

Fall 2023 Biannual Code Amendments

Community Development

September 29, 2023 Draft

Periodically staff “batch” minor amendments to the Clark County Code to correct scrivener’s errors, update references, clarify standards, and to make some minor policy changes. These batches of code changes are commonly known as “Biannual Code Amendments”.

Changes are highlighted in yellow. Language proposed to be deleted is ~~struck-through~~. Language proposed to be added is double-underlined.

Title 40 Updates

These updates are required to be heard by the Planning Commission for recommendation to the Council and are subject to 60-day notification to the Department of Commerce prior to adoption.

SCRIVENER’S ERRORS AND MINOR CHANGES

1. Update for Consistency With State Law.

40.100.070. Definitions: Adult Family Home

“Adult family home” means a single-family dwelling or duplex licensed as such by the state of Washington, housing a maximum of six (6) adult residents, except when up to two (2) additional residents are authorized pursuant to RCW 70.128.066, where staff assumes the responsibility for the safety and well-being of the residents due to their age or condition. Care is provided by staff and may include provision of meals, laundry, and assistance with activities of daily living, and may include nursing care. Staff may or may not reside in the same dwelling.

Rationale: RCW 70.128.066 allows for up to two additional residents under specific circumstances.

2. Update for Consistency with Federal FCC Rules

40.260.250.E.1

1. Collocation. Wireless communications facilities shall be collocated to the greatest extent possible to minimize the total number of support towers throughout the county. To this end, the following requirements shall apply:

- a. Proposals for collocation of new transmission equipment on an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station shall not be denied.

- ab. The county shall deny an application for a new support tower if the applicant does not demonstrate a good faith effort to collocate on an existing facility. Applicants for new support towers shall demonstrate to the responsible official that collocation is infeasible by showing that at least one (1) of the following conditions exists:

- (1) No existing towers or structures are located within the applicant's projected or planned service area for their facility; or
- (2) According to a qualified RF specialist, existing towers or structures cannot be reconfigured or modified to achieve sufficient height; or
- (3) According to a qualified RF specialist, collocation would result in electronic, electromagnetic, obstruction or other radio frequency interference with existing or proposed installations; or
- (4) According to a structural engineer, existing towers or structures do not meet minimum structural specifications or structural integrity for adequate and effective operations to meet service objectives; or
- (5) Collocation would cause a nonconformance situation (e.g., exceeding height restrictions); or
- (6) A reasonable financial arrangement between the applicant and the owner(s) of existing facilities could not be reached.

bc. Carriers who collocate on existing towers or structures shall be allowed to construct or install accessory equipment and shelters as necessary for facility operation. Such development shall be subject to regulations under the International Building Code (IBC), applicable development standards of the underlying zone, and applicable development standards pursuant to this section (e.g., lighting, security, signage).

ed. Collocated WCFs within one (1) mile of any public safety building such as police or fire station shall be reviewed with Clark Regional Emergency Services Agency for possible interference with public safety communications.

Rationale: Federal Communications Commission rules state that local government cannot deny any "eligible" facilities request for modification of an existing wireless tower. "eligible" in this context means collocation of new transmission, equipment, removal of transmission equipment, or replacement of transmission equipment. CCC 40.260.250 do not regulated the latter two.

3. Add Comma

40.350.030.B.4.b.3

- b. All new, modified or extended driveways longer than three hundred (300) feet shall be provided with an approved turnaround at the terminus. There shall also be approved turnouts constructed such that the maximum distance from turnout to turnout, or from turnout to turnarounds, does not exceed five hundred (500) feet. Turnouts shall comply with the Standard Details Manual. Construction of roads and driveways within the wild land urban interface/intermix area shall conform to Section [15.13.030](#).

1 **4. Remove Reviewer Comment**

2
3 **40.445.030.C.1.b(5)(a)**

- 4
5 (a) Compensatory mitigation is completed in advance of the impact. Ratios shall be reduced from
6 the standard ratios in Table 40.445.040-1 based on the performance of the mitigation at the
7 time of application; or **2 And?**

8 **5. Correct Spelling and Wetland Rating Score Threshold**

9
10 **40.445.030.C.2.a(3)(b)**

- 11
12 (b) For wetlands with a moderate or high habitat function (**lessmore** than **sixfive (65)**) points on the
13 habitat section of the rating system form) a permanently protected, relatively undisturbed,
14 vegetated corridor at least 100 feet wide is provided that meets one or more of the following
15 criteria:

16 **Rationale:** "Moderate" and "High" habitat function requires a habitat score of 6 or more points on the
17 wetland rating form. The adopted code states this threshold incorrectly.

18 **6. Add Period**

19
20 **40.445.030.C.3.c(1)(e).**

- 21
22 (e) Site Specific Mitigation Actions. The responsible official may authorize other mitigation actions
23 that replace fish and wildlife habitat conservation area functions and values.

24 **7. Add Missing Word**

25
26 **40.445.080.K.2**

- 27
28 2. Compensatory mitigation requirements may be increased by the responsible official when all or
29 some portion of the unauthorized activity cannot be permitted under this chapter or functions
30 and values cannot **be** restored in place.

31 **8. Modify Type II-A Rename "Neighborhood" Meeting and Modify Notification Requirements**

32
33 **40.510.025.C**

- 34
35 2. **NeighborhoodCommunity** Meeting.

- 36
37 a. The applicant must hold a **neighborhoodcommunity** meeting within the ninety (90) day period
38 prior to the submittal of an application for a conditional use, planned unit development, or
39 master planned development. This meeting is to exchange information on the development
40 design, and review issues and alternatives prior to the application. The meeting must be held
41 at a location within a reasonable distance of the proposed development site on a weekday
42 evening. A pre-application conference does not substitute for a **neighborhoodcommunity**
43 meeting.
44
45 b. The applicant must send out notices at least fifteen (15) days prior to the meeting to the
46 following:

(1) The Chair of the Neighborhood Associations Council of Clark County (NACCC);

(2) The county-recognized official representative of the Neighborhood Association, if one exists, that includes the proposed site;

(3) The county staff representative responsible for neighborhood relations; and

(4) All landowners within a radius of five hundred (500) feet of the proposed site.

(5) The mailing list used for notification shall be based on the most recent property tax assessment rolls within thirty (30) days of mailing of the Clark County Assessor. At the request of the applicant, and upon payment of an applicable fee, the county will provide the required mailing list.

3. After the neighborhood community meeting is held, the application shall be processed following the procedures in Section 40.510.020, unless a public hearing is required under Section 40.510.025(C)(5).

Rationale: The use of “neighborhood” meeting has created confusion regarding the role of the neighborhood associations in the process. The NACCC Chair and Neighborhood Program Coordinator agree that the requirement for notification to the Chair is unnecessary.

9. Update for consistency with SEPA Rules.

40.520.040.B.2.f

- f. Above-ground storage tanks over two thousand (2,000) gallons and underground tanks larger than ten thousand (10,000) gallons in size. SEPA review is required for underground tanks over ten thousand (10,000) gallons that exceed the thresholds in WAC 197-11-800(2)(h). CARA provisions in Sections 40.410.010(B) and 40.410.020(A) may also apply.

Rationale: WAC 197-11-800(2)(h) currently exempts any storage tank below 10,000 gallons of total capacity. This revision ensures consistency even if the WAC threshold is changed.

REFERENCE UPDATES AND “CLEAN-UPS” FROM OTHER CODE CHANGES

1. Correct specific code changes that were made in error at the last biannual code update and revert back to the original code language.

40.350.030.B.8(e)

- e. New Urban and Rural Residential Driveways. New urban and rural residential driveways accessing roads with a speed limit of over twenty-five (25) mph are subject to Table 40.350.030-8.

40.550.010.B.1.b

- b(2) Alternative pavement design, roadway cross-section, roadway geometry or construction material changes for local access roads. Alternate hammerhead turnaround designs on private driveways and roadways.

b(10) Alternate hammerhead turnaround designs on private driveways and roadways.

40.550.010.B.2.b(2)

(2) Alternative pavement design, roadway cross-section, roadway geometry or construction material changes for collector and higher classification of roadways.

Rationale: Codes changes in their final form were not specifically reviewed by council and can be considered scrivener's errors as they were changes inadvertently made during the update process. The language "added" in these code sections was accidentally stricken from the last code update.

CLARIFICATIONS

1. Clarify Zoning Setback Exceptions for Fences and Retaining Walls

40.200.070.A.9

9. Fences and retaining walls, except as specified in 40.320.010.F may be located in any setback.

Rationale: There is no exception for fences and retaining walls in 40.200.070. 40.320.010.F implies that fences and retaining walls that are not prohibited in setbacks by this section can be located within a setback, however, the definition of "setback" in 40.100.070 refers to "applicable structures" and specifically states that exceptions are in 40.200.070. The County has never enforced setbacks for fences and retaining walls except as specified in 40.320.010.F. This amendment makes it clear that setbacks only apply to fences and retaining walls as specified in 40.320.010.F.

2. Clarify Applicability of Deferral of Frontage Improvements in the Low Density Residential Districts

40.350.030.B.5.c(2)

(2) The development approval authority may defer frontage road improvements, in whole or in part, where the current development proposal is for multiple lots in the R1-5, R1-6, R1-7.5, R1-10 or R1-20 zoning districts larger than one (1) acre and a covenant running with the land is recorded requiring such improvements to be undertaken when redivision is proposed at an urban density.

Rationale: The intent of the code was to provide for deferral of frontage improvements when an urban land division contained multiple one acre lots and was not intended for developments to strategically create one large lot within the urban zone to circumvent required frontage improvements while all other proposed lots within the development met the respective urban density.

2. Clarify Site Plan Exemption for Duplexes and Triplexes

40.520.040.B.4.b

b A duplex or triplex and modifications to it on a lot created and approved for where such residential uses s are allowed;

Rationale: The ability to develop duplexes and triplexes on a residential lot are dictated by the Zoning District standards and do not require an applicant to declare and request approval for such uses at

1 platting. This revision clarifies that duplexes and triplexes are exempt from site plan wherever zoning
2 allows them.

3 **3. Clarify how Construction Plan Approval for Subdivision, Short Plat and Site Plans is Provided.**

4
5 **40.520.040.F.1.c. Final Site Plan/Final Construction Plan Review**

- 6
7 c. Construction Plans. Where improvements are required, plans for such improvements shall be
8 submitted to the County Engineer who shall review them for conformance with conditions of
9 preliminary site plan approval and other adopted county standards as of the date of preliminary
10 site plan approval. Approval shall be given by ~~the signature of~~ the County Engineer on the
11 construction plans. Improvements shall be designed by or under the direct supervision of a
12 licensed engineer where required by statute (Chapters [18.08](#), [18.43](#), and [18.96](#) RCW). The
13 licensed engineer shall certify same by seal and signature. All construction plans shall comply with
14 the provisions of the Clark County Code.

15
16 **40.520.040.F.3.c. Construction Plan and Final Site Plan Review Procedure**

- 17
18 c. The construction plan approval shall be given by ~~the signature of~~ the County Engineer on the
19 improvement plans.

20
21 **40.540.080.A. Construction of Required Improvements**

22
23 **A. Construction Plans.**

24
25 Where improvements are required, plans for such improvements shall be submitted to the County
26 Engineer, who shall review them for conformance with conditions of preliminary plat approval and
27 other adopted county standards as of the date of preliminary plat approval. Approval shall be
28 given by ~~the signature of~~ the County Engineer on the improvement plans. Improvements shall be
29 designed by or under the direct supervision of a licensed engineer where required by statute
30 (Chapters 18.08, 18.43, and 18.96 RCW). The licensed engineer shall certify same by seal and
31 signature. All construction plans shall comply with the provisions of Subtitle 40.3, and in addition
32 to the above certification shall contain the following:

33
34 **40.540.080.B. Construction Prior to Final Plat Approval Bonds**

- 35
36 B Construction shall not start prior to both the construction plans having been ~~approved signed~~ by
37 the County Engineer, and the final plat survey computations having been approved by the County
38 Engineer; except that rough grading operations may proceed before the plans are approved by the
39 County Engineer under the following conditions:

40
41 **Rationale:** With the implementation of Avolve ProjectDox, construction plans are now reviewed and
42 approved electronically, rather than producing a hard copy. After all departments have review and
43 approved their respective improvements, the construction plans are routed to the County engineer
44 for approval. An approval stamp, rather than the County Engineer's signature, would be placed on the
45 construction plans.

46 **4. Clarify Responsibility for Payment of Recoding Fees**

47
48 **40.610.045.D.1**

1. A covenant to Clark County promising to pay the deferred impact as a lien to be recorded with the Clark County Auditor against the property involved. The covenant shall be signed by all owners of the property, with signatures acknowledged, as required for a deed, and will encumber the property until the obligation is satisfied. The covenant will bind all successors in interest to the property owners, and will be subordinate to only one (1) mortgage for property purchase and dwelling construction. No fee will be charged for the cost of recording documents as to the applicant will be responsible to record the covenant, at their expense, and provide a recorded copy of the covenant before the applicant may obtain a building permit.

Rationale: The intent is to preclude the responsible official from charging service fees to record documents for the applicant and to make the applicant responsible for recording and associated Auditor's fees. As revised, the responsible official is precluded from charging a service fee for recording pursuant to RCW 82.02.020.

MINOR POLICY ITEMS

1. Change Requested by Ecology for Final Approval of the Shoreline Master Program Amendment Adopted on March 7, 2023.

40.100.070. Definitions: Isolated Wetlands

"Isolated wetlands" means those wetlands which are not within or contiguous with a Fish and Wildlife Habitat Conservation Area as defined in CCC 40.445.020.C or shoreline jurisdiction as defined in CCC 40.460.210.A and are separated from other wetlands by a distance greater than the largest wetland buffers required under Section 40.445.020.B.5 for all adjacent wetlands.

Rationale: Ecology does not support application of the exemptions allowed for small wetlands under the CAO within in the Shoreline Management Area and has requested this change be made prior to granting final authorization of the Shoreline Amendment adopted by Council on March 7, 2023.

2. Amend RADU Size and Access Standards.

40.260.022.C.6

6 Allowable Size.

- a. Subject to Section 40.260.022(C)(6)(c) and except as allowed under Section 40.260.022(C)(6)(b). the total gross floor area of an RADU excluding basements shall not exceed fifteen hundred (1,500) square feet or forty percent (40%) of the area of the primary dwelling's living area, whichever is less. Total floor area of an RADU means the total interior area, including non-habitable space but excluding garages.
- b. The total floor area of the dwelling's basement may be used as the RADU, provided there is a separate exterior entrance, and the basement area does not exceed the size of the primary dwelling unit.
- c. The living area of the primary dwelling unit excludes uninhabitable floor area, garage, and outbuilding square footage, whether attached or detached. If the primary dwelling unit is smaller than seven hundred fifty (750) square feet gross floor area, the RADU may be up to

three hundred (300) square feet even though this exceeds forty percent (40%) of the primary dwelling unit's living area. The minimum total floor area of an RADU shall not be less than one hundred fifty (150) square feet.

40.260.022.D.1

1. New entrances for a RADU created by internal conversion or by an addition to an existing primary dwelling shall be located on the side or rear of the primary dwelling RADU unless it can be demonstrated that no feasible alternative exists.

Rationale: The intent of these changes is to maintain consistency with revised standards for urban ADUs proposed under the Housing Options Action Plan and to clarify what is included in the floor area of the RADU and where external access to the RADU is to be located.

3. Increase Public Notice Radius Requirements

40.510.020.E.2.a(3). Type II Process

- (3) Owners of property within a radius of threefive hundred (3500) feet of the property that is the subject of the application if the subject property is inside the urban growth boundary or to owners or property within a radius of five hundred one thousand (51000) feet of the property if the subject property is outside the urban growth boundary;

40.510.025.C.2.b(4). Type II-A Neighborhood Meeting

- (4) All landowners within a radius of five hundred one thousand (51000) feet of the proposed site.

40.510.030.E.3.a(3). Type III Process

- (3) Owners of property within a radius of threefive hundred (3500) feet of the property that is the subject of the application if the subject property is inside the urban growth boundary or to owners or property within a radius of five hundred one thousand (51000) feet of the property if the subject property is outside the urban growth boundary;

40.510.040.E.1.b(4). Type IV Process

- (4) Owners of record of property and residents within threefive hundred (3500) feet of the subject property if the subject property is inside the urban growth boundary, or to owners of property and residents within five hundred one thousand (51000) feet of the subject property if the subject property is outside the urban growth boundary.

Rationale: A common theme in public comments on Type II and III applications is that many neighbors do not receive sufficient public notice of the application. This revision increases the radius for such notifications.

4 Pre-Application Conference for Major Home Businesses

40.510.020.A.2.a(3). Exceptions From the Requirement for a Pre-application Conference

- (3) Chapter 40.260, special uses (unless specified as a Major Home Business or a Type III review)

1 **Rationale:** These applications are often complex, particularly when the applicant has initiated
2 business activities on a residential lot without prior review or approval. Many proposed plans
3 substantially exceed limitations set forth in the criteria and trigger stormwater engineering
4 requirements. A pre-application conference would provide for an opportunity discuss these
5 complexities prior to submittal of an application.

6 **5 Modify Type II-A Neighborhood Meeting Venue Requirements**

7
8 **40.510.025.C.2.a**

- 9
10 a The applicant must hold a neighborhoodcommunity meeting within the ninety (90) day period
11 prior to the submittal of an application for a conditional use, planned unit development, or
12 master planned development. This meeting is to exchange information on the development
13 design, and review issues and alternatives prior to the application. The meeting must be held on a
14 weekday evening at a location within a reasonable distance of the proposed development site
15 and/or a widely available virtual meeting platform on a weekday evening. A pre-application
16 conference does not substitute for a neighborhood meeting.

17
18 **Rationale:** The County has been allowing these meetings to be held virtually since the COVID
19 pandemic. Rationale for thee meeting name change is addressed on page 4, Line 20.

Other Updates

These updates are required to be heard only by the Council.

SCRIVENER'S ERRORS AND MINOR CHANGES

1. Fire Code Security Key Box Requirements.

15.12.907.2.2

2. Provided with a security key box in accordance with Section 506.1 and commonly keyed as approved by the appropriate fire district chief. ~~Such security key boxes shall contain keys to the building and the fire alarm control panel and shall have the cover of the box connected to a separate zone on the fire alarm panel such that the alarm is activated at any time the cover of the key box is opened.~~

Rationale: These standards are not consistent with national and state fire codes and the Fire Marshall has determined that they are unnecessary.

MINOR POLICY ITEMS

1. Residential Building Code Exception for "Agricultural" Structures

14.06.101.2.6

- ~~6. Agricultural structure, defined as a structure designed and constructed to house farm, forestry, or winery implements, hay, grain, grapes, barrels, poultry, livestock or other horticultural or wood products. This structure may not be a place of human habitation, but can be used for occasional or seasonal processing, treating, or packaging of agricultural, forest, or winery products. Personal riding arenas not intended for use by the public are considered to meet this definition and, therefore, are outside the scope of the International Residential Code.~~

Rationale: This exception is not consistent with the State Building Code as adopted by the State Building Code Council. Structures that fit this use description, that are not otherwise exempt or excepted would be held to building code standards applicable to the stated occupancy.