

HOW TO APPEAL A DECISION OF THE CITY OF BROOKINGS

Land use decisions and interpretations of City Council, Planning Commission, or City Staff can be appealed.

There are two types of decisions—administrative decisions and discretionary decisions made by the City of Brookings.

Administrative Decisions

City Ordinances give City Staff and Site Plan Committee the authority to approve or deny certain types of applications such as building permits, sign permits, and home occupation permits. Approval or denial of this type of application is an “administrative decision”.

This involves interpreting the application for zoning and development standards and how they apply to each application and an application may be denied if it does not meet and can not be made to meet the standards. In the event of ambiguity in the Code, administrative decisions can be appealed to the Planning Commission. The Planning Commission will decide the meaning, intent, and interpret the provision of the Code.

Discretionary Decisions (Quasi-judicial and legislative)

The approval or denial of most applications requires a decision made at a public hearing for which a hearing notice has been mailed to all property owners within a certain distance of the project site and published in a local newspaper. All interested parties can testify at the hearing or submit written testimony prior to or at the hearing. Decisions made in this manner are “discretionary decisions” and are based on more complex criteria that must be applied to each application on a case by case basis. Discretionary decisions are made by the Planning Commission and City Council. Decisions made by the Planning Commission can be appealed to the City Council and decisions made by the City Council can be appealed to the Oregon Land Use Board of Appeals (LUBA). Anyone who participated in the public hearing either in writing or through oral testimony, can appeal the decision.

An application for an appeal must be filed with the Planning Department, within 15 days of the date of the postmark on the notice of decision.

THE APPEAL PROCESS

Planning Commission

If you believe there is ambiguity in the Code provisions relating to your application you may appeal the decision to the Planning Commission. In appealing the Staff’s decision, you must show how your application met the requirements of the Land Development Code and how Staff erred in making the decision to deny it.

City Council

The applicant or anyone who participated in the Planning Commission public hearing in which the decision was made, can appeal that decision to the City Council. To qualify as a participant you must have submitted testimony, written or oral, to the Planning Commission. When you appeal a decision of the Planning Commission, the basis of your appeal must address the criteria set out in the Land Development Code for the particular type of application in question and you must show how the Planning Commission erred in their application of that criteria in making their decision. It is your responsibility to provide the proof that the decision of the Planning Commission was in error.

The City Council will either overturn the Commission's decision, uphold it, revise the conditions of approval, or send the application back to the Planning Commission for further consideration. All appeals to the City Council are held "de novo" which means as if it were a new hearing. In this meeting new and different evidence may be submitted, as a part of the appeal, than was submitted at the Planning Commission hearing. The record from the Planning Commission hearing will be included in the staff report for the City Council hearing.

If you are not satisfied with the decision of the City Council, you may appeal the Council's decision to the Oregon Land Use Board of Appeals (LUBA). Appeals to LUBA must be filed with that agency within 21 days of the City Council's decision. Filing and presenting your case to LUBA is more formal and legal in nature than either of the City's hearing bodies and may even require the service of an attorney. To get more information about the LUBA hearing process, you can call the LUBA information office at (503) 373-1265, mailing address LUBA, 550 Capitol St. NE, Suite 235, Salem, OR 97301-2552.

Starting The Process

The appeal application form is available at the Planning Department.

The following items must be submitted with your application:

1. A filing fee.
2. A written statement addressing issues and /or regulations, which are the basis of the appeal.

Your written statement may also include any exhibits, maps, plot plans or other material that you think is necessary to support your appeal.

These materials must be submitted within 15 days of the date of the postmark on the notice of decision.