

## OFFICE OF THE CITY ATTORNEY

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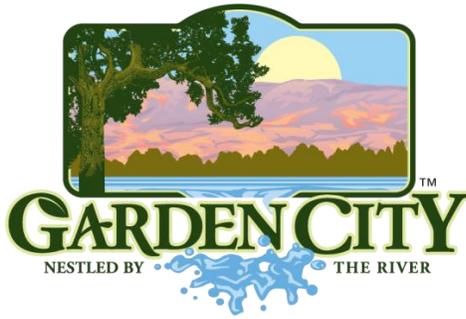
**TO:** Overlay District Ad Hoc Committee  
**FROM:** Charles I. Wadams, City Attorney  
**DATE:** 07/25/2019  
**SUBJECT:** Outline of Overlay District Legal Issues

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### COMPONENTS AND RELEVANT CONSIDERATIONS

#### 1) Purpose Statement

- a) The Purpose Statement should clearly state the goals of the overlay district and the goals should be tied to the objectives of the Comprehensive Plan.
- b) A direct connection to protecting the public health, safety, morals, general welfare, and aesthetics should be made.
- c) Public necessity must be shown.
  - i) Is there a public necessity for this proposed overlay?
    - (1) If yes, what is the public necessity?
    - (2) What information has been gathered to demonstrate the public necessity?
- d) Impacts on property values should be addressed.
  - i) Will there be impacts on property values?
    - (1) If yes, what will the impact be?
    - (2) What information has been gathered to demonstrate the impact?
- e) Fairness of applicability to only a portion of the community should be shown.
  - i) Is it fair to impact only a portion of the community?
    - (1) If yes, what information has been gathered to demonstrate that any impact will be fair to the community?



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- f) If an overlay district would change permitted or conditional uses, then creating a new underlying zoning district may be the more appropriate action.

### 2) Spatial Definition

- a) The boundary or rule for the spatial definition of the overlay should be clearly defined in a way the public can easily understand.
- b) Boundaries for the overlay district should be drawn based on reliable scientific factors or other logical rationale to justify including properties within the boundaries.
  - i) Is there a logical rationale for including all areas immediately adjacent to the Boise River and/or the Boise River Greenbelt or should the boundary be defined differently?
  - ii) Is there an identifiable need for the district at all areas adjacent to the River and/or Greenbelt?
  - iii) Should the overlay district include “sites,” “lots,” or “areas” adjacent to the Boise River and/or the Boise River Greenbelt rather than parcels?
- c) It might be best that an overlay zoning district be avoided if it would result in multiple overlapping overlay districts on the same area.

### 3) Application Procedures

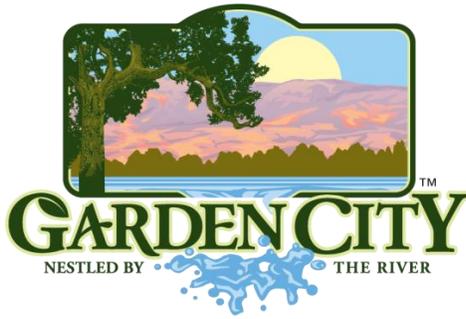
- a) What information should be included in a request to the City Council for an overlay district?
- b) Should the procedures be different from a public-initiated request and a government-initiated request?

### 4) Special Definitions

- a) Specialized standards will likely require specialized terminology that must be defined.

### 5) Standards for Review and Approval

- a) The reviewing body needs guidance concerning how to determine compliance.



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- i) If there are no standards for review and approval, an ordinance may be struck down for vagueness or decisions overturned as being arbitrary and capricious.

### 6) Appeals Process

- a) The term “hardship” should be carefully outlined to address unique situations and to avoid variances based on convenience rather than peculiar damages.
- b) The standing to appeal needs to be limited to “aggrieved parties” having direct and substantive claims.

### 7) Resolution of Conflicting Provisions

- a) If the overlay intends to add new provisions above those existing in the underlying zoning district(s), then it will be necessary to prescribe which set of standards takes precedence in cases of a conflict.

### 8) Overcoming Legal Challenges

- a) Overlay districts are typically challenged on substantive due process and equal protection claims.
  - i) First, the municipality should be able to show a legitimate municipal interest in protection of an area.
  - ii) Second, the municipality should be able to show the zoning is “rationally related” to this interest.
- b) If the strict enforcement of the overlay district requirements might result in a takings claim, the overlay district should provide for hardship variances.
- c) Municipalities should be careful that an overlay district is not preempted by the state or federal government.