

CHAPTER 6 ADMINISTRATION

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11-6-1: PURPOSE.

The purpose of this Chapter is to set forth the roles, responsibilities, and processes in the administration of permits and decisions that are authorized by this Code consistent with Idaho Code.

11-6-2: DUTIES AND AUTHORITIES.

- (A) City Council. The City Council shall have the authority to set policy and legislation effecting land use and the administration of this Code, including fees as established by resolution of the Council. The Council shall act on:
- (1) Recommendations from the Planning and Zoning Commission in legislative actions and some quasi-judicial applications.
 - (2) Recommendations from the Board of Adjustment on quasi-judicial applications.
 - (3) Decisions on some quasi-judicial applications without prior recommendations from either the Planning and Zoning Commission or Board of Adjustment.
 - (4) Appeals of the Planning and Zoning Commission, Board of Adjustment and Zoning Administrator decisions.
 - (5) It shall be unlawful to erect, construct, move or structurally alter any building or structure, or any part thereof, until after a written permit to do so, has been issued by the Building Official.
- (B) Planning and Zoning Commission. The Planning and Zoning Commission shall be the designated planning agency for the City. The Commission shall be responsible for final action on some site specific permits and for recommendations to the City Council on land use legislation, comprehensive plan amendments, and other policy matters. In undertaking these responsibilities, the Planning and Zoning Commission shall act as follows:
- (1) Provide for citizen meetings, hearings, surveys, or other methods to obtain advice on the planning process, comprehensive plan, and implementation.
 - (2) Promote a public interest in and understanding of the Planning and Zoning Commission's activities.
 - (3) Make recommendations to the Council concerning the comprehensive plan, planning process, or implementation of the comprehensive plan.

- (4) Initiate proposed amendments to this Code and conduct a review of this Code from time to time.
 - (5) Interpret the provisions of this Code and consistency of actions with the Comprehensive Plan.
 - (6) Conduct public hearings, make decisions and recommendations to the City Council based on the required findings and standards for applications as set forth in Section 11-6-4 of this Chapter.
- (C) Board of Adjustment.
- (1) The Board of Adjustment shall be responsible for decisions on site specific applications, including variances related to exceptions to this Code, conditional use permits, and appeals of decisions made by the Zoning Administrator. (Ord. 3241, 3-14-19)
 - (2) In carrying out its responsibilities, the Board shall conduct public hearings, make decisions and recommendations to the City Council based on the required findings and standards for applications as set forth in Section 11-6-4 of this Chapter.
- (D) Zoning Administrator. The Zoning Administrator shall be the administrative official of this Code. In carrying out this responsibility, the Zoning Administrator or their authorized staff shall act as follows:
- (1) Interpret provisions in the enforcement and administration of this Code.
 - (2) Provide information to the public on planning and zoning matters.
 - (3) Receive and examine applications including, but not limited to, the following:
 - (a) Enter upon any property to make examinations and surveys.
 - (b) Determine the completeness of applications in providing the required information.
 - (c) Maintain records of all materials and correspondence related to land use applications.
 - (d) Maintain records of the Planning and Zoning Commission, Board of Adjustment and City Council hearings and actions.
 - (e) Transmit to the Planning and Zoning Commission, Board of Adjustment and City Council all applications related to their responsibilities as set forth in this Code.
 - (4) Review and act on minor ministerial permits, site plans, adherence to performance standards and compliance with the provisions of this Code.
 - (5) Enforcing the conditions and standards imposed on all permits granted by the city and permitted under this Code.
- (E) Summary of Actions/Decisions. Table 11-6-1 Summary of Actions/Decisions that follows is a list of the actions/decisions the City shall take in the administration of this code, the decision body responsible and the process and findings under which the action shall be granted.

Table 11-6-1: Summary of Actions/Decisions

Notes: BA = Board of Adjustment A = Appeal Process CC = City Council ADM = Administrative Process PZ = Planning and Zoning Commission P = Permit Process ZA = Zoning Administrator PH = Public Hearing Process				
Permit/Decision	Code Cross-reference	Recommending Authority	Final Decision-maker	Process
APPEALS				
Decisions of the Zoning Administrator	11-6-3E		BA	A
Decisions of the Board of Adjustment or Planning and Zoning Commission	11-6-4		CC	A
CONDITIONAL USE PERMITS				
All uses listed as conditional in the Tables of Uses	11-2-3, 11-2-4, and 11-2-5			
C ₁ Conditional Use (Administrative)			ADM	ADM
C ₂ Conditional Use (Board of Adjustment)			BA	PH
C ₃ Conditional Use (City Council)		PZ	CC	PH
To Allow Structures Buildings Within Seventy-five feet (75') of the Banks of a Designated Natural Flood Channel	11-4-3		BA	PH
Minor amendment to a PUD	11-6-3I (9)		ZA	ADM
Major amendment to a PUD	11-6-3I (9)	PZ	CC	PH
PARKING AND LOADING				
To allow off-street parking on a separate lot	11-4-5A (3)		ZA	ADM
To determine the number of off-street parking spaces required for uses not listed in Table 11-4-2	11-4-5B (2)		ZA	ADM
To waive additional off-street parking for similar uses in the CC and TN Zones	11-4-5B (3)		ZA	ADM
To reduce or waive off-street parking requirements	11-4-5B (4)		ZA	ADM
To allow a transit access credit to reduce the number of required parking spaces	11-4-5C (3)		ZA	ADM
To allow a reduction in off-street parking in a shared parking situation	11-4-5D (2)		ZA	ADM
To approve a parking site plan	11-4-5F		ZA	ADM
To combine off street loading for two (2) or more buildings	11-4-5H (1)		ZA	ADM
To allow combined loading facilities	11-4-5H (1)		ZA	ADM

PERMITS				
Temporary construction use	11-2-6BB		BA	P
Temporary land use	11-2-6CC		ZA	ADM
Boat docks and boat landing facilities along the Snake River	11-4-8B		CC	ADM
Reconstruction of a monopole	11-5-2E (1)		ZA	ADM
Moving Structures	11-6-5D		ZA	P
PLANS				
Landscape Plan	11-4-4D (3)		ZA	P
Site plans	11-4-5F		ZA	P
WAIVER or EXCEPTIONS				
Variance	11-6-5G		BA	PH
Minimum lot size in PT Zone	11-6-5I	PZ	CC	P
ZONING				
Certificate			ZA	ADM
Code amendment	11-6-5I	PZ	CC	PH
Code enforcement	11-6-7		ZA	ADM
Map amendment	11-6-5I	PZ	CC	PH
Map interpretation	11-3-1C	BA	CC	P
Table of Allowed Uses Interpretation	11-2-2A (1)(3)		ZA	ADM
Amendments to Tower Overlay Zones (T-1 and T-2)	11-6-5J	PZ	CC	PH

(Ord. 3218, 9-13-18) (Ord. 3241, 3-14-19)

11-6-3: APPLICATION PROCEDURES.

The purpose of this Section is to outline the application procedures for a permit or decision under provisions of this Code.

(A) Application Requirements.

- (1) All uses, structures, or work defined by this Code as requiring review by the City Council, Planning and Zoning Commission, Board of Adjustment or Zoning Administrator must obtain the appropriate permit or permits prior to commencing the use, construction or alteration in or on any property within the City of Idaho Falls.
- (2) All requests for permits and decisions in accordance with this Code shall submit a complete application to the Zoning Administrator on forms approved and provided by the city.
- (3) Some requests for permits and decisions shall require additional application information.
- (4) All information and applications are preferred to be submitted electronically.
- (5) All applications shall be accompanied by a filing fee in an amount as set from time to time by City Council resolution.
- (6) No action shall be taken on an application until the application has been determined to be complete by the Zoning Administrator or their authorized staff.

- (C) Action on the Application. After an application has been determined to be complete, an action or decision shall occur as follows:
 - (1) For an administrative decision identified as “ADM” on Table 11-6-1 Summary of Actions/Decisions, the Zoning Administrator shall act upon the application within thirty (30) days.
 - (2) For a permit request identified as “P” on Table 11-6-1 Summary of Actions/Decisions, the decision-making authority shall act upon the application within sixty (60) days.
 - (3) For an application requiring a public hearing identified as on Table 11-6-1 Summary of Actions/Decisions, the initial hearing shall be held no later than sixty (60) days after the date of the determination of completeness, unless waived by the applicant.
- (D) Public Hearing Procedures. All applications subject to a public hearing as identified on Table 11-6-1 Summary of Actions/Decisions, shall follow the public hearing requirements consistent with Idaho Code.
- (E) Appeal Procedures for Decisions of the Zoning Administrator.
 - (1) The Board of Adjustment shall hear and decide appeals wherein it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Administrator in the enforcement of this Code and shall have appellate jurisdiction over all decisions and rulings of the Zoning Administrator.
 - (2) Any citizen or person or any officer or department of the City may appeal to the Board of Adjustment by filing a request in writing with the Zoning Administrator within fourteen (14) days from the grant or refusal of a permit by the Zoning Administrator.
 - (3) Notice of the public hearing on an appeal of the Zoning Administrator’s decision shall be made in accordance with Idaho Code.
- (F) Expiration of Action on Applications. All application approvals shall expire one (1) calendar year from the date of approval unless:
 - (1) The city issues a building permit for the proposed improvement, development, or use prior to the expiration of the one (1) calendar year; or
 - (2) By condition of approval, a time period for completion of the application has been specified.
- (G) Resubmittal.
 - (1) No application that has been denied by the City shall be resubmitted, in substantially the same form for the same use, within one (1) year from the date of denial.
 - (2) The Zoning Administrator may waive the one (1) year requirement and accept a new application, where the subject property is affected by amendments to the Comprehensive Plan or to this Code.
- (H) Certificate of Occupancy. No certificate of occupancy shall be issued for any approved application until the development has been inspected and determined to be in compliance with all terms and conditions of the permit, including but not limited to, proper installation of all required improvements.
- (I) Application Procedures for a Planned Unit Development (PUD).
 - (1) Applications for a planned unit development shall consist of three (3) procedural steps: pre-application conference, Planning and Zoning Commission hearing and recommendation to the Council, and hearing and final plan approval by the Council. With the concurrence of the Zoning Administrator, an applicant may combine the PUD hearings with the hearings required for associated subdivision applications or zoning Zone changes.

- (2) Prior to the filing of an application for a PUD permit, the applicant shall request and the Zoning Administrator shall schedule a pre-application conference with the Planning Division staff and other City staff, as deemed necessary.
 - (a) A pre-application conference with the Planning Division staff is mandatory for all PUD proposals.
 - (b) At the pre-application conference, the applicant shall submit a sketch plan of the proposed PUD and shall outline and generally discuss the nature of the development and proposed land use. This step represents an opportunity to identify any major problems that may exist and identify solutions to those problems before formal application.
- (3) Applications shall be filed not later than one hundred and twenty (120) days after the date of the pre-application conference.
 - (a) All applications for a permit shall include information required by the Zoning Administrator.
 - (b) The contents of the application shall be of sufficient clarity, quality and detail to allow the City to determine compliance with the performance standards of this article and the other standards imposed by this Code.
- (4) Applications for a PUD shall be reviewed as a conditional use and shall follow the public hearing requirements consistent with Idaho Code.
- (5) The Planning and Zoning Commission shall review the application for compliance with Section 11-2-6W of this Code.
 - (a) If the Commission finds that the proposed plan and uses do not comply with Section 11-2-6W of this Code, it shall make a finding in writing specifying the reasons why the application is not in compliance with such standards and shall deliver the same to the applicant and the Council within forty-five (45) days.
 - (b) The Commission may, at any time, recess the public hearing to a later date and no further public notice shall be necessary, provided the motion to recess and the date of the recessed hearing is duly noted in the minutes of Planning and Zoning Commission.
 - (c) Following the conclusion of the public hearing, the Commission shall forward its recommendation in writing to the Council, which recommendation shall include proposed findings in accordance with its recommendation.
- (6) The applicant may, at any time prior to the consideration of the application by the Council, request that application be withdrawn and resubmitted at a later date to the Commission for purpose of making modifications recommended by the Planning and Zoning Commission. In the event the applicant requests reconsideration of the application within ninety (90) days after the date of the hearing before the Planning and Zoning Commission, no filing fee shall be required for such amended application.
- (7) Upon receipt of the recommendation of the Commission, a public hearing before the City Council shall be held, and the Council shall approve or deny the application.
 - (a) If the Council denies the application, it shall prepare specific written findings indicating the basis of its denial and the performance standards not met by such application.
 - (b) If the Council approves the application, it shall adopt the findings of the Commission, together with any additional findings or modifications it deems necessary, and order the Zoning Administrator to issue a permit which incorporates the representations made in the

application and any other conditions required by the Council in order ensure compliance with this article.

- (8) Approval of the PUD shall expire if no effort is made to complete the PUD within eighteen (18) months from the date of Council's approval of the development plan.
 - (a) The Planning and Zoning Commission may grant a written extension for twelve (12) months based on demonstrated cause.
 - (b) For phased PUDs, the PUD or subsequent phases of the initial PUD shall expire automatically if the phases outlined in the development plan are not completed according to the approved phasing schedule identified in this Section.
- (9) PUD amendments shall follow the following procedures for minor and major changes. Amendments shall be in keeping with previous phases or approved PUD development plans and shall meet the same objectives as the original PUD. If the proposed amendment is intended to alter the previously approved plans objectives the applicant will justify how the amendment fits within the whole of the development.
 - (a) Minor changes to a PUD planned unit development may be approved administratively and in writing whereupon a permit may be issued. Such changes may be authorized without additional public notice at the discretion of the Zoning Administrator. Changes not specifically identified below shall constitute a major change. Minor changes shall be defined as follows:
 - (i) A change of less than five percent (5%) in the approved number of residential dwelling units, provided an increase will not exceed the permitted density of the Zone.
 - (ii) A change of less than five percent (5%) in the amount of commercial square footage within the development.
 - (iii) A change in location or layout of approved common areas and amenities provided there is no decrease.
 - (iv) A change in building location or placement less than twenty percent (20%) of the building width.
 - (b) Major changes to a PUD must follow the same review, public notice and hearing process required for approval of the initial PUD Planned Unit Development. Major changes shall include, but not be limited to the following:
 - (i) A change in the character of the development.
 - (ii) A change of greater than five percent (5%) in the approved number of residential dwelling units.
 - (iii) A change of greater than five percent (5%) in the amount of commercial square footage within the development.
 - (iv) A reduction in the approved common space and/or amenities provided.
 - (v) A change in the location and placement of buildings greater than twenty percent (20%) of the building width.
 - (vi) An increase in the number of lots above what was approved through the preliminary plan review.
 - (vii) Any other change to the plan not defined herein as a minor change.

11-6-4: DECISION-MAKING PROCEDURES.

The purpose of this Section is to describe the manner in which decisions are rendered, the responsibilities in making decisions and the process for appeal of decisions.

(A) General Provisions.

- (1) All decisions and any conditions for the approval of any permit shall be set forth in writing.
- (2) Any city decision-making body may impose conditions upon the approval of any permit, provided such conditions are reasonably necessary to implement or achieve the requirements of this Code.

(B) Decisions of the Board Adjustment and Planning Commission.

- (1) A majority vote of the members present shall be necessary to decide upon any matter upon which a vote is required to pass.
- (2) For applications that do not require the approval of the City Council, the Planning and Zoning Commission or Board of Adjustment shall approve or deny the application on a majority vote. (Ord. 3241, 3-14-19)
- (3) If the application requires approval by the City Council, the Planning and Zoning Commission or Board of Adjustment shall forward its recommendations to the Council. The Council shall, within a reasonable time, hold at least one (1) public hearing to consider the application.
- (4) Written notice of decisions of the Board of Adjustment and Planning and Zoning Commission, including conditions and Reasoned Statement of Relevant Criteria and Standards, shall be sent within five (5) days to the applicant and/or their representative, and all persons who have requested a copy of the decision.

(C) Appeal Procedures for Board of Adjustment and Planning and Zoning Commission Decisions.

- (1) Decisions of the Board of Adjustment and Planning and Zoning Commission shall be final unless a written appeal is made to the City Council within fourteen (14) days of the date of the written notice of decision described above in paragraph Section 11-6-4B (4).
 - (a) The written notice of appeal shall be filed with the Zoning Administrator and shall set forth the objections to the decision made by the Board of Adjustment or Planning and Zoning Commission.
 - (b) Upon receipt of the appeal, the Zoning Administrator shall forward to the Council the record of the Board of Adjustment or Planning and Zoning Commission, including the Reasoned Statement of Relevant Criteria and Standards, adopted by the Board or the Commission.
- (2) The concurring vote of a majority of the members of the City Council shall be required to reverse any requirement, decision, or condition of the Board of Adjustment or Planning and Zoning Commission.
- (3) Any person aggrieved by a decision of the Council may seek recourse as provided in Idaho Code, as amended.

(D) Hearing Purpose. To provide consistency in the conduct of public hearings and meetings held in conjunction with the process of regulating the use and development of land within the jurisdiction of the City; to protect the public interest and the private rights of all participants in the public hearing process; and to comply with the requirements of Idaho Code Title 67 Chapter 65. The term “decision-making board” shall mean the Board of Adjustment, Planning and Zoning Commission, Council, hearing examiner or advisory board and any other person or persons duly authorized to make a

determination regarding zoning or land use planning pursuant to Idaho Code, excluding City staff.

(E) Types of Hearings.

(1) Single Meeting Quasi-Judicial Hearings.

(a) Single Meeting Quasi-Judicial Hearings shall be required when a permit or discretionary administrative ruling is sought from a decision-making board such as the Board of Adjustment, Planning and Zoning Commission, or Council and only one (1) public hearing is required by this Code or the Idaho Code before final action can be taken on the request. Because such a hearing may influence the individual rights of applicants, this administrative procedure shall be more strictly controlled to protect individual rights. Decisions following Single Meeting Quasi-Judicial Hearings shall be final, subject to appeal to a higher decision-making authority as provided by this Code or the Idaho Code. Permits to which this procedure shall apply are the variance, Conditional Use Permit, Preliminary Plat, or vacation of a portion of a subdivision plat.

(b) Procedures for Single Meeting Quasi-Judicial Hearings.

(i) Pre-hearing. Prior to the conduct of the hearing, no person shall attempt to discuss the subject of the hearing with a member of the decisionmaking board destined to decide the issue. Any such attempt shall be reported by the decision-making board member so approached to legal counsel for the decision-making board who shall advise the decision-making board in that regard. Notices of public hearing shall provide adequate information to allow notice recipients to participate in the hearing process.

(ii) The Hearing.

- a. Public hearings shall be conducted according to orderly procedures as specified by the chair of the meeting, subject to the will of the decision-making board.
- b. All procedures shall be directed to providing the participants in the hearing a fair chance to be heard by an impartial decision-making board.
- c. Decision-making board members having a conflict of interest involving the subject matter of a hearing shall participate only as allowed by Idaho Code.
- d. The chair of the decision-making board shall have sole authority to recognize participants in the hearing process and to maintain order in its conduct. All inquiries regarding the presentation of any person shall be directed to the chair, who shall decide the need for a response and seek one where necessary or appropriate.
- e. Subject to decision-making board objection, the chair may establish reasonable time limits on presentations in the interest of fairness and to provide more people with a chance to participate. Said limitations may be established at the beginning of the hearing or may be invoked during the hearing when conditions warrant.
- f. Clapping, jeering, interrupting, commenting, out of turn and personal attacks, and being disruptive and discourteous are not allowed and may cause the perpetrator(s) to be removed from the hearing at the order of the chair or decision-making board.
- g. Formal rules of evidence will not apply during the hearing, but the chair may rule that certain testimony may be excluded or shortened because of its relevance to

the subject of the hearing.

- h. Hearings conducted in accord with this Section shall generally be conducted in the following order:
 - 1. Opening of hearing and call to order.
 - 2. Introduction of hearing item explanation of request and receipt of City staff evidence and materials or applicant's representative(s).
 - 3. Presentation by applicant.
 - 4. Testimony in support, opposition, and other public testimony.
 - 5. Response of applicant testimony or board questions.
 - 6. Other response as determined by the Chair.
 - 7. Closure of the public hearing.
 - 8. Decision-making board deliberations without further unsolicited comment.
- i. Members of the decision-making board may question any participant in the hearing process concerning any representations made or questions raised in the course of the hearing or in written materials submitted prior to the hearing.
- j. The chair of the decision-making board conducting the hearing may solicit a response to a question seeking a specific objective fact from any participant without reopening the hearing for general testimony.

(iii) Post-Hearing.

- a. At the close of the initial public hearing the decision-making board may take any of the following actions concerning the application before it:
 - 1. Approve the application as presented.
 - 2. Reject the application as presented.
 - 3. Approve the application subject to specific conditions as permitted by the applicable substantive City Code or Idaho Code.
 - 4. Table the application to allow fact finding by the City staff. to receive answers to specific factual questions from the applicant or the interested public. or to defer the decision for further reflection. When a request is tabled. the final decision shall be made at a succeeding regularly scheduled meeting, or at a special meeting for which proper notice has been given. Tabling should seldom occur, due to the practical and logistical problems created thereby.
 - 5. Schedule a continuation of the public hearing at a specific time and place. This provision shall apply to any visit to the site in question by the decision-making board.
 - aa. Following each public hearing, the decision-making board shall reach a decision regarding the permission sought in the subject application. The deliberations and final decision shall be conducted in an open meeting, subject to the public scrutiny, and shall be made in a timely manner.

- bb. Decisions in such applications shall be accompanied by a written Reasoned Statement of Relevant Criteria and Standards which shall set forth the reasons for the decision-making board's decision pursuant to Idaho Code. Reasoned Statement of Relevant Criteria and Standards shall be adopted by specific motion of the decision-making board.
 - cc. Adoption of Reasoned Statement of Relevant Criteria and Standards shall constitute a final decision for purposes of appeal.
- (2) Two Meeting Quasi-Judicial Hearings.
 - (a) General. Two Meeting Quasi-Judicial Hearings shall be required when the permit or regulatory change sought requires a sequence of two (2) or more public hearings before final action may be taken on the request. The initial public hearing shall be conducted by the Planning and Zoning Commission whose task is to prepare a recommendation for submittal to the Council. Following receipt of the recommendation from the advisory board, a second public hearing must be scheduled before the Council before a decision on the request may be rendered. Like those hearings classified as Single Meeting Quasi-Judicial Hearings the rights of individuals are at stake and the protection of those rights is a prime purpose of the required procedure. Like a Single Meeting Quasi-Judicial Hearings procedure the resulting decision from a Two Meeting Quasi-Judicial Hearings procedure is final unless appealed to a subsequent decision-making tribunal. Unlike the Single Meeting Quasi-Judicial Hearings procedure, care must be taken in the steps between the initial and second hearing to protect the interests of all parties involved. Two Meeting Quasi-Judicial Hearings are used in request for changes in zoning district boundaries, changes to the Comprehensive Plan when sought in conjunction with a request for a change in zoning district boundaries, Planned Unit Developments.
 - (b) The Hearings.
 - (i) The Two Meeting Quasi-Judicial Hearings are to be conducted according to the same format as the Single Meeting Quasi-Judicial Hearings in the preceding section. The Two Meeting Quasi-Judicial Hearings procedure differs only in that two (2) successive hearings on the same matter (not on appeal) are required to complete the process. Both hearings are de novo hearings, which allow presentation of any pertinent information regardless of prior participation and/or deliberation in the process.
 - (ii) The first hearing shall be conducted by the Planning and Zoning Commission and shall be held for the purpose of formulating a recommendation to be forwarded to the Council.
 - (iii) The second hearing shall be conducted by the Council according to the same guidelines and requirements which are applied to a Single Meeting Quasi-Judicial Hearings.
 - (c) Post-Hearing. At the conclusion of the public hearing held by the Council, the Council may take any of the following actions:
 - (i) Approve the recommendation of the Planning and Zoning Commission, and adopt the Planning and Zoning Commission's Reasoned Statement of Relevant Criteria and Standards.
 - (ii) Approve the recommendation of the Planning and Zoning Commission, subject to modifications to the Planning and Zoning Commission's Reasoned Statement of

Relevant Criteria and Standards.

- (iii) Render a decision different from the recommendation of the Planning and Zoning Commission, and adopt a new Reasoned Statement of Relevant Criteria and Standards.
 - (iv) Defer decision on the request to a later meeting date.
 - (v) Remand the recommendation to the Planning and Zoning Commission for clarification or further documentation of the recommendation prior to reaching a decision.
 - (d) A decision shall be deemed final when a proposal has been either approved or disapproved by the Council.
- (3) Legislative Hearings.
- (a) General. Legislative hearings shall be required for Category B annexation and when amendments are contemplated to the substantive or procedural terms of the Zoning Code, the Subdivision Code, the Sign Code, or the Comprehensive Plan. Legislative hearings are characterized by their general applicability to the community as a whole. Legislative hearings may only be initiated by City staff, the Planning and Zoning Commission, or at the direction of the Mayor or the Council.
 - (i) Legislative hearings are required when changes are proposed to the land use regulations of the City which are subject to the requirements of Title 67, Chapter 65 of the Idaho Code, such as changes to the Zoning Code, the Subdivision Code, the Sign Code, or the Comprehensive Plan.
 - (ii) Legislative hearings are required to be held twice, similar to the Two Meeting Quasi-Judicial Hearings, but legislative hearings are not subject to the same procedural restrictions as are Quasi-Judicial hearings.
 - (ii) Ex parte contacts are not forbidden in conjunction with the legislative hearing process.
 - (b) Pre-Hearing.
 - (i) A legislative hearing may be scheduled by City staff, by order of the chair of the Planning and Zoning Commission, the Mayor, the Council, or by a motion passed by a majority of the membership of the respective board involved.
 - (ii) Upon said order the City staff shall cause to be published a public notice containing the nature of the proposed change contemplated to the land use regulations of the City and the time and place of the hearing.
 - (iii) A copy of the proposed change shall be made available to the public for inspection from the time notice is published to the time of the hearing.
 - (iv) Written comments may be forwarded for consideration any time prior to a vote of the board hearing the matter, as determined by its chair.
 - (c) The Hearing.
 - (i) Testimony may be submitted in any form by any person interested in the legislative proposition, subject to rulings by the chair concerning form, length, or relevance. The chair shall be free to vary the order of hearing procedures as necessary or desirable.
 - (ii) Hearings conducted in accordance with this Section shall generally be conducted in the following order:

- a. Opening of the hearing and call to order.
 - b. Introduction of hearing item and explanation of proposal and receipt of comment and materials presented before the public hearing.
 - c. Public testimony in support, in opposition, or other testimony related to the proposal.
 - d. Closure of the public hearing.
 - e. Board deliberations without further unsolicited commitment.
- (iii) All deliberations on matters which are the subject of legislative hearings shall be conducted in a properly called open meeting of the board considering the proposal.
- (d) The First Hearing.
- (i) At the close of the initial hearing, the Planning and Zoning Commission shall prepare a recommendation to the Council concerning the proposal before them. This recommendation may take any of the following forms:
 - a. Approval of the proposal as presented.
 - b. Rejection of the proposal as presented.
 - c. Approval of the proposal subject to modifications as included in the Planning and Zoning Commission's recommendation.
 - (ii) The Planning and Zoning Commission shall forward its recommendation to the Council within forty-five (45) days of the close of the initial public hearing. The recommendation shall be in writing and shall set forth the reasons for the Planning and Zoning Commission's recommendation.
 - (iii) Upon receipt of the Planning and Zoning Commission's recommendation, the Council shall determine whether to hold a second public hearing on the subject of the initial legislative hearing. Upon an affirmative finding, the City shall publish notice of a Council legislative public hearing stating its nature and the time, place, and date.
- (e) The Second Hearing.
- (i) Procedures for the second hearing, conducted this time before the Council, shall be the same as for the initial hearing before the Planning and Zoning Commission.
 - (ii) At the conclusion of the second hearing the Council may take any of the following actions:
 - a. Adopt the proposal in ordinance form as originally proposed or as recommended or modified by the Planning and Zoning Commission.
 - b. Reject the change as proposed.
 - c. Propose substantial modifications to the proposal originally made or to the proposal recommended by the Planning and Zoning Commission and return the substantially modified proposal to the Planning and Zoning Commission for a new initial hearing.
- (F) Appeals of Interpretation or Administration.
- (1) The Council shall review the appeal on the written record generated and/or preserved by the Board of Adjustment. Decisions made regarding appeals herein should be founded upon sound

reason and practical application of recognized principles of law. When considering the merits of an appeal, no additional public testimony or information shall be taken or considered by the Council. After considering the record and the reasons for the appeal, the Council shall take one (1) or more of the following actions:

- (a) Sustain the Decision. Sustain the decision of the Board in whole or in part.
- (b) Reverse the Decision. Reverse the decision of the Board in whole or in part.
- (c) Remand the Decision.
 - (i) Remand the matter in whole or in part to the Board with comments and/or instructions for further consideration by the Board or for remand by the Board to the Zoning Administrator in order to gather more information on the matter. The Council shall remand the appeal in whole or in part for gathering of additional material information and a subsequent decision only where it is shown by a preponderance of the evidence that there is:
 - a. New material information not available or readily discoverable at the time of the Zoning Administrator's decision; and
 - b. It is in the public interest to develop such additional material information on the matter.
 - (ii) Procedures and guidelines for an appeal in addition to that contained herein may be established from time to time by resolution of the Council.

(G) Mediation:

- (1) Mediation Request. An applicant or any affected person may, by written request submitted to the Community Development Services Department, request mediation provided that the request is received no later than within seven (7) days of an appealable decision under this Chapter.
- (2) Public Hearing. After receiving the written request, the Community Development Service Department shall present the mediation request to the Council. The Council shall evaluate the request at a public meeting and may order mediation if the Council believes the mediation may resolve the dispute.
- (3) During mediation, any time limitation relevant to the application shall be tolled. Such tolling shall cease when the applicant or any other affected person, after having participated in at least one (1) mediation session, states in writing that no further participation is desired and notifies the other parties, or upon notice of a request to mediate wherein no mediation session is scheduled for twenty-eight (28) days from the date of such request.
- (4) Pre-Mediation Conference. If the Council orders mediation, the Council shall select and pay the expense of the mediator for a first meeting with the mediator and the affected person(s). The first meeting with the mediator shall be to determine whether to schedule additional mediation meetings and to determine compensation to the mediator. The applicant and the affected parties shall be required to participate in the pre-mediation meeting; however, an applicant may decline to participate in mediation requested by an affected person and an affected person may decline to participate in mediation.
- (5) Mediation may occur at any point during the decision-making process or after a final decision is made. If mediation occurs after a final decision, any resolution of differences through mediation shall be the subject of another public meeting before the decision-making body.

(Ord. No. 3300, 2-13-20)

11-6-5: DECISION-MAKING CRITERIA.

The purpose of this Section is to identify the criteria for review and decision on certain types of applications and the required Reasoned Statement of Relevant Criteria and Standards consistent with Idaho Code.

- (A) Appeal of Decisions of the Zoning Administrator. The Board of Adjustment is empowered to reverse, or affirm wholly or partly, or modify the order, requirement, decision, or determination of the Zoning Administrator.
- (B) Conditional Use Permit.
 - (1) The City Council, Board of Adjustment or Planning and Zoning Commission shall approve or deny a conditional use permit application and shall issue written Reasoned Statements of Relevant Criteria and Standards and in accordance with Idaho Code.
 - (2) In the event an application is denied, the City Council, Board of Adjustment or Planning and Zoning Commission may make recommendations to the applicant or set forth conditions under which it would approve the application and the applicant may resubmit their application.
 - (3) In addition to the conditions specified by the Zoning Code for conditional uses in each particular Zone, the City Council, Board of Adjustment, or Planning and Zoning Commission may impose additional conditions, including, but not limited to:
 - (a) Minimizing adverse impact on other developments or adjacent properties.
 - (b) Controlling the sequence and timing of development.
 - (c) Controlling the duration of development.
 - (d) Assuring the development is maintained properly.
 - (e) Designating the exact location and nature of development.
 - (f) Requiring landscaping of on-site or off-site public facilities or services.
 - (g) Restricting the hours of operation of any business or other commercial activity conducted on the premises.
 - (h) Such other conditions as may be necessary to preserve the character and harmony of the zone and avoid conflict with the general characteristics of the area designated in the Comprehensive Plan.
 - (4) Prior to granting a conditional use permit, the City Council, Planning and Zoning Commission, or Board of Adjustment may require studies of the social, economic, fiscal or environmental effects of the proposed conditional use, and may require the submission of a development plan as set forth in Section 11-3-6B of this Code. (Ord. 3241, 3-14-19)
 - (5) A conditional use permit is not transferable from one (1) parcel of land to another.
 - (6) Abandonment of or non-use of a conditional use permit for a period of twelve (12) consecutive months shall terminate said conditional use permit, and any privileges granted shall be null and void.
 - (7) Failure to comply with the conditions of approval for a conditional use permit shall be cause for termination of the approval and shall be deemed to be a violation of this Code.
- (C) Conditional Use Permit to Allow Structures Buildings Within Seventy-Five feet (75') of the Banks of a Designated Natural Flood Channel may be approved subject to the following conditions:
 - (1) Adequate measures are taken to insure the uninterrupted flow of water during floods.

- (2) Adequate measures are taken to protect the building or structure from damage due to floods.
 - (3) Flood damage hazard to surrounding land and improvements will not be increased as a result of the construction of a building or structure for which a permit is requested.
 - (4) All structures will be located in accordance with the plan of flood drainage adopted by the Council.
 - (5) Applicant has submitted a complete Flood Elevation Certificate.
- (D) Permit for Moving a Building, Including Locating a Mobile or Manufactured Home on a Permanent Foundation.
- (1) The building and lot on which the building is to be located conform to the requirements of this Code.
 - (2) All dedications and improvements, as required by the City for streets and facilities and buildings, shall be provided in conformity with the standards of the City.
 - (3) For mobile homes, the applicant must provide certification from the State of Idaho and the Department of Housing and Urban Development that the structure meets all applicable codes making the structure suitable for human occupancy.
- (G) Variances.
- (1) A variance is a permit issued by the Board of Adjustment pursuant to Idaho Code.
 - (2) A variances may be issued for the area, width, location, height, and lot coverage requirements as set forth in Chapter 3 Zoning Regulations and Chapter 5 Overlay Zones Regulations of this Code and from the regulations in Chapter 4 Design and Development Regulations of this Code which regulate the manner in which conforming uses are developed.
 - (3) Approval of a variance shall be based on the following findings:
 - (a) Undue hardship results from physical limitations on development unique to the property upon which the variance is requested and such hardship is not generally applicable to other properties in the same Zone.
 - (b) Such hardship is not economic in nature not has it been created by the owner of the property or occupant.
 - (c) Granting the variance will not be in conflict with the public interest or create a nuisance or potential harm to the neighborhood in which the lot is located.
- (H) Waiver from the Minimum Lot Size of Thirty Thousand Square Feet (30,000 ft²) in the PT Zone.
- (1) A waiver maybe allowed based on the following findings:
 - (a) That the use cannot be practicably developed without the reduced minimum lot size.
 - (b) That the applicant can satisfy the performance standards set forth by use of the improvements, premises and facilities of a contiguous use.
 - (2) The issuance of a permit for a use having less than thirty thousand square feet (30,000 ft²) may be conditioned upon the conveyance, dedication, grant or joint use agreement between the applicant and the owner of the contiguous use as may be required by the Commission and Council in order to demonstrate the applicant's ability to meet the performance standards. The documents of conveyance or agreement shall include a provision that the document of conveyance or agreement shall be irrevocable without the express written consent of the Council.

- (I) Amendments to the Zoning Code or Zoning Map. Amendments to the Zoning Code or Zoning Map, including changes to existing zoning map, the existing zoning map, or zoning for proposed areas of annexation, may be allowed subject to the following findings:
- (1) The Zoning is consistent with the principles of City's adopted Comprehensive Plan, as required by Idaho Code.
 - (2) The potential effects on the following:
 - (a) Traffic congestion as a result of development or changing land use in the area and the need that may be created for wider streets, additional turning lanes and signals, and other transportation improvements.
 - (b) Exceeding the capacity of existing public services, including, but not limited to: schools, public safety services, emergency medical services, solid waste collection and disposal, water and sewer services, other public utilities, and parks and recreational services.
 - (c) Nuisances or health and safety hazards that could have an adverse effect on adjoining properties.
 - (d) Recent changes in land use on adjoining parcels or in the neighborhood of the proposed Zoning Map amendment.
- (J) Amendments to Tower Overlay Zones. In addition to the required findings for zone change as set forth in Section 11-5-6I, amendments to the Tower Overlay Zones may be allowed subject to the following findings:
- (1) That the requested amendment is consistent with the purposes for Towers and Antennas as set forth in Section 11-5-2A of this Code.
 - (2) That as demonstrated by the applicant, that no existing tower, structure, property within an existing Zone, or alternative technology can accommodate the applicant's proposed antenna. Evidence submitted to demonstrate no existing Zone or technology can accommodate the applicant's proposed antenna may consist of any of the following:
 - (a) No existing towers or structures are located within the existing Zones which meet applicant's engineering requirements in terms of location, height, or structural strength.
 - (b) No existing sites are located within the existing Zones which meet engineering location requirements.
 - (c) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
 - (d) The fees, costs, or contractual provisions required by an owner in order to share an existing tower or structure, adapt an existing tower or structure for sharing, or locate a tower or antenna are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
 - (e) An alternative technology that does not require the use of towers or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable.

11-6-6: REQUIRED IMPROVEMENTS.

(A) Standards.

- (1) The Zoning Administrator may specify the manner of installing or constructing all required improvements necessary to assure compliance with the requirements of this Code.
- (2) As determined by the Zoning Administrator improvement drawings and specifications shall be required in the application for a permit.
- (3) The installation of all required improvements shall conform to the City Standard drawings and Engineering specifications and any other design or construction standards adopted by ordinance.
- (4) The applicant shall file improvement drawings and specifications for all required improvements and shall obtain the approval of the Planning Administrator prior to the commencement of their construction.

(B) Inspection. The City may inspect all required improvements during construction, and upon a finding that such improvements are not being constructed in conformity with the specifications set forth in Section 11-6-6A, the City may order construction to cease and may withhold the issuance of any Certificate of Occupancy.

(C) Installation of Required Improvement.

- (1) All required improvements shall be installed at the applicant's expense.
- (2) All requests for phasing required improvements shall be submitted as part of the application for a permit, and phased installation may be permitted if the phasing was a condition for the issuance of the permit.
- (3) Phasing shall be permitted only upon a specific finding Zoning Administrator that such phasing will not violate the performance standards set forth in the review of the application and upon the following additional conditions:
 - (a) One-half of the required improvements shall be commenced within one year from the date the permit is issued.
 - (b) All required improvements shall be completed within three (3) years from the date the permit is issued.

(D) Completion of Required Improvements. All required improvements shall be completed prior to occupancy or use of any portion of the property.

(E) Continuous Obligations for Maintenance.

- (1) All required improvements not dedicated to the public shall be maintained in a good state of care, condition and repair at all times. All such required improvements which become functionally obsolete or worn out shall be replaced with a comparable improvement.
- (2) Any applicant or owner of property who fails to maintain any privately owned required improvement in accordance with the approved plans shall be deemed to be in violation of this Zoning Code.
- (3) The City may enforce against person or entity that fails to complete the required improvements using the procedure set forth in Section 11-6-7 of this Code.

11-6-7: ENFORCEMENT.

- (A) Continuing Obligation. Maintenance of improvements, conditions of approvals, and requirements of this code shall be a continuing obligation of the applicant or their successors. Any failure to meet these obligations shall be deemed a violation of the Code and subject to the penalties set forth in Title 1, Chapter 3 General Penalty Provisions of City Code.
- (B) Violation. Any person or entity that violates any provisions of this Code shall be guilty of a misdemeanor, and upon conviction shall be subject to penalties as set forth in City Code.
- (C) Procedures for Enforcement.
 - (1) A written notice of failure to maintain the required improvements, conditions of approval, or requirements of this Code shall be served upon all owners of record of the property. The notice shall be in writing and shall be mailed to the owner(s)'s or address last shown on the records of the Bonneville County Assessor. Service of the notice shall be deemed to be complete upon its deposit in the U.S. mail, postage prepaid in the manner set forth above. The notice shall contain a brief description of the terms of the maintenance plan, conditions of approval or violation of the Code.
 - (2) Any person receiving the notice, may, within ten (10) days of the date of service, request a hearing before the Board of Adjustment, which request shall be delivered to the Zoning Administrator. Following receipt of the request, the Zoning Administrator shall deliver the request to the Board of Adjustment which shall hold a hearing within twenty (20) days from that date. At the hearing, the person may request a reasonable extension of time for curing their failure to comply or otherwise demonstrate good cause why they should not be required to comply. (Ord. 3218, 9-13-18)
 - (3) If compliance is not completed within thirty (30) days after the date the notice of failure to maintain the public improvements was served, or any extension allowed by the Board of Adjustment, the owner or owners of the property subject thereto shall be deemed to be in violation of this Zoning Code, and shall be subject to the penalties set forth in Title 1, Chapter 3 General Penalty Provisions of City Code. (Ord. 3233, 12-20-18)
- (D) Nuisance. Any building or structure which has been set up, erected, constructed, altered, enlarged, converted, moved, remodeled or maintained contrary to the provisions of this Code, and any use of land or building or premises established, conducted, maintained or operated contrary to the provisions of this Code are hereby declared to be unlawful and opposed to the orderly development of the community and shall therefore be considered a public nuisance.