



Agenda for the Regular Meeting Dalton Gardens City Council

Thursday, June 3rd, 2021 @ 6:00 PM

Location: DALTON GARDENS CITY HALL, 6360 N 4th St., Dalton Gardens, ID

Meeting will be conducted via teleconference and in person.

Please click this link to join the webinar via computer/smartphone:

<https://us02web.zoom.us/j/87341410375?pwd=U3JMQmRvUzZjNmJmU0NBUTZ5Vzk2dz09>

Phone Number: 1-669-900-6833 or 1-346-248-7799 or 1-253-215-8782

Webinar ID: 873 4141 0375; Passcode: 387423

1. CALL TO ORDER:

2. ROLL CALL OF CITY COUNCIL MEMBERS:

3. PLEDGE OF ALLIGANCE:

4. AMENDMENTS TO THE AGENDA- ACTION

5. PUBLIC COMMENT PERIOD:

Each speaker will be allowed a maximum of three (3) minutes to address the City Council on matters that relate to City government business. Comments related to future public hearings should be held for that public hearing. Please be advised that the City Council can only take official action this evening for those items already listed on the agenda.

6. REPORTS:

- a. Council Members
- b. City Engineer
- c. Clerk/Treasurer
- d. Kootenai County Sheriff

7. CONSENT CALENDAR- ACTION

- a. Minutes from the Regular Meeting May 24, 2021 and Special Meeting May 27, 2021
- b. Financial Statements:
 - March 1, 2021 to March 31, 2021
 - April 1, 2021 to April 30, 2021
 - May 1, 2021 to May 31, 2021
- c. Claims Listed from May 25, 2021 to June 3, 2021

8. OLD BUSINESS:

- a. Facility Reservation Policy- **ACTION**
- b. Discussion of AIC & ICCTFOA Conference in Boise Attendance June 15-18

9. NEW BUSINESS:

- a. iii-A Annual Presentation to the City Council
- b. Discussion and Approval of Directive to Planning & Zoning to continue pursuing Small Cell Ordinance- **ACTION**
- c. City of Hayden Cooperative Funding Agreement (Chip Seal Prairie Ave) with Waiver of Potential Conflict from Lake City Law- **ACTION**
- d. Discussion and Approval of Josh Exley contract for IT maintenance – **ACTION**

10. PUBLIC COMMENT:

Each speaker will be allowed a maximum of three (3) minutes to address the City Council on matters that relate to City government business. Comments related to future public hearings should be held for that public hearing. Please be advised that the City Council can only take official action this evening for those items already listed on the agenda.

11. ADJOURNMENT-ACTION

POSTED 6/1/21

The purpose of the Agenda is to assist the Council and interested citizens in the conduct of the public meeting. Careful review of the Agenda is encouraged. Testimony from the public will be solicited for any item or issue listed under the category of Public Hearings. Any individual who wishes to address the Council on any other subject should plan to speak when Item: Public Comments is identified by the Mayor. The Mayor and Council will not normally allow audience participation at any other time. Please no repetitive or abusive comments. Workshops are for Council Members discussion only on a topic, no action or decisions occur at that time. No Public Comment is taken during Workshops. Assistance for persons with disabilities will be provided upon 24-hour notice prior to the meeting by calling the City Clerk at (208) 772-3698.

Dalton Gardens Horse Complex Use Restrictions and Reservation Policy

Draft April 5 June 1, 2021

Reservations

The Dalton Gardens Horse Complex reservations are made on a first-come, first-served basis, up to one year in advance of the event. The arena will be closed to the general public during any said reservation. Reservation shall require approval of a reservation application filed with the City Clerk, along with the required reservation fee, at least 5 business days prior to the proposed use date. Reservations are non-transferable. The City may also require a refundable cleaning/ damage deposit, to be returned in full if no clean-up or repairs are required to be completed by the City after the event. For the year 2021, reservations which are already on the Community Calendar will be honored.

If the event will result in attendance of 50 or more but less than 125 persons, an event permit (in accordance with City Code Title 3, Chapter 7) shall be required prior to acceptance of the reservation. Reservations for large events should be made 45 days in advance.

Cancellations of reservations may occur at any time prior to the event. The reservation fee shall be non-refundable, regardless of the timing of the cancellation. No refunds or credits will be given if inclement weather conditions prevent use of the facility.

Rules for use of the facility

The Complex Arena must be left in the same or better condition than existed before any event or use of the facility. Any clean-up work or repairs by the City will be charged against the cleaning/ damaged deposit. If the cleaning/ damage deposit does not cover the cost of cleaning or repairs, the person or entity that made the reservation shall be liable to pay the balance of the costs.

The use of any City facility shall be at your own risk. The City of Dalton Gardens does not assume any liability or responsibility for injury or for any loss, theft or damage to personal items.

The applicant is responsible for the behavior of all guests attending the event.

Vehicle parking is limited to designated parking areas only. Driving on the lawn area is prohibited.

The riding arena and round pen facilities are open from 7:00 a.m. to sunset (City Code Section 9-2-1 A.). Special exceptions may be granted by the City Council.

Leashed dogs are allowed at the arena, dogs must remain under control of the owner. The owner is responsible for cleaning up after the dog. Dogs are not allowed in horse arenas.

~~Alert those in the arena when you enter or leave.~~ All manure is to be picked up and removed from the premises.

Sitting on the gates or fencing is not allowed. Gates are to remain closed at all times.

Horses are not allowed on the grass areas, except when necessary to get to a gate. Horses are allowed on the path along the outside perimeter of the arena complex.

Children under age 18 must wear a helmet when mounted. Helmets are recommended for all riders when mounted. Adult supervision is recommended for children under the age of 18.

No smoking is allowed on City property.

No alcohol is allowed at the riding arena facility, including the picnic gazebo, unless a permit is granted by City Council, in accordance with City Code Section 9-2-1B.

Glass containers are prohibited.

The applicant is responsible for removal of all garbage, trash and litter created by the event.

Decoration or signage is allowed, and must be removed promptly after the event.

Music or noise must be kept at a reasonable level not to disturb other park patrons and neighbors.

Open fires, explosives and fireworks are prohibited.

Vegetation and landscaping rocks may not be disturbed or removed.

Picnic tables must be left on the concrete pad.

Only for non-profit activities are not permitted.

Fees may be reduced or waived in exchange for maintenance work done by prior arrangement with the City.

Vandalism or destruction of City property is a crime and violators will be prosecuted.

Ward Newcomb Memorial Park Use Restrictions and Reservation Policy

Draft April 5 June 1, 2021

Reservations

Ward Newcomb Memorial Park is a community asset paid for and maintained by the residents of Dalton Gardens and is not designed to accommodate regular sports activities. Reservations for the Ward Newcomb Memorial Park Gazebo (picnic shelter) are made on a first-come, first-served basis, up to one year in advance of the event. ~~For events that are anticipated to have more than 25 participants, the Park will not remain open to the general public during any said reservation. The picnic shelter or the lawn area, or both, are available for reservation.~~ Reservation shall require approval of a reservation application filed with the City Clerk, along with the required reservation fee, at least 5 business days prior to the proposed use date. For the year 2021, reservations which are already on the Community Calendar will be honored.

Reservations are non-transferable. The City may also require a refundable cleaning/ damage deposit, to be returned in full if no clean-up or repairs are required to be completed by the City after the event.

If the event will result in attendance of 50 or more persons, an event permit (in accordance with City Code Title 3, Chapter 7) shall be required prior to acceptance of the reservation. Reservations for large events should be made 45 days in advance. Vendors may be allowed at the Park with approval of an event permit.

Cancellations of reservations may occur at any time prior to the event. The reservation fee shall be non-refundable, regardless of the timing of the cancellation. No refunds or credits will be given if inclement weather conditions prevent use of the facility.

Rules for use of the facility

The Park must be left in the same or better condition than existed before any event or use of the facility. Any clean-up work or repairs by the City will be charged against the cleaning/ damage deposit. If the cleaning/ damage deposit does not cover the cost of cleaning or repairs, the person or entity that made the reservation shall be liable to pay the balance of the costs.

The use of any City facility shall be at your own risk. The City of Dalton Gardens does not assume any liability or responsibility for injury or for any loss, theft or damage to personal items.

The applicant is responsible for the behavior of all guests attending the event.

Within one week of an event for which a reservation has been approved by the City, the applicant may place an 8.5" x 11" sign at the gazebo that indicates the date, time, and name of the party holding the reservation. The sign shall be placed in the holder provided by the City.

Vehicle parking is limited to the adjacent parking area only. Driving on the lawn area is prohibited. Vendors with canopies are restricted to the parking lot.

The Park is open from sunrise to sunset. The park may be reserved from 7:00 a.m. to 10:00 p.m. by issuance of a permit.

Animals are generally prohibited at the Park, except for certified service animals. Dogs may be permitted in designated areas for special events with special permission from the City Council. (City Code Section 9-2-1C.)

No Smoking is allowed in the designated area on City property.

No alcohol is allowed at the Park, including the picnic shelter, unless a permit is granted by City Council, in accordance with City Code Section 9-2-1 B.

Glass containers are prohibited.

The applicant is responsible for removal of all garbage, trash and litter created by the event.

Decoration or signage is allowed with approval by the City, and must be removed promptly after the event.

Music or noise must be kept at a reasonable level not to disturb other park patrons and neighbors.

No overnight camping is allowed.

Open fires, explosives and fireworks are prohibited.

Vegetation and landscaping rocks may not be disturbed or removed.

Picnic tables must be left on the concrete pad.

Access for other park visitors must not be restricted.

Vandalism or destruction of City property is a crime and violators will be prosecuted.

Only for non-profit activities are not permitted.

Dalton Gardens City Hall Use Restrictions and Reservation Policy

Draft April 5 June 1, 2021

Reservations

The meeting rooms at Dalton Gardens City Hall may be reserved for use up to one year prior to an event. Reservations are made on a first-come, first-served basis. ~~During regular business hours, City Hall will remain open to the general public during any said reservation. City Hall is not available for reservation during regular business hours.~~ Only the Council chamber and the basement, or both, are available for reservation. Reservations shall require approval of a reservation application filed with the City Clerk, along with the required reservation fee, at least 5 business days prior to the proposed use date. Reservations are non-transferable. For the year 2021, reservations which are already on the Community Calendar will be honored.

Reservations are non-transferrable. The City may also require a refundable cleaning/ damage deposit, to be returned in full if no clean-up or repairs are required to be completed by the City after the event. The City may also require that the party responsible for the reservation reimburse the City for staff time (as overtime) for staff to be present during non-business hours.

If the event will result in attendance of 50 or more persons, an event permit (in accordance with City Code Title 3, Chapter 7) shall be required prior to acceptance of the reservation.

Reservations for large events should be made 45 days in advance.

Cancellations of reservations may occur at any time prior to the event. The reservation fee shall be non-refundable, regardless of the timing of the cancellation. No refunds or credits will be given if inclement weather conditions prevent use of the facility. The City may cancel the reservation with no notice if the City needs to use the facility for City business (all reservation fees will be returned in such a circumstance).

Rules for use of the facility

City Hall must be left in the same or better condition than existed before any event or use of the facility. Any clean-up work or repairs by the City will be charged against the cleaning/ damage deposit. If the cleaning/ damage deposit does not cover the cost of cleaning or repairs, the person or entity that made the reservation shall be liable to pay the balance of the costs.

The use of any City facility shall be at your own risk. The City of Dalton Gardens does not assume any liability or responsibility for injury or for any loss, theft or damage to personal items.

The applicant is responsible for the behavior of all guests attending the event. Vehicle parking is limited to the adjacent parking area only.

No smoking is allowed on City property. No alcohol is allowed at City Hall without City Council approval.

Only for non-profit activities are ~~not~~ permitted.

Users shall comply with posted fire-code capacities. Cooking is not allowed.

CITY OF DALTON GARDENS, IDAHO

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF DALTON GARDENS, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; AMENDING TITLE 5, CHAPTER 1, SECTION 4 TO ADD DEFINITIONS; AMENDING TITLE 5, CHAPTER 3, SECTION 1 TO ADD A NEW ALLOWED USE TO THE COMMERCIAL DISTRICT AND TO CLARIFY REQUIREMENTS FOR A SPECIAL USE PERMIT; AMENDING TITLE 5, CHAPTER 3, SECTION 14 TO DELETE WIRELESS COMMUNICATION FACILITY; AMENDING TITLE 5, CHAPTER 4, SECTION 1 TO REVISE THE USES ALLOWED IN THE UTILITY DISTRICT; AMENDING TITLE 5, CHAPTER 5, SECTION 1 TO ADD A NEW ALLOWED USE IN THE RESIDENTIAL DISTRICT; AMENDING TITLE 5, CHAPTER 5, SECTION 2 TO CLARIFY USES WHICH REQUIRE A SPECIAL USE PERMIT; AMENDING TITLE 5 TO ADD A NEW CHAPTER 13 FOR STANDARDS FOR SPECIFIC USES AND A NEW SECTION 1 TO SAID CHAPTER TO ADD STANDARDS FOR DISTRIBUTED ANTENNA SYSTEMS AND SMALL CELL WIRELESS COMMUNICATION FACILITIES, PROVIDING SEVERABILITY, REPEALING CONFLICTING PROVISIONS, AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1: AMENDMENTS TO TITLE 5, CHAPTER 1, SECTION 4

5-1-4: DEFINITIONS:

DISTRIBUTED ANTENNA SYSTEMS (DAS): A form of wireless communication facility consisting of a network of transceiver equipment at a central hub site to support multiple antenna locations throughout the desired coverage area.

MACROCELL: An antenna or antennas mounted on a tower, ground-based mast, rooftops and other towers or structures, at a height that provides a clear view over the surrounding buildings and terrain.

SMALL CELL: A form of wireless communication facility consisting of compact wireless equipment that contain their own transceiver equipment and function like cells in a wireless network but provide a smaller coverage area than traditional macrocells. Small cells shall not exceed 50 feet in height and shall have antennas that are less than 3 cubic feet in size.

UTILITY SUPPORT STRUCTURE: A freestanding structure that is used for supporting utilities, including, but not limited to electrical service and communications. Such structures may consist of a monopole, mast, lattice tower, utility pole, water tower, or other similar structures.

WIRELESS COMMUNICATION FACILITY (WCF): A staffed or unstaffed facility or location or equipment for the transmission or reception of radio frequency (RF) signals or other wireless communications or other signals for commercial communications purposes, typically consisting

of one or more antennas or group of antennas, a tower or attachment support structure, transmission cables and other transmission equipment, and an equipment enclosure or cabinets, and including small cell technologies.

SECTION 2: AMENDMENTS TO TITLE 5, CHAPTER 3, SECTION 1, SUBSECTION B.2.

5-3-1: USES

B. Allowed Uses:

2. Allowed Uses: See section 5-3-14, "Appendix 1 Activity Groups", of this chapter for general description and definition of each use.

Distributed antenna systems and small cell wireless communication facilities, in accordance with the standards in Section 5-13-1.

4. Special Use Permits: See section 5-3-14, "Appendix 1 Activity Groups", of this chapter for general description and definition of each use. A structure, site or parcel may have more than one special use permit. Each special use is considered a separate permit.

Wireless communication facility, except distributed antenna systems and small cell wireless communication facilities

SECTION 3: AMEND TITLE 5, CHAPTER 3, SECTION 14

5-3-14: APPENDIX 1 ACTIVITY GROUPS:

~~Wireless communication facility (WCF). Any facility designed and used for the purpose of transmitting, receiving, or relaying voice and data signals. WCFs include siting areas, transmission towers and antennas.~~

SECTION 4: AMEND TITLE 5, CHAPTER 4, SECTION 1

5-4-1 USE RESTRICTIONS:

A The utility district shall permit no land uses other than the following:

1. Water infrastructure such as the maintenance of wells, pumps, pump houses, water tanks, pipes, and associated fencing, equipment and accessory structures or buildings, all of which must be compatible with one another.

2. Electrical substations and associated fencing, equipment, accessory structures or buildings.

3. Distributed antenna systems and small cell wireless communication facilities, in accordance with the standards in Section 5-13-1.

SECTION 5: AMEND TITLE 5, CHAPTER 5, SECTION 1

5-5-1: ALLOWED USES:

Ordinance No. ____

Page 2

Draft 3 for Planning Commission hearing – January 28, 2021

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:

Distributed antenna systems and small cell wireless communication facilities, in accordance with the standards in Section 5-13-1.

SECTION 6: AMEND TITLE 5, CHAPTER 5, SECTION 2

5-5-2: SPECIAL USES:

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

SECTION 7: AMEND TITLE 5, TO ADD A NEW CHAPTER 13

CHAPTER 13
STANDARDS FOR SPECIFIC USES

5-13-1: STANDARDS FOR DISTRIBUTED ANTENNA SYSTEMS AND SMALL CELL WIRELESS COMMUNICATION FACILITIES

A. Distributed antenna systems (DAS) and small cells are allowed in all zones, provided the applicant complies with all Federal laws (such as the Americans With Disabilities Act) and State laws and requirements.

B. Distributed antenna systems and small cells located within city right-of-way are subject to approval of encroachment permits, licensing agreements, building permits and administrative review, as applicable for the circumstance.

C. Distributed antenna systems and small cells located on private property are subject to administrative review and building permit approval. No private property shall host more than one antenna system.

D. Installation of a distributed antenna system or small cell on an existing building or existing utility support structure shall not result in an increase in height greater than 15' higher than the existing building or utility support structure. Utility support structures may be replaced, but shall be no more than 15 feet higher than the previous structure which did not support a distributed antenna system or small cell.

E. New support structures used for distributed antenna systems or small cells which are not replacements shall not exceed 45 feet in height above grade. In no case shall the utility support structure and antenna in combination exceed 50 feet in total height.

F. The antenna array shall be designed, placed and colored to blend into the architectural detail and coloring of the host structures. Support towers or poles shall be painted a non-reflective color that best allows it to blend into the surroundings. The use of grays, blues, greens, dark bronze, browns or other site-specific colors may be appropriate; however, each case should be evaluated individually.

G. A single permit application may be used for multiple distributed antennas that are part of a larger overall DAS network. A single permit application may also be used for multiple small cells. A single license agreement may be used for multiple node locations in DAS and/or small cell networks.

H. The City may charge fees for permit review and/or use of City-owned right-of-way, in accordance with the duly-adopted fee schedule.

I. A written report will be prepared, signed and sealed by an Idaho-licensed professional engineer or a competent employee of the applicant, which assesses whether the proposed WCF demonstrates compliance with the RF emissions limits established by the FCC. If the report is prepared by an employee of the applicant, who is not an Idaho-licensed professional engineer, the report must be accompanied by documentation establishing the employee's competence to complete the report.

J. Documentation from an Idaho-licensed professional engineer shall be submitted which shall demonstrate the proposed facility's compliance with applicable Building Code standards, and describing the general structural capacity of the proposed facility, including the maximum number and type of devices that can be accommodated and the basis of the calculation of capacity. Additionally, a Non-Ionizing Electromagnetic Radiation Report demonstrating compliance with FCC regulations shall also be submitted.

K. Colocation of Facilities:

1. Policy: It is the policy of the City to minimize the number of wireless communication support towers and to encourage the collocation of antenna arrays of more than one wireless communication service provider on a single support tower.

2. Written consent to place DAS and small cell wireless facilities on utility poles and related infrastructure shall be submitted with the application to the City.

3. Colocation consent shall be required and a written statement shall be signed by a person with the legal authority to bind the applicant and the project owner, which indicates whether the applicant is willing to allow other transmission equipment owned by others to collocate with the proposed wireless communication facility whenever technically and economically feasible and aesthetically desirable.

L. Setback Requirements:

1. Except for facilities which are collocated on the same structure, no DAS or small cell shall be located within 500 feet of another DAS or small cell installation.

2. No DAS or small cell shall be located within 30 feet of a residence.

M. Compliance:

1. All DAS and small cell facilities must comply with all standards and regulations of the FCC and any State or other Federal government agency with the authority to regulate wireless communication facilities.

2. All graffiti on DAS and small cell facilities must be removed at the sole expense of the permittee after notification by the City to the owner/operator of the facility. The graffiti must be removed within fourteen (14) days after notification by the City.

3. If any FCC, State or other governmental license or any other governmental approval to provide communication services is ever revoked as to any site permitted or authorized by the City, the permittee must inform the City of the revocation within thirty (30) days of receiving notice of such revocation.

N. Indemnification. Each permit issued for a DAS or small cell facility located on City property shall be deemed to have as a condition of the permit a requirement that the applicant defend, indemnify and hold harmless the City and its officers, agents, employees, volunteers, and contractors from any and all liability, damages, or charges (including attorneys' fees and expenses) arising out of claims, suits, demands, or causes of action as a result of the permit process, a granted permit, construction, erection, location, performance, operation, maintenance, repair, installation, replacement, removal, or restoration of the DAS or small cell.

O. Insurance. Each permit issued for a DAS or small cell facility located on City property shall procure and maintain insurance, in the amount set forth in the Master License Agreement, but in no event less than the minimum amount provided by the Idaho Tort Claims Act, Idaho Code Section 6-901 *et seq.*, and provide the City with a certificate of insurance on a standard insurance industry ACORD form or its equivalent. The insurance coverage required must be issued by an insurer licensed, authorized or permitted to transact business in the State of Idaho.

P. Colocation of DAS or Small Cell on Pre-Existing Structure. For the mounting or installation of a DAS or small cell facility on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes:

1. Purpose: This section implements, in part, 47 USC section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 18-133, and regulated by 47 CFR section 1.6003. Except when a shorter timeframe is otherwise required under this chapter, the following timeframes apply to colocation.

2. Application Review:

a. Application: The City shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the City to consider whether an application is a colocation request.

b. Review: Upon receipt of an application for a colocation request pursuant to this section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

c. Timeframe For Review: Within sixty (60) days of the date on which an applicant submits an application seeking approval of a colocation request under this section, the City shall review and act upon the application, subject to the tolling provisions below.

d. Tolling Of The Timeframe For Review: The 60-day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete.

(1) To toll the timeframe for incompleteness, the City must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application.

(2) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness.

(3) Following a supplemental submission, the City will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

e. Failure To Act: In the event the City fails to approve or deny a complete application under this section within the timeframe for review (accounting for any tolling) the request shall be deemed granted provided the applicant notifies the City in writing after the review period has expired, and the applicant shall be entitled to pursue all remedies under applicable law.

Q. New Structure to Support Small Cell. For the mounting or installation of a DAS or small cell facility on a new tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes:

1. Purpose: This section implements, in part, 47 USC section 332(c)(7) of the Federal Communications Act of 1934, as amended, as interpreted by the FCC in its Report and Order No. 18-133, and regulated by 47 CFR section 1.6003. Except when a shorter timeframe is otherwise required under this chapter, the following timeframes apply to colocation.

2. Application Review:

a. Application: The City shall prepare and make publicly available an application form, the requirements of which shall be limited to the information necessary for the City to consider whether an application is a colocation request.

b. Review: Upon receipt of an application for a colocation request pursuant to this section, the City shall review such application, make its final decision to approve or disapprove the application, and advise the applicant in writing of its final decision.

c. Timeframe For Review: Within ninety (90) days of the date on which an applicant submits an application seeking approval of a colocation request under this section, the City shall review and act upon the application, subject to the tolling provisions below.

d. Tolling Of The Timeframe For Review: The 90-day review period begins to run when the application is filed, and may be tolled only by mutual agreement between the City and the applicant, or in cases where the City determines that the application is incomplete.

(1) To toll the timeframe for incompleteness, the City must provide written notice to the applicant within thirty (30) days of receipt of the application, specifically delineating all missing documents or information required in the application.

(2) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness.

(3) Following a supplemental submission, the City will notify the applicant within ten (10) days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

e. Failure To Act: In the event the City fails to approve or deny a complete application under this section within the timeframe for review (accounting for any tolling) the request shall be deemed granted provided the applicant notifies the City in writing after the review period has expired, and the applicant shall be entitled to pursue all remedies under applicable law.

R. Abandonment. Any DAS or small cell that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such DAS or small cell shall so notify the City in writing and remove the same within ninety (90) days of giving notice to the City of such abandonment. Additionally, upon written notice from the City that the DAS or small cell has been abandoned by the owner of such infrastructure for a continuous period of more than twelve (12) months, the owner shall remove the same within ninety (90) days. If the removal cannot be accomplished within this timeframe, the owner shall request an extension and provide a plan to remove the same and the associated timelines to accomplish the removal. Failure to remove an abandoned DAS or small cell within said ninety (90) days shall be grounds to remove the DAS or small cell at the owner's expense, including all costs and attorneys' fees. Irrespective of any agreement between the owner of a facility and the owner of a building or land upon which the facility is located to the contrary, they shall be jointly and severally responsible for the removal of abandoned unused facilities and the facility's foundation, if any.

SECTION 8. SEVERABILITY.

If any provision of this chapter, or its application to any person or circumstances, be declared unconstitutional or invalid for any reason by a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter or the application of the provisions to other persons or circumstances.

Nothing in this chapter shall be construed as preventing the adoption of more restrictive provisions set forth in other sections of the Dalton Gardens Municipal Code. The more restrictive provisions of the code shall control.

SECTION 9. REPEAL OF CONFLICTING PROVISIONS.

All provisions of the ordinances of the City of Dalton Gardens which conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 10. EFFECTIVE DATE.

Upon passage and approval and publication in one (1) issue of the Coeur d'Alene Press, the official newspaper of the City of Dalton Gardens, Idaho, this Ordinance shall be in full force and effect.

PASSED under suspension of the rules at which a roll call vote was taken at regular meeting of the city council of the City of Dalton Gardens, Kootenai County, Idaho, this _____ day of _____, 2021.

ATTEST:

DAN EDWARDS, Mayor

VALERIE ANDERSON, Clerk



User Name: Caitlin Kling

Date and Time: Wednesday, May 19, 2021 11:35:00 AM PDT

Job Number: 144240862

Document (1)

1. *Idaho Code § 67-6511*

Client/Matter: -None-

Idaho Code § 67-6511

Statutes current through Chapter 360 of the 2021 Regular Session (except Chapter 224) and effective as of May 12, 2021

ID - Idaho Code Annotated > GENERAL LAWS > TITLE 67. STATE GOVERNMENT AND STATE AFFAIRS > CHAPTER 65. LOCAL LAND USE PLANNING

§ 67-6511. Zoning ordinance

(1) Each governing board shall, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, establish within its jurisdiction one (1) or more zones or zoning districts where appropriate. The zoning districts shall be in accordance with the policies set forth in the adopted comprehensive plan.

(a) Within a zoning district, the governing board shall where appropriate establish standards to regulate and restrict the height, number of stories, size, construction, reconstruction, alteration, repair or use of buildings and structures; percentage of lot occupancy, size of courts, yards, and open spaces; density of population; and the location and use of buildings and structures. All standards shall be uniform for each class or kind of buildings throughout each district, but the standards in one (1) district may differ from those in another district.

(b) Within an overlay zoning district, the governing board shall establish clear and objective standards for the overlay zoning district while ensuring that application of such standards does not constitute a regulatory taking pursuant to Idaho or federal law.

(2) Ordinances establishing zoning districts shall be amended as follows:

(a) Requests for an amendment to the zoning ordinance shall be submitted to the zoning or planning and zoning commission which shall evaluate the request to determine the extent and nature of the amendment requested. Particular consideration shall be given to the effects of any proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction. An amendment of a zoning ordinance applicable to an owner's lands or approval of conditional rezoning or denial of a request for rezoning may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

(b) After considering the comprehensive plan and other evidence gathered through the public hearing process, the zoning or planning and zoning commission may recommend and the governing board may adopt or reject an ordinance amendment pursuant to the notice and hearing procedures provided in section 67-6509, Idaho Code, provided that in the case of a zoning district boundary change, and notwithstanding jurisdictional boundaries, additional notice shall be provided by mail to property owners or purchasers of record within the land being considered, and within three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be impacted by the proposed change as determined by the commission. Notice shall also be posted on the premises not less than one (1) week prior to the hearing. When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of posted or mailed notice. In the absence of a locally adopted alternative notice procedure, sufficient notice shall be deemed to have been provided if the city or county provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city or county at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site. Any property owner entitled to specific

Idaho Code § 67-6511

notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board subject to applicable procedures.

(c)The governing board shall analyze proposed changes to zoning ordinances to ensure that they are not in conflict with the policies of the adopted comprehensive plan. If the request is found by the governing board to be in conflict with the adopted plan, or would result in demonstrable adverse impacts upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction, the governing board may require the request to be submitted to the planning or planning and zoning commission or, in absence of a commission, the governing board may consider an amendment to the comprehensive plan pursuant to the notice and hearing procedures provided in section 67-6509, Idaho Code. After the plan has been amended, the zoning ordinance may then be considered for amendment pursuant to paragraph (b) of this subsection.

(d)If a governing board adopts a zoning classification pursuant to a request by a property owner based upon a valid, existing comprehensive plan and zoning ordinance, the governing board shall not subsequently reverse its action or otherwise change the zoning classification of said property without the consent in writing of the current property owner for a period of four (4) years from the date the governing board adopted said individual property owner's request for a zoning classification change. If the governing body does reverse its action or otherwise change the zoning classification of said property during the above four (4) year period without the current property owner's consent in writing, the current property owner shall have standing in a court of competent jurisdiction to enforce the provisions of this section.

History

I.C., [§ 67-6511](#), as added by 1975, ch. 188, § 2, p. 515; am. 1983, ch. 121, § 1, p. 314; am. 1985, ch. 141, § 1, p. 384; am. 1987, ch. 329, § 1, p. 688; [am. 1992, ch. 269, § 4, p. 830](#); [am. 1999, ch. 396, § 8, p. 1099](#); [am. 2003, ch. 142, § 1, p. 410](#); [am. 2011, ch. 89, § 3, p. 192](#); [am. 2013, ch. 216, § 1, p. 507](#).

Annotations

Notes

AMENDMENTS.

The [2011 amendment, by ch. 89](#) , added the first sentence in subsection (c).

The [2013 amendment, by ch. 216](#) , added the subsection and paragraph designations; inserted paragraph (1)(b); and substituted "paragraph (b) of this subsection" for "section 67-6511(b), Idaho Code" at the end of paragraph (2)(c).

EFFECTIVE DATES.

Section 2 of S.L. 1983, ch. 121 declared an emergency. Approved April 1, 1983.

Case Notes

AMENDMENT.
 ANNEXATION REQUIREMENTS.
 COMPREHENSIVE PLAN.
 CONFLICT WITH CITY PLAN.
 CONFORMING ZONING ORDINANCES TO PLAN.
 DUTY OF GOVERNING BODY.
 INDISPENSABLE PARTIES.
 INITIATIVE LEGISLATION PROHIBITED.
 NAMING AND NUMBERING OF STREETS.
 PROCEDURE.
 REVERSAL OF ZONING DECISION.
 REVIEW.
 SPOT ZONING.
 UNIFORMITY.
 ZONING RESTRICTIONS.

ANALYSIS

AMENDMENT.

The enactment of a comprehensive plan is a precondition to the validity of zoning ordinances; it follows a fortiori that an amendment to a zoning ordinance must also be in accordance with the adopted plan. *Love v. Board of County Comm'rs*, 105 Idaho 558, 671 P.2d 471 (1983).

Where the findings of fact were insufficient to support the conclusion that zoning amendment was in accordance with the county comprehensive plan, the district court's decision reversing the decision of the county commission was appropriate because of the commission's failure to make written findings in support of its conclusions and, the case was remanded to the county commissioners for further proceedings. *Love v. Board of County Comm'rs*, 105 Idaho 558, 671 P.2d 471 (1983).

ANNEXATION REQUIREMENTS.

By specifically prescribing the hearing and notice requirements to be followed in the annexation and zoning of newly incorporated areas, the legislature has clearly expressed its intention that the notice and hearing provisions of this section for zoning district boundary changes are inapplicable to annexation proceedings. *City of Lewiston v. Bergamo*, 119 Idaho 221, 804 P.2d 1352 (Ct. App. 1990).

COMPREHENSIVE PLAN.

A land use map is not the comprehensive plan, but only a subpart of one of the components referred to in § 67-6508 which go into the making of a plan. *Bone v. City of Lewiston*, 107 Idaho 844, 693 P.2d 1046 (1984).

Where the effect of the rezoning ordinance was to limit retail and entertainment uses in an outlying area, effect was consistent with encouraging such uses around the central core and council's conclusion that the "downzoning" of the 12.6 acres to limited business was consistent with city's comprehensive plan was not clearly erroneous. *Sprenger, Grubb & Assocs. v. City of Hailey*, 127 Idaho 576, 903 P.2d 741 (1995).

Idaho Code § 67-6511

Board of commissioners did not this section by ignoring the county's comprehensive plan when it granted a zone change from A-2.5 to R-1, as the board's finding that the zone change was "in accord with" the comprehensive plan was supported by substantial, competent evidence. Evans v. Teton County, 139 Idaho 71, 73 P.3d 84 (2003).

CONFLICT WITH CITY PLAN.

A city zoning and annexation ordinance, which established a 12-acre business zone adjacent to an area zoned commercial by the county and one-quarter mile from the main business zoning sector of the city, does not conflict with the city comprehensive plan as prohibited by this section, even where the plan is general and contains some undefined terms, since the proposed zone was close enough to existing business zoning. State ex rel. Roark v. City of Hailey, 102 Idaho 511, 633 P.2d 576 (1981).

This section does not require a zoning ordinance's land use designation to be in strict conformance with the corresponding land use designation of the comprehensive plan; the determination of whether a zoning ordinance is "in accordance with" the comprehensive plan is one of fact for the governing body charged with zoning. Balser v. Kootenai County Bd. of Comm'rs, 110 Idaho 37, 714 P.2d 6 (1986).

Where the applicant's property was the only property in the area which had not been rezoned, the board of county commissioner's decision to rezone the property as commercial, even though it was contrary to the existing comprehensive plan, was supported by substantial evidence and was not clearly erroneous. Ferguson v. Board of County Comm'rs, 110 Idaho 785, 718 P.2d 1223 (1986).

CONFORMING ZONING ORDINANCES TO PLAN.

The trial court erred as a matter of law in holding that the process of conforming zoning ordinances to the comprehensive plan is a purely ministerial duty; in fact, that determination is committed to the sound discretion of the governing body, subject only to judicial review on the record. Balser v. Kootenai County Bd. of Comm'rs, 110 Idaho 37, 714 P.2d 6 (1986).

DUTY OF GOVERNING BODY.

A governing body charged to zone "in accordance with" under this section must make a factual inquiry into whether the requested zoning ordinance or amendment reflects the goals of, and takes into account those factors in the comprehensive plan in light of the present factual circumstances surrounding the request; it does not require that governing bodies, as a matter of law, zone their land as it appears on their land use maps nor does it mean that such bodies can ignore their comprehensive plans when adopting or amending zoning ordinances. Bone v. City of Lewiston, 107 Idaho 844, 693 P.2d 1046 (1984); Love v. Board of County Comm'rs, 108 Idaho 728, 701 P.2d 1293 (1985).

The governing body charged with zoning must make a factual inquiry to determine whether the requested rezoned reflects the goals of, and takes into account those factors in, the comprehensive plan in light of the present factual situation surrounding the request. Ferguson v. Board of County Comm'rs, 110 Idaho 785, 718 P.2d 1223 (1986).

In considering a rezoning request, the board of county commissioners was guilty of unlawful procedure in failing to deliberate first on the proposed amendment to the comprehensive plan and, after that determination was made, deciding the appropriateness of a rezoned within that area. Price v. Payette County Bd. of County Comm'rs, 131 Idaho 426, 958 P.2d 583 (1998).

Bingham County Zoning Ordinance § 17.7 was not applicable when the recommendation of a planning and zoning commission on a rezoning application was to amend the zoning ordinance. Applying Ordinance § 17.7 in a

Idaho Code § 67-6511

situation in which the planning and zoning commission had recommended approval of a rezoning application, but the application had been denied by the board of county commissioners on the ground that they were split on the issue, would, in essence, delegate to the planning and zoning commission the authority to amend the zoning ordinance in violation of Idaho Const., Art. XII, § 2 and § 67-6504 and this section. Brower v. Bingham County Commissioners (In re Zoning Change), 140 Idaho 512, 96 P.3d 613 (2004).

INDISPENSABLE PARTIES.

Landowner, who challenged the validity of a zoning ordinance amendment which downsized use of his land from heavy industrial to rural residential, was not required to name landowners within 300 feet of his property as indispensable parties. McCuskey v. Canyon County, 123 Idaho 657, 851 P.2d 953 (1993).

INITIATIVE LEGISLATION PROHIBITED.

The legislature clearly intended that the authority to enact comprehensive plans, establish zoning districts and adopt amendatory ordinances be exercised exclusively by city and county legislative or governing bodies and pursuant to specific prescribed procedures; thus, the comprehensiveness of zoning legislation in Idaho leaves no room for direct legislation by electors through an initiative election, and an initiative through which city sought to enact ordinance establishing height criteria for certain areas was in conflict with this chapter and was invalid. Gumprecht v. City of Coeur d'Alene, 104 Idaho 615, 661 P.2d 1214 (1983), overruled on other grounds, City of Boise City v. Keep the Commandments Coalition (In re Initiative Petition for a Ten Commandments Display), 143 Idaho 254, 141 P.3d 1123 (2006).

NAMING AND NUMBERING OF STREETS.

Since the purposes of this chapter and the duties of those charged with its administration are closely related to the planning and zoning functions that have long been the domain of cities and counties, since of necessity these functions transcend the boundaries of local special purpose districts, since former § 40-501 was amended to add to the duties of the county commissioners the duty to rename streets and highways within the county by proper ordinance, since §§ 50-1301 to 50-1329 governing the filing of subdivision plats provide that all plats must be presented to the proper governing body of a city and/or county for approval and each plat must show all the streets and have them named, since nothing in this chapter suggests a legislative intent for the planning and standard setting of this chapter in respect to highways to flow to highway districts by reason of the language of former § 40-1611 and since this chapter was enacted after former §§ 40-1611 and 40-1615, this chapter gives a county the authority to set standards for street naming and address numbering within the boundaries of a local highway district. Worley Hwy. Dist. v. Kootenai County, 104 Idaho 833, 663 P.2d 1135 (Ct. App. 1983).

PROCEDURE.

Board of county commissioners acted within its authority under §§ 67-6509 and 67-6535(3) and Idaho Const., Art. XII, § 2 and this section, when it considered two zoning changes pursuant to a single application; and there was no violation of procedural due process because the objectors had sufficient opportunity to express their views. Ciszek v. Kootenai County Bd. of Comm'rs, 151 Idaho 123, 254 P.3d 24 (2011).

REVERSAL OF ZONING DECISION.

A district court may only reverse a zoning decision if one of six grounds set forth in § 67-5215 (now repealed) is found to exist. Love v. Board of County Comm'rs, 108 Idaho 728, 701 P.2d 1293 (1985) (See § 67-5279).

REVIEW.

A landowner's action seeking a declaratory judgment interpreting this section and a writ of mandamus requiring a city to accept his interpretation of the statute is in reality an appeal of a city's zoning decision and should be reviewed only under the guidelines set forth in former § 67-5215 (now repealed). *Bone v. City of Lewiston*, 107 Idaho 844, 693 P.2d 1046 (1984) (See § 67-5279).

The district court applied an incorrect standard of review when it held, as a matter of law, that a zoning amendment must conform exactly to the existing comprehensive plan. *Ferguson v. Board of County Comm'rs*, 110 Idaho 785, 718 P.2d 1223 (1986).

Record on review demonstrated that the a board of county of commissioners followed the criteria set out in this section, and there was adequate evidence to support its decision to grant conditional rezoning to a property owner. *Taylor v. Canyon County Bd. of Comm'rs*, 147 Idaho 424, 210 P.3d 532 (2009).

SPOT ZONING.

Where there was sufficient testimony about growth in the relevant area and the appropriateness of expanding the residential area, determination of the board of county commissioners granting a request to rezone property from agricultural to residential did not constitute spot zoning. *Price v. Payette County Bd. of County Comm'rs*, 131 Idaho 426, 958 P.2d 583 (1998).

UNIFORMITY.

A city TDR ordinance, designed to permit purchasers to construct buildings taller than would otherwise be permitted in the city, conflicts with the uniformity requirement of this section and is invalid under *Idaho Const., Art. XII, § 2. KGF Dev., LLC v. City of Ketchum*, 149 Idaho 524, 236 P.3d 1284 (2010).

ZONING RESTRICTIONS.

Aesthetic concerns, including the preservation of open space and the maintenance of the rural character of a county, are valid rationales for a county to enact zoning restrictions under its police power. *Terrazas v. Blaine County*, 147 Idaho 193, 207 P.3d 169 (2009).

CITED IN:

Langmeyer v. State, 104 Idaho 53, 656 P.2d 114 (1982); *McDonnell v. Board of County Comm'rs*, 116 Idaho 824, 780 P.2d 146 (1989); *Taylor v. Board of County Comm'rs*, 124 Idaho 392, 860 P.2d 8 (Ct. App. 1993); *Friends of Minidoka v. Jerome County (In re Jerome County Bd. of Comm'rs)*, 153 Idaho 298, 281 P.3d 1076 (2012).

Opinion Notes

OPINIONS OF THE ATTORNEY GENERAL.

Caitlin Kling

State Regulations.

Because the oil and gas conservation act (OGCA) does not express, either explicitly or impliedly, an intent to preempt the operation of local land use planning authorities, such authorities may be applied to oil and gas developments if done in a manner consistent with the goals, objectives, and authorities of the local land use planning act and in the absence of operational conflicts between the zoning ordinance and the OGCA or oil and gas conservation commission rules or orders. OAG 11-1.

Research References & Practice Aids

COLLATERAL REFERENCES.

A.L.R.

Propriety of federal court's abstention, under *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 756, 27 L. Ed. 2d 669 (1971), to avoid interference in ongoing state proceedings involving land use and zoning. 55 A.L.R. Fed 2d 261.

IDAHO CODE

Copyright 2021 State of Idaho All rights reserved.

End of Document

COOPERATIVE FUNDING AGREEMENT

This Agreement made and entered into this _____ day of _____, 2021, is by and between the City of Hayden, a municipal corporation of the State of Idaho, (hereinafter “Hayden”), whose address is 8930 N. Government Way, Hayden, Idaho 83835, and the City of Dalton Gardens, a municipal corporation of the State of Idaho, (hereinafter “Dalton Gardens”), whose address is 6360 N. 4th Street, Dalton Gardens, Idaho 83815.

WHEREAS, Hayden owns and maintains the north side of Prairie Avenue, including a bike lane, and Dalton Gardens owns and maintains the south side of Prairie Avenue, including a bike lane; and

WHEREAS, Hayden, as part of the annual preventative maintenance activities on its transportation system, is installing surface treatments as part of the “2021 Chip Seal Project” (hereinafter “Project”) on Prairie Avenue; and more specifically described as follows:

Dalton Gardens

<i>Road Name and Limits</i>	<i>Proposed Work Description</i>
Prairie, 4th Street to Government Way (South Side)	1/2” Chip Seal Granite
Prairie, 4th Street to Government Way (South Side) Bike Lane	Fog Seal

(“Dalton Gardens Portion”); and

WHEREAS, Hayden will engage in commercial bids and contract with private commercial entities to install surface treatments; and

WHEREAS, Hayden and Dalton Gardens wish to work cooperatively to install surface treatments on both sides of Prairie Avenue; and

WHEREAS, Hayden and Dalton Gardens agree that this process will benefit both parties; and

WHEREAS, Hayden and Dalton Gardens agree to pay their respective one-half share of costs for the work items associated with the surface treatments for Prairie Avenue identified in the contract documents; and

NOW THEREFORE, this cooperative agreement is entered into between Hayden and Dalton Gardens to address the terms of the funding, work, and the management of the Project.

1. Duties of Hayden

- a. Hayden will not advertise the bid with the Dalton Garden’s Portion until Dalton Gardens concurs with the acceptability of this Agreement in writing.
- b. Hayden will pay to advertise the project for bids in the paper.

- c. Hayden will competitively bid the commercial contract for surface treatments, including the Dalton Garden's Portion, in accordance with Idaho Code section 67-2805. Once the bids have been opened, but prior to the award of the bid, Hayden will review the bids to determine if the bids are within reasonable financial expectations.
 - d. Hayden will award the surface treatment contract, execute the agreement with the contractor, administer the contract and manage the project.
2. Duties of Dalton Gardens
- a. Dalton Gardens will pay Hayden a lump sum amount equal to the bid price for the respective Dalton Gardens Portion of the Project after the bid opening and prior to the Award of the Contract. Within 60 days of the substantial completion of the Project, Hayden will coordinate with Dalton Gardens to determine if financial adjustment is necessary and settle each respective account accordingly.
 - b. If Dalton Gardens fails to provide payment to Hayden for their portion of the contract costs, the respective quantities will be removed from the contract and any raise in unit prices due to the Contractor because of the reduction in overall quantity will be borne by the party at fault.
3. Upon completion of the work and acceptance, each party shall be responsible for the future maintenance of those routes receiving surface treatments that are within that party's jurisdiction.
4. This agreement shall be in effect upon its execution by all parties and shall remain in effect until the Project is completed.

City of Hayden

City of Dalton Gardens

Steve Griffitts, Mayor

Dan Edwards, Mayor

ATTEST:

ATTEST:

Abbi Sanchez, City Clerk

Teresa Janzen, Deputy City Clerk

Caitlin Kling | Attorney
ckling@LCLattorneys.com

June 1, 2021

Dan Edwards, Mayor
CITY OF DALTON GARDENS
6360 N. 4th St.
Dalton Gardens, ID 83815-9254

Steven J. Griffiths, Mayor
CITY OF HAYDEN
8930 N. Government Way
Hayden, ID 83835-9214

Re: *Waiver of Potential Conflict – Cooperative Funding Agreement 2021 Chip Seal Project*

As you both know, Lake City Law Group, PLLC currently represents both the City of Dalton Gardens (hereinafter “Dalton Gardens”) and the City of Hayden (hereinafter “Hayden”). The purpose of this letter is to request the informed consent regarding Lake City Law’s representation of each of your entities related to a proposed Cooperative Funding Agreement for the 2021 Chip Sealing Project.

A. Background

Lake City Law currently represents both Dalton Gardens and Hayden. In our capacity as counsel to both, we have been asked to aid in drafting and reviewing a Cooperative Funding Agreement between Dalton Gardens and Hayden relating to the 2021 Chip Sealing Project whereby Hayden and Dalton will share in the cost of surface treatments to Prairie Avenue. In this situation we would be representing both Dalton Gardens and Hayden. In order for us to assist both cities in creating this mutually beneficial agreement, we will need to have the written consent of both Dalton Gardens and Hayden as further explained below.

B. Conflict Disclosure - Concurrent Representation - Professional Conduct Rules

The Idaho Rules of Professional Conduct (the “Rules”) govern attorneys’ duties and responsibilities in the practice of law in Idaho. Under the Rules, it is our duty to inform you of certain implications of representing both entities with regard to any conflict matter, including the disadvantages and risks involved.

Rule 1.7(a) sets forth the general rule regarding concurrent representation:

- a. Except as provided in paragraph (b) a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another client; or

- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by the personal interests of the lawyer, including family and domestic relationships.

Rule 1.7(b) provides that an attorney may represent the same clients with conflicting interests if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; ... and
- (4) each affected client gives informed consent confirmed in writing.

(Elements 2 and 3 of Rule 1.7(b) do not apply.)

I will review each of these Rules in order.

Rule 1.7(a)(1) – Clients with Adverse Interests

Rule 1.7(a)(1) is clearly implicated because (i) Lake City Law has ongoing legal matters for both Dalton Gardens and Hayden; and (ii) the negotiation of agreements between the parties puts the parties in a situation of being directly adverse to each other.

Rule 1.7(a)(2) – Materially Limited

Materially Limited by Concurrent Representation of the Current Clients.

Rule 1.7(b) – Diligent Representation; Disclosure of Information

Under Rule 1.7(b) we must believe that we will be able to provide competent and diligent representation to both clients.

We believe our representation of the parties will not adversely affect our relationship with either party and we can diligently represent both parties regarding the same.

Rule 1.7(b)(4) – Informed Consent

a. General

Rule 1.7 requires that the consent of the clients be “informed.” The key factors in the disclosure to the clients to obtain the informed consent are (i) description of the scope of the engagement, (ii) identification of all potential points of conflict or adversity, and (iii) impact on the attorney-client privilege. The scope of the engagement has been covered in the paragraphs above.

b. All Potential Conflicts and Points of Adversity

Although Dalton Gardens and Hayden seek a mutually beneficial agreement in matters between the parties, nonetheless there is inherent adversity in such negotiations. For example, both parties want to be fair, but also want the most benefit at the least cost.

c. Attorney-Client Privilege

With respect to the attorney-client privilege, the Rules make a further distinction between “concurrent clients” and “common representation” – the situation in which the attorney seeks consent of the clients to represent all of them to “adjust a relationship between clients on an amicable and mutually advantageous basis.” Here, the situation of representing Dalton Gardens and Hayden is a common representation. Accordingly, there is an impact on the attorney client privilege. The prevailing rule in matters of common representation, such as this, is that there is no attorney-client privilege. Therefore, you should be advised that if a dispute arises between the parties, the attorney-client privilege will not protect any such communications that reasonably relate to the Agreement or negotiations or discussions related thereto.

d. Independent Counsel

Interpretations of the Rules would indicate that in order for the consent of the clients to be informed, each client should have the opportunity to obtain advice from a separate counsel. Lake City Law has written this letter to inform both Dalton Gardens and Hayden. Please feel free to seek independent legal advice from legal counsel of your choosing in order to review this concurrent representation letter.

Please note that if the interests between Dalton Gardens and Hayden become adverse, Lake City Law must and will withdraw as counsel for both entities, as you are both current clients of the firm and Lake City Law cannot represent either of you in a dispute or claim against the other.

If the scope of Lake City Law’s representation as described in this letter is inconsistent in any way with your understanding or wishes, please let me know as soon as possible. Otherwise, please sign the original in the spaces provided and return one copy to me. This agreement may be executed in counterpart, each which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Sincerely,

LAKE CITY LAW GROUP, PLLC



Caitlin D. Kling

UNDERSTOOD AND AGREED:

City of Dalton Gardens

City of Hayden

By: _____
Dan Edwards, Mayor

By: _____
Steven Griffiths, Mayor

Date: _____

Date: _____

ATTEST:

ATTEST:

Teresa Janzen, City Clerk

Abbi Sanchez, City Clerk

PROFESSIONAL SERVICE AGREEMENT FOR TECHNOLOGY AND SYSTEM SUPPORT SERVICES

This AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2021 (“Effective Date”), by and between the City of Dalton Gardens, a municipal corporation of the state of Idaho, 6360 N. Fourth Street, Dalton Gardens, ID (hereinafter “CITY”) and Josh Exley, 7055 Davenport, Dalton Gardens, ID (hereinafter “CONTRACTOR”). CITY and CONTRACTOR may collectively be referred to as the “parties” and individually as a “party.”

THE PARTIES AGREE AS FOLLOWS:

1. **SCOPE OF WORK:** CITY hereby employs CONTRACTOR as an independent contractor to complete and perform the following project:

Information technology and system support services for maintenance of City computer systems and files.

The parties agree to coordinate with each other to facilitate a timely and professional process. Contact information is:

CITY:
Jessica Hutson, City Clerk
6360 N. Fourth Street
Dalton Gardens, ID

CONTRACTOR:
Josh Exley
7055 Davenport
Dalton Gardens, ID

2. **TERM:** This Agreement is effective on the Effective Date to September 30, 2021.

3. **COMPENSATION:** The CITY agrees to pay CONTRACTOR \$50.00 per hour, not to exceed a total amount of \$15,000.00 during the Term of the Agreement, as compensation for the work described in Section 1 above. CONTRACTOR shall itemize the labor and supply costs each week and shall note on the invoice if asked to do anything extra and the cost of that expense; shall save all receipts for any supply items purchased; and shall turn in a complete invoice on or before the 25th day of each month, to the Clerk of the City of Dalton Gardens, by email, fax, mail, or by hand-delivery. Any adjustments in compensation shall be submitted to and approved by City Council.

4. **INDEPENDENT CONTRACTOR:** The parties agree that CONTRACTOR is an independent contractor of CITY and in no way an employee or agent of CITY and is not entitled to workers compensation or any benefit of employment with the CITY. The CITY shall have no control over the performance of this Agreement by CONTRACTOR or its employees, except to specify the time and place of performance, and the results to be achieved. The CITY shall have no responsibility for security or protection of CONTRACTOR’S supplies or equipment. CONTRACTOR agrees to pay and be responsible for all taxes due from the compensation received under this contract.

5. INDEMNIFICATION: CONTRACTOR agrees to indemnify, defend, and hold harmless CITY, and its officers, agents and employees, from and against any and all claims, losses, actions, or judgments for damages or injury to persons or property arising out of or in connection with the acts and/or any performances or activities of CONTRACTOR, CONTRACTOR's agents, employees, or representatives under this Agreement.

6. INSURANCE: CONTRACTOR agrees to obtain and keep in force during its acts under this Agreement a comprehensive general liability insurance policy in the minimum amount of \$500,000, which shall name and protect CONTRACTOR, all CONTRACTOR's employees, the CITY, and its officers, agents and employees, from and against any and all claims, losses, actions, and judgments for damages or injury to persons or property arising out of or in connection with the CONTRACTOR's acts. CONTRACTOR shall provide proof of liability coverage as set forth above to CITY prior to commencing its performance as herein provided, and require insurer to notify CITY ten (10) days prior to cancellation of said policy.

7. WORKER'S COMPENSATION: CONTRACTOR shall maintain in full force and effect worker's compensation for CONTRACTOR and any agents, employees, and staff, to the extent relevant, that the CONTRACTOR may employ, and provide proof to CITY of such coverage or that such worker's compensation insurance is not required under the circumstances.

8. TERMINATION: This Agreement may be terminated immediately by CITY for breach of this Agreement by Contractor, and either party may terminate this Agreement by giving thirty (30) days written notice of termination to the other party.

9. NON-DISCRIMINATION: CONTRACTOR shall not discriminate against any person or entity in the providing of the services and/or materials herein under and CONTRACTOR shall not refuse to serve or hire any person because of such person's race, creed, sex, color, or national origin. Also, CONTRACTOR will in no manner discriminate against any person because of such person's race, creed, sex, color, or national origin. Any such discrimination shall be deemed a violation of this Agreement and shall render this Agreement subject to forfeiture.

10. COMPLIANCE WITH LAWS: CONTRACTOR agrees to comply with all federal, state, city, and local laws, rules and regulations.

11. SECTION HEADINGS: The section headings of this Agreement are for clarity in reading and not intended to limit or expand the contents of the respective sections to which they pertain.

12. ATTORNEY FEES AND COSTS: Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court cost and reasonable attorney fees as determined by a Court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination, or forfeiture of this Agreement.

13. ENTIRE AGREEMENT: This is the entire agreement of the parties and can only be modified or amended in writing by the parties.

14. NOTICES: All notices by either party to the other, required or provide for herein, shall be served by United States Postal Service, postage prepaid. If sent by mail, service of such notice shall be deemed complete when written notice is placed in the United States mail, postage pre-paid, addressed to the addresses listed above for the parties.

15. AUTHORITY: The parties hereto covenant and represent that the execution of this Agreement has been authorized by the governing Manager/Member/Council of the respective party, and the individual signatures set forth herein are authorized and binding upon the respective party.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Effective Date.

CITY
City of Dalton Gardens

CONTRACTOR
Josh Exley

By: _____
Dan Edwards, Mayor

By: _____
Printed Name: _____
Title: _____

ATTEST:

Jessica Hutson, City Clerk

