

**HILLSIDE DEVELOPMENT ORDINANCE NO 166**

AN ORDINANCE OF DALTON GARDENS, IDAHO, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, ESTABLISHING REQUIREMENTS FOR HILLSIDE DEVELOPMENT.

BE IT ORDAINED by the Mayor and City Council of Dalton Gardens, Idaho:

- Section 1: Title
- Section 2: Authority
- Section 3: Purpose
- Section 4: Definitions
- Section 5: Applicability
- Section 6: Application and Information Requirements
- Section 7: Process
- Section 8: Standards
- Section 9: Waiver of Standards
- Section 10: Administrations of Ordinance
- Section 11: Inspection
- Section 12: Maintenance
- Section 13: Prohibited Conduct, Enforcement, and Penalties
- Section 14: Severability
- Section 15: Conflicting Ordinance Provisions
- Section 16: Effective Date

**SECTION 1: TITLE**

This Ordinance shall be known as the HILLSIDE DEVELOPMENT ORDINANCE of Dalton Gardens.

**SECTION 2: AUTHORITY**

This Ordinance is authorized under the provisions of Idaho Code Section 67-6513.

**SECTION 3: PURPOSE:**

- A. To provide the maximum in public safety and welfare in the development and design of building sites, roadways, and other service amenities; and
- B. To provide safe ingress and egress for vehicular, bicycle, and pedestrian traffic to and within the hillside areas, while at the same time minimizing the scarring effects of hillside development; and
- C. To use to the fullest extent the current understanding of the planning, design, and engineering professions and the natural sciences including botany,

biology, ecology, soils and geology, to mitigate potential hazards to public health, safety, and welfare., and to enhance the existing and future appearance and resources of the hillsides; and

- D. To provide guidelines in the creation of buildings suited to the natural hillside surroundings through imaginative and innovative building techniques; and
- E. To provide a variety of development patterns on the hillside; and
- F. To provide variations in architectural design to reduce grading and scarring of the hillside.

#### **SECTION 4: DEFINITIONS**

Administrator – An official appointed by the Mayor and City Council to administer provisions of this Ordinance. This official may be a contract professional such as a licensed engineer.

Development – Any work requiring a Dalton Gardens Site Disturbance Permit.

Scarring – Any permanent scar left on a hillside by a development activity.

Site Disturbance Ordinance – Dalton Gardens Ordinance number 166, and all subsequent amendments.

Visual Impact – The visible change in a hillside as a result of any development activity.

#### **SECTION 5: APPLICABILITY:**

This Ordinance shall apply whenever a Site Disturbance Permit is required and the overall slope is greater than 6%. This Ordinance shall apply in conjunction with the Dalton Gardens site disturbance Ordinance and any subsequent amendments. Any conflicts between Ordinances shall be interpreted to mean that the most restrictive standard shall apply. This Ordinance shall apply to all development including individual building permits, special use permits, and land divisions.

#### **SECTION 6: APPLICATION AND INFORMATION REQUIREMENTS:**

Application: All applications for a hillside development permit shall be submitted to the City on a form provided by the City with a filing fee as set by resolution of the City Council. At a minimum, the following shall be required:

A. Visual Impact Report: A visual impact report which has been reviewed and approved by an Idaho licensed design professional. The report shall include the following information:

1. Graphic rendition: The existing view (prior to development) and the proposed view (after development) in a computer/photographic generated graphic form.
2. Detailed methods on mitigation of visual impacts. These methods include but are not limited to: architectural design, building site envelopes, height restrictions, landscaping, fencing, construction materials, and colors.
3. The existing vegetation and the proposed method of preserving and/or replacing such vegetation.
4. A statement detailing how the proposed development or subdivision minimizes visual impact and hillside scarring through careful site placement, roadway design, or other methods.

B. Slope Stabilization and Re-Vegetation Plan and Report: The applicant shall hire an Idaho licensed design professional with expertise in landscape architecture to review and approve the slope stabilization and re-vegetation plan and report. The report shall include a description of the existing soils, the vegetation to be planted, soils amendments if necessary, and slope stabilization measures to be implemented. The report shall also include an analysis of the environmental effects of such operations including the effects on slope stability, soil erosion and water quality.

C. Engineering Hydrology Report: Based upon the slope stabilization plan and report, the city may require a professional engineer registered in the state of Idaho to complete an engineering hydrology investigation and report. This individual should be experienced and knowledgeable in the science of hydrology and in the techniques of hydrologic investigation. This report shall include the following information:

An adequate description of the hydrology of the site, conclusions on the proposed development, and opinions and recommendations covering the adequacy of sites to be developed. The report shall include results of field investigations of the site, unless existing information is determined by the City to be sufficient to satisfy the purpose of this article.

D. A natural features plan and report with the following information:

1. Hazardous Areas: Location and identification of all potential hazardous areas including, but not limited to, land that is unsuitable for development because of poor drainage areas, high

ground water, steep slopes, rock formation, buried pipelines, or other similar conditions likely to be encountered.

2. Important Features: The plan shall show important features, including, but not limited to, the following: outline of existing structures, watercourses, surface water, wetlands, power lines, telephone lines, airport influence areas, any existing easements, municipal boundaries, section lines, and property lines.
  3. A written statement explaining how the site plan, private road, and/or plat protects or mitigates impacts on the important natural features of the site.
- E. Supplemental Data: Other supplemental data may be required by the City when deemed appropriate by the Administrator, Planning Commission, Mayor, or City Council.

## **SECTION 7: PROCESS:**

Upon review of the application, the City shall apply the criteria listed in this section to determine whether or not to approve, approve with conditions, or deny the hillside development permit. No grading, filling, clearing, or excavation of any kind shall be initiated until the hillside development permit is approved by the City, a site disturbance permit (or waiver) is obtained from the City, and the development has received approval by the decision-making body. The hillside development application must first be submitted to the Planning Commission for a public hearing, who will then make a recommendation to the City Council for final decision.

### Criteria for Approval:

- A. The site is physically suitable for the design and location of the proposed development.
- B. The proposed development will provide safe ingress and egress for all building sites, and to the public at large.
- C. The proposed development shall result in minimum disturbance of hillside areas;
- D. Areas not suited for development because of soil, geology, vegetation, or hydrology limitations are designated as open space;
- E. Disruption of existing native vegetation is minimized;

- F. The proposal sets forth sufficient and adequate mitigation for the identified visual impacts beyond the normally expected impact of hillside development.

**SECTION 8: STANDARDS:**

To ensure the intent of this Ordinance is achieved, the applicant shall retain a professional civil engineer currently registered in the state of Idaho to serve as the engineer of record.

- A. It shall be the responsibility of the engineer of record:
  - 1. To prepare the preliminary development plan and permit application.
  - 2. To incorporate into the development plans all recommendations contained in the plans and other reports as required in this article.
  - 3. To act as coordinating agent between other professionals, the owner, the City, and other government agencies with a regulatory interest in the development.
  - 4. To prepare any revised plans and to submit an as-built record to the City upon the completion of the project.
- B. The engineer of record shall submit all necessary reports to the City both prior to and during development activities.
- C. If the engineer of record, in the course of fulfilling the specified responsibilities, discovers that any work is being accomplished to a substantially lesser standard than required by this Ordinance or by the approved hillside development plan, the noncompliance shall be reported in writing to the owner, with copies of the report delivered to the City within three (3) working days of the discovery. The owner shall provide the City with recommendations for corrective measures, within five (5) calendar days of the notice. The City may require corrective action within a specified period. If any deficiency is deemed by the City to be an imminent threat to the public health, safety, or welfare, that work shall be stopped immediately until such deficiencies are corrected.
- D. If the engineer of record is replaced during the course of work, the work shall be stopped. Work may resume when the replacement engineer of record has agreed to accept the responsibility for previous and future work.
- E. In the event work is stopped during inclement weather, all open, and/or unfinished work on the project shall be protected to the satisfaction of the City.

- F. At the conclusion of the approved work, the engineer of record shall submit a report to the City stating that the work has been executed in compliance with the approved plans. The report shall have the signature and professional seal of the engineer of record, along with copies of all testing reports required by this Ordinance, by the City, or by the Administrator.
- G. The City may require the grading operation and/or project schedule be modified if delays occur which result in weather-generated problems not anticipated at the time approval was granted. Construction shall be scheduled to minimize soil disturbance.
- H. Development Of Special Hazard Areas: Any area that presents one or more of the following limiting factors shall not be permitted to be developed unless the engineer of record can demonstrate to the City, based on the required engineering reports, that these limitations can be overcome in such a manner as to prevent hazard to life, hazard to property, adverse effects on the use or stability of a public way or adverse impact on the natural environment:
1. Landslide areas or scarps, or areas of active landslides.
  2. Natural slopes greater than 15%.
  3. Water table within six feet (6') of the surface at any time of the year.
  4. Any area of hydrologic hazard as determined by the engineering hydrology report.
- I. Vegetation and Slope Stabilization
1. Vegetation shall be removed only when absolutely necessary, such as for the construction of structures, filled areas, roadways, firebreaks, or as required by this title.
  2. Every effort shall be made to conserve topsoil that is removed during construction for later use on areas requiring re-vegetation or landscaping.
  3. Adequate soil and slope stabilization using any combination of vegetation and/or chemical or mechanical methods shall be established on all disturbed areas as each stage of development completed.
  4. New plantings shall be protected with organic cover unless determined not to be necessary in the slope stabilization and re-vegetation plan and report.
- J. Slopes And Stabilization:

1. All retaining walls with a total vertical height of four feet (4') or more, including footing, shall be designed in accord with the regulations of the Dalton Gardens Municipal Code for building permits.
2. All slopes that are stabilized by mechanical or chemical means shall conform to the surrounding terrain and shall be given aesthetic treatment that is designed to blend into the background and minimize the visual impacts on surrounding areas.
3. Large tracts shall be divided into smaller workable units on which construction can be completed within one construction season so that large areas are not left bare and exposed during the winter-spring runoff period.

K. Roadways:

1. Roadway alignments shall be designed to create the minimum feasible amounts of hillside scarring, land coverage and the disturbance of the soil.
2. Roadway alignments shall be designed to minimize removal of existing deep-rooted perennial vegetation.
3. Roadway alignments shall be designed to follow natural terrain.
4. Roadways shall meet the standards of the Associated Highway Districts of Kootenai County design criteria, except as revised by Ordinance or variance.

**SECTION 9: WAIVER OF STANDARDS:**

- A. The City has the authority to grant a waiver if the engineer of record can demonstrate to the satisfaction of the City that any of the standards required by this article are not necessary in the proposed development, and that the omission of such requirements would not result in any of the following:
1. Hazard to public safety.
  2. Hazard to public or private property.
  3. Excessive hillside scarring.
- B. The request for a waiver of standards shall be in writing and shall state the reason for the request. The justification for the waiver shall be based on the engineering reports required in Section 6 of this Ordinance. The request for

waiver shall be forwarded by the Clerk to the Planning Commission for recommendation and the City Council for final decision.

- C. Alternatives: The City or Administrator may approve an alternative development proposal when the overall design, as proposed by the applicant, meets or exceeds the intent and the requirements of this Ordinance and shall not be detrimental to the public health, safety, or welfare, and provides adequate mitigation of visual impacts and hillside scarring.

## **SECTION 10: ADMINISTRATION OF ORDINANCE**

- A. General: The Ordinance shall be administered in a manner consistent with other Ordinances of Dalton Gardens by an Administrator as appointed by the Mayor and City Council. All applicants shall use the Department of Environmental Quality's Best Management Practices as guidelines to implement the requirements and standards set forth in this Ordinance. Changes in the supporting documents may be accomplished by subsequently adopted resolution.
- B. Duration of Permit: Permits shall expire if the work authorized by the permit is not started within 180 days of issuance of the permit, or if work is suspended or abandoned at any time after the work has started for a period of 180 days or more. The City may grant one time extension for an additional 180 days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented work authorized by the permit. The City may set specific time limits to the permit for project initiation and completion for environmental reasons or for coordination with other permitted site work.
- C. Appeals: Appeals concerning interpretation or administration of this Ordinance may be made by any person aggrieved. Such appeals shall be filed, along with the applicable filing fee, within a reasonable time, not to exceed forty-five (45) days from occurrence of the action being appealed. A notice of Appeal specifying the grounds of the appeal shall be filed with the Administrator. The Administrator shall transmit to the Planning Commission all papers constituting the record upon which the action appealed was taken. The Administrator shall schedule the item for a hearing to be commenced within sixty-five (65) days of filing the Notice of Appeal and shall give legal public notice, as well as due notice to the parties in interest. The Planning Commission shall decide the matter within forty-five (45) days of completion of the Appeal hearing.

The decision of the Planning Commission may be appealed to the Mayor and City Council, provided that a Notice of Appeal is filed with the Administrator within ten (10) days of the decision. The Mayor and City Council shall decide the matter within forty-five (45) business days.



## **SECTION 11: INSPECTION**

All activities governed by these regulations shall be subject to inspection by the City as work is in progress. It shall be the permittee's responsibility to keep the City notified of the progress of the project and call for all required inspections. If deemed necessary by the City, special inspections and testing may be performed to verify conformance with this Ordinance. The cost of such special inspections and testing shall be borne by the applicant.

## **SECTION 12: MAINTENANCE**

Maintenance requirements and responsibility shall be clearly identified for all projects where hillside development permits are required. When improvements benefit more than one lot, a maintenance agreement between all parties which benefit from the improvements must be established, including assurance of adequate funding. Easements across private property for maintenance access to improvements shall also be required where necessary. All maintenance agreements must be approved by the Administrator.

In the event that appropriate maintenance of any improvements is not conducted, the City shall have the option of requiring the property owner or association to provide for maintenance, or take other enforcement measures as outlined in Section 13.

## **SECTION 13: PROHIBITED CONDUCT, ENFORCEMENT, AND PENALTIES**

The following actions shall be considered violations of this Ordinance:

- A. Failure to obtain a permit prior to the start of any development activity for which a permit is required under this Ordinance;
- B. Failure to call for inspections as required by this Ordinance, or by the approved hillside development plan and reports;
- C. Failure to complete the development activity within the time limits specified by the permit;
- D. Failure to install in a timely manner and maintain the necessary slope stabilization measures;
- E. Failure to minimize hillside scarring, road alignment, land coverage and soil disturbance;

F. Conducting work on a site outside the scope of work outlined in the approved plans;

G. Continuing work at a site after a Stop Work order has been placed;

H. Failure to notify the City of substandard work as required in Section 8-C.

If any of the above violations have occurred, the Administrator may revoke the permit or order the work stopped by notice, in writing, served on any persons engaged in doing or causing such work to be done. Such person shall stop all site work until authorized by the Administrator to proceed. The Administrator may also withhold further issuance of permits. Stop Work orders may be appealed in the same manner as other appeals.

Violations of this Ordinance may be considered a criminal misdemeanor and shall be punishable by a maximum fine of \$300 or six (6) months in jail, or both. Each day of violation shall constitute a separate offense. The City may also take civil action to compel performance and completion of, or maintenance of, improvements installed pursuant to this Ordinance.

#### **SECTION 14: SEVERABILITY**

Should any section, clause, or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, it shall not affect the validity of the remaining portions of this Ordinance.

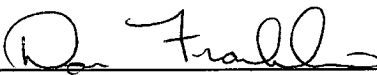
#### **SECTION 15: CONFLICTING ORDINANCE PROVISIONS**

If any conflict occurs between this Ordinance and provisions of the Uniform Building Code or other City Ordinances, the more restrictive Ordinance shall take precedence.

#### **SECTION 16: EFFECTIVE DATE**

This Ordinance shall take effect and be in full force upon its passage, approval, and publication in one (1) issue of the Coeur d'Alene Press.

ADOPTED this 5<sup>th</sup> day of February, 2004

  
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Dan Franklin, Mayor

CITY OF DALTON GARDENS

ATTEST:   
CLERK Marcia Wingfield

# AFFIDAVIT OF PUBLICATION

STATE OF IDAHO,  
County of Kootenai,

} ss.

*Kattie Hoy*

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

*Legal Notice*

of which the annexed is a printed copy, was published in the regular *Thursday* issue of said newspaper for *one* consecutive *day* commencing on the *4* day of *March*, 2004, and ending on the *4* day of *March*, 2004, 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.

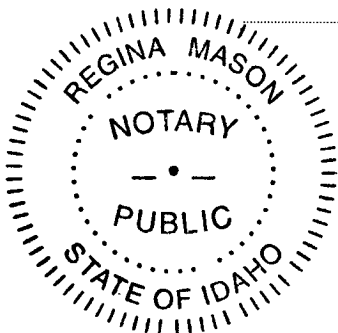
*Kattie L. Hoy*

Personally appeared before me this *4* day of *March*, 20 *04*

*Regina Mason*

Notary Public for the State of Idaho,  
residing at Coeur d'Alene, Idaho.

MY COMMISSION EXPIRES 6/18/09



City of Dalton Gardens  
Notice of Adoption  
Hillside Ordinance Number 166  
March 4, 2004

The Dalton Gardens City Council, at a duly notice public hearing held on February 5, 2004, adopted the Dalton Gardens Hillside Ordinance Number 166, which provides for definitions for terms found in the ordinance, establishes the purpose of the ordinance to be to provide the maximum in public safety and welfare in the development and design of building sites, roadways, and other service amenities; and to provide safe ingress and egress for vehicular, bicycle, and pedestrian traffic to and within the hillside areas, while at the same time minimizing the scarring effects of hillside development; and to use to the fullest extent the current understanding of the planning, design, and engineering professions and the natural sciences including botany, biology, ecology, soils and geology, to mitigate potential hazards to public health, safety, and welfare, and to enhance the existing and future appearance and resources of the hillside; and to provide guidelines in the creation of buildings suited to the natural hillside surroundings through imaginative and innovative building techniques; and to provide a variety of development patterns on the hillside; and to provide variations in architectural design to reduce grading and scarring of the hillside. The ordinance also provides for the criteria for applicability of the ordinance, sets forth the standards required to comply with the ordinance, outlines the required elements of the hillside permit and the process necessary to obtain. The ordinance also outlines the inspection process, engineering standards, and prohibited conduct, enforcement and penalties which may include but are not limited to criminal prosecution and civil litigation. The ordinance will take effect upon the first publication which is scheduled for March 4, 2004. The full text of the Hillside Ordinance is available at the Dalton Gardens City Hall, 6360 N. 4th Street during regular office hours.  
Legal 4771  
March 4, 2004

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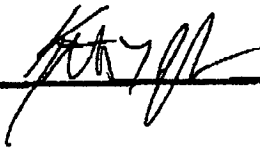
3-01-2004 10:00AM

FROM DALTON CITY HALL 2087625156

March 1, 2004

To Whom It May Concern:

I am Ken Jacobson, attorney at law and legal advisor for the City of Dalton Gardens, Idaho. I do certify that the summary of Ordinance Number 166 is a true and complete summary and provides adequate notice to the public regarding zoning and subdivision regulations.



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