



Oregon  
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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## NOTICE OF ADOPTED AMENDMENT

12/10/2012

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Hermiston Plan Amendment  
DLCD File Number 004-12

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: Friday, December 21, 2012

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: Clint Spencer, City of Hermiston  
Gordon Howard, DLCD Urban Planning Specialist  
Grant Young, DLCD Regional Representative

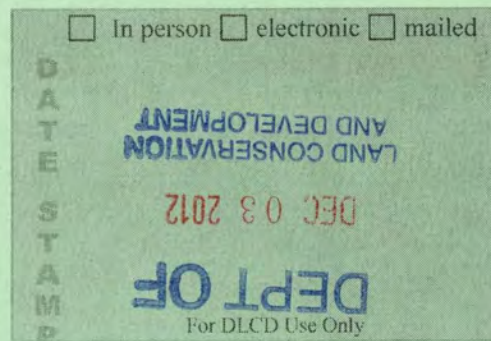
<paa> YA

FOR 2

DLCD

# 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



Jurisdiction: City of **Hermiston**

Date of Adoption: **11/26/2012**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **9/26/2012**

☐ Comprehensive Plan Text Amendment

☐ Land Use Regulation Amendment

☐ New Land Use Regulation

Local file number: **R. Randall**

Date Mailed: **11/30/2012**

☐ Comprehensive Plan Map Amendment

☐ Zoning Map Amendment

☒ Other: **Zoning Text Amendment**

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

Amended the Outlying Commercial Zone (C-2) by adding the following conditional use to 157.041(B) of the Hermiston Code of Ordinances:

(11) Other uses similar to the uses permitted outright or the conditional uses normally located in the Outlying Commercial Zone C-2, providing that the use has approval from the planning commission.

Does the Adoption differ from proposal? **No.**

Plan Map Changed from: **n/a**

to: **n/a**

Zone Map Changed from: **n/a**

to: **n/a**

Location: **n/a**

Acres Involved: **n/a**

Specify Density: Previous: **n/a**

New: **n/a**

Applicable statewide planning goals:

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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**

Please list all affected State or Federal Agencies, Local Governments or Special Districts: **n/a**

Local Contact: **Clint Spencer**

Address: **180 NE 2<sup>nd</sup> Street**

City: **Hermiston**

Zip: **97838**

Phone: **(541) 567-5521**

Extension: **5011**

Fax Number: **541-567-5530**

E-mail Address: **[clspencer@hermiston.or.us](mailto:clspencer@hermiston.or.us)**

DLCD file No. 004-12 (19524) [17254]

**Ordinance No. 2194**

AN ORDINANCE AMENDING CHAPTER 157 OF THE CITY OF HERMISTON CODE OF ORDINANCES TO REVISE THE OUTLYING COMMERCIAL ZONE (C-2) TEXT.

THE CITY OF HERMISTON DOES ORDAIN AS FOLLOWS:

**SECTION 1.** §157.041(B) of the Hermiston Code of Ordinances is hereby amended with the following addition:


(11) Other uses similar to the uses permitted outright or the conditional uses normally located in the Outlying Commercial Zone (C-2), providing that the use has approval from the planning commission.

**SECTION 2.** The findings of fact as adopted by the City Council on November 26, 2012 are incorporated herein by reference.

**SECTION 3.** The effective date of this ordinance shall be the thirtieth day after enactment.

PASSED by the Common Council this 26<sup>th</sup> day of November 2012.

SIGNED by the Mayor this 26<sup>th</sup> day of November 2012.

  
\_\_\_\_\_  
MAYOR

ATTEST:

  
\_\_\_\_\_  
ASSISTANT CITY RECORDER



## HERMISTON CITY COUNCIL

### Regular Meeting

November 26, 2012

Mayor Severson called the regular meeting to order at 7:00 pm and declared a quorum present. Present were Councilors Misner, Davis, Harn, Calame and Harkenrider. Councilors Hardin, Anderson and Myers were excused. Staff members in attendance were City Attorney Luisi, Mark Morgan, Clint Spencer, Chief Edmiston, Larry Fetter, Ron Sivey, Bill Schmittle and Donna Moeller. City Manager Brookshier was excused. News media present were Randy Thompson and Holly Dillemoth of the Hermiston Herald and Eric Olson of KOHU-KQFM. The pledge of allegiance was given.

### Minutes

Councilor Misner moved and Councilor Harkenrider seconded that minutes of the November 5 regular meeting be approved for filing. Motion carried unanimously.

### Hearing/Amend the Outlying Commercial Zone-Code of Ordinances to add Conditional Use

Mayor Severson asked if any councilor wished to declare a potential conflict of interest. There were none, the hearing was opened at 7:08 pm to consider amending the Outlying Commercial Zone (C-2) of the Hermiston Code of Ordinances by adding the following conditional use to 157.041(B):

(11) Other uses similar to the uses permitted outright or the conditional uses normally located in the Outlying Commercial Zone (C-2), providing that the use has approval from the planning commission.

City Planner Spencer read the hearing guidelines as follows:

The city council is holding a hearing to consider amending the Outlying Commercial Zone (C-2) of the Hermiston Code of Ordinances by adding the following conditional use to §157.041(B):

(11) Other uses similar to the uses permitted outright or the conditional uses normally located in the Outlying Commercial Zone C-2, providing that the use has approval from the planning commission.

The applicant is Randy Randall of Preferred Properties

The applicable substantive criteria relied upon by the City in rendering the decision to amend the zoning text are contained in §157.226(E) of the Hermiston Code of Ordinances.

Testimony and evidence must be directed toward the criteria described above or other criteria in the comprehensive plan or land use regulations that the person believes to apply to the decision.

Failure to raise an issue by the close of the record at or following the hearing, in person or by letter, precludes appeal to the Land Use Board of Appeals (LUBA) or the city council based on that issue.

Failure to provide statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to that issue precludes appeal to LUBA or the city council based on that issue.

Prior to the conclusion of the evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments, or testimony regarding the application. The planning commission shall grant such a request by continuing the public hearing pursuant to ORS 197.763(6)(B) or leaving the record open for additional written evidence, arguments, or testimony pursuant to ORS 197.763(6)(C).

For this hearing, the process begins with the staff report, followed by testimony from the applicants and any other supporters of the application. This will be followed by opponents to the application. Finally, a rebuttal by the applicant will be allowed. The public hearing portion of the procedure will then be closed, and the city council will consider the information and testimony received and make a decision on the proposed amendment.

City Planner Spencer stated in the spring of 2012, Randy Randall of Preferred Properties approached the planning commission for a determination if RV parking would be a use allowed in a C-2 zone under the city's similar use provision. This provision allows the planning commission to determine if a use not listed in the zoning ordinance is similar to other uses already permitted in a zone. The consensus of the planning commission was that RV parking was not sufficiently similar to other permitted uses and that if Mr. Randall wished to pursue RV storage on his property, he should pursue a text amendment to the zoning ordinance.

Mr. Randall agreed to pursue this option. Originally, staff discussed the possibility of adding RV storage to the conditional uses in the C-2 zone. The applicant proposed adding language to the C-2 zone similar to that used by other jurisdictions, which allows the planning commission to add similar uses on an ad hoc basis. Staff agrees with the applicant that the proposed text amendment offers more flexibility under the existing similar use provisions in 157.136(B) of the zoning code.

The modification proposed is as follows:

**1. HZO Section 157.041(B), "Outlying Commercial Zone"**

Add new section (B)(11):

Other uses similar to the uses permitted outright or the conditional uses normally located in the Outlying Commercial Zone providing that the use has approval from the planning commission.

Proponents:

David Hadley, 130 S.E. 3rd Street, the applicant's counsel, spoke in favor of the proposed text amendment to the City's zoning ordinance.

There were no opponents who wished to address the council, and the hearing was closed at 7:10 pm

Findings of Fact:

The following findings of fact were presented:

1. Notice of the planning commission hearing will be published in the Hermiston Herald at least 10 days prior to the hearing in accordance with §157.226 of the Hermiston Code of Ordinances.
2. Testimony and comments will be heard at the public hearing.
3. The planning commission will hold a public hearing in accordance with §157.266(F).
4. The notice of proposed amendment will be sent to the Department of Land Conservation and Development, more than 45 days prior to the first evidentiary hearing in accord with Oregon Administrative Rules, Chapter 660, Division 18.
5. A notice of public hearing will be provided to all affected agencies by direct mail.
6. Policy 2 requires the City to annually review development activity and its impacts.
7. A recent development proposal revealed that the specified C-2 zone permitted and conditional uses do not clearly or directly deal with a specific use regarding storage of recreational vehicles in the C-2 zone. This may be due in part because recreational vehicles, especially self-propelled RV's, were not in such common use at the time of original implementation of the city's Outlying Commercial C-2 Zone. The Applicant is proposing to provide flexibility regarding similar uses in the C-2 zone in order to update the code and better deal with needed contemporary uses.
8. As discussed by the planning commission, recreational storage has traditionally been associated with mini storage units located in industrial zones. The locations are often well outside the center of the city and are commonly located outside of the urban growth boundary. Having secure and attractive storage facilities, more centralized to city residents, can reduce both time and fuel savings to the city's residents. It is common for such recreational vehicles to be retrieved and reset during weekends and holidays and affects, if any, with respect to traffic issues should be negligible.  
  
Indirect benefits to convenient centralized secure storage is the potential for increased storage offsite from the owners front or side yards. Any reduction in long term street usage, especially utility (transport trailers for recreational vehicles), has a naturally occurring safety feature.
9. The existing C-2 uses permitted outright and conditional appear to inhibit the possibility of permitting appropriate storage for recreational vehicles in a convenient and centralized location. Such use, under the Conditional Use Process, could otherwise be compatible with existing C-2 outright and conditional uses.
10. Amending the C-2 zone to allow planning commission approval of similar existing uses under the Conditional Use Process may allow better development opportunities on

properties within the C-2 zone by providing safe and secure parking of recreational type vehicles within the city limits.

11. The proposed "similar use" addition to C-2 uses will allow greater flexibility and commercial development and encourage a broader range of commercial activities should the planning commission grant such a use as allowed in the Conditional Use section of the Ordinance (Section 157.205 et. seq.), which states, in part:

"Conditional uses are those uses which may be appropriate, desirable, convenient or necessary in the district in which they are allowed, but which by reason of their height or bulk or the creation of traffic hazards or parking problems or other adverse conditions may be injurious to the public safety, welfare, comfort and convenience unless appropriate conditions are imposed."

12. As a conditional use, RV storage on paved parking provides an appropriate, desirable, and convenient use for residents. This may contrasted to "out of town" dirt or graveled parking surfaces in that weed issues (goatheads) and vermin (mice) are much less of a problem to the owners of stored recreational vehicles.
13. Similar uses allowed by this text amendment may be subject to individual transportation analysis at the discretion of the planning commission to ensure compliance with the Transportation System Plan.

City Planner Spencer stated subject to the testimony received at the hearing and based upon the findings of fact, staff recommends that the city council adopt the ordinance amendment and incorporate the new language into the Code of Ordinances.

Councilor Harkenrider moved and Councilor Misner seconded to accept the findings of fact in support of amending Chapter 157 of the City of Hermiston Code of Ordinances to revise the Outlying Commercial Zone (C-2) text. Motion carried unanimously.



**APPLICATION TO AMEND ZONING ORDINANCE TEXT**  
**§157.041 OUTLYING COMMERCIAL ZONE – C-2**

**Introduction**

Mr. Randy D. Randall recently acquired property at 705 S. First Street, Hermiston, Oregon. The property was the former location of the Pacific Power and Light customer service office and storage yard for utility related inventory, trucks, and equipment. The location of the property is shown on the map attached as Tax Lot 2302. In addition to the buildings it includes approximately one acre of paved parking located east of the existing building and north of Highland Avenue. The property is bordered on the east by the Union Pacific Railroad right-of-way.

Mr. Randall recently completed remodeling of the office building. Preferred Realty, Inc. and Preferred Property Management are both occupying the office building. The storage parking area has been re-fenced with a 6-foot sight obscuring fence. Mr. Randall desires to use the existing fenced enclosed one acre parking area as a commercial RV/parking/storage area. Mr. Randall, after discussing his proposal with city planning staff, submitted a Request for Interpretation to the planning commission. The result of that request is summarized below.

**Planning Commission Request for Interpretation**

The approved minutes of the Hermiston Planning Commission meeting on April 11, 2012 as it pertains to this application is set forth below:

**“NEW BUSINESS**

City Planner Spencer stated that staff has received a request for an interpretation of similar uses as permitted under §157.136(B) of the Hermiston Code of Ordinances. This provision allows the planning commission to rule that a use not specifically listed in the allowed uses of a zone shall be included among the allowed use if the use is of the same general type and is similar to allowed uses. This provision does not authorize the inclusion of a use where it is specifically listed in another zone or which is of the same general type and is similar to a use listed in another zone.

Randy Randall has submitted a request for an interpretation for property he is considering purchasing at 705 S. First Street and is zoned Outlying Commercial (C-2). This property was formerly the Pacific Power office/storage area and has been used for the last few years as a base of operations for a truck refrigeration maintenance operation. The site is directly across from the high school and north of Domino's Pizza. Mr. Randall wishes to move his Preferred Property offices to the building and utilize the 1 acre paved parking lot as a potential commercial RV parking/storage area. The offices for Preferred Property are an outright use at the site, but the potential RV storage is more problematic and thus an interpretation from the planning commission is requested.



Similar uses permitted in the C-2 zone include automobile, boat or trailer sales, rental, service and repair. RV parks are also allowed outright in the C-2 zone provided they meet the minimum lot size of three acres. C-1 and C-2 zones both allow for parking lots and garages as outright uses.

However, historically, RV storage on a paid basis has been a use associated with ministorage operations. This is a use permitted in the M-1 and M-2 industrial zones and not in either commercial zone. All of the existing ministorage operations which also include RV storage are located in the city's industrial zones. Similar uses permitted in the M-1 zone include, ministorage and a wholesale distribution or outlet; including trucking, warehousing and storage.

The applicant and staff request guidance from the planning commission on this manner. There are similar uses allowed in the C-2 zone but the use itself is one that has historically been associated only with a light industrial use.

Commissioner Caplinger wanted to verify that RV parking is an outright use for a minimum lot size of three acres since in a C-2 zone, RV parks are allowed with a minimum lot size of three acres. Chairman Saylor wanted to make sure that sight obscuring fencing was to be used.

Randy Randall – 868 W. Punkin Center Road – stated that he plans on replacing the current fencing and will have closed-circuit monitoring. He doesn't feel that the proposed RV storage will be a negative impact to the school or to traffic. Chairman Saylor asked about the number of RV's to be stored. Mr. Randall said that it would be a maximum of 40 RV's.

After further discussion, the Commissioners agreed that the code should be written to keep RV storage from popping up in any C-2 zone lot. Mr. Randall also suggested that the code should include a condition requiring that any RV in storage be licensed at all times. Mr. Randall will pick up an application to amend the zoning ordinance."

### **Specific Request**

The applicant's request is to amend §157.040 Outlying Commercial Zone C-2 by adding the following conditional use to §157.041(B):

- (11) Other uses similar to the uses permitted or the conditional uses normally located in the Outlying Commercial Zone C-2, providing that it has approval of the planning commission.

The result of this text amendment would provide the opportunity for the planning commission to review a proposal, such as presented by Mr. Randall for RV storage subject to application and approval under the Conditional Use process. The Conditional Use process would provide the planning commission the opportunity to evaluate a particular proposal and location for RV parking/storage, and prevent such uses from locating on any C-2 zone lot where such use may be inappropriate based upon size and surrounding uses of other adjoining properties. Conditions, among, others would include fencing and security requirements, limitation on the number of stored RV's, boats, or similar recreational vehicles (jet skis, snowmobiles, ATVs, and

their hauling trailers) and further to require that such items stored be appropriate licensed (if required) and be readily movable to and from the site.

The planning commission will have, as set forth in §157.205, authority to grant or deny such similar uses permitted on conditionally normally located in the C-2 zone based upon the criteria, application procedure, public hearing, approval criteria, and standards as set forth in §157.205 et. seq.

### **Approval Criteria**

An amendment to the text of the Hermiston Zoning Code shall comply with provisions of the City of Hermiston Comprehensive Plan and other applicable administrative rules. The following goals and policies are applicable to this application for a text amendment. References to a proposed RV storage use listed below are illustrative only and are not meant to limit or expand the planning commission's ability to grant or deny any similar uses as may come before the planning commission upon amendment of the ordinance as proposed.

**Goal 1 and Policy 1. Citizen Involvement.** The City will insure that citizens have an adequate opportunity to be involved in all phases of the planning process.

1. Notice of the planning commission hearing will be published in the Hermiston Herald at least 10 days prior to the hearing in accordance with §157.226 of the Hermiston Code of Ordinances.
2. Testimony and comments will be heard at the public hearing.
3. The planning commission will hold a public hearing in accordance with §157.266(F).

**Goal 2 and Policy 3. Intergovernmental Coordination.** The City of Hermiston will facilitate intergovernmental coordination so that decisions affecting local, state, and federal planning and development actions in the Hermiston area are rendered in an efficient and consistent manner.

4. The notice of proposed amendment will be sent to the Department of Land Conservation and Development, more than 45 days prior to the first evidentiary hearing in accord with Oregon Administrative Rules, Chapter 660, Division 18.
5. A notice of public hearing will be provided to all affected agencies by direct mail.

**Policy 2. Planning Process.** The City of Hermiston will monitor and update periodically its comprehensive plan and implementing ordinances to respond to changing conditions.

6. Policy 2 requires the City to annually review development activity and its impacts.

7. A recent development proposal revealed that the specified C-2 zone permitted and conditional uses do not clearly or directly deal with a specific use regarding storage of recreational vehicles in the C-2 zone. This may be due in part because recreational vehicles, especially self-propelled RV's, were not in such common use at the time of original implementation of the city's Outlying Commercial C-2 Zone. The Applicant is proposing to provide flexibility regarding similar uses in the C-2 zone in order to update the code and better deal with needed contemporary uses.

**Policy 15. Energy Conservation.** The City of Hermiston will encourage the conservation of energy resources wherever possible through careful land use planning, community education, and adoption of conservation-oriented policies.

8. As discussed by the planning commission, recreational storage has traditionally been associated with ministorage units located in industrial zones. The locations are often well outside the center of the city and are commonly located outside of the urban growth boundary. Having secure and attractive storage facilities, more centralized to city residents, can reduce both time and fuel savings to the city's residents. It is common for such recreational vehicles to be retrieved and reset during weekends and holidays and affects, if any, with respect to traffic issues should be negligible.

Indirect benefits to convenient centralized secure storage is the potential for increased storage offsite from the owners front or side yards. Any reduction in long term street usage, especially utility (transport trailers for recreational vehicles), has a naturally occurring safety feature.

**Policy 19. Commercial Development.** The City of Hermiston will assure the availability of a sufficient supply of commercial land to accommodate 20-year projected need and strive to achieve the balanced distribution of commercial activities in neighborhoods, downtown and along outlying highways.

9. The existing C-2 uses permitted outright and conditional appear to inhibit the possibility of permitting appropriate storage for recreational vehicles in a convenient and centralized location. Such use, under the Conditional Use Process, could otherwise be compatible with existing C-2 outright and conditional uses.
10. Amending the C-2 zone to allow planning commission approval of similar existing uses under the Conditional Use Process may allow better development opportunities on properties within the C-2 zone by providing safe and secure parking of recreational type vehicles within the city limits.
11. The proposed "similar use" addition to C-2 uses will allow greater flexibility and commercial development and encourage a broader range of commercial activities should the planning commission grant such a use as allowed in the Conditional Use section of the Ordinance (Section 157.205 et. seq.), which states, in part:



“Conditional uses are those uses which may be appropriate, desirable, convenient or necessary in the district in which they are allowed, but which by reason of their height or bulk or the creation of traffic hazards or parking problems or other adverse conditions may be injurious to the public safety, welfare, comfort and convenience unless appropriate conditions are imposed.”

12. As a conditional use, RV storage on paved parking provides an appropriate, desirable, and convenient use for residents. This may contrasted to “out of town” dirt or graveled parking surfaces in that weed issues (goatheads) and vermin (mice) are much less of a problem to the owners of stored recreational vehicles.

**Goal 12 and Policy 34. Transportation System Plan.** THE CITY OF HERMISTON WILL COMPLY WITH THE REQUIREMENTS OF THE TRANSPORTATION PLANNING RULE WITH THE ADOPTION OF THE TRANSPORTATION SYSTEM PLAN AND RELATED AMENDMENTS TO IMPLEMENTING ORDINANCES.

13. Similar uses allowed by this text amendment may be subject to individual transportation analysis at the discretion of the planning commission to ensure compliance with the Transportation System Plan.

### **Conclusion**

For the reason explained above, the Applicant believes that the applicable approval criteria for this text amendment have been satisfied and encourages the planning commission, after considering this proposed text amendment and all testimony received at the public hearing, to recommend approval to the Hermiston City Council.

ity of Hermiston  
Planning Department  
80 NE 2<sup>nd</sup> Street  
Hermiston, OR 97838

**CERTIFIED MAIL™**



7006 0100 0003 4299 5691



DEPT OF

DEC 08 2012

LAND CONSERVATION  
AND DEVELOPMENT

ATTN: Plan Amendment Specialist  
DLCD  
635 Capitol Street NE, Suite 150  
Salem, OR 97301-2540