

# Staff Report

For the Meeting of October 26, 2015

MAYOR AND MEMBERS OF THE CITY COUNCIL

Agenda Item #

NO: 2015 –

**SUBJECT: Public Hearing for  
Ordinance 2234**

## Subject

The City Council is holding a hearing to consider an amendment to the zoning ordinance prohibiting retail sales, warehousing, processing, or distributing marijuana in any zone permitting commercial activities.

## Summary and Background

Pursuant to Resolution 1997, the City Council is holding a public hearing to consider an amendment to §157.151 of the Hermiston Zoning Code regulating prohibited activities. The amendment is a text amendment adding new activities to the prohibited activities list. The new prohibited activities are as follows:

(B) *Marijuana Related Activities*. The following activities shall be prohibited activities in the R-3, R-4, C-1, C-2, DCO, M-1, and M-2 zones:

1. Marijuana processing sites;
2. Medical marijuana dispensaries registered under ORS 475.314;
3. Marijuana producers licensed under section 19, chapter 1, Oregon Laws 2015;
4. Marijuana processors licensed under section 20, chapter 1, Oregon Laws 2015;
5. Marijuana wholesalers licensed under section 21, chapter 1, Oregon Laws 2015;
6. Marijuana retailers licensed under section 22, chapter 1, Oregon Laws 2015; or
7. Any combination of the entities described in this section.

The amendment is permitted by the State of Oregon under the provisions of HB 3400 which allowed any city or county that voted against Measure 91 by at least 51% to enact a local prohibition against marijuana distribution. The City of Hermiston and Umatilla County both voted against Measure 91 by 62%.

The amendment to the zoning ordinance proposed for adoption is to amend the prohibited activities list in §157.151. The amendment will amend the prohibited activities list to prohibit the above listed marijuana related activities in the R-3, R-4, C-1, C-2, DCO, M-1, and M-2 zones. The R-3 and R-4 zones are high density residential zones, but are included in the prohibition because both zones allow selected commercial activities as conditional uses. Specifically, the R-

3 and R-4 zones allow doctor prescribed medical products sales in a building less than 4,000 square feet.

§157.226 of the Hermiston Code of Ordinances provides the method and approval criteria for granting or denying an amendment to the zoning ordinance. The proposed amendment has been deemed a legislative change in that it involves the text of the ordinance.

The city mailed a notice of the proposed text amendment to all property owners in the affected zones. 1,753 notices were mailed out. The city received testimony from one property owner, Joe Thompson, owner of Eastside Market, stating that he opposed the ordinance. Notice was also published in the Hermiston Herald in advance of each public hearing.

A copy of the findings of fact adopted by the planning commission is attached to this report and is intended to be an exhibit to the ordinance.

### **Fiscal Information**

Adoption of a marijuana prohibition will result in the local forfeiture of tax revenue associated with marijuana sales. HB 3400 also prohibits any city which prohibits marijuana sales from imposing any additional taxes. Based upon similar tax revenues associated with marijuana sales in Colorado, Hermiston will forgo approximately \$30,000 of state tax revenue.

### **Alternatives and Recommendation**

The city council may choose to:

- Adopt Ordinance 2234 as written
- Modify the text of Ordinance 2234 and adopt at the next available council meeting
- Reject Ordinance 2234

When the council directed staff to prepare a text amendment on this matter, there was discussion by the council about forwarding the matter to the voters. No formal motion was made on whether to include a voter referral but staff included a voter referral in Section 3. The council may wish to continue discussion of the voter referral. Staff recommends that the city council adopt the ordinance as written.

### **Requested Action/Motion**

Staff requests that the city council make a motion to adopt the findings of fact following the closure of the public hearing.

Staff requests that the city council adopt Ordinance 2234 as written.

Reviewed by:

**CITY OF HERMISTON**



Department Head – Clinton Spencer, City Planner



City Manager Approval

**FINDINGS OF FACT**

**ORDINANCE NO 2234**

**OCTOBER 26, 2015**

**Statewide Planning Goals and Comprehensive Plan Policies.**

**Goal 1 and Policy 1. Citizen Involvement.** The City will insure that citizens have an adequate opportunity to be involved in all phases of the planning process.

1. Notice of the planning commission hearing was published in the Hermiston Herald at least 20 days prior to the hearing on September 23, 2015 in accordance with §157.226 of the Hermiston Code of Ordinances.
2. Notice of the planning commission and city council hearing was provided by direct mail to 1,723 property owners. The 1,723 mailed notices were provided to all property owners in the R-3, R-4, C-1, C-2, DCO, M-1, and M-2 zones (with duplicated owners at duplicated addresses filtered). The mailed notice complied with the requirements for public notices established by the voters of Oregon through the passage of Ballot Measure 56 which requires notice be mailed to affected property owners when a change in a zoning regulation would limit a use previously allowed.
3. The Planning Commission held a public hearing on October 14, 2015 in accordance with §157.226(F).
4. The City Council held a public hearing on October 26, 2015 in accordance with §157.226(F)

**Goal 1 and Policy 2. Planning Process.** The City of Hermiston will monitor and update periodically its comprehensive plan and implementing ordinances to respond to changing conditions.

5. Policy 2 requires the City to annually review development activity and its impacts.
6. The City Council directed staff to prepare a code amendment to implement the prohibition of marijuana related activities as permitted by the State of Oregon in HB 3400.

**Goal 2 and Policy 3. Intergovernmental Coordination.** The City of Hermiston will facilitate intergovernmental coordination so that decisions affecting local, state, and federal planning and development actions in the Hermiston area are rendered in an efficient and consistent manner.

7. The notice of proposed amendment was sent to the Department of Land Conservation and Development on September 1, 2015, more than 35 days prior to the first evidentiary hearing in accord with Oregon Administrative Rules, Chapter 660, Division 18.

**Goal 3 Agricultural Lands.**

8. The adoption of the prohibition will not impact or prohibit the growth of marijuana for personal use on personal property as authorized under Measure 91. Under Measure 91, up to four plants may be cultivated for personal use.
9. Agricultural growth or large production of marijuana plants on existing agricultural land within the city limits or urban growth boundary is not currently permitted per §157.002 which states that all land uses must be in compliance with federal law and cultivation of marijuana is not permitted under federal law.
10. Use of existing agricultural land for cultivation of legal crops such as alfalfa, potatoes, corn, and other crops is not affected.

**Goal 4 Forest Lands, Goal 15 Willamette River Greenway, Goal 16 Estuarine Resources, Goal 17 Coastal Shorelands, Goal 18 Beaches and Dunes, Goal 19 Ocean Resources.**

11. There are no tracts of lands subject to Goals 4, 15, 16, 17, 18, or 19 anywhere within the city limits or UGB. These goals are not applicable.

**Goal 5 Natural Resources, Scenic and Historic Areas, and Open Space, Goal 6 Air, Water and Land Resource Quality, Goal 7 Areas Subject to Natural Hazards, Goal 8 Recreation Needs, Goal 9 Economic Development, Goal 10 Housing, Goal 11 Public Facilities and Services, Goal 13 Energy Conservation, Goal 14 Urbanization.**

12. The City's acknowledged comprehensive plan has policies established to for compliance with Goals 5, 6, 7, 8, 9, 10, 11, 13, and 14. No new uses are being permitted through the amendments. No additional findings must be made demonstrating compliance with these Goals.

**Goal 12 Transportation and OAR 660, Division 012**

13. The proposed amendment does not permit any new uses. Therefore no new trips will be created and no transportation facility will be significantly affected as a result of the amendment.

**Hermiston Zoning Ordinance §157.226**

14. The City Council initiated the proposed amendment to the zoning ordinance through the adoption of Resolution 1997 on August 24, 2015 in compliance with §157.226(A).
15. The proposed amendment amends the text of the zoning ordinance, has a widespread impact on the city as a whole, and does not involve an amendment to the zoning map. Therefore, the proposed amendment is a legislative amendment as defined by §157.226(B)(1) and §157.226(C)(1) and (2).
16. Based upon Finding #15, the proposed amendment is not a quasi-judicial action and the approval criteria in §157.226(E)(1) are not applicable.
17. Notice of the proposed amendment was provided to the Oregon Department of Land Conservation and Development on September 1, 2015, more than 35 days in advance of the first evidentiary hearing as required by §157.226(F) and modified by ORS 197.610.
18. A notice of public hearing for the planning commission hearing was published on September 23, 2015 and the city council notice was published on October 7, 2015. Each notice was published in the Hermiston Herald at least 20 days in advance of the hearing as required by §157.229(D).
19. Based upon Finding #15, the proposed amendment is legislative and mailed notice to property owners is not required per §157.229(D). However, Measure 56 as passed by the voters of the State of Oregon requires mailed notice to all property owners within a zone when a change in a land use regulation may limit a use previously allowed on a property. In compliance with Measure 56, the city mailed notice to all property owners in the R-3, R-4, C-1, C-2, DCO, M-1, and M-2 zones on September 23, 2015.

**ORDINANCE NO. 2234**

AN ORDINANCE AMENDING TITLE XV, CHAPTER 157 OF THE HERMISTON CODE OF ORDINANCES TO PROHIBIT THE SALE, WAREHOUSING, PROCESSING, AND DISTRIBUTION OF MARIJUANA IN THE CITY'S COMMERCIAL ZONES AND REFERRING THE ORDINANCE TO THE VOTERS

WHEREAS, the State of Oregon through the adoption of House Bill 3400 has authorized eligible cities and counties to enact prohibitions on the sale, warehousing, production, and processing of marijuana; and

WHEREAS, the Hermiston City Council passed resolution 1997 on August 24, 2015, said resolution initiating the process to amend the city's zoning ordinance to prohibit commercial marijuana activities; and

WHEREAS, the Hermiston Planning Commission held a public hearing on October 14, 2015 to receive public testimony and consider the amendment of Title XV, Chapter 157 of the Hermiston Code of Ordinances; and

WHEREAS, the Hermiston City Council held a public hearing on October 26, 2015 to receive public testimony and consider the amendment of Title XV, Chapter 157 of the Hermiston Code of Ordinances; and

WHEREAS, notice of the planning commission and city council hearings was provided to the Department of Land Conservation and Development and published in a newspaper of general circulation in accordance with statutory requirements and local ordinance requirements for notice of legislative amendments; and

WHEREAS, a staff report on the proposed amendments was available seven days prior to the August 12 public hearing and seven days prior to the October 14 and October 26 public hearings and included findings in support of the amendment to the code of ordinances; NOW THEREFORE

THE CITY OF HERMISTON ORDAINS AS FOLLOWS:

**SECTION 1.** Title XV, Chapter 157 of the Hermiston Code of Ordinances is hereby amended by adding Section 157.151(B) (*Prohibited Activities*) to read as follows:

(B) *Marijuana Related Activities.* The following activities shall be prohibited activities in the R-3, R-4, C-1, C-2, DCO, M-1, and M-2 zones:

1. Marijuana processing sites;
2. Medical marijuana dispensaries registered under ORS 475.314;
3. Marijuana producers licensed under section 19, chapter 1, Oregon Laws 2015;
4. Marijuana processors licensed under section 20, chapter 1, Oregon Laws 2015;
5. Marijuana wholesalers licensed under section 21, chapter 1, Oregon Laws 2015;
6. Marijuana retailers licensed under section 22, chapter 1, Oregon Laws 2015; or

7. Any combination of the entities described in this section.

**SECTION 2.** The findings of fact as adopted by the city council on October 26, 2015 are incorporated herein by reference.

**SECTION 3.** The city council shall submit the measure of this ordinance to the electors of the City of Hermiston for approval at the next statewide general election to be held on November 8, 2016.

**SECTION 4.** Upon approval of the electors of the City of Hermiston, the text of this ordinance shall be provided to:

- a) The Oregon Health Authority; and
- b) The Oregon Liquor Control Commission; and
- c) The Oregon Department of Land Conservation and Development

**SECTION 5.** The effective date of this ordinance shall be thirty days after certification of the election results by the city council of the City of Hermiston.

PASSED by the Common Council this 26th day of October, 2015.

SIGNED by the Mayor this 26th day of October, 2015.

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MAYOR

ATTEST:

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CITY RECORDER