

AGENDA ITEM SUMMARY

DATE: 6/13/2011

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____

SUBJECT:

Water and Wastewater Ordinance amendment

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

I am attaching proposed amendments to Chapter 13.02 and 13.04 of the Hailey Municipal Code. The amendments are intended to include separate irrigation systems from surface water sources to be included in the definition of the Municipal Water System and to allow user base fees to be used for water and wastewater expansion.

Ned

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS

Case # _____
Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: _____ Phone # _____
Comments:

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

____ City Attorney	____ Clerk / Finance Director	____ Engineer	____ Building
____ Library	____ Planning	____ Fire Dept.	_____
____ Safety Committee	____ P & Z Commission	____ Police	_____
____ Streets	____ Public Works, Parks	____ Mayor	_____

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Discuss and determine whether the city wants to conduct a public hearing to consider the proposed amendment.

FOLLOW-UP REMARKS:

HAILEY ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING TITLE 13 OF THE HAILEY MUNICIPAL CODE BY AMENDING SECTION 13.02.010(B) OF THE HAILEY MUNICIPAL CODE TO CLARIFY THE DEFINITION OF MUNICIPAL WATER SYSTEM; BY AMENDING SECTIONS 13.04.130(A) AND (B) OF THE HAILEY MUNICIPAL CODE TO INCLUDE EXPANSION OF THE MUNICIPAL WATER AND WASTEWATER SYSTEMS TO BE FUNDED BY THE WATER AND WASTEWATER USER BASE FEES; BY PROVIDING FOR A REPEALER CLAUSE; BY PROVIDING FOR A SEVERABILITY CLAUSE; AND BY PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the City desires to clarify the definitions of Municipal Water System and to allow expansion of the Municipal Water and Wastewater Systems to be funded by Water and Wastewater User Base Fees; and

WHEREAS, the Mayor and City Council find that the amendments to the Chapter will further the public health, safety and general welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, AS FOLLOWS:

Section 1. Section 13.02.010(B) of the Hailey Municipal Code is hereby amended by the addition of the following underlined language and the deletion of the following stricken language:

B. Water.

1. "Backflow" shall mean the flow other than in the intended direction of flow of any foreign liquids, gases or harmful or offensive substances into the distribution system of the City water supply as a result of reduced or reversed pressure.

A. "Back Pressure Backflow" shall mean the backflow of a contaminated, or polluted fluid due to an increased pressure above the supply pressure, which may be due to pumps, boilers or other sources of pressure.

B. "Back Siphonage Backflow" shall mean the flowing back of used, contaminated, or polluted fluid from a plumbing fixture or vessel into a water supply pipe due to a pressure less than atmospheric in such pipe.

2. "Backflow Prevention Device" shall mean a device or means which, when properly installed between the City water supply system and the terminus or ultimate point of use, will reasonably prevent Backflow, and approved by USCEC, and certified by AASE, IAPMO and UPC.

3. "Cross Connection" shall mean any physical arrangement whereby the City water system is connected with any other water supply system, Wastewater, drain, conduit, pool, storage reservoir or any other source of water supply which contains or may contain contaminated water, sewage or other waste or liquids which may be harmful to human health or which may deleteriously affect the City water supply.

4. "Fire Hydrant" shall mean a device used to discharge water from the Water Main for the general purpose of fighting fires.

5. "Irrigation System" shall mean any system designed to water lawns, gardens, shrubs, trees, etc.

6. "Meter Vault" shall mean a device placed on the Municipal Water Service Line at the property line which contains a shut-off valve and a Water Meter.

7. "Municipal Water Service Line" shall mean that portion of an individual water service line that runs from its connection with the Water Main to and including the corporation stop, Meter Vault, Water Meter and radio signaling unit that is installed on the service line. It will be installed within the limits of the public right-of-way or utility easement, and, after installation, it is owned and maintained by the City.

8. "Municipal Water System" shall mean all components and facilities of the Municipal Water system that are used to deliver ground water and surface water within the City and that is are owned, operated and maintained by the City for domestic, irrigation and other uses.

9. "Private Fire Service Connection" shall mean the separate and independent connection from the Water Main that connects directly to a sprinkler system that has been, or is to be installed, in any building for the purpose of fire control within that specific. A Private Water Service Line for domestic service to the building may be installed off this service connection with a Water Meter plumbed in by the owner.

10. "Private Water Service Line" shall mean the portion of the water service line that runs from the limits of the building being served to the point of connection with the Municipal Water Service Line.

11. "Private Water System" shall mean any water system for domestic use that is not owned, operated and maintained by the City.

12. "Service Connection" shall mean each water connection between the Municipal Water System and a Property.

13. "Water Main" shall mean any pipe line owned by the City for the purpose of transportation and/or distribution of water to serve more than one Private Water Service Line or user.

14. "Water Meter" shall mean a device to measure water use and shall include the radio signal unit.

15. "Water User" shall mean any individual, firm, company, association, society, or corporation, or group who has connected to the Municipal Water System

Section 2. Section 13.04.130(A)(1) of the Hailey Municipal Code is hereby amended by the addition of the following underlined language and the deletion of the following stricken language:

A. Water User Fees.

1. User Base Fee. The monthly user base fee is intended to cover the costs of the operation, maintenance and expansion of the Municipal Water System, including the operation and maintenance costs which consist at least of, but not limited to: 50% of the labor, benefits and administrative costs and 100% of DEQ fees, insurance, training and short-term depreciation. The monthly user base fee shall be assessed to each Property. The monthly user base fee shall be

calculated by dividing the yearly operation, and maintenance and expansion costs of the Municipal Water System described herein by the number of Water Users. Property with two or more services extended to it shall have the choice of paying a single monthly user base fee (for all services connected to the Property) or establishing separate accounts for each service with a Landlord/Tenant agreement as described in Section 13.04.150.

Section 3. Section 13.04.130(B)(1) of the Hailey Municipal Code is hereby amended by the addition of the following underlined language and the deletion of the following stricken language:

B. Wastewater User Fees.

1. User Base Fee. The monthly user base fee is intended to cover the costs of the operation, maintenance and expansion of the Municipal Wastewater System, including the ~~operation and maintenance costs which consist at least of~~, but not limited to, 50% of the labor, benefits and administrative costs, and 100% of DEQ fees, insurance, training and short-term depreciation. The minimum monthly user fee shall be assessed to each Property. The monthly user base fee shall be calculated by dividing the yearly operation, and maintenance and expansion costs of the Municipal Wastewater System described herein by the number Wastewater Users. Property with two or more services extended to it shall have the choice of paying a single monthly user base fee (for all services connected to the Property) or establishing separate accounts for each service with a Landlord/Tenant agreement as described in Section 13.04.150.

Section 4. Repealer Clause. All Ordinances or Resolutions or parts thereof in conflict herewith are hereby repealed and rescinded.

Section 5. Severability Clause. If any section, paragraph, sentence or provision hereof or the application thereof to any particular circumstances shall ever be held invalid or unenforceable, such holding shall not affect the remainder hereof, which shall continue in full force and effect and applicable to all circumstances to which it may validly apply.

Section 6. Effective Date. This Ordinance shall be in full force and effect after its passage, approval and publication according to law.

PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL and approved by the Mayor this ___ day of _____, 2011.

Richard L. Davis, Mayor City of Hailey

ATTEST:

Mary Cone, City Clerk

AGENDA ITEM SUMMARY

DATE: 06/13/2011 DEPARTMENT: Administration DEPT. HEAD SIGNATURE: HD

SUBJECT:

Consideration by Hailey City Council, acting as a property owner within the Airport West Subdivision, to consent to the Airport West Owner's Association's application to the City of Hailey for amendment to the Airport West Annexation agreement with the City of Hailey, which amendment would allow accessory dwelling units on properties within the subdivision

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Two years ago, the Airport West Owner's association approached the City of Hailey to explore whether the city would be willing to amend the Airport West Annexation Agreement to allow Accessory Dwelling units within the subdivision. The City Council expressed willingness that the matter be explored. Documents from that discussion are attached.

The city attorney advised that all property owners within the Airport West Subdivision agree to a change in the annexation agreement, thereby allowing the application for Annexation Agreement Amendment to be processed and considered by the Hailey City Council. Airport West Owner's Association has collected most of the signatures needed to bring that application forward. The City, however, as a property owner within the subdivision, should first consider whether it will allow its Owner's Association to forward such an application to the City.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Caselle # _____
Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: _____ Phone # _____
Comments:

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Move that the Hailey City Council, acting as a property owner within the Airport West Subdivision, consent to the Airport West Owner's Association's application to the City of Hailey for amendment to the Airport West Annexation agreement with the City of Hailey, which amendment would allow accessory dwelling units on properties within the subdivision, and authorize the mayor to sign documents necessary to give that authority.

FOLLOW-UP REMARKS:

*

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

KNEELAND, KORB, COLLIER & LEGG
Post Office Box 249
Ketchum, ID 83340
KKCL File No. 7499-Z

(Space above line for Recorder's Use)

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that City of Hailey as owner of Lot 5, Block 4, Airport West Subdivision Phase II, Blaine County, Idaho does hereby irrevocably make, constitute and appoint Ted Higginbotham in his capacity as President of the Board of Directors of Airport West Business Park Owners Association, Inc., an Idaho non-profit corporation ("Association"), or the successor president of that Association, my/our true and lawful power of attorney for me/us and in my/our name to do anything and everything that I/we could do if personally present, but specifically limited to the following matters concerning my/our interest in that certain real property identified above:

1. To execute the Fourth Amendment to Annexation, Services and Development Agreement, Airport West Business Park ("Fourth Amendment") to permit accessory dwelling units on Airport West Business Park lots subject to and in compliance with Association approval and subject to reasonable rules, regulations and limitations and guidelines as emended from time to time;

2. To do any and all things related to the above and/or incidental thereto in furtherance of the Fourth Amendment objective.

It is my/our intention that this limited power of attorney authorization is to be binding upon all successors and assigns of my/our ownership interest in the above described property. This authorization is intended to touch and concern the land to constitute a covenant running with the land. It is the intention that the Association may, based on this limited power of attorney authorization to its president, act as regard to the above described property as provided herein without obtaining the additional or further consent of any successor or assigns.

IN WITNESS WHEREOF, I/we have hereunto set our hands this _____ day of _____, 2011.

OWNERS:

CITY OF HAILEY

By: Rick Davis
Its: Mayor

OWNER CONSENT TO PERMIT ACCESSORY DWELLING UNITS (ADU'S)
ON AIRPORT WEST BUSINESS PARK LOTS

The Board of Directors of Airport West Business Park Owners Association, Inc., desire and propose and recommend that Accessory Dwelling Units (ADU's) be permitted on Airport West Business lots and that the Annexation, Services and Development Agreement, Airport West Business Park ("Annexation Agreement"), and the Declaration of Covenants, Conditions and Restrictions for Airport West Business Park ("Declaration") be amended to permit ADU's on Airport West Business Park lots.

The proposed Fourth Amendment to Annexation Agreement ("Fourth Amendment") and the proposed Amendment to the Declaration ("Declaration Amendment") which would permit ADU's on Airport West Business Park lots are attached hereto for reference.

The undersigned Airport West Business Park lot owner approves the Fourth Amendment and the Declaration Amendment and hereby irrevocably makes, constitutes and appoints Ted Higginbotham in his capacity as president of the Board of Directors of Airport West Business Park Owners Association, Inc., an Idaho non-profit corporation ("Association") or the successor president of the Association, the undersigned's true and lawful attorney in fact to do anything and everything that the undersigned in our names could do if personally present, but specifically limited to the following matters concerning our interest as a lot owner of Airport West Business Park, Blaine County, Idaho:

1. To execute the Fourth Amendment to permit ADU's on Airport West Business Park lots;
2. To execute the Declaration Amendment to permit ADU's on Airport West Business Park lots;
3. To do any and all things related to the approval of ADU's or incidental thereto in furtherance of the Fourth Amendment and Declaration Amendment objective to permit ADU's on Airport West Business Park lots.

It is the undersigned's intention that this limited power of attorney shall be binding upon all successors and assigns of our Airport West Business Park lot ownership interest described below and is intended to touch and concern the property and constitute a covenant running with the property. It is the undersigned's intention that the Association may, based on this limited power of attorney, act in regard to the described property as provided herein without obtaining the further consent of any successor in interest of the property.

OWNER CONSENT TO PERMIT ADU'S

HAILEY CITY COUNCIL MINUTES

June 8, 2009

PH 265 Request by Airport West Partners to amend Airport West Annexation Agreement to allow residential uses

Beth Robrahn gave an overview to council as to this request. Robrahn indicated that this is a request to amend Airport West Annexation Agreement to allow for residential uses only in the portion of Airport West zoned SCI-SO (SCI-SO zone allows for residential uses).

Matt Engel presented for Airport West Partners residing at 1720 Northridge Dr spoke to council. Engel gave historical information of the CC&R's developed when Airport West began. Engel expressed interest by some property owners to open up the SCI-I district to allow for residential uses also. A vote was tallied from 17 lot owners in Airport West Park Association, 11 were in favor of residential uses, 1 against, 2 abstained, and 3 lots were not represented in person or by proxy.

Peter Lobb of 403 E. Carbonate asked if this conflicts with Community Housing Units. Williamson does not believe it does so.

Burke spoke with Rick Baird the airport manager recently about this topic. Baird believes there could be complaints if residential uses were opened in this area. Burke is a proponent for allowing residential use.

Haemmerle is for this but is unsure how you limit the number of people living in a unit.

Keirn is concerned with small children living in these areas but overall is in favor of the idea.

Brown is in support of this idea. Brown asked Building Official Dave Ferguson if these buildings would be okay to convert to living areas. Matt Engel added that the owner would be handling the rental space and somehow related to the business occupied in the same structure.

Williamson asked Matt Engel who on the Airport West Board voted against this Accessory Dwelling Units (ADU) change and why. Engel replied that the voter against accessory uses did so because that person does not want to incur the cost of changing the annexation agreement.

Mayor Davis added that the City does not enforce CCR's so this would need to be "self-policed" by the owners.

Matt Engel will look into the legal language changes and bring it back to council.

HAILEY CITY COUNCIL MINUTES

June 8, 2009

RECEIVED

JUN 02 2009

Ms. Beth Robrahn
Director of Planning and Zoning
City of Hailey
115 South Main Street
Hailey, Idaho 83333

Subject: Airport West Business Park
Annexation, Services and Development Agreement
Accessory Dwelling Units
Request for Proceedings

Dear Beth:

In December of 2008, the members of Airport West Business Park (AWBP) Owners' Association voted in favor of initiating steps to have the Annexation, Services and Development Agreement amended to allow the use of Accessory Dwelling Units (ADUs) in the business park.

This matter was originally brought before the Association at the December, 2007 annual meeting. Since then, the matter has undergone a year-long review. The process has given all of the 97 parties that have ownership interests in AWBP multiple opportunities to provide their suggestions and comments. As part of this process, AWBP Owners' Association circulated a draft work plan indicating how AWBP will allow and govern ADUs. An information meeting was held in November, 2008 to give all of the Association's members the chance to have a voice in this issue. A final governance work plan is attached as Exhibit A. This plan was ratified with a vote to proceed with the initiative at the Annual Meeting on December 4, 2008. The text of the Association's motion is also included as Exhibit B.

Please accept this letter as the AWBP Association's formal request that the City of Hailey begin necessary proceedings to review and consider this action. Please feel free to alert anyone of the undersigned by either email or telephone.

Please advise the Association regarding what the process will entail to complete the necessary approvals and related amendment to the Annexation, Services and Development Agreement.

Sincerely,

ENGEL & ASSOCIATES, LLC
Property Manager for Airport West Business Park



Matthew B. Engel
Managing Member

Exhibit A
ADUs at Airport West Business Park

The members of the Airport West Business Park Association (AWBPA) are considering the right to allow Accessory Dwelling Units (ADUs) in the business park. In doing so, the most common concern raised is that ADUs will have to be managed in a way that they do not impact the industrial and business nature of the park.

The following language has been prepared to highlight these concerns.

Benefits of ADUs

ADUs are meant to provide business owners, and their key employees, the ability to be in constant contact with their business.

ADUs are meant to provide an additional security presence for the business and the surrounding businesses by providing 24/7 occupancy.

ADUs are meant to reduce commuter trips for those that would normally be commuting to and from the business on a regular/daily basis.

Governances and Concerns

If you have an ADU, you have a responsibility to the rest of the park to respect the industrial nature of the park and comply with its "governance and concerns" issues. Rest assured if you put young kids or partying young adults in your ADU, you are going to be confronted by the Association.

Rules incorporated into CC&Rs

ADUs shall not bring people to the premises that are unfamiliar with the business operations. Members have raised concern that they only want people around that have an understanding of the operational hazards and safety issues of the business. So, only those people with tangible interests to business operating on the premises, and key employees shall be allowed to occupy ADUs. Tangible interests mean owners of the business/adult family members employed by the business.

For those businesses leasing property in AWBP that involve an ADU, an electronic copy of the active lease will be required and kept on file with the AWBP Association.

ADUs shall not willfully generate unfamiliar third-parties entering and leaving the properties. The intent is to not generate additional pedestrian or vehicle traffic to the site, other than what the business will already generate. (Example: no pizza deliveries).

There are secondary street and alleyways within AWBP that are designed to be work zones. Currently Comet Lane, Galaxy Lane, Citation Way (South of Aviation Drive), Colibri Lane, Lear Lane (West of Aviation Drive), Piper Crossing, Topolev Way, Haviland Way, and Ember Way are such streets. ADUs in these areas shall be closely monitored and governed so that they do not generate activities that may impact or conflict with the industrial nature of these environments.

These and additional rules shall be a condition of ADUs and be written into the CC&R documents. The AWBP Association's manager, board of directors, and form of governance shall have the authority to act in a reasonable fashion to address any activity that does not meet these goals. In the event of a conflict between the industrial use of the park, and the use of an ADU, the industrial activity shall have precedence over the occupation of ADUs, and the activity generated from the ADU shall cease. The CC&RS shall grant the AWBP Association the right and ability to revoke permission to occupy any offending ADU. All costs incurred by the AWBP Association (including manager's time billing) to cease unwanted activity or revoke occupancy to and ADU shall be borne by the ADU owner.

Specific Bylaws of ADUs

- 1) ADUs must be on the second level of the building in which they are located.
- 2) ADUs will be encouraged to use building entrances that are common to the principle uses of the building. In addition, ADU entrances shall also connect to sidewalks and/or paved circulation areas that lead pedestrians to and from the primary AWBP sidewalks system and away from any of the work zone alleys mentioned above.
- 3) Occupants of ADUs are not to have facilities at grade such as patios, other recreation, or outdoor cooking facilities uncharacteristic of the principle business's use.
- 4) ADUs must have at least one or more dedicated parking stall (more depending on City requirements). ADUs must have designated ground floor storage that shall be screened and covered for the occupant's use.
- 5) The maximum number of ADUs within buildings or within parcels shall be regulated or determined by the City.
- 6) The maximum size or area allowed for ADUs within buildings or within parcels shall be regulated or determined by the City.

7) ADUs shall be owner, employee, or business lessee occupied only, and not to be rented on the open "For Rent" real estate market.

8) ADUs shall not be sold as condominiums or separate legal parcels from the primary commercial unit.

Exhibit B

ADU Motion

Airport West Business Park Owners Association – Official Business
Accessory Dwelling Units

Motion:

Airport West Business Park Owners Association shall seek to revise the Development Services Agreement between the Association and the City of Hailey whereby to allow the development of Accessory Dwelling Units within the business park.

Please cast vote:

Yes A “Yes” vote in favor of this motion means that you approve Airport West Business Park Owners Association to pursue discussions with the City of Hailey and take actions to formally amend the Development Services Agreement permitting Accessory Dwelling Units within the business park, as set forth and regulated by the Association. A vote in favor of the motion also means that you approve of Association funds being used to judiciously hire legal and planning professionals to prepare the necessary documents and oversee arguments brought before the City to accomplish this change and modify the Association’s Covenants, Conditions and Restrictions (CC&Rs) accordingly.

No A “No” vote cast against the motion means that you do not wish for the Association to seek to modify the Development Services Agreement in order to allow Accessory Dwelling Units in the business park at this time.

