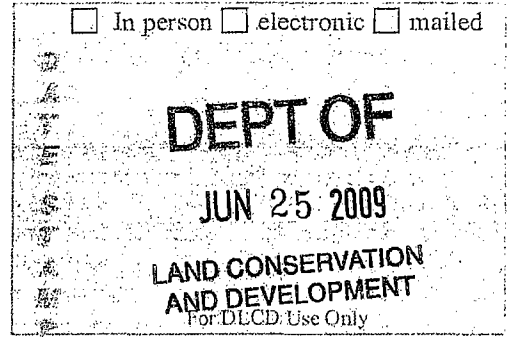


Notice of Adoption

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



Jurisdiction: **City of Brookings**

Local file number: **LDC-6-09**

Date of Adoption: **6/22/2009**

Date Mailed: **6/24/2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 4/6/2009

- Comprehensive Plan Text Amendment
- Land Use Regulation Amendment
- New Land Use Regulation
- Comprehensive Plan Map Amendment
- Zoning Map Amendment
- Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".
Revisions to Land Development Code Chapter 17.120, Non Conforming Uses

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

There a few minor word changes.

Plan Map Changed from: _____ to: _____

Zone Map Changed from: _____ to: _____

Location: _____ Acres Involved: _____

Specify Density: Previous: _____ New: _____

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing? Yes No

If no, do the statewide planning goals apply? Yes No

If no, did Emergency Circumstances require immediate adoption? Yes No

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

None.

Local Contact: **Dianne Morris**

Phone: (541) 469-1138 Extension:

Address: **898 Elk Dr.**

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

City: **Brookings**

Zip: **97415-**

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

ADOPTION SUBMITTAL REQUIREMENTS

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

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

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

IN AND FOR THE CITY OF BROOKINGS
STATE OF OREGON

ORDINANCE NO. 09-O-637

IN THE MATTER OF ORDINANCE 09-O-637, AN ORDINANCE AMENDING CHAPTER 17.120, NONCONFORMING USES, TO TITLE 17, LAND DEVELOPMENT CODE, OF THE BROOKINGS MUNICIPAL CODE, IN IT'S ENTIRETY.

Sections:

- Section 1. Ordinance Identified.
- Section 2. Amends Chapter 17.120, in its entirety.

The City of Brookings ordains as follows:

Section 1. Ordinance Identified. This ordinance amends Chapter 17.120, Nonconforming Uses, to Title 17, Land Development Code, of the Brookings Municipal Code (BMC).

Section 2. Amend Chapter 17.120. Chapter 17.120, Nonconforming Uses is amended to read as follows:

**Chapter 17.120
NONCONFORMING USES**

Sections:

- 17.120.010 Continuation of nonconforming use.
- 17.120.020 Discontinuance of a nonconforming use.
- 17.120.030 Destruction of nonconforming use or structure.
- 17.120.040 Completion of structure.
- 17.120.050 Enlargement or alteration of a nonconforming structure.

17.120.010 Continuation of nonconforming use.

A lawfully pre-existing use of a structure or site, which does not conform to the regulations for the district in which it is located, shall be deemed to be a lawful, nonconforming use and may be continued, subject to the following regulations:

A. Routine maintenance and repairs may be performed on structures or sites.

B. No non-conforming structure, shall be moved, altered, or enlarged unless required by law, allowed elsewhere in this Code, or unless the moving, alteration or enlargement will result in the elimination of the nonconforming use.

C. No structure partially occupied by a nonconforming use shall be moved, altered or enlarged in such a way as to permit the enlargement of the space occupied by the nonconforming use. [Ord. 89-O-446 § 1.]

17.120.020 Discontinuance of a nonconforming use.

If a nonconforming use has been changed to a conforming use, or if the nonconforming use of a building, structure or premises is discontinued for the time period specified below, the said use shall be considered abandoned, and said building, structure or premises shall thereafter be used only for uses permitted as an allowed outright use or as a conditional uses in the district in which it is located:

A. Residential uses in a commercial zoning district: five years unless the building has been altered to the point that it is no longer suitable as a residence;

B. All other uses: two years. [Ord. 90-O-446.B § 3; Ord. 89-O-446 § 1.]

17.120.030 Destruction of nonconforming use or structure.

If a nonconforming residential or commercial structure is destroyed to any extent, by any cause beyond the owner's control, it may be rebuilt or replaced by a structure that is no larger than the original structure. Time limits for this replacement shall comply with BMC 17.120.020 above. [Ord. 90-O-446.B § 4; Ord. 89-O-446 § 1.]

17.120.040 Completion of structure.

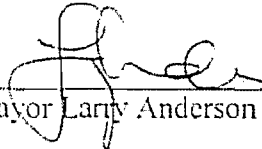
Nothing contained in this Code shall require any change in the plans, construction, alteration or designated use of a structure for which a valid permit exists unless work is discontinued and the building permit expires prior to completion. [Ord. 89-O-446 § 1.]

17.120.050 Enlargement or alteration of a nonconforming structure.

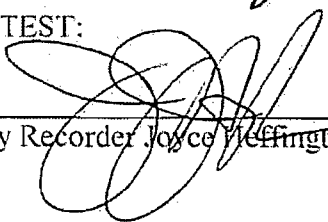
Existing structures that do not conform to current standards, including but not limited to setbacks, coverage, and height requirements, can be expanded, but only if all new construction complies with current standards and does not increase the area out of compliance.

First Reading: June 22, 2009
Second Reading: June 22, 2009
Passage: June 22, 2009
Effective Date: July 22, 2009

Signed by me in authentication of its passage this 23rd day of June, 2009



Mayor Larry Anderson

ATTEST:


City Recorder Joyce Jefferson

Chapter 17.120
NONCONFORMING USES

Draft 04-01-09

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

Text to be omitted has strikethrough.

Sections:

- 17.120.010 Continuation of nonconforming use.
~~17.120.020~~ Change of nonconforming use.
17.120.020 Discontinuance of a nonconforming use.
17.120.030 Destruction of nonconforming use or structure.
17.120.040 Completion of structure.
17.120.050 Enlargement or alteration of a nonconforming structure.
~~17.120.070~~ Pre-existing limited use permit or variance.

17.120.010 Continuation of nonconforming use.

A use lawfully occupying ***pre-existing use of a*** structure or site on the effective date of this code or of amendments thereto, which does not conform to the regulations for the district in which it is located, shall be deemed to be a ***lawful***, nonconforming use and may be continued, subject to the following regulations:

A. Routine maintenance and repairs may be performed on structures or sites, the use of which is nonconforming.

B. No ***non-conforming*** structure, the use of which is nonconforming, shall be moved, altered, or enlarged unless required by law, ***allowed elsewhere in this Code***, or unless the moving, alteration or enlargement will result in the elimination of the nonconforming use.

C. No structure partially occupied by a nonconforming use shall be moved, altered or enlarged in such a way as to permit the enlargement of the space occupied by the nonconforming use. [Ord. 89-O-446 § 1.]

~~17.120.020 Change of nonconforming use.~~

~~The planning commission may grant an application for a change of use, filed in accordance with the provisions of Chapter 17.136 BMC, conditional use permits, if, on the basis of the application and the evidence submitted, they make the following findings:~~

~~A. That the proposed use is classified in a more restrictive category than the existing or pre-existing use by the district regulations of this code. The classifications of the nonconforming use shall be determined on the basis of the district in which it is first permitted; provided, that a conditional use shall be deemed to be in a less restrictive district than a permitted use in the same district.~~

that it violates the coverage restriction, but this right shall be subject to all other restrictions contained in this Code. [Ord. 89-O-446 § 1.]

Existing structures that do not conform to current standards, including but not limited to setbacks, coverage, and height requirements, can be expanded, but only if all new construction complies with current standards and does not increase the area out of compliance.

~~17.120.070 Pre-existing limited use permit or variance or qualified zone change.~~

~~A use which was lawful by reason of a limited use permit or variance or **qualified zone change** may be conducted only on the terms of the original permit variance **approval** granted, and subject to all limitations under which the permit for variance was awarded. [Ord. 89-O-446 § 1.]~~

CITY OF BROOKINGS PLANNING COMMISSION
STAFF REPORT

SUBJECT: Land Development Code Amendment
FILE NO: LDC-06-09
HEARING DATE: June 2, 2009

REPORT DATE: May 22, 2009
ITEM NO: 7.4

GENERAL INFORMATION

APPLICANT: City Initiated.
REPRESENTATIVE: City Staff.
REQUEST: Revisions to Chapter 17.120 Non-conforming Uses, Brookings
Municipal Code (BMC).
PUBLIC NOTICE: Published in local newspaper.

BACKGROUND INFORMATION

The City's Land Development Code (LDC) Committee reviewed and made revisions to Chapter 17.120, Non-conforming Uses, BMC. Most of the revisions were to remove confusing or insert clarifying language. Following are some of the more important changes:

- Under 17.120.020, Change of nonconforming use. This section was stricken as it was inappropriate. Conditional uses are addressed in Chapter 17.136.
- Under 17.120.020, Discontinuance of a nonconforming use. The length of time for a discontinued use or structure to be considered abandoned was increased.
- Under 17.120.030 Destruction of nonconforming use or structure. The length of time to replace a destroyed nonconforming use or structure was increased.
- Under 17.120.050 Enlargement or alteration of a nonconforming structure. The language in this section was very confusing and was deleted. New language was inserted to clarify that all new construction must comply with the current standards and not increase the area out of compliance.
- Under 17.120.070 Pre-existing limited use permit or variance. This section was stricken as the special chapters used to grant these approvals address the requirements and compliance.

Following this report is the draft version of Chapter 17.120, BMC (Attachment A).

RECOMMENDATION

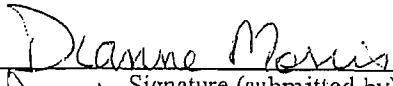
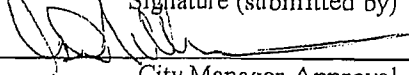
After careful consideration, and any input the public may provide, Staff supports a Planning Commission recommendation of approval of file LDC-06-09, Chapter 17.120, Non-conforming Uses, BMC, to the City Council.

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: June 22, 2009

Originating Dept: Planning


Signature (submitted by)

City Manager Approval

Subject: A hearing on File LDC-6-09 for consideration and possible adoption of revisions to Chapter 17.120, Nonconforming Uses, Brookings Municipal Code (BMC).

Recommended Motion: Motion approving revisions to Chapter 17.120, Nonconforming Uses, BMC.

Financial Impact: None

Background/Discussion: The City's Land Development Code (LDC) Committee reviewed and made revisions to Chapter 17.120, Non-conforming Uses, BMC. Most of the revisions were to remove confusing or insert clarifying language. Following are some of the more important changes:

- Under 17.120.020, Change of nonconforming use. This section was stricken as it was inappropriate. Conditional uses are addressed in Chapter 17.136.
- Under 17.120.020, Discontinuance of a nonconforming use. The length of time for a discontinued use or structure to be considered abandoned was increased.
- Under 17.120.030 Destruction of nonconforming use or structure. The length of time to replace a destroyed nonconforming use or structure was increased.
- Under 17.120.050 Enlargement or alteration of a nonconforming structure. The language in this section was very confusing and was deleted. New language was inserted to clarify that all new construction must comply with the current standards and not increase the area out of compliance.
- Under 17.120.070 Pre-existing limited use permit or variance. This section was stricken as the special chapters used to grant these approvals address the requirements and compliance.

The Planning Commission reviewed this Chapter and recommended approval to the City Council without making any additional suggested revisions.

Following this report is the draft version of Chapter 17.120 (Attachment A).

Policy Considerations: N/A

Attachment(s): Draft version of Chapter 17.120, Nonconforming Uses, BMC



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CITY OF BROOKINGS

898 Elk Drive

Brookings, OR 97415

Ph: (541) 469-2163 Fax: (541) 469-3650

TO:

Plan Amendment Specialist

DLCD

635 Capitol St. NE, Suite 150

Salem, OR 97301-2540

