

ORDINANCE NO. 2008- 1

AN ORDINANCE OF THE CITY OF LAVA HOT SPRINGS, IDAHO, AMENDING CHAPTER 5, ORDINANCE NO. 1983-2, OF THE ZONING ORDINANCE OF THE CITY, PRESCRIBING APPLICATIONS FOR ZONING CHANGES AND THE CONTENTS OF APPLICATIONS; ESTABLISHING THAT FEES FOR ZONING ORDINANCE OR MAP AMENDMENTS MAY BE ESTABLISHED BY RESOLUTION OF THE CITY COUNCIL; PRESCRIBING THE METHOD FOR AMENDMENT OF THE ZONING ORDINANCE AND ZONING MAP; ESTABLISHING THE PROCEDURE FOR PUBLIC HEARINGS BEFORE THE PLANNING AND ZONING COMMISSION FOR TEXT AND MAP AMENDMENTS; ESTABLISHING TIME LIMITS FOR ACTION BY THE PLANNING AND ZONING COMMISSION AND CITY COUNCIL FOR AMENDMENTS TO THE ZONING ORDINANCE; PRESCRIBING THAT ANNEXED AREAS SHALL BE ZONED IN ACCORDANCE WITH HEARING PROCEDURES AT THE TIME OF ANNEXATION; PRESCRIBING APPLICATIONS AND THE CONTENTS THEREOF FOR CONDITIONAL USE PERMITS; SETTING FORTH THE STANDARDS APPLICABLE TO CONDITIONAL USES; PERMITTING THE PLANNING AND ZONING COMMISSION TO ESTABLISH ADDITIONAL SUPPLEMENTARY CONDITIONS FOR CONDITIONAL USES; SETTING FORTH THE PROCEDURE FOR PUBLIC HEARINGS ON CONDITIONAL USE PERMIT APPLICATIONS; ESTABLISHING THE TIME PERIOD FOR COMMISSION ACTION UPON AN APPLICATION AND THE CONDITIONS WHICH MAY BE ATTACHED TO THE APPLICATION BY THE COMMISSION; PERMITTING THE PLANNING AND ZONING COMMISSION TO REQUEST STUDIES FROM OTHER AGENCIES IN REGARD TO CONDITIONAL USE PERMITS; ESTABLISHING A TIME PERIOD FOR ACTION BY THE COUNCIL ON AN APPLICATION FOR CONDITIONAL USE PERMIT AND NOTIFICATION TO THE APPLICANT; ESTABLISHING AN APPELLATE PROCEDURE FOR ADVERSE ACTIONS; ESTABLISHING A PROCEDURE FOR VARIANCE PERMIT APPLICATIONS AND THE CONDITIONS UNDER WHICH THEY WILL BE CONSIDERED; SETTING FORTH AN APPLICATION PROCESS AND PROCEDURE FOR VARIANCES; ESTABLISHING THAT A FILING FEE FOR CONDITIONAL USE PERMITS AND REQUESTS FOR VARIANCE MAY BE ESTABLISHED BY RESOLUTION OF THE CITY COUNCIL; ESTABLISHING THE PROCEDURE FOR PUBLIC HEARINGS ON VARIANCE REQUESTS AND TIME LIMITS FOR ACTION UPON THE SAME; ESTABLISHING AN APPELLATE PROCEDURE FOR APPEALS FROM A VARIANCE APPROVAL OR DENIAL; WAIVING THE RULE REQUIRING THAT THIS ORDINANCE BE READ ON THREE SEPARATE OCCASIONS; AND ESTABLISHING AN EFFECTIVE DATE OF THIS ORDINANCE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LAVA HOT SPRINGS, IDAHO, AS FOLLOWS:

**Section 1:** Chapter 5, Section 1, Subsection 1b, Ordinance No. 1983-2 relating to amendment of the Zoning Ordinance is amended as follows:

b. An amendment to the text of this Ordinance or to the official zoning map may be initiated by resolution of intention by the planning commission or the City Council or by an application of one or more of the owners of property affected by the proposed amendment.

**Section 2:** Chapter 5, Section 1, Subsection 1c, Ordinance No. 1983-2, relating to amendment of the Zoning Ordinance is hereby repealed and the following section is substituted therefor:

c. Applications from a property owner shall be filed with the planning commission on forms prescribed by the planning commission, accompanied by such data and information necessary to assure the fullest presentation of facts. Applications shall contain the following information:

1. Name, address and phone number of applicant;
2. Proposed amending ordinance, approved as to form by the council;
3. Present land use;
4. Present zoning district;
5. Proposed use;
6. Proposed zoning district;
7. A vicinity map at a scale approved by the commission showing property lines; thoroughfares, existing and proposed zoning and such other items as the commission may require;
8. A list of all property owners and their mailing addresses who are within three hundred feet of the external boundaries of the land being considered;
9. A statement on how the proposed amendment relates to the comprehensive plan, availability of public facilities and compatibility with surrounding areas.

**Section 3:** Chapter 5, Section 1, Subsection 1e, Ordinance No. 1983-2 relating to amendment of the Zoning Ordinance, is hereby amended as follows:

e. A filing fee of ~~ten dollars (\$10.00)~~ as established by resolution of the City Council shall be paid at the time of the filing by an owner or owner's representative's application, but no fee will be required in the case of proceedings instituted by either the Council or the Planning Commission.

**Section 4:** Chapter 5, Section 1, Subsection 1, Ordinance No. 1983-2, relating to amendment of zoning districts, is hereby amended to add a new subsection "f" thereto as follows:

f. Zoning districts shall be amended in the following manner:

1. Requests for an amendment to the zoning ordinance shall be submitted to the commission which shall evaluate the request to determine the extent and nature of the amendment requested;

2. If the request is in accordance with the adopted comprehensive plan, the commission may recommend and the council may adopt or reject the ordinance amendment under the notice and hearing procedures as provided in this chapter; and

3. If the request is not in accordance with the adopted comprehensive plan, the request shall be submitted to the planning and zoning commission which may recommend and the council may adopt or reject an amendment to the comprehensive plan under the notice and hearing procedures provided in Section 67-6509, Idaho Code. After the comprehensive plan has been amended, the zoning ordinance may then be amended as provided in this chapter. The hearings on the comprehensive plan and the proposed change to the zoning ordinance may be held concurrently.

**Section 5:** Chapter 5, Section 1, Subsection 2, Ordinance No. 1983-2, relating to public hearings for zoning text and zoning map amendments is hereby repealed, and the following Subsection 2 is substituted therefor:

**2. Commission Public Hearing**

The Planning and Zoning Commission shall hold a public hearing and make recommendations on proposed zoning amendments. Zoning amendments may consist of text or map revisions.

A. Zoning Ordinance Text Amendment. The commission, prior to recommending a zoning ordinance text amendment to the council, shall conduct at least one (1) public hearing in which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of time and place and a summary of the amendment shall be published in the official newspaper or paper of general circulation within the jurisdiction. Following the commission's hearing, if the commission makes a material change from what was presented at the public hearing, further notice and hearing shall be provided before the commission forwards the amendment with its recommendation to the council.

B. Zoning Ordinance Map Amendment. The commission, prior to recommending a zoning ordinance map amendment, that is

in accordance with the comprehensive plan, to the council, shall conduct at least one (1) public hearing in which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of time and place and a summary of the amendment shall be published in the official newspaper or paper of general circulation within the jurisdiction. Additional notice of the hearing shall be provided by mail to property owners by the applicant and residents 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. The applicant shall provide the commission with the signatures of such property owners acknowledging that they have received such notice, or in lieu thereof, proof of mailing to each property owner. 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 residents, in lieu of the mail notification, sufficient notice shall be deemed to have been provided when the city provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site. Following the commission's hearing, if the commission makes a material change from what was presented at the public hearing, further notice and hearing shall be provided before the commission forwards the amendment with its recommendation to the council.

**Section 6:** Chapter 5, Section 1, Subsection 3, Ordinance No. 1983-2 is repealed and a new subsection is substituted therefor, as follows:

3. Action by Commission. Within sixty (60) days from the receipt of the proposed amendment, the commission shall transmit its recommendation to the council. The commission may recommend that the amendment be granted as requested, or it may recommend a modification of the amendment requested, or it may recommend that the amendment be denied. The commission shall insure that any favorable recommendations for amendments are in accordance with the comprehensive plan and established goals and objectives.

**Section 7:** Chapter 5, Section 1, Ordinance No. 1983-2, is hereby amended to add a new Subsection 4 as follows:

4. Action by the City Council.

A. Within sixty (60) days after receipt of the written recommendations from the planning and zoning commission, the city council shall consider the same, and shall adopt, revise, or reject the amendment to the zoning ordinance or map as submitted and recommended to it by the planning and zoning commission. Following consideration by the city council, if the city council

makes a material change in the recommendation or alternative options contained in the recommendation by the commission concerning adoption, amendment or repeal of the ordinance or a part thereof, the city council may conduct a public hearing upon the same, or may return the same to the planning and zoning commission for further public hearing taking into consideration the material change, said public hearings to be in accordance with Section 67-6509, Idaho Code.

B. Upon granting or denying an application to amend the zoning ordinance, text or map, the council shall specify:

1. The ordinance and standards used in evaluating the application.
2. The reasons for approval or denial; and
3. The actions, if any that the applicant could take to obtain a permit.

**Section 8:** Chapter 5, Section 1, Ordinance No. 1983-2 is amended to add a new Subsection 5 thereto which shall read as follows:

5. Zoning upon annexation.

Prior to annexation of an unincorporated area, the council shall request and receive a recommendation from the planning and zoning commission on the proposed comprehensive plan and zoning ordinance changes for the unincorporated area. The commission and the city council shall follow the notice and hearing procedures provided in Section 67-6509, Idaho Code. Concurrently or immediately following the adoption of an ordinance of annexation, the council shall amend the comprehensive plan and zoning ordinance.

**Section 9:** Section 2, Chapter 5, Ordinance No. 1983-2, relating to conditional Use Permits is repealed and the following section is substituted therefor:

SECTION 2: Conditional Use Permits

A. Application--Filing--Contents. An application for conditional use permit shall be filed with the clerk by at least one owner of property for which such conditional use is proposed. At a minimum, the application shall contain the following information:

1. Name, address and phone number of applicant;
2. Legal description of property (with street address, if possible);
3. Description of existing use;
4. Zoning district;

5. Description of proposed conditional use;
6. A plan of the proposed site for the conditional use showing the location of all buildings, parking and loading area, traffic access and traffic circulation, open spaces, landscaping, refuse and service areas, utilities, signs, yards and such other information as the commission may require to determine if the proposed conditional use meets the intent and requirements of this title;
7. A narrative statement evaluating the effects on adjoining property; the effect of such elements as noise, glare, odor, fumes and vibration on adjoining property; a discussion of the general compatibility with adjacent and other properties in the district; and the relationship of the proposed use to the comprehensive plan.

B. General standards applicable to conditional uses. The commission shall review the particular facts and circumstances of each proposed conditional use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

1. Will, in fact, constitute a conditional use as established in this title for the zoning district involved, in that it is not already defined as a permitted use in this Ordinance.
2. Will be harmonious with and in accordance with the general objectives or with any specific objective of the comprehensive plan and/or the zoning ordinance;
3. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;
4. Will not be hazardous or disturbing to existing or future neighboring uses;
5. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protections, drainage structures, refuse disposal, water and sewer and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;
6. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
7. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
8. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares;
9. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.

C. Supplementary conditions and safeguards may be required. In granting any conditional use, the commission may prescribe appropriate conditions, bonds and safeguards in conformity with this title. Violations of such conditions, bonds or safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a violation of this title.

D. Public hearing required--Notice of time and place. Prior to granting a conditional use permit, at least one public hearing in which interested persons shall have an opportunity to be heard shall be held before the commission. At least fifteen days prior to the hearing, notice of the time and place and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the jurisdiction. Notice may also be made available to other newspapers, radio or televisions stations serving the jurisdiction for use as a public service announcement. Notice shall be posted on the premises not less than one (1) week prior to the hearing. Notice of the hearing shall also be provided by the applicant by regular mail to property owners and residents within the land being considered, three hundred (300) feet beyond the external boundaries of the land being considered, and any additional area that may be substantially impacted by the proposed conditional use as determined by the commission. Property owners or residents who reside outside the postal service zip code mailing limits of the city, and whom the commission determines may be impacted by the proposed change, shall be given notice of the public hearing by certified mail. When notice is required to two hundred or more property owners or residents, in lieu of the mailing notification, notice may be provided through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city at least fifteen (15) days prior to the hearing date in addition to site posting on all external boundaries of the site.

E. Commission action.

1. Within thirty days after the public hearing, the commission shall recommend to the council approval, conditional approval, or disapproval of the application for conditional use permit as presented. If the application is recommended to be approved or approved with modifications, the commission shall direct the administrator to transmit its recommendation to the council listing the specific conditions specified by the commission for approval.

2. Upon granting of a conditional use permit, conditions may be attached to a conditional use permit including, but not limited to, those:

- a. Minimizing adverse impact on other developments;
- b. Controlling the sequence and timing of development;

- c. Controlling the duration of development;
- d. Assuring that development is maintained properly;
- e. Designating the exact location and nature of development;
- f. Requiring the provisions for on-site or off-site public facilities or services;
- g. Requiring more restrictive standards than those generally required in an ordinance.
- h. Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction.

3. Prior to granting a conditional use permit, the commission may request studies from the planning staff or public agencies concerning social, economic, fiscal and environmental effects of the proposed conditional use. A conditional use permit shall not be considered as establishing a binding precedent to grant other conditional use permits. A conditional use permit is not transferable from one parcel of land to another.

4. The commission shall insure that any favorable recommendations for conditional use permits are in accordance with the comprehensive plan and established goals and objectives.

F. Council action.

1. Within thirty days after receiving the recommendations of the commission, the council shall either approve, conditionally approve or disapprove the application as presented. If the application is approved or approved with modifications, the council shall direct the administrator to issue a conditional use permit listing the specific conditions specified by the council for approval.

2. Upon granting or denying an application the council shall specify:

- a. The ordinance and standards used in evaluating the application;
- b. The reasons for approval or denial;
- c. The action, if any, that the applicant could take to obtain a permit.

G. Applicant notification. Within ten days after a decision has been rendered, the clerk shall provide the applicant with written notice of the action on the request.

H. Any owner of property within a three hundred foot (300') radius of the exterior boundaries of the subject property may appeal the decision of the City Council provided written notice of appeal is filed with the City Clerk within five (5) days after decision of the City Council.



I. Filing fees for applications for Conditional Use may be set by resolution of the City Council.

**Section 10:** Subsection 1a, Section 3, Chapter 5, Ordinance No. 1983-2 relating to variances to the Zoning Ordinance, is hereby amended to read as follows:

1. The following provisions shall apply in considering variances:

a. The City ~~Council~~ shall consider variances to the terms of this Ordinance which will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and under such conditions that the spirit of the ordinance shall be observed and substantial justice done. In acting upon such variance the City ~~Council~~ shall make a full investigation and shall hold a public hearing, as herein specified and shall only grant a variance upon finding that the following are true:

(1) That the granting of the variance will not be in conflict with the spirit and intent of the Comprehensive Plan for the City, and will not effect a change in zoning;

(2) That there are exceptional or extraordinary circumstances or conditions, applicable to the property involved, or the intended use thereof, which do not apply generally to the property or class of use in the district, so that a denial of the relief sought will result in:

(a) undue loss in value of the property;  
(b) Inability to preserve the property rights of the owner;  
(c) The prevention of reasonable enjoyment of any property right of the owner;

(3) The granting of such relief will not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements of other property owners, or the quiet enjoyment of such property or improvement.

**Section 11:** Subsection 1b, Section 3, Chapter 5, Ordinance No. 1983-2 is hereby amended to read as follows:

b. An application for a variance may be initiated by one (1) or more property owners. Such application shall be filed with the ~~City Council~~ Planning and Zoning Commission on forms prescribed by the City ~~Council~~ accompanied by such data and information necessary to assure the fullest presentation of facts and shall include at least the following:

- applicant;
- (1) The name, address, and phone number of
- address;
- (2) Legal description of property and street
- (3) Description of nature of variance requested;
- (4) A narrative statement demonstrating that the  
requested variance conforms to the standards set forth in this  
Section;
- (5) Names and addresses of all property owners and  
residents within three hundred (300) feet of the exterior  
boundaries of the land being considered.

**Section 12:** Subsection 1c, Section 3, Chapter 5, Ordinance No. 1983-2 is hereby repealed and the following is substituted therefor:

c. A filing fee, as may be established by resolution of the City Council, shall be paid at the time of filing of the application by the owner or owner's representative.

**Section 13:** Subsection 1d, Section 3, Chapter 5, Ordinance No. 1983-2 is hereby repealed and the following is substituted therefor:

d. The Planning and Zoning Commission shall hold at least one public hearing on each variance request following the same hearing and notice procedures as set forth for conditional use permits in Section 2, Chapter 5, Ordinance No. 1983-2. Within thirty (30) days after the public hearing for a variance request, the Commission shall transmit its recommendations for approval or disapproval to the Council. Within thirty (30) days after receiving the recommendations of the Commission, the Council shall approve, disapprove, or approve with conditions, the application for variance and shall give notice to the applicant within ten (10) days after the decision has been rendered.

**Section 14:** Subsection 1e, Section 3, Chapter 5, Ordinance No. 1983-2 is amended as follows:

e. Any owner of property within a ~~two~~ three hundred ~~(200)~~ (300) foot radius of the exterior boundaries of the subject property may appeal the decision of the City Council provided written notice of such an appeal is filed with the City Clerk within five (5) days after the decision of the City Council.

**Section 15:** The rule requiring that this ordinance be read on three separate occasions is hereby waived.

Section 16: This Ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

PASSED AND APPROVED BY THE MAYOR AND CITY COUNCIL OF THE  
CITY OF LAVA HOT SPRINGS, IDAHO, this 8<sup>th</sup> day of May,  
2008.

CITY OF LAVA HOT SPRINGS,  
IDAHO

Marshall M. Burgin  
Marshall Burgin, Mayor

ATTEST:

Canda Dimick  
Canda Dimick, City Clerk