



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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Fax (503) 378-5518

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NOTICE OF ADOPTED AMENDMENT

04/23/2014

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

FROM: Plan Amendment Program Specialist

SUBJECT: Polk County Plan Amendment
DLCD File Number 003-14

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: Wednesday, May 07, 2014

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: Austin McGuigan, Polk County
Jon Jinings, DLCD Community Services Specialist
Angela Lazarean, DLCD Regional Representative
Katherine Daniels, DLCD Farm/Forest Specialist

<paa> YA



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

FOR DLCD USE
File No.: 003-14 (20258)
[17848]
Received: 4/16/2014

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 14-03**

Date of adoption: 4/16/2014

Date sent: 4/16/2014

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): 3/16/2014

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.
- Change from _____ to _____ acres. A goal exception was required for this change.
- 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 Code of Ordinances Chapter 90

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

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.

Polk County inacted a temporary moratorium on the establishment of medical marijuana dispensaries within the unincorporated areas of Polk County consistant with Oregon Senate Bill 1531.

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**BEFORE THE BOARD OF COMMISSIONERS
FOR THE COUNTY OF POLK, STATE OF OREGON**

In the Matter of Enacting an Ordinance)
Imposing a Moratorium on the Operation)
of Registered Medical Marijuana Facilities)
within the Unincorporated Area of)
Polk County, Oregon)

ORDINANCE NO. 14-03

THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Section 1. Authority. SB 1531C (2014 Legislative Session) and ORS 475.314 as amended, expressly authorize units of local government, including counties, to adopt an ordinance that enacts a moratorium on the operation of registered medical marijuana facilities in areas subject to the jurisdiction of said unit of local government.

Section 2. Enactment. Polk County Code of Ordinances is amended by the enactment of an amendment to Chapter 90, which reads in full as follows:

- See Attached Exhibit A


Section 3. Severability. Should any section or portion of this ordinance be held unlawful or unenforceable by any court of competent jurisdiction, such decision shall apply only to the specific section, or portion thereof, directly specified in the decision. All other sections or portions of this ordinance shall remain in full force and effect.


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4 **Section 4. Notice to OHA.** A copy of this ordinance shall be forwarded to the
5 Oregon Health Authority.
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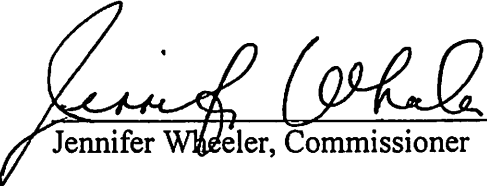
7 **Section 5. Emergency.** This ordinance being immediately necessary to protect
8 public safety and property, an emergency is declared, and this ordinance takes effect upon its
9 adoption.
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12 Dated: April 16, 2014 at Dallas, Oregon
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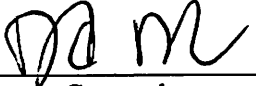
15 POLK COUNTY BOARD OF COMMISSIONERS
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20 _____
21 Craig Pope, Chairman
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26 Mike Ainsworth, Commissioner
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31 Jennifer Wheeler, Commissioner
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33 Approved as to Form:
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36 _____
37 County Counsel
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39 First Reading: April 16, 2014
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41 Second Reading: N/A
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43 Recording Secretary: Heather Merrill
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EXHIBIT A

90.10 MORATORIUM – MEDICAL MARIJUANA FACILITIES

- A. PCCO Section 90.10 is enacted in compliance with SB 1531C (2014 Legislative Session), and is intended to impose a moratorium on the operation of registered medical marijuana dispensaries.
- B. Within the unincorporated area of Polk County, Oregon, the use of any building, structure, location, premises or land for operation of a registered medical marijuana facility (including facilities that dispense pursuant to ORS 475.314) is prohibited until May 1, 2015, or until this code section is repealed or invalidated, whichever occurs first.

MEMORANDUM

TO: Board of Commissioners
FROM: Austin McGuigan, Community Development Director
DATE: April 7, 2014
SUBJECT: Temporary Moratorium on Medical Marijuana Dispensaries.

RECOMMENDATION:

Planning staff recommends that the Board of Commissioners consider imposing a temporary moratorium on the establishment of medical marijuana dispensaries in unincorporated Polk County.

ISSUE:

Should the Board of Commissioners impose a temporary moratorium on the establishment of medical marijuana dispensaries in unincorporated Polk County?

I. BACKGROUND

The citizens of the State of Oregon passed a state proposition in 2013 which permits medical marijuana dispensaries. Senate Bill (SB) 1531C (2014 Legislative Session) and ORS 475.314 as amended authorize local governments, including counties, to adopt an ordinance that enacts a moratorium on the operation of registered medical marijuana dispensaries until May 1, 2015, if the moratorium is enacted prior to May 1, 2014. SB 1531C also allows local governments to reasonably regulate medical marijuana dispensaries for time, place and manner.

Under the provisions of SB 1531C, Polk County could impose a temporary moratorium on the establishment of medical marijuana dispensaries in unincorporated Polk County until the County has had more time to determine what land use regulations, if any, could be imposed. If enacted prior to May 1, 2014 the moratorium could be imposed through May 1, 2015. The legislative amendment process would allow an opportunity for public review and input on the proposed temporary moratorium.

II. COMMENTS RECEIVED

No comments have been received as of the writing of this staff report.

III. CRITERIA FOR LEGISLATIVE AMENDMENTS

A legislative amendment to the text of the Polk County Zoning Ordinance (PCZO) may be approved provided that the request is based on substantive information that supports the change. In amending the PCZO, Polk County shall demonstrate compliance with PCZO 115.060. The applicable review and decision criteria are listed in bold, followed by Staff's analysis and findings.

- (A) **Compliance with Oregon Revised Statutes, and the statewide planning goals and related administrative rules. If an exception to one or more of the goals is necessary, Polk County shall adopt findings which address the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4; [PCZO 115.060(A)]**
- (B) **Conformance with the Comprehensive Plan (PCCP) goals, policies and intent, and any plan map amendment criteria in the plan; [PCZO 115.060(B)]**
 - 1. **To develop a timely, orderly and efficient arrangement of public facilities and services to serve as framework for urban and rural development. [PCCP Section 2, Element J, Goal 1]**
 - 2. **To support the provision of needed public services for all residents of Polk County. [PCCP Section 2, Element J, Goal 2]**
 - 3. **To plan the efficient and economic provision of public facilities and services for the people of Polk County. [PCCP Section 2, Element J, Goal 3]**
- (C) **That the proposed change is in the public interest and will be of general public benefit; and [PCZO 115.060(C)]**
- (D) **Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land. [PCZO 115.060(D)]**

Staff Findings: Under Oregon Revised Statute (ORS) 475.314, facilities registered with the State to dispense medical marijuana were permitted in zones that allow commercial uses, including agricultural zones. Senate Bill (SB) 1531 was introduced to the Oregon Legislature in 2014 to allow cities and counties to regulate, restrict or prohibit the registration of medical marijuana facilities allowed under ORS 475.314. By the end of the 2014 legislative session, a compromise was reached allowing cities and counties to enact a moratorium on the operation of registered medical marijuana facilities until May 1, 2015 so long as a moratorium is enacted no later than May 1, 2014.

As a result of the passage of SB 1531, Polk County is considering imposing a temporary moratorium as permitted in the bill and under general law. The proposed moratorium does not amend the text of either the Polk County Zoning Ordinance or Comprehensive Plan. Nor does the proposed moratorium amend the Polk County Zoning Map or Comprehensive Plan Map.

Oregon Senate Bill 1531C Section 3. (1) states: “Notwithstanding ORS 475.314 and section 2 of this 2014 Act, the governing body of a city or county may adopt an ordinance enacting a moratorium on the operation of registered medical marijuana facilities until May 1, 2015, in the area subject to the jurisdiction of the city or county if the moratorium is enacted no later than May 1, 2014.”

Because the above quoted section allows a local jurisdiction to enact a moratorium outright, such a moratorium is not a land use decision. Additionally, the above section of SB 1531 does not require any findings of compliance with any State or local land use regulation in order to enact the moratorium. Therefore, the adoption of this ordinance fits the definition in ORS 197.015(10)(b) of what is not a land use decision.

Citizen involvement is important to Polk County. As a result, Polk County Planning has reviewed the proposed moratorium and is providing its recommendation to the Polk County Board of Commissioners through a public hearing process. Notice of the public hearing before the Board of Commissioners was provided to the Oregon Department of Land Conservation and Development on March 11, 2014 and published in the local Itemizer Observer newspaper on March 26, 2014. Staff has not received any comments as of the writing of this staff report.

Oregon Administrative Rules governing the process by which medical marijuana dispensary businesses can operate have not been finalized by the Oregon Health Authority. Unregulated operation of medical marijuana dispensaries in unincorporated Polk County presents the potential for health and safety risks to the citizens of the County. In order to protect the public health, safety and welfare and preserve the character of the County's neighborhoods and commercial areas where medical marijuana dispensaries might be located, Polk County could impose a temporary moratorium on the establishment of medical marijuana dispensaries in Polk County Code of Ordinance (PCCO) Chapter 90 until the County has had more time to determine what land use regulations could be imposed. If enacted prior to May 1, 2014 the moratorium could be imposed through May 1, 2015.

The Polk County zoning ordinance does not specifically enumerate the medical marijuana dispensary use in any zone. After the County has had time within the period of the moratorium to consider potential land use regulations, Polk County could choose to apply the legislative land use process to consider regulatory standards and zoning restrictions on medical marijuana dispensaries. At that time, Polk County would need to adopt findings addressing the standards listed in Polk County Zoning Ordinance Chapter 115.060.

Based on the findings discussed above, the proposed ordinance to enact a temporary moratorium on the establishment of medical marijuana dispensaries in unincorporated Polk County through May 1, 2015 would not be a land use decision, but would be in the public interest and of general public benefit.

IV. CONCLUSION

Based on the findings above, Staff concludes that the proposed ordinance amending Chapter 90 of the Polk County Code of Ordinances would not be a land use decision.

BOARD OF COMMISSIONERS ACTION:

After opening the public hearing and receiving testimony, the Board of Commissioners options include the following:

1. Determine that a temporary moratorium on medical marijuana dispensaries in unincorporated Polk County would be in the public interest and of general public benefit and adopt an ordinance imposing a temporary moratorium through May 1, 2015; or
2. Other.

FISCAL IMPACTS:

Fiscal impacts to Polk County include staff time necessary to prepare the notice, staff reports, and ordinance.

ATTACHMENTS:

A - Ordinance 14-03