



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

02/21/2012

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 001-12

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, March 08, 2012

This amendment was not submitted to DLCD for review prior to adoption pursuant to OAR 660-18-060, the Director or any person is eligible to appeal this action to LUBA under ORS 197.830 to 197.845.

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
Steve Oulman, DLCD Regional Representative

<paa> YA

Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

In person electronic mailed

DEPT OF

FEB 17 2012

LAND CONSERVATION AND DEVELOPMENT

For DLCD Use Only

Jurisdiction: **Polk County**

Local file number: **LA 11-02**

Date of Adoption: **2/15/2012**

Date Mailed: **2/16/2012**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? No Date:

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

The Board of Commissioners adopted Ordinance No. 12-01, which amends Polk County Zoning Ordinance (PCZO) Chapters 112, 128.500, 128.700, and 128.800. The adopted updates reduce the required setbacks for fences and signs, and remove specific restrictions on the size, number, and allowed uses of garages in the Acreage Residential Five Acre (AR-5), the Acreage Residential Ten Acre (AR-10), and the Agriculture and Forestry Ten Acre (AF-10) zones. These amendments also update the standards for hardship dwellings in the AR-5 zone to be consistent with other zones that permit hardship dwellings, and amend the height restriction for accessory structures in the SR zone.

Does the Adoption differ from proposal?

N/A

Plan Map Changed from: **N/A**

to:

Zone Map Changed from: **N/A**

to:

Location: **N/A**

Acres Involved:

Specify Density: Previous: **N/A**

New: **N/A**

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
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Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: **Jerry Sorte**

Phone: (503) 623-9237 Extension:

Address: **850 Main Street**

Fax Number: **503-623-6009**

City: **Dallas**

Zip: **97338**

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

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and **TWO Complete Copies** (documents and maps) of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

**BEFORE THE BOARD OF COMMISSIONERS FOR
POLK COUNTY, OREGON**

In the matter of Legislative)
Amendment LA 11-02 to amend Polk)
County Zoning Ordinance Chapters)
112, 128.500, 128.700, and 128.800.)

ORDINANCE NO. 12-01

WHEREAS, on March 2, 2011, the Board of Commissioners adopted Resolution 11-02 thereby initiating the legislative amendment process to update Polk County Zoning Ordinance Chapters 112, 128.500, 128.700, and 128.800; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on October 18, 2011 to receive comments and testimony. The Planning Commission deliberated at the October 18, 2011 meeting and unanimously recommended that the Board of Commissioners approve Legislative Amendment LA 11-02; and

WHEREAS, Polk County Planning staff recommended additional changes to the proposed amendments after the Planning Commission's hearing in order to respond to public concern raised over specific sections of Polk County Zoning Ordinance Chapters 112 and 128.500; and

WHEREAS, the Board of Commissioners conducted a duly noticed public hearing on November 30, 2011, and provided an opportunity for the submission of testimony and evidence. The Board continued the November 30, 2011 public hearing until February 1, 2012 in order to allow additional time for the public to comment on the proposed amendments to the Polk County Zoning Ordinance; and

WHEREAS, the Board of Commissioners deliberated at their public hearing on February 1, 2012 and passed a motion to approve Legislative Amendment 11-02 as recommended by the Planning Commission and Planning staff; now therefore

THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Sec. 1. That Polk County adopts the findings in favor of the amendments to the Polk County Zoning Ordinance as shown on Exhibit A.

Sec. 2. That Polk County repeals the existing Polk County Zoning Ordinance Sections 112.190(A), 112.280, 112.300, 112.310, 112.320, 112.350, 112.360, and 112.420(B) and adopts new Sections 112.125, 112.190(A), 112.280, 112.300, 112.310, 112.320, 112.350, 112.360, and 112.420(B) as shown on Exhibit B.

Sec. 3. That Polk County repeals the existing Polk County Zoning Ordinance Sections 128.520(F)(4), 128.720(G)(4), and 128.820(G)(4), and adopts new Sections 128.520(F)(4), 128.720(G)(4), and 128.820(G)(4) as shown on Exhibit C.

Sec. 4. That Polk County repeals the existing Polk County Zoning Ordinance Section 128.530(A), and adopts a new Section 128.530(A) as shown on Exhibit D.

Sec. 5. That Polk County determines that an emergency related to the economic welfare of the citizens of Polk County is declared and this ordinance is effective immediately upon passage.

Dated this 15th day of February 2012, at Dallas, Oregon.


POLK COUNTY BOARD OF COMMISSIONERS



Mike Ainsworth, Chair




Craig Pope, Commissioner



Jennifer Wheeler, Commissioner

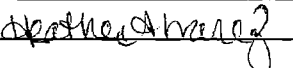
Approved as to Form



David Doyle
County Counsel

First Reading: 15-February-2012

Second Reading: W/A

Recording Secretary: 

Findings in support of Legislative Amendment LA 11-02:

I. 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 providing a factual basis to support the change. In amending the PCZO, Polk County shall demonstrate compliance with PCZO 115.060. Staff's analysis and findings are provided below.

- (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)]**

Findings: The proposed amendments would modify the development standards for fences and signs in all zones; garages in the AR-5, AR-10, and AF-10 zones; hardship dwellings in the AR-5 zone; and accessory structures in the SR zone. Fences, signs, garages, hardship dwellings, and accessory structures are accessory uses of property. Those uses are typically accessory to a dwelling, farm use, or other commercial use of a property. Fences, signs, garages, hardship dwellings, and accessory structures are currently permitted in the zones that would be impacted by these amendments. These amendments would not change the uses that are permitted in any given zone. Development standards such as setbacks and height limitations are not regulated by the statewide planning goals, the Oregon Revised Statutes (ORS), or the Oregon Administrative Rules (OAR). The proposed changes would allow a home business to occur within a garage in the AR-5, AR-10, or AF-10 zone; however, that business would need to comply with the applicable standards of the zone and may require approval through an application process. The AR-5, AR-10, and AF-10 zones are "exception land" meaning that they are not subject to Statewide Planning Goal 3; Agricultural Lands, and Goal 4; Forest Lands. Staff is not aware of any statewide planning goals, ORS or OAR that are applicable to this legislative amendment.

- (B) Conformance with the Comprehensive Plan (PCCP) goals, policies and intent, and any plan map amendment criteria in the plan; [PCZO 115.060(B)]**

- 1. [Economic Development Goal 2]. To provide an atmosphere conducive to economic activity with an emphasis on private sector activity. [PCCP, Section 2, Element H, Goal 2]**
- 2. The Rural Lands Plan designation applies to lands in the County which for the most part lie between the relatively flat agricultural areas and the foothills of the Coast Range. These lands are generally hilly, heavily vegetated, and have low densities of residential development.**

It is the intent of the Rural Lands Plan designation to provide an opportunity for a segment of the population to obtain acreage home sites in a rural area, while at the same time encouraging and protecting agriculture and forestry.

In those areas that receive an exception from the Oregon Statewide Planning Agricultural and Forest Land Goals #3 and #4, but are not given an exception to Oregon Statewide Planning Urbanization Goal #14, implementation will be accomplished with the Acreage Residential 10-Acre (AR-10) Zone and Agriculture and Forestry 10-Acre (AF-10) Zone. In those areas that receive an exception from the Oregon Statewide Planning Agricultural and Forest Land Goals #3 and #4 and Urbanization Goal #14, implementation will be accomplished with the Acreage Residential (AR-5) or Suburban Residential (SR) Zones. [PCCP, Section 4, Land Use Plan Designations]

- 3. [Public Facilities and Services Goal 1] To develop a timely, orderly and efficient**

arrangement of public facilities and services to serve as framework for urban and rural development. [PCCP, Section 2, Element J, Goal 1]

- 4. The Urban Reserve designation applies to lands lying within urban growth boundaries but outside of city limits. The Urban Reserve designation recognizes that:**
- (a) The Urban Growth Boundary was designed to provide the supply of land available for the city's urban growth needs to the year 2000;**
 - (b) All of the land within the Urban Growth Boundary does not need to be developed immediately;**
 - (c) The type and form of development of land between existing municipal limits and the adopted Urban Growth Boundary is to be based upon an adopted land use plan which has been coordinated with the County; and**
 - (d) That agreements between Polk County and its municipalities limit the provision of public sewer or water service to areas within the city limits.**

The Urban Reserve designation addresses itself toward protecting the intent and integrity of the city's coordinated and adopted land use plan by limiting random development actions which could stand in the way of logical, planned development. The Urban Reserve designation recognizes that the provision of adequate levels of public facilities and services should guide urban development, and not the other way around.

The Urban Reserve designation acknowledges that lands under such a designation will eventually be developed for urban uses. The designation identifies those lands which can be preserved until needed for urban purposes and annexed.

The Urban Reserve designation shall reflect and be in support of the County's Urban Land Development policies, and the policies and intent statements contained within the intergovernmental agreement adopted by Polk County and each municipality regarding the development and management of urbanizable lands.

The Urban Reserve designation may be implemented through a number of zones, but primarily through the Suburban Residential (SR) zone or the Exclusive Farm Use (EFU) Zone. [PCCP, Section 4, Land Use Plan Designations]

Findings: The Polk County Comprehensive Plan (PCCP) contains broad goals and policies that are intended to promote economic development, including commercial agriculture, in Polk County. Zoning provides an important tool in implementing the PCCP. Polk County as a matter of policy has allowed fences to be placed at a property line. The proposed amendments to the PCZO would codify that policy. There are numerous uses permitted in Polk County that would benefit by being able to build fences and or locate signs within the normal building setbacks of the zone. Commercial agriculture, especially livestock operations, would benefit by being able to place fences along property lines, rather than setting the fence back 20 or 30 feet from a property line. Allowing fences along a property line allows more agricultural land to enter production. Commercial ventures of all types that seek to attract customers to the property would benefit by being able to place a free standing sign in the normal building setbacks of the zone. For example, a business within the EFU or FF zone would be required to setback a sign at least 30 feet from the property line, which may correspond with a public right-of-way. On Polk County's arterial and collector roads, the right-of-way may extend a substantial distance from the travel lanes of the road. For example, on sections of Zena Road, the right-of-way is over 100 feet in width, and the right of way extends for 30 feet from the edge of the road pavement. Under Polk County's current development standards, a sign would need to be placed 30 feet from the road right-of-way. That would require a sign to be setback a total

of 60 feet from the edge of the road pavement. Such a sign would likely be ineffective in serving its function to assist the public in accessing a business on the subject property. The proposed amendments to fence and sign setbacks would assist in the management of properties for an array of permitted uses throughout the County.

Staff has proposed to amend PCZO 112.420(B), in order to reduce the normal building setbacks for signs to three feet in public zones. Signs could still be placed at the property line under PCZO 112.125; however, they would be limited to the height restrictions under that section. At three feet, signs could be built to the normal building setbacks of the zone; which in this case would be 35 feet and in some instances higher. This would be consistent with commercial zones which typically have a three foot front yard setback for all buildings and structures, including signs. Public zones are similar to commercial zones in that both zoning types typically need signs to direct people to the property. A three foot sign setback in public zones would be consistent with Goal 1 of the Public Facilities and Services element of the Comprehensive Plan, because it would allow public facilities to more efficiently direct citizens to the property.

These amendments would remove the restriction limiting each single family dwelling to one garage in the AR-5, AR-10, and AF-10 zones. These amendments would also remove the restrictions that limit garages to three cars in those zones and prohibit business or industry from occurring within garages. The current restriction on the number of garages is unique, because there are no restrictions on the number of shop or other customary accessory buildings in those zones. Also, there are no size limitations on residences, agricultural buildings, shop buildings, or any other building in those zones. The AR-5, AR-10, and AF-10 zones implement the Rural Lands Plan Designation. As stated in PCCP, Section 4:

It is the intent of the Rural Lands Plan designation to provide an opportunity for a segment of the population to obtain acreage home sites in a rural area, while at the same time encouraging and protecting agriculture and forestry.

The proposed amendment to the AR-5, AR-10, and AF-10 zones would be consistent with the intent of the Rural Lands Plan designation. They would preserve a citizen's ability to obtain an acreage home site in a rural area, and would not have generally negative impacts on agriculture or forestry. This proposal is first and foremost seeking internal consistency within those zoning chapters. There are no restrictions on the number of other accessory buildings that can be established in those zones, nor are there size restrictions on the dwelling or other accessory structures in that zone. Any garage would still be subject to the setback and other development standards of the AR-5, AR-10, or AF-10 zones. Those setbacks would provide separation between a garage and neighboring uses, which may include commercial farm and forestry operations.

The amendments recommended by the Planning Commission would also remove the restriction that "no business or industry" be conducted within garages on the subject property. Removing this restriction would not change the types of uses that are permitted in the AR-5, AR-10, and AF-10 zones, but it would allow garages to host permitted uses that may be classified as "business or industry." Staff believes this is appropriate considering that a property owner may currently operate a home occupation out of a dwelling or shop building. The proposed amendments would open the garage to business activity that is permitted in the zone. Home occupations or other commercial uses that may occur within a garage would still remain subject to the zoning standards of the AR-5, AR-10, and AF-10 zones. Removing the restriction that "no business or industry" occur within a garage would not grant unfettered authority to use garages for any commercial purposes. This change would be consistent with the Rural Lands designation and would promote an atmosphere conducive to economic activity consistent with Economic Development Goal 2 in the PCCP.

After the Planning Commission's public hearing, staff identified an additional amendment that should be made in the AR-5 zone with respect to how accessory hardship dwelling structures may be used once the hardship condition no longer exists. The difference between the AR-5 zone and all other zones that permit hardship dwellings, is that in all other zones a hardship dwelling, in lieu of simply being removed, may be demolished, or converted into another approved onsite use. So, a

hardship dwelling could be converted to such uses as a guest house, storage building, or shop building, depending on what uses are permitted in the underlying zone. In the AR-5 zone, the hardship must be removed and other options are unavailable. This amendment would not change any of the allowed uses in the AR-5 zone. It would simply allow a hardship dwelling that is no longer needed to be converted to another approved use on the subject property. The uses permitted in the AR-5 zone implement the Rural Lands designation. For this reason, staff finds that the proposed amendment is consistent with the goal and policies of the Comprehensive Plan.

Staff proposes amending PCZO 112.300 in order to allow accessory structures in the SR zone within a UGB to have a height limitation of 35 feet without a waiver from the applicable city. This would place accessory structures in the SR zone and a UGB under the same height restrictions as accessory structures in the SR zone and outside of a UGB. The SR zone implements the Urban Reserve PCCP land use plan designation. The Urban Reserve intent statement in the PCCP states:

The Urban Reserve designation addresses itself toward protecting the intent and integrity of the city's coordinated and adopted land use plan by limiting random development actions which could stand in the way of logical, planned development. [PCCP, Section 4, Land Use Plan Designations]

Polk County has adopted urban growth management agreements (UGMAs) with all cities that have urban growth boundaries that expand outside of city limits into Polk County. This includes Dallas, Monmouth, Independence, Salem, and Willamina. Those agreements contain a process for reviewing development within the urban growth boundary. The UGMAs contain some limitations on development within the urban growth boundary in order to guide development in preparation for anticipated annexation into the city over the 20 year planning horizon. The UGMAs act to implement the above referenced intent statement of the Urban Reserve designation in the PCCP. PCZO 112.300 is the only section of the PCZO that allows a city to waive a standard in the PCZO outside of the process specified in the applicable UGMA.

The City of Salem provided comment on this proposed amendment and agreed that the waiver process should be eliminated, but expressed concern with the 35 foot maximum height limitation. The City of Salem recommended that the new standard incorporate the City's 15 foot height limitation as the maximum but allow that height to be varied through the County's variance process rather than a city waiver. This would allow the city an opportunity to comment, and the County would apply its own standards for a variance.

The City of Monmouth provided comment on this proposed amendment as well and believes that the County should retain the waiver process as it has been successfully implement within the Monmouth UGB in the past. Monmouth expressed concern with the 35 foot maximum height limitation, believing that structures built to this height may be unsightly and possibly conflict with surrounding urban uses upon annexation. Monmouth believes that retaining the option for a City-waiver to the accessory structure height requirement in the Polk County Zoning Ordinance is consistent with the UGMA, but acknowledges it creates an extra regulatory step for the affected property owners.

Staff believes that the proposed amendments to PCZO 112.300 would be consistent with the Urban Reserve PCCP land use plan designation and would "[limit] random development actions which could stand in the way of logical, planned development." As proposed, PCZO 112.300 would allow an accessory structure in the SR zone, either inside or outside of a UGB, to be built up to 35 feet in height. First, the proposed amendments would not alter the allowed uses of the property, nor would they alter the existing lot coverage requirement. PCZO 112.300 currently applies to a narrow list of accessory uses that are contained in PCZO 127.020(G). Those uses include accessory greenhouses, hobby shops, garages, guest sleeping quarters, and private stables and barns. Under PCZO 112.290, the lot coverage by all accessory structures shall not be more than 25 percent of rear yard area. This standard would not change. Accessory structures could be built taller under this proposal, but they could not consume a greater footprint on the property. Accessory structures would also be subject to the same setback requirements. Under the proposed PCZO 112.300, accessory structures placed at a

property line, which is allowed on rear yards identified in PCZO 112.330, would have a maximum permitted height of eight feet. Accessory structures could be built taller than eight feet, up to 35 feet in height; however, the accessory structure would need to be setback one foot from the property line for each one foot of height that the structure would be above eight feet. So a 20 foot tall accessory structure would need to be setback at least 12 feet from a property line, and a 35 foot tall accessory structure would need to be setback at least 27 feet from the property line. The interior side yard setback under PCZO 112.320 is five feet, so an accessory structure placed five feet from an interior side property line would be limited to 13 feet in height.

The proposed height limit for accessory structures, which increases based on the setback, would help to ensure solar access to neighboring properties. In areas such as the Chanicka Heights Subdivision in the Salem UGB, which is already developed to urban levels, the proposal would have little impact on the height of the accessory structures that would be built. Those lots are small enough that it would be unlikely that new, detached accessory structures over 15 feet in height would be built because they would need to be set back more than seven feet from all property lines. On larger parcels in the UGB, where large setbacks could be accommodated, tall accessory structures would be pushed toward the center of the property, which would maintain separation between those buildings and existing development on neighboring properties.

The proposed amendments would allow for taller detached garages to be built in the SR zone; however, garages would still be limited to three cars by PCZO 127.020(G)(4). Staff believes that it is appropriate to permit garages that exceed a city's maximum height limitation for accessory structures, such as 15 feet in the City of Salem, because garages commonly exceed 15 feet in height. This would place detached garages, and other accessory structures, under the same maximum height restriction as a garage that is attached to a dwelling. As described in PCZO 112.340, an attached accessory structure in the SR zone has the same 35-foot height limit as the dwelling. A detached accessory structure that is within four feet of the main building is currently considered attached for the purposes of setbacks and height restrictions. When a property in the UGB that contains a 35 foot tall detached garage is annexed into the city and developed to an urban density, the result may be that more of the new subdivision lots would have taller buildings near their property lines. Such a scenario would be consistent with urban development, where single-family dwellings typically may be built to 35 feet in height and are subject to a five foot side-yard setback. Those buildings would also be existing, so potential lot buyers would be aware of an existing building and its proximity to the property line.

The proposed 35 foot height limitation would provide equity between the uses that are permitted in the SR zone. For example, buildings that are used to serve for-profit agricultural practices under 127.020(D)(1) and (2) are currently allowed to be built to 35 feet in height. Under the status quo, a property owner that would like to build a tall accessory structure, such as a detached garage or a private horse barn, has the incentive to call the building a for-profit agricultural building, because such buildings may be built to a higher maximum height.

Staff believes that if a city would like to regulate the height of accessory structures in the UGB that the appropriate place to include that limitation is in an UGMA. The proposed amendment to PCZO 112.300 would not modify any of the UGMAs between Polk County and cities. The proposed amendments would not change any of the allowed uses in the SR zone. For the reasons discussed above, staff finds that the proposed amendments would be consistent with the intent of the Urban Reserve Plan designation. An increase in the height limit of accessory structures, with the restrictions discussed above, would not result in random development action. If the Board determines that a 35 foot height limitation for accessory structures is too tall, staff recommends that the Board establish a lower, but clear and objective maximum height. A height limitation of 25 feet would likely accommodate most requests, including those seeking to build a garage to cover a large recreational vehicle.

Based on the above findings, the proposed amendments to the Polk County Zoning Ordinance would comply with the goals, policies, and intent of the PCCP.

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

Findings: This legislative amendment consists of multiple components, all of which would be in the public interest and of general public benefit. This legislative amendment would update the PCZO in order to allow fences and signs to be placed in the regular building setbacks of a zone in all zones. These amendments would be of general public benefit because it would enhance a property owner's ability to use their property for a variety of existing permitted uses. As discussed above, a sign that is located near a property line, that might otherwise have to be setback out of view, would assist the viability of the use that is advertised by the sign. The proposed setback reductions for signs would not impose any new regulations on sign content or allow new uses in any zones. Consequently, these amendments would not result in a surge of new billboards in Polk County. There are only a few commercial zones in Polk County that allow billboards, signs advertising goods or services provided outside of the subject property, and those zones already have minimal building setbacks. Front-yard commercial setbacks are typically three feet. The zones that would be affected the most by this proposal would be the resource zones: the EFU, FF, FFO, and TC zones. Those zones have front yard setbacks that range from 20 to 30 feet. Because billboards are not permitted in most zones, the signs that would be placed near property lines would be those advertising uses that are permitted in the zone. These may include signs for wineries, farm stands, u-pick farms, etc. They may also be signs in public zones for schools or cemeteries.

The proposed amendment to the setback standards for fences would be in the public benefit because fences are structures that have historically been used to demarcate property lines, and these amendments would formally allow that practice. Staff has recommended that the maximum height of a fence that is located on the property line be six feet. This is intended to balance the needs of neighbors who may wish to protect solar access to their property with the needs of the property owner. A taller fence, or sign, that would be placed on a property line would require review through the variance process.

The proposed amendments would clarify that signs in the SR zone may be placed at a property line when the height of the sign does not exceed four feet (48 inches). This proposal would be in the public interest and of general public benefit because the SR zone permits some commercial activities. A modest, four foot tall sign near a public right-of-way would assist customers in accessing the property and patronizing an approved on-site use.

Staff recommends changing the normal building setbacks for signs in public zones from 20 feet to three feet. This amendment would be in the public interest and of general public benefit because public zones are similar to commercial zones in that they often require tall signs to help direct citizens to the property. Examples of uses allowed in public zones that may benefit from taller signs three feet from a front property line include schools, auditoriums, the fairgrounds, and hospitals.

The legislative amendment would also remove language that restricts garages in the AR-5, AR-10, and AF-10 zones. The proposed amendments would remove the limitation on garages to one per single-family dwelling, the limitation that restricts the size of a garage to three cars, and the limitation that prohibits business or industry from occurring in garages. These amendments would be in the public interest and of general public benefit because staff has found that there is a demand for larger garages in the acreage residential zones. There are no limits on the number or size of shop, or other approved accessory buildings in those zones, so it is inconsistent to limit the number or size of garages. Allowing "building or industry" to occur in garages would be appropriate considering there is no specific restriction on allowing building or industry within a dwelling or other, non-garage, buildings in those zones. A use that may constitute building or industry would still need to be permitted in the zone and may require an application for a use, such as a home occupation. Consequently, staff believes that the impacts of allowing additional uses to occur within a garage would be negligible. Garages would still be subject to the setback and height restrictions of the zone, and those development standards are intended to minimize offsite impacts associated with those buildings.

After the Planning Commission's public hearing, staff identified an additional amendment that should be made in the AR-5 zone with respect to how accessory hardship dwelling structures may be used once the hardship condition no longer exists. The difference between the AR-5 zone and all other zones that permit hardship dwellings, is that in all other zones a hardship dwelling, in lieu of simply being removed, may be demolished, or converted into another approved onsite use. So, a hardship dwelling could be converted to a use such as a guest house, storage building, or shop building, depending on what uses are permitted in the underlying zone. In the AR-5 zone, the hardship must be removed and other options are unavailable. Theoretically, the hardship once removed could be placed right back on the property and converted to another approved use. This situation is not practical. The amendments proposed by staff would be in the public interest and of general public benefit because they would allow property owners to maintain much of the value of the building used for a structure on the subject property by converting the building to another, non-residential use.

After the Planning Commission's public hearing, staff developed an amendment to PCZO 112.300 in order to modify the height standards for accessory structures in the SR zone and a UGB. This issue came to staff's attention as a result of recent building permit applications seeking to build accessory structures in the Salem UGB that exceed the city's accessory structure height limitation of 15 feet. This legislative amendment process provides an appropriate time to modify PCZO 112.300. Staff assumes that the current language in PCZO 112.300, which ties the height of accessory structures in the SR zone in a UGB to the city's standard, was created prior to the adoption of UGMAs between Polk County and cities with UGBs that extend outside of city limits. The proposed amendments would allow accessory structures in the SR zone and a UGB to be built up to 35 feet without a waiver from the city. This would be in the public interest and of general public benefit because it would allow property owners in those zones more opportunities in how they develop their land, while balancing the impact of those accessory structures on neighboring property owners. The proposed language in PCZO 112.300 would require that buildings above eight feet in height be setback at least one foot for each foot in height above eight feet. This would help to provide solar access to neighboring properties. The 35 foot height limitation would also be consistent with other types of buildings that are allowed on properties in those locations. Lot coverage and garage size standards would not change.

Based on the above findings, Staff concludes that the proposed changes to the PCZO are in the public interest and of general public benefit.

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

Findings: Polk County has adopted urban growth management agreements (UGMAs) with each of the cities that have urban growth boundaries (UGBs) that extend outside of city limits and into Polk County's planning jurisdiction. These cities are Salem, Dallas, Monmouth, Independence, and Willamina. Those cities were notified of the Planning Commission and Board of Commissioner's public hearings as discussed in Section II above. Cities were noticed of the proposed changes to PCZO and provided an opportunity to comment. Staff received a comment from the City of Salem which is included as Attachment D. Those comments are included as attachments to this memorandum. The Falls City UGB is entirely located within city limits; therefore, Polk County does not have an UGMA regarding UGB land use management with Falls City.

The proposed amendments to the PCZO would affect the setbacks for fences and signs countywide including properties within UGBs. The amendments would also affect garages in the AR-5, AR-10, and AF-10 zones; hardship dwellings in the AR-5 zone; and accessory structures in the SR zone. The UGMAs between Polk County and individual cities include restrictions on development within UGBs, however, those restrictions primarily concern land use rather than development standards such as setbacks. Those agreements contain a process for reviewing development within urban growth boundary. The UGMAs also contain some limitations on development within the urban growth boundary in order to guide development in preparation for anticipated annexation into the

city over the 20 year planning horizon. Most UGMAs require that the County provide the City with advanced notification of any land use application. UGMA provisions would not be affected by the proposed updates.

The amendments to the maximum permissible height of accessory structures in the SR zone under PCZO 112.300 are the primary component of this legislative amendment that would affect properties in the UGB. The proposed amendments would allow accessory structures to be built to the same height as other uses permitted in the zone such as single-family dwellings, agricultural buildings, and buildings used for public purposes. Staff believes that if a city would like to regulate the height of accessory structures in the UGB that the appropriate place to include that limitation is in an UGMA. The proposed amendment to PCZO 112.300, and the other sections of the PCZO affected by this legislative amendment, would not modify any of the UGMAs between Polk County and cities. The proposed amendments would change the development standards for specific uses but would not change the ability to establish any use in the zones impacted by this legislative amendment. Staff received comment on this issue from the City of Salem (Attachment D) and the City of Monmouth (Attachment E). The City of Salem requested that the maximum height of accessory structures be limited to 15 feet with an opportunity for a variance through the County's variance process. The City of Monmouth requested that Polk County not change the existing ordinance requirements. Neither City indicated that the County's proposal would be inconsistent with their respective comprehensive plans. As discussed above, staff proposes a 35 foot height limitation; however, the Board could choose a lesser height. As a result, the proposed amendments would be consistent with all adopted UGMAs and would comply with this criterion.

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.

CHAPTER 112

DEVELOPMENT STANDARDS

LOT AREA, YARDS, HEIGHT RESTRICTIONS, AND ACCESS

112.125. Fences and Signs

ACCESSORY STRUCTURES IN THE SR ZONE

112.300. Height Standards for Accessory Structures Except Fences and Signs

112.350. Fences and Signs - Location, Height and Density

112.360. Measurement of Height of Fences and Signs

112.125. FENCES AND SIGNS. This section applies to all zones, except the SR zone. The setback and height standards for fences and signs in the SR zone are listed in Sections 112.310 through 112.370.

(A) Fences may be placed within the setbacks of a zone, up to a property line, subject to the following requirements:

(1) The maximum height (as defined by Section 110.260) of any fence shall be six (6) feet when the fence is located at the property line. Within properties that are not located within an adopted urban growth boundary, the maximum height of a fence within a setback may be increased one (1) foot for each one (1) foot of distance from the property line.

(2) The fence shall not project across a property line.

(3) Fences in public zones are subject to the vision clearance requirements listed in Section 112.140.

(4) Fences are subject to all other applicable development standards of the zone.

(B) Free-standing signs permitted under this ordinance may be placed within the setbacks of a zone, up to a property line, subject to the following requirements. This section does not apply to road signs and other signs designed for public safety.

(1) The maximum height (as defined by Section 110.260) of any sign within a setback shall be six (6) feet when the foundation of the sign is located at the property line. For properties which are not located within an adopted urban growth boundary, the maximum height for a sign within a setback may be increased one (1) foot for each one (1) foot of distance from the property line.

(2) A sign shall not project across a property line.

(3) Signs in public zones are subject to the vision clearance requirements of Section 112.140.

(4) Illumination of signs employing lighting from outside of the sign shall be directional, and not direct light off of the subject property. The illumination of signs shall conform with all state and federal requirements.

(5) Signs are subject to all other applicable development standards of the zone.

(C) Signs affixed to a building or structure shall be considered a part of the building or structure, and shall be subject to the setbacks for the building or structure to which it is affixed.

Exhibit B to Ordinance No. 12-01

- (D) Fences and signs that comply with the normal building setbacks of a zone shall be subject to height and all other applicable development standards of the zone.

112.190. SETBACK DISTANCES. An existing building or part thereof that extends into the front yard, side yard, or rear yard, shall be treated as a non-conforming building. [Amended by Ordinance 93]

- (A) To permit or afford better light, air and vision on the more heavily traveled streets and roads; to protect the arterial streets and highways and to permit the expansion of street areas for traveling purposes, or eventual widening of streets or roads; every building, or structure, exclusive of fences, signs, floodlight standards, and their supporting members shall set back from the streets or parts of streets or roads hereafter named, the number of feet set forth below, measured at right angles to the property line adjacent to the street or road right-of-way.

PRINCIPAL ARTERIAL (STATE 18,22)	MINOR ARTERIAL (STATE 51,99,221,223)	MAJOR & MINOR COLLECTOR (COUNTY)	LOCAL ROADS (COUNTY)
30 feet from existing R.O.W. for all <u>commercial & industrial</u>	30 feet *(measured from 80 foot R.O.W.)	30 feet *(measured from 60 foot R.O.W.)	See zone listing
30 feet from a 120 foot R.O.W. for all non-commercial & industrial			

* Indicates additional right of way may be required where existing is deficient.

The above setback provisions are minimum requirements, and are to be considered as supplementary and additional to any such requirements contained in any other part of this ordinance; provided, however, should a greater setback line or front yard be required along any portion of any street herein before named by any other section or provision of this ordinance, then such greater setback line or front yard area shall be the minimum permitted by this ordinance.

112.280. APPLICATION OF REGULATIONS REGARDING ACCESSORY

STRUCTURES. The regulations regarding accessory structures set forth in Sections 112.290 through 112.370 shall apply to customary residential accessory buildings for private use, fences, or signs, in the Suburban Residential Zoning District. These regulations do not apply to accessory structures in the Acreage Residential Five Acre (AR-5) and Ten Acre (AR-10) Zones, or Agriculture and Forestry Ten Acre (AF-10) zone. The standards for fences and signs in all zones, except the SR zone, are listed in Section 112.125.

112.300. HEIGHT STANDARDS FOR DETACHED ACCESSORY STRUCTURES

EXCEPT FENCES AND SIGNS. The maximum height (as defined by Section 110.260) of any accessory structure, except fences and signs, shall be eight (8) feet plus the distance that the accessory structure is setback from the nearest property line. For the purposes of this section, the setback distance shall be rounded down to the nearest one foot increment. The maximum height for an accessory structure shall not exceed 35 feet. This section does not alter the required setbacks listed in Sections 112.310 through 112.330.

112.310. FRONT YARDS AND YARDS ADJACENT TO STREETS WITH ACCESSORY STRUCTURES. Any accessory structure, except fences and signs, which has any portion extending above grade shall observe the yard requirements the same as the main building, otherwise all such structures shall be at or below grade. Fences and signs may be placed on the property line.

112.320. SIDE YARDS, INTERIOR WITH ACCESSORY STRUCTURES. Accessory structures, except fences, not attached to the main building located in an interior side yard shall be set back at least five (5) feet from any lot line. Fences may be placed on the property line.

112.350. FENCES AND SIGNS-LOCATION, HEIGHT AND DENSITY. In any yard adjacent to a street and within ten (10) feet from the property line adjacent to such street, fences, walls, hedges, and signs may be up to 48 inches in height. That portion of a fence above 24 inches shall be at least 75 percent open when measured at 90 degrees to the fence. Fences and signs located in a yard area other than above described may be up to seven (7) feet in height.

112.360. MEASUREMENT OF HEIGHT OF FENCES AND SIGNS. All fences and signs along a public right-of-way will be measured from and along the sidewalk, or if no sidewalk exists, from and along the curb, or if no curb exists, from and along the finished shoulder grade of the right-of-way. All other fences and signs will be measured from and along the finished grade of the property along the fence.

112.420. PUBLIC ZONE DEVELOPMENT STANDARDS

- (B) **FRONT YARD.** There shall be a front yard on every lot in all Public Zones, which front yard shall have a minimum depth of 20 feet, except the minimum front yard for signs shall be three (3) feet. Signs may be placed within the three (3) foot setback subject to Section 112.125. No parking shall be permitted within the minimum front yard area.

Exhibit C to Ordinance No. 12-01

PCZO Sections 128.520(F)(4), 128.720(G)(4), and 128.820(G)(4) shall read as follows:

Accessory uses and structures:

- (4) Private garages and parking areas for the storage and protection of the motor vehicles of the residents of the dwelling;

Exhibit D to Ordinance No. 12-01


PCZO Section 128.530(A) shall read as follows:

- (A) **HARDSHIP TEMPORARY MANUFACTURED DWELLING.** One manufactured dwelling unit in conjunction with an existing dwelling as a temporary use for the term of the hardship suffered by the existing resident or a relative of the resident, provided that:
- (1) The medical hardship is certified by a licensed physician;
 - (2) The manufactured home is connected to the existing sewage disposal system; except when the County Sanitarian finds the existing system to be inadequate and that it cannot be repaired or is not physically available; If the manufactured home will use a public sanitary system, such condition will not be required.
 - (3) The applicant agrees to renew the permit every two years.
 - (4) Within three months of the end of the hardship, the manufactured home shall be removed, demolished, or converted to an approved nonresidential use.
 - (5) Notice of Determination. Upon issuance of a temporary hardship determination by the Planning Director, determinations shall be mailed to the applicant and to interested parties based upon the provisions of Section 111.270 of the Polk County Zoning Ordinance. An appeal of the Planning Director's decision shall be processed pursuant to Section 111.280 of the Polk County Zoning Ordinance.

ADDRESS SERVICE
REQUESTED

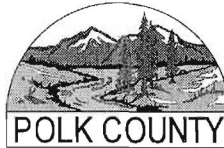
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Polk County Community Development

Polk County Courthouse
850 Main Street
Dallas, Oregon 97338



TO:

Department of Land Conservation and
Development, Plan Amendment Specialist
635 Capital Street NE STE 150
Salem, OR 97301