

Supplemental Materials – Spring 2018

67-6513. Subdivision ordinance (from Local Land Use Planning Act).

Each governing board shall provide, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for standards and for the processing of applications for subdivision permits under sections 50-1301 through 50-1329, Idaho Code. Each such ordinance may provide for mitigation of the effects of subdivision development on the ability of political subdivisions of the state, including school districts, to deliver services without compromising quality of service delivery to current residents or imposing substantial additional costs upon current residents to accommodate the proposed subdivision. Fees established for purposes of mitigating the financial impacts of development must comply with the provisions of chapter 82, title 67, Idaho Code. Denial of a subdivision permit or approval of a subdivision permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

50-1301. Definitions (from state platting statute).

The following definitions shall apply to terms used in this section and sections 50-3012 through 50-1334, Idaho Code.

(1) **Basis of bearing:** The bearing in degrees, minutes and seconds, or equivalent, of a line between two (2) monuments or two (2) monumented corners that serves as the reference bearing for all other lines on the survey;

(2) **Easement:** A right of use, falling short of ownership, and usually for a certain stated purpose;

(3) **Functioning street department:** A city department responsible for the maintenance, construction, repair, snow removal, sanding and traffic control of a public highway or public street system which qualifies such department to receive funds from the highway distribution account to local units of government pursuant to section 40-709, Idaho Code;

(4) **Idaho coordinate system:** That system of coordinates established and designated by chapter 17, title 55, Idaho Code;

(5) **Land survey:** Measuring the field location of corners that:

- (a) Determine the boundary or boundaries common to two
- (2) or more ownerships;
- (b) Retrace or establish land boundaries;
- (c) Retrace or establish boundary lines of public roads, streets, alleys or trails; or

(d) Plat lands and subdivisions thereof.

(6) Monument: A physical structure or object that occupies the position of a corner;

(7) Owner: The proprietor of the land, (having legal title);

(8) Plat: The drawing, map or plan of a subdivision, cemetery, townsite or other tract of land, or a replatting of such, including certifications, descriptions and approvals;

(9) Private road: A road within a subdivision plat that is not dedicated to the public and not a part of a public highway system;

(10) Public highway agency: The state transportation department, any city, county, highway district or other public agency with jurisdiction over public highway systems and public rights-of-way;

(11) Public land survey corner: Any point actually established and monumented in an original survey or resurvey that determines the boundaries of remaining public lands, or public lands patented, represented on an official plat and in the field notes thereof, accepted and approved under authority delegated by congress to the U.S. general land office and the U.S. department of the interior, bureau of land management;

(12) Public right-of-way: Any land dedicated and open to the public and under the jurisdiction of a public highway agency, where the public highway agency has no obligation to construct or maintain said right-of-way for vehicular traffic;

(13) Public street: A road, thoroughfare, alley, highway or bridge under the jurisdiction of a public highway agency;

(14) Reference monument: A special monument that does not occupy the same geographical position as the corner itself, but whose spatial relationship to the corner is known and recorded, and which serves to witness the corner;

(15) Sanitary restriction: The requirement that no building or shelter which will require a water supply facility or a sewage disposal facility for people using the premises where such building or shelter is located shall be erected until written approval is first obtained from the director of the department of environmental quality or his delegate approving plans and specifications either for public water and/or sewage facilities, or individual parcel water and/or sewage facilities;

(16) Street: A road, thoroughfare, alley, highway or a right-of-way which may be open for public use but is not part of a public highway system nor under the jurisdiction of a public highway agency;

(17) Subdivision: A tract of land divided into five (5) or more lots, parcels, or sites for the purpose of sale or building development, whether immediate or future; provided that this definition shall not include a bona fide division or partition

of agricultural land for agricultural purposes. A bona fide division or partition of agricultural land for agricultural purposes shall mean the division of land into lots, all of which are five (5) acres or larger, and maintained as agricultural lands. Cities or counties may adopt their own definition of subdivision in lieu of the above definition;

(18) Witness corner: A monumented point usually on a lot line or boundary line of a survey, near a corner and established in situations where it is impracticable to occupy or monument the corner. (2017)

50-1302. Duty to file (subdivision).

Every owner creating a subdivision, as defined above, shall cause the same to be surveyed and a plat made thereof which shall particularly and accurately describe and set forth all the streets, easements, public grounds, blocks, lots, and other essential information, and **shall record said plat.** This section is not intended to prevent the filing of other survey maps or plats. Description of lots or parcels of land, according to the number and designation on such recorded plat, in conveyances or for the purposes of taxation, shall be deemed good and valid for all intents and purposes.

67-6512. Special use permits, conditions, and procedures. (from LLUPA)

(a) As part of a zoning ordinance each governing board may provide by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for the processing of applications for special or conditional use permits. A special use permit may be granted to an applicant if the proposed use is conditionally permitted by the terms of the ordinance, subject to conditions pursuant to specific provisions of the ordinance, subject to the ability of political subdivisions, including school districts, to provide services for the proposed use, and when it is not in conflict with the plan. Denial of a special use permit or approval of a special use permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with requirements established thereby.

(b) Prior to granting a special use permit, at least one (1) public hearing in which interested persons shall have an opportunity to be heard shall be held. At least fifteen (15) days prior to the hearing, notice of the time and place, and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the

jurisdiction. Each local government is encouraged to post such notice on its official websites, if one is maintained. Notice may also be made available to other newspapers, radio and television stations serving the jurisdiction for use as a public service announcement. Notice shall be posted on the premises not less than one (1) week prior to the hearing.

Notwithstanding jurisdictional boundaries, notice shall also be provided to property owners or purchasers of record within the land being considered, three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be substantially impacted by the proposed special use as determined by the commission, provided that in all cases notice shall be provided individually by mail to property owners or purchasers of record within the land being considered and within three hundred (300) feet of the external boundaries of the land being considered and provided further that where a special use permit is requested by reason of height allowance that notice shall be provided individually by mail to property owners or purchasers of record within no less than three (3) times the distance of the height of the allowed height of a structure when more than one hundred (100) feet and within no less than one (1) mile when the peak height of a structure in an unincorporated area is four hundred (400) feet or more and, when four hundred (400) feet or more, the structure's proposed location and height shall be stated in the notice. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board.

(c) When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of mailed notice.

In the absence of a locally adopted alternative notice procedure, sufficient notice shall be deemed to have been provided if the city or county provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city or county at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site.

(d) Upon the granting of a special use permit, conditions may be attached to a special use permit including, but not limited to, those:

- (1) Minimizing adverse impact on other development;
- (2) Controlling the sequence and timing of development;
- (3) Controlling the duration of development;
- (4) Assuring that development is maintained properly;

(5) Designating the exact location and nature of development;

(6) Requiring the provision for on-site or off-site public facilities or services;

(7) Requiring more restrictive standards than those generally required in an ordinance;

(8) Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction.

(e) Prior to granting a special use permit, studies may be required of the social, economic, fiscal, and environmental effects and any aviation hazard as defined in section 21-501(2), Idaho Code, of the proposed special use. A special use permit shall not be considered as establishing a binding precedent to grant other special use permits. A special use permit is not transferable from one (1) parcel of land to another.

(f) In addition to other processes permitted by this chapter, exceptions or waivers of standards, other than use, inclusive of the subject matter addressed by section 67-6516, Idaho Code, in a zoning ordinance may be permitted through issuance of a special use permit or by administrative process specified by ordinance, subject to such conditions as may be imposed pursuant to a local ordinance drafted to implement subsection (d) of this section.

Framework of Decision Criteria - also includes planned unit development

- Use must be expressly conditionally permitted by ordinance*
- Subject to conditions authorized by ordinance
- Possible conditions: Height limitations, additional setbacks, additional landscaping, parking layout, location of solid waste containers, signage limitations, lighting restrictions, access requirements, additional architectural review, materials choices, hours of operation, physical barriers, building design
- Primary emphasis – fitting with surroundings
 - neighboring land uses
 - infrastructure

67-6516. Variance - Definition - Application - Notice - Hearing.

Each governing board shall provide, as part of the zoning ordinance, for the processing of applications for variance permits. A variance is a modification of the bulk and placement requirements of the ordinance as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other ordinance provision affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots. A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest. Prior to granting a variance, notice and an opportunity to be heard shall be provided to property owners adjoining the parcel under consideration and the manager or person in charge of the local airport if the variance could create an aviation hazard as defined in section 21-501, Idaho Code. Denial of a variance permit or approval of a variance permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

Variance Decision Criteria

- Must be something that can be measured (physically)
- Serves as a constitutional safety valve – protect ability to use land
- Must show “undue hardship”
- Because of unique physical characteristics of the site
- Must not be in conflict with the public interest

67-6511. Zoning ordinance (zone changes).

(1) Each governing board shall, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, establish within its jurisdiction one (1) or more zones or zoning districts where appropriate. **The zoning districts shall be in accordance with the policies set forth in the adopted comprehensive plan.**

(a) Within a zoning district, the governing board shall

where appropriate, establish standards to regulate and restrict the height, number of stories, size, construction, reconstruction, alteration, repair or use of buildings and structures; percentage of lot occupancy, size of courts, yards, and open spaces; density of population; and the location and use of buildings and structures. All standards shall be uniform for each class or kind of buildings throughout each district, but the standards in one (1) district may differ from those in another district.

(b) Within an overlay zoning district, the governing board shall establish clear and objective standards for the overlay zoning district while ensuring that application of such standards does not constitute regulatory taking pursuant to Idaho or federal law.

(2) Ordinances establishing zoning districts shall be amended as follows:

(a) Requests for an amendment to the zoning ordinance shall be submitted to the zoning or planning and zoning commission which shall evaluate the request to determine the extent and nature of the amendment requested. Particular consideration shall be given to the effects of any proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction. An amendment of a zoning ordinance applicable to an owner's lands or approval of conditional rezoning or denial of a request for rezoning may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

- Criterion: "... zoning districts shall be in accordance with the policies set forth in the adopted comprehensive plan."
- Emphasis is on *policies*
- Degree of discretion applicable in such matters
- Burden of persuasion rests on party seeking change
- Word-driven process

Public Hearing Requirements (LLUPA)

Public hearing required by LLUPA: (one public hearing before P-Z if you have one, two hearings if your ordinance otherwise requires)

Creation or revision of Planning and Zoning Commission (§67-6504)

Adopt or revise comprehensive plan (§67-6509);

Adopt or revise zoning (§67-6511), subdivision (§67-6513) or other land use ordinance (authorized by LLUPA);

Adopt or modify ordinance provisions allowing development agreements (conditional zoning) (§67-6511A)

Propose or materially revise planned unit development (§67-6515) or special use permit (§67-6512);

Ordinance authorizing transfer of development rights (§67-6515A);

Proposing or revising a variance (less extensive notice requirements) (§67-6516);

Adoption of Future Acquisitions Map (§67-6517);

Adoption of development standards (§67-6518);

Authorizing hearing examiners (§67-6520);

Adoption or amendment of interim ordinances (§67-6524);

Zoning upon annexation (cities) (§67-6525) (2 hearings required per §50-222);

Adoption or amendment of area of city impact (§67-6526)

Adoption or revision of public hearing procedures **ordinance**

(unneeded if resolution) pursuant to §67-6534;

Procedures upon agreeing to reconsider a decision pursuant to §67-6535

Public hearing not expressly required by LLUPA:

Consideration of subdivision proposal (most local ordinances require a public hearing or equivalent);

Adoption of *bona fide* emergency ordinance (§67-6523);

Adoption or revision of public hearing procedures **resolution** pursuant to §67-6534;

Decision declining further reconsideration pursuant to §67-6535.

NOTICE OF PUBLIC HEARING

Proposal to Vacate Alley and Authorize a Special Use Permit for a School (including comments regarding the definition of “school”) at the NW corner of Pine Street and Idaho Highway 200 in Clark Fork, ID.

NOTICE IS HEREBY GIVEN that the City Council of Clark Fork, Idaho will hold a public hearing at City Hall, 110 E 3rd St, Clark Fork, ID 83811, on the 15th day of September, 201X at 7:00 p.m. concerning requests submitted by Applicant seeking approval of a conditional use permit to construct a school facility to be known as the Alpha Center on Lots 11-20, Block 15, Nagel's Addition and to vacate the platted, but undeveloped, alley in Block 15, Nagel's Addition in the City of Clark Fork. The Clark Fork City Council also seeks comments regarding whether the proposed use constitutes a school within the meaning of the Clark Fork zoning ordinance. The site in question is located at the northwest corner of Pine Street and Highway 200.

Persons with an interest in this matter should participate in the public hearing or supply written comments in accordance with the dates set forth in this notice. Individual planning commission members, city councilors or the mayor **should not be contacted** outside the hearing process in order to respect the rights of all who have an interest.

All residents or landowners within the city of Clark Fork desiring to be heard should appear at this hearing. Written comments from those who are or are not residents or landowners within the city of Clark Fork may be sent to the City of Clark Fork City Clerk, 110 E 3rd St, Clark Fork, ID 83811; e-mail comments to clerk2@clarkforkidaho.org. Written comments must be received by the city clerk no later than the close of business on September 10, 2014. The public hearing will be conducted in accordance with hearing procedures in the Hearing Procedures Resolution adopted by the Clark Fork City Council. Additional information about the request and the text of the hearing procedures resolution is available on the city's website at <http://www.clarkforkidaho.org>. If a group of landowners seek to designate a spokesman, such request shall be made to the Mayor of Clark Fork at City Hall no later than September 10, 201X. Materials received after deadlines established by this notice will not be considered at the scheduled hearing.

A complete file on this matter may be reviewed by the public at Clark Fork City Hall. The City Hall Building is handicapped accessible and if any person needs special equipment to accommodate his/her disability in order to fully participate in the public hearing, please notify the City Clerk at least 48 hours in advance of the meeting date. The City Hall telephone number is 208-266-1315.

**City of Clark Fork, Idaho
Record Keeper, City Clerk**

Publish twice: As Soon As Possible and 7 days later

When mailing notice: Include more information!

Include application summary (a cover page, part of your application form, that summarizes what is being requested). Explain where complete file can be examined.

Include definition of: **Special Use**

Provide notice of Hearing Procedures Resolution and where to read it (refer to website – or clerk's office?)

Provide a brief flowchart of the process that will be followed

Include a sheet that identifies the decision criteria for the proposed special use and how to testify (including time limits, if known)

Provide city phone number where more information would be available

RESOLUTION NO. _____
CITY OF RIVER CITY

TITLE: LAND USE PUBLIC HEARING PROCEDURES

WHEREAS: Idaho Code §67-6534 requires that cities maintain a regular set of procedures for public hearings held by the City of River City Planning and Zoning Commission and City Council in matters governed by the Local Land Use Planning Act; and

WHEREAS: From time to time it is beneficial to review and revise those hearing procedures to better facilitate input from the public and to promote a thorough and expeditious hearing;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council that the City of River City hereby adopts the following procedures to be applied in matters concerning land use-related public hearings:

Section 1. Public Notice

- a. If a public hearing is required by law or ordinance, the planning commission and, when applicable, the city council shall hold at least one public hearing in which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of the time and place and a summary of the proposal shall be published in the city's official newspaper. Notice of public hearing should only be published when an application is complete in a manner sufficient to address the requirements established by ordinance and application forms.
- b. In the case of annexations, conditional use permits, site-specific rezones, subdivisions, and variances, notice shall also be provided to property owners within the land being considered; those record owners of lands within three hundred feet (300') of the external boundaries of the land being considered; and, optionally, within any additional areas that may be substantially impacted by the proposal as determined by the planning and zoning commission or by decision of the community development department staff. Contents of the mailed notice must contain the information required by law and when practical should include information guided by this Resolution such as requirements of testimony, default time limits (or issue-specific time limits, if known), timing for allowing written submissions, and other significant conditions or restrictions on testifying.
- c. When mailed notices would be required to be sent to two hundred (200) or more property owners, a notice of public hearing, at least 2" x 4" in size, published in the city's official newspaper at least 15 days prior to the hearing, shall be considered adequate in lieu of otherwise required mailed notices.
- d. For site-specific matters, the subject property should be posted with signs describing the type of action to be considered, contact information for the Community Development Department, and the time, date and location of the hearing. Such signage shall be posted on the site as required by law.

Section 2. General Rules for Testimony in a Quasi-judicial or Annexation-related Public Hearing:

- a. At the commencement of the public hearing, the Commission/Council, or the Chairman/Mayor may establish a time limit to be observed by all speakers. This resolution provides the default time limits as follows: Applicant (to describe application and reasons that it meets requirements) – not to exceed fifteen (15) minutes. Staff explanation – not to exceed fifteen (15) minutes. Individual testimony – pro, neutral and con – three (3) minutes per person (up to fifteen (15) minutes for spokesman in cases where spokesmen are pre-authorized by the chairman). Rebuttal by the applicant (no new evidence – only information from the record to rebut assertions by contrary testimony) – as needed.
- b. No person shall be permitted to testify or speak before the hearing agency at a public hearing unless such person has signed his name and written his contact address on sign-up sheets to be provided by the city. This requirement shall not apply to staff or technical witnesses directed by the chairperson to give evidence or information to the hearing agency.
- c. The presiding officer, or the council/commission, is authorized to revise the default time frames and order of proceedings so long as due process rights are maintained. In the event of disagreement by governing board members with procedural rulings by the chairman, the governing board may suspend or amend any one or more of these rules by majority vote of members of the governing board then in attendance, provided that due process rights are preserved.
- d. Anyone who intends to appear as a representative of a group at a hearing where spokesmen will be allowed should contact the Community Development Department at least five days prior to the hearing. Staff may then apprise the representative of procedures for the hearing and any special limits or allowances concerning testimony.
- e. No person shall be permitted to speak before the council/commission at a public hearing until such person is recognized by the chairperson.
- f. Testimony should directly address the subject at hand.
- g. Testimony should not be repetitious with other entries into the record.
- h. Testimony should not be personally derogatory.
- i. Testimony should comply with time restrictions established by the hearing agency.
- j. If oral testimony fails to comply with the aforementioned standards, the chairperson may declare such testimony out of order and require it to cease.

k. All public hearing proceedings shall be recorded electronically or stenographically and all persons speaking at such public hearings shall speak before a microphone in such a manner as will assure that the recorded testimony or remarks will be complete.

Section 3. Order for Quasi-Judicial Public Hearing:

Quasi-judicial hearings involve site-specific decisions (such as rezoning specific property) as opposed to legislative hearings which require decisions that have a broad application (such as a change in the text of a zoning or subdivision ordinance, which does not necessarily affect one specific parcel of land). Quasi-judicial Public hearings should follow the order of events set forth below:

- a. Brief introduction of the subject of the hearing by city staff.
- b. Presentation by applicant. (Decision makers should address their questions to the applicant at this time.)
- c. City staff report. (Decision makers should address their initial questions to staff at this time.)
- d. Open Public Hearing: Testimony from public in the following order: (Questions from the decision makers should be asked of the person testifying before they leave the podium whenever possible.)
 1. In favor of proposal
 2. Neutral respecting proposal
 3. Opposed to proposal
- e. Rebuttal testimony from applicant. (Decision makers should ask any final questions.) If new facts are elicited, the public must be given an opportunity to respond to the new facts.
- f. Close Public Hearing
- g. Discussion of hearing subject among governing board members. Questions may also be directed to city staff during this period. Any procedural rules requiring a motion prior to discussion are hereby suspended for purposes of such discussion. Decision makers may table the matter until later in the meeting if other public hearings are pending or to a later meeting for deliberations.
- h. The final decision should include a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan for rezoning requests, relevant ordinance and statutory decision criteria for other requests, pertinent constitutional principles and factual information contained in the record.
- i. When a final decision has been made, a copy of the final decision shall be sent promptly by electronic mail, or by U.S. Mail if requested, to a permit or approval applicant and to any other affected property owner entitled to mailed notice by local ordinance or state law who has requested notice of the final decision on the sign-up sheets at the public hearing or otherwise. Applicants or affected property owners

shall have no more than fourteen (14) days after a final decision is rendered to request reconsideration by the final decision-maker. Any such request must identify specific deficiencies in any final decision. Failure to request reconsideration may invalidate a subsequent judicial appeal. After considering the identified deficiencies, the final decision shall be issued and distributed as above. If no decision is made within the sixty (60) day timeframe for reconsideration, notice of that fact shall be sent promptly by electronic mail, or by U.S. Mail if requested, to a permit or approval applicant and to any other affected property owner entitled to mailed notice by local ordinance or state law who has requested notice of the final decision on the sign-up sheets at any public hearing concerning the application or otherwise.

Section 4. Standards for Written Testimony:

Written testimony and exhibits from the public to be admitted at a public hearing shall comply with the following standards:

- a. Written testimony and exhibits must be submitted at least six (6) calendar days prior to the date of the pertinent public hearing. This provision may be varied through notice to potential hearing participants.
- b. Written testimony should include the signature and address of the submitter.
- c. Written testimony should address the issue at hand.
- d. Written testimony should not be personally derogatory.
- e. If written testimony or an exhibit fails to comply with the aforementioned standards, the chairperson or council/commission may declare such testimony inadmissible.

Section 5. Exhibits:

All exhibits, photographs, diagrams, maps, evidence and other material presented during the public hearing should be marked or otherwise identified and entered into the record. Exhibits from the Applicant must be submitted at least twenty (20) days prior to the hearing and shall be marked or identified prior to publication of any notice of public hearing. Original exhibits may be released to the presenting party if requested in writing, and if acceptable to the Community Development Director and legal counsel. If original exhibits are released, photocopies or reproducible photos of the originals should be maintained in the record.

Section 6. Records Maintained:

The City Clerk should maintain records of all public meetings in the following manner:

- a. Transcribable verbatim recordings of the proceedings should be maintained in conformance with Idaho Code §50-907 or its successor.

b. Originals or accurate duplicates of written submittals to the hearing record and copies of applications should be maintained in conformance with Idaho Code §50-907 or its successor.

c. Minutes which catalog the occurrences at the public hearing shall be maintained as required by applicable sections of the Idaho Code.

Section 7. Procedures for Legislative Public Hearings.

Public hearings on legislative matters brought pursuant to requirements established by the Local Land Use Planning Act should take place after notice has been provided as required by law. Prior to publishing notice of legislative public hearing a draft of the legislative proposal should be prepared and be available for public inspection no later than the day the notice of public hearing is published. Procedural limits on duration of testimony may be established by the chairman, subject to approval by the governing board. Legislative public hearings do not require final decisions in a manner comparable to those for quasi-judicial proceedings.

This resolution shall be in full force from the date of its adoption until superseded by a resolution addressing the same subject matter.

Adopted this _____ day of _____, 201__.

Mayor

ATTEST:

City

CITY OF _____
PUBLIC HEARING
SIGN-UP SHEET

You must sign up to testify – or submit comments

Agenda Item Number (or name): _____

Date: September 15, 201X

PLEASE PRINT LEGIBLY

Name: _____

Physical Address (not PO box) (city and state of residence):

Choose one:

Support the application Neutral Oppose the application

Do you wish to testify? Yes No

If you do **not** wish to testify orally, your comments on this sheet will be read into the record – so long as they are written legibly, signed below and do not exceed the space allotted.

Written signature (only if not testifying)

Do you wish to receive notice of the final decision by email? If so, please provide email address: _____.

67-6535. Approval or denial of any application to be based upon express standards and to be in writing.

(1) The approval or denial of any application required or authorized pursuant to this

chapter shall be based upon standards and criteria which shall be set forth in the comprehensive plan, zoning ordinance or other appropriate ordinance or regulation of the city or county. Such approval standards and criteria shall be set forth in express terms in land use ordinances in order that permit applicants, interested residents and decision makers alike may know the express standards that must be met in order to obtain a requested permit or approval. Whenever the nature of any decision standard or criterion allows, the decision shall identify aspects of compliance or noncompliance with relevant approval standards and criteria in the written decision.

(2) The approval or denial of any application required or authorized pursuant to this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.

(a) Failure to identify the nature of compliance or noncompliance with express approval standards or failure to explain compliance or noncompliance with relevant decision criteria shall be grounds for invalidation of an approved permit or site-specific authorization, or denial of same, on appeal.

(b) Any applicant or affected person seeking judicial review of compliance with the provisions of this section must first seek reconsideration of the final decision within fourteen (14) days. Such written request 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) day time 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.

(3) It is the intent of the legislature that decisions made pursuant to this chapter should be founded upon sound reason and practical application of recognized principles of law. In reviewing such decisions, the courts of the state are directed to consider the proceedings as a whole and to evaluate the adequacy of procedures and resultant decisions in light of practical considerations with an emphasis on fundamental fairness and the essentials of reasoned decision making. Only those whose challenge to a decision demonstrates actual harm or violation of fundamental rights, not the mere possibility thereof, shall be entitled to a remedy or reversal of a decision. Every final decision rendered concerning a site-specific land use request shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to section 67-8003, Idaho Code. An applicant denied an application or aggrieved by a final decision concerning matters identified in section 67-6521(1)(a), Idaho Code, may, within twenty-eight (28) days after all remedies have been exhausted under local ordinance, seek judicial review under the procedures provided by chapter 52, title 67, Idaho Code. An appeal shall be from the final decision and not limited to issues raised in the request for reconsideration.