



MEMORANDUM

TO: Polk County Board of Commissioners
FROM: Eric Knudson, Associate Planner
DATE: August 30, 2023
SUBJECT: Legislative Amendment 23-02: Text Amendments to Polk County Zoning Ordinance Chapter 136

Public Hearing – September 6, 2023

ISSUE:

The Polk County Board of Commissioners will hold a public hearing concerning potential text amendments to Polk County Zoning Ordinance (PCZO) Chapter 136, which pertains to the Exclusive Farm Use (EFU) Zoning District. The proposed text amendments are intended to bring PCZO Chapter 136 into compliance with State law, and to consider adopting optional changes for uses that could be permitted within the EFU zone.

RECOMMENDATION:

Staff recommends that the Board of Commissioners adopt the proposed text amendments to PCZO Chapter 136, as included in Attachment A.

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 with land use regulations found in State law where required, and to consider optional changes to PCZO Chapter 136 where Polk County's local ordinance may be currently more restrictive than or differentiates from State law. It should be noted that many of the required text amendments to PCZO 136.030, 136.040, 136.060 and 136.070 found in Attachment A are not substantive changes but are rather 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 136 simultaneously.

A public hearing was held before the Polk County Planning Commission on July 18, 2023, where Planning Staff made a recommendation to the Planning Commission regarding the proposed text amendments to PCZO Chapter 136. The Planning Commission concurred with staff on all proposed text amendments and recommended that the Board of Commissioners adopt Staff's recommendation. Since the Planning Commission public hearing, staff has made some further changes to the proposed text amendments that do not constitute substantive changes to the Planning Commission's recommendation, but were rather intended to correct any grammatical, typographical, formatting, or other errors. As discussed, the proposed text amendments to PCZO Chapter 136 are included as Attachment A.

II. COMMENTS RECEIVED

- Attachments B-1, B-2: Comments received prior to the Planning Commission Hearing
- Attachments C-1, C-2, C-3: Comments received after the Planning Commission Hearing, but prior to the Board of Commissioners Hearing

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 Chapter 136 into conformance with State law where required, and to evaluate and consider adopting optional changes for uses that could be permitted in the EFU Zoning District. 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 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 legislative amendment process on April 11, 2023. Staff sent notice of the proposed text amendments to the Oregon Department of Land and Conservation Development (DLCD) on June 13, 2023. Staff sent notice of the Planning Commission Public Hearing to all interested parties on June 28, 2023, 20 days prior to the hearing. Notice of the Planning Commission public hearing was also published in the June 28, 2023 publication of the *Itemized Observer* newspaper and was posted on the Planning Division page of the Polk County website on June 28, 2023. Pursuant to PCZO 115.040, the Planning Commission conducted a public hearing on July 18, 2023 and made a recommendation to the Board of Commissioners to adopt staff's recommendation of the proposed amendments to PCZO Chapter 136. Staff sent notice of the September 6, 2023 Board of Commissioners public hearing to all interested parties on August 16, 2023, 20 days prior to the hearing. Notice of the Board of Commissioners public hearing was also published in the August 16, 2023 publication of the *Itemized Observer* newspaper and was posted on the Planning Division page of the Polk County website on August 16, 2023.

Planning Staff received two (2) public comments from citizens after the staff recommendation was issued, but prior to the Planning Commission public hearing. These comments are included as Attachments B-1 and B-2.

In the first public comment received, a citizen encouraged Polk County to "further strengthen the provisions for home occupations and commercial activities in conjunction with farm use to avoid the kind of nonfarm related businesses and large events that have been approved under these provisions in Marion, Yamhill and other Oregon counties." However, these comments did not include any specific suggestions to "further strengthen" those provisions. These comments also expressed support for staff's recommendation to not adopt the optional changes for temporary medical hardship dwellings, aerial fireworks businesses, and agri-tourism.

These comments were provided to the Planning Commission and were discussed by the Planning Commission in the July 18, 2023 public hearing. As discussed, the Planning Commission concurred with staff's recommendation and recommended that the Board of Commissioners adopt the proposed text amendments to PCZO Chapter 136. Since the Planning Commission public hearing, staff has made some further changes to the proposed text amendments that did not substantively change the Planning Commission's recommendation but were rather intended to correct any grammatical, typographical, formatting, or other errors. The proposed text amendments are included as Attachment A.

In the second public comment received, a citizen raised concerns regarding Planning Staff's procedure for providing the public with notice of the July 18, 2023 Planning Commission public hearing and the ability to submit comments for the application. Specifically, the comments provided indicated that Planning Staff listed July 7, 2023 as the deadline to submit public comments, which was 11 days prior to the hearing, and prior to the publishing of the Staff Report. The comments further indicate that this inhibited citizen involvement and was not consistent with the spirit of Oregon Statewide Planning Goal No. 1. Staff believes that this citizen misinterpreted the language found in the public notice form that was sent on June 28, 2023, which stated:

"Written comments received by 5:00 PM on July 7, 2023 will be included in the staff report to the Planning Commission. Comments received after this time, but prior to the hearing, will be provided to the Planning Commission at the hearing."

Because the Staff Report and recommendation are required to be available for inspection at least seven (7) days prior to the public hearing, pursuant to PCZO 111.340(G), the July 7, 2023 date listed on the public notice form was merely a deadline for public comments that would be included in the Staff Report and recommendation, not a deadline for public comments or citizen involvement. The purpose of this deadline is to provide staff adequate time to address the public

comments. The public notice clearly indicated that any comments received after July 7, 2023 but prior to the hearing would be provided to the Planning Commission at the hearing. In this case, staff provided the Planning Commission with the two (2) public comments that were submitted after July 7, 2023, but prior to the hearing on July 18, 2023, which were received by the Planning Commission and considered as part of their recommendation to the Board of Commissioners.

The comments provided further state:

“The significant failure is not having a 'Hearing LA 23-02 Sign-ups Sheet for Interested Citizens' in Hearing room, for the Record, and, to 'make-up appeal rules' that a "decision maker has to have an opportunity to respond", OR, a Citizen can't file a LUBA appeal on 'that issue'...(from today's Hearing?) It's not good to mix Planning Hearing rules & a Recommendation, with later BOC decisions, as it's confusing, and, does not help Citizens Involvement Goals.”

Staff understands these comments to be raising concerns about appropriate sign-up sheets not being available for the public hearing, and the ability to present testimony to the Planning Commission or the Board of Commissioners. A sign-up sheet for public testimony was provided at the Planning Commission public hearing. No public testimony was received during the Planning Commission hearing and there were no members from the public in attendance. As discussed, this comment was provided to the Planning Commission during the July 18, 2023 public hearing, and was considered as part of the Planning Commission’s recommendation to the Board of Commissioners. The record is still open and any comments received prior to the September 6, 2023 public hearing, or any testimony received during the public hearing, will be considered by the Board of Commissioners in their decision.

The Planning Commission found that the public notice form for the Planning Commission public hearing that was sent to all interested parties, published in the *Itemized Observer* newspaper, and the Polk County website complied with all public hearing notification requirements listed in PCZO 111.340, 111.350, and 111.370.

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. ORS 215.283 pertains to uses that may be allowed in the EFU zone. This text amendment is intended to add the changes found in OAR Chapter 660 Division 33 and ORS 215.283 to the PCZO where required and/or permitted by the State. Many of these changes are not substantive but are rather minor changes intended to add the language found in State law verbatim to the PCZO. 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, as required by law. Because these required changes are not substantive but rather for the sake of conformance, staff will not review these changes in this report. The full text amendment with all changes can be found in Attachment A.

This report will be primarily concentrated on the evaluation of the changes found in OAR Chapter 660 Division 33 and ORS 215.283(2) that are not required to be adopted by the County, but are optional and allow local governments to be more restrictive than State law. Due to changes in State law, Chapter 136 is currently more restrictive than or differentiates from State law in its regulation of some land uses that may be allowed in the EFU zone. As part of this process, the Board of Commissioners could 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 listed under ORS 215.283(2) 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.

Aquaculture: Mandatory Change

PCZO 136.050(B) currently permits the propagation, cultivation, maintenance and harvesting of aquatic species, subject to the review and approval of a conditional use permit. Aquaculture is authorized by the State pursuant to ORS 215.283(2)(p) and OAR 660-033-0130(27). Changes to the ORS and OAR have revised the evaluation standards for aquaculture to specify that aquaculture shall only include aquatic species that are not under the jurisdiction of the State Fish and Wildlife Commission or insect species. Based on these changes, PCZO 136.050(B) could be interpreted as being less restrictive than State law, therefore, staff finds that this text amendment is a mandatory change.

Temporary Medical Hardship Dwellings: Optional Change

PCZO 136.040(L) currently permits “one manufactured dwelling, recreational vehicle (RV), or the temporary residential use of an existing building in conjunction with an existing dwelling as a temporary use for the term of hardship suffered by the existing resident or a relative of the resident,” subject to the review and approval of 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 215.283(2)(L) and OAR 660-033-0130(10). 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 approved nonresidential use. In some instances, this process requires the property owner to obtain a change of use building permit from the Polk County Building Division, which includes final inspections to be completed by the Building Official. In other instances, this process could require the property owner to obtain

planning authorization to use the manufactured dwelling for an approved use rather than physically removing it from the property. For example, a property owner could submit an application with the Planning Division to recertify a manufactured dwelling for the use of a temporary medical hardship dwelling rather than removing it from the subject property within three months of the end of the hardship. This process is intended to limit the burdens placed on the property owner while still conforming to the provisions in State law. For this reason, staff and the Planning Commission recommend not adopting this text amendment.

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 ORS 215.283(2). As discussed above, temporary medical hardship dwellings are currently processed through an administrative review. Staff currently applies the general review standards listed under PCZO 136.060 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. While staff does not currently apply PCZO 136.060 directly to applications for temporary medical hardship dwellings, staff applies similar standards listed under 136.040(L)(5) and (6), which state “The dwelling will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use;” and “The dwelling will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.” For this reason, changing this process from administrative review to a conditional use review would not alter staff’s evaluation for a temporary medical hardship dwelling, rather it would merely change where the criteria derives from. 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 in the EFU zone under a Type B procedure earlier this year. Based on the information discussed above, staff finds that this text amendment is a mandatory change. Since the Planning Commission public hearing, staff has made some further changes to the recommended text amendments that did not substantively change the recommendation but were rather intended to correct some typographical and formatting errors. As discussed, the proposed text amendments to PCZO Chapter 136 are included as Attachment A.

Home Occupations: Optional Change

PCZO 136.050(K) 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 215.283(2)(i), ORS 215.448, and OAR 660-003-0130(14). 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 136.050(K), 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, 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 136.050(K) could be interpreted as being more restrictive than State law. For these reasons, staff and the Planning Commission recommend adopting the proposed text amendment, as shown in Attachment A.

Commercial Dog Kennels, Training Classes or Testing Trials: Optional Change

PCZO 136.050(L) currently permits dog kennels, as defined by PCZO 110.301, on land not classified as high-value farmland, subject to review and approval of a conditional use permit. Commercial Dog Kennels, Training Classes or Testing Trials are authorized by the State pursuant to ORS 215.283(2)(n) and OAR 660-033-0120, Table 1. Changes to State law have removed

restrictions on high-value farmland and now authorize this use on any land in the EFU zone. State law also authorizes training classes or testing trials under this section that cannot otherwise be authorized under PCZO 136.040(U).

Under the current PCZO criteria, commercial dog kennels cannot be permitted on land classified as high-value farmland. The proposed amendment would remove this restriction. This use would still be subject to a conditional use permit and the general review standards listed in PCZO 136.060. Staff finds that PCZO 136.050(L) is currently more restrictive than State law, therefore, staff and the Planning Commission recommend removing this restriction and adopting the proposed text amendment, as shown in Attachment A.

Aerial Fireworks Business: Optional Change

Polk County does not currently permit aerial fireworks businesses. ORS 215.283(2)(v) and OAR 660-033-0130(35) currently authorize an aerial fireworks display business that has been in continuous operation at its current location within an EFU zone since December 31, 1986, and possesses a wholesaler's permit to sell or provide fireworks. If adopted, this use would be subject to review and approval of a conditional use permit.

Staff is not aware of any existing aerial fireworks businesses located in the EFU zone of rural Polk County. Because this criteria only authorizes pre-existing businesses, staff and the Planning Commission find that this change would be unnecessary and recommend not adopting this text amendment.

Equine Therapeutic Counseling Activities: Optional Change

Polk County does not currently permit equine therapeutic counseling activities. In 2018, Senate Bill (SB) 1533 was passed by the State Legislature, which authorized equine and equine-affiliated therapeutic and counseling activities, pursuant to ORS 215.283(2)(bb) and OAR 660-033-0130(41). These activities are required to be conducted in buildings that were lawfully constructed on the property prior to January 1, 2019, or in new buildings that are accessory, incidental, and subordinate to the farm use on the tract. In addition, the individuals conducting the therapeutic or counseling activities are required to be acting within the proper scope of any licenses required by the State. If adopted, this use would be subject to review and approval of a conditional use permit.

The proposed amendment would permit equine therapeutic counseling activities but would not result in any additional development that would not otherwise be permitted for farm use pursuant to PCZO 136.030(A). The proposed use would also be subject to the general review standards listed under PCZO 136.060. Staff finds no reason to recommend any additional restrictions on the State provisions pertaining to this use. For this reason, staff and the Planning Commission recommend adopting this text amendment, as shown in Attachment A.

Mineral and Aggregate Operations: Optional Change

PCZO 136.050(Q)(2) currently permits the mining of aggregate and other mineral and subsurface resources which are included in the County inventory of mineral and aggregate resources when the quantity of material proposed to be mined from the site is estimated to be 2,000,000 tons of aggregate material or less. In addition to mining, ORS 215.283(2)(b)(B) also authorizes the crushing and stockpiling of said aggregate and other mineral and subsurface resources, subject to the same standards as mining. As it currently reads, staff finds that PCZO 136.050(Q)(2) could be interpreted as being more restrictive than State law. For this reason, staff and the Planning Commission recommend adopting this text amendment, as shown in Attachment A.

Solid Waste Disposal Site: Optional Change

PCZO 136.050(X) currently permits solid waste disposal sites on lands not classified as high-value farmland, subject to review and approval of a conditional use permit. Changes to State law now authorize the maintenance, enhancement, or expansion of existing facilities on high-value farmland that are wholly within the EFU zone and on the tract in which the site is located, pursuant to ORS 215.283(2)(k) and OAR 660-033-0130(18)(a). As it reads, staff finds that PCZO 136.050(X) could

be interpreted as being more restrictive than State law. Staff finds that adopting this text amendment would not result in any new facilities on high-value farmland. For these reasons, staff and the Planning Commission recommend adopting this text amendment, as shown in Attachment A.

Commercial Power Generating Facilities: Optional Change

PCZO 136.050(Z) currently permits commercial power generating facilities, not including commercial wind power generation facilities listed in PCZO 136.050(AA), subject to review and approval of a conditional use permit. ORS 215.283(2)(g) and OAR 660-033-0130(17) and (22) currently authorize this use and contain additional language which clarifies what specific uses can be included under this section. According to statute, commercial utility facilities are for the purpose of generating power for public use by sale, but do not include wind power generation facilities listed in PCZO 136.050(AA) or photovoltaic solar power generating facilities listed in ORS 215.283(g) and OAR 660-033-0130(38). However, if the area is high-value farmland, a commercial photovoltaic solar power generation facility may be established as a commercial utility facility as provided in ORS 215.447. A renewable energy facility as defined in ORS 215.446 may also be established under this section.

Staff finds the proposed text amendment would not result in any additional uses that are not otherwise permitted under the current ordinance, but would rather clarify the applicable review and decision criteria for specific uses that may fall under PCZO 136.050(Z). To provide clarity as to what uses are subject to this criteria, staff and the Planning Commission recommend adopting this text amendment, as shown in Attachment A.

Commercial Wind Power Generation Facilities: Optional Change

PCZO 136.050(AA) currently permits commercial wind power generation facilities that are commercial utility facilities, as defined in ORS 215.446, for the purpose of generating power for public use by sale as described in OAR 660-033-0130(37). ORS 215.283(2)(g) and OAR 660-033-0130(37) currently authorize this use and contain additional language which clarifies what specific uses can be included under this section. In addition, State law includes separate criteria when establishing this use on high-value farmland, arable lands, or non-arable lands. The proposed text amendment would include language requiring the applicant to demonstrate that they considered reasonable alternatives and potential negative impacts on agricultural operations conducted on the subject property. The full list of criteria can be found in Attachment A of this report.

Staff finds the proposed text amendment would not result in any additional uses that are not otherwise permitted under the current ordinance, but would rather clarify the applicable review and decision criteria for specific uses that may fall under PCZO 136.050(AA). To provide parity with State law, staff and the Planning Commission recommend adopting this text amendment, as shown in Attachment A.

Commercial Photovoltaic Solar Power Generating Facilities: Mandatory Change

The PCZO does not currently contain specific language or criteria for commercial photovoltaic solar power generating facilities. Staff currently evaluates this use under the criteria for commercial power generating facilities listed in PCZO 136.050(Z) and applies State law pertaining to photovoltaic solar power generating facilities directly to land use applications. ORS 215.283(2)(g) and OAR 660-033-0130(38) currently authorize commercial photovoltaic solar power generating facilities as a commercial utility facility as defined in ORS 215.446 for the purpose of generating power for public use by sale as described in OAR 660-033-0130(38). The specific review criteria is based on the soil types of the property. On high-value farmland, the photovoltaic solar power generating facility shall not use, occupy, or cover more than 12 acres unless an exception to Statewide Planning Goal 3 is granted. On arable farmland, the facility shall not use, occupy, or cover more than 20 acres. On non-arable farmland, the facility shall not use, occupy, or cover more than 320 acres. The full list of review and decision criteria can found in Attachment A.

Staff finds that the proposed text amendment would not result in any additional uses that would not otherwise be permitted in the EFU zone. Currently, staff applies this criteria from State law directly

to land use applications. Adopting the proposed text amendment would simply be for the purpose of communicating to property owners and applicants the applicable review and decision criteria for this use rather than referencing State law. Staff has not identified any issues that would warrant a recommendation to be more restrictive than State law. For this reason, staff and the Planning Commission recommend adopting this text amendment, as shown in Attachment A.

In addition to the changes discussed above, OAR 660-033-0130(38)(c) and OAR 660-033-0130(g)(B) also authorized counties to permit dual-use development for both photovoltaic solar power generation facilities and farm use. This provision was repealed on January 1, 2022, therefore, staff finds that this provision is no longer applicable.

Private Parks, Playgrounds, Hunting and Fishing Preserves and Campgrounds: Optional Change

PCZO 136.050(DD) currently permits private parks, playgrounds, hunting and fishing preserves and campgrounds on lands not classified as high-value farmland, subject to review and approval of a conditional use permit. When the subject property is located within three miles of an urban growth boundary, additional criteria listed in PCZO 130.065(A) and (B) are applicable. ORS 215.283(2)(c) and OAR 660-033-0130(19) currently authorize campgrounds for emergency purposes to support natural hazard recovery efforts and contain specific criteria pertaining to those circumstances, including, but not limited to, the removal or conversion of the campground after 36 months. PCZO 136.050(DD) currently lists emergency purposes as a use permitted under this section but does not list any the review and decision criteria found in State law for those circumstances.

Upon review of OAR 660-033-0130, there appears to be two subsections labeled “(19)(a)” which pertain to private parks, playgrounds, hunting and fishing preserves and campgrounds. Staff identified discrepancies between the two sections, specifically, one of the sections includes specific criteria for campgrounds that are for emergency purposes. It appears that the first section labeled “(19)(a)” reflects the current text of PCZO 136.050(DD), in addition to new provisions pertaining to specific standards for private campgrounds established for emergency purposes. To provide parity with State law, staff and the Planning Commission recommend adopting this text amendment, as shown in Attachment A, which clarifies the criteria for private campgrounds for emergency purposes.

Golf Courses and accessory uses: Mandatory Change

PCZO 136.050(FF) currently permits golf courses and accessory uses on a tract of land not classified as high-value farmland, subject to review and approval of a conditional use permit. In addition, existing golf courses on all farmlands may be maintained, enhanced, or expanded, up to 36 holes on the same tract. ORS 215.283(2)(f) and OAR 660-033-0130(20) currently restrict non-regulation golf courses under this section, which are defined as a golf course or golf course-like development that does not meet the State’s definition of golf course, including, but not limited to, executive golf course, par three golf courses, pitch and putt golf courses, miniature golf courses, and driving ranges. Furthermore, State law contains specific language pertaining to accessory facilities, which states that food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests.

The proposed text amendment would clarify what uses are not included to be permitted under this section. As is reads, staff finds that the current text could be interpreted to be less restrictive than State law, as it does not clarify that “non-regulation golf courses” are not permitted under this section, nor does it define “non-regulation golf courses.” In addition, the proposed text amendment would clarify the manner in which food and beverage facilities may be permitted when accessory to a golf course. As it reads, PCZO 136.050(FF) could be interpreted as being less restrictive than State law as it pertains to food and beverage facilities accessory to a golf course. For these reasons, staff finds these text amendments to be mandatory.

Planning Staff received three (3) public comments after the Planning Commission public hearing but prior to the Board of Commissioners public hearing pertaining to the proposed text amendments

to Golf Courses and accessory uses (see Attachments C-1 through C-3). The comments provided requested that additional language be added to this section to explicitly state that “non-regulation golf courses” include “frisbee, disc, or similar courses.” The comments provided acknowledge that although it may be implied that “frisbee, disc, or similar courses” would be considered “non-regulation golf courses,” this suggestion would help remove any ambiguity and create a more comprehensive description of what constitutes a “non-regulation golf course.”

As discussed, the Board of Commissioners may adopt provisions that are more restrictive than State law. Because staff has no reason to believe that a frisbee, disc, or similar course would meet the definition of a “regulation” golf course, as currently used in PCZO 136.050(FF), staff finds that adding the recommended language would not be a substantive change to the Planning Commission’s recommendation, but could provide additional clarification as to what constitutes a “non-regulation golf course.”

Schools: Mandatory Change

PCZO 136.050(II) currently permits new public or private schools on lands not classified as high – value farmland, including all buildings essential to the operation of a school, for kindergarten through grade 12 and primarily for residents of the rural area in which the school is located. Currently, schools located within three miles of an urban growth boundary may not be expanded beyond the requirements listed in PCZO 136.065(A) and (B). ORS 215.283(2)(aa) currently permits new schools on lands not classified as high-value farmland. OAR 660-033-0130(18) currently permits existing lawfully established schools that were formally allowed pursuant to ORS 215.213(1)(a) or ORS 215.283(1)(a) as in effect before January 1, 2010 to be expanded provided that the expansion complies with all the criteria listed in the OAR. Changes to State law prohibits the restrictions on the expansion of enclosed existing schools located within three miles of an urban growth boundary to no longer be limited to the requirements listed in PCZO 136.065(A) and (B). As it reads, staff finds that PCZO 136.050(II) is currently more restrictive than State law, where State law specifies that local jurisdictions cannot be more restrictive. For this reason, staff finds these text amendments to be mandatory.

Childcare Facilities: Optional Change

The PCZO does not currently have specific criteria for child care facilities in the EFU zone. Although, in the past, childcare facilities have been authorized in the EFU zone under the criteria for a conditional use home occupation. ORS 215.283(2)(dd) currently authorizes child care facilities when the facility would primarily be for the children of residents and workers of the rural area in which the facility or program would be located, and must be collocated with a community center or a public or private school.

Adopting this text amendment would authorize childcare facilities in the EFU zone. Although childcare facilities may be established as a conditional use home occupation, they are limited to establishment within an existing dwelling or structure that is normally associated with the EFU zone. Adopting the proposed text amendment would provide specific criteria for childcare facilities and could authorize the construction of a new structure to support this use. As with home occupations, childcare facilities would be subject to the review and approval of a conditional use permit, which includes compliance with PCZO 136.060. To provide clear parameters regarding the manner in which childcare facilities can be authorized in the EFU zone, staff and the Planning Commission recommend adopting this text amendment, as shown in Attachment A.

Agri-Tourism and other Commercial Events: Optional Change

Polk County currently permits single-day agri-tourism and commercial events, subject to a ministerial review, pursuant to PCZO 136.030(R). Polk County also permits agri-tourism and other commercial events that are in conjunction with a permitted winery, cider business, or farm brewery, or in conjunction with an existing farm operation subject to a conditional use permit. ORS 215.283(4)(c) authorizes counties to issue a limited use license for up to six (6) agri-tourism or other commercial events in a calendar year that are in conjunction with an existing farm use on a

tract. This license must be renewed every five (5) years. In addition, ORS 215.283(4)(d) authorizes counties to issue a limited use permit for up to 18 agri-tourism or other commercial events in a calendar year that are incidental and subordinate to the existing commercial farm use on the subject tract and are necessary to support the commercial farm uses or the commercial agricultural enterprises in the area. This permit must be renewed every five (5) years. Upon renewal of either a license or permit, the county would need to determine whether the agri-tourism is in compliance with the provisions listed in ORS 215.283(4)(c), which would include a cumulative impacts analysis to ensure that the agri-tourism, in combination with other agri-tourism events or activities on surrounding properties, have not materially altered the stability of the land use pattern in the area.

These laws trace back to Oregon Senate Bill 960 in 2011. Polk County has previously chosen not to adopt all of the agri-tourism criteria from this bill due to concerns related to the multi-year license and permit. Adopting this text amendment would authorize the issuance of multi-year licenses and permits for agri-tourism and other commercial activities or events.

As discussed above, the PCZO currently authorizes agri-tourism and other commercial activities and events in association with the following uses: commercial activity in conjunction with farm use (PCZO 136.050(I)), winery (PCZO 136.040(O)), cider business (PCZO 136.040(P)), and farm brewery (PCZO 136.040(Q)).

Multi-year licenses and permits for agri-tourism and other commercial events associated with wineries, cider businesses, and farm breweries are subject to the criteria listed under PCZO 117.090 and PCZO 117.100, respectively. In such cases, conditions of approval are imposed to limit the agri-tourism and other commercial events to the size and scale that are evaluated and proposed as part of the administrative review process, and the licenses/permits must be renewed every five (5) years.

Commercial activities in conjunction with farm use are subject to a conditional use review. In such cases where agri-tourism and other events are pursued through this criterion, the criteria listed under PCZO 136.060 must be addressed, which is intended to limit impacts and not increase the cost of surrounding farm and forest uses in the surrounding area.

In evaluating the adoption of this text amendment, staff considered the potential negative externalities that could be associated with the law that would otherwise be avoided. As discussed, PCZO Chapter 136 currently permits agri-tourism when associated with farm use without a five (5) year look back. If agri-tourism and other commercial events were to be adopted as a discrete use, as authorized by the State, the County would be required to consider a cumulative impacts analysis upon each license/permit renewal period. The cumulative impacts analysis is intended to evaluate whether the existing agri-tourism and other commercial events, together with other existing agri-tourism in the surrounding area, have materially altered the agricultural stability of the land use pattern in the surrounding area. Staff's primary concern with adopting this as a discrete use is that the required cumulative impacts analysis is concentrated on mitigating impacts that have already occurred, regardless of who is responsible for the impacts, rather than considering and preventing potential impacts before they occur. Analyzing whether the agri-tourism and other commercial events have materially altered the agricultural stability of the land use pattern of the surrounding area does nothing to prevent the impacts over the course of the initial five years. It also does not require businesses that are causing the most significant impact to change their practices. But, it could punish the first businesses that bring agri-tourism to the area at the end of the five years. For example, if, as part of the five year cumulative impacts analysis, the County finds that other new agri-tourism businesses, together with the first business, have significantly impacted the area, the County would be required to deny the five year renewal permit for the first business. A fundamental problem with this approach is that it would not attract the type of capital investment that may be needed to mitigate the impacts in the first place, as there would not be any certainty for an applicant making the investment that they would be allowed to continue their use beyond the initial five years.

Since this law took effect in 2011, Polk County has not had the need to enact the law. Farm operations have been permitted to pursue agri-tourism, including making the expensive fire, life, and safety changes the County required to ensure the public is safe.

Because the County already permits this use in conjunction with farm use, subject to either an administrative review or a conditional use permit, where staff imposes conditions to ensure the size and scale of such events do not impact surrounding farm and forest activities, staff believes that adopting a text amendment to allow for agri-tourism and other commercial events as a discrete use would be unnecessary. For the reasons described above, staff and the Planning Commission recommend not adopting this text amendment.

General Findings:

The recommended amendments to the PCZO would comply with and implement the applicable amendments to State law. 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. As discussed above, 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 136.030, which pertains to uses that are outright permitted in the EFU zone. These changes are mandatory and would add the language from ORS Chapter 215 and OAR Chapter 660 Division 33 verbatim in order to provide better 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 33. The County does not have deference over any of these changes to uses that are outright permitted in the EFU zone.

The proposed text amendments would also include changes to PCZO 136.040, which pertains to farm and nonfarm uses that are subject to administrative review land use applications. Similar to PCZO 136.030, these changes are mandatory and are intended to provide better 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, which pertains to farm and nonfarm uses that are subject to the review and approval of a conditional use land use application. The changes to this section are not mandatory, however, as discussed above, the County may be more restrictive than State law, though not less restrictive. As discussed in the previous section, the Planning Commission has made a recommendation to the Board of Commissioners regarding the adoption of each of these changes to the PCZO. The proposed amendments to the PCZO are designed to directly implement State law, with the exception of adopting uses that don't pertain to Polk County, such as aerial fireworks businesses; or, uses that could have unintended negative externalities, such as agri-tourism and other commercial events that are not in conjunction with a winery, cider business, or farm brewery. The Board of Commissioners could choose to recommend more restrictive standards in such cases where the Planning Commission has recommended adoption.

Conformance with specific PCCP goals and policies 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 discourage the development of nonfarm uses in agricultural areas.** [PCCP Section 2, Element B, Agricultural Lands Policy 1.5]
- 4. 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:

The proposed text amendments would directly implement ORS 215.283 and other applicable sections of 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. These text amendments 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.

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 will endeavor to conserve for agriculture those areas which exhibit a predominance of agricultural soils, and an absence of nonfarm use interference and conflicts.** [PCCP Section 2, Element B, Agricultural Lands Policy 1.1]
6. **Polk County will apply standards to high-value farmland areas consistent with Oregon Revised Statutes Chapter 215 and Oregon Administrative Rules Chapter 660, Division 33.** [PCCP Section 2, Element B, Agricultural Lands Policy 1.3]

Findings:

ORS 215 and OAR Chapter 660 Division 33 apply specific provisions for some uses on agricultural lands that are classified as high-value farmland, as defined in OAR 660-033-0020(8)(a)-(f). As discussed, the proposed text amendments would be implemented directly from State law. By updating the PCZO to be consistent with State law, nonfarm uses on high-value soils would be limited and subject to the provisions found in State law. The Board of Commissioners may adopt further restrictions for uses on high-value farmlands to further limit the potential interference and conflict of nonfarm uses, however, potential conflicts would also be evaluated on a case-by-case basis through the conditional use review process. Staff finds that by adopting State law directly, the proposed amendments would be consistent with PCCP Section 2, Element B, Agricultural Lands Policy 1.1 and 1.3.

- (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 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 Board of Commissioners 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 Board of Commissioners could recommend adopting the text amendments as proposed by Staff, recommend further restrictions, or recommend not adopting 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 Board of Commissioners shall adopt those changes as required to no longer be less restrictive than 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 removes certain restrictions and would afford property owners the full property rights that are authorized by the State. As discussed above, staff and the Planning Commission have 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 and the Planning Commission'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. 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. Most IGAs require that the County provide the City with advanced notification of any land use application and IGA provisions would not be affected by the proposed updates. Staff provided notice of the proposed text amendments to all cities in Polk County on June 28, 2023.

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 and the Planning Commission recommend that the Board of Commissioners adopt the following text amendments found in Attachment A:

- 1) All mandatory changes to PCZO 136.030, 136.040, 136.060, and 136.070.
- 2) All mandatory changes to PCZO 136.050, including changes to:
 - Aquaculture (PCZO 136.050(B))
 - Procedure for Processing Temporary Medical Hardship Dwellings (PCZO 136.040(L))
 - Golf Courses and Accessory Uses (PCZO 136.050(FF))
 - Schools (PCZO 136.050(II))
- 3) All optional changes to PCZO 136.050, including changes to:
 - Home occupations (PCZO 136.050(K))
 - Commercial Dog Kennels, Training Classes, or Testing Trials (PCZO 136.050(L))
 - Mineral and Aggregate Operations (PCZO 136.050(Q)(2))
 - Solid Waste Disposal Sites (PCZO 136.050(X))
 - Commercial Power Generating Facilities (PCZO 136.050(Z))
 - Commercial Wind Power Generation Facilities (PCZO 136.050(AA))
 - Private Parks, Playgrounds, Hunting and Fishing Preserves and Campgrounds (PCZO 136.050(DD))
- 4) All new uses and/or provisions that would be listed under PCZO 136.050, including:
 - Equine Therapeutic Counseling Activities
 - Commercial Photovoltaic Solar Power Generation Facilities
 - Childcare Facilities

In addition, staff recommends that the Planning Commission recommend to the Board of Commissioners not adopting the following text amendments:

- Additional provisions for Temporary Medical Hardship Dwellings (PCZO 136.040(L))

- Allowing Aerial Fireworks Businesses
- Allowing Agri-Tourism and other Commercial Events when not ancillary to a winery, cider business, or farm brewery.

BOARD OF COMMISSIONERS ACTION:

After opening the public hearing and receiving testimony, the Board of Commissioners options include the following:

- (1) Move to approve Legislative Amendment 23-02 as recommended by Staff and the Planning Commission; thereby amending the PCZO Chapters 136 by:
 - (a) Adopting the PCZO amendments presented in Attachment A, or
 - (b) As further amended by the Board of Commissioners (state revisions); or
- (2) Continue the public hearing; or
- (3) Other.

ATTACHMENTS:

- | | | |
|---------------|---|--|
| A | - | Proposed Amendments to PCZO Chapter 136 |
| B-1, B-2 | - | Comments provided prior to the Planning Commission Hearing |
| C-1, C-2, C-3 | - | Comments provided after the Planning Commission Hearing, but prior to the Board of Commissioners Hearing |