

CITY OF DALTON GARDENS

ORDINANCE NO. 73

AN ORDINANCE RELATING TO SHORT PLATS AND SHORT SUBDIVISIONS IN THE INCORPORATED AREA OF DALTON GARDENS, IDAHO, TO BE KNOWN AS "CITY OF DALTON GARDENS SHORT SUBDIVISION ORDINANCE": DEFINING PROCEDURES FOR THE APPROVAL OF SHORT SUBDIVISIONS; PROVIDING PROCEDURES FOR ADMINISTRATION AND APPEAL; PRESCRIBING PENALTIES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, protection of the public health, safety and general welfare requires that the division of land into two, three, or four lots, tracts, or parcels for the purpose of sale, lease, or transfer proceed in accordance with standards to prevent the overcrowding of land; provide proper ingress and egress; to facilitate adequate provisions for water, sewage, fire protection, and ways; and to assure conveyance of land by accurate legal descriptions; and

WHEREAS, this Council deems the controls, standards, procedures, and penalties set forth in this Ordinance to be essential to the protection of the public health, safety, and general welfare of the citizens of Dalton Gardens; and the adoption thereof to be in the public interest;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DALTON GARDENS, IDAHO:

SECTION I:

1. Title. This Ordinance shall be known and cited as the "Dalton Gardens Short Subdivision Ordinance".

2. Authority. This Ordinance is adopted pursuant to Title 50, Chapter 13 of the Idaho Code; Title 67, Chapter

65 of the Idaho Code; and Article 12, Section 2 of the Idaho Constitution, as amended or subsequently codified.

3. Applicability. Every division of land for the purpose of sale, lease, or transfer into two (2), three (3), or four (4) lots, tracts, or parcels, within the incorporated area of Dalton Gardens, where no new dedications are required, shall proceed in compliance with this Ordinance.

4. Administration. The Dalton Gardens Planning and Zoning Commission, hereinafter referred to as the Commission, is vested with the authority to summarily approve or disapprove proposed short subdivisions. The Commission shall prepare and require the use of such forms as necessary to administer this Ordinance.

5. Exemptions. The provisions of this Ordinance shall not apply to the following:

(a) Any division of land for the purpose of adjusting the boundary line, or the transfer of land between two (2) adjacent property owners, which does not result in the creation of any additional building site.

(b) Any division of land made by testamentary provision, the laws of descent, or upon court order.

(c) Any acquisition or division of land by a public agency for public right-of-way purposes.

(d) Any division of land that is proceeding in compliance with the Subdivision Ordinance of the City of Dalton Gardens as it now exists or is subsequently amended.

SECTION II: Definitions. Whenever the following words or phrases appear in this Ordinance, they shall be given the

meaning attributed to them by this Section. When not inconsistent with the context, words used in the present tense shall include the future; the singular shall include the plural, and the plural the singular; the word "shall" is always mandatory; and the words "may" or "should" indicate a use of discretion in making a decision.

1. Council shall mean the legislative authority of the City of Dalton Gardens.

2. Dedication is the deliberate appropriation of land by an owner for any general and public uses, reserving to himself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which such property has been devoted. The intention to dedicate shall be evidenced by the owner by the presentment for filing of a final plat or short plat showing the dedication thereon; and, the acceptance by the public shall be evidenced by the approval of such plat for filing by the City Council.

3. Comprehensive Plan is the current Comprehensive Plan of Dalton Gardens adopted by the Council pursuant to State Law.

4. Division of Land for purposes of this Ordinance is any transaction or action, not otherwise exempt or provided for under the provisions of this Ordinance which alters or affects the shape, size or legal description of any part of an owner's "land" as defined in 7 below. Rental or lease of a building, facility, or structure which does not alter or affect the legal description of an owner's "land" shall not constitute a division of land.

5. Easement is a grant by a property owner to specific

persons or to the public to use land for a specific purpose or purposes.

6. Final Plat is the final drawing of the subdivision and dedication prepared for filing for record with the County Recorder, and containing all elements and requirements set forth in the Idaho Code and in this Ordinance adopted pursuant thereto.

7. Land is a legally created lot, tract, parcel, site or division which is shown on an officially recorded plat or short plat, or is specifically described as a separate unit of property on a deed executed prior to the effective date of this Ordinance, or constitutes a prior division of land as defined in 11 below. If a deed requires a determination whether separate units of property are in fact described therein, application for prior division exemption shall be made in the same manner prescribed for contracts in 11 below.

8. Lot is a fractional part of subdivided lands having fixed boundaries, being of sufficient area and dimension to meet minimum zoning and subdivision requirements for width and area. The term shall include tracts, parcels, sites or divisions. A lot shall be considered as all contiguous land under single ownership, unless legally platted or short platted. Property bisected by a dedicated public road shall not be deemed contiguous.

9. Plat is a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, roads and alleys or other divisions and dedications.

10. Preliminary Plat is a neat and approximate drawing of a proposed subdivision showing the general layout of roads and alleys, lots, blocks and restrictive covenants to be applicable to the subdivision, and other elements of a plat or subdivision which shall furnish a basis for the approval or disapproval of the general layout of a subdivision.

11. Prior Division of Land is either of the following:

(a) A division initiated by sale, lease, transfer or option contract executed prior to the effective date of this Ordinance which presently remains a binding and enforceable commitment as between the parties thereto, their successors or assigns. If the applicable instrument does not specifically designate separate units of property but does describe separate and defined lots, tracts, parcels, sites or divisions of land which are contiguous they shall constitute prior divisions of land only if each conforms with Dalton Gardens Zoning and Subdivision Ordinances lot size and width requirements in effect at the time of application for exemption and each is provided with adequate access.

(b) A taxation parcel of any size which is surrounded by prior divisions of land as defined by subsection (a) of this Section.

(c) A taxation parcel of any size which was created prior to the effective date of this Ordinance for the purpose of creating divisions of land which were exempt from platting requirements. Taxation parcels which were administratively created by the assessor's office solely for tax purposes shall not be afforded the status of

prior divisions for subdivision purposes. Examples of taxation parcels created solely for tax purposes include senior citizen segregations; special district segregations; deed of trust or mortgage segretaions administratively effected by one other than the land-owner or agent; and segregation for tax exemption purposes.

(d) A taxation parcel created in the assessor's office for description purposes because of section lines if it conforms with the Dalton Gardens Zoning and Subdivision Ordinance lot size and width requirements in effect at the time of application for exemption.

12. Road is an improved and maintained public right-of-way which provides vehicular circulation or principal means of access to abutting properties, and which may also include provisions for public utilities, pedestrian walkways, public open space and recreation areas, cut and fill slopes, and drainage.

13. Short Plat is a document consisting of a map of a Short Subdivision, together with written certificates and data, showing thereon the division of a tract of land into lots.

14. Short Subdivision is every division of land for the purpose of lease or sale into two (2), three (3), or four (4) lots, plots, sites, parcels, or tracts, within the incorporated area of Dalton Gardens where no new dedications are required.

15. Subdivider is a person, including a corporate person, who undertakes to create a subdivision for the purpose of this Ordinance.

SECTION III: Application.

1. Form and Fees. Any person who undertakes a short subdivision as defined by this Ordinance shall submit to the Commission a completed application form, provided by the Commission, accompanied by a non-refundable fee in an amount to be established by resolution of the City Council.

2. Contents of Application -- Plats and Plans Required.

The drawing, map, and accompanying material submitted with an application for short subdivision approval shall include, at a minimum, the following information:

(a) The name, address, and telephone number of the applicant, and the property owner if different than the applicant.

(b) A legal description of the entire area being subdivided and a legal description for each of the proposed lots.

(c) The size of each lot indicated by square footage computation sufficiently accurate to determine that each lot meets the minimum established lot size requirements.

(d) A copy of any existing or proposed restrictions or covenants.

(e) A sketch map drawn on good quality paper, sheet size no larger than 8½" x 11", to a scale sufficient to assure legibility. Such a map shall contain at a minimum, the following:

(1) Boundaries and dimensions of the entire area being subdivided, and the proposed boundaries and dimensions of the proposed lots.

(2) All existing buildings and structural improvements.

(3) The location of any roads, easements, or rights-of-way that exist or are proposed to serve the short subdivision.

(4) A space for approval of the Commission.

SECTION IV: Minimum Lot Size and Width Requirements.

All lots within a short subdivision shall have one hundred ten (110) feet frontage on a public street and contain not less than one (1) acre, less such portions which may have been granted, dedicated or conveyed for use as road right-of-way or other easement.

SECTION V: Procedure.

1. Distribution of Plats and Plans. Upon receipt of a completed application for short subdivision approval the Commission shall forward copies of the proposal to the following agencies for comment:

- (a) Dalton Water Association.
- (b) Panhandle Health District.
- (c) Other appropriate agencies.

Agencies requested to review a proposed short subdivision will have seven (7) days upon receipt of a request for review in which to return their written comments. Failure by an agency to reply within the established review period shall be interpreted to mean that the particular agency has no concern over the proposal.

2. Decision Time Limitation. Within thirty (30) days after receipt of a completed application, or at its next



regular meeting, the Commission shall approve or disapprove the proposed short subdivision and shall immediately notify the applicant, in writing, of such decision. If an application is disapproved, the Commission shall cite the specific reasons for disapproval.

3. Requirements for Approval. The Commission shall not approve a short plat unless:

(a) The proposed lots meet all established lot size and width requirements.

(b) Adequate water supply and sewage disposal are available.

(c) The decision to approve a short subdivision will not be contrary to the public interest.

4. Filing. Upon approval of short subdivision the Commission shall transmit a copy of the approved application and plans to the County Recorder for filing. The fee collected at the time the application was submitted will be used to cover the cost of filing. The Commission shall also forward a copy of the approved short subdivision to the City Clerk for permanent file at the City Clerk's Office.

SECTION VI: Appeals.

1. Time for Appeal. Any decision of the Commission may be appealed to the Council by the applicant or any interested party within thirty (30) days following the issuance of the decision. The notice of appeal shall be on a form provided by the Commission and shall be filed with the Council.

2. Appeals - Council Action. The Council shall, at the next regularly scheduled meeting following the receipt of an appeal, consider all matters pertaining to the contested

decision together with all other evidence deemed appropriate and shall affirm or reverse the decision of the Commission, or shall remand the matter to the Commission for further investigation.

SECTION VII: Violations -- Enforcement -- Penalties.

No person shall sell, lease, or transfer any land subject to the requirements of the Ordinance until a short subdivision has been approved and filed. Violation of any of the provisions of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor punishable by fine not to exceed One Hundred Dollars (\$100) or imprisonment not to exceed thirty (30) days. Each day such violation continues shall be considered a separate offense. The landowner, tenant, subdivider, builder, public official, or any other person who commits, participates in, assists in, or maintains such violation may be found guilty of a separate offense. Nothing herein contained shall prevent the Council or any other public official or private citizen from taking such lawful action as is necessary to restrain or prevent any violation of this Ordinance or of the Idaho Code.

Further, no short subdivision required by this Ordinance shall be recorded by the County Recorder until such short subdivision has received approval by the Commission. No public, board, agency, commission, official, or other authority shall authorize any improvements on any land in violation of this Ordinance.

SECTION VIII: Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid or unconstitutional by a court of competent

jurisdiction, such decision shall effect only that provision or application, and shall not effect the validity of other provisions or applications.

SECTION IX: Repealer. All other ordinances or parts of ordinances in conflict with this short subdivision ordinance or inconsistent with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

SECTION X: Effective Date. This Ordinance shall come into full force and effect upon passage and approval and publication in one issue of the Coeur d'Alene Press, a newspaper of general circulation in the City of Dalton Gardens.

Passed under suspension of the rules upon which a roll call vote was taken and duly enacted an ordinance of the City of Dalton Gardens at a <sup>SPECIAL</sup> ~~regular~~ meeting of the Mayor and City Council held on the 29 day of May, 1979.

James C. Howard  
Mayor

ATTEST:

Lucy A. Lower  
City Clerk

# AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, }  
County of Kootenai, } ss.

*Carol Hedge*

..... being first duly sworn  
upon oath deposes and says:

1. I am now and at all times hereinafter mentioned was a citizen of the United States, resident of the State of Idaho, over the age of twenty-one years and not a party of the above entitled action.

2. I am now and at all times hereinafter mentioned was the printer (principal clerk) of the "Coeur d'Alene Press," a newspaper printed and published daily except Sunday in Coeur d'Alene, Kootenai County, Idaho, and having a general circulation in said county.

3. The

*Notice*

.....  
.....  
.....  
of which the annexed is a printed copy, was published in the regular *Three*  
issue of said newspaper for *1* consecutive *day*,  
commencing on the *7* day of *June*, 19*79*, and  
ending on the *7* day of *June*, 19*79*, and such  
publication was made as often during said period as said *daily*  
newspaper was regularly issued.

4. That said newspaper has been continuously and uninterruptedly published in said Kootenai County, during a period of more than seventy-eight consecutive weeks immediately prior to the first publication of said notice.

*Carol Hedge*

Subscribed and sworn to before me this *7* day of *June*

19*79*

*Roberta D. Gandy*  
Notary Public for the State of Idaho,  
residing at Coeur d'Alene, Idaho.

**CITY OF DALTON GARDENS. ORDINANCE NO. 73**  
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WHEREAS, this Council deems the controls, standards, procedure, and penalties set forth in this Ordinance to be essential to the protection of the public health, safety, and general welfare of the citizens of Dalton Gardens; and the adoption thereof to be in the public interest;

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(b) A taxation parcel of any size which is surrounded by prior divisions of land as defined by subsection (a) of this Section.

(c) A taxation parcel of any size which was created prior to the effective date of this Ordinance for the purpose of creating divisions of land which were exempt from platting requirements. Taxation parcels which were administratively created by the assessor's office solely for tax purposes shall not be afforded the status of prior divisions for subdivision purposes. Examples of taxation parcels created solely for tax purposes include senior citizen segregations; special district segregations; deed of trust or mortgage segregations administratively effected by one other than the landowner or agent; and segregation for tax exemption purposes.

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(4) A space for approval of the

Commission.  
**SECTION IV: Minimum Lot Size and Width Requirements.** All lots within a short subdivision shall have one hundred ten (110) feet frontage on a public street and contain not less than one (1) acre, less such portions which may have been granted, dedicated or conveyed for use as road right-of-way or other easement.

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**SECTION VII: Violations — Enforcement — Penalties.** No person shall sell, lease, or transfer any land subject to the requirements of the Ordinance until a short subdivision has been approved and filed. Violation of any of the provisions of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor punishable by fine not to exceed One Hundred Dollars (\$100) or imprisonment not to exceed thirty (30) days. Each day such violation continues shall be considered a separate offense. The landowner, tenant, subdivider, builder, public official, or any other person who commits, participates in, assists in, or maintains such violation may be found guilty of a separate offense. Nothing herein contained shall prevent the Council or any other public official or private citizen from taking such lawful action as is necessary to restrain or prevent any violation of this Ordinance or of the Idaho Code.

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**SECTION VIII: Severability.** If any provisions of this Ordinance or its application to any person or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such decision shall effect only that provision or application, and shall not effect the validity of other provisions or applications.

**SECTION IX: Repealer.** all other ordinances or parts of ordinances in conflict with this short subdivision ordinance or inconsistent with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

**SECTION X: Effective Date.** This Ordinance shall come into full force and effect upon passage and approval and publication in one issue of the Coeur d'Alene Press, a newspaper of general circulation in the City of Dalton Gardens.

Passed under suspension of the rules upon which a roll call vote was taken and duly enacted an ordinance of the City of Dalton Gardens at a special meeting of the Mayor and City Council held on the 29th day of May, 1979.

/s/ James C. Howard  
Mayor

ATTEST:  
/s/ Lucy A. Howey  
City Clerk  
Legal 831  
June 7, 1979