



# 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](http://www.lcd.state.or.us)

### NOTICE OF ADOPTED AMENDMENT

July 10, 2007



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Hermiston Plan Amendment  
DLCD File Number 001-07

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Copies of the adopted plan amendment are available for review at DLCD offices in Salem, the applicable field office, and at the local government office.

Appeal Procedures\*

### DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: July 20, 2007

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. 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 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 DATE SPECIFIED ABOVE.**

Cc: Gloria Gardiner, DLCD Urban Planning Specialist  
Mark Radabaugh, DLCD Regional Representative  
Clint Spencer, City Of Hermiston

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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

☐ In person ☐ electronic ☐ mailed

DATE  
DEPT OF  
JUL 02 2007  
LAND CONSERVATION  
AND DEVELOPMENT  
For DLCD Use Only

Jurisdiction: **City of Hermiston**

Local file number: **Utility Code Amend.**

Date of Adoption: **6/25/2007**

Date Mailed: **6/27/2007**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **3/26/2007**

☐ 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".

Amend zoning ordinance to change regulation of public utilities, changing them from conditional to permitted uses. Also adopt limited land use procedures into zoning ordinance.

Does the Adoption differ from proposal? Please select one

No

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location:

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19  
☒ ☒ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☒ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

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 # 001-07(15992)

**DLCD file No.** \_\_\_\_\_

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

N/A

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Local Contact: **Clint Spencer**

Phone: (541) 567-5521      Extension:

Address: 180 NE 2<sup>nd</sup> St

Fax Number: 541-567-5530

City: Hermiston

Zip: 97838-

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

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### **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](http://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](mailto: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](mailto:mara.ulloa@state.or.us) - ATTENTION: PLAN AMENDMENT SPECIALIST.

**ORDINANCE NO. 2138**

AN ORDINANCE AMENDING CHAPTER 157 OF THE CITY OF HERMISTON CODE OF ORDINANCES TO AMEND UTILITY FACILITY PERMITTING.

THE CITY OF HERMISTON DOES ORDAIN AS FOLLOWS:

(New language is in italics and underlined; existing language to be deleted is in brackets.)

Chapter 157 of the Hermiston Code of Ordinances is hereby amended to read as follows:

**SECTION 1.** Subsection 157.004 of Chapter 157 of the Hermiston Code of Ordinances is amended to read:

§157.004 STATE AND FEDERAL REGULATIONS.

All development within the city shall adhere to *(A)-(D) below, but these standards shall not be approval standards for land use decisions, limited land use decisions or expedited land divisions.*

- (A) State and federal air quality standards;
- (B) State and federal clean water regulations;
- (C) State noise regulations;
- (D) State and federal solid and hazardous waste regulations.

**SECTION 2.** Subsection 157.025(A) of Chapter 157 of the Hermiston Code of Ordinances is amended by adding Subsection (7) to read:

§157.025 SINGLE-FAMILY RESIDENTIAL ZONE (R-1).

(A) Uses permitted outright. In a R-1 zone, only the following uses and their accessory uses are permitted outright:

- (1) Single-family dwelling;
  - (2) Residential care home;
  - (3) Home occupations;
  - (4) Accessory structures;
  - (5) Family day care provider;
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(6) Manufactured dwelling placed on an individual lot outside of a manufactured dwelling park and subject to requirements of 157.144. This requirement shall not be construed as abrogating a recorded restrictive covenant.

(7) Utility facilities as defined in Hermiston Zoning Ordinance Section 157.143.

**SECTION 3.** Subsection 157.025(B) of Chapter 157 of the Hermiston Code of Ordinances is amended by deleting Subsection(10) to read:

§157.025(B) Conditional uses permitted. In a R-1 zone, the following uses and their accessory uses are permitted when authorized in accordance with the requirements of 157.205 through 157.210 of this chapter:

- (1) Cemetery;
- (2) Church;
- (3) Community building;
- (4) Day care home;
- (5) Golf course and other open land recreational use, but excluding intensive commercial amusement use such as "pitch and putt" golf course, driving range, automobile race track or amusement park;
- (6) Governmental structure or land use including but not limited to a public park, playground, recreational building, fire station, library, museum, or civic center;
- (7) Hospital or nursing home;
- (8) Mortuary;
- (9) Private utilities including electric power substations, telephone exchanges, television, radio or microwave transmission facilities; and
- (10) [Public utilities including wells, water storage tanks and sanitary sewer pump stations; and
- (11)] Schools: nursery or preschool, primary, elementary, junior or senior high, college.

**SECTION 4.** Section 157.143 of Chapter 157 of the Hermiston Code of Ordinances is amended to read:

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§157.143 UTILITY FACILITIES.

Public [or] and private utility facilities including but not limited to power transmission lines, major trunk pipelines and similar facilities and public and private wells, water storage tanks and treatment facilities, sanitary sewer pump stations and sanitary sewer treatment facilities, electric power substations, telephone exchanges and television, radio or microwave transmission facilities, but excluding underground sewer, water, gas, communication and power distribution lines and similar facilities serving uses located solely within Umatilla County, which are allowed in any zone

**SECTION 5.** Subsection 157.163(A) of Chapter 157 of the Hermiston Code of Ordinances is amended to read:

§157.163 IMPLEMENTING ACTION.

The following development shall fall within the scope of this subchapter and shall be required to comply with the requirements identified herein:

- (A) New residential, commercial [or], industrial or utility facility development;
- (B) Expansion of single-family or duplex residential development costing in excess of 30% of the assessed value of the improvements on the property;
- (C) Reconstruction of a single-family or duplex residential casualty loss costing in excess of 130% of the previously assessed value of the structure itself;
- (D) Expansion of multiple-family, commercial or industrial development costing in excess of 10% of the assessed value of the improvements on the property;
- (E) Reconstruction of multiple-family, commercial or industrial casualty loss in excess of 110% of the previously assessed value of the structure itself; and
- (F) Change of occupancies.

**SECTION 6.** Chapter 157 of the Hermiston Code of Ordinances is amended by adding a new section, §157.166, to read:

§157.166 LIMITED LAND USE DECISIONS.

All uses permitted outright by this chapter and subject to Section 157.160 - 165 shall be processed as limited land use decisions as defined in ORS 197.015(13). The approval process shall be as provided in ORS 197.195(1)-(5). The Hermiston Comprehensive Plan shall not be an approval standard for a limited land use decision. Approval shall be by the Planner following notice of the application and an opportunity to comment as required by ORS 197.763. Appeals of the Planner's decision shall be to the Hermiston City Council as

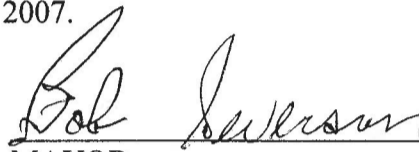
provided for in ORS 197.195(5), except that such appeals shall be on the record and shall follow the procedures in ORS 197.763.

**SECTION 7.** The findings of fact as adopted by the City Council on June 25, 2007 are incorporated herein by reference.

**SECTION 8.** This ordinance shall take effect on the thirtieth day after its enactment.

PASSED by the Common Council this 25<sup>th</sup> day of June 2007.

SIGNED by the Mayor this 25<sup>th</sup> day of June 2007.

  
MAYOR

ATTEST:

  
ASSISTANT CITY RECORDER

**BEFORE THE CITY COUNCIL  
FOR THE CITY OF HERMISTON**

An Application Initiated by	)	
The Hermiston City Council	)	
Pursuant to Hermiston Zoning	)	FINDINGS OF FACT AND
Ordinance ("HZO") 157.226 to	)	CONCLUSIONS OF LAW
Amend HZO 157.004, 157.025,	)	
157.143, and 157.163 and Add	)	
HZO 157.166	)	

**I. SUMMARY OF APPLICATION**

A. Amendment. The City has initiated an application to amend the Hermiston Zoning Ordinance ("HZO") by amending HZO 157.004, 157.025, 157.143, and 157.163, and by adding HZO 157.166 (collectively, "Amendment"). The Amendment constitutes a "land use regulation" as defined in ORS 197.015(12) because it is a zoning ordinance establishing standards for implementing a comprehensive plan.

B. Purpose. The purposes of the Amendment are the following:

1. Promote the health, safety, and welfare of the citizens of the City;
2. Implement Policies 2, 22, 28, and 29 of the Hermiston Comprehensive Plan ("Plan") to respond to evolving community needs and the provision of local government facilities and services;
3. Clarify the role of state and federal regulations in review of applications for land use decisions, limited land use decisions, and expedited land divisions;
4. Clarify terminology, definitions, zoning compliance requirements, and permissibility of utility facilities; and
5. Clarify applicability of and procedures for "limited land use decisions" under HZO.

C. Description. The provisions of the Amendment are described as the following:

1. Amend HZO 157.004 to clarify that state and federal regulations are not approval standards for land use decisions, limited land use decisions, or expedited land divisions.
2. Amend HZO 157.025 to delete "public utilities" as a conditional use and add "utility facilities" as a permitted use in the R-1 zoning district.
3. Amend HZO 157.143 to clarify that "utility facilities" include above and below ground facilities and publicly and privately owned utility facilities.
4. Amend HZO 157.163 to clarify that development of utility facilities is subject to the HZO.
5. Add HZO 157.166 to define permitted uses as limited land use decisions subject to approval by the Planner pursuant to ORS 197.195(1)-(5) and appeal to the Hermiston City Council, with any appeal subject to the procedures of ORS 197.763.

D. Proposed Text. The proposed text of the Amendment is set forth in Ordinance No. 2138 attached hereto and incorporated herein by reference.

E. Notice to DLCD. The City provided forty-five (45) days' notice of the Amendment to the Oregon Department of Land Conservation and Development ("DLCD") on March 26, 2007, pursuant to ORS 197.610 and OAR Chapter 660, Division 18.

## II. COMPLIANCE WITH APPLICABLE PROVISIONS OF THE PLAN

The Amendment will be in compliance with the Plan, specifically the following:

A. Policy 2. Policy 2 ("Planning Process") of the Plan states: "THE CITY OF HERMISTON WILL MONITOR AND UPDATE PERIODICALLY ITS COMPREHENSIVE PLAN AND IMPLEMENTING ORDINANCES TO RESPOND TO CHANGING CONDITIONS." Thus, the HZO is a "live" document that is subject to revision to meet various economic, political and technological events that occur over time. For example, the HZO must remain flexible and responsive to the citizens and reflect the changing form of the community. In addition, this policy requires the City to update the HZO in response to identified conditions.

In this case, the City has determined that existing regulations of the HZO relating to two separate regulatory areas (utility facilities and decision-making procedures) warrant additional clarification. First, the City has determined that, provided that utility facilities are subject to clear and objective standards of the HZO, they do not need to be subject to conditional use review and instead can be permitted in the R-1

zoning district. The Amendment proposes updates to HZO 157.025, HZO 157.143, and HZO 157.163 to implement this determination.

Moreover, the City has determined that existing decision-making provisions of the HZO warrant additional clarification to limit the role of state and federal regulations in review of land use applications and to identify the applicability of and procedures for "limited land use decisions." The Amendment proposes an update to HZO 157.004 and the addition of HZO 157.166 to implement this determination. Accordingly, the Amendment is in compliance with Policy 2.

B. Policy 22. Policy 22 ("Provision of Public Services and Facilities") of the Plan states: "THE CITY OF HERMISTON WILL PLAN FOR THE TIMELY AND EFFICIENT PROVISION OF A FULL COMPLEMENT OF URBAN SERVICES AND FACILITIES IN ALL DEVELOPED AND DEVELOPING AREAS WITHIN THE COMMUNITY." Currently, the HZO arguably lacks clear and objective standards for locating and developing utility facilities. As a result, the provision of utility services may be hindered as utility providers, the City, and City residents attempt to interpret the existing standards in relation to an application for a new utility facility. The Amendment rectifies this issue by providing clear and objective standards for locating and developing utility facilities, including water, sewer, and communication facilities. These clear and objective standards will expedite the consideration of applications for utility facilities, which will, in turn, allow for the timely and efficient provision of utility services throughout the community. Since utilities are one component of a full complement of urban services and facilities, the Amendment is in compliance with Policy 22. The specific provisions of the Amendment that implement this policy are HZO 157.025, 157.143, and 157.163.

C. Policy 28. Policy 28 ("Local Government Services and Facilities") of the Plan states: "THE CITY OF HERMISTON WILL PROMOTE ADEQUATE AND EFFICIENT PROVISIONS OF LOCAL GOVERNMENT SERVICES AND FACILITIES." Currently, the HZO arguably lacks clear and objective standards for locating and developing utility facilities. As a result, the provision of utility services may be hindered as utility providers, the City, and City residents attempt to interpret the existing standards in relation to an application for a new utility facility. The Amendment rectifies this issue by providing clear and objective standards for locating and developing utility facilities, including water, sewer, and communication facilities. These clear and objective standards will expedite the consideration of applications for utility facilities, which will, in turn, promote adequate and efficient provision of utility services throughout the community. Since utilities are one component of local government services and facilities, the Amendment is in compliance with Policy 28. The specific provisions of the Amendment that implement this policy are HZO 157.025, 157.143, and 157.163.

D. Policy 29. Policy 29 ("Private Utilities") of the Plan states: "THE CITY OF HERMISTON WILL ENCOURAGE AND FACILITATE THE ADEQUATE AND EFFICIENT PROVISION OF PRIVATE UTILITIES INCLUDING ELECTRICAL, NATURAL GAS, AND TELEPHONE SERVICE." Currently, the HZO arguably lacks clear and objective standards for locating and developing utility facilities, including private utilities. As a result, the provision of private utility services may be hindered as utility providers, the City, and City residents attempt to interpret the existing standards in relation to an application for a new utility facility. The Amendment rectifies this issue by providing clear and objective standards for locating and developing utility facilities, including private utilities. These clear and objective standards will expedite the consideration of applications for utility facilities, which will, in turn, encourage and facilitate adequate and efficient provision of utility services, including private utilities. Thus, the Amendment is in compliance with this policy. The specific provisions of the Amendment that implement this policy are HZO 157.025, 157.143, and 157.163.

### III. COMPLIANCE WITH STATEWIDE PLANNING GOALS

A. Statewide Planning Goals Not Applicable. ORS 197.175(2)(b) requires that cities and counties enact land use regulations to implement their acknowledged comprehensive plans. Comprehensive plans, in turn, must satisfy the Statewide Planning Goals (the "Goals") in order to be acknowledged. ORS 197.175(2)(a).

As described in II. above, the Plan, which is acknowledged, contains a basis for the Amendment. Thus, the Amendment is not subject to review for compliance with the Goals.

### IV. COMPLIANCE WITH APPLICABLE STATUTES AND ADMINISTRATIVE RULES

Notwithstanding that the Amendment is exempt from complying with the Goals, applicable statutes and administrative rules continue to apply to the Amendment.

A. Applicable Statutes. The Amendment is in compliance with applicable statutes, including ORS 197.610-.625, which establish procedures for amending land use regulations and to the provisions of ORS Chapter 197 relating to limited land use decisions.

B. Applicable Administrative Rules. The Transportation Planning Rule ("TPR") applies to adoption of new land use regulations. OAR 660-012-0060(1). The TPR requires that a city or county implement mitigation measures when new land use regulations would

significantly affect transportation facilities. The first step in the analysis is to determine if a significant effect exists. This determination includes existing facilities in the City's Transportation System Plan ("TSP") which would be in place by the time new uses might be expected. If there is no significant effect, the TPR is not applicable.

The Amendment will not have a significant effect because it does not authorize new uses. Nevertheless, the City cannot find a lack of significant effect for new uses established or existing uses expanded after the planning period of the TSP because OAR 660-012-0060(2)(c) could be violated.

Thus, the next step is to determine whether, with mitigation, a significant effect can be avoided. OAR 660-012-0060(1) authorizes four mitigation measures. OAR 660-012-0060(1)(a) provides for allowed land uses to be limited in order to be consistent with an effected facility's planned function, capacity and performance standard. HZO 157.164 requires that a use's traffic generation be mitigated by constructing and dedicating street right-of-way adjacent to the use. This mechanism should effectively avoid a significant effect on transportation facilities. Thus, the Amendment is in compliance with the TPR.