TITLE 9

ZONING REGULATIONS

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CHAPTER 1

TITLE, AUTHOURITY, PURPOSES AND DEFINITIONS

SECTION:

9-1-1: Short Title
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9-1-1: **SHORT TITLE**: This title shall be known and cited as the OWYHEE COUNTY ZONING ORDINANCE. (Ord. 09-09, 10-6-2009)

9-1-2: **AUTHORITY**: This title is authorized by the Idaho constitution article 12, section 2, Idaho Code sections 31-714, 31-828, 31-4408, and 31-4504 and is mandated by Idaho Code sections 67-6511 which provides that each board of county commissioners "shall" establish a land use district or districts within the unincorporated area of the county, and excludes any zoning ordinance for any area of city impact in the county. (Ord. 09-09, 10-6-2009)

9-1-3: **PURPOSES**: This zoning title is designed and enacted to protect the public health, safety and welfare by implementing the county comprehensive plan and accomplishing the following purposes:

A. Protect and conserve the historic customs, traditions and way of life unique to the county, consistent with a reasonable and orderly rate of growth and development and protection of private property rights;

B. Protect and conserve the agricultural and range uses which form the primary base of the county's economy;

C. Provide for reasonable and sound land development, a safe and healthy environment, and a successful economic climate;

D. Require the coordination by the planning and zoning commission with the county natural resources advisory committee[1] to achieve coordinated planning for the entire county and protection of private property rights which are critical to the economic stability of the county and to the maintenance of a healthy environment;

E. Protect and enhance private property rights and property values consistent with the county's responsibility to protect public health, safety and welfare;

F. Minimize infiltration into agricultural land areas of those elements of urban development which will adversely impact agricultural operations;

G. Provide a process for negotiating and developing areas of city impact;

H. Designate land use districts (zoning districts) appropriate for uses that meet the needs of the county's citizens by providing for growth compatible with protection of soil, water, air, wildlife and other natural environmental and scientific qualities;

I. Preserve the recreational, archeological, architectural and cultural history of the county and its historic resources;

J. Protect and conserve the natural resources in the county by considering the impact on such resources of proposed land uses;

K. Maintain, protect, and enhance the county's transportation system; and

L. Provide a means for administering the land use planning process in a manner which can assist school districts to maintain, protect and enhance school facilities and school transportation systems. (Ord. 09-09, 10-6-2009)

9-1-4: **DEFINITIONS**: As used in this title, the following words and terms shall have the meanings ascribed to them in this section:

ACCESSORY BUILDING: A detached subordinate building, the use of which is customarily incidental to that of the main building, or to the main use of the land, and not including those buildings designated herein as agricultural buildings.

ACCESSORY USE: A use customarily incidental or subordinate to the main use of the premises.

ACRE: Forty three thousand five hundred sixty (43,560) square feet.

ADMINISTRATOR: A person appointed by the board of county commissioners to administer this title and related ordinances. Until such person is appointed, the administrator is the board of county commissioners.

AGRICULTURAL BUILDING: A structure designed and constructed, or modified, to house farm implements, hay, grain, poultry, livestock or other horticultural products including structures used for processing, treating, packaging, sale or storage of agricultural products and including commercial, packing, sale or conditioning buildings for farm crops. Also included are structures for the housing of agricultural workers when such workers are employed on the farm unit.

AGRICULTURAL LAND/PURPOSE: That land on which agricultural operation occurs. Agricultural operation includes, without limitation, any facility for the growing, raising or production of agricultural, horticultural and viticultural crops and vegetable products of the soil, poultry and poultry products, livestock, field grains, seeds, hay, apiary and dairy products, and the processing for commercial purposes of livestock or agricultural commodities, including the processing of such commodities into food commodities.

AIRPORT: Any runway, land area or other facility designed or used either publicly or privately by any person for the landing and taking off of aircraft, including all necessary taxiways, aircraft storage and tie down areas, land areas set aside as buffer zones or safety overruns, hangars and other necessary buildings.

ALLEY: A minor street providing secondary access to the back or side of a property otherwise abutting a street.

ANIMAL UNIT: See definition of CAFO.

AREA, MINIMUM LOT: The total area within the property lines of the lot, excluding adjacent streets, except as otherwise provided.

ATTACHED ACCESSORY LIVING QUARTERS: An attached structure that is used either as quarters for the ill, elderly or disabled. Accessory living quarters must be incidental and subordinate in size, impact and purpose to a principal dwelling. The attached living quarters must be accessible from inside the primary residence. The accessory living quarters shall not have a separate address or separate utility meters and shall not be rented separately from the main residence, nor used for commercial purposes other than a home occupation. Recreational vehicles shall not be permitted as accessory living quarters in any zoning district.

BOARD OF COUNTY COMMISSIONERS: The governing board of the county.

BOARDING AND ROOMING HOUSES: A building or portion thereof which is used to accommodate, for compensation, boarders or roomers, not including members of the owner's and/or occupant's immediate family. The word "compensation" shall include payment in money, service or other things of value.

BUILDING: A combination of materials, whether portable or fixed, which comprises a

structure affording facilities or shelter for any use or occupancy, and shall include a part or parts thereof and all equipment therein normally a part of the structure.

BUILDING CODE: A building code may be any universal construction or safety code adopted by the county.

BUILDING HEIGHT: The vertical distance from the grade to the highest point on the roof surface.

CAFO: May also be referred to as "concentrated animal feeding operation" or "confined animal feeding operation", and means a lot or facility where the following conditions are met:

A. Animals have been or will be stabled or confined and fed or maintained for a total of one hundred twenty (120) consecutive days or more in any twelve (12) month period;

B. Crops, vegetation, forage growth or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility; and

C. The lot or facility is designed to confine or actually does confine as many as or more than the number of animals specified in any of the following categories: seven hundred (700) mature dairy cows, whether milked or dry; one thousand (1,000) veal calves; one thousand (1,000) cattle other than mature dairy cows or veal calves; two thousand five hundred (2,500) swine each weighing fifty five (55) pounds or more; ten thousand (10,000) swine each weighing less than fifty five (55) pounds; five hundred (500) horses; ten thousand (10,000) sheep or lambs; or eighty two thousand (82,000) chickens.

For the purpose of this definition, two (2) or more concentrated animal feeding operations under common ownership are

considered to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

CAFO ADVISORY TEAM: Representatives of the Idaho state department of agriculture, Idaho department of environmental quality and Idaho department of water resources who review a site proposed for a CAFO, determine environmental risks and submit a suitability determination to the county.

CAR LOTS AND MACHINERY LOTS: A retail or wholesale area for the sale of motor vehicles and machinery.

CEMETERY: The term “cemetery” shall mean a place dedicated to, used and intended to be used for the permanent interment of the human dead, and shall include a burial plot for earth interments, a mausoleum for vault or crypt interments, a crematory, or a crematory and columbarium for cinerary interments, or any combination of one or more of the above. This definition shall be construed to include bona fide pet cemeteries.

CERTIFICATE OF COMPLIANCE: A certificate issued by the administrator or designee of the board of county commissioners which certifies that the proposed land use for a building, lot, parcel or other premises is in compliance with this title. The certificate must be issued before any building permit is issued and before a person enters into occupancy. When the proposed land use is pursuant to a conditional use permit, the certificate of compliance is issued only after the applicant is in substantial compliance with the special conditions imposed.

COMMERCIAL: A business activity concerned with the buying, selling, exchanging and/or transporting of goods and services.

CONCENTRATED ANIMAL FEEDING OPERATION: See definition of CAFO.

CONDITIONAL USE: A use permitted within a zoning district only under a conditional use permit issued pursuant to this title.

CONDITIONAL USE PERMIT: A permit granted to an applicant who seeks to place a land use in a district where the use is not allowed, said permit to be granted only pursuant to the provisions of this title and to contain specific conditions placed pursuant to provisions of this title.

CONFINED ANIMAL FEEDING OPERATION: See definition of CAFO.

CONSERVATION: Protection of natural resources and the environment and excludes development of land.

CONSERVATION EASEMENT: An easement which places limitation on the use of the servient estate for conservation purposes.

COTTAGE INDUSTRY: A business in a home which can be a full or part time occupation which is conducted entirely within a dwelling unit and which does not change the character of the dwelling unit or adversely impact the surrounding area. The dwelling must have adequate appurtenant facilities to support the business.

DEVELOPMENT AGREEMENT: A written commitment by an applicant for rezoning or owner of the subject parcel to specifically defined development, such agreement to be made a condition of rezoning.

DWELLING: Any building or portion thereof which is used as the private residence or sleeping place of one or more human beings, but not including hotels, boarding and rooming houses, motels, tourist courts, resort cabins, clubs, hospitals, or similar uses.

DWELLING, MULTIPLE-FAMILY: A building occupied as a residence by two (2) or more families living independently of each other but not including motels or hotels, boarding or rooming houses, tourist courts, resort cabins, clubs, hospitals, or similar uses.

DWELLING, ONE-FAMILY: A detached building designed exclusively for and occupied as a residence by one family.

DWELLING UNIT: In a dwelling or multiple-family dwelling, one or more rooms designed for and occupied as a residence by one family; e.g., an apartment.

EASEMENT: An interest in land conveyed and granted by the landowner to another person, the grantor landowner becoming the owner of the servient estate and the grantee easement owner becoming the owner of the dominant estate. Such easement contains the right to control land use of the servient estate by requiring the servient estate owner to change the land use of the servient estate or any portion thereof or by prohibiting the servient estate owner from enlarging, expanding, changing, or altering the land use of the servient estate or any portion thereof.

ENVIRONMENTAL RISK: That risk to the environment deemed posed by a proposed CAFO site as determined and categorized by the CAFO site advisory team and set forth in the site advisory team's suitability determination report.

FINAL DECISION: A written document including findings, conclusions, and order that is signed by the decision making body, and recorded by the clerk of the board of county commissioners.

GRADE AND OFFICIAL GRADE: Grade (ground level) is the average of the finished ground level at the center of all walls of a building. If walls are within twenty five feet (25') of a sidewalk or curb, ground level shall be measured at the

street, curb, sewer or structure considered.

HAZARDOUS WASTE: A waste or combination of wastes of a solid, liquid, semisolid, or contained gaseous form which, because of its quantity, concentration or characteristics (physical, chemical or biological) may:

A. Cause or significantly contribute to an increase in deaths or an increase in a serious, irreversible or incapacitating reversible illnesses; or

B. Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties but do not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to national pollution discharge elimination system permits under the federal water pollution control act, as amended, 33 USC, section 1251 et seq., or source, special nuclear, or byproduct material as defined by the atomic energy act of 1954, as amended, 42 USC section 2011 et seq.

HAZARDOUS WASTE FACILITY OR SITE: Any property, structure, or ancillary equipment intended and used for the transportation, treatment, storage or disposal of hazardous wastes.

HAZARDOUS WASTE MANAGEMENT: The systematic control of the collection, source separation, storage, treatment, transportation, processing, and disposal of hazardous wastes.

HEALTH FACILITIES: Any of the following:

A. Hospital. A place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care for not less than twenty four (24) hours in any week of two (2) or more nonrelated individuals suffering from illness, disease, injury, deformity, or requiring care because of old age, or a place devoted primarily to providing for not less than twenty four (24) hours in any week of obstetrical or other medical or nursing care for two (2) or more nonrelated individuals. The term hospital includes public health centers in general, tuberculosis, mental, chronic disease and other types of hospitals and related facilities, such as laboratories, outpatient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals;

B. A facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with said facilities;

C. A facility specially designed for the diagnosis, treatment, education, training or custodial care of the mentally handicapped, including facilities for training specialists and sheltered workshops for the mentally handicapped, but only if such workshops are part of facilities which provide or will provide comprehensive services for the mentally retarded;

D. A facility providing services for the prevention or diagnosis of mental illness, or care and treatment of mentally ill patients, or rehabilitation of such persons, which services are provided principally for persons residing in a particular community or communities in or near which the facility is situated or at a statewide facility.

HOTELS AND MOTELS: Any building or portion thereof designed to be commercially used, let or hired out

for occupancy by persons on a temporary basis.

ILL, ELDERLY OR DISABLED PERSON: A person in need of special care or supervision; or a care provider for any such person if the person in need of such care is a resident on the site. Accessory living quarters for the ill, elderly or disabled may include cooking facilities. To qualify as an accessory living quarters, the structure must meet the "attached accessory living quarters" definition.

IN HOME BUSINESS: A business in a home which can be a full or part time occupation which is conducted entirely within a dwelling unit and which does not change the character of the dwelling unit, or adversely impact the surrounding area. The dwelling must have adequate appurtenant facilities to support the business.

INDUSTRIAL USE: A business establishment engaged in manufacturing or technically productive enterprises.

INTERMENT SITE: Interment site shall consist of a lot, or portion thereof, containing a burial plot for earth interments, a mausoleum for vault or crypt interments, a columbarium for cinerary interments, or any combination of one or more of the above. No interment site shall be allowed on parcels smaller than three (3) acres. No more than two (2) interments shall be allowed per parcel unless approval is granted for the development of a platted cemetery. No future development or easements shall be allowed upon or within five feet of the remains. Interment sites are not deemed to be equivalent to rural cemeteries as defined in Idaho Code § 27-201 et seq.

JUNKYARD: A lot, structure or part thereof, used for the collecting, storage and/or sale of material for recycle or reuse such as, but not limited to, wastepaper, rags, scrap metal or discarded material, or for the collecting, dismantling, storing and

	salvaging of machinery or vehicles for the use or sale of parts thereof. A junkyard includes auto and machinery wrecking yards.
KENNEL:	Any lot or premises on which four (4) or more animals at least four (4) months of age are harbored for commercial purposes such as boarding, breeding or training of such animals, and where such activity is not accessory to or incidental to an allowed use in the district.
LOT:	An area of land occupied, or to be occupied, by a building or group of buildings, and any accessory buildings identified with each, and having legal access to a public right of way.
LOT AREA:	The area of a lot which does not include public rights of way for roads or streets. However, irrigation ditch rights of way and public utility easements may be included in the lot area.
LOT LINE, FRONT:	The property line dividing a lot from a street. On a corner lot, only one street line shall be considered as a front line, and the shorter street frontage shall be considered the front line.
LOT LINE, REAR:	The line opposite the front line.
LOT LINE, SIDE:	Any lot line other than the front lot line or rear lot lines.
LOT WIDTH:	The distance parallel to the front lot line measured between side lot lines through that part of the building or structure where the lot is narrowest.
MAJOR SUBDIVISION:	A subdivision which contains a number of lots greater than ten (10).
MANUFACTURED HOME:	A structure, constructed after June 15, 1976, in accordance with the HUD manufactured home construction and safety standards, and is transportable in one or more sections, which, in the

traveling mode, is eight feet (8') or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure which meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under 41 USC section 5401 et seq.

MANUFACTURED HOME COURTS OR PARKS: For the purpose of this definition, the term "manufactured home" refers also to "mobile home". A manufactured home court or park exists when there are two (2) or more manufactured homes placed on an acre and where such placement is not for purposes of providing agricultural labor housing.

MEMBERSHIP CLUB: An association of persons, whether incorporated or unincorporated, for some common purpose, but not including groups organized primarily to render a service carried on as business.

MINOR SUBDIVISION: A subdivision which contains a number of lots that is ten (10) or less.

MOBILE HOME: A factory assembled structure or structures generally constructed prior to June 15, 1976, and equipped with the necessary service connections and made so as to be readily movable as a unit or units on their own running gear and designed to be used as a dwelling unit or units with or without a permanent foundation.

MODULAR BUILDING: Any building or building component, other than a manufactured or mobile home, which is constructed according to codes and standards adopted by the Idaho division of building safety, which is of closed construction and is entirely or substantially prefabricated or assembled at a place other than the building site.

MUNICIPAL SOLID WASTE LANDFILL: A discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined under 40 CFR 257.2. A municipal solid waste landfill also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste and industrial solid waste. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill or a lateral expansion. Such a landfill may be publicly or privately owned.

NATURAL RESOURCES ADVISORY COMMITTEE: The committee appointed by the board of county commissioners to serve as an advisory committee to the board regarding matters relevant to the management of federal and state lands located within the county, the relationship of that management to the continuation of the custom, culture and economic stability of the county, and to perform the duties set forth in title 2, chapter 3 of this code.

NONAGRICULTURAL ACTIVITIES: Residential, commercial, or industrial property development and use not primarily used for the growing, raising or production of agricultural, horticultural and viticulture crops and vegetable products of the soil, poultry and poultry products, livestock, field grains, seeds, hay, apiary and dairy products, and the processing for commercial purposes of livestock or agricultural commodities, including the

	processing of such commodities into food commodities.
NONCONFORMING BUILDING:	A building, structure or portion thereof built prior to the effective date hereof, or any amendment hereto, and conflicting with the provisions of the ordinance applicable to the district in which it is located. No residence, supporting structure or agricultural building shall become nonconforming as the result of the passage hereof.
NONCONFORMING USE:	The use of a structure or premises conflicting with provisions of this title.
OCCUPANCY:	Taking possession of and use of property; period during which a person possesses, uses, does business in, and/or resides in a building, structure or premises.
OCCUPY:	To take or enter upon possession of a building, structure or premises; to live in, do business in, use a building, structure or premises.
ODOR MANAGEMENT PLAN:	A plan prepared by the applicant for a conditional use permit by which the applicant will manage, control and/or mitigate any odor resulting from the proposed use.
OPEN SPACE:	An area substantially open to the sky, which may be on the same lot with a building. The area may include, along with the naturally occurring physical characteristics of the earth, water areas, swimming pools, tennis courts and other areas of recreational, historical or archeological value. Streets and structures for habitation shall not be considered as part of open space.
OPEN SPACE EASEMENT:	An easement which places limitation on the use of the servient estate for open space purposes.
ORIGINAL PARCEL:	As defined in the Owyhee County subdivision ordinance[2].

PARCEL: A contiguous quantity of land owned by, or recorded as the property of, the same person. Parcels purchased on different occasions with separate financing for the purpose of increasing the size of a parcel or tract, which parcels have not been combined into single legal description, are individual parcels.

PERSON: A single entity, including any association, firm, copartnership or corporation.

PLANNED UNIT DEVELOPMENT: An area of land in which a variety of land uses are provided for under single ownership or control, which may be subjected to conditions of minimum area, permitted uses, ownership, common open space, utilities, density, arrangement of land uses on the site, and permit processing.

PLANNING AND ZONING COMMISSION: The Owyhee County planning and zoning commission appointed by the board of county commissioners to perform planning and zoning duties as assigned under this title.

PUBLIC WATER AND SEWER FACILITIES: Those facilities of a municipality or sanitation district approved by the Southwest district health department and by the state department of health for general public use.

RECREATION EASEMENT: An easement which places limitation on the use of the servient estate for recreational purposes.

RECREATIONAL VEHICLE: A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The entities include, but are not limited to, travel trailer, camping trailer, truck camper, fifth wheel trailer and motor home.

RECREATIONAL VEHICLE PARK: An area for the temporary placing of recreational vehicles for the purpose of temporary lodging.

SETBACK: The distance from the nearest point of a building or other structure, measured to the front lot line.

STRUCTURE: Anything constructed or erected, which requires location on the ground, or attached to something having a location on the ground, but not including fences or walls used as fences eight feet (8') or less in height, poles, lines, cables or other similar transmitting or distribution facilities of public utilities.

SUBDIVISION: As defined in the Owyhee County subdivision ordinance[3].

SUITABILITY DETERMINATION: That document created and submitted by the CAFO site advisory team after review and analysis of a proposed CAFO site that identifies the environmental risk categories related to a proposed CAFO site, describes the factors that contribute to the environmental risks and sets forth any possible mitigation of risk.

TELECOMMUNICATIONS FACILITIES: All wires, cables, equipment, apparatus or other installments necessary to furnish service, by which there is accomplished or may be accomplished, the sending or receiving of information, data, message writing signals, signals, pictures, and sounds of all kinds, by aid of such wires, cables, equipment apparatus or other installations, but shall not include the structure in which such telecommunications facilities are housed.

TRACT: A lot, piece or parcel of land of greater or less size, the term not importing, in itself, any precise dimension.

VARIANCE: A modification of the bulk and placement requirements of this title as to lot size, lot coverage, width, depth, front yard, side yard, setbacks, parking space, height of

	buildings, or other ordinance provisions affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots, said modification to be allowed only upon a showing by the application of undue hardship because of characteristics of the site and that the modification is not in conflict with public interest.
WASTE:	Any solid, semisolid, liquid or contained gaseous material for which no reasonable use or reuse is intended or which is intended to be discarded.
YARD:	An open space other than a court or a lot unoccupied and unobstructed from the ground upward, except as otherwise provided in this title.
YARD, BACK:	A yard extending across the full width of the lot between the rear lot line and the nearest line or point of the building.
YARD, FRONT:	A yard extending across the full width of the lot between the front lot line and the nearest line or point of the building.
YARD, SIDE:	A yard extending from the front yard to the yard between the side lot line and the nearest line or point of the building or accessory buildings attached thereto.

9-1-5: **COORDINATION WITH NATURAL RESOURCES COMMITTEE**: The planning and zoning commission, the administrator, and all planning and zoning staff will cooperate with and coordinate activities with the natural resources committee on all issues, actions, and matters which are relevant to the duties of the natural resources committee as set forth in title 2, chapter 3 of this code. (Ord. 09-09, 10-6-2009)

1: See title 2, chapter 3 of this code.
2: See title 10, chapter 2 of this code.
3: See title 10 of this code.

CHAPTER 2

ADMINISTRATION; GENERAL PROVISIONS

SECTION:

9-2-1: Administration; Certificate Of Compliance
9-2-2: Planning And Zoning Commission
9-2-3: Staff
9-2-4: Staff To Assist Planning And Zoning Commission
9-2-5: Hearing Officer
9-2-6: Hearing Examiner

9-2-1: **ADMINISTRATION; CERTIFICATE OF COMPLIANCE**:

A. Chief Administrative Office: The board of county commissioners will serve as the chief administrative office for administration of comprehensive planning and zoning activities conducted pursuant to this title and related ordinances. The board may appoint or designate an administrator to handle these duties.

B. Issuance Of Certificate Of Compliance: The board of commissioners, or its designee, shall be responsible for issuing a certificate of compliance which certifies that a proposed land use is in compliance with this title. If the board's administrator has a question as to whether compliance has been achieved, the question may be directed to the board for assistance and resolution. No building permit may be issued, and no person may enter into occupancy or begin the proposed use, until the certificate has been issued. When the proposed land use is dependent upon a conditional use permit, the certificate will be issued only after the applicant is in substantial compliance with special conditions designed to be satisfied before construction, occupancy or commencement of use. (Ord. 09-09, 10-6-2009)

9-2-2: **PLANNING AND ZONING COMMISSION**:

A. Membership: The commission membership shall be set by resolution of the board of county commissioners in compliance with the provisions of Idaho Code section 67-6504.

B. Duties: The planning and zoning commission shall carry out the duties of such commission as prescribed herein and in Idaho Code title 67, chapter 65.

C. Procedures; Time Frames: The planning and zoning commission shall follow the procedures and time frames set forth in this title when performing its duties. (Ord. 09-09, 10-6-2009)

9-2-3: **STAFF**: Staff functions, under the administrative direction of the board of county commissioners, shall be performed by staff designated by the board by resolution, and the duties of such staff and the procedures by which they will perform their duties shall also be set by resolution. (Ord. 09-09, 10-6-2009)

9-2-4: **STAFF TO ASSIST PLANNING AND ZONING COMMISSION**: When staff members designated by the board are assisting the planning and zoning commission in the performance of their duties, they shall operate under the direction of the planning and zoning commission. Staff shall be designated to assist the planning and zoning commission at the request of the commission. (Ord. 09-09, 10-6-2009)

9-2-5: **HEARING OFFICER**: The board of commissioners or the planning and zoning commission may appoint a hearing officer to perform the procedural functions set forth in this title with regard to the procedures to be followed by the board and the commission. The hearing officer shall not make findings of fact and conclusions of law, but may assist the board or the commission in the preparation of such findings and conclusions. If no hearing officer is appointed, the chairman or vice chairman of the board or commission shall serve as hearing officer. (Ord. 09-09, 10-6-2009)

9-2-6: **HEARING EXAMINER**:

A. Appointment; Duties: The board of county commissioners may appoint a hearing examiner to perform the duties as set forth by the Idaho legislature including hearing applications for subdivisions, conditional use permits and variances, and requests for zoning district boundary changes in accordance with the comprehensive plan, as well as other duties which may be assigned by the board of commissioners.

B. Hearing Procedures: When the hearing examiner conducts a hearing, the same procedures as required for hearings before the planning and zoning commission and the board of county commissioners shall apply.

C. Decision Of Hearing Examiner: The hearing examiner's decision to grant or deny the application or request shall specify, in writing, the ordinance and standards used in evaluating the application, the reasons for the decision, and the actions, if any, that the applicant could take to obtain a permit or zoning district boundary change in accordance with the comprehensive plan. The written decision will be filed with the clerk of the board, and copies will be sent to the planning and zoning commission and to the board of county commissioners.

D. Appeal: Any person aggrieved by the hearing examiner's decision may appeal the decision to the board of county commissioners by filing a written notice of appeal with the clerk of the board within twenty (20) days after the decision is filed with the clerk. The appellate procedures, including payment of fee, shall be the same for appeals from the examiner as from the planning and zoning commission to the board of commissioners.

E. Recommendations: Additionally, either the planning and zoning commission or the board of county commissioners may request that the hearing examiner sit with the planning and zoning commission or board of county commissioners during hearings held by those bodies on applications for conditional use permits, variances or requests for zoning district boundary changes; and, at the conclusion of such hearings, the examiner may make a recommendation to the planning and zoning commission or board of county commissioners conducting the hearing. Such recommendation shall specify the ordinance and standards used by the examiner to evaluate the application or request, the reasons for the recommendation, and the actions, if any, the

examiner believes the applicant could take to obtain a permit, variance or zoning district boundary change. The planning and zoning commission or the board of county commissioners shall not be bound to follow the recommendation, but may take it into consideration in reaching their decision. Consideration of the recommendation will not relieve the hearing body from its duty to issue a written decision in accordance with this title. (Ord. 09-09, 10-6-2009)

CHAPTER 3

HEARING PROCEDURES AND TIME LIMITS

SECTION:

9-3-1: Procedures
9-3-2: Application For Variances Or Conditional Use Permits
9-3-3: Time Frames For Hearing And Decision By Commission
9-3-4: Finality Of Commission Decision
9-3-5: Appeals To The Board
9-3-6: Show Cause Order

9-3-1: **PROCEDURES**: The following procedures shall be followed by the planning and zoning commission, by the hearing examiner and by the board of county commissioners in matters in which a public hearing is required:

A. Hearing Officer; Certification Of Notice Of Hearing: The hearing officer (including the examiner, the chairman or vice chairman serving as hearing officer) shall preside over the public hearing and shall make all procedural decisions which are necessary. Before commencing the hearing, the presiding officer will certify that at least fifteen (15) days prior to the hearing, notice of the time and place and a summary of the request to be heard was published in the newspaper designated by the board of county commissioners for publication of legal notices, and that written notice by United States mail was provided so that at least fifteen (15) days prior to the hearing property owners of property adjoining the subject land site and others as required by the local land use act were notified of the hearing.

B. List Of Procedures; Sign Up Sheets: At least one-half (1/2) hour prior to the commencement of the hearing, a list of the procedures to be followed at the hearing shall be posted at the entrance to the hearing room along with sign up sheets for prospective witnesses to sign.

C. Failure To Sign Up: The hearing officer may refuse to permit any person to testify who has not signed the sign up sheet prior to commencement of the hearing.

D. Statement Of Rules And Procedures: The hearing officer shall open the meeting with a statement of the rules and procedures to be followed during the hearing.

E. Statement Of Issues: The hearing officer shall open each hearing with a statement of the issues before the commission or board in that particular case and relief requested by the applicant.

F. Administration Of Oath Or Affirmation: The hearing officer shall administer the oath or affirmation to the witnesses, except at legislative hearings where public input is solicited.

G. Burden Of Persuasion: The applicant for relief or action by the board or commission shall have the burden of persuasion.

H. Record Of Hearing: The record of the hearing, including minutes, documents relating to the provision of notice of the hearing, documents admitted into evidence or offered into evidence and rejected, motions and briefs filed by any party, and the decision of the board or commission, shall be filed by the hearing officer with the clerk of the board of county commissioners to be held as official records of the county.

I. Written Findings, Conclusions And Order; Recommendation: The written findings, conclusions and order or recommendation of the commission, hearing officer or board shall be filed with the clerk of the board of county commissioners to be held as official records of the county, and a copy shall be mailed to the applicant seeking relief or action. (Ord. 09-09, 10-6-2009)

9-3-2: **APPLICATION FOR VARIANCES OR CONDITIONAL USE PERMITS**:

A. Filing Of Application:

1. Form: An application for variance or conditional use permit must be completed on a form approved by and provided by the administrator or the board of county commissioners.

2. Instructions; Guidelines: The application will contain or be accompanied by instructions which shall advise the applicant of the specific elements of information and fact which must be presented, and as to which the applicant has the burden of proof, before the requested relief can be granted. The applicant shall be advised of the requirement that full and complete information must be provided which demonstrates how and why a variance can be granted under the requirements for variance set forth in this title, or how and why a conditional use permit can be granted under the requirements for conditional use permits set forth in this title. Such instructions shall include a list of any use-siting guidelines, use guidelines, or specific studies which the planning and zoning commission or board of commissioners may require for consideration. Such guidelines may be established by the board of commissioners by resolution, or may come from this title or related ordinances.

3. Filing; Fee: The application must be filed with the clerk of the board, or the person designated by the board, and accompanied by a filing fee as set by the board of commissioners by resolution. It must be signed by the owner of the land site for which a variance or conditional use is proposed, providing that an application may be signed by a designee of the owner if the application contains a specific description of the relationship of the applicant to the owner and to the proposed use and also a specific authorization of the designee's presentation signed by the owner. No application will be accepted for filing if not accompanied by the established filing fee.

B. Time Frames For Presentation Of Application To Commission And Scheduling Of Hearing:

1. Review By Administrator: The administrator will review and consider the sufficiency of the application, and upon the acceptance by the administrator, the application for variance or conditional use permit will be presented to the planning and zoning commission at the first regularly scheduled meeting of the commission after it is filed.

2. Sufficient Application: If the application contains information which the administrator believes is sufficient for conduct of a public hearing, the hearing shall be scheduled to be held within one hundred twenty five (125) days of the date presented to the commission.

3. Insufficient Application: If the administrator finds the application does not contain information complete enough to provide public notice of

the proposed use and/or to provide the basis for a meaningful public hearing, then the administrator shall return the application to the party who signed it with written instructions as to the deficiencies in the application which must be cured before a hearing will be scheduled. Such action by the administrator shall not be considered an appealable decision.

C. Resubmission Of Application: If an applicant resubmits an application sent back by the administrator pursuant to the preceding subsection, the administrator shall submit it to the commission at its next regularly scheduled meeting. A fee for resubmission may be set by the board of commissioners by resolution.

D. Consideration Of Resubmitted Application: The commission shall consider resubmitted applications at the first regularly scheduled meeting after the date of resubmission and acceptance by the administrator that the application is sufficient to provide adequate public notice and to hold a meaningful public hearing.

1. Application Sufficient For Hearing: If the administrator decides that the application is sufficient, a hearing shall be scheduled to be held within one hundred twenty five (125) days of the date of resubmission by the application.

2. Application Insufficient For Hearing: If the administrator decides that the application is not sufficient, the application will be denied and such decision shall be considered final unless appealed to the board of commissioners. (Ord. 09-09, 10-6-2009)

9-3-3: **TIME FRAMES FOR HEARING AND DECISION BY COMMISSION**:

A. Recess Due To Insufficient Evidence: A hearing held by the commission may be recessed if the commission finds it has not received sufficient evidence from which to determine the issues relevant to the relief being requested. The decision to recess the hearing shall include the date, time and place of the resumed hearing and shall specify any limitations which will be placed on receipt of evidence at the resumed hearing.

B. Second Recess Of Hearing: Upon resumption of the hearing, if the commission finds that the evidence received is still insufficient to serve as the basis for decision of the issues relevant to the relief being requested,

a second decision to recess may be issued, again including the date, time and place of the resumed hearing and specification of any limitations which will be placed on receipt of evidence at the second resumption. Notice of the second resumption hearing shall be published in accordance with the hearing requirements set by the local planning act.

C. Decision Of Commission: Upon conclusion of receipt of evidence as to the application, the commission may grant the relief requested only if it is persuaded by the applicant that the relief should be granted under this title and in accordance with the standards established by this title. The commission may make and announce its decision at the conclusion of receipt of evidence, with a written decision to be filed not later than ninety five (95) days from the announcement of decision, or may take the case under advisement, with a written decision to be rendered no later than ninety five (95) days from the date on which the case is taken under advisement.

D. Motion To Reconsider: Within fifteen (15) days of recording of a written decision, any party may file a written motion to reconsider the commission's decision, or any portion thereof. Upon payment of fees as set by the board of county commissioners, the motion to reconsider will be scheduled for hearing on the next regular hearing date for which appropriate pubic notice can be provided. If such motion is filed, the appeal deadline is tolled and the commission's decision is not final until the motion has been decided and until the decision of the commission on the motion to reconsider is recorded. (Ord. 09-09, 10-6-2009)

9-3-4: **FINALITY OF COMMISSION DECISION**: The decision of the planning and zoning commission or county commissioners as to the variance or conditional use permit is not final until a written document including findings, conclusions, and order is signed by the planning and zoning commission or board of county commissioners and recorded by the clerk of the board of county commissioners. (Ord. 09-09, 10-6-2009)

9-3-5: **APPEALS TO THE BOARD**: A party aggrieved by a final decision of the planning and zoning commission may appeal the decision to the board of county commissioners, providing that the following procedures must be followed:

A. Filing; Form: The appeal must be filed, in writing, with the clerk of the board of commissioners, on a form provided by the board, within twenty

(20) days after the date on which the planning and zoning final decision is filed with the clerk of the board.

B. Filing Fee: The notice of appeal must be accompanied by a filing fee in an amount to be set by the board by resolution. The clerk shall not file the notice of appeal until such fee is paid, and, if the fee is not paid within the time set for filing an appeal, the planning and zoning commission decision is final.

C. Presented To Board; Hearing Scheduled: The clerk shall present the notice of appeal to the board of commissioners at its next regularly scheduled meeting after the filing of the notice. The board shall schedule a public hearing to be noticed and conducted in accordance with the local planning act, and with the procedures set for hearings by this title. The hearing shall be scheduled to be conducted within ninety five (95) days from the date the notice of appeal is presented to the board by the clerk of the board. If a notice of appeal was not timely filed, or if the appellate fee is not paid, the clerk shall report such facts to the board at its first regularly scheduled meeting after the appeal time has expired, and the board shall send to the aggrieved party a written statement of the reasons why the board will not consider an appeal.

D. Appeal Hearing: The board shall conduct its appeal hearing in accordance with the procedural provisions for hearings set by this title. After consideration of the planning and zoning commission decision and its underlying evidence, any evidence offered by the commission or its staff in support of or explanation of the decision, and evidence submitted by the appellant and other witnesses, the board may affirm the commission's decision, modify the commission's decision, reverse the commission's decision, or remand the case to the commission for further consideration under the following standards:

1. New Evidence:

a. Remand To Planning And Zoning Commission; Fee: If the appellant or other witnesses intend on presenting to the board, evidence not presented to the planning and zoning commission during its hearing which would have been relevant and material to the commission's decision, the board shall remand the case to the commission for consideration of new evidence. Upon remand, the commission shall consider the case on the next

hearing date on which there is time available for the hearing. A fee for the remand hearing will be assessed as set by resolution.

b. Prehearing; Fee: At least twenty one (21) days prior to the date set for the appellate hearing, the appellant shall advise the board, in writing, if he/she intends to offer such evidence, and shall include the written advisement of the nature and summary of the evidence intended to be offered. At a preappeal hearing date and time set by the board, the board shall decide whether the evidence would have been relevant and material to the commission's decision. A fee for prehearing determination will be assessed as set by resolution.

2. Action Of The Board: The board shall give substantial weight to the decision of the planning and zoning commission and shall modify or reverse such decision only if the board is persuaded by the appellant that the decision is contrary to the county comprehensive plan, this title or to any other relevant federal, state or county law.

a. The appellant has the burden of persuasion.

b. If, for any reason within the discretion of the board, the appeal hearing must be recessed to receive further evidence, the recessed hearing should be resumed on the next public hearing date on which there is time available for resumption of the hearing. The recess order shall specify the date, time and place of the resumed hearing as well as any limitations on receipt of evidence at the resumed hearing. There shall be no more than one recess of an appeal hearing.

c. When the evidence is completed at the appeal hearing, the board may take the appeal under advisement and render its decision, in writing, within ninety five (95) days of the date upon which the case is taken under advisement, or may announce its decision orally and file its written decision within ninety five (95) days of the announcement. (Ord. 09-09, 10-6-2009)

9-3-6: **SHOW CAUSE ORDER**: At any time while an application for variance or conditional use permit is pending, and any time before a decision of the board of county commissioners or planning and zoning commission becomes final, if the

governing body receives an allegation that the applicant is making unlawful use of the property which is the subject of the application, or that the applicant is using the property in any way inconsistent with the current zoning status, the board of county commissioners or the planning and zoning commission may enter a show cause order to be served on the applicant to require that the applicant show cause at a hearing on a date certain why the application should not be denied. Said notice shall be noticed and scheduled in accordance with the provisions of this title as to notice for conditional use permit hearing proceedings. In case of an emergency, endangering public health or safety found to exist by the governing body, the time noticed for said hearing may be shortened to five (5) working days from the time the show cause order is served on the applicant. (Ord. 09-09, 10-6-2009)

CHAPTER 4

ZONING DISTRICTS; MAPS

SECTION:

9-4-1: Zoning Districts
9-4-2: Maps

9-4-1: **ZONING DISTRICTS**:

A. Established: In order to implement the Owyhee County comprehensive plan and to accomplish the purpose of this title, there are hereby established the following zoning districts in the unincorporated area of the county: (Ord. 09-09, 10-6-2009)

A	Agricultural
M	Multi-use
R	Residential
C	Commercial
I	Industrial
H	Historical
-	Power zoning overlay

(Ord. 09-09, 10-6-2009; amd. Ord. 2013-03, 8-12-2013)

B. Land Use Within Districts: Land use in the districts must be consistent with the provisions of this title regarding the uses allowed and permitted within each district.

C. Compliance Required: It shall be unlawful for any person to establish or maintain a land use in any of the specified districts except in compliance with the provisions of this title.

D. Conditional Use Permit, Easements: A conditional use permit is required for and prior to creation of an easement which requires the servient estate owner to change or alter the land use of the servient estate or any part thereof in existence on the stated effective date of the easement, or which prohibits the servient estate owner from

enlarging, expanding, changing or altering the land use of the servient estate, or any part thereof in existence on the stated effective date of the easement. The provision is applicable to, but not limited to, easements popularly known as "conservation easements", "recreation easements", "open space easements". Chapter 5 of this title shall be applicable to the application for conditional use permit filed pursuant to this section. (Ord. 09-09, 10-6-2009)

9-4-2: **MAPS**:

A. Official Zoning District Maps: The official zoning district maps for the county shall be the maps accompanying the county comprehensive plan approved in February 2002, with the exception that "rural residential" and "river residential" shall be removed from the map and those districts shall be shown as "residential".

B. Maintained At Courthouse Or Courthouse Annex: The official maps shall be maintained at the county courthouse or courthouse annex building by the administrator of planning and zoning and shall be available for public use during regular business hours established for the county courthouse by the board of county commissioners.

C. Legal Descriptions: The legal descriptions of the zoning districts shall be as stated in the comprehensive plan and as attached to the official maps. No legal description has been provided for the large A zone, and boundary lines of that zone shall be determined by reference to adjoining zone district boundaries.

D. Discrepancy Between Description And Depiction: Any discrepancy between the legal description of the zoning district and the depiction of the zoning district on the official maps shall be governed by the legal description. (Ord. 09-09, 10-6-2009)

CHAPTER 5

ZONING DISTRICT REGULATIONS

ARTICLE A. A AGRICULTURAL DISTRICT

SECTION:

9-5A-1: Purpose
9-5A-2: Designation
9-5A-3: Allowed Uses
9-5A-4: Permitted Uses Under Conditional Use Permit
9-5A-5: Building Setbacks
9-5A-6: Rights Of Way

9-5A-1: **PURPOSE**:

A. District A is designed to protect agricultural and rangeland uses. District A is designed to protect and maintain agricultural and rangeland uses, and to maintain viable tracts of prime agricultural and rangeland. Minor incidental agricultural uses do not indicate, designate, or determine the use as an agricultural use.

B. Residential uses that are not part of a customary use related to the operation of an individual farm or ranch will be discouraged in district A. Parcels proposed for residential development will not be considered agricultural uses merely because there is some incidental agricultural use such as pasture for family pets.

C. Large lot subdivisions with incidental use of nonviable agricultural size parcels use will be discouraged. (Ord. 09-09, 10-6-2009)

9-5A-2: **DESIGNATION**: The zoning district designed for agricultural use shall be designated "district A". (Ord. 09-09, 10-6-2009)

9-5A-3: **ALLOWED USES**: The following uses are allowed in district A:

Agricultural operations including, without limitation, any facility for the growing, raising or production of agricultural, horticultural and viticultural crops and vegetable products of the soil, poultry and poultry products, livestock, field grains, seeds, hay, apiary and dairy products and the processing for commercial purposes of livestock or agricultural commodities, including the processing of such commodities into food commodities, but excluding "CAFO" as defined in section 9-1-4 of this title and meatpacking plants.

Attached living quarters to a currently existing dwelling, with a common wall, for a member of the family who is ill, elderly, or disabled.

Cottage industries and in home businesses.

Horse breeding and training facilities, boarding stables, riding stables, arenas.

Oil and gas well sites.

Those accessory or incidental uses customarily associated with the above stated uses. (Ord. 09-09, 10-6-2009; amd. Ord. 2013-02, 8-12-2013)

9-5A-4: **PERMITTED USES UNDER CONDITIONAL USE PERMIT**:

A. Permitted Uses: The following uses may be permitted in district A under a conditional use permit granted in accordance with the provisions of this title which calls for protection of agricultural and rangeland uses. Great weight will be given to the soil classifications found on the parcel and the historic and current use of the parcel(s), as well as surrounding land uses:

Uses allowed or permitted in district R.

Airports.

Cemeteries.

Confined animal feeding operations.

Easement as referred to in subsection 9-4-1D of this title.

Energy resources developed for on site agricultural use.

Gravel pits and quarries.

Hunting clubs, shooting facilities or fishing clubs or facilities.

Junkyard.

Kennels.

Land applied wastewater (nonhazardous) and agricultural byproducts wastewater.

Meatpacking plants.

Municipal facilities for hosting of local or regional fairs.

Municipal solid waste landfills and municipal solid waste transfer stations.

Planned unit development.

Power generation, production and/or distribution facilities.

Preschool nurseries and/or child daycare.

Public and semipublic buildings including, but not limited to, law enforcement, fire, health and safety buildings and uses, government services, schools, libraries, and other public uses.

Radio and television transmitting stations.

Recreational pursuits and opportunities accessory to or incidental to agricultural operations.

Recreational use facilities.

Single-family dwelling for residence by a farm/ranch owner's family member, agent, or employee who is employed full time in the operation of the farm, ranch or agricultural unit. For the purposes of this use, "full time" is defined as receipt during the year immediately preceding the date of the filing of an application for conditional use of eighty percent (80%) or more of the person's gross income from the farm or ranch or agricultural unit on which the dwelling would be placed.

Veterinary or animal hospitals.

Any of the above uses may be subject to a development agreement[1].

Any use not identified in the allowed uses, and not identified as a permitted use may be permitted only through the conditional use process.

B. Conditions: Conditions placed on a conditional use permit granted pursuant to this title for any of the permitted uses listed herein must be complied with. Noncompliance with the terms and conditions of the conditional use permit shall make the use unlawful. It shall be unlawful to establish and then maintain any of the permitted uses listed herein without obtaining and complying with a conditional use permit.

C. CAFO: A CAFO can be permitted only upon the granting of a conditional use permit, and the application for such permit and processing of the application shall be subject to the following provisions:

1. Application; Odor Management Plan: The application for such permit shall be filed with the planning and zoning administrator along with an odor management plan. The application shall be on a form approved by the board, shall contain all the information required by the board and communicated to the applicant, and no such application will be processed unless it is accompanied by an odor management plan.

2. Review: The application and odor management plan shall be reviewed by the planning and zoning commission or hearing examiner to determine whether they are complete enough to allow for adequate factual consideration in the hearing process. If so, the planning and zoning commission or hearing examiner will request that the board of commissioners request the forming of a CAFO site advisory team pursuant to Idaho Code section 67-6529E. If not, the application and odor management plan shall be returned to the applicant with specification of the deficiencies.

3. Time Limits: The time limits set for consideration of applications in this title shall not begin to run until the report of the CAFO site advisory team is received by the clerk of the board of commissioners. From the date of receipt, the time for scheduling hearings shall commence to run.

4. Considerations: In considering the application for CAFO conditional use permit, the planning and zoning commission or hearing examiner shall consider the odor management plan, the CAFO site advisory team report and any guidelines adopted by resolution by the board of commissioners, which guidelines shall be provided to the applicant for consideration in preparing the application. (Ord. 09-09, 10-6-2009)

9-5A-5: **BUILDING SETBACKS**: No building or structure shall be placed within five feet (5') of the property line, or forty feet (40') of a county road or one hundred feet (100') of a state or federal highway. (Ord. 09-09, 10-6-2009)

9-5A-6: **RIGHTS OF WAY**: All street and road rights of way shall be developed in accordance with any minimum standards adopted by the county. (Ord. 09-09, 10-6-2009)

1: See subsection 8-2C-6B of this code.

CHAPTER 5

ZONING DISTRICT REGULATIONS

ARTICLE B. M MULTI-USE DISTRICT

SECTION:

9-5B-1: Purpose
9-5B-2: Designation
9-5B-3: Allowed Uses
9-5B-4: Permitted Uses Under Conditional Use Permit
9-5B-5: Building Setbacks
9-5B-6: Rights Of Way

9-5B-1: **PURPOSE**: District M is designed for mixed and varied uses in areas where commercial use should be anticipated in accordance with the county comprehensive plan. (Ord. 09-09, 10-6-2009)

9-5B-2: **DESIGNATION**: The zoning district designed for multi-use shall be designated "district M". (Ord. 09-09, 10-6-2009)

9-5B-3: **ALLOWED USES**: The following uses are allowed in district M:

Uses allowed in the A district.

Uses allowed in the C district except dairy processing plants.

Uses allowed in the R district.

Boarding and rooming houses.

Churches and church schools.

Colleges and private schools.

Dormitories, sorority and fraternity houses.

Hospitals, rest homes, convalescent homes, and nursing homes.

Oil and gas well sites.

Preschool age nurseries.

Professional offices.

Public schools.

Public utility mains and substations including public offices but not including repair or storage facilities.

Single-family dwellings and multi-family dwellings.

Other uses related to or incidental to the primary uses set forth in this section including, but not limited to, private swimming pools. (Ord. 09-09, 10-6-2009; amd. Ord. 2013-02, 8-12-2013)

9-5B-4: **PERMITTED USES UNDER CONDITIONAL USE PERMIT**:

A. Permitted Uses: The following uses may be permitted in district M under a conditional use permit granted in accordance with the provisions of this title:

Uses permitted in district A except for confined animal feeding operations and meatpacking plants.

Uses permitted in district C.

Uses permitted in district R.

Easement as referred to in subsection 9-4-1D of this title.

Municipal solid waste sites and municipal waste transfer stations.

Public parks, playgrounds and other recreational areas.

Public utilities repair or storage facilities.

Recreational vehicle parks.

Uses not identified in the allowed uses or in the permitted uses may be permitted only through the conditional use permit process.

B. Conditions: Conditions placed on a conditional use permit granted pursuant to this title for any of the permitted uses listed herein must be complied with. Noncompliance with the terms and conditions of the conditional use permit shall make the use unlawful. It shall be unlawful to establish and then maintain any of the permitted uses listed herein without obtaining and complying with a conditional use permit. (Ord. 09-09, 10-6-2009)

9-5B-5: **BUILDING SETBACKS**: No building or structure shall be placed within five feet (5') of the property line, or forty feet (40') of a county road or one hundred feet (100') of a state or federal highway. (Ord. 09-09, 10-6-2009)

9-5B-6: **RIGHTS OF WAY**: All street and road rights of way shall be developed in accordance with any minimum standards adopted by the county. (Ord. 09-09, 10-6-2009)

CHAPTER 5

ZONING DISTRICT REGULATIONS

ARTICLE C. R RESIDENTIAL DISTRICT

SECTION:

9-5C-1: Purpose
9-5C-2: Designation
9-5C-3: Minimum Lot Size
9-5C-4: Allowed Uses
9-5C-5: Permitted Uses Under Conditional Use Permit
9-5C-6: Building Setbacks
9-5C-7: Rights Of Way

9-5C-1: **PURPOSE**: The R zoning district is designed primarily for residential uses. Subdivisions may be subject to a development agreement. (Ord. 09-09, 10-6-2009)

9-5C-2: **DESIGNATION**: The zoning district designed for residential uses shall be designated "district R". (Ord. 09-09, 10-6-2009)

9-5C-3: **MINIMUM LOT SIZE**: The minimum lot size in the residential zone is that upon which the Southwest district health will permit placement of water and sewer systems, and that which is determined to have sufficient domestic water supply. (Ord. 09-09, 10-6-2009)

9-5C-4: **ALLOWED USES**: The following uses are allowed in district R:

All existing agricultural uses.

Cottage industry/in home business.

Oil and gas well sites.

Single-family, including attached quarters with a common wall for a member of the family.

Other uses related to or incidental to the primary use set forth in this section. (Ord. 09-09, 10-6-2009; amd. Ord. 2013-02, 8-12-2013)

9-5C-5: **PERMITTED USES UNDER CONDITIONAL USE PERMIT**:

A. Permitted Uses: The following uses may be permitted in district R under a conditional use permit granted in accordance with provisions of this title:

Boarding and rooming houses.

Churches and church schools.

Colleges and private schools.

Convalescent and nursing homes.

Daycare facilities, preschool nurseries.

Easements as referred to in subsection 9-4-1D of this title.

Grocery stores, gasoline stations, recreational facilities and other such service businesses as are beneficial or necessary for the support and service of the residential developments in the district.

Hospitals.

Mobile home parks.

Multi-family dwellings.

Planned unit development.

Playgrounds and other public areas.

Public and semipublic buildings including, but not limited to, law enforcement, fire, health and safety buildings and uses, government services and other public uses.

Public parks.

Public schools.

Public utility mains and substations.

Residential subdivisions.

Other uses incidental to or related to the primary uses set forth herein.

Any of the above uses may be subject to a development agreement.

Any use not identified in the allowed uses or in the permitted uses may be permitted only through the conditional use permit process.

B. Lot Area; Structure Requirements: All structures placed on lots or parcels of any size must meet standards, rules and regulations set up by the state board of health or the Southwest district health department.

C. Conditions: Conditions placed on a conditional use permit granted pursuant to this title for any of the permitted uses listed herein must be complied with. Noncompliance with the terms and conditions of the conditional use permit shall make the use unlawful. It shall be unlawful to establish and then maintain any of the permitted uses listed herein without obtaining and complying with a conditional use permit. (Ord. 09-09, 10-6-2009)

9-5C-6: **BUILDING SETBACKS**: No building or structure shall be placed within five feet (5') of the property line, or within forty feet (40') of a county road or within one hundred feet (100') of a state or federal highway. (Ord. 09-09, 10-6-2009)

9-5C-7: **RIGHTS OF WAY**: All street and road rights of way shall be developed in accordance with any minimum standards adopted by the county. (Ord. 09-09, 10-6-2009)

CHAPTER 5

ZONING DISTRICT REGULATIONS

ARTICLE D. C COMMERCIAL DISTRICT

SECTION:

9-5D-1: Designation
9-5D-2: Allowed Uses
9-5D-3: Permitted Uses Under Conditional Use Permit
9-5D-4: Building Setbacks
9-5D-5: Rights Of Way

9-5D-1: **DESIGNATION**: The zoning district designed for commercial uses shall be designated "district C". (Ord. 09-09, 10-6-2009)

9-5D-2: **ALLOWED USES**: The following uses are allowed in district C:

All existing agricultural uses.

All uses allowed in districts R and M.

Commercial businesses and uses not prohibited by federal, state or county law, or any section of this title, excepting CAFOs, meatpacking plants and any industrial business or use.

Oil and gas well sites. (Ord. 09-09, 10-6-2009; amd. Ord. 2013-02, 8-12-2013)

9-5D-3: **PERMITTED USES UNDER CONDITIONAL USE PERMIT**: The following uses are permitted in district C only under a conditional use permit issued pursuant to the provisions of this title:

Easements as referred to in subsection 9-4-1D of this title.

Planned unit development.

Public and semipublic buildings, including, but not limited to, law enforcement, fire, health and safety buildings and uses, government services and other public uses.

Any use not identified in the allowed uses or permitted uses may be permitted only through the conditional use permit process. (Ord. 09-09, 10-6-2009)

9-5D-4: **BUILDING SETBACKS**: No building or structure or any portion thereof, except steps and uncovered porches less than ten feet (10') in width, shall be erected within five feet (5') of the property line. If the property adjoins district A, M or R, no building or structure or any portion thereof shall be placed within two hundred feet (200') of a property line that adjoins said districts. No building or structure shall be placed within forty feet (40') of a county road, or within one hundred feet (100') of a state or federal highway. (Ord. 09-09, 10-6-2009)

9-5D-5: **RIGHTS OF WAY**: All street and road rights of way shall be developed in accordance with any minimum standards adopted by the county. (Ord. 09-09, 10-6-2009)

CHAPTER 5

ZONING DISTRICT REGULATIONS

ARTICLE E. I INDUSTRIAL DISTRICT

SECTION:

9-5E-1: Purpose
9-5E-2: Designation
9-5E-3: Allowed Uses
9-5E-4: Permitted Uses By Conditional Use Permit
9-5E-5: Building Setbacks
9-5E-6: Rights Of Way

9-5E-1: **PURPOSE**: District I is designed to accommodate light industries, manufacturing plants, processing plants and other related uses which are compatible with the county's other land uses. (Ord. 09-09, 10-6-2009)

9-5E-2: **DESIGNATION**: The zoning district designed for industrial uses shall be designated "district I". (Ord. 09-09, 10-6-2009)

9-5E-3: **ALLOWED USES**: The following uses are allowed in district I:

All existing agricultural uses.

Industrial businesses and uses not prohibited by federal, state or county law or by any section of this title, except CAFOs.

Oil and gas well sites. (Ord. 09-09, 10-6-2009; amd. Ord. 2013-02, 8-12-2013)

9-5E-4: **PERMITTED USES BY CONDITIONAL USE PERMIT**: The following uses are permitted in district I only by conditional use permit issued pursuant to the provisions of this title:

Easements as referred to in subsection 9-4-1D of this title.

Hazardous waste sites.

Municipal solid waste landfills and municipal solid waste transfer stations.

Planned unit developments.

Residential dwellings.

Any use not identified in the allowed uses or permitted uses are permitted only by conditional use permit process. (Ord. 09-09, 10-6-2009)

9-5E-5: **BUILDING SETBACKS**: No building or structure or any portion thereof, except steps and uncovered porches less than ten feet (10') in width, shall be erected within five feet (5') of the property line. If the property adjoins districts A, R or M, no building shall be placed within two hundred feet (200') of a property line that adjoins said districts. No building or structure shall be placed within forty feet (40') of a county road, or within one hundred feet (100') of a state or federal highway. (Ord. 09-09, 10-6-2009)

9-5E-6: **RIGHTS OF WAY**: All street and road rights of way shall be developed in accordance with any minimum standards adopted by the county. (Ord. 09-09, 10-6-2009)

CHAPTER 5

ZONING DISTRICT REGULATIONS

ARTICLE F. H SILVER CITY HISTORICAL DISTRICT

SECTION:

9-5F-1: Designation
9-5F-2: Purposes
9-5F-3: Certificate Of Appropriateness, General Provisions, Procedures And Standards
9-5F-4: Review Standards For Certificate Of Appropriateness
9-5F-5: Definitions
9-5F-6: Allowed Uses
9-5F-7: Permitted Uses Under Conditional Use Permit
9-5F-8: Prohibited Uses
9-5F-9: Certificate Of Appropriateness

9-5F-1: **DESIGNATION**:

A. The Silver City historical district shall be designated district H and shall be shown as such on the county zoning map of Owyhee County, Idaho. The Silver City townsite is located inside the H district but is not governed by chapter 5 of this title. The Silver City townsite continues to be governed by chapter 7 of this title.

B. The Silver City historic district consists of all of Sections 25, 26, 35, and 36 in Township 4 South, Range 4 West Boise Meridian including all of Sections 31 and 32, Township 4 South, Range 4 West Boise Meridian; including all of Sections 3, 4, 5, 6, 7, 8, 9, and 10 in Township 5 South, Range 3 West, Boise Meridian; all the above in Owyhee County, State of Idaho.

C. District H as depicted on the county map includes the ten thousand two hundred forty (10,240) acres in the Silver City historic district as defined by this title. This area is listed on the national register of

historic places (1863 - 1940) as the Silver City historic district. (Ord. 09-09, 10-6-2009)

9-5F-2: **PURPOSES**: The purposes for designating a historical district are:

A. To safeguard the county's historic aesthetic and cultural heritage as embodied and reflected in its landmarks, views and properties;

B. Foster civic pride in the accomplishments of the past as represented by the historic district;

C. Promote the use of the historic district for the education, pleasure, and welfare of the people of the county;

D. Retain and enhance those properties which contribute to the character of the district and to encourage their preservation, conservation and adaptation for current use;

E. Assure that alterations of existing structures are compatible with the character of the historic district;

F. Assure that new construction in the historic district is compatible with the character of the historic district and Silver City townsite;

G. Provide development standards to minimize the impact of human made structures and surface grading on existing landforms, unique geologic features, existing landscape features and open space;

H. Protect and preserve views of major and minor ridgelines;

I. Minimize cut and fill, earthmoving, grading operations and other construction on the natural terrain to ensure the finished slopes are compatible with existing land character;

J. Promote architecture and designs that are compatible with the Silver City townsite and minimize visual impacts throughout the historic district.

K. It is not the intent of this title to supersede any state or federal law. (Ord. 09-09, 10-6-2009)

9-5F-3: **CERTIFICATE OF APPROPRIATENESS, GENERAL PROVISIONS, PROCEDURES AND STANDARDS**:

A. Review By Historic Preservation Commission: No building permit shall be issued for any structure or site located within the historical district until the application for such permit has been reviewed by the county historic preservation commission appointed by the board of county commissioners and approved by the board and building official.

B. Review By Building Department: When applying for a certificate of appropriateness, the applicant shall furnish twelve (12) copies of all detailed plans, elevations, perspectives, specifications and location of property pins or property boundaries to the county building department for review by the building official to determine whether the project will require a building permit. Following that review, and within ten (10) business days, the building department will send the copies and the application for certificate of appropriateness to the historic preservation commission.

C. Request For Meeting: Any applicant for a building permit and certificate of appropriateness may request a meeting with the building official and/or the historic preservation commission prior to the submittal of an application, and will be given written notice of the meeting during which the permit and/or certificate of appropriateness will be discussed or considered.

D. Additional Information: During the review process the county historic preservation commission may require the submission of additional information, including, but not limited to, a photo or computer simulation of the project and associated improvements.

E. Technical Standards: An applicant should address the following standards in developing a project plan:

1. Highest Point Of Structure: The highest point of the proposed structure shall be more than twenty five (25) vertical feet below a major or minor ridgeline as measured from the ground to the roofline.

2. Building Size: Building size for single-family residential, and commercial structures shall be in keeping with the small scale building size or the structures in the Silver City townsite. The maximum floor area, including all floors, is one thousand two hundred (1,200) square

feet or less. The maximum floor area, including all floors, for accessory or appurtenant structures is a combined total maximum size of three hundred (300) square feet.

3. Setbacks: Building setbacks shall be five feet (5') from the property line and forty feet (40') from a county road.

4. Structure Height: The height of a structure is to be twenty four feet (24') or less as measured from finished grade along fifty percent (50%) or more of the longest wall.

5. Landscaping Plan: The improvement(s) including any required earthmoving or grading associated with the structure shall minimize removal of existing vegetation with emphasis on preserving mature trees. A detailed landscaping plan shall be presented showing the location and replacement of trees and vegetation.

6. Natural On Site Vegetation: A significant portion of natural on site vegetation must be retained to naturally screen the project.

7. Landscaping: Landscaping will be installed and designed to screen the project so as to prevent it from creating adverse visual impact.

8. Exterior Color Treatment: The exterior color treatment of a new structure and appurtenances will be designed to blend with the historical nature and ambience of the historic district, vegetation and landforms.

9. Exterior Windows And Trim: Exterior windows and trim are to be appropriate to the historically represented date range of the structure.

10. Roof Angles And Composition: Roof angles and composition to be designed to conform to existing landforms and landscape, with no A-frame roofs, the roof with the wall to roof height not to exceed one and a half to one (1.5:1).

11. Site And Design: The project shall be sited and designed to reduce its visual impact on the ridgelines, historic sites and unique topographic features.

12. Landforms: Landforms to be considered to be unique topographic features are, but not limited to: Florida Mountain, War Eagle Mountain, Potosi Ridge, Silver City entrance road, New York Summit and Jordan Headwaters Ridgeline.

F. Variance: A person may apply to the historic preservation commission for a variance from one or more of the technical standards set forth in subsections A through E of this section.

1. Form: The variance shall be filed on a form approved by the board of commissioners. The variance must specifically identify the standard or standards from which relief is sought, and must contain a detailed and clear statement of facts supporting the request for variance.

2. Grounds For Allowing: A variance may be granted when application of the standard or standards would result in depriving the applicant of practical and reasonable use of his/her property for its allowed or permitted use, and when granting the variance does not substantially detract from the purposes set forth in this article.

3. Decision Of Historical Preservation Commission: A decision by the historical preservation commission granting a variance is final. If the variance is denied, the decision must be in writing and must contain findings and conclusions supporting the denial.

4. Appeal: A person aggrieved by a denial of a variance may appeal to the board of county commissioners by filing an appeal on a form approved by the board within twenty (20) days of receipt of the denial decision of the historic preservation commission. The appeal must be accompanied by payment of a fee set by resolution of the board. The appeal must specifically and clearly state the action from which the appeal is taken, specifically identify the standard or standards from which relief was sought, and must specifically and clearly state why the denial is wrong factually and/or wrong because in violation of ordinance or statute.

5. Hearing: The hearing and time lines for hearing will be governed by the provisions for conditional use permit hearings set in chapter 6 of this title. (Ord. 09-09, 10-6-2009)

9-5F-4: **REVIEW STANDARDS FOR CERTIFICATE OF APPROPRIATENESS**: The following standards shall be reviewed to determine:

A. The degree to which the work may destroy or alter the appearance of a structure or lot;

B. The degree to which the proposed work would serve to isolate the structure from its historical, archaeological or architectural surroundings, or would introduce visual, audible, vibratory or polluting elements that are out of character with the resource and its setting, or that would adversely affect the physical integrity of the resource;

C. The compatibility of the building materials with the aesthetic and structural appearance of the resource;

D. The compatibility of the proposed design to the significant characteristics of the structure;

E. Changes that have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment, as these changes may have acquired significance in their own right, and this significance shall be recognized and respected;

F. Distinctive stylistic features or examples of skilled craftsmanship, which characterize a building, structure or site, shall be treated with sensitivity;

G. Deteriorated architectural features shall be repaired rather than replaced whenever possible. In the event that replacement is necessary, the material being replaced shall be historically compatible to the original in composition, design, color, texture and other visual qualities of the relevant historical period. Repair or replacement of missing architectural features should be based on evidence rather than conjectural design or the availability of different architectural elements from other buildings or structures;

H. The purposes stated in section 9-5F-2 of this article should be reviewed as stated for certificate of appropriateness. (Ord. 09-09, 10-6-2009)

9-5F-5: **DEFINITIONS**: As used in this article, the following terms and phrases shall have the meanings ascribed to them as follows:

ADAPTIVE USE: The restrained alteration of a historical or architectural resource to accommodate uses for

which the resource was not originally constructed, but in such a way so as to maintain the general historical and architectural character to retain significant features and characteristics.

APPURTENANT AND/OR ANCILLARY STRUCTURES: Structures that are subordinate and supplementary to the predominant use of the parcel.

ARCHEOLOGICAL RESOURCES: Areas or location occupied as residences or utilized by humans (historic or prehistoric) for a sufficient length of time to construct features or deposits, which may remain in greater or lesser degrees of preservation and order and which may lend to the increase of knowledge of humans and their own development.

ARCHITECTURAL RESOURCES: Districts, zones, structures, buildings, sites or landscaping that possess local interest or artistic merit, or which are particularly representative of their class or period, or represent achievements in architecture, or engineering technology or design.

BOARD: The Owyhee County board of commissioners.

BUILDING MATERIALS: The physical characteristics which create the aesthetic and structural appearance of the resource, including, but not limited to, consideration of the texture and style of the components and their combinations, such as brick, stone, shingle, wood, concrete or stucco.

CERTIFICATE OF APPROPRIATENESS: The official document issued by the historic preservation commission prior to the approval of any application to construct, demolish, relocate, reconstruct, restore or alter any site in the historic district.

COMMERCIAL: As defined in section 9-1-4 of this title.

COMMISSION: The Owyhee County planning and zoning commission.

CONSERVATION: The sustained use of and appearance of a resource essentially in its existing state.

DETAIL: Architectural aspects which, due to a particular treatment, draw attention to certain parts or features of a structure.

FLOOR AREA: The structure area confined to the area encompassed by the outside surface of the structure foundation.

GRADING: Earthmoving activity.

HEIGHT: The vertical dimension of a given structure or building and defined as measured from the ground to roofline.

HISTORIC DISTRICT: The area of Owyhee County which has been so designated and defined by legal description and demonstrated on a map, both of which are attached to the body of the zoning ordinance on file in the office of the county clerk.

HISTORIC PRESERVATION COMMISSION: The commission appointed by the board to provide advice on preservation of Owyhee County historic resources.

HISTORIC RESOURCES: Districts, zones, sites, structures, buildings and landscape that represent facets of history in the locality, state or nation; places associated with a personality or a group important to the past.

HISTORICAL NATURE: A particular character or atmosphere pertaining to the historical uniqueness of a specific district, zone, site, structure, building, or landscape that represents facets of Owyhee County history.

JUNKYARD: As defined in section 9-1-4 of this title.

NEW STRUCTURE: Any structure not in existence on May 19, 2008.

ORDINARY MAINTENANCE AND REPAIR: Any work for which a building permit or any other permit is not required, and where the purpose of the work is stabilization, and where the work will not change the exterior appearance of the structure. Any work not satisfying the definition of the previous sentence shall not be considered ordinary maintenance and repair, e.g., the application of paint to previously unpainted surfaces shall not be considered ordinary maintenance and repair, nor shall the construction or enlargement of a

driveway or parking area be considered ordinary maintenance and repair.

OUTBUILDING: Structure built for storage and/or purposes other than habitation.

PORCH: An attached structure, covered or uncovered, without exterior walls.

PRESERVATION: Any action taken to prevent further deterioration or damage to an item or structure while maintaining that item or structure in its present condition and the act or process of applying measures to sustain the existing form, integrity, and material of a building or structure and the existing form and vegetative cover of a site. Preservation may include initial stabilization work, where necessary, as well as ongoing maintenance of the historic building materials.

PROPORTION: The relative physical sizes within and between buildings and building components.

PROTECTION: The act or process of applying measures designed to affect the physical condition of a property by defending or guarding it from deterioration, loss or attack, or to cover or shield the property from danger or injury. In the case of buildings and structures, such treatment is generally of a temporary nature and anticipates future historic preservation treatment; in the case of archeological sites, the protective measure may be temporary or permanent.

RECONSTRUCTION: The process of reproducing by new construction the exact form and detail of a vanished building, structure, or object, or a part thereof, as it appeared at the specific period of time of the original structure.

REHABILITATION: The process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural and cultural values.

RESTORATION:	The act or process of reproducing by new construction the exact form and detail of a vanished building structure, or object, or a part thereof, as it appeared at a specific period or time or the removal of features added at a later point in time.
RHYTHM:	A regular pattern of shapes including, but not limited to, windows, doors, projections and heights, within a building, structure, or group of same.
RIDGELINE:	A visually prominent, relatively narrow strip or crest of land, which includes the highest points of elevation within a watershed that separates one drainage basin from another.
Major Ridgeline:	A ridgeline which is prominently visible in the historic district, characterized by the lack of topographical backdrop where the sky is visible beyond the ridge.
Minor Ridgeline:	A ridgeline which is not prominently visible from all points. Minor ridgelines are typically lower in height, when compared to the surrounding terrain and may be visible only to a limited area, or have a backdrop of a nearby higher topographical feature.
SCALE:	The harmonious proportion of parts of a building or structure to one another and to the human figure.
SETTING:	The surrounding buildings, structures or landscaping which provide visual, aesthetic or auditory quality of the historic or architectural resources.
SHAPE:	The physical configuration of structures or buildings and their component parts including, but not limited to, roofs, doors, windows and facades.

SIGNIFICANT CHARACTERISTICS OF HISTORICAL OR ARCHITECTURAL RESOURCES: Those characteristics which are important to or expressive of the historical, architectural, or cultural quality and integrity of the resource and its setting, and which include, but are not limited to, building material, detail, height, mass, proportion, rhythm, scale, setback, setting, shape, street accessories and workmanship.

STABILIZATION: The act or process of applying measures designated to reestablish a weather resistant enclosure and the structural stability of an unsafe or deteriorated property while maintaining the essential form as it exists at present.

STREET ACCESSORIES: Those sidewalk or street fixtures which provide cleanliness, comfort, direction or safety and are compatible in design to their surroundings, and include, but are not limited to, trash receptacles, benches, signs, lights, hydrants and landscaping including, but not limited to, trees, shrubbery, and planters.

STRUCTURE: Anything constructed or erected, the use of which requires permanent location on the ground or which is attached to something having a permanent location on the ground. This includes, but is not limited to, buildings, fences (excepting fences for containment of livestock or which are used in a livestock grazing operation), walls, driveways, sidewalks, signs and parking areas.

SUBDIVISION: As defined in title 10, chapter 2 of this code. (Ord. 09-09, 10-6-2009)

9-5F-6: **ALLOWED USES**: The following uses are allowed within district H:

Currently existing agricultural uses, and those accessory or incidental uses customarily associated with those agricultural uses.

Interior rehabilitation and stabilization of structures.

Maintenance or construction of nonresidential fences, corral/containment facilities for livestock.

Mining operations.

Oil and gas well sites.

Ordinary maintenance and stabilization of structures. (Ord. 09-09, 10-6-2009; amd. Ord. 2013-02, 8-12-2013)

9-5F-7: **PERMITTED USES UNDER CONDITIONAL USE PERMIT**:

A. Uses: Any use not identified in the allowed uses and which is not listed as a prohibited use may be permitted only following receipt of a certificate of appropriateness and approval of a conditional use permit pursuant to chapter 6 of this title.

B. Certificate Of Appropriateness; Appeal: The decision of the historic preservation commission as to the certificate of appropriateness shall be in writing and shall state reasons upon which the decision is based. A party aggrieved by a denial of certificate of appropriateness may file an appeal to the board of commissioners by filing a notice of appeal with the clerk of the board, on the form approved by the board of commissioners, within twenty (20) days after the date of denial. The notice must state the reasons why the denial should be overturned and must be accompanied by a copy of the decision being appealed and payment of the fee set by the board. A hearing on the appeal shall be scheduled in conformity with the time limits set for hearings by this title. The appellant may represent himself or be represented by counsel. The county historic preservation officer shall represent the historic preservation committee to present the historic preservation commission's reasons for denying the certificate. The board of commissioners shall give substantial weight to the advisory decision of the historic preservation commission, and shall reverse their decision only if the denial is not consistent with the purposes for establishing the historic district and the standards for review set in section 9-5F-3 of this article, or is in violation of this title and/or federal or state law.

C. Conditional Use Permit: Upon issuance of a certificate of appropriateness, the applicant shall then file an application for a conditional use permit pursuant to chapter 6 of this title. The conditional use permit shall be heard by the board of commissioners.

D. Conditions Placed On Conditional Use Permit: Conditions may be placed on a conditional use permit granted pursuant to this article for any of the permitted uses listed herein. Noncompliance with the terms and conditions of the conditional use permit shall make the use unlawful. It shall be unlawful to establish and then maintain any of the permitted uses listed herein without obtaining and complying with a conditional use permit. (Ord. 09-09, 10-6-2009)

9-5F-8: **PROHIBITED USES**:

Heavy industrial development and production, with the exception of mining.

Junkyards.

Municipal solid waste transfer stations.

Subdivisions. (Ord. 09-09, 10-6-2009)

9-5F-9: **CERTIFICATE OF APPROPRIATENESS**: A certificate of appropriateness shall be required prior to the approval of a conditional use permit and shall also be required for the following situations prior to commencement of work upon any structure or site located within district H:

A. Whenever work requires a building permit or other permit required by the county.

B. Whenever work includes the application of paint to a previously unpainted exterior surface or the application of paint color differing from existing color.

C. Whenever work includes the construction, modification or enlargement of a driveway or parking area.

D. Whenever work includes the erection, moving, demolition, reconstruction, excavation, restoration or alteration of the exterior of any structure or site, except when such work satisfies all the requirements for ordinary maintenance and repair.

E. Whenever there is to be any change in the scope of work which has been previously approved by a prior certificate of appropriateness.

F. Any signage proposed within the boundaries of district H. (Ord. 09-09, 10-6-2009)

CHAPTER 6

CONDITIONAL USE PERMITS AND VARIANCES

SECTION:

9-6-1: Nature Of Conditional Use Permits
9-6-2: Exemption As To Site Operations Permitted Before October 1991
9-6-3: Procedure For Obtaining Conditional Use Permits
9-6-4: Issuance Of Conditional Use Permit
9-6-5: Conditional Use Permits Subject To Right To Farm Act
9-6-6: Variances
9-6-7: Planned Unit Developments

9-6-1: **NATURE OF CONDITIONAL USE PERMITS**:

A. Uses Identified Throughout Designated Zones: Conditional uses have been identified throughout the designations of districts in this title.

B. Burden Of Persuasion; Compliance With Conditions: As to each permitted use specified in those designations, the applicant requesting such use has the burden of persuading that the use should be permitted, and then must comply with whatever special conditions are placed on any permit granted.

C. Transferability; Administrative Decision: A conditional use permit is not transferable from the site for which the permit is granted to another land site. A conditional use permit may be transferred from the original applicant to another person through an administrative discretion decision. Upon payment of fees as set by the board of county commissioners, and submittal of a completed request for transfer application containing all required documents as stated on the application form, such transfer may be granted. The original applicant must be the one seeking the transfer, and the transferee of the permit must sign and have notarized an affidavit agreeing to, and accepting all conditions originally placed on the conditional use permit being transferred. The use sought in the conditional use permit must be constructed as originally presented, and upon the same building site as presented in the original public hearing. Upon payment of fees and

submittal of the application, the administrator will review and prepare a written decision detailing the reasons for the action taken. The decision will be mailed to the applicant and presented to the planning and zoning commission at the next regularly scheduled meeting. The decision of the administrator is appealable to the board of county commissioners. No fee will be charged for an appeal of an administrative decision.

D. Extension Of Permit: If substantial progress toward development of the use permitted by a conditional use permit has not been accomplished within twenty four (24) months from the date the permit is issued, the conditional use permit expires. The applicant must request extension of the life of the permit prior to the twenty four (24) month expiration date from the planning and zoning commission, hearing examiner or board of county commissioners, from whichever granted the final permit. (Ord. 09-09, 10-6-2009)

9-6-2: **EXEMPTION AS TO SITE OPERATIONS PERMITTED BEFORE OCTOBER 1991**: No application for conditional use permit shall be required for continued operation on or for expansion of use of any site which had been established and was being operated under state and/or federal permit or license issued pursuant to state and/or federal law on or before October 3, 1991. (Ord. 09-09, 10-6-2009)

9-6-3: **PROCEDURE FOR OBTAINING CONDITIONAL USE PERMITS**:

A. Application; Form: Applications for conditional use permits for those uses identified in sections 9-5A-4, 9-5B-4, 9-5C-5 and 9-5E-4 of this title shall be filed with the administrator of the planning and zoning commission on a form prescribed by the administrator or the board. The applicant must contain full information as required by the application packet and the instructions accompanying the application in order to be considered.

B. Filing Fee: An application must be accompanied by a filing fee as adopted from time to time by the board by resolution. If the fee is not paid, the application will not be considered.

C. Hearing; Notice: When a completed application is filed with the administrator, the administrator shall present said application at the next regularly scheduled meeting of the planning and zoning commission. Upon receipt of said completed application and payment of the required filing fee, the administrator shall schedule at least one public hearing on the conditional use permit application at which interested persons shall have an opportunity to be heard. At least fifteen (15) calendar days prior to the hearing, notice of the time and place and a summary of the proposed conditional use permit shall be published in the official newspaper of general circulation within the county. Notice will also be posted at the county courthouse in Murphy, Idaho, and the office of the clerk of the court in Homedale, Idaho. The board, administrator, or the commission may also decide to provide additional notice to property owners who may be substantially impacted by the proposed conditional use permit. (Ord. 09-09, 10-6-2009)

9-6-4: **ISSUANCE OF CONDITIONAL USE PERMIT**:

A. Burden Of Proof: The applicant for a conditional use permit has the burden of proof with regard to justifying the issuance of the conditional use permit. The planning and zoning commission may direct the administrator to require the applicant to provide reports and testimony relevant to each of the provisions of this section and may require the applicant to conduct studies of the social, economic, fiscal and environmental effects of the proposed conditional use.

B. Criteria For Issuance: The planning and zoning commission shall review the particular facts and circumstances of each application for a conditional use permit in terms of the following standards, and may issue a conditional use permit only when it finds adequate evidence answering the following questions about the proposed application:

1. Whether this title permits the use by conditional use permit.

2. Whether the intended use is necessary or desirable to the public convenience and welfare.

3. Whether the proposed use may create a hazard, nuisance, detriment or other injury to other property in the immediate vicinity or to the health or safety to the citizens of the county in general.

4. Whether essential public services, or the general public health or safety, or the general public environment may be negatively impacted by such use or whether there may be a requirement of additional public funding in order to meet the needs created by the requested use.

5. Whether adequate sewer, water and drainage facilities, and utility and other service systems are to be provided by the applicant to accommodate said use.

6. When a permit is granted with appropriate conditions, bonds and safeguards which are in conformity with this title may be prescribed. Violations of such conditions, bonds or safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a violation of this title.

7. Whether the proposed use may have adverse impact on water and water supplies, both surface, aquifer and underground in the county.

8. Whether the geological base on which the use is to be placed may or may not support such proposed use.

9. Whether the proposed use at the proposed site may endanger human health, animal life and plant life in the surrounding area and/or the county in general.

10. Whether the proposed use complements, benefits, and is compatible with the surrounding land uses.

11. Whether special conditions could be imposed upon the proposed use which would so minimize any adverse impact as to justify the granting of the conditional use permit.

C. Special Conditions: If the planning and zoning commission determines that the conditional use permit should be granted but that special conditions are necessary in order to minimize any adverse impact which might be caused by the proposed use, the commission may apply special conditions designed to minimize that adverse impact including, but not limited to, conditions which perform the following functions:

1. Minimize adverse impact on the surrounding area and the public health, safety and environment in general.

2. Control the sequence and timing of development of the proposed use.

3. Control the duration of the development and use of the proposed use.

4. Assure that the development is properly maintained.

5. Designate the exact location and nature of development.

6. Require the provision for on site or off site public facilities or services.

D. Permit Denied: When the commission denies a conditional use permit, it shall specify the portions of the ordinance and standards used in evaluating the application, the reason for denial, and what actions, if any, that the applicant may take to try to obtain a permit upon submission of a new application.

E. Permit Granted: When the commission grants a conditional use permit, it shall specify the portions of the ordinance and standards used in evaluating the application and the reasons for approval.

F. Violation: When a permit is granted with appropriate conditions, bonds and safeguards which are in conformity with this title may be prescribed. Violations of such conditions, bonds or safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a violation of this title. (Ord. 09-09, 10-6-2009)

9-6-5: **CONDITIONAL USE PERMITS SUBJECT TO RIGHT TO FARM ACT**:

A. Required: All conditional uses permitted under a conditional use permit must be subject to the provisions of the right to farm act and any successor legislative acts designed to protect existing agricultural uses.

B. Special Condition: A special condition must be placed on every conditional use permit requiring the applicant to acknowledge compliance with Idaho Code title 22, chapter 45 or successor acts and compliance with Idaho Code section 67-6529 which protects existing agricultural uses on agricultural lands and requires the applicant to notify any purchaser of a lot, parcel or tract affected by the conditional use permit of the need to comply with such legislative acts. The

conditional use permit may contain a special condition requiring the applicant to place protective language regarding the necessity of complying with Idaho Code title 22, chapter 45 and Idaho Code section 67-6529 and successor acts in any documents relating to transfer of ownership of any lot, parcel or tract affected by the conditional use permit. A conditional use permit may be conditioned upon the applicant's causing the permit and special conditions to be recorded with the office of the county recorder.

C. Issuance Of Building Permit Restricted: No building permit may be issued for any lot, parcel or tract affected by a conditional use permit unless a certificate of compliance, containing reference to this section, is issued by the administrator or a designee of the board of county commissioners. (Ord. 09-09, 10-6-2009)

9-6-6: **VARIANCES**: Variances shall not be granted on the grounds of convenience or profit, but only where strict application of the provisions of this title would result in unnecessary hardship. A variance shall not be considered a right or special privilege, but may be granted to an applicant only after the applicant has met the burden of persuasion that failure to grant the variance would impose undue hardship on the applicant because of the characteristics of the use site, and that granting the variance will not be inconsistent with the public interest. (Ord. 09-09, 10-6-2009)

9-6-7: **PLANNED UNIT DEVELOPMENTS**: Planned unit developments may be permitted under a conditional use permit. The application for such PUD shall be on a form approved by the administrator or the board and must be filed with the administrator of planning and zoning along with payment of an application fee set by the board. All procedures applicable to applications for conditional use permits shall be applicable to applications for PUDs. A PUD may be permitted which includes a variety of land uses under a single ownership or control, and may be subject to conditions as to minimum area, permitted uses, ownership, common open space, utilities, density, arrangements of land uses on a site, permit processing and any other condition which would be permissible under the conditional use permit process. (Ord. 09-09, 10-6-2009)

CHAPTER 7

SILVER CITY ZONING

SECTION:

9-7-1: Short Title
9-7-2: Purpose
9-7-3: Scope
9-7-4: Designated Area
9-7-5: Definitions
9-7-6: Regulations
9-7-7: Procedures
9-7-8: Review Criteria
9-7-9: Variance
9-7-10: Complaints
9-7-11: Appeals
9-7-12: Enforcement

9-7-1: **SHORT TITLE**: This chapter shall be known as the SILVER CITY ZONING ORDINANCE. (Ord. 09-09, 10-6-2009)

9-7-2: **PURPOSE**: It is hereby declared, as a matter of public policy, that the protection, enhancement and perpetuation of properties of historical, cultural and aesthetic merit are in the interests of the health, prosperity and welfare of the people of the county and Silver City. Therefore, this chapter is intended to:

A. Accomplish the protection, enhancement and perpetuation of improvements and landscape features of landmarks and properties which represent distinctive elements of Silver City's cultural, social, economic, political and architectural history.

B. Safeguard the city's historic, aesthetic and cultural heritage as embodied and reflected in such landmarks and properties. (Ord. 09-09, 10-6-2009)

9-7-3: **SCOPE**: Other provisions of this title notwithstanding, the provisions of this chapter known as the Silver City zoning ordinance, control as to issues relating to the area designated in section 9-7-4 of this chapter, with the exception of enforcement which shall be accomplished as provided in chapter 17 of this title. (Ord. 09-09, 10-6-2009)

9-7-4: **DESIGNATED AREA**: The area addressed in this chapter shall be defined as the land within:

Sec. 6, S1/2NE1/4, N1/2SE1/4, Township 5 South, Range 3 West, Boise Meridian, Owyhee County, State of Idaho (160 acres). (Ord. 09-09, 10-6-2009)

9-7-5: **DEFINITIONS**: For the purpose of this chapter, certain terms are hereby defined:

AESTHETICS:	Dealing with the nature of beautiful, and with judgments concerning beauty.
DWELLING:	A place of residence.
HISTORICAL NATURE:	A particular character atmosphere pertaining to Silver City's noteworthy past.
LOT:	A parcel of land within the Silver City zoning ordinance area as surveyed by the bureau of land management.
NEW STRUCTURE:	Any structure not in existence on the effective date hereof.
ORDINARY MAINTENANCE AND REPAIR:	Any work for which a building permit or any other permit is not required and where the purpose of such work is stabilization and where such work will not change the exterior appearance of the structure.
OUTBUILDING:	Structure built for storage and purposes other than residency.
PORCH:	An attached structure, covered or uncovered, without exterior walls.

PRESERVATION:	Any action taken to prevent further deterioration or damage to an item or structure while maintaining that item or structure in its present condition.
RECONSTRUCTION:	The process of reproducing by new construction the exact form and detail of a vanished structure or part thereof as it appeared at a specific period of time.
REHABILITATION:	The process of returning a property to a state of utility, through repair or alteration, which makes possible and efficient contemporary use.
RESTORATION:	The process of returning an item or structure to its appearance at any given point in time. This can include the reconstruction of a vanished feature or the removal of features added at a later point in time.
STABILIZATION:	A protection technique applied to structures to prevent further deterioration.
STRUCTURE:	Anything constructed or erected which requires location on the ground, including signs. (Ord. 09-09, 10-6-2009)

9-7-6: **REGULATIONS**:

A. Permitted Without Approval: The following actions are permitted without approval of the county commissioners:

1. Ordinary maintenance and repair.

2. Interior rehabilitation and stabilization.

B. Permitted Upon Approval: The following actions may be permitted upon approval of the county commissioners:

1. Rehabilitation and/or restoration (exterior).

2. Exterior stabilization that changes the appearance of a structure.

3. Construction of storage structure, restricted to one single story, detached structure per lot, said structure to be no more than eighty (80) square feet in size.

4. Construction of outhouse, restricted to one four foot by four foot (4' x 4') single story structure per lot.

5. Relocation of outhouses or storage structures.

6. Excavation of any kind.

7. Reconstruction of attached structure known to have been an integral part of existing primary structure.

8. Reconstruction of a structure that existed on the effective date hereof that was subsequently destroyed by reasons beyond human control.

9. Exception: Fuel tanks for utility purposes.

C. Prohibited Except By Variance: The following are expressly prohibited under this title except by variance as provided in section 9-7-9 of this chapter:

1. Erection of new structures other than as provided for in subsection B of this section.

2. Moving, changing or demolition of any structure except when deemed necessary by the county commissioners in the exercise of police powers or for health or safety reasons.

3. Reconstruction of any detached structure not in existence on the effective date hereof.

4. The use of more than one structure per lot as a dwelling.

5. Residential occupancy, either temporary or permanent, in mobile homes, tents or other outbuildings. Casual use by campers, motor homes, etc., may be made, but the time of use may not exceed seven (7) continuous days of use. Exception: Watchman's quarters during the winter months as sanctioned by the Silver City taxpayers association and the bureau of land management.

D. Required Actions: The following actions are required: general upkeep of structures and grounds so as to eliminate health and safety hazards

and/or any items not in keeping with the historical nature and aesthetics of the area. (Ord. 09-09, 10-6-2009)

9-7-7: **PROCEDURES**: Application procedures pertaining to subsection 9-7-6B of this chapter:

A. Building Permit Application; Costs: Applicants shall submit one complete copy of the historic building permit application with all plans and specifications to the county planning and zoning administrator, who shall prepare an estimate of costs and fees at the rate set by the county clerk for photocopying and mailing at the current U.S. postal rate. The applicant shall submit to the administrator the estimated costs and fee for the planning and zoning review as set by the board of commissioners, or the application shall be deemed "not submitted". The administrator shall copy and distribute, within five (5) days, one copy to each member of the county historic preservation committee. The administrator shall retain the original for the planning and zoning commission records.

B. Review By Historic Preservation Committee: The county historic preservation committee shall review the application and submit their recommendations, in writing, to the planning and zoning commission within sixty (60) days from the date of receipt of the application from the administrator.

C. Placement On Agenda: Upon receipt of the recommendation, the administrator shall place the matter on the agenda of the next regularly scheduled meeting of the planning and zoning commission for their administrative review. The planning and zoning commission shall approve or disapprove the application, after considering the recommendation of the Owyhee County historical preservation committee. The planning and zoning commissioners may schedule a meeting to discuss the application with the applicant and a representative from the preservation commission.

D. Application Approved: If an application is approved, the administrator will prepare a certificate of zoning compliance and notify the county building official of the approval.

E. Application Disapproved: If an application is disapproved, the planning and zoning commission shall send written notification to the applicant along with their reason for denial and a copy of the historic

preservation commission's recommendation. The decision of the planning and zoning commission is appealable to the board of county commissioners.

F. Appeals: Appeals shall be in conformance with the Idaho administrative procedures act. An appeal shall not preclude the filing of an application for variance as provided in section 9-7-9 of this chapter. (Ord. 09-09, 10-6-2009)

9-7-8: **REVIEW CRITERIA**: The county commissioners and the county historic preservation committee shall be guided by the following criteria:

A. The purpose and intent of this title.

B. The degree to which the proposed work may destroy or alter the appearance of a structure or lot.

C. The degree to which the proposed work would serve to isolate the structure from its historical, archaeological or architectural surroundings, or would introduce visual, audible, vibratory, or polluting elements that are out of character with the resource and its setting, or that adversely affect the physical integrity of the resource.

D. The compatibility of the building materials with the aesthetic and structural appearance of the resource.

E. The compatibility of the proposed design to the significant characteristics of the structure.

F. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

G. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, or site shall be treated with sensitivity.

H. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on

evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures. (Ord. 09-09, 10-6-2009)

9-7-9: **VARIANCE**:

A. Definition: A "variance" is a modification of the requirements of this title.

B. Power To Grant: The county commissioners may grant a variance.

C. Application: An applicant for variance must submit a written application for variance, including the names and addresses of all persons owning property adjacent to the proposed variance parcel, together with one complete historic building permit application with all plans and specifications to the county clerk.

D. Fees And Costs: The clerk shall prepare an estimate of costs and fees at the rate set by the clerk for photocopying, mailing at the current U.S. postal rate and the regular costs of newspaper publication. Applicant shall submit to the clerk the estimated costs and fees or the application for variance shall be deemed as "not submitted" to the clerk.

E. Distribution Of Copies: The clerk shall copy and distribute, within five (5) days, one copy of such application to each member of the county historic preservation committee. The clerk shall retain originals for the county commissioners' records.

F. Review And Recommendation Of Historic Preservation Committee: The county historic preservation committee shall review the applications and submit written recommendation to the county commissioners within sixty (60) days from the date of receipt from the county clerk.

G. Placement On Commission Agenda: Upon receipt of the recommendation, the county clerk shall place the matter on the next regularly scheduled commissioners' meeting, not less than thirty (30) days nor more than sixty (60) days from the date of the clerk's receipt of the county historic preservation commission's recommendations.

H. Notice Of Hearing: Within seven (7) business days of placing the matter on the agenda of the board of county commissioners, the clerk shall notify the applicant and the county historic preservation

committee of the date, time and location of the hearing before the board of county commissioners. The county clerk shall, within seven (7) business days, notify owners of adjacent property by registered U.S. mail, of the date, time and location of the hearing and that the application for variance and the historic building application can be viewed at the county clerk's office and that copies can be obtained by tendering payment of the copying fee set by the county clerk. The county clerk shall cause to be published once a week for two (2) consecutive weeks in a newspaper printed in the county the same information required to be given to adjacent property owners.

I. Application Granted: A variance under subsections 9-7-6C1, C3, C4, and C5 of this chapter may be granted only upon a showing by the applicant of undue hardship because of the characteristic of the site or the original structure and that the variance is not in conflict with the public interest and that the variance is in keeping with the purpose and intent of this chapter.

J. Application Denied: A variance under subsection 9-7-6C2 of this chapter may not be granted. (Ord. 09-09, 10-6-2009)

9-7-10: **COMPLAINTS**: Any citizen may file with the county commissioners informal, written complaints concerning alleged violations of this chapter. Upon receipt by the county commissioners of such a complaint charging property owner, resident or occupant of the area covered by this chapter with violation of any provision of this chapter, the commissioners may schedule a mediation hearing to consider such complaint or, if warranted, for injunction or mandamus immediately. (Ord. 09-09, 10-6-2009)

9-7-11: **APPEALS**: Any persons aggrieved by a decision of the county commissioners shall have such right of appeal as may be otherwise provided by law. (Ord. 09-09, 10-6-2009)

9-7-12: **ENFORCEMENT**: Enforcement of this chapter shall be accomplished as provided in chapter 17 of this title. (Ord. 09-09, 10-6-2009)

CHAPTER 8

ZONING RECLASSIFICATIONS AND COMPREHENSIVE PLAN MODIFICATIONS

SECTION:

9-8-1: Application
9-8-2: Notification Of Hearing And Hearing Procedure
9-8-3: Standards For Evaluating Applications
9-8-4: Development Agreements

9-8-1: **APPLICATION**: Any change, modification, or reclassification of districts or of the county comprehensive plan may be initiated by the board of county commissioners, the planning and zoning commission, or by application of one or more property owners, purchasers or holders of valid options to purchase property. When the application for change, modification or reclassification is initiated by a property owner, purchaser or holder of valid options to purchase property, the application must be submitted on a form approved by the board of county commissioners and must be filed with the clerk of the board along with an application fee as set by the board of county commissioners. The application must contain full information as required by the application and the instructions accompanying the application in order to be considered. (Ord. 09-09, 10-6-2009)

9-8-2: **NOTIFICATION OF HEARING AND HEARING PROCEDURE**:

A. Set By Statute: The hearing procedure related to requests for zoning changes and comprehensive plan changes shall be as set forth by the Idaho legislature in the local planning act.

B. Additional Expanded Notification: Notification shall be as prescribed in that act, but the planning and zoning commission, hearing examiner, or board of county commissioners can require additional expanded notification by resolution or order. When such additional and expanded notification is ordered, notice of the hearing must be given as ordered.

C. Hearing: The hearing on the application must be held by the planning and zoning commission or a hearing examiner.

D. Submittal Of Recommendation: Within sixty (60) days after completion of the hearing, the commission or examiner must send to the board of county commissioners a recommendation as to whether to grant, deny or modify the request. No zoning change, comprehensive plan change or change to the official zoning map is effective until approved by the board of county commissioners and then implemented by ordinance amendment specifically setting forth the change. (Ord. 09-09, 10-6-2009)

9-8-3: **STANDARDS FOR EVALUATING APPLICATIONS**: The planning and zoning commission, hearing examiner and board of county commissioners must evaluate an application for zoning change or modification or comprehensive plan change or modification in light of standards set forth by the Idaho legislature in the local planning act and in light of the county comprehensive plan. (Ord. 09-09, 10-6-2009)

9-8-4: **DEVELOPMENT AGREEMENTS**: Any rezoning granted under this chapter may be conditioned upon the execution of a written commitment by the applicant for rezoning that the use or development of the property subject to the rezone will be as specifically represented in the application for rezoning and to the planning and zoning commission or hearing examiner and board of commissioners. Such agreements shall be subject to the following provisions:

A. Form: Written commitment will be prepared on a form approved by the board of commissioners.

B. Binding On Owner And Subsequent Owners: The order granting the rezone shall provide that the written commitment is binding on the owner of any parcel covered by the rezoning, each subsequent owner and each other person acquiring an interest in the parcel. The written commitment shall recite the same binding nature.

C. Recording: The written commitment must be recorded with the office of the county recorder prior to issuance of the order to rezone.

D. Modification: A written commitment may be modified only by permission of the board of commissioners; an application for such modification on a form approved by the board and payment of a fee set by the board must be filed with the clerk of the board and then is subject to the processing and hearing requirements set forth in this title for applications for conditional use permits.

E. Termination: A commitment may be terminated, and the zoning designation upon which the use is based reversed, upon the failure of requirements in the commitment after a reasonable time as fixed by the board of commissioners, or upon the failure of the owner of a parcel covered by the zoning designation, each subsequent owner or each other person acquiring an interest in the parcel to comply with the conditions. A termination hearing may be held on the board's own motion, or upon request from the planning and zoning commission or hearing examiner following the hearing process set forth in this title for conditional use permits.

F. Consent To Reversal: Entering into a written commitment shall be considered as a written consent to reverse the rezoning decision upon failure of the conditions imposed by the written commitment.

G. Requiring Written Commitments Not Obligation To Grant Rezone: By requiring written commitments as conditions for rezone, the board of commissioners has not obligated the planning and zoning commission or hearing examiner to recommend a rezone or the board to grant the rezone. (Ord. 09-09, 10-6-2009)

CHAPTER 9

EVALUATION OF IMPACT OF ACTIONS

SECTION:

9-9-1: Actions Subject To Analysis

9-9-1: **ACTIONS SUBJECT TO ANALYSIS**: Upon written request of an owner of real property, the following actions are subject to the regulatory analysis provided by Idaho Code section 67-8003: a) denial of a permit for conditional use, b) subdivision, c) planned unit development, d) variance, or e) approval of any such uses with conditions unacceptable to the landowner. (Ord. 09-09, 10-6-2009)

CHAPTER 10

FEES

SECTION:

9-10-1: Authority To Set Fees
9-10-2: Payment By Applicant Of Fees And Related Costs
9-10-3: Development Impact Fee Advisory Committee

9-10-1: **AUTHORITY TO SET FEES**: The board of county commissioners shall determine the fees to be assessed related to the various actions requested and required under the provisions of this title and related ordinances. The determination shall be made by resolution, and shall be based upon evaluation of actual cost of providing the services necessary to the actions requested and required. (Ord. 09-09, 10-6-2009)

9-10-2: **PAYMENT BY APPLICANT OF FEES AND RELATED COSTS**: It shall be the responsibility of the applicant requesting an action pursuant to this title or related ordinances to pay the fees established for the process related to the application or request. It shall also be the responsibility of the applicant to pay costs for services such as, but not limited to, engineering and surveying and other professional services related to examination of applications, site plans, plats and conduct of special studies which may be required by the planning and zoning commission, the hearing examiner and/or the board of county commissioners in the process for considering the application or request. Payment of such fees and costs must be completed prior to a hearing or other action on the application or request. (Ord. 09-09, 10-6-2009)

9-10-3: **DEVELOPMENT IMPACT FEE ADVISORY COMMITTEE**: The board of county commissioners shall appoint a development impact fee advisory committee pursuant to Idaho Code section 67-8205, by October 1, 2003. Said committee will perform the duties set forth in Idaho Code section 67-8205 and will report a recommendation to the planning and zoning commission and to the board of county commissioners by March 1, 2004. (Ord. 09-09, 10-6-2009)

CHAPTER 11

NONCONFORMING USES

SECTION:

9-11-1: Continuation Of Use
9-11-2: Enlargement Of Use
9-11-3: Existing Use
9-11-4: Change To More Appropriate Nonconforming Use
9-11-5: Superseded By Permitted Use
9-11-6: Abandonment Of Use
9-11-7: Nonconforming Use Created After Effective Date
9-11-8: Conditional Use

9-11-1: **CONTINUATION OF USE**: A nonconforming use shall be allowed to continue in existence throughout the life of the use as it existed at the time this title was enacted. (Ord. 09-09, 10-6-2009)

9-11-2: **ENLARGEMENT OF USE**: Any enlargement of a nonconforming use, either by extending the land or site upon which the use exists, or by expanding the use itself to the extent that it changes the nature of the use, is unlawful unless permitted by conditional use permit. (Ord. 09-09, 10-6-2009)

9-11-3: **EXISTING USE**: To avoid undue hardship, nothing in this title shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date hereof or amendment hereof and upon which actual building construction has been carried on diligently; provided, that it is completed and so used within one year after the effective date hereof. (Ord. 09-09, 10-6-2009)

9-11-4: **CHANGE TO MORE APPROPRIATE NONCONFORMING USE**: If no structural alterations are made, any nonconforming use of a structure or structure and land may, upon the issuance of a conditional use permit by the planning and zoning commission, be changed to another nonconforming use; provided, that the commission shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the commission may require appropriate conditions and safeguards in accordance with other provisions of this title. (Ord. 09-09, 10-6-2009)

9-11-5: **SUPERSEDED BY PERMITTED USE**: Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed. (Ord. 09-09, 10-6-2009)

9-11-6: **ABANDONMENT OF USE**: When a nonconforming use of a structure, or structure and land in combination, is discontinued or abandoned for more than one year, the board of county commissioners shall take action to comply with Idaho Code section 67-6538, or successor statutory procedures regarding nonuse. The structure, or structures and land in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located. (Ord. 09-09, 10-6-2009)

9-11-7: **NONCONFORMING USE CREATED AFTER EFFECTIVE DATE**: A nonconforming use which came into existence after the passage hereof shall not be deemed a nonconforming use, but an illegal use and shall be abated. (Ord. 09-09, 10-6-2009)

9-11-8: **CONDITIONAL USE**: Any use which is permitted as a conditional use in a district under the terms of this title shall not be deemed a nonconforming use in such district, but shall, without further action, be considered a conforming use. (Ord. 09-09, 10-6-2009)

CHAPTER 12

TEMPORARY HARDSHIP PERMIT

SECTION:

9-12-1: Application
9-12-2: Siting Of Dwelling
9-12-3: Special Conditions

9-12-1: **APPLICATION**:

A. Who May Apply: Any person may apply for a granting of a temporary hardship permit which will permit a temporary dwelling for no longer than twelve (12) months, for the benefit of a person who is ill, disabled, or has medical or life problems which create an undue burden on the person or family. The hardship must be demonstrated by supporting documents from a licensed physician.

B. Application; Form; Fee: The application shall be made on a form approved by the administrator or the board of county commissioners, and shall be filed with the administrator with the proper fee as set by the board of county commissioners. The application must be complete and contain all required information. The application is subject to an administrative discretion decision.

C. Decision Of Administrator: Upon payment of fees and submittal of the complete application, the administrator will prepare a written decision detailing the reasons for the action taken, along with all supporting documents, and present that written decision to the planning and zoning commission for their administrative review. The decision of the administrator is appealable to the board of county commissioners.

D. Refiling Annually; Conditional Use Permit: A new application must be filed every twelve (12) months, but the temporary use shall not be allowed to exceed thirty six (36) months without applying for a conditional use permit.

E. Standard Conditions: Temporary hardship permits are subject to the same standard conditions applicable to all conditional use permits as adopted by resolution by the board of county commissioners. (Ord. 09-09, 10-6-2009)

9-12-2: **SITING OF DWELLING**: The dwelling authorized under this chapter may be placed on a lot, parcel or tract where no such dwelling would otherwise be authorized under this title. (Ord. 09-09, 10-6-2009)

9-12-3: **SPECIAL CONDITIONS**: Special conditions may be imposed upon any permit issued under this chapter designed to specifically limit the use to the temporary use authorized by this chapter. (Ord. 09-09, 10-6-2009)

CHAPTER 13

TRANSFER OF DEVELOPMENT RIGHTS

SECTION:

9-13-1: Committee Created; Purpose
9-13-2: Membership

9-13-1: **COMMITTEE CREATED; PURPOSE**: There shall be created a committee to prepare a recommendation to the planning and zoning commission and to the board of commissioners regarding creation of development rights and the procedure by which landowners can voluntarily transfer such development rights. The recommendation shall be made after study of and consideration of the elements related to transfer of development rights as set forth in Idaho Code section 67-6515A. (Ord. 09-09, 10-6-2009)

9-13-2: **MEMBERSHIP**: The planning and zoning commission may make recommendations to the board of commissioners as to the membership of the committee, and the board of commissioners shall name the members of the committee by October 1, 2003. The committee shall submit its recommendation to the planning and zoning commission and board of commissioners no later than March 10, 2004. (Ord. 09-09, 10-6-2009)

CHAPTER 14

OIL AND GAS WELLS

SECTION:

9-14-1: Purpose
9-14-2: Definitions
9-14-3: Zoning Classifications
9-14-4: Administrative Permit Requirement
9-14-5: Administrative Permit Application
9-14-6: Issuance Of Administrative Permit
9-14-7: Site Design And Installation

9-14-1: **PURPOSE**: The purpose of this chapter is to provide, through zoning provisions, for the reasonable development of land for oil and gas drilling while providing adequate health, safety and general welfare protections of Owyhee County residents. Oil and gas exploration, drilling, and extraction operations involve activities that are economically important and will impact Owyhee County. Accordingly, it is necessary and appropriate to adopt reasonable requirements for oil and gas resource development so that these resources can be obtained in a manner that is economically remunerative, and that minimizes potential impacts on the residents of Owyhee County.

Local governments are preempted from regulating the same features of oil and gas well operations or accomplishing the same purposes regulated under Idaho statute 47-317. Local zoning regulates surface land use as authorized under the local land use planning act[1]. (Ord. 2013-02, 8-12-2013)

9-14-2: **DEFINITIONS**: For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

ADMINISTRATIVE PERMIT: A regulatory review and/or action performed by the planning and zoning commission of Owyhee County and not deemed a legislative or quasi-judicial action.

ADMINISTRATOR: The Owyhee County planning and zoning administrator.

APPLICANT: Any person, owner, operator, partnership, company, corporation and its subcontractors and agents who has an interest in real estate for the purpose of exploring or drilling for, producing, or transporting oil or gas.

COLLECTOR STREET: A public street or road which, in addition to providing access to abutting lots, intercepts local streets and provides a route for carrying considerable volumes of local traffic to community facilities and arterial streets.

COMMISSION: The Owyhee County planning and zoning commission.

DEPARTMENT: The Idaho department of lands.

DEVELOPMENT: Any work which actively promotes bringing in production.

DRILLING PAD: The area of surface operations surrounding a proposed or existing well or wells and accessory structures and equipment necessary for drilling, completion, recompletion, work over, development and production activities.

EXPLORATION: Geologic or geophysical activities, including, but not limited to, the search for oil, gas, or other subsurface hydrocarbons.

LOCAL STREET: A public street or road designed to provide access to abutting lots and to discourage through traffic.

OIL AND GAS: Crude oil, natural gas, methane gas, propane, butane, and/or any other constituents or similar substances that are produced by drilling an oil or gas well.

OIL AND GAS CONSERVATION COMMISSION: State of Idaho oil and gas conservation commission.

OIL AND GAS WELL: A hole drilled into the earth for the purpose of exploring for or extracting oil, gas, or other hydrocarbon substances.

OPERATOR: Any person, owner, applicant, partnership, company, corporation and its subcontractors and agents who has an interest in real estate for the purpose of exploring or drilling for, producing, or transporting oil or gas.

ROAD REPAIR AGREEMENT: A written agreement between the applicant and Owyhee County or the applicable local highway jurisdiction obligating the applicant to repair damage, excluding ordinary wear and tear, if any, to public streets, including, but not limited to, bridges, caused by the operator or its employees, agents, contractors, subcontractors, or representatives in the performance of drilling or production of any wells authorized by a local jurisdiction.

WELL: An oil and gas well or an injection well, including, but not limited to, directional drilling wells. (Ord. 2013-02, 8-12-2013)

9-14-3: **ZONING CLASSIFICATIONS**: Subject to the provisions of this chapter:

A. An oil or gas well site shall be considered a permitted use by right within any zoning district(s), subject to the standards listed herein. (Ord. 2013-02, 8-12-2013)

9-14-4: **ADMINISTRATIVE PERMIT REQUIREMENT**:

A. No oil or gas well site, or an addition to an existing oil or gas well site, shall be constructed or located within Owyhee County unless an administrative permit under this chapter has been issued by the Owyhee County planning and zoning commission (commission) to the applicant approving the construction or preparation of the site for oil or gas development or construction of natural gas compressor stations or natural gas processing plants.

B. Each application shall be submitted with the fee established pursuant to resolution of Owyhee County as adopted. Such fee shall be reasonably related to the cost of administering this chapter.

C. Any modification to an existing and/or permitted oil or gas well site that materially alters the size, location, number of wells, accessory equipment or structures, shall require a modification of the administrative permit under this chapter. Like kind replacements shall not require a permit modification.

D. Wells that were permitted and constructed prior to the adoption of this chapter shall not be required to meet the requirements of this chapter. Any modification to an existing or permitted oil or gas well site that occurs after the effective date hereof and materially alters the size, type, location, number of wells, or other accessory equipment or structures, shall comply with this chapter.

E. Upon receiving notice from the department that an application has been submitted, the Owyhee County planning and zoning administrator (administrator) will notify all property owners within one mile of the affected tax parcel, that an application for a new oil and gas operation has been filed with the county. The notice is for informational purposes only and will not solicit any public comments on the application.

F. An administrative permit shall not be required for exploration of oil and gas. "Exploration of oil" means geologic or geophysical activities, including, but not limited to, the search for oil, gas, or other subsurface hydrocarbons.

G. The administrative permit shall be null and void, if an applicant does not conduct said business for a period of one year. Administrative permits issued under this chapter shall not be transferable to any other applicant, except by majority vote of the Owyhee County planning and zoning commission, and the filing of an application by the applicant to whom such administrative permit is, or may be, transferred or assigned. (Ord. 2013-02, 8-12-2013)

9-14-5: **ADMINISTRATIVE PERMIT APPLICATION**:

A. At the time of administrative permit application, the applicant shall provide to the administrator:

1. A narrative describing an overview of the project including the number of acres to be disturbed for development, the number of wells to be drilled including oil and gas conservation commission permit number(s) for all wells, if available, at the time of submittal and provided when issued later, and the location, number and description of equipment and structures to the extent known.

2. The address of the oil or gas well site and a legal description of the parcel on record with Owyhee County.

3. The contact information of the individual or individuals responsible for the operation and activities at the oil or gas well site shall be provided to Owyhee County and all applicable emergency responders as determined by Owyhee County. Such information shall include a phone number where such individual or individuals can be contacted twenty four (24) hours per day, three hundred sixty five (365) days a year. Annually, or upon change of relevant circumstances, the applicant shall update such information and provide it to Owyhee County and all applicable emergency responders.

4. A scaled site plan of the oil or gas well site showing the drilling pad, planned access roads, the approximate location of derricks, drilling rigs, equipment, and structures and all permanent improvements to the site and any postconstruction surface disturbance in relation to natural resources. Included in this map shall be a staging area within the development site for vehicles to locate while gaining access to the oil or gas well site.

5. A narrative and map describing the planned access routes to the well sites on public roads including the transportation and delivery of equipment, machinery, water, chemicals, and other materials used in the siting, drilling, construction, maintenance, and operation of the oil or gas well site.

6. A statement that the applicant will make the operation's preparedness, prevention, and contingency plan available to Owyhee County and all emergency responders at least thirty (30) days prior to drilling of an oil or gas well and at least annually thereafter while drilling activities are taking place at the oil or gas well site.

7. An appropriate site orientation of the preparedness, prevention, and contingency plan for all applicable emergency responders as determined by Owyhee County. The cost and expense of the orientation shall be the sole responsibility of the applicant. If multiple wells/well pads are in the same area (covered by the same emergency response agencies), evidence for the appropriate emergency response agencies that a training course was offered in the last twelve (12) months shall be accepted.

8. A narrative describing the environmental impacts of the proposed project on the site and surrounding land and measures proposed to protect or mitigate such impacts shall be provided to Owyhee County. (Ord. 2013-02, 8-12-2013)

9-14-6: **ISSUANCE OF ADMINISTRATIVE PERMIT**:

A. Within fourteen (14) business days after receipt of an administrative permit application, the planning and zoning administrator will determine whether the application is complete and advise the applicant accordingly.

B. If the application is complete and fulfills the requirements of this chapter, the Owyhee County planning and zoning commission shall issue an administrative permit within twenty one (21) days following the date the complete application was submitted.

C. If the application is incomplete or does not fulfill the requirements of this chapter, the planning and zoning administrator will notify the applicant of the missing and/or inadequate material and, upon receiving said material, the commission shall issue the administrative permit within twenty one (21) days following the date the complete application was submitted.

D. As a condition of administrative permit approval, applicant shall provide all permits and plans from the department and all other appropriate regulatory agencies to the administrator within thirty (30) days of receipt of such permits and plans.

E. If temporary housing for well site workers is proposed on the well site, a plan showing the number and location of the units shall be provided to the administrator. Temporary housing plans shall be in compliance with all applicable Owyhee County regulations, and may require a conditional use permit. (Ord. 2013-02, 8-12-2013)

9-14-7: **SITE DESIGN AND INSTALLATION**:

A. Access:

1. Vehicular access to a natural gas well, oil well, or well pad solely via a residential street is prohibited unless it can be proven that the only viable vehicular access to the well site is via the residential route. The use of collector streets is preferred.

2. Owyhee County adopted professional standards pertaining to minimum traffic site distances for all access points shall be adhered to.

3. Access directly to state roads from a well site may require an Idaho transportation department (ITD) approach permit. Prior to initiating any work at a drill site, the administrator shall be provided a copy of any required approach permit.

4. Access directly to Owyhee County local streets shall require a road repair agreement with the Owyhee County board of commissioners or the applicable highway district prior to initiating any work at the well site. Operator shall comply with any generally applicable bonding and permitting requirements for Owyhee County roads that are to be used by vehicles for site construction, drilling activities and site operations.

B. Height:

1. There shall be an exception to the height restrictions contained in this section for the temporary placement of drilling rigs, drying tanks, pad drilling and other accessory uses necessary for the actual drilling or redrilling of an oil or gas well. The duration of such exemption shall not exceed the actual time period of drilling or redrilling of an oil or gas well or pad drilling.

C. Setbacks/Location:

1. Setback distances shall, at minimum, follow requirements listed in Idaho statute, title 47, chapter 3 and administrative rule 20.07.02 conservation of crude oil and natural gas in the state of Idaho.

2. Recognizing that specific location of equipment and facilities is an integral part of the oil and gas development, and as part of the planning process, operator shall strive to consider the location of its temporary and permanent operations, where prudent and possible, so as to minimize interference with Owyhee County residents' enjoyment

of their property and future Owyhee County development activities as authorized by the Owyhee County applicable ordinances.

3. Exception from the standards established in this subsection may be granted by the commission upon good cause by the operator that it is not feasible to meet the setback requirements from surface tract property lines and that adequate safeguards have or will be provided to justify the exception.

D. Screening And Fencing:

1. Security fencing shall not be required at oil or gas well sites during the initial drilling, or redrilling operations, as long as manned twenty four (24) hour on site supervision and security are provided.

2. Upon completion of drilling or redrilling, security fencing consisting of permanent chainlink fence shall be promptly installed at the oil or gas well site to secure wellheads, storage tanks, separation facilities, water or liquid impoundment areas, and other mechanical and production equipment and structures on the oil or gas well site.

3. The commission may use its discretion to determine whether fencing requirements shall be enforced for wellheads, storage tanks, separation facilities, and other mechanical and production equipment and structures on the oil or gas well site.

4. Security fencing shall be at least six feet (6') in height equipped with lockable gates at every access point and having openings no less than twelve feet (12') wide. Additional lockable gates used to access oil and gas well sites by foot may be allowed, as necessary.

5. Warning signs shall be placed on the fencing surrounding the oil or gas well site providing notice of the potential dangers and the contact information in case of an emergency. During drilling and hydraulic fracturing, clearly visible warning signage must be posted on the pad site.

6. In construction of oil or gas well sites, the natural surroundings should be considered and attempts made to preserve existing trees and other native vegetation. Existing trees and respective root systems should not be disturbed whenever possible. Reforestation/revegetation of the well site will be provided by the owner/operator as required by rules governing oil and gas conservation.

E. Lighting: Lighting at the oil or gas well site, either temporary or permanent shall be directed downward and inward toward the activity, to the extent practicable, so as to minimize the glare on public roads and adjacent properties.

F. Noise: Owyhee County recognizes that oil and gas development is accompanied by inherent noise. However, the operator shall consider, to the extent possible, mitigation of noise resulting from the oil or gas well development.

G. Dust Control: Operator shall control fugitive dust arising from operations. Operator shall routinely control dust by sprinkling with water or a water/calcium chloride mixture where necessary.

H. Work Hours: Site development, other than drilling shall be conducted only between seven o'clock (7:00) A.M. and seven o'clock (7:00) P.M. Monday through Friday and between nine o'clock (9:00) A.M. and five o'clock (5:00) P.M. on Saturday. Truck deliveries of equipment and materials associated with drilling and well servicing, site preparation and other related work conducted on the site shall be limited to the above same work hour restrictions except in cases of an emergency. The operator may request an exception to this section for good cause shown. (Ord. 2013-02, 8-12-2013)

1: IC 67-65.

CHAPTER 15

OVERLAY DISTRICTS

ARTICLE A. POWER ZONING OVERLAY DISTRICT

SECTION:

9-15A-1: Short Title And Purpose
9-15A-2: Establishment Of Power Zoning Overlay District
9-15A-3: Allowed Uses
9-15A-4: Development Standards

9-15A-1: **SHORT TITLE AND PURPOSE**:

A. This article shall be known as the OWYHEE COUNTY GREATER THAN 230kV NOMINAL POWER ZONING OVERLAY DISTRICT ORDINANCE (OVERLAY ORDINANCE).

B. It is the purpose of this article to promote the public health, safety, and general welfare, to minimize public and private losses and to locate high voltage power transmission lines in areas that best suit the needs of Owyhee County and its citizens. Specific goals are to:

1. Protect human life and health.

2. Continue to provide reliable power service to county residents.

3. Locate power corridors in areas of least impact to residents of the county.

4. Locate power corridors in areas of least impact to extraordinary natural, wildlife, historical, recreational, and cultural resources of the county. (Ord. 2013-03, 8-12-2013)

9-15A-2: **ESTABLISHMENT OF POWER ZONING OVERLAY DISTRICT**: There is hereby established a power zoning overlay district where power transmission lines east of range 3 west, and greater than 230kV nominal shall be located.

Other power transmission overlay districts may be established by rezoning the property. (Ord. 2013-03, 8-12-2013)

9-15A-3: **ALLOWED USES**: Power transmission lines east of range 3 west and greater than 230kV nominal are allowed uses in the overlay district, and shall be located in the overlay district unless a rezone is sought and approved in another area. (Ord. 2013-03, 8-12-2013)

9-15A-4: **DEVELOPMENT STANDARDS**:

A. Tower structures that support transmission lines shall not be located on prime irrigated land, nor interfere with existing pivot irrigation systems unless approved by the landowner.

B. Transmission lines shall preserve scenic qualities within the overlay to the greatest extent possible.

C. All residential development shall be outside of any transmission line easement. (Ord. 2013-03, 8-12-2013)

CHAPTER 16

HOME BURIAL AND PRIVATE INTERMENT ORDINANCE

SECTION:

9-16-1: Short Title and Purpose
9-16-2: Composition
9-16-3: Recording and Notice Required
9-16-4: Responsibility
9-16-5: Setback, Consent, and Code Requirements
9-16-6: Standards for Interment and Removal
9-16-7: Disestablishment of an Interment Site
9-16-8: Procedure
9-16-9: Violations

9-16-1: **SHORT TITLE AND PURPOSE**: Owyhee County desires that the interment of human remains on private property be conducted in a manner that is respectful to the deceased, the family, and the citizenry of the County and in so doing, the County enacts this ordinance to provide a method and standard of disposition, maintenance, improvements, and beautification of an interment site.

9-16-2: **COMPOSITION**: Interment sites shall consist of a lot, or portion thereof, containing a burial plot for earth interments, a mausoleum or vault or crypt interments, or a columbarium for interments of cremated remains, or any combination of one or more of the interments set forth in this section. No interment site shall be allowed on parcels smaller than three (3) acres. No more than two (2) interments shall be allowed per parcel unless approval is granted for the development of a platted cemetery. No future development or easements shall be allowed upon or within five feet (5') of the remains. Interment sites are not deemed to be equivalent to rural cemeteries as defined in Idaho Code, Title 27, Chapter 2 (Idaho Code, § 27-201 et seq.).

9-16-3: **RECORDING AND NOTICE REQUIRED**: An interment site shall be laid out and described specifically, by metes and bounds on the deed of record so as to give appropriate notice to lien holders, successors in title,

and the public at large for any parcel containing an interment site. The owner of the parcel containing the interment site shall record such deed within sixty (60) days of the interment of human remains thereon. If a parcel containing an interment site is sold, the seller of the property must disclose to the buyer the existence and location of the interment site.

9-16-4: **RESPONSIBILITY**: The owner of any property, which contains an interment site, has the responsibility for maintaining the property in a manner that is respectful of the memory of the person or persons whose remains are interred thereon. The responsibility to maintain the interment site runs with the land and the owner may not be relieved of that responsibility until and unless the interment site is disestablished. The responsibility to maintain the interment site extends to successors in title so long as human remains are interred thereon.

9-16-5: **SETBACK, CONSENT, AND CODE REQUIREMENTS**: All interment sites shall meet the following requirements, prior to the time that any human remains shall be buried or placed therein:

A. The location of an interment site shall be:

1. At least one-hundred feet (100') from the boundary line of any lot or parcel.
2. At least three hundred feet (300') from any wells, surface water intake structures, and public or private drinking water supply lakes or springs.
3. At least two hundred feet (200') from the high-water mark of any body of surface water such as a river, stream, lake, pond, intermittent stream, or sinkhole.
4. At least one hundred feet (100') from any dwelling, school or school lot, hospital or other medical facility, or place of business.
5. At least one hundred feet (100') from the right-of-way of any public road.

B. Construction of a mausoleum, columbarium, or any monument or other grave marker on an interment site shall comply with the applicable building code requirements.

C. All uses made of interment sites shall comply with all state requirements including, but not limited to:

1. Idaho Code, § 39-260, registration of deaths;
2. Idaho Code, § 39-268, final disposition of dead bodies;

3. Idaho Code, § 39-269, disinterment;
4. Idaho Code, Title 54, Chapter 11, morticians, funeral directors and embalmers, (Idaho Code, § 54-1101 et seq.); and
5. The relevant sections of the Idaho Administrative Code (IDAPA).

9-16-6: **STANDARDS FOR INTERMENT AND REMOVAL**: Each interment or removal of human remains on private property shall meet the following standards:

A. Non-cremated human remains buried beneath the surface of the ground shall comply with the following depth-of-grave requirements:

1. If there is an outer case around the coffin, the uppermost part of the outer case must be deeper than two feet (2') from the natural surface.
2. If there is not an outer case, and there is just a coffin or just the body with no coffin, then the remains must be buried to a depth not less than three feet (3') from the natural surface of the ground.
3. Proper maintenance shall be maintained such as filling in any depression that may be created at any time due to nature.

B. Each container of human remains buried beneath the surface of the ground shall be indicated by a permanent, visible marker or monument. The marker or monument should be placed as soon as is practicable after the remains are interred.

9-16-7: **DISESTABLISHMENT OF AN INTERMENT SITE**: An interment site, once established, may be disestablished by the owner of the property. To disestablish an interment site, the owner must do all of the following:

A. Arrange to remove and properly re-inter any human remains interred therein;

B. Removal of the markers or monuments that indicate the presence of human remains;

C. Remove, demolish, or convert to another permitted use any mausoleum or columbarium, constructed on the interment site; and

D. A new deed of record must be filed indicating that the interment site has been disestablished.

9-16-8: **PROCEDURE**: For any such private interment, a permit shall be required. In order to obtain a permit, the application shall be filed with the Planning and Zoning Administrator on a form prescribed by the administrator or the board. The first two interments will be accomplished by administrative discretion decision. Platted cemeteries shall only be approved by conditional use permit.

9-16-9: **VIOLATIONS**: In addition to any other penalties, pursuant to Idaho Code, § 19-5304, the court may order the prior owner of land who did not record the existence of an interment site on that land and who did not disclose the existence of an interment site to the buyer prior to selling the land, to pay reasonable costs to disinterment and re-interment of any human remains thereon.

CHAPTER 17

ENFORCEMENT

SECTION:

9-16-1: Severability
9-16-2: Misdemeanor
9-16-3: Violation

9-16-1: **SEVERABILITY**: If any section, subsection, sentence, clause, or phrase of this title is held to be invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this title and they shall remain in full force and effect. (Ord. 09-09, 10-6-2009; amd. Ord. 2013-02, 8-12-2013; Ord. 2013-03, 8-12-2013)

9-16-2: **MISDEMEANOR**: Violation of this title shall constitute a misdemeanor punishable as provided in Idaho Code section 18-113 as it may from time to time be amended and/or retitled. Each day the violation continues shall constitute a separate offense. A fine of one hundred dollars ($100.00) per day will be assessed per violation. (Ord. 09-09, 10-6-2009; amd. Ord. 2013-02, 8-12-2013; Ord. 2013-03, 8-12-2013)

9-16-3: **VIOLATION**:

A. Recommendation To Board Of Commissioners: When the planning and zoning administrator or commission finds that violation of this title has occurred or is about to occur, the administrator shall advise the board of commissioners in a written recommendation containing factual findings upon which the recommendation is based.

B. Notice: Upon receiving such recommendation from the administrator, or on its own motion after finding that a violation has occurred or is about to occur, the board of commissioners may direct the

administrator to send an initial letter advising the party of the violation and the fine associated with the violation.

C. Order To Show Cause: The party will have fourteen (14) days to respond with a solution agreeable to the board. If such solution is not received, the board may issue an order to show cause requiring a public hearing at which the alleged offender will have the opportunity to show cause why he/she is not in violation of this title, and/or why enforcement proceedings should not be initiated.

D. Enforcement Action; Fee: If after the order to show cause hearing, the board is of the opinion that a violation has occurred and that enforcement action should be initiated, the board may direct that enforcement action be initiated to abate the violation and/or seek imposition of penalties. A fee may be set by resolution for the order to show cause hearing. (Ord. 09-09, 10-6-2009; amd. Ord. 2013-02, 8-12-2013; Ord. 2013-03, 8-12-2013)