

NONCONFORMING USE
ORDINANCE NO 220.

AN ORDINANCE OF DALTON GARDENS, IDAHO, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, AMENDING TITLE 5 CHAPTER 6 OF THE DALTON GARDENS MUNICIPAL CODE, MORE SPECIFICALLY, ADDING AND AMENDING THE TITLE AND PURPOSE, THE RIGHT TO CONTINUE NONCONFORMING USES, ISSUANCE OF NONCONFORMING USE CERTIFICATE, ABANDONMENT OF USES, DAMAGE OR DESTRUCTION OF NONCONFORMING STRUCTURES, REPAIRS AND ALTERATIONS, EXPANSION OF USES, STRUCTURES, CHANGES OF ACTIVITIES, NONCONFORMING LOTS, NUISANCES, PROVIDING FOR PENALTIES, SEVERABILITY AND AN EFFECTIVE DATE.

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

SECTION 1: AMENDMENTS: Title 5 Chapter 6 of the Dalton Gardens Municipal Code shall be repealed and the following revised title and chapter added:

Chapter6
NONCONFORMING USES

5-6-1: TITLE AND PURPOSE:

The provisions of this article shall be known as the *NONCONFORMING USE REGULATIONS*. The purpose of these regulations is to control, improve, or terminate uses which do not conform to the zoning ordinance and to protect property rights and establish the parameters for the continuation of such existing uses. These regulations shall apply to all nonconforming uses.

5-6-2: DEFINITIONS:

GRANDFATHERING: A vested use, allowed to continue, same as the term nonconforming use.

NONCONFORMING USE: Any and all of the following:

A. "Nonconforming activity" means an activity which, under this 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 hereof.

B. "Nonconforming facility" means a structure or facility which, under this 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 hereof.

C. "Nonconforming lot" means a lot which, under this 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 hereof.

5-6-3: RIGHT TO CONTINUE NONCONFORMING USE:

A nonconforming use which is in existence on the effective date of this zoning 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 this Chapter.

5-6-4: NONCONFORMITY RESULTING FROM EMINENT DOMAIN OR CONDEMNATION

If an eminent domain action (hereinafter referred to as "condemnation") results in the creation of nonconformity of the lot or the facility, the existing nonconforming use shall be allowed to continue under the Dalton Gardens Municipal Code, until such time as the use changes. For example, if the condemnation results in the elimination of necessary parking spaces required under the Code, the nonconformity shall be allowed to continue until such time as the use or facility change as outlined in Sections 5-6-6 through 5-6-12.

If upon change of use the requirements of the code then in existence cause modification of the facility to be necessary, a variance procedure may be utilized.

If structural alterations are required due to eminent domain or condemnation, the alterations will not be counted toward the 50% accumulation of repairs and alterations as delineated in 5-6-8 of this Ordinance with the following provisions: 1) The property owner provides evidence of the non conformity and 2) that the remodel and alteration that will be done is necessary to accommodate the condemnation and 3) Any remodel and alteration resulting from a condemnation must be reviewed and approved by the City and 4) All remodels and alterations which result from the condemnation shall be completed upon completion of the public improvements for which the condemnation was implemented.

If other facility or site improvements are necessary as a result of eminent domain or condemnation, including but not limited to sign relocation, entry or parking lot relocation, etc., the issuance of a new permit for such improvements shall not trigger compliance with the requirements for Landscaping, Fencing and Buffering, refuse screening or lighting for the entire site.

5-6-5: ISSUANCE OF PERMITTED NONCONFORMING USE CERTIFICATE:

A certificate permitting a nonconforming use can be issued by the city to the property owners of all nonconforming use properties in existence on the effective date of this ordinance or amendment thereto, and those nonconforming properties created by a subsequent rezoning. This certificate shall include, but shall not be limited to, the following information:

- A. Legal description of property.
- B. Type of use involved.
- C. Reasons for the nonconformance.
- D. Land area involved.
- E. Type and area of building or portion of buildings involved in the nonconforming activity.

This certificate shall be used by the City to ensure the nonconforming status for the property owner and to determine if future requests for license renewals, change of uses, or building and site disturbance permits, continue to comply with the non-conforming status of the site, use or structure. This certificate shall not be used to grant a use that would be nonconforming to the applicable development regulations. There shall be no fee required for a nonconforming use certificate. A copy of the certificate will be given to the property owner and a copy of the certificate will be kept on file with the City. The City shall keep written documentation on all nonconforming uses, even if no certificate is issued to the property owner, and said records shall be available to the public.

5-6-6: NONCONFORMING USE; ABANDONMENT OF USE:

- A. Nonconforming as To Activity: Whenever a use, which is nonconforming because it is not a permitted activity, discontinues active operation for a continuous period of one year, such nonconforming use shall be considered abandoned and may not be resumed. The existing facilities on the property may be used thereafter, but only for a permitted activity or a special use permit.
- B. Nonconforming as To Facility: A use, which is nonconforming because of the facility, may resume operations regardless of the period during which it may have discontinued active operation.

C. No provision of this Ordinance is intended to supersede the provisions of Idaho Code 67-6538.

5-6-7: NONCONFORMING USE; DAMAGE OR DESTRUCTION OF FACILITIES:

- A. Nonconforming as To Activity: Whenever a facility that contains a nonconforming activity is damaged or destroyed to the extent that reconstruction, repairing, or rebuilding will exceed fifty percent (50%) of the replacement costs of the facility as it was immediately prior to the damage, the facility may only be restored to accommodate a conforming activity or with a special use permit to resume a prior non-conforming activity. The value of the proposed repairs shall be determined using the City's valuation for establishing building permit fees. Market value shall be the value of the structure as determined by the Kootenai County Assessor's Office or a private licensed appraiser, if the property owner chooses.
- B. Nonconforming as To Facility: Whenever a nonconforming facility is damaged or destroyed to the extent that reconstruction, repairing, or rebuilding will exceed fifty percent (50%) of the replacement costs of the facility as it was immediately prior to the damage, the facility may not be restored as nonconforming. The value of the proposed repairs shall be determined using the City's valuation for establishing building permit fees. Market value shall be the value of the structure as determined by the Kootenai County Assessor's Office or by a licensed appraiser
- C. Multiple Tenant Structures/Facilities: If a site or structure has multiple tenants, each tenant space shall be evaluated separately to determine the value of the existing facility versus the value of the proposed repair or reconstruction, unless the repair or reconstruction is not associated with a tenant space.

5-6-8: NONCONFORMING USE; REPAIRS AND ALTERATIONS OF FACILITIES:

- A. Nonconforming As To Activity: Facilities for a use which is nonconforming because the activity is not itself permitted where it is located, may be repaired and altered subject to the following provisions:
1. If the nonconforming activity occupies less than fifty percent (50%) of the facility, repairs, remodels and structural alterations may be allowed, regardless of cost, provided the alteration does not enable an expansion of the nonconforming activity.

2. Where the nonconforming activity occupies more than 50% of the facility, repairs, remodels and/or alterations may be performed on a structure housing a nonconforming use, including but not limited to, repair or replacement of the roof, walls, fixtures, wiring or plumbing, provided the repairs do not enable an expansion of the nonconforming use, and provided the cumulative value of the repairs performed over a five (5) year period do not exceed fifty percent (50%) of the market value of the structure prior to the repair, remodel or alteration. The value of the proposed repairs shall be determined using the City's valuation for establishing building permit fees. Market value shall be the value of the structure as determined by the Kootenai County Assessor's Office or by a licensed appraiser.

B. **Nonconforming As To Facility:** Any nonconforming facility used for a permitted activity may be repaired or altered subject to the following provisions:

1. No structural alterations shall be made to the nonconforming portion of any facility except those required by law and repairs or alterations which do not increase the volume of the nonconforming portion of the building.
2. The costs of such repairs or alterations shall not exceed fifty percent (50%) of the market value of the facility. The value of the proposed repairs shall be determined using the City's valuation for establishing building permit fees. Market value shall be the value of the structure as determined by the Kootenai County Assessor's Office or by a licensed appraiser.
3. Repairs or alterations shall not result in a greater degree of nonconformity.
4. There shall be no limit on the value of the repairs or alterations made to bring the site into greater conformity with City regulations.

5-6-9: NONCONFORMING USE; EXPANSION:

A. **Nonconforming As To Activity:** A use, which is nonconforming wholly or partly because it is not itself a permitted use where it is located, shall not be expanded in any way.

B. **Nonconforming As To Facility:** Any facility which is nonconforming for any reason may not be expanded or enlarged. This section is not intended to preclude expansion, alteration nor enlargement which does not increase the habitable floor area, as defined by the currently adopted building code, of the nonconforming facility.

5-6-10: NONCONFORMING ACTIVITY; SUBSTITUTIONS NOT PERMITTED; DEFINITION OF SUBSTITUTION:

A substitution is the replacement of an existing nonconforming activity by a new nonconforming activity, or a change in the nature of an existing nonconforming activity. Substitutions are prohibited. Substitutions do not include a change of ownership, tenancy, or management where the previous line of business or other function is substantially unchanged.

5-6-11: NONCONFORMING ACTIVITY; CHANGE TO PERMITTED ACTIVITY:

- A. Activity Not Requiring A Special Use Permit: Any nonconforming activity may be replaced by an activity permitted in the zoning district and shall meet all of the requirements of that use in the zoning district.
- B. Activity Requiring A Special Use Permit: Any nonconforming activity requiring a special use permit within the present zoning district may be expanded only upon the granting of said permit.
- C. Resumption Of Nonconforming Activity: If a nonconforming activity is replaced by a conforming activity, the nonconforming activity shall not be resumed.

5-6-12: ADDITIONAL RESTRICTIONS:

Any restrictions on the repairs, alterations and expansion of a nonconforming use shall be in addition to the basic restrictions on nonconforming uses. In case of conflict, the most restrictive shall apply.

5-6-13: NONCONFORMING FACILITY; REVERSION:

Any portion of a nonconforming facility which is changed to conform to the regulations of the zoning district where located shall not be changed back to a nonconforming portion.

5-6-14: NONCONFORMING LOT:

- A. Restrictions On Use: A lot which is nonconforming as to width or depth or lot area and which was under one ownership at the time the area was first zoned, the zoning causing the lot to become nonconforming, may be used subject to all other requirements of the Zoning Ordinance.
- B. Creation Of Nonconforming Lots: A lot shall not be separated from a larger parcel if any of the resulting lots would be nonconforming.

5-6-15: NUISANCE:

None of the provisions of the nonconforming use regulations restrict the authority to require modification or termination of any nonconforming use which has been declared to be a nuisance by the City Council.

5-6-16: PENALTY:

- A. Any person violating any of the provisions set out in this title shall be assessed a charge of one hundred dollars (\$100.00) for each violation, payable at the city clerk's office within thirty (30) days of the citation. Each such person is guilty of a separate violation for each and every day the violation continues.
- B. Violations of Title 5 Chapter 6 of the Municipal Code shall be resolved before a business license is issued or renewed.

SECTION 2: 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 3: CONFLICTING ORDINANCE PROVISIONS

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

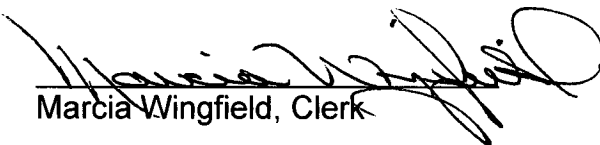
SECTION 4: EFFECTIVE DATE

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 day of July, 2012.



Dan Franklin, Mayor



Marcia Wingfield, Clerk

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

June 7, 2012

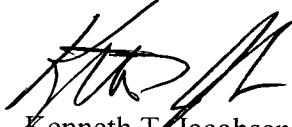
City of Dalton Gardens
Attn: Marcia Wingfield, City Clerk
6360 N.4th Street
Dalton Gardens, ID 83815

RE: Ordinance 220

Dear Marcia:

Pursuant to Idaho Code § 50-901A, this letter is to certify that the summary of Ordinance No. 220, DALTON GARDENS NONCONFORMING USE ORDINANCE, is true and complete and provides adequate notice to the Public of the contents of said Ordinance.

Very truly yours,


Kenneth T. Jacobsen
City Attorney

KTJ/rs