



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

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

Date: June 04, 2015
Jurisdiction: City of Shady Cove
Local file no.: MMF 15-01
DLCD file no.: 001-15

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 06/03/2015. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD 37 days prior to the first evidentiary hearing.

Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A 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).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or plan.amendments@state.or.us



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

FOR DLCD USE	
File No.:	001-15
Received:	{ 23651 }
	6/3/2015

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: City of Shady Cove

Local file no.: **MMF 15-01**

Date of adoption: 05/21/2015 Date sent: 6/3/2015

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): 03/03/2015

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:

No

Local contact (name and title): Debby Jermain, Planning Secretary

Phone: 541-878-8204

E-mail: info@shadycove.net

Street address: 22451 Hwy 62

City: Shady Cove

Zip: 97539-

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:

General Commercial (GC) Section 154.081 (C)

For a change to a comprehensive plan map:

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

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

General Commercial (GC) Section 154.081 (C)

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: Oregon Health Authority, DLCD, State Fire Marshal, Jackson County Fire District #4, DEQ, ODOT, Jackson County Development Services

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.

City of Shady Cove

Ordinance No. 272

**AN ORDINANCE OF THE CITY OF SHADY COVE, OREGON AMENDING
THE SHADY COVE CODE OF ORDINANCES TO PERMIT MEDICAL
MARIJUANA FACILITIES**

Whereas, the State of Oregon enacted legislation to permit medical marijuana facilities to serve holders of medical marijuana cards; and

Whereas, the City of Shady Cove must amend its Code of Ordinances to implement the legislation; and

Whereas, Chapter 154, of the Shady Cove Code of Ordinances governs Type IV Legislative Procedures within the corporate limits of the City and requires, if approval is recommended by the Planning Commission, that the City Council of the City of Shady Cove make the final decision regarding the application; and

Whereas, The Shady Cove Planning Commission, after providing proper public notice, met in Public Hearing on April 9, 2015, to consider amendments to Section 154.081 of the Shady Cove Code of Ordinances to add Medical Marijuana Facility as a permitted use in the General Commercial District (GC) subject to compliance with state licensing and operation requirements; and

Whereas, on April 9, 2015, following the close of the public hearing, the Planning Commission deliberated on the record of the proceedings, after which a motion was made, duly seconded, and unanimously approved, to recommend that the City Council approve the addition of medical marijuana facilities to Section 154.081.

Now therefore,

**THE COUNCIL OF THE CITY OF SHADY COVE ORDAINS AS
FOLLOWS:**


The Shady Cove Code of Ordinances is amended as follows:

- | | |
|------------------------|---|
| Section 1: Title | This Ordinance shall be known as the Medical Marijuana Facility Ordinance of the City of Shady Cove, Oregon. |
| Section 2: Description | Medical Marijuana Facility regulations, attached as Exhibit A, approved by the City Council. |
| Section 3: Amendment | The permitted use regulations contained in Chapter 154.081 of the Shady Cove Code of Ordinances Plan Map are amended to add Medical Marijuana Facility and modify the numbering of the remaining uses in Section 154.081. |

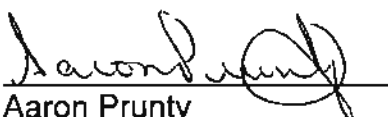
Section 4: The City Council adopts as its own, and incorporates by reference, the Planning Commission recommendation attached as Exhibit B.

PASSED AND APPROVED by the City Council of the City of Shady Cove this 21st day of May, 2015.

Approved:


Tom Anderson
Mayor

Attest:


Aaron Prunty
City Administrator

Council Vote:

Mayor Anderson	<u>Y</u>
Councilor Ulrich	<u>Absent</u>
Councilor Sanderson	<u>Y</u>
Councilor Burgess	<u>Y</u>
Councilor Mitchell	<u>Y</u>

EXHIBIT "A"

Amend Section 154.081(C)(39) to add Medical Marijuana Facility. (Because the list is alphabetical, the remaining uses on the list will be renumbered only.)

Medical Marijuana Facility is defined as a facility validly registered with the State of Oregon that is authorized according to the State of Oregon Health Authority (OHA) to transfer usable marijuana and immature plants to and from:

- (a) registry identified cardholders, and
- (b) persons responsible for a medical marijuana grow site.

Medical marijuana facilities may be allowed, subject to the following standards and restrictions:

- i. Compliance with all requirements as established by the Oregon Health Authority (OHA) to be validly registered.
- ii. Prior to operating the business, the operator shall provide the City with a copy of the medical marijuana facility's valid proof of registration as issued by the OHA.

EXHIBIT "B"

BEFORE THE PLANNING COMMISSION
OF THE CITY OF SHADY COVE
COUNTY OF JACKSON, STATE OF OREGON

IN THE MATTER OF CONSIDERATION OF)
AMENDMENTS TO CHAPTER 154.081 OF THE) RECOMMENDATION
SHADY COVE CODE OF ORDINANCES TO) TO CITY COUNCIL
PERMIT MEDICAL MARIJUANA FACILITIES)

APPLICANT: City of Shady Cove Planning File No. MMF 15-01

RECITALS:

- 1) Chapter 154, of the Municipal Code of the City of Shady Cove governs Type IV Legislative Procedures within the corporate limits of the City and requires, if approval is recommended by the Planning Commission, that the City Council of the City of Shady Cove make the final decision regarding the application; and,
- 2) The Shady Cove Planning Commission, after providing proper public notice, met in Public Hearing on April 9, 2015, to consider amendments to Chapter 154.081 of the Shady Cove Code of Ordinances to include Medical Marijuana Facilities in the General Commercial District (GC) subject to compliance with state licensing and operation requirements. The Commission received testimony from interested parties and staff. The staff recommendations, as submitted to the Planning Commission, are contained in a staff memorandum that is part of the record; and,
- 3) On April 9, 2015, following the close of the public hearing, the Planning Commission deliberated on the record of the proceedings, after which a motion was made and duly seconded, to recommend that the City Council approve the addition of medical marijuana facilities to Chapter 154.081. The motion passed by a roll call vote of 5 to 0.

NOW THEREFORE, the Planning Commission of the City of Shady Cove finds, concludes, and recommends as follows:

SECTION 1: FINDINGS

- 1) The Planning Commission hereby incorporates by reference all oral deliberations and findings of fact established in the record of the public hearing, and cites by reference: oral and written testimony of interested citizens and staff, and findings of fact which are a part of the record, the City Planner's staff report; and,
- 2) The Planning Commission hereby finds that it has received all information and evidence necessary to consider the above request; and,

- 3) The City provided public notice through the Upper Rogue Independent, and mailed notices to owners of all commercial properties within the city limits via United States Postal Service. The Planning Commission finds and concludes that proper notice has been given; and,
- 4) The Planning Commission finds that although no one specifically spoke in opposition to the proposed amendments, several expressed concerns about associated marijuana grow operations and whether distribution of products should be through pharmacies rather than separate businesses. Another party wanted assurance that business owners would not be forced to rent space to dispensaries. The Commission also takes note of two communications received from business owners who objected to the proposed amendment, citing negative effects on the business climate in Shady Cove.
- 5) The criteria used to evaluate the requested amendments to the Code of Ordinances are contained in Section 154.438 with additional considerations in Section 154.380(F). The Planning Commission finds that the request meets the criteria and considerations.

SECTION 2: CONCLUSION

The Planning Commission concludes that the proposed amendments to Section 154.081 of the Shady Cove Code of Ordinances comply with procedural requirements of the Shady Cove Code of Ordinances, and appropriately implement State law regarding medical marijuana facilities. It also concludes that the small number of potential dispensaries will limit adverse effects of such businesses. The Commission also concludes that the recommendation is entirely separate from any decision that may be made in the future about implementing Measure 91 regulating recreational marijuana.

SECTION 3: DECISION

Based on the record of the public hearing on this matter, the Planning Commission recommends approval of amendments to Section 154.081 of the Shady Cove Code of Ordinances to include medical marijuana facilities as a permitted use in the General Commercial zoning district.

This RECOMMENDATION for APPROVAL is given to the Shady Cove City Council this 17th day of April 2015, in Shady Cove, Oregon.


Paula Trudeau, Chair

**CITY OF SHADY COVE
LEGISLATIVE DECISION STAFF REPORT
HEARING DATE: April 9, 2015
FILE: MMF 15-01**

I. PROPOSAL

Amend Section 154.081(C) (39) of the Shady Cove Code of Ordinances to add Medical Marijuana Facility as a permitted use in the General Commercial District.

II. AUTHORITY AND CRITERIA

The amendment of the City's code is a legislative action, governed by Section 154.380(F) (Type IV Legislative Procedure). This section states:

The recommendation by the Planning Commission and the decision by the City Council shall be based on consideration of the following factors:

- (1) The Statewide Planning Goals and Guidelines adopted under O.R.S. Ch. 197 (for comprehensive plan amendments only);*
- (2) Comments from any applicable federal or state agencies regarding applicable statutes or regulations;*
- (3) Any applicable intergovernmental agreements; and*
- (4) Any applicable comprehensive plan policies and provisions of this chapter that implement the comprehensive plan. Compliance with § 154.381 shall be required for Comprehensive Plan amendments and land use district map and text amendments.*

III. BACKGROUND AND DISCUSSION

In 2014, Shady Cove adopted a moratorium regarding approval of medical marijuana facilities. The moratorium expires in May, requiring the city to reach a decision about amending its Municipal Code to permit medical marijuana facilities. The City Council directed staff to prepare an ordinance amendment to include dispensaries only in the General Commercial zoning district. The proposed amendments are as follows:

Amend Section 154.081(C)(39) to add Medical Marijuana Facility. (Because the list is alphabetical, the remaining uses on the list will be renumbered only.)

Medical Marijuana Facility is defined as a facility validly registered with the State of Oregon that is authorized according to the State of Oregon Health Authority (OHA) to transfer usable marijuana and immature plants to and from:

- (a) registry identified cardholders, and
- (b) persons responsible for a medical marijuana grow site.

A Medical Marijuana Facility may be allowed, subject to the following standards and restrictions:

- i. Compliance with all requirements as established by the Oregon Health Authority (OHA)

- ii. Prior to operating the business, the operator shall provide the City with a copy of the medical marijuana facility's valid proof of registration as issued by the OHA.

House Bill 3460 and Senate Bill 1531, enacted by the Oregon Legislature in 2014 permit governmental bodies to authorize facilities for distributing medical marijuana. These bills amend Oregon Revised Statute (ORS) 475.300-346, which permits the medicinal use of marijuana. While the ORS permits growing of limited amounts of marijuana, the most recent legislation opens the opportunity to establish dispensaries for distribution to holders of medical marijuana cards. The legislation stipulates that such facilities must be a minimum of 1,000 feet from properties containing public or private elementary, secondary, or career schools attended primarily by minors. It also requires a 1,000-foot minimum separation from another medical marijuana facility. These measures and many other restrictions are included in the business license application that must be completed before a medical marijuana facility may open.

There has been no uniform method for incorporating the rule statewide. Some communities consider it an outright permitted retail use, while others such as Central Point have amended their ordinances to specifically include the use, thereby confining it to a particular zoning district. Still others have opted to include the use in a zoning district that requires approval of a conditional use permit. Cave Junction filed a lawsuit and a lower court determined that cities are not compelled to allow facilities, but that decision has been appealed to higher courts.

If adopted, the amendment will list a Medical Marijuana Facility as a permitted use with only a couple of specific standards that require proof of compliance with Oregon Health Authority (OHA) authorization. The primary reason for this approach is that the legislation is relatively new and could be subject to revisions. If the City's ordinance simply refers to proof of compliance with the OHA requirements, the state rules in effect at the time an application would govern. The City would not have to amend its code each time there is a change in state law.

IV. CONFORMANCE WITH APPLICABLE CRITERIA

The proposed amendment is to permit distribution of products only to holders of medical marijuana cards; the products cannot be sold for recreational use. The amendment implements state law that permits medical marijuana facilities, as defined and regulated in ORS 475.300-346. The following findings in ORS 475.300 were made in 1999, when medical marijuana was first approved, and were not modified when the dispensaries were added in 2010:

The people of the state of Oregon hereby find that:

- (1) Patients and doctors have found marijuana to be an effective treatment for suffering caused by debilitating medical conditions, and therefore, marijuana should be treated like other medicines;
- (2) Oregonians suffering from debilitating medical conditions should be allowed to use small amounts of marijuana without fear of civil or

criminal penalties when their doctors advise that such use may provide a medical benefit to them and when other reasonable restrictions are met regarding that use;

(3) ORS 475.300 (Findings) to 475.346 (Short title) are intended to allow Oregonians with debilitating medical conditions who may benefit from the medical use of marijuana to be able to discuss freely with their doctors the possible risks and benefits of medical marijuana use and to have the benefit of their doctors professional advice; and

(4) ORS 475.300 (Findings) to 475.346 (Short title) are intended to make only those changes to existing Oregon laws that are necessary to protect patients and their doctors from criminal and civil penalties, and are not intended to change current civil and criminal laws governing the use of marijuana for nonmedical purposes.

Section 154.380 of the Code of Ordinances establishes the review procedures for legislative amendments to the Code, requiring Planning Commission review resulting in a recommendation to City Council. Section 154.439 establishes three criteria, but because the third criterion relates to specific site development plans and not to text amendments, only the first two criteria apply. The applicable criteria are:

1. The proposal shall be consistent with the city's adopted goals and policies pertaining to land use, growth, and development, and
2. The proposal shall be consistent with all applicable statewide planning goals.

Comprehensive Plan Compliance

Citizen Involvement Policy 3 states that the City will ensure two-way communication between citizens and decision-makers.

Finding: In addition to placing notice of the hearing in the newspaper, the City also provided written notice to owners of General Commercial property. Two owners expressed opposition to the proposed amendment, citing concerns about the effect of such facilities on the character and economic health of the City.

Economic Development Policy 3 states that the City shall continue to review and refine its land use regulations to ensure that they are reasonable and accurately reflect the goals and objectives of the community.

Finding: The Oregon Legislature legalized Medical Marijuana dispensaries in 2014 with the intent that they would be available to provide a safe source of medical marijuana to for those who have medical marijuana cards issued in compliance with Oregon Health Authority regulations. Consideration of the text amendment is appropriate in view of this legislation, particularly since authorized moratoria expire in May.

Land Use Policy 3 states that zoning regulations will include clear and objective standards for the review of conditional uses, site plans and variances.

Finding: While most categories in the General Commercial zone are subject to only site plan review criteria, the proposed Marijuana Facility category includes standards requiring proof of compliance with Oregon Health Authority standards. The City's business license for such facilities will also be tailored to ensure compliance with time, place, and manner provisions to ensure the facility operates consistently with state law.

V. RECOMMENDATION

The proposed amendment implements State legislation to include medical marijuana facilities. The proposed business license imposes strict limitations on the conduct of a facility, including distances from other dispensaries and potentially incompatible uses.

While questions remain about federal intervention, medical marijuana facilities are permitted by Oregon law, and are subject to Oregon Health Authority oversight. Part of the reason for not including a long list of operating standards in the Municipal Code is the extent of control that OHA has over dispensaries. Even if their rules change over time, the Municipal Code would still be current by requiring proof of OHA compliance.

Staff recommends approval of the code amendments as written, but an alternative available to the Council is to list the use as a conditional permit instead of an outright permitted use. Conditional uses would require Planning Commission public hearing.

A crucial point with respect to this proposed amendment is that it is separate from recreational marijuana regulations that are still being drafted in response to voter approval of Measure 91. The measure very clearly states that it has no effect on medical marijuana regulations; recreational marijuana facilities will be subject to OLCC oversight instead of the Oregon Health Authority.

VI. PLANNING COMMISSION ACTION

Recommend City Council approval of the proposed amendments as drafted, approval with revisions, denial, or continuance for further consideration.