



POLK COUNTY

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COMMUNITY DEVELOPMENT

AUSTIN M^cGUIGAN
Director

MEMORANDUM

TO: Polk County Planning Commission/Committee for Citizen Involvement

FROM: Michael Burns, Associate Planner

DATE: January 30, 2024

SUBJECT: Legislative Amendment 23-03: Text Amendments to the Polk County Zoning Ordinance Chapters 136 and 177.

Public Hearing – February 6, 2024

ISSUE:

The Polk County Planning Commission will hold a public hearing concerning potential text amendments to Polk County Zoning Ordinance (PCZO) Chapters 136 and 177, which pertain to the Exclusive Farm Use (EFU) and Timber Conservation (TC) Zoning Districts. The proposed text amendments are intended to bring PCZO Chapters 136 and 177 into compliance with State law, and to consider adopting optional changes for uses in these zones.

RECOMMENDATION:

Staff recommends that the Planning Commission discuss ‘optional’ items listed in this report and in Attachments A and B, and for each item, make a recommendation to the Polk County Board of Commissioners regarding whether the provision should be added to the PCZO, and if so, what the code language should be. In addition, staff recommends that the Planning Commission recommend adopting all required changes to PCZO Chapter 136 and 177, as listed in Attachments A and B.

STAFF REPORT:

I. BACKGROUND

Oregon Revised Statute (ORS) 197.646 states that when new land use statutes, statewide land use planning goals or rules implementing the statutes or the goals are enacted, counties must either adopt amendments to their local code to implement the changes to State law or apply those changes directly to land use applications. Currently, the Planning Division applies certain sections of ORS and Oregon Administrative Rules (OAR) directly to land use applications. Some changes in State law are not mandated to be adopted by the local government, but rather allow the local government the opportunity to be more restrictive than State law. The proposed legislative amendment is intended to provide conformity to PCZO Chapter 136 and 177 with land use regulations found in State law where required, and to consider optional changes to PCZO Chapter 136 and 177 where Polk County’s local ordinance may currently be more restrictive than or differentiates from State law. It should be noted that many of the required text amendments to PCZO 177 found in Attachment A are not substantive changes but, rather are intended to provide parity with the language found in State law.

Typically, text amendments solely intended for conformance with provisions in State law would be processed through a ministerial action, however, staff has chosen to consolidate those changes that

are required and those changes that are optional into one legislative amendment process in order to evaluate all amendments to PCZO Chapter 177 and 136 synchronously.

II. COMMENTS RECEIVED

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

III. CRITERIA FOR LEGISLATIVE AMENDMENTS

A legislative amendment to the text of the PCZO may be approved provided that the request is based on substantive information and factual basis to support the change. In amending the PCZO, Polk County shall demonstrate compliance with PCZO 115.060. The applicable review and decision criteria are listed in bold, followed by staff's analysis and findings.

1. AMENDING THE TEXT OF THE POLK COUNTY ZONING ORDINANCE.

- (A) **[ORS 197.612(1)] An amendment to the text of the Polk County Zoning Ordinance solely for the purpose of conforming the ordinance to new requirements in a land use statute, statewide land use planning goal or rule of the Land Conservation and Development Commission implementing the statutes or goals may be made without holding a public hearing when:**
- (1) **Polk County gives notice to the Oregon Department of Land Conservation and Development of the proposed change in the manner provided by ORS 197.610 and 197.615;**
 - (2) **The Oregon Department of Land Conservation and Development confirms in writing that the only effect of the proposed change is to conform the Polk County Zoning Ordinance to the new requirements; and**
 - (3) **The Planning Division provides notice of the proposed change to the Planning Commission.**
- (B) **An amendment to the text of the Polk County Zoning Ordinance under the provisions of subsection (A) of this section shall be considered a ministerial decision and not a land use action. Amendments under subsection (A) of this section need only be adopted on the Board of Commissioner's Consent agenda.**
- (C) **All amendments to the text of the Polk County Zoning Ordinance that are not included in subsection (A) of the section shall be processed under the procedures and criteria for a legislative comprehensive plan amendment described in Chapter 115.**

Staff Findings: The proposed text amendments are intended to bring PCZO Chapters 136 and 177 into conformance with State law where required, and to evaluate and consider adopting optional changes for uses which may be permitted in the EFU and TC Zoning Districts. While a portion of these text amendments are included under subsection (A) of this criteria, not all of the changes are for the purpose of conforming PCZO Chapter 136 and 177 to new requirements found in Oregon Revised Statutes, Statewide Planning Goals, or Oregon Administrative Rules, but rather to consider adopting optional changes. Therefore, staff has determined that the proposed text amendments shall be processed under the procedures and criteria for a legislative comprehensive plan amendment described in PCZO Chapter 115. The Polk County Board of Commissioners initiated this text amendment process on September 19, 2023. Pursuant to PCZO 115.040, the Planning Commission conducts a public hearing and makes a recommendation to the Board of Commissioners. The Board of Commissioners holds a separate public hearing and makes the final local decision for this matter. Staff's findings to address the criteria listed in PCZO 115.060 are provided below.

2. **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)]

- (B) A local government shall amend its acknowledged comprehensive plan or acknowledged regional framework plan and land use regulations implementing either plan by a self-initiated post-acknowledgment process under ORS 197.610 to 197.625 to comply with a new requirement in land use statutes, statewide land use planning goals or rules implementing the statutes or the goals. [ORS 197.646(1)]**
- (C) When a local government does not adopt amendments to an acknowledged comprehensive plan, an acknowledged regional framework plan or land use regulations implementing either plan, as required by subsection (1) of this section, the new requirements apply directly to the local government's land use decisions. The failure to adopt amendments to an acknowledged comprehensive plan, an acknowledged regional framework plan or land use regulations implementing either plan required by subsection (1) of this section is a basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335. [ORS 197.646(3)]**

General Findings: ORS 197.646 states that when new land use statutes, statewide land use planning goals or rules implementing the statutes or the goals are enacted, counties must either adopt amendments to their local code to implement the changes to State law or apply those changes directly to land use applications. Currently, the Planning Division applies certain sections of ORS and OAR directly to land use applications. Some changes in State law are not mandated to be adopted by the local government but rather allow the local government the opportunity to be more restrictive than State law.

OAR Chapter 660 Division 33 pertains to agricultural lands and the administrative rules that govern land uses that are consistent with Oregon Statewide Planning Goal 3. OAR Chapter 660 Division 6 pertains to forest lands and the administrative rules that govern land uses that are consistent with Oregon Statewide Planning Goal 4. ORS 215 pertains to uses that may be allowed in the EFU and TC zones. This text amendment is intended to add the changes found in OAR Chapter 660 Division 33, OAR Chapter 660 Division 6, and ORS 215 to the PCZO where required by the State. Many of these changes are not substantive but are rather minor changes intended to make the language found in the PCZO verbatim to State law. In other cases, some of the changes would add additional provisions that have not been adopted by the County but have been applied directly to land use applications. Because these required changes are not substantive but rather are for the sake of conformance, staff will not detail these changes in the findings. The full text amendment with all changes can be found in Attachments A and B.

This report will be primarily concentrated on the evaluation of the changes found in OAR Chapter 660 Division 33, OAR Chapter 660 Division 6, and ORS 215 that are not required to be adopted by the County and allow local governments to be more restrictive than State law. Due to changes in State law, PCZO Chapter 136 and 177 are currently more restrictive, less restrictive, or differentiate from State law in its regulation of some land uses that may be allowed in the EFU and TC zones. As part of this process, the Planning Commission could recommend for the Board of Commissioners to adopt the optional text amendments as proposed by Staff, adopt those text amendments with further restrictions, or choose to not adopt those text amendments. These changes will be referred to in this report as "optional changes," and are discussed in further detail below along with staff's recommendation for each change.

In other cases, there have been changes in State law to optional uses which have resulted in the PCZO being less restrictive in some sections. Although these uses are optional, the changes are required to be added to the PCZO in order to continue to be in compliance with State law. These changes will be referred to in this report as "mandatory changes," and are discussed in further detail below.

Temporary Medical Hardship Dwellings: Optional Change

PCZO 177.035(B) currently permits “One manufactured dwelling or the temporary residential use of an existing building in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident,” subject to an administrative review. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle must be removed or demolished, or returned to an allowed nonresidential use. Temporary medical hardship dwellings are authorized by the State pursuant to ORS 215.755(2) and OAR 660-006-0025(4)(t). State law indicates that a converted building can be converted back to an approved nonresidential use, while a manufactured dwelling or RV must be removed or demolished.

The Planning Division currently authorizes manufactured dwellings that were used as a temporary medical hardship dwelling to be “removed” by converting them to an otherwise approved use. In some instances, the intended use could require the property owner to obtain a change of use building permit, including inspections from the Building Division. In other instances, the intended use could require a new planning authorization. Ultimately, if the intended use of the manufactured dwelling is otherwise permitted by the zone, staff finds that it is not necessary to physically remove the manufactured dwelling from the subject property, so long as all necessary permits are obtained to formally convert and/or re-authorize the structure for an approved use. This process is intended to limit the burdens placed on property owners while also meeting the requirements found in State law. For these reasons, staff recommends not adopting this text amendment as it is written in statute.

Procedure for Temporary Medical Hardship Dwellings: Mandatory Change

State law indicates that temporary medical hardship dwellings should be processed under a conditional use review, as this use is listed under OAR 660-006-0025(4). As discussed above, temporary medical hardship dwellings are currently processed through an administrative review process. Staff currently applies the general review standards listed under PCZO 177.050 to all conditional use applications. The purpose of this criteria is to ensure that the proposal would not force a significant change or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. Staff already applies PCZO 177.050 to applications for temporary medical hardship dwellings; therefore, changing this process from administrative review to a conditional use review would not alter staff’s evaluation for a temporary medical hardship dwelling. This amendment would change this application from a Type A notification procedure to a Type B notification procedure, as specified in PCZO 111.240. This would require staff to send notice of a complete application to all neighboring property owners located within a 750 foot buffer surrounding the subject property prior to the issuance of the decision. Because this change would be required, staff began processing temporary medical hardship dwellings under a Type B procedure in 2023. Based on the information discussed above, staff finds that this text amendment is a mandatory change.

Temporary Medical Hardship Dwellings: Optional Change

In some instances, temporary medical hardship dwelling applications also require a significant resource management plan if the dwelling would be sited within the inventoried Deer and Elk Habitat Area, which is a Goal 5 protected resource.

Within the Deer and Elk Habitat area, “residential development” is considered a conflicting use. Pursuant to PCZO 182.040(A), when a permitted use in the underlying zone is listed as a conflicting use, the management plan review type is ministerial. However, pursuant to PCZO 182.040(B), when a conditional use is identified as a conditional use, a public hearing is required.

Since the mandatory change identified above includes changing temporary medical hardship dwellings to be a conditional use rather than an administrative review process, staff recommends that clarifying text be added to the temporary hardship dwelling criteria that specifies the requirements of Chapter 182 are applicable, but are not subject to the public hearing requirements listed in 182.040(B). When PCZO Chapter 182 was adopted, temporary hardship dwellings were not conditional uses. Therefore, staff finds that it was never Polk County’s intent to require a public hearing for temporary medical hardship dwellings that are within the Deer and Elk Habitat area.

Staff recommends adopting the optional text amendment for temporary hardship dwellings included in Attachments A and B.

Replacement Dwelling: Part Mandatory Changes, Part Optional Changes

The Oregon Legislature recently amended ORS 215.291 through the passage of House Bill 2192 (2023), which pertains to replacement dwellings in resource zones. The proposed changes would include updating the replacement dwelling criteria for Polk County's EFU and TC zones, while updates to the Farm/Forest zone would be completed through a future legislative amendment process that focuses on updates PCZO Chapter 138.

Staff has identified a discrepancy in ORS 215.291(2)(b)(C), which may require a future legislative correction. ORS 215.291(2)(b)(C) states:

(2) For replacement of a lawfully established dwelling under this section:

(b) The replacement dwelling:

(C) Must comply with the construction provisions of section R327 of the Oregon Residential Specialty Code, if:

(i) The dwelling is in an area identified as extreme or high wildfire risk on the statewide map of wildfire risk described in ORS 477.490; or

(ii) No statewide map of wildfire risk has been adopted.

These criteria reference a "statewide map of wildfire risk" described in ORS 477.490 and has additional development standards for properties located within the "high" and "extreme" risk categories. However, the map described in ORS 477.490 is called a "statewide wildfire hazard map" and does not include an "extreme" risk category, but rather only has three risk categories including "low", "moderate", and "high". Staff reviewed a draft of this map and found that Polk County does not contain any "high" wildfire risk areas. For these reasons, staff recommends that the amended criteria found in ORS 215.291(2)(b)(C) not be adopted locally at this time. Instead, staff can apply this statute directly as a condition of development that would require the applicant to determine the applicability of these standards at the time of development.

Staff recommends that all other mandatory changes found in ORS 215.291 be adopted to provide consistency with State law. The replacement dwelling criteria currently found in PCZO Chapters 136 and 177 is both more restrictive and less restrictive than State law and the proposed changes would provide parity.

Home Occupations: Optional Change

PCZO 177.040(A) currently permits home occupations that are operated by a resident of the property in which the business is located, subject to review and approval of a conditional use permit. Home occupations are authorized by the State pursuant to ORS 215.448 and OAR 660-006-0025(4)(s). State law currently authorizes home occupations to be operated by a resident or an employee of a resident of the property on which the business is located.

Under the current criteria listed in PCZO 177.040(A), home occupations must be operated by a resident of the property in which the business is located, but may employ up to five (5) employees. This proposed amendment would authorize home occupations to be operated by an employee of the resident, although, it could not result in any additional employees and would not permit any uses or a size and scale that could not otherwise be permitted under the current criteria. Based on this information, staff finds that PCZO 177.040(A) could be interpreted as being more restrictive than State law. For these reasons, staff recommends adopting the proposed text amendment, as shown in Attachment A.

New Single Family Accessory Dwelling Unit to Support Family Forestry: Optional Change

Pursuant to ORS 215.757 and OAR 660-006-0027(9), counties may choose to allow a new single family accessory dwelling unit to support family forestry in the TC zone subject to a review and

approval when the dwelling would be occupied by an owner or a relative of the owner to assist with the forestry operation on the property. The PCZO does not currently list this as a permitted use in the TC zone. Adopting this text amendment would authorize single family accessory dwelling units to support family forestry in the TC zone. To provide clear parameters regarding the manner in which this use may be authorized in the TC zone, staff recommends adopting this text amendment, as shown in Attachment A.

A land division to preserve open space or a park: Optional Change

Pursuant to ORS 215.783 and OAR 660-006-0026(2)(e), counties may choose to adopt standards to allow land divisions to preserve open space or a park in the TC zone. A land division under this criteria would require the purchaser of one of the resulting parcels to be a provider of public parks or open space, or a not-for-profit land conservation organization. Land divisions under this section would still be subject to the partition standards listed in Polk County Subdivision and Partition Ordinance (PCSO) Chapter 91. For these reasons, staff recommends adopting this text amendment, as shown in Attachment A.

Period of Validity for Residential Uses: Mandatory Change

Currently, the PCZO states that land use approvals for residential uses are valid for four (4) years. A single two (2) year extension to this period of validity may be approved upon submission of a written request for an extension prior to the expiration of the approval.

Pursuant to OAR 660-003-00140(5), a permit approved for residential development on agricultural or forest land outside of an urban growth boundary may receive an additional five (5) one-year extensions upon written requests prior to the expiration of the previous extension. Such extensions may only be approved when the applicable residential development statute has not been amended following the approval of the permit, except the amendments to ORS 215.750 by Oregon Laws 2019, chapter 433, section 1; and an applicable rule or land use regulation has not been amended following the issuance of the permit, unless allowed by the county, which may require that the applicant comply with the amended rule or land use regulation. The proposed text amendments would allow the County to grant applicants additional extensions for residential land use applications. For these reasons, staff recommends adopting this text amendment, as shown in Attachment A.

Land Division Requirements: Optional Change

Currently, land partitions in the TC zone must be exercised within two (2) years of the effective date pursuant to PCZO 177.060(F). Staff has not found any provisions in state law which require the period of validity for land partitions in the TC zone to be two (2) years. In this way, the PCZO is more restrictive than state law. Adopting the proposed text amendments would allow the County to give applicants more or less time to exercise approved land divisions. For these reasons, staff recommends adopting this text amendment, as shown in Attachment A.

General Findings: The recommended amendments to PCZO 136 and 177, which would comply with and implement the applicable amendments to State law, are included as Attachments A and B. Consequently, this update process would be consistent with ORS 197.646(1). An exception to the Oregon Statewide Planning Goals is not required to approve any of these amendments. Staff concludes that the proposed text amendments to the PCZO 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)]

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

requirements and ORS conflict, the County is required to apply the more restrictive of the two standards.

As discussed above, ORS 197.646 requires that Polk County update its local code to implement changes to State law. Until such changes are made, the County must implement the new provisions of State law directly. Planning Staff is currently applying State law directly to applications for many of the proposed changes. In light of the changes to State law, Polk County has an opportunity to evaluate and consider adopting these changes to PCZO Chapter 136 and 117. As discussed, some of these changes are required and other changes are optional. Many of the changes are not substantive but are rather intended to provide parity between the local ordinance and the language found in State law.

The proposed text amendments would include changes to PCZO 177.030, which pertains to uses that are outright permitted in the TC zone. These changes are mandatory and would add the language from ORS Chapter 215 and OAR Chapter 660 Division 6 verbatim in order to provide parity with State law. The intent of this is to afford citizens the right to uses that have little or no impact on neighboring properties without requiring a land use application or license. By adopting the language found in State law verbatim, the County would be permitting all such uses that are outright permitted uses and authorized by ORS Chapter 215 and OAR Chapter 660, Division 6. The County does not have deference over any of these changes.

The proposed text amendments would also include changes to PCZO 136.040 and 177.035, which pertain to uses that are subject to administrative review land use application. Similar to PCZO 136.030, these changes are mandatory and are intended to provide parity with State law by adopting the language found in the applicable ORSs and OARs verbatim. Many of these changes have been applied by County staff directly to land use applications. Therefore, the intent of these changes is simply to add the language from State law to the local ordinance rather than applying the provisions directly from State law.

The proposed text amendments could include changes to PCZO 136.050 and 177.040, 177.060, and 177.070, which are uses that the county may be more restrictive in implementing. Changes to these sections that are more restrictive than State law are not mandatory; however, the County may not be less restrictive than State law. As discussed in the previous section, staff has made a recommendation to the Planning Commission regarding the adoption of each of these changes to the PCZO. The proposed amendments to the PCZO were designed to directly implement State law and adopt uses that are not currently permitted by the PCZO. The Planning Commission could choose to recommend more restrictive standards in such cases where staff has recommended adoption.

Conformance with specific PCCP goals, policies and intent are discussed below.

1. **Polk County will strive to permit those uses that have little or no impact on neighboring properties without requiring a land use determination or limited land use determination.** [PCCP Section 2, Element A, Goal 1.3]
2. **Polk County will permit those farm and nonfarm uses in agricultural areas authorized by Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33.** [PCCP Section 2, Element B, Agricultural Lands Policy 1.4]
3. **Polk County will permit farm-related and non-farm residential use in agricultural areas consistent with Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33.** [PCCP Section 2, Element B, Agricultural Lands Policy 1.6]

Findings: As discussed, some of the proposed text amendments would directly implement ORS Chapter 215 and OAR Chapter 660, Division 33. These text amendments would be consistent with PCCP Section 2, Element B, Policy 1.4, which states that Polk County will permit those farm and nonfarm uses in agricultural areas authorized by ORS Chapter 215 and OAR 660-033. The proposed text amendments to PCZO Chapter 136 for hardship dwellings in the EFU zone would

also be consistent with PCCP Section 2, Element B, Agricultural Lands Policy 1.6, which states that Polk County will permit farm-related and non-farm residential use in agricultural areas consistent with Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33. In addition, the required text amendments, specifically the outright permitted uses listed in PCZO 136.030, would be consistent with PCCP Section 2, Element A, Goal 1.3, which states Polk County will strive to permit those uses that have little or no impact on neighboring properties without requiring a land use determination or limited land use determination.

4. Polk County will discourage the development of nonfarm uses in agricultural areas. [PCCP Section 2, Element B, Agricultural Lands Policy 1.5]

Findings: The proposed text amendments would include amendments to nonfarm uses. PCCP Section 2, Element B, Agricultural Lands Policy 1.5 is intended to discourage nonfarm uses in the EFU zone, although, it is acknowledged that some nonfarm uses are permitted subject to review and approval of an administrative or conditional use application. As mentioned, in such cases where additional nonfarm uses could be permitted or where there have been changes to State law pertaining to nonfarm uses, staff has designed the proposed amendments to the PCZO to directly implement State law. Because such nonfarm uses are subject to review and approval from the Planning Division, limitations and conditions can be imposed to limit the impacts of those nonfarm uses. For this reason, staff finds the proposed text amendments would be consistent with PCCP Section 2, Element B, Agricultural Lands Policy 1.5.

5. Polk County shall zone forest lands for uses allowed pursuant to Oregon Administrative Rules Chapter 660, Division 6. In addition to forest practices and operations and uses auxiliary to forest practices, as set forth in Oregon Revised Statute 527.722, Polk County shall allow in the forest environment the following general types of uses:

- a. **Uses related to, and in support of, forest operations;**
- b. **Uses to conserve soil, water and air quality and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate for the forest lands;**
- c. **Locally dependent uses such as communication towers, mineral and aggregate resources use, etc.;**
- d. **Forest management dwellings as provided for in Oregon Administrative Rule 660-06-027; and e. Other dwellings under prescribed conditions.** [PCCP Section 2, Element C, Forest Lands Policy 1.4]

6. Polk County will permit new dwellings and structures on designated forest lands consistent with Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 6. [PCCP Section 2, Element C, Forest Lands Policy 1.5]

Findings: As previously discussed, the proposed text amendments would directly implement Chapter 215 and OAR Chapter 660, Division 06 for uses in the TC zone. These text amendments would be consistent with PCCP Section 2, Element C, Forest Lands Policies 1.4 and 1.5, which state that Polk County will permit those uses, including the new Single Family Accessory Dwelling Unit to Support Family Forestry Use, on forest lands authorized by ORS Chapter 215 and OAR 660-006.

7. Polk County shall provide the opportunity to establish single-family dwellings on designated forest lands that comply with lot-of-record provisions established under state law consistent with Oregon Revised Statutes, Chapter 215, and Oregon Administrative Rules, Chapter 660, Division 6. [PCCP Section 2, Element C, Forest Lands Policy 1.6]

Findings: The proposed text amendments would include amendments to lot-of-record dwelling

criteria listed in PCZO 177.070(A) in order to provide conformity with ORS Chapter 215 and OAR Chapter 660, Division 06. These text amendments would be consistent with PCCP Section 2, Element C, Forest Lands Policy 1.6 which states that Polk County shall provide the opportunity to establish single-family dwellings on forest lands that comply with lot-of-record provisions found in ORS Chapter 215 and OAR Chapter 660, Division 06.

- 8. Polk County will review all requests for the division of land in forest land areas and will permit only those which meet the following criteria:**
- a. For forest operations and practices, the minimum lot size will be at least 80 acres.**
 - b. For non-forest parcels, the proposed division is consistent with Oregon Revised Statutes, Chapter 215, and Oregon Administrative Rules, Chapter 660, Division 6 and complies with all applicable requirements of the zoning and partitioning ordinances. [PCCP Section 2, Element C, Forest Lands Policy 1.7]**

Findings: Some of the proposed text amendments would directly implement ORS Chapter 215 and OAR Chapter 660, Division 06 by providing parity between the language in these chapters, and the PCZO. The proposed text amendments also include a new set of criteria under which an applicant could divide their land to preserve open space or a park in the TC zone pursuant to OAR 660-006-0026(2)(e). These text amendments would be consistent with PCCP Section 2, Element C, Forest Lands Policy 1.7, which states that Polk County will only permit land division requests in forest land when the minimum parcel size is at least 80 acres or the proposed division is consistent with ORS Chapter 215 and OAR Chapter 660, Division 06.

- (C) That the proposed change is in the public interest and will be of general public benefit; and**

Findings: The purpose of this legislative amendment is to update the PCZO in order to reflect changes in State law or discrepancies found between State law and the PCZO. The proposed amendments would be in the public interest because they would provide continuity between the requirements of State law and the PCZO. Currently, the Planning Division must apply ORS 215, OAR Chapter 660 Division 6, and OAR Chapter 660 Division 33 directly to some types of land use applications. This situation makes it difficult for applicants and property owners to understand what provisions apply to their property. The proposed text amendments would resolve that issue. This continuity would benefit both applicants and other property owners seeking to understand their property rights.

This process also provides the opportunity for the Planning Commission to consider how to regulate specific optional uses where the county can be more restrictive than State law. For those optional changes discussed in this report, the Planning Commission could recommend for the Board of Commissioners to adopt the text amendments as proposed by Staff, apply those text amendments with further restrictions, or choose to not adopt the text amendments. In some cases, there have been changes in State law to optional uses which have resulted in the PCZO as being less restrictive in some sections. Although these uses are optional, the changes are required to be adopted in order to continue to be in compliance with State law. For such changes, the Planning Commission can recommend adopting those changes as required to no longer be less restrictive than State law, which would alleviate the need to apply State law directly to land use applications.

For those changes to optional uses in which staff has recommended to the Planning Commission, staff has recommended that those changes directly reflect State law. Staff believes that adopting the language from State law directly rather than being more restrictive than State law would be in the public interest and of general public benefit because it remove certain restrictions and would afford property owners certain property rights that are authorized by the State and which are not currently permitted in the TC zone. As discussed above, staff has also recommended that some optional changes should not be adopted. For those changes, staff believes that adoption would be

unnecessary and it would be in the public interest and would be of general public benefit to not adopt those changes at this time. Staff's recommendations on the specific optional changes are discussed in further detail above.

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

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. 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 text amendments to the PCZO would amend the standards for some uses that are outright permitted and some uses that are subject to review and approval of an administrative review or conditional use application in the EFU and TC zones. While most properties in the UGB are zoned Suburban Residential (SR), where these text amendments would not apply, some properties in UGBs are zoned EFU. None of the proposed text amendments would impact the existing terms of any IGA's with any cities. Polk County will continue to provide notice to cities when the county receives land use applications for property located within an adopted UGB.

Staff finds that the proposed text amendments would comply with this criterion.

IV. CONCLUSION

Based on the findings above, Staff concludes that the proposed amendments to the Polk County Zoning Ordinance would comply with all of the applicable review and decision criteria for a legislative amendment. As discussed, staff recommends that the Planning Commission recommend to the Board of Commissioners the adoption of the following text amendments found in Attachments A and B:

- 1). All mandatory changes to PCZO 136.
 - Replacement Dwellings (136.040(I))
- 2). All mandatory changes to PCZO 177, including changes to:
 - Private Parks and Campgrounds (177.040(G))
 - Temporary Medical Hardship Dwellings (136.050(G))
 - Replacement Dwellings (177.035(B))
 - Period of Validity for Residential Uses (177.210)
- 3). All optional changes to PCZO 136 including changes to:
 - Replacement Dwellings (136.040(I))
 - Temporary Medical Hardship Dwellings (136.050(G))
- 4). All optional changes to PCZO 177 including changes to:
 - Replacement Dwellings
 - Temporary Medical Hardship Dwellings (177.040(Z))
 - Home Occupations (177.040(A))
 - Land Division Requirements (177.060(F))
- 5) All new uses and/or provisions that would be listed under PCZO 177, including:
 - A land division to preserve open space or a park
 - New Single Family Accessory Dwelling Unit to Support Family Forestry

PLANNING COMMISSION ACTION:

After opening the public hearing and receiving testimony, the Planning Commission's options include the following:

- (1) Move to recommend that the Board of Commissioners approve Legislative Amendment 23-03, which consists of:
 - (a) Adopting the PCZO amendments presented in Attachments A and B of the Staff Report;
or
 - (b) As further amended by the Planning Commission (state revisions).
- (2) Continue the public hearing:
 - (a) To a time certain, or
 - (b) Indefinitely.
- (3) Close the public hearing and take no action on the proposed amendments.

ATTACHMENTS:

- | | | |
|---|---|---|
| A | - | Proposed Amendments to PCZO Chapter 136 |
| B | - | Proposed Amendments to PCZO Chapter 177 |