

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

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

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

This Elmore County Administration Ordinance, Title 6, are adopted pursuant to authority granted in Title 67 Chapter 65 of the Idaho Statute (“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 6-1-2: Provisions Declared to Be Minimum Requirements:**

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 6-1-3: Preservation of Private Property Rights:**

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 always 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 6-1-4: Prohibited Uses:**

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

**Section 6-1-5: Wildfire Prevention:**

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 6-1-6: Severability Clause:**

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 6-1-7: Effective Date:**

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

**Section 6-1-8: 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. A notice will be sent to the Applicant within thirty (30) days of expiration.
- 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 6-1-9: 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 text 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 6-1-10: Errors in Legal Descriptions:**

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 6-1-11: References to Other Laws or Titles or Policies:**

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 6-1-12: Saving Clause:**

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.

## **CHAPTER 2 – AUTHORITY AND DUTIES OF THE DIRECTOR**

### **Sections:**

**6-2-1: Authority of the Director**

**6-2-2: Duties of the Director**

### **Section 6-2-1: Authority of the Director:**

- A. The Board shall appoint a Director to administer this Ordinance and serve as the Director of the Land Use and Building Department. The Director may be provided with assistance to administer this Ordinance of such other persons as the Board may direct.
- B. The Director has full authority to make and offer interpretations of how this Ordinance will be implemented and administered.
- C. The Director may assign specific duties as required by this Ordinance to staff or qualified persons as deemed appropriate by the Director.

### **Section 6-2-2: Duties of the Director:**

- A. The Director's duties include, but are not limited to, the following:
  - 1. Advise interested citizens of the Ordinance provisions; and
  - 2. Inform the news media regarding land use and zoning matters of public interest, particularly the time and place of public hearings; and
  - 3. Prepare the agenda for the meetings of the Commission; and
  - 4. Aid applicants in the preparation of required forms and permit applications. Where practical, the Director may combine related permits for the convenience of the applicant; and
  - 5. Investigate all written alleged and documented violations of this Ordinance and notify in writing the person responsible for such violation(s), ordering the action necessary to correct such violation; and
  - 6. Receive, file and transmit to the Commission or Board all applications, petitions, transcripts and other communications on which they must act. Advise the Commission and the Board of pertinent provisions of the Ordinance regarding development proposals; and



7. Maintain permanent and current records of land use applications, reclassifications, variances and conditional use permits and of the hearings and actions thereon; and
8. Inspect and make recommendations upon all filed plats pursuant to this Ordinance; and
9. Interpret boundaries of zone districts and also interpret land use categories; and
10. Provide a liaison between the Commission and the Board; and
11. Direct subordinate staff to accomplish the above listed duties and delegate responsibilities; and
12. Advise interested persons of the Ordinance provisions; and
13. Aid applicants in the preparation and expedition of required applications; and
14. Issue zoning permits, building permits, certificates of occupancy, notifications and such similar administrative duties; and
15. Serve as the County Flood Ordinance Administrator; and
16. Assist the Commission and Board in carrying out the provisions of this Ordinance; and
17. Other duties as directed by the Board.

## **CHAPTER 3 - HEARING EXAMINER**

### **Sections:**

- 6-3-1: Qualifications and Designation of Hearing Examiners**
- 6-3-2: Referral of Applications to Hearing Examiners**
- 6-3-3: Conflict of Interest Prohibited**
- 6-3-4: Notice, Hearing and Records**
- 6-3-5: Duties of the Director in Relationship to the Hearing Examiner**
- 6-3-6: Conduct of Hearings**
- 6-3-7: Standards and Criteria**
- 6-3-8: Hearing Examiner's Findings and Decision**
- 6-3-9: Appeals from Decisions of the Hearing Examiner**

### **Section 6-3-1: Qualifications and Designation of Hearing Examiners:**

The Board, upon a recommendation by the Commission, shall determine if a Hearing Examiner is necessary. If the Board determines that it is necessary to utilize a Hearing Examiner, then the Board by resolution shall prescribe the minimum qualifications for Hearing Examiners. The Board shall designate those persons who may be appointed by the Board as Hearing Examiners, shall determine compensation and other contractual terms with Hearing Examiners, and shall have the power, subject to any contractual terms, to dismiss any Hearing Examiner.

### **Section 6-3-2: Referral of Applications to Hearing Examiners:**

- A. Notwithstanding any provision of this Ordinance to the contrary, the Board by resolution may designate those applications of a routine nature that do not require policy decisions, as provided in § 67-6509, Idaho Statute. Applications, which may be referred to the Hearing Examiner, shall be determined by the Board and consistent with the Comprehensive Plan and this Ordinance.
- B. Applications which otherwise may be referred to the Hearing Examiner may be heard by the Commission or Board when such applications are submitted concurrently with other applications which shall be heard by the Commission or Board.
- C. If no Hearing Examiner is appointed, the applications determined and defined by resolution of the Board shall be referred to the Commission.

### **Section 6-3-3: Conflict of Interest Prohibited:**

The conflict of interest provisions of this Ordinance and Idaho Statute, shall apply to Hearing Examiners, and a Hearing Examiner shall not participate in the hearing of an application where a conflict of interest exists that would preclude participation under those provisions. The Hearing Examiner is further subject to the conflict of interest and other provisions contained in the by-laws of the Elmore County Planning and Zoning Commission.

**Section 6-3-4: Notice, Hearing and Records:**

Except as otherwise provided in this Chapter, the notice, hearing, and records for an application before the Hearing Examiner shall be the same as provided in this Ordinance and State law for the hearing of such applications before the Commission.

**Section 6-3-5: Duties of the Director in Relationship to the Hearing Examiner:**

- A. Upon receipt of an application, which shall be referred to the Hearing Examiner, the Director or other Director's staff shall review the application for completeness. The Director may require additional information to be submitted by the applicant pursuant to provisions of this Ordinance where such information is deemed necessary to further the evaluation by the Hearing Examiner. Upon finding that the application is complete, the Director shall schedule a public hearing in accordance with this Ordinance.
- B. Copies of all applications referred to the Hearing Examiner, staff report, and the entire public record with regard thereto shall be kept in the Department office and shall be made available to the public for review for the period of time specified by Idaho Statute and this Ordinance prior to any hearing(s) of the Hearing Examiner. All applications referred to the Hearing Examiner, Hearing Examiner reports, findings, decisions, records of hearings, and other documentation related to said applications shall be kept in the public records of the Department.

**Section 6-3-6: Conduct of Hearings:**

The Hearing Examiner shall review all information supplied by the Director prior to the hearing. The hearing shall be conducted in accordance with this Ordinance and applicable Idaho Statute upon a finding that notice was adequate and in compliance with requirements contained in this Ordinance and Idaho Statute. Reasonable time limits may be established at the outset of the hearing, and both the applicant and other members of the public shall be given an opportunity to be heard. Hearings may be continued in accordance with this Ordinance. All hearings shall be tape-recorded. A transcribable record of all hearings before the Hearing Examiner shall be kept and maintained pursuant to Idaho Statute by the Department.

**Section 6-3-7: Standards and Criteria:**

In hearing an application, the Hearing Examiner shall apply the standards and other criteria that are applicable under this Ordinance, other ordinances, the Comprehensive Plan and Idaho Statute to a direct review of an application.

**Section 6-3-8: Hearing Examiner's Findings and Decision:**

- A. After a hearing is closed, the Hearing Examiner shall prepare Findings of Fact, Conclusions of Law and Decision, which shall include:
  - 1. A brief description of the application; and
  - 2. A summary of testimony received; and
  - 3. The Ordinance and standards used in evaluating the application; and
  - 4. Finding as to the adequacy of notice; and
  - 5. Findings of Fact; and
  - 6. Conclusions of Law; and
  - 7. Decision, followed by the reasoning for the decision; and
  - 8. Conditions of approval; and
  - 9. The actions, if any, that the applicant could take to obtain a permit.
- B. The Decision as prepared by the Hearing Examiner shall be signed and filed with the Director and shall be available to the applicant and the public.

**Section 6-3-9: Appeals from Decisions of the Hearing Examiner:**

The Decision of the hearing examiner may be appealed to the Board in the manner prescribed by this Ordinance, provided a notice of appeal is timely filed as required per this Ordinances.

## **CHAPTER 4 – PLANNING AND ZONING COMMISSION JURISDICTION, AND DUTIES**

### **Sections:**

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

### **Section 6-4-1: Commission Jurisdiction and Authority:**

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

### **Section 6-4-2: Commission Membership and Term:**

- A. The 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 and confirmed by the majority vote of the Board.
  - 2. 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. Members may be removed by a majority vote of the Board.
7. Members may have their term renewed, by a majority vote of the Board.

#### **Section 6-4-3: Organization, and Expenditures:**

- A. Organization: The Commission shall elect a Chairperson and a Vice Chairperson. The Commission may create any additional officers 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 Commission 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 6-4-4: Clerk of Commission:**

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 6-4-5: Conflict of Interest:**

Idaho Statute § 67-6506 pertaining to conflicts of interest involving elected and appointed officials shall apply to the Commission and the Board. A member or employee of the Commission shall not participate in any proceeding or actions when the member or 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 6-4-6: Meetings Conducted by the Commission:**

- A. All meetings of the 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. 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 and records 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 public hearings in accordance with this Ordinance.

### **Section 6-4-7: Public Hearings Conducted by the Commission:**

- A. The Commission shall conduct public hearings as necessary to implement this 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 Statute.
- 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. Special rules may be adopted for special situations.
- 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 decision taken by the Commission. This decision shall 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 public hearings 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 as required by other sections of this Ordinance. 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 as required by other section of this Ordinance 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, his or her 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 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 while a public hearing is still open.

**Section 6-4-8: 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, 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. Staff has not received any written or oral opposition to the application.
  - 2. 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 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 project 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 project number, applicant's name, and location of site)?
  - 3. Applicant(s) Question: Is the applicant or a representative of this application present (provide project 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 6-4-8 C then 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 6-4-9: 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. 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 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 Staff. The 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. If an application is deferred from more than twelve (12) months the application shall be deemed withdrawn. 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 6-4-9 (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 Department as an automatic withdrawal request of the application by the applicant.

#### **Section 6-4-10: Duties:**

A. The 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 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.
  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. Conduct studies pertaining to land usage within the County.
  2. 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 buildings, 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 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, 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 and submit its findings, determinations and/or recommendations to the Board pertaining to said application(s) in accordance with the standards, rules and procedures herein recited, as well as concerning such other application(s) which might be made incidental to the enforcement and administration of this Ordinance.

**Section 6-4-11: Resolutions:**

Idaho Statute pertaining to rule making and resolutions shall apply to the Commission and the Board.

**Section 6-4-12: 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 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 6-4-13: 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 Statute § 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 Statute § 67-6509(d).
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.