

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

CHAPTER 6 - HEARING EXAMINER

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Section 6-6-1: Qualifications and Designation of Hearing Examiners:

- A. The Board, upon a recommendation by the Planning and Zoning Commission, shall determine if a Hearing Examiner is necessary. If the Board determines that it is necessary to utilize a Hearing Examiner, then the Board by resolution shall prescribe the minimum qualifications for Hearing Examiners, which shall include a professionally trained or licensed planners, engineers, or architects experienced in the field of planning and zoning. The Board shall designate those persons who may be appointed by the Board as Hearing Examiners, shall determine compensation and other contractual terms with Hearing Examiners, and shall have the power, subject to any contractual terms, to dismiss any Hearing Examiner.

Section 6-6-2: Referral of Applications to Hearing Examiners:

- A. Notwithstanding any provision of this Ordinance to the contrary, the Board by resolution may designate those applications of a routine nature that do not require policy decisions, as provided in Section 67-6509, Idaho Code. Applications, which may be referred to the Hearing Examiner, include subdivisions, and conditional use permits, which are in accordance with the Comprehensive Plan. Planned Community, Planned Unit Development, and Planned Unit Development District applications shall not be designated or referred to the Hearing Examiner.

- B. Applications which otherwise may be referred to the Hearing Examiner may be heard by the Commission or Board when such applications are submitted concurrently with other applications which shall be heard by the Commission or Board, except Planned Community, Planned Unit Development, and Planned Unit Development District applications which shall only be heard by the Commission and/or Board.
- C. If no Hearing Examiner is appointed, the applications determined and defined by resolution of the Board shall be referred to the Director or Commission.

Section 6-6-3: Conflict Of Interest Prohibited:

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

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

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

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

- A. Upon receipt of an application, which shall be referred to the Hearing Examiner, the Growth and Development Department Director (hereinafter referred to as "Director") or other Director's staff shall review the application for completeness. The Director may require additional information to be submitted by the applicant pursuant to provisions of this Ordinance where such information is deemed necessary to further the evaluation by the Hearing Examiner. Upon finding that the application is complete, the Director shall certify same. The Director shall refer said certified application(s) and all information attached thereto to the Hearing Examiner accompanied by a Staff report including but not limited to a summary of the application(s), compliance with applicable zoning code(s), and the Comprehensive Plan.
- B. Copies of all applications referred to the Hearing Examiner, Staff report, and the entire public record with regard thereto shall be kept in the Growth and Development Department offices and shall be made available to the public for review for the period of time specified by State Law and this Ordinance prior to any hearings of the Hearing Examiner. All applications referred to the Hearing Examiner, Hearing Examiner reports, findings, decisions, records of hearings, and other documentation related to said applications shall be kept in the public records of the Growth and Development Department.

Section 6-6-6: Conduct of Hearings:

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

Section 6-6-7: Standards and Criteria:

- A. In hearing an application, the Hearing Examiner shall apply the standards and other criteria that are applicable under this Ordinance, other ordinances, and the Comprehensive Plan and State law to a direct review of such an application by the Commission.

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

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

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

- A. The findings of fact and decision of the hearing examiner may be appealed to the Board in the manner prescribed by this Ordinance, provided a notice of appeal is timely filed as required per this title.