to be more restrictive in certain ways on template dwellings, especially when HB 2225 will somewhat restrict new forest dwellings in Clackamas County based on other factors.

VI – NEXT STEPS

Staff will take the direction from the Planning Commission and prepare necessary legislative text amendments in December 2019 and January 2020. The first public hearing on those proposed amendments before the Planning Commission would be in February or March, as schedules permit.

LINKS

- [Map 5-3: Essential Pedestrian Network](#)
- [FCC Declaratory Ruling and Third Report and Order \(small wireless facilities mandate\)](#)

If you have any questions, please contact me at 503-742-4523 or by email at ghamburg@clackamas.us.