TITLE 6
ELMORE COUNTY
ZONING and DEVELOPMENT ORDINANCE

CHAPTER 7 – PLANNING AND ZONING COMMISSION JURISDICTION, AND DUTIES

Sections:

6-7-1: **Commission Jurisdiction and Authority**
6-7-2: **Commission Membership and Term**
6-7-3: **Organization, and Expenditures**
6-7-4: **Clerk of Commission**
6-7-5: **Conflict of Interest:**
6-7-6: **Meetings Conducted By the Commission**
6-7-7: **Public Hearings Conducted By the Commission**
6-7-8: **Consent Agenda**
6-7-9: **Commission Deferral Procedures**
6-7-10: **Duties**
6-7-11: **Resolutions**
6-7-12: **Responsibility in Matters of Historic Preservation**
6-7-13: **Other Duties:**

Section 6-7-1: Commission Jurisdiction and Authority:

A. For the purpose of carrying out the provisions of this Ordinance, a combined planning function and zoning function Commission is hereby created and authorized for Elmore County, Idaho. The Board has hereby created a Planning and Zoning Commission for Elmore County. This combined function Commission shall be known as the Elmore County Planning and Zoning Commission, "Commission". The Elmore County Planning and Zoning Commission hereinafter shall be referred to as the "Commission".

Section 6-7-2: Commission Membership and Term:

A. A Planning and Zoning Commission shall be established and membership selected by the Board.

B. Membership:

1. Appointment: The Commission shall consist of not less than three (3) or more than twelve (12) voting members, each appointed by the Board of County Commissioners and confirmed by the majority vote of the Board.

2. Purpose: The Board shall ensure that the interests of the entire County are broadly represented on the Commission and shall select the members without respect to political affiliation, and may receive such mileage and per diem compensation as provided by the Board.

3. Residency: Each member must remain a resident of the County during his/her service on the Commission. Each member shall have lived in Elmore County for at least five (5) years prior to their appointment the commencement of membership on to the Commission. Not more than one-third (1/3) of the appointed members may reside within an incorporated City in the County of one thousand five hundred (1,500) or more population in Elmore County. Each City Council Commission shall have opportunity to submit nominations to the Board for potential members from that City.

4. Term: Each member will serve for a term of four (4) years. Unexpired terms (vacancies) shall be filled in the same manner as the original appointments.

5. At least one-half (1/2) of the members shall reside outside the boundaries of any city's Area of Impact.

6. No Commissioner shall serve more than two (2) full consecutive terms without specific concurrence by two-thirds (2/3) of the governing board adopted by motion and recorded in the minutes.

7. Members may be removed for cause by a majority vote of the Board, and have their term renewed, by a majority vote of the Board

Section 6-7-3: Organization, and Expenditures:

A. Organization: The Commission shall elect a Chairperson and a Vice Chairperson, hereinafter shall be referred to as the "Chairperson" and "Vice Chairperson". The Commission may create any additional offices it may deem necessary. The Commission may establish subcommittees, advisory committees or neighborhood groups to advise and assist in carrying out the responsibilities under this Chapter. The Board may enact a set of bylaws to guide the Commission in its operation.

B. Expenditures and Staff: With approval of the Board, the Commission may receive and expend funds, goods and services from the Federal, State or local government agencies or from civic and private sources. Expenditures by the Commission shall be within the amounts appropriated by the Board. Within such limits, the Commission is authorized to hire or appoint nonvoting technical advisors.

Section 6-7-4: Clerk of Commission:

A. The Commission shall have authority to designate a Clerk, who may be a member of the Commission, or employee of the County, and who shall act as such Clerk or Secretary to the Commission, without extra compensation, and shall keep an accurate record of all proceedings of said Commission, and shall file, when ordered by the Commission, with the Board, a report of all transactions of the Commission.

Section 6-7-5: Conflict of Interest:

A. Idaho Code pertaining to conflicts of interest involving elected and appointed officials shall apply to the Elmore County Planning and Zoning Commission and the Elmore County Board of Commissioners. A member or employee of the Commission shall not participate in any proceeding or actions when the member employee (or his/her employer, business partner, associate or any person related to him/her by affinity or consanguinity within the second degree) has an economic interest in the procedure or action. Any actual or potential interest in any proceeding shall be disclosed at or before any meeting at which the action is being heard. A knowing violation of this subsection shall be a misdemeanor.

Section 6-7-6: Meetings Conducted By the Commission:

A. All meetings of the Elmore County Planning and Zoning Commission are open to the public. The Commission shall fix its place of meeting and shall conduct at least one regular meeting each month; provided however, that if no issues over which the Commission has jurisdiction are pending on its calendar, a meeting may be canceled; provided however, that in any event, one regular meeting shall be held for each month for not less than nine (9) months in each year. Other meetings of the Commission shall be held at the call of the Chairperson and at such other times as the Commission may determine. The action of the Commission at any meeting may be continued to the next regular meeting without further notice being given.

B. Meetings, Records And Voting: At least one regular meeting shall be held each month for not less than nine (9) months in a year; additional special or workshop meetings may be scheduled as necessary. All meetings and records shall be open to the public. The Director shall maintain a record of meetings, hearings, resolutions, studies, findings, permits and actions taken by the Commission. All members shall have voting rights; a majority of the members of the Commission shall constitute a quorum.

C. Quorum: A majority of the appointive members of the Commission shall be necessary to constitute a quorum at any meeting.

D. Open to Public: All meetings shall be open to the public.

E. Keeping of Minutes: The Commission shall keep minutes of its proceedings, and shall keep records of its examinations, findings, recommendations and all other official

actions, and render reports thereof to the Board. The records herein referred to shall be a public record.

F. Rules of Order: Written rules consistent with the laws of the State for the transaction of business of the Commission shall be adopted. The Commission shall proceed according to its own rules of order for the conduct of business and shall file its rules of order with the County Clerk.

G. Written Report: Minutes shall be kept of every meeting. Whenever the Commission meets, a written set of minutes will be prepared stating the findings and actions taken by the Commission. All decisions of the Commission on applications shall be in the form of written findings of fact and conclusions of law that explain the criteria and standards considered relevant, state the fact relied upon, and explain the justification for the decision based on the criteria, standards and facts set forth.

H. The Commission shall advertise, provide notice, and conduct a public hearing in accordance with this Ordinance.

Section 6-7-7: Public Hearings Conducted By the Commission:

A. The Elmore County Planning and Zoning Commission shall conduct public hearings as necessary to implement this Zoning and Development Ordinance as applicable.

B. Quorum: A majority of the appointive members of the Commission shall be necessary to constitute a quorum at any meeting.

C. Open to Public: All meetings shall be open to the public, with provisions for Executive Sessions as allowed by Idaho Code.

D. Keeping of Minutes: The Commission shall keep minutes of its proceedings, shall keep records of its examinations, findings, recommendations and all other official actions, and render reports thereof to the Board. The records herein referred to shall be a public record.

E. Rules of Order: Written rules consistent with the laws of the State for the transaction of business of the Commission shall be adopted. The Commission shall proceed according to its own rules of order for the conduct of business and shall file its rules of order with the County Clerk.

F. Written Report: In cases involving a hearing, the review of plats or applications where a finding, determination, decision or recommendation has been made on a subject, then the Commission, in addition to including the matter in its reports as prescribed, shall file with the Clerk of the Board after the conclusion of such matter a written report stating the findings and action taken by the Commission. This report shall be in the form of findings of fact and conclusions of law that explain the criteria and standards considered

relevant, state the fact relied upon, and explain the justification for the decision based on the criteria, standards and facts set forth.

G. Voting: The concurring vote of a majority of a quorum present shall be necessary to sustain a finding, determination, recommendation or decision of the Commission.

H. The Commission shall advertise, provide notice, and conduct a public hearing in accordance with this Ordinance.

I. The Chairperson may limit public testimony to three (3) minutes for each member of the public. The applicant, (including an applicant's representative(s), may not be allowed more than thirty (30) minutes for each application, except for Planned Communities, Planned Unit Developments, and Planned Unit Development Districts which shall be allotted sixty (60) minutes. The Chairperson may allot more time to any applicant, or application based on complexity and size.

J. The applicant shall be allowed up to twenty (20) minutes for rebuttal following public testimony, except for Planned Communities, Planned Unit Developments, and Planned Unit Development Districts which may be allotted more time by the Chairperson based on their complexity and size.

K. Each person testifying before the Commission shall state, for the record, her or his full name and address.

L. Every document referred to by any person during testimony (including charts, maps, photographic evidence or any other evidence) shall be identified and entered into the record of the proceeding. Such exhibits shall be maintained in the Growth and Development Department.

M. Members of the Commission may question any person or applicant who has finished testifying or they may recall a person or applicant for further testimony or questioning.

Section 6-7-8: Consent Agenda:

A. Commission Consent Agenda Applicability: Routine or uncontested applications may be placed on a consent agenda in accordance with the procedures set forth herein. The Director, Planning Staff, or the Chairperson at the beginning of the public hearing shall identify all applications or items eligible for the consent agenda. Only applications or items that meet the following criteria shall be considered for the consent agenda if:

1. Planning Staff has not received any written or oral opposition to the application.

2. The Planning Staff and the applicant are in agreement on the proposed findings and conclusions and recommended conditions of approval.

3. Staff has concluded that the application complies with the Elmore County or applicable Comprehensive Plan and Zoning Ordinance as proposed or as modified by a condition(s) of approval.

4. The Commission has no concerns with the application.

B. To make a determination on whether or not the application should be placed on the consent agenda, the Chairperson shall ask the following questions of the Commission, audience, and the applicant(s) at the hearing:

1. Commission Question: Does the Commission have any questions on the application (provide agenda number and applicant's name)?

2. General Audience Question: Is there anyone present in the audience who would like to present adverse testimony related to the application (provide agenda number, applicant's name, and location of site)?

3. Applicant(s) Question: Is the applicant or a representative of this application present (provide agenda number, applicant's name, and location of site)?

4. Applicant(s) Question: Is the applicant in agreement with the Staff's recommendation, findings and conclusions, and conditions of approval?

C. Removal from Consent Agenda: Items shall be removed from the consent agenda and placed back on the regular agenda as provided by this Ordinance and Chapter if:

1. Any member of the Commission has concerns; or

2. There is opposition from any party or member of the public, regarding an application on the consent agenda; or

3. No one is present to testify, but written testimony was provided to Staff regarding an item on the consent agenda; or

4. The applicant is not in agreement with Staff's recommendation, or findings and conclusions, or and conditions of approval.

D. Consent Agenda Approval Requirements:

1. If the Commission has no concerns, and there is no opposition as described in Section 6-7-8 C than the item or application may be placed on the consent agenda.

2. Once the consent agenda is established, the Commission may approve all items on the consent agenda with one motion.

Section 6-7-9: Commission Deferral Procedures:

A. Applications that have been placed on the Commissions public hearing agenda may be deferred by the Commission for a maximum of one hundred eighty (180) calendar days from the initial hearing date unless a longer deferral is agreed to by the applicant.

B. If the Commission makes a specific finding at the public hearing that a deferral is necessary due to the lack of a quorum or the lateness of the hour, then a delay can be granted.

C. The Commission must rule upon requests for deferral of scheduled agenda items that were submitted prior to or at the start of the public hearing.

D. Planning Staff, or the applicant, for good cause may request a deferral. A request for a deferral of a scheduled agenda item shall be made before the Commission during the public hearing. The Commission shall hear the request and rule on the request by a majority vote.

   1. If the applicant and the Planning Staff are in agreement on the deferral, including the requested length of deferral, and there is no public opposition, the Commission may consider the request to be routine. Such requests should be deferred to a date specific when possible to avoid the requirement for re-advertising.

   2. The Commission shall act on requests for deferral only after soliciting input from the applicant, staff and any concerned public. If a deferral is granted, any member of the public who cannot or will not return for a deferral hearing shall be provided an opportunity to testify.

E. An application shall be considered as being on the agenda upon the mailing of radius notices to impacted property owners and residents as defined by this ordinance. Prior to the placement of an application on the public hearing agenda, the applicant may submit a request for rescheduling to the Planning Staff. The Planning Director may reschedule the hearing to an appropriate date if the applicant has requested rescheduling or if there are procedural or logistical reasons that justify rescheduling.

F. Maximum Deferral Time Period Allowed: The maximum deferral time period the Commission may grant an applicant, at the request of the applicant, shall not be greater than twelve (12) months. A request for a deferral shall be made before the Commission during the public hearing. The Commission shall hear the request and rule on the request by a majority vote. Deferrals greater than one hundred eighty (180) calendar days shall only be granted by the Commission for one of the following reasons:

   1. Additional studies are required by the Commission; or

2. Consideration of other development alternatives as recommended by Staff or the Commission based on the facts contained in the record or as a result of some new fact discovered through public testimony.

3. Deferrals greater than one hundred eighty (180) calendar days that meet the conditions listed in Subsection 6-7-9 (F) 1 and 2 shall only be granted to an applicant if the applicant agrees to the following:

    a. Deferral request granted to an applicant for one hundred eighty (180) calendar days or longer shall be re-noticed. The additional notice shall be in compliance and as required by this ordinance; and

    b. The applicant shall agree to pay an additional fee, as determined by the Director, to cover the cost of re-advertising/noticing within thirty (30) calendar day of receiving the additional fee notice from the Director; and

    c. The applicant shall agree to pay an additional fee, as determined by the Director, to cover the cost of review, evaluation, additional reports required and analysis of any new or additional plans, documents and drawings submitted within thirty (30) calendar day of receiving the additional fee notice from the Director.

    d. Failure to pay the additional fees as required shall be considered by the Growth and Development Department as an automatic withdrawal request of the application by the applicant.

Section 6-7-10: Duties:

A. The Elmore County Planning and Zoning Commission shall have the following duties:

1. The Commission shall hold public meetings, hearings, surveys, etc., to obtain input to the planning process. The Commission may also conduct informational meetings to consult with public officials and agencies, civic or professional organizations, etc. As a result of such meetings, the Commission may submit recommendations to the Board concerning the planning process.

2. The Commission may initiate amendments to this Ordinance or Title and the Comprehensive Plan.

3. The Commission shall periodically review all privately proposed amendments to this Ordinance and the Comprehensive Plan and make recommendations to the Board.

4 The Commission shall review development proposals according to the process outlined in this Ordinance and make recommendations to the Board.

5. The Commission shall review applications for zoning reclassifications and make recommendations to the Board.

6. The Commission shall review and decide conditional use permit applications.

7. The Commission shall hear and decide appeals when it is alleged that the Director has made an error.

8. The Commission shall grant conditional use permits as specified in this Ordinance, and under the conditions as herein specified, such additional safeguards as will uphold the intent of this Ordinance.

9. The Commission shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation, or determination made by the Director or the Hearing Examiner.

10. The Commission shall review and authorize, in addition to the Board such variances from the terms of this Ordinance as will not be contrary to the public interest where, owing to the special conditions, a literal enforcement of this Ordinance will result in unnecessary hardship and so that the spirit of this Ordinance shall be observed and substantial justice is done.

11. The Commission shall review all proposed amendments to this Ordinance and make recommendations to the Board.

12. The Commission shall review all applicable development applications, not assigned to the Hearing Examiner, plus variances and make recommendations to the Board of County Commissioners.

13. The members of the Commission shall elect its own chairperson and vice-chairperson and create and fill such other offices as it may determine it requires. Any expenditures of the Commission shall, exclusive of gift or fees, be within amounts appropriated and set aside by the County, for the purposes of the Commission as herein set forth. Within such limits, the Commission is authorized to employ such employees and technical advisers as are deemed necessary for its work.

B. The Commission shall have jurisdiction and authority in addition to the jurisdiction and authority granted elsewhere in this Ordinance as follows:

1. Land Usage Studies: Conduct studies pertaining to land usage within the County.

2. Preparations and Recommendations: Prepare and recommend plans and ordinances or amendments thereto to the Board.

3. Pursuant to a study of the County land use, traffic circulation system, population trends and from time to time other pertinent factors and subsequent to the holding of a public hearing thereon, the Commission shall prepare and recommend to the Board a Comprehensive Plan and such amendments thereto as may be deemed necessary for

the unincorporated portions of the County, taking into consideration the requirements of the Idaho Local Land Use Planning Act.

4. Pursuant to study and the holding of hearings thereon and in accordance with the Comprehensive Plan, the Commission shall prepare and recommend to the Board a zoning ordinance and such amendments thereto as may be necessary in dividing the unincorporated portions of the County into districts of such number, shape and area as may be deemed best suited to carry out the purpose of this Ordinance, and regulating or restricting the uniform use of land in each district for trade, industry, residence or other purposes, as well as the percentage of lot that may be occupied, and size of yards, courts and other open spaces, and density of population and further regulate and restrict the erection, construction, reconstruction, alteration, repair or use of building, and further regulate and restrict the height, number of stories and the size of buildings and other structures.

5. The Commission shall make recommendations and suggestions to the Board. In addition to the requirements that the Commission prepare and recommend to the Board for adoption the Comprehensive Plan and a zoning ordinance as herein above set forth, the Commission on its own initiative or upon the request of the Board shall from time to time review said Comprehensive Plan and zoning ordinance and recommend addition, amendments or repeal of such plans, ordinance or regulations.

6. Furthermore, the Commission shall from time to time make recommendations and suggestions to the Board concerning the future growth, and development and beautification of the County in respect to its public buildings, streets, parks, grounds, and lands consistent with future growth and development of the County in order to promote the public health, morals, safety and welfare of the inhabitants thereof.

7. Any and all maps, plats, and replat of land which require the approval of the Board, or any official or employee thereof, shall first be submitted to the Commission for its approval.

8. The Commission shall render advice to individuals, and to receive and act, as a recommending body to the Board of County Commissioners, upon applications as authorized and specified herein.

9. The Commission is further empowered to give suggestions and advice to individuals concerning landscaping, or location of buildings, structures or works to be erected, constructed or altered by or for such individuals.

10. The Commission upon the receipt of an application shall process same and submit its findings, determinations and/or recommendations to the Board pertaining to said application in accordance with the standards, rules and procedures herein recited, as well as concerning such other applications which might be made incidental to the enforcement and administration of this ordinance.

Section 6-7-11: Resolutions:

A. Idaho Code pertaining to rule making and resolutions shall apply to the Elmore County Planning and Zoning Commission and the Elmore County Board of Commissioners.

Section 6-7-12: Responsibility in Matters of Historic Preservation:

A. One of the purposes of this ordinance is to promote the educational, cultural, economic and general welfare of the public of Elmore County through the identification, evaluation, designation, and protection of those buildings, sites, areas, structures, and objects which reflect significant elements of the county's, the state's and the nation's historic, architectural, archaeological, and cultural heritage. In order to protect historic resources, the Elmore Planning and Zoning Commission shall have the authority and responsibility to conduct the following:

1. Conduct a survey of local historic properties.

2. Recommend the acquisition, by the county, of fee simple and lesser interests in historic properties, including adjacent or associated lands, by purchase, bequest, or donation.

3. Recommend methods and procedures necessary to preserve, restore, maintain and operate historic properties under the ownership or control of the county.

4. Recommend that the lease, sale, or other transfer or disposition of historic properties be made subject to rights of public access and other covenants and in a manner that will preserve the property.

5. Draft and submit to the Board for approval, contracts with the state or federal government, or any agency of either, or with any other organization.

6. Cooperate with the federal, state, and local governments in the pursuance of the objectives of historic preservation.

7. Make recommendations and otherwise participate in the planning processes undertaken by cities, the county, the state, or the federal government and related agencies.

8. Recommend ordinances to the county and otherwise provide information for the purposes of historic preservation in the county.

9. Promote and conduct educational and interpretive programs on historic preservation and historic properties in the county.

10. Enter private property, buildings, or structures in the performance of its official duties, but only with the express consent of the owner or occupant thereof.

11. Review nominations of properties, within the county's jurisdiction, to the National Register of Historic Places and provide comments to the state historic preservation office.

12 Nominate properties within the county's jurisdiction to the National Register of Historic Places.

Section 6-7-13: Other Duties:

A. Other duties of the Commission include, but are not limited to, the following:

1. Comprehensive Plan: Pursuant to a study of previous and existing conditions, trends, desirable goals and objectives, or desirable future situations, the Commission shall prepare, implement, review, and make subsequent recommendations for amendments to the Comprehensive Plan as set forth in Idaho Code section 67-6509. The plan shall include all land within the jurisdiction of the Board. In addition, the Commission shall accept petitions from any person to amend the Comprehensive Plan as set forth in Idaho Code section 67-6509D.

2. Recommendations to The Board: The Commission, upon its own initiative, upon a request of the Board, or upon receipt of an application or petition as set forth in this chapter, shall hold a public hearing and make a recommendation to the Board.

3. Decisions by The Commission: The Commission shall review and approve, approve with conditions, or deny applications as set forth in this ordinance. The Commission shall act on applications pursuant to the requirements of this ordinance.