

**TITLE 8
ELMORE COUNTY PUBLIC HEALTH AND SAFETY
ZONING AND DEVELOPMENT ORDINANCE**

- CHAPTER 1 - FIRE PREVENTION AND WILDFIRE MITIGATION STANDARDS AND REGULATIONS APPLYING TO ALL DISTRICTS**
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CHAPTER 1- FIRE PREVENTION AND WILDFIRE MITIGATION STANDARDS AND REGULATIONS APPLYING TO ALL DISTRICTS

Sections:

- 8-1-1: Purpose**
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Section 8-1-1: Purpose:

This Chapter establishes regulations for prevention of wildfires and damage to property resulting from fire hazards. The purpose of this Chapter is to protect the public health, safety, and welfare by establishing standards to:

1. Minimize the potential of spreading fire from wildland areas to structures; and
2. Establish special standards that apply to new construction, alteration, moving, or change of use of habitable structures, with the intent to reduce the threat of loss of life and property from fire; and
3. Require vehicle turnouts on public and private roads with the intent to provide better emergency access to remote areas; and
4. Require that new development provide water supply systems and suitable access for firefighting crews, with the intent to increase the resources available to such crews and minimize the spread of fire; and
5. Establish standards for defensible space.

Section 8-1-2: Applicability:

- A. These regulations shall apply to new development, alteration, moving or changing of use of residential, commercial or industrial structures within any zoning district as identified on the Wildfire Urban Interface (“WUI”) overlay map. The limits of which have been adopted by the Board as shown on the WUI map on file at the Development, or as hereinafter may be amended.
- B. Uninhabitable structures shall be exempt from these regulations, except when located within the defensible space as set forth in the regulations of this Chapter.

Section 8-1-3: Standards:

A. Important Facts about Wildfires in Elmore County:

1. Wildfire will find the weakest links in the defense measures you have taken on your property.
2. The primary determinants of a home's ability to survive a wildfire are its roofing material and the quality of the "defensible space" surrounding it.
3. Any measures taken to protect your home and property will make them more able to withstand wildfires.

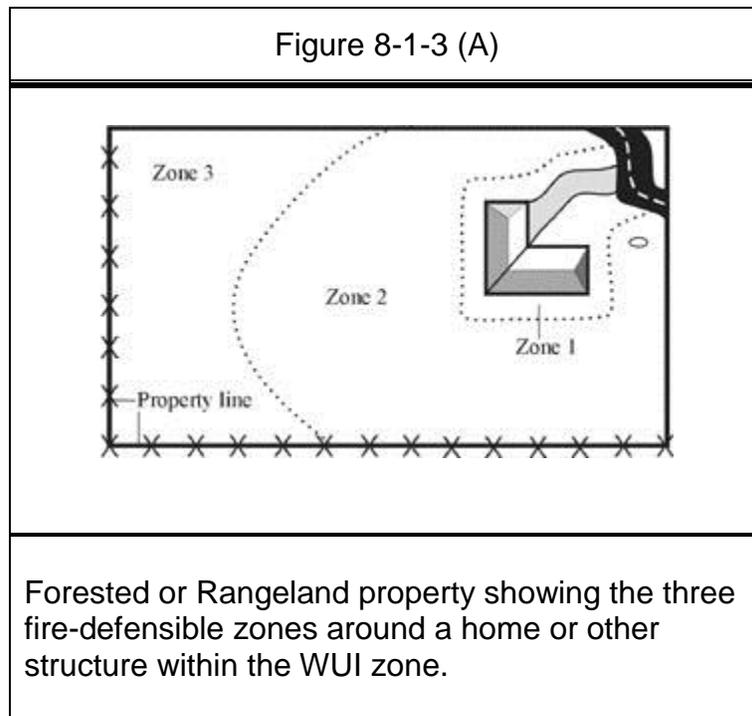
B. Roofing Materials. The specifications for roofing materials for development within the WUI overlay zone are as follows:

1. Wood roofing materials shall be prohibited; and
2. Only Non-Combustible roofing materials are allowed; and
3. Non-combustible roofing materials must meet Class C standards or exceed Class C standards for fire resistance.

C. Defensible Space. Defensible space is an area around a structure where fuels and vegetation are treated, cleared or reduced to slow the spread of wildfire towards a structure. It also reduces the chance of a structure fire moving from the building to the surrounding land. Defensible space provides room for firefighters to do their jobs. Your home and property are more likely to withstand a wildfire if grasses, brush, trees and other common forest/rangeland fuels are managed to reduce a fire's intensity.

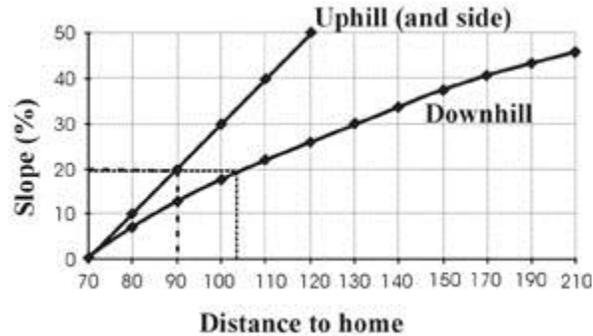
1. Fuel hazard: The measure of fuel hazard refers to its continuity, both horizontal (across the ground) and vertical (from the ground up into the vegetation crown). Fuels with a high degree of both vertical and horizontal continuity are the most hazardous, particularly when they occur on slopes. Heavier fuels (brush and trees) are more hazardous (i.e. produce a more intense fire) than lighter fuels such as grass.
2. Mitigation: Mitigation of wildfire hazards focuses on breaking up the continuity of horizontal and vertical fuels. Additional distance between fuels is required on slopes.
3. Defensible Space: Creating an effective defensible space involves developing a series of management zones in which different treatment techniques are used. See Figure 8-1-3 (A) for a general view of the relationships among these management zones. Defensible space around each building property located within the WUI overlay zone shall be required.

4. The actual design and development of defensible space depends on several factors: Size and shape of buildings, materials used in their construction, the slope of the ground on which the structures are built, surrounding topography, and sizes and types of vegetation on your property. These factors all affect your final design.



- D. Defensible Space Management Zone 1: Is defined, as the area of maximum modification and treatment. It consists of an area a minimum of thirty (30') feet around the structure in which all flammable vegetation is removed. This minimum thirty (30') feet is measured from the outside edge of the home's eaves and any attached structures, such as decks.
- E. Defensible Space Management Zone 2: Is defined, as an area of fuel reduction. It is a transitional area between Zones 1 and 3. The size of Zone 2 depends on the slope of the ground where the structure is built. Typically, the defensible space should extend seventy-five (75') to one hundred twenty-five (125') feet from the structure. See Figure 8-1-3 (B) for the appropriate distance for your home's defensible space. Within this zone, the continuity and arrangement of vegetation is modified. Remove stressed, diseased, dead or dying trees and shrubs. Thin and prune the remaining larger trees and shrubs. Be sure to extend thinning along either side of your driveway all the way to your main access road. These actions help eliminate the continuous fuel surrounding a structure while enhancing homesite safety and the aesthetics of the property.

Figure 8-1-3 (B)



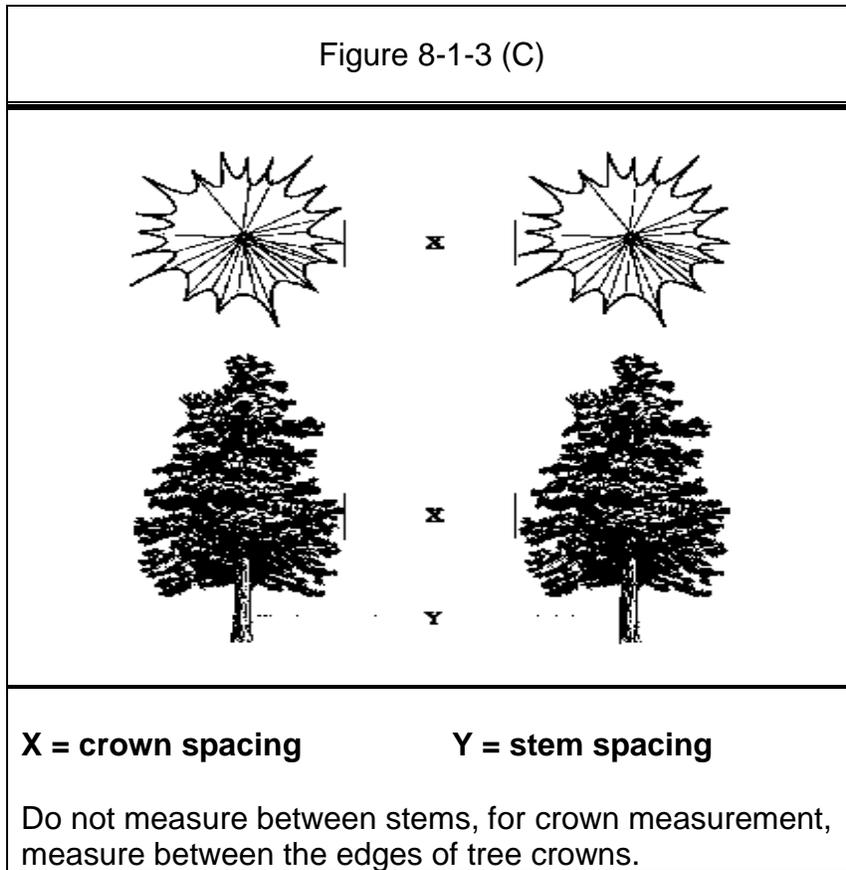
This chart indicates the minimum recommended dimensions for defensible space from the home to the outer edge of Zone 2. For example, if your home is situated on a twenty (20%) percent slope, the minimum defensible space dimensions would be ninety (90') feet uphill and to the sides of the home and one hundred four (104') feet downhill from the home.

- F. Defensible Space Management Zone 3: Is defined, as area of traditional forest or rangeland management and is of no particular size. It extends from the edge of your defensible space to your property boundaries.
- G. Minimum required defensible space standards for all Zones: These standards shall apply to properties residing within the WUI overlay zone, unless specifically exempted by this Chapter.
 - 1. Defensible Space Zone 1:
 - a. The defensible space of Zone 1 shall be a minimum of thirty (30') feet, measured from the edges of the structure. Within this zone, several specific treatments are recommended; and
 - b. Plant nothing within three to five (3' to 5') feet of any structure if that structure is sided with wood, logs or other flammable materials. Decorative rock may be used instead, as it creates an attractive, easily maintained, nonflammable ground cover; and
 - c. If the house has noncombustible siding, widely spaced foundation plantings of low growing shrubs or other "fire wise" plants are acceptable. Do not plant

directly beneath windows or next to foundation vents. Be sure there are no areas of continuous grass adjacent to plantings in this area; and

- d. Approved plants in this zone shall be frequently pruned and maintained to ensure a vigorous low growth profile; and
 - e. Dead branches, stems and leaves shall be removed. Firewood or other combustible materials shall not be stored in this zone; and
 - f. Screened decks shall be enclosed or screened with metal screening, and gravel shall be extended under the deck. Storage under decks shall be prohibited; and
 - g. Ideally, all trees from Zone 1 should be removed to reduce fire hazards. If you plant trees, you shall:
 - 1.) Not plant coniferous variety trees due to their inherent flammability; and
 - 2.) Consider it part of the structure and extend the distance of the entire defensible space accordingly; and
 - 3.) Isolate the tree from any other surrounding trees, and
 - 4.) Prune it to at least ten (10') feet above the ground; and
 - 5.) Remove any branches that interfere with the roof or are within ten (10') feet of the chimney; and
 - h. Remove all "ladder fuels" from beneath the tree. Ladder fuels are defined as vegetation with vertical continuity that allows fire to burn from ground level up into the branches and crowns of trees. Ladder fuels are potentially very hazardous but are easy to mitigate; and
 - 1.) No ladder fuels shall be allowed under tree canopies; and
 - 2.) In all other areas, prune all branches of shrubs or trees up to a height of ten (10') feet above the existing grade or one-half (1/2) the height of the tree or shrub, whichever is the least.
2. Defensible Space Zone 2: Shall be an area of fuel reduction designed to reduce the intensity of any fire approaching your home or buildings. The following standards shall apply:
- a. Thin trees and large shrubs so there is at least ten (10') feet between crowns. Crown separation shall be measured from the furthest branch of one tree to the nearest branch on the next tree, see Figure 8-1-3 (C); and

- b. On steep slopes, more space shall be required between tree crowns. See Figure 8-1-3 (D) for minimum required spacing; and
- c. Ladder fuels shall be removed from under trees; and



- d. Tree branches shall be neatly pruned to a height of at least ten (10') feet from the natural grade; and
- e. Small clumps of two to three (2 to 3) trees may be occasionally left in Zone 2, provided more defensible space between the crowns of these clumps and surrounding trees has been allotted; and
- f. Because Zone 2 forms an aesthetic buffer and provides a transition between Zones 1 and 3, it is necessary to blend the requirements for Zones 1 and 3; and
- g. Thin the portions of Zone 3 adjacent to Zone 2 more heavily than the outer portions; and

- h. Isolated shrubs may remain, provided they are not under tree crowns. Prune and maintain these plants periodically to maintain vigorous growth; and
- i. Remove dead stems from trees and shrubs annually; and
- j. Limit the number of dead trees (snags) retained in this Zone. Be sure any snags left for wildlife use cannot fall onto the house or block access roads or driveways; wildlife only needs one or two snags per acre; and
- k. Mow grasses (or remove them) as needed through the growing season to keep them low, a maximum of six to eight (6" to 8") inches. This is extremely critical mid-summer to fall when grasses dry out and cure or in the spring after the snow is gone but before the plants green up; and
- l. Stack firewood and woodpiles uphill or on the same elevation as the structure but at least thirty (30') feet away; and
- m. Clear and keep away flammable vegetation within ten (10') feet of woodpiles; and
- n. Do not stack wood against your house or on/under your deck, even in winter as many homes have burned from a woodpile that ignited as the fire passed. Wildfires can burn at almost any time in Elmore County; and
- o. Propane tanks shall be located at least thirty (30') feet from any structures, preferably on the same elevation as the house and anchored securely. Clear and keep flammable vegetation at least ten (10') feet of these tanks. Do not screen propane tanks with shrubs or vegetation; and

FIGURE 8-1-3 (D)		
MINIMUM TREE CROWN AND SHRUB CLUMP SPACING		
Percent (%) of Slope	Tree Crown Spacing In Feet	Brush and Shrub Clump Spacing
0 -10 %	10´	2 1/2 x shrub height
11 - 20%	15´	3 x shrub height
21 - 40%	20´	4 x shrub height
> 40%	30´	6 x shrub height

- p. Slash piles (limbs, branches and other woody debris) shall be disposed through chipping or by piling and burning. Prior to any burning, contact the Department, Local Fire District, Idaho Department of Lands and/or County Sheriff's Office for information about burning slash piles. If neither of these alternatives is possible, lop and scatter slash by cutting it into very small pieces and distributing it over the ground. Avoid heavy accumulations of

slash. Lay it close to the ground to speed decomposition. If desired, no more than two or three small, widely spaced brush piles may be left for wildlife purposes. Locate these towards the outer portions of your defensible space.

3. Defensible Space Zone 3: Shall not be defined by a specific or specified size. It extends from the edge of your defensible space to your property lines. A gradual transition into this zone from defensible Zones 2 shall be attained. Space standards to other management objectives you may have for your property may be allowed. Typical management objectives for areas surrounding homesites or subdivisions shall:
 - a. Provide optimum recreational opportunities; and
 - b. Enhance aesthetics; and
 - c. Maintain tree health and vigor; and
 - d. Provide barriers for wind, noise, dust and visual intrusions; and

Figure 8-1-3 (E) Minimum Tree Spacing for Zone 3			
Tree Diameter Shown in Inches	Average Spacing Between Trees Shown in Feet	Tree Diameter Shown in Inches	Average Spacing Between Trees Shown in Feet
3	10	14	24
4	11	15	26
5	12	16	28
6	13	17	29
7	14	18	31
8	15	19	33
9	16	20	35
10	17	21	36
11	19	22	38
12	21	23	40
13	23	24	42

- e. Support production of firewood, fence posts and other forest commodities; or grow Christmas trees or trees for transplanting; and
- f. Specific requirements shall be dictated by your objectives for your land and the kinds of trees or brush present. See Figure 8-1-3 (E) for the minimum

spacing between trees. Forest management in Zone 3 is an opportunity for you to increase the health and growth rate of the forest and/or rangeland in this zone. Keep in mind that root competition for available moisture limits tree growth and ultimately the health of the vegetation; and

- g. A high canopy forest reduces the chance of a surface fire climbing into the tops of the trees and might be a priority for you if this zone slopes steeply. The healthiest forest is one that has multiple ages, sizes, and species of trees where adequate growing room is maintained over time. Remember to consider the hazards of ladder fuels. Multiple sizes and ages of trees might increase the fire hazard from Zone 3 into Zone 2, particularly on steep slopes; and
- h. A greater number of wildlife trees can remain in Zone 3; and
- i. Make sure that dead trees pose no threat to power lines or fire access roads. While pruning generally is not necessary in Zone 3, it may be a good idea from the standpoint of personal safety to prune trees along trails and fire access roads. If you prefer the aesthetics of a well-manicured forest, you might prune the entire area. In any case, pruning helps reduce ladder fuels within the tree stand, thus enhancing wildfire safety; and
- j. Mowing is not necessary in Zone 3. Any approved method of slash treatment is acceptable for this zone, including piling and burning, chipping or lop-and-scatter.

H. Special WUI Recommendations: Tree spacing guidelines do not apply to mature stands of aspen trees where the recommendations for ladder fuels have been complied as defined in this Chapter. In areas of aspen regeneration and young trees, the following spacing guidelines and other requirements listed herein shall be followed:

1. Brush and Shrubs: Brush and shrubs are woody plants, smaller than trees, often formed by a number of vertical or semi-upright branches arising close to the ground. Brush is smaller than shrubs and can be either woody or herbaceous vegetation. On nearly level ground, minimum spacing recommendations between clumps of brush and/or shrubs is two and one half (2 ½) times the height of the vegetation. Maximum diameter of clumps should be two (2) times the height of the vegetation. As with tree crown spacing, all measurements are made from the edges of vegetation crowns, Figure 8-1-3 (DB). For example: For shrubs six (6') feet high, spacing between shrub clumps should be fifteen (15') feet or more apart (measured from the edges of the crowns of vegetation clumps). The diameter of shrub clumps should not exceed twelve (12') feet (measured from the edges of the crowns). Branches should be pruned to a height of three (3') feet; and

2. Grasses: Keep dead, dry or curing grasses mowed to less than six (6") inches; and
3. Defensible space size can be reduced where grass is the predominant fuel, subject to review and approval of the Department. The minimum defensible space for grass fuels is shown in Figure 8-1-3 (F); and

Figure 8-1-3 (F) Minimum Defensible Space Size for Grass Fuels	
Percent (%) of Slope	Defensible Space Size Uphill, Downhill, Side Hill
0 - 20 %	30'
21 - 40%	50'
> 40%	70'

4. Windthrow: In Elmore County, certain locations and tree species, including several pine and spruce species, are especially susceptible to damage and uprooting by high winds called "Windthrow". If you see evidence of this problem on or near your property, or have shallow-rooted types of tree species, it is highly recommended that you contact a professional forester or landscape architect or agricultural extension office to help design your defensible space; and
 5. Adjustments: If your trees or homesite are susceptible to Windthrow and the trees have never been thinned, use a stem spacing of diameter plus five instead of the guides listed in the Zone 3 section. Over time (every 3 to 5 years) gradually remove additional trees. The time between cutting cycles allows trees to "firm up" by expanding their root systems. Continue this periodic thinning until the desired spacing is reached. Also consider leaving small clumps of trees and creating small openings on their lee side (opposite of the predominant wind direction). Again, a professional forester or landscape architect or agricultural extension office can help you design the best situation for your specific homesite and tree species. Remember, with species such as pine and spruce, the likelihood of a wildfire running through the treetops or crowns (crowning) is closely related to the overabundance of fuels on the forest floor. Be sure to remove downed logs, branches and excess brush and needle buildup.
- I. Maintaining Your Defensible Space: Your home and property is located in a forest/rangeland that is dynamic and always changing. Trees and shrubs continue to grow, plants die or are damaged, new plants begin to grow, and plants drop their leaves and needles. Like other parts of your home, defensible space requires maintenance. Use the following checklist each year to determine if additional work or maintenance is necessary.

Defensible Space and Fire Wise Annual Checklist

- Trees and shrubs are properly thinned and pruned within the defensible space. Slash from the thinning is disposed of.
- Roof and gutters are clear of debris.
- Branches overhanging the roof and chimney are removed.
- Chimney screens are in place and in good condition.
- Grass and weeds are mowed to a low height.
- An outdoor water supply is available, complete with a hose and nozzle that can reach all parts of the house.
- Fire extinguishers are checked and in working condition.
- The driveway is wide enough. The clearance of trees and branches is adequate for fire and emergency equipment. (Check with your applicable fire department and highway district.)
- Road signs and your name and house number are posted and easily visible.
- There is an easily accessible tool storage area with rakes, hoes, axes and shovels for use in case of fire.
- You have practiced family fire drills and your fire evacuation plan.
- Your escape routes, meeting points and other details are known and understood by all family members.
- Attic, roof, eaves and foundation vents are screened and in good condition.
- Silt foundations and decks are enclosed, screened or walled up.
- Trash and debris accumulations are removed from the defensible space.

J. Vegetation Control: Any new construction, alteration, or change of use of a habitable structure shall be required to establish a minimum thirty (30') foot defensible space around the perimeter. Property owners shall be responsible for maintaining the defensible space, unless such responsibility is transferred to another party through a binding contract. All accessory structures within the defensible space must meet applicable fire resistive construction standards for structures as established by the building codes adopted by Elmore County.

K. General Roadway and Property Access Requirements Related to the WUI: The minimum standards listed shall be required:

1. If an abutting public street or approved private road meets the standards for the defensible space as set forth above, the width of such roadway shall be counted as part of the defensible space; and
2. All areas within five (5') feet adjacent to private roads and driveways shall be cleared of vegetation; and

3. Single specimens of trees, ornamental vegetation, cultivated ground cover (such as green grass, ivy, succulents, or similar plants), or native grasses and weeds trimmed to a maximum height of six (6") inches are allowed provided any such plants do not form a means of readily transmitting fire; and
 4. For driveways, all areas within five (5') feet of each side of the driveway shall be cleared; and
 5. For private roads, the entire width of the private road easement shall be cleared. All vegetation shall be cleared from within thirty-six (36") inches of any above grade (overhead) electrical distribution and transmission lines; and
 6. All vegetation shall be cleared from within ten (10') radial feet of any non-insulated energized electrical conductor and associated live parts. Cultivated ground cover (such as green grass, ivy, succulents, or similar plants), or native grasses and weeds trimmed to a maximum height of six (6") inches are allowed provided any such plants do not form a means of readily transmitting fire. It is not the intent of this section to require an owner to relocate existing habitable structures, driveways, or utilities, nor to require an owner to remove vegetation from an abutting property.
- L. Private Roads and Property Access Requirements Related to the WUI. Vehicular turnouts for emergency vehicles shall be required on all new private roads. Such turnouts shall be spaced at a maximum interval of seven hundred feet (700') and shall be a minimum of eight (8') feet wide and thirty (30') feet in length or a seventy (70') foot radius cul-de-sac. Road construction shall meet the private road standards as set forth in this Ordinance. Maintenance of the private road shall include vegetation control as specified in this Section.
- M. Access to New Subdivisions located in WUI areas shall be served by an interconnected system of roadways and/or fire accesses such that emergency vehicles can travel to the lots from two (2) directions.
1. All subdivisions shall provide fire flow as adopted by the applicable fire authority; and
 2. The appropriate fire authority shall provide a written statement to the Department approving such fire flows. The fire flow shall be an approved drafting site, storage tanks, pond, hydrants etc. as deemed acceptable by the appropriate fire authority. Pumper access points shall be designed to all weather specifications and shall be capable of holding seventy thousand (70,000) pound loads.
- N. Alternative Development Proposals within the WUI area. The Director may allow, or recommend allowance to the Commission and/or Board, an alternative development proposal when the overall design, as proposed by the applicant, meets or exceeds

the intent and the requirements of this Chapter and shall not be detrimental to public health, safety, and welfare or increase possibility of wildfire damage.

CHAPTER 2 – FLOOD DAMAGE PREVENTION

Sections:

- 8-2-1: Statutory Authorization, Fact, Purpose and Objectives**
- 8-2-2: General Provisions**
- 8-2-3: Administration**
- 8-2-4: Provisions for Flood Hazard Reduction**

Section 8-2-1: Statutory Authorization, Fact, Purpose and Objectives:

- A. Statutory Authority: The Legislature of the State of Idaho, pursuant to Idaho Statute §§ 46-1020 through 46-1024, authorizes local governments to adopt floodplain management ordinances that identify floodplains and minimum floodplain development standards to minimize flood hazards and protect human life, health, and property.
- B. Fact:
 - 1. The flood hazard areas of Elmore County are subject to periodic inundation that results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood relief and protection, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
 - 2. These flood losses are caused by structures in flood hazard areas, which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages, and by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities.
 - 3. Local government units have the primary responsibility for planning, adopting and enforcing land use regulations to accomplish proper floodplain management.
- C. Purpose:
 - 1. Protect human life, health, and property;
 - 2. Minimize damage to public facilities and utilities such as water purification and sewage treatment plants, water and gas mains, electric, telephone lines, sewer lines, streets, and bridges located in floodplains;
 - 3. Help maintain a stable tax base by providing for the sound use and development of flood prone areas;
 - 4. Minimize expenditure of public money for costly flood control projects;

5. Minimize the need for rescue and emergency services associated with flooding and generally undertaken at the expense of the general public;
6. Minimize prolonged business interruptions;
7. Ensure potential buyers are notified the property is in an area of special flood hazard; and
8. Ensure those who occupy the areas of special flood hazard assume responsibility for their actions.

D. Objectives and Methods of Reducing Flood Losses: In order to accomplish its purpose, this Chapter includes methods and provisions to:

1. Require that development that is vulnerable to floods, including structures and facilities necessary for the general health, safety, and welfare of citizens, be protected against flood damage at the time of initial construction;
2. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which increase flood heights, velocities, or erosion;
3. Control filling, grading, dredging, and other development which may increase flood damage or erosion;
4. Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or that may increase flood hazards to other lands;
5. Preserve and restore natural floodplains, stream channels, and natural protective barriers which carry and store flood waters.

Section 8-2-2: General Provisions:

- A. Lands to Which This Chapter Applies: This Chapter shall apply to all Special Flood Hazard Areas within the jurisdiction of Elmore County. Nothing in this Chapter is intended to allow uses or structures that are otherwise prohibited by the Ordinance.
- B. Basis for Area of Special Flood Hazard: The Special Flood Hazard Areas identified by the Federal Emergency Management Agency in its Flood Insurance Study (FIS) for Elmore County, dated, March 15, 1994, with accompanying Flood Insurance Rate Maps (FIRM) or Digital Flood Insurance Rate Maps (DFIRM), and other supporting data, are adopted by reference and declared a part of this Ordinance. The FIS and the FIRM are on file at the Department and Clerk offices.

- C. Establishment of Floodplain Development Permit: A Floodplain Development Permit shall be required in conformance with the provisions of this Chapter prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of this Chapter.
- D. Compliance: No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this Chapter and other applicable Ordinance regulations.
- E. Abrogation and Greater Restrictions: This Chapter shall not in any way repeal, abrogate, impair, or remove the necessity of compliance with any other laws, ordinances, regulations, easements, covenants, or deed restrictions, etc. However, where this Chapter and another conflict or overlap, whichever imposes more stringent or greater restrictions shall control.
- F. Interpretation: In the interpretation and application of this Chapter all provisions shall be:
 - 1. Considered as minimum requirements;
 - 2. Liberally construed in favor of the governing body; and
 - 3. Deemed neither to limit nor repeal any other powers granted under state statutes.
- G. Warning and Disclaimer of Liability: The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This Chapter does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This Chapter shall not create liability on the part of Elmore County or by any officer or employee thereof for flood damages that result from reliance on this Chapter or an administrative decision lawfully made hereunder.
- H. Penalties for Violation: No structure or land shall hereafter be located, extended, converted, or altered unless in full compliance with the terms of this Chapter and other applicable regulations. Violation of the provisions of this Chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions shall constitute a violation of this Ordinance.

Section 8-2-3: Administration:

- A. Designation of Floodplain Ordinance Administrator: The Elmore County Land Use and Building Department Director hereinafter referred to as the “Floodplain Administrator”, shall administer and implement the provisions of this Chapter.

B. Duties and Responsibilities of the Floodplain Administrator: The Floodplain Administrator shall perform, but not be limited to, the following duties:

1. Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this Chapter have been satisfied.
2. Review all proposed development within Special Flood Hazard Areas to assure that all necessary local, state and federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
3. Notify adjacent communities and the Idaho Department of Water Resources State Coordinator for the National Flood Insurance Program (NFIP) prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
4. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.
5. Prevent encroachments into floodways and flood fringe areas unless the certification and flood hazard reduction provisions of this Chapter are met.
6. Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of this Chapter.
7. Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of this Chapter.
8. Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of this Chapter.
9. When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of this Chapter.
10. Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or flood fringe areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

11. When Base Flood Elevation (BFE) data has not been provided in accordance with the provisions of this Chapter, obtain, review, and reasonably utilize any BFE data, along with floodway data or flood fringe area data available from a federal, state, or other source, including data developed pursuant to this Chapter, in order to administer the provisions of this Chapter.
12. When Base Flood Elevation (BFE) data is provided but no floodway or flood fringe area data has been provided in accordance with the provisions of this Chapter, obtain, review, and reasonably utilize any floodway data or flood fringe area data available from a federal, state, or other source in order to administer the provisions of this Chapter.
13. When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area is above the Base Flood Elevation (BFE), advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file.
14. Permanently maintain all records that pertain to the administration of this Chapter and make these records available for public inspection in accordance with the Idaho Public Records Law.
15. Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local Chapter and the terms of the permit.
16. Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this Chapter, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a violation of this Ordinance.
17. Revoke floodplain development permits in accordance with this Ordinance.
18. Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community.
19. Follow through with corrective procedures of this Chapter.
20. Review, provide input, and make recommendations for variance requests.

21. Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with the provisions of this Chapter, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.

22. Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

C. Floodplain Development Application, Permit, and Certification Requirements:

1. Application Requirements: Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:

a. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

- i. the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
- ii. the boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Article III, Section B, or a statement that the entire lot is within the Special Flood Hazard Area;
- iii. the flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in this Chapter;
- iv. the boundary of the floodway(s) or flood fringe area(s) as determined in this Chapter;
- v. the Base Flood Elevation (BFE) where provided as set forth this Chapter; and
- vi. the old and new location of any watercourse that will be altered or relocated as a result of proposed development.

b. Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:

- i. Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;

- ii. Elevation in relation to mean sea level to which any non-residential structure in Zone A, AE, AH, AO, or A1-30 will be floodproofed; and
 - iii. Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.
- c. If floodproofing, a Floodproofing Certificate (FEMA Form 086-0-33) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.
- d. A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
 - i. The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
 - ii. Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with this Chapter, when solid foundation perimeter walls are used in Zones A, AE, AH, AO, and A1-30.
- e. Usage details of any enclosed areas below the lowest floor.
- f. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
- g. Certification that all other local, state and federal permits required prior to floodplain development permit issuance have been received.
- h. Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of this Chapter are met.
 - i. A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and
 - ii. A map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

2. Permit Requirements. The Floodplain Development Permit shall include, but not be limited to:

- a. A complete description of all the development to be permitted under the floodplain development permit (i.e. house, garage, pool, septic, bulkhead, cabana, pole barn, chicken coop, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.).
- b. The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in this Chapter.
- c. The Flood Protection Elevation required for the reference level and all attendant utilities.
- d. The Flood Protection Elevation required for the protection of all public utilities.
- e. All certification submittal requirements with timelines.
- f. A statement that no fill material or other development shall encroach into the floodway or flood fringe area of any watercourse, as applicable.
- g. The flood opening requirements, if in Zones A, AE, AH, AO, or A1-30.

3. Certification Requirements.

a. Elevation Certificates

- i. An Elevation Certificate (FEMA Form 86-0-33) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.
- ii. A final as-built Finished Construction Elevation Certificate (FEMA Form 86-0-33) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of

Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy. The Finished Construction Elevation Certificate certifier shall provide at least two (2) photographs showing the front and rear of the building taken within ninety (90) days from the date of certification. The photographs must be taken with views confirming the building description and diagram number provided in Section A. To the extent possible, these photographs should show the entire building including foundation. If the building has split-level or multi-level areas, provide at least two (2) additional photographs showing side views of the building. In addition, when applicable, provide a photograph of the foundation showing a representative example of the flood openings or vents. All photographs must be in color and measure at least 3" x 3". Digital photographs are acceptable.

- b. Floodproofing Certificate: If non-residential floodproofing is used to meet the Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
- c. If a manufactured home is placed within Zone A, AE, AH, AO, or A1-30 and the elevation of the chassis is more than thirty-six (36) inches in height above grade, an engineered foundation certification is required in accordance with the provisions of this Chapter.
- d. If a watercourse is to be altered or relocated, the following shall all be submitted by the permit applicant prior to issuance of a floodplain development permit: a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation

and an Idaho Stream Channel Alteration Permit approval shall be provided by the applicant to the Floodplain Administrator.

- e. Certification Exemptions. The following structures, if located within Zone A, AE, AH, AO, or A1-30, are exempt from the elevation/floodproofing certification requirements specified in items a. and b. of this subsection:
 - i. Recreational Vehicles meeting requirements of Section 8-2-4 B.5.a.;
 - ii. Temporary Structures meeting requirements of Section 8-2-4 B.6.; and
 - iii. Accessory Structures less than 200 square feet meeting requirements of Section 8-2-4 B.7.
- 4. Determinations for existing buildings and structures: For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:
 - a. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
 - b. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
 - c. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
 - d. Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the adopted Idaho Building Code and this Ordinance are required.
- D. Violations and Corrective Procedures: Violations of this Chapter shall be subject to the enforcement, violation and penalties of this Ordinance.
- E. Variance Procedures:

1. The Commission and Board shall hear and decide requests for variances from the requirements of this Chapter.
2. Variances may be issued for:
 - a. the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
 - b. functionally dependent facilities, if determined to meet the definition as stated in this Chapter, provided provisions of Section 8-2-4 E.9.b., c., and e., have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
 - c. any other type of development, provided it meets the requirements of this Section.
3. In passing upon variances, the Commission and/or Board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this Ordinance, and:
 - a. the danger that materials may be swept onto other lands to the injury of others;
 - b. the danger to life and property due to flooding or erosion damage;
 - c. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. the importance of the services provided by the proposed facility to the community;
 - e. the necessity to the facility of a waterfront location as defined under this Chapter as a functionally dependent facility, where applicable;
 - f. the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - g. the compatibility of the proposed use with existing and anticipated development;
 - h. the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

- i. the safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - k. the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
4. A written report addressing each of the above factors shall be submitted with the application for a variance.
5. Upon consideration of the factors listed above and the purposes of this Chapter, the Commission and/or Board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this Chapter.
6. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
7. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of Idaho upon request.
8. Conditions for Variances:
 - a. Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.
 - b. Variances shall not be issued within any designated floodway or flood fringe area if the variance would result in any increase in flood levels during the base flood discharge.
 - c. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - d. Variances shall only be issued prior to development permit approval.

- e. Variances shall only be issued upon:
 - i. a showing of good and sufficient cause;
 - ii. a determination that failure to grant the variance would result in exceptional hardship; and
 - iii. a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- 9. A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met:
 - a. The use serves a critical need in the community.
 - b. No feasible location exists for the use outside the Special Flood Hazard Area.
 - c. The reference level of any structure is elevated or floodproofed to at least the Flood Protection Elevation.
 - d. The use complies with all other applicable federal, state and local laws.
 - e. The County has notified the State NFIP Coordinator of the Idaho Department of Water Resources of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.
- 10. Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Idaho Statute 67-6535.

Section 8-2-4: Provisions for Flood Hazard Reduction

- A. General Standards: In all Special Flood Hazard Areas the following provisions are required:
 - 1. All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
 - 2. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the Technical Bulletin two (2), Flood Damage-Resistant Materials Requirements, and available from the Federal Emergency Management Agency.

3. All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
4. All new electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the Flood Protection Elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
7. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
8. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:
 - a. shall be constructed entirely of flood resistant materials at least to the Flood Protection Elevation; and
 - b. shall include, in Zones A, AE, AH, AO, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
 - i. A minimum of two flood openings on different sides of each enclosed area subject to flooding;
 - ii. The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
 - iii. If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
 - iv. The bottom of all required flood openings shall be no higher than one (1) foot above the interior or exterior adjacent grade;

- v. Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
 - vi. Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.
9. Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this Chapter, shall meet the requirements of “new construction” as contained in this Chapter.
 10. Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, flood fringe area, or stream setback, provided there is no additional encroachment below the Flood Protection Elevation in the floodway, flood fringe area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this Chapter.
 11. New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in this Chapter. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the Flood Protection Elevation and certified in accordance with the provisions of this Chapter.
 12. All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage, and determined to be reasonably safe from flooding.
 13. All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
 14. All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
 15. All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

16. When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
 17. When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest Base Flood Elevation (BFE) shall apply.
- B. Specific Standards: In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, the following provisions:
1. Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Flood Protection Elevation, as defined in this Chapter.
 2. Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Flood Protection Elevation, as defined in this Chapter. Structures located in A, AE, AH, AO, and A1-30 Zones may be floodproofed to the Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AH and AO Zones, the floodproofing elevation shall be in accordance with this Chapter. A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in this Chapter, along with the operational plan and the inspection and maintenance plan.
 3. Manufactured Homes.
 - a. New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Flood Protection Elevation, as defined in this Chapter.
 - b. Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the Idaho Division of Building Safety's "Idaho Manufactured Home Installation Standard" in accordance with Section 44-2201(2), Idaho Statute. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis

shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.

- c. All enclosures or skirting below the lowest floor shall meet the requirements of this Chapter.
- d. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

4. Additions/Improvements.

- a. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - i. not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
 - ii. a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- b. Additions to post-FIRM structures that are a substantial improvement with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.
- c. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - i. not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
 - ii. a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- d. Any combination of repair, reconstruction, rehabilitation, addition, or improvement of a building or structure, the cumulative cost of which equals or exceeds 50 percent (50%) of the market value of the structure before the

improvement or repair is started, must comply with the standards for new construction. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:

- i any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions; or
- ii any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

5. Recreational Vehicles. Recreational vehicles shall be either:

a. Temporary Placement.

- i. be on site for fewer than one hundred eighty (180) consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or

b. Permanent Placement.

- i. Recreational vehicles that do not meet the limitations of Temporary Placement shall meet all the requirements for new construction, as set forth in this Chapter.

6. Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

- a. a specified time period for which the temporary use will be permitted. Time specified may not exceed six (6) months, renewable up to one (1) year;
- b. the name, address, and phone number of the individual responsible for the removal of the temporary structure;
- c. the time frame prior to the event at which a structure will be removed (i.e., immediately upon flood warning notification);
- d. a copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and

- e. designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.

7. Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, elevation or floodproofing certifications are required for all accessory structures in accordance with this Chapter, and the following criteria shall be met:

- a. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
- b. Accessory structures shall not be temperature-controlled;
- c. Accessory structures shall be designed to have low flood damage potential;
- d. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- e. Accessory structures shall be firmly anchored in accordance with the provisions of this Chapter;
- f. All service facilities such as electrical shall be installed in accordance with the provisions of this Chapter; and
- g. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Flood Protection Elevation in conformance with the provisions of this Chapter.

8. Tanks: When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

- a. Underground tanks: Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.
- b. Above-ground tanks, elevated: Above-ground tanks in flood hazard areas shall be attached to and elevated to or above the design flood elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area.
- c. Above-ground tanks, not elevated: Above-ground tanks that do not meet the elevation requirements of this Chapter shall be permitted in flood hazard areas provided the tanks are anchored or otherwise designed and

constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.

- d. Tank inlets and vents: Tank inlets, fill openings, outlets and vents shall be:
 - i. at or above the flood protection elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the base flood; and
 - ii. anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.

9. Construction of Below-Grade Crawlspace.

- a. The interior grade of a crawlspace must not be below the BFE and must not be more than two (2) feet below the exterior lowest adjacent grade (LAG).
- b. The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed four (4) feet at any point.
- c. There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event.
- d. The velocity of floodwaters at the site should not exceed five (5) feet per second for any crawlspace.

10. Other Development in regulated floodways and flood fringe.

- a. Fences: Fences that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, in regulated floodways and flood fringe shall meet the limitations of this Chapter.
- b. Retaining walls, sidewalks, and driveways. Retaining walls, bulkheads, sidewalks, and driveways that involve the placement of fill in regulated floodways and flood fringe shall meet the limitations of this Chapter.
- c. Roads and watercourse crossings. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings, and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways and flood fringe shall meet the limitations this Chapter.

- d. Drilling Water, Oil, and/or Gas Wells: Drilling Water, Oil, and/or Gas Wells including fuel storage tanks, apparatus, and any equipment at the site that encroach into regulated floodways and flood fringe shall meet the limitations of this Chapter.
- e. Docks, piers, and boat ramps. Docks, piers, boat ramps, marinas, moorings, decks, docking facilities, port facilities, shipbuilding, and ship repair facilities that encroach into regulated floodways and flood fringe shall meet the limitations of this Chapter.

C. Standards for Floodplains without Established Base Flood Elevations. Within the Special Flood Hazard Areas designated as A Zones (also known as Unnumbered A Zones) and established in Section 8-2-2 B., where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of Section 8-2-4 A. shall apply:

1. No encroachments, including fill, new construction, substantial improvements or new development shall be permitted, unless a determination of the Base Flood Elevation (BFE) is provided.
2. The BFE used in determining the Flood Protection Elevation (FPE) shall be determined based on the following criteria:
 - a. When Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in this Chapter.
 - b. When floodway or flood fringe data is available from a federal, state, or other source, all new construction and substantial improvements within floodway and flood fringe areas shall also comply with the requirements of this Chapter.
 - c. All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference in accordance with this Chapter.
 - d. When Base Flood Elevation (BFE) data is not available from a federal, state, or other source as outlined above, the reference level shall be elevated or floodproofed (non-residential) to or above the Flood Protection Elevation, as defined in this Chapter. All other applicable provisions of this Chapter shall also apply.

- D. Standards for Riverine Floodplains with Base Flood Elevations but without Established Floodways or Flood Fringe Areas. Along rivers and streams where Base Flood Elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor flood fringe areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:
1. Standards of Sections 8-2-4 A. and B.; and
 2. Until a regulatory floodway or flood fringe area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood at any point within the community.
- E. Floodways and Flood Fringe Areas: Areas designated as floodways or flood fringe areas are located within the Special Flood Hazard Areas established in this Chapter. The floodways and flood fringe areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Section 8-2-4 A. and B., shall apply to all development within such areas:
1. No encroachments, including fill, new construction, substantial improvements, and other developments shall be permitted unless:
 - a. it is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or
 - b. a Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained within six months of completion of the proposed encroachment.
 2. If Section 8-2-5 E.1. is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this Chapter.
 3. Manufactured homes may be permitted provided the following provisions are met:
 - a. the anchoring and the elevation standards of Section 8-2-4 B.3.; and
 - b. the encroachment standards of Section 8-2-4 E.1.

F. Standards for Areas of Shallow Flooding (Zone AO, AH, AR/AO, or AR/AH). Located within the Special Flood Hazard Areas established in this Chapter, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Section 8-2-4 A. and B., all new construction and substantial improvements shall meet the following requirements:

1. The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of two (2) feet, above the highest adjacent grade; or at least two (2) feet above the highest adjacent grade if no depth number is specified.
2. Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Section 8-2-4 F.1. so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with Sections 8-2-3 C.3., and Section 8-2-4 B.2.
3. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

CHAPTER 3 – WELLHEAD PROTECTION

Sections:

- 8-3-1: Purpose and Goals
- 8-3-2: Applicability
- 8-3-3: Establishment of Wellhead Zones Established
- 8-3-4: Notice of Proposed Action to Operator of Public or Community Water Supply
- 8-3-5: Allowed Uses and Notice Requirements by Zone

Section 8-3-1: Purpose and Goals:

- A. It is the purpose of this Chapter to promote the public health, safety, and general welfare of the residents of Elmore County by minimizing public and private losses due to contamination of the public water supply, through a formalized ground water protection/pollution abatement and control plan.
- B. The specific goals of the wellhead protection regulations, and the formalized ground water protection/pollution abatement and control plan are to:
 - 1. Protect public water systems; and
 - 2. Protect human life and health; and
 - 3. Ensure that the public is provided with a sustainable safe potable water supply; and
 - 4. Minimize expenditure of public money for pollution remediation projects; and
 - 5. Minimize regulations and land use; and
 - 6. Minimize business interruptions.

Section 8-3-2: Applicability:

- A. This Chapter and these regulations contained herein shall only apply to public and private water systems regulated by the Division of Environmental Quality areas within a Public Water System's Source Water Protection Area, as established and certified by the Idaho Department of Environmental Quality, within the jurisdiction of Elmore County, Idaho and registered with the Elmore County Recorder.
- B. Private or individual wells shall be exempt from this Chapter.

Section 8-3-3: Establishment of Wellhead Zones Established:

- A. This Chapter shall establish four (4) wellhead zones:
 - 1. Wellhead Protection Zone IA, defined as a minimum fixed radius extending no less than one hundred (100') feet radius from the wellhead supplying potable water to the public water supplies; and
 - 2. Wellhead Protection Zone IB, defined as a three (3) year Time of Travel district (TOT) as defined in this Title, which is the time required for ground water to move in the ground from a specific point to a well; and
 - 3. Wellhead Protection Zone II, defined as six (6) year Time of Travel district (TOT); and
 - 4. Wellhead Protection Zone III, defined as a ten (10) year Time of Travel district (TOT).
- B. Source Water Delineation Maps for the Wellhead Zones are located with the Idaho Department of Environmental Quality and in the Elmore County Ground Water Quality Improvement and Drinking Source Protection Plan.

Section 8-3-4: Notice of Proposed Action to Operator of Public or Community Water Supply:

Whenever there is a request which requires approval from the Commission and/or Board for land lying within a wellhead protection zone, written notice of the hearing shall be given to the entity operating the public or community water supply within that district. The Commission and/or Board may require a granting of easements for monitoring wells if the Commission and/or Board deems it appropriate for protection of the public water supply.

Section 8-3-5: Allowed Uses and Notice Requirements by Zone:

- A. Wellhead Protection Zone IA: Uses permitted within Zone IA shall be limited to:
 - 1. Necessary public water supply wellhead equipment including, wellhead facility buildings, water storage tanks, disinfections equipment, disinfections chemical storage and landscaping as required by this Ordinance. All other uses shall be prohibited.
- B. Wellhead Protection Zone IB: Notice of proposed action to operator of public or community water supply shall be required in a Wellhead Protection Zone IB if any of the following uses are proposed within a wellhead Zone IB:
 - 1. Sanitary landfills; and

2. Livestock confinement operations; and
 3. Hazardous waste disposal facility; and
 4. Injection well is a prohibited use except for the following:
 - a. Closed systems or as approved by IDEQ.
 5. All manufacturing or industrial businesses involving the collection, handling, manufacture, use, storage, transfer or disposal of any hazardous solid or liquid material or waste having potential impact on ground water; and
 6. Existing sewer lines shall not be closer than one hundred (100') feet of a wellhead or of a new sanitary system and sewer lines shall not be closer than one hundred fifty (150') feet of a wellhead; and
 7. Existing septic tanks or drain fields shall not be closer than one hundred (100') feet of a wellhead and new installation of septic tanks or drain fields shall not be closer than two hundred (200') feet away from the wellhead; and
 8. Junk or salvage yards; and
 9. Disposal of waste oil, oil filters, tires and all other petroleum products; and
 10. Land use activities posing a hazard or threat to existing ground water quality as deemed by the Director, Commission and/or Board during review process of applications may be prohibited.
- C. Wellhead Protection Zone II: Notice of proposed action to operator of public or community water supply shall be required in a Wellhead Protection Zone IB if any of the following uses are proposed within a wellhead Zone II:
1. Sanitary landfills; and
 2. Hazardous waste disposal facility; and
 3. Injection well is a prohibited use except for the following:
 - a. Deep well injection (below eighteen (18') feet in depth):
 - (1) Geothermal heat; or
 - (2) Heat pump return; or
 - (3) Cooling water return;

b. Shallow well injection only (less than eighteen (18') feet in depth), including:

- (1) Storm runoff; or
- (2) Agricultural runoff wastewater; or
- (3) Special drainage water; or
- (4) Aquifer recharge; or
- (5) Aquifer remediation; or
- (6) Septic systems (general).

4. Land use activities posing a hazard or threat to existing ground water quality as deemed by the Director, Commission and/or Board during review process of applications may be prohibited.

D. Wellhead Protection Zone III: Notice of proposed action to operator of public or community water supply shall be required in a Wellhead Protection Zone IB if any of the following uses are proposed within a wellhead Zone III:

1. Injection wells except for the following:

a. Deep well injection (below eighteen (18') feet in depth):

- (1) Geothermal heat; or
- (2) Heat pump return; or
- (3) Cooling water return.

b. Shallow well injection only (less than eighteen (18') feet in depth):

- (1) Storm runoff; or
- (2) Agricultural runoff wastewater; or
- (3) Special drainage water; or
- (4) Aquifer recharge; or
- (5) Aquifer remediation; or
- (6) Septic systems (general).

2. Land use activities posing a hazard or threat to existing ground water quality as deemed by the Director, Commission and/or Board during review process of applications may be prohibited.

CHAPTER 4 - NUISANCE

Sections:

- 8-4-1: General Enforcement**
- 8-4-2: Definitions**
- 8-4-3: Enforcement, Violations and Penalties**

Section 8-4-1: 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 Statute and this Ordinance.
- B. 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.
- C. 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 8-4-2: Definitions:

ABATABLE NUISANCES: Enumerated nuisance conditions that may be abated by the city in accordance with the provisions of this chapter, specifically including, without limitation, the following nuisance conditions:

- A. Nuisance materials leaked, drained, seeped, dripped, sprayed, or dumped onto the ground on private property;
- B. Nuisance weeds;
- C. Graffiti; or
- D. Snow or ice on a public sidewalk abutting or adjoining any privately owned premises.

E. Personal property on any portion of a public sidewalk, except as specifically allowed by law or by written permit issued by the city or other governing authority.

GENERAL NUISANCES: Nuisance conditions that may lead to criminal charges without any prior attempt by the city to obtain abatement thereof, specifically including, without limitation, nuisance materials leaked, drained, seeped, dripped, sprayed, or dumped onto the ground on public property, or any other nuisance condition not enumerated in the definition of "abatable nuisances".

GRAFFITI: Any inscription, work, figure, symbol, drawing, mark, or design that is marked, etched, scratched, drawn, or painted on any real or personal property or improvement, including, but not limited to, walls, fences, gates, pavement, buildings, rocks, trees, bridges, streets, sidewalks, and/or signs, whether such property is public, private, temporary, or permanent, without the consent of the owner of such property or the owner's authorized agent, and which inscription, work, figure, symbol, drawing, mark, or design is visible from any publicly accessible location.

JUNK VEHICLE: Any vehicle, or parts thereof, which:

- A. Cannot be safely operated under its own power;
- B. Is missing any one of the following: foot brakes, hand brakes, headlights, taillights, horn, muffler, rearview mirrors, windshield wipers, or adequate fenders;
- C. Has been declared salvage, or has been physically damaged to the extent that the cost of parts and labor minus the salvage value would make it uneconomical to repair or rebuild such vehicle; or
- D. Is otherwise in a wrecked, partially dismantled, inoperative, or dilapidated condition.

NUISANCE: Anything which unreasonably injures or offends the health or senses; obstructs the free passage, comfortable enjoyment, or customary use of public or private property; or creates an actual or potential safety, health, or fire hazard.

NUISANCE MATERIALS: Hazardous, noxious, dangerous, or offensive materials, including, but not limited to, oil, gasoline, fuel, antifreeze, paint, pesticides, or herbicides.

WEEDS: Undesirable plant growth, whether living or dead, that is unkempt, unsightly, deleterious and/or injurious to the public. This definition shall not include cultivated grasses and pastures, though such vegetation may be declared a nuisance where otherwise appropriate.

Section 8-4-3: 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, 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 nuisance 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, Code Enforcement Officer 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 nuisance 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 fifteen (15) day opportunity to correct the violation(s) after receipt of notice. This Notice may be made by personal service or certified mail, return receipt requested. The Code Enforcement Officer may extend the fifteen (15) day requirement for good cause, but under no circumstances shall the time period be extended for public health and safety issues for longer than ninety (90) days.
3. A follow up inspection is performed to verify that the violation(s) has/have been corrected after the fifteen (15) days from receipt of notice.
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 IDAHO STATUTE §§ 31-604, 52-202 and 52-205. Said costs shall attach as a lien upon the subject property if unpaid.

G. Remedies and Sanctions not Exclusive: The remedies and sanctions set forth in this Chapter shall not be construed so as to exclude any other remedies or sanctions, either criminal or civil, elsewhere prohibited by this Chapter.

H. Severability: The provisions of this chapter are severable, and if any sentence, section or other part of this chapter shall be found to be invalid, such invalidity shall not affect the remaining provisions and the remaining provisions shall continue in full force and effect.

I. Chronic Nuisance Property:

1. Purpose: Chronic nuisance properties present grave health, safety and welfare concerns and occur when the property owners or persons in charge of such properties fail to take corrective action to abate the nuisance conditions with more than one (1) violation notice. Chronic nuisance properties have a tremendous negative impact upon the quality of life, safety and health of the neighborhoods where they are located. Additionally, chronic nuisance properties are a financial burden to the county; repeated calls for service to the properties because of the nuisance activities that repeatedly occur or exist on such properties.

This chapter is a means to ameliorate those conditions by providing a process for abatement and hold responsible the owners or persons in charge of such properties. This remedy is not an exclusive remedy available under any state or local laws and may be used in conjunction with such other laws.

a. Chronic Nuisance Property Violation:

i. Any property within the unincorporated areas which becomes a chronic nuisance property is in violation of this section and subject to its remedies.

ii. Any person(s) who permits property under his or her ownership or control to be a chronic nuisance property shall be in violation of this section and subject to its remedies.

2. Procedure:

a. When the code enforcement officer, or his designee, receives documentation confirming the occurrence of three (3) or more nuisance activities within a ninety (90) day period on the property, the code enforcement officer, or his designee, may review such reports with the Director to determine whether they describe the nuisance activities enumerated above. For the purposes of this section, an arrest or conviction of an individual for the above described nuisance activities shall not be necessary to qualify as a nuisance. Upon a finding of the occurrence of three (3) or more nuisance activities within a ninety (90) day period on the property, the code enforcement officer, or his designee, shall notify a property owner at the address shown in the Elmore County Assessor records and shall notify the person

in charge of the property in writing that the property is in danger of being declared a chronic nuisance property.

b. The notice shall contain:

- i. The street address or a legal description sufficient for identification of the property;
- ii. A concise description of the nuisance activities that exist, or that have occurred on the property;
- iii. A demand that the owner or person in charge respond to the code enforcement officer, or his designee, within ten (10) days of receipt of the notice to discuss the nuisance activities and create a plan to abate the chronic nuisance;
- iv. Offer the person in charge an opportunity to abate the nuisance activities giving rise to the violation; and
- v. A statement describing that if legal action is sought, the property could be subject to closure, civil penalties and cost assessed up to one hundred dollars (\$100.00) per day after the notice of the chronic nuisance is received.
- vi. Such notice shall be either: a) personally served; or b) delivered by certified and first-class mail to the person in charge of the property, with a copy mailed certified and first class to the owner indicated by the Elmore County assessor, if different than the person in charge of the property.
- vii. If the person in charge fails to respond to the notice within the time prescribed, the code enforcement officer, or his designee, shall post such notice at the property. If the person in charge fails to respond to the notice of chronic nuisance, the matter shall be referred to the office of the county attorney for further action.
- viii. If the person in charge responds as required by the notice and agrees to abate the nuisance activity, the code enforcement officer, or his designee, and person in charge and/or property owner, may work out an agreed upon course which would abate the nuisance activity. If an agreed course of action does not result in the abatement of the nuisance activities or if no agreement concerning abatement is reached, the matter shall be forwarded to the office of the county attorney for enforcement action.

- ix. It is a defense to an action for chronic nuisance property that the person in charge at all material times could not, in the exercise of reasonable care or diligence, determine that the property had become chronic nuisance property, or could not in spite of the exercise of reasonable care and diligence, control the conduct leading to the determination that the property is chronic nuisance property.

J. Commencement of Action; Enforcement:

1. Once the matter is referred to the county attorney, the county attorney shall immediately review and make a determination whether to initiate legal action authorized under this section or state statute, or may seek alternative forms of abatement of the nuisance activity. The county attorney may initiate legal action on the chronic nuisance property and seek civil penalties and costs in district court for the abatement of the nuisance.
2. In determining whether a property shall be deemed a chronic nuisance property and subject to the court's jurisdiction, the county shall have the initial burden of proof to show by a preponderance of the evidence that the property is a chronic nuisance property. The county may submit official sheriff reports, code enforcement reports and other affidavits outlining the information that led to the investigation of nuisance activities occurring or existing at the property. The failure to prosecute an individual, or the fact no one has been convicted of a crime is not a defense to a chronic nuisance action.
3. Once a district court determines the property to be a chronic nuisance under this section the court may impose a civil penalty against any or all of the persons in charge of the property and/or the owner of the property, and may order any other relief deemed appropriate. A civil penalty may be assessed for up to one hundred dollars (\$100.00) per day for each day the nuisance activity continues to occur following the date of the original notice by the code enforcement officer or sheriff department, as described above. In assessing the civil penalty, the court may consider the following factors, citing to those found applicable:
 - a. The actions taken by the person in charge and/or owner to mitigate or correct the nuisance activity;
 - b. The financial condition of the persons in charge;
 - c. The cost to the county of investigating and correcting or attempting to correct the condition;
 - d. The repeated or continuous nature of the nuisance activity;
 - e. The statements of the neighbors or those affected by the nuisance activity;
 - f. Any other factor deemed relevant by the court.
4. The district court which determines the property to be a chronic nuisance property shall also assess costs against the person in charge and/or owner in the amount it costs the county to abate, or attempt to abate, the nuisance activity.

5. If the district court determines the property to be a chronic nuisance property, the district court may order the property closed and secured against all unauthorized access, use and occupancy for a period of six (6) months, and may impose a civil penalty and costs.
 6. Once a determination has been made by the district court that the chronic nuisance property shall be subject to closure, the court may authorize the county to physically secure the premises and initiate such closure. Costs for such closure shall be submitted to the court for review. Any civil penalty and/or costs awarded to the county may be filed with the county treasurer, who shall cause the same to be filed as a lien on the property with the Elmore County assessor.
 7. The district court shall retain jurisdiction during any period of closure or abatement of the property.
- K. County Abatement Option: Nuisances which remain unabated after notice, may, at the option of the county, be removed, abated or destroyed by the county or its agents, after the following steps have been taken:
- i. If after fifteen (15) days from the date a written violation notice is received by first-class and certified mail to the property's owner's address as shown in the current official Elmore County assessor records, no abatement of the nuisance has occurred, the designated enforcement officer shall provide a second ten (10) day notice to be delivered to the property owner by certified mail or personal service, which shall indicate the following:
 - a. That if the property owner fails to abate the nuisance, the county shall take steps to abate the same.
 - b. That the property owner may contract with the county to abate the nuisance and pay costs of the same.
 - c. That if the county abates the nuisance, all costs and expenses of the abatement shall be billed and assessed against the property owner, and if unpaid, shall become collectible as a special assessment with property taxes.
 - d. That the property owner has a right to appear before the county Board to show cause as to why he or she should not be forced to abate or pay for abatement of the nuisance; furthermore, that if the property owner desires such a hearing, a request for hearing, in writing, shall be given to the designated enforcement officer prior to expiration of the ten (10) day notice, and that abatement by the county will proceed if the property owner has not exercised this option to request a hearing.

- e. If said certified notice is returned as undeliverable, or is unclaimed by the property owner, nothing shall preclude the county from exercising its abatement option as specified herein.
- ii. When the ten (10) day notice has expired without a request for hearing, the Board's designated enforcement officer is authorized to remove, abate or destroy the nuisance. The designated enforcement officer is authorized to utilize county personnel to abate the nuisance or to contact the Board or Sheriff in regard to contracting for an outside party to abate the nuisance.
- iii. If the county abates any nuisance under the provisions of this section, a statement of charges billed to the property owner shall be mailed by first-class and certified mail to the property owner.
- iv. If payment is not received from the property owner within thirty (30) days, the amount billed shall, in accordance with state law, be assessed as a special assessment collectable against the subject property as other state, county and municipal taxes.
- v. If the property owner requests a hearing to show cause before the Board, the hearing shall, if feasible, be placed on the agenda of the next regularly scheduled Board meeting. The decision of the Board shall be final. A ten (10) day period shall be given to the property owner after the Board decision so that the property owner shall have additional opportunity to abate the nuisance or to pursue any legal remedies or defenses at the district court level.

L. Penalty:

1. A violation of any provision of this section shall be a general misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000.00).
2. Notice of violations of this chapter shall be recorded in the office of Elmore County Recorder and shall run with the land. Once a violation has been resolved, a Notice of Release of Violation shall be recorded in the office of Elmore County Recorder.