

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150 Salem, Oregon 97301-2540 Phone: (503) 373-0050

Fax: (503) 378-5518 www.oregon.gov/LCD



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

Date: May 08, 2015

Jurisdiction: City of Winston

Local file no.:

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 05/01/2015. 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 less than 35 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.

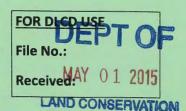
DLCD Contact

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

DLCD FORM 2



TO A COMPREHENSIVE PLAN OR LAND USE REGULATION



Local governments are required to send notice of an adopted change to a comprehensive plan or land use regularities 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 WINSTON

Local file no.: N/A

Date of adoption: 4/27/2015 Date sent: 4/29/2015

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): 3/20/2015

No

Is the adopted change different from what was described in the Notice of Proposed Change? If yes, describe how the adoption differs from the proposal:



No

Adopted text to Zoning Ordinance is essentially the same; text modified slightly for item dd. (i) through (v) on page 5 through public hearing processes. Remainder of text is unchanged from Notice of Proposed Amendment.

Local contact (name and title): Lisa Hawley, Planner & David Van Dermark, City Manager

Phone: 541-679-6739 E-mail: lahawley@co.douglas.or.us &

david.vandermark@cityofwinston.org

Street address: 201 NW Douglas Blvd City: Winston Zip: 97496-

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:

N/A

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): N/A

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:

Modified WZO Section 1.020 to add two new definitions

Modified WZO Section 4.140.1 to add MMF & its assoc. standards as a use permitted outright in C-G zone

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:

Location of affected property (T, R, Sec., TL and address):

List affected state or federal agencies, local governments and special districts: Those notified of proposal were: Douglas County Public Works, Building & Planning Depts, Deputy Fire Marshall, Winston-Dillard Fire Dist, Winston-Dillard Water Dist, ODOT Region 3, City of Winston (Public Works, Sewer & Police), Winston-Dillard School Dist, SHPO and Umpqua Transit

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.

Copy of City Council staff report, dated April 21, 2015 is attached to this DLCD notice, but referenced attachments are not included.

ORDINANCE NO. 668

AN ORDINANCE AMENDING THE CITY OF WINSTON ZONING ORDINANCE FOR THE PROVISION OF MEDICAL MARIJUANA FACILITIES AND DECLARING AN EMERGENCY

Whereas, the City of Winston Planning Commission held one workshop on April 8, 2015 and held a public hearing on April 15, 2015, and whereas the Winston City Council held a workshop on April 24, 2015, and whereas a public hearing was held on April 27, 2015 before the City Council to consider the following legislative amendments:

Legislative amendments to the Winston Zoning Ordinance to add language to address the establishment of medical marijuana facilities, which includes incorporating state siting standards for registration of medical marijuana facilities and applying additional land use standards necessary to ensure public safety and address consistency with permitted uses in zones in which the facilities may be located. The amendments will modify Section 1.020 to add two new definitions [medical marijuana facilities (MMF) and person responsible for medical marijuana facility (PRF)] and will modify Section 4.140.1 to add medical marijuana facility and its associated statutory and local standards as a use permitted outright in the City's (C-G) General Commercial zone.

Whereas, after reviewing the recommendation of the Planning Commission and conducting a public hearing on April 27, 2015, and

Whereas, amendments to the City of Winston Zoning Ordinance are needed in order to address the provision of medical marijuana facilities within the jurisdictional boundaries of Winston; and

Whereas, the 2014 Legislature enacted SB 1531, which permitted local jurisdictions to enact a moratorium on medical marijuana facilities within their jurisdictions to provide additional time to address the regulation and siting of the facilities. The Winston City Council adopted an Ordinance declaring such a moratorium on April 21, 2014, with the moratorium effective until May 1, 2015; and

Whereas, this legislative amendment process has been expedited to have the amendments to permit medical marijuana facilities approved and adopted by the City prior to expiration of the City's moratorium on May 1, 2015.

NOW THEREFORE, THE CITY OF WINSTON HEREBY ORDAINS AS FOLLOWS:

SECTION ONE: FINDINGS OF FACT

- A. A public hearing on the proposed legislative amendments to the Zoning Ordinance text was held before the Planning Commission on April 15, 2015. Opportunity was provided for public participation during the hearing and the Planning Commission was provided written comment and oral testimony for their consideration.
- B. The Planning Commission forwarded a recommendation to City Council to adopt the proposed legislative amendments, which included several proposed revisions.

- C. A City Council conducted a public hearing on the proposed legislative amendments on April 27, 2015. Opportunity was provided for public participation during the hearing.
- D. The City Council accepted the recommendation of the Planning Commission with one modification to the proposed text of the amendments.
- E. On the basis of the facts contained in the record, the City Council finds there is sufficient justification and need to accept the Planning Commission recommendation and adopts as its own the Findings of the Staff Reports of the Planning Commission, which are included hearing by this reference.

SECTION TWO: AMENDING ZONING ORDINANCE TEXT.

The amendments to the Winston Zoning Ordinance Text are hereby attached to this ordinance and identified as Exhibit A, Adoption Draft dated April 27, 2015, and by this reference made part of this ordinance. This adoption draft has the same contents as the Third Draft, dated April 21, 2015, presented at the City Council hearing, except for the one approved modification to the proposed text and the updated cover sheet and footers to acknowledge adoption.

SECTION THREE: EFFECT OF AMENDMENT.

Ordinance No. 590 (Winston Zoning Ordinance) heretofore and herein amended; remains in full force and effect.

<u>SECTION FOUR: EMERGENCY</u>. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Ordinance takes effect on its passage.

First reading before the City Council on the 27th day of April, 2015.

Second reading and adoption by the City Council on the 27th day of April, 2015.

Sharon K. Harrison, Mayor

ATTEST:

David M. Van Dermark, City Manager

EXHIBIT A

2015 LEGISLATIVE AMENDMENTS TO THE

CITY OF WINSTON ZONING ORDINANCE

ADOPTION DRAFT April 27, 2015

PLANNING COMMISSION

Hearing April 15, 2015

CITY COUNCIL

Hearing 1st & 2nd Readings April 27, 2015

April 27, 2015

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LEGEND

Deletion Deletion is marked with strike out function

Addition <u>Addition</u> is marked with bold and underline

WINSTON ZONING ORDINANCE AMENDMENTS

DRAFT - March 2015

AMENDMENTS RESULTING FROM THE PASSAGE OF HB 3460 IN THE 2013 LEGISLATURE, "MEDICAL MARIJUANA FACILITY REGISTRATION" & IMPLEMENTING ORS 475.314 & OARS 333-008-1000 - 333-008-1400, "MEDICAL MARIJUANA FACILITIES" (MMFs).

HB 3460, enacted by the 2013 Legislature, directed the Oregon Health Authority (OHA) to establish, by rule, a medical marijuana facility (MMF) registration system to authorize the transfer of "usable marijuana" from registry identification cardholders, designated primary care givers of registry identification cardholders or marijuana grow sites to medical marijuana facilities and from medical marijuana facilities to registry identification cardholders or designated primary care givers of registry identification cardholders.

ORS 475, "Controlled Substances..." was revised in 2013 to include ORS 475.314 to establish statutory provisions for medical marijuana facility registration.

The 2014 Legislature enacted SB 1531, which permitted local jurisdictions to enact a moratorium on medical marijuana facilities within their jurisdictions to provide additional time to address the regulation and siting of medical marijuana facilities. The Winston City Council adopted an Ordinance declaring such a moratorium on April 21, 2014, with the moratorium effective until May 1, 2015.

In 2014, the OHA adopted administrative rules, OAR 333-008-1000 through 333-008-1400 (effective July 11, 2014) to implement ORS 475.314, the registration of medical marijuana facilities and adopt rules governing the registration and operation of medical marijuana facilities.

STATE REQUIREMENTS FOR MEDICAL MARIJUANA FACILITIES

Registration Required

By state statute and rule, a medical marijuana facility may not be established or operated unless the facility has been registered by the OHA in accordance with OHA rules. A "person responsible for a medical marijuana facility," or PRF as they are identified in the rule, must submit an application to the OHA. To be considered complete, the application must include information, including fingerprints, required for a criminal background check. (Per OAR 333-008-1280, any criminal background information received by OHA about a PRF is confidential and is not subject to disclosure without a court order.)

Registration Application Approval by OHA

Prior to determining whether to approve or deny an application, the OHA must:

a) Ensure the criminal background check has been completed and review the results;

- b) Contact the Oregon Medical Marijuana Program (OMMP) (the OHA program that registers growers) to ensure the proposed location of the facility is not the same location as a registered grow site;
- c) Determine whether the proposed facility is located within 1,000 feet of the property of a public or private elementary, secondary or career school; and
- d) Review the list of registered facilities to determine whether any registered facilities are within 1,000 feet of the proposed facility.

If the proposed facility complies with ORS 475.314 and the OHA rules and the PRF has passed the criminal background check, OHA will notify the PRF that the application has been approved and the facility is registered. The PRF will be provided with a proof of registration that includes a unique registration number. A facility's registration cannot be transferred to another location.

Security Requirements

Security requirements for registered facilities are outlined in detail in OAR 333-008-1140 through 333-008-1180, and include:

- commercial grade door locks installed on every external door;
- marijuana is kept in a locked, secure area;
- marijuana transfer areas are posted as restricted access areas;
- a security alarm system that is installed by an alarm installation company and meets the specifications of OAR 333-008-1150;
- a fully operational video surveillance recording system that meets the specifications of OAR 333-008-1160;
- camera coverage and placement meeting the specifications of OAR 333-008-1170;
- video recording requirements meeting the specifications of OAR 333-008-1180.

The OHA will not approve the facility for operation until all security requirements are in place. A proposed facility that is in compliance with the statutes and rules but has not yet had a security system installed and/or other security requirements met, may be issued a provisional registration, valid for 60 days. Because a provisional registration may be issued by the OHA prior to all security requirements being in place, land use authorization should not be issued for a provisional registration, but only for an OHA final approval, which requires all security measures to be installed and allows the facility to be fully operational.

Operation of Registered Facilities, OAR 333-008-1200, outlines responsibilities of a PRF of a registered facility and includes that the PRF must have written detailed policies and procedures, as well as training for employees on the policies and procedures, that at a minimum cover: security; testing; transfers; operation; required record keeping; labeling, and; violations and enforcement.

Annual Renewal Required

A facility's registration expires one year from application approval and must be renewed by OHA on an annual basis. A criminal background check (including fingerprints) on the PRF must be conducted every year at the time of application renewal by the OHA.

LOCAL ACTION REQUIRED

With the moratorium on the establishment of medical marijuana facilities expiring on May 1, 2015, Legislative Amendments to the City of Winston Zoning Ordinance (WZO) are needed to incorporate the state siting standards for registration of medical marijuana facilities and to apply any additional land use standards necessary to ensure public safety and address consistency with permitted uses in zones in which the facilities may be located.

The state's standards require that an MMF may not be located:

- at a registered grow site;
- within 1,000 ft. of a public or private elementary, secondary or career school;
- within 1,000 ft. of another MMF;

and the facility may not be a mobile facility.

Additional local standards that should apply are that an MMF may not be located:

- within 1,000 ft. of a licensed preschool or daycare facility;
- within 500 ft. of any property with an established church;
- within 200 ft. of any property zoned for (PR) public reserve or parks; and the maximum hours of operation are to be from 9:00 a.m. through 7:00 p.m.

PROPOSED LEGISLATIVE AMENDMENTS TO THE WINSTON ZONING ORDINANCE

ACTION: ADD DEFINITION OF MEDICAL MARIJUANA FACILITY (MMF) AND PERSON RESPONSIBLE FOR A MEDICAL MARIJUANA FACILITY (PRF) INTO SECTION 1.020, DEFINITIONS (PGS. 12 & 14).

SECTION 1.020. Definitions.

MEDICAL MARIJUANA FACILITY (MMF): a facility registered by the Oregon Health Authority (OHA) under OAR 333-008-1050 to, as outlined in ORS 475.314, authorize the transfer of usable marijuana and immature marijuana plants from:

- (a) A registry identification cardholder, the designated primary care giver of a registry identification cardholder, or a person responsible for a marijuana grow site to the medical marijuana facility; or
- (b) A medical marijuana facility to a registry identification cardholder or the designated primary care giver of a registry identification cardholder.

PERSON RESPONSIBLE FOR A MEDICAL MARIJUANA FACILITY or "PRF": means an individual who owns, operates, or otherwise has legal responsibility for a facility and who meets the qualifications established in OAR 333-008-1000 through 333-008-1400, "Medical Marijuana Facilities," and has been approved by the Oregon Health Authority for registration of that facility.

ACTION: ADD STATUTORY PROVISIONS FOR A MEDICAL MARIJUANA FACILITY AS A USE PERMITTED OUTRIGHT IN THE (C-G) GENERAL COMMERCIAL ZONE AT SECTION 4.140, (PG. 43)

Page 43, Add Item dd. to Section 4.140.1, (C-G) General Commercial zone:

SECTION 4.140.1 Uses Permitted Outright

dd. A Medical Marijuana Facility, subject to the following standards:

- (i) No portion of the facility shall be located within 1000 feet of the property boundary of another medical marijuana facility.
- (ii) No portion of the facility shall be located within 1000 feet of the property boundary of a public or private elementary, secondary or career school* attended primarily by minors.
- (iii) No portion of the facility shall be located within 1000 feet of the property boundary of a registered Head Start facility, or a licensed preschool or daycare facility.
- (iv) No portion of the facility shall be located within 500 feet of the property boundary of an established tax-exempt church.
- (v) No portion of the facility shall be located within 200 feet of any property with a Public plan designation or zoned for (PR) Public Reserve and/or parks, unless an arterial street runs between the facility and those properties.
- (vi) The facility shall not be located at a registered grow site.
- (vii) The maximum hours of operation for the facility shall be 9:00 a.m. through 7:00 p.m.
- (viii) No mobile facility or services shall be authorized.
- (ix) Proof of an approved Oregon Health Authority (OHA) registration shall be provided, demonstrating that the facility is in full compliance with ORS 475.314 and OAR 333-008-1000 through 333-008-1400, which includes a criminal background check of the person responsible for the facility, a security alarm system installed by an alarm installation company, and a fully operational video surveillance recording system.

(x) The facility shall comply all applicable parking, setback, signage and other property development standards of the C-G zone.

*As defined in OAR 333-008-1010, "career school" means any private proprietary professional, technical, business or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any profession at a physical location attended primarily by minors.

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COPY FOR DLCD NOTICE OF ADOPTION -

201 N.W. Douglas Blvd. • Winston, OR 97496-9594 • Telephone (541) 679-6739

April 21, 2015

STAFF REPORT

TO:

Winston City Council

THROUGH: David Van Dermark, City Manager

FROM:

Lisa Hawley, Community Services Planner

RE:

Public Hearing on 2015 Special Legislative Amendments (Medical Marijuana

Facilities)

BACKGROUND

On April 27, 2015, the City Council will conduct a special public hearing to consider recommendations from the Winston Planning Commission on the adoption of proposed legislative amendments to the City of Winston Zoning to address the siting of medical marijuana facilities within the City. The City Council will accept public testimony on the proposed amendments at the public hearing, and then will close the hearing and render a decision on the matter.

Due to the nature of the proposed amendments, this legislative amendment process has been expedited to have the amendments approved and adopted prior to May 1, 2015, which is the date the City's existing moratorium on medical marijuana facilities expires.

As part of this process, the Planning Commission conducted a workshop on April 8, 2015 to discuss the proposed amendments. The Planning Commission also held a public hearing on the amendments on April 15, 2015. The Planning Commission had received three written comments prior to the public hearing.

During the public hearing, the Planning Commission heard testimony from several individuals, both in favor and against the proposed amendments. There were several comments about maintaining the proposed distances from Head Start and licensed daycare and preschool facilities in order to provide an appropriate buffer distance. There were also several comments about the amendments being too restrictive on siting medical marijuana facilities and that there needs to be a balance between protecting children and providing economic development opportunities within the City.

Staff Report/CITY COUNCIL Page 2 April 21, 2015

After closing the public portion of the hearing, the Planning Commission discussed the proposed amendments and deliberated toward a recommendation. Based upon the findings of the staff reports and the testimony provided, a motion was made by Commissioner Price and seconded by Commissioner Vanassche-Roach to accept Alternative No. 2, with reasonable modifications to the proposed amendments; the motion passed 3-2 with Commissioners Price, Vanassche-Roach and Knudson voting in favor and Commissioners Richardson and Osborne voting against the motion. The accepted modifications included: (1) add language "No portion of" to the beginning of items dd.(i) through (v); (2) modify item dd.(iii) to add Head Start facility, delete the remainder of the sentence after daycare facility about other organizations, and add to the end of the sentence the words "unless an arterial street runs between the facility and those properties"; and (3) modify item dd.(iv) to add "tax-exempt" so as to clarify "established tax-exempt church".

On April 24, 2015, the City Council will conduct a workshop to review and discuss the proposed amendments prior to the hearing.

FINDINGS OF THE STAFF REPORT

Pursuant to ORS 197.610 and OAR Chapter 660, Division 18, "Notice of Proposed to a Comprehensive Plan or Land Use Regulation" was mailed to the Department of Land Conservation and Development (DLCD) on March 20, 2015.

• This notice was not mailed the required 35 days prior to the first evidentiary hearing, which was held on April 15, 2015. Since the notice did not meet the required 35 days, the City mailed the DLCD notice under the emergency provisions of ORS 197.610 (2) and OAR 660-018-0022, which provide a process for expedited review under qualifying emergency circumstances.

Notice of the proposed legislative amendments was sent to interested agencies and utility providers on March 24, 2015.

A legal notice of public hearing on the proposed legislative amendments was posted in *The News Review* on March 25, 2015 for the Planning Commission meeting on April 15, 2015. A legal notice of the public hearing before City Council was also posted in *The News Review* on April 17, 2015 for the City Council meeting on April 27, 2015.

Notice in accordance with ORS 227.186 [commonly known as Ballot Measure 56 Notice] was not required. Staff determined that the proposed amendments do not change the base zoning of properties within the city limits or UGB, and do not adopt or amend a new ordinance or create a new regulation in a manner which limits or prohibits land uses previously allowed in the affected zone.

Attached are copies of the Planning Commission staff reports, the written comments received for the Planning Commission hearing, the third draft of the proposed amendments (which includes the recommended changes from the Planning Commission), and a copy of the draft City Ordinance to adopt the amendments.

Staff Report/CITY COUNCIL Page 3 April 21, 2015

ALTERNATIVES

Alternative No. 1

The City Council approves the proposed legislative amendments to the Winston Zoning Ordinance, adopts City Ordinance No. 668 under the emergency provisions of Winston City Charter, Chapter 8, Section 33.

Alternative No. 2

The City Council approves the proposed legislative amendments to the Winston Zoning Ordinance and Winston Subdivision Ordinance, with modifications or other changes, based on Findings of Fact and/or testimony brought forward through the public hearing process, and adopts City Ordinance No. 668 under the emergency provisions of Winston City Charter, Chapter 8, Section 33.

Alternative No. 3

The City Council takes no action at this time on the proposed legislative amendments.

Planning Staff recommends the City Council approve the proposed legislative amendments and accept Alternative No. 1.

Attachments:

- (1) Planning Commission Staff Report, dated April 9, 2015
- (2) Planning Commission Supplement Staff Report, dated April 15, 2015
- (3) Copies of written comments received
- (4) Third draft of proposed legislative amendments, dated April 21, 2015
- (5) Copy of draft City Ordinance No. 668



201 N.W. DOUGLAS BLVD. WINSTON, OREGON 97496



ATTN: PLAN AMENDMENT SPECIALIST DLCD 635 CAPITOL STREET NE, SUITE 150 SALEM OR 97301-2540



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