

ORDINANCE NO. 73

AN ORDINANCE CONTAINING DEFINITIONS: DECLARING JURISDICTION OVER SIDEWALKS: PROVIDING FOR THE ESTABLISHMENT OF THE GRADES THEREOF: PROVIDING FOR THE ISSUANCE OF PERMITS TO CONSTRUCT SIDEWALKS: PROHIBITING THE BUILDING OF NONCONFORMING SIDEWALKS: SETTING FORTH PROCEDURE FOR THE ENFORCEMENT OF THIS ORDINANCE: PROVIDING PENALTIES AND DECLARING AN EMERGENCY.

The City of Brookings does ordain as follows:

SECTION 1. DEFINITIONS.

(a) For the purposes of this ordinance a "sidewalk" shall mean a raised walk or footway for pedestrians constructed out of some other material other than the ground traversed by the walk or footway.

(b) For the purposes of this ordinance a "non-conforming sidewalk" shall mean (1) any sidewalk that is built or constructed upon any property within the corporate limits of the City of Brookings upon any grade which has not been previously established by the City of Brookings, (2) any sidewalk for which a written permit has not been issued by the city to the owner of the property upon which any sidewalk has been built or constructed prior to the building or construction of the said sidewalk, (3) any sidewalk which is not built and constructed out of any material not approved by the City of Brookings, or surfaced in any manner not approved by the City of Brookings, or any sidewalk which has been built and constructed or maintained in such shape or condition of repair as to render the sidewalk dangerous, unsafe or unfit for use of pedestrians, (4) any sidewalk which, by its continuance, damages or adversely affects the use of any connecting sidewalk, on the property of another, or which shall obligate the owner or owners of any connecting sidewalk to the payment of any cost or expense by virtue of said damage or adverse effect.

SECTION 2. DECLARATION OF THE CITY'S JURISDICTION OVER SIDEWALKS.

The City of Brookings, for the protection of the Public Welfare, for the safety of the Public, and for the best interest of the City, hereby declares that the City of Brookings, Oregon, possesses, claims, maintains, exerts and reserves unto the city complete and full jurisdiction over and unto all sidewalks now, or hereafter, constructed or built

within the corporate limits of the City of Brookings.

SECTION 3. GRADE OF SIDEWALKS. The grade of each and all of the sidewalks constructed and maintained upon any property located within the corporate limits of the City of Brookings, shall be the grade thereof as the same is established under such rules and regulations as the Council may on its motion provide. The Council shall have the right to establish the grade of any sidewalk along any street or alley and upon any block, or lot contained in said block, or upon any other property within the corporate limits of the City. Any sidewalk not constructed or maintained upon the grade here set forth shall be a non-conforming sidewalk.

SECTION 4. PROHIBITION OF NON-CONFORMING SIDEWALK. From and after the date of passage and the effectiveness of this ordinance, no person, firm or corporation shall build, construct or maintain a non-conforming sidewalk upon any property, or along, adjacent to, or parallel to, any street or alley, within the corporate limits of the City of Brookings.

SECTION 5. PROHIBITION FOR CONSTRUCTING SIDEWALK WITHOUT PERMIT.

No owner or owners of property located within the corporate limits of the City of Brookings, or person, firm or corporation, shall build or construct a sidewalk or excavate any ground for the purpose of building or construction of a sidewalk thereon, without first having applied for and received from the City Works Superintendent a permit for such building, constructing and excavating.

SECTION 6. PROCEDURE TO SECURE PERMIT. Any owner of property located within the corporate limits of the City of Brookings, or any person, firm or corporation desiring to build, construct or excavate for, a sidewalk within said corporate limits shall substantially comply with the following procedure. An application in writing shall first be made to the City Works Superintendent setting forth the description of the land upon which a sidewalk is to be constructed or built, and upon which the excavation, if any, therefore is to be made. This application shall also set forth the material to be used in the said constructing and building together with a brief statement as to how the sidewalk is to be surfaced, the date on which the work is to be completed, the length and width of said sidewalk, and the grade upon which the sidewalk is to be established. The City Works Superintendent shall consider the application and if it appears to him that the provisions of this ordinance have been substantially complied with by the applicant he shall issue a permit to the applicant to build, construct, and excavate to the extent that such excavation is necessary to accomplish the purpose applied for, the said sidewalk.

SECTION 7. DUTY OF CITY WORKS SUPERINTENDENT. It shall be the duty of the City Works Superintendent to periodically inspect the condition and shape of repair of all sidewalks in the City. He shall periodically make a report of such inspection to the Council. He shall diligently, in his said report, set forth and describe all non-conforming sidewalks that he has discovered, prior to the date of his report, and submit the same to the Council.

SECTION 8. PROCEDURE TO VACATE NON-CONFORMING SIDEWALKS. The Council may at its own motion or upon the submission to it of a report by the City Works Superintendent, find that a non-conforming sidewalk exists and is being maintained within the corporate limits of the City of Brookings. Upon the adoption of such finding or the acceptance of the report of the City Works Superintendent covering the existence of a non-conforming sidewalk, the Council may on its motion order a notice to be prepared and personally served upon the owner or owners of the property upon which said non-conforming sidewalk exists or is being maintained. This notice shall be signed by the City Recorder and contain a brief statement of the complaint. This notice shall summon all adverse parties to appear, at a date, time and place which shall not be less than ten (10) days after the said date of said service, and show cause why the sidewalk constructed, built, or being maintained, upon the property should not be declared a non-conforming sidewalk under this ordinance. In the event the party or parties upon whom this notice has been served shall appear before the Council before the date set forth in said notice for them to appear and make a satisfactory showing to the Council that the non-conforming sidewalk has been brought into the status of an approved sidewalk and that all of the provisions of this ordinance have been obeyed and complied with, the Council may, at its motion, vacate the proceedings. Otherwise the Council shall hold its hearing upon the complaint on the date and at the time and place set forth in the aforesaid notice. From the evidence introduced before it at the said hearing of said notice the Council shall adjudicate the matter before it. If the Council shall find that the sidewalk complained of in said notice is a non-conforming sidewalk as the same is defined in this ordinance, the Council shall have issued its Order commanding each and every person upon whom the said notice has been served, as hereinabove provided, to repair the sidewalk, reasonably described and complained of, under such conditions as the Council shall set forth in said order, and to remove the said sidewalk from the status of a non-conforming sidewalk, or, at its motion, command each and every person, upon whom the said notice was served, to remove the said non-conforming sidewalk in its entirety. A copy of this order shall be served personally upon all of the parties named in the original notice to show cause, or, if it is impossible to such make service within the corporate limits of

the City of Brookings, service of the said order may be made by and through the United States mails by addressing the order to the last known address of the party, or parties, herein above required to be served with a copy of said order. The time in which the party, or parties, shall be ordered to comply with the said order shall not be less than ten (10) days or more than fifteen (15) days from the date of said order. This said order shall be signed by the Mayor and City Recorder and shall be dated. For the protection of the Public Welfare and Safety and pedestrians, and for the purpose of giving public notice that the said sidewalk complained of in the aforesaid notice, and commanded in said order to be repaired or removed, is a non-conforming sidewalk, and as a warning to the Public that the said non-conforming sidewalk is dangerous to, and unsafe for, the use as a walk or footway; and in the event that the person or persons to whom the said order is directed shall either fail or refuse to fully comply with and obey the said order within the period of time therein set forth for the same to be obeyed; the City of Brookings shall have the right to build and erect a fence, of such height as the Council shall decide, around the sidewalk described and set forth in said order, and to post not less than two (2) signs thereon which shall substantially warn all pedestrians that this said sidewalk is a non-conforming sidewalk under this ordinance, that it is dangerous and unsafe to be used as a walk or footway, and that the City of Brookings denies that it has either approved of the said sidewalk or has consented that it be built or constructed and, further, that the City of Brookings shall not be obligated to, nor does it agree to, the payment of any sum of money whatsoever for injuries or damages sustained by any person or persons who thereafter are injured or damaged as the result of their use of the said sidewalk, so fenced in, as a walk, footway or for any other purpose. No person, firm or corporation whomsoever, shall, in any manner or degree, move, relocate, break down, destroy or remove this said fence erected by the City of Brookings, or attempt so to do.

SECTION 9. VIOLATIONS. The violation of any section of this ordinance shall constitute a separate offense, and the violations of any section of this ordinance shall be cumulative. Each and every day whereon any of the sections of this ordinance shall be violated by any person shall constitute a separate offense.

SECTION 10. PENALTY. Any person found guilty of a violation of this ordinance shall, for each and every violation hereof, be punished by a fine of not more than Fifteen (\$15.00) Dollars, or by imprisonment in the City Jail for not more than Seven (7) days, or by both such fine and imprisonment.

SECTION 11. SAVING CLAUSE. If any section, sentence, clause or word of this ordinance shall be held to be invalid or unconstitutional, the invalidity or unconstitutionality of such section, sentence, clause or word shall not affect the validity or the constitutionality of any other portion of this ordinance, it being the intent of the Council of the City of Brookings, Oregon, to provide for the enforcement of the remainder of this ordinance, notwithstanding such part so declared invalid or unconstitutional, or should or may so be declared.

SECTION 12. EMERGENCY CLAUSE. It is hereby adjudged and declared that existing conditions are such that this ordinance is necessary for the immediate preservation of the public peace, health and safety of the City of Brookings, and an emergency is hereby declared to exist and this ordinance shall take effect and be in full force and effect from and after its passage.

Read by title and in full this 24th day of May, 1955.

Read a second time by title this 24th day of May, 1955.

Read a third time by title and passed by the Council this 24th day of May, 1955.

AUTHENTICATED THIS 24TH DAY OF MAY, 1955.

  
*Byron L. Brimm*  
Byron L. Brimm, Mayor.

Passed by the Council this 24th day of May, 1955.

*Gladys Kanick*  
Gladys Kanick, City Recorder.