

## **CHAPTER 91**

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

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## CHAPTER 91

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

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

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

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

#### **91.150. DEFINITIONS.**

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

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

"Minor Arterials" connect areas of principal traffic generation to major urban and rural highways. The minor arterial network provides for through traffic movement to the major arterials and distribution into the network of collector and local streets.
- (7) "Block." An area or unit of land adjacent to one or more streets in a subdivision.

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

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

either removed, maintained as an access road or maintained as a connection between the realigned roadway and a road that intersects the original alignment. The realignment shall maintain the function of the existing road segment being realigned as specified in the acknowledged comprehensive plan.

- (35) "Reserve Strip." A strip of land, one foot in width, across the end of or along the edge of a street or alley, for the purpose of controlling access which is reserved or held for future street extension or widening.
- (36) "Reverse Frontage Lot." A lot having frontage on two parallels or approximately parallel roads, where the rear of the lot, or structure on the lot faces an arterial.
- (37) "Road or Street." A public or private way created to provide ingress or egress for persons to one or more lots, parcels, areas, or tracts of land.
- (38) "Roadway." The general term used to describe the strip of land, structures, surfacing, and shoulders over which motorized vehicles travel. The roadway includes the area between the edges of the shoulder or curb and the area two feet beyond the edge of shoulder or curb.
- (39) "Rural." Those areas within Polk County which lie outside an adopted Urban Growth Boundary (UGB) and outside an urban unincorporated community.
- (40) "Shall." The term "shall" is used in a mandatory sense.
- (41) "Subdivide Land." To divide a lot or parcel into four or more lots, within a calendar year, when such lot or parcel exists at the beginning of such year.
- (42) "Subdivider." Any person who undertakes to subdivide a lot or parcel for the purpose of transfer of ownership or development and including changes in street or lot lines.
- (43) "Subdivision." Either an act of subdividing land property subdivided as defined in this section.
- (44) "Transportation Impact Analysis (TIA)". A study which evaluates the adequacy of the existing transportation system to serve a proposed development and the expected effects of the proposed development on the transportation system. A TIA is required when a particular development is expected to generate more than 300 vehicle trips during a single day and/or more than 100 vehicle trips during a single hour. The TIA should provide adequate information for Public Works to evaluate the development proposal and, if necessary, identify traffic mitigation measures.
- (45) "Urban." Those areas of Polk County which lie within an adopted Urban Growth Boundary (UGB) or within an urban unincorporated community.
- (46) "Urban Growth Boundary (UGB)." A boundary adopted by both the city and county which includes the estimated supply of various land types (commercial, industrial, public, and residential) intended to serve the city's needs over a 20-year planning period.
- (47) "Waiver." An action or decision of a public entity to modify, remove or not apply one or more land use regulations under ORS 195.305 to 195.336 and sections 5 to 11, chapter 424, Oregon Laws 2007, sections 2 to 9 and 17, chapter 855, Oregon Laws 2009, and sections 2 to 7, chapter 8, Oregon Laws 2010, or ORS 195.305, as in effect immediately before December 6, 2007, to allow the owner to use property for a use permitted when the owner acquired the property. **[Amended by Ordinance 18-01]**
- (48) "Walkway." A transportation facility built for use by pedestrians, including persons in wheelchairs. Walkways include sidewalks, paths and paved shoulders.
- (49) "Vicinity Map." A drawing or diagram, to scale, showing the location of the proposed partition or subdivision relative to abutting properties, to nearby roads or streets, or to other known landmarks such as rivers townsites, rural community centers and such.

## **91.200 PROCEDURES FOR SUBDIVISIONS AND PARTITIONS**

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

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

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

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

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

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

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

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

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

**91.220. PARTITION FINAL APPROVAL.** An application that has received conditional approval as provided above in this section, and other applicable sections of this Ordinance and

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

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

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

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

**91.280. BOARD SIGNATURE ON SUBDIVISION PLATS.** For purposes of ORS 92.100 and Polk County Code 91.730, the chairperson of the Board of County Commissioners is delegated the



authority to sign subdivision plats on behalf of the Board of Commissioners. In the event that the chairperson is not available, any other commissioner may act in place of the chairperson and sign subdivision plats for the Board.

#### **91.290. GENERAL APPROVAL CRITERIA FOR PARTITIONS**

- (1) In order to approve a partition application, the Planning Director, Hearings Officer, or Board of Commissioners shall consider information submitted by the applicant and other sources into the record for the proceeding and make findings that:
  - (a) The proposal is consistent with the provisions and intent of the adopted Comprehensive Plan and Transportation Systems Plan; and
  - (b) The proposal is consistent with the provisions of this chapter and the zoning ordinance.
- (2) The Planning Director, Hearings Officer, or Board of Commissioners may prescribe conditions or make changes or modifications, which are within this chapter and the zoning ordinance.
- (3) If a partition application cannot meet the above conditions or requirements and conditions, the Board, Hearings Officer or Planning Director shall deny the proposal.

#### **91.300. GENERAL APPROVAL CRITERIA FOR SUBDIVISIONS**

- (1) In order to approve a subdivision application, the Hearings Officer shall consider information submitted by the applicant and other sources into the record for the proceeding and make findings that:
  - (a) The proposal is consistent with the provisions and intent of the adopted comprehensive plan and transportation systems plan; and
  - (b) The proposal is consistent with the provisions of this chapter and the zoning ordinance.
- (2) The Hearings Officer may prescribe conditions or make changes or modifications, which are within this chapter and the zoning ordinance.
- (3) If such a subdivision application cannot meet the above conditions or requirements and conditions, the Hearings Officer shall deny the proposal.
- (4) Conditional approval of a subdivision in any unincorporated area of Polk County in accordance with the procedures of this chapter shall not be granted unless it can be shown that minimum adequate levels of service for schools, fire protection and water can be provided. Minimum adequate levels of service shall be determined in accordance with the following standards:
  - (a) The required minimum level of service for educational facilities will be as determined by the relevant school district.
  - (b) The required minimum level of service for fire protection will be the existence of fire protection service provided by a municipal fire department or rural fire protection district.
  - (c) The required minimum level of service for the provision of rural domestic water will be a source that conforms to County and State regulations regarding location and construction and which meets state health specifications.
  - (d) If comment is received from a service agency that the proposed subdivision will use and may cause an exceeding of capacity, but existing services can accommodate excess by planned expansion or modification, the permit process may proceed. If comment is received from a service agency that the proposed

subdivision will exceed capacity and no modification to existing services is planned which can serve the additional requirements of the subdivision, the application will be denied.

## **91.700 STANDARDS FOR PARTITIONS AND SUBDIVISIONS**

### **(1) SEWAGE DISPOSAL.**

- (a) All parcels created in a partition shall have:
  - (A) Public sewage facilities available, or
  - (B) An on-site area approved pursuant to State Department of Environmental Quality rules for the installation of a sewage disposal system, or
  - (C) The property owner sign an acknowledgement that no building permits will be issued for structures or uses that require sewage disposal, and that the parcel(s) created have not obtained on-site sewage disposal system approval.
- (b) All lots created in a subdivision shall have:
  - (A) Public sewage facilities available, or
  - (B) An on-site area approved pursuant to State Department of Environmental Quality rules for the installation of a sewage disposal system.

### **(2) ROAD, STREET, AND HIGHWAY STANDARDS.** New public and private roads created by partitions and subdivisions shall be designed and constructed pursuant to the *Polk County Road Standards* adopted by the Polk County Board of Commissioners, as identified in Ordinance 98-6, as amended. Hereafter “road” includes “street”.

- (a) Roads shall be aligned with existing roads in the vicinity of the proposed subdivision or partition either by prolongation of existing centerline or by connection with suitable curves. A road shall conform to the location, alignment, and width as indicated on a Corridor Refinement Plan for roads and highways now or hereafter adopted by Polk County. Roads shall intersect at or as near right angles as practicable. Road alignments shall be consistent with the adopted Transportation Systems Plan, or County adopted Corridor Refinement Plan. A property located within an urban growth boundary shall provide for the extension of roads and highways consistent with the adopted City Transportation Systems Plan.
- (b) No partition or subdivision shall create a dedicated road in unincorporated Polk County without the approval of Polk County. No instrument dedicating land in unincorporated Polk County to public use shall be accepted for recording unless such instrument bears the approval of the Polk County Board of Commissioners.
- (c) Unless an exception to the easement width has been granted pursuant to PCSO 91.800, the minimum widths for easements granting vehicular access across the subject property shall be:
  - (A) Sixty (60) feet wide for access easements that are intended to become preferred alternatives for “proposed” roads as identified in the Polk County Transportation Systems Plan.
  - (B) Forty (40) feet wide for all other access easements.

### **(3) PROPERTY DIMENSIONS**

- (a) **LOT OR PARCEL SIZE.** All lots and parcel sizes shall conform to the requirements of the zone in which the subdivision or partition is requested. When sub-surface sewage disposal means are proposed for the subdivision or partition, state and local health regulations, soil types, drainage, terrain, and location shall be included as part of the

criteria reviewed to determine the minimum lot sizes that will safely accept subsurface sewage disposal.

- (b) **CORNER LOTS OR PARCELS.** All corner lots or parcels shall be at least 100 feet wide adjacent to each road.
  - (c) **PROPERTY LINES.** Side property lines shall be as close to right angles to the front property line as practicable. Unless otherwise approved, rear property lines shall be not less than one-half the width of the front property lines.
  - (d) In a cul-de-sac, the minimum property line fronting the turnaround shall be 50 feet and in no cases shall the property width be less than 60 feet at the building line.
- (4) **SUBDIVISION ROAD IMPROVEMENTS.** All road improvements, including pavement, curbs, sidewalks and surface drainage shall be constructed pursuant to the specifications of the Polk County Road Standards. The applicant shall provide for all improvements identified herein or by reference. The Board may require a performance bond to ensure the development of roads to required standards. Subdivision plats shall not have final approval until such time as the Board is satisfied that any required road improvements will be completed pursuant to the specifications and standards set forth in this section:
- (a) Subdivision roads shall be constructed as follows:
    - (A) For subdivisions located within an urban growth boundary, the road design and construction standards of the affected city shall apply. If the city has no adopted standards then the urban geometric design standards described in the Polk County Road Standards shall apply. The design and construction of all roads shall be based on the functional classification of such roads.
    - (B) For subdivisions located outside an urban growth boundary the rural geometric design standards described in the Polk County Road Standards shall apply. The design and construction of all roads shall be based on the functional classification of such roads.
  - (b) Mitigation may be required based on the traffic impacts identified through the Transportation Impact Analysis as defined in the Polk County Road Standards.
    - (A) Mitigation may require the dedication of land for improving existing roadways or constructing future roadways as development occurs. This includes roadway dedication on lands for which building permits are requested for new structures as well as lands proposed for major development.
    - (B) Mitigation may include the improvement of existing roadways intersecting or bordering a development to a standard that coincides with anticipated use. The classification of an existing road may increase based upon the results of a traffic analysis. An increase in classification shall necessitate an improvement in the roadway in accordance with the Polk County Road Standards.
  - (c) Access onto arterials will require the approval, through the permit process, from the Oregon Department of Transportation. The applicant(s) will need to follow ODOT's construction requirements for that portion of the access within state-owned right-of-way.

#### **91.720. 91.720 SALE OF SUBDIVISION LOTS AND PARTITION PARCELS**

- (1) No person shall sell any lot in any subdivision with respect to which approval is required by this ordinance, until such approval is obtained. No person shall negotiate to sell any lot in a subdivision until a tentative plan has been approved.
- (2) A person may negotiate to sell any parcel in a partition with respect to which approval of a tentative plan is required by this ordinance, prior to the approval of the

tentative plan for the partition. However, no person may sell any parcel in a partition for which approval of a tentative plan is required by this ordinance, prior to such approval.

**91.800. EXCEPTIONS TO ORDINANCE STANDARDS.**

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

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

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

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

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

this chapter.

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

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

**91.950. LAWFULLY CREATED PARCELS.**

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

**91.955. CREATION OF PARCELS WHICH WERE IMPROPERLY FORMED.**

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

- (i) The dwelling or other building was lawfully established prior to January 1, 2007; and
  - (ii) The permit does not change or intensify the use of the dwelling or other building.
- (d) An application to validate a unit of land under this section is an application for a permit, as defined in ORS 215.402. An application to Polk County under this section is not subject to the minimum lot or parcel sizes established by ORS 215.780.
- (e) A unit of land becomes a lawfully established parcel when the county validates the unit of land under this section if the owner of the unit of land causes a partition plat to be recorded within 90 days after the effective date of the land use decision.
- (f) Polk County may not approve an application to validate a unit of land under this section if the unit of land was unlawfully created on or after January 1, 2007.
- (g) Development or improvement of a parcel created under subsection (e) of this section must comply with the applicable laws in effect when a complete application for the development or improvement is submitted as described in PCZO Section 111.250(B).
- (h) When a unit of land was sold before January 1, 2007, but was not a lawfully established unit of land, the county shall consider and may approve an application for the creation of a parcel pursuant to this section, notwithstanding that less than all of the owners of the existing lawfully established unit of land have applied for the approval. [Amended by Ordinance 10-04]
- (2) A unit of land that was not lawfully established pursuant to Section 91.950 may be consolidated with another lawfully created parcel or agglomerated with sufficient land so as to meet or exceed the current minimum parcel size within the applicable zoning district through the property line adjustment process. The resulting unit of land shall be recognized as lawfully created. Such property line adjustment application shall also be subject to the requirements of Section 91.960. [Amended by Ordinance 10-04]
- (3) All development on parcels which were improperly formed, but which are recognized as lawfully created under the provisions of this section is subject to the standards and requirements of the Polk County Zoning Ordinance.

## **PROPERTY LINE ADJUSTMENTS**

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

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

- (1) **EXCLUSIONS.** Review and approval is not required if the property line adjustment complies with one or more subsections listed in subsection (a) through (e) below.
  - (a) In all zones, excluding land in a farm or forest zone (EFU, TC, FF, and FFO), review and approval is not required if:
    - (i) The total area to be adjusted is less than 10 percent of the current size of the smallest affected parcel, and

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

adjusted property line shall be surveyed and monumented as required by state law.

- (g) For all such excluded adjustments identified in (a) through (e) of this subsection, the adjustment shall not create a split-zoned parcel(s) that does not comply with the standards for creation of a parcel in each zone unless the property owner provides for the recording of a restrictive covenant in the deed records for the subject property that prohibit the property from being partitioned along the zoning boundary until such time as each parcel would comply with the minimum standards for the creation of a parcel in each zone. **[Amended by Ordinance 10-04]**
  - (h) For all such excluded adjustments identified in (a) through (e) of this subsection, no parcel created from a subdivision or partition authorized by a waiver shall be adjusted to be larger than:
    - (i) Two acres if the lawfully established unit of land is, before the adjustment, two acres in size or smaller and is high-value farmland, high-value forestland or within a ground water restricted area; or
    - (ii) Five acres in size if the lawfully established unit of land is, before the adjustment, five acres in size or smaller and is not high-value farmland, high-value forestland, or within a ground water restricted area. **[Amended by Ordinance 18-01]**
- (2) **GENERAL STANDARDS.** Except for those exclusions noted in Section (1) above, all property line adjustments shall meet the following criteria:
- (a) The adjustment shall be consistent with the Comprehensive Plan and meet the intent and purpose of the zone; and
  - (b) The adjustment shall not decrease required setbacks, access, yard areas, lot widths or other standards of the zone; and
  - (c) All parcels will retain any on-site septic system and associated repair area on the parcel it serves; and
  - (d) The adjustment will create no additional parcel(s); and
  - (e) The adjustment will not create a split-zoned parcel(s) that does not comply with the standards for creation of a parcel in each zone unless the property owner provides for the recording of a restrictive covenant in the deed records for the subject property that prohibit the property from being partitioned along the zoning boundary until such time as each parcel would comply with the minimum standards for the creation of a parcel in each zone; and
  - (f) A property line adjustment where one or both of the properties involved are smaller than the minimum lot or parcel size for the applicable zone may be approved where:
    - (i) Both properties are located entirely outside the corporate limits of a city; and
    - (ii) One or both of the abutting properties are smaller than the minimum lot or parcel size for the applicable zone before the property line adjustment and, after the adjustment, one is as large as or larger than the minimum lot or parcel size for the applicable zone; or
    - (iii) Both abutting properties are smaller than the minimum lot or parcel size for the applicable zone before and after the property line adjustment. **[Amended by Ordinance 10-04]**



- (g) A property line adjustment between two parcels that exceed the minimum parcel size for the applicable zone before the property line adjustment shall result in two parcels that exceed the minimum parcel size for the applicable zone after the property line adjustment. [Amended by Ordinance 10-04]
- (3) **ADJUSTMENTS IN RESOURCE ZONES.** Except for those exclusions noted in Section (1) above, property line adjustments must meet the General Standards listed in (2) above. In addition, on land in a farm or forest zone (EFU, TC, FF and FFO), a property line adjustment under Section (2), subsection (f) may not be used to:
- (a) Decrease the size of a lot or parcel that, before the relocation or elimination of the common property line, is smaller than the minimum lot or parcel size for the applicable zone and contains an existing dwelling or is approved for the construction of a dwelling, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling based on an acreage standard (Sections 136.040(D), 138.080(A)(3), 138.080(B)(2), or 177.070(B));
  - (b) Decrease the size of a lot or parcel that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than the minimum lot or parcel size, if the abutting vacant tract would be increased to a size as large as or larger than the minimum tract size required to qualify the vacant tract for a dwelling based on an acreage standard (Sections 136.040(D), 138.080(A)(3), 138.080(B)(2), or 177.070(B));
  - (c) Allow an area of land used to qualify a tract for a dwelling based on an acreage standard to be used to qualify another tract for a dwelling if the land use approval would be based on an acreage standard (Sections 136.040(D), 138.080(A)(3), 138.080(B)(2), or 177.070(B)); or [Amended by Ordinance 10-04]
  - (d) Adjust a property line that resulted from a subdivision or partition authorized by a waiver so that any lawfully established unit of land affected by the property line adjustment is larger than:
    - (i) Two acres if the lawfully established unit of land is, before the adjustment, two acres in size or smaller and is high-value farmland, high-value forestland or within a ground water restricted area; or
    - (ii) Five acres in size if the lawfully established unit of land is, before the adjustment, five acres in size or smaller and is not high-value farmland, high-value forestland, or within a ground water restricted area. [Amended by Ordinance 18-01]
- (4) **ADJUSTMENTS IN RESIDENTIAL ZONES.** Except for those exclusions noted in Section (1) above, a property line adjustment between parcels in the SR, AR-5, and GR/LDR zones must meet the General Standards listed in (2) above. In addition, the applicant(s) must demonstrate that the adjustment would retain all parcels of adequate size, as detailed by the applicant and determined by the Planning Director, to provide adequate area for the intended or existing structures and uses, setbacks, parking, access, and spacing required for water supply and on-site sewage disposal (including repair area).
- (5) **ADJUSTMENTS IN COMMERCIAL, INDUSTRIAL, AND PUBLIC ZONES.** Except for those exclusions in Section (1) above, a property line adjustment between parcels in a commercial, industrial, or public zone must meet the General Standards listed in (2) above. In addition, the applicant(s) must demonstrate that the adjustment would retain all parcels of adequate size, as detailed by the applicant and determined by the Planning Director, to provide adequate area for the intended or existing structures

and uses, setbacks, parking, access, landscaping, and spacing required for water supply and on-site sewage disposal (including repair area).