

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Sitting/Acting as (if applicable) Policy Session Worksheet

Presentation Date: February 11, 2020 **Approx. Start Time:** 2:30 **Approx. Length:** 30 Min

Presentation Title: Application Fees for Outdoor Mass Gatherings

Department: County Counsel

Presenters: Stephen L. Madkour

Other Invitees: DTD Planning

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Approval of a new fee to Appendix A of the County Code for applications for outdoor mass gatherings. No other changes to the County Code are proposed.

EXECUTIVE SUMMARY:

Currently the County does not have an application fee schedule for outdoor mass gathering applications. State law allows for an application fee. The statute, ORS 433.750(6), authorizes a fee that "may not exceed the greater of \$5,000 or \$2 per anticipated attendee of the gathering." County staff recommends that the Board establish an application fee. An application fee is intended to cover the costs in county staff time associated with reviewing outdoor mass gathering application materials. No other changes to the county code are proposed.

Existing state law establishes a review process for counties outdoor mass gathering applications. Those review criteria are fairly extensive and when presented would impose a relatively significant time commitment from county staff to review. Under the statute, County staff would review an application for an outdoor mass gathering for the following:

"compliance with or the ability to comply with the health and safety rules governing outdoor mass gatherings to be regulated according to the anticipated crowd and adopted by the Oregon Health Authority. ¹The application must include all of the following:

- (a) Name and address of the applicant.
- (b) Legal description of the place of the proposed gathering.
- (c) Date of the proposed gathering.
- (d) Estimated attendance at the proposed gathering.
- (e) Nature of the proposed gathering.
- (f) Such other appropriate information as the county may require in order to ensure

compliance with rules of the authority.

(2) Notice of the application must be sent by the county to the county sheriff or county chief law enforcement officer, the local health officer and the chief of the fire district in which the gathering is to be held.

¹ See OAR Chapter 333 Division 39 - Regulations Governing Health and Safety at Outdoor Mass Gatherings

(3) Each officer receiving notice of the application under subsection (2) of this section may comment in writing to the county not later than the hearing date. The comment may include recommendations related to the official functions of the officer as to granting the permit and any recommended conditions that should be imposed.

(4) The county shall hold a public hearing on the issue of compliance with this section. Notice of the time and place of the hearing including a general explanation of the matter to be considered must be published at least 10 calendar days before the hearing in a newspaper of general circulation in the county or, if there is none, it must be posted in at least three public places in the county.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

What is the cost? \$ There would be costs in county staff time associated with receiving and reviewing applications for outdoor mass gatherings. It is expected that any internal costs would be offset by the proposed application fee.

What is the funding source? The funding source would be the application fee paid by applicants.

STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department's Strategic Business Plan goals?
This proposal is not department specific but does align with the county's objective of being good stewards of the public's dollars and this proposed fee is intended to be a cost recovery mechanism to allocate costs back to the department.
- How does this item align with the County's Performance Clackamas goals?
Setting an application fee for outdoor mass gatherings will ensure that such events comply with state law and is aligned with the following goals:
Ensure Safe, Healthy and Secure Communities
Building public trust through good government

LEGAL/POLICY REQUIREMENTS:

State law defines an outdoor mass gathering as follows: "Outdoor mass gathering,' unless otherwise defined by county ordinance, means an actual or reasonably anticipated assembly of more than 3,000 persons which is held primarily in open spaces and not in any permanent structure and within any three-month period is expected to continue for more than 24 hours and not more than 120 hours, excluding hours required for ingress to and egress from a gathering that is located on lands zoned for exclusive farm use that are 60 miles or farther from the nearest interstate highway." ORS 433.735(2).

A "Permanent structure" is further defined in state law to include "a stadium, an arena, an auditorium, a coliseum, a fairgrounds or other similar established places for assemblies." ORS 433.735(3).

The County does not regulate outdoor mass gatherings. The proposed application fee would be the county's sole locally imposed regulation that pertains to outdoor mass gatherings. The County would rely on existing state law pertaining to outdoor mass gatherings.

The County does not have a mass gathering application fee in Appendix A of the County Code. Counsel recommends that the County approve a fee for outdoor mass gathering applications at an amount authorized by state statute. At this time there is no proposal to adopt any other local regulatory oversight for outdoor mass gathering events.

PUBLIC/GOVERNMENTAL PARTICIPATION: The Board held a public hearing on this proposed fee on January 23, 2020.

OPTIONS:

1. Adopt a fee that "may not exceed the greater of \$5,000 or \$2 per anticipated attendee of the gathering."
2. Adopt a fee other than the maximum set forth in state law;
3. Adopt a fee and a fee waiver provision; or
4. Not adopt a fee.

RECOMMENDATION:

County staff respectfully requests that the Board approve Option 1 - Adopt a fee that "may not exceed the greater of \$5,000 or \$2 per anticipated attendee of the gathering" and proceed to a public hearing on the fee adoption.

ATTACHMENTS:

ORS 433.735 to 433.770 - Regulation of Outdoor Mass Gatherings

SUBMITTED BY:

Division Director/Head Approval _____
Department Director/Head Approval _____
County Administrator Approval _____



For information on this issue or copies of attachments, please contact Stephen L. Madkour,
County Counsel 503-655-8362

REGULATION OF OUTDOOR MASS GATHERINGS

433.735 Definitions for ORS 433.735 to 433.770. As used in ORS 433.735 to 433.770 and 433.990 (7):

(1) “Organizer” includes any person who holds, stages or sponsors an outdoor mass gathering and the owner, lessee or possessor of the real property upon which the outdoor mass gathering is to take place.

(2) “Outdoor mass gathering,” unless otherwise defined by county ordinance, means an actual or reasonably anticipated assembly of more than 3,000 persons which is held primarily in open spaces and not in any permanent structure and within any three-month period is expected to continue for more than 24 hours and not more than 120 hours, excluding hours required for ingress to and egress from a gathering that is located on lands zoned for exclusive farm use that are 60 miles or farther from the nearest interstate highway.

(3) “Permanent structure” includes a stadium, an arena, an auditorium, a coliseum, a fairgrounds or other similar established places for assemblies.

(4) “Temporary structure” includes tents, trailers, chemical toilet facilities and other structures customarily erected or sited for temporary use. [1971 c.597 §1a; 1981 c.82 §3; 1985 c.758 §1; 2001 c.104 §157; 2007 c.445 §32; 2019 c.408 §2]

433.740 Policy. The Legislative Assembly finds that the uncontrolled outdoor gatherings of large groups of persons for extended periods of time have necessitated a need for the establishment of reasonable health and safety rules to regulate such outdoor mass gatherings. [1971 c.597 §1]

433.745 Outdoor mass gathering without permit prohibited. (1) An organizer may not hold an outdoor mass gathering or allow an outdoor mass gathering to be held on real property that the organizer owns, leases or possesses unless the governing body of the county in which the outdoor mass gathering is to take place issues the organizer a permit to hold the outdoor mass gathering.

(2) A permit issued under this section does not entitle the organizer to make any permanent development to or on the real property. Any permanent development on the real property must be made in accordance with any applicable state or local land use law. [1971 c.597 §2; 1985 c.758 §3; 2015 c.428 §1]

433.750 Application for outdoor mass gathering for which county decides land use permit is not required; criteria; procedure; fee. (1) Unless a county decides that a land use permit is required, the county in which an outdoor mass gathering is to take place shall issue a permit upon application if the organizer demonstrates compliance with or the ability to comply with the health and safety rules governing outdoor mass gatherings to be regulated according to the anticipated crowd and adopted by the Oregon Health Authority. The application must include all of the following:

(a) Name and address of the applicant.

(b) Legal description of the place of the proposed gathering.

(c) Date of the proposed gathering.

(d) Estimated attendance at the proposed gathering.

(e) Nature of the proposed gathering.

(f) Such other appropriate information as the county may require in order to ensure compliance with rules of the authority.

(2) Notice of the application must be sent by the county to the county sheriff or county chief law enforcement officer, the local health officer and the chief of the fire district in which the gathering is to be held.

(3) Each officer receiving notice of the application under subsection (2) of this section may comment in writing to the county not later than the hearing date. The comment may include recommendations related to the official functions of the officer as to granting the permit and any recommended conditions that should be imposed.

(4) The county shall hold a public hearing on the issue of compliance with this section. Notice of the time and place of the hearing including a general explanation of the matter to be considered must be published at least 10 calendar days before the hearing in a newspaper of general circulation in the county or, if there is none, it must be posted in at least three public places in the county.

(5) Except as provided in ORS 433.763, a decision of a county on an application for a permit to hold an outdoor mass gathering may be appealed to a circuit court for the county as provided in ORS 34.020 to 34.100.

(6) A county may charge permit applicants a fee reasonably calculated to reimburse the county for its reasonable and necessary costs in receiving, processing and reviewing applications for permits to hold outdoor mass gatherings. However, a fee authorized by this subsection may not exceed the greater of \$5,000 or \$2 per anticipated attendee of the gathering. [1971 c.597 §3; 1985 c.758 §4; 1993 c.779 §1; 2009 c.595 §681; 2015 c.736 §83; 2019 c.408 §3]

433.755 Additional information required before permit issued; liability of permit holder; casualty insurance; county as additional insured. (1) In reviewing an application for a permit to hold an outdoor mass gathering, the county governing body may require such plans, specifications and reports as it may deem necessary for proper review and it may request and shall receive from all public officers, departments and agencies of the state and its political subdivisions such cooperation and assistance as it may deem necessary. If the county governing body determines upon examination of the permit application that the outdoor mass gathering creates a potential for injury to persons or property, the county governing body may require organizers to obtain an insurance policy in an amount commensurate with the risk, but not exceeding the limitation for liability of a local public body under ORS 30.272 (3). The policy of casualty insurance shall provide coverage against liability for death, injury or disability of any human or for damage to property arising out of the outdoor mass gathering. The county shall be named as an additional insured under the policy.

(2) In the event of failure to remove all debris or residue and repair any damage to personal or real property arising out of the outdoor mass gathering within 72 hours after its termination and to remove any temporary structures used at the outdoor mass gathering within three weeks after its termination, the county governing body may file suit against the organizer for financial settlement as is needed to remove debris, residue or temporary structures and to repair such damage to real or personal property of persons not attending the outdoor mass gathering. The organizer shall be wholly responsible for payment of any fines imposed under ORS 433.990 (7). [1971 c.597 §4; 1985 c.758 §5; 1993 c.779 §2; 2001 c.104 §158; 2007 c.445 §33; 2019 c.340 §1]

433.760 Rulemaking authority. Notwithstanding any other provisions of law, the Oregon Health Authority shall, in accordance with the provisions of ORS chapter 183, make rules regulated according to anticipated crowds with respect to health and safety at outdoor mass gatherings which provide for:

- (1) Adequate water supply, drainage and sewerage facilities;
- (2) Adequate toilet facilities;
- (3) Adequate refuse storage and disposal facilities;
- (4) Adequate food and sanitary food service, if supplied;
- (5) Adequate emergency medical facilities and communication systems;
- (6) Adequate fire protection; and
- (7) Adequate security personnel and traffic control. [1971 c.597 §5; 1981 c.82 §4; 1985 c.758 §8; 2009 c.595 §682]

433.763 Application for outdoor mass gathering for which county decides land use permit is required; criteria; procedure. (1) An application for an outdoor mass gathering for which the county decides that a land use permit is required, or for any gathering of more than 3,000 persons any part of which is held outdoors and which continues or can reasonably be expected to continue for a period exceeding that allowable for an outdoor mass gathering, shall be allowed by a county if:

(a) The applicant has complied or can comply with the requirements for an outdoor mass gathering permit set out in ORS 433.750 and 433.755;

(b) Permits required by the applicable land use regulations have been granted; and

(c) The proposed gathering:

(A) Is compatible with existing land uses; and

(B) Does not materially alter the stability of the overall land use pattern of the area.

(2) A hearings officer, county planning commission or other person or body that the county designates may make findings and approve or deny an application for a permit under this section. A decision granting or denying a permit under this section may be appealed to the county governing body as provided in ORS 215.402 to 215.438.

(3) Notwithstanding subsection (1) of this section, a county may not require a permit under ORS 433.750 for events otherwise permitted under ORS 215.213 (11), 215.283 (4), 215.449, 215.451 or 215.452. [1985 c.758 §7;

2019 c.408 §1a]

433.765 Right of county to enact ordinances or regulations. ORS 433.735 to 433.770 and 433.990 (7) and any rules adopted under ORS 433.735 to 433.770 and 433.990 (7) do not preempt the right of a county to enact ordinances or regulations not inconsistent with ORS 433.735 to 433.770 and 433.990 (7) or any rules adopted under ORS 433.735 to 433.770 and 433.990 (7), except that a county may not, under ORS 433.750 or 433.763, require a land use permit for a gathering of 3,000 people or fewer, any part of which is held outdoors. [1971 c.597 §6; 2001 c.104 §159; 2007 c.445 §34; 2019 c.408 §5]

433.767 Application to gatherings defined by county ordinance. ORS 433.735 to 433.770 and 433.990 (7) apply to outdoor mass gatherings defined by county ordinance as well as to those defined by ORS 433.735. [1981 c.82 §2; 2001 c.104 §160; 2007 c.445 §35; 2019 c.408 §4]

433.770 Enforcement. (1) In addition to and not in lieu of the maintenance of other actions for any violation of ORS 433.745, the district attorney for the county in which an outdoor mass gathering is to be held may maintain an action in any court of general equitable jurisdiction to prevent, restrain or enjoin any violation of ORS 433.745.

(2) Cases filed under the provisions of this section or an appeal therefrom shall be given preference on the docket over all other civil cases except those given equal preference by statute. [1971 c.597 §6a; 1979 c.284 §143]