

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: 11/29/23 **Approx. Start Time:** 11:00 a.m. **Approx. Length:** 30 min

Presentation Title: Potential ZDO Amendments for Utility Facilities

Department: Transportation and Development

Presenters: Dan Johnson, Director; and Jennifer Hughes, Planning Director

Other Invitees: Cheryl Bell, Assistant Director of Development; Caleb Huegel, Assistant County Counsel; and Joy Fields, Principal Planner

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Staff is requesting a decision on whether to initiate amendments to the Zoning and Development Ordinance (ZDO) related to utility facilities and direction on the scope of the proposed amendments.

EXECUTIVE SUMMARY:

The ZDO regulates utilities differently depending on the applicable zoning of a particular site. In addition, 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 initial review of ORS 757, this definition appears to exclude, for example, telecommunications, sanitary sewer and surface water management, as well as 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.

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 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) require conditional use permits in all other zones where utilities are permitted, and

there are several zones where such facilities may be prohibited altogether. Although an amendment to more consistently address utilities has been on a list of potential ZDO amendments, it was not until very recently that the significant scope of the issue was realized.

Although staff has previously understood that utility facilities outside rights-of-way potentially require land use review and has advised utility providers accordingly, utility facilities inside rights-of-way typically have proceeded through the utility permit process without review and analysis by Planning and Zoning. Given the new understanding about the scope of the needed land use review and the number of annual utility permits in rights-of-way (nearly 2,000 in 2022), a significant practical difficulty exists in administering the ZDO in its current form.

There is an additional concern. Under the ZDO, development (including institutional uses such as utility facilities) that has a need for electricity, natural gas, and communications services must install such facilities pursuant to the requirements of the utility providing the service and, unless the utility prohibits it, such facilities must 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). However, it could also be argued that the requirement applies to all utility facilities. Applying this standard to major utility lines, rather than just on-site service lines, could result in substantially increased costs for utilities and ultimately ratepayers.

In determining whether, and how, to proceed with ZDO amendments, there are several considerations.

- Should all utility facilities in road rights-of-way be outright allowed? In staff's view, this approach would be consistent with historic, typical use of rights-of-way and would have the effect of encouraging these facilities in rights-of-way rather than in alternate locations. In addition, it is common for zoning to be different along a right-of-way, even varying from one side to the other. By aligning with what already applies in the EFU, TBR and AG/F zones, administration of the ZDO will be simpler and more consistent.
- Should some facilities in rights-of-way remain a conditional use (e.g., electric transmission poles over a certain height or lines over a certain voltage)? Understandably there may be community concern about the safety and aesthetic impacts of certain utility facilities. That said, there is a clear need for utility lines to cross rural areas, and a conditional use permit process that denies such a line in one location may suggest that the line is more appropriate in a different rural right of way. What criteria would be most appropriate in making that determination?
- Should some utility facilities outside rights-of-way also be allowed outright (e.g., underground facilities or linear facilities)? A key factor to consider are anticipated impacts of these uses, particularly in residential areas.

If the Board decides to initiate ZDO amendments, it is important that the proposal begin as the most expansive one that the Board would potentially like to consider. This will provide for the most accurate notice and the most meaningful public and utility provider input. The proposal can be narrowed as input is received that informs the Planning Commission's recommendation and the Board's final decision.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

What is the cost? Existing staff time

What is the funding source? Existing General Fund allocated to the Planning and Zoning program

STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department's Strategic Business Plan goals?

The project aligns with the Long-Range Planning Program's purpose of providing land use and transportation plan development, analysis, coordination, and public engagement services to residents; businesses; local, regional, and state partners; and County decision-makers so they can plan and invest based on a coordinated set of goals and policies that guide future development.

- How does this item align with the County's Performance Clackamas goals?

It aligns with the Performance Clackamas goal to "Build a Strong Infrastructure".

LEGAL/POLICY REQUIREMENTS:

The county is required to allow utilities in its road rights-of-way. However, amending the ZDO to change the land use regulations applicable to such facilities does not appear to be required by law.

PUBLIC/GOVERNMENTAL PARTICIPATION:

Public notice will be provided as required by law for any proposed amendments to the Comprehensive Plan or the ZDO that come before the Planning Commission or Board for consideration at public hearings. The public will have the opportunity to comment on the proposed amendments at public hearings before the Planning Commission and the Board.

OPTIONS:

Under all options, the amendments would not apply in EFU, TBR or AG/F zones where the ZDO already implements state law, and review requirements associated with environmental or hazard areas (e.g., streams, wetlands) would continue to apply.

Option 1: Amend the ZDO to adopt a more comprehensive definition of "utility facility"; 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; and allow the following outright: utility facilities inside the right-of-way and underground utility lines outside the right-of-way.

Option 2: Amend the ZDO to adopt a more comprehensive definition of "utility facility"; 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; and allow some utility facilities outright. In selecting this option, the Board would need to identify which types of facilities should be allowed outright (e.g., inside the right of way, underground, linear).

Option 3: Amend the ZDO to adopt a more comprehensive definition of "utility facility"; 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; and allow all utility facilities outright.

Option 4: Do not amend the ZDO, thereby continuing to require conditional use permits for all public utility facilities and administering the current definition of public utility facility and the current requirement for underground utilities.

RECOMMENDATION:

Staff recommends **Option 1:** Amend the ZDO to adopt a more comprehensive definition of “utility facility”; 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; and allow the following outright: utility facilities inside the right-of-way and underground utility lines outside the right-of-way.

ATTACHMENTS:

None

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval *Dan Johnson*

County Administrator Approval _____

For information on this issue or copies of attachments, please contact Jennifer Hughes @ 503-742-4518
