

AN ORDINANCE OF THE CITY OF LAVA HOT SPRINGS, BANNOCK COUNTY, IDAHO, PROVIDING A POLICY TO GUIDE MAJOR LAND DEVELOPMENT PROJECTS AND ENCOURAGE PLANNED UNIT DEVELOPMENTS; PROVIDING FOR DEFINITIONS; MINIMUM AREA, PERMITTED USES, REQUIREMENTS, OWNERSHIP, COMMON OPEN SPACE IN RESIDENTIAL PUD'S AND MAINTENANCE OF THOSE COMMON AREAS, PROVIDING FOR DEVELOPMENT OF STREETS AND UTILITIES; PROVIDING FOR CONTAINED DEVELOPMENT, PROVIDING FOR RESTRICTIVE COVENANTS; PROVIDING FOR COMMUNITY FACILITIES, PROVIDING FOR PRELIMINARY PLAN; PROVIDING FOR AN ENGINEER'S APPROVAL; PROVIDING FOR FILING FEES; PROVIDING FOR APPLICATION AND COMMISSION ACTION ON THE APPLICATION; PROVIDING FOR PUBLIC HEARING BEFORE THE PLANNING AND ZONING COMMISSION; PROVIDING FOR FINAL PLAN REQUIREMENT; PROVIDING FOR BONDING; BUILDING PERMITS AND PLAT PLANS; PROVIDING FOR REVOCATION; PROVIDING FOR PHASED DEVELOPMENT; PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE.

Section 1. This chapter shall be known as the "Planned Unit Development Ordinance of the City of Lava Hot Springs.

Section 2. It is the policy of the city to guide major land development projects, embracing a combination of land uses, by encouraging planned unit developments to achieve the following:

- A. A maximum choice of living environments by allowing a variety of housing and structure types and permitting an increased density per acre and a reduction in lot dimensions, yards, setbacks, and area requirements;
- B. A more useful pattern of open space and recreation areas and, if merited as part of the project, more convenience in the location of accessory commercial uses, industrial uses and services;
- C. A development pattern which preserves and utilizes natural topography and geological features, scenic vistas, trees and other vegetation and prevents the disruption of natural drainage patterns;
- D. A more efficient use of land than is generally achieved through conventional development resulting in substantial savings through shorter utilities and streets;
- E. A development pattern in harmony with land use density, transportation, and community facilities objectives of the city's comprehensive plan.

Section 3. Planned unit development defined. A "planned unit development" is a use of land and structures, not necessarily adhering to the zoning requirements, which has been approved by the city council as provided in this ordinance.

Section 4. Minimum area. A PUD will not be considered if the area has the space to comply with existing zoning requirements. If the requirements of the present zoning ordinance are modified, the PUD shall contain a minimum area of one (1) acre.

Section 5. Uses. All uses that may be allowed within the land use district are permitted within a PUD. PUD's are not a permitted use within existing approved or platted subdivisions. In

addition, up to ten percent of the gross land area may be directed to other uses that are not allowed within the land use district, provided:

- A. That the uses are appropriate with the primary use;
- B. That the uses are intended to serve principally the properties within the PUD;
- C. That the uses are planned as an integral part of the PUD;
- D. That the uses are located and so designated as to provide direct access to a collector or an arterial street without creating congestion or traffic hazards;
- E. That a minimum of fifty percent of the primary use development occurs prior to the development of the related uses.

Section 6. Requirements. Planned unit developments shall comply in all respects with the specific regulations and requirements approved and authorized for such specific planned unit development. Specific minimum requirements are as follows:

- A. Maximum building coverage in conformance with the underlying zoning district regulations;
- B. Minimum perimeter setbacks in conformance with the underlying zoning district regulations;
- C. Maximum height of building shall not exceed that specified for the underlying zoning district;
- D. Overall allowable density shall be no greater than that allowed in the underlying zoning district in which the property is located, except, that the city council may grant additional density for any project which it feels would benefit the public interest and further the objectives of the city comprehensive plan to encourage an adequate housing stock.
- E. The required front yard and side yard which faces on a public street shall not be used for parking space but shall be landscaped and maintained, except for permitted driveways.
- F. Off-street parking shall be provided at the rate of two (2) parking spaces per unit. In applicable subdividing provisions and regulations shall be carried out simultaneously with the planned unit development review process.

Section 7. Ownership. An application for approval of a PUD shall be filed by a property owner or a person having a contractual interest in the property to be included in the PUD. The PUD application shall be filed in the name or names of the recorded owner or owners of property included in the PUD. However, the preliminary application may be filed by the holder(s) of an equitable interest in such property. Before approval is granted to the final development plan, the entire project shall be under single ownership and evidence of legal title must be presented with the final development plan. Single ownership shall include ownership by a corporation or partnership.

Section 8. Common open space in residential PUDs.

A. A target of ten (10) percent of the gross land area developed in any residential planned unit development project shall be reserved for common open space and recreational facilities for the residents or users of the area being developed. The actual land area, use and placing will be negotiated between the city and the applicant on a case-by-case basis.

B. A common open space is a parcel or parcels of land, an area of water, or a combination of land and water within a planned unit development designated and intended for use or enjoyment of residents of the development in common, not including, however, the area within

any road, driveway, parking area, sidewalk or enclosed building or structure except those designed for recreational use.

C. All areas not covered by buildings, parking spaces, sidewalks or driveways shall be planted into lawn, trees and shrubs, and otherwise landscape practice.

D. In developments with five (5) or more units, there shall be provided a usable recreation or playground area outside of the front yard setback, with a total minimum area of one thousand (1,000) square feet for the first five (5) units and two hundred (200) additional square feet for each additional unit.

E. The required amount of common spaces reserved under a planned unit development shall be held in corporate ownership by owners of the project for the use of each owner who buys property within the development, or shall be sold to the owner of the project as a group or be dedicated to the public and retained as common space for parks, recreation or related uses. Public utility and similar easements and right-of-way for water courses and other similar channels are not acceptable for common open space unless such land or right-of-way is usable and is approved by the commission.

F. The responsibility for the maintenance of all open spaces shall be specified by the developer before approval of the final plan.

G. Every property developed under the planned unit development should be designed to abut common open space or similar areas. A clustering of dwellings is encouraged.

Section 9. Maintenance of common areas. A homeowners' association shall be created to ensure adequate maintenance of use-in-common areas, facilities and structures. Maintenance responsibility shall remain with the owner of the PUD until seventy-five percent of the lots or units are sold. Thereafter, the maintenance responsibility shall be as specified in the declarations, covenants and restrictions, or articles of incorporation and bylaws previously filed by the owner-subdivider with the Bannock County recorder and Office of the Secretary of State prior to the final plat approval of the PUD. A trust fund, established for the maintenance of the common areas, must be included in the articles of incorporation.

Section 10. Streets and utilities. Streets may be either private or public streets at the developer's option but all streets must be constructed in accordance with State of Idaho Transportation Department "Manual of Street Design Standards", current edition. Underground utilities, including telephone, cable television and electric systems are required within the limits of all PUDs. All utility lines shall be installed by the developer at his own expense. All utilities shall be given proper easements by deed upon the final plat. All main water, sewer and electrical lines shall become the property of the city, upon acceptance by the city, and all maintenance shall be performed by the city upon the main lines only. All connecting laterals to main water and sewer lines shall be the responsibility of the individual homeowner or the PUD's homeowners' association.

If at any time the homeowners' association of a PUD petitions the city to take a private street for maintenance, the city may refuse to accept the street, or it may refuse to accept the street until it is brought to city maintenance standards. Under no circumstances shall the city accept for maintenance of the common area of a PUD.

Section 11. Contained development. A planned unit development shall be essentially independent and contained. It shall be physically disassociated from surrounding properties,

particularly those with different uses. For example, terrain, orientation, streets and highways, woods or rivers, sight-proof fencing or natural barriers shall create this physical disassociation. If containment is impossible, either the development should be disapproved or approval should be conditioned on the density, design and degree of development ensuring achievement of the objectives of this chapter in the manner in which the site is used.

Section 12. Restrictive covenants. Each PUD developer shall deliver a set of finalized “restrictive covenants” to the city council prior to final plat approval. These owners shall contain, at a minimum.

A. No lot, home, share or interest in the PUD may be purchased without signing the “restrictive covenants” accepting its conditions.

B. All owners shall belong to the homeowners’ association.

C. All owners agree to a monthly direct deposit to the homeowners’ association trust fund. The fund is to be used for the maintenance of the PUD’s common areas.

D. If PUD requests the city to take over street maintenance, and if city agrees, owners would waive any protests to the city establishing a local improvement district in order to bring the streets in the PUD up to the standards and specifications required by the city.

Section 13. Community facilities. PUDs of forty acres or more shall include site availability for needed community facilities not otherwise provided for. For example, provision may be required for sites for schools, public safety buildings, utilities, parks and recreation areas. This section may not be avoided by dividing parcels from an original tract into units of less than forty acres so as to phase a development whether it consists of strictly PUDs or not.

Section 14. Procedure for approval of a planned unit development. The granting of a permit for a planned unit development shall require a pre-application, a preliminary development plan, and a final development plan. Review of applicable subdividing provision and regulations shall be carried out simultaneously with the planned unit development review process. (Subdivision Ord. 2006-2)

Section 15. Pre-application meeting. The developer shall meet with the planning and zoning commission prior to the submission of the preliminary development plan. The purpose of the meeting is to discuss informally the purpose and effect of the chapter and criteria and standards contained herein and to familiarize the developer with the plan, this chapter and such other information as deemed appropriate.

Section 16. Preliminary plan. The requirements on a preliminary plan for a PUD shall be the same as specified for a preliminary plat in the subdivision ordinance, Ord.2006-2, and any subsequent amendment thereto, except that the following additional information shall be submitted:

A. Approximate percentage of area intended for use-in-common;

B. Approximate maximum height of buildings;

C. For residential use, number of single-family dwelling units and of multiple-family dwelling units intended;

D. Topography to show direction of drainage with maximum contour intervals of twenty feet extending not less than one hundred fifty feet beyond the boundaries of the development area;

- E. All structures and improvements within the development area which are to remain;
- F. Tentative street pattern and pedestrian walkway pattern (separate from streets), within the development area, showing intended street and walkway widths;
- G. Tentative location of building lots and/or building areas, and major areas intended for use-in-common;
- H. The initial draft of articles of incorporation, association bylaws, restrictive covenants, and other legal documents as required.
- I. All material shall be submitted to the city clerk's office two (2) weeks prior to the next regularly scheduled meeting. An application will not be placed on the agenda until all applicable documents are submitted.

Section 17. Engineering Review. The developer shall submit to the City Engineer for review and comment the specifications and drawings for utilities, street improvements, common areas, building placement and proposed architecture. The City Engineer shall submit formal written comments to the city council for consideration in approval or disapproval of the preliminary plat.

Section 18. Initial filing fee. The fee for filing a preliminary plat for a PUD shall be two hundred dollars. The plat shall be filed with the city clerk.

Section 19. Application - Commission action. The preliminary plat along with association bylaws, restrictive covenants, and other required documents shall be submitted to the planning and zoning commission for review at the next regular meeting and completed at least sixty (60) days there after. Upon being reviewed and approved by the planning and zoning commission, the preliminary plat and other documents shall be submitted to the city council at the next regular meeting and completed at least sixty (60) days there after. If the preliminary plat, the bylaws, restrictive covenants and other required documents are accepted for further processing, the plat shall be returned to the planning and zoning commission for public hearing. Revisions requested by the applicant while preparing for the public hearing shall be accepted or rejected by the planning and zoning commission.

Section 20. Hearing before planning and zoning commission. A public hearing before the planning and zoning commission on the preliminary plat in accordance with requirements for conditional use permits under the zoning ordinance of the city, when the same is returned to the commission by the city council. A date for hearing shall be set at such a time as sufficient information has been submitted for a meaningful public hearing. Additional prints shall be supplied as required.

A. Notice of hearing shall be given in the manner prescribed by the zoning law of the city for conditional use permits.

B. Following conclusion of the hearing, the planning and zoning commission shall transmit the results of the hearing together with its recommendations to the city council within thirty-five (35) days.

Section 21 City council action. The city council may take up to sixty (60) days to consider the results of the public hearing and recommendations of the planning and zoning commission and either approve the preliminary plat or disapprove it with reasons for such

disapproval, in which event a revised plat may be submitted to the planning and zoning commission for rehearing within sixty (60) days. Upon approval of the preliminary plat, the applicant may proceed toward final plat approval.

Section 22. Final plan requirements. Upon approval of the preliminary plan for a PUD, the procedures to be followed for final plan shall be as set forth for a final plat pursuant to the subdivision ordinance, Ord.2006-2, and any subsequent amendment thereto, except that the following will also be required:

- A. Design and layout of use-in-common areas with any specific recreation areas indicated;
- B. Perimeter fencing, where required, indicating height, material and area to be fenced;
- C. Design, layout of entrance treatment and entrance signs;
- D. Landscaping plans showing grassed areas and general location and kinds of planting;
- E. Typical plot plan for each type of building including entrance way, walkways, parking areas, fencing and sight screening.
- F. Final draft of restrictive covenants, association bylaws and articles of incorporation, and other legal documents as required.

Section 23. Bonding. Prior to the recording of any approved plat, the developer shall have completed the improvements on the plat or posted a bond as required in an amount of one hundred ten percent (110%) of the amount of the work to be completed. Developer shall also submit proposed agreements, work schedule and estimated completion times to accomplish the improvements approved in the final plat stage. Off-site improvements, if required, are bondable items. The procedures to be followed for bonding for improvements shall be as set forth for bonding for improvements pursuant to the subdivision ordinance, Ord. 2006-2 and any subsequent amendment thereto.

Section 24. Building permits and plot plans. Upon approval and recording of any final plat drawing, building permits may be issued. The plot plan for each building or for each contiguous group of buildings shall not preclude minor adjustments being permitted by the building official which do not violate the building spacing and/or setback requirements which have been approved.

Section 25. Revocation of approval. In the event a material condition of approval of a PUD is violated or is unfulfilled within any time limit set, or applicable provisions of this title are materially violated, the city council may, either on recommendation of the planning and zoning commission or on its own initiative, give required notice and hold a public hearing on the question of revocation of the approval given and of any permits issued pursuant thereto. After concluding the hearing, the council shall make appropriate written findings of fact and if it elects to revoke the approval and/or permits, it shall do so by resolution. In such event any improvements already made shall be used in accordance with existing use zoning regulations.

Section 26. Phased development of PUD. Any developer wishing to develop a PUD over a series of years shall comply with the additional requirements and regulations set forth in this section. Each phase of such development shall contain all the necessary elements and improvements to exist independently from proposed future phases in a stable manner and shall comply with all applicable zoning regulations.

- A. Development Plan. In addition to the PUD application the subdivider shall submit to the city a development plan and development schedule for the entire project. The development plan, if approved, shall be the master plan for the entire project subject to modification by the subdivider through same procedures as required for approval of original plan; and, subject to additional regulations of subsequently adopted or amended ordinances and statutes; and subject to additional requirements imposed by the commission or council due to changes in the development of neighboring properties. After approval of the development plan, the subdivider shall submit to the city a preliminary plan and final plan of each phase of the project built or to be built as evidenced by a valid building permit. A public hearing will be required on all development plans as specified in this ordinance. However, the public hearing requirement may be waived on preliminary plans originating from an approved development plan, where the preliminary plan is in substantial conformity to the approved development plan.
- B. Preliminary Plan. Upon approval of a development plan, the subdivider shall file a preliminary plan for each state of his development in conformance with the approved development plan. Each phase of the project shall conform to regulations and ordinances adopted by the city in effect at the time of submission of the preliminary plan for that phase.

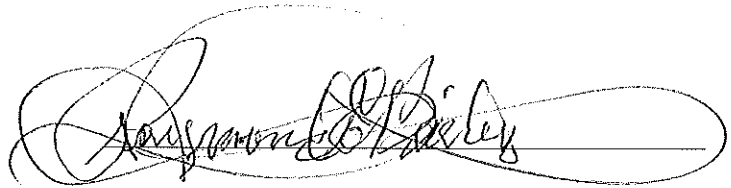
#### Section 27. Severability

It is hereby declared to be the intent that the provision, and parts thereof, of this ordinance shall be severable. Should any section subsection, paragraph, clause or phrase of this ordinance, or any particular application thereof, be declared invalid or unconstitutional for any reason by a court of competent jurisdiction, such decision shall not affect the remaining portion or said section, subsection, paragraph, clause or phrase of this ordinance.

#### Section 28. Effective Date

This Ordinance shall be in full force and effect upon the passage and publication of this Ordinance according to law, the Council dispensing with the rule that ordinances must be read on three different days, all as provided by law.

PASSED AND APPROVED this 1<sup>st</sup> day of October, 2007, by the Mayor and City Council of the City of Lava Hot Springs, Idaho.

A handwritten signature in black ink, appearing to read "Raymond E. Bailey", is written over a horizontal line. The signature is enclosed within a large, loopy oval shape.

RAYMOND E. BAILEY, Mayor

ATTEST:

A handwritten signature in black ink, appearing to read "Canda Dimick", is written over a horizontal line. The signature is enclosed within a large, loopy oval shape.

CANDA DIMICK, City Clerk