



Oregon

Theodore R. Kubongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

5/14/2010

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: Polk County Plan Amendment
DLCD File Number 004-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Thursday, May 27, 2010

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Jerry Sorte, Polk County
Jon Jinings, DLCD Community Services Specialist
Katherine Daniels, DLCD Farm/Forest Specialist
Gary Fish, DLCD Regional Representative

<paa> YA/l

Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
 PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

In person electronic mailed

DATE STAMP

DEPT OF
MAY 07 2010
LAND CONSERVATION AND DEVELOPMENT
 For DLCD Use Only

Jurisdiction: **Polk County**

Local file number: **LA 09-03**

Date of Adoption: **5/5/2010**

Date Mailed: **5/6/2010**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **8/25/2009**

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

The adopted amendments update Polk County Zoning Ordinance (PCZO) Chapters 110 and 111, and the Polk County Subdivision and Partition Ordinance in order to be consistent with recent changes to state law. These amendments also repeal PCZO Chapter 179; the Homestead Exception chapter, in order to be consistent with state law.

Does the Adoption differ from proposal? **Yes**, Please explain below:

The text of the amendments were modified through the County review process.

Plan Map Changed from: **N/A**

to: **N/A**

Zone Map Changed from: **N/A**

to: **N/A**

Location: **The adopted amendments apply countywide**

Acres Involved: **0**

Specify Density: Previous: **N/A**

New: **N/A**

Applicable statewide planning goals:

1 **2** **3** **4** **5** **6** **7** **8** **9** **10** **11** **12** **13** **14** **15** **16** **17** **18** **19**

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: Jerry Sorte

Address: 850 Main Street

City: Dallas

Zip: 97338-

Phone: (503) 623-9237 Extension:

Fax Number: 503-623-6009

E-mail Address: sorte.jerry@co.polk.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This form must be mailed to DLCD within 5 working days after the final decision
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO Complete Copies (documents and maps) of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: webserver.lcd.state.or.us. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing mara.ulloa@state.or.us.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. Please print on 8-1/2x11 green paper only. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to mara.ulloa@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

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4
5 **BEFORE THE BOARD OF COMMISSIONERS FOR**
6 **POLK COUNTY, OREGON**
7

8 In the matter of Legislative)
9 Amendment LA 09-03 to amend the)
10 Polk County Zoning Ordinance)
11 And the Polk County Subdivision and)
12 Partition Ordinance in order to be)
13 Consistent with State law)
14

15 **ORDINANCE NO. 10-04**
16

17 **WHEREAS**, changes to state law have invalidated sections of the Polk County Zoning
18 Ordinance and the Polk County Subdivision and Partition Ordinance and created new standards for
19 certain types of land use applications; and
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21 **WHEREAS**, on August 25, 2009 the Board of Commissioners initiated a legislative amendment
22 process to update the Polk County Zoning Ordinance and Polk County Subdivision and Partition
23 Ordinance to be consistent with state law; and
24

25 **WHEREAS**, the Planning Commission conducted a duly noticed public hearing on March 30,
26 2010 to receive comments and testimony. The Planning Commission deliberated at the March 30, 2010
27 meeting and forwarded a recommendation to the Board of Commissioners supporting the updates to the
28 Polk County Zoning Ordinance and the Polk County Subdivision and Partition Ordinance; and
29

30 **WHEREAS**, the Board of Commissioners conducted a duly noticed public hearing on April 21,
31 2010, and provided an opportunity for the submission of testimony and evidence. The Board of
32 Commissioners deliberated at the April 21, 2010 meeting and unanimously approved Legislative
33 Amendment 09-03 as recommended by the Planning Commission; now, therefore:
34

35 **THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:**
36

37 Sec. 1. That Polk County adopts the findings in favor of the amendments to the Polk County
38 Zoning Ordinance and Polk County Subdivision and Partition Ordinance provided in the Staff Report
39 section of the Board of Commissioner's Memorandum dated April 14, 2010, as shown on Exhibit A.
40

41 Sec. 2. That Polk County amends Polk County Zoning Ordinance Chapter 110, as shown on
42 Exhibit B, and Chapter 111, as shown on Exhibit C.
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44 Sec. 3. That Polk County amends the Polk County Subdivision and Partition Ordinance, Chapter
45 91, as shown on Exhibit D.
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48 Sec. 4. That Polk County repeals Polk County Zoning Ordinance Chapter 179; Homestead
49 Exception.
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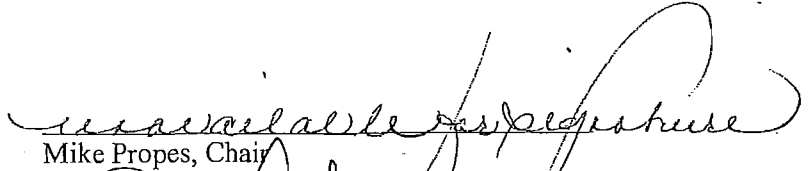
51 Sec. 5. That Polk County determines that an emergency related to the economic welfare of the
52 citizens of Polk County is declared and this ordinance is effective immediately upon passage.

100699

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Dated this 5th day of May 2010, at Dallas, Oregon.

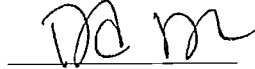
POLK COUNTY BOARD OF COMMISSIONERS


Mike Propes, Chair


Ron Dodge, Commissioner


Tom Ritchey, Commissioner

Approved as to Form:


David Doyle
County Counsel

First Reading: _____

Second Reading: _____

Recording Secretary: _____

10-700

Staff report section of the Board of Commissioners Memorandum for Legislative Amendment 09-03 dated April 14, 2010:

I. BACKGROUND

This legislative amendment was initiated in order to consider proposed updates to Chapters 110, 111, and 179 of the PCZO and Chapter 91, the PCSO. These updates are intended to implement recent changes to state law, and include changes in definitions to several terms, procedural updates, changes to the criteria for recognizing improperly formed parcels, and changes to the property line adjustment criteria for properties in resource zones. The proposed updates are included as Attachments A, B, and C. These updates would also include repealing PCZO Chapter 179; Homestead Exception, which was invalidated by state law in 1993.

ORS 197.646 (1) and (3) require that when new land use regulations are adopted in ORS, counties must adopt amendments to their local code to implement the changes to state law. Until those amendments to the county's local code are adopted, the county must apply the ORS changes directly to land use applications. Currently the Planning Division applies multiple updated sections of ORS directly to land use applications. This situation adds difficulty to filing an application, because it requires applicants to address both Polk County criteria and state criteria. In some instances the new requirements of state law are more restrictive than the PCZO or PCSO. In other instances Polk County's requirements are more restrictive than state law. Where Polk County requirements and ORS conflict, the County is required to apply the more restrictive of the two standards.

The amendments proposed by Staff are detailed in Attachments A, B, and C to this memo. Those amendments are summarized as follows:

PCZO Chapter 110; General Provisions and Definitions:

- ◇ Updates to the definition of "limited land use decision." This change would implement ORS 197.015(12).
- ◇ The definition of "partition land" and "property line adjustment" would be modified so that they make reference to and have the same definitions of those terms in the PCSO. This would reduce the duplicity of definitions for these terms.
- ◇ Deletion of the definition for "lot line adjustment." A "lot line adjustment" is specifically a property line adjustment between lots. The PCZO and PCSO predominately use the more general term "property line adjustment," and there are no standards exclusive to property line adjustment between lots.

PCZO Chapter 111; Administration and Procedures:

- ◇ Clarification to the process for deeming an application incomplete and what must be submitted by an applicant to complete the application. These changes would implement ORS 215.427(2).
- ◇ Addition of a standard stating that if an application remains incomplete for more than 180 days, the application will be void. This change would implement ORS 215.427(4).
- ◇ An increase from 120 to 150 days in the time allotted to the County to process and make a final decision on a land use decision on those properties outside of an urban growth boundary and that are not for mineral aggregate extraction. This change would implement ORS 215.427(1).
- ◇ Specification that the 120 or 150 day deadline for the County to process and make a final decision on a land use decision can be extended by the applicant, but only for a specific amount of time, not to exceed 215 days total. This change would implement ORS 215.427(5).
- ◇ Clarification that a person has 12 rather than 10 days from the date of mailing of a land use decision to appeal the decision to the Board of Commissioners. This change would implement ORS 215.416(11)(a)(C).
- ◇ The term "lot line adjustment" would be replaced with the more inclusive term: "property line adjustment."

PCZO Chapter 179; Homestead Exception.

- ◇ This entire chapter would be repealed to reflect changes to state law implemented by HB 3661 (1993).

PCSO (Chapter 91):

- ◇ Updates to the definition of "partition plat," "partition land," and "property line adjustment." These changes would implement ORS 92.010(8), (9), and (12).
- ◇ Clarification that a lawfully created parcel includes those parcels created by dividing land as a result of a lien foreclosure or foreclosure of a recorded contract for the sale of real property. These changes would implement ORS 92.010(9).
- ◇ New standards for recognizing a property that was improperly formed. These changes would implement changes in ORS 92.176 and 92.177.
- ◇ Updates to the types of property line adjustments in resource zones that are excluded from the land use process. These changes would accommodate the new restrictions of ORS 92.192.
- ◇ New standards for property line adjustments where one or both of the properties are smaller than the minimum parcel size of the zone. These changes would implement ORS 92.192.
- ◇ New standards for specific property line adjustments in farm or forest zones that would have the effect of allowing an abutting vacant tract to acquire enough acreage to qualify for a dwelling. These changes would implement ORS 92.192.

Notice of the proposed amendments (DLCD Form 1) and two copies of the record were mailed to DLCD on August 25, 2009. Planning Division staff provided notification of the March 30, 2010 Planning Commission public hearing and the April 21, 2010 Board of Commissioners public hearing for file LA 09-03 to the Dallas *Itemizer-Observer* Newspaper for publication on March 10, 2010. On March 4, 2010, Planning Staff provided notice of the Planning Commission and Board of Commissioners public hearing to interested parties. Notification of this legislative proceeding has been fulfilled pursuant to Polk County Zoning Ordinance (PCZO) Section 111.370.

II. COMMENTS RECEIVED

No comments were received as of the writing of this staff report.

III. CRITERIA FOR LEGISLATIVE AMENDMENTS

A legislative amendment to the text of the Polk County Zoning Ordinance (PCZO) may be approved provided that the request is based on substantive information providing a factual basis to support the change. In amending the PCZO, Polk County shall demonstrate compliance with PCZO 115.060(A). Staff's analysis and findings are provided below:

- (A) **Compliance with Oregon Revised Statutes, and the statewide planning goals and related administrative rules. If an exception to one or more of the goals is necessary, Polk County shall adopt findings which address the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4; [PCZO 115.060(A)]**
1. A local government shall amend its acknowledged comprehensive plan, regional framework plan and land use regulations implementing either plan by a self-initiated post-acknowledgment process under ORS 197.610 to 197.625 to comply with:
 - (a) A new statutory requirement; or
 - (b) A new land use planning goal or rule requirement adopted by the Land Conservation and Development Commission. [ORS 197.646(1)]
 2. When a local government does not adopt amendments to a comprehensive plan, a regional framework plan and land use regulations implementing either plan as

required by subsection (1) of this section [ORS 197.646(1)], the new statutory, land use planning goal or rule requirements apply directly to the local government's land use decisions. The failure to adopt amendments to a comprehensive plan, a regional framework plan and land use regulations implementing either plan required by subsection (1) of this section is a basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335. [ORS 197.646(4)]

Findings: ORS 197.646 (1) and (4) require that when new land use regulations are adopted in ORS, counties must adopt amendments to their local code to implement the changes to state law. Until the county's local code is updated, the county must apply the ORS changes directly to land use applications. Over the past few years, the Oregon legislature passed and the Governor signed multiple pieces of legislation that affect the review and decision criteria for common land use applications. As such, ORS 197.646 (1) requires that certain sections of PCZO Chapter 110 and 111, and the PCSO, be updated to reflect the changes to state law. The following sections of ORS have been updated and would be implemented by the proposed amendments: ORS 92.010(8), (9), and (12); 92.176; 92.177; 92.192; 197.015(12); 215.427(2), (3)(a), (4), and (5).

The updated sections of ORS 92, 197, and 215 currently apply directly to land use applications. Where the updated sections of ORS conflict with the PCZO or PCSO, an applicant must address the more restrictive of the two requirements. The proposed amendments would implement the recent changes to ORS, and where state law is now less restrictive than the requirements of the PCZO and PCSO, the text of the PCZO and PCSO have been amended to reflect the provisions of state law.

The proposed amendments to PCSO 91.955(1) would implement ORS 92.176 and 92.177, which specify criteria for recognizing an improperly formed parcel. Proposed PCSO 91.955(2) would specify an additional method that could be used to recognize an improperly formed parcel. If a property does not comply with the criteria listed in proposed PCSO 91.955(1), the property could still become lawful if it is consolidated with another lawfully created parcel or agglomerated with sufficient land so as to meet or exceed the current minimum parcel size within the applicable zoning district through the property line adjustment process. This method to create a lawful parcel through the property line adjustment would comply with ORS 92.010(3)(a), which states:

“Lawfully established unit of land” means:

(A) A lot or parcel created pursuant to ORS 92.010 to 92.190; or

(B) Another unit of land created:

- (i) *In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations; or*
- (ii) By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations. [ORS 92.010(3)(a) – emphasis added]

Proposed PCSO 91.955(2) would allow an improperly formed parcel to be consolidated with a lawful parcel to create one lawful parcel. This consolidation would cause one parcel to become larger, so no parcel would be reduced below a minimum parcel size. The consolidation would be completed through a property lined adjustment process, so the partition criteria would not apply. Proposed PCSO 91.955(2) would also allow multiple improperly formed parcels to be consolidated into one lawful parcel, if the resultant parcel size meets or exceeds the minimum parcel size. This consolidation would also not reduce a parcel below the minimum parcel size, nor would it be considered a partition. It is the opinion of Staff that proposed PCSO 91.955(2) would benefit the public because it provides additional options to bring an improperly formed parcel into a lawful status.

The provisions of the Homestead Exception were added to Polk County Zoning Ordinance in 1977 by Ordinance 193. The Homestead Exception established specific criteria for property owners residing on operational farm units prior to the enactment of countywide zoning (July 1, 1973) to dispose of farm acreage while either retaining personal residences and surrounding homesites, or relocating on a portion of the farm acreage. If property owners could demonstrate compliance with the criteria, they

could create a small parcel that was just large enough for a home and accessory structures. The administrative rules adopted to apply HB 3661, which passed in 1993, adopted new and specific standards for non-farm dwellings. At that point, the provisions of the Homestead Exception in PCZO became less restrictive than state law and could no longer be applied by the County. Staff recommends that the Homestead Exception now be repealed.

The proposed amendments to PCZO Chapter 110 and 111 and to the PCSO would comply with the applicable provisions of ORS. An exception to the Oregon Statewide Planning Goals is not required to approve these amendments. Staff concludes that the proposed text amendments to the PCZO and PCSO would comply with this criterion.

(B) Conformance with the Comprehensive Plan (PCCP) goals, policies and intent, and any plan map amendment criteria in the plan; [PCZO 115.060(B)]

1. **[Agricultural Lands Goal 1] To preserve and protect agricultural lands within Polk County. [PCCP, Section 2, Element B, Goal 1]**
2. **[Agricultural Lands Policy 1.1] Polk County will endeavor to conserve for agriculture those areas which exhibit a predominance of agricultural soils, and an absence of nonfarm use interference and conflicts. [PCCP, Section 2, Element B, Policy 1.1]**

Findings: The Polk County Comprehensive Plan (PCCP) is implemented by the provisions in the Polk County Zoning Ordinance (PCZO) and Polk County Subdivision and Partition Ordinance (PCSO). Section 7 of the PCCP, Implementation Techniques, states: "in theory, the zoning ordinance is a legislative expression of the Comprehensive Plan and must satisfy certain standards set out by state statute." The PCCP is implemented within the bounds provided by state law. The PCCP can set goals and policies, which through implementation by the PCZO or PCSO, are more restrictive than state law. However, the provisions of the PCZO or PCSO may not be less restrictive than state law.

As discussed above, ORS 197.646 requires that Polk County update its local code to implement changes to state law. Until such changes are made, the County must implement the new provisions of state law directly. In light of the recent changes to state law, there are sections of the PCZO and PCSO that are more restrictive than state law. These are the provisions where Polk County has the option to retain the current standards that are more restrictive than state law, or remove those requirements. The amendments included as Attachments A, B, and C, would incorporate changes to state law, and remove those provisions of the PCZO and PCSO that are more restrictive than state law. PCZO 111.250(C) currently requires that final action on a land use application be taken within 120 days. ORS 215.427(1) is less restrictive than the PCZO, and sets this period at 150 days for certain applications. Staff believes that allowing 30 additional days for the County to produce a final decision on a land use application (150 days rather than the current 120 days) would continue to be in the benefit of the applicant, but ensuring timely decisions, and County staff and the public, who reviews these applications. An additional 30 days provides needed time to resolve appeals in an equitable manner and reduce the likelihood of a procedural error.

The new provisions of state law described in ORS 92.192 contains aspects that are both more and less restrictive than PCSO 91.960(3)(b) and (c). PCSO 91.960(3)(b) and (c) requires that all property line adjustments in resource zones between parcels smaller than the minimum parcel size demonstrate that one of the affected parcels will increase its resource productivity as a result of the property line adjustment. Also, the resulting configuration must not conflict with commercial farm and forest operations in the area. In summary, the new provisions in ORS 92.192 require that property line adjustments between parcels smaller than the minimum parcel size not reduce the size of a parcel that contains or is approved for a dwelling in order to allow an abutting adjacent tract to gain enough acreage to qualify for a dwelling under the "acreage standard." These provisions of ORS 92.192 are more restrictive than PCZO 91.960(3)(b) and (c) in that they require consideration of if the tract increasing in size could qualify for a dwelling, and less restrictive than the PCSO in that the standard does not require findings to address the criteria listed in PCSO 91.960(3)(b) and (c). The proposed updates to the property line adjustment criteria would incorporate the requirements listed in ORS

92.192, and remove PCSO 91.960(3)(b) and (c). This adjustment would continue to protect resource lands by reducing the likelihood that the property line adjustment process would be used to create smaller parcels around dwellings in order to qualify vacant tracts for new dwellings. Also, all property line adjustment applications, excluding those listed in PCSO 91.960(1), would still need to include evidence to demonstrate that the proposed adjustment would be consistent with the Comprehensive Plan and the intent and purpose of the zone. So, while the proposed amendments to the PCSO would no longer specifically require that adjustments between parcels in resource zones below the minimum parcel size not “conflict with commercial farm or forest operations in the area,” the Comprehensive Plan contains goals and policies that protect resource land, and property line adjustments would still need to be consistent with those objectives.

Based on the above findings, the proposed amendments to the Polk County Zoning Ordinance would comply with this criterion.

(C) That the proposed change is in the public interest and will be of general public benefit; and [PCZO 115.060(C)]

Findings: The purpose of this legislative amendment is to update the Polk County Zoning Ordinance (PCZO) and the Polk County Subdivision and Partition Ordinance (PCSO) in order to reflect changes in state law. The proposed amendments would be in the public interest because they would provide continuity between the requirements of state law and the PCZO and PCSO. Currently, the Planning Division applies certain sections of state law directly to land use applications, and does not apply the sections of the PCSO that have been invalidated by changes to state law. This situation makes it difficult for applicants and other property owners to understand what regulations apply to their property. The proposed amendments would resolve this issue by updating Polk County’s regulations so that the PCZO and PCSO are consistent with state law; thereby eliminating the need to apply state law directly. This continuity would benefit both applicants and other property owners seeking to understand their property rights.

This process also provides the opportunity for the Board of Commissioners to consider if retaining those sections of the PCZO and PCSO that are more restrictive than state law are in the public interest. As described in Section III, Subsection B above, it is Staff’s recommended making the PCZO and PCSO less restrictive where possible the requirements of state law would continue to allow the PCZO and PCSO to be consistent with the Polk County Comprehensive Plan; including the goals and policies to protect agricultural lands.

Currently, the PCSO lists specific types of property line adjustments that are not land use decisions and do not require the same review and approval as a regular property line adjustment. As described in the PCSO 91.960(1), these “mutual consent property line adjustments” may be approved where the area to be adjusted is less than 10% of the smallest affected parcel and where no property is reduced below the minimum parcel size and existing structures would continue to meet setbacks. The mutual consent process is also available in resource zones (EFU, TC, FF, and FFO) when both parcels would begin and remain above the minimum parcel size of the zone, and in all zones where the adjustment would correct a legally built structure located on or over the property line. The mutual consent process is favorable to property owners because approval is ministerial and can often be granted by a Planning staff member’s signature at the Planning counter or within a day or two. These approvals are not open to appeal.

ORS 192.92 presents new standards for certain types of property line adjustments, which before could have been reviewed as mutual consent property line adjustments under PCSO 91.960(1). Specifically, in a resource zone, ORS 192.92 prohibits those adjustments that shrink a parcel smaller than the minimum parcel size that contains a dwelling so that the parcel getting larger could then qualify for a dwelling under the acreage standard. These adjustments are prohibited even if they convey less than 10% of the smallest affected parcel. So, ORS 192.92 invalidates some mutual consent property line adjustments. Staff, however, has crafted language that would prohibit the adjustments described in ORS 192.92 from the mutual consent process while retaining the other adjustments that could previously qualify under the mutual consent process. The new language proposed by Staff causes the

mutual consent standards in PCSO 91.960(1) to be more complicated (See Attachment A). The Board of Commissioners could choose to simplify this section by removing PCSO 91.960(b) and/or (c). Removal of those sections may allow the code to be easier to administer; however, it would preclude property owners seeking property line adjustments in certain situations from the benefits of the mutual consent process.

Based on the above findings, Staff concludes that the proposed changes to the PCZO are in the public interest and of general public benefit.

(D) Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land. [PCZO 115.060(D)]

Findings: Polk County has adopted intergovernmental agreements with each of the cities that have urban growth boundaries (UGB) in Polk County. These cities are Salem, Dallas, Monmouth, Independence, and Willamina. All cities were notified of the April 21, 2010 Board of Commissioners public hearing on March 4, 2010.

The proposed amendments to the Polk County Zoning Ordinance (PCZO) and the Polk County Subdivision and Partition Ordinance (PCSO) include changes in definitions to several terms, procedural updates, changes to the criteria for recognizing improperly formed parcels, and changes to the property line adjustment criteria for properties in resource zones. These updates would also include repealing PCZO Chapter 179; Homestead Exception, which was invalidated by state law in 1993. These changes would affect the criteria for specific land use applications countywide, including within UGBs. Staff believes that the proposed amendments would be consistent with all adopted intergovernmental agreements pertinent to land in UGBs. The proposed amendments would not amend any of the requirements of those agreements.

Consequently, Staff finds that the proposed amendments comply with this criterion.

IV. CONCLUSION

Based on the findings above, Staff concludes that the proposed amendments to the Polk County Zoning Ordinance would comply with all of the applicable review and decision criteria for a legislative amendment.

CHAPTER 110

GENERAL PROVISIONS AND DEFINITIONS

110.001.	Short Title
110.005. - 110.615.	Definitions
110.620.	Application of Zoning Regulations
110.630.	Conformance and Permits Required
110.640.	Amendment of Text Only
110.650.	Savings Clause
110.660.	Repealing Conflicting Ordinances

110.001. SHORT TITLE. This ordinance shall be known as the Polk County Zoning Ordinance, hereinafter referred to as the PCZO, and may be so cited and pleaded.

DEFINITIONS

110.005. GENERAL DEFINITIONS. For the purpose of this ordinance, words used in the present tense include the future, the singular number includes the plural, the word "shall" is mandatory and not directory, the word "building" includes structures.

110.007. ACCESS. The connection of any existing or proposed road or bike facility to a county or state road; for example, a private driveway or public road, for ingress or egress to property.

[Amended by Ordinance 98-5]

110.010. ACCESSORY BUILDING. A detached, subordinate building or portion of a main building, the use of which is incidental to that of the main building or to the use of the land.

110.012. ACCESSORY TRANSPORTATION IMPROVEMENTS. Transportation improvements that are incidental to a land use to provide safe and efficient access to the use.

[Amended by Ordinance 01-10]

110.015. ACCESSORY USE. A use incidental, appropriate, and subordinate to the main use of a lot or building.

110.020. APPEARANCES OF INTERESTED PERSONS; REMONSTRANCES. Any person or persons desiring to be heard for or against the subject of the hearing may file with the governing body, Hearings Office or the Planning Commission, whichever holds the hearing, a statement in writing, or may appear and respond orally at the hearing, either in person or by authorized representative. An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal. Such issues shall be raised with sufficient specificity as to afford the hearings body, and the parties, an adequate opportunity to respond to each issue.

[Amended by Ordinance 89-17]

110.025. AIR CONTAMINANT. Any dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

110.030. AIR CONTAMINATION SOURCE. Any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property in, at, or on which such source is located, or the facility, equipment or other property by which the emission is caused or from which the emission comes.

110.040. AIRPORT. A landing area, runway or other facility designed, used, or intended to be used for the landing and taking off of aircraft, aircraft storage, hangars, and other necessary buildings and open spaces.

110.045. ALLEY. A public space or thoroughfare not more than 20 feet, but not less than 10 feet in width which has been dedicated or deeded to the public for public use providing a secondary means of access.

110.148. CHANNELIZATION. The separation or regulation of conflicting traffic movements into definite paths of travel by traffic islands or pavements markings to facilitate the safe and orderly movements of both vehicles and pedestrians. Examples include, but are not limited to, left turn refuges, right turn refuges including the construction of islands at intersections to separate traffic, and raised medians at driveways or intersections to permit only right turns. "Channelization" does not include continuous median turn lands. [Amended by Ordinance 01-10]

110.050. ALTERATION, STRUCTURAL. Any change or repair which would affect or materially change a supporting member of a building, such as a bearing wall, column, beam, or girder.

110.055. APARTMENT. An apartment shall mean a dwelling unit as defined in this ordinance.

110.060. APARTMENT HOTEL. A building or portion thereof designed for or containing both individual guest rooms or suites or rooms and dwelling units.

110.162. CORRIDOR REFINEMENT PLAN OR REFINEMENT PLAN. - An amendment to the Polk County transportation systems plan, which resolves, at a systems level, determinations on function, mode or general location which were deferred during transportation system planning because detailed information needed to make those determinations could not reasonably be obtained during that process. [Amended by Ordinance 01-10]

110.065. APARTMENT HOUSE. A building or portion thereof designed, built, rented, leased, let or hired out to be occupied, or which is occupied or is the home or residence of three or more families living independently of each other and doing their own cooking in said building, and shall include flats and apartments.

110.070. ARTERIAL STREET (ROAD). A roadway intended to carry large volumes of traffic (typically 1,000 ADT or more outside of an urban growth boundary) and connect major traffic generators, cities, recreational areas, and major segments of transportation networks. High capacity is achieved through allowing higher speed, limited access, wider roadway and movement preference at intersections with lesser standard roadways.

“Principal arterials” are major urban and rural highways connecting communities towns, and cities. The principal arterial provides for through traffic movement and distribution to lower order roadways.

“Minor arterials” connect areas of principal traffic generation to major urban and rural highways. The minor arterial network provides for through traffic movement to the major arterials and distribution into the network of collector and local streets. [Amended by Ordinance 98-5]

110.075. AUTOMOBILE SERVICE STATION. A premises used for retail sales directly to the consumer for the supplying of gasoline, oil, minor accessories and services for automobiles, trucks, and/or motor vehicles.

110.080. AUTOMOBILE OR TRAILER SALES AREA. A lot used for display, sale, or rental of new or used automobiles, trucks, and/or motor vehicles or trailers, where no repair work is done except minor, incidental repairs of automobiles or trailers to be displayed, sold or rented on the premises.

110.085. AUTOMOBILE/TRAILER CAMP. See Trailer Park, Mobile Home Park.

110.090. AUTOMOBILE WRECKING YARD; JUNK YARD. A premises used for the storage or sale of used automobile, truck, and/or motor vehicle parts or for the storage, dismantling, or abandonment of junk, obsolete automobiles, trailers, trucks, machinery, or parts thereof.

110.095. AWNING. A movable shelter supported entirely from the exterior wall of a building and of a type, which can be retracted, folded or collapsed against the face of a supporting building.

110.100. AWNING, MOBILE HOME, TRAILER. A stationary structure, permanent or demountable, used in conjunction with a mobile home or trailer, other than a window awning, for the purpose of providing shelter from the sun and rain, and having a roof with supports and not more than one wall or storage cabinet substituting for a wall.

110.105. BASEMENT. That portion of a building between floor and ceiling which is partly below and partly above grade, but so located that the vertical distance from grade to the floor below is equal to or greater than the vertical distance from grade to ceiling. If such portion of a building is not a basement, then it shall be considered a story.

110.107. BED AND BREAKFAST FACILITY. Any establishment located in a structure designed for a single-family residence and associated structures regardless of whether the owner or operator resides in any of the structures which:

- (A) Has more than two rooms for rent on a daily basis to the public; and
- (B) Offers a breakfast meal as part of the cost of the room.

110.110. BLOCK. The properties abutting on one side of a street between either:

- (A) 2 Cross streets;
- (B) Or between the city limits and the nearest cross streets;
- (C) Or when there is only 1 cross street;
 - (1) Between a cross street and the dead-end of a street;
 - (2) Between a cross street and a line projected from the centerline of an intersecting street, such as a "T" intersection;
 - (3) Between a cross street and a point 600 feet from the particular property under consideration when there is no other cross street or intersecting street within 600 feet;
- (D) Or when there are no cross streets, then the block shall be between the points 600 feet from each side of the property under consideration and along the street.

110.112. BOARD. The Polk County Board of Commissioners.

110.115. BOARDING HOUSE. A building or portion thereof used for the purpose of providing meals or meals and lodging for pay or compensation of any kind to persons other than members of the family occupying such dwelling.

110.120. BUILDING. A structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

110.125. CABANA. A stationary, light-weight structure which may be prefabricated or demountable, with two or more walls, used adjacent to and in conjunction with a mobile home or trailer to provide additional living space and designed to be moved with the trailer or mobile home.

110.130. CAMPGROUNDS. A premises under one ownership where persons camp or live in any manner other than in a permanent building constructed entirely of wood or more lasting materials, excepting mobile home parks, and trailer parks.

110.135. CARPORT. A stationary structure consisting of a roof with its supports and not more than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle.

110.140. CELLAR. See Basement.

110.145. CEMETERY. Land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including a columbarium, crematory, mausoleum, or mortuary, when operated in conjunction with and within the boundary of such cemetery.

110.147. CHANGE OF USE. Any change of a structure, land, waterway, activity within a building, or use of the land in such a way as to substantially alter or affect the land or waterway. See DEVELOPMENT. [Amended by Ordinance 219]

110.150. CLUB. An organization, group, or association supported by the members thereof, the purpose of which is to render a service primarily for members and their guests, but shall not include any organization, group, or association the chief activity of which is to render a service customarily carried on as a business.

110.152. COMMERCIAL POWER GENERATING FACILITY. A "commercial power generating facility" is a facility that converts energy into a usable form of energy (such as electricity) and conveys that energy to the public. Commercial power generating facilities typically convert mechanical energy into electrical energy. A "commercial power generating facility" does not include a net metered facility as defined in ORS 757.300 or a facility (either

grid-connected or stand-alone) that produces an equal amount or less energy than is consumed by the use(s) to which the facility is accessory over the course of a calendar year, provided that the power generating facility is located on the same tract as the use(s) to which it is accessory and the power generating facility, tract, and use(s) are all under common ownership and management.

[Amended by Ordinance 09-06]

110.155. COMMISSION(S). The Polk County Planning Commission and/or any other Commission established by the Polk County Board of Commissioners. [Amended by Ordinance 219]

110.157. COMMUNICATION TOWER. A "communication tower" includes any tower designed to support commercial radio, television, and/or telecommunications receiving or broadcasting antennas, dishes, buildings and associated commercial equipment used to transmit or receive radio, microwave, wireless communications, and other electronic signals. [Amended by Ordinance 09-06]

110.160. CONVALESCENT HOME. See Nursing Home.

110.165. COURT. A space, open and unobstructed to the sky, located at or above grade level on a lot and bounded on 3 or more sides by walls of a building.

110.167. CULTURED CHRISTMAS TREES. "Cultured Christmas trees" refers to trees which are:

- (A) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;
- (B) Of a marketable species;
- (C) Managed to produce trees meeting U. S. No. 2 or better standards for Christmas trees as specified for the Agricultural Marketing Services of the U. S. Department of Agriculture; and
- (D) Evidencing periodic maintenance practices of shearing for Douglas Fir and pine species, weed and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and disease control, stump culture, soil cultivation, and irrigation. [Amended by Ordinance 89-17]

110.170. DAY NURSERY. An institution, establishment, or place, not a part of the public school system, in which are commonly received at one time 3 or more children, not of common parentage, under the age of 14 years, for a period or periods not exceeding 12 hours per day for the purpose of being given board, care, or training, apart from their parents or guardians for compensation or reward.

110.172. DEVELOPMENT. Any change in the use of land, of a waterway, or of a structure, which substantially alters or affects the land or waterway.

- (A) For the purpose of this ordinance, the term development shall include the following:
 - (1) Any use or activity, which requires a building, permit under the provisions of the Uniform Building Code.
 - (2) Any use or activity which requires a manufactured home placement permit.
 - (3) Any use or activity which requires a permit from the Oregon State Division of Lands.
 - (4) Any use or activity which requires a permit under the provisions of the Oregon Forestry Practices Act.
 - (5) Any use or activity which requires a permit for sub-surface on-site disposal of sewage from the Polk County Division of Environmental Health.
 - (6) Any use or activity which requires a conditional use permit or floodplain development permit under the provisions of this ordinance.

- (B) For the purpose of this ordinance, the term development shall exclude the following:
- (1) Landscaping.
 - (2) Construction or placement of accessory structures that are usual and necessary for the use and enjoyment of existing improvements.
 - (3) Construction of driveways.
 - (4) Maintenance and repair usual and necessary for continuance of an existing use or activity. [Amended by Ordinance 256]

110.175. DIRECTOR. The Polk County Planning Director or designated representative.
[Amended by Ordinance 219]

110.180. DORMITORY. A building other than a hotel, boarding or rooming house, used primarily for sleeping purposes.

110.185. [Repealed by Ord. 89-17, Sec. 2]

110.186. DWELLING. "Dwelling" means a building or portion thereof which is occupied in whole or in part as a home, residence, or sleeping place, either permanently or temporarily, but excluding hotels and motels. [Amended by Ordinance 89-17]

110.190. DWELLING UNIT. One or more habitable rooms which are occupied or which are intended or designed to be occupied by one family with facilities for living, sleeping, cooking and eating, excluding hotels, motels, or recreational vehicles.

110.195. DWELLING, SINGLE FAMILY. A detached building designed exclusively for occupancy by one family.

110.200. DWELLING, TWO-FAMILY (DUPLEX). A building designed exclusively for occupancy by two families living independently of each other.

110.205. DWELLING, MULTIPLE FAMILY. A building or portion thereof designed for occupancy by 3 or more families, living independently of each other.

110.210. EDUCATIONAL INSTITUTION. A college or university supported by public funds or by contributions or endowments and giving general academic instruction, excluding elementary and high schools and trade or commercial schools.

110.215. ENFORCEMENT OFFICER. The Director or other persons designated by the Board of Commissioners to assist the Director in enforcing this ordinance. [Amended by Ordinance 88-16]

110.220. FAMILY. An individual or 2 or more persons living together in a dwelling unit.

110.223. FARM USE. "Farm use" means the current employment of land [including that portion of such lands under buildings supporting accepted farming practices] for the primary purpose[s] of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the product of, livestock, poultry, furbearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including, but not limited to, providing riding lessons, training clinics, and schooling shows. "Farm use" also includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in Section 110.167, or land described in ORS 321.267 (1)(e) or 321.415 (5).

"Current employment" of land for farm use includes:

- (A) Farmland, the operation or use of which is subject to any farm-related government program;
- (B) Land lying fallow for one year as a normal and regular requirement of good animal agricultural husbandry;
- (C) Land planted in orchards or other perennials, other than land specified in paragraph (D) of this section, prior to maturity;
- (D) Land not in an exclusive farm use zone which has not been eligible for assessment at special farm use in the year prior to planting the current crop and has been planted in orchards, cultured Christmas trees or vineyards for at least three years;
- (E) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable or grazeable, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use;
- (F) Land under buildings supporting accepted farm practices;
- (G) Water impoundments lying in or adjacent to and in common ownership with farm use land; and
- (H) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the owner of land specially valued at true cash value for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;
- (I) Land lying idle for no more than one year where the absence of farming activity is due to the illness of the farmer or member of the farmer's immediate family. For purposes of this paragraph, illness includes injury or infirmity whether or not such illness results in death;
- (J) Any land described in ORS 321.267(1)(e); and,
- (K) Any land in an exclusive farm use zone used for the storage of agricultural products that would otherwise be disposed of through open field burning or propane flaming.

[Amended by Ordinance 89-17]

110.225. FENCE. An unroofed barrier or an unroofed, enclosing structure such as masonry, ornamental iron, woven wire, wood pickets or solid wood or any other material used as an unroofed barrier to light, sight, air or passage.

110.230. FRATERNITY, SORORITY, STUDENT HOME. A residential building in which living accommodations are furnished to students.

110.232. FRONTAGE ROAD. Also known as "Marginal Access Road." A service road generally parallel and adjacent to an arterial, and which provides access to abutting properties, but protected from through traffic. Also known as "Access Road." A low volume public road that principally provides access to property. [Amended by Ordinance 00-10]

110.235. GARAGE. A building or portion thereof in which a motor vehicle is stored, repaired or kept.

110.240. GARAGE, PRIVATE. A detached accessory building or portion of a main building for the parking or temporary storage of automobiles in which no business, occupation, or services is provided for or is in any way conducted.

110.245. GARAGE, PUBLIC. A building, other than private garage, used for the care, repair, or equipping of motor vehicles, or where such vehicles are parked or stored for compensation, hire, or sale.

110.247. GOVERNING BODY. Polk Board of Commissioners.

110.250. GRADE (GROUND LEVEL). The lowest point of elevation of the finished surface of the ground between the exterior wall of a building, or the lowest structural component of a free standing tower, and a point 5 feet distant from said wall or free standing tower, or the lowest point of elevation of the finished surface of the ground between the exterior wall of a building or free standing tower and the property line whichever is nearest to said wall or free standing tower. In case walls or free standing towers are parallel to and within 5 feet of a public sidewalk, alley or other public way, the grade shall be the elevation of the sidewalk, alley or public way. [Amended by Ordinance 09-06]

110.255. GROUP CARE HOME. A home or private institution maintained and operated for the care, boarding and training of one or more physically handicapped persons, or one or more mentally retarded persons who, because of well established retarded intellectual development, require special care by a person who is not the parent or guardian of, and who is not related by blood or marriage to such persons, but does not include foster homes, correctional homes, or detention facilities.

110.257. HEARINGS OFFICER. The Polk County Hearings Officer.

110.260. HEIGHT OF BUILDING. The vertical distance from the "grade" to the highest point of the coping of a flat roof or the deck line of a mansard roof or to the average height of the highest gable of a pitch or hip roof.

110.261. HEIGHT OF WIND ENERGY SYSTEM. The "height of a wind energy system" shall be the vertical distance from the grade to the tip of a wind generator blade when the tip is at its highest point. [Amended by Ordinance 09-06]

110.262. HELIPORT. A heliport is an area used or to be used for landing or take-off of helicopters or other vertical take-off or landing aircraft capable of hovering and may include any or all of the area or buildings which are appropriate to accomplish these functions.

110.265. HOMES FOR THE AGED AND INFIRM. Any home or other institution that maintains facilities for rendering board and domiciliary care for compensation to 3 or more aged persons not related to the operator by blood or marriage. An aged person is a person of the age of 65 or more, or a person of less than 65 years who by reasons of infirmity requires domiciliary care.

110.270. HOME OCCUPATION. An occupation which may be carried on by the resident of a dwelling house as a secondary use. In residential zones, home occupations are outright permitted uses when no assistants are employed, no commodities are sold other than services, no structural alterations are made to accommodate such occupations and the residential character of the building remains unchanged, and not more than one-half of the floor area of one-story is devoted to such use. Other home occupations which provide various services and commodities may be permitted outright or as conditional uses pursuant to the standards of Chapter 116 of the Zoning Ordinance.

110.275. HOSPITAL. An institution devoted primarily to the rendering of healing, curing and nursing care, which maintains and operates facilities for the diagnosis, treatment or care of two or more non-related individuals suffering from illness, injury or deformity, or where obstetrical or other healing or nursing care is rendered over a period exceeding 24 hours.

110.280. HOSPITAL, VETERINARY. A building or premises for the medical or surgical treatment of domestic animals or pets.

110.285. HOTEL. Any building containing guest rooms intended or designed to be used, or which are used, rented, or hired out to be occupied, or which are occupied for sleeping purposes by guests.

110.286. INOPERABLE VEHICLE.

- (A) A dismantled, unserviceable, inoperable, junked, or abandoned vehicle or any vehicle legally or physically incapable of being operated for a period exceeding 30 days

unless such vehicle, or parts thereof, is completely enclosed within a building, or stored on property lawfully designated under the zoning ordinances of Polk County as a place where such vehicles may be stored.

- (B) An inoperable vehicle shall not mean a licensed or unlicensed camper trailer, utility trailer, or licensed or unlicensed operable vehicle which are used on private property for the production, propagation or harvesting of agricultural or forest products grown or raised on such lands or which are used in the extraction or processing of mineral and aggregate products. [Amended by Ordinance 219]

110.287. INTENSIFICATION. The addition to or expansion of a structure or existing use of land or a waterway in such a way as to substantially alter or affect the land or waterway. See DEVELOPMENT.

110.290. JUNK CAR. See AUTOMOBILE WRECKING YARD.

110.295. KINDERGARTEN. See DAY NURSERY. [Section 110.300 repealed by Ordinance 91-15 dated July 24, 1991.]

110.301. KENNEL, KENNEL (COMMERCIAL). A facility for the keeping of dogs which have a set of permanent canine teeth or have become six months of age if:

- (A) The facility receives more than \$250 in gross receipts during a year for the sheltering of dogs which are not the property of the operator of the facility;
- (B) The facility is privately operated as animal shelter, whether for profit or not for profit;
- (C) The facility is operated for the production or sheltering of dogs which are to be offered for commercial sale. [Amended by Ordinance 91-15]

110.303. LIMITED LAND USE DECISION.

- (A) Means a final decision or determination pertaining to a site within an urban growth boundary which concerns:
 - (1) The approval or denial of a subdivision or partition, as described in ORS Chapter 92.
 - (2) The approval or denial of an application based on discretionary standards designed to regulate the physical characteristics of a use permitted outright, including, but not limited to, site review and design review.
- (B) Does not mean a final decision made by a local government pertaining to a site within an urban growth boundary that concerns approval or denial of a final subdivision or partition plat or that determines whether a final subdivision or partition plat substantially conforms to the tentative subdivision or partition plan. [Amended by Ordinance 10-04]

110.305. LIQUID WASTE. Any waste oils, septic tank pumpings, industrial wastes and other similar materials.

110.310. LOADING SPACE. An off-street space or berth on the same lot with a building, or contiguous to a group of buildings for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and which abuts upon a street, alley, or other appropriate means of access.

110.315. LOT. A unit of land that is created by a subdivision of land. A lot so created shall remain a discrete lot, unless the lot lines are vacated, or the lot is further divided, as provided by law.

110.320. LOT AREA. The total area measured on a horizontal plane within the lines of a lot.

110.325. LOT DEPTH. The horizontal distance between the front lot line and the rear lot line measured at a point halfway between the side lot lines.

110.330. LOT INTERIOR. A lot other than a corner lot.

110.335. LOT LINE. The lines bounding a lot as defined herein.

110.340. LOT LINE, FRONT. In the case of an interior lot, a line separating the lot from the street; and in the case of a corner lot, a line separating the lot from the street on which the improvement or contemplated improvement will face.

110.345. LOT LINE, REAR. A lot line which is opposite and most distant from the front lot line. In the case of a triangular shaped lot, the rear lot line, for building purposes, shall be assumed to be a line 10 feet in length within the lot parallel to and at the maximum distance from the front lot line.

110.350. LOT LINE, SIDE. Any lot line which is not a front or rear lot line.

110.360. LOT OF RECORD. A lot which is part of a subdivision or a lot or parcel described by metes and bounds, which has been recorded in the office of the County Recorder. In the Exclusive Farm Use, Timber Conservation, Farm Forest, and Farm Forest Overlay zones, a lot of record refers to a lot or parcel which was lawfully created and acquired by the present owner prior to January 1, 1985, where a dwelling may be allowed subject to compliance with the applicable lot-of-record provisions in each zone.

110.367. MANUFACTURED HOME. Except as provided in Section 178.015, "manufactured home" means a structure constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction. Based on the standards of the Uniform Building Code, such a home constructed prior to 1976 is defined as a "mobile home". Such a home constructed after 1976 is defined as a "manufactured home". For purposes of this ordinance the terms "manufactured home" and "mobile home" are interchangeable. [Amended by Ordinance 89-17]

110.370. MARQUEE. A permanent roofed structure attached to and supported by the building and projecting over public property.

110.375. MATERNITY HOME. See HOSPITAL.

110.380. [Repealed by Ord. 89-17, Sec. 50] [Amended by Ordinance 89-17]

110.385. MANUFACTURED HOME PARK. Any place where four (4) or more manufactured homes are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent space or keep space for rent to any person for a charge or fee paid or to be paid for the rental or use of facilities or to offer space free in connection with securing the trade or patronage of such person. "Manufactured home park" does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one mobile home per lot if the subdivision was approved by Polk County. [Amended by Ordinance 89-17]

110.386. METEOROLOGICAL TOWER. A "meteorological tower" includes the tower, base plate, anchors, guy cables and hardware, anemometers (wind speed indicators), temperature and pressure sensors, other weather measuring devices attached to the tower, wind direction vanes, booms to hold equipment anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit weather information at a given location. [Amended by Ordinance 09-06]

110.387. MINING. All or any part of the process of mining by the removal of overburden and the extraction of natural mineral deposits, thereby exposed by any method including open-pit mining operations, auger mining operations, processing, surface impacts of underground mining, production of surface mining refuse and the construction of adjacent or off-site borrow pits

except those constructed for use as access roads. "Surface Mining" does not include excavation of sand, gravel, clay, rock or other excavations of sand, gravel or clay, rock or other similar materials conducted by a landowner or tenant on the landowner's or tenant's property for the primary purpose of reconstruction or maintenance of access roads and excavation or grading operations conducted in the process of farming or cemetery operations, onsite road construction or other onsite construction or nonsurface impacts of underground mines. [Amended by Ordinance 89-17]

110.390. MOTEL (TOURIST CAMP). A series of attached, semi-attached, or detached apartments, each composed of bedroom and bathroom, with each apartment having entrance leading directly from the outside of the building.

110.392. NEW ROAD. A public road or road segment that is not a realignment of an existing road or road segment. [Amended by Ordinance 00-10]

110.395. NONCONFORMING LOT. A lot which does not meet the area or width requirements of the zone in which it is located.

110.400. NONCONFORMING STRUCTURE. A building or structure or portion thereof lawfully existing at the time this ordinance became effective (November 13, 1970), which was designed, erected, or structurally altered, for a use that does not conform to the use regulations of the zone in which it is located, or which does not conform to the setbacks for maximum lot coverage or other provisions herein established for the zone.

110.405. NONCONFORMING USE. A use to which a building or land was lawfully put at the time this ordinance became effective (November 13, 1970) and which does not conform with the use regulations of the district in which it is located.

110.407. [Repealed by Ord. 89-17, Sec. 50] [Amended by Ordinance 219]

110.410. NURSERY. See DAY NURSERY.

110.415. NURSING HOME. Any home, place or institution which operates and maintains facilities providing convalescent or nursing care, or both, for a period exceeding 24 hours for two (2) or more ill or infirm patients not related to the nursing home administrator, or owner, by blood or marriage. Convalescent care may include, but need not be limited to, the procedures commonly employed in nursing and caring for the sick. A nursing home includes rest homes and convalescent homes, but does not include a boarding home for the aged, a retirement home, hotel, hospital, or a chiropractic facility licensed under ORS.

110.420. OVERLAY ZONE. A zone which establishes special requirements and provisions in addition to those of the primary ZONE. [Amended by Ordinance 219]

110.425. OWNER. The owner of record of real property as shown on the latest tax rolls or deed records of the county, or a person who is purchasing a parcel of property under written contract.

110.427. PARCEL. "Parcel" includes a unit of land created:

- (A) By partitioning land as defined in ORS 92.010;
- (B) In compliance with all applicable planning, zoning or partitioning ordinances or regulations;
- (C) By deed or sales contract, if there were no applicable planning, zoning or partitioning ordinances or regulations; or
- (D) By deed or sales contract, if the property division occurs as a result of a grant to a public agency or public body for state highway, county road, city street, or other right of way purposes provided such deed or sales contract occurred on or prior to August 4, 1991. The property conveyed to the public agency or public body shall be deemed a separate parcel, and the remnant shall be deemed a separate parcel. If the conveyance bisects a property, each remnant located on either side of the parcel conveyed to the public agency or public body shall be considered separate parcels.

- (E) A parcel so created shall remain a discrete parcel, unless the parcel lines are vacated, or the parcel is further divided, as provided by law. [Amended by Ordinances 89-17 and 06-04]

110.430. PARKING AREA, PRIVATE. An open area, building or structure, other than a street or alley, used for the parking of the automobiles of residents and guests of a building.

110.435. PARKING AREA, PUBLIC. An open area, building or structure, other than a private parking area, street, or alley used for the parking of automobiles, trucks, and other motor vehicles and available for use by the public or by persons patronizing a particular building or establishment.

110.440. PARKING, SPACE, AUTOMOBILE. Space within a private or public parking area, building or structure, for the parking of one automobile.

110.445. PARTICLE DEPOSITION. The quantity of that portion of the particulate matter in the air which settles out in a given length of time as measured by sampling procedures adopted by the Oregon Department of Environmental Quality or their equivalent.

110.450. PARTICULATE MATTER. The discrete particles of a liquid, other than water, or a solid as distinguished from gas and vapor.

110.451. PARTITION. Either an act of partitioning land or an area or tract of land partitioned as defined.

110.452. PARTITIONING LAND. "Partitioning land" has the meaning described in the Polk County Subdivision and Partition Ordinance, Chapter 91. [Amended by Ordinance 10-04]

110.455. PERSON. A natural person, heirs, executors, administrators, or assigns and also includes a firm, partnership or corporation, its or their successors or assigns, or the agent of any of the aforesaid, and any political subdivisions, agency, board or bureau of the State.

110.457. PHOTOVOLTAIC SYSTEM. A "photovoltaic system" consists of equipment that converts sunlight into electricity and then stores or transfers that electricity. This equipment includes photovoltaic modules and panels, mounting and sun tracking hardware, foundation, inverter, wiring, batteries, or other components used in the system. A photovoltaic system may be a grid-connected or stand-alone system. A photovoltaic system does not include a system that utilizes a photovoltaic module or panel that contains a total surface area of nine square feet or fewer. [Amended by Ordinance 09-06]

110.462. PRIMARY ZONE. The zone which establishes the basic requirements and provisions for the use of land in a particular area. See OVERLAY ZONE. [Amended by Ordinance 219]

110.463. PROPERTY LINE ADJUSTMENT. "Property line adjustment" has the meaning described in the Polk County Subdivision and Partition Ordinance, Chapter 91.

110.465. RAMADA. A stationary structure having a roof extending over a mobile home or trailer, which may also extend over a patio or parking space for motor vehicles, and is used principally for protection from sun and rain.

110.466. RECREATIONAL VEHICLE PARK. A lot or parcel on which two or more travel trailer/RV sites are located, established or maintained for occupancy by the general public as temporary living quarters for recreation or vacation purposes, and as defined by ORS 446.310(9) (1989 edition). [Amended by Ordinance 91-15]

110.467. RECYCLING DEPOT. A center, depot drop box or other place for receiving source separated recyclable materials with or without compensation. This shall not include a salvage, junk, or auto wrecking yard.

110.470. REFUSE. Any putrescible and non-putrescible solid wastes including garbage, rubbish, ashes, dead animals, abandoned automobiles, junk, solid market wastes, street cleaning, and industrial wastes (including waste disposal in industrial salvage).

110.475. REPAIR. The reconstruction or renewal of any part of an existing building for the purpose of its maintenance. The word "repair" or "repairs" shall not include structural changes.

110.476. RESIDENTIAL FACILITY. A residential care, residential training, or residential treatment facility licensed by or under the authority of the department as defined in ORS 443.400, under ORS 443.400 to 443.460, or licensed by the Children's Services Division under ORS 418.205 to 418.327, which provides residential care alone or in conjunction with treatment or training or a combination thereof for six to 15 individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential facility.

[Amended by Ordinance 89-17]

110.477. RESIDENTIAL HOME. A residential treatment or training or an adult foster home licensed by or under the authority of the department as defined in ORS 443.400, under ORS 443.400 to 443.825, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home licensed under ORS 443.705 to 443.825 which provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related. Staff persons required to meet licensing requirements shall not be counted in the number of facility residents, and need not be related to each other or to any resident of the residential home. [Amended by Ordinance 89-17]

110.480. REST HOME. See NURSING HOME.

110.485. RESTAURANT, CAFE. An establishment where prepared food is served to the public for consumption within the building, or to "take out" to some other location.

110.487. REVERSE FRONTAGE LOT. A lot having frontage on two parallel or approximately parallel roads, where the rear of the lot, or structure on the lot faces an arterial.

[Amended by Ordinance 98-5]

110.488. ROAD REALIGNMENT. Rebuilding an existing roadway on a new alignment where the new centerline shifts outside the existing right of way, and where the existing road surface is removed, maintained as an access road or maintained as a connection between the realigned roadway and a road that intersects the original alignment. The realignment shall maintain the function of the existing road segment being realigned as specified in the acknowledged comprehensive plan. [Amended by Ordinance 00-10]

110.500. ROOMING HOUSE. A residential building or portion thereof providing sleeping rooms where lodging for three (3) or more persons is provided for compensation.

110.502. SEASONAL FARM WORKER. A person who, for an agreed remuneration or rate of pay, performs temporary labor for another to work in the production of farm products or planting, cultivating or harvesting of seasonal agricultural crops or in forestation or reforestation of lands, including but not limited to the planting, transporting, tubing, precommercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash and other related activities. [Amended by Ordinance 89-17]

110.503. SEASONAL FARM WORKER HOUSING. Housing limited to occupancy by seasonal farm workers and their immediate families which is occupied no more than nine months a year. [Amended by Ordinance 89-17]

110.505. SCHOOL, TRADE OR COMMERCIAL. A building where instruction is given to pupils for a fee in money or otherwise which fee is the principal reason for the existence of the school.

110.510. SCHOOL, ELEMENTARY, JUNIOR HIGH OR HIGH. An institution, public or parochial, offering instruction in the several branches of learning and study, in accordance with the rules, and regulations of the State Department of Education. [Amended by Ordinance 219]

110.520. SOLID WASTE. Solid waste shall include all putrescible and non-putrescible waste, including but not limited to, garbage, rubbish, refuse, ashes, waste paper and cardboard; grass

clippings, composts; sewer sludge; residential; commercial and industrial appliances, equipment and furniture; discarded, inoperable, or abandoned vehicles or vehicle parts and waste motor vehicle tires; manure, vegetable, or animal solid and semi-solid waste and dead animals. Waste shall mean useless, unwanted or discarded materials, which would otherwise come within the definition of solid waste or waste, may from time to time have value and thus be utilized shall not remove them from the definition. The terms solid waste or waste do not include:

- (A) Environmentally hazardous wastes as defined in ORS 466.005.
- (B) Materials used for fertilizer or for other productive purposes on land in agricultural operations in the growing and harvesting of crops or the raising of fowl or animals.
- (C) Septic tank and cesspool pumping or chemical toilet waste.
- (D) Reusable beverage containers as defined in ORS 459.860.
- (E) Source separated principal recyclable materials as defined in ORS 459 and the rules promulgated there.

110.522 SPECIAL FOREST PRODUCTS. Products as defined in ORS 164.813 (6) to be inclusive of the following items:

- (A) Bear grass, boughs, branches, ferns and other forest plant parts used in floral arrangements and decorations;
- (B) The bark and needles of the Pacific yew, cascara bark, cedar salvage including chunks, slabs, stumps and logs that are more than one cubic foot in volume;
- (C) Cut or picked evergreen foliage and shrubs including, but not limited to, ferns, huckleberry, Oregon grape, rhododendron and salal;
- (D) Firewood, native ornamental trees and shrubs, including trees and shrubs that not nursery grown and that have been removed from the ground with the roots intact;
- (E) Round or split posts, poles, pickets, stakes or rails, shakeboards, shake-bolts, shingle bolts or other round or split products of any forest tree species; and wild edible mushrooms that have not been cultivated or propagated by artificial means.

110.525. STABLE, PUBLIC. A building in which horses are kept for remuneration, hire, or sale, including saddle and riding clubs.

110.540. STORY. That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar or unused underfloor space is more than 6 feet above grade as defined herein for more than 50 per cent of the total perimeter or is more than 12 feet above grade as defined herein at any point, such basement, cellar or unused underfloor space shall be considered as a story.

110.545. HALF-STORY. A story under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than two-feet above the floor of such story.

110.550. STREET. A way of travel more than 20 feet wide which has been dedicated or deeded to the public for public use.

110.555. STRUCTURE. That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, regardless of whether it is wholly or partly above or below grade.

110.556. SUBDIVIDE. Subdivide land means to divide land into four or more lots within a calendar year. [Amended by Ordinances 219 and 289]

110.557. TRAILER (TRAVEL OR VACATION). A vehicle or structure equipped with wheels for highway use that is intended for human occupancy, which is not being used for

residential purposes and is being used for vacation and recreational purposes. [Amended by Ordinance 219]

110.570. TRANSFER SITE OR TRANSFER FACILITY. A fixed or mobile facility, used as an adjunct to collection vehicle(s), resource recovery facility, disposal site between the collection of the waste/solid waste and disposal site, including but not limited to, another vehicle, a concrete slab, pit, building, hopper, railroad gondola or barge.

110.575. TOURIST COURT. See MOTEL.

110.572. TRANSPORTATION IMPROVEMENTS. – (a) Means transportation improvements on rural lands that provide safe and efficient access to the use for which it is related.

(b) The term includes:

- (i) Accessory transportation improvements that are allowed or conditionally permitted in the EFU, FF, FFO, or TC zoning districts;
- (ii) Transportation improvements that are allowed or conditionally permitted in the EFU, FF, FFO, or TC zoning districts;
- (iii) Channelization;
- (iv) Realignment;
- (v) Replacement of an intersection with an interchange;
- (vi) Continuous median turn lane;
- (vii) New access roads and collectors within a built or committed exception area, or in other areas where the function of the road is to reduce local access to or local traffic on a state highway. These roads shall be limited to two travel lanes. Private access and intersections shall be limited to rural needs or to provide adequate emergency access.
- (viii) Bikeways, footpaths, and recreation trails not other wise allowed as a modification or part of an existing road;
- (ix) Park-and-Ride areas;
- (x) Railroad mainlines and branchlines;
- (xi) Pipelines;
- (xii) Navigation channels;
- (xiii) Replacement of docks and other facilities without significantly increasing the capacity of those facilities;
- (xiv) Expansion or alterations of public use airports that do not permit service to a larger class of airplanes; and
- (xv) Transportation facilities, services and improvements other than those listed in the Zoning Ordinance that serve local travel needs. The travel capacity and level of service of the facilities and improvements serving local travel needs shall be limited to that necessary to support rural land uses identified in the Comprehensive Plan or to provide adequate emergency access.

110.580. TRUCK. A motor vehicle designed or used for carrying, conveying, or moving over highways of this State any property, article, or thing and having a combined weight of vehicle and maximum load to be carried thereon of more than 6,000 lbs.

110.585. USE. The purpose of which land or a building is arranged, designed, or intended, or for which either land or a building is or may be occupied.

110.587. UTILITY FACILITY NECESSARY FOR PUBLIC SERVICE. A major physical component of an enterprise that performs an essential public service, such as a natural gas plant, water supply facility, sewage treatment facility, telephone switching station, electrical substation, or radio, microwave, fiber optic, or television transmission tower. However, this does not include components such as poles, wires, cables, lines or pipes. [Amended by Ordinance 91-15]

110.589. VISION CLEARANCE. A triangular area at the street or highway corner of a corner lot, or the corner at any alley-street intersection of a lot, the space being defined by a diagonal line across the corner between the points on the street right-of-way line or street-alley right-of-way line measured from the corner.

110.590. WATER-DEPENDENT USE. A use or activity which can be carried out only, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water. [Amended by Ordinance 219]

110.591. WATER-RELATED USE. A use which is not directly dependent upon access to a water body, but which provides goods or services that are directly associated with a water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered.

Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and mobile home parks are not generally considered dependent on or related to water location needs. [Amended by Ordinance 219]

110.592. WETLANDS. Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions. [Amended by Ordinance 88-17]

110.593. WIND ENERGY SYSTEM. A "wind energy system" consists of equipment that converts energy from the wind into usable forms of energy (such as electricity) and then stores or transfers the energy. This equipment includes any base, blade, foundation, wind generator, nacelle, rotor, wind tower, transformer, vane, wire, inverter, batteries or other component used in the system. A wind energy system may be a grid-connected or a stand-alone system. [Amended by Ordinance 09-06]

110.594. WIND TOWER. A "wind tower" is the monopole, freestanding, or guyed structure that supports a wind generator. [Amended by Ordinance 09-06]

110.595. WINERY DEFINED.

- (A) As used in Sections 136.040 and 178.030, "winery" means a facility that produces wine with a maximum annual production of:
- (1) Less than 50,000 gallons, and that:
 - (i) Owns an on-site vineyard of at least 15 acres;
 - (ii) Owns a contiguous vineyard of at least 15 acres;
 - (iii) Has a long-term contract for the purchase of all the grapes from at least 15 acres of a vineyard contiguous to the winery; or
 - (iv) Obtains grapes from any combination of subparagraphs (i), (ii) and (iii) of this paragraph.
 - (2) At least 50,000 gallons but no more than 100,000 gallons, and that:
 - (I) Owns an on-site vineyard of at least 40 acres;
 - (ii) Owns a contiguous vineyard of at least 40 acres;

- (iii) Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery; or
 - (iv) Obtains grapes from any combination of subparagraphs (i), (ii) and (iii) of this paragraph.
- (B) A “winery”, as defined in this section means, a facility that produces wine and, shall allow the sale of:
- (1) Wines produced in conjunction the winery; and
 - (2) Items directly related to wine, the sales of which are incidental to retail sale of wine on site, including those served by a limited service restaurant as defined in ORS 624.010.
- (C) A “winery”, as defined in this section, shall allow only the bulk processing and wholesale distribution of wines produced on site. [Amended by Ordinance 89-17]

110.595. [“Yard” redesignated Sec. 110.599 by Ord. 89-17, Sec. 30]

110.599. YARD. A space other than a court on the same lot with a building open from the ground upward, except as otherwise provided herein. [Amended by Ordinance 89-17]

110.600. YARD, FRONT. A yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and a line parallel thereto at the nearest point of the foundation of the main building.

110.605. YARD, LANDSCAPED. An open area or areas devoted primarily to the planting and maintaining of trees, grass, shrubs, and plants together with sufficient permanent irrigation installation to properly maintain all vegetation. As complimentary features, such as fountain, pools, screens, decorative lighting, sculpture, and outdoor furnishings may be placed within said area.

- (A) Location or site: The required Landscaped Yard (110.605) areas adjacent to a street shall not be used for parking or loading areas and the yards shall be the same as is required for the main building in the district in which the parking area is to be located and such yard area adjacent to a street shall be landscaped with trees, shrubs, grass or evergreen ground cover and other complementary materials and maintained in a neat and well appearing manner. The side and rear yards, other than those adjacent to a street, may be used for parking and loading areas when such areas have been developed and are maintained as required by this ordinance. [Amended by Ordinance 90-19]

110.610. YARD, REAR. A yard extending across the full width of the lot between the most rear main building and the rear lot line, but for determining the depth of the required rear yard, it shall be measured horizontally from the nearest point of the rear lot line; or, if the rear lot line adjoins an alley, then from the center line of the alley, toward the nearest part of the foundation of the main building.

110.615. YARD, SIDE. A yard between the main building and the side lot line, extending from the front yard, or front lot line where no front yard is required, to the rear yard; the width of the required side yard shall be measured horizontally from the nearest point of the side lot line toward the nearest part of the foundation of the main building. [Amended by Ordinance 219]

110.620. APPLICATION OF ZONING REGULATIONS. The regulations set by this ordinance within each zone shall be minimum regulations and shall apply uniformly to each class or kind of structure or land.

110.630. CONFORMANCE AND PERMITS REQUIRED. No building structure, or premise shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, moved, structurally altered, or enlarged unless in conformity with all the

regulations herein specified for the zone in which it is located and then only after applying for and securing all permits and licenses required by all laws and ordinances.

110.640. AMENDMENT OF TEXT ONLY. Any amendment of this ordinance which amends, supplements or changes only the text hereof, shall be initiated by the Board of Commissioners or by the Planning Commission by resolution. Whenever an amendment is initiated by the Board of Commissioners, the resolution shall be referred to the Planning Commission for its recommendation.

In every case of a proposed amendment, the director shall fix a date for a public hearing before the Planning Commission and shall cause notice to be given as provided in Chapter 111. After the public hearing, the Planning Commission shall refer its recommendations to the Board of Commissioners. [Section 110.850 repealed by Ordinance 88-19]

110.650. SAVINGS CLAUSE. If any section, paragraph, subdivision, clause, sentence, or provision of this ordinance shall be adjudicated or declared by any court of competent jurisdiction to be unconstitutional or invalid, such judgement shall not affect, impair, invalidate, or nullify the remainder of this ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence, or provision immediately involved in the controversy in which such judgement or decree shall be rendered, it being the intent of the Board of Commissioners to enact the remainder of this ordinance notwithstanding the parts so declared unconstitutional or invalid; and should any section, paragraph, subdivision, clause, sentence, or provision of this ordinance be declared unreasonable or inapplicable to a particular premises or to a particular use at any particular location, such declaration of judgement shall not affect, impair, invalidate, or nullify such section, paragraph, subdivision, clause, sentence, or provision as to any other premises or use.

110.660. REPEALING CONFLICTING ORDINANCES. The following ordinances passed by the Board of Commissioners and all ordinances amendary thereof, and all other ordinances and parts of ordinances in conflict herewith, hereby are repealed:

- Ordinance No. 18 12-22-64
- Ordinance No. 24 4-19-66
- Ordinance No. 35 5-18-67
- Ordinance No. 45 12-29-67
- Ordinance No. 52 8-03-68
- Ordinance No. 56 9-13-68
- Ordinance No. 63 5-23-69
- Ordinance No. 82 6-18-71
- Ordinance No. 85 8-31-71
- Ordinance No. 93 11-09-71
- Ordinance No. 94 11-30-71
- Ordinance 88-21 11-30-88
- Ordinance 89-17 12-06-89

CHAPTER 111**ADMINISTRATION AND PROCEDURES**

111.010.	Administration of the Ordinance
111.020.	Minimum Requirements
111.030.	Effect on Other Ordinances, Agreements Between Parties
111.040.	Interpretation of Ordinance
111.050.	Similar Uses
111.060.	Fees
111.070.	Zones: Official Map
111.080.	Certification
111.090.	Arrangement of Map
111.100.	Location
111.110.	Amending Official Zoning Map
111.120.	Replacement of Official Zoning Map
111.130.	Rules for Interpretation of Zone Boundaries
111.140.	Zoning Map Amendments
111.150.	Initiation of Zone Change Proceedings by Polk County
111.160.	Initiation of Zone Change
111.170.	Zone Change Signatures: How Counted
111.180.	Filing and Checking Petition
111.190.	Zone Change Hearing Before the Hearings Officer
111.200.	Zone Change Hearing Before the Board of Commissioners
111.210.	Final Action by the Board of Commissioners
111.220.	Filing a Land Use Application
111.230.	Notice of Application
111.235	Special Transportation Notification
111.240.	Administrative Review
111.245.	Notice of Type A Procedure
111.250.	Action by Planning Director or Hearings Officer
111.260.	Referral by Planning Director
111.270.	Notice of Action by Planning Director or Hearings Officer
111.275.	Zone Change Criteria
111.280.	Appeal to Board of Commissioners
111.290.	Call of Board of Commissioners
111.300.	Action by Board of Commissioners

- 111.310. Effective Date
- 111.320. Holding Public Hearings
- 111.330. Appearances of Interested Person, Remonstrances
- 111.340. Notice of Public Hearing; Content
- 111.350. Mailing of Notice; Notification Area; Failure to Receive Notice
- 111.360. Posting Notice
- 111.370. Publishing Notices
- 111.380. Conduct of Hearing; Continuance; Extension; Reopening Record

111.010. ADMINISTRATION OF THE ORDINANCE. This ordinance shall be jointly administered by the County Building Official and the Director of Planning.

The Building Official or other designated officer, prior to issuing any permit pertaining to the use of land or structures, or the erection or alteration of any structure, shall ascertain that the proposed use or construction shall in all ways conform to the requirements set forth in this ordinance.

The Planning Director shall handle all matters pertaining to zone changes, variances, and conditional uses, and other administrative matters as prescribed by this ordinance; and such other matters as directed by the Board of Commissioners.

111.020. MINIMUM REQUIREMENTS. In interpreting and applying this ordinance, the provisions herein shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience, and general welfare.

111.030. EFFECT ON OTHER ORDINANCES, AGREEMENTS BETWEEN PARTIES. It is not intended by this ordinance to repeal, abrogate, annul or in any way to impair or interfere with any existing provision of law or ordinance, previously adopted, relating to the use of buildings or premises, or relating to the erection, construction, establishment, alteration, or enlargement of any buildings or improvements; nor is it intended by this ordinance to interfere with or abrogate or annul any easement, covenant, or other agreement between parties; provided, however, that where this ordinance imposes a greater restriction upon the erection, construction, establishment, alteration, or enlargement of buildings, structure, or improvements, or the use of any such structures or premises in said several zones or districts, or any of them, than is imposed or required by such existing provisions of this ordinance, the greater restriction shall control, except that such precedence of this ordinance shall not apply to valid and unexpired permits and/or uses previously granted under the terms and provisions of any ordinance.

111.040. INTERPRETATION OF ORDINANCE.

- (A) When, in the administration of this ordinance, there is doubt regarding the intent of the ordinance, the Director shall request an interpretation of the provision by the Board of Commissioners, who may issue an interpretation of the question if they have determined that such interpretation is within their power and is not a legislative act. Any interpretation of the ordinance shall be based on the following:
 - (1) The purpose and intent of the ordinance as applied to the particular section and question; and,
 - (2) The opinion of the County Counsel when requested by the Board of Commissioners.
- (B) The Board of Commissioners may decide that the interpretation of the question is not within their power without an ordinance amendment or that there is insufficient basis upon which to make an interpretation and may request the Director to study the problem, and where necessary, propose an amendment to the ordinance. [Amended by Ordinance 88-21]

111.050. SIMILAR USES. The Director may permit in any zone any use not described or listed in this ordinance for any other zone if, in the opinion of the Director, the requested use is of the same general type and is similar to the uses permitted in the zone. Such review and permission shall be made in the same manner as other interpretations of this ordinance, as described in Section 111.040.

111.060. FEES. Fees shall be required by the Director to be paid at the time of filing of each petition or application for a farm or forest dwelling, lot-of-record determination, land use determination, conditional use, planned development, variance, land partition, property line

adjustment, similar use decision, comprehensive plan amendment, or zone change. The fees required by this section shall be set by resolution adopted by the Board of County Commissioners. [Amended by Ordinance 267]

111.070 ZONES: OFFICIAL MAP

<u>FULL NAME</u>	<u>DESIGNATION</u>
Suburban Residential Zone	SR Zone
Acreage Residential 5 Acre Zone	AR-5 Zone
Limited Multi-Family Residential Zone	RL Zone
Multi-Family Residential Zone	RM Zone
High Rise Apartment Residential Zone	RH Zone
Exclusive Farm Use Zone	EFU Zone
Farm/Forest Zone	F/F Zone
Farm Forest Overlay Zone	FFO Zone
Public Amusement and Recreation Zone	PA Zone
Public and Private Cemeteries Zone	PC Zone
Public and Private Education Facilities Zone	PE Zone
Public and Private Hospital Zone	PH Zone
Public Park Zone	PP Zone
Public Service Zone	PS Zone
Commercial Office Zone	CO Zone
Commercial Retail Zone	CR Zone
Commercial General Zone	CG Zone
Industrial Commercial Zone	IC Zone
Industrial Park Zone	IP Zone
Light Industrial Zone	IL Zone
Heavy Industrial Zone	IH Zone
Rural Industrial Zone	R-IND Zone
Mineral Extraction Zone	ME Zone
Timber Conservation Zone	TC Zone
Rural Commercial Zone	R-COM Zone
Unincorporated Community Commercial Office Zone	UC-CO Zone
Unincorporated Community Commercial Retail Zone	UC-CR Zone
Unincorporated Community Commercial General Zone	UC-CG Zone
Unincorporated Community Industrial-Commercial Zone	UC-IC Zone
Unincorporated Community Industrial Park Zone	UC-IP Zone
Unincorporated Community Light Industrial Zone	UC-IL Zone
Unincorporated Community Heavy Industrial Zone	UC-IH Zone
Eola Unincorporated Community Commercial	Eola UC-C Zone
Eola Unincorporated Community Industrial Commercial	Eola UC-IC Zone
Eola Unincorporated Community Industrial	Eola UC-I Zone
Rickreall Unincorporated Community Commercial	Rickreall UC-C Zone
Rickreall Unincorporated Community Industrial Commercial	Rickreall UC-IC Zone
Rickreall Unincorporated Community Industrial	Rickreall UC-I Zone
Grand Ronde Commercial	GR / C Zone

Commercial Highway / Tourist
Grand Ronde Light Industrial
Grand Ronde Heavy Industrial
Grand Ronde Public Assembly Zone
Grand Ronde Public Works / Safety
Limited Use Overlay Zone

CH / T Zone
GR / LI Zone
GR / HI Zone
GR / PA Zone
GR / PW Zone
LU Zone

111.080. CERTIFICATION. The Board of Commissioners and the County Clerk shall certify that "this is the official zoning map referred to in Section 113.060 of the Polk County Zoning Ordinance". [Amended by Ordinance 88-19]

111.090. ARRANGEMENT OF MAP. The official map may consist of several sheets or pages, which pages shall be listed on a cover page together with the date and number of each page. The certification of the official zoning map shall appear on the cover page.

111.100. LOCATION. Regardless of the existence of purported copies of the official zoning map which may from time to time be made or published, there shall be only one official zoning map which shall be located in the County Clerk's office, and which official zoning map shall be the final authority as to the zoning status of land and water areas, buildings and other structures. An administrative counterpart of the official zoning map shall be maintained in the Planning Division office.

111.110. AMENDING OFFICIAL ZONING MAP. When an ordinance has been enacted amending the official zoning map, the Director shall so change and annotate the official map and the cover sheet to show the ordinance or resolution number and date of the change. The Director shall certify that the map has been changed as set forth in the amending ordinance and shall indicate the date the map was changed.

111.120. REPLACEMENT OF OFFICIAL ZONING MAP. In the event the official zoning map becomes damaged, destroyed, lost or difficult to interpret because of the nature and number of changes and additions, or when it is necessary or desirable for some other reason, the Board of Commissioners, upon recommendation of the Planning Commission, may adopt all or part of a new zoning map by resolution, and such map shall supersede the prior official zoning map. The superseded map shall be filed for reference purposes for at least one (1) year. The new official map may correct drafting or other errors or omission in the prior official zoning map, but no such correction shall have the effect of amending the ordinance or any subsequent amendment thereof. The replacement map or each page in the case of individual sheets or pages shall be certified by the Board of Commissioners and County Clerk that "this official zoning map supersedes and replaces the official zoning map (date of map being replaced) as part of the Polk County Zoning Ordinance."

111.130. RULES FOR INTERPRETATION OF ZONE BOUNDARIES. Where uncertainty exists as to the boundaries of zones as shown on the official zoning map, the following rules shall apply:

- (A) Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines;
- (B) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;
- (C) Boundaries indicated as approximately following county boundaries shall be construed as following county boundaries;
- (D) Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.

- (E) Boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines;
- (F) Boundaries indicated as parallel to our extensions of features indicated in subsections (A) through (E) above shall be so construed. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map;
- (G) Where physical or cultural features existing on the ground are at variance with those shown on the official zoning map, or in other circumstances not covered by subsections (A) through (F) above, the director shall interpret the zone boundaries, and if need be, may refer the matter to the Board of Commissioners for their interpretation. [Amended by Ordinance 88-19]

111.140. ZONING MAP AMENDMENTS. A map zone change is a reclassification of any area from one zone or district to another, after the proposed change has been reviewed and a recommendation made by the Hearings Officer or the Planning Commission. Such change shall be an ordinance enacted by the Board of Commissioners after proceedings have been accomplished in accordance with the provisions of this chapter. [Amended by Ordinance 88-21]

111.150. INITIATION OF A ZONE CHANGE BY POLK COUNTY.

- (A) A zone change may be initiated by Polk County only when the change proposed is in the public interest.
- (B) Proceedings to reclassify premises as to zone initiated by Polk County shall be by resolution, and the resolution shall be referred to the Planning Commission, if legislative, and the Hearings Officer, if quasi-judicial. The Director shall hereupon fix a date for hearing before the hearing body and give notice of such hearing as provided in Sections 111.340 through 111.370.
- (C) After the hearing, the Planning Commission or Hearings Officer shall make a recommendation to the Board of Commissioners. [Amended by Ordinance 88-21]

111.160. INITIATION OF ZONE CHANGE. Property owners, or persons purchasing property under contract, if they state in writing that they are purchasing the property under contract, may file a zone change petition. The petition shall be in writing on forms provided by the Planning Director and shall be filed with the Planning Director not less than 45 days prior to the date of the hearing. The petition shall contain the following information:

- (A) The present zone;
- (B) The proposed zone;
- (C) The street address, or where none exists, the location of the property;
- (D) The legal description of the property sought to be reclassified;
- (E) The names, addresses and zip codes of the owner(s) of the property sought to be reclassified; and
- (F) The signatures of the owners of at least 50 percent of the area of the property sought to be reclassified and the extent or percentage of interest or portion of the property as may be owned by the person signing the petition.

111.170. ZONE CHANGE SIGNATURES: HOW COUNTED. Pursuant to Section 111.160 (F), the following rules shall apply:

- (A) Tenants in Common. When but one tenant in common, or several but less than all, signs a zone change petition or waiver it shall be counted only for such interest or portion of the common property as the person or persons signing may own.

- (B) Tenants by the Entirety; Joint Tenancy. Where property is owned by a husband and wife as tenants by the entirety and only one of them signs, he or she shall be deemed the owner of 1/2 of the property and shall be counted accordingly. Where property is owned by two (2) or more persons under an estate having the attributes of a joint tenancy or right of survivorship each tenant shall be deemed the owner of so much of the property as he would receive if the joint property were divided equally between such tenants.
- (C) Purchasers Under Contract. Any person purchasing property under a contract of sale may sign a petition, waiver, or other instrument required by this ordinance, as owner, provided that he states he is purchasing the property under contract.
- (D) Government Property. Notwithstanding the fact that the consent of the federal, state, county, or local government, or the agents thereof, is not necessary to any zone change petition or other petition required by this ordinance, any such governmental unit or agency may, however, remonstrate and object to any proposed change, and such objection, remonstrance, or other instrument shall be signed by the administrative head of such governmental unit having authority over the property.
- (E) Corporations. Where property is owned by a private corporation, a petition, waiver, or other instrument conveying such property under this ordinance shall be signed by an authorized officer of the corporation.
- (F) Prima Facie Proof of Ownership. When any person signs as the owner of property or as an officer of a public or private corporation owning the property, or as an attorney in fact or agent of any such owner, or when any person states that he is buying the property under contract, the Hearings Officer and the governing body may accept such statements to be true, unless the contrary be approved, and except where otherwise in this ordinance more definite and complete proof is required, the Hearings Officer or governing body may demand proof that the signer is such owner, officer, attorney in fact, or agent. [Amended by Ordinance 88-21]

111.180. FILING AND CHECKING PETITION. After the complete zone change petition has been filed with the Planning Director, the staff shall check the petition and determine if the petition is complete under the provisions of Section 111.170, and if the petition is sufficient, the Planning Director shall then fix the time of the hearing on such petition before the Planning Commission or Hearings Officer and cause notice of hearing to be given as provided in Sections 111.340 through 111.370. [Amended by Ordinance 88-21]

111.190. ZONE CHANGE HEARING BEFORE THE HEARINGS OFFICER. The Hearings Officer shall hold a public hearing as prescribed in Chapter 111 on the complete petition for zone change. After concluding this hearing, the Hearings Officer shall prepare a report setting forth a summary of facts and conditions involved in the reclassification and submit the same, together with a recommendation to the Board of Commissioners. [Amended by Ordinance 88-21]

111.200. ZONE CHANGE HEARING BEFORE THE BOARD OF COMMISSIONERS. The Board of Commissioners shall hold a public hearing on the proposed zone change as provided in Chapter 111. Final decision by the Board of Commissioners shall not be effective until 21 days after mailing of the decision. Filing of an appeal to the Land Use Board of Appeals stays all proceedings by all parties in connection with the matter appealed until the appeal has been resolved. [Amended by Ordinance 88-21]

111.210. FINAL ACTION BY THE BOARD OF COMMISSIONERS. Any zone change or reclassification of property shall be by ordinance which shall be passed by the Board of Commissioners. Any denial of a proposed zone change shall be by order. A final decision by the Board of Commissioners shall not be effective until 21 days after mailing of the decision. Filing

of an appeal to the Land Use Board of Appeals stays all proceedings by all parties in connection with the matter appealed until the appeal has been resolved. Whenever any premises are reclassified as to zone, or a new zone established, or boundary lines of a zone changed, the official zoning map shall be changed as provided in Section 111.140. [Amended by Ordinance 88-21]

111.220. FILING A LAND USE APPLICATION.

- (A) Application for any land use permit or determination under this ordinance shall be submitted to the Community Development Department on forms provided by the County Planning Director. The application shall be accompanied by the appropriate fee(s) as adopted by the Board of Commissioners. An application may be filed by:
 - (1) The owner of the subject property;
 - (2) A purchaser thereof under a duly executed written contract, when the purchaser states on the application he or she is the contract purchaser and the seller consents in writing to the application;
 - (3) A lessee in possession of the subject property, when the owner consents in writing to the application; or
 - (4) The agent for any of the foregoing persons when duly authorized in writing by the owner of the property.
- (B) Concurrent requests do not require multiple fees; however, the higher of multiple application fees shall be charged
- (C) If an application for a permit, limited land use decision or zone change is incomplete, the Planning Director shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete upon receipt by the Planning Director of:
 - (1) All of the missing information;
 - (2) Some of the missing information and written notice from the applicant that no other information will be provided; or
 - (3) Written notice from the applicant that none of the missing information will be provided. [Amended by Ordinance 10-04]

Note: This provision does not preclude the applicant from submitting additional information at a later date.

- (D) On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (C) of this section and has not submitted:
 - (1) All of the missing information;
 - (2) Some of the missing information and written notice that no other information will be provided; or
 - (3) Written notice that none of the missing information will be provided. [Amended by Ordinance 10-04]

111.230. NOTICE OF APPLICATION.

- (A) Notice of an application which requires a public hearing shall be made as prescribed in Sections 111.340 through 111.370 of the Polk County Zoning Ordinance.
- (B) Notification shall be made at least 20 days before the date on which the application is to be heard. Those notified have an opportunity to comment in writing to the Planning Director concerning the application. [Amended by Ordinance 90-19]

111.235 SPECIAL TRANSPORTATION NOTIFICATION

- (A) Polk County will provide ODOT notification to ensure that ODOT is involved as early as possible in the assessment of any redevelopment or new development proposal within the Rickreall community with a trip generation potential that significantly exceeds the trip generation assumptions for the Rickreall community adopted into the Polk County TSP as part of the Rickreall Junction Facility Plan. The ODOT contact for any such development shall be the ODOT Area 3 Planner.
- (B) Polk County will provide ODOT notification to ensure that ODOT is involved as early as possible in the assessment of any redevelopment or new development proposal within the Fort Hill Interchange Management Area Overlay Zone with a trip generation potential that significantly exceeds the trip generation assumptions used for the Fort Hill IAMP. The ODOT contact for any such development shall be the ODOT Area 3 Planner. [Amended by Ordinance 07-06]

111.240. ADMINISTRATIVE REVIEW. Administrative review shall be conducted by the Planning Director as follows:

- (A) Type A Procedure. This procedure shall apply to applications for land partitions; farm dwellings in the Exclusive Farm Use (EFU) and Farm Forest (F/F) zones; property line adjustments (except for those exclusions noted in Chapter 91 of the Polk County Code; forest dwellings in the Timber Conservation (TC) and Farm Forest (F/F) zones; lot-of-record determinations as specified by this ordinance; placement of manufactured homes in the Suburban Residential (SR) zone; use of a manufactured home for temporary hardship in all zones; administrative variances; land use determinations; and all other listed uses as specified. Under this procedure, the Planning Director shall render a final decision or, alternatively, may refer the matter to the Hearings Officer as provided under Section 111.260. Decisions under this procedure may be appealed to the Board of Commissioners.
- (B) Type B Procedure. This procedure shall apply to all applications not specified under Section 111.240 (A), unless an initial hearing is required by a specific provision of the Polk County Zoning Ordinance. Notice of the proposed action shall be made pursuant to Section 111.350. Those notified, including the applicant, shall be given 10 days from the date of the notification to either submit a written request for public hearing before the Hearings Officer, or bring to the attention of the Planning Director objections to approval or any adverse consequences or incompatibilities that may result from approval. A request for a hearing shall be in writing and shall state the basis for requesting the hearing and shall be accompanied by payment of a fee, specified in the County's fee resolution, to defray the cost of the hearing. The amount of the fee shall not exceed the limits established by ORS 215.416(11). No fee is required if the hearing is requested by the Board, Commission, Department of Land Conservation and Development, or the Director. [Amended by Ordinances 92-38, 97-9, and 09-02]

111.245. NOTICE OF TYPE A PROCEDURE.

- (A) Notice of applications under Section 111.240 (A) shall be sent for review and comment to all groups that are registered with the Planning Division to receive electronic notification of land use applications within the geographical area that includes the site of the land use request and any affected jurisdiction, state, or local agency as determined by the Planning Director. [Amended by Ordinances 97-9 and 09-02]
- (B) Notice shall be mailed to the Oregon Department of Transportation for any land use change or development requiring County review and approval which requires direct access to a state highway or which is located within 500 feet of a state highway or public use airport. [Amended by Ordinance 98-5]

111.250. ACTION BY PLANNING DIRECTOR OR HEARINGS OFFICER.

- (A) Applications submitted under section 111.240 may be granted only if they meet criteria established in the Polk County Zoning Ordinance and/or Comprehensive Plan. Decisions shall be made by the Polk County Planning Director or Hearings Officer only after reviewing materials submitted with the application and other applicable evidence and hearing testimony from Planning Division staff, the applicant(s) and other interested parties.
- (B) If the application was complete when first submitted or the applicant submits additional information as described in Section 111.220 (C), within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted. [Amended by Ordinance 10-04]
- (C) Polk County shall take final action on an application for a permit, limited land use decision, or zone change, for land within an urban growth boundary and applications for mineral aggregate extraction, including resolution of all appeals under Section 111.280, within 120 days after the application is deemed complete pursuant to Section 111.220 (C). Polk County shall take final action on all other applications for a permit, limited land use decision, or zone change, including resolution of all appeals under Section 111.280, within 150 days after the application is deemed complete pursuant to Section 111.220 (C). [Amended by Ordinance 10-04]
- (D) The 120 or 150-day period set in subsection (C) of this section may be extended for a specified period of time at the written request of the applicant. The total of all extensions may not exceed 215 days. [Amended by Ordinance 10-04]
- (E) The 120 or 150-day period set in subsection (C) of this section does not apply to an amendment to the Polk County Comprehensive Plan or the provisions of the Zoning Ordinance. [Amended by Ordinance 10-04]

111.260. REFERRAL BY PLANNING DIRECTOR.

- (A) The Polk County Planning Director may decline to act on an application under section 111.240 and refer it to the Polk County Hearings Officer. Referral shall be made within 30 days after the date on which the application is received, and shall be heard at the first regular meeting of the Hearings Officer scheduled after the referral.
- (B) Action of the Hearings Officer on a referral is final and may be appealed to the Polk County Board of Commissioners in accordance with section 111.280.
- (C) The Director shall notify the applicant in writing of a referral to the Hearings Officer. Notice shall be sent within seven days after the date of referral.

111.270. NOTICE OF ACTION BY PLANNING DIRECTOR OR HEARINGS OFFICER.

The Polk County Planning Director shall send notice of any action taken on an application under Section 111.240 to all groups that are registered with the Planning Division to receive electronic notification of land use applications within the geographical area that includes the site of the land use action, all property owners of record within the notification area as specified in Section 111.350, and any person who is adversely affected or aggrieved by the decision. Notification shall be mailed within ten days after action is taken on the application. However, failure to receive notice does not affect the validity of the action. [Amended by Ordinance 97-9 and 09-02]

111.275. ZONE CHANGE CRITERIA. Pursuant to Section 111.160, a zone change may be approved, provided that the request satisfies all applicable requirements of this ordinance, and provided that with written findings, the applicant(s) clearly demonstrate compliance with the following criteria:

- (A) The proposed zone is appropriate for the comprehensive plan land use designation on the property and is consistent with the purpose and policies for the applicable comprehensive plan land use classification;
- (B) The proposal conforms with the purpose statement of the proposed zone;
- (C) The uses allowed in the proposed designation will not significantly adversely affect allowed uses on adjacent lands;
- (D) Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property;
- (E) The proposed change is appropriate taking into consideration the following:
 - (1) Surrounding land uses,
 - (2) The density and pattern of development in the area,
 - (3) Any changes which may have occurred in the vicinity to support the proposed amendment;
- (F) The proposal complies with any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land; and
- (G) The proposal complies with Oregon Revised Statutes, all applicable statewide planning goals and associated administrative rules. If an exception to one or more of the goals is necessary, the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4 shall apply. [Amended by Ordinance 98-3]

111.280. APPEAL TO BOARD OF COMMISSIONERS.

- (A) An appeal may be taken to the Polk County Board of Commissioners by any person whose interests are affected adversely or who is aggrieved by action on an application under Section 111.240. An appeal must be filed with the Community Development Department within 12 days after the mailing of notice to the applicant. [Amended by Ordinances 09-02 and 10-04]
- (B) On receiving an appeal the Community Development Department shall certify and deliver to the Board a copy of the original application and copies of all other papers constituting the record of the action under appeal.
- (C) Upon receipt of an appeal by the Community Development Department, the Board of Commissioners shall set the matter for a public hearing and cause notice of the time and place of the hearing to be given as provided under Section 111.340. The Planning Director shall send notice of the public hearing to all groups that are registered with the Planning Division to receive electronic notification of land use applications within the geographical area that includes the site of the land use action, all property owners of record within the notification area as specified in Section 111.350, and any person who is adversely affected or aggrieved by the decision. A hearing may be continued from time to time if the Board considers it advisable. [Amended by Ordinance 09-02]
- (D) The appeal shall be accompanied by payment of a fee, specified in the County's fee resolution, to defray the cost of the hearing. [Amended by Ordinance 09-02]
- (E) Filing of an appeal stays all proceedings by all parties in connection with the matter appealed until the Board of Commissioners has made a decision on the appeal. [Amended by Ordinances 89-1 and 97-9]

111.290. CALL OF BOARD OF COMMISSIONERS.

- (A) Two or more members of Polk County Board of Commissioners may call up an action by the Polk County Hearings Officer or the Planning Director. However, the call must be made at the first meeting after notice of the decision is presented.
- (B) The provisions of Section 111.280 (B) and (C) apply with respect to a matter called up under this section. [formerly 122.070]

111.300. ACTION BY BOARD OF COMMISSIONERS.

- (A) Pursuant to Sections 111.280 and 111.290, the Polk County Board of Commissioners shall review any action of the Polk County Hearings Officer or the Polk County Planning Director. The Board may remand the matter for further investigation and consideration, in which case the Hearings Officer or Planning Director shall conduct such further investigation as is necessary and report findings and conclusions in writing to the Board.
- (B) Pursuant to Section 111.290, after conducting a public hearing to consider an action and appeal, and finding that the facts therein stated do not warrant further hearing, the Board may summarily affirm the action and deny the appeal.
- (C) Pursuant to Section 111.290, after conducting a public hearing to consider an action and appeal, the Board may affirm or reverse wholly or partly, or modify, any action appealed, and may impose such additional conditions as it finds warranted by the facts.

111.310. EFFECTIVE DATE. Land use actions granted under section 111.240 become effective on the 10th day after mailing of the notice of the decision or after the regular meeting of the Polk County Board of Commissioners following such mailing, whichever is later. However, if the matter has been called up by the Board under Section 111.290, or the matter has been appealed under Section 111.280, the land use action does not become effective until the Board has taken final action. A final decision by the Board of Commissioners shall not be effective until 21 days after mailing of the decision. An appeal of a land use action by the Board of Commissioners to the Land Use Board of Appeals stays all proceedings by all parties in connection with the matter until the appeal has been resolved. [Amended by Ordinance 97-9]

111.320. HOLDING PUBLIC HEARINGS. Any hearing shall be public and may be continued or postponed from time to time. At any such hearing all persons shall be given an opportunity to be heard.

111.330. APPEARANCES OF INTERESTED PERSONS, REMONSTRANCES. Any person or persons desiring to be heard for or against the subject of the hearing may file with the governing body, Hearings Officer or the Planning Commission, whichever holds the hearing, a statement in writing, or may appear and respond orally at the hearing, either in person or by authorized representative. Written remonstrances or objections to the proposed zone change, variance, conditional use or other subject of hearing, may be filed with the hearings body.

[Amended by Ordinance 88-21]

111.340. NOTICE OF PUBLIC HEARING; CONTENT. Upon the fixing of the time of public hearing on all matters before the appropriate hearing body, the Director shall give notice as set forth in this chapter. The notice shall:

- (A) Explain the nature of the application and the proposed use or uses which could be authorized;
- (B) List the applicable criteria from the ordinance and the plan that apply to the application at issue;

- (C) Set forth the street address or other easily understood geographical reference to the subject property.
- (D) State the date, time and location of the hearing.
- (E) State that failure of an issue to be raised in a hearing, in person or in writing, or failure to provide sufficient specificity to afford the hearings body an opportunity to respond to the issue, precludes appeal to the Land Use Board of Appeals on that issue;
- (F) State that a copy of the application, all documents and evidence relied upon by the applicant, and applicable criteria, are available for inspection at no cost and will be provided at reasonable cost;
- (G) State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing, and will be provided at a reasonable cost; and include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings. [Amended by Ordinances 89-17 and 88-21]

111.350. MAILING OF NOTICE; NOTIFICATION AREA; FAILURE TO RECEIVE NOTICE.

- (A) Notices of public hearing to be held by the hearing body, notice of an application to be processed as a Type B procedure pursuant to Section 111.240 (B), or notice of any action taken on an application by the Planning Director or Hearings Officer shall be mailed to the applicant and to owners of record on the most recent property tax assessment roll where such property is located:
 - (1) Within 100 feet of the property which is the subject of the notice, where the subject property is wholly or partly within an urban growth boundary;
 - (2) Within 250 feet of the property which is the subject of the notice, where the subject property is outside an urban growth boundary and not within a farm or forest zone; or
 - (3) Within 750 feet of the property which is the subject of the notice, where the subject property is within a farm or forest zone.
- (B) Notices of public hearing to be held by the hearing body shall be mailed 20 days prior to the date of the hearing.
- (C) Failure to receive notice by mail as provided in this section shall not affect the validity of the proceedings if the County can demonstrate by affidavit that such notice was given.
- (D) Notice of an application to be processed as a Type B procedure pursuant under Section 111.240 (B) and public hearing notices shall be mailed to all groups that are registered with the Planning Division to receive electronic notification of land use applications within the geographical area that includes the site of the land use action. [Amended by Ordinances 89-17, 97-9 and 09-02]
- (E) Notice of a public hearing shall be mailed to the owners of public-use airports if the property subject to the land use permit or zone change is located:
 - (1) Within 5,000 feet of a visual airport.
 - (2) Within 10,000 feet of an instrument airport. [Amended by Ordinance 98-5]

111.360. POSTING NOTICE.

- (A) Notice of public hearing related to an application to be processed as a Type B procedure pursuant to Section 111.240 (B), shall be given by posting a sign on the

subject property within 10 feet of whatever boundary line of such land abuts the most traveled public road or street, and if no public road abuts thereon, then facing in such a manner as may be most readily seen by the public.

- (B) It shall be the responsibility of the applicant to provide the sign frame and place such notice at least 20 days prior to the public hearing. A placard with printed information on the proposed change shall be provided by the Planning Director for the sign structure, and shall be obtained for mounting by the applicant or his representative prior to posting.
- (C) The posted sign shall be removed by the applicant or the applicant's representative within five days after final action on the application. [Amended by Ordinance 89-17]

111.370. PUBLISHING NOTICES. Notice of public hearings to be held on amendments to the text of the ordinance, on zone changes and Comprehensive Plan amendments, shall be given by publishing such notice in a newspaper of general circulation in the county at least once not less than 20 days prior to said hearing. [Amended by Ordinances 219 and 88-21]

111.380. CONDUCT OF HEARING; CONTINUANCE; EXTENSION; REOPENING RECORD.

- (A) At the beginning of a hearing under the Comprehensive Plan or land use regulations of Polk County, a statement shall be made to those in attendance that:
 - (1) Lists the applicable substantive criteria;
 - (2) States that testimony and evidence must be directed toward the criteria described in paragraph (1) of this subsection, or other criteria in the Plan or implementing ordinances which the person believes to apply to the decision; and
 - (3) States that failure to raise an issue with sufficient specificity to afford the hearings body an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals.
- (B) If additional documents or evidence in support of an application is submitted at a public hearing, any party shall be entitled to a continuance of the hearing. Such a continuance is not subject to the limitations of ORS 215.428.
- (C) Unless there is a continuance, if a participant so requests before the conclusion of the initial evidentiary hearing, the record shall remain open for at least seven days after the hearing. Such an extension shall not be subject to the limitations of ORS 215.428.
- (D) When the Board of Commissioners, Planning Commission or Hearings Officer reopens a record to admit new evidence or testimony, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue. [Amended by Ordinance 89-17]

CHAPTER 91

SUBDIVISIONS, PARTITIONS, and PROPERTY LINE ADJUSTMENTS (Short Title; Definitions)

91.110.	Short Title
91.120.	Purpose
91.150	Definitions
91.200	Procedures for Subdivisions and Partitions
91.210	Appeal of Subdivision or Partition Application
91.220	Partition Final Approval
91.250	Subdivision Final Approval
91.260	Filing of Final Plan
91.280	Board Signature on Subdivision Plats
91.290	General Approval Criteria for Partitions
91.300	General Approval Criteria for Subdivisions
91.700	Standards for Partitions and Subdivisions
91.720	Sale of Subdivision Lots and Partition Parcels
91.800	Exceptions to Ordinance Standards
91.820.	Appeals of Exceptions Decisions
91.840	Violations
91.910	Administration
91.920	Enforcement
91.930	Area Involved
91.940	Fees
91.950.	Lawfully Created Parcels
91.955	Creation of Parcels Which Were Improperly Formed
91.960.	Property Line Adjustments

CHAPTER 91

SUBDIVISIONS, PARTITIONS, AND PROPERTY LINE ADJUSTMENTS (Short title; Definitions)

91.110. SHORT TITLE. This chapter may be cited as the "Subdivision Ordinance".

91.120. PURPOSE. In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirement adopted for the public health, safety and welfare. To protect the people, among other purposes, such provisions are intended to provide for permanently wholesome community environment, adequate public services, and safe streets for accomplishing, among other things, the following objectives:

- (1) Better living conditions within new subdivisions and partitioned land;
- (2) Areas which may be properly developed and in conformance with existing ordinances;
- (3) Simplification and definiteness of land descriptions;
- (4) Establishment and development of street utilities, and public areas;
- (5) To uniformly enforce standards and regulations as set forth in this chapter to inform the person proposing the subdivision or partition of what is necessary to meet the requirements of subsections (1) to (4) of this section, and to minimize the need for additional requirements and regulations not set forth in this chapter.

91.150. DEFINITIONS.

- (1) General Definitions. For the purpose of this chapter, words used in the present tense include the future, the singular number includes the plural, and the term "this ordinance" includes all amendments hereafter made thereto.
- (2) "Access." The connection of any existing or proposed road or bike facility to a county or state road; for example, a private driveway or public road, for ingress or egress to property.
- (3) "Accessory Transportation Improvements." Transportation improvements that are incidental to a land use to provide safe and efficient access to the use.
- (4) "Alley." A public way not more than 20 feet wide, providing a secondary means of access to private property.
- (5) "Applicant." Any person as defined in this section who makes application to the County for approval of a subdivision or partitioning plan.
- (6) "Arterial Street (Road)." A state highway and other public road that principally provides service to through traffic. Such a roadway is intended to carry large volumes of traffic (typically 1,000 ADT or more outside of an urban growth boundary) and connect major traffic generators, cities, recreational areas, major destinations, and major segments of transportation networks. High capacity is achieved through allowing higher speed, limited access, wider roadway and movement preference at intersections with lesser standard roadways.

"Principal Arterials" are major urban and rural highways connecting communities, towns and cities. The principal arterial provides for through traffic movement and distribution to lower order roadways.

"Minor Arterials" connect areas of principal traffic generation to major urban and rural highways. The minor arterial network provides for through traffic movement to the major arterials and distribution into the network of collector and local streets.

- (7) "Block." An area or unit of land adjacent to one or more streets in a subdivision.

- (8) "Board." The Polk County Board of Commissioners.
- (9) "Building Lines." The building lines for all lots and parcels shall be coincident with the building setback requirements of the zone in which the development is occurring.
- (10) "Channelization." The separation or regulation of conflicting traffic movements into definite paths of travel by traffic islands or pavement markings to facilitate the safe and orderly movements of both vehicles and pedestrians. Examples include, but are not limited to, left turn refuges, right turn refuges including the construction of islands at intersections to separate traffic, and raised medians at driveways or intersections to permit only right turns. "Channelization" does not include continuous median turn lands.
- (11) "Collector Street (Road)." A public road that provides access to property and that collects and distributes traffic between access roads and arterials or as specified in an acknowledged comprehensive plan. Any street designated as such on an official map adopted in conjunction with a comprehensive plan as allowed under ORS Chapter 215.
- "Major Collectors" carry local traffic between neighborhood areas to arterial facilities. The major collector provides access from minor collectors to community services and to other neighborhoods within, or immediately adjacent to urban areas.
- "Minor Collectors" serve as links between the local street system and the higher order roadways. Minor collectors carry traffic between minor traffic generators, such as neighborhood shopping and community centers and schools.
- (12) "Contiguous." Means all lots, tracts or parcels of land under single ownership being in actual contact, adjoining or touching, excluding those lots, tracts or parcels of land divided by a public way.
- (13) "Corner Lot." A lot or portion thereof situated at the intersection of two or more streets.
- (14) "Curb Line." The line indicating the edge of vehicular roadway within the overall right-of-way.
- (15) "Division." The act of creating a boundary.
- (16) "Easement." The grant of a right of use across or through an area or tract of land.
- (17) "Frontage Road." Also known as "Marginal Access Road." A service road generally parallel and adjacent to an arterial, and which provides access to abutting properties, but protected from through traffic. Also known as "Access Road." A low volume public road that principally provides access to property.
- (18) "Hearings Officer." An individual appointed by the Board of Commissioners to conduct hearings under this Chapter.
- (19) "Lot." A unit of land created by a subdivision of land.
- (20) "New Road." A public road or road segment that is not a realignment of an existing road or road segment.
- (21) "Official Map." Any map adopted by the Board of Commissioners in conjunction with the adoption of an ordinance, or in conjunction with the Comprehensive Plan allowed under ORS Chapter 215.
- (22) "Owner." The owner of record of real property as shown on the latest tax roles of Polk County or by the deed records of such county, or a person who is purchasing a unit or tract of land under contract.
- (23) "Parcel." A unit of land created by partitioning of land, or as created pursuant to Sections 91.950 and 91.955.

- (24) "Partition." Either an act of partitioning land or a parcel of land partitioned as defined in this section.
- (25) "Partition plat" includes a final map and other writing containing all the descriptions, locations, specifications, provisions and information concerning a partition. [Amended by Ordinance 10-04]
- (25) "Partitioning Land" means dividing land to create not more than three parcels of land within a calendar year when such parcel exists at the beginning of such year. "Partitioning land" does not include:
- (a) Dividing land as a result of a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots;
 - (b) Adjusting a property line as property line adjustment is defined in this section;
 - (c) Dividing land as a result of the recording of a subdivision or condominium plat;
 - (d) Selling or granting by a person to a public agency or public body of property for state highway, county road, city street or other right of way purposes if the road or right of way complies with the applicable comprehensive plan and ORS 215.283 (2)(q) to (s). However, any property sold or granted for state highway, county road, city street or other right of way purposes shall continue to be considered a single unit of land until the property is further subdivided or partitioned; or
 - (e) Selling or granting by a public agency or public body of excess property resulting from the acquisition of land by the state, a political subdivision or special district for highways, county roads, city streets or other right of way purposes when the sale or grant is part of a property line adjustment incorporating the excess right of way into adjacent property. The property line adjustment shall be approved or disapproved by the applicable local government. If the property line adjustment is approved, it shall be recorded in the deed records of the county where the property is located. [Amended by Ordinances 08-02 and 10-]
- (26) "Person." Person, unless the context indicates otherwise, includes an individual partnership, corporation, both public and private, association, or club; and the singular includes the plural; and the masculine includes the feminine.
- (27) "Plan." A drawing or diagram made to scale of a proposed or tentative division of an area or tract of land.
- (28) "Planning Director." The designated representative authorized and appointed by the Board under ORS to administer the provisions of this chapter.
- (29) "Plat." Includes a final diagram, drawing, replat or other writing containing all the descriptions, location, specifications, dedications, provisions and information concerning a subdivision.
- (30) "Private Way." All rights-of-way not open to use by the general public.
- (31) "Property line" means the division line between two units of land.
- (32) "Property line adjustment" means a relocation or elimination of all or a portion of the common property line between abutting properties that does not create an additional lot or parcel. [Amended by Ordinance 10-04]
- (33) "Public Way." Any city, county, state, or federal highway, roadway, right-of-way, or easement open to use by the general public.
- (34) "Realignment." Rebuilding an existing roadway on a new alignment where the new centerline shifts outside the existing right of way, and where the existing road surface is

- either removed, maintained as an access road or maintained as a connection between the realigned roadway and a road that intersects the original alignment. The realignment shall maintain the function of the existing road segment being realigned as specified in the acknowledged comprehensive plan.
- (35) "Reserve Strip." A strip of land, one foot in width, across the end of or along the edge of a street or alley, for the purpose of controlling access which is reserved or held for future street extension or widening.
 - (36) "Reverse Frontage Lot." A lot having frontage on two parallels or approximately parallel roads, where the rear of the lot, or structure on the lot faces an arterial.
 - (37) "Road or Street." A public or private way created to provide ingress or egress for persons to one or more lots, parcels, areas, or tracts of land.
 - (38) "Roadway." The general term used to describe the strip of land, structures, surfacing, and shoulders over which motorized vehicles travel. The roadway includes the area between the edges of the shoulder or curb and the area two feet beyond the edge of shoulder or curb.
 - (39) "Rural." Those areas within Polk County which lie outside an adopted Urban Growth Boundary (UGB) and outside an urban unincorporated community.
 - (40) "Shall." The term "shall" is used in a mandatory sense.
 - (41) "Subdivide Land." To divide a lot or parcel into four or more lots, within a calendar year, when such lot or parcel exists at the beginning of such year.
 - (42) "Subdivider." Any person who undertakes to subdivide a lot or parcel for the purpose of transfer of ownership or development and including changes in street or lot lines.
 - (43) "Subdivision." Either an act of subdividing land property subdivided as defined in this section.
 - (44) "Transportation Impact Analysis (TIA)". A study which evaluates the adequacy of the existing transportation system to serve a proposed development and the expected effects of the proposed development on the transportation system. A TIA is required when a particular development is expected to generate more than 300 vehicle trips during a single day and/or more than 100 vehicle trips during a single hour. The TIA should provide adequate information for Public Works to evaluate the development proposal and, if necessary, identify traffic mitigation measures.
 - (45) "Urban." Those areas of Polk County which lie within an adopted Urban Growth Boundary (UGB) or within an urban unincorporated community.
 - (46) "Urban Growth Boundary (UGB)." A boundary adopted by both the city and county which includes the estimated supply of various land types (commercial, industrial, public, and residential) intended to serve the city's needs over a 20-year planning period.
 - (47) "Walkway." A transportation facility built for use by pedestrians, including persons in wheelchairs. Walkways include sidewalks, paths and paved shoulders.
 - (48) "Vicinity Map." A drawing or diagram, to scale, showing the location of the proposed partition or subdivision relative to abutting properties, to nearby roads or streets, or to other known landmarks such as rivers townsites, rural community centers and such.

91.200 PROCEDURES FOR SUBDIVISIONS AND PARTITIONS

- (1) A Partition application shall be submitted to the Planning Division on the form provided by the Planning Director. The application shall include a map of the area proposed for partitioning, with approximate dimensions and acreage identified. The Planning Director shall provide for the notification to affected agencies as identified in Chapter 111 of the Polk County Zoning Ordinance. A Partition application is reviewed

and a decision may be made by the Planning Director. The Planning Director shall provide notification of the decision pursuant to PCZO Chapter 111. The notice of decision shall include the following statement:

“This approval is valid, subject to conditions identified herein, unless otherwise modified by the process identified in Section 91.800 (Exceptions to Ordinance Standards).”

- (2) A Subdivision application shall be submitted to the Planning Division on the form provided by the Planning Director. The Planning Director and applicant shall provide for notification pursuant to PCZO Chapter 111.

The Hearings Officer reviews a subdivision application at a public hearing. The Hearings Officer shall conduct the public hearing pursuant to PCZO Chapter 111 procedures. The Hearings Officer shall deliberate and provide a final written decision. The Planning Director shall provide notification of the decision of the Hearings Officer pursuant to PCZO Chapter 111. The notice of decision shall include the following statement:

“This approval is valid, subject to conditions identified herein, unless otherwise modified by the process identified in Section 91.800 (Exceptions to Ordinance Standards).”

A subdivision application shall include the following additional information and data:

- (a) One reproducible copy of the tentative plan for the proposed subdivision on 8.5 inch by 11 inch paper.
- (b) Subdivision Name. No tentative plan of a subdivision shall be approved which bears a name using a word which is similar to or pronounced the same as a word in the name of any other subdivision in the same county, except for the words "town", "city", "place", "court", "addition", or similar words unless the land platted is contiguous to and platted by the same party that platted the subdivision bearing that name or unless the party files and records the consent of the party that platted the subdivision bearing that name. All plats must continue the block numbers of the plat of the same name last filed, or as provided in ORS 92.090.
- (c) Vicinity map.
- (d) A plan of the proposed subdivision at a scale of one inch equals 200 feet or on a larger scale if desired and including the following information and data;
 - (A) The township, range, section or donation land claim, tax lot, and the county in which the subdivision is located.
 - (B) The location of all existing or proposed roads within or on the boundary of the proposed subdivision.
 - (C) Total land area of the proposed subdivision with lot layout and approximate dimensions.
 - (D) The zoning in and adjacent to the proposed subdivision shall be shown on the tentative plans and the tentative plans shall indicate any uses proposed other than single family residential.
 - (E) An outline of proposed deed restrictions or covenants, if any, shall also be indicated.
 - (F) The location of all buildings within the proposed subdivision and their present uses. Those to remain shall be indicated.

- (G) The location, size, and use of all contemplated and existing public areas within the proposed subdivision, and a description of the adaptability of the area for uses contemplated. Areas for public use approved by the Hearings Officer shall be dedicated for such use and indicated on the final plat before recording.
 - (H) The location and kind of public utilities in or adjacent to the proposed subdivision. If possible, the locations should be shown on the vicinity map.
 - (I) Location of any drainage ways or easements in or adjacent to the proposed subdivision.
 - (J) Topography shall be provided at a contour interval of 10 feet when slopes within the proposed subdivision exceed 10%. The base for such information shall be the datum obtained from any official benchmark in Polk County or the City of Salem providing its location, description, and elevation is furnished. When an official benchmark is not available, a survey monument shall be set in a concrete monument, and the monuments set in a secure place. An assumed elevation shall be assigned from which all map elevations for that subdivision shall be referenced.
 - (K) North point, scale and date.
 - (L) The location of all proposed pedestrian and bicycle facilities.
 - (M) The names and addresses of all landowners within the proposed subdivision, the subdivider, if other than the owners, and the engineer or surveyor responsible for laying out the subdivision.
 - (N) Written statements from the applicant showing compliance with applicable approval criteria and development standards in Sections 91.270 and 91.700.
- (3) The Planning Director, Hearings Officer, or Board of Commissioners may require additional information to complete review of the application if it is determined that such information is needed to complete the application review process. The applicant shall be responsible for providing identified additional information.

91.210. APPEAL OF SUBDIVISION OR PARTITION APPLICATION. Upon approval or disapproval of a subdivision or partition, the decision may be appealed to the Board of Commissioners by any person who is adversely affected or aggrieved, or who is entitled to notice of the decision as identified in PCZO 111.350. A decision on an application for a subdivision or partition may be appealed by submitting an appeal form to the Planning Division, with the appropriate appeal fee, within twelve (12) days of the mailing of the decision. An appeal of a subdivision decision must include documentation of participation in the proceedings either through written or oral testimony.

91.220. PARTITION FINAL APPROVAL. An application that has received conditional approval as provided above in this section, and other applicable sections of this Ordinance and the Zoning Ordinance, shall be reviewed for final approval upon the applicant submitting documentation showing compliance with all conditions. The County Surveyor shall examine the plat for accuracy and completeness and he may collect such fees as are provided by state law for such review. Approval of the submitted plat shall be considered final when properly endorsed by the County Surveyor, the County Road Official, the Planning Director, and the Assessor. The Board of Commissioners shall sign if required for acceptance of a dedicated area. The plat shall be recorded with the County Clerk. Recording of the plat with the County Clerk shall constitute final approval by Polk County of the partition request by the applicant.

91.250. SUBDIVISION FINAL APPROVAL. The following conditions shall be met prior to final approval of a subdivision.

- (1) The final plat and all supporting evidence and documentation showing compliance with conditions of approval shall be submitted to applicable agency within 12 months after the effective date granting conditional approval.
- (2) All lots shall be served from an established public or private water system or private source with the water available at each lot prior to recording the subdivision plat. The water quality shall be in accordance with the requirements of the Oregon Health Division, the Oregon Water Resources Department, and the Oregon Department of Environmental Quality.
- (3) A subdivision plat, when ready for final approval prior to recording, shall substantially conform to the approved tentative plan, however, the final subdivision plat may contain all or only a portion of the approved tentative plan.
- (4) After the final plat has been submitted to the County Surveyor for review, the Planning Director's staff shall review the final plat and compare it with the approved tentative plan to ascertain whether the final plat conforms substantially to the approved tentative plan and with such conditions of approval of the tentative plan which may have been made. The County Surveyor shall examine the plat for accuracy and completeness and may collect such fees as are provided by law for such review.
- (5) If the Planning Director or County Surveyor finds there has not been full conformity with the conditionally approved plan, either or both shall advise the subdivider of the changes or additions that must be made, and afford the subdivider an opportunity to make such changes or additions. The applicant shall submit documentation showing compliance within 60 days of notification of needed changes, or prior the end of the period of validity as outlined in the initial decision, whichever is longer.
- (6) When the final plat has been reviewed and is in substantial conformity with conditions of approval, the Planning Director shall sign the plat without further action.
- (7) If the final plat is not in full conformance, it shall be submitted to further review by the Hearings Officer.
- (8) If the final plat is referred to the Hearings Officer for signature, the Hearings Officer may elect either to sign the plat or reconsider it.

91.260. FILING OF FINAL PLAT. When approved and signed by the County Surveyor, Planning Director, Road Official, County Assessor and Tax Collector, the plat shall be forwarded to the Board of Commissioners for approval and signatures prior to being signed and recorded by the County Clerk. Any bond agreements, deeds, Bancroft petitions and statements of financial responsibility shall be submitted with the final plat for approval by the Board. Recording of the plat with the County Clerk shall constitute final approval by Polk County of the partition request by the applicant.

91.280. BOARD SIGNATURE ON SUBDIVISION PLATS. For purposes of ORS 92.100 and Polk County Code 91.730, the chairperson of the Board of County Commissioners is delegated the authority to sign subdivision plats on behalf of the Board of Commissioners. In the event that the chairperson is not available, any other commissioner may act in place of the chairperson and sign subdivision plats for the Board.

91.290. GENERAL APPROVAL CRITERIA FOR PARTITIONS

- (1) In order to approve a partition application, the Planning Director, Hearings Officer, or Board of Commissioners shall consider information submitted by the applicant and other sources into the record for the proceeding and make findings that:

- (a) The proposal is consistent with the provisions and intent of the adopted Comprehensive Plan and Transportation Systems Plan; and
 - (b) The proposal is consistent with the provisions of this chapter and the zoning ordinance.
- (2) The Planning Director, Hearings Officer, or Board of Commissioners may prescribe conditions or make changes or modifications, which are within this chapter and the zoning ordinance.
 - (3) If a partition application cannot meet the above conditions or requirements and conditions, the Board, Hearings Officer or Planning Director shall deny the proposal.

91.300. GENERAL APPROVAL CRITERIA FOR SUBDIVISIONS

- (1) In order to approve a subdivision application, the Hearings Officer shall consider information submitted by the applicant and other sources into the record for the proceeding and make findings that:
 - (a) The proposal is consistent with the provisions and intent of the adopted comprehensive plan and transportation systems plan; and
 - (b) The proposal is consistent with the provisions of this chapter and the zoning ordinance.
- (2) The Hearings Officer may prescribe conditions or make changes or modifications, which are within this chapter and the zoning ordinance.
- (3) If such a subdivision application cannot meet the above conditions or requirements and conditions, the Hearings Officer shall deny the proposal.
- (4) Conditional approval of a subdivision in any unincorporated area of Polk County in accordance with the procedures of this chapter shall not be granted unless it can be shown that minimum adequate levels of service for schools, fire protection and water can be provided. Minimum adequate levels of service shall be determined in accordance with the following standards:
 - (a) The required minimum level of service for educational facilities will be as determined by the relevant school district.
 - (b) The required minimum level of service for fire protection will be the existence of fire protection service provided by a municipal fire department or rural fire protection district.
 - (c) The required minimum level of service for the provision of rural domestic water will be a source that conforms to County and State regulations regarding location and construction and which meets state health specifications.
 - (d) If comment is received from a service agency that the proposed subdivision will use and may cause an exceeding of capacity, but existing services can accommodate excess by planned expansion or modification, the permit process may proceed. If comment is received from a service agency that the proposed subdivision will exceed capacity and no modification to existing services is planned which can serve the additional requirements of the subdivision, the application will be denied.

91.700 STANDARDS FOR PARTITIONS AND SUBDIVISIONS

- (1) SEWAGE DISPOSAL.
 - (a) All parcels created in a partition shall have:
 - (A) Public sewage facilities available, or

- (B) An on-site area approved pursuant to State Department of Environmental Quality rules for the installation of a sewage disposal system, or
 - (C) The property owner sign an acknowledgement that no building permits will be issued for structures or uses that require sewage disposal, and that the parcel(s) created have not obtained on-site sewage disposal system approval.
- (b) All lots created in a subdivision shall have:
- (A) Public sewage facilities available, or
 - (B) An on-site area approved pursuant to State Department of Environmental Quality rules for the installation of a sewage disposal system.
- (2) ROAD, STREET, AND HIGHWAY STANDARDS. New public and private roads created by partitions and subdivisions shall be designed and constructed pursuant to the *Polk County Road Standards* adopted by the Polk County Board of Commissioners, as identified in Ordinance 98-6, as amended. Hereafter "road" includes "street".
- (a) Roads shall be aligned with existing roads in the vicinity of the proposed subdivision or partition either by prolongation of existing centerline or by connection with suitable curves. A road shall conform to the location, alignment, and width as indicated on a Corridor Refinement Plan for roads and highways now or hereafter adopted by Polk County. Roads shall intersect at or as near right angles as practicable. Road alignments shall be consistent with the adopted Transportation Systems Plan, or County adopted Corridor Refinement Plan. A property located within an urban growth boundary shall provide for the extension of roads and highways consistent with the adopted City Transportation Systems Plan.
 - (b) No partition or subdivision shall create a dedicated road in unincorporated Polk County without the approval of Polk County. No instrument dedicating land in unincorporated Polk County to public use shall be accepted for recording unless such instrument bears the approval of the Polk County Board of Commissioners.
 - (c) Unless an exception to the easement width has been granted pursuant to PCSO 91.800, the minimum widths for easements granting vehicular access across the subject property shall be:
 - (A) Sixty (60) feet wide for access easements that are intended to become preferred alternatives for "proposed" roads as identified in the Polk County Transportation Systems Plan.
 - (B) Forty (40) feet wide for all other access easements.
- (3) PROPERTY DIMENSIONS
- (a) LOT OR PARCEL SIZE. All lots and parcel sizes shall conform to the requirements of the zone in which the subdivision or partition is requested. When sub-surface sewage disposal means are proposed for the subdivision or partition, state and local health regulations, soil types, drainage, terrain, and location shall be included as part of the criteria reviewed to determine the minimum lot sizes that will safely accept subsurface sewage disposal.
 - (b) CORNER LOTS OR PARCELS. All corner lots or parcels shall be at least 100 feet wide adjacent to each road.
 - (c) PROPERTY LINES. Side property lines shall be as close to right angles to the front property line as practicable. Unless otherwise approved, rear property lines shall be not less than one-half the width of the front property lines.

(d) In a cul-de-sac, the minimum property line fronting the turnaround shall be 50 feet and in no cases shall the property width be less than 60 feet at the building line.

(4) **SUBDIVISION ROAD IMPROVEMENTS.** All road improvements, including pavement, curbs, sidewalks and surface drainage shall be constructed pursuant to the specifications of the Polk County Road Standards. The applicant shall provide for all improvements identified herein or by reference. The Board may require a performance bond to ensure the development of roads to required standards. Subdivision plats shall not have final approval until such time as the Board is satisfied that any required road improvements will be completed pursuant to the specifications and standards set forth in this section:

(a) Subdivision roads shall be constructed as follows:

(A) For subdivisions located within an urban growth boundary, the road design and construction standards of the affected city shall apply. If the city has no adopted standards then the urban geometric design standards described in the Polk County Road Standards shall apply. The design and construction of all roads shall be based on the functional classification of such roads.

(B) For subdivisions located outside an urban growth boundary the rural geometric design standards described in the Polk County Road Standards shall apply. The design and construction of all roads shall be based on the functional classification of such roads.

(b) Mitigation may be required based on the traffic impacts identified through the Transportation Impact Analysis as defined in the Polk County Road Standards.

(A) Mitigation may require the dedication of land for improving existing roadways or constructing future roadways as development occurs. This includes roadway dedication on lands for which building permits are requested for new structures as well as lands proposed for major development.

(B) Mitigation may include the improvement of existing roadways intersecting or bordering a development to a standard that coincides with anticipated use. The classification of an existing road may increase based upon the results of a traffic analysis. An increase in classification shall necessitate an improvement in the roadway in accordance with the Polk County Road Standards.

(c) Access onto arterials will require the approval, through the permit process, from the Oregon Department of Transportation. The applicant(s) will need to follow ODOT's construction requirements for that portion of the access within state-owned right-of-way.

91.720. 91.720 SALE OF SUBDIVISION LOTS AND PARTITION PARCELS

(1) No person shall sell any lot in any subdivision with respect to which approval is required by this ordinance, until such approval is obtained. No person shall negotiate to sell any lot in a subdivision until a tentative plan has been approved.

(2) A person may negotiate to sell any parcel in a partition with respect to which approval of a tentative plan is required by this ordinance, prior to the approval of the tentative plan for the partition. However, no person may sell any parcel in a partition for which approval of a tentative plan is required by this ordinance, prior to such approval.

91.800. EXCEPTIONS TO ORDINANCE STANDARDS.

(1) The Planning Director or Hearings Officer may authorize an exception to any partition, subdivision, or property line adjustment requirements set forth in these standards.

- (2) Consideration for an exception from these regulations shall be based upon a written statement by the subdivider or person requesting the partition in which is given complete details of conditions and reasons why a specific exception should be granted. A request for an exception from these regulations shall be filed with the Planning Director prior to final approval of the final plat. No exception to a subdivision and partition ordinance standard will be considered after a plat has been recorded.
- (3) The basic reason for granting an exception will be proof that:
 - (a) Special conditions or circumstances peculiar to the property under consideration make an exception necessary. The applicant shall specifically identify the condition or circumstance that requires an exception to the standard.
 - (b) The exception is necessary for the proper development of the subdivision or partition and the preservation of property rights and values.
 - (c) The exception will not at present or hereafter be detrimental to the public welfare or injurious to other properties adjacent to or in the vicinity of the proposed subdivision or partition.
 - (d) The exception is the minimum variation to the standard that will allow relief and provide for use of the property.
- (4) The Planning Director or Hearings Officer may impose conditions to minimize potential impacts to public facilities, services, or other land uses in the area.

91.820. APPEALS OF EXCEPTION DECISIONS. A decision regarding an exception to a standard for a subdivision or partition may be appealed to the Board of Commissioners by any person who is adversely affected or aggrieved, or who is entitled to notice of the decision as identified in PCZO 111.350. The Board may affirm the action, reverse the decision or direct the request back to the Planning Director or Hearings Officer for reconsideration. A decision on an application for an exception to a subdivision or partition standard may be appealed by submitting an appeal form to the Planning Division, with the appropriate appeal fee, within twelve (12) days of the mailing of the decision. The appeal must identify the ordinance provisions that have not been met in the reasons for the appeal.

91.840. VIOLATIONS. It shall be unlawful for any person to violate any provision of this chapter, to permit or maintain any such violation, to refuse to obey any provision hereof, or to fail or refuse to comply with any such provision except as exception may be allowed under this chapter. Proof of such unlawful act or failure to act shall be deemed prima facie evidence that such act is that of the owner. Prosecution or lack thereof of either the owner or the occupant shall not be deemed to relieve the other. When a lot or parcel is created in violation of this chapter, the Polk County Building Official may withhold building permits or may stop the construction or order the removal of any structure on the property that is found to be in violation.

91.910. ADMINISTRATION. All matters pertaining to the administration of this chapter shall be charged to the Planning Director, unless otherwise identified herein. All matters pertaining to the issuance of any permits for the use of land or structures or the erection or alteration of any structure on the land shall be charged to the Building Office.

91.920. ENFORCEMENT. It shall be the duty of the Polk County Planning Director to enforce this chapter.

91.930. AREA INVOLVED. This chapter shall be applicable to all lands within Polk County lying outside of the corporate limits of incorporated cities exercising general planning and zoning functions or when access to a County road is required.

91.940. FEES. Fees for applications, plans and plats for partitions and subdivisions may be set by Resolution of the Board of Commissioners.

91.950. LAWFULLY CREATED PARCELS.

- (1) A parcel shall be considered lawfully created if:
 - (a) The parcel was created by deed instrument or sales contract prior to the May 15, 1974 (the date of adoption of the Polk County Subdivision and Partition Ordinance);
 - (b) The parcel was created after May 15, 1974 in accordance with the provisions of the Polk County Subdivision and Partition Ordinance; or
 - (c) The parcel was created by dividing land as a result of a lien foreclosure or foreclosure of a recorded contract for the sale of real property. [Amended by Ordinance 10-04]
- (2) A parcel created under subsections (1)(a) through (c) of this section shall remain a separate and discrete parcel unless the parcel lines are vacated or the parcel is further divided, as provided by law.
- (3) All development on lawfully created parcels is subject to the standards and requirements of the Polk County Zoning Ordinance.

91.955. CREATION OF PARCELS WHICH WERE IMPROPERLY FORMED.

- (1) The Planning Director may approve a partition application to validate a unit of land that was improperly formed, and does not comply with Section 91.950, upon consideration of information submitted by the applicant and other sources into the record for the proceeding that demonstrates compliance with Sections 91.290, 91.700(1) and (2), and this section. Improperly formed units of land may be validated under this section regardless of whether or not they meet the current minimum parcel size requirements of the zoning district.
 - (a) Polk County may approve an application to validate a unit of land that was created by a sale that did not comply with the applicable criteria for creation of a unit of land if the unit of land:
 - (i) Is not a lawfully established unit of land; and
 - (ii) Could have complied with the applicable criteria for the creation of a lawfully established unit of land in effect when the unit of land was sold.
 - (b) Notwithstanding subsection (a)(ii) of this section, the county may approve an application to validate a unit of land under this section if the county approved a permit, as defined in ORS 215.402, for the construction or placement of a dwelling or other building on the unit of land after the sale. If the permit was approved for a dwelling, the county must determine that the dwelling qualifies for replacement under the criteria set forth in Section 177.035 (C)(1) to (4).
 - (c) Polk County may approve an application for a permit, as defined in ORS 215.402, or a permit under the applicable state or local building code for the continued use of a dwelling or other building on a unit of land that was not lawfully established if:
 - (i) The dwelling or other building was lawfully established prior to January 1, 2007; and
 - (ii) The permit does not change or intensify the use of the dwelling or other building.
 - (d) An application to validate a unit of land under this section is an application for a permit, as defined in ORS 215.402. An application to Polk County under this section is not subject to the minimum lot or parcel sizes established by ORS

215.780.

- (e) A unit of land becomes a lawfully established parcel when the county validates the unit of land under this section if the owner of the unit of land causes a partition plat to be recorded within 90 days after the effective date of the land use decision.
 - (f) Polk County may not approve an application to validate a unit of land under this section if the unit of land was unlawfully created on or after January 1, 2007.
 - (g) Development or improvement of a parcel created under subsection (e) of this section must comply with the applicable laws in effect when a complete application for the development or improvement is submitted as described in PCZO Section 111.250(B).
 - (h) When a unit of land was sold before January 1, 2007, but was not a lawfully established unit of land, the county shall consider and may approve an application for the creation of a parcel pursuant to this section, notwithstanding that less than all of the owners of the existing lawfully established unit of land have applied for the approval. [Amended by Ordinance 10-04]
- (2) A unit of land that was not lawfully established pursuant to Section 91.950 may be consolidated with another lawfully created parcel or agglomerated with sufficient land so as to meet or exceed the current minimum parcel size within the applicable zoning district through the property line adjustment process. The resulting unit of land shall be recognized as lawfully created. Such property line adjustment application shall also be subject to the requirements of Section 91.960. [Amended by Ordinance 10-04]
- (3) All development on parcels which were improperly formed, but which are recognized as lawfully created under the provisions of this section is subject to the standards and requirements of the Polk County Zoning Ordinance.

PROPERTY LINE ADJUSTMENTS

91.960. PROPERTY LINE ADJUSTMENTS. A property line adjustment requires an application to and approval from the Planning Director, except for those exclusions in Section (1) below. A survey of the adjusted property line may be required pursuant to Oregon law. A resulting property description is recommended that describes both resulting properties.

For all adjustments requiring review and approval, the applicant(s) must demonstrate that the adjustment will meet the General Standards listed in (2) below.

- (1) **EXCLUSIONS.** Review and approval is not required if the property line adjustment complies with one or more subsections listed in subsection (a) through (e) below.
 - (a) In all zones, excluding land in a farm or forest zone (EFU, TC, FF, and FFO), review and approval is not required if:
 - (i) The total area to be adjusted is less than 10 percent of the current size of the smallest affected parcel, and
 - (ii) No parcel is being reduced below the minimum parcel size, and
 - (iii) The resulting parcels would retain sufficient area to comply with setback and siting standards for the zone.
 - (b) In a farm or forest zone (EFU, TC, FF, and FFO), review and approval is not required if:

- (i) The total area to be adjusted is less than 10 percent of the current size of the smallest affected parcel; and
 - (ii) No parcel is being reduced below the minimum parcel size, and
 - (iii) The resulting parcels would retain sufficient area to comply with setback and siting standards for the zone; and
 - (iv) Both parcels contain a dwelling or have been approved for the construction of a dwelling; or
 - (v) Both parcels do not contain a dwelling and have not been approved for the construction of a dwelling; or
 - (vi) The parcel being reduced in size is smaller than the minimum parcel size and contains a dwelling or is approved for the construction of a dwelling, and the parcel being increased in size is part of a vacant tract if that vacant tract would contain less than 160 acres when the property line adjustment is completed; or
 - (vii) The parcel being increased in size contains a dwelling or is approved for the construction of a dwelling, and the parcel being decreased in size is vacant.
- (c) In the EFU zone, review and approval is not required if:
- (i) The total area to be adjusted is less than 10 percent of the current size of the smallest affected parcel; and
 - (ii) No parcel is being reduced below the minimum parcel size, and
 - (iii) The resulting parcels would retain sufficient area to comply with setback and siting standards for the zone; and
 - (iv) The parcel being reduced in size is smaller than the minimum parcel size and contains a dwelling or is approved for the construction of a dwelling, and the parcel being increased in size is part of a vacant tract that would contain equal to or more than 160 acres and be classified as high-value farmland.
- (d) In a farm or forest zone (EFU, TC, FF, and FFO), review and approval is not required when all affected parcels are as large as or larger than the minimum parcel size and would remain as large as or larger than the minimum parcel size after the adjustment.
- (e) In all zones, review and approval is not required to correct a legally built structure located on or over the property line.
- (f) For all such excluded adjustments identified in (a) through (e) of this subsection, the affected property owners shall sign and submit a statement of mutual consent for the adjustment to the Planning Director, prior to the adjustment. The consent form is available in the Community Development Department. The property owners shall complete the mutual consent adjustment by recording an ownership document with the Polk County Clerk that describes the area transferred. The adjusted property line shall be surveyed and monumented as required by state law.
- (g) For all such excluded adjustments identified in (a) through (e) of this subsection, the adjustment shall not create a split-zoned parcel(s) that does not comply with the standards for creation of a parcel in each zone unless the property owner provides for the recording of a restrictive covenant in the deed records for the

subject property that prohibit the property from being partitioned along the zoning boundary until such time as each parcel would comply with the minimum standards for the creation of a parcel in each zone. [Amended by Ordinance 10-04]

(2) GENERAL STANDARDS. Except for those exclusions noted in Section (1) above, all property line adjustments shall meet the following criteria:

- (a) The adjustment shall be consistent with the Comprehensive Plan and meet the intent and purpose of the zone; and
- (b) The adjustment shall not decrease required setbacks, access, yard areas, lot widths or other standards of the zone; and
- (c) All parcels will retain any on-site septic system and associated repair area on the parcel it serves; and
- (d) The adjustment will create no additional parcel(s); and
- (e) The adjustment will not create a split-zoned parcel(s) that does not comply with the standards for creation of a parcel in each zone unless the property owner provides for the recording of a restrictive covenant in the deed records for the subject property that prohibit the property from being partitioned along the zoning boundary until such time as each parcel would comply with the minimum standards for the creation of a parcel in each zone; and
- (f) A property line adjustment where one or both of the properties involved are smaller than the minimum lot or parcel size for the applicable zone may be approved where:
 - (i) Both properties are located entirely outside the corporate limits of a city; and
 - (ii) One or both of the abutting properties are smaller than the minimum lot or parcel size for the applicable zone before the property line adjustment and, after the adjustment, one is as large as or larger than the minimum lot or parcel size for the applicable zone; or
 - (iii) Both abutting properties are smaller than the minimum lot or parcel size for the applicable zone before and after the property line adjustment.
[Amended by Ordinance 10-04]
- (g) A property line adjustment between two parcels that exceed the minimum parcel size for the applicable zone before the property line adjustment shall result in two parcels that exceed the minimum parcel size for the applicable zone after the property line adjustment. [Amended by Ordinance 10-04]

(3) ADJUSTMENTS IN RESOURCE ZONES. Except for those exclusions noted in Section (1) above, property line adjustments must meet the General Standards listed in (2) above. In addition, on land in a farm or forest zone (EFU, TC, FF and FFO), a property line adjustment under Section (2), subsection (f) may not be used to:

- (a) Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling based on an acreage standard (Sections 136.040(D), 138.080(A)(3), 138.080(B)(2), or 177.070(B));
- (b) Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or

parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling based on an acreage standard (Sections 136.040(D), 138.080(A)(3), 138.080(B)(2), or 177.070(B)); or

- (c) Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard (Sections 136.040(D), 138.080(A)(3), 138.080(B)(2), or 177.070(B)). [Amended by Ordinance 10-04]
- (4) **ADJUSTMENTS IN RESIDENTIAL ZONES.** Except for those exclusions noted in Section (1) above, a property line adjustment between parcels in the SR, AR-5, and GR/LDR zones must meet the General Standards listed in (2) above. In addition, the applicant(s) must demonstrate that the adjustment would retain all parcels of adequate size, as detailed by the applicant and determined by the Planning Director, to provide adequate area for the intended or existing structures and uses, setbacks, parking, access, and spacing required for water supply and on-site sewage disposal (including repair area).
- (5) **ADJUSTMENTS IN COMMERCIAL, INDUSTRIAL, AND PUBLIC ZONES.** Except for those exclusions in Section (1) above, a property line adjustment between parcels in a commercial, industrial, or public zone must meet the General Standards listed in (2) above. In addition, the applicant(s) must demonstrate that the adjustment would retain all parcels of adequate size, as detailed by the applicant and determined by the Planning Director, to provide adequate area for the intended or existing structures and uses, setbacks, parking, access, landscaping, and spacing required for water supply and on-site sewage disposal (including repair area).

ADDRESS SERVICE
REQUESTED



UNITED STATES
POSTAL SERVICE
FIRST CLASS
\$ 02.457
0.2 FLA
0004275537 MAY 08 2010
MAILED FROM ZIP CODE 97338

Polk County Community Development

Polk County Courthouse
850 Main Street
Dallas, Oregon 97338



TO:

DLCD
Plan Amendment Specialist
635 Capitol ST NE, Suite 150
Salem, OR 97301