

**TITLE 10
PLANNING AND ZONING**

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CHAPTER 1 SUBDIVISION ORDINANCE

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10-1-1: TITLE: This Chapter shall be known as the Subdivision Ordinance of the City of Idaho Falls.

10-1-2: PURPOSE: The purpose of this Chapter is to:

- (A) Promote the public health, safety, and welfare;
- (B) Provide guidance for future development and growth to the City in accordance with the comprehensive plan;
- (C) Integrate existing streets and highways with proposed transportation plans and other related development of the City;
- (D) Assure safe and adequate transportation systems, water, sewers, storm drains, parks, school sites, and other public uses and facilities;
- (E) Establish reasonable standards of design and uniform procedures for the subdivision and re-subdivision of land.
- (F) Provide for orderly layout, monumenting and legal description of subdivided lands;
- (G) Provide for an orderly and expeditious method of processing applications for subdivisions and re-subdivisions.

10-1-3: DEFINITIONS: Whenever the following words or terms are used in this Code, they shall have the meanings ascribed below:

ACCESS PRIVATE: Any street, road, drive, alley, or other privately-owned way used to obtain direct vehicular access to a public street or alley.

ACCESS PUBLIC: Any street, road, highway, alley, or other publicly dedicated and accepted way designed for movement of vehicular traffic.

ALLEY: A public way designed to serve as secondary access to the side or rear of lots that have principal access on some other street.

AGRICULTURAL LAND: Land used strictly for the cultivation of crops or for animal husbandry and which is held in tracts or parcels no smaller than ten (10) acres in area.

AMENDED PLAT: A change in the plat of an approved or recorded subdivision that affects the layout of any street or area reserved for public use or that creates any additional lots.

AREA OF CITY IMPACT: The agreement between the City and Bonneville County, as amended, adopted pursuant to Idaho Code 67-6526 and on file with Community Development Services Department.

BLOCK: A tract of land bounded by streets, alleys, parks, cemeteries, rights of way, or other public boundary lines.

BUILDING: Any structure built for the protection, shelter, or enclosure of persons, animals, chattels, or property of any kind.

COMMISSION: The Planning and Zoning Commission of the City.

COMPREHENSIVE PLAN: The current, legally adopted and amended Comprehensive Plan of the City.

CUL-DE-SAC: A local street with only one (1) outlet and having a safe and convenient circuit for traffic reversal.

DEDICATION: The setting apart and acceptance by the Council of land or an interest in land for use by the public.

DEVELOPER: A person who subdivides or proposes to subdivide land, whether as an owner or an agent of an owner.

DEVELOPMENT AGREEMENT: A contract between the subdivider or developer and the City that sets forth the rights, duties, and obligations of all parties regarding the development of a subdivision or tract of land located within or proposed for annexation into the City.

DIRECTOR: The Director of the Community Development Services Department of the City.

EASEMENT: A right of use that is less than ownership, usually for a certain stated purpose.

FRONTAGE: Any side of a lot which abuts a public street.

GRADE: The slope of a road or street expressed as a percentage amount.

IMPROVEMENT: Any alteration to, or construction upon real property, which increases the value or utility of the land.

INDIVIDUAL SEWAGE: A septic tank, seepage tile sewage disposal system, or any other sewage treatment device not connected or intended to serve more than one (1) building, or connected to any other public or private sewage system.

LONG-TERM LEASE: Any transfer of a possessory interest in land for a period greater than thirty-five (35) years, subject to a reversionary interest in the transferor.

LOT: A tract, plot, or portion of a subdivision or other parcel of land of sufficient dimension and area to meet applicable City zoning requirements for lot size.

LOT, CORNER: A lot situated at the intersection of two (2) streets.

MODEL HOME: A dwelling unit used for display purposes which typifies the type of units to be constructed in a subdivision.

OWNER: Any person, group of persons, partnership, association trust, corporation, or other legal entity having legal title to, or an interest in, the land proposed to be subdivided.

PLAT, FINAL: The final drawing of the subdivision, including all dedication and acknowledgments thereon, which conforms to the provisions of this Chapter and to Idaho Code.

PLAT, PRELIMINARY: The preliminary drawing or drawings, indicating the proposed manner or layout of the subdivision, including but not limited to, street and utility layout and design, lots, blocks and proposed zoning.

PLAT, SKETCH: A sketch prior to the preparation of a preliminary plat, or final plat in the case of a short subdivision, used for the purpose of generally discussing the proposed subdivision and any applicable requirements.

PUBLIC IMPROVEMENT: Any drainage system, road, curb, gutter, sidewalk, off-street parking area, sewer or water system, or any other facility for which the City may assume responsibility, or which may affect improvements which are presently the responsibility of the City.

RE-PLAT: A change in the plat of an approved or recorded subdivision that affects the layout of any street or area reserved for public use, or which creates any additional lots.

RE-SUBDIVISION: Same as RE-PLAT.

RECORD OF SURVEY: A field survey and a map that is drawn according to the requirements of Idaho Code, Title 55, Chapter 19, as amended.

RIGHT-OF-WAY: Land occupied or intended to be occupied by a street, sidewalk, railroad, public utility, or other similar public use.

RURAL STREET STANDARD: A typical rural street section as shown in the Engineering Design Policy Manual.

SALE: Any transfer of ownership in land, including a contract of sale, whether by deed, contract, plat, or other agreement.

SETBACK: The minimum distance between a building and a property line.

SPITE STRIP: Any strip of land located within or adjacent to a subdivision the primary purpose of which is to allow the owner or developer of any subdivision to control access to a dedicated street or other public facility.

STREET: The entire width between the boundary lines of a public way.

STREET, DEAD-END: A street or portion thereof, with only one (1) point of ingress and egress.

STREET STANDARDS: The cross sections and construction standards for typical street sections, as set forth in the Engineering Design Policy Manual.

SUBDIVISION: The division of land into two (2) or more lots, for the purpose of sale or development, including any re-subdivision of land.

SUBDIVISION, REGULAR: The subdivision of land into five (5) or more lots.

SUBDIVISION, SHORT: The subdivision of land into four (4) or fewer lots.

VARIANCE: A modification of the strict application of this Chapter.

(Ord. 3181, 04-12-18; Ord. 3186, 5-24-18; Ord. 3332, 09-10-20; Ord. 3412, 9-23-21)

10-1-4: PLATTING:

(A) **Platting Required.** No person shall subdivide or re-subdivide any piece, parcel, or tract of land, situated within the City's corporate limits or sell or convey any subdivision or portion thereof, within said subdivision, without first filing a plat approved by the City in conformity with the requirements of this Chapter. Notwithstanding the foregoing, any plat situated within the Area of City Impact, shall be subject to the terms and provisions of the Area of Impact Agreement.

(B) **Exclusions.** Platting shall not be required for:

(1) A bona fide sale, division or partition of land intended strictly for use thereafter as agricultural land. The intent to construct a residence, apartment commercial or industrial building or other nonagricultural building or buildings upon such tract of land, (as evidenced by a request for a building permit) shall be deemed sufficient evidence that the land described in the application for a building permit is no longer agricultural land and therefore immediately subject to the requirements of this Chapter.

(2) An allocation of land in settlement of an estate of a decedent or the subject of a court decree for the distribution of property.

(3) An involuntary sale of land as result of legal condemnation as defined and allowed in the Idaho Code.

(4) Widening of existing streets to conform to the Comprehensive Plan or by authority of the City.

(5) The acquisition of street right of way by a public agency in conformity with the Comprehensive Plan.

(6) An exchange of land for the sole purpose of straightening property boundaries or enlarging any existing lot, and which does not create additional lots. Notwithstanding, when such an exchange of land occurs, a boundary survey shall be performed and staked by an Idaho licensed surveyor and a Record of Survey depicting the exchange shall be filed with the City Surveyor and recorded with Bonneville County pursuant to Idaho Code.

(C) Amended Plat, Re-subdivision or Replat: Whenever a developer proposes to re-subdivide, replat, or amend the plat of an approved preliminary or final plat or a recorded subdivision, the developer shall file a new application for a subdivision and such application shall be processed in the manner set forth in this Chapter.

(D) Plat Specifications: All plats shall comply with Idaho Code and such other regulations established by the City to ascertain compliance with the provisions of this Chapter. The Director shall, upon request, make available a written copy of all such regulations.

10-1-5: GENERAL SUBDIVISION STANDARDS:

(A) Other Laws and Ordinances: All improvements located upon land which is subdivided shall be designed and constructed in compliance with the following laws, rules and regulations, and standards:

(B) Local Ordinances: The Zoning Ordinance of the City, the International Building Code, the International Residential Code, the International Fire Code, the Uniform Plumbing Code, the International Mechanical Code, the National Electric Code, and all other applicable ordinances of the City.

(C) State Laws: All applicable laws of the State, and all rules and regulations, having the force and effect of law promulgated by the State Department of Transportation or Department of Public Health.

(D) Standard Drawings and Specifications: The Standard Drawings and Specifications.

(E) Engineering Design Policy Manual: The Engineering Design Policy Manual, adopted from time to time by Resolution of the Council, a copy of which shall be kept on file with the City Engineer and shall be available to members of the public.

(F) Lot Improvements:

- (1) Each lot shall be arranged so that the lot meets all qualifications necessary to secure a City building permit.
- (2) Lot dimensions shall conform to the minimum standards in the Zoning Ordinance.
- (3) A lot shall have full frontage on, and access to, a dedicated street.
- (4) No residential lot shall have direct access to an arterial street. Direct access to arterial streets from commercial or industrial lots shall be permitted only where it can be demonstrated that:
 - (a) The direct access will not impede the flow of traffic on the arterial street or otherwise create an unsafe condition;
 - (b) There is no reasonable alternative for access to the arterial street from the proposed point of access;
 - (c) There is sufficient sight distance along the arterial street from the proposed point of access;
 - (d) The proposed access is located so as not to interfere with the safe and efficient functioning of any intersection; and
 - (e) The developer agrees to provide all public improvements, such as turning lanes or signals, necessitated for the safe and efficient use of the proposed access as determined by the City Engineer.
 - (f) Adequate provisions shall be made for soil preservation, drainage patterns, and debris and waste disposal and collection.
 - (g) Side lot lines shall be at, or near, right angles or radial to the street within the required front setback. Corner lot lines intersecting right-of-way lines shall be chamfered by a right-of-way line that is determined by the chord of a minimum twenty foot (20') radius tangent curve.
 - (h) All property within the subdivision shall be included within a lot or within an area dedicated for public use.
 - (i) All residential corner lots shall be a minimum of ten percent (10%) larger in area than the average of all non-corner lots and non-wedge shaped lots within the plat or subdivision. If fewer than ten (10) such lots are shown in the subdivision or plat under consideration, the Director may use other adjacent plats or subdivisions within the surrounding area to calculate the average area of all similarly zoned lots within the vicinity of the subdivision.

(G) Blocks:

- (1) Blocks shall be designed in accordance with sound engineering practices and standards, taking into consideration such factors as access, circulation, traffic safety and control, topography, utilities, and service easements.
- (2) A residential block length shall not exceed one thousand three hundred feet (1,300'), nor shall it be less than four hundred feet (400') in length. The Planning and Zoning Commission may recommend (and the Council may require) dedication and construction of hard-surfaced pedestrian ways, where necessary, to provide safe and convenient circulation or access to schools, parks, playgrounds, the river and greenbelt, shopping areas, alternate modes of transportation, planned pathways, or any other community facilities.

(H) Street Requirements:

- (1) Every major street in the subdivision shall conform to the major street plan of the City, as set forth in the Comprehensive Plan.
- (2) The alignment and width of a previously platted street shall be preserved unless topographical conditions or existing buildings or structures require otherwise.

(I) Street Classification:

- (1) Roadway classifications shall comply with the Comprehensive Plan and the current Access Management Plan provided by the Bonneville Metropolitan Planning Organization (BMPO).

(J) Cross Sections:

- (1) Final geometric design of street sections shall be approved at the time improvement drawings are submitted for approval by the City. Traffic counts and traffic impact studies, when required, shall be performed by the developer and submitted to the City for review and approval.

(K) Right-of-way Width:

- (1) Right-of-way width within a subdivision shall comply with the following:
 - (a) For residential and commercial zones and adjacent to institutional uses in any zone, a sixty foot (60') minimum right-of-way width is required.
 - (b) For a residential collector a minimum seventy foot (70') right-of-way width is required.
 - (c) For industrial zones a minimum seventy foot (70') right-of-way width is required.
 - (d) For arterials and collectors the minimum a right-of-way width required shall be as identified in the Comprehensive Plan.

- (2) Every residential lot adjoining an arterial street shall comply with the following requirements:
- (a) Such lots shall have reverse frontage on the arterial streets.
 - (b) Such lots shall be buffered from the arterial street by an effective combination of the following: lot depth, earth berms, vegetation, walls or fences, and structural soundproofing.
 - (c) The minimum lot depth shall be one hundred fifty feet (150') except where the use of berms, vegetation, and structures are demonstrated to constitute an effective buffer for a dwelling on a lot less than one hundred fifty feet (150') in depth.
 - (d) Whenever practical, existing roadside trees shall be saved and used in the arterial buffer.
 - (e) Parking areas may be used to buffer arterial streets from high density residential uses except that a parking area shall not extend into a required landscape buffer.
 - (f) Development agreements shall include provisions for installation and continued maintenance of arterial buffers.
 - (g) No residential lot shall have individual access to an arterial street.
 - (h) All public streets and alley rights of way shall be measured from property line to property line. The minimum width of street and alley rights of way shall conform to the typical cross sections and street standards approved by the City, for the street classification designated by the Director and as set forth in the Comprehensive Plan. In determining the street classification, the Director shall take into consideration all of the following factors:
 - (i) Zoning and land usage of the area in which the street is located.
 - (ii) Anticipated traffic volume and character of traffic use.
 - (iii) Character or function of the street.
 - (iv) Vehicular and pedestrian safety.
 - (v) Anticipated future growth in the area served by the street.
 - (vi) Population density in the area served by the street.

- (i) Local streets or minor collector streets serving residentially-zoned areas may be developed to rural street standards (fifty foot (50') right-of-way) only upon the following conditions and only if approved by the City:
 - (i) All residential lots bordering such streets have frontage lengths of at least two hundred ten feet (210'); or
 - (ii) The gross average density of the development served by the street is equal to, or less than, one (1) single-family unit per acre.
- (j) A permanent dead-end street shall not be longer than four hundred feet (400'), provided, however, if all lots fronting upon such street are zoned RE, RP, R-1, R-2, or TN, then the street may be constructed to a length not to exceed six hundred feet (600'). Notwithstanding the foregoing, no conditional use or building permit shall be issued for the construction of a school, church, day care center, or multi-family dwelling unit with more than two (2) units, where the primary vehicular access for such use is upon a permanent dead-end street having a length in excess of four hundred feet (400'). Every permanent dead-end street shall have a closed end with a turn-around with a street right-of-way line diameter of at least ninety feet (90') minimum or as required by the Fire Marshal.
- (k) Streets that temporarily dead-end may be permitted with a distance of greater than four hundred feet (400') in length, provided the developer files a preliminary plat depicting a through street connecting to such temporary dead-end street, as part of another phase within that preliminary plat, and provided further the Council may order the developer to file a final plat for such phase of the preliminary plat, at any time at the expiration of three (3) years after the date the plat showing the temporary dead-end street was approved.
- (l) Streets shall be laid out so as to intersect as nearly as possible at right angles and no street shall intersect any other street at less than eighty degrees (80°) or greater than one hundred degrees (100°).
- (m) Minor streets shall be so laid out in a manner as will discourage their use by through traffic.
- (n) Streets in subdivisions shall continue the alignment of existing streets in adjoining subdivisions (or their proper projections when adjoining property is not subdivided). Streets, alleys, and utility lines shall be arranged in a manner which will facilitate convenient street extension and connection to future streets, alleys, and utility lines developed by the owners of adjoining.
- (o) Minimum street grades of four-tenths percent (0.4%) and corner radius of six-tenths percent (0.6%) shall be required with the maximum grade being

seven percent (7%) for secondary and major streets and ten percent (10%) for local or minor streets.

- (p) All streets and alleys shall be completed to the grades approved by the City.
- (q) Where street lines within a block deflect from each other at any one point more than ten degrees (10°), there shall be a connecting curve. The radius of the curve for the inner right-of-way line shall be not less than seven hundred fifty feet (750') for a major street, three hundred feet (300') for a collector or secondary street, and one hundred seventy feet (170') for local or minor streets.
- (r) Back of curbs at street intersections shall be rounded with curves with a minimum radius of twenty-five feet (25').
- (s) No plat shall be laid out in any manner for the purpose of creating a Spite Strip within or adjacent to the subdivision.
- (t) Street name signs shall be erected by the developer in accordance with Standard Drawings and Specifications and this Code.
- (u) All streets and alleys within the subdivision shall be dedicated for public use. The dedication of one-half ($1/2$) streets in a subdivision is prohibited except where essential to the reasonable development of the subdivision in conformity with other requirements of this Chapter and where it will be practicable to require the dedication of the other one-half ($1/2$) when the adjoining property is platted, all as determined by the Director. Wherever a one-half ($1/2$) street is situated adjacent to a parcel of land to be subdivided, the other one-half ($1/2$) shall be platted within such parcel.
- (v) All street sections, curbs, gutters, and sidewalks shall be constructed in accordance with the Standard Drawings and Specifications. Curbs, gutters, and sidewalks shall be constructed on each side of all public streets, unless otherwise approved in writing by the Director. (Ord. 3186, 5-24-18)

(L) Alleys and Easements:

- (1) The minimum width of any dedicated alley shall be twenty feet (20'), unless otherwise approved by the Public Works Department and Community Development Services Department. Alleys may be required along the rear line of business property, and in the rear of all lots fronting major thoroughfares, as determined by the Director.
- (2) Where alleys are not provided, public utility easements of not less than eight feet (8') in width may be dedicated on each side of all rear lot lines and six feet (6') on side lot lines, where necessary, for poles, wires, conduits, storm or

sanitary sewers, and gas and water lines. Easements of greater width may be required by the City Engineer along lines across lots or along boundaries where necessary for surface drainage or for the extension of main sewers or other utilities.

- (3) Alley intersections and sharp changes in alignment shall be avoided, but where necessary and when allowed by the City Engineer, corners shall be of sufficient radius to permit safe vehicular movement.
- (4) Dead-end alleys shall be avoided. If unavoidable, such alleys shall be provided with adequate turn-around facilities at the dead-end.
- (M) Access Coordination: The access location of a lot to the public right-of-way shall be coordinated so it does not interfere with another lot's access or the safety and efficiency of the transportation system. Lot access should comply with the City's adopted Access Management Plan. A subdivision may be required to provide shared access with adjacent subdivisions. Subdivisions required to have shared access shall execute the necessary cross-access agreements or easements to facilitate the shared access and provide copies of the executed documents to the City prior to the recording of the final plat.
- (N) Sidewalks: Sidewalks shall be provided in all residential and commercial subdivisions unless developed according to rural street standards identified in this Chapter.
- (O) Water and Sewage Facilities: The developer shall ensure that utility improvements and extensions are made to provide sufficient sanitary sewage disposal, storm drainage and water quality and water flow, and pressure for domestic use and fire protection. All water, sewage, and storm drainage utility systems shall be designed and constructed in accordance with the Standard Drawings and Specifications, and the rules and regulations of the Department of Environmental Quality for the State. No construction on such utility systems may be commenced until the City Engineer and the Department of Environmental Quality have approved the design of such system in writing. No plat shall be recorded by the developer or accepted by the City unless the plat bears the necessary water and sanitary certificates required by Idaho Code. (Ord. 3186, 5-24-18)
- (P) Flood Plain Areas: The City may prohibit the subdivision of any portion of land which lies within the flood plain of any body of water as designated by the Federal Emergency Management Agency (FEMA) for the public health, safety and welfare, if it is determined that construction of the subdivision creates a potential hazard to the health or safety of the occupants of the subdivision.

(Ord. 3181, 04-12-18; Ord. 3412, 9-23-21).

10-1-6 APPLICATION FOR SUBDIVISION APPROVAL:

- (A) Application for Approval: No plat shall be recorded until an application for subdivision has been filed by the developer or developers and approved in accordance with the provisions of this Chapter.

- (B) Plat Procedures: The preparation, submittal, review, and approval or denial of all subdivision plats shall proceed through a Regular Subdivision plat procedure (for subdivisions with five (5) or more lots) or a Short Subdivision plat procedure (for subdivision with four (4) or fewer lots).
- (C) Plat Approval Process: Applications seeking approval for regular subdivision shall comply with the preliminary plat and final plat approval process set forth hereafter. Applications for a short subdivision may follow the sketch plat and final plat approval process, if prior approval to so proceed is given by the Director.
- (D) Application and Fees: Whenever a developer requests approval of a sketch plat, preliminary plat, or final plat, such plat shall be accompanied by an application form provided by the City. All applications shall be accompanied with the associated filing fees in an amount set by Resolution of the Council.
- (E) Application Deemed Complete: An application for plat approval shall be deemed to be filed with the Director's office upon payment of all fees required by this Chapter and receipt of the application and plat, complete with all required contents.

10-1-7 SKETCH PLAT APPROVAL PROCESS: Where a sketch plat is filed, the applicant shall discuss with the Director the requirements of this Chapter, and if the sketch plat appears to be in conformity therewith, the Director shall approve the same or advise the applicant of specific changes, additions, or recommendations which will be likely required to obtain final plat approval. Such approval or recommendations from the Director shall constitute authorization to prepare and submit a final plat. Approval or recommendations for approval shall be given by the Director within twenty (20) days following the date the plat is filed with the Director's office.

10-1-8 PRELIMINARY PLAT APPROVAL PROCESS:

- (A) Preliminary plat approval to subdivide land shall be required when a proposed subdivision includes multiple phases of development, when the subdivision will be divided into several lots and blocks, when the application involves adjustments or realignments to the layout of existing public streets, when the plat proposes the dedication of new public rights-of-way or public facilities, and when directed by the Director. Approval of a preliminary does not constitute approval of the final plat. Actual subdivision does not occur until the final plat is approved and recorded with the Bonneville County Recorder.
- (B) Submittal and City Staff Review Process:
 - (1) Pre-application Meeting. Prior to submitting an application for a Preliminary Plat, the developer shall request a pre-application meeting with City staff. The Community Development Services Department shall schedule and conduct a pre-application meeting within three (3) business days following receipt of a request from a developer. The developer shall provide either a sketch plat or a copy of the proposed preliminary plat prior to the pre-application meeting.

- (2) Application and Contents of Preliminary Plats. The application and plat shall accurately and fairly describe and depict all improvements, structures, boundary lines, lot configurations, area to be developed, existing and proposed land use and zoning, grades, land contour, recreational and public use area, utilities, water works, topography, streets, alleys, easements, and shall contain such other information as may be necessary to determine if the proposed subdivision complies with the requirements of this Chapter. Proof of compliance with the Neighborhood Meeting requirements of the Zoning Code shall be submitted as part of a complete application. The plat shall be drawn in accordance with generally accepted engineering standards and practices and shall be drawn in such a manner as will assure legibility, clarity, reproducibility, accuracy, uniformity, and neatness of the plat.
- (3) A complete application shall be submitted to the Community Development Services Department on a form provided by the City and accompanied by a filing fee as set by Resolution of the Council. The application shall be submitted at least five (5) weeks prior to the regularly scheduled Planning and Zoning Commission meeting, or as otherwise approved by the Director.
- (4) Following receipt of a complete application and all applicable fees, the Community Development Services Department shall distribute copies of the Preliminary Plat and other application materials to appropriate reviewing agencies for review and comment.
- (5) The City will return redlined documents to the applicant or the applicant's agent detailing any changes requested by the reviewing agencies.
- (6) Preliminary Plat Public Hearing.
 - a. After the review of City staff comments and recommendations have been addressed and resubmitted to the Community Development Services Department, a public hearing at a regularly scheduled meeting with the Planning and Zoning Commission shall be scheduled to consider the preliminary plat. Notice of the preliminary plat hearing shall be pursuant to requirements of the Idaho Local Land Use Planning Act. Within sixty (60) days following the date of the Commission meeting at which the plat and application were first submitted, the Commission shall complete its review and shall approve, conditionally approve, or disapprove of the preliminary plat and application, unless an extension of time is agreed to by the Commission and the developer.

(C) Planning and Zoning Commission Review.

- i. When acting on a preliminary plat application, the Planning and Zoning Commission shall review the preliminary plat to determine that the preliminary plat is consistent with the principles contained within the Comprehensive Plan and is in compliance with this Chapter and all applicable Federal, State, or local

laws. In conducting such reviews, the Commission may recess such hearing for good cause and may solicit information, data, studies, or comments necessary to determine such compliance. In the event the Commission conditionally approves the preliminary plat, it shall advise the developer in writing of the conditions under which the approval is granted, and upon developer's compliance with such conditions and the Director's written certification thereof, the preliminary plat shall be deemed approved. If approval of the plat is denied, the Commission shall advise the developer, in writing, of the reasons for denial of the preliminary plat application.

- ii. Model Homes. The Council shall allow no more than two (2) model homes to be built in a subdivision after preliminary plat approval, but before final plat approval, provided the lots to be developed have frontage upon an existing public street. (Ord. 3300, 2-13-20)

(D) Appeal of Preliminary Plat. Any person aggrieved by the Planning and Zoning Commission decision on the preliminary plat may appeal the Planning and Zoning Commission's decision to the Council. Such appeal shall be submitted with the appeal fee to the Community Development Services Department within fourteen (14) days from the Planning and Zoning Commission's written decision and shall list the specific Code provisions or other reasons that the appellant believes comprise error. The appeal is on the record that was produced in the preliminary plat process. The appeal shall be scheduled for consideration at a Council meeting and shall occur within sixty (60) days following receipt of the appeal. Upon considering the preliminary plat appeal, the Council may uphold the appeal, deny the appeal, or remand the appeal to the Planning and Zoning Commission for further action, including direction to reopen the public hearing to receive further information. (Ord. 3300, 2-13-20)

(E) Preliminary Plat Expiration: The approval of a preliminary plat shall expire twenty-four (24) months following the date of approval unless a final plat has been approved by the Commission. If the plat is being phased, the preliminary plat shall expire twenty-four (24) months following the date of approval of the final plat for the previous phase. The Planning and Zoning Commission may grant one (1) written twenty-four (24) month extension upon finding good cause. (Ord. 3300, 2-13-20; Ord. 3423, 10-28-23)

10-1-9 FINAL PLAT APPROVAL PROCESS:

(A) Submittal and Review Process:

- (1) Following the approval of the sketch plat or preliminary plat, as the case may be, the developer may file an application for final approval of the subdivision plat. Subdivisions that include public improvements shall submit improvement drawings as required by this Chapter. Submittal of improvement drawings shall run concurrently with the submittal of the final plat. All applications shall be made on a form provided by the City and shall be accompanied by a filing fee as set by Resolution of the Council.

- (2) A complete application shall be submitted to the Community and Development Services Department. Application shall be submitted at least five (5) weeks prior to the scheduled Planning and Zoning Commission meeting where the application will be considered.
- (3) In addition to the application forms required by the Community Development Services Department, the application shall show that the Final Plat is consistent with the approved Preliminary Plat.
- (4) If the number of residential buildable lots has increased more than five percent (5%) within any proposed division or if roadway patterns have been modified within the preliminary plat, the Final Plat shall be determined not to be consistent with the Preliminary Plat. If the Director determines that the Final Plat is not consistent with the Preliminary Plat or that conditions of the Preliminary Plat approval have not been met, a new Preliminary Plat shall be submitted and processed according to the requirements of this Chapter.
- (5) All development shall comply with the Plat Phasing Sequence shown and approved on the Preliminary Plat. Any variation of sequence shall be re-approved following a full staff review and subsequent re-approval by the Director.
- (6) When review comments and recommendations have been satisfactorily addressed by the applicant and resubmitted to the Community Development Services Department, the Planning and Zoning Commission shall consider the Final Plat at a regular scheduled meeting of the Commission. Within sixty (60) days after the meeting of the Commission at which the request for approval of the Final Plat is considered, the Commission shall recommend to the Council approval or denial of the Final Plat. However, the developer may request that the matter be recessed, and in such event, the sixty (60) day period for initial decision making shall not commence until the matter is again considered by the Commission. The Commission shall provide the applicant with written certification of its decision as required by Idaho Code. Whenever the Commission recommends denial of the final plat, it shall specify the ordinances and standards used in evaluating the application, and its reasons for denial thereof and the actions, if any, that the applicant may take to obtain their approval. If the Planning and Zoning Commission denies the Final Plat, or if substantial changes are required, the plat shall be resubmitted.
- (7) Consideration of the request for final plat approval may be conducted simultaneously with hearings for annexation, initial zoning, rezoning, or amendment of the Comprehensive Plan relating to the same property.
- (8) Upon the developer's written request, the Commission shall forward its recommendation to the Council, provided, however, if such request is not physically filed with the Director within one (1) year following the date the Commission issues its recommendation, then the application shall become void. Within forty-five (45) days after the developer's written request, the Council

shall hear the request for approval of the final plat to determine if the same complies with the provisions of this Chapter.

- (9) If the final plat conforms to the provisions of this Chapter and all other applicable State or Federal laws, or local ordinances, the Council shall approve the final plat and authorize the Mayor and Clerk to sign the original plat. In granting or denying the application for approval of the final plat, the Council shall specify the ordinance and standards used in evaluating the application, and reasons for approval or denial, and the actions, if any, that the applicant may take to obtain approval. The Council shall provide the applicant with written approval of the final plat decision as required by Idaho Code. The City shall publish notice of the Council's final decision in the City's official newspaper within ten (10) days.
- (10) Proof of payment of all engineering, hook-up, water and sewer, road and bridge, and surface drainage fees and all other fees prescribed by City ordinance. (Ord. 3300, 2-13-20)

(B) Final Plat Requirements:

- (1) Boundary Resolution: The boundary lines and corners of any property being surveyed as part of a Subdivision Plat shall be established and/or retraced in accordance with appropriate boundary law principles governed by the set of facts and evidence found in the course of performing the research and survey.
- (2) Measurement Standards: The following measurement standards for Relative Positional Precision for the monuments or witnesses marking the corners of the surveyed property shall be followed in creation of the final plat:
 - (a) "Relative Positional Precision" means the length of the semi-major axis, expressed in feet, of the error ellipse representing the uncertainty due to random errors in measurements in the location of the monument, or witness, marking any corner of the surveyed property relative to the monument, or witness, marking any other corner of the surveyed property at the ninety-five percent (95%) confidence level (two (2) standard deviations). Relative Positional Precision is estimated by the results of a correctly weighted least-squares adjustment of the survey.
 - (b) Any boundary lines and corners established or retraced may have uncertainties in location resulting from (1) the availability, condition, history, and integrity of reference or controlling monuments, (2) ambiguities in the record descriptions or plats of the surveyed property or its adjoiners, (3) occupation or possession lines as they may differ from the written title lines, and (4) Relative Positional Precision. Of these four (4) sources of uncertainty, only Relative Positional Precision is controllable, although due to the inherent errors in any measurement, it cannot be eliminated. The magnitude of the first three (3) uncertainties can be projected based on evidence. The surveyor in responsible charge

shall evaluate and make determinations using sound survey practices for the first three uncertainties. Relative Positional Precision is estimated using statistical means (see Section 2a above and Section 2e below).

- (c) The first three (3) of these sources of uncertainty shall be weighed as part of the evidence in the determination of where, in the surveyor's opinion, the boundary lines and corners of the surveyed property should be located (see Section 2b above). Relative Positional Precision is a measure of how precisely the surveyor is able to monument and report those positions; it is not a substitute for the application of proper boundary law principles. The surveyor shall use sound principles in evaluating position and also meet the requirements of the Relative Positional Precision.
 - (d) For any measurement technology or procedure used on a Subdivision Plat, the surveyor shall (1) use appropriately trained personnel, (2) compensate for systematic errors, including those associated with instrument calibration, and (3) use appropriate error propagation and measurement design theory (selecting the proper instruments, geometric layouts, and field and computational procedures) to control random errors such that the maximum allowable Relative Positional Precision outlined in Section 2e below is not exceeded.
 - (e) The maximum allowable Relative Positional Precision for monumentation of a Subdivision Plat is one-tenth of one foot (0.10') plus fifty parts per million (50ppm) (based on the direct distance between the two (2) corners being tested). In certain circumstances, the size or configuration of the surveyed property, or the relief, vegetation, or improvements on the surveyed property may result in survey measurements for which the maximum allowable Relative Positional Precision may be exceeded. If the maximum allowable Relative Positional Precision is exceeded, the surveyor shall note the reason as required in Section 3a below.
- (3) Final Plat or Map Document Accuracy Requirements:
- (a) A note on the face of the plat or map shall explain the site conditions that resulted in a Relative Positional Precision that exceeds the maximum allowed under Section 2e of these standards.
 - (b) Each of the subdivision boundaries and individual lot boundaries shown on the plat shall have a maximum mathematical closure of 0.01 feet plus ten parts per million (10 ppm).
 - (c) A note on the face of the plat or map shall describe the location and description of any monuments, lines, or other evidence that control the boundaries of the surveyed property or that were otherwise relied upon in establishing or retracing the boundaries of the surveyed property, and the relationship of that evidence to the surveyed boundary.

- (d) An explanation of the boundary description of the subdivision, if it differs from the original deed for the property, shall be made on the face of the plat or map in a surveyor's note. Where a measured or calculated dimension differs from the record by an amount deemed significant by the surveyor, such dimension shall be shown in addition to, and differentiated from, the corresponding record dimension.
 - (e) When the results of the survey differ significantly from the record, or if a fundamental decision related to the boundary Resolution is not clearly reflected on the plat or map, the surveyor shall explain this information with notes on the face of the plat or map.
- (4) Subdivision Title Guarantee and Report: Proof of ownership and authority of the property owner to legally plat the property shall be demonstrated, prior to recording the final plat, in the form of a title insurance product, approved by the City and set forth in the Final Plat application. The title insurance product shall include, but may not be limited to, proof of ownership and authority to bind the property and sign the "Owner's Dedication" and the "Drinking Water System Certificate".
- (5) Recording the Final Plat:
- (a) The applicant shall provide three (3) reproducibles of the executed Final Plat to the Public Works Department in accordance with Section 50-1304, Idaho Code. Signatures shall be in reproducible black ink.
 - (b) Upon approval and execution of the final plat, the City Surveyor shall file the plat with the Bonneville County Recorder's office. All approved final plats shall be offered for record within one hundred and eighty (180) days following approval by the Council, unless an extension of time for filing is granted by the Council.
 - (c) If the final plat is not offered for record within one hundred and eighty (180) days, or other time period granted by the Council, because of the applicant's failure to meet the requirements specified herein, the Council may rescind its approval of the plat.
 - (d) No plat shall be recorded or offered for record nor shall any land be recorded or offered for sale with reference to such a plat until said plat has been duly approved by Council and signed.
 - (e) If a fully executed Final Plat has been offered for record by the property owner and has been delayed for any reason, the order to record may come from the Director regardless of the wishes of the owner of the land platted. (Ord. 3003, 4-23-15; Ord. 3129, 8-10-2017; Ord. 3391, 6-24-21; Ord. 3423 10-28-23)

10-1-10 ENGINEERING IMPROVEMENT DRAWINGS:

- (A) Any person who requests acceptance by the City of any street, utility line, or other public improvement shall first submit improvement plans profiles and specifications for such improvements to the Community Development Services Department. Improvement drawings submitted shall be prepared, signed, and stamped by a licensed professional engineer. Construction of said public improvements shall not be commenced until the City Engineer has certified that such plans are in accordance with the Standard Drawing and Specifications and that the developer has paid the associated fee. Final approval of and signature on the improvement drawings by the City must be obtained prior to the associated Final Plat being submitted to the Council for approval. (Ord. 3186, 5-24-18)

- (B) Acceptance: If improvement plans sealed by a professional engineer licensed in Idaho comply with all state and local laws and ordinances and any development agreement executed or to be executed between the City and the applicant, the City Engineer shall endorse the improvement plans and shall cause a notice to be imprinted upon the improvement drawings stating that the City will not accept ownership or maintenance of such public improvements until a professional engineer licensed in the State of Idaho has inspected the construction of such public improvements and has delivered written certification to the City Engineer that such inspection was made and that construction of such improvements meets or exceeds the minimum standards set forth in the Standard Drawings and Specifications. (Ord. 3186, 5-24-18)

- (C) As-built Drawings: As-built drawings and construction materials testing documentation of such public improvements shall be prepared, sealed by a professional Engineer licensed in Idaho, and submitted to the City Public Works Department. Following submittal, the City Engineer shall then review the sealed “as-built” drawings, together with the certification of the professional engineer, for acceptance. Public improvements which have been accepted by the City shall result in a “Notice of Public Acceptance of Street and Utilities” to be recorded in the Bonneville County Recorder’s office.

10-1-11 ANNEXATION AND INITIAL ZONING IN CONJUNCTION WITH A PLAT:

- (A) Cities may annex unincorporated territory contiguous to the municipal boundaries provided it complies with Idaho Code. Annexation and Initial Zoning may be done concurrent with a Final Plat.

- (B) Submittal and Review Process:
 - (1) A Complete Application shall be submitted to the Community Development Services Department. Applications shall be submitted at least five (5) weeks prior to a regularly scheduled Planning and Zoning Commission meeting where the matter is to be considered.

- (2) Upon receipt of an annexation petition and the required fee, the Community Development Services Department shall schedule a hearing before the Planning and Zoning Commission on the proposed amendment.

(C) Development Agreement:

- (1) The development agreement shall be prepared by the developer on a form provided by the City and submitted to the City for review. Review and recommendations will then be made by the City and returned to the developer. Final approval by the City and signatures by the developer shall be obtained before the final plat being submitted to the Council.

10-1-12 GUARANTEE OF COMPLETION:

- (A) The developer of a subdivision within the City shall be required to construct and install all public improvements as required by this Code and Idaho Code and the approved improvement drawings for each subdivision or phase thereof prior to the issuance of any building permit for said subdivision. Guarantee of completion shall be provided in lieu of completing all infrastructure improvements prior to issuance of building permits within a subdivision.

- (B) Financial Guarantee Arrangements: Prior to commencing construction on any public improvements, the final plat and development agreement shall be approved and recorded. The City shall require the developer to provide a financial guarantee of performance in one (1) or a combination of the following arrangements which shall be in addition to the requirements of any other agency responsible for the administration, operation and maintenance of the applicable public improvement. Public improvements shall include but not be limited to: roads, electric, public water, public sewer, fire protection, lighting, required landscaping, curb, gutter, sidewalks, and drainage systems.

(C) Surety Bond:

- (1) Accrual: The bond shall accrue to the City covering all costs of construction of the specific public improvements.
- (2) Amount: The bond shall be in the amount equal to the one hundred fifty percent (150%) of the total estimated costs based on the development cost in this Section, for completing construction of the specific public improvement, as recommended and approved by the City Engineer.
- (3) Term Length: The bond shall be in force for a period of at least twelve (12) months, with automatic renewals until such time as the public improvements are completed and accepted by the City and shall further continue until all warranty periods are completed.
- (4) Bonding for Surety Company: The bond shall be with a surety company authorized to do business in the State of Idaho and acceptable to the Council.

- (5) Development Cost Estimate: The development cost estimate shall be provided by the developers engineer for review and approval by the City Engineer. Said estimate shall reflect the nearest similar City project bid cost estimates plus ten percent (10%) of the improvement needed to complete the subdivision.
- (D) Cash Deposit, Certified Check, Negotiable Bond or Irrevocable Bank Letter of Credit:
- (1) Treasurer, Escrow Agent, or Trust Company: A cash deposit, certified check, negotiable bond, or an irrevocable bank letter of credit, such surety acceptable to the City, shall be deposited with an escrow agent City Treasurer, or trust company;
 - (2) Dollar Value: The dollar value of the cash deposit, certified check, negotiable bond or an irrevocable bank letter of credit shall be equal to one hundred fifty percent (150%) of the estimated cost based on the development cost agreement in this Section, for completing construction of the specific public improvement, as recommended and approved by the City Engineer.
 - (3) Escrow Time: The escrow time for the cash deposit, certified check, negotiable bond, or irrevocable bank letter of credit, shall be for a period of a least twelve (12) months, with automatic renewals until such time as the public improvements are completed and accepted by the City and shall further continue until all warranty periods are completed.
 - (4) Development Cost Estimate: The Development cost estimate shall be provided by the developers engineer for review and approval by the City Engineer. Said estimate shall reflect nearest similar City project bid cost estimates plus ten percent (10%) of the improvements needed to complete subdivision.
 - (5) Other Security: Other security for public improvements may be accepted upon a specific finding by the Council that such security is in an amount and of a type that guarantees installation of public improvements required by this Code.
 - (6) Approval of As-Built Site Improvements: With respect to financial guarantees, the approval of all as-built site improvements within a subdivision shall be conditioned on the accomplishment of the following:
 - (a) The public improvements as required in the construction improvement drawings required by this Code have been completed by the developer and approved by the City.
 - (b) All completed public improvements shall be approved by the developer's engineer with an acknowledged/notarized letter.
 - (7) Inspection of Public Improvements Under Construction:
 - (a) Before recording of a final plat an agreement shall be made in writing between the developer and the City to provide for the inspection and the

construction and conformity of public improvements to the approved construction plans. The inspection fee shall be in an amount set from time to time by Council based on a percentage of the estimated total public improvement construction costs. Materials testing, per the frequency specified in the City's standards, shall be provided by the developer at no cost to the City.

- (b) Prior to construction of public improvements, a pre-construction meeting shall be held with the appropriate City staff, the project engineer, and the contractor or the contractor's designated representative.
- (8) **Penalty in Case of Failure to Complete Construction of Public Improvements:** In the event the developer fails to complete construction of public improvements within the period of time required by the conditions of the guarantee for the completion of public improvements the Council may proceed to have such work completed. The Council may determine and take necessary action in order to accomplish completion of the required public improvement. The Council may reimburse itself for the cost and expense thereof by appropriating the cash deposit, certified check, negotiable bond, irrevocable letter of credit, or other acceptable security which the developer deposited in lieu of the surety bond. The City may take any steps necessary to require performance by the bonding or surety company, and as included in a development agreement between the Council and the developer.
- (9) **Reduction and Release of Guarantee:**
- (a) Following completion of a portion of the public improvement (such as a structure or a section of road), the developer may submit a written request to the City Engineer for final inspection of that portion. To receive partial acceptance the public improvement must be functional and able to be utilized by the public with or without restrictions as determined by the City Engineer. If the City Engineer determines that the developer completed the portion of work in accordance with the development agreement requirements, the City Engineer may consider the inspection a final inspection for that completed portion and relieve the contractor of construction site responsibilities for that portion. If the inspection discloses work not completed in accordance with the requirements of the development agreement, the City Engineer shall not declare that portion of the project complete until the developer addresses the noncompliant work to the satisfaction of the City Engineer.
 - (b) Partial acceptance by the City occurs only after the developer executes and submits all documents, certificates, and proofs of compliance for that portion. When the developer submits (and the City Engineer accepts) all contract required project documentation, the City Engineer will make the partial acceptance for that portion and notify the developer in writing of this acceptance. Bond release shall be proportionate to the cost of construction of the public improvement accepted. If after partial

completion, the developer or a subcontractor damages that partial completion, the developer shall repair or replace the damaged work to the satisfaction of the City Engineer at no additional costs to the City.

- (c) Final acceptance by the City occurs only after the inspecting engineer certifies that all of the public improvements are complete and free from defect, after receipt of a notarized statement and itemized bill, and with approval of the City Engineer. The City shall then release the developer from the development agreement upon completion of all warranty periods.
- (10) Exception: For subdivisions where the City determines it to be in the best interest of the property owners to install sidewalks at the time of building rather than at the time of subdivision development, the following procedure will be followed regarding the installation of sidewalks:
- (a) Building Permit/Certificate of Occupancy: A building permit may be issued on a building occupying a lot when the required sidewalk has not been installed under the following conditions:
 - (i) On the building permit it is clearly noted that the sidewalks shall be installed prior to the receipt of a final Certificate of Occupancy.
 - (ii) Prior to the issuance of a temporary Certificate of Occupancy at least one (1) of the following shall be in force:
 - (aa) A cash deposit or certified check in the amount approved by the City Engineer pursuant to this Section shall be deposited and held in escrow by the City until such time as the sidewalks are installed. It shall be the responsibility of the property owner to request an inspection of the installation and request a refund of the escrowed funds from the City. All refunds of such escrowed funds shall be subject to the accounts-payable cycle of the City. An inspection by the City Engineer showing acceptance and compliance of sidewalks shall be completed prior to any request for a refund of the escrowed funds.
 - (bb) A letter from a title company certifying that funds in the amount approved by the City Engineer pursuant to this section shall be held in escrow until such time as the sidewalks have been installed and an inspection by the City Engineer showing acceptance and compliance of sidewalks has been completed.

10-1-13 ADMINISTRATION – WARIANCES – APPEALS:

- (A) Director: The Director shall administer the terms and provision of this Chapter and received and process all subdivision applications.
- (B) Variances: The Council may, upon recommendation from the Commission, grant a variance to the terms and provision of this Chapter. A variance may be granted only upon an express finding that all of the following conditions exist:
- (1) There are special circumstances or conditions affecting the property being platted such that a strict application of this Chapter would clearly be impracticable or unreasonable.
 - (2) Strict compliance with this Chapter would result in extraordinary hardship, as distinguished from mere inconvenience, to the developer because of the particular physical surroundings, shape, or unusual topography of the developer's property, and will substantially preclude development of the property.
 - (3) The circumstances for which the variance is sought are unique to the property and are not applicable to other properties similarly situated.
 - (4) The variance is the least deviation from this Chapter necessary to mitigate the hardship.
 - (5) The granting of the variance is not likely to be substantially detrimental to the public safety, health, and welfare or will not substantially injure other property adjoining the property for which the variance is sought.
 - (6) The variance is not otherwise contrary to law.
 - (7) The conditions necessitating the variance were not caused or exacerbated by or in any way arise from the actions of the developer.
- (C) Petition for Public Hearing: In the event that a hearing has not been held or scheduled for any application or authorization required under this chapter, any affected person may petition the City in writing to hold a hearing prior to final action on an application or authorization. The petition shall be filed with the Community Development Services Department. The City may use its discretion to approve the petition. However, if twenty (20) or more affected persons petition for a hearing, the City shall be required to hold the hearing.
- (D) Appeals of Final Decisions: Any person denied a permit or aggrieved by a final decision of the City, may, within sixty (60) days after all remedies have been exhausted under this Code, seek judicial review pursuant to the judicial review procedures set forth in Title 67, Chapter 65 Idaho Code.

CHAPTER 2
BRIDGE AND STREET REGULATIONS

SECTION:

- 10-2-1: Intent
- 10-2-2: Definitions
- 10-2-3: Scope of Ordinance
- 10-2-4: Responsibilities of Developers

10-2-1: INTENT: The City Council finds and declares as follows:

- (A) The development of new subdivisions and developments around the periphery of the City is impacting the City's bridges and arterial and collector streets, and
- (B) The development of new subdivisions outside the City, but which require private access to streets and ways within the City also impacts City bridges and arterial streets and otherwise reduces the ability of such streets and bridges to adequately handle traffic flow.
- (C) The increased traffic volume generated by such new subdivisions and developments requires the construction of new collector and arterial streets and bridges, and
- (D) It is not equitable to fund the entire cost of constructing such arterial street improvements and bridge construction entirely from ad valorem tax revenues, and
- (E) The annexation of subdivisions to the City is creating the need for improvements to streets and bridges and the developers thereof should therefore pay a portion of the cost thereof, and

10-2-2: DEFINITIONS: Whenever the following words or terms are used in this Code, they shall have the meanings ascribed below:

ARTERIAL STREET: A major roadway designated in the BMPO Access Management Plan to serve through traffic and where access to abutting properties is restricted.

COLLECTOR STREET: A street designated in the BMPO Access Management Plan to provide for traffic movement between an arterial streets and a local streets.

DEVELOPER: Any person owning fee simple title to any parcel of real property, subject to this Chapter.

LOCAL STREET: A street designated in the BMPO Access Management Plan into which private access is freely allowed, and which is less than fifty (50) feet in width, as measured from the back of the curbs.

PRIVATE ACCESS: Any roadway, drive, or other privately-owned way used to obtain direct vehicular access to a public street or alley.

PUBLIC ACCESS: Any street, road, highway, alley or other publicly dedicated and accepted way designed for movement of vehicular traffic.

RE-SUBDIVISION: A change in any plat of an improved or recorded subdivision that affects the layout of any street or area reserved for public use, or which creates any additional lots.

SUBDIVISION: The division of land into two (2) or more lots for the purpose of sale, lease or development by a Developer, including any re-subdivision of land.

SUBDIVISION ORDINANCE: The Subdivision Ordinance of the City of Idaho Falls, as the same now exists or as modified hereafter. (Ord. 3181, 04-12-18; Ord. 3332, 09-10-20)

10-2-3: SCOPE OF ORDINANCE: This Chapter shall apply to all land annexed to the City and, except as expressly provided herein, to all land contiguous to any street located within the City and from which land public or private access is made to such street or for which City plat approval is required under Title 50, Chapter 13, Idaho Code.

10-2-4: RESPONSIBILITIES OF DEVELOPERS: The responsibilities of the Developer and of the City for the construction of bridges and streets shall be as follows:

(A) Costs associated with all bridges across canals, ditches, and streams lying entirely within or adjacent to a subdivision within the City or within property to be developed within the City, except arterial and higher classification streets, shall be the responsibility of the Developer.

(B) The design and construction of all collector and local streets, within or adjacent to the Developer's subdivision or property, shall be the Developer's responsibility. The Developer shall dedicate the right of way required to support the street classification designated in the BMPO Access Management Plan. The Developer shall be responsible for the design and construction of the roadway features including, but not limited to, all grading, excavation, base, paving, irrigation structures, utility relocations, landscaping, signals, illumination, sidewalk, curb and gutter and storm drainage facilities, along with any additional reconstruction or repair necessary due to the development-required utility work, needed grade adjustments, or turn lane additions. The ballast depth and width of any paved street surface for which the Developer has responsibility shall be in conformance with the Engineering Design Policy Manual.

(C) The design and construction of all arterial street expansion or reconstruction shall be the responsibility of the City. The Developer's proportionate share of the cost of arterial street improvements shall be payment of impact fees, as set forth in Title 10, Chapter 8, of this Code. All design and construction of auxiliary lanes and appurtenances necessary for the specific development shall be paid for by the Developer independent of any impact fees due. The Developer shall dedicate the right-of-way required to support the arterial classification designated in the BMPO Access Management Plan.

(D) If any existing collector or local street in or adjacent to a subdivision is roughly parallel and adjacent to a canal, river, freeway, arterial street, or other such similar facility or topographical feature (as determined by the City), the Developer shall be responsible for the necessitated construction of both sides of street section and all sidewalk, curb and gutter and storm drainage facilities along subdivisions's street frontage. City shall be responsible for installation costs of additional street ballast and paving required for pavement widths greater than forty-three (43) feet, not including auxiliary lanes necessary for the subdivision.

(E) All streets, sidewalks, curbs, gutters or other public improvements which the developer is required to construct shall be constructed in accordance with the Engineering Design Policy Manual and the Standard Drawings and Specifications.

(Ord. 3467, 5-26-22)

CHAPTER 3

[RESERVED]

(Ord. 3179, 4-12-2018)

CHAPTER 4 FLOOD CONTROL

SECTION:

- 10-4-1: Purpose
- 10-4-2: Definitions
- 10-4-3: General Provisions
- 10-4-4: Administration
- 10-4-5: Provisions for Flood Hazard Protection
- 10-4-6: Legal Status Provisions

10-4-1 PURPOSE

Statement of Purpose

The purpose of this Chapter is to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

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 and 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, 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. (Ord. 3184, 05-10-18)

10-4-2 DEFINITIONS

Unless specifically defined below, words or phrases used in this Chapter shall be interpreted according to the meaning they have in common usage and to give this Chapter its most reasonable application.

Accessory Structure (appurtenant structure): a structure on the same lot or parcel as a principal structure, the use of which is incidental and subordinate to the principal structure.

Addition (to an existing building): an extension or increase in the floor area or height of a building or structure.

Appeal: a request for review of the Floodplain Administrator's interpretation of provisions of this Chapter or request for a variance.

Area of Shallow Flooding: a designated AO, AH, AR/AO, or AR/AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent (1%) or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard: see Special Flood Hazard Area (SFHA).

Base Flood: the flood having a one percent (1%) chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE): a determination by the Federal Insurance Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year. When the BFE has not been provided in a Special Flood Hazard Area, it may be obtained from engineering studies available from a Federal, State, or other source using FEMA-approved engineering methodologies. This elevation, when combined with the Freeboard, establishes the Flood Protection Elevation.

Basement: any area of the building having its floor sub grade (below ground level) on all sides.

Building: see Structure.

Critical Facilities: facilities that are vital to flood response activities or critical to the health and safety of the public before, during, and after a flood, such as a hospital, emergency operations center, electric substation, police station, fire station, nursing home, school, vehicle and equipment storage facility, or shelter; and facilities that, if flooded, would make the flood problem and its impacts much worse, such as a hazardous materials facility, power generation facility, water utility, or wastewater treatment plant.

Datum: the vertical datum is a base measurement point (or set of points) from which all elevations are determined. Historically, that common set of points was the National Geodetic Vertical Datum of 1929 (NGVD29). The vertical datum currently adopted by the federal government as a basis for measuring heights is the North American Vertical Datum of 1988 (NAVD88).

Development: any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

Development Activity: any activity defined as Development which will necessitate a Floodplain Development Permit; such as: the construction of buildings, structures, or accessory structures; additions or substantial improvements to existing structures; bulkheads, retaining walls, piers, and pools; the placement of mobile homes; or the deposition or extraction of materials; the construction or elevation of dikes, berms and levees.

Digital Flood Insurance Rate Map (DFIRM): the digital official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

Elevated Building: for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Elevation Certificate: The Elevation Certificate is an important administrative tool of the NFIP. It is used to determine the proper flood insurance premium rate; it is used to document elevation information necessary to ensure compliance with community floodplain management regulations; and it may be used to support a request for a Letter of Map Amendment (LOMA) or Letter of Map Revision based on fill (LOMR-F).

Enclosure: an area enclosed by solid walls below the BFE/FPE or an area formed when any space below the BFE/FPE is enclosed on all sides by walls or partitions. Insect screening or open wood lattice used to surround space below the BFE/RFPE is not considered an enclosure.

Encroachment: the advance or infringement of uses, fill, excavation, buildings, structures, or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Existing Construction: for the purposes of determining rates, structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. “Existing construction” may also be referred to as “existing structures.”

Existing Manufactured Home Park or Manufactured Home Subdivision: a manufactured home park or subdivision where the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and final site grading or the pouring of concrete pads) is completed before the effective date of the original floodplain management regulations adopted by the community, on October 15, 1982.

Existing Structures: see existing construction.

Expansion to an Existing Manufactured Home Park or Subdivision: the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or Flooding:

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - 1. The overflow of inland or tidal waters.
 - 2. The unusual and rapid accumulation or runoff of surface waters from any source.
 - 3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph a.2. of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.1. of this definition.

Flood Elevation Determination: See Base Flood Elevation (BFE)

Flood Elevation Study: See Flood Insurance Study (FIS)

Flood Hazard Boundary Map (FHBM): an official map of a community, issued by the Federal Insurance Administrator, where the boundaries of the flood, mudslide (i.e., mudflow) related erosion areas having special hazards have been designated as Zones A, M, and/or E.

Flood Insurance Rate Map (FIRM): an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood Insurance Study (FIS): an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations; or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood Zone: a geographical area shown on a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) that reflects the severity or type of flooding in the area.

Floodplain or Flood-Prone Area: any land area susceptible to being inundated by water from any source (see definition of “flooding”).

Floodplain Administrator: the individual appointed to administer and enforce the floodplain management regulations.

Floodplain Development Permit: any type of permit that is required in conformance with the provisions of this Chapter, prior to the commencement of any development activity.

Floodplain Management: the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and flood plain management regulations.

Floodplain Management Regulations: zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a flood plain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing: any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Flood Protection Elevation (FPE): the Base Flood Elevation plus the Freeboard.

- a. In “Special Flood Hazard Areas” where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus one and a half (1.5) feet of freeboard; and
- b. In “Special Flood Hazard Areas” where no BFE has been established, this elevation shall be at least one and a half (1.5) feet above the highest adjacent grade.

Flood Protection System: those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a “special flood hazard” and the extent of the depths of associated flooding. Such a system typically includes dams, reservoirs, levees, or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

Floodway: the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

Freeboard: a factor of safety usually expressed in feet above a flood level for the purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, obstructed bridge openings, debris and ice jams, and the hydrologic effects of urbanization in a watershed. The Base Flood Elevation (BFE) plus the freeboard establishes the Flood Protection Elevation (FPE). Freeboard shall be one and a half (1.5) feet.

Functionally Dependent Use: a facility that cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair facilities. The term does not include long-term storage, manufacture, sales, or service facilities.

Highest Adjacent Grade (HAG): the highest natural elevation of the ground surface prior to construction, adjacent to the proposed walls of a structure. Refer to the FEMA Elevation Certificate for HAG related to building elevation information.

Historic Structure: a structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or to a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:
 1. by an approved state program as determined by the Secretary of the Interior, or
 2. directly by the Secretary of the Interior in states without approved programs.

Letter of Map Change (LOMC): a general term used to refer to the several types of revisions and amendments to FEMA maps that can be accomplished by letter. They include Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR), and Letter of Map Revision based on Fill (LOMR-F)

1. **Letter of Map Amendment (LOMA):** an official amendment, by letter, to an effective National Flood Insurance Program (NFIP) map. A LOMA establishes a property's location in relation to the Special Flood Hazard Area (SFHA). LOMAs are usually issued because a property has been inadvertently mapped as being in the floodplain but is actually on natural high ground above the base flood elevation.
2. **Letter of Map Revision (LOMR):** FEMA's modification to an effective Flood Insurance Rate Map (FIRM) or a Flood Boundary and Floodway Map (FBFM) or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The LOMR officially revises the Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM), and sometimes the Flood Insurance Study (FIS) report, and when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM, FBFM, or FIS report.
3. **Letter of Map Revision Based on Fill (LOMR-F):** FEMA's modification of the Special Flood Hazard Area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of

fill outside the existing regulatory floodway. The LOMR-F does not change the FIRM, FBFM, or FIS report.

4. **Conditional Letter of Map Revision (CLOMR)**: A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map (FIRM) or Flood Insurance Study (FIS). Upon submission and approval of certified as-built documentation, a Letter of Map Revision (LOMR) may be issued by FEMA to revise the effective FIRM. Building Permits and/or Flood Development Permits cannot be issued based on a CLOMR, because a CLOMR does not change the NFIP map.

Levee: a man-made structure, usually an earthen embankment, designed and constructed according to sound engineering practices, to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee System: a flood protection system that consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest Adjacent Grade (LAG): the lowest point of the ground level next to the structure. Refer to the FEMA Elevation Certificate for LAG related to building elevation information.

Lowest Floor: the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; Provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR § 60.3 and this Chapter.

Manufactured Home: a structure, transportable in one or more sections, built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "Manufactured Home" does not include a "Recreational Vehicle."

Manufactured Home Park or Subdivision: a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market Value: the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

Mean Sea Level: for purposes of the National Flood Insurance Program (NFIP), the National Geodetic Vertical Datum (NGVD) of 1929 or other datum (such as North America Vertical Datum of 1988 - NAVD88) to which Base Flood Elevations (BFEs) shown on a community's FIRM are referenced.

Mudslide (i.e., mudflow): describes a condition where there is a river, flow, or inundation of liquid mud down a hillside usually as a result of a dual condition of loss of brush cover and the subsequent accumulation of water on the ground preceded by a period of unusually heavy or sustained rain. A mudslide (i.e., mudflow) may occur as a distinct phenomenon while a landslide is in progress, and will

be recognized as such by the Administrator only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.

Mudslide (i.e., mudflow) Area Management: the operation of an overall program of corrective and preventive measures for reducing mudslide (i.e., mudflow) damage, including but not limited to emergency preparedness plans, mudslide control works, and flood plain management regulations.

Mudslide (i.e., mudflow) Prone Area: an area with land surfaces and slopes of unconsolidated material where the history, geology, and climate indicate a potential for mudflow.

National Flood Insurance Program (NFIP): The NFIP is a Federal program created by Congress to mitigate future flood losses nationwide through sound, community-enforced building and zoning ordinances and to provide access to affordable, federally backed flood insurance protection for property owners.

New Construction: for floodplain management purposes, a structure for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures. Any construction started after October 15, 1982, and before the effective start date of this floodplain management Chapter is subject to the ordinance in effect at the time the permit was issued, provided the start of construction was within one hundred eighty (180) days of permit issuance.

New Manufactured Home Park or Subdivision: a place where the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community on October 15, 1982.

Post-FIRM: construction or other development for which the “start of construction” occurred on or after the effective date of the initial Flood Insurance Rate Map (FIRM).

Pre-FIRM: construction or other development for which the “start of construction” occurred before October 15, 1982, the effective date of the initial Flood Insurance Rate Map (FIRM).

Recreational Vehicle: a vehicle that is:

- a. Built on a single chassis, and
- b. 400 square feet or less when measured at the largest horizontal projection, and
- c. Designed to be self-propelled or permanently towed by a light duty truck, and
- d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Floodway: See Floodway

Remedy a Violation: to bring the structure or other development into compliance with State or local flood plain management regulations, or, if this is not possible, to reduce the impacts of its non-compliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this Chapter such

ordinance or regulations, or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

Repetitive Loss Structure: An NFIP-insured structure that has had at least two paid flood losses of more than one thousand dollars (\$1,000) each in any 10-year period since 1978.

Riverine: relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special Flood Hazard Area (SFHA): the land in the flood plain within a community subject to a one percent (1%) or greater chance of flooding in any given year. For purposes of these regulations, the term “special flood hazard area” is synonymous in meaning with the phrase “area of special flood hazard”.

Start of Construction: includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure: a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Substantial Damage: damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent (50%) of its market value before the damage occurred. See definition of “substantial improvement”. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty-five percent (25%) of the market value of the structure before the damage occurred.

Substantial Improvement: any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

2. Any alteration of a “historic structure”, provided that the alteration will not preclude the structure's continued designation as a “historic structure” and the alteration is approved by variance issued pursuant to this Chapter.

Temperature Controlled: having the temperature regulated by a heating and/or cooling system, built-in or appliance.

Variance: a grant of relief by the governing body from a requirement of this Chapter.

Violation: the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the Finished Construction Elevation Certificate, other certifications, or other evidence of compliance required in 44 CFR § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

Water Surface Elevation: the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 or the North American Vertical Datum (NAVD) of 1988 (or other specified datum), of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

Watercourse: a lake, river, creek, stream, wash, channel, or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur. (Ord. 3184, 05-10-18)

10-4-3 GENERAL PROVISIONS

A. Lands to Which This Chapter Applies

This Chapter shall apply to all Special Flood Hazard Areas within the jurisdiction of the City of Idaho Falls. Nothing in this Chapter is intended to allow uses or structures that are otherwise prohibited by the City Zoning Ordinance.

B. Basis for Special Flood Hazard Areas

The Special Flood Hazard Areas identified by the Federal Emergency Management Agency in its Flood Insurance Study (FIS) for City of Idaho Falls, Bonneville County, Idaho, dated April 1982, 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 Chapter. The FIS and the FIRM are on file at the office of the Clerk.

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 Section(4)(B) 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 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, etcetera. 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 the City of Idaho Falls 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 misdemeanor. Any person who violates this Chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than an amount allowed by the State of Idaho for a misdemeanor violation or an amount set from time to time by Resolution of the Council or imprisoned for not more than one hundred eighty (180) days, or a combination thereof. Each day the violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City from taking such other lawful actions as is necessary to prevent or remedy any violation. (Ord. 3003, 4-23-15; Ord. 3184, 05-10-18; Ord. 3365, 1-14-21)

10-4-4 ADMINISTRATION

A. Designation of Floodplain Ordinance Administrator

The Assistant Planning Director, hereinafter referred to as the “Floodplain Administrator”, is hereby appointed to 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 USC 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 Section (5)(E) of this Chapter are met.
6. Obtain actual elevation (in relation to mean sea level) of the lowest floor (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Section (4)(C)(3) 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 Section (4)(C)(3) of this Chapter.
8. Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of Section (4)(C)(3) 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 Section (4)(C)(3) and Section (5)(B)(2) 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 Section (3)(B) 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 Section (5)(C)(2) of 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 Section (3)(B), 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 (SFHA) 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, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
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 this Chapter and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
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 misdemeanor.
17. Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.

18. Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
19. Follow through with corrective procedures of Section (4)(D) 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 Section (3)(B) of this Chapter, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify the NFIP State Coordinator and FEMA of your community's 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 Section (3)(B) of this Chapter, 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 Section (3)(B) of this Chapter;
 - iv. the boundary of the floodway(s) or flood fringe area(s) as determined in Section (3)(B) of this Chapter;
 - v. the Base Flood Elevation (BFE) where provided as set forth in Section (3)(B); Section (3)(C); or Section (5)(C) of this Chapter;
 - vi. the old and new location of any watercourse that will be altered or relocated as a result of proposed development; and

- 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 lowest floor (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 Chapter 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, or on columns/posts/piers/piles/shear walls); and
 - ii. Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Section (5)(A)(8)(i-vi) of 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 Section (5)(B)(5) and (6) 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
- j. 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, rip-rap, docks, grading, paving, excavation or drilling operations, or storage of equipment or materials, etcetera).
- b. The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Article III, Section B.
- c. The Flood Protection Elevation required for the lowest floor 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 openings requirements, if in Zones A, AE, AH, AO, or A1-30.
- h. All floodplain development permits shall be conditional upon the start of construction of work within one hundred eighty (180) days. A floodplain development permit shall expire one hundred eighty (180) days after issuance unless the permitted activity has commenced as per the Start of Construction definition.
- i. A statement of the limitations of below BFE enclosure uses, if applicable. (i.e., parking, building access and limited storage only).
- j. A statement that all materials below BFE/FPE must be flood resistant materials.

3. Certification Requirements.

a. Elevation Certificates

- i. A Construction Drawings 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 lowest floor, 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 lowest floor 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" × 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 lowest floor 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 Section (5)(B)(3)(b).
- 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:
 - i. a description of the extent of watercourse alteration or relocation; and
 - ii. 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
 - iii. a map showing the location of the proposed watercourse alteration or relocation; and

- iv. 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 (5)(B)(5)(a);
 - ii. Temporary Structures meeting requirements of Section (5)(B)(6); and
 - iii. Accessory Structures less than 200 square feet meeting requirements of Section (5)(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 Chapter is required.

D. Corrective Procedures

- 1. Violations to be Corrected. When the Floodplain Administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.
- 2. Actions in Event of Failure to Take Corrective Action. If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
 - a. that the building or property is in violation of the floodplain management regulations;

- b. that a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
 - c. that following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.
- 3. Order to Take Corrective Action. If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of this Chapter, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one hundred eighty (180) calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.
- 4. Appeal. Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the Clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
 - a. Failure to Comply with Order. If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

E. Variance Procedures

- 1. The Board of Adjustment as established by the City, hereinafter referred to as the “appeal 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 Section 2 of this Chapter, provided provisions of Section 4(E)(9)(b), (c), and (d), 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 appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this Chapter, 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 Section 2 of 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. The applicant shall include a written report addressing each of the above factors in Section (4)(E)(3)(a-k) with their application for a variance.
 5. Upon consideration of the factors listed above and the purposes of this Chapter, the appeal 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 lowest floor 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.
10. The City will notify 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.
11. Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Idaho Code. (Ord. 3184, 05-10-18)

10-4-5 PROVISIONS FOR FLOOD HAZARD REDUCTION

A. General Standards

In all Special Flood Hazard Areas the following provisions are required:

1. All new construction, substantial improvements, and development shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
2. All new construction, substantial improvements, and development shall be constructed with materials and utility equipment resistant to flood damage in accordance with the Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, and available from the Federal Emergency Management Agency.
3. All new construction, substantial improvements, and development shall be constructed by methods and practices that minimize flood damages.
4. All new and replacement 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. All 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. A fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor shall:
 - a. be constructed entirely of flood resistant materials at least to the Flood Protection Elevation; and
 - b. 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 (2) 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 Chapter shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this Chapter 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 Section (4)(E)(9) of 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 Section (4)(C)(3) 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 USC 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, as set forth in Section (3)(B), or Section (5)(D), the following provisions, in addition to the provisions of Section (5)(A) of this Chapter, are required:

1. **Residential Construction.** New construction, substantial improvements, and development of any residential structure (including manufactured homes) shall have the lowest floor, including basement, elevated no lower than the Flood Protection Elevation, as defined in Section 2 of this Chapter.
2. **Non-Residential Construction.** New construction, substantial improvements, and development of any commercial, industrial, or other non-residential structure shall have the lowest floor, including basement, elevated no lower than the Flood Protection Elevation, as defined in Section 2 of this Chapter. Structures located in Zones A, AE, AH, AO, and A1-30 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 Section (5)(F)(2) of 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 Section (4)(C)(3) of 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 lowest floor of the manufactured home is no lower than the Flood Protection Elevation, as defined in Section 2 of 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 Idaho Code § 44-2201(2). 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 Section (5)(B)(4).
 - 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; or
 - 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; or
 - 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 taking place during a five (5) year period, 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. For each building or structure, the five (5) year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this Chapter. 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 Section (5)(A) of 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 Section (4)(C)(3) of 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 Section (5)(A)(1) of this Chapter;
- f. All service facilities, such as electrical, shall be installed in accordance with the provisions of Section (5)(A)(4) 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 Section 5 A(8)(b)(i-vi) of this Chapter.

An accessory structure with a footprint less than two hundred (200) square feet and is a minimal investment of seven thousand five hundred dollars (\$7,500) or less and satisfies the criteria outlined in a - g above is not required to meet the elevation or floodproofing standards of Section (5)(B)(2) 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 in flood hazard areas shall be anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the base flood, including the effects of buoyancy (assuming the tank is empty);
- b. 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 base flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;
- c. Not elevated above-ground tanks, that do not meet the elevation requirements of Section (5)(B)(2) 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, 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 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 Section (5)(E) of this Chapter.
- b. Retaining walls, bulkheads, sidewalks, and driveways that involve the placement of fill in regulated floodways and flood fringe shall meet the limitations of Section (5)(E) of this Chapter.
- c. 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, which encroach into regulated floodways and flood fringe, shall meet the limitations of Section (5)(E) of this Chapter.
- d. 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 Section (5)(E) of this Chapter.
- e. 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 Section (5)(E) of this Chapter.
- f. Gravel and sand and their subsequent extraction on lands within the Special Flood Hazard Area that encroach into regulated floodways and flood fringe shall meet the limitations of Section (5)(E) of this Chapter. A Reclamation Plan Bond for LOMR shall be posted by the mine/property owner with the City to cover the estimated costs of a Reclamation LOMR as determined by the mine/property owner and shall provide supporting documentation for the estimated LOMR cost. A Reclamation LOMR shall be completed within one year of the completion of mining. Upon failure of the property owner to obtain a Reclamation LOMR of the mining site within one (1) year, the Reclamation Plan Bond for LOMR will be forfeited. (OPTIONAL)

11. Subdivision plats.

Flood zones.

- a. A note must be provided on the final plat documenting the current flood zone in which the property or properties are located. The boundary line must be drawn on the plat in situations where two (2) or more flood zones intersect over the property or properties being surveyed.
- b. FEMA FIRM panel(s): #160xxxxxxC, and 160xxxxxxE, etc.

FIRM effective date(s): mm/dd/year
Flood Zone(s): Zone X, Zone A, Zone AE, Zone AO, Zone, AH, Zone D, etc.
Base Flood Elevation(s): AE ____ .0 ft., etc.
Flood Zones are subject to change by FEMA and all land within a floodway or floodplain is regulated by 10-1-5(0) of the City Subdivision Ordinance.

12. Critical Facilities:

As a best practice, FEMA recommends protection that exceeds code minimums. For example, FEMA 543, Design Guide for Improving Critical Facility Safety from Flooding and High Winds (2007) recommends protecting critical facilities to withstand at least a 0.2-percent-annual-chance flood event (often called the “500-year flood event”). Flood elevations for the 0.2-percent-annual-chance flood may be greater than the elevation specified by ASCE 24. If federal funding or other Federal action is involved, the requirements of Executive Order 11988 – Floodplain Management may necessitate protection of critical actions to the 500-year flood elevation (critical actions may include the construction and repair of critical facilities).

In existing facilities that have not been substantially damaged, it may not be possible to floodproof or elevate to provide protection from the 0.2-percent-annual-chance flood event. In those instances, floodproofing or elevating as high as practical is recommended.

C. Standards for Floodplains without Established Base Flood Elevations

Within the Special Flood Hazard Areas designated as Zone A (also known as Unnumbered A Zones) and established in Section (3)(B) of this Chapter, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of Section (5)(A) of this Chapter, shall apply:

The BFE used in determining the Flood Protection Elevation (FPE) shall be determined based on the following criteria:

1. 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 Chapter and shall be elevated or floodproofed in accordance with standards in Sections (5)(A) and (B) of this Chapter .
2. 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 Sections (5)(B) and (E).
3. 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 Section (3)(B) and utilized in implementing this Chapter.
4. When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the lowest floor shall be elevated or floodproofed (non-residential) to two feet (2.0 ft.) above the Highest Adjacent Grade (HAG) at the building site or to the Flood

Protection Elevation (FPE) whichever is higher, as defined in Section 2 of this Chapter. All other applicable provisions of Section (5)(B) 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 (5)(A) and (B) of this Chapter; 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. Standards for Floodways and Flood Fringe Areas

Areas designated as floodways or flood fringe areas are located within the Special Flood Hazard Areas established in Section (3)(B). 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 (5)(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 (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 (5)(B)(3) of this Chapter; and
 - b. the encroachment standards of Section (5)(E)(1) of this Chapter.

F. Standards for Areas of Shallow Flooding (Zone AO, AH, AR/AO, or AR/AH)

Located within the Special Flood Hazard Areas established in Section (3)(B) of 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 Sections (5)A and (B) of this Chapter, all new construction and substantial improvements shall meet the following requirements:

1. The lowest floor 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 (5)(F)(1) of this Chapter 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 Section (6)(C)(3), and Section (5)(B)(2) of this Chapter.

3. Adequate drainage paths shall be provided around structures on slopes to guide floodwaters around and away from proposed structures. (Ord. 3184, 05-10-18)

10-4-6 LEGAL STATUS PROVISIONS

A. Effect on Rights and Liabilities under the Existing Flood Damage Prevention Ordinance

This Chapter, in part, comes forward by re-enactment of some of the provisions included in the Flood Damage Prevention Ordinance enacted October 15, 1982, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this Chapter shall not affect any action, suit, or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of the City of Idaho Falls, Idaho, enacted on October 15, 1982, as amended, which are not reenacted herein are repealed. (Ord. 3184, 05-10-18)

B. Effect upon Outstanding Floodplain Development Permits

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a Floodplain Development Permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this Chapter. Provided, however, that when construction is not begun under such outstanding permit within a period of one hundred eighty (180) days subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this Chapter. (Ord. 3184, 05-10-18)

CHAPTER 5

(Rescinded)

**CHAPTER 6
STREET NUMBERING**

SECTION:

- 10-6-1: Supervision of Street Numbering
- 10-6-2: Baseline Numbering Systems
- 10-6-3: Method of Numbering
- 10-6-4: Address Identification

10-6-1: **SUPERVISION OF STREET NUMBERING:** The Community Development Services Department shall supervise the numbering of all houses and buildings upon the streets and avenues within the City. (Ord. 3003, 4-23-15)

10-6-2: **BASELINE NUMBERING SYSTEMS:**

(A) **Baseline Systems.** All residences and businesses within the City shall be numbered in accordance with the street numbering system set forth in this Chapter. All buildings within the City shall be numbered in accordance with two separate baseline systems, each of which shall have a north-south baseline and an east-west baseline. The intersection of each of such baselines shall hereafter be referred to as the initial points.

(B) **Original Townsite Baseline.** The initial point for the following described baseline system shall be the junction of the center line of South Eastern Avenue and the center line of Walnut Street extended west. The north-south baseline shall run along the center line of Eastern Avenue, and the east-west baseline shall run along the center line of Walnut Street extended west to Interstate 15. All residences and businesses located within the following described area shall be numbered in accordance with such baselines, to-wit: Commencing at the junction of South Eastern Avenue and West 13th Street extended; thence easterly to South Boulevard; thence northerly along South Boulevard to West Elva Street; thence west to Riverside Drive; thence northwesterly along the east bank of the Snake River to Highway 20; thence southwesterly along Highway 20 to I-15; thence southerly along I-15 to Pancheri Drive; thence easterly along Pancheri Drive to South Yellowstone Avenue; thence northeasterly on South Yellowstone Avenue to the junction of South Yellowstone and Short Street; thence easterly to the point of beginning. Such area shall hereafter be referred to as the Original Townsite.

(C) **Areas Other Than Original Townsite.** The numbering of all houses and businesses located within all portions of the City other than the Original Townsite, shall conform to the following described baseline system. The initial point for this area of the City shall be the junction of the center lines of First Street extended and North Boulevard. The north-south baseline shall run along the center line of Boulevard, and the east-west baseline shall run along the center line of First Street on the east and along the center line of a line commencing at the initial point and thence southwesterly to the intersection of West Broadway and I-15, and thence westerly along the center line of West Broadway to the City limits.

10-6-3: **METHOD OF NUMBERING:**

(A) Numbering of Streets Generally. Numbering shall commence at the initial point for each baseline system. All blocks shall be numbered with fifty (50) numbers to a side between two intersecting streets, except where such numbering would produce irregularity. Numbering shall extend all directions from the initial points described above with the even numbers being on the right, and the odd numbers on the left, when facing away from the initial point. Houses and buildings located on streets not extending to a baseline shall be numbered as though such street extended to a baseline. All numbers for buildings and houses located on a street shall be approximately evenly proportioned for the 50 numbers located between the two streets intersecting perpendicularly thereto. All building numbers shall conform as nearly as possible to the corresponding points on parallel or nearly parallel streets.

(B) Dual Direction Streets. If a street changes from running approximately parallel to one baseline to another perpendicular baseline, then the numbering shall change at the center of the curve in the street where such change is made, except as set forth below. If a street changes direction and then reverts to running parallel with its original direction without intersection with another street, then all houses and buildings located thereon shall be numbered as though the entire street ran in the same direction for the entire length thereof. In such case, all houses and buildings located thereon shall be numbered in even proportions for the 50 numbers on each side thereof.

(C) Dual Occupancies. Buildings having more than one occupancy shall have separate numbers at the street entrance to each occupancy.

10-6-4: ADDRESS IDENTIFICATION

New and existing buildings shall have approved address numbers, building numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numbers or alphabetical letters. Numbers shall be a minimum of four inches (4") high with a minimum stroke width of one-half inch (0.5"). Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole or other sign or means shall be used to identify the structure.

**CHAPTER 7
FORM BASED CODE**

SECTION:

- 10-7-1: The Idaho Falls Form Based Code Adopted
- 10-7-2: Purpose
- 10-7-3: Penalty

10-7-1 THE IDAHO FALLS FORM BASED CODE ADOPTED:

- (A) The Idaho Falls Form Based Code, October 2023 Edition, is hereby adopted as an official Code of the City.
- (B) Code on File. One (1) copy of the Idaho Falls Form Based Code, October 2023 Edition, shall be retained by the Clerk for use and examination by the public. (Ord. 3147, 12-14-2017; Ord. 3185, 05-10-18; Ord. , 2-27-18; Ord. 3544 10-12-23)

10-7-2 PURPOSE. The purpose of this Chapter is to:

- (A) adopt a form based code for the downtown area of Idaho Falls, as recommended by the Downtown Master Plan and Implementation Strategy;
- (B) protect and enhance the unique and historic character of the downtown area;
- (C) promote the public health, safety, and welfare;
- (D) protect or enhance property values within the downtown area;
- (E) provide guidance for future development in the downtown area in accordance with the Comprehensive Plan and Downtown Master Plan and Implementation Strategy;
- (F) establish reasonable standards of design and uniform procedures for the development and re-development of land and buildings within the downtown area;
- (G) provide for an orderly and expeditious method of processing applications for development in the downtown area; and
- (H) establish appropriate penalties for violators of Chapter requirements. (Ord. 3148, 12-14-2017)

10-7-3 PENALTY. Any person who violates any provision of this Chapter is guilty of a separate misdemeanor for every twenty-four (24) hour period of continued violation. (Ord. 3148, 12-14-2017)

CHAPTER 8
CITY DEVELOPMENT IMPACT FEES

SECTION:

- 10-8-1: Legislative Findings
- 10-8-2: Authority, Applicability, and Effective Date
- 10-8-3: Intent
- 10-8-4: Definitions
- 10-8-5: Imposition and Computation of Impact Fees
- 10-8-6: Payment of Impact Fees
- 10-8-7: Impact Fee Established. Refunds of Impact Fees Paid
- 10-8-8: Exemptions From Impact Fees
- 10-8-9: Credit Reimbursements
- 10-8-10: Appeals
- 10-8-11: Additional Provisions

10-8-1: LEGISLATIVE FINDINGS. The City finds that:

- A. Based on the City Comprehensive Plan adopted pursuant to Title 67, Chapter 65, Idaho Code, including, but not limited to, the capital improvements element of the Comprehensive Plan, the capital facilities plans of various City Departments, and the general governmental goal of protecting the health, safety, and general welfare of the residents of the City, and its area of City impact, it is necessary that the City's public facilities for public safety (police and fire/EMS); and parks and recreation; and transportation to accommodate new growth and development within the City and its area of City impact.
- B. New residential and nonresidential growth and development imposes and will continue to impose increasing demands upon the Public Facilities, as defined in this Chapter.
- C. The revenues generated from new residential and nonresidential growth and development often do not generate sufficient general funds to provide the necessary improvements of these Public Facilities to accommodate new growth and development.
- D. New growth and development are expected to continue and will place ever increasing demands on the City to provide and expand the Public Facilities to serve new growth and development.
- E. The City has planned for the improvement of the Public Facilities in the capital improvements element of the City Comprehensive Plan.
- F. The creation of an equitable impact fee system will enable the City to impose a proportionate share of the costs of needed improvements to the Public Facilities to accommodate new growth and development, and will assist the City in implementing the capital improvements element of the Comprehensive Plan.
- G. In order to implement an equitable impact fee system for the Public Facilities, the City retained TischlerBise to prepare an impact fee study for these types of facilities. The resulting

document titled "Capital Improvement Plan and Development Impact Fee Study of City of Idaho Falls, Idaho 2021", dated December 15, 2021, as amended from time to time by the Council, (the "Impact Fee Study"), recommended for approval by the Impact Fee Advisory Committee, is on file in the office of the Clerk.

H. The Impact Fee Study is consistent with the capital improvements element of the Comprehensive Plan, and uses the levels of service set forth in the Comprehensive Plan and the Capital Improvement Plan for these Public Facilities.

I. The Impact Fee Study sets forth reasonable methodologies and analyses for determining the impacts of various types of new growth and development on the Public Facilities and determines the cost of acquiring or constructing the improvements necessary to meet the demands for such Public Facilities created by new growth and development.

J. The Impact Fee Study uses a calculation methodology in accordance with generally accepted accounting principles that is net of credits for the present value of revenues that will be generated by new growth and development based on historical funding patterns and that are anticipated to be available to pay for system improvements, including taxes, assessments, user fees, and intergovernmental transfers, and includes consideration of the following factors:

1. The cost of existing system improvements within the service area;
2. The means by which existing system improvements have been financed;
3. The extent to which the new growth and development will contribute to the cost of system improvements through taxation, assessment, or developer or landowner contributions, or has previously contributed to the cost of system improvements through developer or landowner contributions;
4. The extent to which the new growth and development is required to contribute to the cost of existing system improvements in the future;
5. The extent to which the new growth and development should be credited for providing system improvements, without charge to other properties within the service area;
6. Extraordinary costs, if any, incurred in serving the new growth and development;
7. The time and price differential inherent in a fair comparison of impact fees paid at different times; and
8. The availability of other sources of funding system improvements including, but not limited to, user charges, general tax levies, transfers, and special taxation.

K. The maximum allowable impact fees described in this Chapter are based on the Impact Fee Study, and do not exceed the costs of system improvements for the Public Facilities to serve new growth and development that will pay the impact fees.

L. The police, fire/EMS, parks and recreation, and transportation Public Facilities included in the calculation of impact fees in the Impact Fee Study will benefit all new growth and development throughout the City, and it is therefore appropriate to treat all areas of the City and

the area of City impact as a single service area for purposes of calculating, collecting and spending the impact fees collected.

M. There is both a rational nexus and a rough proportionality between the development impacts created by each type of development covered by this Chapter and the impact fees that such development will be required to pay.

N. This Chapter creates a system by which impact fees paid by new growth and development will be used to finance, defray or to provide capital improvements for the Public Facilities in ways that benefit the development for which impact fees were paid.

O. This Chapter creates a system under which impact fees shall not be used to correct existing deficiencies in Public Facilities, or to replace or rehabilitate existing Public Facilities, or to pay for routine operation or maintenance of those Public Facilities.

P. This Chapter is consistent with all applicable provisions of Title 67, Chapter 82, Idaho Code, concerning impact fee ordinances.

10-8-2: AUTHORITY, APPLICABILITY, AND EFFECTIVE DATE.

A. This Chapter is enacted pursuant to the City's general police and any other powers pursuant to the authority granted to the City by the Idaho Constitution, Idaho Code Title 50, and pursuant to the authority granted to the City by Idaho Code § 67-8201, et seq.

B. The provisions of this Chapter shall apply to all of the territory within the limits of the City and to any unincorporated areas of the City within the City's area of city impact where the City has executed an intergovernmental agreement with Bonneville County for purposes of collection or expenditure of impact fees pursuant to Idaho Code § 67-8204A, and other applicable laws of the State of Idaho.

C. This Chapter is effective May 1, 2022 (the "effective date") of City Ordinance 3446, which adopted the provisions of this Chapter.

D. Applications for building permits received by the City prior to the effective date of this Chapter, or amendments to this Chapter, adopting impact fees or amending or adopting any methodology by which impact fees are calculated, shall be exempt from that portion of this Chapter, or amendment enacted after such building permit application, if a valid building permit has been issued or construction has commenced prior to the effective date of this Chapter or any amendment. For building permits that expire or are revoked after the effective date of this Chapter, the fee payer shall be entitled to a refund of previously paid impact fees as provided in this Chapter, provided that in the case of reapplication for building permit, the impact fee in effect at the time of the reapplication shall be paid.

(Ord. 3510, 04-13-2023)

10-8-3: INTENT.

A. The intent of this Chapter is to promote the health, safety and general welfare of the residents of the City and its area of City impact.

B. The intent of this Chapter is to be consistent with those principles for allocating a fair share of the cost of capital improvements to Public Facilities to serve new growth and development in compliance with the provisions set forth in Idaho Code § 67-8201, et seq. The provisions of this Chapter shall be interpreted, construed and enforced in accordance with the provisions set forth in Idaho Code § 67-8201, et seq.

C. The intent of this Chapter is that impact fees should be charged, collected, and expended for police, fire/EMS, parks and recreation, and transportation capital improvements to increase the service capacity of such categories of Public Facilities, which capital improvements are included in approved capital improvements plans.

D. The intent of this Chapter is to ensure that Public Facilities are available to serve new growth and development; new growth and development bears a proportionate share of the cost of police, fire/EMS, parks and recreation, and transportation capital improvements to such Public Facilities; such proportionate share does not exceed the cost of the capital improvements to such Public Facilities required to serve new growth and development; and the funds collected from new growth and development are used for capital improvements for Public Facilities that benefit new growth and development. Such impact fees should be charged and collected from taxing districts, as defined in Idaho Code § 63-201, and authorized public charter schools, as defined in Idaho Code 33-5202A.

E. It is not the intent of this Chapter to collect any monies from new growth and development in excess of the actual amount necessary to offset new demands for capital improvements to Public Facilities created by such new growth and development.

F. It is not the intent of this Chapter that the impact fees be used to remedy any deficiency in police, fire/EMS, parks and recreation, and transportation capital improvements existing on the effective date hereof, or ever be used to replace, rehabilitate, maintain and/or operate any Public Facilities.

G. It is not the intent of this Chapter that any monies collected from an impact fee deposited in an impact fee fund ever be commingled with monies from a different fund or ever be used for capital improvements that are different from those for which the impact fee was paid.

H. It is not the intent of this Chapter that impact fees be used for:

1. Construction, acquisition or expansion of public facilities other than capital improvements identified in the capital improvements plans.
2. Repair, operation or maintenance of existing or new capital improvements.
3. Upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards.
4. Upgrading, updating, expanding or replacing existing capital improvements to serve existing development to provide better service to existing development.
5. Administrative and operating costs of the City unless such costs are attributable to development of the capital improvements plans used to determine impact fees by a

surcharge imposed by ordinance on the collection of an impact fee, which surcharge shall not exceed a development's proportionate share of the cost of preparing the capital improvements plans.

6. Principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the City to finance capital improvements identified in the capital improvements plans.

(Ord. 3510, 04-13-2023)

10-8-4: **DEFINITIONS.** The following words and phrases, when used in this Chapter, shall have, unless the context clearly indicates otherwise, the following meanings:

AFFORDABLE HOUSING: Housing affordable to families whose incomes do not exceed eighty (80) percent of the median income for the service area.

APPLICATION: A form, process, or procedure established by the City to gather information to determine a person's compliance with Code requirements related to licenses, permits, authorizations, approvals, uses, or other permission granted to persons pursuant to this Code, authority delegated to Idaho municipalities by the Idaho Code, or Idaho Constitution.

BUILDING PERMIT: An official document or certificate by that name issued by the City authorizing the construction or siting of any building.

CAPITAL IMPROVEMENTS: Improvements with a useful life of ten (10) years or more, by new construction or other action, which increase the service capacity of a Public Facility.

CAPITAL IMPROVEMENTS ELEMENT: A component of the City's Comprehensive Plan.

CAPITAL IMPROVEMENTS PLAN: A plan adopted pursuant to this Chapter that, in part, identifies capital improvements for which impact fees may be used as a funding source.

DAY: Each twenty-four (24) hour period of time when the City is generally open for business and which is not a holiday or weekend day (i.e., business day not calendar day).

DEVELOPER: A person who subdivides or proposes to subdivide land, whether as an owner or an agent of an owner, and any person who installs improvements or structures on such land.

DEVELOPMENT: Any construction or installation of a building or structure, or any change in use of a building or structure, or any change in the use, character, or appearance of land, which creates additional demand and need for Public Facilities or the subdivision of property that would permit any change in the use, character, or appearance of land.

DEVELOPMENT APPROVAL: Any written authorization from a governmental entity which authorizes the commencement of a development.

DEVELOPMENT REQUIREMENT: A requirement attached to a development approval or other governmental action approving or authorizing a particular development including, without limitation, a rezoning, which development requirement compels the payment, dedication or contribution of goods, services, land and/or money as a condition of approval.

EXTRAORDINARY COSTS: Those costs incurred as a result of extraordinary impact, as defined in this Chapter.

EXTRAORDINARY IMPACT: An impact which is reasonably determined by the City to result in the need for police, fire/EMS, parks and recreation, and/or transportation system improvements, the cost of which will significantly exceed the sum of the impact fees to be generated from the project; or result in the need for police, fire/EMS, parks and recreation, and transportation system improvements that are not identified in the capital improvements plans.

FEE ADMINISTRATOR: The official appointed by the Mayor, with Council approval, and authorized to administer this Chapter.

FEE PAYER: A person who pays or is required to pay an impact fee or the fee payer's successor in interest including, but not limited to, taxing districts, as defined in Idaho Code 63-201, and authorized public charter schools, as defined in Idaho Code 33-5202A.

GOVERNMENTAL ENTITY: Any unit of local government that is empowered by Idaho Code § 67-8201, et seq., to adopt an impact fee ordinance.

IMPACT FEE: A payment of money imposed as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve development. The term does not include a charge or fee to pay the administrative, plan review or inspection costs associated with permits required for development.

IMPACT FEE STUDY: The document entitled the "Capital Improvement Plan and Development Impact Fee Study of City of Idaho Falls, Idaho 2021", dated December 15, 2021, as amended from time to time by the Council.

LAND USE ASSUMPTIONS: A description of the service area and projections of land uses, densities, intensities, and population in the service area over at least a twenty (20) year period.

LEVEL OF SERVICE: A measure of the relationship between service capacity and service demand for Public Facilities.

MANUFACTURED HOME: A structure, constructed after June 15, 1976, pursuant to Idaho Code HUD manufactured home construction and safety standards.

MODULAR BUILDING: Any building or building component (other than a Manufactured Home, as defined in this Chapter) which is constructed according to standards contained in any City-adopted building code or any amendments thereto, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site.

NONRESIDENTIAL DEVELOPMENT:

A. **RETAIL:** Establishments primarily selling merchandise, eating/drinking places, and entertainment uses. Retail includes, but is not limited to, shopping centers, supermarkets, pharmacies, restaurants, bars, nightclubs, automobile dealerships, movie theaters, and lodging (hotel/motel).

B. **OFFICE:** Establishments providing management, administrative, professional, or business

services. Office includes, but is not limited to, banks, business offices, medical offices, and veterinarian clinics.

C. **INDUSTRIAL:** Establishments primarily engaged in the production and transportation of goods. Industrial includes, but is not limited to, manufacturing plants, trucking companies, warehousing facilities, utility substations, power generation facilities, and telecommunications buildings.

D. **INSTITUTIONAL:** Public and quasi-public buildings providing educational, social assistance, or religious services. Institutional includes, but is not limited to, school districts, schools, universities, churches, daycare facilities, hospitals, health care facilities, and government buildings.

PRESENT VALUE: The total current monetary value of past, present or future payments, contributions or dedications of goods, services, materials, construction or money.

PROJECT: A particular development on an identified parcel of land.

PROJECT IMPROVEMENTS: Site improvements and facilities that are planned and designed to provide service for a project and that are necessary for the use and convenience of the occupants or users of the Project.

PROPORTIONATE SHARE: That portion of the cost of system improvements determined pursuant to Idaho Code § 67-8207, and this Chapter, which reasonably relates to the service demands for Public Facilities of a project.

PUBLIC FACILITY(IES):

- A. Public safety facilities, including police and fire/EMS facilities; and
- B. Parks open space and recreation areas, and related capital improvements; and
- C. Transportation facilities, including arterial streets, arterial intersections, arterial bridges, arterial appurtenances, and related arterial capital improvements.

RESIDENTIAL DEVELOPMENT HOUSING UNITS:

A. **SINGLE FAMILY HOUSING UNITS:**

1. **SINGLE FAMILY DETACHED:** A one-unit structure detached from any other house with open space on all four sides. Such structures are considered detached even if they have an adjoining shed or garage. A one-family house that contains a business is considered detached as long as the building has open space on all four sides.

2. **SINGLE FAMILY ATTACHED (TOWNHOUSE):** A one-unit structure that has one or more walls extending from ground to roof separating it from adjoining structures. In row houses (sometimes called townhouses), double houses, or houses attached to nonresidential structures, each house is a separate, attached structure if the dividing or common wall goes from ground to roof.

3. **MOBILE HOME:** A Manufactured Home, Modular Building, including both occupied and vacant mobile homes, to which no permanent rooms have been added. A Mobile Home used only for business purposes or for extra sleeping space or a Mobile Home for sale on a dealer's lot, at the factory, or in storage is not counted in the housing inventory.

B. **MULTIFAMILY HOUSING UNITS:** Two (2) or more units (duplexes and apartments) within a structure containing two (2) or more housing units, further categorized as units in structures with 2, 3 or 4, 5 to 9, 10 to 19, 20 to 49, and 50 or more apartments; a boat, recreational vehicle (RV), van, and the like that includes any living quarters occupied as a housing unit that does not fit the other categories (e.g., houseboats, railroad cars, campers, and vans). Recreational vehicles, boats, vans, railroad cars, and the like are included only if they are occupied as a current place of residence.

SERVICE AREA: The territory within the limits of the City and the City's area of City impact, as amended, expanded, contracted, or adjusted from time to time.

SUCCESSOR IN INTEREST: A person who gains legal title in real property for which an impact fee is paid or a credit is approved pursuant to the terms of this Chapter.

SYSTEM IMPROVEMENT COSTS: Costs incurred for construction or reconstruction of system improvements, including design, acquisition, engineering and other costs attributable thereto, and also including, without limitation, the type of costs described in Idaho Code § 50-1702(h), to provide additional public facilities needed to serve new growth and development. For clarification, system improvement costs do not include:

- A. Construction, acquisition or expansion of public facilities other than capital improvements identified in the capital improvements plans;
- B. Repair, operation or maintenance of existing or new capital improvements;
- C. Upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
- D. Upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development;
- E. Administrative and operating costs of the governmental entity unless such costs are attributable to development of the capital improvements plans, as provided in Idaho Code § 67-8208; or
- F. Principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the governmental entity to finance capital improvements identified in the capital improvements plans.

SYSTEM IMPROVEMENTS: In contrast to project improvements, means capital improvements to public facilities that are designed to provide service to a service area including, without limitation, the type of improvements the City has the authority to make as described in Idaho Code § 50-1703. (Ord. 3510, 04-13-2023)

10-8-5: IMPOSITION AND COMPUTATION OF IMPACT FEES.

A. Any application for or building permit required or issued, enabling the construction or the alteration or expansion of an existing structure or improvement, and, in the case of construction that does not require a building permit, any building that takes place on or after the effective date of this Chapter, shall be subject to the imposition of impact fees in the manner and amount set forth in this Chapter. The methodology adopted for the purpose of determining police, fire/EMS, parks and recreation, and transportation impact fees shall be based upon the assumptions set forth in the Impact Fee Study.

B. Impact fees shall be required as a condition of approval of all residential and nonresidential development in the service area for which a building permit is required or issued, including the alteration or expansion of an existing structure or improvement, and shall be payable prior to the issuance of any building permit (or installation permit in the case of a manufactured home) for a residential development housing unit or a nonresidential development. Except as otherwise provided herein, after the effective date of this Chapter, no building permit shall be issued, or occupancy or use allowed, until the impact fees described in this Chapter have been paid, unless the development or alteration or improvement for which the permit is sought is exempted pursuant this Chapter or approved credits are used to cover the impact fee, as set forth in this Chapter. The Fee Administrator shall have the authority to withhold a building permit or stop construction, as the case may be, until the appropriate impact fee has been collected.

C. A fee payer required by this Chapter to pay an impact fee may choose to have the amount of such impact fee determined pursuant to either the fee schedule or subsections (D) through (F) of this Section. If the fee payer chooses to have the amount of such impact fee determined pursuant to subsections (D) through (F) of this Section, such impact fee shall be subject to the adjustment described in this Chapter, if applicable. If the project is a mix of those uses listed on the fee schedule, then the impact fees shall be determined by adding up the impact fees that would be payable for each use as if it were a freestanding use pursuant to the fee schedule.

D. As an alternative to payment of impact fees assessed following submission of a complete building permit application, a fee payer may request an individual assessment of impact fees where the fee payer can demonstrate by clear and convincing evidence in the fee payer's independent impact fee calculation study that the established impact fee is inappropriate for the Project. Written application for individual assessment shall be made to the Fee Administrator at any time prior to building permit(s) issuance. Such independent impact fee calculation study for the fee payer's development shall be prepared at the fee payer's cost by a qualified professional and contain studies, data and other relevant information and be submitted to the Fee Administrator for review. Any such study shall be based on the same methodology and the same level of service standards, improvements and costs used in the Impact Fee Study, and shall document the methodologies and assumptions used. The City may hire a professional consultant to review any independent impact fee calculation study on behalf of the City, and may charge the reasonable costs of such review to the fee payer.

E. Any independent impact fee calculation study submitted by a fee payer may be accepted, rejected or accepted with modifications by the City as the basis for calculating impact fees. The City shall not be required to accept any study or documentation the City reasonably deems to be inaccurate or unreliable. The City shall have the authority to request that the fee payer submit additional or different documentation for consideration in connection with review of any independent impact fee calculation study. If such additional or different documentation is accepted or accepted with modifications as a more accurate measure of the impact fees due in connection

with fee payer's proposed development than the applicable impact fees set forth in the fee schedule, then the impact fee due under this Chapter shall be calculated according to such documentation.

F. The Fee Administrator shall render a written decision establishing the impact fees in connection with the individual assessment within thirty (30) days from the date a request for individual assessment is submitted. The decision shall include an explanation of the calculation of the impact fees, shall specify the system improvement(s) for which the impact fees are intended to be used, and shall include an explanation of the following factors considered:

1. The cost of existing system improvements within the service area;
2. The means by which existing system improvements have been financed;
3. The extent to which the new growth and development will contribute to the cost of system improvements through taxation, assessment, or developer or landowner contributions, or has previously contributed to the cost of system improvements through developer or landowner contributions;
4. The extent to which the new growth and development is required to contribute to the cost of existing system improvements in the future;
5. The extent to which the new growth and development should be credited for providing system improvements, without charge to other properties within the service area;
6. Extraordinary costs, if any, incurred in serving the new growth and development;
7. The time and price differential inherent in a fair comparison of impact fees paid at different times; and
8. The availability of other sources of funding system improvements including, but not limited to, user charges, general tax levies, transfers, and special taxation.

G. Certification of the impact fee for a Project may be applied for in the following manner:

1. Written request for an individual impact fee assessment shall be made to the Fee Administrator not later than thirty (30) days following applications for, or requirement of, a building permit for construction or alteration or expansion of an existing structure, or improvement on or within a Project. Late applications for certification of the impact fee will not be considered unless the fee payer demonstrates that the facts supporting such application were not known or discoverable until after the time had run and that undue hardship would result if said application is not considered.
2. The Fee Administrator shall provide the fee payer with a written impact fee certification for the Project within thirty (30) days of the date a request for individual impact fee assessment is submitted. The certification provided by the Fee Administrator shall establish the impact fee for the Project in question, so long as there is no material change to the Project as identified in the certification application or the impact fee schedule. The certification shall include an explanation of factors considered, and shall specify the system improvement(s) for which the impact fee is intended to be used.

The certification shall include an explanation of the calculation of the impact fee, shall specify the system improvement(s) for which the impact fee is intended to be used, and shall include an explanation of the factors considered, which factors are identified in subsection (F) of this Section.

H. Appeals of the Fee Administrator's determination of an individual assessment or certification shall be made to the City as provided further in this Chapter.

I. The City recognizes that there may be circumstances where the anticipated fiscal impacts of a proposed development are of such magnitude that the City may be unable to accommodate the development without excessive or unscheduled public expenditures that exceed the amount of the anticipated impact fees from such development. If the City determines that a proposed development would create such an extraordinary impact on the City's police, fire/EMS, parks and recreation, and/or transportation public facilities, the City may refuse to approve the proposed development. In the alternative, the City may calculate a pro rata share per residential development housing unit, or square feet of nonresidential development, of the extraordinary impact and charge a reasonable extraordinary impact fee that is greater than would ordinarily be charged.

J. If the City discovers an error in its impact fee formula that results in assessment or payment of more than a proportionate share, City shall, at the time of assessment on a case-by-case basis, adjust the impact fee to collect no more than a proportionate share or discontinue the collection of any impact fees until the error is corrected by Ordinance.

(Ord. 3510, 04-13-2023)

10-8-6: PAYMENT OF IMPACT FEES

A. After the effective date of this Chapter, all fee payers shall pay the impact fees as provided by this Chapter to the Fee Administrator following application for a building permit and prior to the issuance of any building permit for a residential development housing unit, or nonresidential development.

B. All impact fees paid by a fee payer pursuant to this Chapter shall be promptly deposited in the impact fee fund described in this Chapter.

10-8-7: IMPACT FEE FUNDS ESTABLISHED. REFUNDS OF IMPACT FEES PAID.

A. There is hereby established a police impact fee fund into which shall be deposited all police impact fees for the purpose of ensuring police impact fees collected pursuant hereto are designated for the accommodation of police capital improvements reasonably necessary to serve new growth and development that paid the impact fee.

B. There is hereby established a fire/EMS impact fee fund into which shall be deposited all fire/EMS impact fees for the purpose of ensuring fire/EMS impact fees collected pursuant hereto are designated for the accommodation of fire/EMS capital improvements reasonably necessary to serve new growth and development that paid the impact fee.

C. There is hereby established a parks and recreation impact fee fund into which shall be deposited all parks and recreation impact fees for the purpose of ensuring parks and recreation

impact fees collected pursuant hereto are designated for the accommodation of parks and recreation capital improvements reasonably necessary to serve new growth and development that paid the impact fee.

D. There is hereby established a transportation impact fee fund into which shall be deposited all transportation impact fees for the purpose of ensuring transportation impact fees collected pursuant hereto are designated for the accommodation of transportation capital improvements reasonably necessary to serve new growth and development that paid the impact fee.

E. Each impact fee fund established in this Section shall be an interest-bearing account which shall be accounted for separately from other impact fee funds and from other City funds. Any interest or other income earned on monies deposited in a fund shall be credited to such fund. Expenditures of impact fees shall be made only for the category of system improvements (including full project costs, such as design, acquisition, engineering, management, construction, project development, etc.) for which the impact fees were collected and as identified in the capital improvements plans.

F. Except as otherwise provided in this Chapter, monies from each fund, including any accrued interest, shall be limited to the financing of acquisition, expansion, and/or improvement of capital improvements, or for principal and interest payments on bonds or other borrowed revenues used to acquire, expand or improve such capital improvements, necessary to serve new growth and development. Impact fees in each established impact fee fund shall be spent within eight (8) years from the date such impact fees were collected on a first in/first out (FIFO) basis. The City may hold the impact fees longer than the prescribed time period if the city identifies, in writing:

1. A reasonable cause why the impact fees should be held longer; and
2. The anticipated date by which the impact fees will be expended but in no event longer than eleven (11) years from the date the impact fees were collected.

G. The Fee Administrator shall prepare quarterly and annual reports to be provided to the Impact Fee Advisory Committee and the Council, which reports shall:

1. Describe the amount of all impact fees collected, appropriated or spent for system improvements during the preceding quarter or year, as applicable, by category of Public Facility; and
2. Describe the percentage of tax and revenues other than impact fees collected, appropriated or spent for system improvements during the preceding quarter or year, as applicable, by category of Public Facility.

H. Funds shall be deemed expended when payment of such funds has been approved by the City. The fee payer or successor in interest shall be entitled to a refund of the impact fee if:

1. Services for which an impact fee is required are never provided;
2. A building permit or permit for installation of a manufactured home is revoked or abandoned;
3. The City, after collecting the impact fee, has failed to appropriate and expend the

collected impact fees, as required by Idaho Code; or

4. The fee payer pays an impact fee under protest and a subsequent review of the impact fee paid or the completion of an individual assessment determines that the impact fee paid exceeded the proportionate share to which the City was entitled to receive.

I. When the right to a refund exists, within ninety (90) days after the City determines that a refund is due, the City shall provide written notice of entitlement to a refund, to the owner of record and the fee payer who paid the impact fees at the address shown on the application for development approval, or to a successor in interest who has notified the City of a transfer of the right or entitlement to a refund and who has provided to the City a mailing address. When the right to a refund exists, the City shall also publish the notice of entitlement to a refund within thirty (30) days after the expiration of the eight (8) year period after the date that the impact fees were collected. Such published notice shall contain the heading "Notice of Entitlement to Impact Fee Refund".

J. A refund shall include interest at one-half (½) the legal rate provided for in Idaho Code § 28-22-104, from the date on which the impact fee was originally paid.

K. In order to be eligible for a refund, a fee payer, successor in interest or owner of record shall file a written application for a refund with the Fee Administrator within six (6) months of the time such refund becomes payable under subsection (E) of this Section, or within six (6) months of publication of the notice of entitlement to a refund, whichever is later. If a successor in interest claims a refund of impact fees, the Fee Administrator may require written documentation that such rights have been transferred to the claimant prior to issuing the requested refund. Refunds shall be paid within sixty (60) days after the date on which the Fee Administrator determines that a sufficient proof of claim for a refund has been made.

L. Any person entitled to a refund shall have standing to sue for a refund under the provisions of this Chapter if there has not been a timely payment of a refund as provided herein.

10-8-8: EXEMPTIONS FROM IMPACT FEES

A. The following types of land development shall be exempt from payment of the impact fees imposed by this Chapter:

1. Rebuilding or replacing a residential development housing unit or the same amount of square feet of a nonresidential development on the same lot and existing on the effective date of this Chapter, provided that the rebuilt or replaced residential development housing unit or nonresidential development does not increase the need for police, fire/EMS, parks and recreation, and transportation public facilities, and such residential development housing unit or nonresidential development is rebuilt or replaced and ready for occupancy within two (2) years of removal or substantial damage. For the purposes of this Subsection, "substantial damage" shall mean damage from any cause or source whereby the cost of restoring the residential development housing unit or nonresidential development to a condition allowing use of occupancy would be equal to or exceeds fifty percent (50%) of the market value before the damage occurred.

2. Construction of an unoccupied, detached accessory structure, or addition of uses

related to a residential development housing unit unless it can be clearly demonstrated that the use creates a significant impact on the capacity of system improvements.

3. Remodeling or repairing a residential development housing unit or a nonresidential development in a manner that does not increase the need for police or fire/EMS or parks and recreation or transportation public facilities.

4. Placing a temporary construction trailer or office on a lot.

B. An impact fee shall be assessed for installation of a modular building or manufactured home unless the fee payer can demonstrate (by documentation, such as utility bills and tax records), either:

1. That a modular building or manufactured home was legally in place on the lot or space prior to the effective date of this Chapter; or

2. That an impact fee has been paid previously for the installation of a modular building or manufactured home on that same lot or space.

C. Developments determined by the Council that provide affordable housing may be granted a waiver of a portion of the impact fee payment required, provided that the exempt development's proportionate share of system improvements is funded through a general fund revenue source other than from impact fees collected.

1. Any waiver granted by the Council shall be based on the degree to which the development meets the following:

a. Current housing affordability guidelines published by the U.S. Department of Housing and Urban Development ("HUD") shall be used to determine whether residential development housing units in the development qualify as affordable housing.

b. Affordable housing projects are required to demonstrate that the projects will provide residential development housing units to eligible families based on HUD income and family size guidelines.

c. Providers of affordable residential development housing units shall demonstrate a long-term commitment to provide affordable housing for a period of not less than twenty (20) years.

d. The developer shall demonstrate the need for the proposed development.

e. the number of dwellings units in the development shall be identified, along with those for which the waiver is sought.

f. Funding to offset the amount waived is available from a general City Fund dedicated to support affordable housing.

2. No waiver shall exceed thirty percent (30%) of impact fee payment required for the development.

3. Failure to develop housing as presented to Council, as determined by the Community Development Services Department Director, shall result in automatic cancelation of the approved waiver and shall require payment of all waived fees within sixty (60) days following cancellation or all building permits and certificates of occupancy shall be revoked.

D. Appeals of the Fee Administrator's determination shall be made as provided further in this Chapter.
(Ord. 3510, 04-13-2023)

10-8-9: CREDIT REIMBURSEMENTS.

A. All system improvements constructed, funded or contributed for police, fire/EMS, parks and recreation, and transportation capital improvements for which an impact fee is imposed, and which are in addition to those public improvements normally and regularly required by the City in connection with new development, such as public street and right-of-way dedications; installation of public improvements required by the Subdivision Ordinance or this Code, etc., shall result in either a credit on future impact fees or reimbursement, at the fee payer's option, for such excess to be paid by future development that benefits from such system improvements. However, no credit or reimbursement shall be provided for:

1. Project Improvements;
2. Any construction, funding or contribution not agreed to in writing by the City prior to commencement of such construction, funding or contribution; and
3. Any construction, funding or contribution of a type of capital improvements not included in the calculation of the applicable impact fee.
4. A park or open space within a City-approved Planned Unit Development or a park not included in a current City five (5) year capital improvement plan.

B. In the calculation of impact fees for a Project pursuant to this Chapter, credit shall be given for the present value of all tax and user fee revenue generated by the fee payer within the service area and used by the City for system improvements of the category for which the impact fee is being collected. If the amount of such credit exceeds the impact fee for a Project, the fee payer shall receive a credit on future impact fees.

C. In the calculation of impact fees for a Project, credit or reimbursement, at the fee payer's option, shall be given for the present value of any construction of system improvements or contribution of land (exclusive of public right-of-way or easement dedication) or money required by the City from the fee payer for system improvements of the category for which the impact fee is being collected, including system improvements paid for through Local Improvement District assessments, if any.

D. If credit or reimbursement is due to the fee payer, the City and fee payer shall enter into a written agreement, negotiated in good faith, prior to the construction, funding or contribution. The written agreement shall include, at minimum, a description of how the system improvements are to be valued, and the amount of the credit or the amount, time, and form of reimbursement. To assist

in such reimbursement, the City shall continue to collect impact fees from other developers whose proposed developments will benefit from such construction, funding or contribution, and will promptly transfer such funds to the fee payer. If a successor in interest claims a reimbursement or credit, the Fee Administrator may require written documentation that such rights have been conveyed to the claimant prior to issuing the requested reimbursement or credit.

E. Approved credits may be used to reduce the amount of impact fees of the category for which the impact fee is being collected in connection with any new growth and development until the amount of the credit is exhausted. Each time a request to use approved credits is presented to the City, the City shall reduce the amount of the applicable impact fee otherwise due from the fee payer and shall note in City records the amount of credit remaining, if any. Upon request of the fee payer, the City shall issue a letter stating the amount of credit available. If the credit has not been exhausted within eight (8) years of the date of issuance of the first building permit for which an impact fee was due and payable, or within such other time period as may be designated in writing by the City, such credit shall lapse, unless a refund of the remaining credit is applied for as set forth in this Chapter.

F. Approved credits or reimbursement shall only be used to reduce the amount of the impact fee of the category for which the impact fee is otherwise due, and shall not be paid to the fee payer in cash or in credits against any other monies due from the fee payer to the City.

G. Credit for land dedications (exclusive of public right-of-way and easement dedications) shall, at the fee payer's option, be valued at:

1. One hundred percent (100%) of the most recent assessed value for such land as shown in the records of the Bonneville County Assessor; or
2. That fair market value established by an MAI appraiser reasonably acceptable to the City in an appraisal paid for by the fee payer.

Credit for contribution or construction of system improvements shall be valued by the City based on complete engineering drawings, specifications, and construction cost estimates submitted by the fee payer to the City, which estimates shall be revised as actual costs become available. The City shall determine the amount of credit due based on the information submitted, or, if the City determines that such information is inaccurate or unreliable, then on alternative engineering or construction costs reasonably acceptable to the City as a more accurate measure of the value of the offered system improvements to the City.

H. Approved credits for land dedications (exclusive of public right-of-way and easement dedication, etc.) shall become effective when the land has been conveyed to and accepted by the City in a form reasonably acceptable to the City and at no cost to the City. Approved credits for contribution or construction of system improvements shall generally become effective when:

1. All required construction has been completed and has been accepted by the City; and
2. All design, construction, inspection, testing, bonding, and acceptance procedures have been completed in compliance with all applicable requirements of the City.

Approved credits for the construction of system improvements may become effective at an earlier

date if the fee payer posts security in the form of a performance bond, irrevocable letter of credit or escrow agreement in the amount and under terms reasonably acceptable to the City.

I. Credit may only be transferred by a fee payer that has received credit to such fee payer's successor in interest. The credit may be used only to offset impact fees for the same category for which the credit was issued. Credits shall be transferred by any written instrument clearly identifying which credits are being transferred, the dollar amount of the credit being transferred, and the system improvements for which the credit was issued. The instrument of transfer shall be signed by both the transferor and transferee, and a copy of the document shall be delivered to the Fee Administrator for documentation of the transfer before the transfer shall be deemed effective. (Ord. 3510, 04-13-2023)

10-8-10: APPEALS. The decisions of the Fee Administrator may be appealed as provided in this Section:

A. Any fee payer who is or may be obligated to pay an impact fee, may appeal a decision made by the Fee Administrator to the Council. Such decisions that may be appealed include:

1. The applicability of an impact fee to the development.
2. The amount of an impact fee to be paid for the development.
3. The availability, amount or application of any credit.
4. The amount of any refund, reimbursement or credit.

A fee payer may pay an impact fee under protest in order to obtain a development approval or building permit(s) and, by paying such impact fee, shall not be estopped from exercising the rights of appeal provided herein, nor shall the fee payer be estopped from receiving a refund of any amount deemed to have been illegally collected. Upon final disposition of an appeal, the impact fee shall be adjusted or refunded, if necessary, in accordance with the decision rendered.

B. In order to pursue an appeal, the fee payer shall file a written notice of appeal with the Clerk within fifteen (15) days after the date of the notice of decision being appealed or the date on which the fee payer submitted a payment of impact fees under protest, whichever is later. Such written appeal shall include a statement describing why the appellant believes that the decision was in error, together with copies of any documents that the appellant believes supports their claim.

C. The Clerk shall notify the fee payer of the hearing date on the appeal, which notice shall be given no less than fifteen (15) days prior to the date of the hearing. The Council shall hear the appeal within forty-five (45) days after receipt of a written notice of appeal.

D. The appellant shall have a right to attend and to present evidence in support of the appeal. The Fee Administrator, City staff member, or their representative(s), shall likewise have the right to attend and to present evidence in support of the Fee Administrator's decision. The burden of proof in the hearing shall be on the fee payer to demonstrate to the Council by a preponderance of evidence that the appeal should be granted.

E. Appeal consideration by the Council is limited to whether this Chapter was correctly interpreted, correctly applied, and the amount of the impact fee, credit, reimbursement, or refund

was properly calculated. The criteria to be used by the Council shall be whether the decision or interpretation made by the Fee Administrator or the alternative decision or interpretation offered by the appellant, more accurately reflects the intent of this Chapter that new growth and development in the City pay its proportionate share of the costs of system improvements for Public Facilities necessary to serve new development.

F. The Council shall modify the amount of the impact fee, credit, refund or reimbursement only if there is a preponderance of the evidence in the record that the Fee Administrator erred, based upon the methodologies contained in the Impact Fee Study, this Chapter and/or capital improvements plans. The decision of the Council shall be final.
(Ord. 3510, 04-13-2023)

10-8-11: ADDITIONAL PROVISIONS

A. Nothing in this Chapter shall limit or modify the rights of any person to complete any development for which a lawful building permit was issued prior to the effective date hereof.

B. Nothing in this Chapter shall prevent the City from requiring a developer to construct reasonable project improvements in conjunction with a project.

C. Nothing in this Chapter shall limit the ability of the City to enter into intergovernmental agreements as provided in Idaho Code § 67-8204A.

D. Time requirements or deadlines in this Chapter shall be extended or waived only by written mutual agreement between the City and the applicant and only where such extension of waiver is not reasonably likely to materially change the legal position or status of the application.

E. The impact fees described in this Chapter, and the administrative procedures of this Chapter shall be reviewed at least once every five (5) years to ensure that:

1. The demand and cost assumptions and other assumptions underlying such impact fees are still valid;
2. The resulting impact fees do not exceed the actual costs of providing police, fire/EMS, parks and recreation, and/or transportation system improvements required to serve new growth and development;
3. The monies collected in any impact fee fund have been and are expected to be spent for system improvements of the type for which such impact fees were paid; and
4. Such system improvements will benefit those developments for which the impact fees were paid.

F. Violation of this Chapter shall be subject to those remedies provided in this Code. Knowingly furnishing false information to any official of the City charged with the administration of this Chapter on any matter relating to the administration of this Chapter including, without limitation, the furnishing of false information regarding the expected size or use of a proposed development, shall be a violation of this Chapter and a misdemeanor.

G. Except for such impact fee as may be calculated, paid and accepted pursuant to an independent impact fee calculation study, the amount of each impact fee shall be as follows:

1. Residential (per housing unit)	
a. Single Family	Maximum Supportable Fee \$6,027
i. Police	\$480.75
ii. Fire/EMS	\$389.25
iii. Parks and Recreation	\$1,390.50
iv. Transportation	\$3,013
b. Multifamily	Maximum Supportable Fee \$3,479
i. Police	\$332.25
ii. Fire/EMS	\$313.50
iii. Parks and Recreation	\$961.50
iv. Transportation	\$1,336
2. Nonresidential (per 1,000 square feet)	
a. Retail	Maximum Supportable Fee \$6,119
i. Police	\$1,366.50
ii. Fire/EMS	\$346.50
iii. Parks and Recreation	\$0
iv. Transportation	\$3,835
b. Office	Maximum Supportable Fee \$2,135
i. Police	\$463.50
ii. Fire/EMS	\$57.75
iii. Parks and Recreation	\$0
iv. Transportation	\$1,440
c. Industrial	Maximum Supportable Fee \$1,085
i. Police	\$236.25
ii. Fire/EMS	\$27.75
iii. Parks and Recreation	\$0
iv. Transportation	\$733
d. Institutional	Maximum Supportable Fee \$3,935
i. Police	\$510.75
ii. Fire/EMS	\$1,251.75
iii. Parks and Recreation	\$0
iv. Transportation	\$1,585

(Ord. 3510, 04-13-2023)