

ORDINANCE NO. 320

AN ORDINANCE AMENDING ORDINANCE NO. 93, NOTICE , HEARING AND APPEALS PROCEDURES

The City of Coos Bay ordains as follows:

Section 1. Chapter 5.2, Development Permits and Procedures, Section 4, Special Development - Planning Commission Review, is hereby amended to read as follows:

Section 4. SPECIAL DEVELOPMENT - PLANNING COMMISSION REVIEW

Special Development - Planning Commission Review is a type of major land use activity reviewed by the Planning Commission in a quasi-judicial fashion. Appeals from final decisions by the Planning Commission must be made to the City Council in accordance with Chapter 5.4. Table 10 lists Special Development Permits falling in this category and the sections of this ordinance which establish the criteria and procedures used in making a decision.

TABLE 10.
TYPE OF SPECIAL DEVELOPMENT PERMITS
SUBJECT TO PLANNING COMMISSION REVIEW

PERMIT	ORDINANCE CHAPTER
Site Plan and Architectural Review	5.11
Variance	5.12
Conditional Use	5.13
Cultural Resources	5.15

Section 2. Chapter 5.2, Development Permits and Procedures, Section 5, Special Development - City Council Review, is hereby amended to read as follows:

Section 5. SPECIAL DEVELOPMENT - CITY COUNCIL REVIEW

Special Development - City Council Review is a type of major land use activity where final authority is vested with the City Council. These decisions may be either quasi-judicial or legislative in nature. Appeals from final decisions by the City Council must be made to the State. Table 11 lists special development permits regulated in this category and the sections of this ordinance which establish the criteria and procedures used in making a decision.

**TABLE 11.
TYPE OF SPECIAL DEVELOPMENT PERMITS
SUBJECT TO CITY COUNCIL REVIEW**

PERMIT	ORDINANCE CHAPTER
Change in Zone	5.14
Land Division - Partition II, Subdivision	5.16
Dedication of Right of Way or Other Public Property	5.17
Vacation	5.18
Plan / Ordinance Amendment	5.19
Annexation	5.20

(Amended August 15, 1995, Ord. #215)

Section 3. Chapter 5.12, Development Permits and Procedures, Section 6, Application, is hereby amended to read as follows:

Section 6. APPLICATION

Unless otherwise specified, application shall be made on forms obtained from the Department of Community Services.

Section 4. Chapter 5.12, Development Permits and Procedures, Section 7, Special Development: Effective Date of Permit Approval, is hereby amended to read as follows:

Section 7. SPECIAL DEVELOPMENT: EFFECTIVE DATE OF PERMIT APPROVAL

1. A permit may become effective immediately after approval by the Commission, Council, or staff, or may be delayed until the applicant complies with conditions attached to the approval. If the applicant fails to comply with the terms of the permit, or conditions thereof, staff shall notify the holder of the permit to provide reasons for noncompliance. Staff may authorize a 90-day period for the applicant to bring the project into compliance. If the applicant fails to do so, staff shall notify the applicant not less than 15 days before the expiration of the grace period to appear before the Planning Commission and show cause why approval should not be revoked. Continued noncompliance may be subject to the penalties or other enforcement action under Chapter 5.5, Enforcement.
2. For special development permits other than those listed in Table 11, if the development is not commenced within a reasonable time after permit approval, land use conditions in the vicinity may change and, the findings which formed the basis of the approval may no longer be supported by facts. Therefore, unless a different time limit has been established by this ordinance or Commission/Council action, approval for special development permits other than

those listed in Table 11 shall lapse if:

- A. The authorized construction or use is not commenced within one (1) year after approval, or, if commenced within such time, is not pursued diligently to completion; or
- B. The occupancy or use of land/building authorized by the permit has been discontinued for a period in excess of 120 consecutive days.

If circumstances beyond the control of the applicant cause delays which do not permit compliance with the established time limitation, the Commission may grant extensions of time, for a period not to exceed one (1) year for each extension, if the applicant can demonstrate the circumstances and conditions which were associated with the initial approval have not changed and that continued approval can be justified.

Applications for extensions of time must be in writing and set forth the reasons justifying the extension. The application must be filed with the Department of Community Services not less than thirty days before the expiration date of the initial approval or extension thereof.

Section 5. Chapter 5.3, Public Hearings, Sections 1, 2 and 3, are hereby amended to read as follows:

CHAPTER 5.3 PUBLIC HEARINGS

Section 1. GENERAL

The following procedures govern the conduct of public hearings.

Section 2. NOTICE

1. Published Notice. Published notice is required for proposed revisions or additions to the comprehensive plan, Land Development Ordinance, subdivisions and vacations.
 - A. Comprehensive Plan, Land Development Ordinance and Subdivision: The published notice for proposed revisions or additions to the comprehensive plan and Land Development Ordinance and subdivisions shall be advertised in a newspaper of general circulation at least ten (10) calendar days prior to each public hearing.
 1. Published notice shall include:
 - a. Date, time, and place of hearing.
 - b. The type of application filed (e.g.: new land use regulation, ordinance amendment).
 - c. A brief summary of the proposed use(s) or change(s) being proposed.
 - d. A statement that objections should be filed at least five (5) days prior to the date of the hearing.
 - e. A statement that the hearing is open to the public, that all interested parties are encouraged to attend, and that individuals interested in obtaining additional

information should contact the Department of Community Services at Coos Bay City Hall prior to the hearing.

B. Vacation. The published notice for a proposed vacation shall be advertised in a newspaper of general circulation once each week for two (2) consecutive weeks prior to the hearing. The last advertisement shall not be less than 7 days prior to the hearing.

1. The notice shall include:

- a. The nature of the pending vacation and the date, time and place of the hearing;
- b. A description of the area proposed to be vacated by the petition, which may include, but is not limited to, any of the following: a map, postal address, legal description, or tax map designation;
- c. The date the petition was filed and the name of at least one of the petitioners; and
- d. That objections or remonstrances to the petition, may be made in writing and filed with the Department prior to the time of the hearing, and that such objections or remonstrances will be considered at the time of hearing.

2. Within five days after the first publication date, a copy of the notice will be posted in at least two conspicuous places in the proposed area to be vacated. The posting and first day of publication of such notice shall be not less than 14 days before the date of the initial hearing.

2. Mailed Notice. For quasi-judicial hearings, notice shall be sent to all property owners within 250 feet of the external legal boundaries of the property described in the application. The notice must be mailed at least 20 days before the hearing; or, if two (2) or more hearings are required, the notice must be mailed at least 10 days before the hearing. **However, for legislative acts which propose to amend the comprehensive plan or any element thereof, notice must be mailed at least 20 days, but not more than 40 days, before the first hearing.** For the purposes of this subsection, property owners shall be those persons identified as owners on the latest adopted tax rolls of Coos County.

The applicant shall provide, at the time of the application, a list of the last known name and address of owners shown on the latest adopted tax rolls of Coos County. Failure of a property owner to receive written notice shall not invalidate any action taken by the Planning Commission or City Council, if a good faith attempt was made to comply with the requirements of this ordinance for notice. [ORD. 171 - 5/21/91]

A. Mailed notice shall include:

1. Date, time and place of hearing;
2. A reasonably written description of the location of the subject property which may include, but is not limited to, any of the following: map, postal address, legal description, or tax map designation;

3. The nature of the pending issue or proposed use;
 4. A list of the applicable criteria upon which the decision will be based; (ORD. 171 - 5/21/91)
 5. A statement that written comments addressing the findings necessary for a decision may be submitted prior to the hearing.
 6. A statement that failure to raise an issue during a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue, precludes appeal based on that issue;
 7. A general explanation of the requirements for testimony and conduct of the hearing;
 8. A statement that the application material is available for inspection or can be copied at a reasonable cost and staff reports may likewise be inspected seven (7) days prior to the hearing.
 9. The name and telephone number of a local government representative who may be contacted for additional information.
- B. Notice of a public hearing for change of zone shall be mailed to the owner of a “public use airport,” as determined by the Oregon Department of Aviation, if the subject property is:
1. Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation to be a “visual airport;” or
 2. Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an “instrument airport.”
- C. For the vacation of a street, alley or public place, notice shall be mailed to all property owners within 250 feet of the external legal boundaries of the area to be vacated.
- D. Notice of a proposed change in zone designation for mobile home parks shall be mailed to each mailing address for tenants in the park not less than 20 days, but not more than 40 days, prior to the hearing.
3. Additional mailed notice shall be required not less than 20 days, but not more than 40 days, before the date of the first hearing for a proposal which would amend the existing comprehensive plan, or any element thereof, to each owner whose property would have to be “rezoned” in order to comply with the amended or new comprehensive plan. The notice shall contain the information prescribed by ORS 227.186(5).

For the purposes of this subsection only, property is “rezoned” when the city:

1. Changes the base zoning classification of the property; or
2. Adopts or amends an ordinance in a manner that limits or prohibits land uses previously allowed in the affected zone.

Section 3. HEARING AUTHORITY

The Planning Commission is designated as the initial Hearing Authority for specific types of development proposals which require a quasi-judicial hearing.

Upon motion and upon majority vote of the City Council, a Hearings Officer may be appointed to act as the Hearing Authority in place of the City Council.

Section 6. Chapter 5.4, Appeals, is hereby amended to read as follows:

CHAPTER 5.4 APPEALS

Section 1. RIGHT OF REVIEW

1. A decision regarding the granting or denial of a staff-issued permit may be appealed to the Planning Commission by an appellant with standing by filing an appeal with the Department of Community Services within fifteen (15) days of the date the notice of the decision was mailed.
2. A decision by the Planning Commission may be appealed to the City Council by an appellant with standing by filing a notice of appeal with the Department of Community Services within fifteen (15) days of the date the notice of the decision was mailed.
3. The Council may review a Planning Commission decision on its own motion, in accordance with all of the procedural provisions of this chapter.

Section 2. REQUIREMENTS OF REQUEST FOR APPEAL

A request for appeal shall contain all of the following:

1. Identification of the decision to be reviewed.
2. Statement of facts establishing the appellant has "standing to appeal."
 - A. In the case of an administrative decision, a person has standing if:
 - (1) the person was entitled to receive mailed notice of the decision, or
 - (2) the person's interests are adversely affected by the decision.
 - B. In the case of a quasi-judicial decision by the Planning Commission, a person has standing if:
 - (1) the person appeared before the Planning Commission orally or in writing, and
 - (2) the person's interests are adversely affected by the decision.
 - C. A person is "adversely affected" by a decision if the decision infringes upon the use and enjoyment of his or her property or otherwise detracts from his or her personal interests.

3. Reasons the appellant feels aggrieved by the decision, and how the appellant feels the reviewing body erred in its decision.

Section 3. NOTIFICATION OF APPEAL

Written notice of the public hearing on an appeal shall be provided to the appellant; the applicant, if different; and all parties entitled to receive mailed notice prior to or after the original decision. This notification shall comply with Chapter 5.3, Section 2(2).

Section 4. SCOPE OF REVIEW

The scope of the review shall be limited to the issues raised in the request for appeal. The Hearings Body will consider evidence in the record, evidence submitted at the appeal hearing which is relevant to the issues under review, and oral or written arguments submitted at the time of the appeal hearing addressing those issues.

The record shall be comprised of:

- A. The notice of the decision.
- B. All written and illustrative evidence submitted by any party and considered in reaching the decision under review, including the staff report.
- C. A transcript, tape or minutes of the hearing.

Section 5. DECISION

1. The reviewing body may affirm, reverse, or modify the decision in whole or in part. When the reviewing body reverses or modifies a decision, it shall set forth its findings and state its reasons for taking this action as applied to the relevant required criteria and standards set forth in this ordinance. If a matter is remanded back to the Planning Commission for further consideration, the Council will state its reasons for so doing.
2. A decision of the reviewing body shall require a two-thirds (2/3) vote of the quorum present.
3. The appellant and affected property owners shall receive written notice of the final decision within five (5) days of the decision.

Section 6. FINDINGS AND ORDER

The findings and order shall be prepared in accordance with Chapter 5.3, Public Hearing.

Section 7. RE-APPLICATION FOLLOWING DENIAL

After denial of a development proposal, no new application for the same area, or any portion thereof, may be submitted for a period of one (1) year from the date of denial. However, the applicant may submit a written statement to the Director of Community Services showing how the proposal has been sufficiently modified to overcome the findings for denial, or that conditions have changed sufficiently to justify reconsideration of the original proposal, or consideration of a similar proposal.

Upon consideration of the statement, the Director of Community Services may waive the one (1) year waiting period.

Section 7. Chapter 5.14, Change in Zone Designation, is hereby amended to read as follows:

Section 1. GENERAL

A change in zone designation may be made to correct a mistake in the original zoning, or for other reasons which satisfy the criteria set forth in this section. The overriding consideration in granting a change in zone designation is whether all uses permitted by the new designation are appropriate and compatible with uses in the surrounding zones and with the comprehensive plan, not only the use which would be permitted in the specific proposal under review. A change in zone designation can be approved on a conditional use basis effective only for the specific use proposed by the applicant; should the property cease to be used for such specific use, the zone designation, and the plan designation if it had been changed in conjunction with the rezone, would revert automatically to the designations it possessed immediately prior to the granting of the qualified rezone.

Section 2. INITIATION

A request to change a zone designation may be initiated by:

1. The City Council or Planning Commission on their own motion.
2. A request by the Department of Community Services.
3. A request of a property owner or the owner's authorized representative.

Section 3. RECOMMENDATION FOR GEOGRAPHIC EXPANSION

The Director of Community Services may request an expansion of the geographic limits of the area subject to the new zone designation set forth in an application, if, in the Director's judgement, such an expansion would advance the policies and objectives of the comprehensive plan or result in development which is compatible with development authorized in the surrounding districts. The Director shall submit the request to the Hearings Body prior to publication of the notice of public hearing. After the public hearing, the Hearings Body may expand the geographic limits, or deny the Director's request.

Section 4. HEARING

A public hearing is required before granting a change in zone designation and shall be conducted in accordance with Chapter 5.3.

Section 5. DECISION

1. If a comprehensive plan map amendment is proposed or required in conjunction with a change in zone designation, the amendment shall be processed concurrently as set forth in Chapter 5.19.
2. The Hearings Body may make a recommendation to the City Council to approve or approve with conditions a change in zone designation, only after adopting findings of fact which

substantiate:

- A. The existing zone designation was the product of a mistake in the original zoning; or
- B. ALL of the following criteria:
 - 1. The change in zone will conform with the policies and objectives of the comprehensive plan;
 - 2. The overall change in the zone district will result in development which is compatible with development authorized in the surrounding districts;
 - 3. The change will not prevent the use of other land in the vicinity; and
 - 4. It is appropriate at this time to permit the specific type of development or change in zone designation into the area in which it had not previously existed.
- 3. A determination by the Planning Commission that a change in zone designation is not appropriate is a final decision not requiring further action by the City Council, unless appealed.
- 4. A determination by the Planning Commission that approval or approval with conditions is appropriate shall not in itself constitute a change in the zoning designation or a final decision.
- 5. The City Council shall hold a public hearing, review the record and the Planning Commission's recommendation, shall enact, enact with conditions, or not enact the proposed change in zone designation, and shall make findings which support its decision. The City Council will allow additional evidence to be presented at the time of public hearing, but shall, if requested by the applicant or appellant, grant additional time to respond to new evidence first presented at this hearing.

Section 6. CONDITIONS

Conditions on the new zone designation may be imposed to protect the health, safety, and general welfare of the neighborhood and general public. These conditions include, but are not limited to, those listed in Chapter 5.13.

Section 7. "Q" Qualified Classification

The City Council may place the property in a "Q" Qualified rezoning classification where limitations are imposed pursuant to Chapter 5.14(1) of this Ordinance. The "Q" Qualified classification shall be indicated by the symbol "Q" following the approved zoning designation (e.g., C-1 Q).

Section 8. Chapter 5.18, Vacation, is hereby amended to read as follows:

CHAPTER 5.18 VACATION

Section 1. GENERAL

The City may find it appropriate and necessary to vacate a street, alley, plat, or other public place when the public interest will not be prejudiced by the proposed vacation. Example of instances

where the public interest would be prejudiced include, but are not limited to, situations where the vacation would adversely affect public access or hinder efficient development. Vacation may be found to be appropriate and necessary for municipal purposes or to promote public welfare.

Section 2. INITIATION

1. A vacation may be initiated by a property owner who has submitted to the Department of Community Services:
 - A. A notarized petition of consent signed by owners of the “affected property” as defined by state statute; this includes the written, notarized consent of each of the owners of all abutting property and of not less than two-thirds in area of the real property affected thereby.

For the purposes of this Section, “real property affected thereby” shall be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted.
 - B. A legal description and map of the ground proposed to be vacated;
 - C. The purpose and justification for the vacation; and
 - D. If applicable, a plat showing the proposed manner of replatting or rededication.
2. A vacation may be initiated by the City Council by a majority vote without a petition or consent of property owners and prior to giving public notice.

Section 3. STAFF REVIEW OF PRIVATE APPLICATION

The Department of Community Services shall verify that the signed petition is valid and meets the requirements of Section 2. The application shall then be presented to the City Council with an initial recommendation from the Department of Community Services.

Section 4. HEARING

If a vacation is initiated by petition and the Council concludes the vacation has merit, or if a vacation is initiated upon motion by the Council, the Council shall set a date for public hearing before the Planning Commission in accordance with the provisions of Chapter 5.3.

The Planning Commission shall make a recommendation to the City Council to approve, conditionally approve, or deny the vacation. The Council shall review the record, the Planning Commission’s recommendation and will allow additional evidence to be presented at the time of the public hearing. The City Council will affirm, amend, or reverse the Commission recommendation, or remand the matter for further consideration. Actions of the Commission and the Council shall be taken only after adopting findings or statements of fact which substantiate ALL of the following

conclusions:

1. If the vacation is initiated by private property owner:
 - A. Consent of the affected property owners has been obtained;
 - B. Notice has been duly given;
 - C. The proposal does not conflict with the comprehensive plan or other ordinances; and
 - D. The public interest will not be prejudiced by the vacation.
2. If the vacation initiated by Council motion:
 - A. Owners of the majority of the area of the property affected by the vacation have not objected to the vacation in writing prior to the hearing;
 - B. The vacation of a street will not substantially affect the marketability of abutting property in terms of access, utility services, or protective services, unless the owners of the affected property consent to the vacation or provisions have been made to pay damages;
 - C. Notice has been duly given;
 - D. The proposal does not conflict with the comprehensive plan or other ordinances; and
 - E. The public interest will not be prejudiced by the vacation.

Section 6. CONDITIONS

The Planning Commission and Council may, at the applicant's expense, impose conditions deemed to be necessary for the vacation, including but not limited to:

1. Retention of easements for physical access, public utilities, or other public service facilities and limitations on the use of the area adjacent to those facilities.
2. Construction or removal of public utilities or other public service facilities and limitations on the use of the area adjacent to those facilities.
3. Replatting or rededication of land to be vacated.
4. Improvement of streets or alleys prior to rededication.
5. Protection of solar or wind access.

Section 7. EFFECTIVE DATE

Upon approval of a proposed vacation and/or fulfillment of conditions, the City Council shall enact an ordinance which declares the land to be vacated and specifies the conditions under which the vacation is made. The proposed vacation will become effective 30 days after enactment of the ordinance.

Section 9. Chapter 5.19 is hereby amended to read as follows:

CHAPTER 5.19 AMENDMENTS TO THE PLAN AND / OR ORDINANCE

Section 1. GENERAL

It will be necessary to amend the comprehensive plan or the text of this ordinance in order to remain in conformity with state law, Oregon Administrative Rules and other policies, and whenever public necessity, convenience, and welfare require it.

Such amendments are legislative acts, solely within the authority of the City Council. However, as a land use action, any amendment shall be subject to a thorough review of the issues and factual information, evaluation of alternative measures, and public review and input.

Section 2. INITIATION

An amendment may be initiated through:

1. Motion, and upon majority vote of the City Council or Planning Commission.
2. The Department of Community Services.
3. A request of a property owner or the property owner's authorized representative.

Section 3. HEARING

A public hearing shall be scheduled before the Planning Commission. The hearing shall be conducted in accordance with Chapter 5.3.

Section 4. DECISION

The Planning Commission shall make a recommendation to the City Council to enact or not enact amendments. The City Council shall hold a public hearing following the Planning Commission hearing. The Council shall review the record, including staff comments, and Planning Commission recommendation and shall enact, enact with conditions, or not enact the proposed amendment. The City Council will allow additional evidence to be presented at the time of the public hearing.

The Council shall take action only after making findings of fact which establish:

1. For a proposed ordinance text amendment:
 - A. An acceptable rationale which supports the need for the amendment; and
 - B. The amendment complies with the applicable provisions of the comprehensive plan.
2. For a proposed plan amendment:
 - A. Identification of new planning problems and issues;

- B. Collection and analysis of inventories and other pertinent factual information;
- C. Evaluation of alternative courses of action and ultimate policy choices; and
- D. Selection of appropriate policy directives based upon consideration of social, economic, energy and environmental needs.

Section 6. EFFECTIVE DATE

Upon approval of the proposed amendment, the City Council shall direct the preparation of an ordinance declaring the change. The proposed amendment will become effective 30 days after enactment of the ordinance, unless an appeal is filed.

Section 10. Chapter 5.16, LAND DIVISION: PARTITION II AND SUBDIVISION, Section 2(2), is hereby amended as follows:

A preliminary plat and partition map application, with filing fee, must be submitted at least forty-five (45) days prior to Planning Commission review (Section 5):

- A. The City will disperse copies of the submitted plans to special districts and other agencies within five (5) days of the completed application.
- B. Comments from the special districts and agencies must be made within twenty (20) days.
- C. City staff will review and discuss any comments with the applicant prior to the Planning Commission hearing.
- D. Final decision for approval of a plat or map will be made by the City Council based upon the recommendation of the Planning Commission, the record and evidence presented at the time of the public hearing.

Section 11. Chapter 5.16, LAND DIVISION: PARTITION II AND SUBDIVISION, Section 5(5) and 5(7) are hereby amended as follows:

- 5. Notice - Preliminary Plat or Map: Public hearings will be held in accordance with Chapter 5.3.
- 7. City Council Decision - Preliminary Plat or Map: The recommendation of the Planning Commission shall be forwarded to the City Council as soon as possible but within sixty (60) days of the hearing. Final decision by the City Council is based upon recommendations by the Planning Commission, the record and evidence presented at the time of the public hearing. The Council may affirm, modify, or reverse the recommendation of the Commission, but shall adopt findings to support the required conclusions per Section 5, subsection 6, this chapter.

Section 12. Severability. The sections and subsections of this Ordinance are severable. The invalidity of one section or subsection shall not affect the validity of the remaining sections or subsections.

The foregoing ordinance was enacted by the City Council of the City of Coos Bay the 2nd day of

April, 2002.

Yes: Mayor Benetti and Councilors Anna Marie Larson, Jeff McKeown, Cindi Miller,
Don Spangler, Kevin Stufflebean and Judy Weeks

No: None

Absent: None

Joe Benetti
Mayor of the City of Coos Bay
Coos County, Oregon

ATTEST:

Joyce Jansen, Deputy Recorder