

**ELMORE COUNTY PLANNING AND ZONING COMMISSION**  
**War Memorial (American Legion Hall), 515 East 2<sup>nd</sup> South Street, Mountain Home, ID**  
**83647**

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**Wednesday, March 18, 2015 at 7:00pm**

**Agenda**

**PLEASE SILENCE CELL PHONES**

**CALL TO ORDER**

**ESTABLISH QUORUM**

- |   |   |
|---|---|
| <input type="checkbox"/> Chairperson Patti Osborn       | <input type="checkbox"/> Vice-Chairperson K.C. Duerig |
| <input type="checkbox"/> Betty Van Gheluwe              | <input type="checkbox"/> Sue Fish                     |
| <input type="checkbox"/> Ed Oppedyk                     | <input type="checkbox"/> Shane Zenner                 |
| <input type="checkbox"/> Jeff Blanksma                  |   |
| <br>  |   |
| <input type="checkbox"/> Attorney of Record Phil Miller |   |

**PLEDGE OF ALLEGIANCE**

**PUBLIC MEETING**

- Sage Grouse Work Session
- Ordinance Work Session

**ITEMS FROM THE PUBLIC**

**FCO and MINUTES**

- Minutes from 02-18-15

**INFORMATION ITEMS**

- Upcoming P & Z Schedule.

**MEETING ADJOURNED**

**ELMORE COUNTY  
PLANNING AND ZONING COMMISSION**

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**MINUTES**  
**Wednesday, February 18 at 7:00 pm**

Vice Chairman Duerig called the meeting to order. Members of the Elmore County Planning and Zoning Commission present were Betty Van Gheluwe, Sue Fish, Shane Zenner, and Ed Oppedyk. Also present were Attorney of Record Phillip Miller, Director Alan Christy and staff member Kacey Ramsauer.

**PLEDGE OF ALLEGIANCE**

**PUBLIC MEETING**

Ordinance Work Session

Christy stated that he has provided a memo on the proposed changes that have been started for the zoning and development ordinance. He stated that he has provided red lines for chapters 1 and 3. He stated that in addition the memo will cover changes proposed in chapters 1, 3, and 4. He stated that it is anticipated that this will be a lengthy process and there will be multiple work sessions on this as well. He stated that it would probably be better if chapters 2 and 8 which are definitions and zoning regulations were covered last. He stated that he is trying to get consistency in terms throughout the ordinance.

**FCO and Minutes**

Case Number: CUP-2015-02 Jane Junge (Mickey and Minnie's Playhouse)

Oppedyk moved to approve.

Van Gheluwe seconded.

Motion carried unanimously.

Minutes from 01-21-15

Oppedyk moved to approve.

Fish seconded.

Motion carried unanimously.

Upcoming P & Z Schedule

Christy recommended the commission cancel the meeting on March 4<sup>th</sup> as there are no agenda items.

Van Gheluwe moved to cancel the March 4<sup>th</sup> meeting,

Oppedyk seconded.

Motion carried unanimously.

**MEETING ADJOURNED**

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K.C Duerig, Vice Chairman

Date:

Attest: \_\_\_\_\_  
Alan Christy, Director

Date:



# Elmore County Land Use and Building Department

520 East 2<sup>nd</sup> South Street  
Mountain Home, ID 83647  
Phone: (208) 587-2142 ext.254  
Fax: (208) 587-2120

Alan Christy  
Director

Tell Riley  
Building Official

Beth Bresnahan  
Planner I

Kacey Ramsauer  
Administrative  
Assistant

## Memorandum

**Date:** 3/09/15

**To:** Elmore County Planning and Zoning Commission

**From:** Alan Christy, Director

**Re:** Chapter 1, 3 & 4 Zoning and Development Ordinance Work Session

### Background

The purpose of this memorandum is to give a summary of proposed changes to the Zoning and Development Ordinance ("Ordinance") for chapters 1, 3 & 4. It is anticipated that chapter 2 will be reviewed once all other chapters have been reviewed to ensure all definitions are added to the Ordinance.

### Summary of Changes for Chapter 1

- Consistency in terms, i.e. Title.
- Grammar errors.
- Added provision for tabled applications.
- Added requirement for legal descriptions be adopted with all zoning maps.

### Summary of Changes for Chapter 3

- Moved section 6-3-1, 6-3-2, 6-3-9 through 6-3-12 to Chapter 4. Chapter 3 will specifically deal with enforcement of the Ordinance. Sections were renumbered accordingly.
- Added requirement that taxes be current before issuing a zoning permit.
- Section 6-3-6 was removed because it is dealt with in other areas of the Ordinance.

### Summary of Changes for Chapter 4

- Added sections from chapter 3 for procedural items.
- Added section for pre-application meetings.
- Added language stating that applications will not be accepted if taxes are delinquent or outstanding.
- Added language to give the County the option to require State and Federal approval before accepting an application.
- Added section for tabled applications.
- Changed notification distance to 1000'. Deleted items that required 1000' notice. Deleted the notice requirement for CAFO's because it conflicted with Chapter 34.
- Added section for procedure to amend the Comprehensive Plan.
- Added section from chapter 8 for Map Ordinance Amendments.

- Added section for tabled applications.
  - Modified reconsideration to remain in compliance with Idaho Code.
  - Variance items clarified.
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### **Items for Discussion**

- When necessary does the County want the option to require State and Federal approvals prior to accepting an application?
  - Should the County have the option to record violations? Staff has not provided any language in the proposed changes. If the Commission wishes to add this a section should be added in chapter 3. Examples are provided as attachment 4 to this memorandum.
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### **Moving Forward**

Staff recommends the Commission conduct another work session on April 15, 2015. As a reminder, this review and proposed changes are a legislative item. These items can be discussed with anyone at anytime.

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### **Attachments:**

1. **Proposed Changes for Chapter 1. Clean and Redline Versions.**
2. **Proposed Changes for Chapter 3. Clean and Redline Versions.**
3. **Proposed Changes for Chapter 4. Clean and Redline Versions.**
4. **Examples of recording violations from other jurisdictions.**

**TITLE 6 & TITLE 7  
ELMORE COUNTY  
ZONING AND DEVELOPMENT ORDINANCE**

**Table of Contents Title 6**

| <b>Chapter</b> | <b>Summary of Contents</b>   | <b>Page #</b> |
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| Chapter 5      | Authority And Duties Of The Growth And Development Director                                  | 112           |
| Chapter 6      | Hearing Examiner   | 114           |
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| Chapter 9      | Non Conforming Property, Use Or Structure, And Grandfather Rights                            | 245           |
| Chapter 10     | Farm Development Right   | 252           |
| Chapter 11     | Standard Regulations Applying To All Districts   | 255           |
| Chapter 12     | Fire Prevention And Wild Fire Mitigation Standards And Regulations Applying To All Districts | 262           |
| Chapter 13     | Flood Hazard Mitigation And Development Requirements Pertaining To Flooding                  | 277           |
| Chapter 14     | Areas Of Critical Concern And Hillside Development Requirements                              | 291           |
| Chapter 15     | One-Time Division Of Property  | 305           |
| Chapter 16     | Property Boundary Adjustments  | 309           |
| Chapter 17     | Public And Private Roads   | 312           |
| Chapter 18     | Master Site Plan Requirements  | 319           |
| Chapter 19     | Landscaping Ordinance  | 330           |
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| Chapter 30 | Planned Community (PC) Standards  | 459    |
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| Chapter 32 | Planned Unit Development District (PUDD) Standards                      | 510    |
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| Chapter 34 | Confined Animal Feeding Operations (CAFOs)                              | 538    |
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## Table of Contents Title 7, Areas of Impact

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**TITLE 6  
ELMORE COUNTY  
ZONING AND DEVELOPMENT ORDINANCE**

**CHAPTER 1 - TITLE, PURPOSE, INTERPRETATION AND ENACTMENT**

**Sections:**

|                |   |
|----------------|---|
| <b>6-1-1:</b>  | <b>Title</b>  |
| <b>6-1-2:</b>  | <b>Authority and Purpose</b>                          |
| <b>6-1-3:</b>  | <b>Provisions Declared To Be Minimum Requirements</b> |
| <b>6-1-4:</b>  | <b>Preservation of Private Property Rights</b>        |
| <b>6-1-5:</b>  | <b>Prohibited Uses</b>                                |
| <b>6-1-6:</b>  | <b>Wildfire Prevention</b>                            |
| <b>6-1-7:</b>  | <b>Severability Clause</b>                            |
| <b>6-1-8:</b>  | <b>Effective Date</b>                                 |
| <b>6-1-9:</b>  | <b>Applicability</b>                                  |
| <b>6-1-10:</b> | <b>Interpretation</b>                                 |
| <b>6-1-11:</b> | <b>Errors in Legal Descriptions</b>                   |
| <b>6-1-12:</b> | <b>References to Other Laws or Titles or Policies</b> |
| <b>6-1-13:</b> | <b>Saving Clause</b>                                  |

**Section 6-1-1: Title:**

- A. Titles 6 and 7 shall be known and referred to as the Elmore County Zoning and Development Ordinance (“Ordinance”).

**Section 6-1-2: Authority and Purpose:**

- A. This Zoning and Development Ordinance, Titles 6 and 7, are adopted pursuant to authority granted in Title 67 Chapter 65 of the Idaho Code (“Local Land Use Planning Act”) and Title 12, Section 2 of the Idaho Constitution. It is enacted for the purpose of guiding the use and development of land within Elmore County while promoting public health, safety, and general welfare.

**Section 6-1-3: Provisions Declared To Be Minimum Requirements:**

- A. In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements. Whenever the requirements of any other lawfully adopted rules, regulations, titles, or resolutions prevail, the most restrictive rules or those imposing the higher standards shall govern.

**Section 6-1-4: Preservation of Private Property Rights:**

- A. This Ordinance shall be interpreted to equally protect each citizen from the undue encroachment on such citizen's private property by his or her neighbors' use of his or her own private property. Each citizen shall have the maximum use of his or her property without placing undue burden upon his or her neighbor. Every citizen of Elmore County shall at all times have the right to appear in person or by his or her agent before the Director, Commission or Board to freely petition for the relief of an alleged burden created by this Ordinance, and to appeal any decision of the Director or Commission pursuant to the procedure stated herein. The enforcement of this Ordinance shall apply equally to each person and property in the similar circumstances.

**Section 6-1-5: Prohibited Uses:**

- A. All uses not permitted under the terms of this Ordinance are prohibited.

**Section 6-1-6: Wildfire Prevention:**

- A. Elmore County has a long history with wildfires. This Ordinance is oriented to the prevention of wildfires and mitigation of the negative effects of wildfires.

**Section 6-1-7: Severability Clause:**

- A. If any provisions of this Ordinance or the application to any persons or circumstances are held invalid, the remainder of the Ordinance or the application or provisions to other persons or circumstances shall not be affected thereby. Should any chapter, section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the Ordinance as a whole or any part thereof other than the part so declared shall not be affected thereby.

**Section 6-1-8: Effective Date:**

- A. This Ordinance shall become effective from and after the date of its approval and adoption, as provided by law.

**Section 6-1-9: Applicability:**

- A. The regulations of this Ordinance shall apply to all unincorporated properties within Elmore County and shall govern development and use of those properties.

- B. **Compliance; Approval Required:** No person or entity shall construct, alter, move, or change the use of a structure or undertake any development unless:
1. The proposed use, structure, or division of property complies with this Ordinance; and
  2. Any required approval is first obtained as provided by this Ordinance, and any applicable conditions of approval are met.
- C. **Permits Required:** Nothing in this Ordinance shall eliminate the need for obtaining any other required permits, including, but not limited to, building permits, plumbing, electrical, or mechanical permits, grading permits, or any permit, or approval required by other sections of this Ordinance, other political subdivisions of the State of Idaho, or agencies of the State of Idaho.
- D. **Unincorporated County Properties:** All properties in unincorporated Elmore County shall comply with the regulations of this Ordinance unless otherwise preempted by Federal Statute or local Ordinances.
- E. **Previous Violations:** The prosecution of violations that occurred under previous land use regulations and that remain a violation under this Ordinance shall continue until resolved.
- F. **Project with Pending Application:** All applications shall be processed according to the regulations and requirements in effect as of the date the Director accepted the application and deemed it complete. Director acceptance and deeming an application complete does not guarantee approval.
- G. **Tabled Application:** Projects that have been accepted by the Director and tabled prior to any approval, shall be deemed withdrawn after one (1) year of inactivity unless otherwise approved by the County.
- H. **Approved Project with Pending Request for a Time Extension:** Time extension requests shall be consistent with the requirements that are in effect when the original application was approved.
- I. **Approved Projects Not Yet Completed:** Any approved application may still be completed as provided by the approval.

**Section 6-1-10: Interpretation:**

A. **Language:**

1. **Terminology:** When used in this Ordinance, all words used in the present tense shall include the future; words used in the singular number shall include the plural number

and the plural the singular, unless the natural construction of the sentence indicates otherwise. The word "shall" is mandatory, and the word "may" is permissive.

2. **Number of Days:** Whenever a number of days is specified in this Ordinance, or in any permit, condition of approval, or notice issued or given as provided in this Ordinance the number of days shall be construed as calendar days, except that such time limits shall extend to the following working day when the last of the specified number of days falls on a weekend or Elmore County holiday.
3. **Minimum Requirements:** When interpreting and applying the regulations of this Ordinance, all regulations shall be considered to be minimum requirements, unless stated otherwise. Proposed uses shall comply with all applicable regulations and standards unless specifically exempt elsewhere in this Ordinance.
4. **Defined Terms:** Terms defined in this chapter shall have their defined meanings when used elsewhere in this Ordinance. For the purpose of readability and clarity, such terms may not be shown in initial caps.
5. **Section Headings:** Section headings or captions are for reference purposes only and shall not be used in the interpretation of this Ordinance.
6. **References:** All references to State or Federal laws and/or regulations shall refer to such laws and/or regulations as they may be amended over time.

B. Measurements:

1. **Structure height:** Shall be measured as the vertical distance from the average contact ground level at the front wall of a building to the highest point of the coping of a flat roof, the deck line of a mansard roof, or the average height (mid-point) of the highest gable of a pitch or hip roof.
2. **Linear distance:** Shall be measured in a horizontal line; it shall not be measured along an inclined surface or line. For uses that have a separation standard, the distance shall be measured from the nearest customer entrance of the proposed use to the nearest property line of the specified use. The measurement is to be conducted in a radial fashion by the specified number of feet (e.g., 300 feet, 1,000 feet).
3. **Illumination levels:** Shall be measured with a calibrated photoelectric photometer or similar device capable of accurate measurement of foot-candle or lumens when measured one foot (1') from the light source.
4. **Noise levels:** Shall be measured at the property line with a calibrated noise meter or similar device capable of accurate measurement (dB, decibel) of sound.

C. District Boundaries: Legal descriptions shall be adopted with all official zoning maps. Where uncertainty exists about the location of any district boundary shown on the official zoning map, the following rules shall be used to resolve the uncertainty:

1. Where a district boundary approximately follows a property line, such property line shall be construed as the district boundary; and
2. Where a district boundary approximately follows a street, alley, or railroad line, such street, alley, centerline, or the extension of such line, shall be construed as the district boundary. Where a street or alley is officially vacated and that street or alley has not been given a zoning designation, the land that was formerly in the vacated street or alley shall have the same designation as the abutting property on either side of the centerline of the vacated street or alley; and
3. Where a district boundary approximately follows a watercourse, the centerline of the watercourse shall be construed to be such boundary. In the event of a change in the watercourse shoreline, the boundary shall be construed as moving with the actual shoreline.

D. Conflicting Regulations:

1. In case of conflict between the text and the maps of this Ordinance, the maps shall prevail; and
2. If conflicts occur between different regulations of this Ordinance, or between this Ordinance and other regulations of this Ordinance, the most restrictive regulation shall apply unless otherwise specified by other regulations of this Ordinance.

E. Allowed Uses: If a proposed use of property is not specifically listed in Chapter 8, Zoning and Overlay Districts, of this Ordinance, the use shall be prohibited, except as follows: the Director may determine that a proposed use not listed in this Ordinance is equivalent to an allowed or conditional use if the Director finds all of the following:

1. The impacts on public services and activities associated with the proposed use are substantially similar to those of one or more of the uses listed in the applicable base or overlay districts as allowed; and
2. The proposed use shall not involve a higher level of activity or density than one or more of the uses listed in the applicable base or overlay districts as allowed; and
3. The proposed use is consistent with the purpose of the district in which the use is proposed to be located; and
4. The proposed use is in substantial conformance with goals and objectives of the applicable Comprehensive Plan.

**Section 6-1-11: Errors in Legal Descriptions:**

- A. Where a property has not been zoned due to an error in a legal description the following shall apply:
1. An error caused by the County, shall be corrected and duly processed by the County as soon as the error is discovered; and
  2. If the error is caused by the applicant and/or owner, the applicant shall apply for a zoning Ordinance map amendment and submit the proper fees.

**Section 6-1-12: References to Other Laws or Titles or Policies:**

- A. References in this Ordinance to other Titles or Ordinances of Elmore County and Statutes of the State of Idaho are provided solely for the coordination of this Ordinance with such other Ordinances and Statutes.

**Section 6-1-13: Saving Clause:**

- A. Should any section, clause, or regulation of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this Ordinance as a whole, or any part thereof, other than the part so declared to be invalid; each section, clause, or regulation hereof being declared severable.

**TITLE 6 & TITLE 7  
ELMORE COUNTY  
ZONING and AND DEVELOPMENT ORDINANCE**

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**TITLE 6  
ELMORE COUNTY  
ZONING and AND DEVELOPMENT ORDINANCE**

**CHAPTER 1 - TITLE, PURPOSE, INTERPRETATION AND ENACTMENT**

**Sections:**

- 6-1-1: Title**
- 6-1-2: Authority and Purpose**
- 6-1-3: Provisions Declared To Be Minimum Requirements**
- 6-1-4: Preservation of Private Property Rights**
- 6-1-5: Prohibited Uses**
- 6-1-6: Wildfire Prevention**
- 6-1-7: Severability Clause**
- 6-1-8: Effective Date**
- 6-1-9: Applicability**
- 6-1-10: Interpretation**
- 6-1-11: Errors in Legal Descriptions**
- 6-1-12: References to Other Laws or Titles or Policies**
- 6-1-13: Saving Clause**

**Section 6-1-1: Title:**

- A. ~~Title~~**Titles** 6 and ~~Title~~**7** shall be known and referred to as the Elmore County Zoning and Development Ordinance: ("**Ordinance**").

**Section 6-1-2: Authority and Purpose:**

- A. This Zoning and Development Ordinance, ~~Title~~**Titles** 6 and 7, ~~Zoning and Development Regulations~~ are adopted pursuant to authority granted ~~to~~**in Title 67 Chapter 65 of the** Idaho Code ("**Local Land Use Planning Act**") and Title 12, Section 2 of the Idaho Constitution. It is enacted for the purpose of guiding the use and development of land within Elmore County while promoting public health, safety, and general welfare.

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**Section 6-1-3: Provisions Declared To Be Minimum Requirements:**

- A. In their interpretation and application, the provisions of this [TitleOrdinance](#) shall be held to be minimum requirements. Whenever the requirements of any other lawfully adopted rules, regulations, [Titles](#), or resolutions prevail, the most restrictive rules or those imposing the higher standards shall govern.

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**Section 6-1-4: Preservation of Private Property Rights:**

- A. This [TitleOrdinance](#) shall be interpreted to equally protect each citizen from the undue encroachment on such citizen's private property by his or her neighbors' use of his or her own private property. Each citizen shall have the maximum use of his or her property without placing undue burden upon his or her neighbor. Every citizen of Elmore County shall at all times have the right to appear in person or by his or her agent before the Director, Commission or Board to freely petition for the relief of an alleged burden created by this [TitleOrdinance](#), and to appeal any decision of the Director or Commission pursuant to the procedure stated herein. The enforcement of this [TitleOrdinance](#) shall apply equally to each person and property in the similar circumstances.

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**Section 6-1-5: Prohibited Uses:**

- A. All uses not permitted under the terms of this [TitleOrdinance](#) are prohibited.

**Section 6-1-6: Wildfire Prevention:**

- A. Elmore County has a long history with wildfires. This [zoning and development TitleOrdinance](#) is oriented to [the](#) prevention of wildfires and mitigation of the negative effects of wildfires.

**Section 6-1-7: Severability Clause:**

- A. If any provisions of this [TitleOrdinance](#) or the application to any persons or circumstances are held invalid, the remainder of the [TitleOrdinance](#) or the application or provisions to other persons or circumstances shall not be affected thereby. Should any chapter, section or provision of this [TitleOrdinance](#) be declared by a court of competent jurisdiction to be invalid, the [TitleOrdinance](#) as a whole or any part thereof other than the part so declared shall not be affected thereby.

**Section 6-1-8: Effective Date:**

A. This Title Ordinance shall become effective from and after the date of its approval and adoption, as provided by law.

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**Section 6-1-9: Applicability:**

A. The regulations of this Title Ordinance shall apply to all unincorporated properties within Elmore

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County and shall govern development and use of those properties.

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B. Compliance; Approval Required: No person or public agency entity shall construct, alter, move, or change the use of a structure or undertake any development unless:

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1. The proposed use, structure, or division of property complies with this Title Ordinance; and

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2. Any required approval is first obtained as provided by this Title Ordinance, and any applicable conditions of approval are met.

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C. Permits Required: Nothing in this Title Ordinance shall eliminate the need for obtaining any other required permits, including, but not limited to, building permits, plumbing, electrical, or mechanical permits, grading permits, or any permit, or approval required by other Titles sections of this code Ordinance, other political subdivisions of the State of Idaho, or agencies of the State of Idaho.

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D. Unincorporated County Properties: All properties in unincorporated Elmore County shall comply with the regulations of this Title Ordinance unless otherwise preempted by federal statute Federal Statute or local Titles. Ordinances.

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E. Previous Violations: The prosecution of violations that occurred under previous land use regulations and that remain a violation under this Title Ordinance shall continue until resolved.

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F. Project with Pending Application: All applications shall be processed according to the regulations and requirements in effect as of the date the Director accepted the application and deemed it complete. Director acceptance and deeming an application complete does not guarantee approval.

G. Tabled Application: Projects that have been accepted by the Director and tabled prior to any approval, shall be deemed withdrawn after one (1) year of inactivity unless otherwise approved by the County.

H. Approved Project with Pending Request for a Time Extension: Time extension requests shall be consistent with the requirements that are in effect when the original application was approved.

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I. Approved Projects Not Yet Completed: Any approved application may still be completed as provided by the approval.

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### Section 6-1-10: Interpretation:

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#### A. Language:

1. **Terminology:** When used in this [Title Ordinance](#), all words used in the present tense shall include the future; words used in the singular number shall include the plural number and the plural the singular, unless the natural construction of the sentence indicates otherwise. The word "shall" is mandatory, and the word "may" is permissive.
2. **Number of Days:** Whenever a number of days is specified in this [Title Ordinance](#), or in any permit, condition of approval, or notice issued or given as provided in this [Title Ordinance](#) the number of days shall be construed as calendar days, except that such time limits shall extend to the following working day when the last of the specified number of days falls on a weekend or Elmore County holiday.
3. **Minimum Requirements:** When interpreting and applying the regulations of this [Title Ordinance](#), all regulations shall be considered to be minimum requirements, unless stated otherwise. Proposed uses shall comply with all applicable regulations and standards unless specifically exempt elsewhere in this [Title Ordinance](#).
4. **Defined Terms:** Terms defined in this chapter shall have their defined meanings when used elsewhere in this [Title Ordinance](#). For the purpose of readability and clarity, such terms may not be shown in initial caps.
5. **Section Headings:** Section headings or captions are for reference purposes only and shall not be used in the interpretation of this [Title Ordinance](#).
6. **References:** All references to [state State](#) or [federal Federal](#) laws and/or regulations shall refer to such laws and/or regulations as they may be amended over time.

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#### B. Measurements:

1. **Structure height:** Shall be measured as the vertical distance from the average contact ground level at the front wall of a building to the highest point of the coping of a flat roof, the deck line of a mansard roof, or the average height (mid-point) of the highest gable of a pitch or hip roof.

2. **Linear distance:** Shall be measured in a horizontal line; it shall not be measured along an inclined surface or line. For uses that have a separation standard, the distance shall be measured from the nearest customer entrance of the proposed use to the nearest property line of the specified use. The measurement is to be conducted in a radial fashion by the specified number of feet (e.g., 300 feet, 1,000 feet).

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3. **Illumination levels:** Shall be measured with a calibrated photoelectric photometer or similar device capable of accurate measurement of foot-candle or lumens when measured one ~~foot~~ (1') ~~feet~~ from the light source.

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4. **Noise levels:** Shall be measured at the property line with a calibrated noise meter or similar device capable of accurate measurement (dB, decibel) of sound.

C. District Boundaries: Legal descriptions shall be adopted with all official zoning maps. Where uncertainty exists about the location of any district boundary shown on the official zoning map, the following rules shall be used to resolve the uncertainty:

1. Where a district boundary approximately follows a property line, such property line shall be construed as the district boundary; and

2. Where a district boundary approximately follows a street, alley, or railroad line, such street, alley, centerline, or the extension of such line, shall be construed as the district boundary. Where a street or alley is officially vacated and that street or alley has not been given a zoning designation, the land that was formerly in the vacated street or alley shall have the same designation as the abutting property on either side of the centerline of the vacated street or alley; and

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3. Where a district boundary approximately follows a watercourse, the centerline of the watercourse shall be construed to be such boundary. In the event of a change in the watercourse shoreline, the boundary shall be construed as moving with the actual shoreline.

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D. Conflicting Regulations:

1. In case of conflict between the text and the maps of this ~~TitleOrdinance~~, the maps shall prevail; and

2. If conflicts occur between different regulations of this ~~TitleOrdinance~~, or between this ~~TitleOrdinance~~ and other regulations of this ~~codeOrdinance~~, the most restrictive regulation shall apply unless otherwise specified by other regulations of this ~~codeOrdinance~~.

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E. Allowed Uses: If a proposed use of property is not specifically listed in Chapter 8, Zoning and Overlay Districts, of this ~~TitleOrdinance~~, the use shall be prohibited, except as follows: the Director may determine that a proposed use not listed in this

**TitleOrdinance** is equivalent to an allowed **or conditional** use if the Director finds all of the following:

1. The impacts on public services and activities associated with the proposed use are substantially similar to those of one or more of the uses listed in the applicable base or overlay districts as allowed; and
2. The proposed use shall not involve a higher level of activity or density than one or more of the uses listed in the applicable base or overlay districts as allowed; and
3. The proposed use is consistent with the purpose of the district in which the use is proposed to be located; and
4. The proposed use is in substantial conformance with goals and objectives of the applicable Comprehensive Plan.

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#### Section 6-1-11: Errors in Legal Descriptions:

A. Where a property has not been zoned due to an error in a legal description the following shall apply:

1. An error **is** caused by the **countyCounty**, shall be corrected and duly processed by the **countyCounty** as soon as the error is discovered; and
2. If the error is caused by the applicant and/or owner, the applicant shall apply for a zoning **TitleOrdinance** map amendment and submit the proper fees.

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#### Section 6-1-12: References to Other Laws or Titles or Policies:

A. References in this **TitleOrdinance** to other Titles or **codesOrdinances** of Elmore County and **statutesStatutes** of the State of Idaho are provided solely for the coordination of this **TitleOrdinance** with such other **TitlesOrdinances** and **statutesStatutes**.

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#### Section 6-1-13: Saving Clause:

A. Should any section, clause, or regulation of this **TitleOrdinance** be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this **TitleOrdinance** as a whole, or any part thereof, other than the part so declared to be invalid; each section, clause, or regulation hereof being declared severable.



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**TITLE 6  
ELMORE COUNTY  
ZONING AND DEVELOPMENT ORDINANCE**

**CHAPTER 3 - ENFORCEMENT**

**Sections:**

- 6-3-1: General Enforcement**
- 6-3-2: Zoning Permits**
- 6-3-3: Enforcement, Violations and Penalties**
- 6-3-4: Emergency Suspension of Permit**
- 6-3-5: Revocation**
- 6-3-6: Investigation Fees and Work without a Permit**

**Section 6-3-1: General Enforcement:**

- A. **Duty of Director:** It shall be the duty of the Director to enforce these regulations and to issue citations and fines as necessary to enforce this Ordinance. The Director shall also coordinate as necessary with the Prosecuting Attorney to enforce any violations or lack of compliance herewith. The Elmore County Sheriff, and his or her authorized representatives, shall have the authority to enforce this Ordinance and assist the Director in enforcement actions as set forth in Idaho Code and this Ordinance.
- B. **Sales Before Approval:** No owner or agent of the owner of a parcel of land located in a proposed subdivision shall transfer or sell any such parcel before a final plat of such subdivision has been approved by the Board, in accordance with the provisions of these regulations and filed with the Elmore County Clerk.
- C. **Metes and Bounds Description:** The subdivision of any lot or parcel of land, by the use of metes and bounds description for the purpose of sale, transfer or lease with the intent of evading these regulations, shall not be permitted. All such described subdivisions shall be subject to all of the requirements contained in this Ordinance.
- D. **Issuance of Building Permit:** No building permit shall be issued for the construction of any building or structure located on a parcel, lot or plat in violation of this Ordinance.
- E. **Appropriate actions and proceedings** may be taken at law or in equity to prevent any violation of this Ordinance, to prevent unlawful construction, to recover damages, to restrain, correct or abate a violation, to prevent illegal occupancy of a building, structure or premises, and these remedies shall be in addition to the penalties described in this Ordinance.

**Section 6-3-2: Zoning Permits:**

- A. No construction or alteration shall commence until the Director has issued a zoning permit. If no structures are involved, no use shall commence until the Director has issued a zoning permit.
- B. No zoning permit shall be issued for any use on a property in violation of this Ordinance or on a property that contains structures or uses in violation of this Ordinance. Any zoning permit secured in violation of State or Federal law shall be invalid.
- C. Any application that requires issuance of a zoning permit as a condition of approval shall be deemed complete with the issuance of the zoning permit. This provision shall apply to prior approved applications with issued zoning permits.
- D. Zoning permits issued in conjunction with a change of use that are not associated with a building permit shall expire if the new use has not commenced within one year of the date of issuance of the zoning permit.
- E. The zoning permit may require inspections and approvals specified in the approval of the application, or conditions of approval.
- F. If the Director determines the conditions of the zoning permit have been violated, the Director may impose a stop work order on a project until the violation has been remedied.
- G. No Zoning Permit shall be issued on property with delinquent or outstanding taxes.

**Section 6-3-3: Enforcement, Violations and Penalties:**

- A. **Enforcement Duties.** All Departments, officials and employees of Elmore County vested with the authority to issue permits shall conform to the provisions of this Ordinance and shall issue no permit or license for uses, buildings or purposes in conflict with the provisions of this Ordinance. Any such permit issued in conflict with the provisions of this Ordinance shall be null and void. The Director shall maintain a zoning enforcement program to promote the abatement of violations of this Ordinance and to provide assistance in the prosecution of such violations. It shall be the duty of the Director and/or the Building Official, or their authorized agent(s), to enforce the provisions of this Ordinance pertaining to the erection, construction, reconstruction, moving, conversion, alteration, addition, location, or raising of any building or structure. It shall further be the duty of the Director, or his/her authorized agent(s) to enforce the provisions of this ordinance pertaining to land use regulation, including compliance with the wrecking, salvage, and/or junk yard provisions.
- B. **Enforcement.** Enforcement of this Ordinance may be by criminal prosecution, a civil lawsuit or an abatement action. Selection of the enforcement procedure shall be at the

sole discretion of the County and commencement of one procedure shall not preclude commencement of another.

- C. No owner, occupant, tenant, manager, person or entity having control of or a legal interest in a property within Elmore County shall maintain a nuisance in common law or nuisance as defined in this Ordinance on said property.
- D. Violation of Ordinance Unlawful. Penalties and Restitution. It shall be unlawful for any owner, occupant, tenant, manager or any person or entity having control of or a legal interest in property to violate any requirement or duty imposed by this Ordinance. Upon conviction of any violation of any of the provisions of this Ordinance such person shall be punished by a fine of not more than one thousand dollars (\$1,000.00), or by imprisonment for not more than six (6) months, or both such fine and imprisonment. Each and every day of continuing violation shall be considered a separate criminal offense. Upon conviction, violators shall be responsible for and pay all incurred investigation, prosecution and court costs as determined by the court having jurisdiction over the proceeding.
- E. Administrative Procedure: Code Enforcement cases commence by a citizen complaint or any time knowledge of a possible violation becomes known to the County. Complainants may be anonymous or the complainant may leave a name and number so that they can be contacted in the future. Following commencement of the case, the following administrative procedure is followed:
  - 1. A site inspection is performed to verify that a violation exists on the property.
  - 2. The property owner, tenant, and/or occupant of the property where there exists a violation of the provisions of this Ordinance are then notified that a violation(s) exists. Such notice shall include (1) a description of the property where the violation exists, (2) a description of the details of the violation or violations and that there is a thirty (30) calendar day opportunity to correct the violation(s). This Notice may be made by personal service or certified mail, return receipt requested. The Code Enforcement Officer may extend the thirty (30) calendar day requirement for good cause, but under no circumstances shall the time period be extended for public health and safety issues for longer than one hundred twenty (120) calendar days.
  - 3. A follow up inspection is performed to verify that the violation(s) has/have been corrected.
  - 4. If compliance cannot be achieved through administrative channels, or if the landowner, tenant and/or occupant of the property fails or refuses to respond to said Notice of Violation within the prescribed time period, the County may commence enforcement action.
  - 5. Compliance with the above administrative procedure either completely or partially is at the discretion of the Director and/or Code Enforcement Officer and failure to

follow these procedures shall not bar commencement of a criminal, civil, or abatement proceeding by the County.

**F. Enforcement Actions.**

1. Criminal Actions shall commence by issuance of a misdemeanor criminal citation signed by the Code Enforcement Officer, Director, any county law enforcement officer, any county employee so authorized by the Board or by a formal criminal complaint filed by the Elmore County Prosecuting Attorney.
2. Civil Actions shall commence by filing a civil complaint by the Elmore County Prosecuting Attorney in the District Court of the State of Idaho having jurisdiction. The County may seek any relief deemed appropriate including, but not limited to, monetary damages, and
3. Abatement. The County may abate any nuisance in Elmore County or any conditions caused by a violation of this Ordinance. The expenses associated with abatement and abatement proceedings (including any expenses arising from contractors hired by the County to perform said abatement, investigatory costs and costs of suit) shall be charged to the owner, occupant or person in charge or possession of the premises or property upon which the nuisance exists. The Prosecuting Attorney may seek recovery of these expenses and costs under I.C. §§ 31-604, 52-202 and 52-205. Said costs shall attach as a lien upon the subject property if unpaid.

**Section 6-3-4: Emergency Suspension of Permit:**

The County may exercise its responsibility to protect public health, safety, and welfare by immediately suspending an approved permit. If the Director finds that a public emergency exists as a result of non-compliance or lack of performance pertaining to a permit a written notification of suspension of the permit shall be sent by certified mail to the permit holder or by personal service or both. The permit is null and void following service of the notice of suspension and failure to obey the notice of suspension is a violation of this Ordinance. The permit holder shall have 30 days to contest the suspension or bring the permit into compliance. If the suspension is contested, the Commission shall conduct a public hearing in accordance with this Ordinance. Such hearing shall occur as soon a practical. The permit can only be reinstated by the County when the situation has been corrected or resolved or when the County determines that there was no sufficient basis for suspension. Any decision by the Commission can be appealed to the Board.

**Section 6-3-5: Revocation:**

All permits of this Ordinance are subject to revocation for non-compliance with their terms and conditions. If the Director determines that a permit has been violated he shall notify the permit holder of his intention to revoke the permit and provide the permit holder the

opportunity to contest the revocation. If the permit holder chooses not to contest the revocation of the permit the Commission shall revoke the permit during an open meeting.

The permit holder notified by the Department of the intent to revoke shall have thirty (30) days to contest the revocation of the permit by filing a letter of contest and paying a fee established by the Board. The Commission shall conduct a public hearing in accordance with this Ordinance for all contested revocations. At such hearing the Commission shall hear evidence from the Director and any other party regarding the alleged violations and why the permit should be revoked. The permit holder shall have the opportunity to provide evidence contesting the violations and why the permit should not be revoked. After hearing evidence, if the Commission upholds the Director's determination of violation it may revoke or modify the permit or find that there was not sufficient evidence to revoke the permit. The decision from the Commission's public hearing may be appealed to the Board in accordance with the provisions of this Ordinance.

**Section 6-3-6: Investigation Fees and Work without a Permit:**

- A. Investigation: Whenever any work, use or action has been commenced without first obtaining approval for which approval is required, and/or a permit for which a permit is required by this Ordinance, a special investigation shall be made by the Building Official and/or Director before approval, use, or action and/or a permit may be issued or resumed for such work.
- B. Fee: An investigation fee, for work without a permit, in addition to an application and/or the permit fee shall be collected whether or not an application and/or permit is then or subsequently issued. The investigation fee shall be equal to the amount of the application fee and/or permit fee required by the County. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this Ordinance nor from any penalty prescribed by this Ordinance or by law.

**TITLE 6  
ELMORE COUNTY  
ZONING ~~and~~ AND DEVELOPMENT ORDINANCE**

**CHAPTER 3 - ~~APPEALS, ENFORCEMENT, WAIVERS, VARIANCES, AND TIME EXTENSIONS~~**

**Sections:**

- ~~6-3-1: Appeals to Commission on Decisions of the Director~~
- ~~6-3-2: Appeals to the Board on Decisions of the Commission~~
- ~~6-3-3: General Enforcement~~
- ~~6-3-4: Zoning Permits~~
- ~~6-3-5: Enforcement, Violations and Penalties~~
- 6-3-4: Emergency Suspension of Permit
- 6-3-5: Revocation
- ~~6-3-6: Code Enforcement Officer~~
- ~~6-3-7: Approval Conditions~~
- ~~6-3-8: Waiver~~
- ~~6-3-9: Zoning Ordinance Amendments~~
- ~~6-3-10: Variances~~
- ~~6-3-11: Time Extension~~
- ~~6-3-12: Investigation Fees and Work without a Permit~~

**Section 6-3-1: Appeals to Commission on Decisions of the Director:**

~~A. Appeal to Commission: Any affected or aggrieved person having an interest in real property which may be adversely affected by a decision of the Director made in interpreting or enforcing this Title may appeal such a decision to the Commission by filing a written notice of appeal. A written notice shall be made by submitting the appropriate fee and application to the Director of Elmore County Growth and Development within ten (10) calendar days of the date of such decision. Appeals shall be based on one of the following:~~

- ~~1. The decision was in violation of constitutional or statutory provisions; or~~
- ~~2. In excess of the statutory authority of the agency; or~~
- ~~3. Made upon unlawful procedure; or~~

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~~4.1. Not supported by substantial evidence on the record as a whole; or~~

~~5.1. Arbitrary, capricious, or an abuse of discretion.~~

~~B. Hearing by Commission: The Commission shall hold a public hearing on all appeals from decisions of the Director after notice has been given in accordance with this Title. The public record shall remain open and the Commission may accept new additional material and testimony.~~

~~C. Decision by Commission: After the Public hearing the Commission shall enter a written order affirming, reversing or modifying the Director's decision. The order shall also contain the reasons for the Commission's decision.~~

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### Section 6-3-2: Appeals to the Board on Decisions of the Commission:

~~A. Appeal and Reconsideration: Any affected or aggrieved person having an interest in real property which may be adversely affected by the issuance or denial of a permit authorizing development or use by any final action of the Commission may either appeal the decision to the Board and/or request reconsideration by the Commission.~~

~~B. Request for Reconsideration on Commission Decision: Upon request of the applicant or an aggrieved party, the application may be reconsidered by the Commission. Reconsideration before the Commission may be granted for good cause. The Commission shall only consider such reconsideration requests once. Good cause includes but is not limited to:~~

~~1. The party requesting reconsideration has new or additional relevant information; and~~

~~2.1. The relevant information was not previously presented and is in response to something brought up at the previous hearing; and~~

~~3.1. The information was not previously available.~~

~~C. Process for reconsideration: A request for reconsideration shall include supporting information and may be made at any time prior to the deadline for filing an appeal as provided in this section.~~

~~1. A decision by the Commission to deny or approve the reconsideration is not appealable.~~

~~2.1. Reappearance before the Commission shall be on the appropriate application and submitted to the Director with fees as adopted by the Board.~~

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~~3.1. The Director will confer with the Commission, if the requested changes would not materially affect the Commission's decision, a reconsideration hearing may be permitted.~~

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~~4.1. If the applicant has modified the application, the Commission shall determine if the revised application shall be reconsidered or if a new application is required.~~

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~~5.1. If the reconsideration hearing is granted, the time to appeal and any pending appeal to be heard before the Commission shall be stayed.~~

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~~6.1. The applicant may still exercise applicant's rights to further appeal the Commission's decision to the Board.~~

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~~7.1. If reconsideration is granted and the appeal is withdrawn, any appeal fee shall be refunded in its entirety.~~

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~~D. Written Request; Fee: Reappearance before the Commission may be made by written request to the Director and shall include a fee. This fee shall be refunded if the reconsideration request is denied.~~

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~~E. Decision to Appeal: Any person aggrieved by a decision of the Commission may appeal such a decision to the Board by filing a written notice of appeal. Appeals shall be based on one of the following:~~

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~~1. The decision was in violation of constitutional or statutory provisions; or~~

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~~2. In excess of the statutory authority of the agency; or~~

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~~3. Made upon unlawful procedure; or~~

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~~4. Not supported by substantial evidence on the record as a whole; or~~

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~~5. Arbitrary, capricious, or an abuse of discretion.~~

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~~F. An appeal shall be made by submitting the appropriate application and fee to the Director of Elmore County Growth and Development within ten (10) calendar days of the Commission's final action.~~

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~~G. Notice of Appeal: The notice of appeal shall state the date and the substance of the decision appealed and the grounds for the appeal.~~

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~~H. Hearing by The Board: The Board shall conduct a public hearing in accordance to Idaho Code and this Title. The Board shall publish a notice specifying the time, date and place~~

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of the public hearing for the appeal and stating the subject of the appeal. The notice shall be published once in the newspaper of general circulation at least fifteen (15) calendar days prior to the hearing. In addition, the same notice requirements as were applicable to the Commission hearing, if any, at which the decision being appealed was made shall be met. The public record shall remain open and the Board may receive additional information and testimony. Only the matters set forth in the appeal shall be considered by the Board. The appeal hearing and review shall be a de novo review and hearing, but the Board may consider and incorporate the record and decision from the Commission in its deliberations and decision.

~~I. Decision by The Board: The Board shall enter an order after the hearing affirming, reversing or modifying the Commission's decision. The order shall contain a statement of the reasons for the Board's decision and shall be served on all parties to the appeal. On its own motion, the Board may, within fourteen (14) calendar days of issuing a written decision, reconsider that decision.~~

~~J. Request for Reconsideration On Board's Decision: The applicant or an aggrieved party, the application may be reconsidered. Reconsideration before the Board may be granted for good cause. The Board shall only consider such reconsideration requests once. Good cause includes but is not limited to:~~

- ~~1. The party requesting reconsideration has relevant information; and~~
- ~~2.1. The relevant information was not previously presented and is in response to something brought up at the previous hearing; and~~
- ~~3.1. The information was not previously available.~~

~~K. Process: A request for reconsideration shall include supporting information and may be made at any time prior to the deadline for filing an appeal as provided in this section:~~

- ~~1. A decision by the Board to deny or approve the reconsideration is not appealable.~~
- ~~2.1. Reappearance before the Board shall be made by written request to the Director and shall include a fee as adopted by the Board. This fee shall be refunded if the reconsideration is denied.~~
- ~~3.1. The Director will confer with the Board, if the requested changes would not materially affect the Board's decision, a reconsideration hearing may be permitted.~~
- ~~4. If the applicant has modified the application, the Commission shall determine if the revised application shall be reconsidered or if a new application is required.~~
- ~~5. If reconsideration is granted, the time to appeal and any pending appeal to be heard before the Board shall be stayed.~~

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~~6.1. The applicant may still exercise applicant's rights to further appeal the Board's decision.~~

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~~7. If reconsideration is granted and the appeal is withdrawn, the appeal fee shall be refunded in its entirety.~~

### Section 6-3-3: General Enforcement:

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- A. Duty of Director: It shall be the duty of the Director to enforce these regulations and to issue citations and fines as necessary to enforce this ~~Title Ordinance~~. The Director shall also coordinate as necessary with the Prosecuting Attorney to enforce any violations or lack of compliance herewith. The Elmore County Sheriff, and his or her authorized representatives, shall have the authority to enforce this ~~Title Ordinance~~ and assist the Director in enforcement actions as set forth in Idaho Code and this ~~Title Ordinance~~.
- B. Sales Before Approval: No owner or agent of the owner of a parcel of land located in a proposed subdivision shall transfer or sell any such parcel before a final plat of such subdivision has been approved by the Board, in accordance with the provisions of these regulations and filed with the Elmore County ~~(Clerk) Recorder of Deeds.~~
- C. Metes and Bounds Description: The subdivision of any lot or parcel of land, by the use of metes and bounds description for the purpose of sale, transfer or lease with the intent of evading these regulations, shall not be permitted. All such described subdivisions shall be subject to all of the requirements contained in ~~these regulations~~ [this Ordinance](#).
- D. Issuance of Building Permit: No building permit shall be issued for the construction of any building or structure located on a parcel, lot or plat ~~sold~~ in violation of ~~the provisions of these regulations~~ [this Ordinance](#).
- E. Appropriate actions and proceedings may be taken at law or in equity to prevent any violation of ~~these regulations~~ [this Ordinance](#), to prevent unlawful construction, to recover damages, to restrain, correct or abate a violation, to prevent illegal occupancy of a building, structure or premises, and these remedies shall be in addition to the penalties described ~~above~~ [in this Ordinance](#).

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### Section 6-3-4: Zoning Permits:

- A. No construction or alteration shall commence until the Director has issued a zoning permit. If no structures are involved, no use shall commence until the Director has issued a zoning permit.
- B. No zoning permit shall be issued for any use on a property in violation of this ~~Title Ordinance~~ or on a property that contains structures or uses in violation of this

~~Title~~Ordinance. Any zoning permit secured in violation of State or Federal law shall be invalid.

C. Any application that requires issuance of a zoning permit as a condition of approval shall be deemed complete with the issuance of the zoning permit. This provision shall apply to prior approved applications with issued zoning permits.

D. Zoning permits issued in conjunction with a change of use that are not associated with a building permit shall expire if the new use has not commenced within one year of the date of issuance of the zoning permit.

E. The zoning permit may require inspections and approvals specified in the approval of the application, or conditions of approval.

F. If the Director determines the conditions of the zoning permit have been violated, the Director may impose a stop work order on a project until the violation has been remedied.

~~G. No Zoning Permit shall be issued on property with delinquent or outstanding taxes.~~

**Section 6-3-53: Enforcement, Violations and Penalties:**

A. Enforcement Duties. All Departments, officials and employees of Elmore County vested with the authority to issue permits shall conform to the provisions of this Ordinance and shall issue no permit or license for uses, buildings or purposes in conflict with the provisions of this Ordinance. Any such permit issued in conflict with the provisions of this Ordinance shall be null and void. The Director ~~of the Growth and Development Department~~ shall maintain a zoning enforcement program to promote the abatement of violations of this Ordinance and to provide assistance in the prosecution of such violations. It shall be the duty of the Director ~~of the Growth and Development Department~~ and/or the Building Official, or their authorized agent(s), to enforce the provisions of this Ordinance pertaining to the erection, construction, reconstruction, moving, conversion, alteration, addition, location, or ~~razing~~ raising of any building or structure. It shall further be the duty of the Director ~~of the Growth and Development Department~~, or his/her authorized agent(s) to enforce the provisions of this ordinance pertaining to land use regulation, including compliance with the wrecking, salvage, and/or junk yard provisions.

B. Enforcement. Enforcement of this Ordinance may be by criminal prosecution, a civil lawsuit or an abatement action. Selection of the enforcement procedure shall be at the sole discretion of the County and commencement of one procedure shall not preclude commencement of another.

C. No owner, occupant, tenant, manager, person or entity having control of or a legal interest in a property within Elmore County shall maintain a nuisance in common law or nuisance as defined in this Ordinance on said property.

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D. Violation of Ordinance Unlawful. Penalties and Restitution. It shall be unlawful for any owner, occupant, tenant, manager or any person or entity having control of or a legal interest in property to violate any requirement or duty imposed by this Ordinance. Upon ~~Conviction~~conviction of any violation of any of the provisions of this Ordinance such person shall be punished by a fine of not more than one thousand dollars (\$1,000.00), or by imprisonment for not more than six (6) months, or both such fine and imprisonment. Each and every day of continuing violation shall be considered a separate criminal offense. Upon conviction, violators shall be responsible for and pay all incurred investigation, prosecution and court costs as determined by the court having jurisdiction over the proceeding.

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E. Administrative Procedure: Code Enforcement cases commence by a citizen complaint or any time knowledge of a possible violation becomes ~~know~~known to the County. Complainants may be anonymous or the complainant may leave a name and number so that they can be contacted in the future. Following commencement of the case, ~~the~~ following administrative procedure is followed:

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1. A site inspection is performed to verify that a violation exists on the property.
2. The property owner, tenant, and/or occupant of the property where there exists a violation of the provisions of this Ordinance are then notified that a violation(s) exists. Such notice shall include (1) a description of the property where the violation exists, (2) a description of the details of the violation or violations and that there is a thirty (30) calendar day opportunity to correct the violation(s). This Notice may be made by personal service or certified mail, return receipt requested. The Code Enforcement Officer may extend the thirty (30) calendar day requirement for good cause, but under no circumstances shall the time period be extended for public health and safety issues for longer than one hundred twenty (120) calendar days.
3. A follow up inspection is performed to verify that the violation(s) has/have been corrected.
4. If compliance cannot be achieved through administrative channels, or if the landowner, tenant and/or occupant of the property fails or refuses to respond to said Notice of Violation within the prescribed time period, the County may commence enforcement action.
5. Compliance with the above administrative procedure either completely or partially is at the discretion of the Director and/or Code Enforcement Officer and failure to follow these procedures shall not bar commencement of a criminal, civil, or abatement proceeding by the County.

F. Enforcement Actions.

1. Criminal Actions shall commence by issuance of a misdemeanor criminal citation signed by the Code Enforcement Officer, Director ~~of Growth and Development~~, any county law enforcement officer, any county employee so authorized by the Board ~~of County Commissioners~~ or by a formal criminal complaint filed by the Elmore County Prosecuting Attorney.
2. Civil Actions shall commence by filing a civil complaint by the Elmore County Prosecuting Attorney in the District Court of the State of Idaho having jurisdiction. The County may seek any relief deemed appropriate including, but not limited to, monetary damages, and
3. Abatement. The County may abate any nuisance in Elmore County or any conditions caused by a violation of this ~~Title Ordinance~~. The expenses associated with abatement and abatement proceedings (including any expenses arising from contractors hired by the County to perform said abatement, investigatory costs and costs of suit) shall be charged to the owner, occupant or person in charge or possession of the premises or property upon which the nuisance exists. The Prosecuting Attorney may seek recovery of these expenses and costs under I.C. §§ 31-604, 52-202 and 52-205. Said costs shall attach as a lien upon the subject property if unpaid.

**Section 6-3-6: Approval Conditions:**

~~Regulation of the subdivision of land and the attachment of reasonable conditions to land subdivision is an exercise of valid police power granted to the County by the Idaho Constitution. The developer has the duty of compliance with reasonable conditions laid down by the Board and Commission for design, dedication, improvement and restrictive use of the land so as to conform to the physical and economical development of the County and to the safety and general welfare of the future plot owners in the subdivision and of the community at large.~~

**Section 6-3-7: Emergency Suspension of Permit:**

The County may exercise its responsibility to protect public health, safety, and welfare by immediately suspending an approved permit. If the Director finds that a public emergency exists as a result of non-compliance or lack of performance pertaining to a permit a written notification of suspension of the permit shall be sent by certified mail to the permit holder or by personal service or both. The permit is null and void following service of the notice of suspension and failure to obey the notice of suspension is a violation of this Ordinance. The permit holder shall have 30 days to contest the suspension or bring the permit into compliance. If the suspension is contested, the Commission shall conduct a public hearing in accordance with this ~~ordinance~~ Ordinance. Such hearing shall occur as soon as practical. The permit can only be reinstated by the County when the situation has been corrected or resolved or when the County determines that there was no sufficient basis for suspension. Any decision by the Commission can be appealed to the Board.

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**Section 6-3-85: Revocation:**

All permits of this ~~ordinance~~Ordinance are subject to revocation for non-compliance with their terms and conditions. If the Director determines that a permit has been violated he shall notify the permit holder of his intention to revoke the permit and provide the permit holder the opportunity to contest the revocation. If the permit holder chooses not to contest the revocation of the permit the Commission shall revoke the permit during an open meeting.

The permit holder notified by the ~~department~~Department of the intent to revoke shall have thirty (30) days to contest the revocation of the permit by filing a letter of contest and paying a fee established by the Board. The Commission shall conduct a public hearing in accordance with this ~~ordinance~~Ordinance for all contested revocations. At such hearing the Commission shall hear evidence from the Director and any other party regarding the alleged violations and why the permit should be revoked. The permit holder shall have the opportunity to provide evidence contesting the violations and why the permit should not be revoked. After hearing evidence, if the Commission upholds the Director's determination of violation it may revoke or modify the permit or find that there was not sufficient evidence to revoke the permit. The decision from the Commission's public hearing may be appealed to the Board in accordance with the provisions of this ~~ordinance~~Ordinance.

**Section 6-3-9: Waiver:**

~~The Director has the authority to determine, on a case-by-case basis if a partial waiver is warranted in a unique situation. The maximum waiver authority granted to the Director is ten (10%) percent of the Title requirements. The Director can only issue an administrative waiver if the waiver does not negatively affect public health and safety, and does not deviate from the spirit and intent of this Title.~~

A. ~~The Director, Hearing Examiner, Commission or Board, in a specific situation, may approve a waiver from strict compliance with a Design Standard in this Title if an applicant can demonstrate that the waiver:~~

- ~~1. Is based on conditions unique to the property in question and not applicable generally to other property, that the property in question demonstrates an extraordinary hardship related to a physical characteristics, surroundings or topographic features; and~~
- ~~2. Is not detrimental to the public health, safety or welfare; and~~
- ~~3. Is not injurious to the property of others physically or financially; and~~
- ~~4. Does not in any way nullify any other provision of this Title or the Elmore County zoning map; and~~

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~~5. That the granting of a waiver would better serve an alternative proposal where the applicant can demonstrate that the alternative proposal suggested would better serve the intended use or public.~~

~~B. Waivers may also be granted if other Federal, State or local agencies have jurisdiction over the subject matter and they have already issued a waiver that applies to the waiver application before Elmore County.~~

### ~~Section 6-3-10: Zoning Ordinance Amendments:~~

#### ~~A. Process:~~

- ~~1. Zoning Ordinance Amendment Initiated by Board: The Board may propose to amend this Title following notice and public hearing procedures in compliance with this Chapter and Title.~~
- ~~2. Zoning Ordinance Amendment Initiated by Property Owner (Including Planned Communities, Planned Unit Developments, and Planned Unit Development Districts): The applicant shall complete a pre-application conference with the Director prior to submittal of an application for a zoning ordinance amendment. An application and fees shall be submitted to the Director on forms provided by the Growth and Development Department.~~
- ~~3. Application; Review: The Board shall apply the standards listed in subsection B of this section and the findings listed in subsection C of this section to review the zoning ordinance amendment.~~
- ~~4. Approval; Reversal of Action: If the Board approves a zoning ordinance map amendment pursuant to a request from a property owner, the Board shall not subsequently reverse its action or otherwise change the zoning classification as set forth in Idaho Code section 67-6511(d).~~

~~B. Standards: For zoning ordinance map amendments, the subject property shall meet the minimum dimensional standards of the proposed base zone.~~

~~C. Required Findings: Upon recommendation from the Commission, the Board shall make a full investigation and shall, at the public hearing, review the application. In order to grant a map or text amendment to the zoning ordinance, the Board shall make the following findings:~~

- ~~1. The zoning ordinance amendment complies with the applicable Comprehensive Plan and~~
- ~~2. The zoning ordinance amendment complies with the regulations outlined for the proposed base zone, specifically the purpose statement; and~~

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3. ~~The zoning ordinance amendment shall not be materially detrimental to the public health, safety, and welfare; and~~
4. ~~The zoning ordinance amendment shall not result in an adverse impact upon the delivery of services by any political subdivision providing public services within the planning jurisdiction including, but not limited to, school districts.~~

**Section 6-3-11: Variances:**

~~Applications for floodplain variance shall comply with the regulations of the Floodplain Chapter within this Title and are not subject to the regulations of this variance section within this Title.~~

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**A. Process:**

1. ~~The applicant shall complete a pre-application conference with the Director prior to submittal of an application for a variance; and~~
2. ~~An application and fees shall be submitted to the Director on forms provided by the Growth and Development Department; and~~
3. ~~The Commission and Board shall both conduct public hearings in accordance with Idaho Code and this Ordinance and apply the standard listed in subsection B of this section and the findings listed in subsection C of this section to review the variance.~~

**B. Standard:** ~~The variance shall comply with Idaho Code section 67-6516.~~

**C. Required Findings:** ~~In order to grant a variance, the Commission and Board shall make the following findings:~~

1. ~~The variance shall not grant a right or special privilege that is not otherwise allowed in the base zone; and~~
2. ~~The variance relieves an undue hardship due to characteristics of the site; and~~
3. ~~The variance shall not be detrimental to the public health, safety, and welfare.~~

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***Section 6-3-12: Time Extension:***

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~~The Director shall review an application for a time extension. The time extension shall commence from the date of expiration of the previous approval, except in the case of an appeal of a Board approval, when the time extension shall commence from the final resolution of such appeal.~~

**A. Process:**

1. ~~An application and fees shall be submitted to the Director on forms provided by the Growth and Development Department.~~
  - a. ~~The application shall include a written request indicating the need for a time extension.~~
  - b. ~~The application shall be prior to expiration date of the original approval.~~
2. ~~At the discretion of the Director, other agencies may be notified of the time extension request in order to solicit their comments and recommendations for consideration.~~
3. ~~The Director shall apply the standards listed in subsection B of this section and the findings listed in subsection C of this section to review the time extension.~~
4. ~~The Director may impose additional conditions in an approval of a time extension for an approved development (excluding final plats).~~

**B. Standards:**

1. ~~The applicant or owner for an approved development (excluding final plats) may apply for a one (1) time extension for a period not to exceed one year.~~
2. ~~The applicant or owner for an approved final plat may apply for one (1) time extension for each phase of the final plat. The time extension shall be for a period not to exceed one year.~~

**C. Required Findings: In order to grant a time extension, the Director shall make the following findings:**

1. ~~The time extension meets the standards listed in subsection B of this section; and~~
2. ~~The applicant and/or owner have adequately justified the need for a time extension.~~

**Section 6-3-13: Investigation Fees and Work without a Permit:**

- A. Investigation: Whenever any work, use or action has been commenced without first obtaining a approval for which approval is required, and/or a permit for which a permit is required by ~~the adopted Building Code Standard and/or the Planning and Zoning Regulations of Elmore County~~this Ordinance, a special investigation shall be made by the Building Official and/or ~~Planning and Zoning~~ Director before approval, use, or action and/or a permit may be issued or resumed for such work.
- B. Fee: An investigation fee, for work without a permit, in addition to an application and/or the permit fee shall be collected whether or not an application and/or permit is then or subsequently issued. The investigation fee shall be equal to the amount of the application fee and/or permit fee required by the ~~adopted Building Code Standard or the Planning and Zoning Regulations of Elmore County, whichever applies.~~County. The payment of such investigation fee shall not exempt any person from compliance with all other

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provisions of this ~~Title Ordinance~~ nor from any penalty prescribed by this ~~Title Ordinance~~ or by law.

**TITLE 6  
ELMORE COUNTY  
ZONING AND DEVELOPMENT ORDINANCE**

**CHAPTER 4 – APPLICATION PROCEDURES AND FEES**

**Sections:**

- 6-4-1: Purpose**
- 6-4-2: Application Requirements and Fees**
- 6-4-3: Neighborhood Meetings**
- 6-4-4: Notice to Agencies and Political Subdivisions**
- 6-4-5: Notice to Public**
- 6-4-6: Decision by the Director**
- 6-4-7: Appeals to Commission on Decisions of the Director**
- 6-4-8: Decision by the Hearings Examiner**
- 6-4-9: Decision by the Commission**
- 6-4-10: Appeals to the Board on Decisions of the Commission or Hearing Examiner**
- 6-4-11: Decision by the Board**
- 6-4-12: Reconsideration by the Board**
- 6-4-13: Waiver**
- 6-4-14: Variance**
- 6-4-15: Zoning Map Amendment**
- 6-4-16: Zoning Text Amendment**
- 6-4-17: Comprehensive Plan Amendment**
- 6-4-18: Time Extensions**

**Section 6-4-1: Purpose:**

- A. The purpose of this Chapter is to provide procedures for all zoning and related applications covered by this Ordinance and to amend the Comprehensive Plan.

**Section 6-4-2: Application Requirements and Fees:**

- A. Pre-application Requirements: All persons desiring to make application for permits shall first schedule a pre-application meeting with the Director. Pre-application meetings are required to ensure proper applications, procedures and notifications are followed. The Director may invite other agencies, political subdivision or affected parties to the pre-application meeting. The Director may determine if any additional pre-application meetings are required.

- B. Application Requirements: All persons making application for permits and other matters herein referred to shall be required to submit to the Director an application on forms provided by the Department and accompanied by an application fee as set forth in subsection F of this section. No application shall be considered as accepted by the Director unless it is complete with all required information.
- C. Combining of Applications: Where practical, the Director, Commission, or Board may combine related applications for the convenience of applicants. [When State or Federal approval is required the County may require State and Federal approvals prior to accepting applications.]
- D. Date of Application Acceptance: The date of acceptance of an application shall be the date of the letter sent by the Department notifying the applicant that the Director has received payment of the required fee and all of the required submittal information pursuant to this Ordinance. No application will be accepted if the property has outstanding or delinquent taxes.
- E. Hearings: A public hearing shall be conducted in accordance with adopted by-laws, Idaho Code and this Ordinance.
- F. Fees: The Board shall, by resolution, establish fees for all applications, permits or petitions authorized by this Ordinance.
- G. Tabled applications: Applications that have been tabled for more than one (1) year will be considered withdrawn.
- H. Re-submittal: No application that has been denied by the Director, the Commission, or the Board shall be resubmitted, in the same form for the same use, within one year from the date of denial. The Director may waive the one (1) year requirement and accept a new application, where the subject property is affected by amendments to the applicable Comprehensive Plan or to this Ordinance.

**Section 6-4-3: Neighborhood Meetings:**

- A. Applicants shall conduct a neighborhood meeting for Comprehensive Plan amendments, variances, conditional uses, Ordinance amendments, expansions or extensions of nonconforming uses, subdivisions or as otherwise required by the Director.
- B. It shall be the sole duty of the applicant to provide written notice to all property owners or purchasers of record owning property within the radius required in this Ordinance of the exterior boundary of the application property and to all registered neighborhood associations and political subdivisions deemed appropriate by the Director. The Department will provide applicants the proper notice list. Notice of a neighborhood meeting shall be in addition to, and not in lieu of, mailed radius notices already required by this Ordinance. Notice of neighborhood meeting must be mailed at least ten (10) days prior to the date of the neighborhood meeting.

- C. The purpose of the neighborhood meeting shall be to review the proposed project.
  - 1. The meeting shall be on a weekend between ten o'clock (10:00) A.M. and seven o'clock (7:00) P.M. or on a weekday between six o'clock (6:00) P.M. and eight o'clock (8:00) P.M. The meeting shall not be on a holiday, a holiday weekend, or the day before a holiday or holiday weekend.
  - 2. The meeting shall be held at one of the following locations:
    - a. On the subject property; or
    - b. At the nearest available public meeting place including, but not limited to, fire station, library, or community center; or
    - c. At an office space with suitable meeting facilities if such facilities are within a one-mile radius of the nearest public meeting place.
- D. The neighborhood meeting shall be conducted prior to submitting the application.
- E. The neighborhood meeting shall not be conducted more than six (6) months prior to submitting the application.
- F. The application materials shall include written verification of the neighborhood meeting on the forms provided by the Department.

**Section 6-4-4: Notice to Agencies and Political Subdivisions:**

- A. The Director shall send a summary of development applications to applicable agencies, as determined by the Director. The notice shall be sent at least fifteen (15) calendar days prior to the public hearing.
- B. The Director shall send a summary of petitions for Comprehensive Plan amendments and applications for Ordinance amendments to applicable agencies and political subdivisions as referenced in Idaho Code section 67-6509(a). The notice shall be sent at least fifteen (15) days prior to the public hearing.
- C. Applications within an Area of City Impact shall be noticed in accordance with the regulations of this Ordinance.
- D. Applications for development within five (5) miles of the 115db Mean Noise Line surrounding the Idaho Army National Guard, Orchard Training Range Area will be forwarded to the Idaho Army National Guard for review and comment at least fifteen 15 days prior to a hearing before the Commission.

**Section 6-4-5: Notice to Public:**

- A. Legal Notice: At least fifteen (15) days prior to the public hearing, the Director shall publish a notice of the time and place and a summary of the application in the official newspaper of general circulation in the County.
- B. Site Notice: At least seven (7) days prior to the public hearing, the Director shall post a notice on the premises of the application, except for Ordinance text amendments or Comprehensive Plan amendments.
- C. Radius Notice: At least seven (7) days prior to the public hearing, the Director shall send a notice of the time and place, and a summary of the application to property owners or purchasers of record (as listed in the current records of the Elmore County Assessor) owning property within one thousand (1000') feet of the property being considered. The Director may determine, or other applications provided for in this Ordinance may require, that notices be sent to property owners or purchasers of record whose properties are further than one thousand (1000') feet from the external boundaries of the property upon which the application is located.
- D. Alternate Forms of Notice: When posted or mailed notice is required of two hundred (200) or more property owners or purchasers of record, alternate forms of notice may be provided as follows:
  - 1. Notice of the time and place of the hearing and summary of the proposal shall be published in a newspaper of general circulation within the County, not less than seven (7) days prior to the hearing.
  - 2. Multiple site notices, the quantity determined by the Director, shall be posted not less than seven (7) days prior to the hearing, in locations of high public uses within the affected areas of the County including post offices and major retail establishments including all external boundaries of the subject property.
  - 3. At least seven (7) days prior to the hearing, a notice shall be made available to the local newspapers, radio, and television stations servicing the County for use as a public service announcement.
  - 4. All non-owner occupied property shall receive written notice at least seven (7) days prior to the hearing.
- E. Public Service Announcement: In the case of amendments to this Ordinance and the Comprehensive Plan, the Director shall issue a notice to other newspapers and radio stations serving the jurisdiction for use as a public service announcement prior to the public hearing.

- F. Applicants who propose development within five (5) miles of the 115db Mean Noise Line surrounding the Idaho Army National Guard, Orchard Training Range Area will be provided the following notice by the Department:

*Applicant is advised that the property may be located near a military installation that conducts flight operations, munitions testing, or military operations that may result in high noise levels, traffic, and dust at all hours of the day throughout the year. Applicant should contact the public affairs office of the nearest military installation to determine whether the property may be impacted by testing or operations at the installation.*

Any new deeds resulting from development within five (5) miles of the 115db Mean Noise Line surrounding the Idaho Army National Guard, Orchard Training Range Area shall include the above notice.

**Section 6-4-6: Decision by the Director:**

- A. Following the acceptance of an application, the Director shall act upon the application. Failure of the Director to act upon an application shall be deemed a denial of the application.
- B. The Director may defer a decision if additional information is required to make a decision. If the application is tabled or deferred for more than one year it shall be considered withdrawn.
- C. The Director may require conditions of approval that are deemed necessary to protect the public health, safety, and welfare and prevent undue adverse impacts on surrounding properties.
- D. The Director shall provide the applicant written findings of fact and conclusions of law in accordance with Idaho Code section 67-6519 stating the reasons for the decision reached. All conditions of approval shall be attached to the written decision.

**Section 6-4-7: Appeals to Commission on Decisions of the Director:**

- A. Appeal to Commission: Any affected or aggrieved person having an interest in real property which may be adversely affected by a decision of the Director made in interpreting or enforcing this Ordinance, may appeal such a decision to the Commission by filing a written notice of appeal. A written notice shall be made by submitting the appropriate fee and application to the Director within ten (10) calendar days of the date of such decision. Appeals shall be based on one of the following:
1. The decision was in violation of constitutional or statutory provisions; or
  2. In excess of the statutory authority of the agency; or

3. Made upon unlawful procedure; or
  4. Not supported by substantial evidence on the record as a whole; or
  5. Arbitrary, capricious, or an abuse of discretion.
- B. Hearing by Commission: The Commission shall hold a public hearing on all appeals from decisions of the Director after notice has been given in accordance with this Ordinance. The public record shall remain open and the Commission may accept new additional material and testimony.
- C. Decision by Commission: After the Public hearing, the Commission shall, enter a written order-affirming, reversing or modifying the Director's decision. The order shall also contain the reasons for the Commission's decision.

**Section 6-4-8: Decision by the Hearings Examiner:**

- A. The Director shall schedule a hearing before the Hearings Examiner after the Director accepts an application. Prior to the public hearing, public notice shall be provided as set forth in this Ordinance.
- B. The Hearings Examiner shall conduct the public hearing in accordance with the procedures of this Ordinance.
- C. The Hearings Examiner may require conditions of approval that he or she deems necessary to protect the public health, safety, and welfare and/or to prevent undue adverse impacts on surrounding properties.
- D. The Hearings Examiner shall provide the applicant a written decision in accordance with Idaho Code sections 67-6520 and 67-6535 stating the reasons for the decision. Conditions of approval, if any, shall be attached to the written decision.

**Section 6-4-9: Decision by the Commission:**

- A. The Director shall schedule a hearing before the Commission after the Director accepts an application. Prior to the public hearing, public notice shall be provided as set forth in this Ordinance.
- B. The Commission shall conduct the public hearing in accordance with the procedures of this Ordinance. The Commission may continue the hearing if it determines in its discretion that additional hearings are necessary. The Commission, however, must issue a decision or recommendation as is applicable no later than one hundred twenty (120) days after the closing of the public hearing. Failure of the Commission to issue a decision or

recommendation shall be deemed a denial or a recommendation of denial of the application.

- C. Following the public hearing, if the Commission makes a material change to any application, further notice and hearing shall be provided in accordance with the regulations of this Ordinance.
- D. The Commission may require or recommend conditions of approval that it deems necessary to protect the public health, safety, and welfare and/or to prevent undue adverse impacts on surrounding properties.
- E. The Commission shall provide the applicant written findings of fact and conclusions of law in accordance with Idaho Code sections 67-6519 and 67-6535 stating the reasons for the decision or recommendation reached. Conditions of approval shall be attached to the written decision or recommendation. For applications where the Commission is acting as a recommending body, the Commission shall forward their recommendation to the Board.
- F. For applications where a decision or recommendation from the Commission is required by this Ordinance, the Commission shall file a written report with the Clerk of the Board stating the findings and action taken by the Commission.

**Section 6-4-10: Appeals to the Board on Decisions of the Commission or Hearing Examiner:**

- A. Appeal and Reconsideration: Any affected or aggrieved person having an interest in real property which may be adversely affected by the issuance or denial of a permit authorizing development or use by any final action of the Commission may either appeal the decision to the Board and/or request reconsideration by the Commission.
- B. Request for Reconsideration on Commission Decision: Upon request of the applicant or an aggrieved party, the application may be reconsidered by the Commission. Reconsideration before the Commission may be granted for good cause. The Commission shall only consider such reconsideration requests once. Good cause includes but is not limited to:
  - 1. The party requesting reconsideration has new or additional relevant information; and
  - 2. The relevant information was not previously presented and is in response to something brought up at the previous hearing; and
  - 3. The information was not previously available.

- C. **Process for Reconsideration:** A request for reconsideration shall include supporting information and may be made at any time prior to the deadline for filing an appeal as provided in this section.
1. A decision by the Commission to deny or approve the reconsideration is not appealable.
  2. Reappearance before the Commission shall be on the appropriate application and submitted to the Director with fees as adopted by the Board. This fee shall be refunded if the reconsideration request is denied.
  3. The Director will confer with the Commission, if the requested changes would not materially affect the Commission's decision, a reconsideration hearing may be permitted.
  4. If the applicant has modified the application, the Commission shall determine if the revised application shall be reconsidered or if a new application is required.
  5. If the reconsideration hearing is granted, the time to appeal and any pending appeal to be heard before the Commission shall be stayed.
  6. The applicant may still exercise applicant's rights to further appeal the Commission's decision to the Board.
  7. If reconsideration is granted and the appeal is withdrawn, any appeal fee shall be refunded in its entirety.
- D. **Decision to Appeal:** Any person aggrieved by a decision of the Commission may appeal such a decision to the Board by filing a written notice of appeal. Appeals shall be based on one of the following:
1. The decision was in violation of constitutional or statutory provisions; or
  2. In excess of the statutory authority of the agency; or
  3. Made upon unlawful procedure; or
  4. Not supported by substantial evidence on the record as a whole; or
  5. Arbitrary, capricious, or an abuse of discretion.
- E. An appeal shall be made by submitting the appropriate application and fee to the Director ten (10) days of the Commission's final action.
- F. **Notice of Appeal:** The notice of appeal shall state the date and the substance of the decision appealed and the grounds for the appeal.

- G. **Hearing by The Board:** The Board shall conduct a public hearing in accordance to Idaho Code and this Ordinance. The Board shall publish a notice specifying the time, date and place of the public hearing for the appeal and stating the subject of the appeal. The notice shall be published once in the newspaper of general circulation at least fifteen (15) days prior to the hearing. In addition, the same notice requirements as were applicable to the Commission hearing, if any, at which the decision being appealed was made shall be met. The public record shall remain open and the Board may receive additional information and testimony. Only the matters set forth in the appeal shall be considered by the Board. The appeal hearing and review shall be a de novo review and hearing, but the Board may consider and incorporate the record and decision from the Commission in its deliberations and decision.
- H. **Decision by The Board:** The Board shall enter an order after the hearing affirming, reversing or modifying the Commission's decision. The order shall contain a statement of the reasons for the Board's decision and shall be served on all parties to the appeal. On its own motion, the Board may, within fourteen (14) days of issuing a written decision, reconsider that decision.

**Section 6-4-11: Decision by the Board:**

- A. The Director shall schedule a hearing before the Board after the Director accepts an application or after the Commission makes a recommendation (if applicable). Prior to the public hearing, public notice shall be provided as set forth in this Ordinance and State law.
- B. The Board shall conduct the public hearing in accordance with the procedures of this Ordinance.
- C. Following the public hearing, if the Board makes a material change to a Comprehensive Plan amendment application or Ordinance amendment application, further notice and hearing shall be provided in accordance with the regulations of this Ordinance.
- D. The Board may require conditions of approval that it deems necessary to protect the public health, safety, and welfare and/or to prevent undue adverse impacts on surrounding properties. This regulation shall not apply to applications for Comprehensive Plan amendments or Ordinance text amendments.
- E. The Board shall provide the applicant written findings of fact and conclusions of law in accordance with Idaho Code sections 67-6519 and 67-6535 stating the reasons for the decision. Conditions of approval, if any, shall be attached to the written decision.
- F. Following the approval of a Comprehensive Plan amendment; the Board shall adopt a resolution adopting the amendment to the Comprehensive Plan.

- G. Following the approval of an Ordinance amendment, the Board shall adopt an ordinance and, within thirty (30) days, publish a summary of the ordinance in the official newspaper of general circulation in the County.

**Section 6-4-12: Reconsideration by the Board**

- A. Request for Reconsideration On Board's Decision: The applicant or an aggrieved party, may file an application for reconsideration by the Board within fourteen (14) days of the Board's final decision in accordance with Idaho Code section 67-6535(2)(b) and this Ordinance. Reconsideration before the Board may be granted for good cause. The Board shall only consider such reconsideration requests once. Good cause includes but is not limited to:
1. The party requesting reconsideration has relevant information; and
  2. The relevant information was not previously presented and is in response to something brought up at the previous hearing; and
  3. The information was not previously available.
- B. Process: A request for reconsideration shall include supporting information and may be made at any time prior to the fourteen (14) day deadline for filing.
1. A decision by the Board to deny or approve the reconsideration is not appealable.
  2. Reappearance before the Board shall be made by written request and application to the Director and shall include a fee as adopted by the Board. This fee shall be refunded if the reconsideration is denied.
  3. The Director will confer with the Board, if the requested changes would not materially affect the Board's decision, a reconsideration hearing may be permitted.
  4. If the applicant has modified the application, the Board shall determine if the revised application shall be reconsidered or if a new application is required.
  5. The applicant may still exercise applicant's rights to further appeal the Board's decision.
  6. If reconsideration is granted the Board shall schedule, notice and conduct a public hearing in accordance with the requirements of this Ordinance.

**Section 6-4-13: Waiver:**

The Director has the authority to determine, on a case-by-case basis if a partial waiver is warranted in a unique situation. The maximum waiver authority granted to the Director is ten (10%) percent of the Ordinance requirements. The Director can only issue an administrative waiver if the waiver does not negatively affect public health and safety, meet the required findings of Ordinance section 6-4-13.A and does not deviate from the intent of this Ordinance.

- A. The Hearing Examiner, Commission or Board, in a public hearing, may approve a waiver greater than ten (10%) percent from strict compliance with a design standard in this Ordinance if an applicant can demonstrate that the waiver:
  - 1. Is based on conditions unique to the property in question and not applicable generally to other property. The property in question demonstrates an extraordinary hardship related to a physical characteristics, surroundings or topographic features; and
  - 2. Is not detrimental to the public health, safety or welfare; and
  - 3. Is not injurious to the property of others physically or financially; and
  - 4. Does not in any way nullify any other provision of this Ordinance or the Elmore County zoning map; and
  - 5. That the granting of a waiver would better serve an alternative proposal where the applicant can demonstrate that the alternative proposal suggested would better serve the intended use or public.
  
- B. Waivers may also be granted if other Federal, State or local agencies have jurisdiction over the subject matter and they have already issued a waiver that applies to the waiver application before Elmore County.

**Section 6-4-14: Variances:**

Certain uses may require additional variance requirements in other sections of the Ordinance.

- A. Process:
  - 1. The applicant shall complete a pre-application conference with the Director prior to submittal of an application for a variance; and
  - 2. An application and fees shall be submitted to the Director on forms provided by the Department; and
  - 3. The Commission and Board shall both conduct public hearings in accordance with Idaho Code and this Ordinance and apply the standard listed in subsection B of this section and the findings listed in subsection C of this section to review the variance.

- B. Standard: The variance shall comply with Idaho Code section 67-6516.
- C. Required Findings: In order to grant a variance, the Board shall make the following findings:
  - 1. The variance shall not grant a right or special privilege that is not otherwise allowed in the base zone; and
  - 2. The variance relieves an undue hardship due to characteristics of the site; and
  - 3. The variance shall not be detrimental to the public health, safety, and welfare.

**Section 6-4-15 Zoning Map Amendments:**

- A. Zoning Ordinance Map Amendment requests shall be in compliance with this Ordinance and Comprehensive Plan.
- B. Process: Zoning Map Amendment requests shall be subject to a public hearing, review, and approval subject to the regulations of this Ordinance. The process shall be as follows:
  - 1. An application and fees, as set forth in this Ordinance, shall be submitted to the Director on forms provided by the Department.
  - 2. A Development Agreement Application and approval may be required for all Zoning Ordinance Map Amendment requests in compliance with this Ordinance.
- C. Zoning Ordinance Amendment Initiated by the Board: The Board may propose a Zoning Ordinance Map Amendment in compliance with this Chapter, except that amendments initiated by the Board may not require a Development Agreement.
- D. Zoning Map Amendment Standards:
  - 1. The Land Use / Zoning Ordinance Map Amendment Matrix shall identify the zoning districts that would be permissible through a Zoning Ordinance Map Amendment (re-zone) request and approval within each land use designation.
  - 2. Zoning Ordinance Map Amendment (re-zone) requests should be consistent with the Land Use / Zoning Map Amendment Matrix and the Comprehensive Plan where Commercial, Industrial Zones and Residential Zones are not arbitrarily being rezoned without first updating the Elmore County Comprehensive Plan Future Land Use Map.
- E. Required Findings: Upon recommendation from the Commission, the Board shall make a full investigation and shall, at the public hearing, review the Zoning Ordinance Map

Amendment request and Development Agreement. The Board shall make the following findings:

1. The Zoning Ordinance Map Amendment complies with the regulations outlined for this Chapter; and
2. The Zoning Ordinance Map Amendment shall not be materially detrimental to the public health, safety and welfare; and
3. The Zoning Ordinance Map Amendment request is in compliance with the Land Use/Zoning Ordinance Map Amendment Matrix; and
4. The Development Agreement meets the requirements of this Ordinance; and
5. That the approval by the Board, of a Zoning Ordinance Map Amendment request would not “impede”<sup>(1)</sup> the normal flow of development; and

*Note: <sup>(1)</sup> For the purpose of this Chapter and required finding (number 5 listed above), the definition of “Impede” shall be the interference with an existing or proposed activity that would delay or cause modification to the progress of normal development and/or development trends, or the causing of delays or interference with the normal flow of progress and/or development trends.*

6. The Zoning Ordinance Map Amendment is not in conflict with the Comprehensive Plan.
- F. Approval and Reversal of Action: If the Board approves a Zoning Ordinance Map Amendment pursuant to a request, the Board shall not subsequently reverse its action or otherwise change the zoning classification as set forth in Idaho Code Section 67-6511(d).
- G. Final approval of a Zoning Ordinance Map Amendment shall be contingent upon an executed and recorded development agreement in compliance with this Chapter and Ordinance, except that amendments initiated by the Board may not require a Development Agreement.
- H. Following the approval of Zoning Ordinance Map Amendment, the Board shall adopt an Ordinance, and within thirty (30) days, publish a summary of the Ordinance and legal description in the official newspaper of general circulation in the County.

**Table 6-4-15  
Land Use / Zoning Map Amendment Matrix**

| Current Zoning District / Land Use       | Ag  | Rec | RR | C1 | C2 | M1 | M2 | PAZ | ABHZ | ACZ | PC | PUD | PUDD |
|--|---|-----|----|----|----|----|----|-----|------|-----|----|-----|------|
|  | Zoning Ordinance Map Amendment (Rezone) Opportunities |     |    |    |    |    |    |     |      |     |    |     |      |
| General Agriculture/Grazing/Forest (Ag)  | -   | ✓   | ✓  | ✓  | ✓  | ✓  | ✓  | ✓   | -    | ✓   | ✓  | ✓   | ✓    |
| Recreation / Tourism (Rec)               | -   | -   | ✓  | ✓  | ✓  | -  | -  | ✓   | -    | -   | ✓  | ✓   | ✓    |
| Rural Residential (RR/MU)                | -   | -   | -  | ✓  | -  | -  | -  | ✓   | -    | -   | ✓  | ✓   | ✓    |
| Neighborhood Commercial (C1)             | -   | ✓   | ✓  | -  | ✓  | -  | -  | -   | -    | -   | ✓  | ✓   | ✓    |
| Highway/Interstate Commercial (C2)       | -   | -   | -  | ✓  | -  | ✓  | ✓  | -   | -    | -   | ✓  | ✓   | ✓    |
| Light Industrial/Manufacturing (M1)      | ✓   | -   | -  | -  | ✓  | -  | ✓  | -   | -    | -   | ✓  | ✓   | ✓    |
| Heavy Industrial/Manufacturing (M2)      | ✓   | -   | -  | -  | ✓  | ✓  | -  | -   | -    | -   | ✓  | ✓   | ✓    |
| Public Airport Hazard Zone (PAZ)         | ✓   | ✓   | ✓  | -  | -  | -  | -  | -   | -    | -   | -  | -   | -    |
| Air Base Hazard Zone (ABHZ)              | -   | -   | -  | -  | -  | -  | -  | -   | -    | -   | -  | -   | -    |
| Air Base Commercial Zone (ACZ)           | ✓   | -   | -  | ✓  | ✓  | -  | -  | -   | -    | -   | -  | -   | -    |
| Planned Community (PC)                   | -   | -   | -  | -  | -  | -  | -  | -   | -    | -   | -  | -   | -    |
| Planned Unit Development (PUD)           | -   | -   | -  | -  | -  | -  | -  | -   | -    | -   | -  | -   | -    |
| Planned Unit Development District (PUDD) | -   | -   | -  | -  | -  | -  | -  | -   | -    | -   | -  | -   | -    |

**Section 6-4-16: Zoning Ordinance Text Amendments:**

**A. Process:**

1. Zoning Ordinance Text Amendment Initiated by Board: The Board may propose to amend this Ordinance following notice and public hearing procedures in compliance with this Ordinance.
2. Zoning Ordinance Text Amendment Initiated by Property Owner: The applicant shall complete a pre-application conference with the Director prior to submittal of an application for a Zoning Ordinance Text Amendment. An application and fees shall be submitted to the Director on forms provided by the Department.

3. Application: The Commission and Board shall conduct public hearings required by Idaho Code and this Ordinance. The Board shall apply the findings listed in subsection B of this section to review the Zoning Ordinance Text Amendment.
- B. Required Findings: Upon recommendation from the Commission, the Board shall make a full investigation and shall, at the public hearing, review the application. In order to grant a Zoning Ordinance Text Amendment, the Board shall make the following findings:
1. The Zoning Ordinance Text Amendment complies with the applicable Comprehensive Plan; and
  2. The Zoning Ordinance Text Amendment complies with the regulations outlined for the proposed base zone, specifically the purpose statement; and
  3. The Zoning Ordinance Text Amendment shall not be materially detrimental to the public health, safety, and welfare; and
  4. The Zoning Ordinance Text Amendment shall not result in an adverse impact upon the delivery of services by any political subdivision providing public services within the planning jurisdiction including, but not limited to, school districts.
  5. Following the approval of Zoning Ordinance Text Amendment, the Board shall adopt an Ordinance, and within thirty (30) days, publish a summary of the Ordinance in the official newspaper of general circulation in the County.

**Section 6-4-18: Time Extension:**

The Director shall review an application for a time extension. The time extension shall commence from the date of expiration of the previous approval, except in the case of an appeal of a Board approval, when the time extension shall commence from the final resolution of such appeal.

A. Process:

1. An application and fees shall be submitted to the Director on forms provided by the Department.
  - a. The application shall include a written request indicating the need for a time extension.
  - b. The application shall be prior to expiration date of the original approval.
2. At the discretion of the Director, other agencies may be notified of the time extension request in order to solicit their comments and recommendations for consideration.

3. The Director shall apply the standards listed in subsection B of this section and the findings listed in subsection C of this section to review the time extension.
4. The Director may impose additional conditions in an approval of a time extension for an approved development (excluding final plats).

**B. Standards:**

1. The applicant or owner for an approved development may apply for a one (1) time extension for a period not to exceed one (1) year, unless otherwise approved by the Director, Commission and/or Board.

**C. Required Findings:**

1. The time extension meets the standards listed in subsection B of this section; and
2. The applicant and/or owner have adequately justified the need for a time extension.

TITLE 6  
ELMORE COUNTY  
ZONING ~~and~~ AND DEVELOPMENT ORDINANCE

CHAPTER 4 – APPLICATION PROCEDURES AND FEES

Sections:

- 6-4-1: Purpose
- 6-4-2: Application Requirements and Fees
- 6-4-3: Neighborhood Meetings
- 6-4-4: Notice to Agencies and Political Subdivisions
- 6-4-5: Notice to Public
- 6-4-6: Decision by the Director
- 6-4-7: ~~Decision by~~ Appeals to Commission on Decisions of the ~~Hearings~~  
Examiner ~~Director~~
- 6-4-8: Decision by the ~~Commission~~ Hearings Examiner
- 6-4-9: Decision by the Commission
- 6-4-10: Appeals to the Board on Decisions of the Commission or Hearing  
Examiner
- 6-4-11: Decision by the Board
- 6-4-12: Reconsideration by the Board
- 6-4-13: Waiver
- 6-4-14: Variance
- 6-4-15: Zoning Map Amendment
- 6-4-16: Zoning Text Amendment
- 6-4-17: Comprehensive Plan Amendment
- 6-4-18: Time Extensions

Section 6-4-1: Purpose:

- A. The purpose of this Chapter is to provide procedures for all zoning and related applications covered by this ~~Title Ordinance~~ Ordinance and ~~petition~~ to amend the Comprehensive Plan.

Section 6-4-2: Application Requirements and Fees:

- ~~A. A. Pre-application Requirements: All persons desiring to make application for permits shall first schedule a pre-application meeting with the Director. Pre-application meetings are required to ensure proper applications, procedures and notifications are followed.~~

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The Director may invite other agencies, political subdivision or affected parties to the pre-application meeting. The Director may determine if any additional pre-application meetings are required.

**B.** Application Requirements: All persons making application for permits and other matters herein referred to shall be required to submit to the Director an application on forms provided by the ~~Growth and Development~~ Department and accompanied by an application fee as set forth in subsection ~~E~~~~F~~ of this section. No application shall be considered as accepted by the Director unless it is complete with all required information.

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**B.C.** Combining of Applications: Where practical, the Director, Commission, or Board may combine related applications for the convenience of applicants. [When State of Federal approval is required the County may require State and Federal agencies should make every effort approvals prior to combine or coordinate related permits with Elmore County accepting applications.]

**D.** Date of Application Acceptance: The date of acceptance of an application shall be the date of the letter sent by the ~~Growth and Development~~ Department notifying the applicant that the Director has received payment of the required fee and all of the required submittal information pursuant to this ~~Title, excluding Planned Community, Planned Unit Development, and Planned Unit Development District applications as specified in this Title~~ Ordinance. No application will be accepted if the property has ~~outstanding or delinquent taxes.~~

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**D.E.** Hearings: A public hearing shall be conducted in accordance with adopted by-laws. Idaho Code and this ~~Title~~ Ordinance.

**E.F.** Fees: The Board shall, by resolution, establish fees for all ~~zoning~~ applications, permits or petitions authorized by this ~~Title, zoning permits, and Comprehensive Plan amendments.~~ Ordinance.

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**F.G.** Tabled applications: Applications that have been tabled for more than one (1) year will be considered withdrawn.

**H.** Re-submittal: No application that has been denied by the Director, the Commission, or the Board shall be resubmitted, in the same form for the same use, within one year from the date of denial. The Director may waive the one (1) year requirement and accept a new application, where the subject property is affected by amendments to the applicable Comprehensive Plan or to this ~~Title~~ Ordinance.

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#### Section 6-4-3: Neighborhood Meetings:

**A.** Applicants shall conduct a neighborhood meeting for Comprehensive Plan amendments, variances, conditional uses, ~~zoning ordinance map~~ Ordinance amendments, expansions or extensions of nonconforming uses, ~~and~~ subdivisions, ~~excluding Planned Community,~~

~~Planned Unit Development, and Planned Unit Development District applications~~ or as specified in this Title ~~otherwise required by the Director.~~

B. It shall be the sole duty of the applicant to provide written notice to all property owners or purchasers of record owning property within the radius required in this ~~Title Ordinance~~ of the exterior boundary of the application property and to all registered neighborhood associations ~~and political subdivisions~~ deemed appropriate by the Director. ~~The Department will provide applicants the proper notice list.~~ Notice of a neighborhood meeting shall be in addition to, and not in lieu of, mailed radius notices already required by this ~~Title Ordinance~~. Notice of neighborhood meeting must be mailed at least ten (10) days prior to the date of the neighborhood meeting.

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C. The purpose of the neighborhood meeting shall be to review the proposed project.

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1. The meeting shall be on a weekend between ten o'clock (10:00) A.M. and seven o'clock (7:00) P.M. or on a weekday between six o'clock (6:00) P.M. and eight o'clock (8:00) P.M. The meeting shall not be on a holiday, a holiday weekend, or the day before a holiday or holiday weekend.

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2. The meeting shall be held at one of the following locations, ~~excluding Planned Community, Planned Unit Development, and Planned Unit Development District applications as specified in this Title:~~

- a. On the subject property; or
- b. At the nearest available public meeting place including, but not limited to, fire station, library, or community center; or
- c. At an office space with suitable meeting facilities if such facilities are within a one-mile radius of the nearest public meeting place.

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D. The neighborhood meeting shall be conducted prior to ~~acceptance of~~ ~~submitting~~ the application.

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E. The neighborhood meeting shall not be conducted more than six (6) months prior to ~~acceptance of~~ ~~submitting~~ the application.

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F. The application materials shall include written verification of the neighborhood meeting on the forms provided by the ~~Growth and Development~~ Department.

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**Section 6-4-4: Notice to Agencies and Political Subdivisions:**

A. The Director shall send a summary of development applications to applicable agencies, as determined by the Director. The notice shall be sent at least fifteen (15) calendar days

prior to the public hearing. ~~Planned Community, Planned Unit Development, and Planned Unit Development District applications shall be noticed as directed by this Title.~~

- B. The Director shall send a summary of petitions for Comprehensive Plan amendments and applications for ~~zoning ordinance~~Ordinance amendments to applicable agencies and political subdivisions as referenced in Idaho Code section 67-6509(a). The notice shall be sent at least fifteen (15) ~~calendar days prior to the public hearing. Planned Community, Planned Unit Development, and Planned Unit Development District applications shall have a summary of petitions for Comprehensive Plan amendments noticed as directed by this Title~~days prior to the public hearing.
- C. Applications within an Area of City Impact shall be noticed in accordance with the regulations of this ~~Title~~Ordinance.
- D. Applications for development within five (5) miles of the 115db Mean Noise Line surrounding the Idaho Army National Guard, Orchard Training Range Area will be forwarded to the Idaho Army National Guard for review and comment at least ~~fifteen~~ 15 days prior to a hearing before the ~~Planning and Zoning~~ Commission.

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**Section 6-4-5: Notice to Public:**

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- A. Legal Notice: At least fifteen (15) ~~calendar~~ days prior to the public hearing, the Director shall publish a notice of the time and place and a summary of the application in the official newspaper of general circulation in the ~~county~~County.
- B. Site Notice: At least seven (7) ~~calendar~~ days prior to the public hearing, the Director shall post a notice on the premises of the application, except for ~~zoning ordinance~~Ordinance text amendments or Comprehensive Plan amendments.
- C. Radius Notice: At least seven (7) ~~calendar~~ days prior to the public hearing, the Director shall send a notice of the time and place, and a summary of the application to property owners or purchasers of record (as listed in the current records of the Elmore County Assessor) owning property within ~~three hundred (300'~~one thousand (1000') feet of the property being considered. The Director may determine, or other applications provided for in this ~~Title~~Ordinance may require, that notices be sent to property owners or purchasers of record whose properties are further than ~~three hundred (300'~~one thousand (1000') feet from the external boundaries of the property upon which the application is located.
  - ~~1. The following uses shall require notice within one thousand (1,000') feet of the property being considered:~~
    - a. ~~Adult entertainment establishment;~~
    - b. ~~Airport or Aircraft landing field;~~

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- e. Any application located in an Agricultural District;
  - d. Bar, brew pub, or nightclub;
  - e. Explosive manufacturing or storage
  - f. Flammable substance storage;
  - g. Foundry;
  - h. Junkyard or automobile wrecking yard;
  - i. Manufacture or processing of hazardous chemicals or gases;
  - j. Meatpacking facility; Reserved;
  - k. Pit, mine, or quarry requiring administrative or conditional use approval;
  - l. Power plant
  - m. Processing plant for agricultural and dairy products;
  - n. Public or quasi public use public or private correctional facility;
  - o. Racetrack, vehicle or animal;
  - p. Sanitary landfill, restricted;
  - q. Sawmill or planing mill;
  - r. Slaughterhouse
  - s. Soil or water remediation;
  - t. Tannery; Reserved;
  - u. Tower or antenna structure higher than fifteen (15') feet;
  - v. Vehicle impound yard;
  - w. Or, any other type of land use that the Director feels warrants a one thousand (1,000') foot radius notice.
2. ~~Animal Feeding Operations (AFO) and Confined Animal Feeding Operations (CAFO), as defined by this Title shall require notice within two thousand six hundred forty (2,640') feet of the property being considered.~~
- D. Alternate Forms of Notice: When posted or mailed notice is required of two hundred (200) or more property owners or purchasers of record, alternate forms of notice may be provided as follows:
1. Notice of the time and place of the hearing and summary of the proposal shall be published in a newspaper of general circulation within the countyCounty, not less than seven (7) ~~calendar~~ days prior to the hearing.
  2. Multiple site notices, the quantity determined by the Director, shall be posted not less than seven (7) ~~calendar~~ days prior to the hearing, in locations of high public uses

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within the affected areas of the ~~county~~County including post offices and major retail establishments including all external boundaries of the subject property.

3. At least seven (7) ~~calendar~~ days prior to the hearing, a notice shall be made available to the local newspapers, radio, and television stations servicing the ~~county~~County for use as a public service announcement.

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4. All non-owner occupied property shall receive written notice at least seven (7) ~~calendar~~ days prior to the hearing.

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~~5. Animal Feeding Operations (AFO) and Confined Animal Feeding Operations (CAFO), as defined by this Title shall not use an alternate form of notice as herein defined, but shall notice all property owners or purchasers of record, regardless of quantity and as require in Section 6-4-5-C(2).~~

E. Public Service Announcement: In the case of amendments to this ~~Title~~Ordinance and the Comprehensive Plan, the Director shall issue a notice to other newspapers, ~~and radio or televisions~~ stations serving the jurisdiction for use as a public service announcement prior to the public hearing.

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F. Applicants who propose development within five (5) miles of the 115db Mean Noise Line surrounding the Idaho Army National Guard, Orchard Training Range Area will be provided the following notice by the ~~Growth and Development~~ Department:

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*Applicant is advised that the property may be located near a military installation that conducts flight operations, munitions testing, or military operations that may result in high noise levels, traffic, and dust at all hours of the day throughout the year. Applicant should contact the public affairs office of the nearest military installation to determine whether the property may be impacted by testing or operations at the installation.*

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Any new deeds resulting from development within five (5) miles of the 115db Mean Noise Line surrounding the Idaho Army National Guard, Orchard Training Range Area shall include the above notice.

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#### Section 6-4-6: Decision by the Director:

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A. Following the acceptance of an application, the Director shall act upon the application. Failure of the Director to act upon an application shall be deemed a denial of the application.

B. The Director may defer a decision if additional information is required to make a decision. If the application is tabled or deferred for more than one year it shall be considered withdrawn.

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- C. The Director may require conditions of approval that are deemed necessary to protect the public health, safety, and welfare and prevent undue adverse impacts on surrounding properties.
- D. The Director shall provide the applicant written findings of fact and conclusions of law in accordance with Idaho Code section 67-6519 stating the reasons for the decision reached. All conditions of approval shall be attached to the written decision.

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**Section 6-4-7: Appeals to Commission on Decisions of the Director:**

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A. Appeal to Commission: Any affected or aggrieved person having an interest in real property which may be adversely affected by a decision of the Director made in interpreting or enforcing this Ordinance, may appeal such a decision to the Commission by filing a written notice of appeal. A written notice shall be made by submitting the appropriate fee and application to the Director within ten (10) calendar days of the date of such decision. Appeals shall be based on one of the following:

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- 1. The decision was in violation of constitutional or statutory provisions; or
- 2. In excess of the statutory authority of the agency; or
- 3. Made upon unlawful procedure; or
- 4. Not supported by substantial evidence on the record as a whole; or
- 5. Arbitrary, capricious, or an abuse of discretion.

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B. Hearing by Commission: The Commission shall hold a public hearing on all appeals from decisions of the Director after notice has been given in accordance with this Ordinance. The public record shall remain open and the Commission may accept new additional material and testimony.

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C. Decision by Commission: After the Public hearing, the Commission shall, enter a written order-affirming, reversing or modifying the Director's decision. The order shall also contain the reasons for the Commission's decision.

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**Section 6-4-8: Decision by the Hearings Examiner:**

- A. The Director shall schedule a hearing before the Hearings Examiner after the Director accepts an application. Prior to the public hearing, public notice shall be provided as set forth in this ~~Title~~ Ordinance.
- B. The Hearings Examiner shall conduct the public hearing in accordance with the procedures of this ~~Title~~ Ordinance.

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C. The Hearings Examiner may require conditions of approval that he or she deems necessary to protect the public health, safety, and welfare and/or to prevent undue adverse impacts on surrounding properties.

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D. The Hearings Examiner shall provide the applicant a written decision in accordance with Idaho Code sections 67-6520 and 67-6535 stating the reasons for the decision. Conditions of approval, if any, shall be attached to the written decision.

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**Section 6-4-89: Decision by the Commission:**

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A. The Director shall schedule a hearing before the Commission after the Director accepts an application, ~~excluding Planned Community, Planned Unit Development, and Planned Unit Development District applications as specified in this Title.~~ Prior to the public hearing, public notice shall be provided as set forth in this [Title Ordinance](#).

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B. The Commission shall conduct the public hearing in accordance with the procedures of this [Title Ordinance](#). The Commission may continue the hearing if it determines in its discretion that additional hearings are necessary. The Commission, however, must issue a decision or recommendation as is applicable no later than one hundred twenty (120) days after the closing of the public hearing, ~~excluding Planned Community, Planned Unit Development, and Planned Unit Development District applications as specified in this Title, which the Commission must issue a recommendation no later than one hundred twenty (120) days after the decision has been made.~~ Failure of the Commission to issue a decision or recommendation shall be deemed a denial or a recommendation of denial of the application.

C. Following the public hearing, if the Commission makes a material change to any application, further notice and hearing shall be provided in accordance with the regulations of this [Title Ordinance](#).

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D. The Commission may require or recommend conditions of approval that it deems necessary to protect the public health, safety, and welfare and/or to prevent undue adverse impacts on surrounding properties.

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E. The Commission shall provide the applicant written findings of fact and conclusions of law in accordance with Idaho Code sections 67-6519 and 67-6535 stating the reasons for the decision or recommendation reached. Conditions of approval shall be attached to the written decision or recommendation. For applications where the Commission is acting as a recommending body, the Commission shall forward their recommendation to the Board.

F. For applications where a decision or recommendation from the Commission is required by this [Title Ordinance](#), the Commission shall file a written report with the Clerk of the Board stating the findings and action taken by the Commission.

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Section 6-4-9

**Section 6-4-10: Appeals to the Board on Decisions of the Commission or Hearing Examiner:**

- A. Appeal and Reconsideration: Any affected or aggrieved person having an interest in real property which may be adversely affected by the issuance or denial of a permit authorizing development or use by any final action of the Commission may either appeal the decision to the Board and/or request reconsideration by the Commission.
- B. Request for Reconsideration on Commission Decision: Upon request of the applicant or an aggrieved party, the application may be reconsidered by the Commission. Reconsideration before the Commission may be granted for good cause. The Commission shall only consider such reconsideration requests once. Good cause includes but is not limited to:
  - 1. The party requesting reconsideration has new or additional relevant information; and
  - 2. The relevant information was not previously presented and is in response to something brought up at the previous hearing; and
  - 3. The information was not previously available.
- C. Process for Reconsideration: A request for reconsideration shall include supporting information and may be made at any time prior to the deadline for filing an appeal as provided in this section.
  - 1. A decision by the Commission to deny or approve the reconsideration is not appealable.
  - 2. Reappearance before the Commission shall be on the appropriate application and submitted to the Director with fees as adopted by the Board. This fee shall be refunded if the reconsideration request is denied.
  - 3. The Director will confer with the Commission, if the requested changes would not materially affect the Commission's decision, a reconsideration hearing may be permitted.
  - 4. If the applicant has modified the application, the Commission shall determine if the revised application shall be reconsidered or if a new application is required.
  - 5. If the reconsideration hearing is granted, the time to appeal and any pending appeal to be heard before the Commission shall be stayed.
  - 6. The applicant may still exercise applicant's rights to further appeal the Commission's decision to the Board.

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7. If reconsideration is granted and the appeal is withdrawn, any appeal fee shall be refunded in its entirety.

D. Decision to Appeal: Any person aggrieved by a decision of the Commission may appeal such a decision to the Board by filing a written notice of appeal. Appeals shall be based on one of the following:

1. The decision was in violation of constitutional or statutory provisions; or
2. In excess of the statutory authority of the agency; or
3. Made upon unlawful procedure; or
4. Not supported by substantial evidence on the record as a whole; or
5. Arbitrary, capricious, or an abuse of discretion.

E. An appeal shall be made by submitting the appropriate application and fee to the Director ten (10) days of the Commission's final action.

F. Notice of Appeal: The notice of appeal shall state the date and the substance of the decision appealed and the grounds for the appeal.

G. Hearing by The Board: The Board shall conduct a public hearing in accordance to Idaho Code and this Ordinance. The Board shall publish a notice specifying the time, date and place of the public hearing for the appeal and stating the subject of the appeal. The notice shall be published once in the newspaper of general circulation at least fifteen (15) days prior to the hearing. In addition, the same notice requirements as were applicable to the Commission hearing, if any, at which the decision being appealed was made shall be met. The public record shall remain open and the Board may receive additional information and testimony. Only the matters set forth in the appeal shall be considered by the Board. The appeal hearing and review shall be a de novo review and hearing, but the Board may consider and incorporate the record and decision from the Commission in its deliberations and decision.

H. Decision by The Board: The Board shall enter an order after the hearing affirming, reversing or modifying the Commission's decision. The order shall contain a statement of the reasons for the Board's decision and shall be served on all parties to the appeal. On its own motion, the Board may, within fourteen (14) days of issuing a written decision, reconsider that decision.

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**Section 6-4-11: Decision by the Board:**

- A. The Director shall schedule a hearing before the Board after the Director accepts an application or after the Commission makes a recommendation (if applicable). Prior to the public hearing, public notice shall be provided as set forth in this ~~Title~~ Ordinance and ~~state~~ State law.
- B. The Board shall conduct the public hearing in accordance with the procedures of this ~~Title~~ Ordinance.
- C. Following the public hearing, if the Board makes a material change to a Comprehensive Plan amendment application or ~~zoning ordinance~~ Ordinance amendment application, further notice and hearing shall be provided in accordance with the regulations of this ~~Title~~ Ordinance.
- D. The Board may require conditions of approval that it deems necessary to protect the public health, safety, and welfare and/or to prevent undue adverse impacts on surrounding properties. This regulation shall not apply to applications for Comprehensive Plan amendments or ~~zoning ordinance~~ Ordinance text amendments.
- E. The Board shall provide the applicant written findings of fact and conclusions of law in accordance with Idaho Code sections 67-6519 and 67-6535 stating the reasons for the decision. Conditions of approval, if any, shall be attached to the written decision.
- F. Following the approval of a Comprehensive Plan amendment; the Board shall adopt a resolution adopting the amendment to the Comprehensive Plan.
- G. Following the approval of ~~a zoning ordinance~~ an Ordinance amendment, the Board shall adopt an ordinance and, within thirty (30) ~~calendar~~ days, publish a summary of the ordinance in the official newspaper of general circulation in the ~~county~~ County.

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**Section 6-4-12: Reconsideration by the Board**

A. Request for Reconsideration On Board's Decision: The applicant or an aggrieved party may file an application for reconsideration by the Board within fourteen (14) days of the Board's final decision in accordance with Idaho Code section 67-6535(2)(b) and this Ordinance. Reconsideration before the Board may be granted for good cause. The Board shall only consider such reconsideration requests once. Good cause includes but is not limited to:

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1. The party requesting reconsideration has relevant information; and

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2. The relevant information was not previously presented and is in response to something brought up at the previous hearing; and

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3. The information was not previously available.

B. Process: A request for reconsideration shall include supporting information and may be made at any time prior to the fourteen (14) day deadline for filing.

1. A decision by the Board to deny or approve the reconsideration is not appealable.

2. Reappearance before the Board shall be made by written request and application to the Director and shall include a fee as adopted by the Board. This fee shall be refunded if the reconsideration is denied.

3. The Director will confer with the Board, if the requested changes would not materially affect the Board's decision, a reconsideration hearing may be permitted.

4. If the applicant has modified the application, the Board shall determine if the revised application shall be reconsidered or if a new application is required.

5. The applicant may still exercise applicant's rights to further appeal the Board's decision.

6. If reconsideration is granted the Board shall schedule, notice and conduct a public hearing in accordance with the requirements of this Ordinance.

#### **Section 6-4-13: Waiver:**

The Director has the authority to determine, on a case-by-case basis if a partial waiver is warranted in a unique situation. The maximum waiver authority granted to the Director is ten (10%) percent of the Ordinance requirements. The Director can only issue an administrative waiver if the waiver does not negatively affect public health and safety, meet the required findings of Ordinance section 6-4-13.A and does not deviate from the intent of this Ordinance.

A. The Hearing Examiner, Commission or Board, in a public hearing, may approve a waiver greater than ten (10%) percent from strict compliance with a design standard in this Ordinance if an applicant can demonstrate that the waiver:

1. Is based on conditions unique to the property in question and not applicable generally to other property. The property in question demonstrates an extraordinary hardship related to a physical characteristics, surroundings or topographic features; and

2. Is not detrimental to the public health, safety or welfare; and

3. Is not injurious to the property of others physically or financially; and

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4. Does not in any way nullify any other provision of this Ordinance or the Elmore County zoning map; and
5. That the granting of a waiver would better serve an alternative proposal where the applicant can demonstrate that the alternative proposal suggested would better serve the intended use or public.

B. Waivers may also be granted if other Federal, State or local agencies have jurisdiction over the subject matter and they have already issued a waiver that applies to the waiver application before Elmore County.

**Section 6-4-14: Variances:**

Certain uses may require additional variance requirements in other sections of the Ordinance

A. Process:

1. The applicant shall complete a pre-application conference with the Director prior to submittal of an application for a variance; and
2. An application and fees shall be submitted to the Director on forms provided by the Department; and
3. The Commission and Board shall both conduct public hearings in accordance with Idaho Code and this Ordinance and apply the standard listed in subsection B of this section and the findings listed in subsection C of this section to review the variance.

B. Standard: The variance shall comply with Idaho Code section 67-6516.

C. Required Findings: In order to grant a variance, the Board shall make the following findings:

1. The variance shall not grant a right or special privilege that is not otherwise allowed in the base zone; and
2. The variance relieves an undue hardship due to characteristics of the site; and
3. The variance shall not be detrimental to the public health, safety, and welfare.

**Section 6-4-15 Zoning Map Amendments:**

A. Zoning Ordinance Map Amendment requests shall be in compliance with this Ordinance and Comprehensive Plan.

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B. Process: Zoning Map Amendment requests shall be subject to a public hearing, review, and approval subject to the regulations of this Ordinance. The process shall be as follows:

1. An application and fees, as set forth in this Ordinance, shall be submitted to the Director on forms provided by the Department.
2. A Development Agreement Application and approval may be required for all Zoning Ordinance Map Amendment requests in compliance with this Ordinance.

C. Zoning Ordinance Amendment Initiated by the Board: The Board may propose a Zoning Ordinance Map Amendment in compliance with this Chapter, except that amendments initiated by the Board may not require a Development Agreement.

D. Zoning Map Amendment Standards:

1. The Land Use / Zoning Ordinance Map Amendment Matrix shall identify the zoning districts that would be permissible through a Zoning Ordinance Map Amendment (re-zone) request and approval within each land use designation.
2. Zoning Ordinance Map Amendment (re-zone) requests should be consistent with the Land Use / Zoning Map Amendment Matrix and the Comprehensive Plan where Commercial, Industrial Zones and Residential Zones are not arbitrarily being rezoned without first updating the Elmore County Comprehensive Plan Future Land Use Map.

E. Required Findings: Upon recommendation from the Commission, the Board shall make a full investigation and shall, at the public hearing, review the Zoning Ordinance Map Amendment request and Development Agreement. The Board shall make the following findings:

1. The Zoning Ordinance Map Amendment complies with the regulations outlined for this Chapter; and
2. The Zoning Ordinance Map Amendment shall not be materially detrimental to the public health, safety and welfare; and
3. The Zoning Ordinance Map Amendment request is in compliance with the Land Use/Zoning Ordinance Map Amendment Matrix; and
4. The Development Agreement meets the requirements of this Ordinance; and
5. That the approval by the Board, of a Zoning Ordinance Map Amendment request would not "impede"<sup>(1)</sup> the normal flow of development; and

Note: <sup>(1)</sup> For the purpose of this Chapter and required finding (number 5 listed above), the definition of "impede" shall be the interference with an existing or proposed activity that would delay or cause modification to the progress of normal

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development and/or development trends, or the causing of delays or interference with the normal flow of progress and/or development trends.

6. The Zoning Ordinance Map Amendment is not in conflict with the Comprehensive Plan.

F. Approval and Reversal of Action: If the Board approves a Zoning Ordinance Map Amendment pursuant to a request, the Board shall not subsequently reverse its action or otherwise change the zoning classification as set forth in Idaho Code Section 67-6511(d)

G. Final approval of a Zoning Ordinance Map Amendment shall be contingent upon an executed and recorded development agreement in compliance with this Chapter and Ordinance, except that amendments initiated by the Board may not require a Development Agreement.

H. Following the approval of Zoning Ordinance Map Amendment, the Board shall adopt an Ordinance, and within thirty (30) days, publish a summary of the Ordinance and legal description in the official newspaper of general circulation in the County.

**Table 6-4-15  
Land Use / Zoning Map Amendment Matrix**

| Current Zoning District / Land Use       | Ag  | Rec | RR | C1 | C2 | M1 | M2 | PAZ | ABHZ | ACZ | PC | PUD | PUDD |
|--|---|-----|----|----|----|----|----|-----|------|-----|----|-----|------|
|  | Zoning Ordinance Map Amendment (Rezone) Opportunities |     |    |    |    |    |    |     |      |     |    |     |      |
| General Agriculture/Grazing/Forest (Ag)  | :   | ✓   | ✓  | ✓  | ✓  | ✓  | ✓  | ✓   | :    | ✓   | ✓  | ✓   | ✓    |
| Recreation / Tourism (Rec)               | :   | :   | ✓  | ✓  | ✓  | :  | :  | ✓   | :    | :   | ✓  | ✓   | ✓    |
| Rural Residential (RR/MU)                | :   | :   | :  | ✓  | :  | :  | :  | ✓   | :    | :   | ✓  | ✓   | ✓    |
| Neighborhood Commercial (C1)             | ≡   | ✓   | ✓  | ≡  | ✓  | ≡  | ≡  | ≡   | ≡    | ≡   | ✓  | ✓   | ✓    |
| Highway/Interstate Commercial (C2)       | :   | :   | :  | ✓  | :  | ✓  | ✓  | :   | :    | :   | ✓  | ✓   | ✓    |
| Light Industrial/Manufacturing (M1)      | ✓   | :   | :  | :  | ✓  | :  | ✓  | :   | :    | :   | ✓  | ✓   | ✓    |
| Heavy Industrial/Manufacturing (M2)      | ✓   | :   | :  | :  | ✓  | ✓  | :  | :   | :    | :   | ✓  | ✓   | ✓    |
| Public Airport Hazard Zone (PAZ)         | ✓   | ✓   | ✓  | :  | :  | :  | :  | :   | :    | :   | :  | :   | :    |
| Air Base Hazard Zone (ABHZ)              | ≡   | :   | :  | :  | :  | :  | :  | :   | :    | :   | :  | :   | :    |
| Air Base Commercial Zone (ACZ)           | ✓   | :   | :  | ✓  | ✓  | :  | :  | :   | :    | :   | :  | :   | :    |
| Planned Community (PC)                   | :   | :   | :  | :  | :  | :  | :  | :   | :    | :   | :  | :   | :    |
| Planned Unit Development (PUD)           | :   | :   | :  | :  | :  | :  | :  | :   | :    | :   | :  | :   | :    |
| Planned Unit Development District (PUDD) | :   | :   | :  | :  | :  | :  | :  | :   | :    | :   | :  | :   | :    |

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**Section 6-4-16: Zoning Ordinance Text Amendments:**

**A. Process:**

- Zoning Ordinance Text Amendment Initiated by Board: The Board may propose to amend this Ordinance following notice and public hearing procedures in compliance with this Ordinance.
- Zoning Ordinance Text Amendment Initiated by Property Owner: The applicant shall complete a pre-application conference with the Director prior to submittal of an application for a Zoning Ordinance Text Amendment. An application and fees shall be submitted to the Director on forms provided by the Department.

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3. Application: The Commission and Board shall conduct public hearings required by Idaho Code and this Ordinance. The Board shall apply the findings listed in subsection B of this section to review the Zoning Ordinance Text Amendment.

B. Required Findings: Upon recommendation from the Commission, the Board shall make a full investigation and shall, at the public hearing, review the application. In order to grant a Zoning Ordinance Text Amendment, the Board shall make the following findings:

1. The Zoning Ordinance Text Amendment complies with the applicable Comprehensive Plan; and
2. The Zoning Ordinance Text Amendment complies with the regulations outlined for the proposed base zone, specifically the purpose statement; and
3. The Zoning Ordinance Text Amendment shall not be materially detrimental to the public health, safety, and welfare; and
4. The Zoning Ordinance Text Amendment shall not result in an adverse impact upon the delivery of services by any political subdivision providing public services within the planning jurisdiction including, but not limited to, school districts.
5. Following the approval of Zoning Ordinance Text Amendment, the Board shall adopt an Ordinance, and within thirty (30) days, publish a summary of the Ordinance in the official newspaper of general circulation in the County.

**Section 6-4-18: Time Extension:**

The Director shall review an application for a time extension. The time extension shall commence from the date of expiration of the previous approval, except in the case of an appeal of a Board approval, when the time extension shall commence from the final resolution of such appeal.

A. Process:

1. An application and fees shall be submitted to the Director on forms provided by the Department.
  - a. The application shall include a written request indicating the need for a time extension.
  - b. The application shall be prior to expiration date of the original approval.
2. At the discretion of the Director, other agencies may be notified of the time extension request in order to solicit their comments and recommendations for consideration.

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3. The Director shall apply the standards listed in subsection B of this section and the findings listed in subsection C of this section to review the time extension.

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4. The Director may impose additional conditions in an approval of a time extension for an approved development (excluding final plats).

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**B. Standards:**

1. The applicant or owner for an approved development may apply for a one (1) time extension for a period not to exceed one (1) year, unless otherwise approved by the Director, Commission and/or Board.

**C. Required Findings:**

1. The time extension meets the standards listed in subsection B of this section; and

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2. The applicant and/or owner have adequately justified the need for a time extension.

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# JEROME COUNTY PLANNING AND ZONING

300 NORTH LINCOLN ROOM 307\* JEROME ID 83338

Planning & Zoning (208) 324-9116

Code Enforcement (208) 644-2713



Facsimile (208) 324-9263

Building Dept. (208) 324-9262

RECORDED DOCUMENT FOR ZONING  
VIOLATION RELEASE  
LAND USE



Leave blank for Recorder

Jerome County Planning & Zoning Office has verified that a Recorded \_\_\_\_\_ Violation has been corrected.

Recorded Violation Date \_\_\_\_\_

Name of Property Owner: \_\_\_\_\_

Address of the Property Owner: \_\_\_\_\_

Address of Property in Violation: \_\_\_\_\_

Location of Property Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_

Deed of Record Instrument # \_\_\_\_\_

Real Property# \_\_\_\_\_

This letter has been recorded at the Jerome County Courthouse and will remain on record as verification that the property is no longer in violation. The property is in compliance in accordance with the Jerome County Zoning Ordinance.

Documents pertaining to the Violation and Release are on file at the Jerome County Planning and Zoning Office and are available for review upon the submittal of a Public Records Request.

Sincerely,

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A  
L

Arthur R. Brown  
Planning & Zoning Administrator

State of Idaho ) Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
S.S.

County of Jerome) \_\_\_\_\_ My Commission Expires on: \_\_\_\_\_

*Notary Public*

# JEROME COUNTY PLANNING AND ZONING

300 NORTH LINCOLN ROOM 307 \* JEROME ID 83338

Planning & Zoning (208) 324-9116

Code Enforcement (208) 644-2713



Facsimile (208) 324-9263

Building Dept. (208) 324-9262

RECORDED DOCUMENT FOR ZONING  
VIOLATION  
LAND USE



Leave blank for Recorder

Jerome County Planning & Zoning Office has verified that a Land Use Violation has occurred.

Violation Notice Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Name of Property Owner: \_\_\_\_\_

Address of the Property Owner \_\_\_\_\_

Address of Property in Violation \_\_\_\_\_

Location of Property Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_

Deed of Record Instrument # \_\_\_\_\_

Real Property# \_\_\_\_\_

This letter has been recorded to document a Violation of the Jerome County Zoning Ordinance. The Property Owner was duly noticed that a violation has occurred and has been provided with an opportunity to cure the violation. The Property Owner has been notified that a Land Use Violation is not in compliance with the Jerome County Zoning Ordinance until the violation is cured. The Property Owner was duly noticed that a Document for Zoning Violation would be recorded at the Jerome County Courthouse for failure to take action on the Reported Violation within sixty (60) days of notice.

This letter will be recorded at the Jerome County Courthouse and will remain on record as a violation until corrective action has been taken. This document will serve as notice to successors or assigns that the violation will remain on the property and those successors or assigns are subject to the Jerome County Zoning Ordinance including any and all penalties and fines.

Documents pertaining to the Violation are on file at the Jerome County Planning and Zoning Office and are available for review upon the submittal of a Public Records Request.

Sincerely,

Arthur R. Brown  
Planning & Zoning Administrator

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State of Idaho ) Subscribed and sworn to (or affirmed) before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
S.S.

County of Jerome) \_\_\_\_\_ My Commission Expires on: \_\_\_\_\_

*Notary Public*