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## NOTICE OF LAND USE PUBLIC HEARINGS

To: Community Planning Organizations, Hamlets, and Other Interested Parties  
From: Glen Hamburg, Senior Planner  
Date: May 18, 2020  
Subject: Public hearings scheduled on proposed amendments to the Clackamas County Comprehensive Plan and Zoning and Development Ordinance (ZDO), with **File ZDO-276: FY 2020 Minor and Time-Sensitive Comprehensive Plan and ZDO Amendments**

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Clackamas County is considering amendments to its Comprehensive Plan and Zoning and Development Ordinance (ZDO) to accomplish the 24 actions listed beginning on the second page of this notice. The full text of the proposed amendments are on our website here: [www.clackamas.us/planning/zdoproposed.html](http://www.clackamas.us/planning/zdoproposed.html)

The Planning Commission and Board of County Commissioners (BCC) have scheduled public hearings to receive testimony from the public and other interested parties on these proposed amendments. Because the amendments may affect your community or area of interest, we want to give you and your organization advance notice of the opportunity to review and comment before or at the public hearings.

### PUBLIC HEARINGS & TESTIMONY

While Clackamas County is abiding by social distancing requirements during the coronavirus pandemic, public hearings are being held virtually using the Zoom platform. One week prior to the hearing dates listed below, a Zoom link to the public hearing and details on how to observe and testify online or by telephone will be available on our website at the web address listed for each hearing:

#### *Hearing Dates and Times:*

- Planning Commission: No earlier than **6:30 p.m., Monday, June 22, 2020**  
[www.clackamas.us/planning/planning-commission](http://www.clackamas.us/planning/planning-commission)
- Board of County Commissioners: No earlier than **9:30 a.m., Wednesday, August 5, 2020**  
[www.clackamas.us/meetings/bcc/landuse](http://www.clackamas.us/meetings/bcc/landuse)

Interested parties are welcome to provide testimony at the hearings or in advance of the hearings. Written testimony in advance of the hearings can be emailed to Glen Hamburg at [ghamburg@clackamas.us](mailto:ghamburg@clackamas.us) or sent by post to **150 Beavercreek Rd, Oregon City, OR 97045**.

Written testimony received by 4:00 p.m. on Wednesday, June 10, 2020, will be included in the information packet provided to the Planning Commission one week before their scheduled hearing; if the written testimony is received after that time and before Planning Commission hearing, it will be emailed to the Planning Commission no later than June 22, 2020. Written testimony received by 4:00 p.m. on Monday, July 27, 2020, will be included in the information packet provided to the BCC one week before their scheduled hearing; if the written testimony is received after that time and before the BCC hearing, it will be emailed to the BCC no later than August 5, 2020.

## BACKGROUND INFORMATION

The 2019-2021 Long-Range Planning Work Program includes a project intended to focus on relatively minor changes to the County's land use policies and regulations in order to comply with state and federal mandates, clarify existing language, correct errors, and adopt optional provisions that require only minimal analysis.

In adoption of the Work Program, the BCC included three specific topics of the ZDO for review under the "minimal analysis" category: notice distances for land use applications in natural resource zones; commercial dog kennels in rural residential zones; and small-scale manufacturing in certain commercial zones. The BCC has also recently requested review of a fourth topic: repealing limits on marijuana retail hours in favor of reliance on state operating hour standards.

Ordinance ZDO-276 proposes a number of changes related to recent state legislation, federal preemption, and general "cleanup" of the Comprehensive Plan and ZDO, as well as changes that address the BCC's identified ZDO review topics and priorities. The changes are grouped in 24 actions that are summarized below.

## PROPOSAL

Ordinance ZDO-276 proposes to accomplish the following 24 actions:

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

Notice of, and Planning Director decisions on, all Type II land use applications, as well as notice of public hearings on appeals and Type III land use applications, 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 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 750 feet if the subject property is in the AG/Forest (AG/F), Exclusive Farm Use (EFU), or Timber (TBR) Districts. ZDO-276 would increase the noticing distance to 2,640 feet (1/2 mile) for the following, if the subject property is in one of these 11 rural or natural resource zoning districts: all Type III land use permit applications and their public hearings; all appeal hearings, including those for 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 RRFF-5 Districts:**

A conditional use permit is required for a commercial dog kennel in the FF-10, RA-1, RA-2, or RRFF-5 Districts. In addition to the existing general approval criteria for *all* conditional use permits in *all* zoning districts, which consider the characteristics of the subject property as well as traffic and other 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 characteristics of the property and surrounding area. ZDO-276 would reduce the minimum setback to 100 feet, while continuing to require the kennel meet the generally applicable conditional use permit criteria.

**3. Allow manufacturing of edible or drinkable products retailed on-site in C-2, C-3, CC, OC, SCMU, and RTC Districts:**

The ZDO currently does not provide a pathway to establish most manufacturing uses in the Community Commercial (C-2) or Rural Tourist Commercial (RTC) Districts. Moreover, while manufacturing is already permitted in the General Commercial (C-3), Corridor Commercial (CC), Office Commercial (OC), and Station Community Mixed Use (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). ZDO-276 would amend ZDO Sections 510 and 513 to allow the manufacturing of edible or drinkable products retailed on the same site in these six zoning 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 to evaluate compliance with existing standards for parking, landscaping, utility services, building design, and other elements. The proposed new manufacturing use would be subject to the same specific square-footage and other limitations as the manufacturing uses already allowed in the OC and SCMU Districts.

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

Oregon Senate Bill 408 (2019) authorizes 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, provided such utility facilities are themselves approved with a conditional use permit according to existing relevant criteria. ZDO-276 would amend ZDO Section 401 to allow for these land divisions consistent with SB 408.

**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 the County to permit these uses on property zoned AG/F or EFU, provided: the activities are conducted in existing buildings that were lawfully constructed on the property before January 1, 2019, or in new buildings that are accessory, incidental and subordinate to the farm use on the tract; and all individuals conducting therapeutic or counseling activities are acting within the proper scope of any licenses required by the state. 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.

**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 forest relative dwellings, consistent with HB 2469. 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.

**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 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 1,920 acres (three square miles). The threshold for wind facilities to be reviewed at the state level was changed to 150 MW peak capacity, up from 105 MW peak capacity, and 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:**

Under certain circumstances, the County allows a developer to choose to pay a fee instead of constructing sidewalks and other frontage improvements that are required concurrent with some types of new development. This fee payment option is called “FILO”, and the revenues collected are spent on pedestrian improvements within the Portland Metropolitan Urban Growth Boundary (UGB). ZDO-276 would amend ZDO Section 1007 to increase the qualifying opportunities for which FILO can be paid and to standardize the qualification requirements between different urban areas in the County.

**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 law. 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), consistent with ORS 215.422(B).

**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(l)(1). The Federal Communications Commission (FCC) now requires the County to allow small wireless facilities in public rights-of-way and on private property, subject only to certain prescribed limitations that would not unduly hinder small wireless facility deployment. According to FCC mandates, the County: must respond within 60 days to a permit proposing collocation of a small wireless facility and within 90 days for review of a new structure for a small wireless facility; and cannot consider the perceived health effects of small wireless facilities in the County’s regulations of the devices. ZDO-276 would amend ZDO Section 835 to: provide review procedures that meet the 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; and prohibit small wireless facilities from being affixed to trees, shrubs, or other vegetation. 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, rather than by the ZDO.

**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, notwithstanding 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, but ZDO-276 would adopt clarifying ZDO amendments to ZDO Section 1206 for consistency with the wording of current 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 appropriate clarifying amendments to ZDO Section 406 are being proposed with ZDO-276. 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 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 to be 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 certain nonconforming secondary schools in the EFU District may be expanded 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, which may still be regulated through local siting standards.

**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 be setback at least 100 feet from all property lines. The farm brewery must 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 these zones, consistent with state requirements.

**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 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 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 zones and rural residential zones). ZDO-276 would amend ZDO Sections 315, 316, 839, and 1015 to be consistent with these HB 2001 prohibitions.

**19. Repeal the owner occupancy requirement for ADUs in the MRR District:**

The County already chooses, without being mandated by the state, to allow ADUs in the Mountain Recreational Resort (MRR) District in the Mt. Hood Corridor. The MRR District has an ADU owner occupancy requirement. As noted above in Action #18, Oregon House Bill 2001 prohibits owner occupancy requirements for ADUs in urban/urbanizable areas; ZDO-276 would repeal the owner occupancy requirement in the MRR District as well.

**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, ZDO-276 would repeal the owner occupancy requirement for an accessory historic dwelling as well.

**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., four hours less per day than what the Oregon Liquor Control Commission (OLCC) would otherwise allow under their current rules. ZDO-276 would repeal the County’s restrictions on the operating hours for marijuana retailers. 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 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, identify the procedural requirements of farm and forest land divisions, and standardize spacing and citations.

## **ADDITIONAL INFORMATION & STAFF REPORT**

General information is available at [www.clackamas.us/planning/zdoproposed.html](http://www.clackamas.us/planning/zdoproposed.html). Additional information about the proposed amendments or the upcoming public hearings is also available by contacting Glen Hamburg at 503-742-4523 or at [ghamburg@clackamas.us](mailto:ghamburg@clackamas.us). A copy of the staff report on the proposed amendments will be available no later than June 15, 2020, and can be obtained by contacting Glen Hamburg at the aforementioned phone number or email, or by contacting Planning and Zoning at 503-742-4500 or [zoninginfo@clackamas.us](mailto:zoninginfo@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 503-742-4545 or email [DRenhard@clackamas.us](mailto:DRenhard@clackamas.us).*

503-742-4696: ¿Traducción e interpretación? |Требуется ли вам устный или письменный перевод? | 翻译或口译 ? | Cần Biên dịch hoặc Phiên dịch? | 번역 또는 통역?