



Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

10/29/2013

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 006-13

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

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Tuesday, November 12, 2013

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



FORM 2

DLCD

Notice of Adoption

This Form 2 must be mailed to DLCD within 20-Working Days after the Final Ordinance is signed by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

☐ In person ☐ electronic ☐ mailed

DEPT OF

OCT 23 2013

LAND CONSERVATION
AND DEVELOPMENT
For Office Use Only

Jurisdiction: City of Hermiston

Local file number:

Date of Adoption: 11/13/13

Date Mailed: 10/21/13

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? ☒ Yes ☐ No Date: 9/3/13☐ 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".

Amendment to Hermiston Zoning Ordinance Section 157.004

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 |
| <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 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...

35-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. 006-13 (19995) [17647]

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

None

Local Contact: Clint Spencer, City Planner

Phone: (541) 567-5521 Extension: 5011

Address: 180 N.E. Second Street

Fax Number: 541 - 567-5530

City: Hermiston

Zip: 97838

E-mail Address: cspencer@hermiston.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 20 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light green paper if available.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated twenty-one (21) days from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit one complete paper copy via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

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

9. **Need More Copies?** Please print forms on 8½ -1/2x11 green paper only if available. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

<http://www.oregon.gov/LCD/forms.shtml>

Updated December 6, 2012



Planning Department

180 NE 2nd Street

Hermiston, OR 97838

Phone: (541)567-5521

Fax: (541)567-5530

planning@hermiston.or.us

To: Mayor and City Council
From: Clinton Spencer, City Planner *CS*
Subject: Text Amendment to 157.004
Date: October 7, 2013

On the advice of the city's land use counsel, a small text amendment is proposed to the zoning ordinance. The proposed amendment is to Section 157.004 which requires compliance with state and federal laws. In recent years the city has issued building permits or other permits for activities which are not regulated under the city codes at all, but are in some cases regulated or prohibited by state or federal rules. The text amendment proposed by counsel will assist the city in applying all relevant rules in the permit issuance process.

The amendment proposed by the city's attorney is as follows:

§157.004 State and Federal Regulations

All development within the city shall adhere to subsections (A) through ~~(D)~~ (E) of this section, but these standards shall not be approval standards for land use decisions, limited land use decisions or expedited land divisions **but they shall govern all other city approvals necessary for building permits and to establish a use:**

- (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.
- (E) In addition to the requirements of the zoning ordinance, all uses and development must comply with all other applicable city, regional, state, and federal regulations **and laws**.
- (F) Any use not authorized by this section is prohibited unless permitted outright or as a conditional use or determined to be similar to other uses in a zone by the Planning Commission.

Attached to this memo is a summary and set of findings of fact prepared by Attorney Mike Robinson. Staff recommends that the city council adopt the amendment and incorporate the new language into the zoning ordinance.

PROPOSED TEXT AMENDMENT

HZO Section 157.004, "State and Federal Regulations".

All development within the city shall adhere to subsections (A) through ~~(D)~~ (E) of this section, but these standards shall not be approval standards for land use decisions, limited land use decisions or expedited land divisions **but they shall govern all other city approvals necessary for building permits and to establish a use:**

- (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.
- (E) In addition to the requirements of the zoning ordinance, all uses and development must comply with all other applicable city, regional, state, and federal regulations **and laws.**
- (F) Any use not authorized by this section is prohibited unless permitted outright or as a conditional use or determined to be similar to other uses in a zone by the Planning Commission.

**In the Matter of a Legislative Text
Amendment to Hermiston Zoning
Ordinance (“HZO”) Section 157.004,
“State and Federal Regulations”**

**Proposed Findings and Facts
and Conclusion of Law
Approving the Text
Amendment**

The City of Hermiston (the “City”) City Council has initiated an amendment to the City’s acknowledged land use regulations, the Hermiston Zoning Ordinance (“HZO”), pursuant to HZO 157.226 (A), “Authorization to Initiate Amendments”. This amendment is a text amendment and is, therefore, a legislative amendment because it establishes new law. HZO 157.226 (B)(1).

The City proposes to amend HZO section 157.004 “State and Federal Regulations”, in two (2) ways as follows (deletions are shown by a strikeout line and additions are shown in bold.):

- ### 3. Satisfaction of Applicable Approval Criteria.

A post-acknowledgement amendment to the City's acknowledged land use regulations is subject to compliance with applicable Statewide Planning Goals ("Goals"), applicable Oregon Administrative Rules (the "OAR"s) and HZO 157.226, "Amendments".

A. Applicable Goals.

This amendment does not affect any substantive Goals, therefore, Goals 3-19 are inapplicable.

a. Goal 1, "Citizen Involvement".

Finding: The City can find that Goal 1 is satisfied because the City's acknowledge citizen participation program has been implemented through local notice requirements and notice to DLCD at its Salem office 35 days prior to the initial evidentiary hearing on the text amendment.

The City can find that Goal 1 is satisfied.

b. Goal 2, "Land Use Planning".

Finding: Goal 2 requires an adequate factual base for the proposed text amendment. The City finds that the proposed text amendment is necessary to make clear that the City requires compliance with all applicable city, regional, state and federal regulations (rules adopted by administrative agencies) and laws (ordinances or statutes adopted by a legislative body). HZO 157.004 is not an approval standard for land use decisions, limited land use decisions or expedited land divisions but guides the City's approval for other requirements, such as building permits and authorization of uses.

The City can find that Goal 2 is satisfied.

B. Applicable Oregon Administrative Rules.

Finding: The City can find that only the Transportation Planning Rule, OAR Chapter 660, Division 012, is applicable to this text amendment. The Transportation Planning Rule is satisfied because this text amendment will not create additional trips. The City can find the OAR 660-012-0060(1) is satisfied because the proposed amendment to the City's acknowledged land use regulations does not "significantly affect" an existing or planned transportation facility because it will not generate addition trips.

The City can find that the TPR is satisfied and no other applicable administrative rules apply.

C. Applicable HZO Criteria, HZO 157.226, “Amendments”.

a. HZO 157.226(A), “Authorization to Initiate Amendments.”

Finding: The City can find that the text amendment has been initiated by the Hermiston City Council, by motion.

b. HZO 157.226(B)(1).

Finding: The City can find that the proposed amendment to the acknowledged land use regulations is a text amendment. The amendment is classified as a legislative amendment because it makes new law and does not apply to a discreet area of land. Therefore, it is not a quasi-judicial amendment.

c. HZO 157.226(F) “Amendment Hearings”.

Finding: The City can find that this criterion is satisfied. The Hermiston Planning Commission conducted a public hearing on the proposed amendment on October 9, 2013. The Planning Commission conducted the hearing in accordance with the public hearing procedures in HZO section 157.229. Further, the City can find that the city provided notice of the proposed text amendment to DLCD 35 days prior to the initial evidentiary hearing as required by ORS 197.610(1) and OAR 660-018-0020(1). The City can also find that the reference to 45 days in this criterion is no longer accurate because the statute and administrative rule require that notice be provided 35 days prior to the initial evidentiary hearing and notice of adoption be provided within 20 working days after adoption. The City can find that notice of adoption of the text amendment can be given to DLCD within 20 working days of its adoption. A PAPA is considered adopted on the date that the Mayor signs the written order.

4. Conclusion.

For the reasons contained herein, the City can find that applicable approval criteria have been satisfied, and the proposed legislative text amendment can be adopted.

ORDINANCE NO. 2207

AN ORDINANCE AMENDING CHAPTER 157 OF THE CITY OF HERMISTON CODE OF ORDINANCES TO AMEND REQUIREMENTS FOR COMPLIANCE WITH STATE AND FEDERAL REGULATIONS.

THE CITY OF HERMISTON DOES ORDAIN AS FOLLOWS:

SECTION 1. §157.004 of the Hermiston Code of Ordinances is hereby amended as follows (*italicized text to be added*):

§157.004 State and Federal Regulations

All development within the city shall adhere to subsections (A) through ~~(D)~~ (E) of this section, but these standards shall not be approval standards for land use decisions, limited land use decisions or expedited land divisions *but they shall govern all other city approvals necessary for building permits and to establish a use:*

- (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.
- (E) In addition to the requirements of the zoning ordinance, all uses and development must comply with all other applicable city, regional, state, and federal regulations *and laws*.
- (F) Any use not authorized by this section is prohibited unless permitted outright or as a conditional use or determined to be similar to other uses in a zone by the Planning Commission.

SECTION 2. The findings of fact as adopted by the City Council on October 14, 2013 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 14th day of October, 2013.

SIGNED by the Mayor this 14th day of October, 2013.


MAYOR

ATTEST:


CITY RECORDER

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et
97838

CERTIFIED MAIL™



7013 0600 0000 0657 0559



DEPT OF

OCT 23 2013

LAND CONSERVATION
AND DEVELOPMENT

ATTN.: Plan Amendment Specialist
Dept. of Land Conservation & Development
635 Capitol Street NE, Suite 150
Salem, OR 97301- 2540