

## ORDINANCE NO. 203

AN ORDINANCE OF DALTON GARDENS, IDAHO, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO,; PROVIDING FOR AMENDMENTS TO TITLE 5 CHAPTER 5 ADDING ALLOWED USES, CLARIFYING SPECIAL USES, ELIMINATING LANGUAGE ON SIGNAGE, AMENDMENTS TO TITLE 5 CHAPTER 6 FOR NONCONFORMING USES, ADDING DEFINITIONS, CLARIFYING AND AMENDING LANGUAGE RELATED TO DAMAGED OR DESTROYED STRUCTURES, EXPANSION OF USES, BUILDINGS OR STRUCTURES, AND AMENDING TITLE 6 CHAPTER 6 SECTION 3 TO ADD LANGUAGE TO CLARIFY NONCONFORMING LOTS, PROVIDING FOR SEVERABILITY; PROVIDING THAT ADOPTION OF THIS ORDINANCE SHALL HAVE NO EFFECT ON PROSECUTIONS MADE UNDER ANY PREVIOUSLY EFFECTIVE ORDINANCE; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF DALTON GARDENS IDAHO

SECTION 1. That Title 5 Chapter 5 of the Dalton Gardens Municipal Code, be, and the same is hereby amended to read as follows:

### Chapter 5 RESIDENTIAL DISTRICT

#### 5-5-1: USE RESTRICTIONS ALLOWED USES:

In the residential district, no building or land located therein shall be used, nor any structure hereafter erected or altered, except for the following purposes:

1. Home gardens and gardening of vacant land.
2. Seasonal agricultural, horticultural and animal products. The sale of agricultural, horticultural and animal products that are grown and raised on site. The raising, breeding and maintaining of dogs, for the purposes of this chapter, is not an agricultural purpose.
3. Single-family dwellings.
4. The usual accessory buildings commonly appurtenant to a single-family dwelling.
5. Trailer houses and tandem trailers not used for human occupancy. (Ord. 192, 2-1-2007)
6. Park, Public: A public park is a tract of land owned by the city and maintained as a place for passive or active recreation programs to meet the recreational needs of the general public, including playgrounds and horse arenas.

7. Fences:

A. Materials For Fences And Walls: Fences and walls may be of any material commonly used in construction, provided that said fence or wall meets any criteria for sturdiness and construction as established in other city regulations.

B. Measurement Of Heights: The height of fences and walls shall be measured from the top of the fence or wall at its highest point to the finished grade of the lot or parcel adjacent to the fence. If the fence or wall is built on a mound or is otherwise constructed on a level above the average finished grade of the parcel or lot, the height of the mound shall be included in the overall height of the fence or wall. However, where parking, loading or other similar areas are constructed adjacent to a fence or wall and are constructed above the finished grade of the parcel, the height of fences or walls shall be measured from the top of the parking/loading surface.

C. Fences For Swimming Pools: Swimming pools shall be enclosed by buildings or fences or walls in accordance with the provisions of the international building code, as adopted, and other applicable provisions of this code.

D. Height And Setback Standards: Fences shall comply with the following height and setback standards:

1. Fences Within Twenty Five Feet Of Property Line Adjacent To Public Right Of Way: Fences within twenty five feet (25') of a property line adjacent to a public right of way shall not exceed three feet (3') in height; provided, however, that a fence within twenty five feet (25') of a property line adjacent to a public right of way may be up to fifty two inches (52") in height if it is of such design and construction, such as field fencing, so as not to obstruct views.

2. Fences Twenty Five Feet From Property Line Adjacent To Public Right Of Way: Fences at least twenty five feet (25') from a property line adjacent to a public right of way may not exceed six feet (6') in height; provided, however, that internal field fencing that is at least twenty five feet (25') from a property line adjacent to a public right of way may be up to eight feet (8') in height if it is of such design and construction so as not to obstruct views and provided further that, for purposes of wildlife deterrence, fencing on a perimeter property line that is at least twenty five feet (25') from a property line adjacent to a public right of way may be up to eight feet (8') in height if it is of such design and construction, such as field fencing, so as not to obstruct views.

3. Obstruction Or Interference: No fence, tree, shrub or growing plant or other landscape feature shall obstruct or interfere with the vision of a roadway at the point of an intersection. Any fence, landscape feature or growing plant shall be considered an obstruction or interference at the point of intersection if it exceeds thirty six inches (36") in height and is within twenty five feet (25') in any direction of the intersection. Height will be measured at the level of the street.

4. Trees To Be Trimmed: All trees located within twenty five feet (25') of the property lines of any property at an intersection of one or more public streets within the city shall have all foliage, including leaves and branches, trimmed to a point eight feet (8') above the level of the street under or near said trees.

E. Permit And Fees Required: No person shall install a fence (except for internal field fencing) in the city without first obtaining a fence permit and complying in all respects with the terms and conditions of the permit and of this chapter. A fence permit shall be valid only for the term of issuance, unless sooner suspended or revoked. A fence permit is not required for painting, maintenance, or repair. Total replacement of an existing fence shall require a permit. Fees associated with the fence permit shall be fixed in the Dalton Gardens fees resolution.

~~Home gardens and gardening of vacant land.~~

~~Seasonal agricultural, horticultural and animal products. The sale of agricultural, horticultural and animal products that are grown and raised on site. The raising, breeding and maintaining of dogs, for the purposes of this chapter, is not an agricultural purpose.~~

~~Single family dwellings.~~

~~The usual accessory buildings commonly appurtenant to a single family dwelling.~~

~~Trailer houses and tandem trailers not used for human occupancy. (Ord. 192, 2-1-2007)~~

#### 5-5-2: SPECIAL USES:

The following uses are permitted only with a special use permit issued pursuant to this chapter, and except for the uses herein specified, no other use can be made of such land or structures located within the residential district:

Churches, schools and municipal or governmental buildings Churches, schools, public, municipal and government, including fire, police and safety uses. This use category includes the land, premises and buildings. This use excludes public parks.

Equine boarding facilities. "Equines" are defined as horses, ponies, mules and donkeys, or any other animal belonging to the family Equidae. "Equine boarding facilities" are defined as any facilities used for the care and maintenance of another individual's equines for profit by the property owner or individual residing on the property. For purposes of this use, "profit" is any exchange of money or services for the care and maintenance of two (2) or more equines. More specifically, care and maintenance may include, but is not limited to, providing anything from minimal to full service boarding. Minimal boarding is where the property owner provides only shelter and/or grazing, and the equine's owner provides all other care. Full service boarding is where a range of services are provided by the property owner that may include feeding, exercise and

veterinary care.

~~Fire, police or public safety buildings~~

Public utility structures such as substations, pumping plants, telephone exchanges and similar uses.

Signs:

~~A. Not more than one sign, not exceeding one square foot in area, bearing only the name or occupation of the occupant of the building to which it is affixed.~~

~~B. Not more than two (2) signs, not exceeding three (3) square feet in area of each sign, advertising for sale or rent the premises on which they are located. (Ord. 192, 2-1-2007)~~

5-5-4: YARDS:

A. Front And Rear Yards: For every structure there shall be a front yard of not less than twenty five feet (25') and a rear yard of not less than ten feet (10') in depth.

B. Side Yards: Each dwelling or residence shall have a side yard ten feet (10') in depth; accessory buildings within seventy five feet (75') from the street line shall have a side yard ten feet (10') in depth; provided, however, that an accessory building more than seventy five feet (75') from the street line shall have a side yard of five feet (5'); and provided further, that each dwelling, residence and accessory building on a corner lot shall have a side yard of not less than twenty five feet (25') along the flanking or side street.

C. Lot Size, Lot Width and Frontage: All lots shall have one hundred ten feet (110') of frontage on a publicly dedicated street, accepted and maintained by the city or the Lakes highway district, and shall contain not less than one acre. Nonconforming lots shall not be created.

D. Lot Coverage: The maximum lot coverage for a lot in Dalton Gardens is thirty five percent (35%) or not to exceed thirty thousand (30,000) square feet, whichever is less. (Ord. 201, 1-8-2009)

SECTION 2. That Title 5 Chapter 6 of the Dalton Gardens Municipal Code, be, and the same is hereby amended to read as follows:

TITLE 5 CHAPTER 6      NONCONFORMING USES

5-6-1: APPLICATION AND INTERPRETATION:

~~A. Application Of Provisions: This shall also apply to trailer coaches, trailer homes and mobile homes, as defined in this Title and used for human occupancy at the effective~~

~~date hereof, and such use of the land may be continued as provided in this Chapter even though such trailer coach, trailer home or mobile home is removed and replaced by another; however, such trailer coach, trailer home and/or mobile home must be replaced by another of equal or greater size, without limit.~~

~~B. Interpretation: The mere presence of a structure shall not be deemed to constitute the use, unless such structure is actually occupied and employed in maintaining such use. (Ord. 105, 1-7-1989)~~

Nonconforming use" means any and all of the following:

1. "Nonconforming activity" means an activity which, under the Municipal Code, is not itself a permitted activity where it is located, but which was permitted by or conformed to the requirements of a zoning ordinance in effect prior to the effective date of the Zoning Ordinance codified in this Title.

2. "Nonconforming structure" means a structure which, under the Municipal Code, is not itself a permitted structure where it is located or does not conform to: off-street parking or loading requirements, performance standards, site performance standards, density, height, yard, buffering, landscaping, screening or other requirements applying to facilities; and which was permitted by or conformed to requirements of the ordinance in effect prior to the effective date of the Ordinance codified in this Title.

3. "Nonconforming lot" means a lot which, under the Municipal Code does not meet the lot area or lot dimension requirements of the zoning district where it is located and which was permitted by or conformed to the requirements of a zoning ordinance in effect prior to the effective date of this Zoning Ordinance.

A nonconforming use which is in existence on the effective date of this ordinance or of any subsequent rezoning or other amendment thereto which makes such use nonconforming may be continued and maintained, except as otherwise specified in the nonconforming use regulations. No substitution, extension, or other change in activities and no alteration or other change in facilities is permitted except as specifically provided herein.

#### 5-6-2: CONTINUANCE OF NONCONFORMING USE:

The lawful use of the land, premises or building existing at the effective date hereof, although such use does not conform to the provisions of this Title, may be continued; except, that if such nonconforming use is discontinued for a period of one year or more, any further use of said land, premises or building shall be in conformity with provisions of this Title. (Ord. 105, 1-7-1989)

#### 5-6-3: DAMAGED OR DESTROYED STRUCTURES:

Nothing in this Title shall be deemed to prohibit the restoration or replacement of a

~~structure nonconforming building, trailer coach, trailer or mobile home~~ within a period of six (6) months from date of its destruction or damage by fire, explosion, act of God or act of a public enemy or prevent the continuation of the use of such building or part thereof. (Ord. 105, 1-7-1989)

**5-6-4: ALTERATION OR EXPANSION OF NON CONFORMING LAND, PREMISE, BUILDINGS OR STRUCTURES:**

~~A building or structure, exclusive of trailer coaches, trailer or mobile homes, devoted to a nonconforming use at the effective date hereof, may not be altered or enlarged so as to extend such nonconforming use more than ten percent (10%) in area. (Ord. 105, 1-7-1989)~~  
Nonconforming use, activity, land, lot, premise, building or structure shall not be enlarged, extended, moved or altered, except to change the use of a structure or land to a use or activity permitted in the district in which it is located.

**5-6-5: CHANGE OF NONCONFORMING USE:**

Whenever a nonconforming use has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted or nonconforming use. (Ord. 105, 1-7-1989)

SECTION 3. That Title 6 Chapter 6 of the Dalton Gardens Municipal Code, be, and the same is hereby amended to read as follows:

**6-6-3: MINIMUM LOT SIZE AND WIDTH REQUIREMENTS:**

All lots within a short subdivision shall have one hundred ten feet (110') frontage on a public street and contain not less than one acre, less such portions which may have been granted, dedicated or conveyed for use as road right of way or other easement. (Ord. 145, 5-7-1998).Nonconforming lots shall not be created.

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, independent provision and such holding shall not affect the validity of the remaining portions thereof.


SECTION 5. Neither the adoption of this Ordinance nor the repeal of any ordinance shall, in any manner, affect the prosecution for violation of such ordinance committed prior to the effective date of this Ordinance or be construed as a waiver of any license or penalty due under any such ordinance or in any manner affect the validity of any action heretofore taken by the Dalton Gardens City Council or the validity of any such action to be taken upon matters pending before the Dalton Gardens City Council on the effective date of this Ordinance.

SECTION 6. This Ordinance shall take effect and be in full force from and after its passage, approval, and publication in the Coeur d'Alene Press. The provisions of this Ordinance shall apply to all applications and appeals filed with, and received by, the Hauser City on and after the effective date of this Ordinance.

ADOPTED this 2nd day of July, 2009.



\_\_\_\_\_  
Dan Franklin, Mayor

  
\_\_\_\_\_  
Marcia Wingfield, City Clerk

# 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*

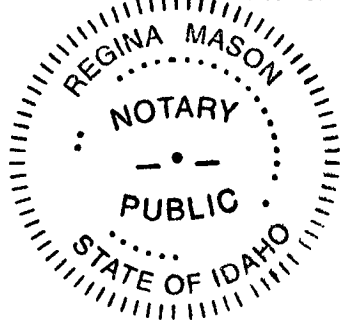
of which the annexed is a printed copy, was published in the regular *Wednesday* issue of said newspaper for *one* consecutive *day* commencing on the *8* day of *July*, 20*09*, and ending on the *8* day of *July*, 20*09*, and such publication was made as often during said period as said *Daily* newspaper 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 *8* day of *July* in the year of *2009*, 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 6/18/15**