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

Date: May 28, 2015
Jurisdiction: Polk County
Local file no.: LA 15-01
DLCD file no.: 002-15

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 05/21/2015. 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 51 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
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: Polk County
Local file no.: LA 15-01
Date of adoption: 5/20/2015 Date sent: 5/21/2015
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): 4/1/2015
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): Austin McGuigan
Phone: 503-623-9237 E-mail: mcguigan.austin@co.polk.or.us
Street address: 850 Main St. City: Dallas Zip: 97338-

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:

For a change to a comprehensive plan map:
Identify the former and new map designations and the area affected:

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

Polk County adopted a temporary moratorium on the establishment of marijuana facilities (which are not currently enumerated as a permitted use in any zone) within unincorporated Polk County

For a change to a zoning map:
Identify the former and new base zone designations and the area affected:

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<th>Change from</th>
<th>to</th>
<th>Acres:</th>
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Identify additions to or removal from an overlay zone designation and the area affected:

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<th>Overlay zone designation:</th>
<th>Acres added:</th>
<th>Acres removed:</th>
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List affected state or federal agencies, local governments and special districts: Oregon Health Authority, Oregon Liquor Control Commission

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.

Administrative Rules governing the process by which marijuana facilities can operate have not been finalized. Pursuant to ORS 197.520(1)(c), Polk County adopted a temporary moratorium on the establishment of marijuana facilities within unincorporated Polk County for the preservation of public health, safety and welfare until the County has had more time to determine what land use regulations could be imposed.
BEFORE THE BOARD OF COMMISSIONERS
FOR THE COUNTY OF POLK, STATE OF OREGON

In the Matter of Enacting a Temporary Moratorium on Medical and Recreational Marijuana Facilities within the Jurisdiction Of Polk County, Oregon and Declaring an Emergency

ORDINANCE NO. 15-01

THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Section 1. Authority. This Ordinance is adopted pursuant to the powers of Polk County under ORS 197.520, ORS 203.035, the Oregon Constitution, and the federal Controlled Substances Act, 21 U.S.C. § 801 et seq.

Section 2. Purpose. The purpose of this Ordinance is to impose a temporary moratorium in accordance with ORS 197.520 on the establishment of new and expansion of existing marijuana facilities in any area within the jurisdiction of Polk County. The purpose of the temporary moratorium is to delay development of County land use regulations for recreational and medical marijuana until the state regulations have been adopted. The moratorium will therefore allow the County to develop comprehensive zoning regulations that are consistent with state regulations for both recreational and medical marijuana. Furthermore, by waiting until the state regulations are adopted, the County seeks to avoid adopting land use regulations that would have to be immediately revisited to comply with state regulations.

Section 3. History. In the coming months, Oregon will gain a second regulatory program for marijuana. The first is an existing program for medical marijuana, which was approved by the voters in 1998 and is governed by the Oregon Medical Marijuana Act ("OMMA"), codified at ORS 475.300 et seq. The Oregon Health Authority administers the OMMA. In 2013, House Bill 3460 required the Oregon Health Authority to adopt regulations for the registration of medical marijuana dispensaries. Shortly thereafter, Senate Bill 1531-C was enacted, which specifically allowed local governments to adopt a temporary moratorium on the operation of medical marijuana on April 9, 2014 (Ordinance No. 2014-5). That moratorium expired on May 1, 2015.

Oregon’s second marijuana program was approved by the voters in November 2014 through Ballot Measure 91, which legalizes recreational marijuana. The recreational marijuana program will be administered by the Oregon Liquor Control Commission ("OLCC") in accordance with
Measure 91. OLCC is currently developing rules to implement the program, which will go into effect initially on July 1, 2015, with the allowance of personal use and possession of recreational marijuana and then on January 4, 2016, when OLCC must begin accepting license applications to produce and sell marijuana. OLCC’s rules will thus likely be adopted by January 4, 2016. In addition to OLCC’s rules, the state legislature has proposed several bills, which if adopted may affect state law and regulation for both the recreational and medical marijuana programs as well as local government authority to regulate the programs.

In sum, Oregon’s two marijuana programs will be administered by two different state agencies under two separate and distinct regulatory frameworks. The regulations implementing recreational marijuana are not yet developed, and regulations implementing medical marijuana will likely be amended by the current state legislature. However, regulations affecting both programs should be solidified in the coming months.

Section 4. Moratorium Declared. The establishment of new and expansion of existing medical marijuana facilities and recreational marijuana facilities shall be prohibited within the unincorporated boundaries of Polk County. As used in this Ordinance, “marijuana facilities” means areas indoors or outdoors used for growing, cultivating, dispensing, selling, processing, producing, or wholesaling marijuana whether for medical or recreational purposes.

In support of this temporary moratorium, the County adopts the findings in the Staff Report dated May 20, 2015, which is attached hereto as Exhibit A and incorporated herein by this reference.

Section 5. Duration of Moratorium. The moratorium imposed by this Ordinance shall be effective until September 17, 2015. The moratorium may be extended by Board Order in accordance with ORS 197.520(4) following a public hearing. The County shall provide at least 14 days’ notice of any hearing on an extension of this moratorium. Notice shall be sent to the Department of Land Conservation and Development; to those who have testified either orally or in writing at public hearing on this Ordinance; and to those who have submitted a written request to receive notice. Notice shall be published in newspapers of general circulation in the County as well as on the County’s website.

Section 6. Enforcement. This Ordinance shall be enforceable under the Polk County Enforcement Ordinance. Violators of this Ordinance are subject to the penalties provided in the Polk County Enforcement Ordinance.

Section 7. Remedies Not Exclusive. The remedies available under the Polk County Enforcement for a violation of the moratorium imposed by this Ordinance are not exclusive of any other remedies available under any applicable federal, state or local law. The County may, in its discretion, seek cumulative remedies for a violation of the moratorium imposed by this Ordinance.
Section 8. Severability. If for any reason any court of competent jurisdiction holds any portion of this Ordinance to be invalid, and such holding is upheld on any appeal, such portion shall be deemed a separate, distinct and independent portion. Any such holding shall not affect the validity of the remaining portions.

Section 9. Scrivener's Errors. Any scrivener's errors in this Ordinance may be corrected by order of the Board of County Commissioners.

Section 10. Emergency. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance shall take effect immediately upon adoption.

Dated: May 20, 2015 at Dallas, Oregon

POLK COUNTY BOARD OF COMMISSIONERS

Mike Ainsworth, Chairman

Craig Pope, Commissioner

Jennifer Wheeler, Commissioner

Approved as to Form:

County Counsel: Catherine Merrell