

CHAPTER 2

ENFORCEMENT AND ADMINISTRATIVE PROCEDURES

SECTION:

- 9-2-1: Enforcement Officer
9-2-2: Conflicts With Other Laws
9-2-3: Severability
9-2-4: Violation; Penalties

9-2-1: **ENFORCEMENT OFFICER:** An enforcing officer shall be appointed by the mayor and city council, and such officer shall be responsible for the enforcement of the provisions of this title. (Ord. 281-07, 9-4-2007)

9-2-2: **CONFLICTS WITH OTHER LAWS:** It is not intended by this title to impair or interfere with other regulations of the state, or local law, or with the private restrictions on the use of land, improvements and structures. Where this title imposes greater restrictions than that imposed by other law or private restrictions, this title shall prevail. (Ord. 281-07, 9-4-2007; amd. 2010 Code)

9-2-3: **SEVERABILITY:** If any provisions of this title or the application thereof to any persons or circumstances are held invalid, the remainder of this title or the application of provisions to other persons or circumstances shall not be affected thereby. (Ord. 281-07, 9-4-2007)

9-2-4: **VIOLATION; PENALTIES:**

- A. **Misdemeanor Violation:** Any person, firm or corporation violating any of the provisions of this title shall be deemed guilty of a misdemeanor and shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of

the provisions of this title is committed, continued or permitted. (Ord. 281-07, 9-4-2007)

- B. Penalties: Upon conviction of any violation of any of the provisions of this title, such person shall be punishable as provided in subsection 1-4A-1A of this code. (Ord. 281-07, 9-4-2007; amd. 2010 Code)

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ARTICLE A. AMENDMENTS; DEVELOPMENT AGREEMENTS

SECTION:

- 9-2A-1: General Provisions
- 9-2A-2: Authority To Initiate Amendments
- 9-2A-3: Application For Amendment
- 9-2A-4: Filing Fee
- 9-2A-5: Action By Planning And Zoning Commission And City Council
- 9-2A-6: Amendment Procedures
- 9-2A-7: Development Agreements

9-2A-1: **GENERAL PROVISIONS:** This title may be amended whenever the council deems that amendment is required for public convenience or necessity or for general welfare. Any amendment shall be enacted pursuant to this article, and for purposes of this article, including any measure to change zoning district boundaries, to establish or disestablish districts, to change district regulations, or to add, repeal or amend any other provision of this article or the whole of this title. (Ord. 281-07, 9-4-2007)

9-2A-2: **AUTHORITY TO INITIATE AMENDMENTS:** An amendment to the text of this title, including the addition of new or unlisted land uses, or to the official zoning map may be initiated by a resolution of intention by the planning and zoning commission or the city council or by application of one or more of the owners of property affected by the proposed amendment. (Ord. 281-07, 9-4-2007)

9-2A-3: **APPLICATION FOR AMENDMENT:**

- A. Applications from a property owner shall be filed with the planning and zoning commission as prescribed by said commission,

accompanied by such data and information necessary to assure the fullest presentation of the facts.

- B. No application from an owner of property for the same general purpose concerning the same property which has been denied by the city shall be received or processed by the city within twelve (12) months of such denial except by unanimous action of the planning and zoning commission. (Ord. 281-07, 9-4-2007)

9-2A-4: **FILING FEE:** A filing fee, set by resolution, shall be paid at the time of filing by an owner or an owner's representative upon application, but no fee will be required in the case of proceedings instituted by either the council or the planning and zoning commission. (Ord. 281-07, 9-4-2007)

9-2A-5: **ACTION BY PLANNING AND ZONING COMMISSION AND CITY COUNCIL:**

- A. The planning and zoning commission shall cause to be made, by any of its members or by any member of its staff, investigation of facts bearing upon any application or matter set for hearing as in the opinion of the planning and zoning commission will serve to provide the necessary information to enable the commission to act.
- B. Not later than ten (10) days after the conclusion of the hearing, the planning and zoning commission shall file a written report with the city clerk stating the action taken by the commission and its recommendation to the city council.
- C. At its next regular meeting after the planning and zoning commission has filed its recommendation with the city clerk, or at such time to which the matter may be continued, the council shall take action on the request. If the council approves the request, it shall thereafter be made part of this title. (Ord. 281-07, 9-4-2007)

9-2A-6: **AMENDMENT PROCEDURES:**

- A. Request For Amendment: Request for rezoning or text amendment to this title shall be submitted to the planning and zoning commission which shall evaluate the request to determine the extent and nature of the amendment request. (Ord. 281-07, 9-4-2007)

B. Compliance With Comprehensive Plan; Procedures:

1. If the request is in accordance with the adopted comprehensive plan, the planning and zoning commission may recommend and the city council may adopt or reject the rezoning or text amendment to this title under the procedures provided in Idaho Code section 67-6509; provided, that in the case of a zoning district change, notwithstanding jurisdictional boundaries, additional notice shall be provided by mail to property owners or purchasers of record within three hundred feet (300') of the external boundaries of the land being considered, and any additional area that may be impacted by the proposed change as determined by the planning and zoning commission. Notice shall also be posted on the premises not less than one week prior to the hearing. When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of posted or mailed notice.

2. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before the planning and zoning commission or city council subject to applicable procedures. (Ord. 281-07, 9-4-2007; amd. 2010 Code)

3. The procedures of Idaho Code section 67-6509 require the following:

a. The planning and zoning commission, prior to recommending an amendment to this title, shall conduct at least one public hearing in which interested persons shall have opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of the time and place and a summary of the request to be discussed shall be published in the official newspaper or paper of general circulation within the jurisdiction. The planning and zoning commission shall also make the notice available to other papers and radio and television stations serving the jurisdiction for use as a public service announcement.

b. A record of the hearings, findings made, and actions taken shall be maintained.

c. The city council, prior to considering any proposed amendment of this title, shall conduct at least one public hearing using the same notice and hearing procedure as the planning and

zoning commission. The city council shall not hold a public hearing, give notice of a proposed hearing, nor take action upon any amendment proposal until recommendations have been received from the planning and zoning commission.

- C. **Noncompliance With Comprehensive Plan; Comprehensive Plan Amendment:** If the request is not in accordance with the adopted comprehensive plan, the request shall be submitted to the planning and zoning commission which shall recommend, and the city council may adopt or reject, an amendment to the comprehensive plan under the notice and hearing procedures provided under Idaho Code section 67-6509. After the comprehensive plan is amended, this title may be modified following the amendment procedures hereof.
- D. **Reversal Of Zoning Classification Decision:** If the city council adopts a zoning classification pursuant to a request by a property owner based upon a valid, existing comprehensive plan and zoning ordinance, the city council shall not reverse its action or change the zoning classification of said property without consent in writing of the current property owner for a period of four (4) years from the date the city council adopted said individual property owner's request for a zoning classification change. If the city council does reverse its action or otherwise change the zoning classification of said property during the four (4) year period without the current property owner's consent in writing, the current property owner shall have standing in a court of competent jurisdiction to enforce the provisions of this title. (Ord. 281-07, 9-4-2007)

9-2A-7: DEVELOPMENT AGREEMENTS:

- A. The city may, in accordance with Idaho Code section 67-6511A, require or permit, as a condition of rezoning, that an owner or developer make a written commitment concerning use or development of the subject parcel.
- B. Prior to requiring or permitting a development agreement as a condition of rezoning, the city shall determine the following:
 - 1. That the development agreement will foster the policies and objectives of the comprehensive plan;
 - 2. That the development agreement will assist the enhancement and stability of the subject parcel's development and use; and

3. That the development agreement will help to stabilize and enhance surrounding developments and uses.
- C. Development agreements shall be in the form of legal agreements for recording, approved by the city, and shall contain specific provisions for modification, enforcement and termination. (Ord. 281-07, 9-4-2007)
- D. Development agreement commitments shall be recorded in the office of the county recorder and shall take effect upon the adoption of the amendment to this title. Unless modified or terminated by the city council, after public hearing, a commitment is binding on the owner of the parcel, each subsequent owner, or other person acquiring an interest in the parcel. A commitment is binding on the owner of the parcel even if it is unrecorded; however, an unrecorded commitment is binding on a subsequent owner or other person acquiring an interest in the parcel only if that subsequent owner or other person has actual notice of the commitment.
- E. Development agreement commitments may be modified only by permission of the city council after complying with the notice and hearing provisions of Idaho Code section 67-6509. A commitment may be terminated, and the zoning designation upon which the use is based reversed, upon failure to comply with the requirements of the commitment after a reasonable time, as determined by the city council, or upon failure of the owner, each subsequent owner or other person acquiring an interest in the parcel to comply with the conditions in the commitment and after complying with the notice and hearing provisions of Idaho Code section 67-6509.
- F. By permitting or requiring commitments by ordinance, the city council does not obligate itself to recommend or adopt the proposed rezoning. A written commitment shall be deemed written consent to rezone upon failure of conditions imposed by the commitment in accordance with the provisions of this article. (Ord. 281-07, 9-4-2007; amd. 2010 Code)

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ARTICLE B. CONDITIONAL USE PERMITS

SECTION:

- 9-2B-1: Scope
- 9-2B-2: Procedures Generally
- 9-2B-3: Application For Permit; Fee
- 9-2B-4: Protests And Appeals
- 9-2B-5: Conditions Of Permit
- 9-2B-6: Planning And Zoning Commission Statement
- 9-2B-7: Studies; Nontransferability Of Permit
- 9-2B-8: Records Kept
- 9-2B-9: Judicial Review

9-2B-1: **SCOPE:** The provisions of this article shall apply to conditional use permits. (Ord. 281-07, 9-4-2007)

9-2B-2: **PROCEDURES GENERALLY:**

- A. The planning and zoning commission may, following the notice and hearing procedures provided under Idaho Code section 67-6509, permit conditional uses where the uses are not in conflict with the comprehensive plan or this title. If the proposed conditional use cannot adequately meet the conditions necessary to assure protection and compatibility with the surrounding properties, uses and neighborhood, the planning and zoning commission will not approve the proposed use. (Ord. 281-07, 9-4-2007)
- B. Denial of a conditional use permit or approval of a conditional use permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided by Idaho Code section 67-8003, consistent with requirements established thereby. (2010 Code)

9-2B-3: **APPLICATION FOR PERMIT; FEE:** Application for a conditional use permit shall be filed with the city on forms prescribed by the city and accompanied by such data and information necessary to assure the fullest presentation of facts and evaluation by the planning and zoning commission. A filing fee set by resolution shall be submitted by the property owner or owner's representative at the time of filing an application for said permit. (Ord. 281-07, 9-4-2007)

9-2B-4: **PROTESTS AND APPEALS:**

- A. Any owner or purchaser of record within a three hundred foot (300') radius of the exterior boundaries of the subject conditional use property may appeal the decision of the planning and zoning commission, provided written notice of the appeal is filed with the city clerk within five (5) working days after the decision of the commission.
- B. In reviewing an appeal, the city council shall hold a public hearing following the same procedures as the planning and zoning commission and may approve, disapprove, or modify the action of the commission. (Ord. 281-07, 9-4-2007)

9-2B-5: **CONDITIONS OF PERMIT:** Upon the granting of a conditional use permit, conditions may be attached including, but not limited to, those:

- A. Minimizing adverse impact on other development;
- B. Controlling the sequence and timing of development;
- C. Controlling the duration of development;
- D. Assuring the development is maintained properly;
- E. Designating the exact location and nature of the development; (Ord. 281-07, 9-4-2007)
- F. Requiring the provision for on site or off site facilities or services; and (Ord. 281-07, 9-4-2007; amd. 2010 Code)
- G. Requiring more restrictive standards than those generally required in this title. (Ord. 281-07, 9-4-2007)

9-2B-6: **PLANNING AND ZONING COMMISSION STATEMENT:**
Upon granting or denying a conditional use permit, the planning and zoning commission shall specify:

- A. The ordinance and standards used in evaluating the application;
- B. The reason for approval or denial; and
- C. The actions, if any, that the applicant could take to obtain a permit.
(Ord. 281-07, 9-4-2007)

9-2B-7: **STUDIES; NONTRANSFERABILITY OF PERMIT:** Prior to granting or denying a conditional use, studies may be required of the social, economic, fiscal and environmental effect of the proposed conditional use. A conditional use is not transferable from one parcel of land to another. (Ord. 281-07, 9-4-2007)

9-2B-8: **RECORDS KEPT:** A record of hearings, findings made and actions taken shall be maintained. (Ord. 281-07, 9-4-2007)

9-2B-9: **JUDICIAL REVIEW:** An applicant denied a permit or aggrieved by a decision may, within sixty (60) days after all remedies have been exhausted under this title, seek judicial review under the procedures provided by Idaho Code sections 71-5215(b) through 79-5216. (Ord. 281-07, 9-4-2007; amd. 2010 Code)

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ARTICLE C. VARIANCES

SECTION:

- 9-2C-1: Scope
- 9-2C-2: Criteria
- 9-2C-3: Application For Variance; Fee
- 9-2C-4: Hearing And Notice Requirements
- 9-2C-5: Protests And Appeals
- 9-2C-6: Planning And Zoning Commission Statement
- 9-2C-7: Records Kept

9-2C-1: **SCOPE:** This article shall apply to variances. (Ord. 281-07, 9-4-2007)

9-2C-2: **CRITERIA:** A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon the showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest nor the general land conditions in the neighborhood. (Ord. 281-07, 9-4-2007)

9-2C-3: **APPLICATION FOR VARIANCE; FEE:** Applications for a variance shall be filed with the city on forms prescribed by the city and accompanied by such data and information necessary to assure the fullest presentation of facts and evaluation by the planning and zoning commission. A filing fee set by resolution shall be submitted by the property owner or owner's representative at the time of filing an application for a variance. (Ord. 281-07, 9-4-2007)

9-2C-4: HEARING AND NOTICE REQUIREMENTS:

- A. Prior to granting or denying a variance, at least one public hearing in which interested persons shall have an opportunity to be heard shall be held.
- B. At least fifteen (15) days prior to the hearing, notice of the time and place and a summary of the proposed variance shall be published in the official newspaper or paper of general circulation within the jurisdiction.
- C. Notice of the hearing shall be provided to property owners and purchasers of record adjoining the parcel under consideration.
- D. Notice shall also be posted on the premises or property not less than one week prior to the hearing. (Ord. 281-07, 9-4-2007)
- E. Denial of a variance or approval of a variance with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided by Idaho Code section 67-8003, consistent with requirements established thereby. (2010 Code)

9-2C-5: PROTESTS AND APPEALS:

- A. Any owner or purchaser of record within a three hundred foot (300') radius of the exterior boundaries of the subject property may appeal the decision of the planning and zoning commission, provided written notice of the appeal is filed with the city clerk within five (5) working days after the decision of the commission. (Ord. 281-07, 9-4-2007; amd. 2010 Code)
- B. In reviewing an appeal, the city council shall hold a public hearing following the same procedures as the planning and zoning commission and may approve, disapprove, or modify the action of the commission. (Ord. 281-07, 9-4-2007)

9-2C-6: PLANNING AND ZONING COMMISSION STATEMENT:

Upon granting or denying a variance, the planning and zoning commission shall specify:

- A. The ordinance and standards used in evaluating the application;

- B. The reasons for approval or denial; and
- C. The procedural actions, if any, that the applicant could take to obtain a permit for a variance. (Ord. 281-07, 9-4-2007)

9-2C-7: **RECORDS KEPT:** A record of hearings, findings made and actions taken shall be maintained. (Ord. 281-07, 9-4-2007)

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ARTICLE D. HEIGHT EXCEPTIONS

SECTION:

- 9-2D-1: Scope
9-2D-2: Criteria; Conditions
9-2D-3: Application For Height Exception; Fee
9-2D-4: Planning And Zoning Commission Statement

9-2D-1: **SCOPE:** The provisions of this article shall apply to height exceptions. (Ord. 315-10, 6-15-2010)

9-2D-2: **CRITERIA; CONDITIONS:** The planning and zoning commission may approve an exception to the base height limit for building features such as church spires, belfries, cupolas, or domes, chimneys, ventilators, skylights, parapet walls, cornices, solar energy systems, elevator penthouses or necessary mechanical appurtenances, together with any required screening, usually located on the roof level, upon finding that such height exception will be compatible with surrounding properties, uses and neighborhood, and that the following standards will be met:

- A. Such features are limited to the height necessary for their proper functioning,
- B. Such features do not exceed more than one hundred twenty percent (120%) of the base height limit of the applicable zone or the height limitations of the airport hazard zoning regulations,
- C. The setbacks for such features are increased over the base setback requirements of the applicable zone by the same percentage as the proposed height increase over the base height limit,

- D. Such features do not measure, in any horizontal direction, more than twenty percent (20%) of the length of the building's exterior wall running in an approximately parallel direction to the measurement. (Ord. 315-10, 6-15-2010)

9-2D-3: APPLICATION FOR HEIGHT EXCEPTION; FEE:

Application for a height exception shall be filed with the city on forms prescribed by the city and accompanied by such data and information necessary to assure the fullest presentation of facts and evaluation by the planning and zoning commission. A filing fee set by resolution shall be submitted by the property owner or owner's representative at the time of filing an application for said permit. (Ord. 315-10, 6-15-2010)

9-2D-4: PLANNING AND ZONING COMMISSION STATEMENT:

Upon granting or denying a height exception, the planning and zoning commission shall specify:

- A. The ordinance and standards used in evaluating the application;
- B. The reason for approval or denial; and
- C. The actions, if any, that the applicant could take to obtain a permit. (Ord. 315-10, 6-15-2010)