



Oregon

Theodore R. Kulongoski, 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

05/12/2011

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 007-10

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. 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 26, 2011

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
Steve Oulman, DLCD Regional Representative

<paa> YA

FORM **2**

DLCD

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



Jurisdiction: **Polk County**

Local file number: **LA 10-02**

Date of Adoption: **5/4/2011**

Date Mailed: **5/5/2011**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **10/28/2010**

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".

Ordinance No. 11-02 updates Polk County Zoning Ordinance (PCZO) Chapter 111; Administration and Procedures. These amendments concern the Official Zoning Map and appeal, remand consideration, and call of the Board of Commissioners processes. The adopted amendments include changes approved in Ordinance No. 09-08 during the Polk County Transportation Systems Plan update, an update to the appeal period, and updates to the posting and publishing requirements for notices of public hearings.

Does the Adoption differ from proposal?

Yes, text language was modified through the legislative amendment process.

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

to:

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

to:

Location: **N/A**

Acres Involved:

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
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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**

Phone: (503) 623-9237 Extension:

Address: **850 Main Street**

Fax Number: **503-623-6009**

City: **Dallas**

Zip: **97338**

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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**BEFORE THE BOARD OF COMMISSIONERS FOR
POLK COUNTY, OREGON**

In the matter of Legislative)
Amendment LA 10-02 to amend Polk)
County Zoning Ordinance Chapter 111)

ORDINANCE NO. 11-02

WHEREAS, on March 2, 2011 the Board of Commissioners initiated a legislative amendment process to update Polk County Zoning Ordinance Chapter 111; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on March 29, 2011 to receive comments and testimony. The Planning Commission deliberated at the March 29, 2011 meeting and unanimously recommended that the Board of Commissioners approve the proposed updates to Polk County Zoning Ordinance Chapter 111; and

WHEREAS, the Board of Commissioners conducted a duly noticed public hearing on April 20, 2011, and provided an opportunity for the submission of testimony and evidence. The Board of Commissioners deliberated at the April 20, 2011 meeting and unanimously approved Legislative Amendment 10-02 as recommended by the Planning Commission and Planning staff; now therefore

THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

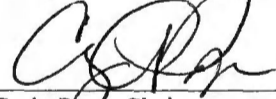
Sec. 1. That Polk County adopts the findings in favor of the amendments to the Polk County Zoning Ordinance as shown on Exhibit A.

Sec. 2. That Polk County amends Polk County Zoning Ordinance Chapter 111, as shown on Exhibit B.

Sec. 3. That Polk County determines that an emergency related to the economic welfare of the citizens of Polk County is declared and this ordinance is effective immediately upon passage.

Dated this 4th day of May 2011, at Dallas, Oregon.

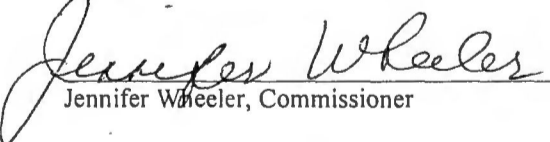
POLK COUNTY BOARD OF COMMISSIONERS



Craig Pope, Chair




Mike Ainsworth, Commissioner



Jennifer Wheeler, Commissioner

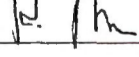
Approved as to Form:



Dave Doyle
County Counsel

First Reading: 5-4-2011

Second Reading: 5-4-2011

Recording Secretary: 

Findings in support of Legislative Amendment LA 10-02:

I. 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. 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. Pursuant to ORS chapters 195, 196 and 197, each city and county in this state shall:**
 - a. Prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission;**
 - b. Enact land use regulations to implement their comprehensive plans;**
 - c. If its comprehensive plan and land use regulations have not been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the goals;**
 - d. If its comprehensive plan and land use regulations have been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the acknowledged plan and land use regulations; and**
 - e. Make land use decisions and limited land use decisions subject to an unacknowledged amendment to a comprehensive plan or land use regulation in compliance with those land use goals applicable to the amendment. [ORS 197.175(2)]**
 - 2. Planning and zoning hearings officers; duties and powers; authority of governing body or planning commission to conduct hearings.**
 - a. A county governing body may authorize appointment of one or more planning and zoning hearings officers, to serve at the pleasure of the appointing authority. The hearings officer shall conduct hearings on applications for such classes of permits and contested cases as the county governing body designates.**
 - b. In the absence of a hearings officer a planning commission or the governing body may serve as hearings officer with all the powers and duties of a hearings officer. [ORS 215.406]**
 - 3. An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the county. An appeal from such other person as the governing body designates**

shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing. [ORS 215.416(9)(D)]

4. **The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:**
 - a. **The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;**
 - b. **The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and**
 - c. **The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing. [ORS 215.416(9)(D)]**
5. **Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the county's land use regulations. A county may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830. [ORS 215.416(11)(C)]**
6. **197.763 Conduct of local quasi-judicial land use hearings; notice requirements; hearing procedures.**

The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television. [ORS 197.763(8)]

Findings:

Official Zoning Map. ORS 197.175(2) requires that Polk County implement its acknowledged comprehensive plan. As described above, the county shall "enact land use regulations to implement their comprehensive plan." The Official Zoning map is one such document that implements the Polk County Comprehensive Plan (PCCP). These amendments would simply change the format of that Official Zoning Map. The statewide planning goals, ORS, and OAR do not specifically state what format a county's official zoning map must take, and this update would not change the zoning of any property in Polk County. For that reason, adopting an electronic Official Zoning Map would be consistent with this criterion.

Appeal Process. ORS 215.406 allows the Board of Commissioners to authorize a hearings officer to conduct hearings on applications and contested cases. ORS 215.416(9)(D) states: "...An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body..." Applying these sections, "such other person as the governing body designates" is the Planning Director, and ORS allows the Board to authorize the Hearings Officer to hear an appeal of the Planning Director's decision. As required by ORS, that hearing would be the first evidentiary hearing and would be held *de novo*.

While the majority of current planning land use decisions are made by the Planning Director, the PCZO requires that some land use decisions be made by the Hearing's Officer at a public hearing. Current planning land use decisions include all land use decisions except plan amendments, zone changes, and legislative amendments. Initial decisions are made by the Hearings Officer for applications that include full variances and the review of wildlife management plans that are submitted in conjunction with a conditional use permit. The Planning Director may also refer a current planning application for decision to the Hearings Officer. Currently, appeals of those Hearings Officer decisions are placed before the Board, who makes a decision after holding a second public hearing. ORS does not require counties to hold two public hearings at the local level for current planning land use decisions. For that reason, the proposed amendment to Chapter 111, to allow the Board the option to ratify the Hearings Officer's decision without holding a second public hearing, would be consistent with ORS.

Call of Board of Commissioners and Action by Board of Commissioners Update. These updates would modify 111.290; Call of the Board of Commissioners, and 111.300; Action by Board of Commissioners. The proposed amendments clarify what process applies to a call of the Board of Commissioners. Section 111.300 would be updated to be consistent with the proposed changes to the appeal process, and also to clarify that the Board may remand any action reviewed or considered by the Board for further investigation to the Planning Director or Hearings Officer. OAR and ORS do not contain regulations specifically applicable to these actions. The proposed amendments would be consistent with state law because they speak to the decision making process and do not affect state mandated hearing or notice requirements, or the requirements under ORS 215.427 that stipulate the County must take final action on a permit application within either 120 or 150 days, based on the type of permit.

TSP Update. These proposed updates to Chapter 111 were determined to be consistent with the ORS, statewide planning goals, and OAR pursuant to the findings adopted in Ordinance No. 09-08.

Appeal Period. This update would extend the appeal period from 10 to 12 days after the Planning Director or Hearings Officer makes a land use decision that is not on an appeal. The 10 day appeal period has been out of compliance with state statutory requirements for years, and staff has directly applied ORS 215.416(11)(C). ORS 215.416(11)(C) requires that the County allow at least 12 days for appeals of such decisions. The proposed amendment to Chapter 111 would allow a 12 day appeal period, and would be consistent with ORS.

Notice Posting and Publication. ORS 215.060 and 215.223 requires that notice of a public hearing(s) for amendments to the Comprehensive Plan or Zoning Ordinance be posted on a sign on the property and published in the local newspaper. ORS 197.763(8) does not require posting and publication of notice for quasi-judicial land use hearings.

As discussed above, the proposed amendments would comply with the applicable provisions of ORS, the statewide planning goals, and OAR. 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 Chapter 111 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. The zoning ordinance for Polk County, adopted in December 1975, is the most important implementation tool currently utilized by the County. In theory, the zoning ordinance is a legislative expression of the Comprehensive Plan and must satisfy certain standards set out by state statute. It should be stated at this point, that while planning and zoning are clearly interrelated, they are distinctly different. Zoning is a regulatory device which can further the proper development of land uses. As such, it may be viewed as one of the tools of planning in that it involves day-to-day attention to those details of land use**

control necessary to achievement of the major goals of land use planning. Planning provides the body of ideas within which zoning operates and the use of zoning ordinances is one of the devices through which planning goals are achieved. The objectives and goals of planning are phrased in the language of advice and recommendation. In this respect, planning functions as a guide to zoning. The effectiveness of good planning and zoning may be measured in the degree to which the long range goals of the Plan are realized. Zoning should be used to help promote the goals of the Comprehensive Plan. [PCCP, Section 7, Zoning]

2. **GOAL 1. To provide for a wide range of opportunities for citizens to be involved in all public phases of the planning process in Polk County. For the purposes of the Polk County Citizen Involvement Program, the term "citizen" shall mean property owners, land use applicants and the general public.** [PCCP, Section 2, Citizen Involvement Element, Goal 1]

Findings: The PCCP contains broad goals and policies that are implemented by the specific provisions in the PCZO and the Polk County Subdivision and Partition Ordinance (PCSO). The proposed amendments to PCZO Chapter 111 would be consistent with the PCCP as described below.

Official Zoning Map. Section 7 of the PCCP acknowledges the importance of zoning as a technique to implement the goals and policies of the PCCP. The Official Zoning Map is a central component to Polk County's zoning because it geographically depicts the zones that apply to all properties in Polk County's planning jurisdiction. Placing the Official Zoning Map in an electronic format would enhance the zoning program, because it would make it clear that the electronic, GIS zoning layer that is used by staff on a daily basis to assist the public is the official map. The public would not need to consult another, physical map to be certain of the zoning affecting a specific property. An electronic map is easier to update and use to create custom, printed maps. While there will still be circumstances where interpretation of zoning boundaries will be necessary, such as where a zoning line follows the center of creek that has since moved, staff anticipates that these instances will be no more frequent than when operating from a paper map.

As proposed, it would be the responsibility of the Information Services Department to ensure that the Official Zoning Map is archived whenever a change to the map is made. The Planning Director would be responsible to ensure that any changes to the Official Zoning Map reflect the adopting ordinance. Redundancy of Map archival would be incorporated into the system at the time the Map is updated, because all changes to the map are depicted in the ordinance that adopts the changes. If there are any questions in the future concerning whether the Map was updated properly, the "paper trail" would lead back to the adopting ordinance. The Planning Director would also be able to create an official copy of the Official Zoning Map by certifying a printed copy. These official copies would be maintained in the Community Development Department and would provide additional redundancy to Map archival. These changes would enhance Polk County's zoning program, and therefore, be consistent with the PCCP.

Appeal Process. Goal 1 of the Citizen Involvement Element of the PCCP, states that the planning program will "provide for a wide range of opportunities for citizens to be involved in all public phases of the planning process in Polk County." A public phase of the planning process includes the opportunity for citizens to air their concerns or support regarding a planning project at a public hearing. Under the proposed updates, the Board would be able to determine which hearing body is best suited to hear a particular appeal and to weigh citizen input. The Board may choose to refer highly technical appeals to the Hearings Officer for consideration, and may decide to hear appeals that require the balancing of conflicting interests themselves. If the proposed updates are implemented, citizens would retain their ability to file an appeal and testify at a

public hearing, and the Board would gain the ability to choose the best venue for the public's concerns to be heard. These proposals would be consistent with the PCCP.

Call of Board of Commissioners and Action by Board of Commissioners Update

These procedural updates would maintain ample opportunity for the public to be involved in the land use planning process. A call by the Board of Commissioners brings a matter to a public hearing, which provides the opportunity for additional public input. The updates to the actions available to the Board clarify the Board's options once public input has been received. These updates would be consistent with the goals, policies, and intent of the PCCP.

TSP Update. These proposed updates to Chapter 111 were determined to be consistent with the PCCP pursuant to the findings adopted in Ordinance No. 09-08.

Appeal Period. This update would extend the appeal period from 10 to 12 days after the Planning Director or Hearings Officer makes a land use decision that is not an appeal. This amendment would bring the PCZO into compliance with ORS. Extending the appeal period from 10 to 12 days, as required by law, would allow citizens additional time to consider and file an appeal. This update would be consistent with the Citizen Involvement Element of the PCCP.

Notice Posting and Publication. These updates would require posting and publication of notice for all hearings associated with a land use application. This notice would be consistent with the Citizen Involvement Element of the PCCP by allowing citizens additional information about how they can be involved in the land use planning process.

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

(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) in order to update and modernize certain administrative processes. These updates consist of modifications to the standards concerning the Official Zoning Map, appeal and remand procedures, a re-adoption of administrative process updates adopted during the 2009 TSP update, updating the land use decision appeal period to reflect changes to state law, and updates to the requirements for posting and publishing notices for public hearings.

The proposed updates would allow the Official Zoning Map to be stored as an electronic layer in the Polk County GIS. This amendment would minimize the amount of staff time needed to update the map, and would clarify to citizens that the GIS zoning layer at the Planning counter is the official map.

Updating the appeal process would be in the public interest and of general public benefit, because it would allow the Board discretion to determine the appropriate hearings body for appeals. The Board may determine that an appeal based on a highly technical issue would be better heard by a Hearings Officer. The Board would retain the ability to hear any appeal to a land use decision. This flexibility would allow the Board to determine the most appropriate process for a given appeal.

Updating the process for calls by the Board of Commissioners would clarify the process associated with that action. Clarifying that the Board may remand any action reviewed or considered by the Board to the Planning Director or the Hearings Officer would allow the Board an additional way to fully investigate an issue prior to making a decision. That option, when employed, would result in better decisions.

When the TSP was updated in 2009, it included updates to various administrative processes in PCZO Chapter 111. Ordinance No. 09-08 adopted findings as to why those updates are in the public interest and of general public benefit. Those updates from Ordinance No. 09-08 were

mistakenly omitted during a subsequent update to PCZO Chapter 111. Adding those updates back into Chapter 111 would be in the public benefit because it would implement the changes enacted in 2009.

ORS 215.416(11)(C) requires that counties allow a 12 day appeal period for “initial” (non appeal) land use decisions on current planning applications. The appeal period in the PCZO is currently 10 days. Amending the PCZO to be consistent with ORS would be in the public interest and general public benefit because it would clarify this requirement of state law in the PCZO.

The proposed updates would require that notice for all public hearings on land use applications be posted on the subject property and published in the local newspaper. Currently, these types of notification are only required for text amendments to the zoning ordinance, zone changes, and comprehensive plan amendments. The proposed additional posting requirement would have a nominal financial impact on the county. With respect to posting, staff prepares a sign board, which is provided to the applicant to post on the property. Publishing notice in the local *Itemizer-Observer Newspaper* costs approximately \$110. Most public hearings on current planning applications are appeal hearings. So, at least some of the cost of posting will be covered by the appeal fee collected from the appellant. Staff believes that the benefit associated with these notices outweighs the costs. If the County is going to hold a public hearing, which is costly in and of itself, the marginal benefit of the proposed notices would outweigh the marginal costs. Additional notice stands to increase public participation.

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 (IGAs) with each of the cities that have urban growth boundaries (UGB) that extend outside of city limits and into Polk County’s planning jurisdiction. These cities are Salem, Dallas, Monmouth, Independence, and Willamina. Those cities were notified of the Board of Commissioner’s public hearing on March 2, 2011. The Falls City UGB is entirely located within city limits; therefore, Polk County does not have an IGA regarding UGB land use management with Falls City.

The proposed amendments to the PCZO would affect certain administrative procedures for land use applications submitted countywide, including within UGBs. The IGAs that Polk County has with the cities include restrictions on development within UGBs, and most IGAs require that the County provide the City with advanced notification of any land use application. These aspects would not be affected by the proposed updates, and staff believes that the proposed amendments would be consistent with all adopted intergovernmental agreements pertinent to land in UGBs. The proposed amendments would not modify any of the requirements of those agreements.

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

II. 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.

1. The following sections of Polk County Zoning Ordinance (PCZO) Chapter 111 are deleted by this ordinance:

111.080. CERTIFICATION.

111.100. LOCATION.

111.140. ZONING MAP AMENDMENTS.

2. The following subsection of PCZO 111.070 is deleted by this ordinance:

Grand Ronde Commercial

GR / C Zone

3. The following sections of PCZO Chapter 111 are amended by this ordinance and read as follows:

CHAPTER 111

ADMINISTRATION AND PROCEDURES

- 111.070. Zoning Designations
111.090. Official Zoning Map
111.280. Appeal and Remand Consideration Procedures

111.070 ZONING DESIGNATIONS

FULL NAME

DESIGNATION

Acreage Residential 10 Acre Zone	AR-10 Zone
Agriculture and Forestry 10 Acre Zone	AF-10 Zone
Northwest Polk Community Commercial	NPC-C Zone

111.090. OFFICIAL ZONING MAP.

- (A) The Official Zoning Map adopted with an effective date of April 2011, exists as an electronic map layer within the Polk County geographic information system (GIS) at a scale of 1:24,000. The Official Zoning Map shall be maintained by the Planning Director. [Amended by Ordinance 11-02]
- (B) The Official Zoning Map shall depict the zoning designations for all properties located in Polk County, and shall be consistent with the Polk County Comprehensive Plan Map. The Official Zoning Map shall be the final authority as to the zoning status of land and water areas, buildings and other structures. [Amended by Ordinance 11-02]
- (C) The Official Zoning Map shall be available for review through the Polk County GIS at the Community Development Department during office business hours. [Amended by Ordinance 11-02]

- (D) The Planning Director may create an official copy of the Official Zoning Map by certifying on the copy that “this is an official copy of the Polk County Official Zoning Map.” [Amended by Ordinance 11-02]

111.110. AMENDING OFFICIAL ZONING MAP. A zone change is a reclassification of any area on the Official Zoning Map from one zoning designation 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. Annexation of territory to a city shall result in automatic amendment of the Official Zoning Map as of the effective date of annexation. When the Official Zoning Map is amended by ordinance or annexation to a city, the Planning Director shall cause the changes to be made to the Official Zoning Map. [Amended by Ordinance 11-02]

111.120. REPLACEMENT OF OFFICIAL ZONING MAP. In the event the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret, 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 Official Zoning Map by resolution. Such map shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct editing or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the ordinance or any subsequent amendment thereof. [Amended by Ordinance 11-02]

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:

- (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]

111.235 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 Region 2 Planner. [Amended by Ordinance 11-02]
- (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 Region 2 Planner. [Amended by Ordinances 07-06 and 11-02]

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 as provided under Section 111.280. [Amended by Ordinance 11-02]

111.245. NOTICE OF TYPE A PROCEDURE.

- (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. Notice shall be mailed to the owner of an airport, defined by the Oregon Department of Aviation as a "public use airport," and to the Oregon Department of Aviation for any land use change or development requiring County review and approval within 5,000 feet of a visual flight rules public use airport or is within 10,000 feet of an instrument flight rules public use airport. [Amended by Ordinances 98-5 and 11-02]

111.260. REFERRAL BY PLANNING DIRECTOR.

- (B) Action of the Hearings Officer on a referral is final and may be appealed in accordance with section 111.280. [Amended by Ordinance 11-02]
- (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.

111.275. 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;

- (H) The road function, classification, capacity and existing and projected traffic volumes have been considered. To allow comprehensive plan map and zone map amendments that may generate trips up to the planned capacity of the transportation system, Polk County will consider road function, classification, road capacity and existing and projected traffic volumes, as criteria for comprehensive plan map and zone map amendments. [Amended by Ordinance 11-02]

111.280. APPEAL AND REMAND CONSIDERATION PROCEDURES.

- (A) An appeal may be filed 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, 10-04, and 11-02]
- (B) On receiving an appeal or request by the applicant for reconsideration of a land use application on remand from the Land Use Board of Appeals, the Community Development Department shall deliver to the Board the application and all other documents constituting the entire record of the action under appeal or remand. [Amended by Ordinance 11-02]
- (C) Upon receipt of an appeal filed with the Community Development Department of a decision by the Planning Director or request by the applicant for reconsideration of a land use application on remand from the Land Use Board of Appeals, the Board of Commissioners shall review the matter and thereafter 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 public hearing, as determined by the Board of

Commissioners, will be conducted by either the Hearings Officer or the Board. The decision resulting from this public hearing shall constitute the final county decision. Decisions of the Hearings Officer shall thereafter be ratified by the Board of Commissioners as part of the Board's Consent agenda. [Amended by Ordinance 11-02]

- (D) Upon receipt of an appeal filed with the Community Development Department of a decision by the Hearings Officer after a first evidentiary hearing, the Board of Commissioners shall review the matter and thereafter either ratify the Hearings Officer's decision or 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 public hearing will be conducted by the Board of Commissioners. The Board's ratification of the Hearings Officer's decision or the Board's decision after holding a public hearing shall constitute the final county decision. [Amended by Ordinance 11-02]
- (E) The Planning Director shall send notice of a public hearing under subsections (C) or (D) of this section 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 or Hearings Officer considers it advisable. [Amended by Ordinances 09-02 and 11-02]
- (F) The appeal or request for reconsideration on remand shall be accompanied by payment of a fee, specified in the County's fee resolution, to defray the cost of the hearing. [Amended by Ordinances 09-02 and 11-02]
- (G) Filing of an appeal stays all proceedings by all parties in connection with the matter appealed until the Board of Commissioners or Hearings Officer has made a decision on the appeal. [Amended by Ordinances 89-1, 97-9, and 11-02]

111.290. CALL OF BOARD OF COMMISSIONERS.

- (A) Two or more members of the Polk County Board of Commissioners may call up an action, which is not an appeal decision, by the Polk County Planning Director or the Hearings Officer. However, the call must be made at the first meeting after notice of the decision is presented. [Amended by Ordinance 11-02]
- (B) On receiving a call of the Board of Commissioners, the Community Development Department shall deliver to the Board the application and all other documents constituting the entire record of the action under appeal or remand. [Amended by Ordinance 11-02]
- (C) 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 public hearing, as determined by the Board of Commissioners, will be conducted by either the Hearings Officer or the Board. The decision resulting from this public hearing shall constitute the final county decision. Decisions of the Hearings Officer shall thereafter be ratified by the Board of Commissioners as part of the Board's Consent agenda. [Amended by Ordinance 11-02]
- (D) The Planning Director shall send notice of a public hearing under subsection (C) of this section 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 all others who received notice of the Planning Director's or Hearings Officer's decision that has been called. A hearing may be continued from time to time if the Board or Hearings Officer considers it advisable. [Amended by Ordinance 11-02]

- (E) A call by the Board of Commissioners stays all proceedings by all parties in connection with the matter until the Board of Commissioners or Hearings Officer has made a decision on the call. [Amended by Ordinance 11-02]

111.300. ACTION BY BOARD OF COMMISSIONERS.

- (A) Pursuant to Section 111.290, the Polk County Board of Commissioners may review any action, which is not an appeal decision, of the Polk County Polk County Planning Director or the Hearings Officer. The Board may remand the matter for further investigation and consideration, in which case the Planning Director or Hearings Officer shall conduct such further investigation as is necessary and report findings and conclusions in writing to the Board. [Amended by Ordinance 11-02]
- (B) Pursuant to Section 111.290, after conducting a public hearing to consider an action, which is not an appeal decision, and finding that the facts therein stated do not warrant further hearing, the Board may summarily affirm the action. [Amended by Ordinance 11-02]
- (C) Pursuant to Section 111.290, after conducting a public hearing to consider an action on an appeal or non-appeal decision, the Board may affirm or reverse wholly or partly, or modify, any action, and may impose such additional conditions as it finds warranted by the facts. The Board's decision shall constitute the final local decision. [Amended by Ordinance 11-02]

111.310. EFFECTIVE DATE. Land use actions granted under section 111.240 become effective on the 12th 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 or Hearings Officer has taken final action. A final county decision by the Board of Commissioners or Hearings Officer shall not be effective until 21 days after mailing of the decision. An appeal of a land use action by the Board of Commissioners or the Hearings Officer 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 Ordinances 97-9 and 11-02]

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:

- (H) Include the name of a local government representative to contact and the phone number where additional information may be obtained. [Amended by Ordinance 11-02]

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

- (F) Notice shall be mailed to the Oregon Department of Transportation for any land use change or development requiring County review and approval which requires access to a state highway or which is located within 500 feet of a state highway. [Amended by Ordinance 11-02]

111.360. POSTING NOTICE.

- (A) Notice of all public hearings required by the provisions of this ordinance, except for legislative text amendments, 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. [Amended by Ordinance 11-02]

Exhibit B to Ordinance No. 11-02

111.370. PUBLISHING NOTICES. Notice of all public hearings required by the provisions of this ordinance 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, 88-21, and 11-02]

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**BEFORE THE BOARD OF COMMISSIONERS FOR
POLK COUNTY, OREGON**

In the matter of Legislative)
Amendment LA 10-02 to amend Polk)
County Zoning Ordinance Chapter 111)

ORDINANCE NO. 11-02

WHEREAS, on March 2, 2011 the Board of Commissioners initiated a legislative amendment process to update Polk County Zoning Ordinance Chapter 111; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on March 29, 2011 to receive comments and testimony. The Planning Commission deliberated at the March 29, 2011 meeting and unanimously recommended that the Board of Commissioners approve the proposed updates to Polk County Zoning Ordinance Chapter 111; and

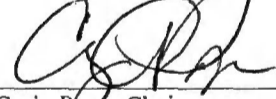
WHEREAS, the Board of Commissioners conducted a duly noticed public hearing on April 20, 2011, and provided an opportunity for the submission of testimony and evidence. The Board of Commissioners deliberated at the April 20, 2011 meeting and unanimously approved Legislative Amendment 10-02 as recommended by the Planning Commission and Planning staff; now therefore

THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

- Sec. 1. That Polk County adopts the findings in favor of the amendments to the Polk County Zoning Ordinance as shown on Exhibit A.
- Sec. 2. That Polk County amends Polk County Zoning Ordinance Chapter 111, as shown on Exhibit B.
- Sec. 3. That Polk County determines that an emergency related to the economic welfare of the citizens of Polk County is declared and this ordinance is effective immediately upon passage.

Dated this 4th day of May 2011, at Dallas, Oregon.

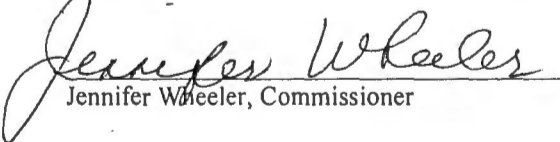
POLK COUNTY BOARD OF COMMISSIONERS



Craig Pope, Chair

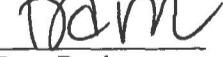


Mike Ainsworth, Commissioner



Jennifer Wheeler, Commissioner

Approved as to Form:



Dave Doyle
County Counsel

First Reading: 5-4-2011

Second Reading: 5-4-2011

Recording Secretary:  _____

Findings in support of Legislative Amendment LA 10-02:

I. 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. 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. Pursuant to ORS chapters 195, 196 and 197, each city and county in this state shall:**
 - a. Prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission;**
 - b. Enact land use regulations to implement their comprehensive plans;**
 - c. If its comprehensive plan and land use regulations have not been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the goals;**
 - d. If its comprehensive plan and land use regulations have been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the acknowledged plan and land use regulations; and**
 - e. Make land use decisions and limited land use decisions subject to an unacknowledged amendment to a comprehensive plan or land use regulation in compliance with those land use goals applicable to the amendment. [ORS 197.175(2)]**
 - 2. Planning and zoning hearings officers; duties and powers; authority of governing body or planning commission to conduct hearings.**
 - a. A county governing body may authorize appointment of one or more planning and zoning hearings officers, to serve at the pleasure of the appointing authority. The hearings officer shall conduct hearings on applications for such classes of permits and contested cases as the county governing body designates.**
 - b. In the absence of a hearings officer a planning commission or the governing body may serve as hearings officer with all the powers and duties of a hearings officer. [ORS 215.406]**
 - 3. An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the county. An appeal from such other person as the governing body designates**

shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing. [ORS 215.416(9)(D)]

4. The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:
 - a. The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;
 - b. The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and
 - c. The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing. [ORS 215.416(9)(D)]
5. Notice under this subsection shall comply with ORS 197.763 (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the county's land use regulations. A county may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830. [ORS 215.416(11)(C)]
6. 197.763 Conduct of local quasi-judicial land use hearings; notice requirements; hearing procedures.

The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television. [ORS 197.763(8)]

Findings:

Official Zoning Map. ORS 197.175(2) requires that Polk County implement its acknowledged comprehensive plan. As described above, the county shall "enact land use regulations to implement their comprehensive plan." The Official Zoning map is one such document that implements the Polk County Comprehensive Plan (PCCP). These amendments would simply change the format of that Official Zoning Map. The statewide planning goals, ORS, and OAR do not specifically state what format a county's official zoning map must take, and this update would not change the zoning of any property in Polk County. For that reason, adopting an electronic Official Zoning Map would be consistent with this criterion.

Appeal Process. ORS 215.406 allows the Board of Commissioners to authorize a hearings officer to conduct hearings on applications and contested cases. ORS 215.416(9)(D) states: "...An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body..." Applying these sections, "such other person as the governing body designates" is the Planning Director, and ORS allows the Board to authorize the Hearings Officer to hear an appeal of the Planning Director's decision. As required by ORS, that hearing would be the first evidentiary hearing and would be held *de novo*.

While the majority of current planning land use decisions are made by the Planning Director, the PCZO requires that some land use decisions be made by the Hearing's Officer at a public hearing. Current planning land use decisions include all land use decisions except plan amendments, zone changes, and legislative amendments. Initial decisions are made by the Hearings Officer for applications that include full variances and the review of wildlife management plans that are submitted in conjunction with a conditional use permit. The Planning Director may also refer a current planning application for decision to the Hearings Officer. Currently, appeals of those Hearings Officer decisions are placed before the Board, who makes a decision after holding a second public hearing. ORS does not require counties to hold two public hearings at the local level for current planning land use decisions. For that reason, the proposed amendment to Chapter 111, to allow the Board the option to ratify the Hearings Officer's decision without holding a second public hearing, would be consistent with ORS.

Call of Board of Commissioners and Action by Board of Commissioners Update. These updates would modify 111.290; Call of the Board of Commissioners, and 111.300; Action by Board of Commissioners. The proposed amendments clarify what process applies to a call of the Board of Commissioners. Section 111.300 would be updated to be consistent with the proposed changes to the appeal process, and also to clarify that the Board may remand any action reviewed or considered by the Board for further investigation to the Planning Director or Hearings Officer. OAR and ORS do not contain regulations specifically applicable to these actions. The proposed amendments would be consistent with state law because they speak to the decision making process and do not affect state mandated hearing or notice requirements, or the requirements under ORS 215.427 that stipulate the County must take final action on a permit application within either 120 or 150 days, based on the type of permit.

TSP Update. These proposed updates to Chapter 111 were determined to be consistent with the ORS, statewide planning goals, and OAR pursuant to the findings adopted in Ordinance No. 09-08.

Appeal Period. This update would extend the appeal period from 10 to 12 days after the Planning Director or Hearings Officer makes a land use decision that is not on an appeal. The 10 day appeal period has been out of compliance with state statutory requirements for years, and staff has directly applied ORS 215.416(11)(C). ORS 215.416(11)(C) requires that the County allow at least 12 days for appeals of such decisions. The proposed amendment to Chapter 111 would allow a 12 day appeal period, and would be consistent with ORS.

Notice Posting and Publication. ORS 215.060 and 215.223 requires that notice of a public hearing(s) for amendments to the Comprehensive Plan or Zoning Ordinance be posted on a sign on the property and published in the local newspaper. ORS 197.763(8) does not require posting and publication of notice for quasi-judicial land use hearings.

As discussed above, the proposed amendments would comply with the applicable provisions of ORS, the statewide planning goals, and OAR. 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 Chapter 111 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. The zoning ordinance for Polk County, adopted in December 1975, is the most important implementation tool currently utilized by the County. In theory, the zoning ordinance is a legislative expression of the Comprehensive Plan and must satisfy certain standards set out by state statute. It should be stated at this point, that while planning and zoning are clearly interrelated, they are distinctly different. Zoning is a regulatory device which can further the proper development of land uses. As such, it may be viewed as one of the tools of planning in that it involves day-to-day attention to those details of land use**

control necessary to achievement of the major goals of land use planning. Planning provides the body of ideas within which zoning operates and the use of zoning ordinances is one of the devices through which planning goals are achieved. The objectives and goals of planning are phrased in the language of advice and recommendation. In this respect, planning functions as a guide to zoning. The effectiveness of good planning and zoning may be measured in the degree to which the long range goals of the Plan are realized. Zoning should be used to help promote the goals of the Comprehensive Plan. [PCCP, Section 7, Zoning]

2. **GOAL 1. To provide for a wide range of opportunities for citizens to be involved in all public phases of the planning process in Polk County. For the purposes of the Polk County Citizen Involvement Program, the term "citizen" shall mean property owners, land use applicants and the general public.** [PCCP, Section 2, Citizen Involvement Element, Goal 1]

Findings: The PCCP contains broad goals and policies that are implemented by the specific provisions in the PCZO and the Polk County Subdivision and Partition Ordinance (PCSO). The proposed amendments to PCZO Chapter 111 would be consistent with the PCCP as described below.

Official Zoning Map. Section 7 of the PCCP acknowledges the importance of zoning as a technique to implement the goals and policies of the PCCP. The Official Zoning Map is a central component to Polk County's zoning because it geographically depicts the zones that apply to all properties in Polk County's planning jurisdiction. Placing the Official Zoning Map in an electronic format would enhance the zoning program, because it would make it clear that the electronic, GIS zoning layer that is used by staff on a daily basis to assist the public is the official map. The public would not need to consult another, physical map to be certain of the zoning affecting a specific property. An electronic map is easier to update and use to create custom, printed maps. While there will still be circumstances where interpretation of zoning boundaries will be necessary, such as where a zoning line follows the center of creek that has since moved, staff anticipates that these instances will be no more frequent than when operating from a paper map.

As proposed, it would be the responsibility of the Information Services Department to ensure that the Official Zoning Map is archived whenever a change to the map is made. The Planning Director would be responsible to ensure that any changes to the Official Zoning Map reflect the adopting ordinance. Redundancy of Map archival would be incorporated into the system at the time the Map is updated, because all changes to the map are depicted in the ordinance that adopts the changes. If there are any questions in the future concerning whether the Map was updated properly, the "paper trail" would lead back to the adopting ordinance. The Planning Director would also be able to create an official copy of the Official Zoning Map by certifying a printed copy. These official copies would be maintained in the Community Development Department and would provide additional redundancy to Map archival. These changes would enhance Polk County's zoning program, and therefore, be consistent with the PCCP.

Appeal Process. Goal 1 of the Citizen Involvement Element of the PCCP, states that the planning program will "provide for a wide range of opportunities for citizens to be involved in all public phases of the planning process in Polk County." A public phase of the planning process includes the opportunity for citizens to air their concerns or support regarding a planning project at a public hearing. Under the proposed updates, the Board would be able to determine which hearing body is best suited to hear a particular appeal and to weigh citizen input. The Board may choose to refer highly technical appeals to the Hearings Officer for consideration, and may decide to hear appeals that require the balancing of conflicting interests themselves. If the proposed updates are implemented, citizens would retain their ability to file an appeal and testify at a

public hearing, and the Board would gain the ability to choose the best venue for the public's concerns to be heard. These proposals would be consistent with the PCCP.

Call of Board of Commissioners and Action by Board of Commissioners Update

These procedural updates would maintain ample opportunity for the public to be involved in the land use planning process. A call by the Board of Commissioners brings a matter to a public hearing, which provides the opportunity for additional public input. The updates to the actions available to the Board clarify the Board's options once public input has been received. These updates would be consistent with the goals, policies, and intent of the PCCP.

TSP Update. These proposed updates to Chapter 111 were determined to be consistent with the PCCP pursuant to the findings adopted in Ordinance No. 09-08.

Appeal Period. This update would extend the appeal period from 10 to 12 days after the Planning Director or Hearings Officer makes a land use decision that is not an appeal. This amendment would bring the PCZO into compliance with ORS. Extending the appeal period from 10 to 12 days, as required by law, would allow citizens additional time to consider and file an appeal. This update would be consistent with the Citizen Involvement Element of the PCCP.

Notice Posting and Publication. These updates would require posting and publication of notice for all hearings associated with a land use application. This notice would be consistent with the Citizen Involvement Element of the PCCP by allowing citizens additional information about how they can be involved in the land use planning process.

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

(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) in order to update and modernize certain administrative processes. These updates consist of modifications to the standards concerning the Official Zoning Map, appeal and remand procedures, a re-adoption of administrative process updates adopted during the 2009 TSP update, updating the land use decision appeal period to reflect changes to state law, and updates to the requirements for posting and publishing notices for public hearings.

The proposed updates would allow the Official Zoning Map to be stored as an electronic layer in the Polk County GIS. This amendment would minimize the amount of staff time needed to update the map, and would clarify to citizens that the GIS zoning layer at the Planning counter is the official map.

Updating the appeal process would be in the public interest and of general public benefit, because it would allow the Board discretion to determine the appropriate hearings body for appeals. The Board may determine that an appeal based on a highly technical issue would be better heard by a Hearings Officer. The Board would retain the ability to hear any appeal to a land use decision. This flexibility would allow the Board to determine the most appropriate process for a given appeal.

Updating the process for calls by the Board of Commissioners would clarify the process associated with that action. Clarifying that the Board may remand any action reviewed or considered by the Board to the Planning Director or the Hearings Officer would allow the Board an additional way to fully investigate an issue prior to making a decision. That option, when employed, would result in better decisions.

When the TSP was updated in 2009, it included updates to various administrative processes in PCZO Chapter 111. Ordinance No. 09-08 adopted findings as to why those updates are in the public interest and of general public benefit. Those updates from Ordinance No. 09-08 were

mistakenly omitted during a subsequent update to PCZO Chapter 111. Adding those updates back into Chapter 111 would be in the public benefit because it would implement the changes enacted in 2009.

ORS 215.416(11)(C) requires that counties allow a 12 day appeal period for “initial” (non appeal) land use decisions on current planning applications. The appeal period in the PCZO is currently 10 days. Amending the PCZO to be consistent with ORS would be in the public interest and general public benefit because it would clarify this requirement of state law in the PCZO.

The proposed updates would require that notice for all public hearings on land use applications be posted on the subject property and published in the local newspaper. Currently, these types of notification are only required for text amendments to the zoning ordinance, zone changes, and comprehensive plan amendments. The proposed additional posting requirement would have a nominal financial impact on the county. With respect to posting, staff prepares a sign board, which is provided to the applicant to post on the property. Publishing notice in the local *Itemizer-Observer Newspaper* costs approximately \$110. Most public hearings on current planning applications are appeal hearings. So, at least some of the cost of posting will be covered by the appeal fee collected from the appellant. Staff believes that the benefit associated with these notices outweighs the costs. If the County is going to hold a public hearing, which is costly in and of itself, the marginal benefit of the proposed notices would outweigh the marginal costs. Additional notice stands to increase public participation.

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 (IGAs) with each of the cities that have urban growth boundaries (UGB) that extend outside of city limits and into Polk County’s planning jurisdiction. These cities are Salem, Dallas, Monmouth, Independence, and Willamina. Those cities were notified of the Board of Commissioner’s public hearing on March 2, 2011. The Falls City UGB is entirely located within city limits; therefore, Polk County does not have an IGA regarding UGB land use management with Falls City.

The proposed amendments to the PCZO would affect certain administrative procedures for land use applications submitted countywide, including within UGBs. The IGAs that Polk County has with the cities include restrictions on development within UGBs, and most IGAs require that the County provide the City with advanced notification of any land use application. These aspects would not be affected by the proposed updates, and staff believes that the proposed amendments would be consistent with all adopted intergovernmental agreements pertinent to land in UGBs. The proposed amendments would not modify any of the requirements of those agreements.

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

II. 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.

1. The following sections of Polk County Zoning Ordinance (PCZO) Chapter 111 are deleted by this ordinance:

111.080. CERTIFICATION.

111.100. LOCATION.

111.140. ZONING MAP AMENDMENTS.

2. The following subsection of PCZO 111.070 is deleted by this ordinance:

Grand Ronde Commercial

GR / C Zone

3. The following sections of PCZO Chapter 111 are amended by this ordinance and read as follows:

CHAPTER 111

ADMINISTRATION AND PROCEDURES

- 111.070. Zoning Designations
111.090. Official Zoning Map
111.280. Appeal and Remand Consideration Procedures

111.070 ZONING DESIGNATIONS

FULL NAME

DESIGNATION

Acreage Residential 10 Acre Zone	AR-10 Zone
Agriculture and Forestry 10 Acre Zone	AF-10 Zone
Northwest Polk Community Commercial	NPC-C Zone

111.090. OFFICIAL ZONING MAP.

- (A) The Official Zoning Map adopted with an effective date of April 2011, exists as an electronic map layer within the Polk County geographic information system (GIS) at a scale of 1:24,000. The Official Zoning Map shall be maintained by the Planning Director. [Amended by Ordinance 11-02]
- (B) The Official Zoning Map shall depict the zoning designations for all properties located in Polk County, and shall be consistent with the Polk County Comprehensive Plan Map. The Official Zoning Map shall be the final authority as to the zoning status of land and water areas, buildings and other structures. [Amended by Ordinance 11-02]
- (C) The Official Zoning Map shall be available for review through the Polk County GIS at the Community Development Department during office business hours. [Amended by Ordinance 11-02]

- (D) The Planning Director may create an official copy of the Official Zoning Map by certifying on the copy that “this is an official copy of the Polk County Official Zoning Map.” [Amended by Ordinance 11-02]

111.110. AMENDING OFFICIAL ZONING MAP. A zone change is a reclassification of any area on the Official Zoning Map from one zoning designation 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. Annexation of territory to a city shall result in automatic amendment of the Official Zoning Map as of the effective date of annexation. When the Official Zoning Map is amended by ordinance or annexation to a city, the Planning Director shall cause the changes to be made to the Official Zoning Map. [Amended by Ordinance 11-02]

111.120. REPLACEMENT OF OFFICIAL ZONING MAP. In the event the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret, 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 Official Zoning Map by resolution. Such map shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct editing or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the ordinance or any subsequent amendment thereof. [Amended by Ordinance 11-02]

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:

- (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]

111.235 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 Region 2 Planner. [Amended by Ordinance 11-02]
- (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 Region 2 Planner. [Amended by Ordinances 07-06 and 11-02]

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 as provided under Section 111.280. [Amended by Ordinance 11-02]

111.245. NOTICE OF TYPE A PROCEDURE.

- (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. Notice shall be mailed to the owner of an airport, defined by the Oregon Department of Aviation as a "public use airport," and to the Oregon Department of Aviation for any land use change or development requiring County review and approval within 5,000 feet of a visual flight rules public use airport or is within 10,000 feet of an instrument flight rules public use airport. [Amended by Ordinances 98-5 and 11-02]

111.260. REFERRAL BY PLANNING DIRECTOR.

- (B) Action of the Hearings Officer on a referral is final and may be appealed in accordance with section 111.280. [Amended by Ordinance 11-02]
- (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.

111.275. 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:

- (H) The road function, classification, capacity and existing and projected traffic volumes have been considered. To allow comprehensive plan map and zone map amendments that may generate trips up to the planned capacity of the transportation system, Polk County will consider road function, classification, road capacity and existing and projected traffic volumes, as criteria for comprehensive plan map and zone map amendments. [Amended by Ordinance 11-02]

111.280. APPEAL AND REMAND CONSIDERATION PROCEDURES.

- (A) An appeal may be filed 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, 10-04, and 11-02]
- (B) On receiving an appeal or request by the applicant for reconsideration of a land use application on remand from the Land Use Board of Appeals, the Community Development Department shall deliver to the Board the application and all other documents constituting the entire record of the action under appeal or remand. [Amended by Ordinance 11-02]
- (C) Upon receipt of an appeal filed with the Community Development Department of a decision by the Planning Director or request by the applicant for reconsideration of a land use application on remand from the Land Use Board of Appeals, the Board of Commissioners shall review the matter and thereafter 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 public hearing, as determined by the Board of

Commissioners, will be conducted by either the Hearings Officer or the Board. The decision resulting from this public hearing shall constitute the final county decision. Decisions of the Hearings Officer shall thereafter be ratified by the Board of Commissioners as part of the Board's Consent agenda. [Amended by Ordinance 11-02]

- (D) Upon receipt of an appeal filed with the Community Development Department of a decision by the Hearings Officer after a first evidentiary hearing, the Board of Commissioners shall review the matter and thereafter either ratify the Hearings Officer's decision or 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 public hearing will be conducted by the Board of Commissioners. The Board's ratification of the Hearings Officer's decision or the Board's decision after holding a public hearing shall constitute the final county decision. [Amended by Ordinance 11-02]
- (E) The Planning Director shall send notice of a public hearing under subsections (C) or (D) of this section 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 or Hearings Officer considers it advisable. [Amended by Ordinances 09-02 and 11-02]
- (F) The appeal or request for reconsideration on remand shall be accompanied by payment of a fee, specified in the County's fee resolution, to defray the cost of the hearing. [Amended by Ordinances 09-02 and 11-02]
- (G) Filing of an appeal stays all proceedings by all parties in connection with the matter appealed until the Board of Commissioners or Hearings Officer has made a decision on the appeal. [Amended by Ordinances 89-1, 97-9, and 11-02]

111.290. CALL OF BOARD OF COMMISSIONERS.

- (A) Two or more members of the Polk County Board of Commissioners may call up an action, which is not an appeal decision, by the Polk County Planning Director or the Hearings Officer. However, the call must be made at the first meeting after notice of the decision is presented. [Amended by Ordinance 11-02]
- (B) On receiving a call of the Board of Commissioners, the Community Development Department shall deliver to the Board the application and all other documents constituting the entire record of the action under appeal or remand. [Amended by Ordinance 11-02]
- (C) 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 public hearing, as determined by the Board of Commissioners, will be conducted by either the Hearings Officer or the Board. The decision resulting from this public hearing shall constitute the final county decision. Decisions of the Hearings Officer shall thereafter be ratified by the Board of Commissioners as part of the Board's Consent agenda. [Amended by Ordinance 11-02]
- (D) The Planning Director shall send notice of a public hearing under subsection (C) of this section 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 all others who received notice of the Planning Director's or Hearings Officer's decision that has been called. A hearing may be continued from time to time if the Board or Hearings Officer considers it advisable. [Amended by Ordinance 11-02]

- (E) A call by the Board of Commissioners stays all proceedings by all parties in connection with the matter until the Board of Commissioners or Hearings Officer has made a decision on the call. [Amended by Ordinance 11-02]

111.300. ACTION BY BOARD OF COMMISSIONERS.

- (A) Pursuant to Section 111.290, the Polk County Board of Commissioners may review any action, which is not an appeal decision, of the Polk County Polk County Planning Director or the Hearings Officer. The Board may remand the matter for further investigation and consideration, in which case the Planning Director or Hearings Officer shall conduct such further investigation as is necessary and report findings and conclusions in writing to the Board. [Amended by Ordinance 11-02]
- (B) Pursuant to Section 111.290, after conducting a public hearing to consider an action, which is not an appeal decision, and finding that the facts therein stated do not warrant further hearing, the Board may summarily affirm the action. [Amended by Ordinance 11-02]
- (C) Pursuant to Section 111.290, after conducting a public hearing to consider an action on an appeal or non-appeal decision, the Board may affirm or reverse wholly or partly, or modify, any action, and may impose such additional conditions as it finds warranted by the facts. The Board's decision shall constitute the final local decision. [Amended by Ordinance 11-02]

111.310. EFFECTIVE DATE. Land use actions granted under section 111.240 become effective on the 12th 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 or Hearings Officer has taken final action. A final county decision by the Board of Commissioners or Hearings Officer shall not be effective until 21 days after mailing of the decision. An appeal of a land use action by the Board of Commissioners or the Hearings Officer 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 Ordinances 97-9 and 11-02]

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:

- (H) Include the name of a local government representative to contact and the phone number where additional information may be obtained. [Amended by Ordinance 11-02]

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

- (F) Notice shall be mailed to the Oregon Department of Transportation for any land use change or development requiring County review and approval which requires access to a state highway or which is located within 500 feet of a state highway. [Amended by Ordinance 11-02]

111.360. POSTING NOTICE.

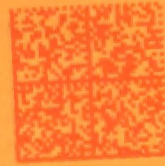
- (A) Notice of all public hearings required by the provisions of this ordinance, except for legislative text amendments, shall be given by posting a sign on the subject property within 10 feet of whatever boundary line of such land abuts the most traveled public road or street, and if no public road abuts thereon, then facing in such a manner as may be most readily seen by the public. [Amended by Ordinance 11-02]

Exhibit B to Ordinance No. 11-02

111.370. PUBLISHING NOTICES. Notice of all public hearings required by the provisions of this ordinance 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, 88-21, and 11-02]

ADDRESS SERVICE
REQUESTED

PRESORTED
FIRST CLASS



UNITED STATES POSTAGE
METRY BOXES
\$ 01.43⁷
02 1M
0004275527 MAY 05 2011
MAILED FROM ZIP CODE 97338

DEPT OF

MAY 06 2011

LAND CONSERVATION
AND DEVELOPMENT

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