

HOME BASED BUSINESS ORDINANCE NO. 180

AN ORDINANCE OF DALTON GARDENS, IDAHO, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, ESTABLISHING REQUIREMENTS FOR HOME BASED BUSINESSES.

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 Requirements
- Section 7: Process
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- Section 10: Inspection
- Section 11: Grace Period for Existing Business
- Section 12: Prohibited Conduct, Enforcement, and Penalties
- Section 13: Severability
- Section 14: Conflicting Ordinance Provisions
- Section 15: Effective Date

SECTION 1: TITLE

This Ordinance shall be known as the HOME BASED BUSINESS ORDINANCE of Dalton Gardens.

SECTION 2: AUTHORITY

This Ordinance is authorized under the provisions of Idaho Code Section 67-6511 and 67-6512.

SECTION 3: PURPOSE

It is the intent of this Ordinance to provide peace, quiet, and domestic tranquility, and maintain the character of all residential neighborhoods within the City. It is further the intent of this Ordinance to guarantee all residents freedom from excessive noise, traffic, nuisances, fire hazards, and other possible effects of commercial uses being conducted in residential areas. This Ordinance will provide standards which allow a resident of a single-family dwelling to operate a limited commercial or business activity from their principal dwelling while achieving the goals of retaining residential character, maintaining property values, and preserving environmental quality. It is not the intent of this Ordinance to cover incidental business phone calls received or made from the residence.

SECTION 4: DEFINITIONS

Critical Material - Any liquid, semi-liquid, flowable, or water soluble solid that is listed on the most current Superfund Amendments and Reauthorization Act, Title III (SARA III) List of Lists published by the Office of Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C. or is required by the U.S. Occupational Safety and Health Administration to have a material safety data sheet (MSDS).

Dwelling - A structure, building, or shelter, serving as a place where one or more persons live. Also known as a house, residence, abode, domicile, habitation, lodging, or home.

Home Based Business – A limited business activity which may, if permitted by the City, be operated in a residential dwelling on a lot in the residential district.

Industrial Use – A use that includes, but is not limited to, manufacturing, processing, production, assembly, warehousing, disposal and/or distribution of goods, services and materials. (Idaho Code §50-2702)

Non-Conforming Home Based Business - A business activity within the residential district that was in existence prior to March 2, 1989 and has been in continuous operation from March 2, 1989 until the date of adoption of this Home Based Business Ordinance.

Non-Domestic Wastewater - any wastewater that is not produced as sanitary wastewater from restroom facilities, showers, or kitchens

Restricted Home Based Business – A business that does not meet at least one of the criteria of a Home Based Business, but which may, with an approved Special Use Permit, be operated within the residential district. The Restricted Home Based Business may be allowed within an accessory structure.

Single-Family Dwelling - A building arranged or designed to be occupied by not more than one family.

SECTION 5: APPLICABILITY

Any property owner or resident operating a business from a dwelling in the residential district shall be required to apply for a Home Based Business permit. If the business does not meet the criteria for a Home Based Business permit, then the property owner or resident shall apply for a Special Use Permit for a Restricted Home Based Business. No business or occupation defined as industrial by the State of Idaho or requiring an industrial application or permit from any government entity shall be permitted.

HOME BASED BUSINESS CRITERIA

A Home Based Business permit shall be required in order to operate business activity within the Residential District. The number of Home Based Businesses within a dwelling is not limited, but the total combined effect of the Home Based Businesses which are permitted on one property shall not exceed the performance standards and criteria in Section 5. A Home Based Business permit shall meet all of the following:

- A. Home Based Businesses shall be incidental and subordinate to the principal use of the dwelling for residential purposes and shall not detract from the residential character of the premises or neighborhood;
- B. The area within the dwelling that is associated with the Home Based Business shall not exceed 25% of the structure or shall not exceed 1000 square feet, whichever is less. The Home Based Business shall not be allowed in any structure other than the dwelling.
- C. No retail sales are allowed where customer vehicular traffic is generated.
- D. Home Based Businesses shall not generate more than one (1) commercial truck delivery per day. Load limits shall apply to truck deliveries on City streets. Deliveries shall be restricted to the business hours between 7:00 a.m. and 7:00 p.m., Monday through Saturday;
- E. Home Based Businesses shall only be operated by family members actually occupying the dwelling as their principal residence,
- F. No additions to the dwelling for the specific purpose of operating a Home Based Business shall be allowed;
- G. Any machinery, mechanical devices, or equipment employed in the operation of a Home Based Business shall not generate noise, vibration, radiation, odor, glare, smoke, steam, or other condition not typically associated with the use of the dwelling for residential purposes;
- H. The outdoor storage of goods and/or materials associated with the Home Based Business is prohibited;
- J. There shall be no parking permitted on yards. There shall be no on-street parking associated with the business. There shall be no pick up and drop off of children or pets that are associated with the Home Based Business;
- K. No signs are allowed;

- L. Evidence of compliance with Panhandle Health District critical materials regulations shall be required if such materials are present. Non domestic wastewater is prohibited.
- M. Yard, Garage, and Estate Sales shall not exceed four sales per calendar year, or a combined total of twelve days per year. More than four sales per calendar year, or more than a combined total of twelve days per calendar year, shall require a Special Use Permit.

SECTION 6: HOME BASED BUSINESS APPLICATION REQUIREMENTS

Application: All applications for a HOME BASED BUSINESS permit shall be submitted to the City by the property owner or resident on a form provided by the City with an application fee as set by resolution of the City Council. At a minimum, the following shall be required:

- A. Application Form and Applicable Fees. The form shall be submitted under oath attesting to the accuracy of the information.
- B. Site Plan: The site plan shall show: a separate floor plan of the dwelling depicting the location and square footage of the Home Based Business.
- C. A narrative describing in sufficient detail the Home Based Business activity and the type of water usage necessary to operate the business.
- D. Notarized authorization of the property owner if the applicant is a tenant or renter.

SECTION 7: PROCESS:

The Applicant shall obtain an application package from the City. The Applicant shall provide to the City the application, narrative, applicable fees and the site plan. The Applicant shall also sign the application form under oath. Upon review of the application, the City shall apply the criteria listed in Section 5 to determine whether or not to approve or deny the Home Based Business.

SECTION 8: ADMINISTRATION OF ORDINANCE

- A. General: The Ordinance shall be administered in a manner consistent with other Ordinances of Dalton Gardens. The permit shall run with the property and specify the owner. The permit may not be moved or transferred to a different business or another owner or tenant. If any changes to the permit occur during the permit year, the business owner shall provide the new or additional information to the City within 30 days of the change.

B. Duration of Permit: Permits shall expire on December 31 of each year. The permit shall be renewed by December 31 of each year. The Clerk shall mail to all permittees of the Municipality a statement of the time of expiration of the permit held. Failure by the City to send the notice, or of the permittee to receive the notice, shall not excuse the permittee from the requirement to obtain a renewal, nor shall it be a defense in an action to operate without a permit.

C. Appeals: Appeals concerning interpretation or administration of this chapter may be taken by any person aggrieved. Such appeals shall be filed 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 Clerk. The Clerk shall transmit to the Planning Commission all papers constituting the record upon which the action appealed was taken. The Clerk shall schedule the item for a hearing to be commenced within sixty (60) 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 Clerk within ten (10) days of the decision. The Mayor and City Council shall decide the matter within forty five (45) days.

SECTION 9: SPECIAL USE PERMITS-CRITERIA FOR RESTRICTED HOME BASED BUSINESS

A Restricted Home Based Business is a business operated on a residential lot and is limited to an accessory use in conjunction with a dwelling that fails to meet one or more of the criteria for a Home Based Business permit.

A Restricted Home Based Business shall require a Special Use Permit. The application requirements and criteria for approval used for a Special Use Permit are found in Title 5, Chapter 7 of the Dalton Gardens Municipal Code.

SECTION 10: INSPECTION

All activities governed by these regulations shall be subject to inspection by the City during business hours. It shall be the permittee's responsibility to keep the City notified of any changes to the conditions required by the permit. If deemed necessary by the City, special inspections may be performed to verify conformance with this Ordinance. The cost of such inspections shall be borne by the applicant. Fees associated with the inspection shall be adopted by Council resolution

SECTION 11: GRACE PERIOD FOR NON-CONFORMING, EXISTING HOME BASED BUSINESSES

An existing Home Based Business that has been operating prior to the ordinance adoption shall be required to make in-person contact with the City within one hundred twenty days (120 days) of ordinance adoption to determine qualifying status of the Home Based Business. Holders of a current business license within the residential zoning district obtained under Ordinance Number 81 of the Municipal Code shall not expand their operation without meeting the current municipal code regulations.

Home Based Businesses that were in existence prior to the repeal of the original home occupation ordinance (March 2, 1989) shall be considered legal, non-conforming and will be allowed to continue operating under this ordinance. The legal non-conforming businesses shall provide proof of existence of the business prior to March 2, 1989 and shall also provide proof of continuous operation from March 2, 1989 up until the adoption of this ordinance. The legal non-conforming Home Based Business shall not be allowed to expand their operation. Once the proof of existence has been established, a permit shall be granted by the City. Yearly renewals of the permit shall be required.

Any expansion of the legal, non-conforming Home Based Business will constitute a substantial change and the property owner or resident shall be required to meet the current requirements of this ordinance.

Home Based Business that existed prior to the ordinance adoption that do not meet the criteria for legal non-conforming or a Home Based Business permit shall be required to apply for a Special Use Permit within one hundred twenty days (120 days) of ordinance adoption. Failure to contact the City and apply for a permit shall be deemed to be abandonment of any right to operate the non-conforming Home Based Business.

SECTION 12: PROHIBITED CONDUCT, ENFORCEMENT, AND PENALTIES

Should the City, at any time during the period in which a Home Based Business is in operation, receive a written complaint, and after conducting an investigation, find that the operation of such Home Based Business is in violation of the provisions of this Ordinance and/or the terms and conditions subject thereto, the City shall serve notice, by certified mail, to cease activities conducted in violation of the Home Based Business regulations. Such notice shall be headed "NOTICE TO CEASE NON-PERMITTED HOME BASED BUSINESS ACTIVITY", shall contain a description of the property, shall describe the ordinance section(s) violated, shall specify the penalty provisions of this Ordinance, and shall specify the appeal process specified by this Chapter.

The property owner or resident shall stop all work associated with the permit until authorized by the City to proceed. The City may also withhold further issuance of permits.

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 compliance of requirements or performance and completion of, or maintenance of, improvements installed pursuant to this Ordinance.

SECTION 13: 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.

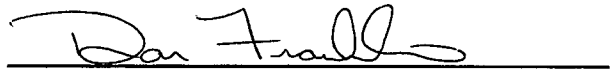
SECTION 14: CONFLICTING ORDINANCE PROVISIONS

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

SECTION 15: 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 1st day of December, 2005.



Dan Franklin, Mayor

ATTEST:



Marcia Wingfield, City Clerk

RESOLUTION 2005-02
(Setting Fee for Home Based Business Applications)
December 1, 2005

WHEREAS, the City has adopted Ordinance 180 establishing requirements for Home Based Businesses; and

WHEREAS, a Home Based Business application will be required therefore incurring additional staff time for administration and enforcement; and

WHEREAS, Idaho Code § 63-1311 allows municipalities to impose a fee and cause to be collected fees for those services provided by that district which would otherwise be funded by property tax revenues; and

WHEREAS, Idaho Code § 63-1311A states that no taxing district may make a decision imposing a new fee, unless it first holds a hearing upon such proposed fee imposition at a regular meeting of the district's governing body after giving public notice of such hearing; and


WHEREAS, the public notices for the imposition of a fee have been published in the Coeur d' Alene Press on November 16, 2005 and November 23, 2005; and

NOW, THEREFORE, IT IS HEREBY RESOLVED that the City of Dalton Gardens shall charge a fee of \$25.00 for the administration and enforcement of each Home Based Business Application

Upon a motion to adopt the text of the foregoing Resolution made by Councilman Roberge, seconded by Councilman Epstein, the following vote was recorded:

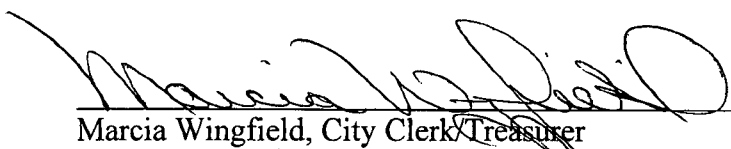
Councilman Howard: aye
Councilman Roberge: aye
Councilman Wright: absent
Councilman Epstein: aye

Upon said roll call, the text of the foregoing was duly enacted as a Resolution of the City Council of the City of Dalton Gardens, Idaho, on the 1st day of December, 2005.



Dan Franklin, Mayor

ATTEST



Marcia Wingfield, City Clerk/Treasurer

DOLAN & JACOBSEN
ATTORNEYS AT LAW
LIBERTY BUILDING
118 N. 7TH ST. - P.O. BOX 1116
COEUR D'ALENE, IDAHO 83816-1116

December 5, 2005

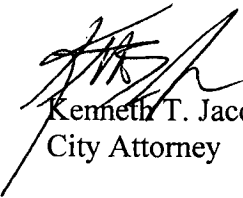
City of Dalton Gardens
Attn: Marcia Wingfield, City Clerk
6360 N.4th Street
Dalton Gardens, ID 83815

RE: Ordinance 178 and 179

Dear Marcia:

Pursuant to Idaho Code § 50-901A, this letter is to certify that the summaries of Ordinance No. 178, SUBSURFACE SEWAGE DISPOSAL SYSTEMS, and Ordinance No. 179, GENERAL LICENSE AND PERMIT PROCEDURES, are true and complete and provide adequate notice to the Public of the contents of said Ordinances.

Very truly yours,


Kenneth T. Jacobsen
City Attorney

KTJ/rs

AFFIDAVIT OF PUBLICATION

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

Kattie Hay

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

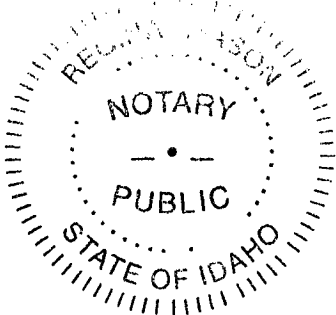
of which the annexed is a printed copy, was published in the regular *Wednesday* issue of said newspaper for *one* consecutive *day* commencing on the *7* day of *December*, 20*05*, and ending on the *7* day of *December*, 20*05*, and such publication was made as often during said period as said *Daily* 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 Hay*

On this *7* day of *December* in the year of *2005*, before me, a Notary Public, personally appeared *Kattie Hay*, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Regina Mason

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



MY COMMISSION EXPIRES 6/18/09

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO,
County of Kootenai, } ss.

Kattie Hay 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

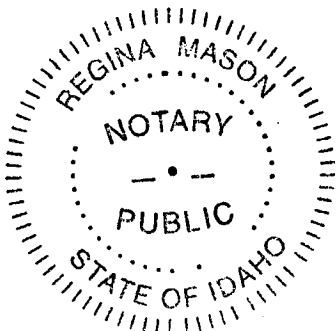
of which the annexed is a printed copy, was published in the regular Wednesday issue of said newspaper for 2 consecutive weeks commencing on the 16 day of November, 2005, and ending on the 23 day of November, 2005, and such publication was made as often during said period as said Daily newspaper was 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 Hay. On this 23 day of November in the year of 2005, before me, a Notary Public, personally appeared Kattie Hay, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Regina Mason

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

MY COMMISSION EXPIRES 6/18/09



NOTICE OF FEE INCREASE

The City of Dalton Gardens proposes to adopt a Home Based Business application fee to offset the cost of administration of the new Home Based Business Ordinance. Idaho Code 63-1311 allows municipalities to impose such a fee and cause to be collected fees for those services provided by that district which would otherwise be funded by property tax revenues. Idaho Code 63-1311A further allows municipalities to offset the cost of administration and enforcement.

All Citizens are invited to attend a public hearing on the establishment of such a fee on December 1st, 2005 at 7:00 p.m. in the City Hall Council Chambers, 6360 N. 4th Street, Dalton Gardens, Idaho.

City Hall and the Council Chamber's are accessible to persons with disabilities. For accessibility arrangements, please contact the City Clerk at (208) 772-3698.

Dan Franklin, Mayor
City of Dalton Gardens

Legal 8267

November 16, 23, 2005