



PLANNING & ZONING DIVISION

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

LAND USE HEARING

August 5, 2020

9:30 AM

Clackamas County is abiding by social distancing requirements during the coronavirus pandemic, so this public hearing will be conducted virtually using the Zoom platform. The Zoom link to the public hearing and details on how to observe and testify online or by telephone are available on our website:

www.clackamas.us/meetings/bcc/landuse/2020-05-06

All interested parties are invited to "attend" the hearing online or by telephone and will be provided with an opportunity to testify orally, if they so choose. Applications may be viewed online at <https://accela.clackamas.us/citizenaccess/>. After selecting the "Planning" tab, enter the Record (File) number to search. Then scroll down and select "Attachments," where you will find the submitted application. Please direct all calls and correspondence to the staff member listed below.

LAND USE HEARING

File No.: ZDO-276: Minor and Time-Sensitive ZDO Amendments

Applicants: Clackamas County

Proposal: 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 County land use regulations 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:

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

ZDO-276 is a proposed ordinance that, if adopted by the Board of County Commissioners (BCC), would make legislative text amendments to the County's Zoning and Development Ordinance (ZDO), as well as to the County's Comprehensive Plan, in response to these various adopted Work Program directives. It also proposes repealing the County's limitations on marijuana retailing operating hours, as further directed by the BCC.

Staff Contact: Glen Hamburg, Sr. Planner, 503-742-4523, GHamburg@clackamas.us

Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at least three (3) business days before the meeting at 503-742-4545 or email Drenhard@clackamas.us.

¿Traducción e interpretación? | Требуется ли вам устный или письменный перевод? | 翻译或口译? | Cần Biên dịch hoặc Phiên dịch? | 번역 또는 통역?

P. 503.742.4500

F. 503.742.4550

WWW.CLACKAMAS.US



Land Use Hearing Item
Staff Report to the Board of County Commissioners

File Number: ZDO-276, *Minor and Time Sensitive Comprehensive Plan and Zoning and Development Ordinance Amendments (FY 2020)*

Staff Contact: Glen Hamburg, Planning and Zoning Division, ghamburg@clackamas.us

Board of County Commissioners Hearing Date: August 5, 2020

PROPOSAL:

ZDO-276 is a package of legislative text amendments to the Clackamas County Comprehensive Plan and Zoning and Development Ordinance (ZDO). The amendments, included in Attachment A, respond to a directive in the adopted Long-Range Planning Work Program for 2019-2021 (Exhibit #15).

Background:

Per the Work Program, this project, “Project O-1”, is intended to make relatively minor changes to County land use regulations that are necessary to comply with new state and federal mandates, clarify existing language, correct errors, and adopt optional provisions that require only minimal staff analysis.

The project includes specific consideration of the following topics suggested by community members during development of the Work Program:

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

As requested by the Board of County Commissioners (BCC), this project is also to propose amendments repealing the County’s limitations on marijuana retailing operating hours so that such hours are only regulated by the Oregon Liquor Control Commission (OLCC).

Proposed Amendments:

The proposed amendments are specifically to Comprehensive Plan Chapter 4, *Land Use*, Comprehensive Plan Table 4-1, *Land Use Designations and Implementing Zoning Districts*, and to 18 separate sections of the ZDO, as shown with summary details in Attachment A.

If adopted, the amendments would accomplish the 24 actions detailed in Pages 2-9 of the Staff Report to the Planning Commission, except for Action #8 concerning road frontage improvements for reasons explained in the ‘Planning Commission Action’ section of this report.

As the Staff Report to the Planning Commission explains, many of the proposed actions are simply to codify new and existing state requirements, correct errors, remove outdated provisions, and clarify without substantively changing existing regulatory language. Several other actions would allow new land uses in natural resource zones that recent changes in state laws now permit the County to authorize, such as equine therapy in the Ag/Forest (AG/F) and Exclusive Farm Use (EFU) Districts, subject to certain criteria; the County has historically chosen to allow all land uses in natural resource zones that the state permits, so allowing these newly permissible land uses as well would be consistent. These proposed actions have generated little discussion since the amendments were drafted and public hearings were held.

Instead, public testimony and Planning Commission deliberations have largely been focused on the amendments that would accomplish the following:

1. **Increase the noticing distance to ½ mile** for certain land use actions in 11 rural and natural resource zoning districts;
2. **Reduce minimum setbacks for a commercial kennel from 200 feet to 100 feet** in four rural residential zoning districts (the FF-10, RA-1, RA-2, or RRFF-5 Districts);
3. **Allow manufacturing of edible or drinkable products retailed on-site, and related wholesale distribution**, in five urban commercial zoning districts (the C-2, CC, C-3, OC, and SCMU Districts) and one commercial zoning district in the Mt. Hood area (the RTC District);
4. **Repeal the County’s restrictions on operating hours for marijuana retailing**, leaving their operating hours to be set only by the state; and
5. **Adopt standards for small wireless facilities**, consistent with existing FCC requirements.

RELATED PRIOR BCC ACTION:

The BCC authorized the Long-Range Planning Work Program with this amendments project on May 7, 2019.

Planning Staff briefed the BCC on ZDO-276 at a February 25, 2020, policy session. The proposed amendments, including those increasing noticing distances, reducing commercial kennel setbacks, and allowing the manufacture of edible and drinkable products in certain commercial zoning districts, reflect the BCC’s specific direction on these measures.

PLANNING COMMISSION ACTION:

Prior to the BCC's policy session in February, the Planning Commission held study sessions on December 9, 2019, and January 13, 2020, to consider the issues addressed by the proposed amendments and to provide direction to staff on the amendments' scope.

The Planning Commission held a public hearing on the proposed amendments on June 22 and continued that hearing on July 13 before voting to recommend the BCC's approval of the amendments in Attachment A.

Additional amendments had originally been proposed to expand the opportunities for which a fee could be paid in lieu of constructing certain required road frontage improvements. However, in a vote of 7-1, the Planning Commission recommended that these amendments not be made until criteria are formalized for how the collected revenue will be expended.

CPO AND HAMLET RECOMMENDATIONS:

All the County's CPOs and Hamlets were sent notice of this proposal on May 18, 2020. Of these entities, only the Oak Grove Community Council (OGCC) has commented on the proposal, and their comments (Exhibits #9 and #13) were in favor of allowing the manufacturing of edible and drinkable products, as well as related wholesale distribution, in the areas of their community zoned C-2 and C-3. Historic Downtown Oak Grove (HDOG), while not a CPO or hamlet, has offered similar support for this measure (see Exhibits #3, #11, and #14)

SIGNIFICANT ISSUES:

The following five issues that the proposed amendments concern were the focus of most of the Planning Commission's discussion and public comments. The first four issues were also specifically identified as priority issues to address with this project, either in the adopted Work Program or otherwise by the BCC.

1. *Should the noticing distance for certain land use actions in rural areas be increased from 500 or 750 feet to ½ mile, as proposed in Attachment A?*

The proposed increased noticing distance would apply to:

- a. All Type III land use permit applications (e.g., applications for conditional use permits, major subdivisions, zone changes) and their public hearings;
- b. All hearings for appeals of Type II applications, including applications for farm crop processing, nonconforming use verification/alteration, and vested right determination; and
- c. All Type II applications for, and Planning Director decisions on, nonconforming use verification, nonconforming use alteration, or vested right determination.

This formulation is what the BCC suggested at its February 25 policy session and what the Planning Commission unanimously recommends.

On the one hand:

- The proposal would increase public awareness of land use actions in rural areas that tend to generate the most public interest and for which the public has the most opportunity to influence; and
- This proposal would be far less costly than increasing notice of *all* ‘Type II’ applications, including more routine land use applications.

On the other hand:

- The proposal could cost \$4,000 more per year in noticing;
- There are already other opportunities (*e.g., via CPOs, online*) to learn of land use applications.

2. *Should the minimum setbacks for kennels approved as a conditional use in four rural residential zoning districts (the FF-10, RA-1, RA-2, or RRFF-5 Districts) be reduced from 200 to 100 feet from property lines?*

A conditional use permit approved by the County’s Hearings Officer after a public hearing is already required for a commercial kennel in these rural residential zoning districts. In addition to the existing general approval criteria for *all* conditional use permits applicable in *all* zoning districts, which consider the characteristics of the subject property as well as the use’s potential impacts to the surrounding area, conditional use permits for commercial kennels in these zoning districts also require that all portions of the kennel operation be set back at least 200 feet from property lines, regardless of the particular characteristics of the subject property or potential impacts of the kennel on the surrounding area.

This standard may be unduly burdensome, and effectively requires a 4.65-acre property for a 50-foot by 50-foot kennel. The Planning Commission unanimously recommends reducing the minimum setback from 200 feet to 100 feet. The BCC supported proposing this reduction as well at its February 25 policy session.

On the one hand:

- Reducing the minimum setback would allow more properties may qualify, leading to more business/service opportunities in rural areas of the County;
- The conditional use permit criteria would still apply, and the Hearings Officer could still require greater setbacks as necessary to protect a neighborhood from the kennel’s impacts; and
- Multnomah County and Washington County already have a 100-foot setback for similar uses in similar zones.

On the other hand:

- It is unknown how many more properties will qualify, due to variables; and
- 100 feet may be no more necessary or appropriate than the current 200 feet.

3. *Should manufacturing of edible/drinkable products retailed on-site, and related wholesale distribution, be permitted in the C-2, C-3, CC, OC, RTC, and SCMU Districts?*

Two of these commercial zoning districts, the C-2 and RTC Districts, currently do not allow any manufacturing, while the other four prohibit the primary processing of raw materials. These restrictions effectively prohibit the brewing of beer, the processing of grains, and the roasting of coffee, even though bars, restaurants, and cafes are already allowed.

ZDO-276 proposes to allow the manufacture of edible or drinkable products that are also retailed on the same site, and related wholesale distribution, in these six zoning districts. This use could include brewpubs, commercial bakeries, and coffee roasters. Allowing this use was supported by the BCC at the February 25 policy session and is unanimously recommended by the Planning Commission.

On the one hand:

- Allowing this new use would increase business/employment opportunities and the functionality of commercial properties;
- Design review would still be required for new development, which would evaluate parking, access/circulation, storm drainage, landscaping, building design, and other elements; and
- The proposal has been supported by community groups and is similar to allowances in other jurisdictions (e.g., Estacada, Sandy, Oregon City, and Washington County).

On the other hand:

- The use may produce smells, noise, and truck traffic.

4. *Should the County repeal its own restrictions on marijuana retailing operating hours and allow such hours to only be regulated by the state?*

The ZDO currently restricts the operating hours of marijuana retailers to between 10:00am and 9:00pm, while the OLCC allows retailers to operate between 7:00am and 10:00pm. Repealing the County's more restrictive operating hour limits would mean retailers in the County could, under current OLCC rules, be open to customers for up to four more hours each day.

The Planning Commission voted unanimously to recommend repealing the County's marijuana retailing operating hour restrictions.

On the one hand:

- Repealing the County's operating hour restrictions would increase business/employment opportunities, while removing a "competitive disadvantage" County retailers have compared to those in neighboring jurisdictions where retailers have longer allowed operating hours;
- Longer retailing hours could be more convenient to customers, including medical marijuana patients;
- There is no ZDO limitation on hours of any other businesses in a commercial zone;
- The proposal would provide some regulatory clarity to business owners and may allow them to improve security and social distancing.

On the other hand:

- There are concerns that longer operating hours, if implemented by retailers, would mean increased consumption of marijuana and result in negative health impacts; and
- Repealing the County's own operating hours would mean the operating hours would be any set by the state.

5. *Should small wireless facilities on private property be regulated as proposed by the Planning Commission?*

“Small wireless facilities” (also known as “small cell wireless facilities” and “small cells”) are devices that wirelessly transmit signals over relatively short distances and meet applicable definitions in 47 CFR 1.6002(1)(1). The County is now required by the FCC to allow small wireless facilities on private property, subject only to certain prescribed limitations that would not unduly hinder small wireless facility deployment. The ZDO currently has no standards for small wireless facilities specifically. The County is precluded from considering perceived health impacts in its regulation of small wireless facilities.

The Planning Commission unanimously recommends requiring that any small wireless facility on a building on private property be the same or substantially similar color of any portion of that building it's attached to in order to protect aesthetics. They also unanimously recommend that they use non-reflective materials on their exterior and that any lights on the facilities be shielded from view from any adjacent residential properties. Staff finds that these standards, as well as the Planning Commission's recommendation that the facilities not be permitted to be attached to trees or other vegetation and the proposed review timeframes, would meet the FCC guidelines.

On the one hand:

- The proposed standards could help ensure that small wireless facilities “blend in” with the rest of any building they're attached to and mitigate lighting impacts on nearby residences; and
- The standards are no more burdensome on service providers than those of other nearby or large jurisdictions, including Lake Oswego, Salem, Spokane, San Diego, and Washington County.

On the other hand:

- Wireless service providers would need to source component materials, covers, and/or paints that are at least similar to those of any building on private property they wish to attach a small wireless facility to.

STAFF RECOMMENDATION:

Staff recommends adoption of the amendments in Attachment A, as also recommended by the Planning Commission. Doing so would achieve the five actions listed on Page 2 of this report, and the 24 actions detailed in Pages 2-9 of the Staff Report to the Planning Commission except for Action #8 concerning expansion of opportunities to pay a fee in lieu of required road frontage improvements.

ZDO-276:

Minor and Time Sensitive
Comprehensive Plan and Zoning and Development Ordinance
Amendments (FY 2020)



Board of County Commissioners Public Hearing
August 5, 2020

PACKETS

- Agenda, Staff Report, PowerPoint
- Planning Commission Staff Report and Minutes
- Attachment A: Proposed Amendments and Summaries
- Exhibits (20)

BACKGROUND

Adopted Work Program (Exhibit #15) Directive:

- Minor/time-sensitive amendments
- Minimal analysis
- Include consideration of three specific issues:
 1. Rural land use application noticing
 2. Commercial dog kennel standards in rural residential areas
 3. Small-scale manufacturing in certain commercial zones

BACKGROUND

Planning Commission Study Sessions:
December 9 and January 13

BCC Policy Session:
February 25

Planning Commission Hearing:
June 22, continued to July 1

PROPOSAL

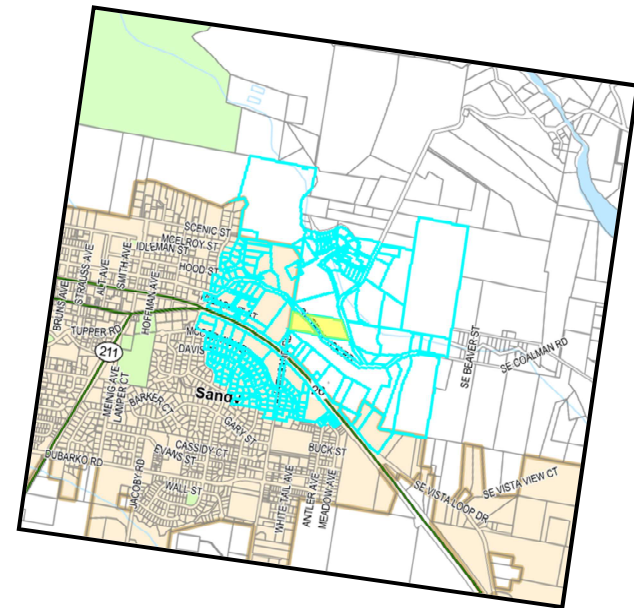
23 proposed actions:

- **15** codify existing mandates, correct errors, or provide clarification or consistency in similar uses between zones
- **3** are optional new allowances uses in farm/forest zones, with minimal impact and unanimous Planning Commission support
- **5** were the focus of discussion and public comment

SIGNIFICANT ISSUE #1

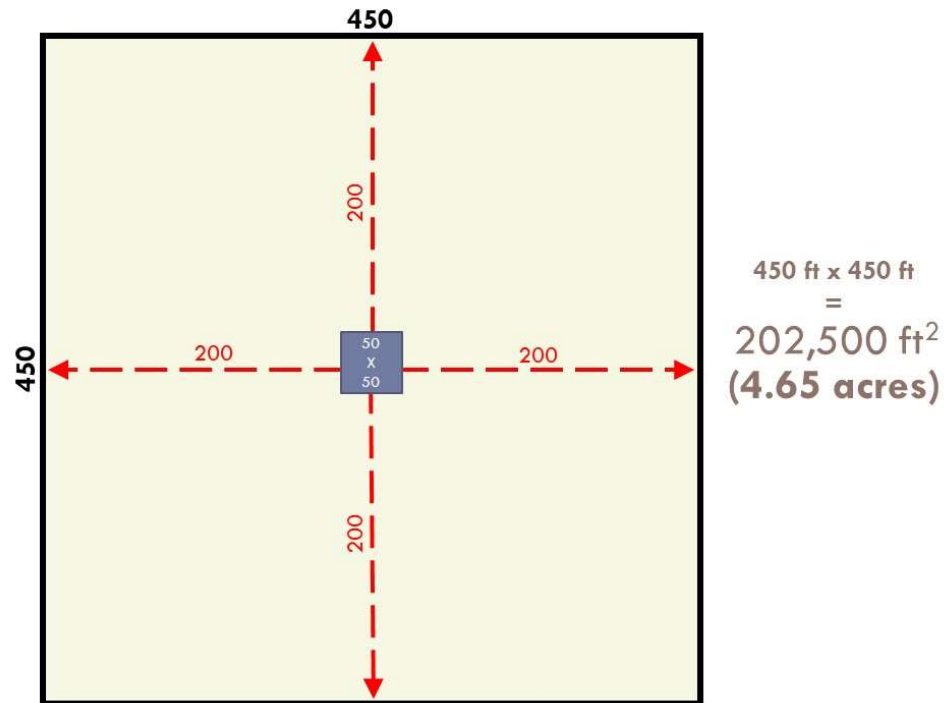
Should the noticing distance for certain land use actions in rural areas be increased to 1/2 mile, as proposed in ZDO-276?

- AG/F, EFU, FF-10, FU-10, RA-1, RA-2, RC, RI, RR, RRF-5, TBR
- From 500/750 feet to 1/2 mile (2,640 feet)
- For notices of:
 1. All 'Type III' applications and their hearings
 2. All 'Type II' appeal hearings
 3. All 'Type II' applications for, and PD decisions on, nonconforming uses and vested rights



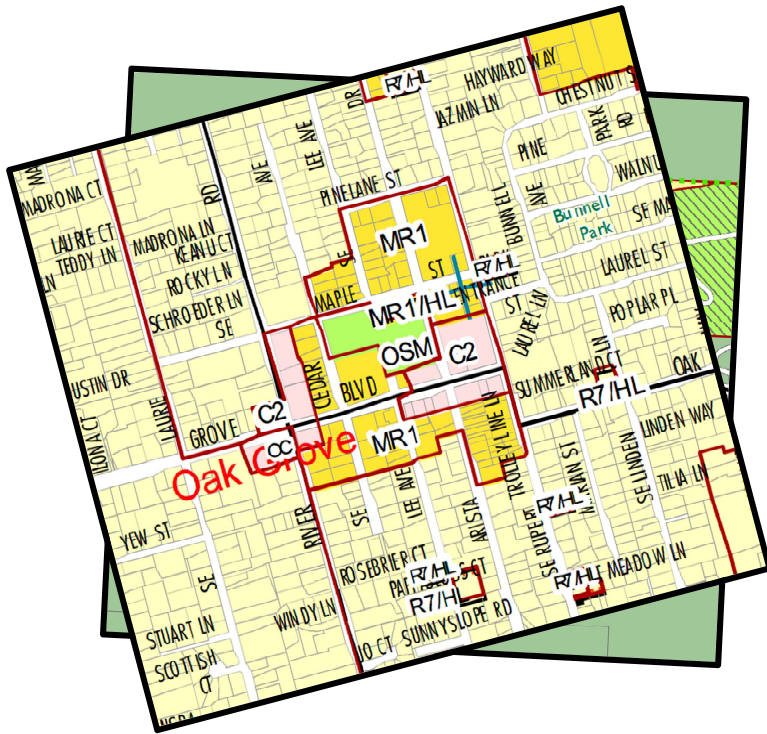
SIGNIFICANT ISSUE #2

Should the setbacks for kennels approved as a conditional use in the FF-10, RA-1, RA-2, or RRFF-5 Districts be reduced from 200 to 100 feet from property lines?



SIGNIFICANT ISSUE #3

Should manufacturing of edible/drinkable products retailed on-site, and related wholesale distribution, be permitted in C-2, C-3, CC, OC, RTC, and SCMU Districts?



- Oak Grove Blvd and River Rd
- McLoughlin Blvd
- Sunnyside Rd and 122nd
- Hwy 212 and 135th
- Johnson Creek Blvd and 82nd
- Johnson Creek Blvd west of Hwy 205
- Fuller Rd
- Government Camp
- Wemme/Welches
- Rhododendron

SIGNIFICANT ISSUE #4

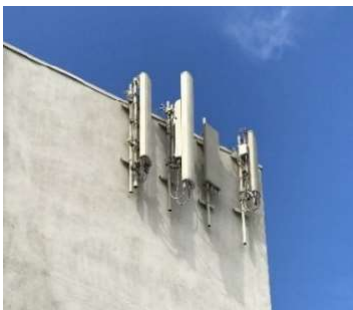
Should the County repeal its own restrictions on marijuana retailing operating hours and allow such hours to only be regulated by the state?



- Current County limitation: 10:00am – 9:00pm
- State OLCC allows 7:00am – 10:00pm
- Effect: Allows 4 hours more per day

SIGNIFICANT ISSUE #5

Should small wireless facilities on provide property be regulated as proposed by the Planning Commission in Attachment A?



- Not located on vegetation
- Same or substantially similar color as any portion of building they're attached to
- Non-reflective
- Lighting shrouded from adjacent residential propertyies

STAFF FINDINGS & RECOMMENDATION

Staff recommends **approval** of amendments in Attachment A, which:

- Address Work Program priorities
- Reflect prior BCC direction
- Meet applicable approval criteria
- Recommended by Planning Commission



THANK YOU





STAFF REPORT

TO: Planning Commission

FROM: Glen Hamburg, Senior Planner

DATE: June 15, 2020

RE: File ZDO-276, *Minor and Time Sensitive Comprehensive Plan and Zoning and Development Ordinance Amendments (FY 2020)*

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BACKGROUND

The adopted Long-Range Planning Work Program for 2019-2021 (Attachment B) includes a project titled “Minor and Time-Sensitive ZDO Amendments”, an effort intended to make relatively minor changes to the County land use regulations 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:

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

ZDO-276 is a proposed ordinance that, if adopted by the Board of County Commissioners (BCC), would make legislative text amendments to the County’s Zoning and Development Ordinance (ZDO), as well as to the County’s Comprehensive Plan, in response to these various adopted Work Program directives. It also proposes repealing the County’s limitations on marijuana retailing operating hours, as further directed by the BCC.

The Planning Commission held study sessions on December 9, 2019, and January 13, 2020, and the BCC held a policy session on February 25, 2020, to discuss the issues now addressed by the proposed amendments and to provide direction to Staff on the amendments’ scope. There will be at least two public hearings on this proposal: one before the Planning Commission on Monday, June 22, and another before the BCC currently scheduled for Wednesday, August 5. The Planning Commission provides a recommendation to the BCC, who would ultimately decide whether the ordinance is adopted.

PROPOSAL

ZDO-276 proposes amendments to Comprehensive Plan Chapter 4, *Land Use*, Comprehensive Plan Table 4-1, *Land Use Designations and Implementing Zoning Districts*, and to 18 separate sections of the ZDO¹. The text amendments are included with summary outlines in Attachment A.

The proposed amendments would accomplish **24 actions**. Following is a list of those 24 actions, as well as brief explanations of the context behind each action and how the actions would be accomplished with the proposed text amendments.

1. Increase the noticing distance for certain land use actions in 11 rural and natural resource zoning districts to ½ mile:

Notice of, and Planning Director decisions on, all “Type II” land use applications², as well as notice of public hearings on appeals and Type III land use applications³, are mailed to the owners of property within a prescribed distance of the subject property and all contiguous properties under the same ownership.

The prescribed distance is currently 500 feet if the subject property is in the one of the following zoning districts: Farm Forest 10-Acre (FF-10), Future Urban 10-Acre (FU-10), Recreational Residential (RR), Rural Area 1-Acre (RA-1), Rural Area 2-Acre (RA-2), Rural Commercial (RC), Rural Residential Farm Forest 5-Acre (RRFF-5), or Rural Industrial (RI) Districts. The prescribed distance is currently 750 feet if the subject property is in the AG/Forest (AG/F), Exclusive Farm Use (EFU), or Timber (TBR) Districts.

Consideration of increasing the noticing distances of land use actions in rural areas is included in the adopted Work Program. At its January 2020 study session, the Planning Commission considered the financial costs for increasing the notice distance to certain distances, and expressed support for proposing to increase the notice of land use application hearings to ¼ mile (1,320 feet) for properties with a current notice distance of 500 feet and to ½ mile (2,640 feet) for properties with a current notice distance of 750 feet.

The BCC expressed support for even greater increases in noticing distances at their February 2020 policy session. As suggested by the BCC, ZDO-276 would amend ZDO Section 1307 to increase the noticing distance to ½ mile for all of the following when the subject property is in the AG/F, EFU, FF-10, FU-10, RA-1, RA-2, RC, RI, RR, RRFF-5, or TBR Districts:

- All Type III land use permit applications and their public hearings;

¹ The ZDO sections proposed to be amended are Sections: 316, *Rural Area Residential 1-Acre (RA-1)*, *Rural Area Residential 2-Acre (RA-2)*, *Recreational Residential (RR)*, *Rural Residential Farm Forest 5-Acre (RRFF-5)*, *Farm Forest 10-Acre (FF-10)*, and *Future Urban 10-Acre (FU-10) Districts*; 401, *Exclusive Farm Use District (EFU)*; 406, *Timber District (TBR)*; 407, *Ag/Forest District (AG/F)*; 510, *Neighborhood Commercial (NC)*, *Community Commercial (C-2)*, *Regional Center Commercial (RCC)*, *Retail Commercial (RTL)*, *Corridor Commercial (CC)*, *General Commercial (c-3)*, *Planned Mixed Use (PMU)*, *Station Community Mixed Use (SCMU)*, *Office Apartment (OA)*, *Office Commercial (OC)*, and *Regional Center Office (RCO) Districts*; 513, *Rural Tourist Commercial (RTC) and Rural Commercial (RC) Districts*; 601, *Campus Industrial District (CI)*; 822, *Home Occupations*; 835, *Wireless Telecommunications Facilities*; 839, *Accessory Dwelling Units*; 841, *Marijuana Production, Processing, and Retailing*; 843, *Accessory Historic Dwellings*, 1007, *Roads and Connectivity*; 1009, *Landscaping*; 1015, *Parking and Loading*; 1206, *Nonconforming Uses and Vested Rights*; 1307, *Procedures*; and 1310, *Time Extension*.

² Land use applications processed according to “Type II” procedures include those for: farm crop (e.g., hemp, marijuana) processing; variances; partitions; nonconforming use verifications or alterations; vested right determinations; temporary dwellings for care; home occupations; certain new dwellings in agriculture or forest zoning districts; and other uses, as listed in ZDO Table 1307-1: *Land Use Permits by Procedure Type*.

³ Land use applications processed according to “Type III” procedures include those for: conditional uses; major subdivisions; home occupation exceptions; certain zone changes; and other uses, as listed in ZDO Table 1307-1.

- All hearings for appeals of Type II applications; and
- All Type II applications for, and Planning Director decisions on, nonconforming use verification, nonconforming use alteration, or vested right determination.

2. Reduce minimum setbacks for a kennel in the FF-10, RA-1, RA-2, or RRRFF-5 Districts from 200 to 100 feet:

A conditional use permit is already required for a commercial dog kennel in the FF-10, RA-1, RA-2, or RRRFF-5 Districts. In addition to the existing general approval criteria for *all* conditional use permits applicable in *all* zoning districts⁴, which consider the characteristics of the subject property as well as the use’s potential impacts to the surrounding area, conditional use permits for commercial kennels in these four particular rural residential zoning districts also require that all portions of the kennel operation be set back at least 200 feet from property lines, regardless of the particular characteristics of the subject property or potential impacts of the kennel on the surrounding area.

As noted previously, consideration of the barriers to establishing kennels in rural residential zoning districts by existing dimensional standards is included in the Work Program. Between its December 2019 and January 2020 study sessions, the Planning Commission considered the impacts of kennel operations, their similarity to other uses allowed in rural areas, and the practical limitations the current setback requirement has on properties that are five acres or less. The Planning Commission also explored the need for kennel services in the County, dimensional standards for similar uses in nearby jurisdictions, the history of the County’s current 200-foot setback requirement, and the criteria for all conditional uses. The Planning Commission ultimately expressed support for proposing a reduction in the setback to 100 feet, which was echoed by the BCC at their February 25 policy session.

ZDO-276 would reduce the minimum setback for a commercial kennel in the FF-10, RA-1, RA-2, or RRRFF-5 Districts to 100 feet from property lines, while continuing to require the kennel meet the generally applicable conditional use permit criteria and a public hearing prior to approval.

3. Allow manufacturing of edible or drinkable products retailed on-site, and related wholesale distribution, in Community Commercial (C-2), Corridor Commercial (CC), General Commercial (C-3), Office Commercial (OC), Rural Tourist Commercial (RTC), and Station Community Mixed Use (SCMU) Districts:

The ZDO currently does not provide a pathway to establish most manufacturing uses in the C-2 or RTC Districts. Moreover, while manufacturing is already permitted in the C-3, CC, OC, and SCMU Districts, the primary processing of raw materials is prohibited. These restrictions can preclude breweries, cideries, cheese-makers, and the manufacturing of other edible or drinkable products, even when the resulting products are retailed on-site (e.g., at a brewpub where beer is both brewed and retailed at the same location).

Consideration of limited changes to the ZDO to allow this kind of “small-scale” manufacturing in community commercial zoning districts (i.e., C-2 and RTC Districts) is included in the Work Program. The Planning Commission supported proposing amendments to allow the use in conjunction with on-site retail in the C-2 and RTC Districts, as well as the C-3 District, at its January 2020 study session, and the BCC concurred at its February 2020 policy session. Staff is recommending allowing the use in the CC, OC, and SCMU Districts for consistency between commercial zoning districts and because doing so would be consistent with applicable Comprehensive Plan policies for those zoning districts’ land use plan designations, as outlined later in this report.

⁴ The generally-applicable conditional use criteria are in ZDO Section 1203, *Conditional Uses*.

ZDO-276 would amend ZDO Sections 510 and 513 to allow the manufacturing of edible or drinkable products retailed on the same site in the C-2, C-3, CC, OC, RTC, or SCMU Districts, including the primary processing of raw materials (e.g., malt, milk, spices) that are ingredients in edible or drinkable products retailed on the same site. The amendments would also allow the wholesale distribution of edible or drinkable products that are manufactured and retailed on the same site.

All new development in the six zoning districts would continue to require design review approval⁵ in order to evaluate compliance with existing standards for elements such as parking, landscaping, utility services, and building design. In the OC and SCMU Districts, the proposed new manufacturing use would also be subject to the same specific square-footage and other limitations that currently apply to the other manufacturing uses already allowed in those zoning districts.

4. Allow land divisions in the EFU District resulting in parcels smaller than 80 acres for siting approved utilities:

Oregon Senate Bill 408 (2019) newly authorizes, but does not require, the County to approve land divisions in the EFU District for utility facilities that are necessary for public service, even if the divisions result in parcels smaller than 80 acres.

The County already allows EFU land divisions resulting in parcels smaller than 80 acres when for other “nonfarm” uses that are not dwellings (e.g., a fire service facility), and the County has historically adopted provisions to allow the natural resource land uses authorized by the state.

ZDO-276 would amend ZDO Section 401 to allow for land divisions in the EFU District when for the siting of an approved utility facility, consistent with SB 408. The amendments would not change the existing requirement that utility facilities themselves be approved with a land use permit.

5. Allow equine and equine-affiliated therapeutic and counseling services in AG/F and EFU Districts, subject to standards:

Oregon Senate Bill 1533 (2018) authorizes, but does not require, the County to permit equine and equine-affiliated therapeutic and counseling services 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 subject tract. Additionally, all individuals conducting therapeutic or counseling activities must operate within the proper scope of any licenses required by the state.

ZDO-276 would amend ZDO Sections 401 and 407 to allow for equine and equine-affiliated therapeutic and counseling services in the AG/F and EFU Districts, consistent with SB 1533. As noted previously, the County has historically adopted provisions to allow the natural resource land uses authorized by the state, and the Planning Commission supported proposing this new land use allowance in AG/F and EFU Districts at its January 13, 2020, study session.

Consistent with state law⁶, the new use would not be permitted in a Portland Metropolitan Area rural reserve.

⁵ Generally-applicable design review criteria are provided in ZDO Section 1102, *Design Review*.

⁶ Oregon Administrative Rules (OAR) 660-027-0070(3).

6. Allow accessory dwellings supporting family forestry in AG/F and TBR Districts, subject to standards:

Oregon House Bill 2469 (2019) authorizes the County to permit a second dwelling on property zoned AG/F or TBR and 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 dwellings supporting family forestry 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.

ZDO-276 would amend ZDO Sections 406 and 407 to allow accessory dwellings supporting family forestry, consistent with HB 2469. As suggested by the Planning Commission at its January 13 study session, the amendments would also require that the accessory dwelling be a manufactured home that uses the same driveway entrance as the existing single-family dwelling on the same lot of record.

As again prohibited by state law, the new use would not be permitted in a Portland Metropolitan Area rural reserve.

7. Provide for renewable energy facilities as a conditional use in the EFU District, consistent with Oregon House Bill 2329 (2019):

HB 2329 raises the threshold under which certain renewable energy projects are subject to state jurisdiction, effective January 1, 2020. The state's Energy Facility Siting Council (EFSC) provides state oversight of larger renewable energy projects; smaller projects, however, are overseen by the county where the proposed project would be located. Under the new law, photovoltaic solar power generation facilities on high value farmland that are less than or equal to 160 acres will now be subject to County jurisdiction. The same is true for photovoltaic solar power generation facilities on cultivated land or land with specific soil classifications that are less than or equal to 1,280 acres (two square miles) and for photovoltaic solar power generation facilities on other land that are less than or equal to three square miles (1,920 acres).

The threshold for wind facilities to be reviewed at the state level was also changed to 150 MW peak capacity, up from 105 MW peak capacity. For geothermal facilities, it was changed to 55 MW peak capacity, up from 38.5 MW peak capacity. HB 2329 also establishes criteria for siting certain renewable energy facilities outside the EFSC process, including habitat mitigation conditions and notification requirements.

ZDO-276 would amend ZDO Section 401 to provide for renewable energy facilities as a conditional use consistent with HB 2329.

8. Modify road frontage improvement “Fee in Lieu of” (FILO) requirements to expand fee payment opportunities and standardize qualification requirements:

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 in the Portland Metropolitan Urban Growth Boundary (Metro UGB). This fee payment option is called “FILO”, and the revenues collected are spent on pedestrian improvements within the Metro UGB.

ZDO-276 would amend ZDO Section 1007 to increase the qualifying opportunities for which FILO can be paid, as recommended by representatives of the County’s Development Review Team and the Transportation Engineering Division. Specifically, the amendments would allow FILO to be paid when the required improvements in the Metro UGB would be located:

- On a road where there are public storm drainage constraints; or
- 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.

The proposed amendments would also allow FILO to be paid for required frontage improvements to *all* road classifications within the Metro UGB, not just improvements to local, connector, and collector roads. The fee could be paid regardless of whether the improvements are to roads on the “Essential Pedestrian Network”, with all cases evaluated according to the same established criteria.

9. Modify ex parte contact definitions, consistent with existing state law:

ZDO-276 would amend ZDO Section 1307 to ensure that what is considered “ex parte contact” under the ZDO is consistent with existing state law⁷. The amendment would clarify that, unlike with certain communications with the County’s Hearings Officer, a communication between County staff and the Historic Review Board, Design Review Committee, Planning Commission, or Board of County Commissioners shall not be considered an ex parte contact for the purposes of ZDO Subsection 1307.12(D)(1).

10. Adopt standards for small wireless facilities, consistent with existing FCC requirements:

“Small wireless facilities” (also known as “small cell wireless facilities” and “small cells”) are devices that wirelessly transmit signals over relatively short distances and meet applicable definitions in 47 CFR 1.6002(1)(1). The Federal Communications Commission (FCC) now requires⁸ the County to allow small wireless facilities in public rights-of-way and on private property, subject only to certain prescribed limitations that would not unduly hinder small wireless facility deployment.

According to the FCC mandates, the County must respond within 60 days to a permit application proposing collocation of a small wireless facility and within 90 days for review of a new structure for a small wireless facility. The County also cannot consider the perceived health effects of small wireless facilities in its own land use regulations of the devices.

ZDO-276 would amend ZDO Section 835 to:

- Provide small wireless facility review procedures that meet the FCC-prescribed timelines;
- Require that small wireless facilities attached to or mounted on a building have the same color or colors as the portions of the building they are attached to or mounted on, as suggested by the Planning Commission at its January 13 study session; and
- Prohibit small wireless facilities from being affixed to trees, shrubs, or other vegetation, as also suggested at the January 13 study session.

The ordinance would also amend Section 835 to enable small wireless facilities in County rights-of-way to be regulated by the Clackamas County Roadway Standards (Attachment D), rather than by the ZDO.

⁷ Oregon Revised Statutes (ORS) 215.422(B).

⁸ The FCC mandate is in its 2018 *Declaratory Ruling and Third Report and Order, included as Attachment C*.

11. Clarify existing requirements related to nonconforming licensed marijuana production premises:

Oregon Senate Bill 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, regardless of any new restrictions the County may have adopted since the premises was lawfully established.

This mandate is consistent with the County’s current application of nonconforming use requirements. ZDO-276 would effectively codify current procedures and adopt clarifying language in ZDO Section 1206 that mirrors the text of the respective state law.

As expressly allowed under SB 365, other proposed amendments to Section 1206 would require an evaluation of additional adverse impacts to the surrounding area when considering applications to optionally *alter* (e.g., expand) a nonconforming marijuana production premises.

12. Clarify existing Forest Template Dwelling requirements:

Oregon House Bill 2225 (2019) provides statewide standardization of certain definitions and rules for approval of “template dwellings” on forest land (land zoned AG/F or TBR). The County’s ZDO and policies are already functionally consistent with these definitions and rules, but clarifying amendments to ZDO Section 406 are being proposed so that the language of the ZDO is more consistent with new state law.

HB 2225 also establishes new restrictions on qualifying a neighboring parcel under the same ownership for another template dwelling. Those restrictions are *not* proposed to be repeated in the ZDO; instead, state statute would continue to be applied directly.

13. Codify existing requirements for replacement dwellings in the EFU District:

Oregon House Bill 3024 (2019) effectively requires approval of a Type II land use permit application for the replacement of certain lawfully-established non-temporary dwellings in the EFU District that were previously removed, destroyed, demolished, or converted to nonresidential uses. The legislation also prohibits the County from considering the property tax classification of the former dwelling when reviewing the application for its replacement. ZDO-276 would amend ZDO Section 401 so that the listed requirements for such replacement dwellings are consistent with HB 3024.

14. Codify existing state allowances for nonconforming secondary school expansions in the EFU District:

Oregon House Bill 3384 (2019) increases the potential cases in which the County is required to permit certain nonconforming secondary schools in the EFU District expanding on to additional EFU-zoned property. ZDO-276 would amend ZDO Section 401 to be consistent with HB 3384.

15. Codify an existing exemption from siting standards for small-scale farm processing in AG/F and EFU Districts:

Oregon House Bill 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”, provided the small-scale processing meets other applicable requirements.

ZDO-276 would amend ZDO Sections 401 and 407 accordingly. In this context, small-scale farm processing *does not* include marijuana processing.

16. Codify existing state allowances for farm breweries in AG/F and EFU Districts:

Under Oregon Senate Bill 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, according to SB 287, be setback at least 100 feet from all property lines. The farm brewery must also have direct road access and internal circulation.

ZDO-276 would amend ZDO Sections 401 and 407 to identify farm breweries as an allowed use in the AG/F and EFU Districts, consistent with SB 287.

17. Codify existing state allowances for cideries in AG/F and EFU Districts:

With amendments to ZDO Sections 401 and 407, ZDO-276 would clarify that cideries are already an allowed use under state law in the AG/F and EFU zoning districts, subject to certain standards and approval procedures.

18. Codify existing prohibitions on accessory dwelling unit (ADU) off-street parking and “owner occupancy requirements”⁹ in urban/urbanizable areas:

Since January 1, 2020, Oregon House Bill 2001 (2019) has prohibited 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 *and* in a zone where a detached single-family dwelling is a primary use (e.g., urban low density residential zoning districts, rural residential zoning districts). ZDO-276 would amend ZDO Section 839 to no longer list an owner occupancy requirement and Section 1015 to no longer require the additional off-street vehicle parking space.

19. Repeal the owner occupancy requirement for ADUs in the Mountain Recreational Resort (MRR) District:

The County already chooses, without being mandated by the state, to allow ADUs in the MRR District in the Mt. Hood Corridor outside of UGBs. The MRR District currently has an ADU owner occupancy requirement, as well as a requirement for one additional off-street parking space for an ADU; the County is not required by HB 2001 to change either of these provisions.

However, at its December 9 study session, the Planning Commission expressed support for pursuing the repeal of the MRR District’s ADU owner occupancy requirement in order to be consistent with the requirements for ADUs in UGBs. The Planning Commission suggested keeping the additional off-street parking space requirement for ADUs in the MRR District, as well as in the Hoodland Residential (HR) District in the Mt. Hood Corridor, because the local roads in that part of the County are sometimes narrower and more likely to be obstructed with snow, thereby reducing opportunities for on-street parking.

⁹ An “owner occupancy requirement” is a requirement that either the primary or accessory dwelling be occupied by the owner of the subject property. The relevant ZDO owner occupancy requirements have mandated that deed restrictions be recorded prior to issuance of a building permit for the accessory dwelling.

ZDO-276 would repeal the owner occupancy requirement for an ADU in the MRR District, but continue to require the additional off-street vehicle parking space.

20. Repeal the owner occupancy requirement for accessory historic dwellings:

Since 2018, the County has opted to allow “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 ADUs, and that Oregon House Bill 2001 already prohibits owner occupancy requirements for ADUs within UGBs, the Planning Commission expressed support at its December 9 study session for repealing the accessory historic dwelling owner occupancy requirement as well. ZDO-276 would amend ZDO Section 843 to repeal the owner occupancy requirement for accessory historic dwellings.

21. Repeal the County’s restrictions on operating hours for marijuana retailing, leaving their operating hours to be set only by the state:

ZDO Section 841 currently limits a marijuana retailer’s operating hours (i.e., the hours they sell to consumers or have consumers present in their building) to between 10:00 a.m. and 9 p.m. This County restriction is four hours less per day than what the Oregon Liquor Control Commission (OLCC) would otherwise allow under their current rules.

Following its February 25 policy session, the BCC voted to support proposing in ZDO-276 the repeal of the County’s more restrictive marijuana retailing operating hours. If the proposed amendment, specifically to ZDO Section 841, were to be adopted, the operating hours for marijuana retailers would then only be regulated by the OLCC, which currently restricts operating hours to between 7:00 a.m. and 10:00 p.m.

22. Repeal inapplicable 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 that is 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, ZDO-276 would repeal provisions in the Comprehensive Plan and ZDO related to the CI District.

23. Adopt “housekeeping” amendments related to AG/F, EFU, and TBR Districts:

ZDO-276 would make certain “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, correct typos, and update and standardize citations, without substantive changes to existing applicable rules in the ZDO.

24. Adopt “housekeeping” amendments to other generally applicable ZDO Sections:

ZDO-276 would also make non-substantive “housekeeping” amendments to ZDO Section 822 to correct typos, and to Section 1307 and 1310 to clarify rules for time extensions and standardize citations.

SIGNIFICANT ISSUES

Of the 24 actions that are proposed in ZDO-276, four were the focus of most discussion at the Planning Commission's study sessions last December and January, and at the BCC's policy session in February. They include those related to noticing distance increases (Action 1, Page 2); setbacks for kennels in rural residential areas (Action 2, Page 3); manufacturing and related wholesaling of consumable goods retailed on-site (Action 3, Page 3); and marijuana retailing operating hours (Action 21, Page 9).

1. *Should the noticing distance for certain land use actions in rural areas be increased to ½ mile, as proposed in ZDO-276?*

The proposal would increase the noticing distance to ½ mile for the following, if the subject property is in the AG/F, EFU, FF-10, FU-10, RA-1, RA-2, RC, RI, RR, RRF-5, or TBR Districts:

- a. All Type III land use permit applications and their public hearings;
- b. All hearings for appeals of Type II applications; and
- c. All Type II applications for, and Planning Director decisions on, nonconforming use verification, nonconforming use alteration, or vested right determination

On the one hand:

- Increased mailings of land use notices could increase public awareness of, and involvement in, land use decision-making;
- The land use applications that would be provided greater notice include those that typically have the most public interest or where public comments can have a more determinative impact on the decision, given their approval criteria; and
- Increasing the noticing distance of only some land use actions in rural areas, as proposed in ZDO-276, is more cost and labor efficient than increasing the noticing of all land use actions¹⁰.

On the other hand:

- Staff has estimated that ZDO-276's proposed notice increase could cost more than \$4,000 in additional expenses per year in supplies and postage, while additional mailings would also require additional labor;
- Because the proposal would not increase the noticing distance of all Type II applications, but would increase the noticing distance of *public hearings for appeals* of decisions on all Type II applications, there will be cases where property owners receive notice of an appeal hearing despite never having received notice of the original application or the Planning Director's decision to begin with, which may lead to confusion; and
- The County provides other ways for the public to learn of land use actions, including from local Community Planning Organizations (CPOs) and various existing online resources.

2. *Should the setbacks for kennels approved as a conditional use in the FF-10, RA-1, RA-2, or RRF-5 Districts be reduced from 200 to 100 feet from property lines?*

On the one hand:

- Reducing the setback requirement could allow more properties to qualify for having a commercial kennel operation, thereby increasing business opportunities in the County and the availability of their services;
- The generally-applicable conditional use permit criteria will still require an evaluation of every proposed kennel's specific operations, the unique characteristics of the subject

¹⁰ Staff estimates that increasing the notice radius of all land use application types in rural areas, including all "Type II" applications, could cost more than \$87,000 per year.

property, and potential impacts on the particular surrounding neighborhood, all regardless of the setback requirement. A public hearing would also still be required before the kennel could be approved;

- Even with a setback reduction to 100 feet in the ZDO, the County’s Hearings Officer could still require a kennel to be setback any distance greater than 100 feet as necessary to satisfy conditional use permit approval criteria (i.e., not unduly impact the surrounding neighborhood); and
- Multnomah and Washington Counties have 100-foot setback requirements for similar uses in similar zones.

On the other hand:

- Given the number of variables that determine whether a kennel could be located on any particular property¹¹, the number of properties that would newly qualify for a kennel because of the setback reduction in ZDO-276 could not be computed; and
- If the conditional use criteria always require a review of the specific characteristics of proposed kennel, the subject property, and the surrounding area, a 100-foot setback may not be any more necessary than a 200-foot setback.

3. *Should manufacturing of edible or drinkable products retailed on site, and related wholesale distribution, be permitted in C-2, C-3, CC, OC, RTC, and SCMU Districts?*

On the one hand:

- Expanding allowed commercial uses in the County provides increased business and employment opportunities;
- All new development in any of these zoning districts would continue to require design review to evaluate elements such as parking, circulation, landscaping, building design, and utility service capacity;
- The use in the OC and SCMU zoning districts would be restricted to the same physical, operational, and square-footage restrictions applied to other types of manufacturing already permitted in these zoning districts;
- Allowing a site to have interdependent but operationally separate uses, with the manufacturing of goods potentially occurring at earlier hours of the day and their retailing occurring in later hours of the day, would increase the property’s utility without necessarily leading to overlapping demands on services such as parking;
- Historic Downtown Oak Grove has supported allowing these land uses in the C-2 and C-3 Districts; and
- These uses are similar to those allowed in comparable zones of other nearby jurisdictions, including the City of Estacada, the City of Oregon City, the City of Sandy, and Washington County.

On the other hand:

- These uses may produce new smells, noise, and truck traffic; and
- Even if the use were permitted in these zoning districts, there may still be other barriers to the use being established (e.g., property characteristics and availability; utility service capacity; existing building capacity).

¹¹ There are many factors other than setbacks that determine whether a particular kennel could be located on a given property (e.g., the size of the kennel’s facilities; the location of existing buildings; physical features of the property; availability of services; neighborhood characteristics). Moreover, the *number* and *shape* of a particular property’s lot lines can be as determinative in whether a use meets a setback requirement as the *depth* of the setback.

4. *Should the County repeal its own restrictions on marijuana retailing operating hours and allow such hours to only be regulated by the state?*

With the OLCC currently allowing marijuana retailers to operate between 7:00 a.m. and 10:00 p.m., repealing the County's more restrictive hours (10:00 a.m. to 9:00 p.m.) would give marijuana retailers four more hours per day to sell to their customers and to have customers on-site.

On the one hand:

- Additional operating hours would increase County business opportunities and may be more convenient to customers, including medical marijuana patients;
- Nearby jurisdictions, including Milwaukie, Oregon City, and Portland, allow marijuana retailing for more hours per day; therefore, repealing the County's more restrictive hours would remove a "competitive disadvantage" that County retailers have compared to retailers in these other jurisdictions;
- The County's land use laws do not regulate the operating hours of any other business type in a commercial zoning district – not even those of liquor stores, pharmacies, or retailers of tobacco products or CBD products derived from hemp;
- No longer having different operating hour restrictions between the County and the state would provide some regulatory clarity to retailers;
- Having customers, and therefore employees, on-site for more hours of the day may help to reduce overnight security concerns; and
- Extended operating hours may help to support social distancing if the same number of customers visit a retailer over a wider time period and the occupancy of the retailer's building at any one time is reduced.

On the other hand:

- There have been concerns that increased operating hours may lead to increased consumption of marijuana products and that increased consumption could then lead to negative health impacts;
- Relying only on the state to regulate the operating hours of marijuana retailers means that the allowed hours could be *any* that the state allows in the future – not necessarily the current (7:00 a.m. to 10:00 p.m.) OLCC limitation; and
- If increased operating hours of any business leads to increased on-site customer visits, the increased operating hours may undermine social distancing.

PUBLIC NOTICE & COMMENTS

Notice of the proposed amendments in ZDO-276 was sent to:

- All cities within the County
- All County Community Planning Organizations (CPOs) and Hamlets
- DLCD, ODOT, Oak Lodge Sanitary District and other interested agencies

Notice was also published in the newspaper and online. To date, Planning and Zoning has received six (6) written comments from members of the public, including comments from Historic Downtown Oak Grove.

ANALYSIS & FINDINGS

1. Statewide Planning Goals:

This section of the report includes findings on ZDO-276's consistency with Statewide Planning Goals. However, proposed Actions 7, 9, 10-18, and 23-24 (listed on Pages 5-9 of this report) are necessary to conform to state or federal mandates or otherwise do not warrant findings for consistency with Statewide Planning Goals.

Goal 1 – *Citizen Involvement*:

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

ZDO-276 does not propose any change to the *Citizen Involvement* chapter (Chapter 2) of the County's Comprehensive Plan. The only Comprehensive Plan amendments that would be made by ZDO-276 would be to Chapter 4, *Land Use*, and Table 4-1, *Land Use Plan Designations and Implementing Zoning Districts*, in order to remove references to a land use plan designation and zoning district that do not currently apply to any property in the County and could not be applied to other properties in the future.

ZDO Section 1307 implements policies of Comprehensive Plan Chapter 2, and contains adopted and acknowledged procedures for citizen involvement and public notification of land use applications. Notice of ZDO-276 has been provided consistent with the requirements of Section 1307, including to DLCDC, all cities in the County, and all active and recognized CPOs and Hamlets 35 days before the first public hearing. Notice of the ordinance and its scheduled hearings was published in *The Oregonian* more than 10 days in advance and has also been posted on County websites. Before a final decision on ZDO-276 can be made, there will have been at least two public hearings: one before the Planning Commission and another before the BCC.

ZDO-276 would amend Section 1307 to increase the noticing distance of certain land use actions that typically generate more public interest and for which the input of neighbors can be particularly helpful in the evaluation of approval criteria. This will increase the number of property owners who are mailed notice of land use applications, public hearings, and decisions, thereby further promoting the opportunity for members of the public to participate in the County's land use planning.

These amendments to Section 1307, and others proposed in ZDO-276, themselves respond to requests for consideration made by members of the public through development and adoption of the Work Program.

This proposal is consistent with Goal 1.

Goal 2 – *Land Use Planning*:

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

ZDO-276 does not require an exception to any Statewide Planning Goal. With the ordinance's proposed amendments, the County's adopted and acknowledged Comprehensive Plan will continue to be consistent with Statewide Planning Goals, and the implementing regulations in the ZDO will continue to be consistent with those Goals and with the Comprehensive Plan.

This proposal is consistent with Goal 2.

Goal 3 – Agricultural Lands:

ZDO-276 would not amend Comprehensive Plan policies related to agricultural lands, nor would it change any property’s land use plan designation or expand any UGB in to agricultural lands (i.e., those zoned EFU).

The only substantive amendments included with ZDO-276 that would impact agricultural lands are to codify in the ZDO existing state allowances/mandates and to authorize land uses as provided under state law. ZDO-276 would not permit new land uses in rural reserves.

This proposal is consistent with Goal 3.

Goal 4 – Forest Lands:

ZDO-276 would not amend Comprehensive Plan policies related to forest lands (i.e., those zoned AG/F or TBR), nor would it change any property’s land use plan designation or expand any UGB in to forest lands.

The only substantive amendments that would impact forest lands are those necessary to codify existing state allowances/mandates and to authorize land uses as provided under state law. ZDO-276 would not permit new land uses in rural reserves.

This proposal is consistent with Goal 4.

Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces:

Goal 5 requires the County to have programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. It requires an inventory of natural features, groundwater resources, energy sources, and cultural areas, and encourages the maintenance of inventories of historic resources.

ZDO-276 would not make any change to the County’s Comprehensive Plan goals, policies, or inventories, or to ZDO provisions, related to the protection of natural resources, or scenic, historic, or open space resources.

This proposal is consistent with Goal 5.

Goal 6 – Air, Water and Land Resources Quality:

Goal 6 instructs the County to consider the protection of air, water, and land resources from pollution and pollutants when developing its Comprehensive Plan. The amendments proposed in ZDO-276 would not change any Comprehensive Plan goal or policy, or implementing regulation, affecting a Goal 6 resource, nor would it modify the mapping of any protected resource.

This proposal is consistent with Goal 6.

Goal 7 – Areas Subject to Natural Hazards:

Goal 7 requires the County’s Comprehensive Plan to address Oregon’s natural hazards. ZDO-276 would not change the County’s acknowledged Comprehensive Plan policies or implementing regulations regarding natural disasters and hazards, nor would it modify the mapping of any hazard.

This proposal is consistent with Goal 7.

Goal 8 – Recreational Needs:

Goal 8 requires relevant jurisdictions to plan for the recreational needs of their residents and visitors. The proposal would not change any existing, state-acknowledged County

Comprehensive Plan policy or implementing regulation regarding recreational needs, nor would it reduce or otherwise modify a mapped recreational resource.

This proposal is consistent with Goal 8.

Goal 9 – *Economic Development*:

Goal 9 requires the County to provide an adequate supply of land for commercial and industrial development. As noted earlier, ZDO-276 would not change the Comprehensive Plan or zoning designation of any property. It also would not add any new restriction to land uses in areas of the County reserved for commercial and industrial development. Rather, the ordinance includes ZDO amendments that would expand certain opportunities for commercial land uses in existing commercial zoning districts.

This proposal is consistent with Goal 9.

Goal 10 – *Housing*:

The purpose of Goal 10 is to meet housing needs. ZDO-276 would neither reduce nor expand the County's housing land supply, nor would it add new restrictions to housing development. ZDO-276 would lessen the restrictions to establishing ADUs and accessory historic dwellings, and would provide greater flexibility to developers of housing in the Metro UGB in how they may contribute to street frontage improvements.

This proposal is consistent with Goal 10.

Goal 11 – *Public Facilities and Services*:

The purpose of Goal 11 is to ensure that local governments plan and develop a timely, orderly, and efficient arrangement of public facilities and services to act as a framework for urban and rural development. ZDO-276 does not propose any change in plans for the provision of water, sewer, or other public services. The new development in commercial zoning districts that would be authorized by the proposed amendments would still be required to obtain design review, which includes consideration of utility service capacity.

Goal 12 – *Transportation*:

The purpose of Goal 12 is to ensure that the County's transportation system is adequate to serve land uses. ZDO-276 would not amend the County's Transportation System Plan, nor would it change the land use plan designation or zoning of any property.

ZDO-276 would recognize that certain land uses in natural resource zoning districts are already allowed by the state, regardless of the County's transportation system, and would incorporate an existing, state-mandated prohibition on requiring one additional off-street vehicle parking space for ADUs in UGBs.

ZDO-276 would continue to require one additional off-street vehicle parking space for ADUs in the MRR District in the Mt. Hood Corridor, as the roads in that area of the County are often narrower and can be obstructed with snow, thereby limiting opportunities for on-street parking.

The new uses that the ordinance *optionally* proposes to allow in natural resource zoning districts, such as equine-affiliated therapeutic and counseling services and accessory dwellings for forest labor help, are expected to have negligible additional impacts on the County's transportation system. Indeed, it is estimated that no more than 60 properties across the County would even qualify for the accessory forest labor dwellings, and the proposed regulations would require that the accessory dwelling use the same driveway as the existing primary dwelling.

Staff also does not expect for the proposed repeal of the County’s own operating hour restrictions for marijuana retailers to overwhelm the capacity of its existing or planned transportation network. Staff has seen no evidence that increasing their hours of operation would lead to additional vehicle or pedestrian traffic at any one time; in fact, increased operating hours could allow retailers to serve the same number of customers over a wider period of time, thereby *reducing* any traffic congestion.

ZDO-276 would also newly allow the manufacturing and related wholesale distribution of edible or drinkable products that are also retailed on the same site in certain urban commercial zoning districts. The retailing of these products is already permitted in these areas. Staff finds that allowing associated manufacturing would not have a significant negative impact on the County’s transportation system, in part because, as suggested by community representatives who have advocated for allowing them, it is expected that manufacturing and wholesaling could occur at different hours than retailing. Moreover, all new development would continue to require design review, which includes consideration of parking, circulation, and frontage improvements.

Even with the proposed minimum setback reduction for commercial kennels in rural residential zoning districts, the use would still require approval of a conditional use permit. Similarly, while ZDO-276 would provide a pathway for approval of EFU land divisions resulting in parcels less than 80 acres when necessary for siting certain utilities, the utilities themselves would still have to be approved with a land use permit, which for most utilities would be a conditional use permit. The conditional use approval process will continue to require a review of the particular proposed kennel operation’s potential traffic impacts.

The proposed amendments to the County’s “FILO” program, which were recommended by representatives of the County’s Development Review Team and the Transportation Engineering Division, would allow developers to pay a fee in lieu of constructing certain road frontage improvements that would not serve a meaningful purpose, and the revenues collected would go to fund pedestrian improvements elsewhere where they are needed, thereby improving the Metro UGB’s pedestrian network.

Notice of ZDO-276 was provided to ODOT, who has not provided comments.

This proposal is consistent with Goal 12.

Goal 13 – *Energy Conservation:*

Goal 13 encourages land use plans to consider lot size, building height, density, and other measures in order to help conserve energy. The proposed amendments would not change any policy or implementing regulation regarding energy conservation.

This proposal is consistent with Goal 13.

Goal 14 – *Urbanization:*

The purpose of Goal 14 is to provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities. The Goal primarily concerns the location of UGBs, the establishment of “urbanizeable areas” and unincorporated communities, exception lands, and rural industrial uses. ZDO-276 would not modify any UGB or the status or boundaries of any unincorporated community. The ordinance would not modify any urban or rural reserve boundary, allow any new land use in such reserve areas, change the land use plan designation or zoning of any property, or allow any new uses in exception lands or industrial zoning districts.

This proposal is consistent with Goal 14.

Goal 15 – Willamette River Greenway:

ZDO-276 would not change any existing requirement related to development in the Willamette River Greenway.

This proposal is consistent with Goal 15.

Goals 16-19:

These four Statewide Planning Goals address estuarine resources, coastal shorelands, beaches and dunes, and ocean resources, and are **not applicable to Clackamas County**.

2. Metro Urban Growth Management Functional Plan

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

ZDO-276 does not propose to change the County’s residential, commercial, or industrial land supply or to modify any UGB. The ordinance would not change the housing density standards in any part of the County or allow any new retail use in any zoning district. The ordinance would also not change the boundaries of an urban or rural reserve, the dimensional standards of any use in an urban area, or any provision governing water resources, flood management areas, or open spaces.

For these reasons, the proposal is consistent with the Functional Plan.

3. Clackamas County’s Comprehensive Plan

Staff finds that the following four chapters of the County’s Comprehensive Plan are applicable to this proposal.

Chapter 2 – Citizen Involvement:

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

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

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

2.A.11 – Promote informed public participation in decisions through sponsoring or conducting education programs and providing publications and printed materials.

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

As noted previously in this report, ZDO-276 would amend ZDO Section 1307, which implements the policies of Chapter 2, to increase the noticing distance of certain land use actions in rural areas that typically generate more public interest and for which the input of neighbors can be particularly helpful in the evaluation of approval criteria. This will increase the number of property owners who are mailed a printed notice of land use applications, public hearings, and

decisions, thereby further promoting the opportunity for members of the public to participate in the County's land use planning and inform land use applications.

ZDO-276 proposes this noticing distance amendment, as well as the amendments related to kennel setbacks and manufacturing in conjunction with on-site retail (Actions 2 and 3 on Page 3), to address three priority issues specifically identified in the 2019-2021 Long-Range Planning Work Program. The Work Program itself was adopted after a broad public input process and upon recommendations of the public.

Consideration of ZDO-276 has proceeded according to the noticing and public hearing requirements of ZDO Section 1307.

This proposal is consistent with Chapter 2.

Chapter 4 – Land Use:

ZDO-276 proposes text amendments that would expand permitted land uses, and make modifications to standards for land uses, in various zoning districts. Some of those proposed amendments are necessary to align the ZDO with existing state laws that would apply regardless of policies in Chapter 4 of the Comprehensive Plan.

Other proposed newly permitted uses, and modifications to use standards and criteria, are optional and warrant written findings that they are consistent with Chapter 4's goals and policies for the relevant land use plan designations.

Action 3 (Page 3) relates to manufacturing in conjunction with on-site retail in specific commercial zoning districts. As described elsewhere in this report, the action would allow a second, supporting use on a property where retailing is already permitted and would promote the local manufacture of retailed goods. Staff finds that this proposal would be consistent with the applicable Chapter 4 provisions for those zoning districts, including those for:

- General Commercial areas that are intended for a wide range of goods and services, including certain types of manufacturing;
- Community Commercial areas designated for local shopping and services, including larger-footprint establishments and other frequently patronized community services; and
- Corridor Commercial areas also intended for a mix of uses, including clean and light manufacturing.

In agricultural lands, Policy 4.OO.2 of Chapter 4 requires that agriculturally related industries be encouraged in agricultural areas. Staff finds that ZDO-276's proposal to allow equine-affiliated therapeutic and counseling services (Action 5, Page 4) would provide the opportunity for a new agricultural use or business.

In forest lands, Policies 4.PP.2, 4.PP.3, and 4.PP.4 respectively encourage forest-related industries, prohibit land uses that conflict with forest uses, and encourage the limitation of housing due to fire concerns. Staff finds that proposed Action 6 (Page 5) to allow an accessory dwelling for housing of a family member assisting in forestry practices is consistent with these policies. The accessory dwellings would serve as housing to workers engaged in forestry, and can only be located on parcels at least 80 acres in area and according to certain siting standards. Action 6's related ZDO amendments also include specific fire-protection measures required by state law.

Proposed Action 21 (Page 9) repealing the County's marijuana retailing operating hour limitations would not conflict with any policy for commercial land use designations in Chapter 4.

Proposed Action 2 would reduce the minimum setbacks for a commercial kennel in certain rural residential zones. However, the conditional use requirements for kennels would still require separate findings that any particular kennel is consistent with applicable Chapter 4 policies for land uses in those areas.

This proposal is consistent with Chapter 4.

Chapter 10 – Community Plans and Design Plans:

Two of ZDO-276's 24 proposed actions warrant review for consistency with Chapter 10 of the County's Comprehensive Plan, which includes policies related to the RTC and MRR Districts in the Mt. Hood area.

Proposed Action 3 (Page 3) allowing the manufacture of certain consumable goods retailed on-site in the RTC District would be consistent with the proposal to allow the same use in the C-2 District, which is the other of the two zoning districts implementing the Community Commercial land use plan designation. Allowing for additional uses of properties would help to promote the more urban environment Chapter 10 plans for. All new development in the RTC District would continue to have to meet specific design standards consistent with the design plans referenced by Chapter 10.

Proposed Action 19 (Page 8) would repeal the owner occupancy requirement for ADUs in the MRR District, which includes areas that are outside of UGBs but that have urban services, consistent with how ADUs are regulated in UGBs. By reducing a barrier to ADU development, the amendment could help to promote the kinds of urban housing densities that many of Chapter 10's *Mount Hood Community Plan* policies aim for.

This proposal is consistent with Chapter 10.

Chapter 11 – The Planning Process:

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

Chapter 11 of the Comprehensive Plan also contains the specific requirement that the Comprehensive Plan and ZDO be consistent with Statewide Planning Goals and with Metro's Urban Growth Management Functional Plan; Chapter 11 is what requires the ZDO itself to be consistent with the Comprehensive Plan. This report's *Analysis & Findings* beginning on Page 13 outlined how ZDO-276 is consistent with all of these requirements.

This proposal is consistent with Chapter 11.

4. Zoning and Development Ordinance (ZDO):

The proposed text amendments are legislative. Section 1307 of the ZDO establishes procedural requirements for legislative amendments, which have been or are being followed in the proposal and review of ZDO-276. Notice of this proposal was provided at least 35 days before the first scheduled public hearing to DLCDC, all cities in the County, and active CPOs, Hamlets, and Villages, as well as other interested agencies, to allow them an opportunity to review and comment on the proposed amendments. Advertised public hearings are being held before the Planning Commission and the BCC to consider the proposed amendments. The ZDO contains no further specific review criteria that must be applied when considering an amendment to the text of the Comprehensive Plan or ZDO.

RECOMMENDATION

Staff finds that the proposed text amendments in Attachment A would best address the priorities identified in the adopted 2019-2021 Long-Range Planning Work Program, while meeting all applicable land use policies. Therefore, Staff recommends the Planning Commission recommend their approval by the Board of County Commissioners as drafted.

LIST OF ATTACHMENTS

- A. Proposed text amendments, with summary outlines
- B. 2019-2021 Long-Range Planning Work Program
- C. Federal Communications Commission 2018 *Declaratory Ruling and Third Report and Order*
- D. Clackamas County Roadway Standards for Small Wireless Facilities (Updated 2020)

**PLANNING COMMISSION
MINUTES**

June 22, 2020

Meeting held via Zoom meeting online

Commissioners present: Brian Pasko, Michael Wilson, Mary Phillips, Gerald Murphy, Thomas Peterson, Tammy Stevens, Carrie Pak, Steven Schroedl

Commissioners absent: Louise Lopes

Staff present: Jennifer Hughes, Glen Hamburg, Darcy Renhard.

Commission Chair Stevens called the meeting to order at 6:34 pm.

General public testimony not related to agenda items: none.

Commissioner Stevens opened the public hearing for ZDO-276, a proposal for amendments to the Clackamas County Comprehensive Plan (Comp Plan) and Zoning and Development Ordinance (ZDO).

Glen Hamburg provided a presentation of the proposed amendments, including those to address three significant issues identified in the Long-Range Planning Work Program and a fourth significant issue raised by the BCC. The amendments reflect recommendations from the Planning Commission study sessions and a BCC policy session. The entire amendment package would amend Comp Plan Chapter 4, *Land Use*, Comp Plan Table 4-1, *Land Use Designations & Implementing Zoning Districts*, as well as 18 separate sections of the ZDO. The amendments would achieve 24 proposed actions.

The first is to increase noticing distances for certain land use actions in 11 rural and natural resource zones to ½ mile from the affected property. Currently, the notice distance in AG/F, EFU, FF-10, FU-10, RA-1, RA-2, RC, RI, RR, RRRF-5, and TBR zones is either 500 or 750 feet. The BCC has asked for a larger notice distance increase than initially suggested for consideration by the Planning Commission earlier this year. As proposed by the BCC and in the draft amendments, notices of all Type III applications and their hearings, all Type II appeal hearings, and all Type II applications and decisions for nonconforming uses and vested rights in these rural and natural resource would be increased to ½ mile. There are other types of land use applications that we could also provide this larger notice for, but there is less likelihood that a neighbor ½ mile away would be impacted by those other types of applications or that neighbors that far away could inform those other applications' approval criteria. Staff feels that the proposal to increase the noticing distance would increase public awareness and provide greater opportunity for input from those who are impacted by these land use actions. One problem with the proposal may be that some property owners will receive notice of an appeal, but they may not have received notice of the original application, potentially leading to some confusion. ZDO-276 does not propose to increase the distance of land use actions in urban type areas due to the narrow scope called for in the Work Program and the significant increase in cost to provide notices in urban areas. There have been some controversial nonconforming use decisions issued within the County which have raised concerns from rural property owners that were outside of our current notice range, which is partly why the noticing radius of nonconforming use decisions in rural areas have been of concern. In nonconforming use and vested right applications, a property owner who has concerns may be able to impact the outcome of the application by providing input. Commissioner Phillips appreciates the BCC proposing expanding the notice distance beyond what the Planning Commission originally suggested. Commissioner Pasko thinks that the increased notice distance is especially important out in the rural zones that do not have an active CPO. Commissioner Murphy would like the MRR and HR zones to be considered for inclusion.

Action 2 concerns minimum setbacks for dog kennels approved as conditional uses in the FF-10, RA-1, RA-2, and RRF-5 zoning districts. The question is whether the setback distance should be reduced from 200 feet to 100 feet. With the current setback requirement of 200 feet, a property would need to be roughly 4.65 acres in order to meet the setbacks (assuming a 50-foot by 50-foot kennel space). The proposed reduction in setbacks would allow more properties to qualify, which could potentially increase business and service opportunities. The conditional use criteria would still apply, which would allow the Hearings Officer to apply greater setbacks if they were warranted. It is difficult to accurately determine how many properties will actually qualify due to variables that staff is unable to predict. The conditional use process would allow an applicant to show how noise and other impacts would be mitigated. During consideration of the Work Program, there were members of the public who felt that the 200-foot setback was too restrictive. A kennel is defined as any lot or premises where four or more dogs more than 6 months of age, or with permanent canine teeth, kept for purposes other than a veterinary clinic. The definition of “kennel” does not include keeping dogs only as pets. To be considered a “kennel”, it must be for commercial purposes. Commissioner Pasko feels that this type of business is really needed, especially in rural zones.

Action 3 concerns manufacturing of edible or drinkable products that are also retailed on the same site, and related wholesale distribution, in Community Commercial (C-2), Corridor Commercial (C-3), General Commercial (CC), Office Commercial (OC), Rural Tourist Commercial (RTC), and Station Community Mixed Use (SCMU) zoning districts. Areas with these zoning designations include the intersection of Oak Grove Blvd and River Rd., Sunnyside Rd. and 122nd, Hwy 212 and 135th, and Johnson Creek Blvd. and 82nd; along McLouglin Blvd., Johnson Creek Blvd. west of Hwy 205, and Fuller Rd., and in areas of Government Camp, Wemme/Welches, and Rhododendron. The related amendments in Attachment A would allow breweries, cideries, bakeries, and the like within these zoning districts. Even though certain types of manufacturing is already permitted in some of these zones, primary processing of raw materials (i.e., processing of raw ingredients) is still prohibited. Allowing these uses would increase business and employment opportunities within the County. It would also increase the functionality of the property. Design Review would still be required for new development, which would address parking, access, circulation, building design, and landscaping. There may be a limited number of vacant properties that could allow this use, but the Oak Grove residents and community representatives have supported the proposal. Commissioner Phillips asked why the new use would be limited to the manufacture of edible and drinkable products, and not allow the manufacture of other products. Glen explained that Oak Grove’s interest has been to find a way to allow brewpubs and bakeries specifically. Other types of manufacturing (that doesn’t involve the primary processing of raw materials) is already permitted in most of these commercial zones, as are art studios. What the current code prohibits is the manufacturing of edible or drinkable products that are sold on the same site, as well as the primary processing of raw materials that are used as ingredients in these products.

Action 8, and the fourth and final significant issue given specific consideration, concerns whether or not the County should repeal its own restrictions on marijuana retail operating hours. The State’s OLCC currently allows marijuana retailers to operate between 7 a.m. and 10 p.m. Clackamas County has more restrictive hours for these operations, limiting their operations to between 10 a.m. and 9 p.m. Repealing the County’s restriction would allow marijuana retailers to compete with retailers in adjacent jurisdictions. The County does not regulate the operating hours of any other type of use in commercial zoning districts. An increase in operating hours would increase business opportunities and possibly improve overnight security. It would also provide regulatory clarity. Some potential negative results might be that if there is more access to marijuana sales, then consumption might increase, which may result in negative health impacts. Under the proposal, operating hours would be any that are set by the State; it does not necessarily mean that operating hours would be 7 a.m. to 10 p.m. for all marijuana retailers always. Commissioner Wilson does not feel that it

is appropriate to restrict a specific retailer's operating hours. Commissioner Peterson agrees that our retailers should not be at a competitive disadvantage to those in other jurisdictions who allow for longer operating hours.

Commissioner Pak asked Glen to explain the urban road frontage FILO proposal. When the developers put together their frontage improvement cost estimates for their projects, they use wage estimates that are less than what it actually ends up costing the County to complete. She would like to see like-for-like cost estimates used. Jennifer Hughes explained that the majority of the funds collected through the FILO program have recently been used for Safe Routes to Schools projects. The money is not being used for repairs; it is being used to install new facilities where there has been a noted deficiency. The proposed amendments would newly allow FILO to be collected in two additional situations: when there are public storm drainage constraints or when the improvements would be located on a public street frontage that is 100 feet or less and nothing for the improvements to connect to. The County could collect the FILO money and use it where it is actually needed, instead of requiring developers to install frontage improvements in these cases. Commissioner Pasko is concerned that there may not be equitable distribution of projects funded with the money collected through the FILO program. Commissioner Pak would like the County to have a comprehensive sidewalk plan so we do not end up with 'islands' without sidewalks in the future. To be clear, about the proposal does not concern just sidewalks; about it concerns frontage improvements that may include sidewalks, but may also include bikeways or other types of improvements. Jennifer informed the Commission that it is a goal of Transportation Engineering to have a formal sidewalk plan in the near future. It is important to note that most of the properties that take advantage of FILO are infill projects and not large developments. Commissioner Pasko would like to have this proposal separated from the rest of the amendment package when it comes time to vote. Glen reiterated that this proposal increases the opportunities for the County to collect FILO fees, and allows FILO regardless of the road classification and whether or not the road is on the "Essential Pedestrian Network".

Commissioner Phillips asked for clarification on the renewable energy facility criteria. There is an inconsistency in the use table, which Glen will look into. What is allowed now will still be allowed, but certain energy uses will be reviewed at the County level rather than by the State. It is unlikely that any of the facilities now to be reviewed at the County level will actually be proposed, however, given their large size and the limited availability of qualifying property.

Commissioner Phillips asked about the design standards that we are proposing for small wireless facilities. These facilities could be attached to existing utility poles, street lights, or bus stops that are within the public right-of-way, or could be attached to private buildings. The FCC does not require us to regulate them under the zoning code or the roadway standards, but does limit the type and scope of regulations the County can have on these facilities. Under the proposal, the zoning code would regulate small wireless facilities that are installed on private property outside of the public right-of-way of County-controlled easements, while those that are within public right-of-way or County-controlled easements would be regulated under the County's Roadway Standards. There are two public comments included in the exhibits addressing small wireless facilities. One suggests that we exempt all small wireless facilities from any setbacks, in any zone, when installed on private property. Staff feels that it is appropriate to still apply setback requirements as we would any other structure. The FCC mandate specifically prohibits the County from considering the health impacts when it comes to regulating these facilities. One requirement that staff is proposing is that any small wireless facility match the color of any portion of a building it is attached to or mounted on. The other comment was from a representative of AT&T. They would like us to amend the proposed standards to say that the facility must match the color of the building "unless not technically feasible". Glen feels that this language would be too subjective. Staff has not identified any other jurisdiction with this kind of provision, while the proposed

language is similar to those of other jurisdictions. The primary focus of service providers will likely be deploying these in rights-of-way, not on private property, so there may not be a lot of instances where the appearance of small wireless facilities on private property would even be an issue. Commissioner Schroedl is concerned that there could be an addition placed on top of power poles without PGE permission. Glen replied that the amendments do not mean that the carrier could just place these facilities wherever they want. Commissioner Murphy pointed out that there are some neighborhoods that do not have utilities above ground, which means that there are no utility poles to install these units on. The FCC mandate states that small wireless facilities must be allowed within the public rights-of-way and within County-controlled easements, but could be regulated by the County Roadway Standards.

Commissioner Stevens asked if there were any representatives of CPOs, hamlets, or villages who wished to provide testimony.

Suzanne Wolf (Historic Downtown Oak Grove)- On behalf of the HDOG Board, she is in favor of allowing the onsite manufacture of edible and drinkable products retailed on site in the C-2 and C-3 Districts in their community. They have been advocating for this type of change since 2012. An informal poll of community members showed that 20% of the respondents would like to see bakeries, cideries, and brewpubs in their community. They feel that it would increase the business opportunities as well as employment opportunities in the area.

Joseph Edge (14850 SE River Forest Dr., Oak Grove) – Mr. Edge represents the Oak Grove Community Council. He submitted a letter in support of the amendment to allow the manufacture of edible and drinkable products retailed on site in the C-2 and C-3 Districts in his community. They are strongly in support of the amendments as drafted by staff. Commissioner Wilson asked if Mr. Edge was aware of any businesses that would take advantage of this new use allowance, if the proposed amendments were approved. Mr. Edge answered that there were two interested parties in the past, but only one is still interested at this time. Commissioner Murphy asked how they might address parking issues. Mr. Edge replied that there is a church with a large parking lot with close proximity that has offered to allow use of their parking lot. Parking requirements would continue to be those currently listed in the ZDO.

Karen Manske (AT&T) – The reason that they have asked for the change to the proposed amendment language is because these wireless facilities may have signal interference if you paint over them. There may also be limitations on the colors that their suppliers can currently provide. Given the area that the provider is trying to cover, it is not ideal to mount them on the sides of buildings. They are trying to cover areas with high density, not the more rural areas yet. Commissioner Schroedl asked why the utility facilities can't be colored to match a building. Ms. Manske answered that the 5G technology does not function in the same way the 4G does. Putting a film or covering over the component may create interference with the signal. Commissioner Phillips suggested using the term 'substantially similar'. Commissioner Pak pointed out that other jurisdictions have adopted language that is the same as what we are proposing and asked how AT&T is addressing their requirements. Ms. Manske answered that they are more interested in installations within the public right-of-way. They haven't installed units in Oregon City or Lake Oswego yet, but they are interested in putting them in Lake Oswego. Commissioner Pak thinks that they are going to have a challenge getting the City of Lake Oswego to allow these installations if they are not compatible with the appearance of the building. Commissioner Murphy asked if these would be co-locations with other carriers. Ms. Manske explained that these are typically installed on existing poles with telephone and electrical utility companies. Co-location of multiple wireless carriers on the same pole isn't always feasible, so new poles may need to be installed in some areas. The proposed amendments would not limit a private property owner from requiring additional standards of facilities located on their property. Glen reiterated that the primary interest of the

wireless companies, as expressed by industry representatives, is not to install these on private property other than in commercial and industrial districts. It is more likely that the provider will install them in public rights-of-way.

Commissioner Stevens asked if there was anyone else who wished to provide testimony. There were none. There is no additional correspondence other than what has already been submitted to the Planning Commission.

Commissioner Phillips asked if the proposal on ADUs was to meet the updates to State law. Glen answered that it would codify recent State prohibitions of the requirement for off-street parking and owner occupancy for ADUs that are both within an urban growth boundary and in a zone that allows detached single family dwellings as a primary use. The proposed amendments would also repeal the requirement for owner occupancy in the MRR District, but would retain the off-street parking requirement for ADUs in this zoning district due to the nature of the roads and snow accumulation in the Mt. Hood area.

Commissioner Phillips moved to close the public testimony portion of the hearing but to leave the record open for additional written testimony, and to continue the hearing to July 13th, 2020 at 6:30 p.m. Commissioner Pasko seconded. *Ayes=8; Nays=0. Motion passes.*

Commissioner Schroedl was interested in learning what the City of San Diego has done to regulate small wireless facilities.

Commissioner Pasko would like more information from our Transportation Engineering Division on how the FILO funds are distributed and the rationale for the proposed amendments.

Commissioner Phillips would like Glen to clarify the language in the uses table in Section 401 regarding renewable energy facilities and what is allowed.

Commissioner Murphy would like to have vegetative weirs as a consideration for FILO. These allow the stormwater back into the ground and also significantly reduces the amount of toxins that end up back in our waterways.

Staff recommendation is approval of the amendments as presented in Attachment A.

Commissioner Pasko moved to approve the minutes from June 8th as submitted. Commissioner Murphy seconds. *Ayes= 6, Nays=0, Abstain=2 (Wilson, Phillips). Minutes are approved.*

There being no further business, the meeting was adjourned at 10:03 pm.

**PLANNING COMMISSION
MINUTES**

July 13, 2020

Meeting held via Zoom meeting online

Commissioners present: Brian Pasko, Michael Wilson, Mary Phillips, Gerald Murphy, Thomas Peterson, Tammy Stevens, Carrie Pak, Steven Schroedl

Commissioners absent: Louise Lopes

Staff present: Jennifer Hughes, Glen Hamburg, Karen Buehrig, Darcy Renhard.

Commission Chair Stevens called the meeting to order at 6:33 pm.

General public testimony not related to agenda items: none.

Commissioner Stevens opened the continuation of the public hearing for the ZDO-276 from June 22, 2020. This hearing is for a proposal to amendments to the Clackamas County Comprehensive Plan (Comp Plan) and Zoning and Development Ordinance (ZDO).

Glen Hamburg summarized additional documents that have been added to the record since the June 22nd meeting. Attachment E outlines the revised proposals and some clarifying language that has been added to the amendment package. In the revised amendments to Comprehensive Plan Chapter 4 for example, there are now conforming amendments for the manufacture of edible and drinkable products to be retailed onsite in General Commercial areas. In the revised amendments to ZDO Section 401 (EFU), there is a correction to a citation. Also, school expansions are listed as a Type II application and equine therapy and utility land divisions are not allowed in urban reserves in Table 401-1. In ZDO Section 406 (TBR), accessory farm forestry dwellings are now recognized as not allowed in urban reserves. In ZDO Section 407 (AG/F), conforming amendments were added to Table 407-1. In ZDO Section 835, language to require "at least similar color for small wireless facilities" has been added per discussion during the June 22nd meeting.

Glen reviewed the 24 actions that this proposal addresses.

1. Staff is recommending that notice distance be increased to ½ mile for Type III applications, non-conforming use applications, and vested right applications in the rural zones. Planning Commission members had no further issues to discuss on this proposal.
2. Reducing rural kennel setbacks from 200 feet to 100 feet. Commissioner Murphy has heard some negative feedback on this, but he did not feel that it needed further discussion. Commissioner Pasko supports staff's recommendation.
3. Allow manufacturing of goods retailed onsite in commercial zones. Staff is only proposing that this be allowed for edible and drinkable goods. Commissioner Phillips would like to save this for further discussion.
4. Allow EFU land divisions when necessary for siting approved utilities. This would be in line with what is allowed by the State. There was no further discussion on this proposal.
5. Allow equine therapy in AG/F and EFU zones. There was no further discussion on this proposed amendment.
6. Allow accessory dwellings for family forestry operations in AG/F and TBR zones. The parcel must be at least 80 acres in area, there must already be an approved dwelling on the property, and the accessory dwelling must be for a family member to help support the farm/forest operations. The Planning Commission recommended that the accessory dwelling be a manufactured home. There are

approximately 60 properties within the County that would qualify for this use. The Planning Commission had no additional comments on this proposal.

7. Provide renewable energy facility criteria consistent with State mandates within the EFU district. The Planning Commission had no additional comments on this.
8. Increase opportunities for urban road frontage FILO. This item was selected for further discussion this evening.
9. Match our definition of ex parte contact to be consistent with State law. There was no further discussion on this.
10. Adopt small wireless facility procedures and standards. The proposal from staff is to have these regulated under the County Roadway Standards and not the ZDO. Commissioner Phillips would like to discuss this further.
11. Codify nonconforming marijuana production premises protections/requirement. This would simply adopt some requirements from the State. There was no further discussion on this.
12. Codify forest template dwelling requirements. This would also adopt requirements from the State. There was no further discussion on this.
13. Codify EFU replacement dwelling requirements. The State has new requirements for this, so we would just be adopting those requirements into our Code. There was no further discussion on this.
14. Allow certain EFU nonconforming secondary school expansions. We would be adopting the State's language into our Code. There was no further discussion on this.
15. Allow small-scale farm processing in AG/F and EFU zones. There was no further discussion on this.
16. Allow farm breweries in AG/F and EFU zones. There was no further discussion on this.
17. Allow cideries in the AG/F and EFU districts. There was no further discussion on this.
18. Repeal the ADU owner occupancy and off-street parking requirements within urban growth boundaries. There was no further discussion on this.
19. Repeal the owner occupancy requirement for ADUs in the MRR district. Staff is not recommending to repeal the off-street parking requirement for ADUs in this district because of concerns with the more narrow and snow-filled streets in this zone. There was no further discussion on this.
20. Repeal the accessory historic dwelling owner occupancy requirement. There was no further discussion on this.
21. Repeal the County's marijuana retail operating hour limitations. Staff feels that OLCC requirements are enough to limit the operating hours. There was no further discussion on this.
22. Remove Campus Industrial (CI) provisions from the Code. There are no longer any properties within the County that fall under this zone, so it does not make sense to keep it.
23. Clean up language in the AG/F, EFU, and TBR sections of the Code. There was no further discussion on this.
24. Other general housekeeping amendments. There was no further discussion on this.

Commissioner Schroedl moved to recommend approval of staff's proposed amendments 1 through 24 as submitted, excluding numbers 3, 8 and 10. Commissioner Peterson seconded. *Ayes=8, Nays=0. Motion passes.*

Glen reviewed proposal #3 which would allow the manufacturing of edible and drinkable products to be retailed onsite, and related wholesale distribution to be permitted in C-2, C-3, CC, OC, RTC, and SCMU districts. Since the last hearing, there was a letter from Ms. Wolf and Historic Downtown Oak Grove expressing support for the proposal. At this time, they are only interested in allowing the manufacture of edible and drinkable products. Mr. Edge of the Oak Grove Community Council also submitted an article that explains the benefits of allowing these uses and supports the staff recommendation. Manufacturing is already permitted in most of the zones, but primary processing of raw materials is not. We may want to mark

adding artisanal manufacturing for future consideration. The Oak Grove community expressed interest in specifically allowing breweries and bakeries. We would have to take a look at what the impacts of other potential new manufacturing activities might have, for example concrete manufacturing, on effected neighborhoods. This would take more time than what is left in the process for this proposal. Commissioner Murphy would be concerned about the impacts of allowing further manufacturing activities in the commercial zones up in Mt. Hood area. A lot of the commercial zones are adjacent to residential zones.

Commissioner Phillips moved to recommend adoption of item #3 based on staff's recommendations, but would also request that staff look into artisanal manufacturing and keep that on the Work Program for future discussion. Commissioner Peterson seconds. *Ayes=8, Nays=0. Motion passes.*

Item #8 would allow additional opportunities to pay a FILO for urban road frontage improvements as proposed in Attachment A. This would only apply to any road in the Portland Metro UGB and when there are public storm drainage constraints. It would also allow FILO when there is 100 feet or less of frontage involved, and there is no existing sidewalk that the new sidewalk would connect to. Commissioner Pasko is concerned that this allows a project that is happening in Damascus to pay for a sidewalk in Wilsonville, for example. There is a lack of clarity on how these funds can be spent. He feels that the fees should remain within the community where the project is taking place. As more sidewalks are built within the County, the fewer number of properties will even qualify to pay the FILO. Typically, FILO funds are used in areas with schools where there are gaps in the sidewalk system. Commissioner Pak is concerned that the fees are not priced adequately. It is important to understand what the objectives and criteria are for the program and to have a specific timeframe for the funds to be used. Commissioner Peterson asked if FILO was collected and used in the same manner as SDCs. Ken Kent explained how the two different funds are used based on what is on the TSP. The FILO is based on what the improvements would cost on that particular property, which may not be the same as what the costs actually are for improvements on a different property. Commissioner Peterson would like the fees that are collected to match the actual costs for a developer to make the improvements. He would also like to see a concern for equity in the distribution of the funds within the communities where the FILO is actually collected. Jennifer Hughes said that the ZDO may not be the appropriate place for outlining how FILO funds are to be spent. The reality is that a lot of projects choose to build their required sidewalks, so they do not even use the FILO option. Commissioner Pasko would like there to be a much clearer policy on FILO. The developer should have to meet specific criteria in order to be approved by the County for the FILO option; they don't get to just opt to pay FILO instead of making improvements. Commissioner Murphy would like swales and vegetative weirs to be an option. Commissioner Phillips asked when this would come back to the Planning Commission if the recommendation was to not move this forward until there was a clear policy in place. Jennifer answered that we have another phase of the ZDO audit in the near future, but the BCC can still approve this proposal if they choose to do so. The staff who would actually have to do the work is not even in Land Use Planning, so we can't really speculate when the work would be done. General consensus is that the Planning Commission would prefer to have this proposal removed from the packet and brought back when the policies have been written.

Commissioner Phillips moved to recommend that the proposal to expand opportunities for which FILO can be paid not be included in the current package of amendments recommended to the BCC until a policy and guidelines for the use of FILO funds and the equitable distribution of the funds with public oversight be established. Commissioner Pasko seconded the motion. *Ayes=7 (Peterson, Stevens, Pasko, Phillips, Murphy, Pak, Schroedl); Nays=1 (Wilson)*

The last item on the agenda is regarding regulation of small cell wireless facilities. These would be regulated under the County Roadway Standards when they are located within the public right-of-way. When they are

located on private property, the proposed ZDO amendments would require that they must be the same or similar color as any portion of the building that they are attached to. They would not be allowed to be installed on vegetation. These recommendations are in line with what other jurisdictions have written into their codes. The FCC requires that the standards be clear and objective. We are required to allow these facilities to be installed, but we do not currently have any standards specifically for small wireless facilities in our Code. Commissioner Pasko feels that the staff recommendation as written is reasonable. Commissioner Phillips would recommend “substantially similar” rather than just “similar”. The County Roadway Standards require that the material be non-reflective and that lighting be shrouded to every extent possible. She would like this language added to the recommendation. Commissioner Schroedl asked if the structural setbacks on private property were addressed. Glen explained that structural setbacks would apply as they currently do within the underlying zone. Commissioner Pak would like to have clearer guidelines for staff to approve these facilities in the future. Glen said that using the term “shrouded to the extent possible” may require a subjective interpretation from staff. Commissioner Phillips recommended saying lighting should be “shrouded from neighboring properties”.

Commissioner Phillips moved to recommend approval of item #10 based on staff proposal with the following modifications: item 803.06(E) for small wireless facilities #2 be amended to read “same or substantially similar color”; that an item #3 be added requiring the use of non-reflective materials; and that an item #4 be added to read “lighting shall be shrouded from adjacent residential properties”. Commissioner Murphy seconded the motion. *Ayes=8, Nays=0. Motion passes.*

Commissioner Phillips moved to approve the minutes from June 22nd as submitted. Commissioner Wilson seconds. *Ayes= 8, Nays=0. Minutes are approved.*

Jennifer provided a schedule review.

There being no further business, the meeting was adjourned at 8:48 pm.