

# CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

## Policy Session Worksheet

**Presentation Date:** 2/25/20    **Approx. Start Time:** 1:30 p.m.    **Approx. Length:** 1 hour

**Presentation Title:** File ZDO-276: FY 2020 Minor and Time Sensitive ZDO Amendments

**Department:** Planning and Zoning Division, Department of Transportation and Development (DTD)

**Presenters:** Glen Hamburg, Senior Planner; Jennifer Hughes, Planning Director

**Other Invitees:** Dan Johnson DTD Director; Cheryl Bell, DTD Assistant Director of Development; Karen Buehrig, Long-Range Planning Manager

### WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Staff is requesting input on the set of amendments being developed as a part of the Minor and Time Sensitive Zoning and Development Ordinance (ZDO) Amendments package. The input falls into two categories:

- Direction related to four substantive land use issues; and
- Questions or concerns about other proposed amendments summarized in Attachment A, many of which relate to new state and federal mandates.

### EXECUTIVE SUMMARY:

The 2019-2021 Long-Range Planning Work Program includes a project titled “Minor and Time-Sensitive ZDO Amendments”. This project was intended to focus on relatively minor changes to the County’s Zoning and Development Ordinance (ZDO) to comply with state and federal mandates, clarify existing language, correct errors, and adopt optional provisions that require only minimal analysis.

Staff is proposing a number of changes related to recent state legislation, federal preemption and general cleanup of the zoning code. Attachment A summarizes these amendments and categorizes them as mandatory or optional.

In addition, during Work Program adoption last year, the Board included three elements of the ZDO for review under the “minimal analysis” category: dog kennels, small-scale manufacturing in urban commercial zones and increasing notice distances for land use applications in rural areas. More recently, the Board requested review of a fourth topic: repealing limits on marijuana retail hours in favor of reliance on state standards.

This amendment package is planned for public hearings this spring. The Planning Commission held two study sessions (one in December 2019 and another in January 2020) where they discussed most of the proposals in detail and provided staff with initial feedback.

Below is a summary of each of the four topics the Board specifically identified for consideration and the draft staff proposal for each.

## 1. Dog daycare/boarding:

These uses are defined as a kennel and allowed through a conditional use permit in several rural residential zones. A former Planning Commission member, as well as public comment, identified concerns with the difficulty in permitting this use. The core issue is whether the existing 200-foot mandatory setback for commercial kennels in rural residential districts is overly restrictive. On the one hand, it provides a baseline level of protection for neighboring properties from kennel impacts. On the other hand, it means that even if a lot is a perfect square and all kennel structures/areas are located in a 2,500-square-foot area at the center of the lot, the lot must be nearly five acres in size to qualify. In addition, even without a mandatory setback, kennels in rural residential areas require a conditional use permit where criteria already consider potential impacts to neighbors and allow for conditions of approval to mitigate such impacts depending on the characteristics of the subject property and the surrounding area. For example, in the absence of a mandatory 200-foot setback from all property lines, the Hearings Officer could require a large setback from an adjacent dwelling but not from an adjacent tract of BLM land or a highway.

### Options for moving forward:

- a. Reduce the mandatory setback from 200 feet to 100 feet, while still requiring conditional use permit criteria to be met.
- b. Eliminate the special kennel setback, which would reduce the minimum setback to the regular rural residential zone setbacks of 30 feet from front and rear property lines and 10 feet from side property lines. Rely only on the conditional use permit criteria to determine whether a specific proposed kennel at a specific rural residential property is appropriate and where it should be sited on the lot to mitigate impacts.
- c. Retain the existing 200-foot setback.

**Staff draft proposal:** Reduce the mandatory setback from 200 feet to 100 feet, while still requiring conditional use permit criteria to be met. This will align Clackamas County standards with Washington and Multnomah Counties and will strike a balance between baseline separation from adjacent properties and making a kennel use feasible on additional rural properties.

## 2. Small-scale manufacturing:

During Work Program development last year, community comment was submitted requesting that small-scale manufacturing be allowed, or allowed to a greater degree, in the Community Commercial (C-2) and General Commercial (C-3) Districts in the County's urban areas. In addition, there has been interest in this use in the Rural Tourist Commercial (RTC) District in the Mt. Hood area. Currently there is no clear path in the C-2 and RTC zones to establish most manufacturing uses, and the C-3 zone prohibits the primary processing of raw materials. These restrictions preclude breweries, cideries, cheese-makers, and the manufacturing of other consumables, even when the resulting products are retailed on-site (i.e., at a brewpub where beer is both brewed and retailed at the same location).

County staff met with representatives of the Oak Grove Community Council to discuss potential allowances for small-scale processing of consumables retailed on-site in the Oak Grove neighborhood and other areas zoned C-2. The County has heard, including from

representatives of the Oak Grove Community Council, that allowing the manufacturing of beer, cider, wine, and other consumables in conjunction with an on-site retail component would be appropriate and could help promote employment and commerce at more periods of the day on the same property. This type of use is allowed in similar zones of other nearby jurisdictions, including in Estacada, Sandy, and Washington County.

**Options for moving forward:**

- a. Allow small-scale manufacturing of consumables (including the primary processing of raw materials for those consumables) in the C-2, C-3 and RTC Districts, provided the manufactured consumables are also retailed on-site.
- b. Continue to prohibit such uses.

**Staff draft proposal:** Allow small-scale manufacturing of consumables (including the primary processing of raw materials for those consumables) in the C-2, C-3 and RTC Districts, provided the manufactured consumables are also retailed on-site. If this use is allowed in these zones, new structures or site development would require Design Review to evaluate compliance with standards for parking, landscaping, utility services, building design, and other elements.

**3. Property owner noticing radius in rural areas:**

The ZDO currently requires that notices of land use applications and decisions involving a property in rural areas be mailed to property owners either within 500 feet or 750 feet of the subject property, depending on the property’s zoning district. While these distances already exceed state requirements in many cases, there has been concern, including in public comment during Work Program development last year, that they are insufficient.

Staff has estimated the additional annual cost to the Planning and Zoning Division of increasing the notice radius in rural areas of all applications, as well as just some applications, to 1,000 feet, a quarter mile, and to a half mile. The estimates, which are based on most recent prior-year figures, include the cost of postage, supplies, and printing but do not include additional labor costs, which are difficult to measure at this incremental level. A summary of those estimates, and a visual illustrating the number of additional properties that would be noticed under two possible scenarios, is included in Attachment B.

**Options for moving forward:**

- a. Increase the noticing radius of required **public hearings**<sup>1</sup> on land use applications in rural areas, such that:
  - Notice of public hearings on land use applications for properties currently with a 500-foot noticing requirement are sent to property owners within **a quarter mile** (1,320 feet) of the subject property; and
  - Notice of public hearings on land use applications for properties currently with a 750-foot noticing requirement are sent to property owners within **a half mile** (2,640 feet) of the subject property.

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<sup>1</sup> Public hearings are required for conditional use permits (e.g. for solar farms in rural areas and subdivisions of more than 10 lots), zone changes, home occupation exceptions, and all *appealed* decisions, including appeals on marijuana processing in the EFU District.

Option (a) would cost the Planning and Zoning Division approximately \$1,000 – \$4,000 more per year to implement (see Attachment B). Option (a) would also ensure that notice of larger development projects, such as conditional use permits for solar farms in rural areas, as well as those that have been appealed to the County’s Hearings Officer, is sent to many more property owners.

- b. Increasing the noticing radius of **all noticed land use applications** in rural areas – including temporary dwelling for care permits, home occupations, and partitions – to a specified distance.

Staff estimates that Option (b) would cost the Division nearly \$20,000 more per year if the notice radius for all rural applications were increased to a quarter mile and nearly \$90,000 more per year if it was increased to a half mile. Option (b) would mean property owners would receive notice of any application and decision, even minor land use applications that may be of little interest to neighbors a quarter mile or a half mile away.

- c. Make **no change** to the County’s current noticing radius requirements.

**Staff draft proposal:** Increase the noticing radius of required **public hearings** on land use applications in rural areas, such that:

- Notice of public hearings on land use applications for properties currently with a 500-foot noticing requirement are sent to property owners within **a quarter mile** (1,320 feet) of the subject property; and
- Notice of public hearings on land use applications for properties currently with a 750-foot noticing requirement are sent to property owners within **a half mile** (2,640 feet) of the subject property.

The Planning Commission discussed this issue at length and their initial assessment is that this option would strike a balance between increasing public awareness and involvement in significant land use issues while avoiding substantial increases in cost of application processing.

#### **4. Repeal of County’s more restrictive hours of operation for marijuana retailers.**

Last month, the Board agreed to discuss at this February 25<sup>th</sup> Policy Session whether or not to propose the repeal of an existing ZDO provision that restricts the County’s marijuana retailers to shorter operating hours than otherwise allowed by the state. Currently, marijuana retailers in Clackamas County can only sell to the public between 10:00 a.m. and 9:00 p.m.; a repeal of the relevant ZDO provision would allow marijuana retailers in the County to sell to customers for four additional hours per day by extending the hours to 7:00 a.m. and 10:00 p.m., the Oregon Liquor Control Commission standard. Members of the Board have heard from those in the industry that the County’s allowed operating hours put them at a competitive disadvantage because other nearby jurisdictions allow marijuana retailers to be open longer.

**Options for moving forward:**

- a. Repeal the County’s current rule limiting a marijuana retailer’s sales to consumers to between 10:00 a.m. and 9:00 p.m. If adopted, the repeal would allow marijuana retailers to be open between 7:00 a.m. and 10:00 p.m. under the current OLCC regulation.
- b. Retain the County’s current rule limiting a marijuana retailer’s sales to consumers to between 10:00 a.m. and 9:00 p.m.

**Staff Draft Proposal:** Repeal the County’s current rule limiting a marijuana retailer’s sales to consumers to between 10:00 a.m. and 9:00 p.m. If adopted, the repeal would allow marijuana retailers to be open between 7:00 a.m. and 10:00 p.m. under the current OLCC regulation.

The ZDO does not regulate the hours of operation for any other commercial uses in commercial zones. This change will align marijuana retailers with that approach.

**FINANCIAL IMPLICATIONS (current year and ongoing):**

Is this item in your current budget?  YES  NO

The adoption process for these amendments is included in the current budget. However, costs associated with increasing the rural noticing radius are not. Costs at the low end of the options likely can be accommodated with current funding, but costs at the high end may require additional resources, particularly under potential cut scenarios for General Fund allocations in FY 2021.

What is the funding source? General Fund - Long-Range Land Use Planning Program

Application fees cover public notice costs, at least in part. At the high end of the options for increasing notice distances, the additional cost per rural application would be approximately \$249.

**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?

The recommendations in this worksheet align with the Performance Clackamas goals to **“Build Public Trust through Good Government”** and **“Grow a Vibrant Economy”**.

**LEGAL/POLICY REQUIREMENTS:**

Attachment A identifies the amendments that are required for compliance with state or federal standards.

**PUBLIC/GOVERNMENTAL PARTICIPATION:**

- The measures related to kennel setbacks, small-scale consumables manufacturing, and rural application notice radii were added to the Work Program following public input.
- County Staff have met with Oak Grove Community Council representatives to discuss their ideas for small-scale manufacturing and with those in the communications industry to consider the Federal Communication Commission’s small wireless facility mandates summarized in Attachment A.
- The Planning Commission has held two public Study Sessions to review the measures described in this worksheet and in Attachment A.
- Public notice will be provided, as required by law, for any proposed amendments to the ZDO that come before the Planning Commission and Board for formal consideration at a public hearing.

**OPTIONS:**

- (1) Direct staff to draft amendments consistent with Attachment A and the staff recommendations in this worksheet and proceed to the public hearing phase
- (2) Direct staff to make Board-identified changes to the proposals in Attachment A or the staff recommendations in this worksheet and proceed to the public hearing phase

**RECOMMENDATION:**

Staff Recommends **Option 1**: Direct staff to draft amendments consistent with Attachment A and the staff recommendations in this worksheet and proceed to the public hearing phase

**SUBMITTED BY:**

Division Director/Head Approval \_\_\_\_\_

Department Director/Head Approval \_\_\_\_\_

County Administrator Approval \_\_\_\_\_

For information on this issue or copies of attachments, please contact Glen Hamburg @ 503-742-4523
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# ATTACHMENT A

## Summary of Amendments Proposed for Consideration under File ZDO-276

1.	<p><b>Forest Template Dwelling requirements:</b>          HB 2225 (2019) provides statewide standardization of certain definitions and rules for approval of “template dwellings” on forest land (land zoned TBR or AG/F). Clackamas County’s ZDO and policies are already functionally consistent with these definitions/rules, but clarifying amendments to the ZDO are appropriate. HB 2225 also establishes new restrictions on qualifying a neighboring parcel under the same ownership for another template dwelling; however, based on concerns about risk of “Measure 49” claims and in consultation with Counsel, staff is not proposing to add those restrictions to the ZDO. Instead, state statute will be applied directly.</p>	<b>Mandatory</b>
2.	<p><b>Small-scale farm processing:</b>          HB 2844 (2019) 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”. The small-scale farm processing allowed outright by HB 2844 <i>does not</i> include marijuana processing, which may still be regulated through local siting standards.</p>	<b>Mandatory</b>
3.	<p><b>EFU replacement dwelling property tax status:</b>          HB 3024 (2019) 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.</p>	<b>Mandatory</b>
4	<p><b>EFU nonconforming secondary school expansion:</b>          HB 3384 (2019) increases the potential cases in which nonconforming secondary schools in the EFU District may be expanded on to additional EFU-zoned property.</p>	<b>Mandatory</b>
5.	<p><b>AG/F and EFU farm breweries:</b>          Under SB 287 (2019), 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. 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.</p>	<b>Mandatory</b>
6.	<p><b>AG/F and EFU cideries:</b>          Clarify that cideries are already allowable under state law in the AG/F and EFU zoning districts according to rules similar to those for wineries.</p>	<b>Mandatory</b>
7.	<p><b>Accessory dwelling unit (ADU) off-street parking and owner occupancy in urban/urbanizable areas:</b>          HB 2001 (2019) prohibits the County from requiring one additional off-street parking space, and from applying an owner occupancy requirement, for an ADU that is both within an urban growth boundary <i>and</i> in a zone where a detached single-family dwelling is a primary use.</p>	<b>Mandatory</b>

<p><b>8. Nonconforming licensed marijuana production premises:</b>  SB 365 (2019) 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 ZDO 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 <i>alter</i> (e.g., expand) a nonconforming marijuana production premises.</p>	<p style="text-align: center;"><b>Mandatory</b></p>
<p><b>9. Ex parte contact definitions:</b>  Staff is recommending an amendment to ZDO Section 1307, <i>Procedures</i> to ensure that what is considered “ex parte contact” under the ZDO is consistent with existing state law. The amendment would clarify that, unlike with certain communications with the County’s Hearings Officer, a communication between County staff and the Planning Commission or Board of County Commissioners shall not be considered an ex parte contact for the purposes of Subsection 1307.12(D)(1), consistent with ORS 215.422(B).</p>	<p style="text-align: center;"><b>Mandatory</b></p>
<p><b>10. Small wireless facilities:</b>  “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. With what is effectively a mandate, the Federal Communications Commission (FCC) now 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. According to the mandate, the County has 60 days to respond to a permit proposing collocation of a small wireless facility and 90 days for review of a new structure for a small wireless facility. The Planning Commission has so far not expressed a need to regulate the aesthetics of these devices on private property outside of rights-of-way, in part because they will primarily be deployed in rights-of-way (e.g., on existing utility poles) without a need to site the devices on the outside of buildings. Staff are proposing for small wireless facilities in County rights-of-way to be regulated through revisions to the Clackamas County Roadway Standards, rather than by the ZDO. According to the FCC mandate, the County <i>cannot</i> consider the perceived health effects of small wireless facilities in its regulations.</p>	<p style="text-align: center;"><b>Mandatory,</b>  but with  some limited  opportunities  for local  regulation</p>
<p><b>11. Repeal of Campus Industrial (CI) District provisions:</b>  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 is recommending that provisions in the Comprehensive Plan and ZDO related to the CI District be repealed.</p>	<p style="text-align: center;"><b>Optional</b></p>
<p><b>12. Parking and owner occupancy for ADUs in Mt. Hood Corridor:</b>  The County already <i>chooses</i> to allow ADUs in the Hoodland Residential (HR) District and the Mountain Recreational Resort (MRR) District in the Mt. Hood Corridor. Both zoning districts currently require one additional off-street parking space for an ADU, and the MRR District has an ADU owner occupancy requirement. As noted above in Item #6, HB 2001 prohibits owner occupancy requirements for ADUs in urban/urbanizable areas. In order to be consistent, the draft proposal repeals the owner occupancy requirement in the Mt. Hood Corridor as well. However, the requirement for one additional off-street parking space would be retained in the Mt. Hood Corridor because the streets in this area are often narrower and piled with snow, thereby limiting on-street parking opportunities.</p>	<p style="text-align: center;"><b>Optional</b></p>
<p><b>13. “Housekeeping” amendments related to AG/F, EFU, and TBR Districts:</b>  Staff is proposing “housekeeping” amendments to sections of the ZDO governing the AG/F, EFU, and TBR zoning districts that are necessary to conform to existing state laws, clarify terms, and correct citations, without substantive changes to existing applicable rules.</p>	<p style="text-align: center;"><b>Optional</b></p>



<p><b>14. “Housekeeping” amendments to other generally applicable ZDO Sections:</b> Staff is also proposing non-substantive “housekeeping” amendments to ZDO Sections 822, <i>Home Occupations</i> to correct typos, as to Section 1307, <i>Procedures</i> to clarify rules for time extensions and identify the procedural requirements of farm and forest land divisions.</p>	<b>Optional</b>
<p><b>16. Accessory historic dwelling owner occupancy:</b> Since 2018, the County has 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 <i>outside</i> 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 ADUs, and that HB 2001 prohibits owner occupancy requirements for ADUs within UGBs, the proposal is to repeal the owner occupancy requirement for an accessory historic dwelling.</p>	<b>Optional</b>
<p><b>17. Road frontage improvement “Fee in Lieu of” (FILO) requirements:</b> Under certain circumstances, the County allows a developer to choose to pay a fee instead of constructing sidewalks and other frontage improvements that are required concurrent with some types of new development. This fee payment option is called “FILO”, and the revenues collected are spent on pedestrian improvements within the Portland Metro UGB. Representatives of the County’s Development Review Team and the Transportation Engineering Division have been reviewing the existing rules for FILO. They recommend the rules be modified in order to increase the qualifying opportunities for which FILO can be paid and to standardize the qualification requirements between different urban areas in the County.</p>	<b>Optional</b>
<p><b>18. Forest relative dwellings:</b> HB 2469 (2019) allows – but does not require – 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 “forest relative 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.</p> <p>Staff estimates that less than 60 properties in the County could qualify under these rules. Because of the relatively low number of qualifying properties, and because the County typically chooses to allow the land use options that are provided to it by the state in farm and forest zones, Staff is recommending that a proposal to permit forest relative dwellings be included with ZDO-276.</p>	<b>Optional</b>
<p><b>19. EFU land divisions for siting utilities:</b> 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 when one of the resulting lots is used for certain approved “nonfarm uses” that are not dwellings (e.g., a fire service facility). SB 408 (2019) allows the County to approve these 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 the ZDO to clearly allow EFU District land divisions for the siting of approved utility facilities.</p>	<b>Optional</b>
<p><b>20. Equine and equine-affiliated therapeutic and counseling services</b> SB 1533 (2018) allows – but does not require – the County to permit this use on property zoned AG/F or EFU, provided the activities are conducted in existing buildings that were lawfully constructed on the property before January 1, 2019, or in new buildings that are accessory, incidental and subordinate to the farm use on the tract; and All individuals conducting therapeutic or counseling activities are acting within the proper scope of any licenses required by the state. SB 1533 was supported by 1000 Friends of Oregon. Staff recommends allowing this as well, in part because the County typically chooses to allow the land use options that are provided to it by the state in farm and forest zones.</p>	<b>Optional</b>

# ATTACHMENT B

## Estimated Additional Annual Costs for Increased Notice Radius Scenarios

INCREASED RADIUS	ESTIMATED ADDITIONAL ANNUAL COST		
	1. Only for notice of public hearings on land use applications in all rural zones	2. For notice of all land use applications in natural resource zones (AG/F, EFU, TBR)	3. For notice of all land use applications in all rural zones
1,000 feet	\$557	\$2,574	\$9,170
¼ Mile (1,320 feet)	\$1,002	\$7,239	\$19,620
½ Mile (2,640 feet)	\$3,995	\$39,501	\$87,617

**EXAMPLE:** A rural property, shown in yellow, under current and possible noticing radius requirements

