



MEMORANDUM

To: Clackamas County Planning Commission

From: Martha Fritzie, Principal Planner
Jennifer Hughes, Planning Director

Date: June 12, 2023; Study Session

RE: **Planning File ZDO-287:** Zoning & Development Ordinance (ZDO) Amendments Related to Places of Worship

The purpose of this study session is to brief the Planning Commission on Planning File **ZDO-287**, which proposes amendments to the county's Zoning & Development Ordinance (ZDO) that are intended to ensure that churches/places of worship are treated comparably with other assembly and institutional, non-religious uses. At this study session, staff will provide background on the proposal and give the Planning Commissioners the opportunity to ask questions. The public hearing for consideration of the amendments in ZDO-287 is scheduled for June 26, 2023.

BACKGROUND

The County is presently the defendant in a federal lawsuit alleging that the ZDO does not treat places of worship equally with other similarly situated uses. The County has denied this allegation; however, to avoid future lawsuits and to assist with resolution of the present case, County Counsel has recommended that we make amendments to the ZDO.

The ZDO and Places of Worship

Under the federal law, the Religious Land Use and Institutionalized Persons Act (RLUIPA), a jurisdiction's zoning codes may not treat a church, or place of worship, unequal to other similarly situated non-religious uses. These rules apply to the county's Zoning & Development Ordinance (ZDO).

Historically, the county's ZDO has sought to treat churches, or places of worship, the same as other uses traditionally considered to be "places of assembly", like community halls, fraternal organization lodges, or senior centers. However, it has come to our attention that there are other types of uses in the ZDO, including certain recreational uses, that are different than a traditional assembly facility, but may at times allow for assembly uses more like a place of worship. In most of the county's zoning districts, these other types of facilities are allowed under a different review process than are places of worship.

In order to understand how this new information affects the ZDO, staff assessed how a broader list of uses that may be considered similar to places of worship are treated in the ZDO, including the following categories:

- Arenas, Exhibition Halls, and Stadiums

- Civic and Cultural Facilities, including art galleries, museums, and visitor centers
- Community Halls
- Entertainment Facilities, including arcades, billiard halls, bowling alleys, miniature golf courses, and movie theaters
- Fraternal Organization Lodges
- Government Uses, generally
- Hosting of Weddings, Family Reunions, Class Reunions, Company Picnics, and Similar Events
- Libraries
- Government-Owned Recreational Uses, including parks, amphitheaters; arboreta; arbors, decorative ponds, fountains, gazebos, pergolas, and trellises; ball fields; bicycle and walking trails; bicycle parks and skate parks; boat moorages and ramps; community buildings and grounds; community and ornamental gardens; courtyards and plazas; equine facilities; fitness and recreational facilities, such as exercise equipment, gymnasiums, and swimming pools; miniature golf, putting greens, and sports courts; picnic areas and structures; play equipment and playgrounds; nature preserves and wildlife sanctuaries; tables and seating; and similar recreational uses
- Other Recreational Uses or Recreational Sports Facilities, including gymnastics facilities, swimming pools, and other sports or outdoor recreation facilities

When considering how uses are treated in the ZDO, it is important to understand the ZDO's general structure regarding uses that are allowed or prohibited in each zoning district.

- Prohibited uses are either specifically listed as prohibited within a zone or are simply not included in the list of uses for a zone (and are therefore considered prohibited by that exclusion).
- Allowed uses will fall under one of several categories, the most relevant for this discussion being:
 - **Primary Use:** The *use* itself is allowed without any additional approvals, but it *may* still be required to undergo certain land use review(s) to ensure all the required development standards are met. Examples of such reviews include Design Review or Floodplain Development.
 - **Conditional Use:** The use is only allowed if approved through a Conditional Use permit, a discretionary land use approval that includes consideration of such factors as impacts to the character of the surrounding area and consistency with the Comprehensive Plan. Even if approved through a Conditional Use permit, the development may also be required to undergo certain land use review(s), to ensure all the required development standards are met.

Other types of allowances include Accessory Use; Limited Use; Conditional Use only in a planned unit development; and Use may be allowed if determined to be similar to another allowed use.

Potential RLUIPA Conflicts in the ZDO

The ZDO allows for places of worship in most, but not all, of the zoning districts in the county. In most zoning districts where they are allowed, places of worship require approval under a Conditional Use permit.

Based on Staff's analysis of allowances for places of worship and the broader list of other possible "similar" uses, the county's ZDO has a potential RLUIPA conflict in every residential, industrial and open space zoning district and in 8 of the 15 commercial zoning districts.¹ These conflicts can be categorized by type of zone as follows:

- **Residential and commercial zones:** The main potential RLUIPA conflict in urban and rural residential and commercial zones is with the government-owned recreational use category (which contains uses like amphitheaters, community buildings and grounds, and gymnasiums). Government-owned recreational uses are allowed as a Primary Use in these zones, whereas places of worship are allowed as a Conditional Use in most of these zones. This conflict affects 34 of the 41 residential and commercial zones.
- **Industrial and open space zones:** Places of worship are not currently allowed in the Open Space Management (OSM) district or in urban or rural industrial districts, but in each of these districts one or more of the possible "similar" uses are allowed as a Primary or Conditional Use.

There are also potential RLUIPA conflicts related to parking requirements and certain design standards that only apply to places of worship.

Staff presented this information and analysis to the Board of County Commissioners (BCC) at a policy session on May 10, 2023. The BCC was asked to provide staff with direction for the ZDO amendments and specifically: *Should the county's ZDO be amended to be more permissive for places of worship or should it be amended to be less permissive for certain other assembly and recreational uses (that may be in some ways similar to places of worship)?*

The BCC discussed each approach, including the following key considerations for each.

More permissive for places of worship:

1. This choice involves relatively simple code amendments and would effectively allow places of worship in every zoning district in the county. Places of worship would still require a Conditional Use approval in a few zones, but the vast majority of the zones in the county would allow places of worship as a Primary Use.
2. The county's ZDO requires all "institutional uses²" to be reviewed under Design Review (or a similar Type II land use review), regardless of whether it is listed as a Conditional Use, Primary Use, or other type of use. This land use review ensures development meets all applicable siting and design standards in the ZDO (e.g., landscaping, lighting, parking). Nothing in RLUIPA requires the county to waive development standards for places of worship if they are equitably applied and therefore, even if the county were to establish places of worship as a Primary Use in most zones, there would still be some review required to mitigate impacts as with all other institutional uses.

¹ Note that agricultural and forest zoning districts (EFU, AG/F & TBR) were not included in this analysis because uses in those districts are determined by state law.

² The ZDO defines institutional uses as: *the use of land and/or structures for activities such as child care, adult daycare and pre-school facilities, public and private schools, colleges, universities, art, music, trade and other educational and training facilities, convalescent care facilities, nursing homes, hospitals, places of worship, fraternal lodges, municipal and civic buildings, transit centers and park-and-ride facilities, parks, swimming pools and other recreational facilities open to the public or a membership group, senior and community centers, libraries, museums, cemeteries and mausoleums, utility facilities, and similar public and private uses.*

Less permissive for other uses similar to places of worship:

1. Places of worship could remain prohibited in some zones (open space, all industrial and one commercial zone) and allowed only as Conditional Uses in some zones (all residential and eight commercial zones), but the ZDO would have to also prohibit some uses that are currently allowed and change some currently allowed uses from Primary to Conditional, including certain recreational uses and community halls.
2. This choice may have higher potential for controversy because it involves restricting or completely taking away development options for a sizeable number of property owners. In addition, because this choice involves restricting uses, the county would be required to mail a notice to every affected property owner, adding considerable expense to the implementation of these code amendments.

At the BCC policy session, two commissioners voiced concerns about allowing places of worship in the county's industrial zones because of potential incompatibilities of the uses and concerns about preservation of industrial land for industrial uses. But ultimately, the BCC voted unanimously to direct staff to amend the ZDO to be more permissive for places of worship, in large part because of a disinclination to add restrictions on existing property owners.

PROPOSED AMENDMENTS

Ordinance ZDO-287 proposes amendments to eliminate potential ZDO conflicts related to equitable treatment of places of worship by amending each zoning district to allow for places of worship in the same way as the most permissive other use identified as possibly similar. See **Attachment A** for more details about how the proposal affects each zoning district.

Generally, these amendments would:

1. Allow for places of worship as a Primary Use in all residential and commercial zoning districts;
2. Allow for places of worship as a Primary Use in all industrial zoning districts, subject to the same limitations that other potentially similar uses are subject to, including a size limit of 20,000 square feet in designated Regionally Significant Industrial Areas; and
3. Allow for places of worship as a Conditional Use in the Open Space Management (OSM) district.

In addition, the amendments would amend and/or eliminate certain development standards that currently apply only to places of worship by:

- Amending ZDO Section 804, *Places of Worship*, to repeal setbacks, lot coverage, and building height standards that are specific only to places of worship; and
- Amending the minimum required off-street parking standard from 0.5 spaces per seat to 0.25 spaces per seat in the main assembly room (or 1 per 100 square feet, exclusive of the chancel or stage), to more closely align places of worship with the off-street parking requirements for other uses that may be considered similar.

NEXT STEPS

Public hearings have been scheduled before the Planning Commission (PC) and Board of County Commissioners (BCC) to consider the amendments proposed in ZDO-287.

PC hearing: Monday, June 26, 2023, 7:30 p.m.

BCC hearing: Wednesday, July 26, 2023, 10:00 a.m.

ATTACHMENTS

- A. Summary Table, ZDO-287 Amendments and Places of Worship in the County's Zoning & Development Ordinance (ZDO)

For more information, contact Martha Fritzie at 503-742-4529 or mfritzie@clackamas.us

Attachment A: Summary Table, ZDO-287 Amendments and Places of Worship in the County's Zoning Development Ordinance (ZDO)

		ZDO Section 315 (Urban Residential Districts)											ZDO Section 316 (Rural Residential Districts)						ZDO Section 317 (Mountain Residential Districts)	
		R-5 – R-30	VR-4/5 & VR-5/7	R-2.5	VTH	PMD	MR-1	MR-2	HDR	VA	SHD	RCHDR	RA-1	RA-2	RR	RRFF-5	FF-10	FU-10	MRR	HR
Places of Worship	Current Allowance in ZDO	C	C	C	CPUD	C	C	C	C	CPUD	C	C	C	C	C	C	C	C, but only if one already exists	C	C
	ZDO-287 Proposed Amendment	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Most permissive use that may be similarly situated	Recreational Uses, Government-Owned , including parks, amphitheaters; arboreta; arbors, decorative ponds, fountains, gazebos, pergolas, and trellises; ball fields; bicycle and walking trails; bicycle parks and skate parks; boat moorages and ramps; community buildings and grounds; community and ornamental gardens; courtyards and plazas; equine facilities; fitness and recreational facilities, such as exercise equipment, gymnasiums, and swimming pools; miniature golf, putting greens, and sports courts; picnic areas and structures; play equipment and playgrounds; nature preserves and wildlife sanctuaries; tables and seating; and similar recreational uses ^{1,2}	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
	Public Recreation Facilities	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	Recreational Sports Facilities for such sports as basketball, dance, gymnastics, martial arts, racquetball, skating, soccer, swimming, and tennis. These facilities may be used for any of the following: general recreation, instruction, practice, and competitions.	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
	Indoor recreation facilities, meeting rooms, interpretive centers, and other similar uses provided such uses are not intended for the purpose of obtaining a commercial profit; libraries	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---

¹ Use is called "Parks, Government-Owned" in ZDO Section 510, but the list of included uses is the same.

² In ZDO Section 513, list of included uses also includes horse trails, pack stations, and ski areas.

P = Primary Use
 A= Accessory Use
 C= Conditional Use, approval subject to ZDO Section 1203, *Conditional Uses*
 CPUD=Conditional Use, but only if located in a planned unit development
 X= Prohibited Use (Use is also prohibited if not listed)
 S= Use may only be authorized pursuant to ZDO Section 106, *Authorizations of Similar Uses*

Attachment A: Summary Table, ZDO-287 Amendments and Places of Worship in the County's Zoning Development Ordinance (ZDO)

		ZDO Section 510 (Urban Commercial Districts)											ZDO Section 511 (Village Community Service District)	ZDO Section 513 (Rural Commercial Districts)		ZDO Section 602 (Urban Industrial Districts)			ZDO Section 604 (Rural Industrial District)	ZDO Section 702 (Open Space Mgmt District)
		NC	C-2	RCC	RTL	CC	C-3	PMU	SCMU	OA	OC	RCO	VCS	RTC	RC	BP	LI	GI	RI	OSM
Places of Worship	Current Allowance in ZDO	C	P	P, but C if capacity >500	P	P	P	P	P	S	P, but C if capacity >500	P, but C if capacity >500	Not listed (X)	P	P, but C if building is > 4,000 SF	Not listed (X)	Not listed (X)	Not listed (X)	Not listed (X)	Not listed (X)
	ZDO-287 Proposed Amendment	P	No amendment	P	No amendment	No amendment	No amendment	No amendment	No amendment	P	P	P	P	No amendment	P	P	P	P	P	C
Most permissive use that may be similarly situated	Recreational Uses, Government-Owned , including parks, amphitheaters; arboreta; arbors, decorative ponds, fountains, gazebos, pergolas, and trellises; ball fields; bicycle and walking trails; bicycle parks and skate parks; boat moorages and ramps; community buildings and grounds; community and ornamental gardens; courtyards and plazas; equine facilities; fitness and recreational facilities, such as exercise equipment, gymnasiums, and swimming pools; miniature golf, putting greens, and sports courts; picnic areas and structures; play equipment and playgrounds; nature preserves and wildlife sanctuaries; tables and seating; and similar recreational uses ^{1,2}	P	P	P	P	P	P	P	P	P	P	P	---	P	P	---	---	---	---	---
	Public Recreation Facilities	---	---	---	---	---	---	---	---	---	---	---	P	---	---	---	---	---	---	---
	Recreational Sports Facilities for such sports as basketball, dance, gymnastics, martial arts, racquetball, skating, soccer, swimming, and tennis. These facilities may be used for any of the following: general recreation, instruction, practice, and competitions.	---	---	---	---	---	---	---	---	---	---	---	---	---	---	P, only indoor facilities are permitted	P, only indoor facilities are permitted	P, only indoor facilities are permitted	P	---
	Indoor recreation facilities, meeting rooms, interpretive centers, and other similar uses provided such uses are not intended for the purpose of obtaining a commercial profit; libraries	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---

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