

RESOURCE USE PROTECTION

94.100 SHORT TITLE

This Ordinance may be cited as the Polk County Resource Use Protection Ordinance.

(1) It is the purpose of this code section to protect resource-based economically productive activities of Polk County in order to assure the continued health, safety, and prosperity of its residents. Resource uses sometimes offend, annoy, interfere with, or otherwise affect others located on or near resource lands. Polk County has concluded that persons located on or near resource lands must accept the conditions commonly associated with accepted resource uses.

(2) This code section is intended to limit the availability of remedies based on nuisance or trespass, complaint procedures, rights of action and claims for relief over which Polk County has jurisdiction, when they otherwise would either have an adverse impact on resource uses which Polk County seeks to protect, or would impair full use of the resource base within Polk County.

94.120 DEFINITIONS

As used in PCC 94.100-94.180:

(1) "Facility" means any real or personal property, including appurtenances thereto and fixtures thereon, associated with a given use.

(2) "Farming practice" means the cultivation, growing, harvesting, processing, or selling of plants or animals of any kind, which lawfully may be grown, possessed, and sold, including but not limited to fish, livestock, poultry, grapes, Christmas trees, and nursery stock.

(3) "Forest practice" has the meaning given that term by ORS 527.620.

(4) "Nonresource use" means any facility, activity, or other use of land which does not constitute a resource use, including but not limited to residential use, and also including any aggregate mining use which is not conducted in accordance with a program complying with Goal 5.

(5) "Resource use" means any current or future generally accepted aggregate mining, farming, ranching, or forest practice or facility conducted in compliance with applicable Polk County Land Use Ordinances.

(6) "Generally accepted" means either:

(a) A practice or facility which is conducted or used in compliance with applicable federal and state laws; or

(b) If there is no applicable federal or state law, a practice or facility which an average person in Polk County who is a grower or producer regularly involved in the same type of resource use would reasonably expect to occur or exist in a truly rural setting. The Polk County Board of Commissioners

may, as it deems necessary, establish resource user peer review boards consisting of five persons who regularly are involved in a resource use within the county, three of whom regularly are involved in the same type of resource use in question, to advise the Commission as to generally accepted practices or facilities with respect to that resource use.

- (7) "Resource use" does not include:
 - (a) The willful growing of unlawful, infested, infected, or diseased plants or animals.
 - (b) Trespass which involves actual physical intrusion onto the property of another by a person or by a person's animals.

94.130 PROTECTING RESOURCE USES OUTSIDE UGB

(1) No resource use occurring outside an urban growth boundary (UGB) shall be declared to be a public or private nuisance or trespass, or support any complaint procedure, or give rise to a claim for relief in favor of, or to protect the interests of, nonresource uses or any persons or property associated therewith, to the extent that such right, proceeding or claim would arise under an ordinance or the inherent authority of Polk County.

- (2) This section applies regardless of:
 - (a) The location of the purportedly affected nonresource use.
 - (b) Whether the nonresource use purportedly affected existed before or after the occurrence of the resource use.
 - (c) Whether the resource use or nonresource use has undergone any change or interruption.
 - (d) Whether the resource use or nonresource use is located inside or outside an area designated as secondary resource lands.

94.140 PROTECTING RESOURCE USES WITHIN UGB

(1) No resource use occurring within an urban growth boundary (UGB) shall be declared to be a public or private nuisance or trespass, or support any complaint procedure, or give rise to a claim for relief in favor if, or to protect the interests of, nonresource uses or any persons or property associated therewith, to the extent that such right, proceeding, or claim would arise under an ordinance or the inherent authority of Polk County.

- (2) This section applies:
 - (a) Regardless of the location of the purportedly affected nonresource use.
 - (b) Only if the resource use predated the purportedly affected nonresource use.

- (c) Only if the resource use has not significantly increased in size or intensity after (A) the effective date of this Ordinance, or (B) the date on which the applicable urban growth boundary is changed to include the subject resource use within its limits, whichever date is later. However, if the change is mandated by law, this section shall apply.

94.150 CHANGE IN UGB

To the extent permissible under State law, if an urban growth boundary (UGB) is changed in such a way as to place a resource use either inside or outside such boundary, PCC 94.130 applies with respect to any conflict between a resource use and nonresource use.

94.160 LAND USE DECISIONS

The fact that Polk County's comprehensive plan, zoning ordinances, and land use decisions may allow the siting, development, or support of any particular use does not negate the provisions of this code section intended to protect a resource use.

94.170 COMPLAINTS BY NONRESOURCE USERS

Any persons engaged in a nonresource use are deemed on notice that Polk County will not act on complaints involving a resource use protected under this code section, wherever located, so long as such resource use complies with applicable provisions of federal and state laws and this code section.

94.180 SEVERABILITY CLAUSE

If any portion of this code section is held invalid by a court of competent jurisdiction, such decision shall apply only with respect to the specific portion held invalid by the decision. It is the intent of Polk County that the remaining portions of this code section continue in full force and effect.

Note: This ordinance was not adopted with code numbers or references. These have been supplied by Legal Counsel. Source: Ordinance No. 92-36.