

**AGENDA ITEM SUMMARY**

**DATE:** April 25, 2011    **DEPARTMENT:** Community Development

**DEPT HEAD:** BR

**SUBJECT:** Request to amend Bigwood Cinema phasing agreement

**AUTHORITY:**  ID Code \_\_\_\_\_  IAR \_\_\_\_\_  City Ordinance/Code \_\_\_\_\_  
(IF APPLICABLE)

**BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:**

The current phasing agreement between the city and Bigwood Cinemas states Phase ii (landscaping) be started no later than May 1, 2011. The developer has requested this start date be extended to May 1, 2016 (letter attached). A copy of the phasing agreement is also attached (the phasing timeline is on page 3) and Exhibit B-2 shows the area included in Phase II.

**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)

- |  |  |   |
|--|--|---|
| <input checked="" type="checkbox"/> City Administrator | <input type="checkbox"/> Library             | <input type="checkbox"/> Safety Committee |
| <input checked="" type="checkbox"/> City Attorney      | <input type="checkbox"/> Mayor               | <input type="checkbox"/> Streets          |
| <input type="checkbox"/> City Clerk                    | <input type="checkbox"/> Planning            | <input type="checkbox"/> Treasurer        |
| <input type="checkbox"/> Building                      | <input type="checkbox"/> Police              | _____                                     |
| <input type="checkbox"/> Engineer                      | <input type="checkbox"/> Public Works, Parks | _____                                     |
| <input type="checkbox"/> Fire Dept.                    | <input type="checkbox"/> P & Z Commission    | _____                                     |

**RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:**

Determine whether to amend the phasing agreement. If the Council is receptive, then an amendment will be drafted for formal action at the next Council meeting.

**ADMINISTRATIVE COMMENTS/APPROVAL:**

City Administrator \_\_\_\_\_ Dept. Head Attend Meeting (circle one) Yes No

**ACTION OF THE CITY COUNCIL:**

Date \_\_\_\_\_

City Clerk \_\_\_\_\_

**FOLLOW-UP:**

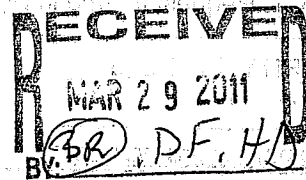
\*Ord./Res./Agmt./Order Originals: Record  
Copies (all info.): \_\_\_\_\_  
Instrument # \_\_\_\_\_

\*Additional/Exceptional Originals to: \_\_\_\_\_  
Copies (AIS only)

# LATHAM L. WILLIAMS

March 26, 2011

The City of Hailey  
c/o Director, Planning Department  
115 Main Street South, Suite H  
Hailey, Idaho 83333



Re: Amendment to Phasing Agreement for Bigwood 6 Cinemas

Dear City of Hailey,

This letter is to request an amendment to the Phasing Agreement for Bigwood 6 Cinemas to allow a five year extension for the construction of Phase II of the Bigwood 6 Cinemas.

The existing Phasing Agreement, executed in 2004, currently requires Phase II to commence no later than May 1, 2011. Because of the unanticipated financial crisis which has had a dramatic effect on the valley's economy and real estate, I request that this date for the commencement of construction of Phase II be extended to May 1, 2016.

Please notify me at your earliest convenience if this is acceptable to the City of Hailey and I will prepare an amendment to the Phasing Agreement for the City's review, approval and execution.

Sincerely,

A handwritten signature in cursive script that reads "Latham Williams".

Latham Williams

**ORIGINAL**

**Instrument # 510418**

HAILEY, BLAINE, IDAHO

2004-09-28

01:10:00 No. of Pages: 29

Recorded for : CITY OF HAILEY

MARSHA RIEMANN

Fee: 87.00

Ex-Officio Recorder Deputy

Index to: AGREEMENT/CORRECTION

*mp*

(SPACE ABOVE LINE FOR RECORDER'S USE)

**PHASING AGREEMENT  
FOR BIG WOOD 6 CINEMAS**

This Phasing Agreement ("**Agreement**") is entered into this <sup>AUGUST</sup> ~~5TH~~ day of ~~February~~, 2004 by and between the City of Hailey ("**City**"); Metropolitan/Rocky Mountain Cinemas, LLC, a Delaware limited liability company ("**MetroRMC**"); and The Williams Family Trust, Latham Williams, Trustee ("**Williams**").

1. **Recitals.** This Agreement is made in contemplation of the following facts and purposes:

A. MetroRMC is desirous of developing a six plex cinema project and related improvements ("**Project**"), all as set forth in that certain Design Review Approval Application ("**Application**") and which said Application has been formally filed with and approved by the City, as more fully set forth in the Findings of Fact, Conclusions of Law and Decision attached hereto as Exhibit "A-1" (the "Design Review Decision"). Approval of this Agreement by the parties is a condition of the Design Review Decision;

B. Williams is the owner of Tax Lots 7570, 7569, 7568 and 7567, more particularly described as Lot 1, Block 1 and Lots 1 and 2, Block 2, Saddle River Subdivision, recorded as Instrument No. ~~507866~~, records of the county recorder, Blaine County, Idaho ("**Property**"). The Project is to be constructed on the Property. The Property is approximately 1.57 acres, is zoned Business (B) and is subject to City's Land Use Ordinances and Zoning Regulations;

C. MetroRMC will develop the Cinema Project in two phases, the first consisting of four (4) auditoriums seating a total of five hundred (500) persons together with lobby, concessions and restrooms and the second consisting of two (2) additional auditoriums seating a total of one hundred eighty-eight (188) persons;

D. In order to ensure that the proposed Project is constructed consistent with City's applicable ordinances and regulations, the City, MetroRMC and Williams deem it in their interests to enter into an agreement with regard to the manner and timing of construction, MetroRMC's maintenance and management thereof, construction and landscaping of the

Sunday together with four (4) additional spaces in compliance with City parking ordinances and standards or, in the alternative, provision of not less than forty-four (44) additional parking spaces or improvements for such parking spaces, or a combination thereof, all in accordance with the currently existing requirements of Article IX of the Hailey Zoning Ordinance.

Phase II shall commence (and evidence adequate to the City shall be provided that all conditions required for Phase II have or will be satisfied by conclusion of construction) not later than May 1, 2011. If construction is not commenced prior to that date this Phasing Agreement will automatically terminate and Phase I will continue to operate as constructed.

3. **Design Review Approval.** In addition to the conditions set forth in the Design Review Decision, the Design Review approval is recommended by the City subject to the following conditions:

(a) All parking, including dimension of stalls, on paved areas shall be provided as shown in the Application in Phases as set forth in Sections 2(a) and (b), above

(b) MetroRMC shall improve the Property with landscaping as described and depicted in the Landscape Plan included in the Application as follows: See attached Exhibits "B-1" and "B-2", the T.W. Beck drawings L-2 dated February 10, 2004 (Phase I) and L-1 dated January 23, 2004 (Phase II).

(c) MetroRMC shall develop the Project in two (2) phases in accordance with the following schedule:

| <u>Phase</u> | <u>Start Date</u>                        | <u>Duration</u> | <u>Construction</u>                   |
|--------------|--|-----------------|---------------------------------------|
| I.           | June 15, 2004<br>(approximate)           | 7 Months        | as outlined in Section 3(a)<br>above. |
| II.          | To commence not<br>later than 05/01/2011 | 6 Months        | as outlined in Section 3(b)<br>above. |

(d) Engineering plans for the following infrastructure improvements shall be submitted by MetroRMC to the City for approval and the approved infrastructure improvements shall be installed in accordance with the applicable City standards and in accordance with the schedule set forth in Paragraph 3(c) of this Agreement, as follows:

Phase I: a) All the of the improvements described in paragraph 4 of the Development Agreement and b) all of the improvements described in paragraph 2(a) of this Agreement. In the event MetroRMC fails to construct the above described infrastructure improvements for Phase I, the City shall be entitled to withhold the issuance of a certificate of occupancy for any structure within Phase I and a building permit for any structure within Phase II.

G. Successor and Assigns; Covenant Running With the Land. This Agreement shall inure to the benefit of City, MetroRMC and Williams and their respective heirs, successors and assigns. This Agreement, including all covenants, terms, and conditions set forth herein, shall be and is hereby declared a covenant running with the land with regard to the Property or any portion thereof, and is binding on all parties to this Agreement as well as their respective heirs, successors and assigns. Nothing contained herein shall be construed to prevent assignment of this Agreement by MetroRMC or Williams; provided, however, any assignee shall be bound by all of the terms and conditions of this Agreement.

H. No Waiver. In the event that City, MetroRMC or Williams, or its successors or assigns, do not strictly comply with any of the obligations and duties set forth herein, thereby causing a default under this Agreement, any forbearance of any kind that may be granted or allowed by any party, or its successors in interest, to the other party under this Agreement shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Agreement with regard to any subsequent default or breach.

I. Partial Invalidity. In the event any portion of this Agreement shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions of this Agreement, or parts hereof, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, it being understood that such remaining provisions shall be construed in a manner most closely approximating the intention of the parties with respect to the invalid, void, or unenforceable provision or part hereof.

J. Entire Agreement. This Agreement constitutes the full and complete agreement and understanding between the parties hereto. No representations or covenants made by either party shall be binding unless contained in this Agreement or subsequent written amendments hereto.

K. No Third Party Beneficiaries. This Agreement is not intended, nor shall it be deemed or construed, to create or confer any rights upon third parties.

L. Authority. Each of the persons executing this Agreement represents that they have lawful authority and authorization to execute this Agreement, as well as any other documents required hereunder, for and on behalf of the entity executing this Agreement.

M. Default. In the event any party to this Agreement, its successors and assigns, fail to faithfully comply with all the terms and conditions included in this Agreement it shall be in breach of this Agreement. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through direct negotiations, the parties shall first endeavor to settle the dispute in an amicable manner by mediation before resorting to arbitration or litigation.

N. Notices. Any and all notices, demands, requests, and other communications required to be given hereunder by either of the parties hereto shall be in writing and be deemed properly served or delivered, if delivered by hand to the party to whose attention it is directed, or

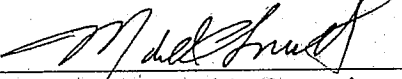
execute and deliver from time to time upon request partial releases, estoppel certificates and other appropriate documentation to release the lien of this Agreement created by the provisions relating to the construction of the infrastructure improvements from portion of the Property being conveyed to third party purchasers and to certify to said purchasers and/or lenders that this Agreement is not in default. Upon the recordation of a partial release, prospective purchasers and title insurers are entitled to rely upon this provision and the partial release. Notwithstanding the recordation of a partial release, the terms, conditions and restrictions of this Agreement that are unrelated to the released provisions for the construction of infrastructure improvements shall remain in full force and effect.

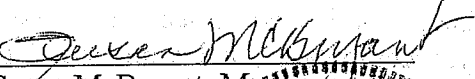
Q. Interpretation. In the event of any inconsistency between the terms and provisions of this Agreement and other drawing, plan, submittal or agreement submitted as part of the Application, the terms and provisions of this Agreement shall control.

IN WITNESS WHEREOF, the parties, having been duly authorized, have hereunto caused this Agreement to be executed, on the day and year first above written, the same being done after public hearing, notice and statutory requirements having been fulfilled.

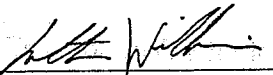
Metropolitan/Rocky Mountain Cinemas, LLC.,  
A Delaware limited liability company

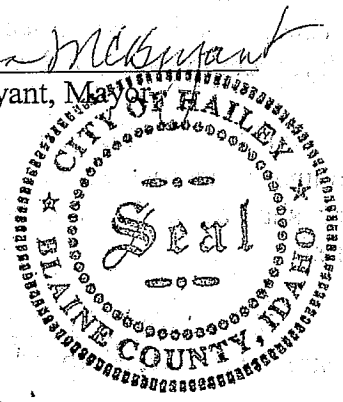
City of Hailey, Idaho

By:   
Marshall C. Smith, Operations Manager

By:   
Susan McBryant, Mayor

The Williams Family Trust

By:  TRUSTEE  
Latham Williams, Trustee



**AGENDA ITEM SUMMARY**

**DATE:** 04/25/2011 **DEPARTMENT:** Admin **DEPT. HEAD SIGNATURE:** HD and BS

**SUBJECT:** Public Hearing on Wood River High School Environmental club's request to Hailey City Council to consider an ordinance which would prohibit plastic bags within the city limits of Hailey

**AUTHORITY:**  ID Code \_\_\_\_\_  IAR \_\_\_\_\_  City Ordinance/Code \_\_\_\_\_  
(IF APPLICABLE)

**BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:**

The Wood River High School Environmental Club gave a presentation at the April 11, 2011 City Council meeting pertaining to plastic bags, and distributed a proposed ordinance which would prohibit the distribution of plastic bags by retailers in Hailey.

On April 19, 2011, notice was sent to all licensed businesses in Hailey, informing them of this public hearing.

Attached is that letter, an information flyer from WRHS Environmental Club, and the proposed ordinance.

**FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:**

**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:**

Hear public comment, discuss, and give direction to WRHS Environmental Club or to city staff.

**FOLLOW-UP/COMMENTS:**

\*

CITY OF HAILEY  
115 MAIN ST. S  
HAILEY, ID 83333  
208-788-4221

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April 19, 2011

Dear Business Owner:

The Wood River High School Environmental Club has put a proposal before Hailey City Council to ban plastic bags entirely from all stores in the City of Hailey. Under their proposal paper bags would be permitted but at a cost of 15 cents each.

The Hailey City Council will hear public concern on the proposed ban at a meeting on Monday, April 25, 2011 at Hailey City Hall.

At this time the council is inviting all business owners and their customers to attend and provide comments.

*Mailed to all Businesses within the City's Business  
License database. (WJ)*



# Why no plastic bags?



1. It is estimated that worldwide plastic bag consumption falls between 500 billion and 1 trillion bags annually. In other words, about 1 million bags every minute.
2. The U.S goes through 100 billion single-use plastic bags every year. This costs retailers about \$4 billion.
3. The average American Family accumulates 60 plastic bags in only 4 trips to the grocery store.
4. A polyethylene single use plastic bag can take up to 1,000 years to begin breaking down.
5. When plastics break down, they don't biodegrade, they photo-degrade, this means that the materials break down into smaller fragments, which readily soak up toxins. They then contaminate soil, waterways, and animals upon ingestion.
6. 10% of the plastic produced every year worldwide end up in the ocean, 70% of that plastic finds its way to the bottom of the ocean where it will likely never degrade.
7. Marine life such as sea turtles, whales and other marine mammals die every year, this number reaching into the hundreds of thousands, from eating discarded plastic bags mistaken for food.
8. On land, the same process occurs. Many cows, goats and other animals suffer a similar fate to marine life when they accidentally ingest plastic bags while foraging for food.
9. An estimated 8 billion pounds of plastic bags, wraps and sacks enter the waste system every year in the U.S alone, putting an unnecessary burden on our diminishing landfill space and causing air pollution if they are incinerated.
10. The production of plastic bags requires petroleum and often natural gas, both non-renewable resources that increase our dependency on foreign suppliers.
11. Each reusable bag can eliminate hundreds, if not thousands of plastic bags.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAILEY, IDAHO PROHIBITTING THE USE OF DISPOSABLE PLASTIC BAGS AND MANDATING CERTAIN STANDARDS AND A FEE FOR THE USE OF PAPER BAGS.**

**WHEREAS**, the City of Hailey, Idaho has a responsibility to protect the environment, the economy and the health of its citizens and visitors; and

**WHEREAS**, the use of plastic bags has a significant impact on the local environment of the City of Hailey, such as contributing to littered streets, sidewalks, waterways, clogging drainage systems and endangering wildlife; and

**WHEREAS**, currently, only 1-3% of plastic bags are recycled leaving 97-99% to become litter or end up in a landfill; and

**WHEREAS**, it is well documented that disposable plastic bags have significant environmental impacts on our local environment involving the use of wood products and other natural resources to produce and distribute paper bags; and

**WHEREAS**, the city believes that residents and visitors should use reusable bags in all instances and that a city fee on the distribution of paper bags by city grocers is appropriate to fund the City of Hailey's efforts to encourage the use of reusable bags and to provide and distribute paper bags while educating residents, businesses and tourists about the impact of trash on our local and regional environmental health; and

**WHEREAS**, it is in the best interest of the health, safety, and welfare of the citizens and visitors of Hailey to reduce the cost to the city of solid waste disposal, and to protect our environment and our natural resources by banning the use of disposable plastic shopping bags and to mandate certain standards and a fee for the use of paper bags.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HAILEY as follows:

**Section 1.**

The recitals of this Ordinance, as set forth above, are hereby incorporated into this Ordinance as Hailey City Council findings of fact and conclusions of law.

**Section 2.**

The City of Hailey Code is hereby amended to include a new Article # ("Prohibition on Disposable Plastic Bags and Mandating Certain Standards and a Fee for the Use of Permitted Paper Bags") within Title # ("Health, Sanitation and Animals") as set forth in Exhibit A, attached to this Ordinance and hereby incorporated herein by reference.

**Section 3.**

This ordinance shall not have any effect on existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided and the same shall be construed and concluded under such prior ordinances.

**Section 4.**

The provisions of this ordinance are severable and the invalidity of any section, phrase, clause or portion of the ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the ordinance.

**Section 5.**

This ordinance shall become effective upon the date of publication of notice of its passage in the newspaper of general circulation within the City of Hailey.

**Section 6.**

A public hearing on the ordinance will be held on \_\_\_\_\_

## EXHIBIT A

Article #

Prohibition on Disposable Plastic Bags and Mandating Certain Standards and a Fee foer the Use of Permitted Paper Bags.

### Sec. \_\_\_\_\_. Definitions.

The following words and phrases as used in this Article shall have the following meaning:

*W.A.T.E.R. fee* City fee of \$.15 imposed and required to be paid by each consumer making a purchase from a City Grocer for each Permitted Paper Bag used during the purchase.

*Business* means any commercial enterprise or establishment, including sole proprietorships (independent), partnerships, corporations or any other legal entity whether for profit or not for profit and includes all employees of the business and any independent contractors associated with the business.

*Grocer* means a retail establishment or Business within City limits that is a full-line, self-service market with a retail market which sells a line of staple food products, meats, produce, household supplies, or dairy products or other perishable items.

*Disposable Plastic Bag* means a bag made from either non-compostable plastic or compostable plastic provided by a Business to a customer at the point of sale for the purpose of transporting goods. The term "Disposable Plastic Bag" shall not include:

(a) Bags used by consumers inside stores to:

- (1) Package bulks items, such as fruit, vegetables, nuts, grains, candy, or small hardware items;
- (2) Contain or wrap frozen foods, meat, or fish, whether prepackaged or not;
- (3) Contain or wrap flowers, potted plants, or other items where dampness or cold conditions may be a problem; and,
- (4) Contain unwrapped prepared foods or bakery goods;

(b) Bags provided by pharmacists to contain prescription drugs;

(c) Newspaper bags, door-hanger bags, laundry dry-cleaning bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags;

(d) Reusable Carryout Bags;

- (e) Non-Permitted Paper Bags and Permitted Paper Bags, as defined in this Article #; or

*Non-permitted Paper bags* means a paper bag provided by a Business to a customer at the point of sale for the purpose of transporting goods, which does not meet the standards of a "Permitted Paper Bag" as defined in this Article #.

*Permitted Paper Bags* means a paper bag provided by a Grocer to a customer at the point of sale for the purpose of transporting goods, which is subject to the City's W.A.T.E.R. fee and that meets all of the following requirements:

- (a) The bag is manufacture from a minimum of forty percent (40%) recycled content;
- (b) The bag contains no old growth fiber; and
- (c) The bag is one hundred percent (100%) recyclable.

*Reusable Carryout Bag* means a bag that is specifically intended for multiple reuse and is made of cloth, fiber, or other machine washable fabric.

**Sec. \_\_\_\_\_ . City Wide Prohibition on Disposable Plastic Bags.**

- (a) Effective XXX, 2011 Disposable Plastic Bags shall not be sold or distributed, retail or wholesale, within City limits by any Business. The City also encourages all Businesses to refrain from purchasing any additional Disposable Plastic Bags before the effective date of the City prohibition on Disposable Plastic Bags.
- (b) Violation of the requirements set forth in this section shall subject the offending Person and/or Business to the penalties set for below in Section\_\_\_\_\_.

**Sec. \_\_\_\_\_ . Establishment of W.A.T.E.R. fee.**

- (a) A consumer making a purchase from a Grocer shall pay at the time of purchase a W.A.T.E.R. fee of \$.15 for each Permitted Paper Bag used during the purchase. All Grocers shall indicate on the consumer transaction receipt the number of Permitted Paper Bags provided and the total amount of W.A.T.E.R. fee charged.
- (b) Each Grocer shall retain \$.08 of each W.A.T.E.R. fee collected as a collection and remittance expense (also known as a "Vendor Fee") to be taken as a Grocer credit against the W.A.T.E.R. fee due to the City.
- (c) The total portion of the W.A.T.E.R. fee retained by the Grocer as a Vendor Fee under this Section shall not be classified as revenue and shall be tax-exempt. The

W.A.T.E.R. fee retained as a Vendor Fee by the Grocer shall be excluded from the definition of Retail Sales as defined under Hailey City Code Section XXX.

- (d) The remaining amount of each W.A.T.E.R. fee collected by a Grocer shall be paid to the City of Hailey Finance Department and shall be deposited as revenue in the Waste Reduction and Reusable Carryout Bag Time Line. A Grocer shall pay and the City of Hailey shall collect the W.A.T.E.R. fee at the same time. The City shall provide the necessary forms for Grocers to file individual returns with the City, separate from the required City Sales Tax forms, to demonstrate compliance with the provisions of the W.A.T.E.R. fee. Notwithstanding the fact that the W.A.T.E.R. fee will be collected at the same time and following a similar procedure as used for the City Sales Tax, such manner of collection at the same time with the W.A.T.E.R. fee Sales Tax is for the convenience of the Grocer and does not change the nature of the W.A.T.E.R. fee from a fee to a tax.
- (e) If payment of any amounts to the City for the W.A.T.E.R. fee is not received on or before the applicable due date, penalty and interest charges shall be added to the amount due and owing to the City pursuant to City Hailey code XXXXX.
- (f) Any City Business may voluntarily opt in and apply the W.A.T.E.R. fee to its business.

**Sec. \_\_\_\_\_ . Required Signage for Grocers.**

Every Grocer that is subject to the collection of the W.A.T.E.R. fee shall display a sign in a location viewable by customers stating that "The City of Hailey prohibits the sale or distribution of Disposable Plastic Bags in an effort to help protect our environment from excess litter, resource consumption and greenhouse gases. The City of Hailey encourages the use of Reusable Carryout Bags in all instances. If you do not have a Reusable Carryout Bag or choose not to purchase a Reusable Carryout Bag, a 100% recyclable paper bag is available subject to a \$.15 per bag fee. City proceeds from the fee shall be used to further promote this program."

**Sec. \_\_\_\_\_ . Enforcement and Penalties for Violation.**

Any Person and/or Business upon conviction of a violation of any provision of this Article, shall be subject to the following penalties:

- (a) Upon the 1<sup>st</sup> violation, a one (1) time only written warning notice that a violation has occurred shall be issued by the City to the Person and/or Business. No monetary penalty shall be imposed for the 1<sup>st</sup> violation.
- (b) Upon a subsequent violation and conviction, the City shall impose a penalty on the Person and/or Business. The penalty shall not exceed:
  - (1) \$50.00 for the 1<sup>st</sup> violation after the written warning;

(2) \$100.00 for the 2<sup>nd</sup> violation in the same calendar year of the 1<sup>st</sup> violation;  
and,


(3) \$300.00 for the 3<sup>rd</sup> and each subsequent violation in the same calendar  
year of the earlier violations.

(c) No more than one (1) penalty shall be imposed upon a Person and/or Business within  
a seven (7) day period.





## STAFF REPORT

**TO:** Hailey City Council  
**FROM:** Beth Robrahn   
**RE:** Zoning Ordinance Amendment – Section 8.2.7 (sign materials)  
**HEARING:** April 25, 2011

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**Note:** Staff analysis is in lighter type

### Notice

Notice for the public hearing on April 11, 2011 was published in the Idaho Mountain Express and mailed to public agencies and area media on March 23, 2011. The public hearing was continued by Council on the record on April 11, 2011 to April 25, 2011

### Proposal

Amendments to Section 8.2.7 of the Zoning Code are proposed by the City. These amendments would create sign material standards. Refer to the attached page for the actual proposed language.

### Procedural History

The Planning and Zoning Commission held a public hearing on September 20, 2010 and recommended the proposed amendment be approved by City Council. Minutes from the Commission's public hearing are attached.

The impetus for the amendments is to ensure that permanent signs are made of materials that will weather better than less durable materials. There is an increasing number of sign permits submitted for signs made of material such as plastic, cardboard, vinyl, and cloth. Signs made of these materials give the impression that the business is temporary and become degraded much faster and need maintenance more frequently than do signs made of sturdy, durable, quality materials, such as wood and metal. While it is recognized that certain materials may be less expensive for the business owner, an aesthetic that connotes longevity for Downtown and other business areas will create a better business climate and public realm.

### Department Comments

none

**Standards of Evaluation**

**14.6 When evaluating any proposed amendment under this Article, the Hearing Examiner or Commission and Council shall make findings of fact on the following criteria:**

**a. The proposed amendment is in accordance with the Comprehensive Plan;**  
The Council should consider how the proposed amendments relate to the various goals of the Comprehensive Plan (listed below for reference). One goal has been identified as being the most applicable to this amendment:

**11.1 Establish a built environment that maintains a human scale, retains interest, aesthetics, encourages various levels of interaction among all members of the community, and enhances the character of different neighborhoods.**

The stated purpose of Article 8.2 is to;

1. Protect the public health, safety, and welfare of persons within the community.
2. Aid in the development and promotion of business and industry.
3. Encourage aesthetic creativity, effectiveness and flexibility in the design of such devices without creating detriment to the general public.
4. Reduce hazardous situations, confusion and visual clutter caused by proliferation, improper placement or illumination, and/or bulk of Signs which compete for the attention of pedestrian and vehicular traffic.

There is an increasing number of sign permits submitted for signs made of material such as plastic, cardboard, vinyl, and cloth. Signs made of these materials give the impression that the business is temporary and become degraded much faster and need maintenance more frequently than do signs made of sturdy, durable, quality materials, such as wood and metal. While it is recognized that certain materials may be less expensive for the business owner, an aesthetic that connotes longevity for Downtown and other business areas will create a better business climate and public realm. The Council should consider whether the proposed amendment will improve the implementation of the stated purpose of Article 8.2.

- b. **Essential public facilities and services are available to support the full range of proposed uses without creating excessive additional requirements at public cost for the public facilities and services;**

There is no anticipated additional cost or compromise to public facilities and services.

- c. **The proposed uses are compatible with the surrounding area; and**

The proposed amendments would not affect uses. This criterion is not applicable to Sign Ordinance amendments.

- d. **The proposed amendment will promote the public health, safety and general welfare.**

It is not anticipated that the proposed amendment will affect the public health, safety and general welfare.

### Summary

The Council is required to hold a public hearing and determine whether the proposed amendments are in accordance with the applicable standards of evaluation. If the proposed change is approved, the Council is required to pass an ordinance making said amendment part of Hailey Zoning Ordinance #532. The draft ordinance is attached.

### Motion Language

#### Approval:

Motion to approve the proposed amendments to Section 8.2.7, finding that the amendments pertaining to sign materials are in accordance with the Comprehensive Plan, that essential public facilities and services are available to support the full range of proposed uses without creating excessive additional requirements at public cost for the public facilities and services, that the proposed uses are compatible with the surrounding area, and that the proposed amendment will promote the public health, safety and general welfare and adopt Ordinance \_\_\_\_ and authorize the mayor to conduct the first reading by title only.

#### Denial:

Motion to deny \_\_\_\_\_ the proposed amendments to Section 8.2.7 pertaining to sign materials, finding that \_\_\_\_\_ [the Council should cite which standards are not met and provided the reason why each identified standard is not met].

#### Continuation:

Motion to continue the public hearing upon the proposed amendment to Section 8.2.7 pertaining to sign materials to \_\_\_\_\_ [the Council should specify a date].

#### Table:

Motion to table the proposed amendment to Section 8.2.7 pertaining to sign materials.

HAILEY ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING HAILEY'S ZONING ORDINANCE, ORDINANCE NO. 532, BY AMENDING SECTION 8.2.7, DESIGN GUIDELINES AND STANDARDS, TO CREATE SIGN MATERIAL STANDARDS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the Hailey City Council has found that the following amendment to the Hailey Zoning Ordinance conforms to the Hailey Comprehensive Plan;

WHEREAS, essential public facilities and services are available to support the full range of proposed uses without creating excessive additional requirements at public cost for the public facilities and services;

WHEREAS, the uses are compatible with the surrounding area; and

WHEREAS, the amendment will promote 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 8.2.7 of the Hailey Zoning Ordinance No. 532, is hereby amended with the addition of the underlined language as follows:

8.2.7 Design Guidelines and Standards.

A. The following guidelines are suggested ways to increase the effectiveness of Signs placed within the City.

1. Projecting Signs are preferred over Portable or sandwich board Signs. Projecting Signs generally are more effective for increasing visibility to both pedestrians and motorist.

2. Sign materials and colors should compliment the building façade. Basic and simple color applications are encouraged.

3. The color of letters and symbols should contrast with the base or background color of the sign to maximize readability.

4. In multi-unit buildings, a Directory Sign with the names and suite numbers of all Units without individual street level entrances are encouraged to be provided at the shared entrance to those Units.

B. Except as otherwise provided herein, the following design standard addressing Sign material shall be met.

1. Signs which are attached or imprinted on a flexible surface that deforms



Easy-to-read fonts should be used and hard to read fonts should be avoided.



under light pressure and that is typically constructed of non-durable materials, including, but not limited to cardboard, cloth, vinyl, and plastic are prohibited.

a. A Temporary Sign may be constructed of such material.

Section 2. Severability Clause. Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 3. Repealer Clause. All City of Hailey ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

Section 4. Effective Date. This ordinance shall be in full force and effect from and after the required three (3) readings, 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, City of Hailey

Commissioner Moore moved to recommend to the City Council approval of the proposed amendments to Section 4.10, finding that the amendments are in accordance with the Comprehensive Plan, essential public facilities and services are available to support the full range of proposed uses without creating excessive additional requirements at public cost for the public facilities and services; the proposed uses are compatible with the surrounding area; and the proposed amendment will promote the public health, safety and general welfare. Commissioner Johnstone seconded, the motion passed unanimously.

 **Public hearing upon a city initiated text amendment to Article 8.2, Signs of the Hailey Zoning Ordinance No. 532. The amendments would address the use of vinyl type material.**

Planner Platt said currently there are no standards for sign materials. She said they want to make sure that permitted signs are made with durable materials. They also wanted to give the business owner the opportunity to display temporary signage with less durable materials.

Commissioner Lloyd asked whether plastic signs are not being referred to. Commissioner Pogue asked if all plastic signs are being outlawed. Platt stated they did not want to see something that was not durable to be permitted.

Commissioner Moore made a graphical correction on the ordinance page, B. and suggested changing addresses to addressing. Commissioner Pogue concurred.

#### **Public Hearing Opened**

Tony Evans wondered what specifically a vinyl sign was.

#### **Public Hearing Closed**

Planner Platt gave the banner Open Now sign at the new restaurant on the corner of Main and Croy as an example of a vinyl sign.

Commissioner Pogue stated it is a temporary sign. Evans asked how long is temporary. Director Robrahn stated not more than 72 hours and no more than 4 times a year.

Commissioner Moore asked about campaign signs and realtor signs. Director Robrahn stated most of those signs are less than 4 sq ft which are not required to be permitted.

Commissioner Moore moved to recommend to the City Council approval of the proposed amendments to Section 8.2.7, finding that the amendments are in accordance with the Comprehensive Plan, essential public facilities and services are available to support the full range of proposed uses without creating excessive additional requirements at public cost for the public facilities and services; the proposed uses are compatible with the surrounding area; and the proposed amendment will promote the public health, safety and general welfare. Commissioner Johnstone seconded, the motion passed unanimously.

## STAFF REPORT

**TO:** Hailey City Council  
**FROM:** Beth Robrahn *BR*  
**RE:** Zoning Ordinance Amendment – Section 8.2.6 (flashing signs)  
**HEARING:** April 25, 2011

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**Note:** Staff analysis is in lighter type

### Notice

Notice for the public hearing on April 11, 2011 was published in the Idaho Mountain Express and mailed to public agencies and area media on March 23, 2011. The public hearing was continued by Council on the record on April 11, 2011 to April 25, 2011

### Proposal

Amendment to Section 8.2.6 of the Zoning Code is proposed by the City. This amendment would allow for one (1) flashing open sign, not to exceed four (4) square feet per business. Refer to the attached page for the actual proposed language.

### Procedural History

The Planning and Zoning Commission held a public hearing on February 7, 2011 and recommended the proposed amendment to allow flashing signs not be approved by City Council. The Commission did discuss reducing the allowance to a maximum of 2 square feet, which would accommodate flashing open signs. Minutes from the Commission's public hearing are attached.

The current sign regulations prohibits all flashing signs and signs with intermittent light sources on the basis of maintaining the aesthetic integrity and safety of Hailey. Last year violation letters were sent to businesses using flashing open signs to inform them that the current regulations prohibit such signs. During follow up with the businesses, some businesses stated that flashing open signs were important for catching the attention of people passing in vehicles. The amendment was initiated by staff in response to this discussion with business owners to allow the Council to determine whether allowing one small flashing open sign per business is appropriate and whether the following factors can be reasonably balanced 1) aesthetics, 2) the potential of creating distractions for vehicular traffic and 3) the potential or perceived benefit of flashing signage to businesses.

A search of American Planning Association articles pertaining to provisions for flashing signs found that it is typical for municipalities to prohibit any flashing sign. No studies measuring the relative effectiveness of flashing signs were found. "A Framework for On-Premise Sign Regulations", produced in association with The Signage Foundation, suggests prohibiting animated and flashing signs as standard practice, but has provisions for electronic message center signs and includes the following discussion, "*there are often two contrasting views of EMCs. One view is that frequently changing EMCs can be viewed as a dynamic asset to the economic vitality of each business and to the community. Alternatively, they can be viewed as increasing*

*visual clutter, distracting motorist's attention and contrary to the general development objectives of the community and the purposes of the community's sign regulations. Many of the concerns regarding EMCs are related to brightness. Since the technology is available, it is reasonable that EMCs be required to have dimming capabilities that adjust the brightness to the ambient light – regardless of the time of day.”*

### **Standards of Evaluation**

**14.6 When evaluating any proposed amendment under this Article, the Hearing Examiner or Commission and Council shall make findings of fact on the following criteria:**

**a. The proposed amendment is in accordance with the Comprehensive Plan;**

The Council should consider how the proposed amendments relate to the various goals of the Comprehensive Plan (listed below for reference). Two goals have been identified as being the most applicable to this amendment:

**3.1 Assure the protection and preservation of Special Sites, Areas and Features to maintain a strong community identity for future generations**

One of the areas affected by the proposed amendment is downtown and the Main Street Corridor. The lands use map describes Downtown as the historic commercial center containing the greatest concentration of commercial, cultural and civic activity. Downtown is the priority area for encouraging higher density commercial and mixed use (commercial and residential) development. The Council should consider whether the potential of several businesses having flashing signs will detract or improve the look and feel of Downtown and Main Street. The Commission found that the potential of each business displaying a flashing sign, even if limited to two square feet, would not be in keeping with the identity of Downtown and Main Street.

**11.1 Establish a built environment that maintains a human scale, retains interest, aesthetics, encourages various levels of interaction among all members of the community, and enhances the character of different neighborhoods.**

The stated purpose of Article 8.2 is to;

1. Protect the public health, safety, and welfare of persons within the community.
2. Aid in the development and promotion of business and industry.
3. Encourage aesthetic creativity, effectiveness and flexibility in the design of such devices without creating detriment to the general public.
4. Reduce hazardous situations, confusion and visual clutter caused by proliferation, improper placement or illumination, and/or bulk of Signs which compete for the attention of pedestrian and vehicular traffic.

The Council should consider whether the potential of several businesses having flashing signs will detract or improve the stated purpose of Article 8.2. While some businesses have stated they flashing open signs help attract attention to their business, the Commission found that the potential for each business to display a flashing open sign, even if limited to two square feet, would increase hazardous situations, confusion and visual clutter.



|   |
|---|
| Comp Plan Goals (2010)  |
| 1.1 Preserve, protect and restore natural resources including waterways, floodplains, wetlands, soil, community forest, native vegetation, green space and wildlife habitat and migration corridors for the benefit of the City and its residents.  |
| 1.2 Efficiently use and conserve resources.   |
| 1.3 Promote renewable energy production   |
| 1.4 Promote energy conservation   |
| 1.5 Promote air quality protection  |
| 2.1 Reduce the potential threat to loss of life, limb or property and minimize public expenditures due to natural and man-made hazards.   |
| 3.1 Assure the protection and preservation of Special Sites, Areas and Features to maintain a strong community identity for future generations  |
| 3.2 Protect the residential character of the original Townsite.   |
| 4.1 Create and maintain an interconnected system of parks, recreational facilities, trails, green spaces and natural lands in order to provide diverse recreation opportunities for Hailey residents within ¼ mile to ½ mile of the greatest number of residents.                           |
| 5.1 Retain a compact City comprised a central downtown with surrounding diverse neighborhoods, areas and characteristics as depicted in the Land Use Map:   |
| a. Main Street Corridor – area of high density commercial, mixed use and residential development.   |
| b. Downtown - the historic commercial center containing the greatest concentration of commercial, cultural and civic activity. Downtown is the priority area for encouraging higher density commercial and mixed use (commercial and residential) development.                              |
| c. Community Activity Areas – located at the north and south ends of the Main Street Corridor. High density residential is encouraged. Commercial and mixed use (commercial and residential) development is appropriate, but should be subordinate and secondary to the infill of Downtown. |
| d. High Density Residential – high density residential infill is encouraged in the area along Main Street and River Street between Downtown and the north and south ends of Main Street.  |
| e. Residential Buffer – medium density residential, providing a buffer between lower density residential neighborhoods to the east and west and the Main Street District.   |
| f. Traditional Residential – Density varies depending on the qualities of different neighborhoods, generally density is higher within a ¼ mile of Downtown, Community Activity Areas or Neighborhood Service Centers and connected by transit service.                                      |
| g. Neighborhood Service Centers – Small commercial areas serving residents within walking distance (¼ to ½ mile) where commercial use is subordinate to residential uses and to Downtown or Community Activity Areas.   |
| h. Light Industrial – Areas containing uses important to a variety of business sectors that focus on the production of products and services that are less compatible with, and do not compete with, uses in Downtown and the Community Activity Areas.                                     |
| i. Airport Site Redevelopment – a diversity and integration of uses and community assets that complement and support Downtown and are connected within and to existing neighborhoods.   |
| j. Community Gateways – areas where one has a sense of arrival or sense of being within a part of town distinguished from others providing opportunities for special design considerations.   |

|       |  |
|-------|--|
| 5.2   | Maintain Downtown as the area containing the greatest concentration of commercial, cultural and civic activity and as the priority area for encouraging higher density commercial and mixed use (commercial and residential) development.  |
| 5.3   | Continue cooperation with the Blaine County and the Friedman Memorial Airport Authority in regional planning efforts to optimally relocate the airport and plan for the long term redevelopment of the site within the city limits to ensure that changes in land use are beneficial to the community of Hailey. |
| 5.4   | Protect open space within and surrounding Hailey, including visible ridgelines, undeveloped hillsides and agricultural areas which help define the unique character of Hailey.   |
| 5.5   | Lessen dependency on the automobile.   |
| 5.6   | Manage and accommodate population growth by infill development and, when appropriate, minimal expansion by annexation and/or density increases.  |
| 5.7   | Encourage development at the densities allowed in the Zoning Code.   |
| 6.1   | Encourage a diversity of economic development opportunities within Hailey  |
| 6.2   | Encourage abundant, competitive and career-oriented opportunities for young workers.   |
| 7.1   | Encourage a variety of projects and programs that meet the needs generated by various segments of the population, especially the needs of those who risk suffering effects of discrimination or are socially or economically disadvantaged.  |
| 7.2   | Encourage projects and programs that seek to provide opportunities for cultural, cross-cultural and educational enrichment.  |
| 8.1   | Encourage development that provides opportunities for home ownership and rental homes for individuals and families of all socio-economic levels.   |
| 9.1   | Plan for the long-term utilities, service and facility needs of the City while minimizing impacts to the greatest extent possible.   |
| 10.1. | Create and maintain a pedestrian and bicycle-friendly community that provides a safe, convenient and efficient multi-modal transportation system for all Hailey residents.   |
| 11.1  | Establish a built environment that maintains a human scale, retains interest, aesthetics, encourages various levels of interaction among all members of the community, and enhances the character of different neighborhoods.  |
| 12.1  | Evaluate whether proposed regulatory or administrative actions may result in an unconstitutional taking of private property.   |
| 13.1  | Encourage and facilitate the development of school facilities that are planned consistently with the city's other land use policies.   |
| 13.2  | Ensure the provision of safe, adequate, convenient multi-modal transportation access to all existing and future school sites.  |

- b. **Essential public facilities and services are available to support the full range of proposed uses without creating excessive additional requirements at public cost for the public facilities and services;**

There is no anticipated additional cost or compromise to public facilities and services.

- c. **The proposed uses are compatible with the surrounding area; and**

The proposed amendments would not affect uses. This criterion is not applicable to Sign Ordinance amendments.

- d. **The proposed amendment will promote the public health, safety and general welfare.**

It is not anticipated that the proposed amendment will affect the public health, safety and general welfare.

### Summary

The Council is required to hold a public hearing and determine whether the proposed amendments are in accordance with the applicable standards of evaluation. If the proposed change is approved, the Council is required to pass an ordinance making said amendment part of Hailey Zoning Ordinance #532. The draft ordinance is attached.

### Motion Language

#### Approval:

Motion to approve the proposed amendments to Section 8.2.6, finding that the amendments pertaining to flashing signs are in accordance with the Comprehensive Plan, that essential public facilities and services are available to support the full range of proposed uses without creating excessive additional requirements at public cost for the public facilities and services, that the proposed uses are compatible with the surrounding area, and that the proposed amendment will promote the public health, safety and general welfare and adopt Ordinance \_\_\_\_ and authorize the mayor to conduct the first reading by title only.

#### Denial:

Motion to deny the proposed amendments to Section 8.2.6 pertaining to flashing signs, finding that \_\_\_\_\_ [the Council should cite which standards are not met and provided the reason why each identified standard is not met].

#### Continuation:

Motion to continue the public hearing upon the proposed amendment to Section 8.2.6 pertaining to flashing signs to \_\_\_\_\_ [the Council should specify a date].

#### Table:

Motion to table the proposed amendment to Section 8.2.6 pertaining to flashing signs.

HAILEY ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING HAILEY'S ZONING ORDINANCE, ORDINANCE NO. 532, BY AMENDING SECTION 8.2.6, PROHIBITED SIGNS, TO ALLOW ONE (1) FLASHING OPEN SIGN PER UNIT; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the Hailey City Council has found that the following amendment to the Hailey Zoning Ordinance conforms to the Hailey Comprehensive Plan;

WHEREAS, essential public facilities and services are available to support the full range of proposed uses without creating excessive additional requirements at public cost for the public facilities and services;

WHEREAS, the uses are compatible with the surrounding area; and

WHEREAS, the amendment will promote 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 8.2.6 of the Hailey Zoning Ordinance No. 532, is hereby amended with the addition of the underlined language as follows:

8.2.6 Prohibited Signs.

A. No person shall erect, maintain, or relocate any of the following Signs within the City:

1. Signs creating traffic hazards. A sign at or near any public street, or at the intersection of any public streets, situated in such a manner as to create a traffic hazard by obstructing vision. Additionally, any sign at any location which would interfere with, obstruct the view of, or be confused with any authorized traffic sign.

2. Any sign which, due to structural weakness, design defect, or other reason, constitutes a threat to the health, safety, and welfare of any person or property.

3. Any sign which contains an intermittent light source, or which includes the illusion of intermittent or flashing light by means of animation, or an externally mounted intermittent light source, excluding one (1) flashing open sign, measuring less than four (4) square feet, per ground floor Unit.

4. Roof Signs, except mansard roof Signs provided that the highest portion of any sign attached to a mansard roof is no more than 2/3 the height of the mansard roof to which it is attached.

5. Animated Signs.

6. Any Pennant, propeller, or similar device which is designed to display movement under the influence of the wind and which contains a message, announcement,

declaration, demonstration, display, illustration, or insignia used for promotion or advertisement of a person, product, service, or business.

7. Any Sign attached to or displayed on outdoor furniture.
8. Any Sign mounted on wheels.
9. Any inflatable object used for promotional or sign purposes, excluding standard size balloons.
10. Signs advertising a business that is located outside of the corporate limits of Hailey.
11. Signs using "day-glo," fluorescent, or brilliant luminescent colored or neon lit backgrounds.
12. Reflective colored material that gives the appearance of changing color.
13. Any Sign covering or obscuring windows, doors, storefronts, building entrances, eaves, cornices, columns, horizontal expression lines, or other architectural elements or details.

Section 2. Severability Clause. Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 3. Repealer Clause. All City of Hailey ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

Section 4. Effective Date. This ordinance shall be in full force and effect from and after the required three (3) readings, 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, City of Hailey

# Hailey Planning & Zoning Commission

## Meeting Minutes

Monday, February 7, 2011  
Hailey City Hall

6:28.56 P.M. Commission Chair Geoffrey Moore called the meeting to order.

**Commissioners Present:** Chair Moore, Vice-Chair Mark Johnstone, Commissioners Mike Pogue, Janet Fugate, and Owen Scanlon.

**Staff Present:** Director Beth Robrahn.

**Public comment** for items not listed on the agenda.  
None.

### **Consent Agenda:**

*Tab 1 Approval of minutes from January 18, 2011 meeting.*

**Owen Scanlon moved to approve, Mark Johnstone seconded, and the motion carried unanimously.**

### **Presentations:**

None.

### **New Business:**

*Tab 2 Public Hearing upon a city initiated text amendment to Article 8.2, Signs, of Hailey Zoning Ordinance No. 532. The amendments would create an exception to allow for one (1) flashing open sign per business. These types of signs are currently prohibited.*

6:30:06 PM Director Robrahn provided background information including the distribution of violation letters sent to businesses currently displaying these signs, and clarification that non-flashing signs under four square feet in size, one per building unit, are allowed. Discussion ensued regarding the number of businesses in town that might choose to display these signs (around 800 businesses with licenses); possible visual conflicts with crosswalk lighting and emergency vehicle lights; whether flashing lights were more visually effective than solid illumination; the impact of flashing signs in the City's transitional zones; and sign size.

6:47:54 PM Chair Moore opened the meeting to public comment. Tony Evans, Idaho Mountain Express, inquired as to the locations of current flashing signs. With no further comment offered, the public comment section of the meeting was closed. Owen Scanlon noted that no business owners attended this meeting to comment. **Commissioner Pogue moved to recommend the Council deny the amendment due to non-compliance with the Comprehensive Plan. Commissioner Fugate seconded, and the motion passed with Commissioner Scanlon opposing.**

## AGENDA ITEM SUMMARY

DATE: April 25, 2010 DEPARTMENT: Clerk & Community Development

DEPT HEAD: R/MHe

SUBJECT: Amendments to Chapter 12.12 - Park Use

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

### BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

These amendments to Chapter 12.12 - Park Use pair with amendments to Chapter 12.14 - Special Events approved by the Council on April 11, 2011. The proposed amendments to Chapter 12.12 incorporate the content of Resolution 2009-08 (Park Use Fees) and Resolution 2009-07 (Guidelines for Park Use and Reservations) and address the **reservation** of City Parks involving fewer than 250 people.

While the Council does not have to adopt polices related to the use of city property by ordinance, the amendments to Chapter 12.12 incorporating the policies previously established by resolution are proposed in order to help keep administrative procedures consistent with other administrative procedures (e.g. special event permits) and more easy to track (i.e. codified in the Municipal Code).

- The amendments are based on distinguishing between **using** a City Park and **reserving** a City Park. Reserving a park precludes the use of that park, or a portion of that park, by the general taxpayer. An underlying premise of these amendments is that it is reasonable and acceptable for a park to be used by a gathering of people (less than 250 people) without a permit or payment of a fee. Only when an individual or group wants to reserve a park, or portion thereof, in a manner that will preclude the use of that park by other people is payment of a fee required. The reservation provisions have assumed it is reasonable to reserve an entire park. *The Council should discuss whether if it is acceptable to reserve an entire park or if the reservation and associated fees is only appropriate for reservation of a portion of park.*

### Summary of Critical Points

- The definition of first come first served deleted because it is not used in amended chapter.
- Since large events are handled by 12.14 and the other categories relate to reservation of parks based on either the number of people or as a Seasonal Event, the definitions of organized private event and organized public event are no longer necessary.
- 12.12.040(A)(1) is to help clarify the different fees in a subsequent section. Because the focus is on the reservation of a park or portion of a park, permits and fees would not apply if a group of people met up in a park to do something - have a picnic, play a game, etc.
- If amplified music is involved it will be subject to new provisions in Title 9, which are forthcoming
- The term reservation replaces "use permit" to clarify what is being managed - not general use of a park, but the exclusive use of a park or portion of a park (what the public and private event definitions referred to) - exclusive use takes the form of a reservation. The fees are to compensate taxpayers for temporary exclusion of use.
- The \$50 (25-99 people) and \$100 (100-249 people) fees include reservation of a pavilion and/or all or some other portion of a park. The Parks and Lands Board recommended a fee structure that started with groups of 25 people or more, because they did not want to charge groups of less than 25 people. In order to make this consistent with the reservation premise, 12.12.040(A)(1) specifies that a park cannot be reserved for exclusive use for groups of less than 25 people. Groups of less than 25 people can still **use** a park (e.g. have a small wedding, picnic), they just can't **reserve** a park...but they can reserve a pavilion. *This could be simplified by allowing reservation of a portion of a park by groups with less than 25 people for \$25 and this fee could include reservation of a pavilion and/or some other portion of a park. To reiterate, the fees are for park reservation (the preclude use by others) not general use (that does not preclude use by others).*

### Feedback on Implementation

The policies of leaving Hop Porter, McKercher and Lions Parks available for Special Events each Friday, Saturday and Sunday between June 15 and September 15 (established by Resolution 2009-07) and allowing the sports fields at Balmoral, Keefer, Lions and McKercher Parks be available for recreational league use through a Seasonal Event permit have been carried over in the proposed amendments to Chapter 12.12. However, implementing these particular policies has resulted in a challenge related to an

annual season event at Lions Park (explained below). In addition, Hop Porter, McKercher and Lions Park cannot be reserved more than 14 days in advance of the desired reservation date because of the special event clause; many people when planning gatherings, such as wedding or reunion, want to reserve the location well in advance of the date.

Explanation of Lions Park Seasonal Event Permit Issue: For approximately the past 10 years one organization has reserved Lions Park for softball tournaments (i.e. seasonal use; application is attached). With Resolution 2009-07, we are not able to book a seasonal use application on weekends through the summer. The options currently available are, 1) deny the seasonal application because we are not able to book weekends through the summer, 2) have the applicant call city hall to see if he is able to use the park 14 days before each anticipated use of the park during the summer, 3) approve the seasonal event with the condition that if a special event is scheduled their use would be bumped for the special event, or 4) approve the seasonal event for Keefer Park, the other park with a softball field, instead of approving it at Lions Park.

Alternatively, Lions Park could be removed from the current special event clause, or to resolve both the softball tournament event at Lions Park and the general desire of people to be able to reserve a park in advance for an event like a wedding, Hop Porter, McKercher and Lions Parks could be kept reserved only for those weekends when large annual events are held (presumably for camping or other spill over activities) - those weekends are Memorial Day weekend, July 1-4, August 5-7 (RMFF), Labor Day weekend and the second weekend in October (Trailing of the Sheep). If new large events are developed and fostered for other weekends during the summer months, then the policy can be adjusted accordingly based on the park identified for a new large event (it should be noted that this new event planning will require forethought to be implemented successfully and will therefore most likely not be last minute endeavors). *Please provide direction regarding which option the Council would like to pursue to address this Seasonal Event Permit and Special Event reservation issue.*

**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)

|  |   |   |
|--|---|---|
| <input checked="" type="checkbox"/> City Administrator | <input type="checkbox"/> Library                        | <input type="checkbox"/> Safety Committee |
| <input checked="" type="checkbox"/> City Attorney      | <input type="checkbox"/> Mayor                          | <input type="checkbox"/> Streets          |
| <input checked="" type="checkbox"/> City Clerk         | <input type="checkbox"/> Planning                       | <input type="checkbox"/> Treasurer        |
| <input type="checkbox"/> Building                      | <input type="checkbox"/> Police                         | _____                                     |
| <input type="checkbox"/> Engineer                      | <input checked="" type="checkbox"/> Public Works, Parks | _____                                     |
| <input type="checkbox"/> Fire Dept.                    | <input type="checkbox"/> P & Z Commission               | _____                                     |

**RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:**  
 Review proposed amendments, hold public hearing, discuss, give direction, take action to approve the proposed ordinance if appropriate.

**ADMINISTRATIVE COMMENTS/APPROVAL:**  
 City Administrator \_\_\_\_\_ Dept. Head Attend Meeting (circle one) Yes No

**ACTION OF THE CITY COUNCIL:**  
 Date \_\_\_\_\_  
 City Clerk \_\_\_\_\_

**FOLLOW-UP:**  
 \*Ord./Res./Agmt./Order Originals: Record \*Additional/Exceptional Originals to: \_\_\_\_\_  
 Copies (all info.): \_\_\_\_\_ Copies (AIS only)  
 Instrument # \_\_\_\_\_





## PARK USE PERMIT APPLICATION

Park Name: Lions Park

Date(s) of Use: 5-1-11 - 10-2-11 Time: From 0800<sup>AM</sup> To 0800<sup>PM</sup>

### Applicant Information

Name: Mike Beall

Mailing Address: Box 160  
Belleuve ID 83313

Phone #: 208-720-6842

Type of Event: Soft Ball

### Organization Information (if applicable)

Name: Hailey Coed Softball

Mailing Address: Box 160  
Belleuve ID 83313

Phone #: 208-720-6842

Mike @ Sutton and son

- The park will not be reserved until the required applications and fees have been received by the city.
- All events and participants are subject to Hailey Municipal Code, 9.04.030 (noise) and 12.12 (parks). Special Events are also subject to 12.14 (special events).
- A \$25/hour maintenance fee will be charged for any cleanup required by the city.
- There is no guarantee of restrooms before May 15th or after October 15th.

Please see reverse side of this form for fee information.

HAILEY ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING CHAPTER 12.12, PARKS AND PUBLIC PATHWAYS OF THE HAILEY MUNICIPAL BY AMENDING DEFINITIONS, BY PROVIDING FOR OVERNIGHT CAMPING IN CERTAIN PARKS, BY ADDING PARK RESERVATION POLICIES, PROCEDURES AND FEES; BY PROVIDING FOR A SEVERABILITY CLAUSE; BY PROVIDING FOR A REPEALER CLAUSE; AND BY PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the City of Hailey has adopted Chapter 12.12 of the Hailey Municipal Code, which allows the Hailey City Council to establish guidelines and policies for use of City Parks;

WHEREAS, the City of Hailey recognizes that City Parks are more than the physical space, they are community gathering places and belong to our entire community;

WHEREAS, in order to equitably distribute the use of City Parks for events and activities which preclude the use of the park by the general taxpayer, the City of Hailey desires to establish guidelines for park reservations;

WHEREAS, it is the intent of the City of Hailey to direct large events to specific parks best suited to accommodate such events and to ensure that the reservation of those parks will not preclude their use for Special Events administered under Chapter 12.14;

WHEREAS, it is the intent of the City of Hailey to ensure that neighborhood parks remain available for use by the neighbors;

WHEREAS, the Mayor and City Council find that such an amendment will further the public health, safety and general welfare; and

WHEREAS, Resolution 2009-08, Park Use Fees, Resolution 2009-07, Guidelines for Park Use and Reservations should be repealed

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

Section 1. Section 12.12.010 of the Hailey Municipal Code is amended by the deletion of the stricken through language and the addition of the underlined language, as follows:

For purposes of this Chapter 12.12, the following words and phrases shall apply as defined herein:

“Administrator” means the department head, or his/her designee, as assigned by the mayor or city administrator to oversee the administration of this chapter.

"City Parks" shall mean those parcels of land that are owned or managed by the city of Hailey and are held for public use or as open or green space, including, but not limited to ~~city park and hillside~~ parcels.

"City Trails" shall mean those parcels of land that are owned or managed by the city of Hailey and are held for non-motorized public use as trails and rights-of-way.

~~"First come, first served basis" shall mean that procedure whereby requests for parks use permits received first during the calendar year shall have priority over applications received later. All park use permit applications received during the same business day shall be considered to have been received at the same time.~~ "In-line Sskates" shall mean footwear containing three or more axles mounted in a straight line extending generally from or behind the heel of the footwear to or in front of the toe of the footwear with a single wheel attached to each axle.

~~"Organized private event" shall mean a planned private event involving use of one of the city parks in a manner which will preclude the use of that park, or a portion thereof, by persons other than those participating in such planned event. An organized private event is generally by invitation only and not taking place as a fundraiser.~~

~~"Organized public event" shall mean a planned public event involving use of one of the city parks in a manner which will preclude the use of that park, or a portion thereof, by persons other than those participating in such planned event. An organized public event is generally open to the general public and/or is taking place as a fundraiser.~~

"Railroad Right-of-way" shall mean that certain real property lying within the legal city limits of the city, legally described in attached ~~Exhibit "A."~~

"Roller Sskates" shall mean footwear containing two axles with two wheels attached to each axle.

"Seasonal Event" shall mean an event held at regular intervals within a specified time period, typically an organized recreational league, and scheduled in advanced.

~~"skate park facility~~ Skate Park Facility" shall mean that ~~city park~~ City Park located adjacent to the intersection of Airport Way and Highway 75, Hailey, Idaho, and used for skateboarding, roller skating and in-line skating.

"Skateboard" shall mean a short board-like object that has two axles attached to the bottom of the board-like object with two wheels attached to each axle and the user rides or stands upon the board-like object.

Section 2. Section 12.12.020 of the Hailey Municipal Code is amended by the deletion of the stricken through language and the addition of the underlined language, as follows:

A. Except as otherwise provided herein, ~~it~~ is unlawful for any person, firm, corporation, partnership or association to park and/or camp overnight in any way, method or manner, in any ~~city park~~ City Park under any circumstances without the express permission of the city of Hailey.

1. RV camping is allowed overnight in designated areas within Roberta McKercher Park, up to a maximum of 12 hours.

2. Overnight camping may be permitted in a City Park as part of an approved special event permit, pursuant to Chapter 12.14, or park use permit.

Requirements for such camping will be imposed as part of the special event permit, pursuant to Chapter 12.14, or park use permit application process and approval.

Section 3. Section 12.12.040 of the Hailey Municipal Code is amended by the deletion of the stricken through language and the addition of the underlined language, as follows:

12.12.040 Use Reservation of city parkCity Parks.

A. Applicability. Reservation for the exclusive uUse of a city parkCity Park, or a portion thereof, for an ~~organized public event or organized private event~~ gatherings of less than 250 people shall require the prior issuance by the city of a park use permit. Such permits shall be obtained from the office of the Hailey City Clerk. For gatherings that are reasonably expected to attract 250 or more people, the procedures and requirements of Chapter 12.14 of the Hailey Municipal Code shall apply instead.

1. No park, or portion thereof, may be reserved for groups of less than 25 people, except a park pavilion may be reserved for groups of less than 25 people.

2. Hop Porter, McKercher and Lions Parks shall be kept available for special events, defined and administered pursuant to Chapter 12.14, each Friday, Saturday and Sunday between June 15 and September 15 of each year.

3. Deerfield, Foxmoor, Curtis, the Skate Park, Balmoral, Old Cutters, Heagle and Echo Hill Parks are neighborhood parks that should remain available for use by the general public and shall not be reserved for exclusive use except with a special events application pursuant to Chapter 12.14.

4. Jimmy's Garden and E. W. Fox Demonstration Garden shall not be reserved for exclusive use.

5. Sports fields at Balmoral, Keefer, Lions and McKercher Parks shall be available for recreational league use through a Seasonal Event permit.

6. Use of Deerfield and Foxmoor Parks for Seasonal Events shall be prohibited due to the limited parking available.

B. Administration. The Administrator of this Chapter is responsible for the coordination of any applicable departmental review and issuance of a park use permit.

1. Authority of Administrator.

a. For events that are reasonably expected to attract less than 250 participants, the Administrator has the authority to issue a park use permit and shall comply with the provisions of this Chapter 12.12.

b. For events that are reasonably expected to attract 250 or more people, the applicant shall comply with Chapter 12.14 of the Hailey Municipal Code.

C. Application Procedure.

1. An application for a park use permit shall be signed by the applicant on a form provided by the Administrator and shall be filed with the Administrator at least fourteen (14) calendar days prior to the desired reservation date.

2. At a minimum, the applicant shall provide, on a form provided by the Administrator, sufficient information to address the requirements set forth in this Chapter.

3. Except as otherwise provided herein, all park use permit applications shall be issued according to date received. Requests for parks use permits received first shall have priority over applications received later. All park use permit applications received during the same business day shall be considered to have been received at the same time.

a. If Hop Porter, McKercher or Lions Parks is not reserved with a Special Event application, then a park use permit application may be submitted to reserve the park not more than fourteen (14) calendar days prior to the start of the desired park use.

~~Park use permits shall be issued on a first come, first served basis as outlined in the current Hailey Parks & Lands Board Parks Use Guidelines Resolution.~~

CE. Fees. A park use permit for use of a city park shall be issued only upon the payment of a park use fee, refundable damage and cleaning deposit, and compliance with requirements for providing additional trash receptacles and/or dumpsters, portable toilets, and security measures, which requirements shall depend on the nature and size of the event. The park use fees and refundable damage and cleaning deposits provided for herein shall be established and adjusted by means of a resolution duly adopted by the Hailey City Council. Except as otherwise provided herein, fees for reservation of a park, or portion thereof, are based on the number of people in attendance and/or participation and are established herein. A park pavilion may be reserved, either solely or in combination with use of other portions of a park, as part of the reservation fees herein. The number of days a reservation fee is charged shall include set-up and tear-down days.

1. A park, or portion thereof, reserved for twenty-five (25) to ninety-nine (99) people shall be assessed a fee of fifty dollars (\$50) per day; this fee may include reservation of a pavilion.

2. A park, or portion thereof, reserved for one hundred (100) to two hundred forty-nine (249) people shall be assessed a fee of one hundred dollars (\$100) per day; this fee may include reservation of a pavilion.

3. A park pavilion reserved for less than twenty-five (25) people shall be assessed a fee of twenty-five dollars (\$25) per day.

4. A park or portion thereof reserved for a Seasonal Event shall be annually assessed a fee of one hundred dollar (\$100) per City Park; this fee may include reservation of a pavilion.

5. An individual or group may apply with the city to adopt-a-park. The following minimum requirements shall be met:

a. Minimum of 10 hours of service in the park, which may include the following as directed by the city and in accordance with the applicable park maintenance standards:

- i) spring and/or fall clean-up
- ii) spring and/or fall fertilizing
- iii) weed control
- iv) weekly mowing

6. If an adopt-a-park application is approved the city will recognize the individual or group on the applicable park sign and waive park use fees as follows for the same individual or group named on the adopt-a-park application:

a. One reservation for a Seasonal Event.

b. One reservation for one hundred (100) to two hundred forty-nine (249) people.

~~D. A park use permit for use of a city park for an organized public event of any size, a seasonal event, or an organized private event anticipating more than 200 participants shall require proof of the applicant as having obtained general liability insurance coverage in the minimum amount of one million dollars covering the city as an additional insured.~~

~~E. A park use permit for a special event, as defined in Section 12.14.010 of the Hailey Municipal Code, shall also be subject to the special events requirements set forth in Chapter 12.14 of the Hailey Municipal Code.~~

~~F. No more than two events anticipating more than 200 participants per event per month per park shall be allowed unless the City Council makes a determination that the limitation set forth in this subsection should be waived for a given event. The start date of each event anticipating more than 200 participants shall be no less than ten (10) days apart.~~

~~G. Compliance with the terms and requirements of this section shall exempt the applicant or organizer of the event subject to such requirements from the provision and requirements of Chapter 5.16 of the Hailey Municipal Code.~~

Section 4. Section 12.12.050 of the Hailey Municipal Code is amended by the deletion of the stricken through language and the addition of the underlined language, as follows:

12.12.050 Use of city parkCity Parks—hours of operation.

A. Except as otherwise provided herein and in section 12.12.020(A), The hours of use for city parkCity Parks shall be daylight hours, from dawn to dusk, defined as one-half hour before sunrise to one-half hour after sunset. Such hours of use shall be posted in plain view by sign at each city parkCity Park. An exception to the hours of use shall may be made where authorized under Chapter 12.14 of the Hailey Municipal Code by the city for special eventswith an approved park use permit.

B. It is unlawful for any person, firm, corporation, partnership or association to park at, occupy or otherwise use any city parkCity Park, under any circumstances, from dusk to dawn without the express written permission of the city of Hailey.

Section 5. Section 12.12.060 of the Hailey Municipal Code is amended by the deletion of the stricken through language and the addition of the underlined language, as follows:

A. Use of the skate park facilitySkate Park Facility is for use by persons using Sskateboards, in-line skates and roller skates only. All other uses are prohibited. Bicycles, BMX bicycles and similar bicycles are expressly prohibited from using the skate park facilitySkate Park Facility.

B. All persons using the skate park facility shall do so at their own risk.

Section 6. Section 12.12.070 of the Hailey Municipal Code is amended by the deletion of the stricken through language and the addition of the underlined language, as follows:

12.12.070 Permitted and prohibited uses of ~~city park~~City Parks and ~~city trails~~City Trails.

A. Except as otherwise provided in this chapter, ~~city park~~City Parks and ~~city trails~~City Trails shall only be used by pedestrians, equestrians, bicycle riders, cross-country skiers and snowshoers, and for all other non-motorized recreational uses. Licensed motorized vehicles are permitted only on designated roadways and parking areas within ~~city park~~City Parks.

B. Except as otherwise provided in this chapter, motorized vehicles, including without limitation, automobiles, motorcycles, trail bikes, mopeds, motorized bicycles and motorized scooters, shall not be permitted on ~~city park~~City Parks and ~~city trails~~City Trails. Motorized vehicles are permitted for construction of improvements or maintenance of the ~~city park~~City Parks and ~~city trails~~City Trails or for emergency access.

Section 7. 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 8. Repealer Clause. All ordinances or parts thereof in conflict herewith are hereby repealed and rescinded.

Section 9. 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 Davis, Mayor  
City of Hailey

ATTEST:

\_\_\_\_\_  
Mary Cone, City Clerk

