



Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

01/27/2014

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: Polk County Plan Amendment
DLCD File Number 001-13

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Thursday, February 13, 2014

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Jerry Sorte, Polk County
Jon Jinings, DLCD Community Services Specialist
Angela Lazarean, DLCD Regional Representative
Katherine Daniels, DLCD Farm/Forest Specialist

<paa> YA



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE

File No.: 001-13 (20023)
[17743]
Received: 1/23/2014

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 5](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

Jurisdiction: Polk County

Local file no.: **LA 13-01**

Date of adoption: 1/22/2014

Date sent: 1/23/2014

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted): 10/2/2013

No

Is the adopted change different from what was described in the Notice of Proposed Change? **Yes** **No**

If yes, describe how the adoption differs from the proposal:

The adopted text amendment has minor differences from what was attached to the Notice of Proposed Change

Local contact (name and title): Jerry Sorte, Planning Manager

Phone: 503-623-9237

E-mail: sorte.jerry@co.polk.or.us

Street address: 850 Main Street

City: Dallas

Zip: 97338

PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY**For a change to comprehensive plan text:**

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

Change from	to	acres.	A goal exception was required for this
change.			
Change from	to	acres.	A goal exception was required for this
change.			
Change from	to	acres.	A goal exception was required for this
change.			
Change from	to	acres.	A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address):

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

For a change to the text of an ordinance or code:

Identify the sections of the ordinance or code that were added or amended by title and number:

Added: Polk County Zoning Ordinance Section 111.215. See Attached.

For a change to a zoning map:

Identify the former and new base zone designations and the area affected:

Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation:	Acres added:	Acres removed:
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Location of affected property (T, R, Sec., TL and address):

List affected state or federal agencies, local governments and special districts:

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

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5 **BEFORE THE BOARD OF COMMISSIONERS FOR**
6 **POLK COUNTY, OREGON**
7

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9 In the matter of Legislative)
10 Amendment LA 13-01 to amend Polk)
11 County Zoning Ordinance Chapter 111)
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13

14 **ORDINANCE NO. 14-01**
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17 **WHEREAS**, on October 23, 2013, the Board of Commissioners adopted Resolution 13-
18 14 which included initiating this legislative amendment process to develop a streamlined
19 process for the County to update the Polk County Zoning Ordinance to be consistent with
20 changes to state law and administrative rule as permitted under ORS 197.612 ; and
21

22 **WHEREAS**, the Planning Commission conducted a duly noticed public hearing on
23 November 12, 2013 to receive comments and testimony. The Planning Commission deliberated
24 at the November 12, 2013 meeting and recommended that the Board of Commissioners approve
25 the proposed amendments to Polk County Zoning Ordinance Chapter 111; and
26

27 **WHEREAS**, the Board of Commissioners conducted a duly noticed public hearing on
28 January 8, 2014, and provided an opportunity for the submission of testimony and evidence. The
29 Board of Commissioners deliberated at the January 8, 2014 meeting, and passed a motion to
30 approve Legislative Amendment 13-01 as recommended by the Planning Commission and
31 Planning staff; now therefore
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33

34 **THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:**
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36 Sec. 1. That Polk County adopts the findings in favor of the amendments to the Polk
37 County Zoning Ordinance as shown on Exhibit A.
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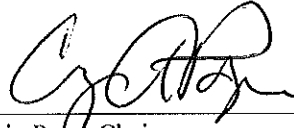
39 Sec. 2. That Polk County amends Polk County Zoning Ordinance Chapter 111 as shown on
40 Exhibit B.
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42 Sec. 3. That Polk County determines that an emergency related to the economic welfare of
43 the citizens of Polk County is declared and this ordinance is effective immediately upon passage.
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452002

1 Dated this 22 day of January 2014, at Dallas, Oregon.
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4 **POLK COUNTY BOARD OF COMMISSIONERS**

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9 _____
10 Craig Pope, Chair

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13 Unavailable for signature

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15 Jennifer Wheeler, Commissioner

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20 Mike Ainsworth, Commissioner

21 Approved as to Form

22 

23 David Doyle

24 County Counsel

25 First Reading: January 22, 2014

26 Second Reading: N/A

27 Recording Secretary: Heather Alvarez

20140122

Exhibit A to Ordinance No. 14-01

Findings in Support of Legislative Amendment 13-01

The "Attachment A" referenced in this exhibit refers to the attachment provided by the Planning Division with the memorandum to the Board of Commissioners for Legislative Amendment 13-01 dated December 23, 2013.

I. CRITERIA FOR LEGISLATIVE AMENDMENTS

A legislative amendment to the text of the Polk County Zoning Ordinance (PCZO) may be approved provided that the request is based on substantive information that supports 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.

- (A) Compliance with Oregon Revised Statutes, and the statewide planning goals and related administrative rules. If an exception to one or more of the goals is necessary, Polk County shall adopt findings which address the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4; [PCZO 115.060(A)]**
 - a. ORS 197.612 Comprehensive plan or land use regulation changes to conform plan or regulations to new requirement in statute, goal or rule.**
 - (1) Notwithstanding contrary provisions of state and local law, a local government that proposes a change to an acknowledged comprehensive plan or a land use regulation solely for the purpose of conforming the plan and regulations 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 take action to change the comprehensive plan or the land use regulation without holding a public hearing if:**
 - (a) The local government gives notice to the Department of Land Conservation and Development of the proposed change in the manner provided by ORS 197.610 and 197.615; and**
 - (b) The department confirms in writing that the only effect of the proposed change is to conform the comprehensive plan or the land use regulations to the new requirements. [ORS 197.612]**
 - b. A local government shall amend its acknowledged comprehensive plan, 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:**
 - (1) A new statutory requirement; or**
 - (2) A new land use planning goal or rule requirement adopted by the Land Conservation and Development Commission. [ORS 197.646(1)]**
 - c. When a local government does not adopt amendments to a comprehensive plan, a regional framework plan and land use regulations implementing either plan as required by subsection (1) of this section [ORS 197.646(1)], the new statutory, land use planning goal or rule requirements apply directly to the local government's land use decisions. The failure to adopt**

amendments to a comprehensive plan, a regional framework plan and 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(4)]

Staff Findings: The proposed amendments to PCZO Chapter 111 (Attachment A) would create a streamlined process for future updates to the text of the PCZO. The proposed process would apply in those instances where the amendments would implement new requirements listed in the Oregon Revised Statutes (ORS) or Oregon Administrative Rules (OAR). As proposed, future PCZO updates that simply incorporate changes to the state rules into the PCZO could be adopted without holding public hearings. This streamlined process is authorized under ORS 197.612.

ORS 197.646 states that when new land use regulations are adopted in state statute (ORS) and administrative rule (OAR), 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. If a county does not amend their local code then that provides a basis for initiation of enforcement action pursuant to ORS 197.319 to 197.335. As an enforcement action, the Land Conservation and Development Commission (LCDC) could include the withholding of funds from any grant or loan made by a state agency to the County. LCDC could also institute actions or proceedings for legal or equitable remedies in Circuit Court pursuant to ORS 197.335(5) and (6).

The historic practice in Polk County has been that when a change is made to the ORS or OAR that the Planning Division immediately applies the updated sections to land use applications. An amendment to the PCZO to implement ORS or OAR is then drafted and moved through the legislative process and heard by the Planning Commission and the Board of Commissioners. The County solicits public input; however, in the instances applicable here, the County is not able to modify the standards. The legislative process in such instances is an expensive public educational campaign.

The proposed PCZO Chapter 111 amendments make only minor modification to the language in ORS 197.612(1) in order to facilitate integration into the PCZO. At the request of the Planning Commission, a section has been added that would have the Planning Division provide notice of the changes being proposed under the new process to the Planning Commission. The proposed amendments also clarify that those zoning text amendments that are not covered under the new process shall continue to be processed under the criteria for legislative comprehensive plan amendments. The PCZO does not currently specify the process and criteria for zoning text amendments, and the proposed changes to PCZO Chapter 111 in Attachment A would provide clarification on that matter. The proposed PCZO Chapter 111 amendments would incorporate the streamlined process authorized under ORS 197.612(1), and codify the historic process for evaluating all other zoning text amendments under the process and criteria for legislative comprehensive plan amendments.

Staff has not identified any other sections of ORS, OAR, or the statewide planning goals that are directly applicable to approval of the proposed PCZO updates. The proposed updates are permitted under ORS 197.612; consequently, the application complies 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)]

- a. **GOAL 1. To provide for a wide range of opportunities for citizens to be involved in all public phases of the planning process in Polk County. For the purposes of the Polk County Citizen Involvement Program, the term "citizen" shall mean property owners, land use applicants and the general public. [PCCP Section (2)(A), Goal 1]**
- b. **Polk County will adopt and maintain a citizen involvement program that complies with Statewide Planning Goal 1 – Citizen Involvement. [PCCP Section (2)(A), Policy 1.1]**

Staff Findings: The proposed amendments to the PCZO would create a new process to adopt zoning text amendments that would have the sole function of reflecting changes to ORS or OAR. The proposed amendments would not change any of the uses that are permitted in any of the zones located in Polk County. The Citizen Involvement element of the Polk County Comprehensive Plan contains goals and policies that are intended to ensure opportunities for citizen participation in the land use planning process. Goal 1 of the Citizen Involvement element seeks "[t]o provide for a wide range of opportunities for citizens to be involved in all public phases of the planning process in Polk County." The proposed changes to the PCZO would allow for streamlined changes to the PCZO in those instances where Polk County no longer has deference to change if or how a policy is implemented. The proposed updates would allow Polk County to avoid the "rubber stamp" process that was required in the past. In this light, the proposed changes comply with the goals and policies of the Citizen Involvement element of the PCCP, because the streamlined zoning updates would occur *after* the authorizing statute or administrative rule have been changed.

The proposed amendments to the PCZO would replace an expensive public education effort with direct adoption of applicable PCZO text amendments outside of the public hearing process. Polk County has a Committee for Citizen Involvement (CCI), and the CCI would be able offset the public education provided previously by public hearings by informing the community about the changes to the PCZO if they deemed the effort warranted.

(C) That the proposed change is in the public interest and will be of general public benefit; and [PCZO 115.060(C)]

Staff Findings: Staff believes that the proposed changes to PCZO Chapter 111 would be in the public interest and of general public benefit because it would allow the County an option to streamline its code update process. This streamlined process would be appropriate, because it would apply to code updates that the County would be obligated to apply whether integrated into the PCZO or not. The current legislative process to update the text of the PCZO to reflect changes in ORS or OAR is costly and time consuming. The public hearings that are a part of the process act as expensive public informational sessions rather than authentic opportunities for the public to make comments on and impact the content of the text amendment. Staff believes that the CCI could develop a more cost effective method to inform the public about changes to the ORS, OAR, and PCZO if they find that outreach is advisable.

(D) Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land. [PCZO 115.060(D)]

Staff 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. Those cities were notified of the Planning Commission and Board of Commissioner's public hearings on October 11, 2013. Staff has not received any comments from the cities as of the writing of this staff report. Land within the UGBs is predominantly zoned Suburban Residential (SR), although some land is zoned Exclusive Farm Use (EFU) and Farm/Forest (F/F).

As reiterated throughout this report, the proposed new zoning text amendment process would apply only to those text amendments that directly apply changes that have been made to the ORS or OAR. The proposed streamlined update process would allow Polk County to change its code to reflect changes to ORS or OAR that apply in certain zones regardless of whether the County updates its code or not. As a result, the proposed changes to Polk County's administration and procedures would not change any of the uses that are permitted in a given zone because those

changes would already have been made by the legislature or LCDL. The text of the IGAs between Polk County and the incorporated cities in Polk County would not change as a result of this legislative amendment.

Staff has not received any comments from the cities as of the writing of this staff report. Based on the findings discussed above, the proposed amendments to the PCZO would comply with all applicable IGAs.

II. CONCLUSION

Based on the findings above, staff concludes that the proposed amendments to the Polk County Zoning Ordinance would comply with all of the applicable review and decision criteria for a legislative amendment.

Exhibit B to Ordinance 14-01

Polk County Zoning Ordinance Chapter 111; Administration and Procedures, shall be amended as follows. Additions to text are double underlined. There are no deletions.

111.215. 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.
[Amended by Ordinance 14-01]