



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

06/10/2013

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Brookings Plan Amendment
DLCD File Number 003-13

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Wednesday, June 19, 2013

This amendment was not submitted to DLCD for review prior to adoption pursuant to OAR 660-18-060, the Director or any person is eligible to appeal this action to LUBA under ORS 197.830 to 197.845.

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Donna Colby Hanks, City of Brookings
Gordon Howard, DLCD Urban Planning Specialist
Dave Perry, DLCD Regional Representative

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FORM 2

DLCD

Notice of Adoption

This Form 2 must be mailed to DLCD within **20-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

☐ In person ☐ electronic ☐ mailed

DATE
STAMP

DEPT OF

JUN 08 2013

LAND CONSERVATION
AND DEVELOPMENT

Jurisdiction: **City of Brookings**

Local file number: **LDC-1-13**

Date of Adoption: **5/28/2013**

Date Mailed:

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? ☐ Yes ☒ No Date:

☐ Comprehensive Plan Text Amendment

☐ Comprehensive Plan Map Amendment

☒ Land Use Regulation Amendment

☐ Zoning Map Amendment

☐ New Land Use Regulation

☐ Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Relocation and revisions of BMC Chapter 17.148, Vacations to BMC Chapter 12, Streets, Sidewalks, and Public Places

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: **N/A**

to:

Zone Map Changed from: **N/A**

to:

Location: **N/A**

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

Was an Exception Adopted? ☐ YES ☒ NO

Did DLCD receive a Notice of Proposed Amendment...

35-days prior to first evidentiary hearing?

☐ Yes ☒ No

If no, do the statewide planning goals apply?

☐ Yes ☒ No

If no, did Emergency Circumstances require immediate adoption?

☐ Yes ☒ No

DLCD file No. 003-13 (19878)

Please list all affected State or Federal Agencies, Local Governments or Special Districts: .

Local Contact: **Donna Colby-Hanks**

Phone: **(541) 469-1137** Extension:

Address: **898 Elk Drive**

Fax Number: **541-469-3650**

City: **Brookings**

Zip: **97415-**

E-mail Address: **dcolbyhanks@brookings.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 20 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS [197.615](#) and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light **green paper if available**.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information ([ORS 197.615](#)).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption ([ORS 197.830 to 197.845](#)).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. ([ORS 197.615](#)).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

9. **Need More Copies?** Please print forms on **8½ -1/2x11 green paper only if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

<http://www.oregon.gov/LCD/forms.shtml>

Updated December 6, 2012

**IN AND FOR THE CITY OF BROOKINGS
STATE OF OREGON
ORDINANCE 13-O-711**

IN THE MATTER OF ORDINANCE 13-O-711, AN ORDINANCE DELETING CHAPTER 17.148, VACATIONS, TITLE 17, LAND DEVELOPMENT CODE, OF THE BROOKINGS MUNICIPAL CODE, IN ITS ENTIRETY AND ADDING CHAPTER 12.50, VACATIONS TO TITLE 12 STREETS, SIDEWALKS, AND PUBLIC PLACES, OF THE BROOKINGS MUNICIPAL CODE.

Sections:

- Section 1. Ordinance Identified.
- Section 2. Deletes Chapter 17.148, in its entirety.
- Section 3. Adds Chapter 12.50

The City of Brookings ordains as follows:

Section 1. Ordinance Identified. This ordinance deletes Chapter 17.148, Vacations, Title 17, Land Development Code, and adds Chapter 12.50 Streets, Sidewalks, and Public Places of the Brookings Municipal Code.

Section 2. Deletes Chapter 17.148. Chapter 17.148, Vacations, is deleted in its entirety.

Section 3. Adds Chapter 12.50. Chapter 12.50, Vacations, is added to read as follows:

**Chapter 12.50
VACATIONS**

Sections:

- 12.50.010 Generally.
- 12.50.020 Application procedures.
- 12.50.030 Vacation criteria.
- 12.50.040 Recording costs.

12.50.010 Generally.

A request to vacate a public street, alley, easement, plat or public place shall be subject to the provisions of Chapter 271 ORS, which requires the holding of a public hearing. Vacations may be initiated either by petition pursuant to ORS 271.080 or on the council's own motion, pursuant to ORS 271.130. [Ord. 89-O-446 § 1.]

12.50.020 Application procedures.

Petitioners or persons requesting the council to initiate a vacation on its own motion, pursuant to ORS 271.130, shall file an application which shall contain the following:

A. Vicinity map drawn to scale of one inch equals 1,000 feet identifying the area proposed to be vacated and adjoining properties;

B. Legal description of area proposed to be vacated;

C. County assessor's parcel maps of the proposed vacation area identifying abutting and affected properties. Identified upon the assessor's parcel maps shall be those abutting and affected properties whose owners have consented to the proposed vacation;

D. Consent to vacate forms completed and signed by all consenting property owners within the abutting and/or affected area;

E. Names and addresses of all abutting and/or affected property owners, including map and tax lot numbers prepared on mailing labels;

F. Written findings of fact prepared by the petitioner(s) or the petitioner(s) representative;

G. The application shall be accompanied by a filing fee in the amount established by general resolution of the city council, no part of which is refundable. [Ord. 89-O-446 § 1.]

12.50.030 Vacation criteria.

A request to vacate will be reviewed by the Site Plan Committee to verify consistency with City ordinances and policies. If the Planning Staff determines the proposed vacation affects any of the Brookings Comprehensive Plan statewide planning goal policies, the vacation request will be heard by the Planning Commission who will make a recommendation to City Council. In these cases, the vacation matter will be processed as a land use decision and notice will be provided as required by BMC Chapter 17.84, Public Hearing Notice Procedures.

A request to vacate that is determined not to be a land use decision will be considered by the City Council following a determination based upon the findings prepared and submitted by the petitioner(s), which shall address the following criteria:

A. Compliance with the comprehensive plan, circulation element or other applicable sections of the document.

B. If initiated by petition pursuant to ORS 271.080, the council shall make the determinations pursuant to ORS 271.120 based upon evidence provided by the petitioner(s) in the written findings.

C. If initiated by the city council on its own motion pursuant to ORS 271.130, a determination shall be made that the vacation will not substantially affect the market value of all such abutting property to the area proposed to be vacated, unless the city council proposes to provide for paying such damages. [Ord. 89-O-446 § 1.]

D. Nothing in this ordinance shall cause or require the removal or abandonment of any public or private sewer, water main, gas main, conduit of any kind, wire, pole or object used or intended to be used for any public service and the right hereby is reserved for the owner of any such utility or object to maintain, continue, repair, reconstruct, renew, replace, rebuild or enlarge all utilities and objects.

12.50.040 Recording costs.

Pursuant to ORS 271.150, following an action by the city council to vacate an area, such enacting ordinance vacating any street, alley, easement, plat or public place shall be recorded with the county clerk, together with any maps, plat or other record in regard thereto. The petitioner(s) for such vacation shall bear the recording cost and the cost of preparing and filing the certified copy of the ordinance and map. [Ord. 89-O-446 § 1.]

First Reading: May 28, 2013 Passage: May 28, 2013
Second Reading: May 28, 2013 Effective Date: June 27, 2013
Signed by me in authentication of its passage this 29th day of May, 2013
ATTEST:
Ron Hedenskog
Mayor Ron Hedenskog
Joyce Wellington
City Recorder Joyce Wellington

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: May 28, 2013

Originating Dept: PWDS-Planning

49 Donna Colby-Hanks
Signature (submitted by)
City Manager Approval

Subject: A hearing on File LDC-1-13 for consideration of the deletion of Chapter 17.148, Vacations and the addition of Chapter 12.50, Vacations. Brookings Municipal Code (BMC).

Recommended Motion: A motion to approve the deletion of Chapter 17.148, Vacations and the addition of Chapter 12.50, Vacations, BMC.

Financial Impact: This will result in a savings of staff time and application fees charged to the applicant.

Background/Discussion: The current procedure for vacating a public street, alley, easement or other public place is found in Chapter 17.148. Vacations of the Land Development Code. Notice of the vacation request is published in the newspaper and mailed to property owners within 250 feet of the area to be vacated prior to the Planning Commission hearing the matter. Prior to City Council hearing the matter, notice is provided as required by Chapter 271, Oregon Revised Statute (ORS) which includes a notice being published in the newspaper for two consecutive weeks and notice being posted on the property.

The City's representative from the Department of Land Conservation and Development verified that vacations typically are not land use decisions required to be heard by the Planning Commission. To streamline the process, Staff proposes removing the requirements from Title 17, Land Development Code and locating them in Title 12, Streets, Sidewalks, and Public Places. The requests would no longer be heard by the Planning Commission, therefore the newspaper notice and mailed notice for this meeting would not be required. The request would be heard by City Council who would continue to make the decisions. Property owners effected by the vacation would be provided notice of the request as required by ORS 271. This would provide an opportunity for citizens to provide written testimony and/or to explain any concerns to City Council.

In some instances, such as when required street frontage or public access to coastal waters is eliminated, the vacation action would be a land use decision. Language has been inserted into proposed BMC Section 12.50.030 to have vacations that are determined by Planning Staff to be land use decisions follow the same process currently in place for all land use decisions.

By streamlining the process and requiring most vacations to only be heard by City Council, there would be a savings of Planning Commission, applicant, and Staff time. Due to this saving of time, staff will propose a reduction of the application fees for vacations.

Site Plan Committee reviewed the proposal and finds the relocation and revisions of the vacation process to be consistent with City ordinances and policies.

The Public Works Development Services Director expressed a concern that the process of retaining easements over existing public infrastructure might be overlooked as it currently is not addressed in the procedures. Additional draft language was added as Sub-section 12.50.030(D) to address this concern. This was provided to the Planning Commission as Exhibit B during their May 7, 2013 meeting. The Commission felt the easement language should also cover private infrastructure such as that belonging to Coos-Curry Electric, Charter Communications, or Frontier. The Commission recommended approval of the draft revisions with the easement language to include private infrastructure as well as public infrastructure to City Council.

Policy Considerations: N/A

Attachment(s):

- A. Planning Commission Staff Report
- B. Exhibit B - Staff memo with proposed easement language
- C. Final draft Chapter 12.50 Vacations including the easement language with the Planning Commission's addition

CITY OF BROOKINGS PLANNING COMMISSION
STAFF REPORT

SUBJECT: Land Development Code Amendment
FILE NO: LDC-1-13
HEARING DATE: May 7, 2013

REPORT DATE: April 22, 2013
ITEM NO: 5.2

GENERAL INFORMATION

APPLICANT: City Initiated.
REPRESENTATIVE: City Staff.
REQUEST: Relocation and revisions of Chapter 17.148, Vacations to Title 12 Streets, Sidewalks, and Public Places new Chapter 12.50, Vacations, Brookings Municipal Code (BMC)
PUBLIC NOTICE: Published in local newspaper.

BACKGROUND INFORMATION

Currently the procedure for vacationing a public street, alley, easement or other public place is found in BMC, Chapter 17.148. Vacations of the Land Development Code. The process requires notice of the vacation request to be published in the local newspaper and mailed to all property owners within 250 feet of the area to be vacated prior to the Planning Commission hearing the matter. After hearing all the evidence, the Planning Commission makes a recommendation to City Council. Prior to City Council hearing the matter, notice is provided as required by Chapter 271, Oregon Revised Statute (ORS) which includes a notice being published in the newspaper for two consecutive weeks and notice being posted on the property.

Staff contacted the City's representative from the Department of Land Conservation and Development who verified that vacations are typically not land use decisions required to be heard by the Planning Commission. To streamline the process, Staff proposes removing the requirements from Title 17, Land Development Code and locating them in Title 12, Streets, Sidewalks, and Public Places. The requests would no longer be heard by the Planning Commission, therefore the newspaper notice and mailed notice for this meeting would not be required. The request would be heard by City Council who would continue to make the decisions. Property owners effected by the vacation would be provided notice of the request as required by ORS 271. This would provide an opportunity for citizens to provide written testimony or/and to explain any concerns to City Council.

In some instances, such as when required street frontage or public access to coastal waters is eliminated, the vacation action would be a land use decision. Language has been inserted into proposed BMC Section 12.50.030 to have vacations that are determined by Planning Staff to be land use decisions follow the same process currently in place for all land use decisions.

The Site Plan Committee reviewed the proposal and finds the relocation and revisions of the vacation process to be consist with City ordinances and policies.

By requiring most vacations to only be heard by City Council, there would be a savings of Planning Commission, applicant, and Staff time. Due to this saving of time, staff will propose a reduction of the Vacation fee to the City Council.

New Chapter 12.50, Vacations with the proposed text is included at **Attachment A**.

RECOMMENDATION

After careful consideration, and any input the public may provide, Staff supports a Planning Commission recommendation of approval of file LDC-1-13, relocating Chapter 17.148, Vacations with revisions to new Chapter 12.50, Vacations, BMC, to the City Council.

Original text to be deleted is ~~stricken~~.

Proposed new text is **bold**.

Title 12 Streets, Sidewalks, and Public Places

Chapter ~~17.148~~ 12.50 VACATIONS

Sections:

~~17.148~~ **12.50.010** Generally.

~~17.148~~ **12.50.020** Application procedures.

~~17.148~~ **12.50.030** Vacation criteria.

~~17.148~~ **12.50.040** Recording costs.

~~17.148~~ 12.50.010 Generally.

A request to vacate a public street, alley, easement, plat or public place shall, ~~in addition to the requirements contained herein,~~ be subject to the provisions of Chapter 271 ORS, which requires the holding of a public hearing. Vacations may be initiated either by petition pursuant to ORS 271.080, ~~upon recommendation of the planning commission,~~ or on the council's own motion, pursuant to ORS 271.130. [Ord. 89-O-446 § 1.]

~~17.148~~ 12.50.020 Application procedures.

Petitioners or persons requesting the council to initiate a vacation on its own motion, pursuant to ORS 271.130, shall file an application which shall contain the following:

- A. Vicinity map drawn to scale of one inch equals 1,000 feet identifying the area proposed to be vacated and adjoining properties;
- B. Legal description of area proposed to be vacated;
- C. County assessor's parcel maps of the proposed vacation area identifying abutting and affected properties. Identified upon the assessor's parcel maps shall be those abutting and affected properties whose owners have consented to the proposed vacation;
- D. Consent to vacate forms completed and signed by all consenting property owners within the abutting and/or affected area;
- E. Names and addresses of all abutting and/or affected property owners, including map and tax lot numbers prepared on mailing labels;
- F. Written findings of fact prepared by the petitioner(s) or the petitioner(s) representative;

G. The application shall be accompanied by a filing fee in the amount established by general resolution of the city council, no part of which is refundable. [Ord. 89-O-446 § 1.]

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A request to vacate will be reviewed by the Site Plan Committee to verify consistency with City ordinances and policies. If the Planning Staff determines the proposed vacation affects any of the Brookings Comprehensive Plan statewide planning goal policies, the vacation request will be heard by the Planning Commission who will make a recommendation to City Council. In these cases, the vacation matter will be processed as a land use decision and notice will be provided as required by BMC Chapter 17.84, Public Hearing Notice Procedures.

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Pursuant to ORS 271.150, following an action by the city council to vacate an area, such enacting ordinance vacating any street, alley, easement, plat or public place shall be recorded with the county clerk, together with any maps, plat or other record in regard thereto. The petitioner(s) for such vacation shall bear the recording cost and the cost of preparing and filing the certified copy of the ordinance and map. [Ord. 89-O-446 § 1.]

Supplemental Packet For Planning Commission

Hearing Date: May 7, 2013 7:00 pm - Council Chambers

File No. LDC-1-13

Doc. #	Date received:	From	Description
Exhibit B	4/30/2012	Staff	memo w/revised draft text



Memo

To: Planning Commission

From: Donna Colby-Hanks, Planning Manager *sc lf*

Date: April 30, 2013

Re: LDC-1-13, existing public infrastructure

Currently there is no language in Chapter 17.148, Vacations that addresses existing public infrastructure such as water or sewer mains, electrical line conduit, or other facilities for providing utilities. Staff has called for a locate each time a vacation has been requested to verify there were no utility facilities within the area. When facilities were located within the area, needed easements were included on a map recorded with the ordinance finalizing the vacation.

Loree Pryce, Public Works Development Services Director, expressed concern that this process might be overlooked and suggested language be drafted to address any utility facilities located within an area proposed for vacation. The additional draft text is found as 12.50.030(D) and is included as Attachment A.

Original text to be deleted is ~~stricken~~.

Proposed new text is **bold**.

Easement language is **bold and underlined**.

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D. Nothing in this ordinance shall cause or require the removal or abandonment of any sewer, water main, gas main, conduit of any kind, wire, pole or object used or intended to be used for any public service and the right hereby is reserved for the owner of any such utility or object to maintain, continue, repair, reconstruct, renew, replace, rebuild or enlarge all utilities and objects.

17.148 12.50.040 Recording costs.

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Original text to be deleted is ~~stricken~~.

Proposed new text is **bold**.

Easement language is **bold and underlined**.

Text recommended by Planning Commission is **bold and dash underlined**.

Title 12 Streets, Sidewalks, and Public Places

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Sections:

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G. The application shall be accompanied by a filing fee in the amount established by general resolution of the city council, no part of which is refundable. [Ord. 89-O-446 § 1.]

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A request to vacate **that is determined not to be a land use decision** will be considered by ~~the planning commission for recommendation to the~~ City Council following a determination based upon the findings prepared and submitted by the petitioner(s), which shall address the following criteria:

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D. Nothing in this ordinance shall cause or require the removal or abandonment of any public or private sewer, water main, gas main, conduit of any kind, wire, pole or object used or intended to be used for any public service and the right hereby is reserved for the owner of any such utility or object to maintain, continue, repair, reconstruct, renew, replace, rebuild or enlarge all utilities and objects.

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DEPT OF

JUN 03 2013

LAND CONSERVATION
AND DEVELOPMENT

CITY OF BROOKINGS

898 Elk Drive
Brookings, OR 97415
Ph:(541) 469-2163 Fax:(541) 469-3650

TO: Plan Amend Specialist
DLCD
635 Capitol St. NE, Suite 150
Salem, OR 97301-2540