



# Community Development Department

Planning, Building Safety, Environmental Soils, Code Enforcement  
 PO Box 6005, Bend, Oregon 97708-6005  
 117 NW Lafayette Avenue  
 www.deschutes.org/cd

## Deschutes County Marijuana Advisory Committee

Meeting #2: Wednesday, February 17, 2016, 4:00-7:00 pm  
 Barnes and Sawyer Rooms, Deschutes Services Building, 1300 NW Wall Street, Bend

NOTICE: A QUORUM OF THE BOARD OF COUNTY COMMISSIONS MAY BE IN ATTENDANCE AT THIS MEETING.

| TIME          | TOPIC  | DESIRED OUTCOME   |
|---------------|--|---|
| 3:30<br>(:30) | <b>Optional pre-meeting refreshments for MAC members</b><br>(DeArmond Room)  |   |
| 4:00<br>(:05) | <b>1. Welcome from Deschutes County</b>  | Welcome attendees   |
| 4:05<br>(:05) | <b>2. Overview of agenda: Mary Orton, The Mary Orton Company, LLC (facilitator)</b>  | Clarity on the agenda.  |
| 4:10<br>(:05) | <b>3. Check-in from Josh Rodriguez</b><br>Two minutes: <ul style="list-style-type: none"> <li>▪ Name, where you live, why you chose to serve on the MAC</li> <li>▪ Who inspires you and how are you a bit like them?</li> <li>▪ Assuming the MAC is successful, what do you want to be able to say you accomplished?</li> </ul>  | List of best hopes for the group.                               |
| 4:15<br>(:05) | <b>4. Introductions of County staff and others serving as MAC resources</b>  | Understanding resources available to the MAC.                   |
| 4:20<br>(:15) | <b>5. Public Comments</b><br>Those who wish to speak will be limited to no more than 3 minutes, and perhaps less to allow time for everyone who wishes to speak. In addition, written comments will be accepted at any time, and will be posted to the County's website, where all MAC members will be expected to read them.<br><br>Please note that this is a time for giving your views to the MAC members, not asking questions. If you have a question, please ask a County staff person during a | Opportunity to hear from members of the public who are present. |

| TIME           | TOPIC  | DESIRED OUTCOME                                |
|----------------|--|--|
|                | break, or send your question to <a href="mailto:mac@Deschutes.org">mac@Deschutes.org</a> .   |  |
| 4:35<br>(:55)  | <p><b>6. Discussion and consensus building on medical marijuana and recreational marijuana regulations</b><br/><i>See Packet: Matrices on zoning and standards</i></p> <p>a. Overview on zoning and permitted vs. conditional uses, standards (15 minutes)</p> <p>b. Wholesale marijuana: “Purchasing marijuana items in Oregon for resale to a person other than a consumer in Oregon.”</p> <ul style="list-style-type: none"> <li>i. Zoning, conditional and permitted uses</li> <li>ii. Standards</li> </ul> <p>c. Retail marijuana: “Selling marijuana items to a consumer in Oregon.”</p> <ul style="list-style-type: none"> <li>i. Zoning, conditional and permitted uses</li> <li>ii. Standards</li> </ul> <p>d. Processing marijuana: “Processing, compounding or conversion of marijuana into cannabinoid products, concentrates, or extracts; excluding packaging or labeling.”</p> <ul style="list-style-type: none"> <li>i. Zoning, conditional and permitted uses</li> <li>ii. Standards</li> </ul> | Provisional agreement on regulations.          |
| 5:30<br>(:10)  | <b>Break</b>   |  |
| 5:40<br>(1:15) | <p><b>7. Discussion and consensus building on medical marijuana and recreational marijuana regulations</b><br/>(continued)</p>   | Provisional agreement on regulations.          |
| 6:55<br>(:05)  | <p><b>8. Next steps</b></p> <ul style="list-style-type: none"> <li>▪ Agenda and date for next meeting: <b>Monday</b>, February 22, 4-7 pm, Barnes and Sawyer Rooms</li> <li>▪ Meeting evaluation</li> </ul>  | Agreement on next steps, continual improvement |
| 7:00           | <b>9. Wrap up and Adjourn</b>  |  |

NOTE: Items included in the packet can be located at:  
<http://www.deschutes.org/marijuana>

Deschutes County encourages persons with disabilities to participate in all programs and activities.

This event/location is accessible to people with disabilities.

If you need accommodations to make participation possible, please call the ADA Coordinator at (541) 617-4747.



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## MEMORANDUM

**TO:** Deschutes County Marijuana Advisory Committee

**FROM:** Nick Lelack, Director  
Matthew Martin, Associate Planner

**DATE:** February 17, 2016

**SUBJECT:** Agenda Overview

### I. SUMMARY / OVERVIEW

The primary purposes of this meeting are to develop and obtain provisional agreement on retail and wholesale regulations for medical and recreational marijuana. If time allows, the committee will begin discussing medical and recreational marijuana processing regulations. Staff will provide a matrix for potential processing standards at the meeting.

The matrices and maps in the packet will guide this discussion. The matrices summarize:

1. The zoning districts where retail and wholesale uses may be a “permitted use,” “conditional use,” or not allowed (see below), including the Board of County Commission’s (BOCC) initial proposal and Planning Commission recommendation; and
2. Standards to regulate retail and wholesale marijuana uses, including the BOCC’s initial proposal, Planning Commission recommendation, Clackamas County’s adopted standards, and Jackson County’s Planning Commission recommendation.

The maps generally illustrate the a 1,000 foot buffer around schools as required for medical marijuana dispensaries and as recommended by the Planning Commission for medical and recreational retail uses.

### II. LAND USE PLANNING OVERVIEW

To ensure that all MAC members have the same general understanding of land use planning and zoning in Oregon, please review the:

1. Department of Land Conservation and Development’s publication, “An Introductory Guide to Land Use Planning for Small Cities and Counties in Oregon,” in particular Chapters 3 (Land Use Planning Documents) and 6 (Conditional Use Permits); and,
2. Technical Briefs 8: Zoning, Processes, and Variances.

Staff will also provide a summary and answer questions regarding this overview at the meeting.

**MARIJUANA RETAIL AND WHOLESALE  
SUMMARY OF ZONES FOR CONSIDERATION TO ALLOW**

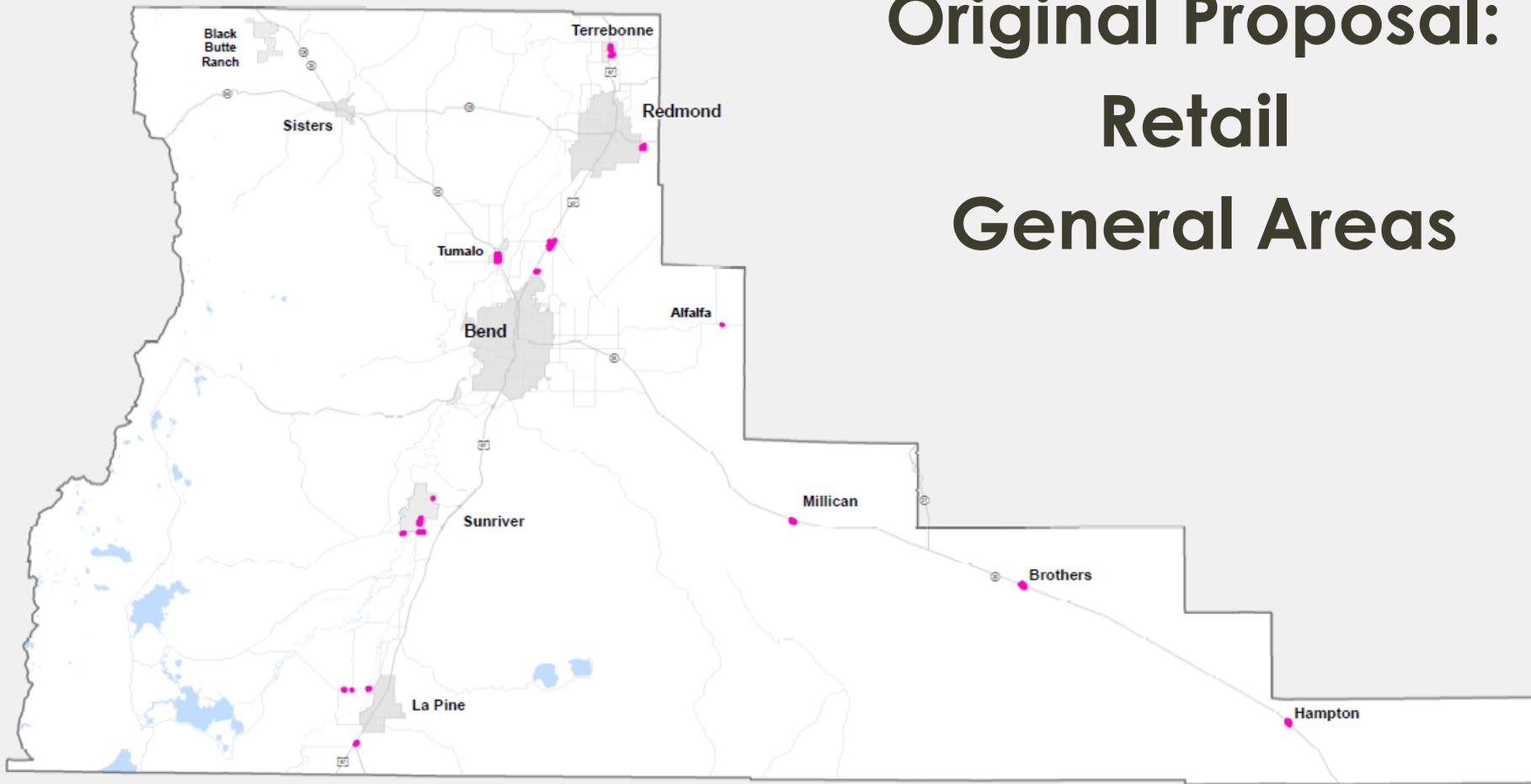
|  | ORIGINAL PROPOSAL |                                  | PLANNING COMMISSION RECOMMENDATION |                           |
|--|-------------------|----------------------------------|------------------------------------|---------------------------|
|  | Permitted (P)     | Conditional Use (CU)             | Not Allowed (-)                    |                           |
| Zone   | Retail            | Wholesale (Recreational)         | Retail                             | Wholesale (Recreational)  |
|  |                   | P-office only<br>CU-with storage |                                    | Office Only<br>NO storage |
| <b>TITLE 18 – Deschutes County</b>   |                   |                                  |                                    |                           |
| <b>18.65 RURAL SERVICE CENTER - UC</b>   |                   |                                  |                                    |                           |
| 18.65.020 Commercial Mixed Use District (Brothers, Hampton, Millican, Whistlestop, Wildhunt) | CU                | P                                | CU                                 | P                         |
| 18.65.021 Commercial Mixed Use (Alfalfa)   | CU                | P                                | CU                                 | P                         |
| <b>18.66 TERREBONNE RURAL COMMUNITY</b>  |                   |                                  |                                    |                           |
| 18.66.040 Commercial - TeC   | P                 | P/CU                             | CU                                 | P                         |
| 18.66.050 Commercial Rural - TeCR  | P                 | P/CU                             | CU                                 | P                         |
| <b>18.67 TUMALO RURAL COMMUNITY</b>  |                   |                                  |                                    |                           |
| 18.67.040 Commercial - TuC   | P                 | P/CU                             | CU                                 | P                         |
| 18.67.060 Industrial - Tul   | CU                | -                                | CU                                 | -                         |
| <b>18.74 RURAL COMMERCIAL</b>  |                   |                                  |                                    |                           |
| 18.74.020 Deschutes Junction and Deschutes River Woods Store                                 | CU                | -                                | CU                                 | -                         |
| 18.74.025 Spring River   | CU                | -                                | CU                                 | -                         |
| 18.74.027 Pine Forest and Rosland  | CU                | P                                | CU                                 | P                         |
| <b>18.100 Rural Industrial</b>   |                   |                                  |                                    |                           |
|  | CU                | -                                | CU                                 | -                         |
| <b>18.108 SUNRIVER UUC</b>   |                   |                                  |                                    |                           |
| 18.108.050 Commercial - SUC  | CU                | P                                | CU                                 | P                         |
| 18.108.055 Town Center - TC  | CU                | -                                | CU                                 | -                         |
| 18.108.110 Business Park - SUBP  | CU                | P/CU                             | CU                                 | P                         |
| <b>TITLE 19 – BEND URBAN AREA ZONING ORDINANCE</b>   |                   |                                  |                                    |                           |
| No Marijuana Related Businesses Allowed  |                   |                                  |                                    |                           |
| <b>TITLE 20 - REDMOND URBAN AREA ZONING ORDINANCE</b>  |                   |                                  |                                    |                           |
| No Marijuana Related Businesses Allowed  |                   |                                  |                                    |                           |
| <b>TITLE 21 - SISTERS URBAN AREA ZONING ORDINANCE</b>  |                   |                                  |                                    |                           |
| No Marijuana Related Businesses Allowed  |                   |                                  |                                    |                           |

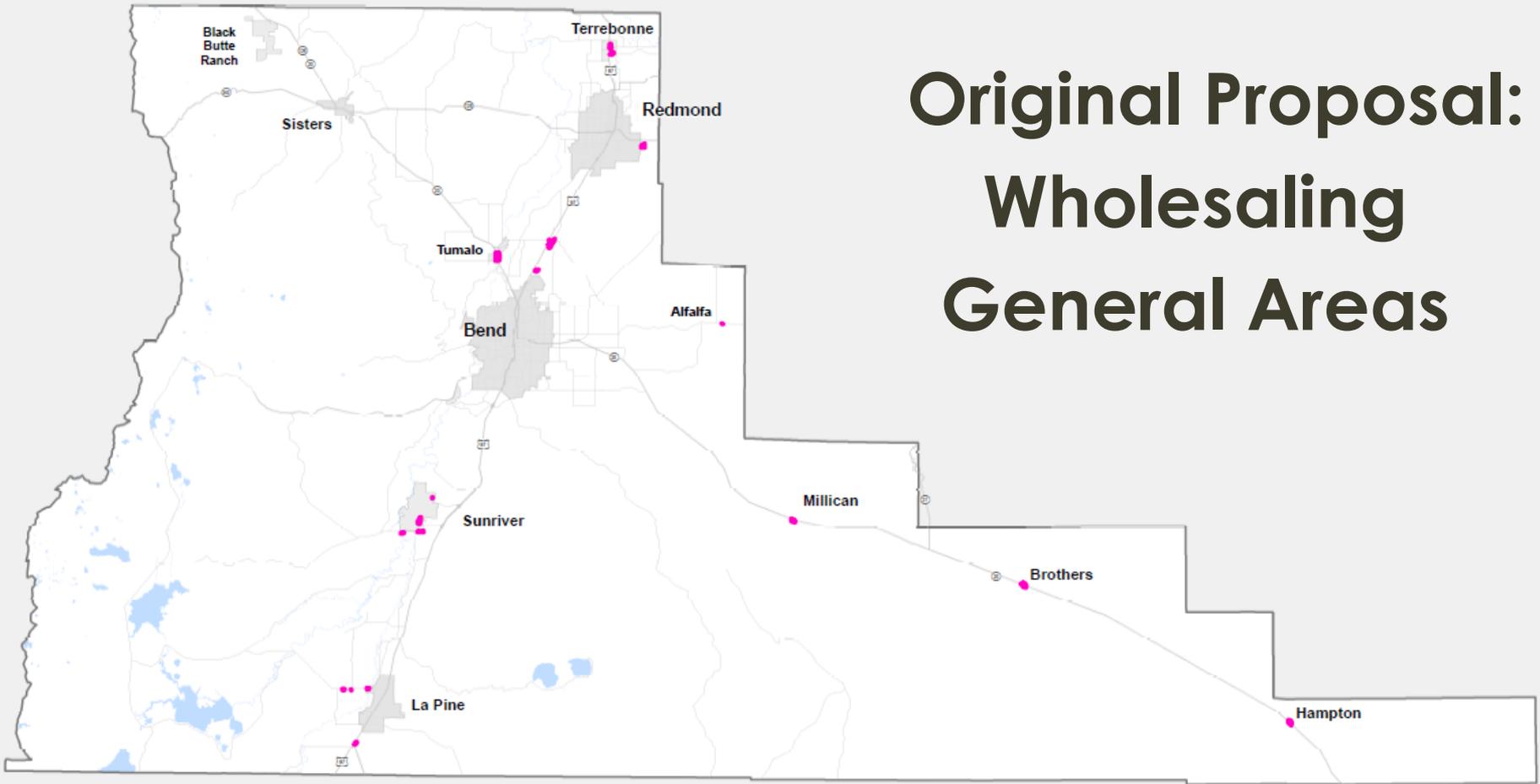
**Related definitions originally proposed and recommended by the Planning Commission**

“Marijuana retailing” means the sale of marijuana items to a consumer, provided that the marijuana retailer is licensed by the Oregon Liquor Control Commission for recreational marijuana sales or registered with the Oregon Health Authority for medical marijuana sales.

“Marijuana wholesaling” means the purchase of marijuana items for resale to a person other than a consumer, provided that the marijuana wholesaler is licensed by the Oregon Liquor Control Commission.

# Original Proposal: Retail General Areas





# Original Proposal: Wholesaling General Areas

**MARIJUANA WHOLESALER  
(RECREATIONAL MARIJUANA ONLY)  
SPECIFIC USE STANDARDS FOR CONSIDERATION**

Definition originally proposed and recommended by the Planning Commission:

“Marijuana wholesaling” means the purchase of marijuana items for resale to a person other than a consumer, provided that the marijuana wholesaler is licensed by the Oregon Liquor Control Commission.

|                                     | ORIGINAL PROPOSAL  | PLANNING COMMISSION RECOMMENDATION                                  | CLACKAMAS COUNTY ADOPTED | JACKSON COUNTY PC RECOMMENDATION   | OLCC (Recreational) |
|-------------------------------------|--|---|--------------------------|--|---------------------|
| <b>Home Occupation</b>              | Prohibited   | Prohibited  | Prohibited               | Prohibited   |                     |
| <b>Office Only</b>                  |  | Office only with no on site storage of marijuana items or products. |                          |  |                     |
| <b>Secure Disposal</b>              | <ul style="list-style-type: none"> <li>Secure disposal of discarded marijuana items shall be provided.</li> <li>Marijuana items shall not be placed within exterior refuse containers on the subject property.</li> </ul>  |   |                          | Marijuana waste shall be stored in a secured waste receptacle in the possession of and/or under the control of the licensee. |                     |
| <b>Minimum Separation Distances</b> | <ul style="list-style-type: none"> <li>1000 from public/private elementary or secondary schools, licenses child care center, and licensed preschool.</li> <li>Change of use (i.e. new school) shall not cause violation of this standard.</li> </ul> <p><b>Distance Calculation:</b><br/>All distances shall be measured from the lot line of the affected property (e.g., a school) to the closest lot line of the property occupied by the marijuana wholesaler.</p> |   |                          |  |                     |
| <b>Co-Location</b>                  | Shall not be co-located on the same lot of record or within the same building with any marijuana social club or marijuana smoking club.  |   |                          |  |                     |
| <b>Outdoor Storage</b>              |  |   |                          | Outdoor storage is prohibited.   |                     |
| <b>Samples/Consumption</b>          |  |   |                          | Samples may be provided to marijuana licensee but product may not be consumed on the property.                               |                     |

**MARIJUANA RETAIL  
(RECREATIONAL AND MEDICAL)  
SPECIFIC USE STANDARDS FOR CONSIDERATION**

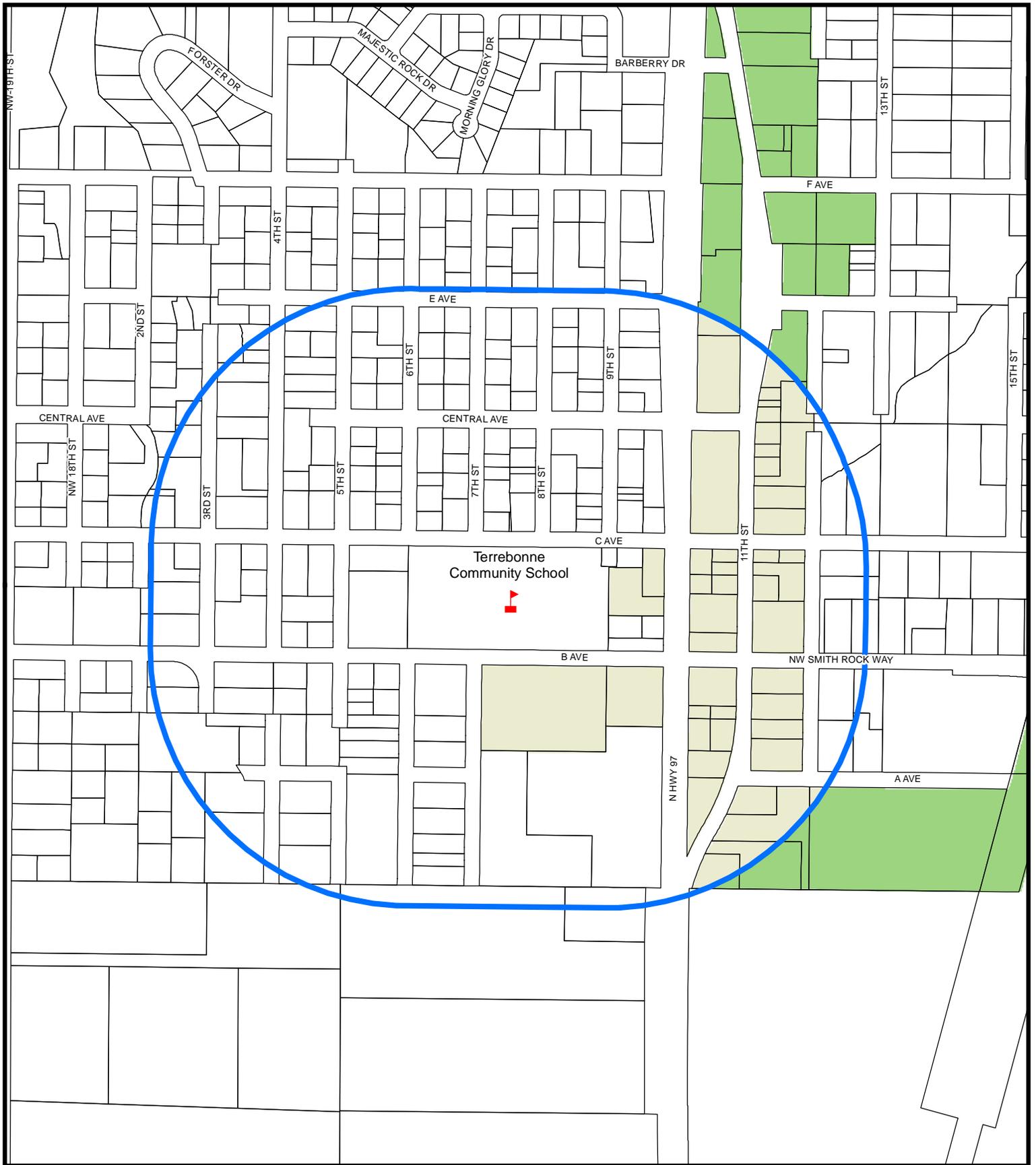
Definition originally proposed and recommended by the Planning Commission

“Marijuana retailing” means the sale of marijuana items to a consumer, provided that the marijuana retailer is licensed by the Oregon Liquor Control Commission for recreational marijuana sales or registered with the Oregon Health Authority for medical marijuana sales.

|                                     | ORIGINAL PROPOSAL   | PLANNING COMMISSION RECOMMENDATION   | CLACKAMAS COUNTY ADOPTED  | JACKSON COUNTY PC RECOMMENDATION  | OLCC (Recreational)   | OHA (Medical)   |
|-------------------------------------|---|--|---|---|---|---|
| <b>Home Occupation</b>              | Prohibited  | Prohibited   | Prohibited  | Prohibited  |   |   |
| <b>Waste Disposal</b>               | <ul style="list-style-type: none"> <li>Secure disposal of discarded marijuana items shall be provided.</li> <li>Marijuana items shall not be placed within exterior refuse containers on the subject property.</li> </ul>   | <ul style="list-style-type: none"> <li>Secure disposal of discarded marijuana items shall be provided.</li> <li>Marijuana items shall not be placed within exterior refuse containers on the subject property.</li> </ul>  | Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee or OHA registrant.  | No marijuana remnants or by-products shall be placed within the facility's exterior refuse containers.  | Store marijuana waste in a secured waste receptacle in the possession of and under the control of the licensee.   |   |
| <b>Minimum Separation Distances</b> | <ul style="list-style-type: none"> <li>1,000 from public/private elementary schools, licenses child care center, licensed preschool, and marijuana retailers.</li> <li>Change of use (i.e. new school) shall not cause violation of this standard.</li> </ul> <p><b>Distance Calculation:</b><br/>All distances shall be measured from the lot line of the affected property (e.g., a school) to the closest lot line of the property occupied by the marijuana retailer.</p> | <ul style="list-style-type: none"> <li>1,000 from public/private elementary schools, licenses child care center, licensed preschool, and marijuana retailer.</li> <li>Change of use (i.e. new school) shall not cause violation of this standard.</li> </ul> <p><b>Distance Calculation:</b><br/>All distances shall be measured from the lot line of the affected property (e.g., a school) to the closest lot line of the property occupied by the marijuana retailer.</p> | <ul style="list-style-type: none"> <li>100 feet from residentially-zoned property except if street frontage on principal interstate, expressway, etc.</li> <li>2,000 feet from elementary or secondary schools, including property and parking lots</li> <li>1,500 feet from public parks, playgrounds, libraries; government-owned recreational use, licensed treatment center, light rail transit station or multi-family dwelling owned by a public housing authority</li> <li>500 feet from a licensed daycare facility or preschool, including associated property and parking lot</li> <li>1,000 feet for other marijuana retailer of the same type (e.g., recreational or medical)</li> <li>1,000 feet from any other marijuana retailer so licensed by the OLCC.</li> <li>1,000 feet from any other marijuana retailer so registered with the OHA.</li> <li>Change of use to listed use shall not cause violation of this standard.</li> </ul> <p><b>Distance Calculation:</b><br/>The distance shall be measured from the lot line of the affected property (e.g., a school) to the closest point of</p> | Shall not be within: <ul style="list-style-type: none"> <li>One mile of the Veterans Administration Southern Oregon Rehabilitation Center and Clinics.</li> <li>1,000 feet of the Jackson County Transition Center.</li> <li>250 feet of residentially zoned property within the White City Urban Unincorporated Community Boundary.</li> <li>1,000 feet of a public park, excluding the Bear Creek Greenway.</li> <li>1,000 feet of an Interstate 5(1-5) interchange. The interchange is defined as the bridge structure over 1-5 including all on and off ramp termini.</li> <li>1,000 feet from a public elementary or secondary school.</li> <li>1,000 feet of another marijuana retail sales facility.</li> <li>1,000 feet of another medical marijuana facility.</li> </ul> <p><b>Distance Calculation:</b><br/>For the purposes of determining the distance between a marijuana retail sales facility/medical marijuana facility and another marijuana retail sales facility/medical marijuana facility "within 1,000 feet" means a straight line measurement in a radius extending 1,000 feet or less in every direction from the closest point</p> | <ul style="list-style-type: none"> <li>May not be located within 1,000 feet of public/private/parochial elementary or secondary school.</li> <li>Local standard cannot require greater than 1,000 feet from another retail marijuana premises.</li> </ul> | <ul style="list-style-type: none"> <li>1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.</li> <li>Must not be located within 1,000 feet of another medical marijuana facility.</li> </ul> |

|                       |   |   |   |   |   |  |
|-----------------------|---|---|---|---|---|--|
|                       |   |   | the building space occupied by the marijuana retailer. For retail to retail separation distance shall be measured from the closest point of the building space occupied by one marijuana retailer to the closest point of the building space occupied by the other marijuana retailer   | anywhere on the premises of a marijuana retailer to the closest point anywhere on the premises of a marijuana retailer.   |   |  |
| <b>Hours</b>          | 10:00 to 7:00 p.m.  | 10:00 to 7:00 p.m.  | 10:00 a.m. to 9 p.m.  | 9:00 a.m. to 7:00 p.m.  | 7:00 a.m. to 10:00 p.m.   |  |
| <b>Window Service</b> | Shall not have a walk-up window or drive-thru window service.   | Shall not have a walk-up window or drive-thru window service.   | Shall not have a walk-up window or drive-thru window service.   |   | A licensee may not sell any marijuana item through a drive-up window. |  |
| <b>Minors</b>         | No minors allowed, unless accompanying a parent or guardian as allowed by state law.  | No minors allowed, unless accompanying a parent or guardian as allowed by state law.  | No minors allowed, unless accompanying a parent or guardian as allowed by state law.  |   | No minors permitted anywhere on premises.                             |  |
| <b>Co-Location</b>    | Shall not be co-located on the same lot of record or within the same building with any marijuana social club or marijuana smoking club. | Shall not be co-located on the same lot of record or within the same building with any marijuana social club or marijuana smoking club. | No retail on same lot as marijuana smoking or social club.  |   |   |  |
| <b>Odor Control</b>   |   |   | <ul style="list-style-type: none"> <li>The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.</li> <li>The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM. 3. The filtration system shall be maintained in working order and shall be in use. The filters shall be changed a minimum of once every 365 days.</li> <li>Negative air pressure shall be maintained inside the building.</li> <li>Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.</li> <li>The filtration system shall be designed by a mechanical engineer licensed in the State of Oregon. The engineer shall stamp the design and certify that it complies with Subsection 841.04(B).</li> </ul> | <ul style="list-style-type: none"> <li>A building used for marijuana retailing shall be equipped with a carbon filtration system for odor control.</li> <li>The system shall consist of one or more fans and filters.</li> <li>At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the square footage of the building floor space (i.e., one CFM per square foot of building floor space).</li> <li>The filter(s) shall be rated for the applicable CFM.</li> <li>The filtration system shall be maintained in working order and shall be in use.</li> <li>An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the carbon filtration system otherwise required</li> </ul> |   |  |

|  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|
|  |  |  | <ul style="list-style-type: none"><li>• An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required.</li></ul> |  |  |  |
|--|--|--|--|--|--|--|



## Proposed Zones Permitting Medical Marijuana Dispensaries

1,000' Radius From Public School Property

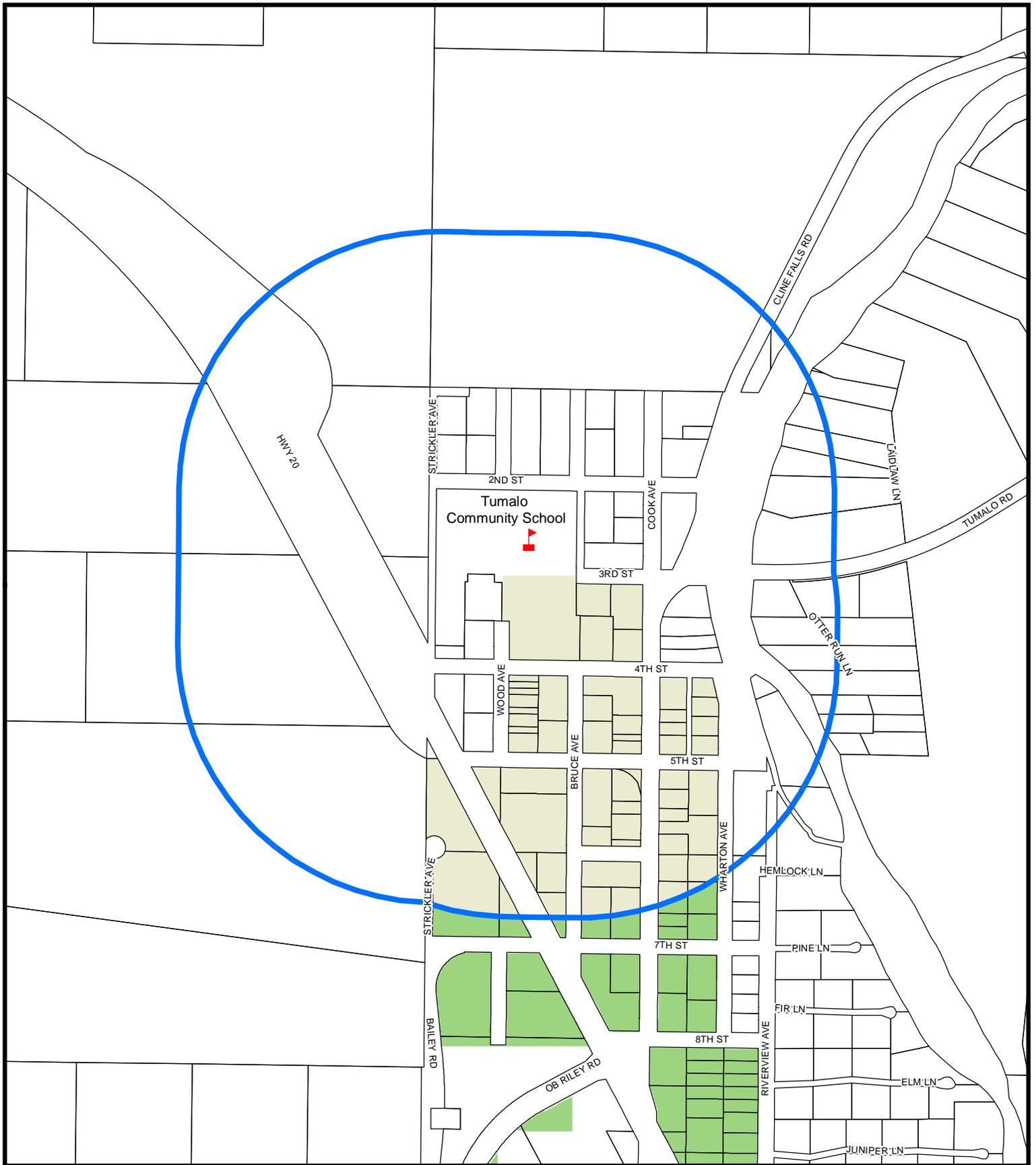
-  Public School
-  1,000' Buffer of Public School
- Medical Marijuana Dispensary Siting Analysis**
-  Within 1,000' of a school
-  Beyond 1,000' of a school



March 12, 2015



DISCLAIMER:  
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N:\Custom\County\CDD\Planning\MatM\MedicalMarijuanaDispensaries



## Proposed Zones Permitting Medical Marijuana Dispensaries

1,000' Radius From Public School Property

-  Public School
  -  1,000' Buffer of Public School
- Medical Marijuana Dispensary Siting Analysis**
-  Within 1,000' of a school
  -  Beyond 1,000' of a school

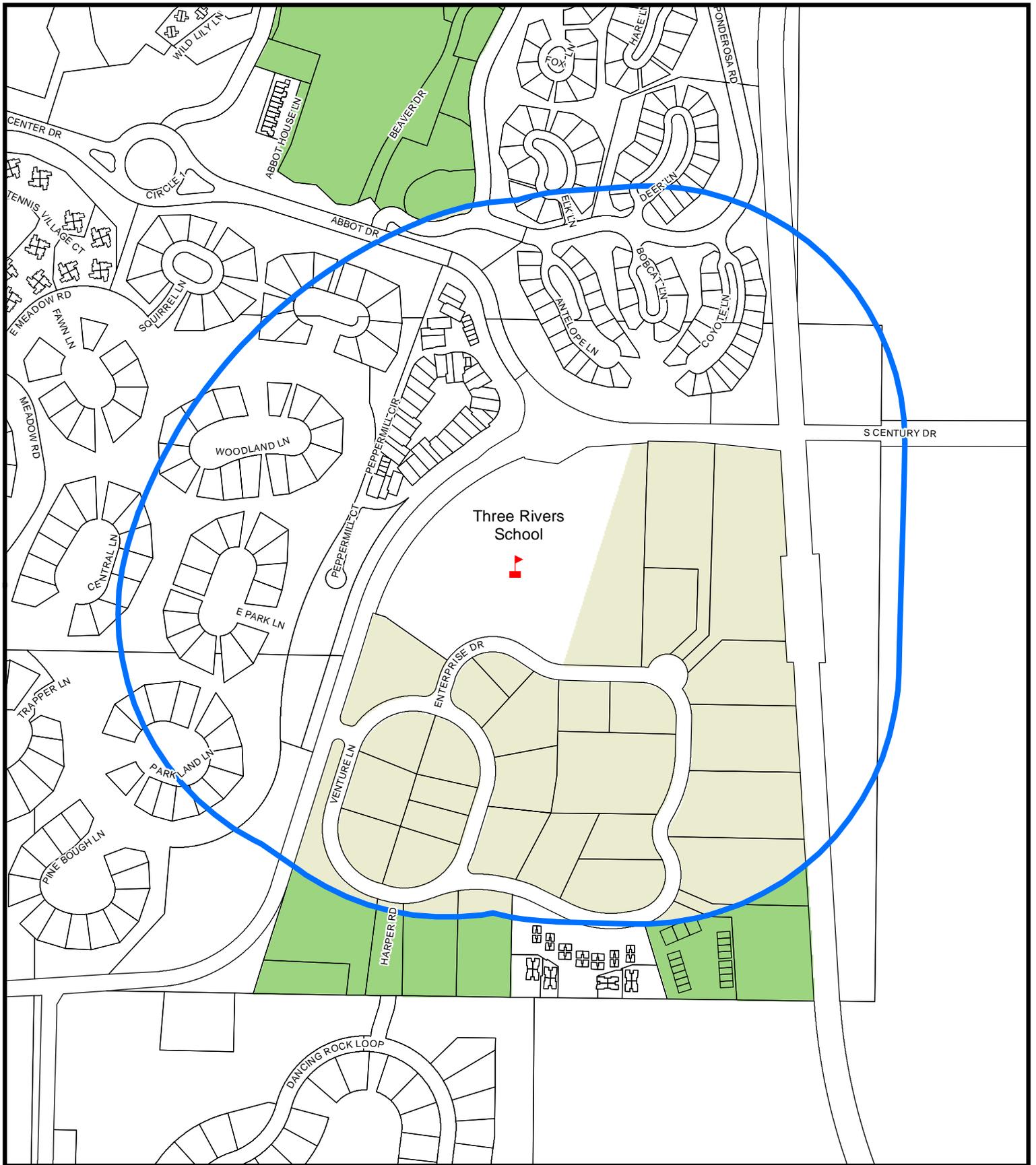


March 12, 2015



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# Proposed Zones Permitting Medical Marijuana Dispensaries

1,000' Radius From Public School Property

-  Public School
-  1,000' Buffer of Public School
- Medical Marijuana Dispensary Siting Analysis**
-  Within 1,000' of a school
-  Beyond 1,000' of a school



March 12, 2015



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N:\Custom\County\CDD\Planning\MatM\MedicalMarijuanaDispensaries

# An Introductory Guide to Land Use Planning for Small Cities and Counties in Oregon



**Produced by the  
Oregon Department of Land Conservation and Development**

January 2007



## **ACKNOWLEDGMENT**

This guide is an update of *City Recorder's Guide to Land Use Planning: The Basics* prepared for the Department of Land Conservation and Development by Daniel Meader of Tenneson Engineering Corporation in 1993.

# TABLE OF CONTENTS

|            |   |       |
|------------|---|-------|
| Chapter 1  | Introduction.....                               | 1     |
| Chapter 2  | Overview of the Land Use Planning Program ..... | 2     |
| Chapter 3  | Land Use Planning Documents.....                | 3-5   |
|            | Comprehensive Land Use Plan                     |       |
|            | Zoning Ordinance                                |       |
|            | Subdivision Ordinance                           |       |
| Chapter 4  | Typical Land Use Actions .....                  | 6-7   |
|            | Building Permits                                |       |
|            | Land Use Permits                                |       |
|            | Partitions and Subdivisions                     |       |
| Chapter 5  | Variances.....                                  | 8-9   |
| Chapter 6  | Conditional Use Permits .....                   | 10-11 |
| Chapter 7  | Zoning Map Amendments .....                     | 12-13 |
| Chapter 8  | Comprehensive Plan Map Amendments.....          | 14    |
| Chapter 9  | Partitions and Subdivisions.....                | 15-16 |
| Chapter 10 | Other Land Use Considerations .....             | 17-18 |
|            | Nonconforming Uses                              |       |
|            | Floodplain Development                          |       |
|            | Overlay Zones                                   |       |
|            | Land Use Compatibility Statements               |       |
| Chapter 11 | Types of Public Hearings.....                   | 19-22 |
|            | Legislative Hearings                            |       |
|            | Quasi-judicial Hearing                          |       |
|            | Findings  |       |
|            | Tips on Running Public Hearings                 |       |
|            | Final Decision                                  |       |
|            | Notice of Decision                              |       |
|            | Appeals   |       |
| Chapter 12 | Public Notice.....                              | 23-24 |
|            | Legislative Hearings                            |       |
|            | Quasi-judicial Hearing                          |       |

Glossary ..... 25-28

Exhibits

A: Sample Forms

B: ORS 197.763 – Conduct of Local Quasi-Judicial Land Use Hearings;  
Notice Requirements; Hearing Procedures

C: Planning Documents

Index

# Chapter 1

## Introduction

The purpose of this guide is to provide basic information regarding the land use planning process in Oregon. It is meant for land use planners and government officials in small cities or counties who are new to land use planning or who rarely process land use applications. The guide offers a step-by-step explanation of the various land use actions that take place in small cities and counties.

For those who have been around the land use planning process for some time, this guide may appear oversimplified. However, there should be some tips that will help even the seasoned planner with day-to-day work. The guide includes

descriptions of various land use actions, from the simplest building permit signoff to planning commission hearings to comprehensive plan and zoning ordinance amendments.

Other available resources include:

- Department of Land Conservation and Development (DLCD), [www.oregon.gov/lcd](http://www.oregon.gov/lcd) (503) 373-0050.
- League of Oregon Cities (LOC), [www.orcities.org](http://www.orcities.org) (503) 588-6550.
- Association of Oregon Counties (AOC), [www.aocweb.org](http://www.aocweb.org) (503) 585-8351.

# Chapter 2

## Overview of the Land Use Planning Program

In the late 1960s and early 1970s, Oregonians became increasingly concerned about the effects of population growth and the threat to the quality of life and resources that make Oregon a special place to live.

In response, the Legislature enacted a series of laws to help shape development throughout the state, including the Beach Bill, Senate Bill 100 (creating statewide land use planning), and others. These laws have resulted in land use plans and state regulations that guide how and where new development occurs.

Today, every city and county has a comprehensive land use plan that has been acknowledged by the state. Each plan represents years of effort and a consensus by citizens and officials about the future of their community.

### Day-to-day Decisions at the Local Level

In Oregon, state and local governments share the job of planning. The state, through the Land Conservation and Development Commission (LCDC), sets overall rules for planning decisions. DLCD provides technical assistance and grants, and reviews local plan amendments for

compliance with the statewide planning goals.

Cities and counties adopt comprehensive plans that meet the applicable statewide planning goals. Local governments make day-to-day land use decisions in conformance with their state-approved plans.

### The 19 Statewide Planning Goals

The statewide planning goals are Oregon's standards for comprehensive planning. Goals set requirements for the content of land use plans. Goals 1-14 apply to the entire state, while Goals 15-19 focus on specific geographic areas.

#### Statewide Planning Goals

1. Citizen Involvement
2. Land Use Planning
3. Agricultural Lands
4. Forest Lands
5. Natural Resources
6. Air, Water and Land Quality
7. Natural Hazards
8. Recreational Needs
9. Economic Development
10. Housing
11. Public Facilities
12. Transportation
13. Energy Conservation
14. Urbanization
15. Willamette Greenway
16. Estuarine Resources
17. Coastal Shore Lands
18. Beaches and Dunes
19. Ocean Resources

For example, the goals require that local governments provide opportunities for citizen involvement. They also set standards for how certain types of land are planned and zoned. The goals also apply to other state agencies when they make decisions affecting land use.

LCDC meets regularly (about every six weeks) and is responsible for adopting rules to

interpret the goals and some land-use planning statutes. LCDC has adopted rules interpreting most of the statewide planning goals. DLCD carries out LCDC decisions and administers other parts of the state's land use laws.

# Chapter 3

## Land Use Planning Documents

Each city and county in the state is required to have a comprehensive land use plan and implementing regulations. The regulations may be contained in a zoning ordinance and a subdivision ordinance or in a combined development code. There may also be supplemental ordinances — for example, a mobile home park development ordinance, a sign ordinance, a floodplain ordinance, or a nuisance abatement ordinance — which may be administered by the planning department or planning commission as a part of the land use process.

A brief discussion of the three most common land use planning documents follows. See also Exhibit C, a summary of common planning documents.

### Comprehensive Land Use Plan

The controlling land use document in all Oregon jurisdictions is the comprehensive land use plan, or simply, the comprehensive plan (or even more simply, the “comp plan”). The comprehensive plan generally includes the following three elements:

- An inventory or a “background” document, which includes inventories and descriptions of existing land uses, natural resources, natural hazards, recreational facilities, transportation facilities, and economics. City plans will also include inventories of housing stock, developable lands, and public facilities such as water, sewer, and storm drainage. County plans will also include

sections on farm and forest land resources. Background documents may also discuss the adequacy of community services such as education and law enforcement;

- Goal and policy statements, which indicate, in a general way, the objectives of the jurisdiction over a specific planning period — normally 20 years from the date of adoption of the plan — and provide guidance on how to achieve those objectives; and

- A comprehensive plan map, which depicts, in a site-specific nature (*i.e.*, to individual property lines), the desired arrangement of uses for the entire jurisdiction. The designations may be very general, such as residential, forest, and industrial, or they may be specific, such as low- or medium-density residential, neighborhood or downtown commercial, and light or heavy industrial;

The comprehensive plan map is the controlling instrument, directing the future of land use in the jurisdiction. The zoning map must be subordinate to the comprehensive plan map. That is, the zoning map cannot allow a more intensive land use than is shown on the comprehensive plan map for the same area. To take that a step further, if a plan designates a certain area as residential, the zoning map cannot designate the same area as commercial — a more intensive land use. Some jurisdictions may have only one map that serves as

both the comprehensive plan and zoning map.

The goals and policies are generally designed to provide *guidance* to elected and appointed officials over the use of land. They are important when reviewing proposed zone changes, comprehensive plan amendments, and sometimes, conditional use permits.

The inventories, while significant, do not play a major role in the day-to-day administration of the planning program of a city or county. The inventories are most important when developing the goals and policies. The inventories are normally updated during major plan updates, and the updated inventories may lead to changes in policies within the plan. For example, if a policy was adopted in 1988 to provide additional tourist-related housing to further an economic development goal, and by 2005 the city found it had an overabundance of tourist-related housing that had been constructed in the intervening years, it would probably be prudent to consider revising that particular policy.

### Zoning Ordinance

The zoning ordinance is the most important tool in the day-to-day planning effort. It is used in conjunction with the zoning map. The typical zoning ordinance includes:

- **Definitions.** A word or phrase will have a specific meaning that is not quite the same as in ordinary conversation.
- **Uses.** These will include descriptions of what land uses may occur in each zone. Some uses will be permitted (often referred to as an “outright permitted use”), which means that the approval of the use is not subject to approval-subjective criteria. Other uses will be listed as “conditional” or “special” uses.

**Note:** A comprehensive plan policy can only be used as an approval criterion for a zone change or permit if it is worded to be mandatory. If the policy uses such terms as “should,” “encourage,” or “consider,” it is not to be used as a basis for making a land use decision. On the other hand, if the policy uses “shall” or “must,” then you will want to make sure that requests for land use changes comply.

These are subject to discretionary criteria and a local government may deny the land use or place conditions on approval of the use. The zoning classifications may also include “overlay” zones, which add provisions to the “base” zone, such as special considerations for floodplains, historic sites, or airports. An

overlay zone does not replace the requirements of the base zoning district.

- **Development Standards.** Requirements such as minimum lot sizes, yard setbacks, and height requirements are often included in the individual zone chapter. In a county, these would also include standards for development in farm and forest zones. Other types of standards such as natural resource protection, off-street parking and landscaping requirements are often found in their own chapter.
- **Procedures.** Several sections of the zoning ordinance deal with the procedures for processing applications for variances, conditional use permits,

zoning ordinance or map amendments, and the administrative provisions, including enforcement.

### **Subdivision Ordinance**

The subdivision or land division ordinance deals with a different aspect of land use — the division of land. The subdivision ordinance provides the process for subdividing or partitioning lands within the jurisdiction.

In a small jurisdiction that has not faced many requests to divide land, the subdivision ordinance, adopted many years ago, may be difficult to implement. Generally, in small cities, it is wise to take even a minor partition request to the city planning commission (if there is one) or the city council. In many small communities, the elected or appointed officials want to be informed of all land use decisions, even the most mundane.

The subdivision ordinance provides the standards for providing infrastructure

such as sewerage, street development, water system improvements, and a host of other design standards. It includes requirements regarding whether and how a new lot must be surveyed. The subdivision ordinance sets forth procedures for approving all types of development actions, including partitions and subdivisions. There is additional information on land divisions in Chapter 10.

There may also be supplemental ordinances — for example, a mobile home park development ordinance, a sign ordinance, a floodplain ordinance, or a nuisance abatement ordinance — which may be administered by the planning department or planning commission as a part of the land use process.

# Chapter 4

## Typical Land Use Actions

This chapter provides a brief summary of the procedures for processing the most common types of land use applications. You should also consult the specific regulations contained in the zoning and subdivision ordinances or development code.

### Building Permits

The simplest land use action is approval of a building permit for a home or an accessory building (*i.e.*, a garage or shed). Before issuing a building permit, be sure to answer the following questions:

- What is the zoning of the property?
- Is the proposed use of the building allowed within that zone?
- Is the use a conditional use? (See conditional use permits below and in Chapter 6.)
- Does the proposed building and site plan comply with all of the development regulations such as setback, height limit, and parking? (Some of these regulations will apply citywide or countywide, some will apply in specific zones, and some will apply to specific types of buildings.)
- Does the proposed building require any special review such as site plan review, floodplain review, hillside review, or historic review?

The building permit applicant must include with the permit application a site plan showing the tentative location of the proposed structure. The building permit application will also include

structural plans, which will be reviewed by the local building official.

The site plan will show the property line configurations, the exterior dimensions of the building, and the distance in feet from the property lines to the proposed structure. If there are other structures, subsurface facilities such as water lines or a septic tank, or easements on the property, these should also be identified in the site plan.

Using the site plan, determine whether the setbacks from the exterior property lines are adequate to satisfy the zoning ordinance standards. If off-street parking is required, the number of off-street parking spaces must be shown on the site plan. A key element not always shown on the site plan is the proposed height of the structure, particularly of accessory structures. Almost all jurisdictions have height limitations on single-family dwellings. If this information is not specifically required on the site plan, it should be requested from the applicant.

Remember to keep on file a copy of the site plan with the building permit. If there are subsequent questions concerning the completed structure, that site plan will be the key in determining whether the applicant has followed through with the development as proposed.

## Land Use Permits

Even the smallest communities are faced with land use actions, including variances, conditional uses, zone changes, comprehensive plan map amendments, partitions, and subdivisions.

A **variance** is simply a process to allow an applicant to vary from development standards required by the zoning ordinance — normally setbacks, building height, or other physical dimension (See Chapter 5 for additional information.)

Most zoning ordinances list uses permitted outright and uses that *may* be permitted (usually called “conditional uses”) in each zone if certain criteria are satisfied. A **conditional use permit** is issued by the city or county when the applicant has shown the criteria have been met. (See Chapter 6 for additional information.)

A **zone change**, also known as a zoning map amendment, is a process by which the applicant seeks to amend the zoning

map to change the designation on a specific tract. The process is more detailed than for the other types of permits described here, and requires several steps, which are discussed later in this guide. A comprehensive plan map amendment often accompanies a zone change. (See Chapters 7 and 8 for additional information.)

## Partitions and Subdivisions

These applications deal with property division rather than how the property will be used. These procedures allow parcels to be divided into smaller lots or parcels. The subdivision ordinance is used to process these applications.

The subdivision ordinance outlines the process to be followed and in most cases, prescribes specific infrastructure standards such as street width, water, and sewer system requirements, and in some cases, curb, gutter, and sidewalk standards. (See Chapter 9 for additional information.)

# Chapter 5

## Variances

A variance is a planning term that refers to a permit that allows some deviation from a development standard. An example of the common use of the term is: “You need to get a variance to place your single-family dwelling within 10 feet of the easterly property line instead of the 15 feet required by the zoning ordinance.”

The zoning ordinance contains approval criteria against which an application is evaluated. A variance is generally applicable only to physical, measurable requirements such as setbacks, height limitations, or lot width-to-depth ratios.

A variance is generally *not* used to allow a land use that is not a permitted or conditional use in a given zone. For example, if a zone allows only dwellings, churches, and parks, the jurisdiction would not approve a variance to allow a grocery store. This is particularly important in farm and forest zones because permitted uses are prescribed by state regulations; a county cannot approve a variance to allow a use not permitted by state provisions.

### Variance Procedures

Normally the process requires the applicant to fill out a variance application form provided by the city or county, and accompany it with a site plan showing the proposed development including the exterior boundaries of the

structures, distance from the property lines, access, and other information necessary to support the request. The applicant must describe the nature of the variance sought and explain how it satisfies the approval criteria in the zoning ordinance.

In small jurisdictions, a variance request is often reviewed in a public hearing before the planning commission or elected

officials; however, cities and counties may choose to have planning staff administratively make decisions on variances. There are certain procedural steps that must be taken in any case. (See Chapters 11 and 12 on notice procedure and quasi-judicial hearings.)

A request for a variance will be evaluated against the criteria established by the individual city or county. A variance that does not satisfy all of the criteria should not be approved.

**TIP:** Dealing with the general public over property rights is not always an easy task. Planning staff may be inclined to tell a potential applicant that it is a waste of money to undergo a particular process that is likely to be denied and to take “no” for an answer. However, the applicant has the right to be heard by the appropriate appointed or elected body on a given land use issue. You should be as tactful as possible, indicating that while the request may not be practical and obtaining approval may be difficult, the applicant has the right to go before the planning commission or city council.

There are generally four criteria for approval of a variance. The criteria usually read something like this:

- Exceptional or extraordinary circumstances that apply to the property but do not apply generally to other properties in the same zone or vicinity. These circumstances result from lot size or shape, topography, or other conditions that the property owners cannot control;
- The variance is necessary so that the applicant can enjoy a property right, the nature of which owners of properties in the same zone or vicinity possess;
- The granting of the variance will not be detrimental to public safety, health, or

welfare, or injurious to other property; and

- The hardship is not self-imposed, and the variance is the minimum that will alleviate the hardship.

As these criteria imply, a variance should be approved for unusual circumstances. If you find that your city or county receives a significant number of variance applications for a particular standard — the side setback in the R-1 zone, for example — it may be a good idea to consider whether the requirement is too stringent and needs to be amended.

# Chapter 6

## Conditional Use Permits

A conditional use permit is probably best described as a process rather than a permit. It is a process by which the jurisdiction reviews a proposed land use that is listed in the zoning ordinance as a conditional use in a given zone.

A conditional use permit allows the local government to (1) determine whether the proposed use is appropriate for the site and neighborhood, and (2) attach conditions to an approval to assist in reducing the impact of the proposed use on the surrounding area. Typical conditional use permits in a city are for multi-family dwellings and public and semi-public structures, including churches. In a county, common conditional uses include certain dwellings in farm and forest zones, home occupations, and temporary dwellings for medical hardship situations.

In small jurisdictions, conditional use permit requests are often taken to the planning commission or elected officials in a hearing process. A jurisdiction may choose, however, for staff or a hearings officer to make decisions on conditional use permits.

Through the review process, the decision maker can assess neighborhood comments as well as comments from other parties of record (those who respond to the notice or participate in a public hearing). The decision maker can approve the request, deny it, or approve it with conditions, based on criteria in the zoning ordinance.

The city or county will often place conditions in order to reduce or offset the impact of a use on adjoining properties or the general neighborhood. Common conditions placed by a city include:

- Limiting the hours of operation;
- Limiting the size of the use;
- Requiring landscaping or fencing to screen the proposed use;
- Requiring

lighting to be directed away from adjoining properties; and

- Setting a time limit to establish the use. If the use is not established within the time limit, the conditional use permit expires.

**TIP:** Always require a site plan for any structure involved in the conditional use permit request, and attach the plan to the findings of fact. For commercial enterprises such as a home occupation or public or semi-public uses, it is normal procedure to ask for a "Statement of Operations." Most ordinances do not require it, but a Statement of Operations is very helpful in setting the parameters of the use. A Statement of Operations is simply an applicant's written statement detailing how the proposed use will be conducted.

In a county, the above conditions may be appropriate for some uses. Other conditions include:

- Increasing setbacks to reduce conflicts with farm use;
- Signing an agreement not to object to farm or forest practices on adjacent land; and
- Renewing the permit annually or biennially.

The procedure for processing a conditional use permit varies among communities, but it will generally follow the procedures described in Chapters 11 and 12. An application, including a site plan and frequently, a public hearing, is required.

Conditional use criteria also vary from city to city and county to county, but they are normally contained in the same

section of the zoning ordinance as the conditional use review procedures. Typically, the criteria will provide that:

- The proposal be consistent with the comprehensive plan and the objectives of the zoning ordinance and other applicable policies of the city or county;
- The proposal have a minimal adverse impact on abutting properties and the surrounding area compared to the impact of development that is permitted outright, taking into account location, size, design, and operation characteristics of the proposed use;
- The proposal preserves assets of particular interest to the community; and
- The applicant has a bona fide intent and capability to develop, use the land as proposed and has some appropriate purpose for submitting the proposal.

# Chapter 7

## Zoning Map Amendments

This chapter could also be titled “zone changes.” Zone changes involve redesignating property from one zone to another (for example, residential to commercial) on the zoning map. Frequently, a request for a zone change will also involve a comprehensive plan map change, which is described in the next chapter. The zoning map amendment and comprehensive plan amendment are generally combined for review and dealt with at the same hearings.

A zone change is normally a two-hearing process, the first before the planning commission and the second before the city council, board of county commissioners, or county court. It requires that post-acknowledgement plan amendment rules be applied, including notifying DLCD at least 45 days before the first public hearing on the application. This gives DLCD the opportunity to evaluate the proposal and participate in the process. The notice of proposed action must include a form provided by DLCD, the text of the proposed amendment and a map of the affected area. Forms are available online at: [www.oregon.gov/LCD/forms.shtml](http://www.oregon.gov/LCD/forms.shtml), or may be obtained by contacting DLCD.

The remainder of this chapter addresses quasi-judicial zone changes. (To understand the difference between quasi-judicial and legislative hearings, see Chapter 11, Types of Public Hearings.)

A zone change begins when a property owner/applicant submits a completed application (sample in Exhibits) together with a map showing the subject property. It is important that a legal description of the property be provided.

Once city or county staff determines the application is complete, a hearing is scheduled before the planning commission and the city council. As noted previously, the city or county provides DLCD with a notice of the proposal at least 45 days before the hearing. The hearing process is discussed in greater detail in Chapter 11.

Approval criteria for a zone change are provided in the zoning ordinance. Typical criteria include:

- A demonstration that the proposed zone will be compatible with surrounding property uses;
- Public services are adequate to serve the proposed use; and
- The change will comply with the goals and policies of the comprehensive plan.

For the last criterion listed, a review of relevant provisions of the plan is needed. Be aware that different sections of the plan may seem to conflict with each other. This requires the decision makers to balance the policies with the unique circumstances of the request in question.

Note that state rules may apply to a zone change as well. A prime example is the

Transportation Planning Rule, which requires a demonstration that the effects of the zone change on the transportation network have been adequately considered.

There are many nuances to a zone change. Here are a few “dos” and “don’ts:”

- **Do** notify DLCD at least 45 days in advance of the first hearing at which the public can testify. This is usually the hearing before the planning commission. It will generally take two or three days from mailing for DLCD to receive the notice. Add 45 days to the date DLCD will receive the notice. Sending a notice late is better than sending an incomplete notice. Be sure to include the information about the requested zone change.
- **Don’t**, as a general rule, rezone a portion of a piece of property without rezoning the whole parcel. This is not always possible because the parcel may cross jurisdiction boundaries.
- **Do** always look at the comprehensive plan map before accepting the zone change application to ensure that the proposed zone will

conform to the comprehensive plan map. If not, a comprehensive plan map amendment will be necessary (see Chapter 8).

- **Don’t** generally rezone lands to create islands of a special designation in the middle of a different zone. This practice is commonly called “spot zoning.” For example, don’t drop a single-lot residential rezone in the middle of the downtown commercial district.

A specific application for a zone change should not be processed without signatures from all property owners involved in the subject area. In other words, those whose property is being rezoned should be in favor of the proposed action. However, it is not necessary to have all adjoining property owners support the proposed zone map change.

You must also send DLCD notice of an adopted zone change decision within five days of the decision becoming final. DLCD will provide the appropriate form.

# Chapter 8

## Comprehensive Plan Map Amendments

A comprehensive plan map amendment is generally reviewed using the same process as for a zoning map amendment. In most cases, a request for a zone change will require a comprehensive plan amendment as well. Many comprehensive plans do not include an amendment procedure within the plan document itself. Therefore, many small cities and counties rely on the amendment process outlined in the zoning ordinance.

The comprehensive plan map amendment is generally a two-hearing process: the first before the planning commission and the second before the city council, board of commissioners, or county court. This is because the comprehensive plan and zoning ordinance must be adopted by ordinance, and therefore, can only be amended by the elected officials.

Comprehensive plan and zoning map amendments can run concurrently, with combined notice to the public and DLCD, one public hearing before the planning commission, and one public hearing before city or county elected officials. The same set of rules that was addressed for zone changes applies to comprehensive plan map amendments.

For cities, an important consideration will be whether the amendment would result in a deficit of land of the designation currently applied to the property. For example, if the application is to change the plan designation and zone from industrial to residential, will there continue to be an adequate supply of industrial land in the city, according to what the comprehensive plan says is needed?

**TIP:** Unlike a zone change, which is reviewed primarily for compliance with the local comprehensive plan, a plan amendment must be shown to be consistent with the statewide planning goals. The application should include an explanation of how the request complies with the goals.

Plan amendments in counties often include an “exception” to a statewide planning goal. An exception is governed by Goal 2, statutes, and rules, not just local criteria.

As with zone changes, do not re-designate a portion of private property without including the entire property, unless the owner is also partitioning his or her property. Small cities are especially susceptible to “spot zoning” — creating a commercial island in the middle of residentially planned property. While circumstances sometimes warrant a spot zone, it is usually not a desirable situation.

As is done for a zone change, remember to send DLCD notice of an adopted plan amendment decision within five days of the decision becoming final — usually a signed ordinance. DLCD will provide the appropriate form.

# Chapter 9

## Partitions and Subdivisions

Partitions and subdivisions are governed by the subdivision ordinance or subdivision chapter of the code. The subdivision ordinance primarily does three things:

- Provides a set of standards for improvements to public infrastructure, such as streets (including sidewalks), water, sewer, and drainage system;
- Provides procedures for processing applications; and
- Provides criteria for reviewing applications.

Some ordinances may still include both Major and Minor Partitions, but currently there is no distinction in state law. Similarly, some jurisdictions may still require that partitions and subdivisions go before a public hearing. However, changes to the statutes now allow administrative approval of partitions and subdivisions by staff. This is being done with increasing regularity in the larger jurisdictions of the state.

The elected officials, especially in small cities and counties, should be aware of any development being considered. A public hearing process on a partition or subdivision, although not required, might be beneficial for local decision makers in understanding the proposed development in their community.

When processing a land division proposal, there are a number of other departments, agencies, and organizations that may need to be involved.

| Who to involve  | Why to involve them   |
|---|---|
| Public works director, city/county engineer                     | Adequacy of existing public infrastructure and necessary improvements |
| Private utilities   | Adequacy of existing infrastructure and necessary improvements        |
| Oregon Department of Transportation                             | If a state highway adjoins the site                                   |
| County road department  | If a city subdivision adjoins a county road                           |
| County sanitarian or Oregon Department of Environmental Quality | Wastewater disposal in rural areas                                    |
| Fire department   | Hydrant locations   |
| Postal service  | Mail box locations  |
| County surveyor   | Name of the subdivision, preparation of the final plat                |
| Oregon Department of State Lands                                | If site includes wetlands (or potential wetlands)                     |

Applications also need to be reviewed by the planner. Some of the criteria for a land division are included in the zoning ordinance. For example, minimum lot size, street frontage, and lot width-to-depth ratio requirements vary from zone to zone and are usually included in the

“property development standards” of each zone.

Partition and subdivision applications generally require two steps — preliminary and final approval. The preliminary approval is the stage where the proposal is reviewed and approved, altered, or denied. Approval of the preliminary plat frequently includes conditions of approval that must be

satisfied before final plat approval. A common condition is that the applicant must construct the necessary public improvements prior to final plat approval. Final approval is simply a check to see that the preliminary approval process has been followed and all of the conditions have been met. It is commonly handled by staff as an administrative matter.

# Chapter 10

## Other Land Use Considerations

There are several other types of land use actions that a small city or county may encounter.

### Nonconforming Uses

A “nonconforming use” is a use or structure that was legally established but is no longer permitted because zoning regulations have been applied or changed since the use or structure was established. A common example is a residence in a commercial zone.

Nonconforming uses may be created because the local government made a conscious decision to plan for a structure or an area to eventually convert to a different use, such as houses in the downtown. Changes in state regulations regarding farm and forest lands can create nonconforming uses in rural areas, such as a school near a city in a farm zone.

Most zoning ordinances allow continuation of nonconforming uses. Maintenance and repair of nonconforming structures are usually allowed, but expansion and replacement are often limited or prohibited. Different codes treat replacement in the event of a natural hazard or disaster in different ways. There is generally a provision for replacement of a building that has been destroyed by fire or other disaster, often within one year, but not all codes permit it.

A statute guides alteration, restoration, and replacement of nonconforming uses

in counties (ORS 215.130). County zoning ordinances must conform to the requirements of the statute. There is no such statute that applies to cities.

If your code has provisions for altering or expanding a nonconforming use, it will likely include approval criteria. As with the other types of permits described in this report, be sure to follow the procedures for notice and decision-making prescribed in your code, and apply the approval criteria rigorously.

### Floodplain Development

Many cities are built near streams or water bodies and all Oregon counties have flood hazard areas. Any jurisdiction with a designated floodplain is required to have an adopted floodplain ordinance. It may be part of the zoning ordinance or a separate ordinance.

Before issuing a building permit or any other land use action, you must check the location of the property against the floodplain maps provided by the Federal Emergency Management Agency (FEMA) to determine whether the property is in the designated flood hazard area or local floodplain zone.

Administering floodplain ordinances can be difficult because the floodplain maps are often not site-specific enough to determine the precise location and elevation on the ground. For questions on floodplain development and permitting, DLCDD has a full-time

floodplain specialist who is available to help (503-373-0050).

### **Overlay Zones**

Zoning ordinances often contain one or more “overlay zones” (sometimes called “combining zones”). An overlay zone is, as the name implies, a zone that adds requirements or considerations regarding the use of affected land. They do not replace the underlying zone.

Overlay zones are commonly employed to implement requirements of the floodplain or other hazard ordinance, to protect flight paths around airports, and protect significant wildlife habitat. There is a wide variety of overlay zones in addition to these.

Overlay zones may make an otherwise permitted use into a conditional use, alter setback or height requirements, or add other types of approval criteria, depending on the purpose of the zone. Overlay zones must be shown on the official zoning map, and they apply only to the land so designated.

### **Land Use Compatibility Statements**

State agency actions must be completed in a manner that is consistent with the local comprehensive plan. The vehicle

through which a city or county (most often a county) confirms that a proposal is consistent with the plan is a land use compatibility statement, or “LUCS.”

Common LUCS requests include new or amended water rights, on-site sewage disposal approval, and wetland fill or removal.

Signing a LUCS is generally not a land use decision (*i.e.*, requiring public notice and opportunity for appeal). As long as the proposed use is permitted outright, such as a dwelling in a residential zone, signing a LUCS is usually accomplished with little trouble. Similarly, if the proposed use requires an approval, such as a conditional use permit, and the applicant has received the approval, then signing the LUCS is a “ministerial decision” (see glossary).

In certain unusual circumstances, deciding whether the proposed use is permitted may require discretion. In these cases, notice of the decision and opportunity for appeal must be provided. Many zoning ordinances require a public hearing by the planning commission, much like a variance or conditional use permit, for all discretionary decisions.

# Chapter 11

## Types of Public Hearings

In processing land use actions in Oregon, there are two types of public hearing procedures: legislative and quasi-judicial. The two hearing processes differ significantly in the procedural and public notice requirements.

A legislative hearing is a public hearing in which the planning commission, city council, board of commissioners, or county court is acting as a legislator, making new law. A quasi-judicial hearing is a type of land use proceeding in which the decision maker is acting in the capacity of a judge.

When deciding whether a particular matter is legislative or quasi-judicial, ask three questions:

- Does the issue being considered affect only one or a few parcels and a small number of property owners?
- Does the decision have to comply with existing approval criteria?
- Is the jurisdiction required to make a decision on the matter?

If the answers to these questions are yes, then use quasi-judicial procedures. If the answers to all the questions are no, it is a legislative matter. Sometimes the answers are mixed and it is not clear which hearing procedure should be employed. Legal counsel will be able to help decide ambiguous cases.

### Legislative Hearings

Legislative hearings typically occur when considering amendments to the goals and policies in the comprehensive plan, to major map amendments, and to changes to the zoning ordinance. They are generally initiated by the local government.

Zoning ordinances usually provide procedures for sending notice of legislative hearings. Procedures generally include providing notice of the hearing in a newspaper of general circulation at least 10 days before the hearing. Local provisions may include additional requirements.

There can be pre-hearing contact between citizens and the decision makers on legislative matters. That is, “*ex parte* contact” is not a concern. Decision makers are seeking all the input they can get on the issues in order to make a reasonable decision on the proposed amendments.

During the process of the hearing, it is appropriate for the presiding officer to explain the nature of the hearing, and ask for a staff report from the planner. Some jurisdictions ask people in favor of the proposed amendment to testify first, followed by those opposed to the amendment. This may not be appropriate for a legislative matter. Rather, it may be advisable simply to ask people to testify in the order they signed up. The proposal may be complex and the issues diverse.

A party may be in favor of parts of the proposal and opposed to others.

It is also advisable for decision makers to prepare a series of findings indicating the rationale for adopting or denying the proposed amendments.

### Quasi-Judicial Hearings

A quasi-judicial hearing is a type of land use proceeding in which the decision maker addresses a narrow land use issue, normally related to one or a limited number of parcels, and apply existing criteria.

Typical variance, conditional use permit, and zone change hearings are all quasi-judicial hearings. They are generally initiated by an applicant. Appeals of an administrative decision on these types of applications are also quasi-judicial.

In Oregon, the quasi-judicial hearing has assumed a major importance in the land use arena. There are certain procedural steps that must be taken, including the notice of the hearing, announcements at the beginning of the hearing, testimony during the hearing, and process after the decision. (Public Notice is covered in the next chapter, but some of the state requirements overlap.)

It is suggested that you be familiar with several of the Oregon Revised Statutes. In particular, ORS 197.763, "Conduct of Local Quasi-Judicial Land Use Hearings, Notice Requirements, Hearing Requirements" (see Exhibit B). The requirements of ORS 197.763 mandate a certain procedure at the beginning of a quasi-judicial hearing.

At the outset of the hearing, the chairperson or designee announces the

nature of the hearing; indicates the review criteria; and polls the decision-making body for *ex parte* contact, pre-hearing bias, or other factors that would preclude an individual decision maker from sitting in on the case. These are situations in which the individual decision maker is asked to determine whether he or she will be able to render an unbiased decision because of contact with parties outside the hearing (*ex parte* contact), pre-hearing bias, or a conflict of interest.

In many cases, pre-hearing contact is difficult to avoid. It simply should be reported at the outset of the hearing, and the decision maker can remain on the board. It is very important that the report of *ex-parte* contact include a summary of what the person learned from the contact. This gives the other members of the decision-making body access to all of the information, and also allows an opportunity for rebuttal of the information if other parties disagree. For the same reason, if any member of the decision-making body has made a visit to the site, he or she should report on the visit and what was observed on the site.

A pre-hearing bias or conflict of interest, on the other hand, should cause the decision maker to step down from that particular hearing issue. A conflict of interest occurs in cases where a member of the decision-making body, or a member's family, stands to profit from the outcome of the decision.

The chairperson must advise the audience of the provisions of ORS 197.763, including statements that testimony, arguments, and evidence must be directed toward the criteria and that failure to raise an issue with

sufficient specificity to afford the decision maker and other parties an opportunity to respond to the issue precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue (the so-called “raise it or waive it” requirement).

The hearing normally begins with the staff report, followed by the proponent’s case, the opponent’s case, and rebuttal from the applicant, if necessary. Public agencies wishing to comment may follow.

The public hearing is then closed and the matter goes to deliberations. During deliberations, the decision-making body has essentially three options:

- Make a decision with findings documenting how the application satisfied or did not satisfy appropriate criteria;
- Determine that there is not enough information to make a decision and continue the hearing to a specified date and time; or
- Schedule deliberations for a specified date and time.

If the hearing or the deliberations are continued to a specified date and time, no additional advertising or notice is necessary. ORS 197.763 includes specific rights regarding who may ask for a continuance or for the record to be left open.

### **Findings**

There are entire books written on preparing findings of fact for decisions. Essentially, what needs to be done in any quasi-judicial land use case is to make findings to support the decision.

Basic facts need to be enumerated (facts such as who, what, where, when, and why). The review criteria need to be spelled out and findings evaluating whether the proposal complies with the review criteria must be outlined. These do not have to be lengthy documents in legal jargon. They need to simply state how the facts of the situation relate to the review criteria. These findings need to be included in the files as part of the hearing body’s decision.

For variances and conditional use permits, a simple order (such as the sample in Exhibits) is all that is needed. For Zoning Ordinance and Comprehensive Plan Map Amendments, an ordinance approved by the city council or board of commissioners is required.

### **Tips on Running Public Hearings**

- Introduce the body (planning commission, council, board, or court) and staff at the outset of the hearing.
- Use a sign-up sheet that requires names and addresses to keep track of proponents and opponents who wish to speak or receive notice of the decision or both.
- Set a time limit for each speaker, if necessary. Try to keep speakers focused on relevant criteria.
- Keep control of the hearing. There are several short courses available for planning commissioners. New planning commissioners and other elected officials are encouraged to attend.
- Record names and mailing addresses of all hearing participants. These people qualify as “parties” to the hearing and must be notified of the decision.

### **Final Decision**

A final decision is one made by the planning commission or council/board that stands unless appealed. The decision must be put in writing and signed by the appropriate city or county official.

### **Notice of Decision**

Once the final decision has been made, a written notice of the decision must be mailed to the applicant, all parties at the public hearing, and those who requested it. In the case of a comprehensive plan text or map amendment or a zoning change, where the 45-day notice was

sent to DLCD, a notice of the decision must be given to DLCD within five working days of the final decision.

### **Appeals**

The zoning ordinance has an appeal process, usually in the administrative provisions section. An appeal of the planning commission decision will generally go to the elected officials, but some jurisdictions use a hearings officer. A final local decision can be appealed to LUBA. LUBA appeals must be filed within 21 days of the final local decision.

# Chapter 12

## Public Notice

See Chapter 11 for a description of the difference between legislative and quasi-judicial land use decisions.

### Legislative Hearing

Legislative hearings are land use procedures in which the decision makers are considering making new law that will have widespread effects.

Notice for a legislative hearing must be published in the local newspaper. This notice is generally just a statement of “who, what, where, why, and when.”

“Ballot Measure 56” notice may also be required if the legislative amendment may further restrict the use of property. If this is the case, individual hearing notice to each affected property owner is required (counties see ORS 215.503 and cities see ORS 227.186). Reimbursement of costs for this notice is available if the local government is required to make the amendment due to new legislation or if it is completed as part of a periodic review work program.

Some local ordinances require posting of public hearing notices. Examples of additional means of notice include:

- The local-access cable TV channel;
- The city’s water and sewer bills;
- Other utility information; and
- Postings at the city hall, post offices, or other locations where the general public can see it.

### Quasi-Judicial Hearing

Prior to conducting a quasi-judicial public hearing on land use issues, there are a number of public notices that need to be prepared and distributed in a variety of ways.

State requirements for quasi-judicial hearing notices are contained in ORS 197.763, “Conduct of Local Quasi-Judicial Land Use Hearings, Notice Requirements, Hearing Requirements” (see copy in Exhibits).

This statute includes a number of requirements for notice, including who must receive notice (it depends on the zone the request is located) and when (generally 20 days before the hearing). In addition to the who, what, where, when, and why information typical of a public notice published in the newspaper, notice to individual property owners must also contain information regarding the “raise it or waive it” rule, the review criteria, the local government contact person, the staff report, and other details.

**A word of caution here:** If your zoning ordinance has different notice requirements from the statute, the more rigorous requirements apply.

ORS 197.763 also provides that the public notice may be mailed and published **10 days** prior to the public hearing provided there is an opportunity for a second public hearing at the local level. This applies when the initial

decision (usually the planning commission's decision) can be appealed or if a second hearing is required (typical for a comprehensive plan amendment request). However, if there is only one opportunity for an evidentiary hearing, the notices must be published and mailed **20 days** in advance of the public hearing. If a staff report is prepared, it

must be available to the public at least **seven days** in advance of the hearing.

**NOTE:** Many local governments are using the 20-day notice period just to be safe and consistent with other requirements and to give staff ample time to complete the staff report

# Glossary

|                         |  |
|-------------------------|--|
| Accessory Structure     | A building or structure subordinate to the primary use.  |
| Administrative Decision | A discretionary decision on a land use permit made by city or county staff without a hearing.  |
| Applicant               | The person who fills out an application for a permit to develop or divide land (see property owner).   |
| Building Official       | The official who administers the building code and issues building permits.  |
| Building Permit         | Approval from the local building official to build, alter, or place structures on real property.   |
| Comprehensive Plan      | A document adopted by the local government that provides the long-range land use planning goals and policies of a city or county. The plan is composed of text and a map.                |
| Conditional Use         | A use that may be allowed, if it meets prescribed conditions in the Zoning Ordinance or additional conditions set forth by the decision-making body.                                     |
| Complete Application    | An application is deemed complete when all the information necessary to process it is provided to the planning official.   |
| Decision-Making Body    | The body that has the legal authority to make decisions on requests for development permits and adopt or amend land use ordinances ( <i>i.e.</i> , planning commission or city council). |
| DLCD                    | Department of Land Conservation and Development. (The administrative arm of the Land Conservation and Development Commission.)   |
| Easement                | A right to use, for a specified purpose, a particular piece of land owned by another.  |
| Evidentiary Hearing     | A hearing in which evidence may be presented.  |
| Findings                | A statement of the standards, facts, and conclusions used in making a decision.  |
| Floodplain              | Low areas adjacent to rivers, lakes, estuaries, and oceans that are periodically flooded at intervals of varying frequency.  |

|                         |   |
|-------------------------|---|
| Height Requirements     | The maximum distance, from the ground to the highest part of the structure, which is allowed by the Zoning Ordinance.   |
| Land Use Application    | A form on which a person requests a land use action.  |
| Land Use Action         | A final decision or determination made by a decision-making body affecting land use.  |
| LCDC                    | Land Conservation and Development Commission. A seven-person volunteer commission appointed by the Governor to develop and administer Oregon’s statewide planning goals.  |
| LUBA                    | Land Use Board of Appeals. An independent, three-person board appointed by the Governor to hear and rule on appeals of land use decisions made by local governments and special districts. LUBA is the only forum that can hear appeals of local land use decisions.                        |
| Legislative decision    | Decisions that create general rules or policies. A legislative matter affects an entire jurisdiction or a broad area, and a wide range of property owners. Making a decision is generally optional.   |
| Ministerial Decision    | A non-discretionary decision on a proposed use of land, often made by staff. An example is a building permit for a structure that is an outright permitted use in the zone (see “outright permitted use”).  |
| Nonconforming use       | A land use not permitted by current zoning regulations. The term is frequently used to describe a use or structure that was legally established but is no longer permitted. An example may be a house constructed prior to zoning regulations in an area that is now designated industrial. |
| Nuisance                | That which substantially interferes with the enjoyment and use of one’s land.   |
| Off-Street Parking      | An area on private property designated for the parking of motor vehicles.   |
| Oregon Revised Statutes | The laws passed by the Oregon Legislature (also referred to as “ORS” and “statutes”).   |
| Outright Permitted Use  | A use permitted by a zoning ordinance that does not require consideration of discretionary approval criteria, special   |

permits, or conditions but often requires some type of review by a planning official.

|                          |  |
|--------------------------|--|
| Partition                | Either an act of partitioning land or an area or tract of land partitioned. “Partition land” means to divide land into two or three parcels within a calendar year.  |
| Planning Commission      | A group of lay persons appointed by the governing body of a city or county to advise the governing body in matters pertaining to land use and comprehensive planning.  |
| Pre-Hearing Contact      | Contact between a decision maker and an applicant or citizen on a matter that is to be heard by the decision-making body.  |
| Periodic Review          | A formal process by which the local government’s land use planning documents is reviewed to address changing circumstances and ensure compliance with new laws and rules.  |
| Public Notice            | Information about a land use decision or about a hearing to be held regarding such a decision. Such notice is either published in a newspaper, mailed to property owners of adjacent property, or both.            |
| Quasi-judicial           | The application of existing regulations to specific properties. The local government is generally required to make a decision on a quasi-judicial matter.  |
| Residential              | Structures intended for or used as living quarters for human beings (single-family dwellings, apartments, manufactured homes, etc.).   |
| Setback                  | The placement of a building a specified distance away from a property line, other structure, or other feature.   |
| Sign Ordinance           | An ordinance that regulates the size, shape, color, and elimination of signs.  |
| Site Plan                | A map showing the land and buildings involved in an application for a development permit.  |
| Statewide Planning Goals | The State of Oregon adopted 19 planning goals, 14 of which are applicable to every jurisdiction in the state. The remaining five goals cover the Willamette Greenway (Goal 15) and the coastal area (Goals 16-19). |

|   |   |
|---|---|
| Structural Plan                                     | A plan describing how a building will be constructed.   |
| Subdivision   | Either an act of subdividing land or an area or a tract of land subdivided. “Subdivide land” means to divide land into four or more lots within a calendar year.  |
| Subdivision Ordinance<br>or Land Division Ordinance | An ordinance specifying the standards to be used in developing sewers, streets, water lines, and other infrastructure, and establishing procedures for approving development actions.   |
| Subsurface Facilities                               | Those facilities installed beneath the earth’s surface, such as septic tanks and electrical, sewer, and water lines.  |
| Urban Growth Boundary (UGB)                         | An imaginary line around cities separating urban from rural land. Upon establishment, an urban growth boundary (UGB) contains sufficient land to accommodate 20 years of growth for residential, commercial, industrial, and public uses.   |
| Variance  | A decision to lessen or otherwise modify the requirements of a land use ordinance as it applies to a particular piece of property.  |
| Zoning Ordinance<br>or Zoning Code                  | An implementing tool of the comprehensive plan. It identifies specific land use zones and provides the regulations affecting uses within each zone. It includes the processes to administer various types of land use actions. Sometimes it is combined with the regulations for dividing land. |
| Zoning Map  | The map that shows parcel-specific zoning districts.  |

# Exhibit A

**SAMPLE ORDER**

City or County \_\_\_\_\_

IN THE MATTER OF THE )  
PROPOSED HOME OCCUPATION )  
FOR \_\_\_\_\_ )

**ORDER**

**PREAMBLE**

On \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, the above matter came before a regularly scheduled meeting of the \_\_\_\_\_ Planning Commission, there being a quorum present. The Public Hearing was opened by Planning Commission Chair \_\_\_\_\_. The staff report was read and there was no testimony in opposition. At the close of the Public Hearing, after Planning Commission deliberations, the Planning Commission moved to approve the proposed Conditional Use for a Home Occupation to establish a bed and breakfast at \_\_\_\_\_ in the City/County, subject to the following conditions:

- 1. The facility will meet all applicable state and county health codes.
- 2. A sign for the operation will be required to meet standards of the City Sign Ordinance.

The decision and conditions were based upon the following Findings of Fact:

- 1. The applicants are \_\_\_\_\_.
- 2. The property is planned and zoned Medium-density Residential.
- 3. Legal access is provided by \_\_\_\_\_ Avenue.
- 4. Adequate water and sewer services are already available to the house.
- 5. The applicants have provided a Statement of Operations, which indicated there will be three guest rooms available to guests. The Statement of Operations is herein incorporated into this Order.
- 6. The Medium-density Residential zone allows as a Conditional Use a Home Occupation. The proposed bed and breakfast meets the definitions and requirements for a Home Occupation.
- 7. There is enough land available for five off-street parking spaces.

APPROVED by unanimous vote of the Planning Commission this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY/COUNTY OF \_\_\_\_\_ PLANNING COMMISSION

Signed: \_\_\_\_\_,  
Chair

ATTEST: \_\_\_\_\_,  
City or County Official

City or County \_\_\_\_\_

**NOTICE OF DECISION**

On \_\_\_\_\_, 20 \_\_\_\_, the \_\_\_\_\_ Planning  
Commission approved a Conditional Use Permit \_\_\_\_\_ for  
\_\_\_\_\_ to \_\_\_\_\_.

Copies of the Order are available at City Hall/County Offices. Any party of record may appeal  
this decision to the City Council/County Commission within 10 days of the Order approval date.

\_\_\_\_\_  
City or County Official

City or County \_\_\_\_\_

**APPLICATION FOR  
BUILDING/MANUFACTURED HOME SIGN-OFF  
(Zoning Ordinance)**

**LANDOWNER**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone number \_\_\_\_\_

**APPLICANT**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone number \_\_\_\_\_

*NOTE: Attach written authorization to represent landowner.*

**TYPE OF APPLICATION**

\_\_\_ BUILDING:                      \_\_\_ Construct                      \_\_\_ Remodel                      \_\_\_ Other  
\_\_\_ MOBILE HOME:                      \_\_\_ Install                      \_\_\_ Other

Brief description of project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**BACKGROUND INFORMATION**

Lot No. \_\_\_ Block No. \_\_\_ Assessor's Map No. \_\_\_\_\_, with frontage on (name) \_\_\_\_\_, which is a (check one):  
city street \_\_\_, county road \_\_\_, or state highway \_\_\_.

*NOTE: If county road or state highway, an access permit shall be required.*

In flood hazard area? (yes/no) \_\_\_  
Fire district? (yes/no) \_\_\_  
Utilities: City water \_\_\_ Well \_\_\_ City sewer \_\_\_ Septic tank \_\_\_  
Planning designation \_\_\_\_\_  
Zoning classification \_\_\_\_\_  
Overlay zones \_\_\_\_\_  
Plan policies \_\_\_\_\_

Intended use of the building/mobile home is \_\_\_\_\_

Is intended use allowed as an outright use in the zone? (yes/no) \_\_\_\_\_

If no, is intended use allowed as a Conditional Use in the zone? (yes/no) \_\_\_\_\_

If yes, a Conditional Use application is necessary.

If neither an outright or Conditional Use, a Zoning Ordinance Amendment will be necessary.

*NOTE: All Zoning Ordinance Amendments must be consistent with the comprehensive plan.*

**ZONING ORDINANCE REQUIREMENTS**

TYPE

\*REQUIREMENTS

Dimensional Standards (see Article \_\_\_\_)

|  |       |
|--|-------|
| Street frontage                                  | _____ |
| Lot depth  | _____ |
| Front yard                                       | _____ |
| Side yard (each)                                 | _____ |
| Back yard  | _____ |
| Lot area (see Section ____ for exception)        | _____ |
| Lot width (at front of building line)            | _____ |
| Lot coverage (Building area / Lot area = ____ %) | _____ |
| Building height                                  | _____ |

Mobile Homes (see Article \_\_\_\_)

\_\_\_\_\_

Signs (see Article \_\_\_\_)

\_\_\_\_\_

Additional Requirements (see Section \_\_\_\_)

|                   |       |
|-------------------|-------|
| Clear vision area | _____ |
| Hazard areas      | _____ |
| Access            | _____ |

*NOTE: Fill in applicable dimensional standard or indicated yes, no, or N/A as appropriate.*

Applicant shall prepare and attach to this application a site plan drawn to scale; showing how all applicable requirements of the Zoning Ordinance shall be satisfied.

The issuance or granting of a permit or approval of plans and specifications shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of the Uniform Building Code as administered by the State of Oregon. No permit presuming to give authority to violate or cancel the provisions of this Code shall be valid, except insofar as to the work of use which it authorizes is lawful.

I hereby certify that the above information is correct and understand that issuance of a permit based on this application will not excuse me from complying with effective ordinances of the

City/County of \_\_\_\_\_ and statutes of Oregon, despite any errors on the part of the issuing authority in checking this application.

\_\_\_\_\_  
Signature of applicant

\_\_\_\_\_  
Date

I, \_\_\_\_\_, City/County Administrator of  
\_\_\_\_\_, Oregon, attest that the foregoing application and  
attachments thereto were received by me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
City or County Official

City or County \_\_\_\_\_  
(To be filled out by city or county staff)

Applicant's site plan and intended use meet all applicable Zoning Ordinance requirements  
(yes/no) \_\_\_\_\_

If yes, the Zoning Sign-off Application may be approved by the City/County.

If no, the Zoning Sign-off Application is not approved for the following reason(s):

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\_\_\_\_\_  
Signature of City or County Official

\_\_\_\_\_  
Date

City or County \_\_\_\_\_

**VARIANCE/CONDITIONAL USE APPLICATION  
(Zoning Ordinance)**

**APPLICANT**

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone number \_\_\_\_\_

**TYPE OF APPLICANT**

Landowner (agent\*) \_\_\_\_\_

Government unit: City \_\_\_\_\_

County \_\_\_\_\_

Special district \_\_\_\_\_

State agency \_\_\_\_\_

Federal agency \_\_\_\_\_

*\*NOTE: If agent, attach written authorization to represent landowner.*

**TYPE OF APPLICATION**

Zoning classification of property is \_\_\_\_\_

\_\_\_ **Variance**

Please refer to Article \_\_\_\_ of the Zoning Ordinance for Variance requirements. If lot size, Variance may not be necessary, please refer to ordinance section \_\_\_\_\_. Briefly describe the type of Variance being requested.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_ **Conditional Use**

Please refer to Article \_\_\_\_ of the Zoning Ordinance for Conditional Use requirements and to Article \_\_\_\_ for types of Conditional Uses allowed.

Type of Conditional Use being requested is: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ATTACHMENTS**

Applicant shall prepare and attach the following to this application:

1. A presentation of facts and reasons which establish need, appropriateness and purpose of the Variance/Conditional Use request, and
2. An 8 ½” x 11” location map of area subject to proposed Variance/Conditional Use drawn to scale, and
3. Either assessor’s map, parcel map, or site plan drawn to scale showing proposed Variance/Conditional Use, and
4. A list of names and addresses of property owners\*\* whose property is subject to the proposed Variance/Conditional Use or within 250 feet of the exterior boundary thereof, and
5. Other information specified in Section \_\_\_\_\_ of the Zoning Ordinance, and
6. Agreement by the property owner to satisfy the requirements of Section \_\_\_\_\_ of the Zoning Ordinance, if applicable.

\*\* NOTE: This information available from the county assessor’s office.

**FEE**

Refer to fee schedule adopted by City Council \$\_\_\_\_\_

I, \_\_\_\_\_, (circle one: Landowner, Agent, Representative of Governmental Unit) swear that the details and information contained in the above application and attachments thereto are true and correct to the best of my knowledge.

\_\_\_\_\_  
Signature of Applicant Date

I, \_\_\_\_\_, City/County Official of \_\_\_\_\_, attest that the foregoing application and attachments thereto were received by me on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, from \_\_\_\_\_ accompanied by a fee of \$ \_\_\_\_\_.

\_\_\_\_\_  
City or County Official Date

**Schedule and Checklist**

**VARIANCE/CONDITIONAL USE APPLICATION  
(Zoning Ordinance)**

|   | <u>Date</u> |
|---|-------------|
| 1. Application submitted by applicant*                                    | _____       |
| 2. Application deemed complete  | _____       |
| 3. Planning Commission review date set                                    | _____       |
| 4. Planning Commission review held  | _____       |
| 5. Planning Commission recommendation (within 10 days of review)          | _____       |
| 6. City Council/County Commission hearing date set                        | _____       |
| 7. Public Notice of City Council/County Commission hearing:               |             |
| a. Mailed to property owners  | _____       |
| b. Mailed to affected governmental units                                  | _____       |
| c. Published in local newspaper or posted                                 | _____       |
| 8. City Council/County Commission hearing held                            | _____       |
| 9. City Council/County Commission decision (within 10 days of hearing)    | _____       |
| 10. Applicant notified of decision  | _____       |
| 11. Effective date, if request approved by City Council/County Commission | _____       |

*\*NOTE: Applications for Variance/Conditional Use for areas within the Urban Growth Boundary outside city limits should be made to the county.*

**CITY OR COUNTY RECORDS**

1. Application and attachments thereto
2. Schedule and checklist
3. Copies of Public Notices
4. Analysis of applicable plan goals and policies  
*NOTE: All Variance/Conditional Use must be consistent with the adopted comprehensive plan*
5. Planning Commission review record, findings of fact, and recommendation
6. City Council/County Commission hearing record, findings of fact, conclusions, decision
7. Copy of notice to applicant of decision

City or County \_\_\_\_\_

**APPLICATION TO AMEND  
ZONING ORDINANCE**

**APPLICANT**

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone number \_\_\_\_\_

**TYPE OF APPLICANT (check one)**

Landowner (agent\*) \_\_\_\_\_

Resident (renter) \_\_\_\_\_

Government unit: City \_\_\_\_\_

County \_\_\_\_\_

Special district \_\_\_\_\_

State agency \_\_\_\_\_

Federal agency \_\_\_\_\_

*\*NOTE: If agent, attach written authorization to represent landowner.*

**TYPE OF AMENDMENT**

Zoning classification of property is \_\_\_\_\_

\_\_\_ **Text**            Applicant shall prepare and attach a copy of proposed text amendment to this application. Section to be amended: \_\_\_\_\_

\_\_\_ **Map**            Present zoning classification is: \_\_\_\_\_  
Proposed zoning classification is: \_\_\_\_\_

Applicant shall prepare and attach the following to this application:

1. An 8 1/2" x 11" location map of area subject to proposed map drawn to scale, and
2. Either assessor's map or parcel map drawn to scale showing proposed map amendment, and
3. A list of names and addresses of property owners\*\* whose property is subject to the proposed map amendment or within 250 feet of the exterior boundary thereof, and
4. Other information specified in Section \_\_\_\_ of the Zoning Ordinance, and
5. Agreement by the property owner(s) to satisfy the requirements of Section \_\_\_\_ of the Zoning Ordinance, if applicable.

*\*\* NOTE: This information available from the county assessor's office.*

**JUSTIFICATION FOR AMENDMENT**

Applicant shall prepare and attach a presentation of facts and reasons which establish need, appropriateness, and purpose of the proposed amendment.

**FEE**

Refer to fee schedule adopted by City Council/County Commission \$ \_\_\_\_\_

I, \_\_\_\_\_, (circle one: Landowner, Agent, Resident, Representative of Governmental Unit) swear that the details and information contained in the above application and attachments thereto are true and correct to the best of my knowledge.

\_\_\_\_\_  
Date

\_\_\_\_\_  
City or County Official

I, \_\_\_\_\_, City or County Official of \_\_\_\_\_, attest that the foregoing application and attachments thereto were received by me on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, from \_\_\_\_\_ accompanied by a fee of \$ \_\_\_\_\_.

\_\_\_\_\_  
Date

\_\_\_\_\_  
City or County Official

**Schedule and Checklist**

**APPLICATION TO AMEND  
COMPREHENSIVE PLAN ORDINANCE**

- |   | <u>Date</u> |
|---|-------------|
| 1. Application submitted by applicant                             | _____       |
| 2. Application deemed complete                                    | _____       |
| 3. Planning Commission hearing date set                           | _____       |
| 4. Public Notice of Planning Commission hearing:                  |             |
| a. Mailed to property owners                                      | _____       |
| b. Mailed to affected governmental units                          | _____       |
| c. Published in local newspaper or posted                         | _____       |
| 5. Planning Commission hearing held                               | _____       |
| 6. Planning Commission recommendation (within 10 days of hearing) | _____       |
| 7. City Council/County Commission hearing date set                | _____       |
| 8. Notice of Intent to DLCD                                       | _____       |
| 9. Public Notice of City Council/County Commission hearing:       |             |
| a. Mailed to property owners                                      | _____       |
| b. Mailed to affected governmental units                          | _____       |
| c. Published in local newspaper or posted                         | _____       |
| 10. City Council/County Commission hearing held                   | _____       |
| 11. Applicant notified of decision                                | _____       |

**If plan map amendment for an area within the city limits, then:**

- |  |       |
|--|-------|
| 12. Effective date, if amendment adopted by City Council | _____ |
| 13. Amendment set to county and LCDC for their records   | _____ |

**If plan map amendment for an area within the Urban Growth Boundary but outside city limits or plan policy amendment, then:**

- |  |       |
|--|-------|
| 14. Applications and hearing record referred to county for action if amendment adopted by City Council | _____ |
| 15. Effective date, if amendment co-adopted by county  | _____ |
| 16. Amendment sent to LCDC for their records if co-adopted by county                                   | _____ |

**If Urban Growth Boundary or plan goal amendment, then:**

- |   |       |
|---|-------|
| 17. Application and hearing record referred to county for action if amendment adopted by City Council | _____ |
| 18. Application and hearing record(s) referred to LCDC for review if amendment co-adopted by county   | _____ |
| 19. Effective date, if amendment approved by LCDC   | _____ |

## **CITY OR COUNTY RECORDS**

1. Application and attachments thereto
2. Schedule and checklist
3. Copies of Public Notices and DLCD notice
4. Analysis of applicable plan goals and policies
5. Planning Commission hearing record, findings of fact, and recommendation
6. City Council/County Commission hearing record, findings of fact, conclusions, decision
7. Copy of notice to applicant of decision
8. If amendment approved, copies of notice to county and LCDC, as appropriate

# Exhibit B

## ORS 197.763

### Conduct of Local Quasi-judicial Land Use Hearings; Notice Requirements; Hearing Procedures

The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before a local governing body, planning commission, hearings body or hearings officer on application for a land use decision and shall be incorporated into the comprehensive plan and land use regulations:

(1) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.

(2)(a) Notice of the hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:

(A) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;

(B) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone; or

(C) Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest

zone.

(b) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.

(c) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

(3) The notice provided by the jurisdiction shall:

(a) Explain the nature of the application and the proposed use or uses which could be authorized;

(b) List the applicable criteria from the ordinance and the plan that apply to the application at issue;

(c) Set forth the street address or other easily understood geographical reference to the subject property;

(d) State the date, time and location of the hearing;

(e) State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue precludes appeal to the board based on that issue;

(f) Be mailed at least:

(A) Twenty days before the evidentiary hearing; or

(B) If two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing;

(g) Include the name of a local government representative to contact and the telephone number where additional information may be obtained;

(h) State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;

(i) State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and

(j) Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.

(4)(a) All documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public.

(b) Any staff report used at the hearing shall be available at least seven days prior to the hearing. If additional documents or evidence are provided by any party, the local government may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

(5) At the commencement of a hearing under a comprehensive plan or land use regulation, a statement shall be made to those in attendance that:

(a) Lists the applicable substantive criteria;

(b) States that testimony, arguments and evidence must be directed toward the criteria described in paragraph (a) of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision; and

(c) States that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the

issue precludes appeal to the board based on that issue.

(6)(a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The local hearings authority shall grant such request by continuing the Public Hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection.

(b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.

(c) If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (7) of this section.

(d) A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179, unless the continuance or extension is requested or agreed to by the applicant.

(e) Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day period shall not be subject to the limitations of ORS 215.427 or 227.178 and ORS 215.429 or 227.179.

(7) When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.

(8) The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if the

local government can demonstrate by affidavit that such notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.

(9) For purposes of this section:

(a) "Argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. "Argument" does not include facts.

(b) "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision.

[1989 c.761 §10a (enacted in lieu of 197.762); 1991 c.817 §31; 1995 c.595 §2; 1997 c.763 §6; 1997 c.844 §2; 1999 c.533 §12]

# Exhibit C

## Planning Documents

The table below lists key documents from the most general to the most specific:

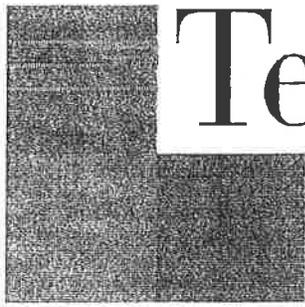
| Document                         | Created by  | Description  | Examples  |
|----------------------------------|---|--|---|
| Oregon Revised Statutes (ORS)    | Oregon Legislature  | Creates the overall planning program. Authorizes and requires local planning.                  | ORS 197.030 (1) There is established a Land Conservation and Development Commission. . . .<br>ORS 197.175 (2) ...each city and county in this state shall prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission. . . .   |
| Oregon Statewide Planning Goals  | Oregon Land Conservation and Development Commission (LCDC)  | Sets overall goals for what planning should accomplish.  | Goal 2 ...All land use plans shall include identification of issues and problems, inventories and other factual information for each applicable statewide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs. . . . |
| Oregon Administrative Rule (OAR) | LCDC  | Sets process for planning on specific topics.  | OAR 660-012-0020(2) The Transportation System Plan shall include the following elements. . . .  |
| Local comprehensive plan         | City Council, County Commission or County Court (usually with recommendations from a planning commission) | Describes current conditions and vision for the future. Generally includes goals and policies. | Vision Statement: ...a well-planned city with a safe, healthy, and aesthetically pleasing environment. . . .<br>Transportation Goal: Provide a safe, diversified, economical, and efficient transportation system. . . .<br>Policy: Provide bikeways on arterial and collector streets. . . .                                       |
| Local ordinances or codes        | Same as above   | Regulates where specific land uses can occur and how they must be designed.                    | Permitted uses in the low-density residential zone include:<br>Single-family dwellings.<br>Parks.<br>Landscaping is required in the commercial zone as follows. . . .   |

## Index

|  |                                  |
|--|----------------------------------|
| Appeal .....                           | 18, 20-22, 24                    |
| Building Permit .....                  | 1, 6, 17                         |
| Comprehensive Land Use Plan .....      | 2-3                              |
| Comprehensive Plan Map Amendment ..... | 7, 13, 14, 21                    |
| Conditional Use Permit .....           | 4, 6, 7, 10, 11, 18, 20, 21      |
| Conditional Use .....                  | 4, 6-8, 10, 11, 18, 20, 21       |
| Final Decision .....                   | 21, 22                           |
| Findings .....                         | 20, 21                           |
| Floodplain .....                       | 3-6, 17, 18                      |
| Inventories .....                      | 3, 4                             |
| Land Use Planning Documents .....      | 3                                |
| Legislative Hearing .....              | 12, 19, 23                       |
| Nonconforming Use .....                | 17                               |
| Notice of Decision .....               | 22                               |
| Notice Requirements .....              | 19, 20, 23                       |
| Partition .....                        | 5, 7, 14-16                      |
| Public Hearing .....                   | 8, 10-12, 14, 15, 18, 19, 21-24  |
| Public Notice .....                    | 18-20, 23                        |
| Quasi-Judicial Hearing .....           | 8, 19, 20, 23                    |
| Setback .....                          | 4, 6-9, 11, 18                   |
| Site Plan .....                        | 6, 8, 11                         |
| Subdivision Ordinance .....            | 3, 5-7, 15                       |
| Subdivision .....                      | 3, 5-7, 15, 16                   |
| Variance .....                         | 4, 7-9, 18, 20, 21               |
| Zone Change .....                      | 4, 7, 12-14, 20                  |
| Zoning Ordinance .....                 | 3-8, 10-12, 14, 15, 17-19, 21-23 |
| Zoning Ordinance Amendment .....       | 1                                |

### List of forms in Exhibit A

- ◆ Sample Order
- ◆ Notice of Decision
- ◆ Application for Building/Manufactured Home Sign-Off (4 pages)
- ◆ Variance/Conditional Use Application (2 pages)
- ◆ Variance/Conditional Use Applications – Schedule & Checklist
- ◆ Application to Amend Zoning Ordinance (2 pages)
- ◆ Application to Amend Comprehensive Plan Ordinance – Schedule & Checklist (2 pages)



# Technical Briefs

8

## Zoning, Processes, and Variances

**Implementation of the comprehensive plan is achieved, to a large degree, through zoning. Zoning divides the land in a community into districts or zones and regulates uses permitted and development standards for each zone. Common zoning districts are residential, commercial, industrial, mixed use, and agricultural. Zoning delineates the mix of uses, density, and intensity of development for a community.**

A community's legal authority to zone comes from the state's enabling legislation. In most jurisdictions, the planning commission is the body that oversees development and adoption of the zoning ordinance. Local governments sometimes separate the responsibility for implementing the zoning ordinance from that of rendering decisions about departures from its requirements. Board of adjustment, board of zoning appeals, and zoning board of review are just a few of the names zoning review panels go by.

While the concept of regulating use and development standards through zoning is simple, its application can be challenging. For each zone there is a list of permissible uses that are allowed "by right." The term "by right" does not mean that a universal right exists to develop a particular use. It means that

the use is one that may be located within the district if it conforms to development standards and other applicable regulations. Development standards regulate things such as building size, height, and setback from lot lines.

In addition to the basic zones, some communities use overlay zones to address certain land use needs within one or more districts. Historic preservation regulations can be administered through overlay districts, as can regulations that deal with development on hillsides or in floodplains. Some communities adopt nontraditional zoning codes, including form-based zoning and performance-based zoning.

Communities with zoning ordinances adopt both a zoning map and text. The map identifies every parcel of land and the zoning district in which it lies. The zoning text explains the rules that

apply in each district, spells out the procedures for administering the zoning ordinance, and establishes the roles and responsibilities of applicants, zoning administrators, hearing boards, and elected officials.

Most zoning texts include a statement of purpose that explains what the community is trying to accomplish through zoning. It also includes definitions that establish the precise meaning of words or terms that are subject to differing interpretations. These definitions are not written in jargon but in clear prose that makes technical and abstract terms understandable to a layperson.

In addition to the general provisions—the overriding rules that apply in each zone—the zoning text also addresses nonconforming uses, special or conditional uses, and procedures for granting variances or allowing the rezoning of land.

While the intent of zoning is to achieve some level of uniformity of use and site design in a given district, new zoning or a change in zoning rarely starts with a blank slate; some development already has taken place. For every zoning

# Technical Briefs

8

ordinance adopted, there is a use that does not conform to the rules.

Legal nonconforming uses—or grandfathered uses—generally are permitted for as long as they exist. However, the nonconforming use is not allowed to expand or be replaced if abandoned or destroyed. Occasionally, a planning commission may require that a legal nonconforming use terminate after a reasonable period of time, the idea being to allow the owner enough time to recoup his investment.

While the zoning ordinance authorizes certain uses by right, other uses may be allowed if they meet specific conditions. A typical zoning ordinance allows conditional uses when they are in the interest of the public convenience and necessity and are not contrary to public health, morals, or welfare.

Decisions to grant conditional use permits depend on the fit between the proposed land use and the place that it will occupy. Required reviews of these proposed special uses allow planning commissions to consider potential negative effects and to develop a set of conditions to minimize the impacts before allowing the development to proceed.

The types of conditions imposed on a proposed special use range from additional landscaping and parking to soundproofing or limiting hours of operation. Not only must a condition bear a reasonable relationship to the public need created by the development,

but it also must be supported by fact and evidence.

While the rules in a zoning district apply uniformly to all parcels, all parcels are not uniform. In recognition of that fact, zoning codes allow for variances—a limited waiver of the existing development standards. Variances, minor exceptions to zoning rules, usually are considered when a property's physical characteristics—size, shape, topography, location, or surroundings—pose unique challenges.

Enabling legislation in many states includes requirements that must be met before a variance can be granted. These requirements include situations where:

- the zoning standards would result in a hardship that is not shared by neighboring or similar properties;
- the zoning standards would deny a landowner reasonable use of the property;
- the applicant did not create the hardship (i.e. through modifying the parcel);
- a variance is the minimum necessary to allow reasonable use of the property.

Because requests for variances are determined in a quasi-judicial setting, procedural due process is paramount. All parties must be given notice and an opportunity to be heard. During the hearing, it is incumbent on the applicant to demonstrate the necessity of the variance and how the request meets the standards for variances. Decisions must be based on those standards and upon testimony that relates to those standards. Findings of fact should tie the decision to relevant facts and existing standards.

From time to time, planning commissions will be asked to change the

zoning in an area. Because a change to the zoning map can have unintended consequences, such action should be given careful consideration, to include:

- Is the proposed rezoning consistent with the comprehensive plan?
- How will the proposed rezoning affect neighboring zoning districts?
- Will the rezoning open the door to inappropriate land uses, even if the proposed use is acceptable?

While zoning is just one facet of the land use process, it has enormous potential to shape a community's physical development. Like the comprehensive plan, zoning should be reviewed at regular intervals and in times of dramatic growth for relevancy and effectiveness. ■

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