



# Oregon

Kate Brown, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

Fax: 503-378-5518

[www.oregon.gov/LCD](http://www.oregon.gov/LCD)



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

Date: January 19, 2016  
Jurisdiction: City of Brookings  
Local file no.: LDC-2-15  
DLCD file no.: 001-16

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 01/15/2016. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD less than 35 days prior to the first evidentiary hearing.

### Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR chapter 661, division 10).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

### DLCD Contact

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



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

<b>FOR DLCD USE</b>	
File No.:	001-16
	{24222}
Received:	1/15/2016

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See [OAR 660-018-0040](#)). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use [Form 4](#) for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use [Form 5](#) for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use [Form 6](#) with submittal of an adopted periodic review task.

Jurisdiction: City of Brookings

Local file no.: **LDC-2-15**

Date of adoption: 01/11/2016

Date sent: 01/15/2016

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1 was submitted):

No

Is the adopted change different from what was described in the Notice of Proposed Change?    Yes    No

If yes, describe how the adoption differs from the proposal:

Local contact (name and title): Donna Colby-Hanks, Planning Manager

Phone: (541) 469-1137

E-mail: dcolbyhanks@brookings.or.us

Street address: 898 Elk Drive

City: Brookings

Zip: 97415-

### PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

**For a change to comprehensive plan text:**

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

**For a change to a comprehensive plan map:**

Identify the former and new map designations and the area affected:

- |                        |    |        |  |
|------------------------|----|--------|--|
| Change from<br>change. | to | acres. | A goal exception was required for this         |
| Change from<br>change. | to | acres. | A goal exception was required for this         |
| Change from<br>change. | to | acres. | A goal exception was required for this         |
| Change from            | to | acres. | A goal exception was required for this change. |

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

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary



**If the comprehensive plan map change is a UGB amendment** including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

**If the comprehensive plan map change is an urban reserve amendment** including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

**For a change to the text of an ordinance or code:**

Identify the sections of the ordinance or code that were added or amended by title and number:

Brookings Municipal Code Chapter 17.124.230 Amateur Radio Facilities, and Amateur Radio Facilities as Conditional Uses in Applicable zones.

**For a change to a zoning map:**

Identify the former and new base zone designations and the area affected:

Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation:	Acres added:	Acres removed:
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Location of affected property (T, R, Sec., TL and address):

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List affected state or federal agencies, local governments and special districts: DLCD

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

The revision adds an opportunity for property owners to site amateur radio facilities of a height up to 70 feet.

**IN AND FOR THE CITY OF BROOKINGS**  
**STATE OF OREGON**  
**ORDINANCE 16-O-752**

**IN THE MATTER OF ORDINANCE 16-O-752, AN ORDINANCE ADDING SECTION 17.124.230, AMATEUR RADIO FACILITIES, AND AMATEUR RADIO FACILITIES AS CONDITIONAL USES IN APPLICABLE ZONING DISTRICTS, TO TITLE 17, LAND DEVELOPMENT CODE OF THE BROOKINGS MUNICIPAL CODE.**

Sections:

Section 1. Ordinance Identified.

Section 2. Adds Section 17.124.230.

Section 3. Adds amateur radio facilities as Conditional Uses in applicable zoning districts.

The City of Brookings ordains as follows:

Section 1. Ordinance Identified. Adds Section 17.124.230, Amateur Radio Facilities, and Amateur Radio Facilities as Conditional Uses in applicable Zoning Districts, to Title 17, Land Development Code of the Brookings Municipal Code.

Section 2. Adds Section 17.124.230. Section 17.124.230 is hereby added to Chapter read as follows:

**17.124.230 Amateur radio facilities.**

Amateur radio facilities are private, non-commercial wireless communication facilities consisting of antennas, towers, and/or support structures. The City recognizes the importance of amateur radio operators and their service to the community especially in the event of emergencies.

Amateur radio facilities are considered an accessory use to a residential dwelling. Chapter 17.128.020(B) provides for exceptions to height limitations for masts, aerials and antenna.

The following siting criteria shall apply to amateur radio facilities that do not meet the provisions of Chapter 17.128.020(B) and/or the applicable zoning district. The criteria are intended to maximize public safety and minimize visual impacts to promote and protect the residential characteristics of the residential zoning districts consistent with federal and state law. Public notice shall be provided to all property owners within 1000 feet of a proposed amateur radio facility requesting approval with a conditional use permit (CUP).

A. Height. The maximum tower/antenna height shall not exceed 70 feet from the finished grade at the base of the tower. A narrative must be submitted with the application providing justification of the need for the requested height. The narrative need not be complex but must provide an explanation as to why a taller tower/antenna is needed to obtain the reliable communications desired by the applicant.

B. Front, Side and Rear Yard Setbacks. All components of the facility, including guy wires, antennas, and footings shall meet the minimum setbacks of the applicable zone.

C. Construction. A building permit shall be obtained for the construction or erection of the amateur radio facility. Plans and calculations shall be provided and shall comply with the provisions of Section 3108 of the Oregon Structural Specialty Code.

D. Finish (paint/surface). The facility shall have a finish, tone or color that reduces its visibility. In most circumstances this condition may be satisfied by painting the facility with a flat light haze gray paint. The owner shall maintain the finish, painted or unpainted. Red and white or orange and white finish is not allowed. If these colors are required by the FAA (Federal Aviation Administration) or ODA (Oregon Department of Aviation), the height shall be reduced to a level that it is not required.

E. Fencing and Security. For security purposes, towers and accessory facilities shall be enclosed by a minimum six-foot fence or be equipped with anti-climb devices. If this conflicts with TIA-222 or other agencies, the most restrictive requirements shall prevail.

F. Lighting. No lighting shall be permitted on the facility. If required by the FAA or ODA, the facility shall be reduced to a level that does not require lighting.

G. Airport Overlay Zone. The facility shall comply with the requirements in BMC Chapter 17.76, Airport Overlay Zone.

H. Advertising/Signs. No advertising or signs of any type are to be placed on the tower at any time except those required or necessary for safety and warnings. Safety and warning signs shall be less than two square feet and be placed on the facility at a height of less than six feet.

I. License. The owner of the facility shall possess and provide a copy of a current FCC license to the City. After six (6) months with no valid license, the facility shall be considered abandoned and shall be removed by the property owner within 60 days thereafter. The owner shall provide a copy of a valid FCC license every three (3) years.

J. Abandonment. The property owner shall provide annual written documentation that the facilities are functioning. Amateur radio facilities that do not have functioning antennas for a period of six months shall be considered abandoned and shall be removed by the owner of the facility within 60 days thereafter. Upon written application, prior to the expiration of the six-month period, the planning commission if approved with a CUP or staff if permitted outright may, in writing, grant a six-month time extension for reuse of the facility. Additional extensions beyond the first six-month extension may be granted by the planning commission subject to any conditions required to bring the project or facility into compliance with current regulation(s).

K. Maintenance. Amateur radio facilities shall be maintained in good order and repair at all time so to not constitute any danger or hazard to adjacent properties. All facilities 25 years or older must be inspected by an Oregon structural engineer every three (3) years and a report provided to the City. The Building Official may request an inspection of a facility of any age where signs of

deterioration or instability are observed. If repairs are needed, they must be completed within six (6) months, reinspected, and a report provided to the City.

L. Unrelated equipment. Equipment and antenna for other than amateur radio facilities shall comply with height and setback requirements of Chapter 17.128.020(B) and the underlying zone.

M. Hazardous Building Sites. Construction or erection of amateur radio facilities shall comply with Chapter 17.100 Hazardous Building Site Protection.

N. Permanent structures must not be located in any easement.

O. The City must be notified if the property is sold. The City will provide the new property owner a copy of the final order with conditions of approval of the Conditional Use Permit granting approval.

P. The amateur radio facilities must be located, designed and installed so as to minimize conflicts with scenic views to the extent possible and to not endanger the safety of persons or property.

Section 3. Adds amateur radio facilities as Conditional Uses in applicable zoning districts: The following subsections are hereby added as follows:

17.16.040(V). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.20.040(U). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.24.040(V). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.28.040(T). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.32.040(V). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.36.040(L). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.40.040(D). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.44.040(D). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.



17.48.040(J). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.52.040(O). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.56.040(J). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.64.040(I). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.68.040(G). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

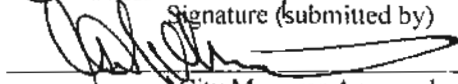
First Reading: January 11, 2016 Passage: January 11, 2016  
Second Reading: January 11, 2016 Effective Date: February 10, 2016  
Signed by me in authentication of its passage this 13<sup>th</sup>, day of January, 2016

Ron Hedenskog  
Mayor Ron Hedenskog

ATTEST:  
Joyce Heffington  
City Recorder Joyce Heffington

**CITY OF BROOKINGS**  
**COUNCIL AGENDA REPORT**

Meeting Date: January 11, 2016

Donna Colby - Hanks *DLH*  
Signature (submitted by)  
  
\_\_\_\_\_  
City Manager Approval

Originating Dept: PWDS-Planning

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**Subject:** A hearing on File LDC-2-15 for consideration of the addition of BMC Section 17.124.230 Specific Standards Applying to Conditional Uses, Amateur communication facilities and the addition of Amateur communication facilities as a conditional use in all applicable zoning districts.

**Recommended Motion:** A motion to approve revisions proposed by LDC-2-15 to add provisions for additional opportunities for amateur radio facilities as an accessory use to dwellings with the approval of a conditional use permit.

**Background/Discussion:** At its meeting of December 14, 2015, City Council directed staff to revise the proposed amateur radio facility ordinance consistent with the recommendations in a letter dated December 8, 2015, provided by City Attorney Martha Rice. The recommendations were in response to a letter received from Christopher Imlay, General Counsel for the National Association for Amateur Radio. Both documents are included with this report as Attachment A. Attachment B is the revised provisions of BMC Section 17.124.230.

Since this matter has been of great interest to the public and as suggested by the City Attorney, notice of the public hearing was published in the local newspaper and mailed directly to all participants and agencies to allow for additional testimony and input.

**Attachment(s):**

- A. Rice letter and Imlay email
- B. Draft revised provisions



# BLACK & RICE LLP

Robert N. Black, Partner  
*rblack@attyblack.com*

Attorneys at Law  
The McNulty House  
710 H Street

Martha D. Rice, Partner  
*mrice@attyblack.com*

Autumn E. Luna, Associate  
*aluna@attyblack.com*

Crescent City, CA 95531

Andre L. Carpenter, Office Mgr  
*acarpenter@attyblack.com*

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## Advice Letter<sup>1</sup>

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TO: Mayor Ron Hedenskog and Members of the City Council;  
City Manager Gary Milliman; City Planning Manager Donna Colby-Hanks

FR: Martha D. Rice, City Attorney

DT: December 8, 2015

RE: Response to Christopher Imlay's Letter Raising Concerns over Content of Proposed City Ordinance to Amend the City Code to Regulate Amateur Radio Installations

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### A. Background

Amateur radio is a federally regulated communications service. The federal agency tasked with enforcing the federal regulations is the Federal Communications Commission ("FCC"). In 1985, the FCC issued PRB-1, an administration ruling declaring a policy of limited preemption of state and local laws regarding the regulation of amateur radio facilities. The policy of limited preemption is an attempt to balance the strong federal interest in promoting amateur operations and the legitimate interests of local governments in regulating local zoning matters. The policy states that local regulation of an antenna structure must not preclude amateur service communications. Rather, it must reasonably accommodate such communications and must constitute the minim practicable regulation to accomplish the state or local authority's legitimate purpose. Municipalities must provide reasonable accommodation in all cases.

### B. Reasonable Accommodation

The Ninth Circuit Court of Appeals announced a three-prong test for determining whether a municipality has "reasonably accommodated" an amateur radio operator.<sup>2</sup> Prior to denying an application to construct an amateur radio antenna facility, the municipality is required to (1) consider the application, (2) make factual findings, and (3) attempt to negotiate a satisfactory compromise with the applicant. If the amateur radio operator's communication is made ineffective by the limitations placed on the facility by the City, then the City has not complied with the reasonable accommodation requirement.<sup>3</sup>

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<sup>1</sup> This advice letter is confidential as an attorney-client communication, unless Client chooses to release it.

<sup>2</sup> *Howard v. City of Burlingame* (9th Cir. 1991) 937 F.2d 1376.

<sup>3</sup> *Pentel v. City of Mendota Heights* (8th Cir. 1994) 13 F.3d 1261.

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### C. Addressing Christopher Imlay's Concerns Outlined in His Letter

Concern No. 1: The ordinance makes "each and every amateur radio antenna, regardless of height or configuration, subject to a conditional use permit."

- Response: This is incorrect. Amateur radio towers and antennas are allowed as an accessory use on all properties with a height limitation of one and one-half times the height limitation of the applicable zoning district. If the tower and antenna are in excess of the height limitation exception set forth in BMC 17.128.020(B), then a special use permit is required in accordance with BMC 17.124.230 (added with this new ordinance).
- Recommendation: No action necessary.

Concern No. 2: Subsection 17.124.030(A) requirement of a "needs analysis" for any tower/antenna that exceeds the one and one-half times the zoning district's height limitation is unclear as to what will be an adequate showing and who will evaluate the evidence.

- Response: This can be fixed by clarifying what is meant by a "needs analysis."
- Recommendation: The City should amend the language to provide clarification to the "needs analysis" process. In accordance with current law, the applicant could be required to show the planning commission, by a preponderance of the evidence, that the desired height is necessary to achieve reliable amateur radio communication, i.e., that reliable communications cannot or are not likely to be achieved with a shorter tower/antenna.

Concern No. 3: Setback limitations without exceptions or alternatives such as retractable antennas or antennas bracketed to structure are unreasonable. Allowing such alternatives is a reasonable accommodation. The one to one setback is unjustifiable since radio antenna support structures do not fall laterally from the base.

- Response: I agree with Mr. Imlay's assessment of this provision. There appears to be no justification for the increased setback requirement versus outright permitted uses such as flagpoles, etc. For example, a 45 foot flagpole could be located say 5 or 10 feet from a property line, but a 50 foot radio tower would have to be located 50 feet from the same property line. Such a heightened requirement is the opposite of a "reasonable accommodation" as it is more restrictive than similar uses. In addition, radio towers are engineered for specific wind loads and are also designed to collapse on themselves and not from the base. Therefore, the "safety" concern is undermined by the design of the towers themselves. One last consideration - this requirement could lead to unintended consequences. The 1 to 1 setback requirement severely limits the placement of the tower on the subject property. Thus, the only compliant placement of the structure may be more disruptive aesthetically than a location closer to one of the property lines.
- Recommendation: The ordinance should be amended so that the setback requirement is the same as the setback for similar facilities that do not exceed the height limitation.

Concern No. 4: The provision requiring an inspection and report every three years is unclear if it is referring to every facility or only those 25 years or older. If it is the latter, which it is, then Mr. Imlay has no objection.

- Response: The latter interpretation is correct. The language was intended to only require the inspection and report for a tower 25 years or older or if the building inspector observes signs of instability or deterioration.
- Recommendation: I recommend clarifying the language of BMC 17.124.230(K) to make it clear that inspections and reports are only required for structures 25 years or older, or upon request of the building inspector.

Concern No. 5: The provision that requires that the tower be monopole is not justified by either safety or aesthetic impacts (BMC 17.124.230(P)). The same provision also requires that the antenna be a directional, rotatable “beam” type antenna. The provision also regulates the overall size of the antenna independent of the structure – an instrumentality of interstate commerce which the City cannot regulate. The city may “evaluate the safety of the installation of the antenna array but not the antenna configuration.”

- Response: Regulation of the type of antenna tower must have a justification. It is difficult to justify the monopole requirement for towers requiring a use permit but not for those towers not requiring a use permit. By way of explanation, House A could have a 45-foot structure with a lattice tower and neighboring House B that applies for a use permit to build a 50-foot structure would be required to have a monopole tower. This is difficult to justify in terms of either aesthetic or safety considerations. Therefore, the point that the monopole requirement is not justified by either safety or aesthetic considerations is well taken.

The second point regarding the “configuration” of the antenna is also a valid point. There is really no overarching safety or aesthetic concern that would justify the City setting type and size requirements that apply to structures requiring a use permit but not structures permitted outright. In addition, the City’s regulation of the type and size of antenna size, without any direct relation to safety or aesthetic concerns, is in danger of intruding upon the FCC’s jurisdiction over ham radio operations.

- Recommendation: My recommendation is to remove the paragraph entirely or to replace it with language similar to the following: “The tower must be of a design that is consistent with characteristics of the surrounding neighborhood. The tower and the antenna must be designed and configured in a manner that do not endanger the safety of persons or property.”

#### D. Ordinance Revisions – Recommendation

I recommend that the Council direct staff to revise the proposed ordinance consistent with the recommendations in the letter. I also recommend that the City Council hold another public hearing since this topic has been of great interest to the public and further changes will be made. I am fully willing and able to explain to the public some of the limitations that the City has when it comes to regulating amateur radio facilities.

# BOOTH, FRERET & IMLAY, LLC

ATTORNEYS AT LAW

ROBERT M. BOOTH, JR. (1911-1981)  
JULIAN P. FRERET (1918-1999)  
CHRISTOPHER D. IMLAY

14356 CAPE MAY ROAD  
SILVER SPRING, MD 20904-6011  
WWW.IMLAYLAW.COM

TELEPHONE: (301) 384-5525  
FACSIMILE: (301) 384-6384  
CHRIS@IMLAYLAW.COM

October 26, 2015

Via E-mail Only

Honorable Ron Hedenskog, Mayor  
Brookings City Council  
898 Elk Dr.  
Brookings, OR 97415

Attention: [deco@brookings.or.us](mailto:deco@brookings.or.us)

Re: City Council Hearing re Amateur Radio Ordinance:  
Proposed Revised Chapter 17, Brookings Ordinances

Greetings:

The undersigned serves as General Counsel for ARRL, the national association for Amateur Radio (formally known as the American Radio Relay League, Incorporated). Our members in the Town of Brookings have requested that we bring to your attention some concerns we have relative to your proposed ordinance changes, most particularly Section 17.124 pertaining to conditional use permits for Amateur Radio antennas and support structures. There are numerous aspects of your proposal that seriously (and unnecessarily) overregulate, and in some cases, prohibit Amateur Radio antennas on a *de facto* basis, in direct violation of both Oregon Statutes Section 221.295<sup>1</sup> and 47 C.F.R. Section 97.15(b), an FCC regulation that has the preemptive effect of a Federal statute.

It is our opinion, having actively practiced Federal Telecommunications Law and Regulation exclusively for the past 35 years, and having initiated the proceeding that resulted in the FCC's limited preemption policy applicable to Amateur Radio antennas that the proposed ordinance restrictions are not consistent with the strong Federal interest in Amateur Radio communications. The City is without jurisdiction to enforce certain of the restrictive provisions contained in the draft ordinance now under consideration.

Our specific concerns are as follows: First, the proposed ordinance changes would make each and every amateur radio antenna, regardless of height or configuration, subject to a

<sup>1</sup> ORS Section 221.295 reads as follows: "Notwithstanding ORS chapters 215 and 227, a city or county ordinance based on health, safety or aesthetic considerations that regulates the placement, screening or height of the antennas or antenna support structures of amateur radio operators must reasonably accommodate amateur radio communications and must represent the minimum practicable regulation necessary to accomplish the purpose of the city or county. However, a city or county may not restrict antennas or antenna support structures of amateur radio operators to heights of 70 feet or lower unless the restriction is necessary to achieve a clearly defined health, safety or aesthetic objective of the city or county. [1999 c.507 §1]".



conditional use permit. There is no provision for any antenna, even a small, ground-mounted vertical monopole or a chimney-mounted VHF and UHF vertical antenna, as a matter of right. The cost and expense of obtaining a conditional use permit for such an antenna is prohibitive. Virtually all reasonable antenna ordinances permit antennas less than a particular fixed height and/or configuration as a matter of right with a building permit only, and they have provisions for conditional use permits for antennas of greater height or configuration.<sup>2</sup> Despite the claim in your draft ordinance that the City “recognizes the importance of amateur radio operators and their service to the community especially in the event of emergencies,” the provisions of the revised ordinance appear to be intended to inhibit antennas through the permitting process.

Second, in proposed Subsection 17.124.230A, which limits overall antenna height to 70 feet maximum, you require that a “needs analysis” to be “submitted with the application providing justification of the need for the requested height.” It is unclear in view of ORS Section 221.295 what the purpose of this submission is and how it is to be adjudicated. It can only be assumed that the City intends to use it to conduct an evaluation of the need of the Amateur Radio licensee for the antenna, regardless of the height thereof. It is also unclear what will constitute an adequate showing and who will be qualified to evaluate the showing. The burden of this showing is not necessary in order to achieve a clearly defined health, safety or aesthetic objective.

Third, the height limit overall is subject to setback limitations. There is no provision for the use of retractable antennas or antennas that are bracketed to the master residence or other accessory building. A one-to-one setback requirement relative to height is unjustifiable in any case since radio antenna support structures do not fall laterally from the base, but even if they did, a less restrictive alternative would be to permit antennas and antenna support structures to be bracketed to the principal structure on lots that cannot accommodate an Amateur Radio antenna of a reasonable height up to 70 feet without violating the setback restriction. The FCC preemption policy calls on municipalities to provide the least restrictive provisions consistent with the legitimate municipal interest as well as “reasonable accommodation.” Amateur Radio antenna permitting cannot be based on the wealth of the licensee and his or her ability to afford a larger lot. A reasonable alternative for setback compliance is to call for the licensee on a smaller lot to install a retractable antenna support structure and to keep it retracted when not in use. Another option is to call for house-bracketed support structures and measure the setback from the highest point of the bracket to the highest point of the antenna.

Fourth, one provision of Subsection 17.124.230K is that the “facility must be inspected by an Oregon structural engineer every three (3) years and a report provided to the City for towers more than 25 years of age...” It is unclear whether this provision calls for all antenna facilities to be inspected by a structural engineer every three years, or whether that provision applies *only to those antenna towers that are more than 25 years old*. If the latter, that is not an

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<sup>2</sup> It is noteworthy that some smaller Amateur Radio antennas approximate the size of a residential television broadcast reception antenna. Video reception antennas at residences of any size at all, if used for television reception, could be erected without any prior approval of the City at all, on rooftops at locations on the property and heights that are far more obtrusive than many Amateur Radio antennas. FCC Rule Section 1.4000 (47 C.F.R. § 1.4000) preempts local regulation of over the air television reception devices, including broadcast television antennas of unlimited size, at heights up to 12 feet above roof level without any local approvals *at all*. Given this, there is no point in attempting to overregulate an Amateur Radio antenna as proposed.

unreasonable provision. If, however, it is to apply to all towers with permits, the cost of such inspections is undoubtedly prohibitive due to the cost of structural engineering inspections and wet-seal certifications every three years, and the ordinance fails the FCC's "no prohibition" and "reasonable accommodation" tests for municipal ordinances. Permitting and maintenance costs, if prohibitive or unnecessary, are inconsistent with the FCC Amateur Radio preemption policy. See, *Modification and Clarification of Policies and Procedures Governing Siting and Maintenance of Amateur Radio Antennas and Support Structures*, 14 F.C.C.R. 19,413 para. 7 (1999)<sup>3</sup>, FCC 99-2569; *Reconsideration denied by Order on Reconsideration*, 15 F.C.C.R. 22151 (November 15, 2000); *Review denied on other grounds*, 17 F.C.C.R. 333 (2001). The United States District Court for the Northern District of New York in Randall Palmer v. City of Saratoga Springs, et al., 180 F. Supp. 2d 379 (N.D.N.Y. 2001) found that "undeniable tension exists between amateur radio operators' interests in erecting a radio antenna high enough to ensure successful communications, and local municipalities' interests in regulating the size and placement of amateur radio antennas. Choosing between the two, the federal government aligned its interests with those of the amateurs... Accordingly, 'federal interests are furthered when local regulations do not unduly restrict the erection of amateur radio antennas.'"

Subsection 17.124.230K provides that "the tower must be a monopole with an aerial or directional beam type antenna. If a directional beam antenna is proposed, it must cover an area less than 100 sq. ft. or a needs analysis must be submitted providing justification of the need for a larger antenna." There are a number of major problems with this provision. It appears intended to prohibit support structures other than monopoles. Specifically, lattice tower structures typically used in most Amateur Radio antenna installations appear to be prohibited. There is no justification provided for the restriction and there is none as a matter of fact, either in terms of aesthetic impact or safety. Second, the restriction indicates that a directional, rotatable "beam" type antennas must be used. Some radio amateurs prefer vertical, ground-mounted antennas with no support structure at all, and some prefer wire antennas suspended from trees. These are not accommodated at all by the proposed ordinance. Finally, the ordinance proposes to regulate the antenna size independent of the support structure. This is the attempted regulation of an instrumentality of interstate commerce over which states and municipalities have no jurisdiction. The ordinance could evaluate the safety of the installation of the antenna array but not the antenna configuration.

ARRL and this office would be pleased to assist in the preparation of ordinance provisions that accomplish the City's legitimate goals without unnecessary and unreasonable

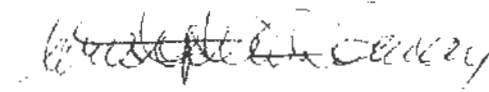
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<sup>3</sup> "We return once again to the position that we have stated earlier in this *Order*, that is, that the standards of "reasonable accommodation" and "minimum practicable regulation" are sufficiently efficacious as guideposts for state, local and municipal authorities... In addition, we believe that PRB-1's guidelines brings to a local zoning board's awareness that the very least regulation necessary for the welfare of the community must be the aim of its regulations so that such regulations will not impinge on the needs of amateur operators to engage in amateur communications."

restrictions on Amateur Radio antennas. Please include this letter in the record in this proceeding.

Please also let me know if additional information is called for.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Christopher D. Imlay". The signature is written in a cursive style with some overlapping letters.

Christopher D. Imlay  
General Counsel, ARRL

Text to be added is **bold**.

Text to be deleted is ~~stricken~~.

**17.124.230 Amateur radio facilities.**

Amateur radio facilities are private, non-commercial wireless communication facilities consisting of antennas, towers, and/or support structures. The City recognizes the importance of amateur radio operators and their service to the community especially in the event of emergencies.

Amateur radio facilities are considered an accessory use to a residential dwelling. Chapter 17.128.020(B) provides for exceptions to height limitations for masts, aeriels and antenna.

The following siting criteria shall apply to amateur radio facilities that do not meet the provisions of Chapter 17.128.020(B) and/or the applicable zoning district. The criteria are intended to maximize public safety and minimize visual impacts to promote and protect the residential characteristics of the residential zoning districts consistent with federal and state law. Public notice shall be provided to all property owners within 1000 feet of a proposed amateur radio facility requesting approval with a conditional use permit (CUP).

A. Height. The maximum tower/antenna height shall not exceed 70 feet from the finished grade at the base of the tower. A ~~needs analysis~~ **narrative** must be submitted with the application providing justification of the need for the requested height. **The narrative need not be complex but must provide an explanation as to why a taller tower/antenna is needed to obtain the reliable communications desired by the applicant.**

B. Front, Side and Rear Yard Setbacks. **All components of the facility, including guy wires, antennas, and footings shall meet the minimum setbacks of the applicable zone.** ~~The minimum setback from all property lines to the finished grade at the base of the tower shall be one (1) foot for every one foot of height. No towers shall be sited within the front yard setback of the underlying zone. With the exception of guy wires, antennas, and footings that do not project above grade level, no component of the facility may encroach into the required setback. Guy wires and antennas must meet the minimum setback of the underlying zone.~~

C. Construction. A building permit shall be obtained for the construction or crection of the amateur radio facility. Plans and calculations shall be provided and shall comply with the provisions of Section 3108 of the Oregon Structural Specialty Code.

D. Finish (paint/surface). The facility shall have a finish, tone or color that reduces its visibility. In most circumstances this condition may be satisfied by painting the facility with a flat light haze gray paint. The owner shall maintain the finish, painted or unpainted. Red and white or orange and white finish is not allowed. If these colors are required by the FAA (Federal Aviation Administration) or ODA (Oregon Department of Aviation), the height shall be reduced to a level that it is not required.



E. Fencing and Security. For security purposes, towers and accessory facilities shall be enclosed by a minimum six-foot fence or be equipped with anti-climb devices. If this conflicts with TIA-222 or other agencies, the most restrictive requirements shall prevail.

F. Lighting. No lighting shall be permitted on the facility. If required by the FAA or ODA, the facility shall be reduced to a level that does not require lighting.

G. Airport Overlay Zone. The facility shall comply with the requirements in BMC Chapter 17.76, Airport Overlay Zone.

H. Advertising/Signs. No advertising or signs of any type are to be placed on the tower at any time except those required or necessary for safety and warnings. Safety and warning signs shall be less than two square feet and be placed on the facility at a height of less than six feet.

I. License. The owner of the facility shall possess and provide a copy of a current FCC license to the City. After six (6) months with no valid license, the facility shall be considered abandoned and shall be removed by the property owner within 60 days thereafter. The owner shall provide a copy of a valid FCC license every three (3) years.

J. Abandonment. The property owner shall provide annual written documentation that the facilities are functioning. Amateur radio facilities that do not have functioning antennas for a period of six months shall be considered abandoned and shall be removed by the owner of the facility within 60 days thereafter. Upon written application, prior to the expiration of the six-month period, the planning commission if approved with a CUP or staff if permitted outright may, in writing, grant a six-month time extension for reuse of the facility. Additional extensions beyond the first six-month extension may be granted by the planning commission subject to any conditions required to bring the project or facility into compliance with current regulation(s).

K. Maintenance. Amateur radio facilities shall be maintained in good order and repair at all time so to not constitute any danger or hazard to adjacent properties. ~~All the facilities~~ **25 years or older** must be inspected by an Oregon structural engineer every three (3) years and a report provided to the City. ~~for towers more than 25 years of age, or at anytime that~~ ~~The Building Official may request an inspection of a facility of any age where~~ observes signs of deterioration or instability **are observed, and requests such an inspection.** If repairs are needed, they must be completed within six (6) months, reinspected, and a report provided to the City.

L. Unrelated equipment. Equipment and antenna for other than amateur radio facilities shall comply with height and setback requirements of Chapter 17.128.020(B) and the underlying zone.

M. Hazardous Building Sites. Construction or erection of amateur radio facilities shall comply with Chapter 17.100 Hazardous Building Site Protection.

N. Permanent structures must not be located in any easement.

O. The City must be notified if the property is sold. The City will provide the new property owner a copy of the final order with conditions of approval of the Conditional Use Permit granting approval.

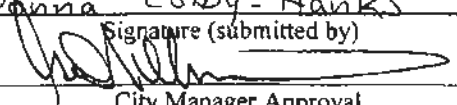
~~P. The tower must be a monopole with an aerial or directional beam type antenna. If a directional beam antenna is proposed, it must cover an area less than 100 sq. ft. or a needs analysis must be submitted providing justification of the need for a larger antenna.~~

QP. The amateur radio facilities must be located, designed and installed so as to minimize conflicts with scenic views to the extent possible **and to not endanger the safety of persons or property.**

**CITY OF BROOKINGS**  
**COUNCIL AGENDA REPORT**

Meeting Date: January 11, 2016

Originating Dept: PWDS - Planning

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

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Subject: Ordinance amending applicable zoning districts to accommodate amateur radio facilities as conditional uses and adding Section 17.124.230 Amateur Radio Facilities to Chapter 17.124, Title 17, Land Development Code, of the Brookings Municipal Code.

Recommended Motion: Motion to adopt Ordinance 16-O-752.

Financial Impact: None.

Background/Discussion: Revisions to add provisions for additional opportunities for amateur radio facilities as an accessory use to a dwelling and with the approval of a conditional use permit were considered by the City Council at several meetings. City Council approved the revisions at their January 11, 2016, meeting.

Policy Considerations: N/A

Attachment(s): Adopting Ordinance 16-O-752.

**IN AND FOR THE CITY OF BROOKINGS**  
**STATE OF OREGON**  
**ORDINANCE 16-O-752**

**IN THE MATTER OF ORDINANCE 16-O-752, AN ORDINANCE ADDING SECTION 17.124.230, AMATEUR RADIO FACILITIES, AND AMATEUR RADIO FACILITIES AS CONDITIONAL USES IN APPLICABLE ZONING DISTRICTS, TO TITLE 17, LAND DEVELOPMENT CODE OF THE BROOKINGS MUNICIPAL CODE.**

Sections:

Section 1. Ordinance Identified.

Section 2. Adds Section 17.124.230.

Section 3. Adds amateur radio facilities as Conditional Uses in applicable zoning districts.

The City of Brookings ordains as follows:

Section 1. Ordinance Identified. Adds Section 17.124.230, Amateur Radio Facilities, and Amateur Radio Facilities as Conditional Uses in applicable Zoning Districts, to Title 17, Land Development Code of the Brookings Municipal Code.

Section 2. Adds Section 17.124.230. Section 17.124.230 is hereby added to Chapter read as follows:

**17.124.230 Amateur radio facilities.**

Amateur radio facilities are private, non-commercial wireless communication facilities consisting of antennas, towers, and/or support structures. The City recognizes the importance of amateur radio operators and their service to the community especially in the event of emergencies.

Amateur radio facilities are considered an accessory use to a residential dwelling. Chapter 17.128.020(B) provides for exceptions to height limitations for masts, aerials and antenna.

The following siting criteria shall apply to amateur radio facilities that do not meet the provisions of Chapter 17.128.020(B) and/or the applicable zoning district. The criteria are intended to maximize public safety and minimize visual impacts to promote and protect the residential characteristics of the residential zoning districts consistent with federal and state law. Public notice shall be provided to all property owners within 1000 feet of a proposed amateur radio facility requesting approval with a conditional use permit (CUP).

A. Height. The maximum tower/antenna height shall not exceed 70 feet from the finished grade at the base of the tower. A narrative must be submitted with the application providing justification of the need for the requested height. The narrative need not be complex but must provide an explanation as to why a taller tower/antenna is needed to obtain the reliable communications desired by the applicant.



B. Front, Side and Rear Yard Setbacks. All components of the facility, including guy wires, antennas, and footings shall meet the minimum setbacks of the applicable zone.

C. Construction. A building permit shall be obtained for the construction or erection of the amateur radio facility. Plans and calculations shall be provided and shall comply with the provisions of Section 3108 of the Oregon Structural Specialty Code.

D. Finish (paint/surface). The facility shall have a finish, tone or color that reduces its visibility. In most circumstances this condition may be satisfied by painting the facility with a flat light haze gray paint. The owner shall maintain the finish, painted or unpainted. Red and white or orange and white finish is not allowed. If these colors are required by the FAA (Federal Aviation Administration) or ODA (Oregon Department of Aviation), the height shall be reduced to a level that it is not required.

E. Fencing and Security. For security purposes, towers and accessory facilities shall be enclosed by a minimum six-foot fence or be equipped with anti-climb devices. If this conflicts with TIA-222 or other agencies, the most restrictive requirements shall prevail.

F. Lighting. No lighting shall be permitted on the facility. If required by the FAA or ODA, the facility shall be reduced to a level that does not require lighting.

G. Airport Overlay Zone. The facility shall comply with the requirements in BMC Chapter 17.76, Airport Overlay Zone.

H. Advertising/Signs. No advertising or signs of any type are to be placed on the tower at any time except those required or necessary for safety and warnings. Safety and warning signs shall be less than two square feet and be placed on the facility at a height of less than six feet.

I. License. The owner of the facility shall possess and provide a copy of a current FCC license to the City. After six (6) months with no valid license, the facility shall be considered abandoned and shall be removed by the property owner within 60 days thereafter. The owner shall provide a copy of a valid FCC license every three (3) years.

J. Abandonment. The property owner shall provide annual written documentation that the facilities are functioning. Amateur radio facilities that do not have functioning antennas for a period of six months shall be considered abandoned and shall be removed by the owner of the facility within 60 days thereafter. Upon written application, prior to the expiration of the six-month period, the planning commission if approved with a CUP or staff if permitted outright may, in writing, grant a six-month time extension for reuse of the facility. Additional extensions beyond the first six-month extension may be granted by the planning commission subject to any conditions required to bring the project or facility into compliance with current regulation(s).

K. Maintenance. Amateur radio facilities shall be maintained in good order and repair at all time so to not constitute any danger or hazard to adjacent properties. All facilities 25 years or older must be inspected by an Oregon structural engineer every three (3) years and a report provided to the City. The Building Official may request an inspection of a facility of any age where signs of

deterioration or instability are observed. If repairs are needed, they must be completed within six (6) months, reinspected, and a report provided to the City.

L. Unrelated equipment. Equipment and antenna for other than amateur radio facilities shall comply with height and setback requirements of Chapter 17.128.020(B) and the underlying zone.

M. Hazardous Building Sites. Construction or erection of amateur radio facilities shall comply with Chapter 17.100 Hazardous Building Site Protection.

N. Permanent structures must not be located in any easement.

O. The City must be notified if the property is sold. The City will provide the new property owner a copy of the final order with conditions of approval of the Conditional Use Permit granting approval.

P. The amateur radio facilities must be located, designed and installed so as to minimize conflicts with scenic views to the extent possible and to not endanger the safety of persons or property.

Section 3. Adds amateur radio facilities as Conditional Uses in applicable zoning districts: The following subsections are hereby added as follows:

17.16.040(V). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.20.040(U). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.24.040(V). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.28.040(T). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.32.040(V). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.36.040(L). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.40.040(D). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.44.040(D). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.48.040(J). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.52.040(O). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.56.040(J). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.64.040(I). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

17.68.040(G). Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.

First Reading: \_\_\_\_\_ Passage: \_\_\_\_\_  
Second Reading: \_\_\_\_\_ Effective Date: \_\_\_\_\_  
Signed by me in authentication of its passage this \_\_\_\_\_, day of \_\_\_\_\_, 2016

ATTEST:

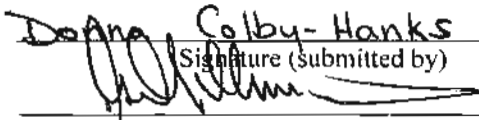
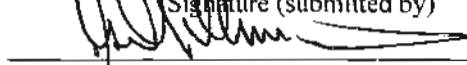
\_\_\_\_\_  
Mayor Ron Hedenskog

\_\_\_\_\_  
City Recorder Joyce Heffington

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: September 14, 2015

  
Signature (submitted by) i/h  
  
City Manager Approval

Originating Dept: PWDS-Planning

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**Subject:** A hearing on File LDC-2-15 for consideration of the addition of Brookings Municipal Code (BMC) Section 17.124.230 Specific Standards Applying to Conditional Uses, Amateur communication facilities and the addition of Amateur communication facilities as a conditional use accessory to an existing dwelling in all zones. City initiated. The criteria used to decide this matter are found in Chapter 17.140 Amendments, of the BMC.

**Recommended Motion:** A motion to approve revisions proposed by LDC-2-15 to add provisions for additional opportunities for amateur radio facilities as an accessory use to dwellings and direct staff to prepare an ordinance for adoption.

**Background/Discussion:** City Council considered draft provisions to allow for amateur radio facilities of 70 feet or lower at their June 22, 2015 and August 10, 2015 meetings. The hearing was continued to the September 14, 2015 meeting.

The provisions provide the City the ability to regulate amateur radio facilities of 70 feet or lower that do not meet the exceptions provided in 17.128.020(B) of one and one-half times the height limitation of the applicable zoning district. The proposed criteria are intended to maximize public safety and minimize visual impacts to protect the residential characteristics of residential neighborhoods consistent with federal and state law. As far as can be determined, all cities and counties within Oregon, with the exception of Deschutes County, exempt facilities 70 feet and lower from any special land use approval. They are allowed outright. Deschutes County allows the facilities outright but has developed several criteria that must be met, such as FCC license, building permit, finish color and the prohibition of attached signage.

The proposed provisions require amateur radio facilities to receive approval with a Conditional Use Permit. The neighbors within 1000 feet will be provided notice; notice is 250 feet for other conditional uses. The proposed criteria address height, setbacks, construction, finish, fencing and security, lighting, airport overlay zone, signs, licenses, abandonment, maintenance, unrelated equipment, hazardous building sites, easements and notification to city when the property is sold. The criteria are required to be clear and objective.

In response to Council discussion, several revisions have been developed and included in the draft text. The applicant will be required to submit a needs analysis that provides justification of the need for the requested tower height.

The required setback has been revised to require one foot of setback for each foot of height. With this setback, approximately 136 of the 2453 residential properties within the city would be of a size to accommodate a 70 foot tower; approximately 397 properties could accommodate a 50 foot tower. With a one foot setback for each two feet of height, approximately 896 properties would accommodate a 70 foot tower; with a setback of one foot for each three foot of height, approximately 1947 of the properties would accommodate a 70 foot tower. Limited variables were considered for the calculations so this is a rough estimate. Each property would need to be addressed on an individual basis after considering all factors.

A requirement has been added that the tower must be a monopole and if a directional beam antenna is proposed, it must cover an area of less than 100 square feet. Research indicates that a modest four-element directional beam antenna would cover approximately 100 sq. ft. Provisions have been added for approval of a larger antenna with the submittal of a needs analysis justifying the need for the larger antenna. See Figure 1 for pictures of several different types of antennas.

With input from the City Attorney, a requirement has been included that requires the facilities to be located, designed and installed so as to minimize conflicts with scenic views to the extent possible.

Attachment(s):           A.   Draft provisions

**Figure 1**

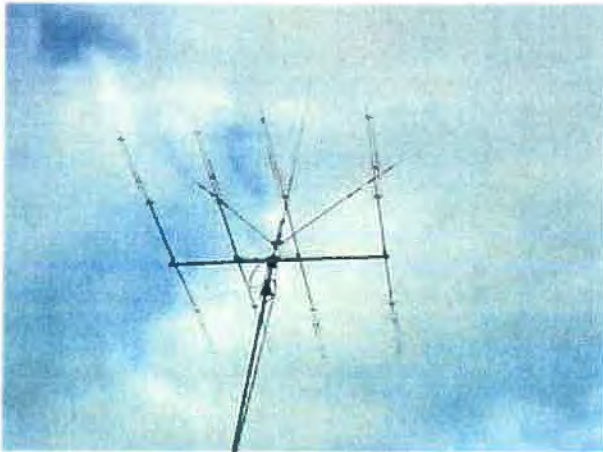
**Aerial antenna**



**Directional beam antenna**



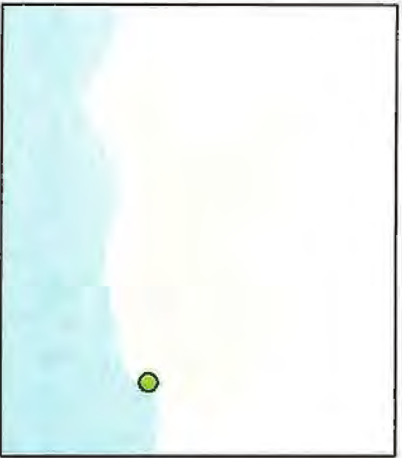
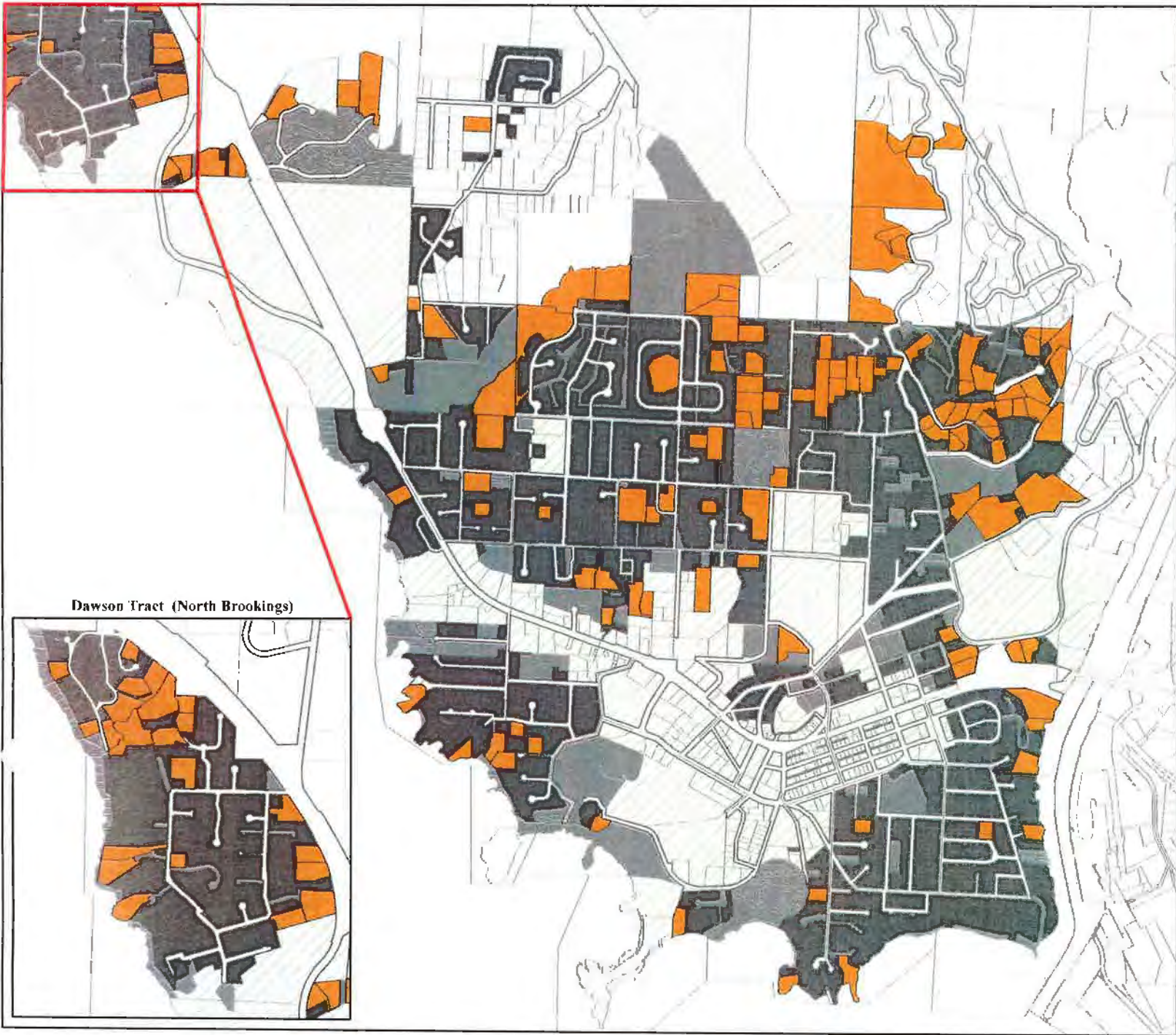
**Direction beam antenna  
(4 elements)**



**Directional beam antenna  
(different configuration)**









Area of Interest - City of Brookings, OR

**Legend**

-  Accommodate 70ft mono-pole radio tower with a 1:1 setback.
- 1:1 setback ratio would result in less than 6% of all residential properties being able to comply when 70ft is the desired tower height. (136 of 2453)
- Average lot size of compliant property is approximately 1.75 acres
-  Residential zoned properties that could not support a 70ft tower with a 1:1 setback.

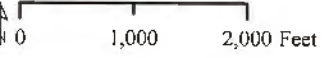
**Notes:**  
 Draft Analysis. This map is for general reference purposes only. Limited variables considered for calculation. Each lot must be addressed on an individual basis after considering all factors. For more information contact the City of Brookings Planning Department.

**1:1 Setback - Site Suitability Analysis**

Amateur Radio (Calculated w/tower height @ 70')



This product is for informational purposes and may not have been prepared for, or be suitable for, legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.  
 Projection: NAD83 Oregon, Brookings GIS, 6/9/2015  
 Attribute: 1 Ratio Principal



Proposed new text is **bold**.

Text added from June 22, 2015 Council discussion is **bold underlined**.

Text deleted from June 22, 2015 Council discussion is ~~stricken~~.

Text deleted from August 10, 2015 Council discussion is ~~double-stricken~~.

Text added from August 10, 2015 Council discussion is **bold double underlined**.

## Chapter 17.16 Suburban Residential (SR) District

### ~~17.16.030 Accessory uses~~

~~The following accessory uses are permitted:~~

~~**E. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**~~

### 17.16.040 Conditional Uses

The following uses are permitted:

**V. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

## Chapter 17.20 Single-Family Residential (R-1) District

### ~~17.20.030 Accessory uses:~~

~~The following uses are permitted:~~

~~**E. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230 in the R-1-12 zone.**~~

### 17.20.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

**U. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230. ~~in the R-1-6, R-1-8, and R-1-10 zones.~~**

Chapter 17.24 Two-Family Residential (R-2) District

17.24.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

- V. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

Chapter 17.28 Multiple-Family Residential (R-3) District

17.28.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

- T. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

Chapter 17.32 Manufactured Home Residential (R-MH) District

17.32.040 Conditional uses.

The following conditional uses may be permitted:

- V. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

Chapter 17.36 Professional Office (PO-1) District

17.36.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

- L. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

Chapter 17.40 Public Open Space (P/OS) District

17.40.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

- D. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

Chapter 17.44 Neighborhood Commercial (C-1) District

17.44.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

- D. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

Chapter 17.48 Shopping Center Commercial (C-2) District

17.48.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

- J. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

Chapter 17.52 General Commercial (C-3) District

17.52.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

- O. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

## Chapter 17.56 Tourist Commercial (C-4) District

### 17.56.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

- J. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

## Chapter 17.64 Industrial Park (I-P) District

### 17.64.040 Conditional uses.

The following uses may be permitted subject to a conditional use permit:

- I. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

## Chapter 17.68 General Industrial (M-2) District

### 17.68.040 Conditional uses.

The following uses may be permitted subject to a conditional use permit:

- G. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

## Chapter 17.124 Specific Standards Applying to Conditional Uses

### 17.124.230 Amateur radio facilities.

**Amateur radio facilities are private, non-commercial wireless communication facilities consisting of antennas, towers, and/or support structures. The City recognizes the importance of amateur radio operators and their service to the community especially in the event of emergencies.**

**Amateur radio facilities are considered an accessory use to a residential dwelling. Chapter 17.128.020(B) provides for exceptions to height limitations for masts, aerials and antenna. ~~Masts, aerials and antenna may be one and one half times the height limitation of the applicable zoning district. However, towers and support structures shall comply with height limitations and setbacks.~~**

The following siting criteria shall apply to amateur radio facilities that do not meet the provisions of Chapter 17.128.020(B) and/or the applicable zoning district. The criteria are intended to maximize public safety and minimize visual impacts to promote and protect the residential characteristics of the residential zoning districts consistent with federal and state law. Public notice shall be provided to all property owners within 1000 feet of a proposed amateur radio facility requesting approval with a conditional use permit (CUP).

**A. Height.** A needs analysis must be submitted with the application providing justification of the need for the requested height. The maximum tower/antenna height shall not exceed 70 feet from the finished grade at the base of the tower.

**B. Front, Side and Rear Yard Setbacks.** The minimum setback from all property lines to the finished grade at the base of the tower shall be One (1) foot for every ~~two (2) feet~~ one foot of height. No towers shall be sited within the front yard setback of the underlying zone. With the exception of guy wires, antennas, and footings that do not project above grade level, no component of the facility may encroach into the required setback. Guy wires and antennas must meet the minimum setback of the underlying zone.

**C. Construction.** A building permit shall be obtained for the construction or erection of the amateur radio facility. Plans and calculations shall be provided and shall comply with the provisions of Section 3108 of the Oregon Structural Specialty Code.

**D. Finish (paint/surface).** The facility shall have a finish, tone or color that reduces its visibility. In most circumstances this condition may be satisfied by painting the facility with a flat light haze gray paint. The owner shall maintain the finish, painted or unpainted. Red and white or orange and white finish is not allowed. If these colors are required by the FAA (Federal Aviation Administration) or ODA (Oregon Department of Aviation), the height shall be reduced to a level that it is not required.

**E. Fencing and Security.** For security purposes, towers and accessory facilities shall be enclosed by a minimum six-foot fence or be equipped with anti-climb devices. If this conflicts with TIA-222 or other agencies, the most restrictive requirements shall prevail.

**F. Lighting.** No lighting shall be permitted on the facility. If required by the FAA or ODA, the facility shall be reduced to a level that does not require lighting.

**G. Airport Overlay Zone.** The facility shall comply with the requirements in BMC Chapter 17.76, Airport Overlay Zone.



**H. Advertising/Signs.** No advertising or signs of any type are to be placed on the tower at any time except those required or necessary for safety and warnings. Safety and warning signs shall be less than two square feet and be placed on the facility at a height of less than six feet.

**I. License.** The owner of the facility shall possess and provide a copy of a current FCC license to the City. After six (6) months with no valid license, the facility shall be considered abandoned and shall be removed by the property owner within 60 days thereafter. The owner shall provide a copy of a valid FCC license every three (3) years.

**J. Abandonment.** The property owner shall provide annual written documentation that the facilities are functioning. Amateur radio facilities that do not have functioning antennas for a period of six months shall be considered abandoned and shall be removed by the owner of the facility within 60 days thereafter. Upon written application, prior to the expiration of the six-month period, the planning commission if approved with a CUP or staff if permitted outright may, in writing, grant a six-month time extension for reuse of the facility. Additional extensions beyond the first six-month extension may be granted by the planning commission subject to any conditions required to bring the project or facility into compliance with current regulation(s).

**K. Maintenance.** Amateur radio facilities shall be maintained in good order and repair at all time so to not constitute any danger or hazard to adjacent properties. The facility must be inspected by an Oregon structural engineer every three (3) years and a report provided to the City for towers more than 25 years of age and at anytime the Building Official observes signs of deterioration or instability. If repairs are needed, they must be completed within six (6) months, reinspected and the report provided to the City.

**L. Unrelated equipment.** Equipment and antenna for other than amateur radio facilities shall comply with height and setback requirements of Chapter 17.128.020(B) and the underlying zone.

**M. Hazardous Building Sites.** Construction or erection of amateur radio facilities shall comply with Chapter 17.100 Hazardous Building Site Protection.

**N. Permanent structures must not be located in any easement.**

**O. The City must be notified if the property is sold. The City will provide the new property owner a copy of the final order with conditions of approval of the Conditional Use Permit granting approval.**

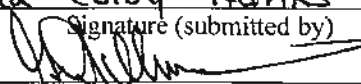
**P. The tower must be a monopole with a aerial or directional beam type antenna. If a directional beam antenna is proposed, it must cover an area less**

than 100 sq ft or a needs analysis must be submitted providing justification of the need for a larger antenna.

Q. The amateur radio facilities must be located, designed and installed so as to minimize conflicts with scenic views to the extent possible.

**CITY OF BROOKINGS**  
**COUNCIL AGENDA REPORT**

Meeting Date: August 10, 2015

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

Originating Dept: PWDS-Planning

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**Subject:** A hearing on File LDC-2-15 for consideration of the addition of BMC Section 17.124.230 Specific Standards Applying to Conditional Uses, Amateur communication facilities and the addition of Amateur communication facilities as a permitted use in Chapter 17.16 Suburban Residential (SR) and Chapter 17.20 Single-Family Residential (R-1-12) and as a conditional use in Chapter 17.20 Single-Family Residential (R-1-6, R-1-8, R-1-10), Chapter 17.24 Two-Family Residential (R-2), Chapter 17.32 Manufactured Home Residential (R-MH), Chapter 17.28 Multiple-Family Residential (R-3), Chapter 17.36 Professional Office (PO-1), Chapter 17.40 Public Open Space (P/OS), Chapter 17.44 Neighborhood Commercial (C-1), Chapter 17.48 Shopping Center Commercial (C-2), Chapter 17.52 General Commercial (C-3), Chapter 17.56 Tourist Commercial (C-4), Chapter 17.64 Industrial Park (I-P), and Chapter 17.68 General Industrial (M-2). City initiated. The criteria used to decide this matter are found in Chapter 17.140 Amendments, of the Brookings Municipal Code (BMC) to provide additional opportunities for amateur radio facilities.

**Recommended Motion:** A motion to approve revisions proposed by LDC-2-15 to add provisions for additional opportunities for amateur radio facilities as an accessory use to dwellings and direct staff to prepare an ordinance for adoption.

**Background/Discussion:** City Council considered draft provisions to allow for amateur radio facilities of 70 feet or lower at their June 22, 2015 meeting. Numerous citizens provided oral testimony and a supplement packet was provided at the meeting containing written comments from citizens. After much discussion, the hearing was continued to the August 10, 2015 meeting.

In response to Council discussion, several revisions have been developed and included in the draft text. The amateur radio facilities will require a Conditional Use Permit in all zones. No towers shall be sited within a front yard setback and guy wires and antennas must meet the minimum setback of the underlying zone. A requirement has been added that every three (3) years evidence of a valid FCC license be provided as well as inspection reports conducted by an Oregon structural engineer for towers more than 25 years of age. Research indicates that the average useful life of towers is 25 years. Text has been added to clarify that permanent structures cannot be located in any easement. A requirement that the owner must notify the City if the property is sold has been added. This will allow the City to provide a copy of the final order with conditions of approval to the new property owner making them aware of the requirements. Although not added, consideration was given to requiring that the facilities be limited to monopoles. In staff's opinion, this requirement would not be defensible as it would be strictly about aesthetics of a monopole versus other types of towers.

**Attachment(s):** A. Draft provisions

Proposed new text is **bold**.

Text added from June 22, 2015 Council discussion is **bold underlined**.

Text deleted from June 22, 2015 Council discussion is ~~stricken~~.

#### Chapter 17.16 Suburban Residential (SR) District

##### ~~17.16.030 Accessory uses~~

~~The following accessory uses are permitted:~~

~~E. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.~~

##### 17.16.040 Conditional Uses

The following uses are permitted:

**V. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

#### Chapter 17.20 Single-Family Residential (R-1) District

##### ~~17.20.030 Accessory uses.~~

~~The following uses are permitted:~~

~~E. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230 in the R-1-12 zone.~~

##### 17.20.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

**U. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230. in the R-1-6, R-1-8, and R-1-10 zones.**

#### Chapter 17.24 Two-Family Residential (R-2) District

17.24.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

**V. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

#### Chapter 17.28 Multiple-Family Residential (R-3) District

17.28.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

**T. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

#### Chapter 17.32 Manufactured Home Residential (R-MH) District

17.32.040 Conditional uses.

The following conditional uses may be permitted:

**V. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

#### Chapter 17.36 Professional Office (PO-1) District

17.36.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

**L. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

#### Chapter 17.40 Public Open Space (P/OS) District

17.40.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

- D. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

Chapter 17.44 Neighborhood Commercial (C-1) District

17.44.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

- D. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

Chapter 17.48 Shopping Center Commercial (C-2) District

17.48.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

- J. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

Chapter 17.52 General Commercial (C-3) District

17.52.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

- O. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

## Chapter 17.56 Tourist Commercial (C-4) District

### 17.56.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

- J. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

## Chapter 17.64 Industrial Park (I-P) District

### 17.64.040 Conditional uses.

The following uses may be permitted subject to a conditional use permit:

- I. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

## Chapter 17.68 General Industrial (M-2) District

### 17.68.040 Conditional uses.

The following uses may be permitted subject to a conditional use permit:

- G. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

## Chapter 17.124 Specific Standards Applying to Conditional Uses

### 17.124.230 Amateur radio facilities.

**Amateur radio facilities are private, non-commercial wireless communication facilities consisting of antennas, towers, and/or support structures. The City recognizes the importance of amateur radio operators and their service to the community especially in the event of emergencies.**

**Amateur radio facilities are considered an accessory use to a residential dwelling. Chapter 17.128.020(B) provides for exceptions to height limitations for masts, aerials and antenna. Masts, aerials and antenna may be one and one-half times**



**the height limitation of the applicable zoning district. However, towers and support structures shall comply with height limitations and setbacks.**

**The following siting criteria shall apply to amateur radio facilities that do not meet the provisions of Chapter 17.128.020(B) and/or the applicable zoning district. The criteria are intended to maximize public safety and minimize visual impacts to promote and protect the residential characteristics of the residential zoning districts consistent with federal and state law. Public notice shall be provided to all property owners within 1000 feet of a proposed amateur radio facility requesting approval with a conditional use permit (CUP).**

**A. Height. The maximum tower/antenna height shall not exceed 70 feet from the finished grade at the base of the tower.**

**B. Front, Side and Rear Yard Setbacks. The minimum setback from all property lines to the finished grade at the base of the tower shall be One (1) foot for every two (2) feet of height. No towers shall be sited within the front yard setback of the underlying zone. With the exception of guy wires, antennas, and footings that do not project above grade level, no component of the facility may encroach into the required setback. Guy wires and antennas must meet the minimum setback of the underlying zone.**

**C. Construction. A building permit shall be obtained for the construction or erection of the amateur radio facility. Plans and calculations shall be provided and shall comply with the provisions of Section 3108 of the Oregon Structural Specialty Code.**

**D. Finish (paint/surface). The facility shall have a finish, tone or color that reduces its visibility. In most circumstances this condition may be satisfied by painting the facility with a flat light haze gray paint. The owner shall maintain the finish, painted or unpainted. Red and white or orange and white finish is not allowed. If these colors are required by the FAA (Federal Aviation Administration) or ODA (Oregon Department of Aviation), the height shall be reduced to a level that it is not required.**

**E. Fencing and Security. For security purposes, towers and accessory facilities shall be enclosed by a minimum six-foot fence or be equipped with anti-climb devices. If this conflicts with TIA-222 or other agencies, the most restrictive requirements shall prevail.**

**F. Lighting. No lighting shall be permitted on the facility. If required by the FAA or ODA, the facility shall be reduced to a level that does not require lighting.**

**G. Airport Overlay Zone.** The facility shall comply with the requirements in BMC Chapter 17.76, Airport Overlay Zone.

**H. Advertising/Signs.** No advertising or signs of any type are to be placed on the tower at any time except those required or necessary for safety and warnings. Safety and warning signs shall be less than two square feet and be placed on the facility at a height of less than six feet.

**I. License.** The owner of the facility shall possess and provide a copy of a current FCC license to the City. After six (6) months with no valid license, the facility shall be considered abandoned and shall be removed by the property owner within 60 days thereafter. The owner shall provide a copy of a valid FCC license every three (3) years.

**J. Abandonment.** The property owner shall provide annual written documentation that the facilities are functioning. Amateur radio facilities that do not have functioning antennas for a period of six months shall be considered abandoned and shall be removed by the owner of the facility within 60 days thereafter. Upon written application, prior to the expiration of the six-month period, the planning commission if approved with a CUP or staff if permitted outright may, in writing, grant a six-month time extension for reuse of the facility. Additional extensions beyond the first six-month extension may be granted by the planning commission subject to any conditions required to bring the project or facility into compliance with current regulation(s).

**K. Maintenance.** Amateur radio facilities shall be maintained in good order and repair at all time so to not constitute any danger or hazard to adjacent properties. The facility must be inspected by an Oregon structural engineer every three (3) years and a report provided to the City for towers more than 25 years of age and at anytime the Building Official observes signs of deterioration or instability. If repairs are needed, they must be completed within six (6) months, reinspected and the report provided to the City.

**L. Unrelated equipment.** Equipment and antenna for other than amateur radio facilities shall comply with height and setback requirements of Chapter 17.128.020(B) and the underlying zone.

**M. Hazardous Building Sites.** Construction or erection of amateur radio facilities shall comply with Chapter 17.100 Hazardous Building Site Protection.

**N. Permanent structures must not be located in any easement.**

**O. The City must be notified if the property is sold. The City will provide the new property owner a copy of the final order with conditions of approval of the Conditional Use Permit granting approval.**

**CITY OF BROOKINGS**  
**COUNCIL AGENDA REPORT**

Meeting Date: June 22, 2015

Donna Colby-Hanks *DC*  
Signature (submitted by)  
[Signature]  
City Manager Approval

Originating Dept: PWDS-Planning

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**Subject:** A hearing on File LDC-2-15 for consideration of the addition of BMC Section 17.124.230 Specific Standards Applying to Conditional Uses, Amateur communication facilities and the addition of Amateur communication facilities as a permitted use in Chapter 17.16 Suburban Residential (SR) and Chapter 17.20 Single-Family Residential (R-1-12) and as a conditional use in Chapter 17.20 Single-Family Residential (R-1-6, R-1-8, R-1-10), Chapter 17.24 Two-Family Residential (R-2), Chapter 17.32 Manufactured Home Residential (R-MH), Chapter 17.28 Multiple-Family Residential (R-3), Chapter 17.36 Professional Office (PO-1), Chapter 17.40 Public Open Space (P/OS), Chapter 17.44 Neighborhood Commercial (C-1), Chapter 17.48 Shopping Center Commercial (C-2), Chapter 17.52 General Commercial (C-3), Chapter 17.56 Tourist Commercial (C-4), Chapter 17.64 Industrial Park (I-P), and Chapter 17.68 General Industrial (M-2). City initiated. The criteria used to decide this matter are found in Chapter 17.140 Amendments, of the Brookings Municipal Code (BMC) to provide additional opportunities for amateur radio facilities.

**Recommended Motion:** A motion to approve revisions proposed by LDC-2-15 to add provisions for additional opportunities for amateur radio facilities as an accessory use to dwellings and direct staff to prepare an ordinance for adoption.

**Financial Impact:** The financial impact will be minimal as very few applications for Conditional Use Permits are anticipated.

**Background/Discussion:** Federal and State laws require that amateur radio facilities be reasonably accommodated and the regulations imposed be the minimum necessary to accomplish the goals of the city. State law goes on to state that a city may not restrict the facilities to heights of 70 feet or lower unless the restriction is necessary to achieve a clearly defined health, safety, or aesthetic objective. BMC Chapter 17.128.040(B) provides for antennas of one and one-half the height limitation of the underlying zone. The height limitation in all residential zones with the exception of Multiply-Family (R-3) is 30 feet. This provides for facilities not exceeding 45 feet. The City Attorney recommended provisions be added to allow for facilities of 70 feet or lower to be processed.

Amateur radio facilities are private, non-commercial wireless communication facilities consisting of antennas, towers, and/or supporting structures. Amateur radio operators are recognized for their service to a community especially in the event of emergencies.

The Planning Commission reviewed draft code revisions at workshops in February and March, 2015 and public hearings in May and June, 2015 prior to unanimously recommending approval

to City Council. The public provided testimony at all the meetings. Public comments were divided with some folks concerned that the provisions were too burdensome and others that they were too lenient.

The proposed revisions would allow amateur radio facilities, accessory to any dwelling, with approval of a conditional use permit (CUP) in all zones with the exception of Suburban Residential (SR) and Single-Family Residential (R-1-12, 12,000 sq ft minimum lot size) where it would be an outright use. Both CUP and outright use approval would require the facilities to meet the proposed criteria in Chapter 17.124.230. The SR and R-1-12 zones require larger minimum lots and are adjacent to property within Curry County's jurisdiction. With the exception of Deschutes County, no other jurisdictions within Oregon were identified that have requirements beyond a building permit. In Deschutes County, the use is outright but must meet specific criteria.

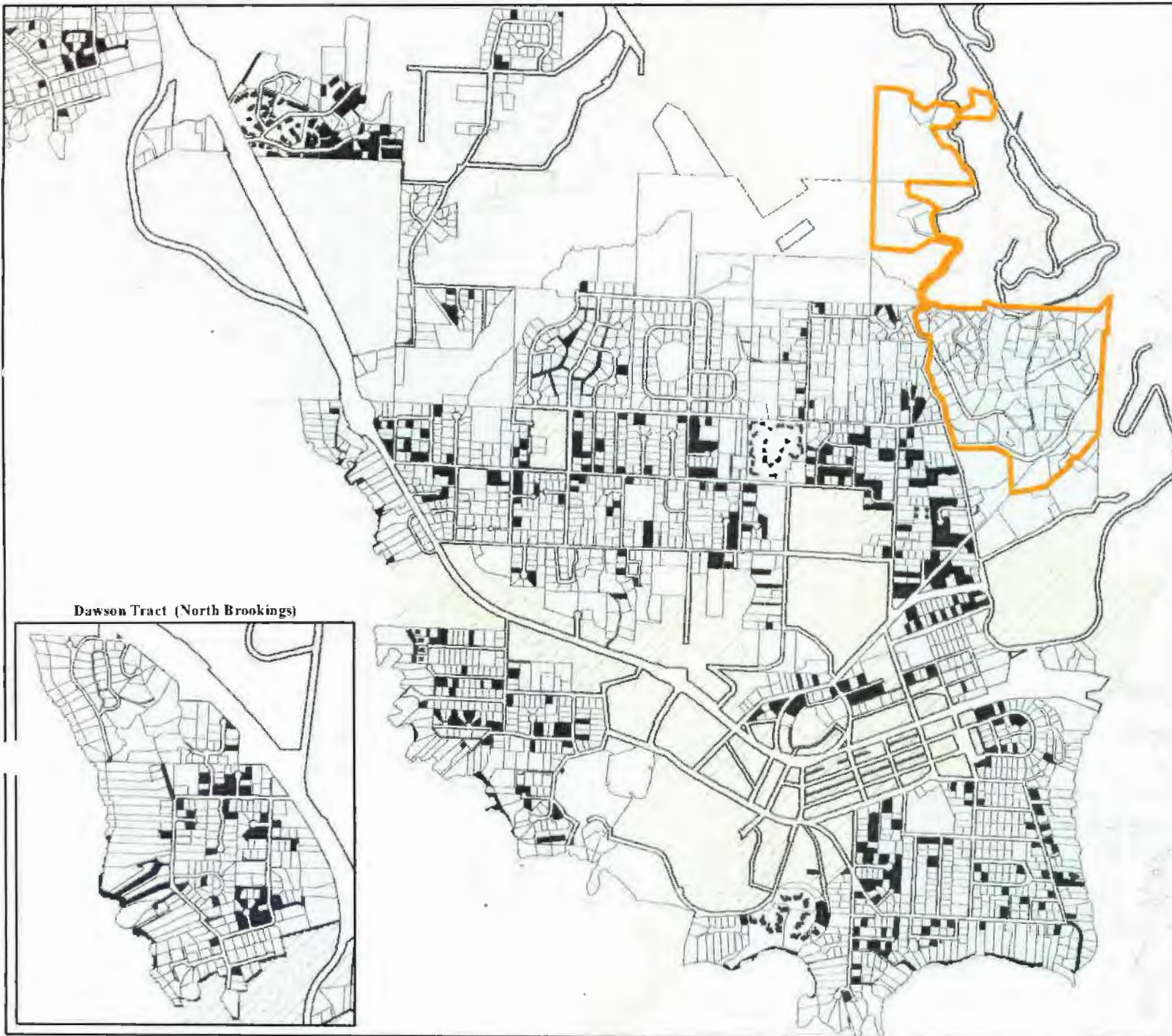
The proposed criteria in Chapter 17.124.230 includes requirements for setbacks, building permits, finishes that reduces visibility, fencing and security, no lighting, complying with Airport Overlay Zone, safety and warning signs, Federal Communications Commission (FCC) license, abandonment and maintenance. Public notice for the CUP would be provided to all property owners within 1000 feet of the subject property. The Land Development Code requires notification to all properties within 250 feet for all other land use actions.

Several additional criteria were considered by the Planning Commission. Interference was removed when it was determined that Federal law provides exclusive jurisdiction of transmission interference to the FCC. Retractable facilities within a certain distance of each other and of Chetco Avenue was removed when information was received that neither of the two largest manufacturers make facilities that can meet the windload requirements.

Policy Considerations: Current policy limits amateur radio facilities to 45 feet. This change would allow facilities to 70 feet in compliance with Federal and State law.

- Attachment(s):
- A. Draft provisions
  - B. Staff report and attachments for May 5, 2015 Planning Commission meeting
  - C. Supplemental packet for May 5, 2015 Planning Commission meeting
  - D. Memo and attachments for June 2, 2015 Planning Commission meeting





Area of Interest - City of Brookings, OR

### Legend

- 70' tower with a 23' Setback (3:1)
- Zoning w/Larger Min. Lot Size
- Setback will not allow for 70' Tower
- Non-Residential Zoning

### Notes:

Draft Analysis. This map is for general reference purposes only. Limited variables considered for calculation. Each lot must be addressed on an individual basis after considering all factors. For more information contact the City of Brookings Planning Department.

Dawson Tract (North Brookings)



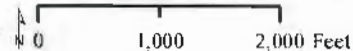
## 3:1 Setback - Site Suitability Analysis

Amateur Radio (Calculated w/tower height @ 70')

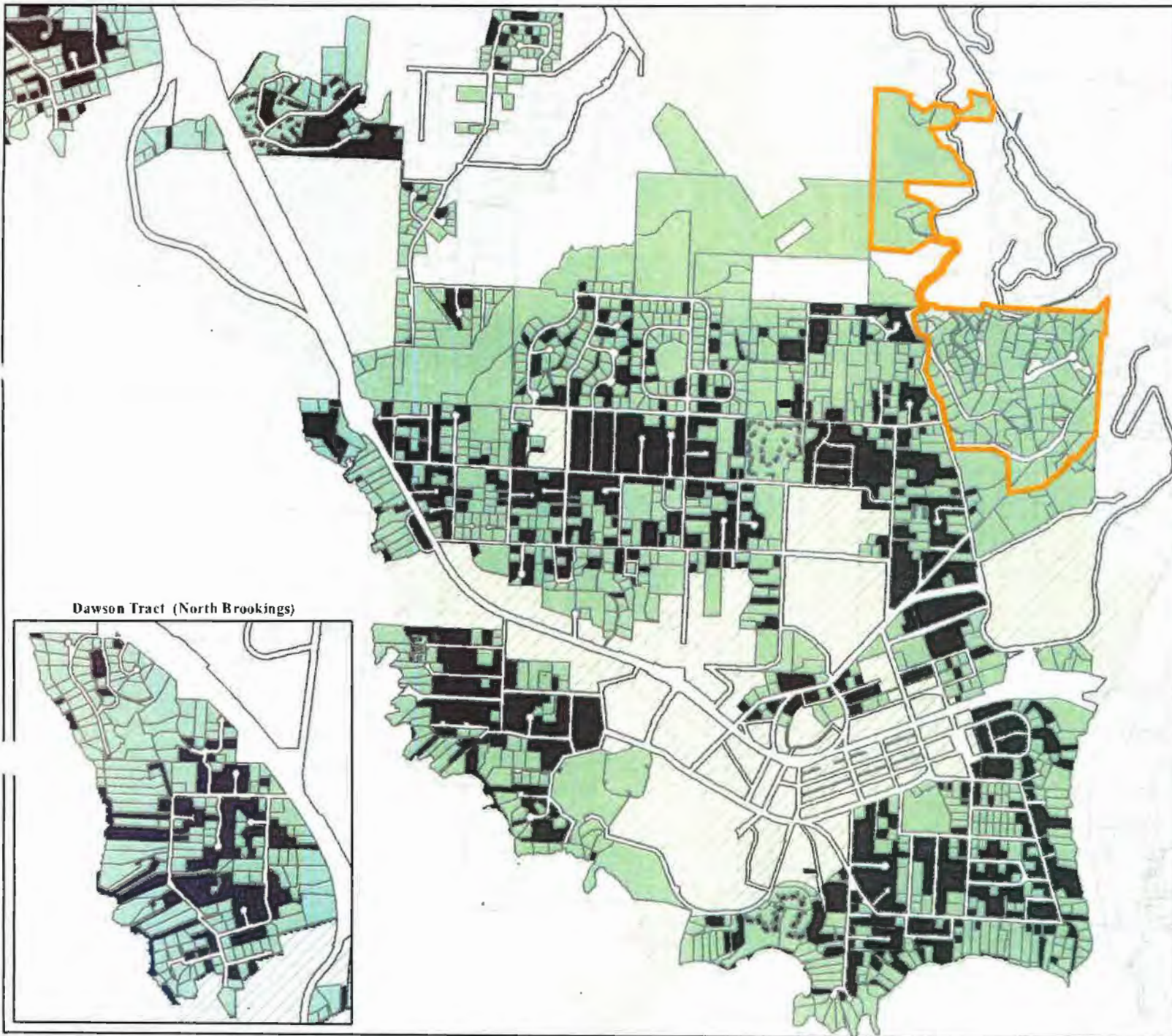


This product is for informational purposes and may not have been prepared for legal, engineering, or surveying purposes. Users of this information should review it against the primary data and information sources to ascertain the usability of the information.

Projections: NAD83 UTM North, Brookings GIS 4, 2/19/2015











Area of Interest - City of Brookings, OR

**Legend**

-  70' tower with a 35' Setback (2:1)
-  Zoning w/Larger Min. Lot Size
-  Setback will not allow for 70' Tower
-  Non-Residential Zoning

Notes:  
 Draft Analysis. This map is for general reference purposes only. Limited variables considered for calculation. Each lot must be addressed on an individual basis after considering all factors. For more information contact the City of Brookings Planning Department.

Dawson Tract (North Brookings)

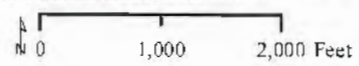


**2:1 Setback - Site Suitability Analysis**  
 Amateur Radio (Calculated w/tower height @ 70')



This product is for informational purposes only and may not have been prepared for, or be suitable for, legal, engineering, or surveying purposes. Users of this information should review, or consult the primary data and information sources to ascertain the usability of the information.

Projection: NAD83 / Oregon South, Brookings GIS file: 2/29/2015





Proposed new text is **bold**.

Chapter 17.16 Suburban Residential (SR) District

17.16.030 Accessory uses

The following accessory uses are permitted:

- E. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

Chapter 17.20 Single-Family Residential (R-1) District

17.20.030 Accessory uses.

The following uses are permitted:

- E. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230 in the R-1-12 zone.**

17.20.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

- U. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230 in the R-1-6, R-1-8, and R-1-10 zones.**

Chapter 17.24 Two-Family Residential (R-2) District

17.24.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

- V. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

## Chapter 17.28 Multiple-Family Residential (R-3) District

### 17.28.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

- T. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

## Chapter 17.32 Manufactured Home Residential (R-MH) District

### 17.32.040 Conditional uses.

The following conditional uses may be permitted:

- V. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

## Chapter 17.36 Professional Office (PO-1) District

### 17.36.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

- L. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

## Chapter 17.40 Public Open Space (P/OS) District

### 17.40.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

- D. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

Chapter 17.44 Neighborhood Commercial (C-1) District

17.44.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

**D. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

Chapter 17.48 Shopping Center Commercial (C-2) District

17.48.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

**J. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

Chapter 17.52 General Commercial (C-3) District

17.52.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

**O. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

Chapter 17.56 Tourist Commercial (C-4) District

17.56.040 Conditional uses.

The following conditional uses may be permitted subject to a conditional use permit:

**J. Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

## Chapter 17.64 Industrial Park (I-P) District

### 17.64.040 Conditional uses.

The following uses may be permitted subject to a conditional use permit:

- I. **Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

## Chapter 17.68 General Industrial (M-2) District

### 17.68.040 Conditional uses.

The following uses may be permitted subject to a conditional use permit:

- G. **Amateur radio facilities, accessory to a dwelling, subject to the provisions of BMC 17.124.230.**

## Chapter 17.124 Specific Standards Applying to Conditional Uses

### 17.124.230 Amateur radio facilities.

**Amateur radio facilities are private, non-commercial wireless communication facilities consisting of antennas, towers, and/or support structures. The City recognizes the importance of amateur radio operators and their service to the community especially in the event of emergencies.**

**Amateur radio facilities are considered an accessory use to a residential dwelling. Chapter 17.128.020(B) provides for exceptions to height limitations for antenna. Antenna may be one and one-half times the height limitation of the applicable zoning district. However, towers and support structures shall comply with height limitations and setbacks.**

**The following siting criteria shall apply to amateur radio facilities that do not meet the provisions of Chapter 17.128.020(B) and/or the applicable zoning district. The criteria are intended to maximize public safety and minimize visual impacts to promote and protect the residential characteristics of the residential zoning districts consistent with federal and state law. Public notice shall be provided to all property owners within 1000 feet of a proposed amateur radio facility requesting approval with a conditional use permit (CUP).**

**A. Height.** The maximum tower/antenna height shall not exceed 70 feet from the finished grade at the base of the tower.

**B. Front, Side and Rear Yard Setbacks.** The minimum setback from all property lines to the finished grade at the base of the tower shall be One (1) foot for every two (2) feet of height. With the exception of guy wires, antennas, and footings that do not project above grade level, no component of the facility may encroach into the required setback.

**C. Construction.** A building permit shall be obtained for the construction or erection of the amateur radio facility. Plans and calculations shall be provided and shall comply with the provisions of Section 3108 of the Oregon Structural Specialty Code.

**D. Finish (paint/surface).** The facility shall have a finish, tone or color that reduces its visibility. In most circumstances this condition may be satisfied by painting the facility with a flat light haze gray paint. The owner shall maintain the finish, painted or unpainted. Red and white or orange and white finish is not allowed. If these colors are required by the FAA (Federal Aviation Administration) or ODA (Oregon Department of Aviation), the height shall be reduced to a level that it is not required.

**E. Fencing and Security.** For security purposes, towers and accessory facilities shall be enclosed by a minimum six-foot fence or be equipped with anti-climb devices. If this conflicts with TIA-222 or other agencies, the most restrictive requirements shall prevail.

**F. Lighting.** No lighting shall be permitted on the facility. If required by the FAA or ODA, the facility shall be reduced to a level that does not require lighting.

**G. Airport Overlay Zone.** The facility shall comply with the requirements in BMC Chapter 17.76, Airport Overlay Zone.

**H. Advertising/Signs.** No advertising or signs of any type are to be placed on the tower at any time except those required or necessary for safety and warnings. Safety and warning signs shall be less than two square feet and be placed on the facility at a height of less than six feet.

**I. License.** The owner of the facility shall possess and provide a copy of a current FCC license to the Planning Department. After six (6) months with no valid license, the facility shall be considered abandoned and shall be removed by the property owner within 60 days thereafter.

**J. Abandonment.** The property owner shall provide annual written documentation that the facilities are functioning. Amateur radio facilities that do not have functioning antennas for a period of six month shall be considered abandoned and shall be removed by the owner of the facility within 60 days thereafter. Upon written application, prior to the expiration of the six-month period, the planning commission if approved with a CUP or staff if permitted outright may, in writing, grant a six-month time extension for reuse of the facility. Additional extensions beyond the first six-month extension may be granted by the planning commission subject to any conditions required to bring the project or facility into compliance with current regulation(s).

**K. Maintenance.** Amateur radio facilities shall be maintained in good order and repair at all time so to not constitute any danger or hazard to adjacent properties.

**L. Unrelated equipment.** Equipment and antenna for other than amateur radio facilities shall comply with height and setback requirements of Chapter 17.128.020(B) and the underlying zone.

**M. Hazardous Building Sites.** Construction or erection of amateur radio facilities shall comply with Chapter 17.100 Hazardous Building Site Protection.

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

SUBJECT: Land Development Code Amendment  
FILE NO: LDC-2-15  
HEARING DATE: May 5, 2015

REPORT DATE: April 22, 2015  
ITEM NO: 5.2

**GENERAL INFORMATION**

APPLICANT: City Initiated.  
REPRESENTATIVE: City Staff.  
REQUEST: Addition of **Section 17.124.230** Specific Standards Applying to Conditional Uses, Amateur radio facilities and the addition of Amateur radio facilities as a permitted use in **Chapter 17.16 Suburban Residential (SR)** and **Chapter 17.20 Single-Family Residential (R-1-12)** and as a conditional use in **Chapter 17.20 Single-Family Residential (R-1-6, R-1-8, R-1-10)**, **Chapter 17.24 Two-Family Residential (R-2)**, **Chapter 17.32 Manufactured Home Residential (R-MH)**, **Chapter 17.28 Multiple-Family Residential (R-3)**, **Chapter 17.36 Professional Office (PO-1)**, **Chapter 17.40 Public Open Space (P/OS)**, **Chapter 17.44 Neighborhood Commercial (C-1)**, **Chapter 17.48 Shopping Center Commercial (C-2)**, **Chapter 17.52 General Commercial (C-3)**, **Chapter 17.56 Tourist Commercial (C-4)**, **Chapter 17.64 Industrial Park (I-P)**, and **Chapter 17.68 General Industrial (M-2)**, **Brookings Municipal Code (BMC)**.

PUBLIC NOTICE: Published in local newspaper and mailed to workshop participants.

**BACKGROUND INFORMATION**

Federal and State laws require that amateur radio facilities be reasonably accommodated and the regulations imposed be the minimum necessary to accomplish the goals of the City. State law goes on to state that a city may not restrict the facilities to heights of 70 feet or lower unless the restriction is necessary to achieve a clearly defined health, safety, or aesthetic objective. The Brookings Municipal Code (BMC) does not provide for facilities exceeding 45 feet. BMC Chapter 17.128.040(B) provides for antennas of one and one-half the height limitation of the underlying zone. The City Attorney recommended provisions to allow for facilities of 70 feet or less to be processed.

The Planning Commission reviewed draft code revisions to add opportunities for amateur radio facilities of 70 feet or less at workshops in February and March, 2015. Memos from these workshops are included as **Attachment B**. Several interested citizens attended and provided input for consideration.

At the February workshop, the Planning Commission reviewed draft provisions to accommodate amateur radio facilities 70 feet or less. Site Plan Committee reviewed the regulations and their suggestions were incorporated. The matter was continued to allow staff to conduct additional research.

At the March workshop, the Planning Commission discussed the 2:1 and 3:1 setbacks, regulation of interference, and separation of amateur radio facilities. The Planning Commission directed staff to confer with the City Attorney to ascertain if the proposed separation of facilities and the 1000-foot buffering of Checto Avenue could be considered as reasonably accommodating the facilities. The City Attorney advises that any outright prohibition of amateur radio facilities in any residential zone or area would not be providing reasonable accommodations. She suggested an alternative might be to require facilities in these areas to be lowered to the height limitation of the underlying zone when not in use. An alternate standard has been included for retractable facilities in the draft text, BMC 17.124.230(L) included as **Attachment G**.

Concern has been expressed regarding the availability of retractable facilities designed to meet the engineering requirements for the City of Brookings. Contact has been made to several of the larger manufacturers of the towers. One company has provided a response (**Attachment D**) and stated they do not manufacture retractable towers. It would not be reasonable to require retractable facilities if they are not available.

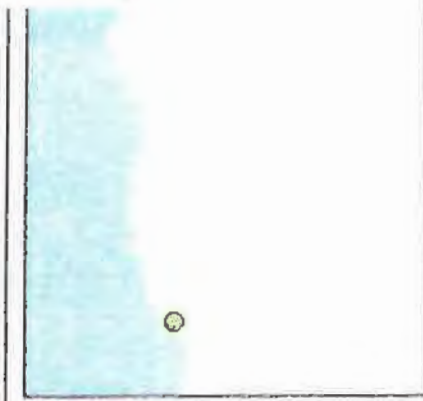
#### **ATTACHMENTS:**

- A - Maps showing 2:1 and 3:1 setbacks
- B - Memos from the January 22 and February 20, 2015 Workshops
- C - ORS 221.295 Ordinances regulating radio antennas
- D - Professional comments
- E - *Antenna Height and Communications Effectiveness* by R. Dean Straw and Gerald L. Hall
- F - *Effective Amateur Radio Communications in Brookings* by Charles Ristorcelli
- G - Draft text

#### **RECOMMENDATION**

After careful consideration, and any input the public may provide, Staff recommends the hearing for File No. LDC-2-15, Amateur Radio Facilities, be continued to the June 2, 2015 meeting at 7:00 PM to allow additional information regarding the availability of retractable towers to be provided by manufacturers.





Area of Interest - City of Brookings, OR

### Legend

70' tower with a 23' Setback (3:1)

Zoning w/Larger Min. Lot Size

Setback will not allow for 70' Tower

Non-Residential Zoning

### Notes:

Draft Analysis. This map is for general reference purposes only. Limited variables considered for calculation. Each lot must be addressed on an individual basis after considering all factors. For more information contact the City of Brookings Planning Department.

Dawson Tract (North Brookings)



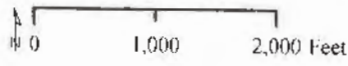
## 3:1 Setback - Site Suitability Analysis

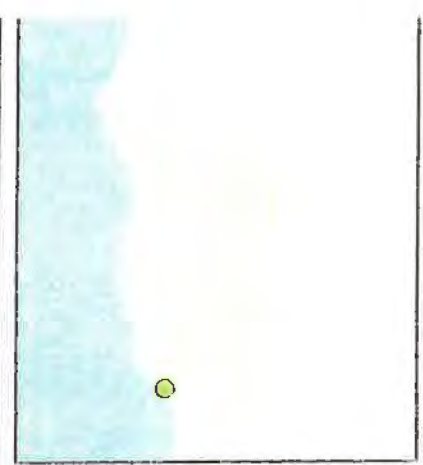
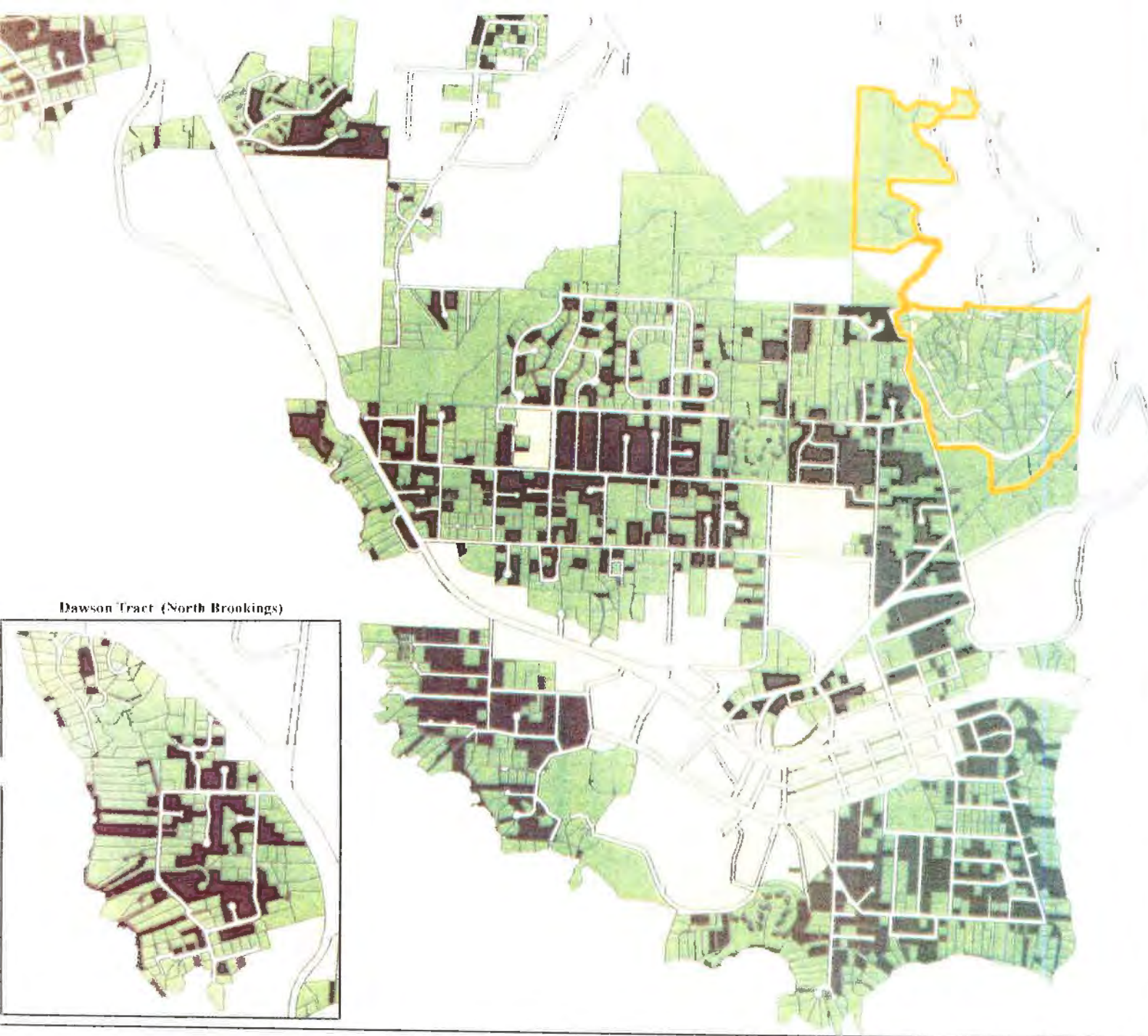
Amateur Radio (Calculated w/tower height @ 70')



This product is for informational purposes and may not have been prepared for, or be suitable for, legal, engineering, or surveying purposes. Users of this information should review or consult the source data and information sources to ascertain the usability of the information.

Project: NAD83 OR South, Brookings GIS v. 3/19/2015





Area of Interest - City of Brookings, OR

**Legend**

- 70' tower with a 35' Setback (2:1)
- Zoning w/Larger Min. Lot Size
- Setback will not allow for 70' Tower
- Non-Residential Zoning

Dawson Tract (North Brookings)



**Notes:**

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**2:1 Setback - Site Suitability Analysis**  
 Amateur Radio (Calculated w/tower height @ 70')



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Prepared by: K. S. ORS / Brookings GIS  
 Date: 07/15/2015

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