



**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**

8/6/2009

**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 011-09

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:** Tuesday, August 18, 2009

This amendment was submitted to DLCD for review prior to adoption. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

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

**\*NOTE:** THE 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 THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

**Cc:** Dianne Morris, City of Brookings  
Gloria Gardiner, DLCD Urban Planning Specialist

<paa> N

FORM 2

# DLCD

## Notice of Adoption

THIS FORM MUST BE MAILED TO DLCD  
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION  
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

In person  electronic  mailed

DEPT OF

JUL 30 2009

LAND CONSERVATION  
AND DEVELOPMENT

For DLCD Use Only

Jurisdiction: **City of Brookings**

Local file number: **LDC-9-09**

Date of Adoption:

Date Mailed: **7/28/2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 4/15/2009

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".  
Clarification and small revisions to Land Development Code Chapter 17.136, Conditional Use Permits.

Does the Adoption differ from proposal? Yes, Please explain below:

Small additional clarifications.

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

to:

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

to:

Location: **N/A**

Acres Involved:

Specify Density: Previous: **N/A**

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...

45-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

011-09 (17511) [15656]

DLCD file No. \_\_\_\_\_

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

Curry County

---

Local Contact: **Dianne Morris**

Phone: (541) 469-1138 Extension:

Address: **898 Elk Dr.**

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

City: **Brookings**

Zip: **97415-**

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

---

## **ADOPTION SUBMITTAL REQUIREMENTS**

This form **must be mailed** to DLCD **within 5 working days after the final decision**  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. **Send this Form and TWO Complete Copies** (documents and maps) of the Adopted Amendment to:  

**ATTENTION: PLAN AMENDMENT SPECIALIST**  
**DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**  
**635 CAPITOL STREET NE, SUITE 150**  
**SALEM, OREGON 97301-2540**
2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **<http://www.lcd.state.or.us/>**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

FINDINGS

**CITY OF BROOKINGS**

**COUNCIL AGENDA REPORT**

Meeting Date: July 27, 2009

Deanne Morris  
Signature (submitted by)

Originating Dept: Planning

\_\_\_\_\_  
City Manager Approval

---

Subject: A hearing on File LDC-9-09 for consideration and possible adoption of revisions to Chapter 17.136, Conditional Use Permit, Brookings Municipal Code (BMC).

Recommended Motion: Motion approving revisions to Chapter 17.136, Conditional Use Permits, BMC.

Financial Impact: None

Background/Discussion: The Land Development Code (LDC) Committee reviewed Chapter 17.136, Conditional Use Permits. Changes were made in most sections of this Chapter to provide better explanations and make the process easier to understand.

Other specific revisions are:

- 17.136.080, Time Limitation, was liberalized to allow more time to establish the approved use;
- 17.136.090, Appeal, was altered to comply with the law which allows only "participants" the authority to appeal and clarifies when the appeal period begins.
- 17.136.100, Effect of an Appeal, is revised to reflect language recently changed in Chapter 17.04, Development Permit, preventing issuance of any permits until all appeal opportunities have been exhausted. This prevents an approval period from being cut short or possibly lapsing before a final decision has been reached.

The Planning Commission suggested a few additional revisions. Alternate language for the Purpose statement is in the draft version of Chapter 17.136 attached to this report. Other suggested changes were grammatical in nature. There was also discussion about adding language describing how the 15 day appeal period is calculated. Staff is concerned that if specific language is added in this Chapter, it would cause confusion in the numerous other Chapters that discuss appeal periods and don't have those details. The definition of "day" in a business dictionary is in agreement with how Staff historically has calculated the appeal period and Staff feels it's best to rely on that.

Policy Considerations: N/A

Attachment(s): Draft version of Chapter 17.136, Conditional Use Permits, BMC

**Chapter 17.136  
CONDITIONAL USE PERMITS**

**Draft 7-08-09**

Text to be added is ***bold and italicized***.

Text to be omitted has strikethrough.

Sections:

<u>17.136.010</u>	Purpose.
<u>17.136.020</u>	Planning Commission authority.
<u>17.136.030</u>	Application.
<u>17.136.040</u>	Public hearings.
<u>17.136.050</u>	Action by the Planning Commission.
<u>17.136.060</u>	Burden of proof.
<u>17.136.070</u>	<del>Entry of order.</del> <b><i>Final Order.</i></b>
<u>17.136.080</u>	Time limitation.
<u>17.136.090</u>	Appeal.
<u>17.136.100</u>	Effect <b><i>of an appeal.</i></b>
<u>17.136.110</u>	Violation of conditions.
<u>17.136.120</u>	Limitation on new applications.
<u>17.136.130</u>	Notification of action.
<u>17.136.140</u>	<del>Mapping.</del>
<u>17.136.140</u>	Minor change.
<u>17.136.150</u>	Use permit to run with the land.

**17.136.010 Purpose.**

~~In all districts, conditional uses may be permitted subject to the granting of a conditional use permit. Because of their unusual characteristics, or the special characteristics of the area in which they are to be located, conditional uses require special consideration so that they may be properly located with respect to the objectives of this code and their effect on surrounding properties. [Ord. 89-O-446 § 1.]~~

~~***Each zone has uses that are permitted outright and those that may be permitted after review and approval as a land use decision by the appropriate governing body. Those in the second category are described as conditional uses.***~~

**ALTERNATE LANGUAGE PROPOSED BY THE PLANNING COMMISSION:**

***Each zone includes two categories of use:***

- ***Permitted use – those uses that are allowed outright with only Staff review.***

- **Conditional use – those uses that require a land use decision process by the appropriate governing body. It is these uses that are the subject of this Chapter.**

#### **17.136.020 Planning Commission authority.**

The Planning Commission shall have the authority to approve, approve with conditions, disapprove **deny** or revoke conditional use permits subject to the provisions of this section ~~Chapter~~. ~~Changes in use, expansion or contraction of site area, or alteration of structure, or uses classified as conditional and existing prior to the effective date of this code, shall conform to all regulations pertaining to conditional uses.~~ [Ord. 89-O-446 § 1.] **This applies to changes in use, expansion of site area, or alteration of structure or uses classified as conditional and existing prior to this Code.**

#### **17.136.030 Application.**

~~The property owner or his authorized agent may make application for a conditional use permit by filing an application, on a land use application form, with the City Manager or his designee for review by the Site Plan Committee~~ **The property owner or authorized agent may request a conditional use permit using a land use application form, which is then submitted to the Planning Department and reviewed by the Site Plan Committee** pursuant to BMC 17.80.030 (B). ~~Upon clearance from~~ **After review by** the Site Plan Committee, the application will be scheduled for the next available Planning Commission hearing. Such application shall be accompanied by the following information:

- ~~A. Name and address of applicant;~~
- ~~B. Statement that the applicant is the owner of the property or is the authorized agent of the owner;~~
- ~~C. Address, legal description and Curry County assessor's tax lot number of the property;~~
- ~~D. The application shall include an accurate scale drawing of the site and improvement proposed. The drawing must be adequate to enable the planning commission to determine the conformance of the proposal with the requirements of this code and shall be prepared in a manner conforming to the requirements and procedures of site plan approval, Chapter 17.80 BMC;~~
- ~~E. A map (Curry County assessor's plat) showing the subject property and surrounding properties and listing of current owners within 250 feet of the property subject to the conditional use permit application;~~
- F. a statement and supportive evidence indicating the precise manner of conformance with each of the applicable provisions of this code together with any other data pertinent to the findings prerequisite to the granting of a conditional use permit as listed in BMC 17.136.050(C) and any specific criteria applicable to the proposal as found in 17.124, Provisions Applying to Special Uses. The application shall be submitted with the appropriate filing fee.**

~~G. The application shall be accompanied by a filing fee in the amount established by general resolution of the city council. No part of the filing fee is refundable. [Ord. 93-O-446.N § 5; Ord. 89-O-446 § 1.]~~

#### 17.136.040 Public hearings.

Before a conditional use is permitted, the proposed conditional use shall be considered by the Planning Commission at a public hearing. Notice of said hearing shall be given as provided in Chapter 17.84 BMC. [Ord. 96-O-446.BB § 6; Ord. 89-O-446 § 1.]

#### 17.136.050 Action by the Planning Commission.

~~A. Within 60 days after the filing of the application,~~ A public hearing shall be held and the Commission shall render its decision. The decision of the Planning Commission shall be final unless **may be** appealed to the City Council.

~~B. The Planning Commission may approve, approve with conditions or disapprove~~ **deny** the conditional use permit application. ~~by the entry~~ **The decision shall be documented in a** ~~planning commission~~ **Final Order.** ~~, in open meeting, by a majority of its members in attendance, which order shall describe the basis for the decision and state the specific circumstances, findings of fact and evidence presented requiring the application of conditions to the approval.~~

C. Findings of Fact. In order to grant any conditional use, the Planning Commission must find, based upon **factual** evidence, ~~both factual and~~ ~~supportive,~~ provided by the applicant, that:

- ~~1. The proposal is in compliance with the comprehensive plan;~~
- ~~2. 1.~~ The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this code;
- ~~3. 2.~~ The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use;
- ~~4. 3.~~ The proposed use will have minimal adverse impact upon adjoining properties. ~~and the improvements thereon.~~ In making this determination, the Commission shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and bulk of buildings, walls and fences, landscaping, screening, exterior lighting and signing;
- ~~5. 4.~~ In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complimentary to the surrounding area.
- ~~4. 5.~~ The proposal is in compliance with the comprehensive plan.

D. Conditions of Approval. In permitting a conditional use, the Planning Commission may impose, in addition to regulations and standards expressly specified in this Code, other conditions found necessary to protect the best interests of the surrounding property or neighborhood, or the City as a whole. These conditions may include, but not be limited to, the following:

1. Increasing required lot size, yard dimensions, open spaces or buffer areas;
2. Requiring fences, walls or landscape screening and/or buffering where necessary to reduce noise, glare and maintain the property in a character in keeping with the surrounding area;

3. Requiring landscaping and maintenance thereof;
4. Increasing street widths, controlling the location and number of vehicular access points to the property for ingress/egress;
5. Requiring means of pedestrian/bicycle access pathways to serve the property;
6. Increasing the number of off-street parking and loading spaces required; surfacing and proper drainage of parking areas;
7. Limiting size, location and number of signs;
8. Limiting the location, coverage or height of buildings because of obstruction to view and reduction of light and air to adjacent property;
9. Limiting or prohibiting openings in sides of buildings or structures;
10. ~~Enclosure~~ **Enclosing** of storage areas and limitation of outside display and/or storage of merchandise;
11. Requiring maintenance of grounds;
12. ~~Regulation~~ **Regulating** of noise, vibration, odors, etc.;
13. ~~Regulation~~ **Regulating** of time for certain activities;
14. Establishing a time period within which the proposed use shall be developed;
15. ~~The requirement of~~ **Requiring** a bond for removal of such use within a specified period of time;
16. ~~Increase~~ **Increasing** the size, type or capacity of any or all utility services, facilities or appurtenances;
17. ~~Requirements under which~~ **Requiring** any future enlargement or alteration of the use shall **to** be reviewed by the Planning Commission and new conditions imposed;
18. ~~The Planning Commission may require that~~ **Requiring** an applicant **to** furnish the City a performance bond with a contractual agreement to assure its share of the development of streets, curbs, gutters, sidewalks, water, sanitary sewers, storm sewers or other necessary and essential public improvements to City standards;
19. ~~The Planning Commission may also require that~~ **Requiring** Site Plan Committee review and approval is necessary in any particular situation to accomplish the purposes and objectives of this Code;
20. And such other conditions as will make possible the development of the City in an orderly and efficient manner and in conformity with the intent and purposes set forth in this section. [Ord. 89-O-446 § 1.]

#### **17.136.060 Burden of proof.**

~~The specific findings made by the Planning Commission in granting a conditional use permit must be factual and supported by substantial evidence. The burden of producing substantial evidence to support the requisite findings is on the applicant seeking the approval of the conditional use. If no evidence is produced concerning any of the findings listed in BMC 17.136.050(C), the application must be denied based upon improper or inadequate findings. All evidence produced must be recited in the findings for approval of any conditional use permit application. [Ord. 89-O-446 § 1.]~~

***In any land use decision, the burden of producing substantial evidence to demonstrate compliance with the applicable criteria is upon the applicant. If adequate evidence is not provided, the application must be denied.***

**17.136.070 Entry of order. Final Order**

~~Where~~ ***If*** the Planning Commission is of the opinion that said ***approves the*** conditional use permit shall be granted, it shall in open public meeting, by a majority of its members in attendance, enter a planning commission ***it shall be documented in a Final Order.*** granting the conditional use permit, which order shall include specific findings of fact, conclusions and supportive evidence pertaining to BMC 17.136.050(C), and any conditions of approval as authorized by BMC 17.136.050(D). The chairman of, or in his absence, the officer presiding over the Planning Commission meeting in which the above described order is enacted, shall forthwith sign the order and cause the same to be filed with the city recorder. Upon the filing of said order with the city recorder, the order shall be in full force and effect. ***The approval and appeal period shall begin from the postmarked date on the mailing of the Final Order to the applicant and participants.*** An order denying ***Denial of*** a conditional use permit shall ***also be documented in a Final Order.*** be entered and filed in a like manner, with the necessary findings of fact, where the Planning Commission, based on the standards specified herein, determines that the conditional use permit should not be granted. [Ord. 89-O-446 § 1.]

**17.136.080 Time limitation.**

A conditional use permit shall become void after one ***two*** years after ***following*** approval, or after such greater or lesser time as may be specified as a condition of approval, unless within that time the required building construction, alteration or enlargement has been commenced and diligently pursued or, if no such construction, alteration or enlargement is required, unless the permitted activity is being regularly conducted on the premises. The Planning Commission may extend ***the period of time allowed to establish the conditional use*** use permit for an additional period of one year, subject to the requirements of this Code. [Ord. 89-O-446 § 1.]

**17.136.090 Appeal.**

The applicant or any interested person ***participant in the hearings for an application*** may, within 15 days after the decision (***postmarked date on mailing of Final Order***) of the Planning Commission is filed with the city recorder, appeal the same to the City Council in the form prescribed by the City. The appeal procedure shall be as set forth in Chapter 17.152 BMC. [Ord. 89-O-446 § 1.]

**17.136.100 Effect of an Appeal.**

No building or other permit shall be issued in any case where a conditional use permit is required by the terms of this Code until 15 days after the decision of the Planning Commission (***postmarked date on mailing of Final Order***) is filed with

~~the city recorder. An appeal from an action of the~~ **of a** Planning Commission **decision** shall automatically **prevent** (stay) the issuance of a building or other permit until such appeal has been exhausted. **all opportunities for appeal have been exhausted.** ~~In the event the Council acts to grant said conditional use permit, the building permit may be issued immediately thereafter, in accordance with such terms and conditions as may have been imposed on said permit. [Ord. 89-O-446 § 1.]~~

#### **17.136.110 Violation of conditions.**

~~The foregoing shall not be the exclusive remedy, and~~ It shall be unlawful and punishable hereunder for any person to violate any condition imposed by a conditional use permit. The Planning Commission ~~on its own motion~~ may revoke any conditional use permit for noncompliance with conditions set forth in the granting of said permit after first holding a public hearing and giving notice of such hearing as provided in Chapter 17.84 BMC. The foregoing shall not be the exclusive remedy **for a violation of conditions of approval.** [Ord. 96-O-446.BB § 6; Ord. 89-O-446 § 1.]

#### **17.136.120 Limitation on new applications.**

~~In a case where~~ **When** an application is denied by the Planning Commission, or denied by the City Council on appeal from the Planning Commission, ~~unless specifically stated to be without prejudice,~~ it shall not be eligible for resubmittal for a period of one year from the date of said ~~the~~ denial. ~~unless, if,~~ in the opinion of the Planning ~~commission~~ **Director,** new evidence is submitted or conditions have changed to an extent that further consideration is warranted, **an application may be considered in less than one year from the first hearing.** [Ord. 89-O-446 § 1.]

#### **17.136.130 Notification of action.**

~~The City Manager, or his designee~~ **Planning Department** shall notify the applicant for a conditional use permit of the Planning Commission's action **mail a notice of the decision and/ or copy of the Final Order to the applicant and participating parties** within five days after entry of the final order **following the Planning Commission's decision.** ~~A copy of said order shall be provided to the applicant. [Ord. 89-O-446 § 1.]~~

#### **17.136.140 Mapping.**

~~Within 30 days after the entry of the final order of a conditional use permit, the permit application file number shall be indicated on the official zoning map on the lot or lots affected by such permit. [Ord. 89-O-446 § 1.]~~

#### **17.136.140 Minor change.**

A minor change to the approved conditional use permit may be allowed through the procedure set forth in BMC 17.116.110. [Ord. 92-O-446.J § 4; Ord. 89-O-446 § 1.]

#### **17.136.150 Use permit to run with the land.**

A conditional use permit granted pursuant to the provisions of this ~~section~~ **Chapter** shall run with the land and shall continue to be valid upon a change of ownership of the site or structure which was the subject of the use permit application, ~~except as otherwise provided in this section~~ **Chapter unless revoked by the Planning Commission for violation of the conditions of approval.** [Ord. 92-O-446.J § 4; Ord. 89-O-446 § 1.]

TOC | < | >

**CITY OF BROOKINGS PLANNING COMMISSION**  
**STAFF REPORT**

SUBJECT: Land Development Code Amendment  
FILE NO: LDC-9-09  
HEARING DATE: July 7, 2009

REPORT DATE: June 24, 2009  
ITEM NO: 7.1

**GENERAL INFORMATION**

APPLICANT: City Initiated.  
REPRESENTATIVE: City Staff.  
REQUEST: Revisions to Chapter 17.136, Conditional Use Permits, Brookings  
Municipal Code (BMC).  
PUBLIC NOTICE: Published in local newspaper.

**BACKGROUND INFORMATION**

The Land Development Code (LDC) Committee reviewed Chapter 17.136, Conditional Use Permits. Changes were made in most sections of this Chapter to provide better explanations and make the process easier to understand.

Other specific revisions are:

- 17.136.080, Time Limitation, was liberalized to allow more time to establish the approved use;
- 17.136.090, Appeal, was altered to comply with the law which allows only "participants" the authority to appeal and clarifies when the appeal period begins.
- 17.136.100, Effect of an Appeal, is revised to reflect language recently changed in Chapter 17.04, Development Permit, preventing issuance of any permits until all appeal opportunities have been exhausted. This prevents an approval period from being cut short or possibly lapsing before a final decision has been reached.

Following this report is the draft version of Chapter 17.136 (Attachment A).

**RECOMMENDATION**

After careful consideration, and any input the public may provide, Staff supports a Planning Commission recommendation of approval of file LDC-9-09, Chapter 17.136, Conditional Use Permits, BMC, to the City Council.

**Chapter 17.136  
CONDITIONAL USE PERMITS**

**Draft 4-08-09**

Text to be added is ***bold and italicized***.

Text to be omitted has ~~strikethrough~~.

Sections:

<u>17.136.010</u>	Purpose.
<u>17.136.020</u>	Planning Commission authority.
<u>17.136.030</u>	Application.
<u>17.136.040</u>	Public hearings.
<u>17.136.050</u>	Action by the Planning Commission.
<u>17.136.060</u>	Burden of proof.
<u>17.136.070</u>	<del>Entry of order.</del> <b><i>Final Order.</i></b>
<u>17.136.080</u>	Time limitation.
<u>17.136.090</u>	Appeal.
<u>17.136.100</u>	Effect <b><i>of an appeal.</i></b>
<u>17.136.110</u>	Violation of conditions.
<u>17.136.120</u>	Limitation on new applications.
<u>17.136.130</u>	Notification of action.
<del><u>17.136.140</u></del>	<del>Mapping.</del>
<u>17.136.140</u>	Minor change.
<u>17.136.150</u>	Use permit to run with the land.

**17.136.010 Purpose.**

~~In all districts, conditional uses may be permitted subject to the granting of a conditional use permit. Because of their unusual characteristics, or the special characteristics of the area in which they are to be located, conditional uses require special consideration so that they may be properly located with respect to the objectives of this code and their effect on surrounding properties. [Ord. 89-O-446 § 1.]~~

***Each zone has uses that are permitted outright and those that may be permitted after review and approval as a land use decision by the appropriate governing body. Those in the second category are described as conditional uses.***

**17.136.020 Planning Commission authority.**

The Planning Commission shall have the authority to approve, approve with conditions, disapprove ***deny*** or revoke conditional use permits subject to the provisions of this section. ~~Changes in use, expansion or contraction of site area, or alteration of structure, or uses classified as conditional and existing prior to the effective date of this code, shall conform to all regulations pertaining to~~

~~conditional uses. [Ord. 89-O-446 § 1.]~~ ***This applies to changes in use, expansion of site area, or alteration of structure or uses classified as conditional and existing prior to this Code.***

#### **17.136.030 Application.**

~~The property owner or his authorized agent may make application for a conditional use permit by filing an application, on a land use application form, with the City Manager or his designee for review by the Site Plan Committee~~ ***The property owner or authorized agent may request a conditional use permit using a land use application form, which is then submitted to the Planning Department and reviewed by the Site Plan Committee*** pursuant to BMC 17.80.030 (B). ~~Upon clearance from~~ ***After review by*** the Site Plan Committee, the application will be scheduled for the next available Planning Commission hearing. Such application shall be accompanied by the following information:

~~A. Name and address of applicant;~~

~~B. Statement that the applicant is the owner of the property or is the authorized agent of the owner;~~

~~C. Address, legal description and Curry County assessor's tax lot number of the property;~~

~~D. The application shall include an accurate scale drawing of the site and improvement proposed. The drawing must be adequate to enable the planning commission to determine the conformance of the proposal with the requirements of this code and shall be prepared in a manner conforming to the requirements and procedures of site plan approval, Chapter 17.80 BMC;~~

~~E. A map (Curry County assessor's plat) showing the subject property and surrounding properties and listing of current owners within 250 feet of the property subject to the conditional use permit application;~~

~~F. a statement and supportive evidence indicating the precise manner of conformance with each of the applicable provisions of this code together with any other data pertinent to the findings prerequisite to the granting of a conditional use permit as listed in BMC 17.136.050(C) and any specific criteria applicable to the proposal as found in 17.124, Provisions Applying to Special Uses. The application shall be submitted with the appropriate filing fee.~~

~~G. The application shall be accompanied by a filing fee in the amount established by general resolution of the city council. No part of the filing fee is refundable. [Ord. 93-O-446.N § 5; Ord. 89-O-446 § 1.]~~

#### **17.136.040 Public hearings.**

~~Before a conditional use is permitted, the proposed conditional use shall be considered by the Planning Commission at a public hearing. Notice of said hearing shall be given as provided in Chapter 17.84 BMC. [Ord. 96-O-446.BB § 6; Ord. 89-O-446 § 1.]~~

#### **17.136.050 Action by the Planning Commission.**

~~A. Within 60 days after the filing of the application, A public hearing shall be held and the Commission shall render its decision. The decision of the Planning Commission shall be final unless ***may be*** appealed to the City Council.~~

B. The Planning Commission may approve, approve with conditions or disapprove **deny** the conditional use permit application. ~~by the entry~~ **The decision shall be documented in a** ~~planning commission~~ **Final Order.** ~~in open meeting, by a majority of its members in attendance, which order shall describe the basis for the decision and state the specific circumstances, findings of fact and evidence presented requiring the application of conditions to the approval.~~

C. Findings of Fact. In order to grant any conditional use, the Planning Commission must find, based upon **factual** evidence, ~~both factual and supportive,~~ provided by the applicant, that:

- ~~1. The proposal is in compliance with the comprehensive plan;~~
- ~~2.1.~~ **1.** The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this code;
- ~~3.2.~~ **2.** The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use;
- ~~4. 3.~~ **3.** The proposed use will have minimal adverse impact upon adjoining properties. ~~and the improvements thereon.~~ In making this determination, the Commission shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and bulk of buildings, walls and fences, landscaping, screening, exterior lighting and signing;
- ~~5. 4.~~ **4.** In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complimentary to the surrounding area.
- ~~4. 5.~~ **5.** The proposal is in compliance with the comprehensive plan.

D. Conditions of Approval. In permitting a conditional use, the Planning Commission may impose, in addition to regulations and standards expressly specified in this Code, other conditions found necessary to protect the best interests of the surrounding property or neighborhood, or the City as a whole. These conditions may include, but not be limited to, the following:

1. Increasing required lot size, yard dimensions, open spaces or buffer areas;
2. Requiring fences, walls or landscape screening and/or buffering where necessary to reduce noise, glare and maintain the property in a character in keeping with the surrounding area;
3. Requiring landscaping and maintenance thereof;
4. Increasing street widths, controlling the location and number of vehicular access points to the property for ingress/egress;
5. Requiring means of pedestrian/bicycle access pathways to serve the property;
6. Increasing the number of off-street parking and loading spaces required; surfacing and proper drainage of parking areas;
7. Limiting size, location and number of signs;

8. Limiting the location, coverage or height of buildings because of obstruction to view and reduction of light and air to adjacent property;
9. Limiting or prohibiting openings in sides of buildings or structures;
10. Enclosure of storage areas and limitation of outside display and/or storage of merchandise;
11. Requiring maintenance of grounds;
12. Regulation of noise, vibration, odors, etc.;
13. Regulation of time for certain activities;
14. Establishing a time period within which the proposed use shall be developed;
15. The requirement of a bond for removal of such use within a specified period of time;
16. Increase the size, type or capacity of any or all utility services, facilities or appurtenances;
17. Requirements under which any future enlargement or alteration of the use shall be reviewed by the Planning Commission and new conditions imposed;
18. The Planning Commission may require that an applicant furnish the City a performance bond with a contractual agreement to assure its share of the development of streets, curbs, gutters, sidewalks, water, sanitary sewers, storm sewers or other necessary and essential public improvements to City standards;
19. The Planning Commission may also require that Site Plan Committee review and approval is necessary in any particular situation to accomplish the purposes and objectives of this Code;
20. And such other conditions as will make possible the development of the City in an orderly and efficient manner and in conformity with the intent and purposes set forth in this section. [Ord. 89-O-446 § 1.]

**17.136.060 Burden of proof.**

~~The specific findings made by the Planning Commission in granting a conditional use permit must be factual and supported by substantial evidence. The burden of producing substantial evidence to support the requisite findings is on the applicant seeking the approval of the conditional use. If no evidence is produced concerning any of the findings listed in BMC 17.136.050(C), the application must be denied based upon improper or inadequate findings. All evidence produced must be recited in the findings for approval of any conditional use permit application. [Ord. 89-O-446 § 1.]~~

***In any land use decision, the burden of producing substantial evidence to demonstrate compliance with the applicable criteria is upon the applicant. If adequate evidence is not provided, the application must be denied.***

**17.136.070 ~~Entry of order.~~ Final Order**

~~Where~~ ***If*** the Planning Commission is of the opinion that said ***approves the*** conditional use permit shall be granted, it shall in open public meeting, by a majority of its members in attendance, enter a planning commission ***it shall be documented in a Final Order*** granting the conditional use permit., which order shall include specific findings of fact, conclusions and supportive evidence

pertaining to BMC ~~17.136.050(C)~~, and any conditions of approval as authorized by BMC ~~17.136.050(D)~~. The chairman of, or in his absence, the officer presiding over the Planning Commission meeting in which the above described order is enacted, shall forthwith sign the order, and cause the same to be filed with the city recorder. Upon the filing of said order with the city recorder, the order shall be in full force and effect. **The approval and appeal period shall begin from the postmark date on the mailing of the Final Order to the applicant and participants.** An order denying **Denial of** a conditional use permit shall **also be documented in a Final Order.** be entered and filed in a like manner, with the necessary findings of fact, where the Planning Commission, based on the standards specified herein, determines that the conditional use permit should not be granted. [Ord. 89-O-446 § 1.]

#### **17.136.080 Time limitation.**

A conditional use permit shall become void after one **two** years after **following** approval, or after such greater or lesser time as may be specified as a condition of approval, unless within that time the required building construction, alteration or enlargement has been commenced and diligently pursued or, if no such construction, alteration or enlargement is required, unless the permitted activity is being regularly conducted on the premises. The Planning Commission may extend **the period of time allowed to establish the conditional use** permit for an additional period of one year, subject to the requirements of this Code. [Ord. 89-O-446 § 1.]

#### **17.136.090 Appeal.**

The applicant or any interested person **participant in the hearings for an application** may, within 15 days after the decision (**postmark date on mailing of Final Order**) of the Planning Commission is filed with the city recorder, appeal the same to the City Council in the form prescribed by the City. The appeal procedure shall be as set forth in Chapter 17.152 BMC. [Ord. 89-O-446 § 1.]

#### **17.136.100 Effect of an Appeal.**

No building or other permit shall be issued in any case where a conditional use permit is required by the terms of this Code until 15 days after the decision of the Planning Commission (**postmark date on mailing of Final Order**) is filed with the city recorder. An appeal from an action of the **of a** Planning Commission **decision** shall automatically **prevent** (stay) the issuance of a building or other permit until such appeal has been exhausted. **all opportunities for appeal have been exhausted.** In the event the Council acts to grant said conditional use permit, the building permit may be issued immediately thereafter, in accordance with such terms and conditions as may have been imposed on said permit. [Ord. 89-O-446 § 1.]

#### **17.136.110 Violation of conditions.**

The foregoing shall not be the exclusive remedy, and it shall be unlawful and punishable hereunder for any person to violate any condition imposed by a conditional use permit. The Planning Commission on its own motion may revoke

any conditional use permit for noncompliance with conditions set forth in the granting of said permit after first holding a public hearing and giving notice of such hearing as provided in Chapter 17.84 BMC. The foregoing shall not be the exclusive remedy **for a violation of conditions of approval.** [Ord. 96-O-446.BB § 6; Ord. 89-O-446 § 1.]

#### **17.136.120 Limitation on new applications.**

~~In a case where~~ **When** an application is denied by the Planning Commission, or denied by the City Council on appeal from the Planning Commission, ~~unless specifically stated to be without prejudice,~~ it shall not be eligible for resubmittal for a period of one year from the date of said ~~the~~ denial. ~~unless,~~ **If** in the opinion of the Planning ~~commission~~ **Director**, new evidence is submitted or conditions have changed to an extent that further consideration is warranted, **an application may be considered in less than one year from the first hearing.** [Ord. 89-O-446 § 1.]

#### **17.136.130 Notification of action.**

The City Manager, or his designee ~~Planning Department~~ shall notify the applicant for a conditional use permit of the Planning Commission's action **mail a notice of the decision and/ or copy of the Final Order to the applicant and participating parties** within five days ~~after entry of the final order~~ **following the Planning Commission's decision.** A copy of said order shall be provided to the applicant. [Ord. 89-O-446 § 1.]

#### ~~17.136.140 Mapping.~~

~~Within 30 days after the entry of the final order of a conditional use permit, the permit application file number shall be indicated on the official zoning map on the lot or lots affected by such permit. [Ord. 89-O-446 § 1.]~~

#### **17.136.140 Minor change.**

A minor change to the approved conditional use permit may be allowed through the procedure set forth in BMC 17.116.110. [Ord. 92-O-446.J § 4; Ord. 89-O-446 § 1.]

#### **17.136.150 Use permit to run with the land.**

A conditional use permit granted pursuant to the provisions of this section **Chapter** shall run with the land and shall continue to be valid upon a change of ownership of the site or structure which was the subject of the use permit application, ~~except as otherwise provided in this section~~ **Chapter unless revoked by the Planning Commission for violation of the conditions of approval.** [Ord. 92-O-446.J § 4; Ord. 89-O-446 § 1.]

**IN AND FOR THE CITY OF BROOKINGS  
STATE OF OREGON**

**ORDINANCE NO. 09-O-641**

**IN THE MATTER OF ORDINANCE 09-O-641, AN ORDINANCE AMENDING CHAPTER 17.136, CONDITIONAL USE PERMITS, TO TITLE 17, LAND DEVELOPMENT CODE, OF THE BROOKINGS MUNICIPAL CODE, IN IT'S ENTIRETY.**

Sections:

- Section 1. Ordinance Identified.
- Section 2. Amends Chapter 17.136, in it's entirety.

The City of Brookings ordains as follows:

Section 1. Ordinance Identified. This ordinance revising Chapter 17.136, Conditional Use Permits, to Title 17, Land Development Code, of the Brookings Municipal Code (BMC).

Section 2. Amend Chapter 17.136. Chapter 17.136, Conditional Use Permits is amended to read as follows:

***Chapter 17.136  
CONDITIONAL USE PERMITS***

Sections:

- 17.136.010 Purpose.
- 17.136.020 Planning Commission authority.
- 17.136.030 Application.
- 17.136.040 Public hearings.
- 17.136.050 Action by the Planning Commission.
- 17.136.060 Burden of proof.
- 17.136.070 Final Order.
- 17.136.080 Time limitation.
- 17.136.090 Appeal.
- 17.136.100 Effect of an appeal.
- 17.136.110 Violation of conditions.
- 17.136.120 Limitation on new applications.
- 17.136.130 Notification of action.
- 17.136.140 Minor change.
- 17.136.150 Use permit to run with the land.

**17.136.010 Purpose.**

Each zone includes two categories of use:

- Permitted use – those uses that are allowed outright.
- Conditional use – those uses that require a land use decision process by the appropriate governing body. It is these uses that are the subject of this Chapter.

**17.136.020 Planning Commission authority.**

The Planning Commission shall have the authority to approve, approve with conditions, deny or revoke conditional use permits subject to the provisions of this Chapter. This applies to changes in use, expansion of site area, or alteration of structure or uses classified as conditional and existing prior to this Code.

**17.136.030 Application.**

The property owner or authorized agent may request a conditional use permit using a land use application form, which is then submitted to the Planning Department and reviewed by the Site Plan Committee pursuant to BMC 17.80.030 (B). After review by the Site Plan Committee, the application will be scheduled for the next available Planning Commission hearing. Such application shall be accompanied by a statement and supportive evidence indicating the precise manner of conformance with each of the applicable provisions of this code together with any other data pertinent to the findings as listed in BMC 17.136.050(C) and any specific criteria applicable to the proposal as found in 17.124, Provisions Applying to Special Uses. The application shall be submitted with the appropriate filing fee.

**17.136.040 Public hearings.**

Before a conditional use is permitted, the proposed conditional use shall be considered by the Planning Commission at a public hearing. Notice of said hearing shall be given as provided in Chapter 17.84 BMC. [Ord. 96-O-446.BB § 6; Ord. 89-O-446 § 1.]

**17.136.050 Action by the Planning Commission.**

A. A public hearing shall be held and the Commission shall render its decision. The decision of the Planning Commission may be appealed to the City Council.

B. The Planning Commission may approve, approve with conditions or deny the conditional use permit application. The decision shall be documented in a Final Order.

C. Findings of Fact. In order to grant any conditional use, the Planning Commission must find, based upon factual evidence, provided by the applicant, that:

1. The site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this code;

2. The site for the proposed use relates to streets and highways adequate in width and degree of improvement to handle the quantity and kind of vehicular traffic that would be generated by the proposed use;

3. The proposed use will have minimal adverse impact upon adjoining properties. In making this determination, the Commission shall consider, but not be limited to, the proposed location of the improvements on the site, vehicular egress/ingress and internal circulation, pedestrian access, setbacks, height and bulk of buildings, walls and fences, landscaping, screening, exterior lighting and signing;

4. In areas designated as requiring preservation of historic, scenic or cultural attributes, proposed structures will be of a design complimentary to the surrounding area.

5. The proposal is in compliance with the comprehensive plan.

D. Conditions of Approval. In permitting a conditional use, the Planning Commission may impose, in addition to regulations and standards expressly specified in this Code, other conditions found necessary to protect the best interests of the surrounding property or

neighborhood, or the City as a whole. These conditions may include, but not be limited to, the following:

1. Increasing required lot size, yard dimensions, open spaces or buffer areas;
2. Requiring fences, walls or landscape screening and/or buffering where necessary to reduce noise, glare and maintain the property in a character in keeping with the surrounding area;
3. Requiring landscaping and maintenance thereof;
4. Increasing street widths, controlling the location and number of vehicular access points to the property for ingress/egress;
5. Requiring means of pedestrian/bicycle access pathways to serve the property;
6. Increasing the number of off-street parking and loading spaces required; surfacing and proper drainage of parking areas;
7. Limiting size, location and number of signs;
8. Limiting the location, coverage or height of buildings because of obstruction to view and reduction of light and air to adjacent property;
9. Limiting or prohibiting openings in sides of buildings or structures;
10. Enclosing of storage areas and limitation of outside display and/or storage of merchandise;
11. Requiring maintenance of grounds;
12. Regulating noise, vibration, odors, etc.;
13. Regulating time for certain activities;
14. Establishing a time period within which the proposed use shall be developed;
15. Requiring a bond for removal of such use within a specified period of time;
16. Increasing the size, type or capacity of any or all utility services, facilities or appurtenances;
17. Requiring any future enlargement or alteration of the use shall to be reviewed by the Planning Commission and new conditions imposed;
18. Requiring an applicant to record a Differed Improvement Agreement (DIA) to provide for sharing the cost of future development of streets, curbs, gutters, sidewalks, water, sanitary sewers, storm sewers or other necessary and essential public improvements to City standards. If the proposed use is no more intense use than what exists presently, it is not lawful for the City to require improvements to the above listed infrastructure;
19. Requiring Site Plan Committee review and approval to accomplish the purposes and objectives of this Code;
20. And such other conditions as will make possible the development of the City in an orderly and efficient manner and in conformity with the intent and purposes set forth in this section. [Ord. 89-O-446 § 1.]

#### **17.136.060 Burden of proof.**

In any land use decision, the burden of producing substantial evidence to demonstrate compliance with the applicable criteria is upon the applicant. If adequate evidence is not provided, the application must be denied.

#### **17.136.070 Final Order**

If the Planning Commission approves the conditional use permit it shall be documented in a Final Order. The approval and appeal period shall begin from the postmarked date on the mailing of the Final Order to the applicant and participants. Denial of a conditional use permit shall also be documented in a Final Order.

**17.136.080 Time limitation.**

A conditional use permit shall become void after two years following approval, or after such greater time as may be specified as a condition of approval, unless within that time the required building construction, alteration or enlargement has been commenced and diligently pursued or, if no such construction, alteration or enlargement is required, unless the permitted activity is being regularly conducted on the premises. The Planning Commission may extend the period of time allowed to establish the conditional use for an additional period of one year, subject to the requirements of this Code. [Ord. 89-O-446 § 1.]

**17.136.090 Appeal.**

The applicant or any participant in the hearings for an application may, within 15 days after the decision (postmarked date on mailing of Final Order) of the Planning Commission, appeal the same to the City Council in the form prescribed by the City. The appeal procedure shall be as set forth in Chapter 17.152 BMC. [Ord. 89-O-446 § 1.]

**17.136.100 Effect of an Appeal.**

No permit shall be issued until 15 days after the decision of the Planning Commission (postmarked date on mailing of Final Order). An appeal of a Planning Commission decision shall automatically prevent (stay) the issuance of a permit until all opportunities for appeal have been exhausted.

**17.136.110 Violation of conditions.**

It shall be unlawful for any person to violate any condition imposed by a conditional use permit. The Planning Commission may revoke any conditional use permit for noncompliance with conditions set forth in the granting of said permit after first holding a public hearing and giving notice of such hearing as provided in Chapter 17.84 BMC. The foregoing shall not be the exclusive remedy for a violation of conditions of approval. [Ord. 96-O-446.BB § 6; Ord. 89-O-446 § 1.]

**17.136.120 Limitation on new applications.**

When an application is denied by the Planning Commission, or denied by the City Council on appeal from the Planning Commission, it shall not be eligible for resubmittal for a period of one year from the date of the denial. If, in the opinion of the Planning Director, new evidence is submitted or conditions have changed to an extent that further consideration is warranted, an application may be considered in less than one year from the first hearing. [Ord. 89-O-446 § 1.]

**17.136.130 Notification of action.**

The Planning Department shall mail a notice of the decision and/ or copy of the Final Order to the applicant and participating parties within five days following the Planning Commission's decision. [Ord. 89-O-446 § 1.]

**17.136.140 Minor change.**

A minor change to the approved conditional use permit may be allowed through the procedure set forth in BMC 17.116.110. [Ord. 92-O-446.J § 4; Ord. 89-O-446 § 1.]

**17.136.150 Use permit to run with the land.**

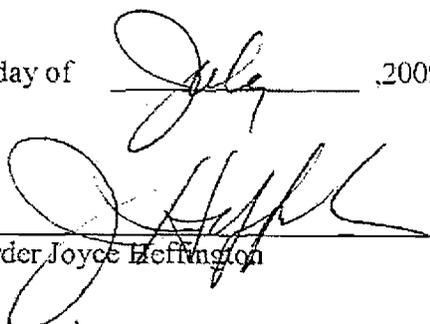
A conditional use permit granted pursuant to the provisions of this Chapter shall run with the land and shall continue to be valid upon a change of ownership of the site or structure

which was the subject of the use permit application, unless revoked by the Planning Commission for violation of the conditions of approval. [Ord. 92-O-446.J § 4; Ord. 89-O-446 § 1.]

First Reading: July 27, 2009  
Second Reading: July 27, 2009  
Passage: July 27, 2009  
Effective Date: August 26, 2009

Signed by me in authentication of its passage this 28<sup>th</sup> day of July, 2009

  
\_\_\_\_\_  
Mayor Larry Anderson

ATTEST:   
\_\_\_\_\_  
City Recorder Joyce Heffington



**CITY OF BROOKINGS**

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

**TO:**

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

