

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

ORDINANCE NO. 09-O-641

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

Sections:

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

The City of Brookings ordains as follows:

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

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

Chapter 17.136
CONDITIONAL USE PERMITS

Sections:

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

17.136.010 Purpose.

Each zone includes two categories of use:

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

17.136.020 Planning Commission authority.

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

17.136.030 Application.

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

17.136.040 Public hearings.

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

17.136.050 Action by the Planning Commission.

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

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

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

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

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

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

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

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

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

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

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

17.136.060 Burden of proof.

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

17.136.070 Final Order

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

17.136.080 Time limitation.

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

17.136.090 Appeal.

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

17.136.100 Effect of an Appeal.

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

17.136.110 Violation of conditions.

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

17.136.120 Limitation on new applications.

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

17.136.130 Notification of action.

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

17.136.140 Minor change.

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

17.136.150 Use permit to run with the land.

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

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

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

Signed by me in authentication of its passage this 28th day of July, 2009



Mayor Larry Anderson

ATTEST: 

City Recorder Joyce Hefington