

# *minutes*

**CITY OF BROOKINGS  
COMMON COUNCIL MEETING  
City Hall Council Chambers  
898 Elk Drive, Brookings, Oregon  
July 11, 1994  
7:00 p.m.**

**I. CALL TO ORDER**

Mayor Davis called the meeting to order at 7:05p. m.

**II. PLEDGE OF ALLEGIANCE**

**III. ROLL CALL**

**Council Present: Mayor Tom Davis, Councilors Nancy Brendlinger, Bob Hagbom, Dave Scott, Councilor Larry Curry**

**Staff Present: Interim City Manager Leo Lightle, Administrative Assistant Donna Van Nest, City Attorney Martin Stone, Planning Director John Bischoff, Chief of Police Kent Owens**

**Media Present: Tracy Reed, Curry Coastal Pilot; Martin Kelly, KCRE; Joel Buffington, KURY**

**IV. CEREMONIES/APPOINTMENTS/ANNOUNCEMENTS**

**V. PUBLIC HEARINGS**

- 1. Amendment to Land Development Code - Section 144 (Amendments) and Section 176 (Land Divisions)**

Mayor Davis opened the public hearing at 7:07 p.m.

## **BACKGROUND INFORMATION**

### **Section 144.050**

**Section 144.050.D of the Land Development Code requires that "In order for the city council to adopt an ordinance for an amendment to this code, comprehensive plan document and/or map, findings must be made, and adopted as a part of said ordinance, that are adequate to support the amendment proposal." This sentence does not distinguish between amendments being made as either a quasi-judicial or legislative nature.**

**Items such as wording changes, addition or deletion of requirements, changes in allowed or conditional uses within various zones and changes to clarify or strengthen the code are legislative in nature. Changes that affect individual parcels or specific parcels in a discrete area are quasi-judicial in nature. It is easy to understand why it is required by law that findings are made in matters that are quasi-judicial in nature. These matters affect direct changes in how a person may or may not use his or her property. Ordinance changes which are quasi-judicial in nature include changes of zone, comprehensive plan land use designations, and street vacations which require an actual change to a map or in the text of a document. In most cases the law does not require findings when adopting ordinance changes that are legislative in nature. These changes are general and are city wide in nature and do not directly affect specific parcels of land.**

**Since the city's Land Development Code does not make a distinction between legislative and quasi-judicial matters, considerable amount of staff and City Attorney time has been expended preparing findings for all changes of a legislative nature to the Land Development Code. Discussions with the City Attorney have led to the conclusion that there is no legal requirement for the Land Development Code to require findings for legislative changes to the code. Based on these discussions staff is recommending that Section 144.050.D be amended to read as follows:**

**In order for the city council to adopt an ordinance for an amendment to this code, comprehensive plan document and/or map that is quasi-judicial in nature, findings must be made, and adopted as a part of said ordinance that are adequate to support the amendment proposal.**

Also, staff recommends adding a sentence to Section 144.060 to say that findings are not required in legislative matters.

## **FINDINGS**

1. Section 144.050.D requires that findings be made for all amendments of the Land Development Code and makes no distinction between legislative matters and quasi-judicial matters.
2. Current court and agency decisions suggest that findings are not necessary when making decisions that are legislative in nature.
3. The requirement to make findings for legislative matters is costly and consumes a disproportionate amount of the city staff's and City Attorney's time due to the fact that there are generally no specific criteria on which to base such findings.
4. In a quasi-judicial matter the Land Development Code provides criteria on which the merits of the proposed action can be based. This is not the case in legislative matters when the Code is being changed to provide additional uses, requirements, language clarification, etc.
5. The requirement for findings in legislative matters has in at least one case caused a delay in the implementation of the change because of an appeal to the Land Use Board of Appeals. The LUBA determination did not challenge the city's authority to make the change but remanded the case back due to weak findings. The decision stated that while there was no specific state requirement for findings, the city's Land Development Code required findings and that the submitted findings were weak. The implication is that LUBA would have let the code change stand if the city's code had not required findings.

## **Conclusion**

**There is no apparent need to require findings when making amendments to the Land Development Code that are legislative in nature. Amendment of Section 144.050.D to eliminate the need for findings for legislative matters will reduce the cost, lessen the burden on city staff and minimize the delay in implementing legislative changes to the Code.**

## **RECOMMENDATION**

**Staff recommends that the Planning Commission make a recommendation of approval of the above ordinance change to the City Council.**

### **Section 176.070**

**Section 176.070.D of the Land Development Code sets out the submittal requirements for requests for final subdivision and major partition maps but does not provide a deadline for submittal that will ensure that the city staff has sufficient time to review the submitted material and prepare a staff report. Section 176.070 does provide the city with a 15 day review period in which the city can review the submitted material for completeness and compliance with the approved preliminary plat. The staff can request any needed or omitted material and such a request will stop the clock. The problem is that under the existing code an application can be made exactly 15 days prior to the desired hearing date and if the review should take the entire 15 days and there are not further requirements, staff would have to take the application to hearing without a prepared staff report.**

**Staff is asking that a requirement be placed in Section 176.070 that all applications must be made three weeks prior to the desired hearing date. This would still allow the 15 day review period but would allow an additional six days for staff to add the item to the hearing agenda.**

**To accomplish this staff is recommending that Section 176.070.D be amended to read:**

- D. Submittal requirements - final map or plat. At least three weeks prior to the date of the desired hearing date, the applicant shall submit....**

## **FINDINGS**

- 1. The city's Land Development Code does not set a specific period prior to the desired hearing date that applications for final map approval must be made.**
- 2. The city has experienced difficulties in the past with applicants requesting final map approval at a specific hearing date but not providing sufficient time for review and preparation of staff report.**

## **CONCLUSION**

**The Land Development Code should be amended to provide a specific period of time that allows staff to review the submitted materials and prepare a written staff report for the Planning Commission. This would avoid confusion on the part of the applicant and make the process easier to understand.**

## **RECOMMENDATION**

**Staff recommends that the Planning Commission make a recommendation of approval of the above ordinance change to the City Council.**

**Proponents speaking:       None**

**Opponents speaking:       Richard W. Keusink, 16883 Marine Drive,  
Brookings, read a letter of opposition into  
the record.**

**Interested Parties:       None**

**Mayor Davis closed the public hearing at 7:12 p.m.**

## **VI. SCHEDULED PUBLIC APPEARANCES**

**VII. ORAL REQUESTS AND COMMUNICATIONS FROM THE AUDIENCE**

**1. Riviera Heights Subdivision Complaint**

**Katherine Martin, 241 Marine Drive, expressed concern over the brush cutting being done on the old Riviera Heights Subdivision property between Marine Drive the Marina Heights Road. John Rogers of 131 Marine Drive and Sharon Marriott of Marine Drive, expressed the same concerns.**

**In a memo from staff, the council was advised that the contractor is in compliance with the excavation permit criteria. **No formal action taken.****

**2. Nuisance Ordinance Complaint**

**Clarence Scott, 709 Pioneer Road, expressed his opposition to the portions of the nuisance ordinance dealing with grass and brush cutting, stating that it is his constitutional right to do with his property whatever he wishes to. **No formal action taken.****

**VIII. STAFF REPORTS**

**A. Community Development Director**

**B. Engineer**

**C. Police Department**

**D. City Manager**

**1. Azalea Park 4-way stop**

**Councilor Curry moved to authorize staff to make the intersection of Old County Road and Azalea Park Road a 4-way stop area, which motion was seconded by Councilor Brendlinger. The clerk called the roll with the following results:**

**Ayes: Councilors Brendlinger, Curry, Hagbom, Scott,  
Mayor Davis**

**Nays: None**

**Motion carried; staff authorized to make  
the intersection of Old County Road and  
Azalea Park Road a 4-way stop area.**

**E. City Attorney**

**IX. CONSENT CALENDAR**

**A. Approval of Council Meeting Minutes**

**1. June 27, 1994 Regular Council Meeting**

**B. Acceptance of Commission/Board Minutes**

**1. May 3, 1994 - May 24, 1994 - June 7, 1994 Planning  
Commission Meetings**

**C. Miscellaneous**

**1. Request to call for bids - tennis court resurfacing**

**2. Acceptance of Bargain and Sale Deed from U.S. National Bank  
for widened portion of Railroad Avenue**

**(end Consent Calendar)**

**Council requested a correction to the minutes of the June 27, 1994 council  
meeting.**

**Councilor Scott moved to approve the Consent Calendar as corrected, which  
motion was seconded by Councilor Brendlinger. The clerk called the roll with  
the following results:**

**Ayes:** Councilors Brendlinger, Curry, Hagbom, Scott, Mayor Davis

**Nays:** None

**Motion carried; Consent Calendar consisting of:**

**A. Approval of Council Meeting Minutes**

- 1. June 27, 1994 Regular Council Meeting**

**B. Acceptance of Commission/Board Minutes**

- 1. May 3, 1994 - May 24, 1994 - June 7, 1994  
Planning Commission Meetings**

**C. Miscellaneous**

- 1. Request to call for bids - tennis court  
resurfacing**
- 2. Acceptance of Bargain and Sale Deed from  
U.S. National Bank for widened portion of  
Railroad Avenue**

**approved.**



**X. ORDINANCES/RESOLUTIONS/FINAL ORDERS**

**A. Ordinances**

- 1. Ordinance No. 94-O-503 - An Ordinance declaring the city's election to receive state revenues**

**Administrative Assistant Donna Van Nest read Ordinance No. 94-O-503 into the record in its entirety.**

**Councilor Hagbom moved to adopt Ordinance No. 94-O-503 by first reading, which motion was seconded by Councilor Curry. The clerk called the roll with the following results:**

**Ayes: Councilors Brendlinger, Curry, Hagbom, Scott, Mayor Davis**

**Nays: None**

**Motion carried; Ordinance No. 94-O-503 adopted by first reading.**

**Administrative Assistant Donna Van Nest read Ordinance No. 94-O-503 into the record by title only for a second reading.**

**Councilor Hagbom moved to adopt Ordinance No. 94-O-503 by second reading, which motion was seconded by Councilor Brendlinger. The clerk called the roll with the following results:**

**Ayes: Councilors Brendlinger, Curry, Hagbom, Scott, Mayor Davis**

**Nays: None**

**Motion carried; Ordinance No. 94-O-503 - An Ordinance declaring the city's election to receive state revenues - adopted. [Effective July 11, 1994]**

2. **Ordinance No. 94-O-446.V - An ordinance amending Ordinance No. 89-O-446 (Land Development Code), Section 8 (Definitions) and Section 100 (Hazardous Building Site Protection) of the City of Brookings.**

**Administrative Assistant Donna Van Nest read Ordinance No. 94-O-446.V into the record in its entirety.**

**Councilor Curry moved to amend the proposed ordinance by the addition of the words, "and/or city manager" to 100.050.B(4), which motion was seconded by Councilor Brendlinger. The clerk called the roll with the following results:**

**Ayes: Councilors Curry, Brendlinger, Scott, Hagbom, Mayor Davis**

**Nays: None**

**Motion carried; proposed Ordinance No. 94-O-446.V amended by the addition of the words, "and/or city manager" to 100.050.B(4).**

**Councilor Brendlinger moved to amend the proposed ordinance by the addition of a comma to Section 100.060.A, which motion was seconded by Councilor Curry. The clerk called the roll with the following results:**

**Ayes: Councilors Curry, Brendlinger, Scott, Hagbom, Mayor Davis**

**Nays: None**

**Motion carried; proposed Ordinance No. 94-O-446.V amended by the addition of a comma to Section 100.060.B.**

**Councilor Scott moved to adopt Ordinance No. 94-O-503 by first reading, which motion was seconded by Councilor Brendlinger. The clerk called the roll with the following results:**

**Ayes: Councilors Brendlinger, Curry, Hagbom, Scott, Mayor Davis**

**Nays: None**

**Motion carried; Ordinance No. 94-O-446.V adopted by first reading.**

**Administrative Assistant Donna Van Nest read Ordinance No. 94-O-446.V into the record by title only for a second reading.**

**Councilor Hagbom moved to adopt Ordinance No. 94-O-446.V by second reading, which motion was seconded by Councilor Brendlinger. The clerk called the roll with the following results:**

**Ayes: Councilors Brendlinger, Curry, Hagbom, Scott, Mayor Davis**

**Nays: None**

**Motion carried; Ordinance No. 94-O-446.V - An ordinance amending Ordinance No. 89-O-446 (Land Development Code), Section 8 (Definitions) and Section 100 (Hazardous Building Site Protection) of the City of Brookings. - adopted. [Effective August 9, 1994]**

3. **Ordinance No. 94-O-446.W - An ordinance amending Ordinance No. 89-O-446 (Land Development Code), Sections 144 (Amendments) and 176 (Land Divisions) of the City of Brookings.**

**Administrative Assistant Donna Van Nest read Ordinance No. 94-O-446.W into the record in its entirety.**

**Councilor Hagbom moved to adopt Ordinance No. 94-O-446.W by first reading, which motion was seconded by Councilor Curry. The clerk called the roll with the following results:**

**Ayes: Councilors Brendlinger, Curry, Hagbom, Scott, Mayor Davis**

**Nays: None**

**Motion carried; Ordinance No. 94-O-446.W adopted by first reading.**

**Administrative Assistant Donna Van Nest read Ordinance No. 94-O-446.W into the record by title only for a second reading.**

**Councilor Scott moved to adopt Ordinance No. 94-O-446.W by second reading, which motion was seconded by Councilor Brendlinger. The clerk called the roll with the following results:**

**Ayes: Councilors Brendlinger, Curry, Hagbom, Scott, Mayor Davis**

**Nays: None**

**Motion carried; Ordinance No. 94-O-446.W - An ordinance amending Ordinance No. 89-O-446 (Land Development Code), Sections 144 (Amendments) and 176 (Land Divisions) of the City of Brookings. - adopted. [Effective August 9, 1994]**

**B. Resolutions**

**XI. COMMITTEE REPORTS**

**A. Planning Commission**

**B. Parks and Recreation Commission**

**C. Golf Board**

**D. Chamber of Commerce**

**XII. REMARKS FROM MAYOR AND COUNCILORS**

**A. Mayor**

**B. Council**

**1. City manager recruitment**

**Councilor Hagbom moved to contract with the League of Oregon Cities for the recruitment of a city manager, which motion was seconded by Councilor Curry. The clerk called the roll with the following results:**

**Ayes: Councilors Brendlinger, Curry, Hagbom, Scott, Mayor Davis**

**Nays: None**

**Motion carried; contract with the League of Oregon Cities for the recruitment of a city manager approved.**

It was council consensus to hold a special council meeting on July 14, 1994 at 7:00 p.m. to develop a profile of a city manager to present to the League of Oregon Cities for use during the city manager hiring process. **No formal action taken.**

**2. Interim city manager salary**

Councilor Hagbom moved to approve a salary increase of \$500 per month to Interim City Manager Leo Lightle, effective July 8, 1994 through 30 days following a permanent city manager being placed on the payroll, which motion was seconded by Councilor Curry. The clerk called the roll with the following results:

**Ayes:** Councilors Brendlinger, Curry, Hagbom, Scott, Mayor Davis

**Nays:** None

**Motion carried; salary increase of \$500 per month to Interim City Manager Leo Lightle, effective July 8, 1994 through 30 days following a permanent city manager being placed on the payroll, approved.**

**3. Municipal court judge position**

It was council consensus to add an agenda item to the special council meeting on July 14, 1994 at 7:00 p.m. to develop a profile of a municipal court judge. **No formal action taken.**

**4. Tax base ad hoc committee**

Council directed staff to contact Chair Larry Goodman to request that the committee schedule a meeting in the near future. **No formal action taken.**

**5. Amendment to Harbor Sanitary District/City of Brookings/Port of Brookings-Harbor Joint Resolution Inter-Agency Agreement**

Councilor Scott moved to authorize the language change in Section 2, Subsection c. of the Harbor Sanitary District/City of Brookings/Port of Brookings-Harbor Joint Resolution Inter-Agency Agreement, which motion was seconded by Councilor Curry. The clerk called the roll with the following results:

**Ayes:** Councilors Brendlinger, Curry, Hagbom, Scott, Mayor Davis

**Nays:** None

**Motion carried; Section 2, Subsection c. of the Harbor Sanitary District/City of Brookings/Port of Brookings-Harbor Joint Resolution Inter-Agency Agreement amended to read:**

**c. Recommend various grant and loan applications and grant management plans to the District, City and Port, relating to planning and technical assistance, pre-engineering and construction of wastewater collection the treatment facilities.**

**RECESS** Mayor Davis recessed the regular council meeting at 9:20 p.m. to convene an executive session.

**EXECUTIVE SESSION - ORS 192.660 (1)(3) - Labor Negotiator Consultations**

Mayor Davis reconvened the regular council meeting at 10:27 p.m.

**XIII. ADJOURNMENT**

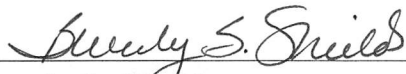
Councilor Scott moved to adjourn, which motion was seconded by Mayor Davis; motion carried unanimously.

Mayor Davis adjourned the meeting at 10:29 p.m.



\_\_\_\_\_  
Tom Davis  
Mayor

**ATTEST:**

  
\_\_\_\_\_  
Beverly S. Shields  
City Recorder