

## STAFF REPORT

**TO:** Kimberly P&Z Commission

**FROM:** Planning and Zoning Department

**RE: Kimberly City Code, Development Regulations Text Amendment-** A City of Kimberly initiated text amendment to Title 17, adding Section 17.14.035. The proposed Section lays out processes for development agreement creation and form, execution, recording, and other specifications.

**HEARING:** November 4, 2014

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### **Proposal**

The proposed amendment is to amend the Kimberly City Code as noted.

### **Background**

The proposed amendment is an ordinance amending Kimberly City Code Title 17 by adding Section 17.14.035. The proposed Section lays out processes for development agreement creation and form, execution, recording, and other specifications.

### **Department Comments**

The City Attorney's office has reviewed the proposed ordinance. Staff believes the ordinance enables needed processes for development agreement creation and form as noted.

### **Procedural History**

The text amendment will be considered by the Kimberly Planning and Zoning Commission on November 4, 2014. At the previous P&Z Meeting, the Commission recommended the amendment be brought for consideration.

### **Notice**

Notice for the Planning and Zoning public hearing was published in the Times News on October 20, 2014, and was mailed to public agencies and area media on October 21, 2014.

### **Standards of Evaluation**

**17.14.010: AUTHORITY TO AMEND: Whenever the public necessity, convenience, general welfare or good zoning practices require, the council may, by ordinance, after receipt of recommendation thereon from the commission and subject to procedures provided by law, amend, supplement, change or repeal the regulations, restrictions and boundaries or classification of property.**

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

**When evaluating any proposed amendment, the Commission and Council shall make findings of fact on the following criteria:**

- a. The proposed amendment is in accordance with the Comprehensive Plan; The Commission should consider how the proposed amendment relates to the various goals**

**of the Comprehensive Plan.**

- **Economic and Community Development Goals**

- **Promote and develop new and improved employment opportunities**

The proposed amendment would likely make it attractive for proposed developers and others to use development agreement processes to further development objectives. The City could also utilize the processes to further economic development objectives.

- **Promote economic growth in the City as opportunities arise that are fitting with its goals and objectives**

Allowing the new processes may be a tool to attract new business.

**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;**

Not applicable.

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

The amendment would likely promote the public health, safety and general welfare by furthering the Comprehensive Plan goals addressed, and by promoting additional private and community opportunities.

**Summary**

**17.14.040: COMMISSION ACTION:**

Requests for an amendment to this title shall be submitted to the commission, which shall evaluate the request to determine the extent and nature of the amendment requested; If the request is in accordance with a comprehensive plan, the commission may recommend and the council may adopt or reject the ordinance amendment under the notice and hearing procedures as herein provided; and



**Motion Language**

Approval:

P&Z

Motion to recommend the City Council approve the amendment to Kimberly City Code Title 17, by adding Section 17.14.035, which lays out processes for development agreement creation and form, execution, recording, and other specifications, finding that the proposed amendment will promote the public health, safety and general welfare.

Denial:

P&Z

Motion to deny recommendation of the proposed the amendments to Kimberly City Code Title 17, adding Section 17.14.035, which lays out processes for development agreement creation and form, execution, recording, and other specifications, finding that \_\_\_\_\_[the Commission should cite which standards are not met and provide the reason why each identified standard is not met].

Continuation:

Motion to continue the public hearing upon the proposed amendments to Kimberly City Code, to amendment Kimberly City Code Title 17, adding Section 17.14.035, which lays out processes for development agreement creation and form, execution, recording, and other specifications, to \_\_\_\_\_[the Council should specify a date].

Table:

Motion to table the proposed amendments to Kimberly City Code, Development Regulations, the application with the ordinance to amendment Kimberly City Code Title 17, adding Section 17.14.035, which lays out processes for development agreement creation and form, execution, recording, and other specifications to a later date:\_\_\_\_\_.

Motion Seconded:\_\_\_\_\_



KIMBERLY ORDINANCE NO. 619

Development Agreements

AN ORDINANCE OF THE CITY OF KIMBERLY, IDAHO, AMENDING KIMBERLY'S CITY CODE, BY AMENDING TITLE 17: CHAPTER 17.14 AMENDMENTS: ADDING SECTION 17.14.035 DEVELOPMENT AGREEMENTS WHICH LAYOUTS THE PROCESSES FOR DEVELOPMENT AGREEMENT CREATION AND FORM, APPLICATION, SAFEGAURDS, EXECUTION, RECORDING, AND MODIFICATION POSSIBILITIES.

WHEREAS, the proposed amendments are in accordance with the general safety and welfare of the community; and

WHEREAS, the amendments are thought to be mechanisms to assist in the Administration and Enforcement of the Title 17; and

WHEREAS, Idaho Code Section 67-6511A authorizes a city to adopt an implementing ordinance for development agreements, but does not self-execute the authority and such an ordinance is required.

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

**Ordinance amendments are shown below in bold text**, language deleted is delineated by a single-line strikethrough, and regular text is neither amended nor deleted, but is shown to provide context and placing of the amendments in the ordinance.

Chapter 17.14 AMENDMENTS

SECTION

17.14.030: Amendment Application Contents

**17.14.035: Development Agreements**

17.14.040 Commission Action

**17.14.035: DEVELOPMENT AGREEMENTS:**



In accordance with the notice and hearing procedures for Zoning Boundary Changes in Kimberly City Code 17.14.050 – 17.14.090 (including notice that a development agreement is part of the application for zoning map amendment), a property owner or developer may request, or the city may require, that an application for zoning map amendment or rezone be processed in conjunction with the execution of a development agreement. The development agreement will allow a change in the zoning for a specific project, with a specific use, to be developed on property in an area which may not be appropriate for all uses permitted outright or conditionally within the proposed zone. Approval of the development agreement, pursuant to this section, would permit the proposed use, with conditions, within the proposed zone.

Such conditional commitments in development agreements are in addition to the regulations provided for in the zoning district by Title 17, and are established to ensure compatibility of the resulting land use with the surrounding area. The use of a PUD permit process shall be the only means whereby the City of Kimberly will/shall entertain allowing uses in a zone not normally allowed therein; and a development agreement does not provide an exception.

**A. Creation and Form:** A request to enter into a development agreement shall be in a form developed by the Community Development Director and approved by the City Council. The development agreement shall, as a condition of consideration by the P&Z Commission or City Council, include at a minimum the following:

- 1) a legal description of the subject property,
- 2) a list of the use(s) to be allowed,
- 3) identification of development standards that shall be required under the development agreement,
- 4) the planned implementation of improvements with a construction and completion schedule,
- 4) provisions for any dedication or reservation of all applicable land,
- 5) a site map showing all boundaries, the locations for permitted use(s), land area in acres, and natural features including water bodies and any other relevant features,
- 6) a provision that the property owner/developer acknowledges and agrees that failure to comply with the terms of the agreement shall result in a reversion of the zoning of the real property to the zoning existing immediately prior to the agreement, pursuant to the procedure set forth in Idaho Code section 67-6511A and this Section,
- 7) a provision for the use of a financial guarantee for project completion if the proposal is developed in phases,
- 8) a provision specifying that unless modified or terminated by the City Council, pursuant to subsection D of this section, the development agreement and all conditions, terms, duties and obligations included in said development agreement are binding on the owner of the property, each subsequent property owner and every person(s) acquiring interest in said property,



9) any other conditions attached to the project through the public hearing process.

**B. Safeguards: The following safeguards shall be applied:**

1. A development agreement shall not prevent the city in subsequent actions related to the property from applying new rules, regulations or policies that do not conflict with commitments applicable to the property as set forth within any duly executed development agreement.
2. If the owner or developer fails to comply with a conditional commitment in a development agreement after completion of construction, the city may deal with the violation through all penalty provisions allowed under city ordinances and state law.
3. When a commitment is required to be satisfied prior to completion of construction, and it is not so satisfied, construction may be halted until compliance is established.

**C. Recording: Agreements shall take effect and shall be recorded in the Twin Falls County recorder's office upon the adoption of the ordinance establishing the zoning map amendment by the City Council or Twin Falls County Board of Commissioners if the property is in the area of impact. Should a development agreement be terminated by the City, and the zoning designation upon which the use is based be reversed, a document recording such termination and zoning reversal shall also be recorded by the City in the Twin Falls County recorder's office. An agreement shall be binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel.**

**D. Modification, Enforcement, and Termination of Commitments: A development agreement may be modified by request of an applicant or the city only after receiving a recommendation by the P&Z Commission and by an approval vote of the City Council after compliance with the notice and hearing provisions for Zoning Boundary Changes in Kimberly City Code Sections 17.14.050 – 17.14.90. The following are circumstances where a modification may be considered:**

1. A change to any of the terms or conditions of the original development agreement is proposed; and/or
2. A substantial change to any established positioning or exterior appearance of any structure over two hundred (200) square feet in area is proposed; and/or
3. A substantial change in infrastructure from what was agreed upon.

A development agreement may be terminated by the city, and the zoning designation granted by the agreement reversed to the zoning that was in effect on the pertinent site before the agreement was executed, upon the failure of the owner, developer, or each subsequent owner or each person acquiring an interest in the subject parcel, to comply with the commitments contained in the development agreement within two (2) years of approval by the City Council or Twin Falls County Board of Commissioners. Exception: The failure to begin or complete site development of all or a portion of a project proposed under a development agreement does not necessarily have to serve as impetus to claim that an owner or developer has failed to comply with their commitments contained in their respective development agreement. Rather, such failure to begin or complete site development of all or a portion of a project proposed under a development agreement, shall serve as



impetus to consider termination of an agreement and reversion of zoning. A hearing for termination may be convened by the City Council after complying with the same notice and hearing provisions required for a Zoning Boundary Change and any relevant termination terms of the pertinent agreement. During the hearing, the council may vote to take no action, cause modification of the agreement if the applicant is willing, or terminate the agreement.

The two (2) year period of time for compliance with the commitments contained in the development agreement may be extended by the city for just cause, and upon application for such by the owner, after complying with the notice and hearing provisions required for a Zoning Boundary Change.

In accordance with state law, the establishment of a development agreement and the written commitments contained therein shall provide written consent for the city council to change the zoning of the subject property to its prior designation upon failure of an applicant to comply with the conditions imposed by their agreement.

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

SECTION 1. The above described and shown text amendments are the subject of text amendments to the Kimberly City Code.

SECTION 2. 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. All City of Kimberly ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

SECTION 4. This ordinance shall be in full force and effect from and after the approval, and publication according to law.

PASSED AND ADOPTED BY THE KIMBERLY CITY COUNCIL AND APPROVED BY THE MAYOR THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2014.

\_\_\_\_\_  
Tracy Armstrong, Mayor, City of Kimberly

Attest:

\_\_\_\_\_  
Shoshonie Heitmann, City Clerk

Publish: Times News \_\_\_\_\_, 2014

