

Chapter 2

ENFORCEMENT AND ADMINISTRATION

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10-2-1: POWERS AND DUTIES OF ENFORCING OFFICERS:

It is the duty of the planning director, or his/her authorized designee, to enforce all provisions of this title¹ and, generally, as determined requisite refer all violations to the city attorney, entering actions in the courts when necessary, and his failure to do so shall not legalize any violation of such provisions, nor shall the failure of the city attorney to enter actions legalize any violation of such provisions.

The planning director, and his/her duly authorized designee, shall have the right to enter upon any land during the daytime in the course of his duties, and, if approached by the property owner or lessor shall show proper identification and give that individual notice as to the purpose of the visit. The director or his/her designee may enter in any building upon being invited by an owner or tenant and may enter a structure closed to them by will of an owner or occupant or through absence of the same upon obtaining an administrative search warrant. They may seek accompaniment, as may be approved by a judge to have other enforcement agency representatives accompany them. (Ord. 3182, 12-9-2002)

10-2-2: APPLICATION AND PLANS REQUIRED:

Any person desiring to construct a building in the city shall first apply for a permit to the building official. All applications for building permits shall be accompanied by a site plan showing the size and location of the existing buildings and buildings to be erected. Before a building permit is issued all requirements of this title shall be met. (Ord. 3182, 12-9-2002)

10-2-3: AMENDMENTS TO ZONING ORDINANCE AND ZONING MAP (REZONES):

- A. Amendments: This zoning ordinance, including the map, may be amended but all proposed amendments shall be submitted first to the planning and zoning commission for its recommendations, which recommendations shall be submitted to the council for its consideration. (Ord. 3182, 12-9-2002)

- B. Application: Any person seeking an amendment of the zoning ordinance's language and/or land use map shall submit to the planning director an application form as prescribed by the city together with a requisite, nonrefundable fee as established by resolution of the council, designating the change(s) desired, the reasons therefor, and how they perceive that the proposed amendment(s) would benefit the city.
1. Transmittal and Advertisements Required: The planning director shall transmit notice and copies of the requested amendment(s) to the commission and other agencies or parties as deemed appropriate. At least fifteen (15) calendar days prior to the hearing, notice of the time and place of the amendment to be discussed shall be published one time in the official newspaper of the city.
 2. Additional Notice for Map Amendment Applications: Additionally, in the case of proposed map amendments, further notice shall be provided by mail to property owners or purchasers of record both within the land area being considered and three hundred feet (300') of the external boundaries of the same; and as may be determined by the planning director any additional area believed impacted by the proposed change. Notice signs shall also be posted on the premises not less than one week prior to the hearing.
 3. Mass Notification Procedure: When and if notice is required to be given to two hundred (200) or more property owners or purchasers of record, an alternative form of procedure of official notice of the public hearing for both the commission and council shall be exercised. In lieu of mailing individual notices to all purchasers of record in the area under consideration and/or posting notice on each property being considered for reclassification or within three hundred feet (300') of the same, additional public notice shall be provided by publishing notice of upcoming consideration of the matter in the official, locally provided newspaper two (2) consecutive times.
 4. Commission Level Public Hearing Required: Following proper advertisement of the request(s) and receipt of the same, the commission shall conduct at least one public hearing during which the public shall have an opportunity to present their opinions on the matter(s) and the commission shall consider the proposed amendment(s). The commission shall make one or more recommendations on the request(s) to the city council. The commission shall either: recommend approval of the request(s), approval with modifications to the request(s), or denial of the request(s). Alternatively, they may vote to table or postpone taking action on the request(s).
 5. Further Notice and Hearing: Following the commission's hearing, if the commission wishes after the fact to make a material change from what was presented and decided during their public hearing review process, further notice and hearing shall be provided before the commission forwards their revised recommendation(s) to the city council.
 6. Commission Amendments to Zoning Map: The city planning and zoning commission may also recommend amendments to the official zoning map of the city to the council on and of its own initiative but only after first holding an advertised and noticed public hearing as required by the aforesaid regulations. (Ord. 3247, 8-4-2003)
- C. Conclusions of Laws Pertinent to Proposed Zoning Map Amendments: Before the commission recommends an amendment to the city's official zoning map and before the council approves any proposed zoning map amendment(s), the commission and the council must individually find and conclude:

1. The proposed map amendment(s) is, are or would be in harmony with the city's currently adopted comprehensive plan and comprehensive plan land use map; and
 2. The proposed map amendment(s) is, are or would provide for a proposed use or set of uses that would be at least reasonably compatible with existing, adjoining property uses; and
 3. The proposed map amendment(s) is, are or would make a change on the land use map of the city which would establish an area of zoning the same as or compatible with immediately adjoining districts; and
 4. The proposed map amendment(s) is not, are not or would not create a "spot" zone (having a section of one kind of zoning surrounded by another) having no supportive basis per the adopted comprehensive land use map so as to only serve(s) to benefit the applicant(s); and
 5. The proposed amendment(s) is, are or would be in the interest of the public and reasonably necessary.
- D. Conclusions of Law Pertinent to Proposed Zoning Ordinance Text Amendments: Before the commission recommends a text (content) amendment to the zoning ordinance, and, before the council approves any proposed zoning code amendment(s), the commission and the council must individually find and conclude:
1. That the proposed amendment(s) is, are or would be reasonably necessary, in the interest of the public, and in harmony with the goals and/or policies of the adopted comprehensive plan.
- E. Public Hearing Required by Council, Notice: Amendments to this zoning ordinance or zoning map may be adopted only after a public hearing has been held in relation thereto before the council in which parties in interest and citizens shall have an opportunity to be heard. The council shall use the same notice and hearing procedures as involved with the commission's hearing.
- F. Reversal of Council Action: If the council adopts a zoning classification or map amendment pursuant to a request by a property owner, the council shall not subsequently reverse its action or otherwise change the zoning classification of said property without the consent in writing of the current property owner for a period of four (4) years from the date the council adopted said individual property owner's request for a zoning classification change or map amendment. (Ord. 3182, 12-9-2002)

10-2-4: ANNEXATION(S):

It is the expressed policy of the state of Idaho that cities of the state should be able to annex lands which are reasonably necessary to assure the orderly development of Idaho's cities in order to allow efficient and economically viable provision of tax supported and fee supported municipal services, to enable the orderly development of private lands which benefit from the cost effective availability of municipal services in urbanizing areas and to equitably allocate the costs of public services in management of development on the urban fringe.

- A. General Annexation Authority: Nampa has, and shall exercise, the authority to annex land into the city upon compliance with the procedures required in this section as allowed by state law.

- B. Right(s) Of Way Annexation: In any annexation proceeding, all portions of highways lying wholly or partially within an area to be annexed shall be included within the area annexed unless expressly agreed upon otherwise between the city of Nampa and the governing board of the Nampa highway district no. 1. Provided further, that the council shall not have the power to declare such land, lots or blocks a part of the city if they will be connected to Nampa only by a shoestring or strip of land that is comprised of a railroad or highway right of way.
- C. Annexation Classifications: Annexations shall be classified and processed according to the standards for each respective category set forth herein. The three (3) categories of annexation are:
1. Category A: Annexations wherein either:
 - a. All involved private landowners raise no objection to annexation; and/or
 - b. They entail or are composed of enclaved property, regardless of surface area, which are surrounded on all sides by land within Nampa city limits; and/or
 - c. They entail property that is bounded on all sides by lands within Nampa and by lands for which owner approval must be given pursuant to subsection D2d of this section; and/or
 - d. They entail property that is/are bounded on all sides by lands either within the city and by the boundary of the Nampa city impact area.
 2. Category B: Annexations wherein either:
 - a. The subject lands contain less than two hundred (200) separate private ownerships and platted lots of record and where not all such landowners have consented to annexation; or
 - b. The subject lands contain more than two hundred (200) separate private ownerships and platted lots of record and where landowners owning more than fifty percent (50%) of the area of the subject private lands have evidenced their consent to annexation at the outset of the annexation process; or
 - c. The lands are the subject of a development moratorium or a water or sewer connection restriction imposed by state or local health or environmental agencies; provided such lands shall not be counted for purposes of determining the number of separate private ownerships and platted lots of record aggregated to determine the appropriate category.
 3. Category C: Annexations wherein the subject lands contain more than two hundred (200) separate private ownerships and platted lots of record and where landowners owning more than fifty percent (50%) of the area of the subject private lands have not evidenced their consent to annexation at the outset of the annexation process. For purposes of this section, prior consent to annex shall be deemed given when evidenced by written authorization or approval executed by the owner or the owner's authorized agent.

Consent shall be implied for the area of all lands connected to a water or wastewater collection system operated by the city and for lands subject to a written consent to annex recorded in the county recorder's office. Written consent to annex lands, if recorded in the county recorder's office, shall be binding upon subsequent purchasers, heirs, or assigns of

lands addressed in the consent. Lands need not be contiguous or adjacent to the city limits at the time the landowner consents to annexation for the property to be subject to a valid consent to annex; provided however, no annexation of lands shall occur, irrespective of consent, until such land becomes contiguous or adjacent to the city.

- D. Annexation Procedures: Annexation of lands into Nampa shall follow the procedures applicable to the category of lands as established by this section. The implementation of any annexation proposal wherein the city council determines that annexation is appropriate shall be concluded with the passage of an ordinance of annexation.
1. Procedures for Category A Annexations: Lands lying contiguous or adjacent to Nampa may be annexed by the city if the proposed annexation meets the requirements of category A. Upon determining that a proposed annexation meets such requirements, the city may initiate the planning and zoning procedures set forth in this chapter to establish the comprehensive planning classification, where necessary, and zoning classification of the lands to be annexed.
 2. Procedures for Category B Annexations: The city may annex lands that would qualify under the requirements of category B annexation if the following requirements are met:
 - a. The lands are contiguous or adjacent to the city and lie within the city's impact area; and
 - b. The land is laid off into lots or blocks or parcels containing not more than five (5) acres of land each, whether the same shall have been or shall be laid off, subdivided or platted in accordance with Nampa's or Canyon County's subdivision ordinances, or otherwise whenever the owner or proprietor or any person by or with his authority has sold or begun to sell off such contiguous or adjacent lands by metes and bounds in tracts not exceeding five (5) acres, or whenever the land is surrounded by the city and is therefore enclaved.

Splits of ownership that occurred prior to January 1, 1975, and which were the result of placement of public utilities, public roads or highways, or railroad lines through the property shall not be considered as evidence of an intent to develop such land and shall not be sufficient evidence that the land has been laid off or subdivided in lots or blocks. A single sale after January 1, 1975, of five (5) acres or less to a family member of the owner for the purpose of constructing a residence shall not constitute a sale within the meaning of this section; and

For purposes of this section, "family member" means a natural person or the spouse of a natural person who is related to the owner by blood, adoption or marriage within the first degree of consanguinity.
 - c. Preparation and publication of a written annexation plan, appropriate to the scale of the annexation contemplated, which includes, at a minimum, the following elements:
 - (1) The manner of providing tax supported municipal services to the lands proposed to be annexed; and
 - (2) The changes in taxation and other costs, using examples, that would result if the subject lands were to be annexed; and

- (3) The means of providing fee supported municipal services, if any, to the lands proposed to be annexed; and
 - (4) A brief analysis of the potential effects of annexation upon other units of local government which currently provide tax supported or fee supported services to the lands proposed to be annexed; and
 - (5) The proposed future land use plan and zoning designation or designations, subject to public hearing, for the lands proposed to be annexed; and
 - (6) Compliance with the notice and hearing procedures governing a zoning district boundary change as set forth in this chapter on the question of whether the property should be annexed and, if annexed, the zoning designation to be applied thereto; provided however, the initial notice of public hearing concerning the question of annexation and zoning shall be published in the official, daily newspaper of the city and mailed by first class mail to every property owner with lands included in such annexation proposal not less than twenty eight (28) days prior to the initial public hearing. All public hearing notices shall establish a time and procedure by which comments concerning the proposed annexation may be received in writing and heard and, additionally, public hearing notices delivered by mail shall include a one page summary of the contents of the city's proposed annexation plan and shall provide information regarding where the annexation plan may be obtained without charge by any property owner whose property would be subject to the annexation proposal.
- d. In addition to the standards set forth elsewhere in this section, annexation of the following lands must comply with the following affiliated requirements:
- (1) Property, owned by Canyon County or any entity within the county, that is used as a fairgrounds area under the provisions of chapter 8, title 31, Idaho Code, or chapter 2, title 22, Idaho Code, must have the consent of a majority of the board of Canyon County commissioners; and
 - (2) Property, owned by a nongovernmental entity, that is used to provide outdoor recreational activities to the public and that has been designated as a planned unit development of fifty (50) acres or more and does not require or utilize any city services must have the express written permission of the nongovernmental entity owner.
- e. After considering the written and oral comments of property owners whose land would be annexed and other affected persons, the city council may proceed with the enactment of an ordinance of annexation and zoning. In the course of the consideration of any such ordinance, the council must make express findings, to be recorded in the written and verbal minutes from the meeting wherein the annexation is approved, as follows:
- (1) That the land to be annexed meets the applicable requirements of this section and does not fall within the exceptions or conditional exceptions contained in this section; and
 - (2) That the annexation would be consistent with the public purposes addressed in the annexation plan prepared by the city; and
 - (3) That the annexation is reasonably necessary for the orderly development of the city.

- f. Notwithstanding any other provision of this section, railroad right of way property may be annexed pursuant to this section only when property within the city adjoins or will adjoin both sides of the right of way.
3. Procedures for Category C Annexations: The city may annex lands that would qualify under the requirements of category C annexation if the following requirements are met:
 - a. Compliance with the procedures governing category B annexations; and
 - b. Evidence of consent to annexation based upon the following procedures:
 - (1) Following completion of all procedures required for consideration of a category B annexation, but prior to enactment of an annexation ordinance and upon an affirmative action by the city council, the city shall mail notice to all private landowners owning lands within the area to be annexed, exclusive of the owners of lands that receive water or sewer service and owners of lands that are subject to a recorded consent to annex. Such notice shall invite property owners to either give consent or express opposition to the annexation, include a return addressed postage paid postcard, and inform the landowners where the entire record of the subject annexation may be examined. Such mailed notice shall also include a legal description of the lands proposed for annexation and a simple map depicting the location of the subject lands.
 - (2) Each landowner desiring to reply must do so within twenty-one (21) days of the date of the initial mailing of such notice. The required response postmark date shall be stated in the mailing that accompanies the reply postcard.
 - (3) The results of the mail poll shall be compiled by the city clerk and shall be determined by tabulating the physical area of the lands, as expressed in acres or square feet, whose owners consent to annexation in their response, plus the area of all lands receiving water and sewer service from the city and the area of all lands subject to a recorded consent to annex against the area of all lands whose owners object to annexation. Objections received after the conclusion of the twenty-one (21) day period shall not be considered unless the late objection is due to the city's failure to follow the procedures provided herein. Objections received from owners of lands subject to a recorded consent to annex, or from owners receiving water or sewer service from the city, shall not be considered objections for purposes of this section. Lands of landowners to whom notice is mailed and who do not respond to the consent request shall not be counted or considered. The clerk shall report the results to the city council.
 - (4) Upon receiving such report, the city council shall canvass the results and may thereafter confirm whether consent was received from the owners of a majority of the land areas responding by mail and those providing written consent, in addition to all lands subject to the implied consent provisions set forth herein and those subject to consent of record in the office of the county recorder. The results of the canvass shall be reflected in the minutes of the city council.

If the canvass confirms that owners of more land area support annexation than oppose such annexation, the city council may enact an ordinance of annexation, which thereafter shall be published and become effective according to the terms of the ordinance. If the canvass confirms that owners of more land area oppose

annexation than support such annexation, the category C annexation shall not be authorized.

- E. **Judicial Review:** The decision of the city council to annex and zone lands as a category B or category C annexation shall be subject to judicial review in accordance with the procedures provided in chapter 52, title 67, Idaho Code, and pursuant to the standards set forth in section 67-5279, Idaho Code. Any such appeal shall be filed by an affected person in the appropriate district court no later than twenty-eight (28) days after the date of publication of the annexation ordinance. All cases in which there may arise a question of the validity of any annexation under this section shall be advanced as a matter of immediate public interest and concern, and shall be heard by the district court at the earliest practicable time.
- F. **Annexation of Noncontiguous Municipal Airfield:** The city may annex land that is not contiguous to the city and is occupied by a municipally owned or operated airport or landing field. However, the city may not annex any other land adjacent to such noncontiguous facilities which is not otherwise annexable pursuant to this section. (Ord. 3182, 12-9-2002)
- G. **Exclusion or Deannexation/Disannexation of Land(s):** Applications to exclude or deannex/disannex land from within the incorporated limits of the city shall be processed in the same manner as applications to annex. The council may choose to grant or deny such applications to deannex, in its sole discretion, as provided in Idaho Code section 50-225. Decisions to grant or deny any application for exclusion, deannexation or disannexation do not require that the council articulate or provide findings justifying its decision. (Ord. 4189, 7-20-2015)

10-2-5: DEVELOPMENT AGREEMENTS:

In accordance with allowances made by state law, a property owner or developer may request, or the city may require, that an application for rezone or zoning map amendment be processed in conjunction with the execution of a development agreement. Through such agreements, a property owner or developer may agree to make written conditional commitments concerning the use or development of a subject parcel in exchange for the change of zoning requested. The purpose of such agreements shall be to allow development that provides benefits for both the property owner or developer and the city by providing a balance between the owner's or developer's desire for certainty in the development process and the city's desire for control of the impacts of the project. (Ord. 4189, 7-20-2015)

Conditional commitments made under such agreements are in addition to the regulations provided for in the zoning district by ordinance, and are established to ensure compatibility of the resulting land use with the surrounding area. Unless multiple land use zones are used/applied within a project in accordance with that which is allowed by the table at section 10-3-2 of this title, the use of a PUD permit process shall be the only means whereby the city of Nampa will/shall entertain allowing uses in a zone not normally allowed therein; development agreement conditions not excepting. The following rules shall govern development agreements: (Ord. 4050, 2-19-2013)

- A. **Creation and Form:** At a minimum, development agreements shall include the following: 1) a legal description of the subject property, 2) a description of the uses permitted on the land, 3) provisions for any reservation or dedication of land, 4) the duration of the agreement, 5) the commitments or other terms of the agreement. Furthermore, agreements may include, if provided by an applicant and/or requested by the planning and zoning commission and/or city council, 1) a conceptual site plan showing proposed arrangement of any structure(s), business or industrial or multi-family park/complex freestanding signage, landscaping and parking area

design(s), and/or 2) a set of building(s) elevations showing exterior building treatments and design(s).

- B. Commitments and Safeguards: The written commitments or conditions exacted shall not be vague and shall have a reasonable relation to the zoning change approved. In addition, the following safeguards shall be applied:
1. A development agreement shall only be allowed in connection with annexations or rezones applied for within bona fide transitional areas, i.e., where two (2) or more competing and incompatible uses have valid claims.
 2. If a substantial amount of land surrounding a property zoned in connection with a development agreement is rezoned to the same zoning as originally requested for the subject property, said development agreement and the commitments contained therein may be lifted by the city upon request of the owner or developer after complying with the notice and hearing provisions of section 10-2-3 of this chapter.
 3. A development agreement shall not prevent the city in subsequent actions applicable to the property, from applying new rules, regulations or policies that do not conflict with commitments applicable to the property as set forth within any duly executed agreement.
 4. If a conditional commitment involves ongoing performance and the owner or developer fails to comply with the commitment after completion of construction, said failure may be dealt with by the city according to the violations and penalties provisions of section 10-2-6 of this chapter.
 5. When a commitment is required to be satisfied prior to completion of construction, and it is not so satisfied, construction shall be halted until compliance is established.
- C. Recording: Development agreements shall be attached as an exhibit to the ordinance establishing the zoning map amendment. Agreements shall take effect and shall be recorded in the Canyon County recorder's office upon the adoption of the ordinance establishing the zoning map amendment by the city council. Should a development agreement be terminated by the city, and the zoning designation upon which the use is based be reversed, a document recording such termination and zoning reversal shall also be recorded by the city in the office of the county recorder unless otherwise modified or terminated by the city council. An agreement shall be binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel.
- D. Modification, Enforcement, Termination and Extension: A development agreement may be modified by request of an applicant or the city only after receiving a recommendation by the city's planning and zoning commission and by an approving vote of the council after complying with the notice and hearing provisions of subsection 10-2-3B of this chapter. Modification of and to an executed agreement shall be required by the planning director or his/her designee under the following circumstances:
1. A change to any of the terms or conditions of the original development agreement is proposed; and/or
 2. A substantial change to any established positioning of any structure over two hundred (200) square feet in area is proposed; and/or

3. A substantial change to any approved parking or landscaping area layout or arrangement is proposed; and/or
4. A substantial change to any approved set of building elevations or exterior appearance or design is proposed; and/or
5. A change to any development agreement approved freestanding commercial or industrial center signage or multi-family complex freestanding signage is proposed.

A development agreement may be terminated by the city, and the zoning designation granted by the agreement reversed to the zoning that was in effect on the pertinent site before the agreement was executed, upon the failure of the owner, developer, or each subsequent owner or each person acquiring an interest in the subject parcel, to comply with the commitments in their agreement within two (2) years. Exception: The failure to begin site development of all or a portion of a project proposed under a development agreement does not necessarily have to serve as impetus to claim that an owner or developer has failed to comply with their commitments contained in their respective development agreement. Rather, commencement of site work and/or construction then left in abandon or failure to abide by development agreement terms, as iterated above, shall serve as impetus to consider termination of an agreement and reversion of zoning. A hearing for termination may be convened by the city after complying with the notice and hearing provisions of subsection 10-2-3B of this chapter and any relevant termination terms of the pertinent agreement. During the hearing, the council may vote to take no action, cause modification of the agreement if the applicant is willing, or terminate the agreement.

The two (2) year period of time for compliance of commitments may be extended by the city for just cause, and upon application for such by the owner, after complying with the notice and hearing provisions of subsection 10-2-3B of this chapter.

In accordance with state law, the establishment of a development agreement and the written commitments contained therein shall provide written consent for the city council to change the zoning of the subject property to its prior designation upon failure of an applicant to comply with the conditions imposed by their agreement. (Ord. 3805, 7-21-2008)

10-2-6: VIOLATIONS AND PENALTIES:

- A. Authority: In any case where any building or structure is erected, constructed, reconstructed, altered, converted or maintained or any building, structure or land is used in violation of this title, as determined by the planning director, his/her designee or a code enforcement officer or otherwise other proper legal authorities of the city, that authority may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy or use of said building, structure, or land, or to prevent any illegal act, conduct, business or use in or about such building, structure or land. In exercising enforcement authority, the city representative shall follow any specific remedial/enforcement sections listed in relevant chapters of this title (e.g., as listed for signs and temporary uses) or, in their absence, adhere to the provisions of this section specifically.

Upon the awareness of any violation of any of the provisions of this title the planning director, his/her designee, or, a code enforcement officer shall serve notice of such violation on the person committing or permitting the same, and if such violation has not ceased within such reasonable length of time as the planning director, or his/her designee, or, a code enforcement

officer may determine, he/she will take action as may be necessary to terminate the violation as specified below.

- B. Compliance Notice: Upon the awareness of any violation of any of the provisions of this title, before abating any unlawful activity the planning director, or his/her designee, or, a code enforcement officer shall first serve notice of such violation on the person committing or permitting the same.
- C. Corrective Action: If such violation has not ceased within such reasonable length of time as the planning director, or, his/her designee, or a code enforcement officer may determine, then the planning director, or, his/her designee or a code enforcement officer shall take such action as may be necessary to terminate the violation. This may infer initial issuance of a citation, solicitation of assistance from other local authorities, abatement of a nuisance, posting of some type of cease and desist or stop work order, withholding a certificate of occupancy or building permit, etc., or pursuit of legal remedies. (Ord. 4010, 3-19-2012)

10-2-7: ADOPTION, AMENDMENT AND REPEAL, OF THE NAMP COMPREHENSIVE PLAN:

- A. The commission, prior to recommending any comprehensive plan amendment or repeal to the council, shall conduct at least one public hearing in 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 a summary of the plan to be discussed shall be published in the official newspaper or paper of general circulation within the jurisdiction. The commission shall also make available a notice to other papers, radio and television stations serving the jurisdiction for use as a public service announcement. Following the commission hearing, if the commission recommends a material change to the proposed amendment to the plan which was considered at the hearing, it shall give notice of its proposed recommendation and conduct another public hearing concerning the matter if the council will not conduct a subsequent public hearing concerning the proposed amendment. If the council will conduct a subsequent public hearing, notice of the planning and zoning commission's recommendation shall be included in the notice of public hearing concerning the public hearing before the council. A record of the hearings, findings made, and actions taken shall be maintained by the city.
- B. The council prior to the adoption, amendment or repeal of the comprehensive plan, may conduct at least one public hearing, in addition to the public hearing(s) conducted by the commission, using the same notice hearing procedures as the commission. The council shall not hold a public hearing, give notice of a proposed hearing, or take action upon the plan, amendments, or repeal until the commission's recommendation has been received. Following consideration by the council, if the council makes a material change in the recommendation or alternative options contained in the recommendation by the commission concerning adoption, amendment or repeal of a plan, further notice and hearing shall be provided before the council adopts, amends or repeals the plan.
- C. No plan shall be effective unless adopted by resolution by the council. A resolution enacting or amending the plan or a part of the plan may be adopted, amended, or repealed by definitive reference to the specific plan document. A copy of the adopted or amended plan shall accompany each adopting resolution and shall be kept on file with the city clerk.
- D. Any person may petition the commission or, in the absence of a commission, the council, for a plan amendment at any time. The commission may recommend amendments to the land use

component of the Nampa comprehensive plan, to the council not more frequently than once every six (6) months. The commission may recommend amendments to the text of the comprehensive plan and to other chapters of this title to the council at any time.

- E. Any person seeking an amendment to the comprehensive plan text or map shall submit to the planning director an application form as prescribed by the planning director, designating the change desired, the reasons therefor, and how the proposed amendment would be in the public interests. Amendment fees are established by council resolution and are nonrefundable. The planning director shall transmit the requested amendment to the commission. If the requested amendment is for a map change, it may be concurrently reviewed with an application for amendment of the zoning map or an application for annexation, provided procedural requirements for each application are met. (Ord. 3182, 12-9-2002)

10-2-8: PUBLIC HEARINGS:

The public hearing process exists to provide an opportunity for citizens to present their views on an issue that may affect them, define the issue upon which a decision is to be made, and obtain essential evidence upon which a decision can be made.

- A. Evidence: City staff reports shall be entered as a part of the public record. Comments from agencies appropriately involved in the review of a project that will be reviewed in a hearing setting may be received and entered into the public record.
- B. Ex Parte Communications and Conflicts of Interest: All material contacts received by public officials outside of the public hearing shall be disclosed prior to the commencement of the public hearing. ("Material contacts" shall be defined as those contacts received outside the public hearing process that expectedly will have a significant effect on the opinion of a public official on a given issue.) If there is a question of conflict of interest, as defined by Idaho Code 67-6506 for council member or commissioner (public official), it shall be disclosed prior to the commencement of the hearing. That official shall not participate in voting or deliberating as an official on any matter with which they have a conflict, but they may testify as a member of the public in the same manner and under the same restrictions as any other citizen.

A city council member, planning commissioner or mayor shall avoid all "ex parte" contact(s) with an applicant or the public once an application for a zoning or other land use request has been filed with the planning and zoning office. If already engaged in a conversation and discussion concerning a zoning or land use application ensues, then that council member, commissioner or the mayor shall thereafter disclose before the acting governing body, for the record, and prior to a vote on the pertinent matter being taken/made the name if the person/people they talked with (contact) a summary of the substance of their conversation, the relationship or affiliation of the contact with a business or organization with a stake in a/the matter. (Ord. 3182, 12-9-2002)

- C. Hearing Procedures: The following sequence of events shall be followed/used during public zoning hearing(s):
 1. Call to Order: The mayor, presiding council person, planning chairperson, or presiding commissioner (all hereinafter a.k.a. "presiding officer") shall explain the meeting's hearing procedures thereby setting forth the rules under which the public meeting shall be conducted, and shall announce the amount of time to be allotted to speakers.
 2. Allotted Speaker Times:

- a. Standard Hearing Item Speaking Times: At the commencement of the hearing, the presiding officer may establish and announce a time limit to be observed by all speakers. If a specific time limit is not given to the attending audience, then initial presentation by the applicant or his representative shall be limited to seven (7) minutes, persons from the audience shall be limited to three (3) minutes each, and closing applicant's rebuttal or concluding comments shall be limited to five (5) minutes. Persons representing groups may be given more time than individuals presenting their own views, if allowed by the meeting's chair. City staff shall be given sufficient time to present their report(s).
- b. Items on Appeal Speaking Times: At the commencement of the hearing, the presiding officer may establish and announce a time limit to be observed by all speakers. If a specific time limit is not given to the attending audience, then initial presentation by the appellant shall be limited to seven (7) minutes, city staff shall be given time as they require, the appellee/respondent, if any, shall then have seven (7) minutes, persons from the audience shall be limited to three (3) minutes each, closing appellant's concluding comments shall be limited to five (5) minutes and concluding appellee's/respondent's concluding comments shall be limited to five (5) minutes. Persons representing groups may be given more time than individuals presenting their own views if allowed by the meeting's chair providing that if more time is allotted to either the appellant or appellee/respondent, then the opposing side shall be afforded equal time to rebut.

3. Hearing Protocol:

- a. The applicant(s) or appellant(s) and/or their representative(s) may present their case. During such presentation or immediately following it, the council or commission may ask their questions of the applicant(s) or appellant(s) and/or their representative(s). Applicants or appellants are encouraged to be or have a representative present to convey their desires and justifications as related to their request and/or to answer questions.
- b. City planning and zoning staff shall present their findings regarding the matter at hand.
- c. Written correspondence shall be officially recognized and accepted as part of the hearing record for the matter at hand under review.
- d. The council or commission shall then receive testimony from those persons supporting the application. No person shall be permitted to speak at a public hearing until the presiding officer has recognized such person. Each person testifying shall be limited to three (3) minutes per person (unless made more or less by the conducting officer following official announcement of the same at the start of the hearing).
- e. The council or commission shall then receive testimony from those persons uncommitted/neutral regarding the proposal/application.
- f. The council or commission shall then receive testimony from those persons opposing the application.
- g. The applicant(s) or appellant(s) and/or their representative(s) shall then be allowed to rebut statements previously made by any person who testified.
- h. The presiding officer shall then close the public hearing to further testimony and allow initiation of deliberations on the matter at hand. They may also ask or receive any code

interpretation or procedural questions of, or from, the city staff as deemed warranted.

If, however, the commission, or council, reopens the hearing by vote, then they may take further public testimony. In so doing, they shall provide for rebuttal time by the public and the applicant(s) or appellant(s) and/or their representative equal to that expended by any that speak on the record in support of, or opposition to, the application(s) under consideration.

- i. The attending/governing board shall then vote on the item once deliberations have ceased.
4. Continuance/Recess: If all sides of the issue cannot be heard in the time allotted, the hearing may be recessed to a later time during the same meeting stated by the chairperson. Persons not having had an opportunity to be heard may sign a roster in order to secure their opportunity to speak at the time stated.
5. Compliance Required: Any person not conforming to these procedures may be prohibited from speaking during a public meeting. Should any person refuse to comply with such prohibition, they may be removed from the room by order of the presiding officer. (Ord. 4282, 9-19-2016)

D. Other Hearing Conduct Rules:

1. Public officials shall not bring up the pros and cons of the subject of the hearing prior to all testimony and evidence being submitted.
2. A transcribable record of hearing shall be made and kept in accordance with Idaho Code 67-6536. In order to assure accuracy of the record, each person shall speak before the microphone in an orderly and constructive fashion, giving their full name and address and stating their views as briefly as possible.
3. The audience, public officials or city staff, shall not interrupt speakers until their time limit has expired or until they have completed their comments.
4. At the conclusion of a speaker's comments, public officials or planning staff when recognized, shall be allowed to question the speaker and the speaker shall be limited to answer to the question asked. The question and answer period shall not be included in the speaker's time limit. (Ord. 3182, 12-9-2002)

10-2-9: APPLICATION APPROVAL OR DENIAL:

The approval or denial of any zoning related application shall be communicated to the applicant in writing by the planning director or his/her designee. The written notice may be in a form prescribed by the planning director and shall contain a "reason statement" that explains the criteria and standards considered relevant to the matter, the relevant facts regarding the matter relied upon by the commission or Council or staff in making a decision and the rationale for the decision. When an application is denied, the written notice shall contain a statement of the actions the applicant could take to obtain approval, if any, and notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to Idaho Code section 67-8003. As elsewhere noted in this chapter, rationale for a decision shall be based on applicable provisions of the comprehensive plan,

relevant ordinances, statutory provisions, pertinent constitutional principles and actual information contained within the record.

As required by Idaho Code section 67-6535(2)(b), any applicant or affected person who wishes to seek judicial review of compliance with the provisions of Idaho Code section 67-6535, must first seek reconsideration of the final decision within fourteen (14) days. Such written request must be delivered to the City Clerk within that time frame and must identify specific deficiencies in the decision for which reconsideration is sought. Upon reconsideration, the decision may be affirmed, reversed or modified after compliance with applicable procedural standards. A written decision shall be provided to the applicant or affected person within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied. A decision shall not be deemed final for purposes of judicial review unless the process required in this subsection has been followed. The twenty-eight (28) daytime frame for seeking judicial review is tolled until the date of the written decision regarding reconsideration or the expiration of the sixty (60) day reconsideration period, whichever occurs first. (Ord. 4159, 1-20-2015)

10-2-10: REQUESTS FOR RECONSIDERATION:

- A. On any application brought before the City Council affecting the use, occupancy or development of real property, including, but not limited to, those matters governed by the Idaho Local Land Use Planning Act, found at Idaho Code 67-6501 et seq., or the Nampa Comprehensive Zoning Ordinance, found in this title, a party may request that the City Council reconsider a decision pursuant to the terms of this section. Decisions and recommendations of the Planning and Zoning Commission are not subject to reconsideration but may be appealed to the City Council as provided in this title.

To make such a request for reconsideration, the following criteria must be met:

1. The requesting party must have been a party interested in the underlying action in one of the following ways: the property owner of the subject property; the applicant for the project; or, any interested person who presented written or oral testimony at the public hearing on the application in question; and
 2. The request must be made in writing and presented to the City Clerk no more than fourteen (14) calendar days after the adoption of written findings of fact, conclusions of law, and/or an order of decision, or, if no such written decision is required or will be issued, within fourteen (14) days of the date on which the decision was made; and
 3. The request must state the basis for the request, including a brief statement of the issues and decision that the requesting party is asking to be reconsidered; and (Ord. 4189, 7-20-2015)
 4. The request must either include new and relevant information challenging claims made during the Council's prior deliberation or be made pursuant to Idaho Code section 67-6535(2)(b). (Ord. 4428, 4-15-2019)\
- B. The City Council will consider the request at the next regularly scheduled meeting. No testimony or evidence will be submitted in connection with the request, and the City Council shall grant or deny the request at its discretion solely on the basis of the written request for reconsideration.

- C. If the City Council denies the request, it may proceed immediately thereafter, or as soon as is practicable, to adopt any required written findings of facts, conclusions of law, decision, and order for the application in question.
- D. If the City Council grants the request, the requesting party must pay the fee for a new public hearing within ten (10) calendar days of the City Council's decision to grant reconsideration. If the payment is not made to the City Clerk within the specified time frame the request for reconsideration shall be automatically rescinded.
- E. All noticing for the hearing at which the City Council will reconsider a prior decision shall be completed in the same manner as was required for the original application. The new hearing shall be conducted in the same manner as all public hearings and shall be considered a de novo hearing.
- F. Upon payment of fees, the Planning Director will schedule a new public hearing for the application as allowed by this Code. The new public hearing and ultimate decision shall be the final action of the City Council.
- G. Once the Council has reconsidered any of its decisions relating to a given application, as set forth hereinabove, it may not entertain any additional or subsequent request for reconsideration, whether by the same or any other interested party. (Ord. 4189, 7-20-2015)