

**Chapter 11-06**

**PLANNING AND ZONING COMMISSION APPLICATION REQUIREMENTS AND PROCEDURES**

**Sections:**

- 11-06-01 AMENDMENT; RECLASSIFICATION**
- 11-06-01.01 Power to Amend**
- 11-06-01.02 Application Required**
- 11-06-01.03 Public Hearing**
- 11-06-02 AMENDMENT OF THE COMPREHENSIVE PLAN**
- 11-06-02.01 Application and Review Required**
- 11-06-03 ANNEXATION**
- 11-06-03.01 Application Required**
- 11-06-03.02 Public Hearing**
- 11-06-03.03 Commission Shall File Recommendation**
- 11-06-03.04 Action by the Commission**
- 11-06-04 CONDITIONAL USE PERMITS**
- 11-06-04.01 Justification**
- 11-06-04.02 Application and Fee**
- 11-06-04.03 Notice of Hearing and Publication**
- 11-06-04.04 Commission Action**
- 11-06-04.05 Effective Date**
- 11-06-04.06 Application, Resubmittal**
- 11-06-04.07 Terms of Permits**
- 11-06-04.08 Extensions**
- 11-06-04.09 Modification & Revocation**
- 11-06-04.10 Staff Level Modifications**
- 11-06-04.11 Conditional Use Modification**
- 11-06-04.12 Commission Approval Required**
- 11-06-04.13 Criteria and Findings**
- 11-06-04.14 Conditional Use; Limitations**
- 11-06-04.15 Development Standards**
- 11-06-05 PLANNED DEVELOPMENTS**
- 11-06-05.01 Justification**
- 11-06-05.02 Use Exceptions**
- 11-06-05.03 Development Standards**
- 11-06-05.04 Application Procedure**
- 11-06-05.05 Staff Review Procedure**
- 11-06-05.06 Planned Developments; Developer Benefits**
- 11-06-05.07 FOOTHILLS PLANNED DEVELOPMENT ORDINANCE**
- 11-06-06 OTHER CONDITIONAL USE APPROVALS**
- 11-06-06.01 Repealed by 6059**
- 11-06-06.02 Child Care Facilities**
- 11-06-06.03 Multiple Family Dwellings in the R-3 District**
- 11-06-06.04 High Rise Multiple Family Dwellings**
- 11-06-06.05 Drive-up Windows: Purpose and Regulations**
- 11-06-06.06 Sexually Oriented Business**
- 11-06-06.07 Mobile Home Parks and Manufactured Home Communities, General**

	<b>Requirements and Allowances:</b>
11-06-06.08	<b>Exceptions to Parking Requirements</b>
11-06-06.09	<b>Conversion or Restoration of a Nonconforming Use</b>
11-06-06.10	<b>Restoration of Damaged Nonconforming Buildings</b>
11-06-06.11	<b>Expansion of Conditional Uses and Legal Nonconforming Uses:</b>
11-06-06.12	<b>General Height Exceptions</b>
11-06-06.13	<b>Public Services, Height Exception</b>
11-06-06.14	<b>Professional, Administrative and Business Offices in M-1 and M-2 Districts</b>
11-06-06.15	<b>Composting Facility</b>
11-06-06.16	<b>Public School Facilities</b>
11-06-07	<b>GENERAL EXCEPTIONS</b>
11-06-07.01	<b>General</b>
11-06-08	<b>SPECIAL EXCEPTIONS</b>
11-06-09	<b>VARIANCES TO THE FLOODPLAIN ORDINANCE</b>
11-06-10	<b>SIGN VARIANCES</b>
11-06-11	<b>VARIANCES TO THE ZONING ORDINANCE</b>
11-06-11.01	<b>Definition</b>
11-06-11.02	<b>Application Required</b>
11-06-11.03	<b>Opportunity to be Heard</b>
11-06-11.04	<b>Action by the Commission</b>
11-06-11.05	<b>Variance</b>
11-06-11.06	<b>Effective Date</b>
11-06-11.07	<b>Waiver of Appeal Period</b>
11-06-11.08	<b>Application, Resubmittal</b>
11-06-11.09	<b>Term of Variance</b>
11-06-11.10	<b>Extension of a Variance</b>
11-06-11.11	<b>Appeal of Variance Decisions</b>
11-06-11.12	<b>Denial of a Variance Permit or Approval of a Variance with Conditions Unacceptable to the Landowner</b>
11-06-12	<b>APPEALS OF ADMINISTRATIVE DECISIONS</b>
11-06-12.01	<b>General</b>
11-06-12.02	<b>Initiation of Application</b>
11-06-12.03	<b>Application and Fee</b>
11-06-12.04	<b>Action by the Planning Director</b>
11-06-12.05	<b>Hearings, Publications and Notice</b>
11-06-12.06	<b>Action by the Commission</b>
<b>Section 11-06-01</b>	<b>AMENDMENT; RECLASSIFICATION</b>

**Section 11-06-01.01 Power to Amend**

This Ordinance may be amended whenever the Council deems that amendment is required for the public convenience or necessity, or for the general welfare. Any amendment to this ordinance shall be enacted pursuant to this section. The amendment of this Ordinance or the reclassification of zoning districts may be initiated by the City Council, the Planning and Zoning Commission or by one or more property owners or holders of valid options to purchase property. The procedures set forth in this Section shall apply to any measure to change district boundaries, reclassify districts, to change district regulations, to add, repeal or amend district regulations and to add, repeal or amend any other provisions of this Section or the whole of this Ordinance.

**Section 11-06-01.02 Application Required**

Every person seeking the reclassification of any land as regulated by this Ordinance shall file an application and fee with the Planning Director in accordance with Section 11-3-2.

**Section 11-06-01.03 Public Hearing**

The Planning and Zoning Commission shall advertise, provide notice and conduct a public hearing in accordance with Section 11-3-6 of this Ordinance for each application to amend this Ordinance or to reclassify a zoning district.

Any recommendation of the Commission relating to change, modification and reclassification of zoning districts and land use classifications and the regulations and standards thereof shall be in writing. The recommendation shall include findings of fact supporting the purposes and objectives of zoning and otherwise securing public health, safety and general welfare. The recommendation shall specifically find that such changes, modifications and reclassifications of zoning districts and land use classifications and the regulations and the standards thereof:

- A. Comply with and conform to the Comprehensive Plan; and
- B. Provide and maintain sufficient transportation and other public facilities, and does not adversely impact the delivery of services by any political subdivision providing services.
- C. Maintain and preserve compatibility of surrounding zoning and development.

Failure of an application to meet these findings shall not prevent the request from being forwarded to the City Council for consideration after Commission review. Notice of the Commission's recommendation shall be included in the notice of the public hearing of the City Council.

(Ord. No. 5691, Amended, 12/27/95)  
(6006, Amended, 07/25/2000; 5916, Amended, 05/18/1999)

**Section 11-06-02 AMENDMENT OF THE COMPREHENSIVE PLAN**

- A. The Commission may recommend amendments to the plan to the Land Use Map component of the Comprehensive Plan not more frequently than every six (6) months. Amendments to the text of the Plan may be recommended by the Commission at any time. The Commission, prior to recommending the adoption, amendment, or repeal of the plan to the Council, shall conduct at least one (1) public hearing in accordance with Section 11-3-6 of this ordinance.
- B. Prior to recommending the adoption, rejection or revision of any Comprehensive Plan Amendment, and after notice has been provided and the report of the Director has been received, the Boise City Planning and Zoning Commission shall hold a public hearing in accordance with the procedures in Section 67-6509 of the Idaho Code and section 11-03-06.4 of the Boise City Code. The Director shall cause notice of the hearing to be published in accordance with section 11-03-06.1 of the Boise City Code . After the Commission has issued its recommendation, the Director shall submit a certified copy of the Comprehensive Plan Amendment as recommended by the Commission, the report of the Director, any proposed revisions to the Comprehensive Plan amendment, and transcripts of the proceedings before the Planning and Zoning Commission to the Mayor and City Council.

(6006, Amended, 07/25/2000; 5916, Amended, 05/18/1999)

**Section 11-06-02.01 Application and Review Required**

- A. Every person seeking an amendment of the Comprehensive Plan shall file an application with the Planning Director in accordance with Section 11-3-2 of this Ordinance.
- B. The Director shall establish deadlines for Comprehensive Plan amendment applications.
- C. The Director shall prepare a report indicating whether the proposed amendment is consistent with the other Elements of the Comprehensive Plan, the effect of the proposed development on the future growth of the city, and the existing Goals, Objectives and Policies of the Comprehensive Plan, and listing any revisions to the Boise City Zoning Code that would be needed to implement the proposed amendment. No amendment to the Comprehensive Plan may be recommended by the Planning and Zoning Commission or approved by the Mayor and City Council unless such amendment is consistent with the other elements of the Comprehensive Plan and the Comprehensive Plan Land Use Map, or where the other components of the Plan are changed to create internal consistency.

(5916, Amended, 05/18/1999)

**Section 11-06-03 ANNEXATION**

The corporate boundary of the City may be expanded whenever the Council deems it to be for the public convenience or necessity or for the general welfare. A request for the annexation of property into the City may be initiated by the City Council, the Planning and Zoning Commission or by one or more property owners or holders of valid options to purchase the property. When the annexation request is initiated by the property owner, the Planning and Zoning Commission may expand or modify the annexation request.

**Section 11-06-03.01 Application Required**

Every person seeking annexation into the City of Boise shall file, with the Planning Director, an application as prescribed in Sections 11-3-2 and 11-3-3.

**Section 11-06-03.02 Public Hearing**

The Commission shall hold at least one public hearing for each annexation request as prescribed in Section 11-3-6 of this Ordinance.

**Section 11-06-03.03 Commission Shall File Recommendation**

The Commission shall file its recommendation on each annexation application with the City Clerk in accordance with Section 11-6-3.4. The Commission's recommendation on annexation applications shall be in accordance with the following policies:

- A. That the annexation shall incorporate the Boise sewer planning area.
- B. Honor negotiated area of impact agreements.

- C. Attempt to balance costs of services with anticipated revenues.
- D. Promote other goals of population balance, contiguous development and prevention of costs due to leap frog development.

**Section 11-06-03.04 Action by the Commission**

At every hearing before the Commission, the Commission shall hear all persons interested in the subject matter then pending before it. Not later than ten (10) days after the conclusion of the proceedings, the Commission shall file with the City Clerk a written report of the hearings before and by the Commission at each hearing and its recommendations to the Council.

**Section 11-06-04 CONDITIONAL USE PERMITS**

**Section 11-06-04.01 Justification**

Conditional uses by definition possess characteristics such as to require review and appraisal by the Commission to determine whether or not the use would cause any damage, hazard, nuisance or other detriment to persons or property in the vicinity.

**Section 11-06-04.02 Application and Fee**

Every person seeking conditional use approval shall file an application and fee with the Planning Director in accordance with Section 11-03-02 of this Ordinance.

**Section 11-06-04.03 Notice of Hearing and Publication**

The Commission shall hold a public hearing and give notice of hearing for every application for a conditional use as required by Section 11-03-06.

**Section 11-06-04.04 Commission Action**

Following the hearing, the Commission shall approve, deny or modify the application for a conditional use permit, imposing any conditions needed to establish the findings of Section 11-06-04.11.

The Commission shall take action on all applications within sixty (60) days from the date of the initial hearing unless the applicant agrees, in writing, to a deferral for a longer period of time.  
(6071, Amended, 06/19/2001)

**Section 11-06-04.05 Effective Date**

Approval of any conditional use permit by the Commission shall become final after a lapse of ten calendar days from the date following the decision, provided however, that such effective date shall be stayed by the filing of an appeal as provided in Section 11-03-07.2.

**Section 11-06-04.06 Application, Resubmittal**

No application for conditional use permit which has been denied by the Commission or the Council, shall be resubmitted in either the same or substantially the same form in less than one year from the date of final action thereon.

**Section 11-06-04.07 Terms of Permits**

The term of a permit shall not exceed 18 months. Within this period, the holder of the permit must:

- A. Acquire construction permits and commence placement of permanent footings and structures on or in the ground. The definition of structures in this context shall include sewer lines, water lines, streets, or building foundations; or
- B. Commence the use permitted by the permits in accordance with the conditions of approval; or
- C. For conceptual conditional use permits, submit an application for detailed conditional use permit; or
- D. For projects which require platting, the plat must be recorded within this period. All plats, and all phases thereof, contingent upon the conditional use permit are subject to paragraph E of this section.
- E. The time within which the entire project must be completed shall not exceed 60 months, unless otherwise approved by the Planning & Zoning Commission. All plats contingent upon the conditional use permit shall be recorded within this period. If subdivision platting is not required, the holder of the permit shall obtain construction permits or, if construction permits are not required, shall commence the use in accordance with the conditional use permit within the term established. The Planning & Zoning Commission may set the term of the permit for more than 60 months for large projects, phased projects, projects requiring multiple subdivision plats, or where extending the term of the permit is found to serve the public interest. The Planning & Zoning Commission may approve a term for greater than 60 months as part of the conditional use permit; other time extensions may be granted in accordance with Section 11-06-04.08 of this ordinance.

(6010, Amended, 08/29/2000)

**Section 11-06-04.08 Extensions**

The Commission may, upon written request by the holder, grant a one-year time extension to an unexpired conditional use permit. Upon receipt of written request for extension, the Planning Director shall determine if a hearing on the request is required, based on the following considerations:

- A. Whether there have been significant amendments to the Boise Comprehensive Plan or Boise City Zoning Ordinance which will apply to the subject conditional use permit; or
- B. If significant land use changes have occurred in the project vicinity which would adversely impact the project or be adversely impacted by the project; or
- C. Whether hazardous situations which have developed or have been discovered in the project area;

or

- D. If community facilities and services required for the project remain adequate.
- E. A maximum of three 1-year time extensions may be granted to unexpired conditional use permits.

If any of the foregoing considerations are found to exist with regard to the project for which an extension is sought, a hearing shall be required.

If a hearing is required, notice shall be provided as described in Section 11-03-06 and a new application and fee must be submitted in compliance with current plans and ordinances and in accordance with the application procedures of this section.

(5916, Amended, 05/18/1999)

#### **Section 11-06-04.09 Modification & Revocation**

Upon application by the holder of a conditional use permit, the Commission may modify the conditions and limitations of the permit in accordance with the limitations and requirements of Section 11-06-04.13. The Commission may delegate to the Planning Director authority to consider minor modifications to conditional use permits. The Planning Director may refer any modification request to the Commission if in his/her judgment the change is significant or could best be reviewed by the Commission. The Commission may revoke or modify a conditional use permit, upon notice and hearing, for breach or violation of any condition or limitation of said permit.

#### **Section 11-06-04.10 Staff Level Modifications**

Staff level modifications of conditional use approvals shall include but are not limited to the following considerations:

- A. A reduction in density which does not exceed 25 percent of the total units.
- B. A relocation of dwelling units or building pads for some practical reason such as road alignment, topography, access or solar access or stability in hillside areas. (Amended by Ord. 5233, 5-8-90)
- C. A change in the phasing plan.
- D. A modification to the recreation area or open space design, but not elimination or significant reduction.
- E. An increase or decrease in proposed setback as long as ordinance requirements are met.
- F. A change in building elevations as reviewed and approved by the Design Review Staff or Committee.

#### **Section 11-06-04.11 Conditional Use Modification**

Prior to approving any conditional use modification the Planning Director shall determine that

the following are true:

- A. The requested modification was not the subject of an appeal during the public hearing process; or
- B. The requested modification will not adversely impact adjacent properties.

All staff-level conditional use modification approvals shall be in writing and shall be signed by the Planning Director or Deputy Director. A letter stating the nature of the modification and findings-of-fact on which the approval was based shall be provided by mail to the applicant. A notice, stating the nature of the modification, shall be provided by mail to the property owners, purchasers of record and residents within a three hundred foot (300') radius of the external boundaries of the subject property. A copy of that notice and documentation of its mailing shall noted and entered into the project files.

#### **Section 11-06-04.12 Commission Approval Required**

Commission level approval of conditional use modifications shall be required for the changes described below:

- A. Any increase in density.
- B. Density decreases exceeding 25 percent of the total approved by the conditional use.
- C. Any change that will impact the neighborhood such as a change in traffic generation or flow, impacts to river or foothills areas, or increases in soil erosion. (Amended by Ord. 5233, 5-8-90)
- D. The requested change was the subject of an appeal during the public hearing.
- E. The requested change would affect some other condition such as a condition regarding greenbelt, streets, schools, floodplain, foothills, etc. (Amended by Ord. 5233, 5-8-90)
- F. A request for greater than twenty percent (20%) increase in building square footage. (Amended by Ord. 5233, 5-8-90)
- G. A request to change the nature of the approved use.
- H. A request to change or delete a condition of approval.
- I. A request which would increase or cause impacts to a foothill or river area. (Amended by Ord. 5233, 5-8-90)

#### **Section 11-06-04.13 Criteria and Findings**

The Commission, following the procedures outlined below, may approve a conditional use permit when the evidence presented at the hearing is such as to establish:

- A. That the location of the proposed use is compatible to other uses in the general neighborhood; and

- B. That the proposed use will not place an undue burden on transportation and other public facilities in the vicinity; and
- C. That the site is large enough to accommodate the proposed use and all yards, open spaces, pathways, walls and fences, parking, loading, landscaping and such other features as are required by this title; and
- D. That the proposed use, if it complies with all conditions imposed, will not adversely affect other property of the vicinity; and
- E. That the proposed use is in compliance with and supports the goals and objectives of the Comprehensive Plan.
- F. Multiple family building (any building containing more than 2 residential units) must be designed to include features which add to the visual and aesthetic appearance of the structure and help prevent a sterile, box-like appearance. Such features may include the use of brick or stone, roof or facade modulation, planter boxes, bay windows, balconies, porches, etc. The Commission or committee must make a finding that specific design features have been added to enhance the physical appearance of such multiple-family residential structures.
- G. Drive-up Windows in a C-5 District; that the proposed use, if it complies with all conditions imposed, will not adversely affect pedestrian traffic or create an unsafe pedestrian environment and that the location and design of the drive-up window provides proper on-site vehicle stacking based on peak hours, and minimizes potential circulation issues or other negative impacts to pedestrians or traffic.

The additional finding 11-06-04.13 (G) shall only apply to drive-up windows in a C-5 District. General conditional use criteria and findings in Section 11-06-04.13 of this code shall not be applied to a Sexually Oriented Business or Bikini Bar, but rather all sexually oriented businesses shall be subject to a conditional use permit that is objective, narrowly tailored, reasonable, uniform and content neutral. (6353, Amended, 10/12/2004; 6071, Amended, 06/19/2001; 5916, Amended, 05/18/1999)

#### **Section 11-06-04.14 Conditional Use; Limitations**

It is not the intent of this Section to restrict or specify the particular architectural design proposed or to specify the exterior detail or design, color or materials proposed by the applicant, except as such detail is of such magnitude as to affect the general appearance and compatibility of the development with its surroundings. The Commission, in acting upon the application, shall provide that approval of a conditional use permit shall be contingent upon compliance with specified conditions, including but not limited to the following matters:

- A. Conformity to approved plans and specifications;
- B. Open spaces, pathways, buffer strips, walls, fences, landscaping and lighting;
- C. Volume of traffic generated, requirements for off-street parking, service drive design and construction standards, vehicular movements within the site and points of vehicular ingress and egress;

- D. Performance characteristics, related to noise, vibration and other potentially dangerous or objectionable elements;
- E. Limits on time of day for the conduct of specified activities;
- F. The term of a permit, or the period of time for which a permit is issued;
- G. Guarantees as to compliance with the terms of the approval;
- H. Number, location, color, size, height, lighting and landscaping of outdoor signs and structures.
- I. Public improvements, including the installation of street lights, in accordance with the requirements of the Public Works Department.
- J. Requiring all irrigation or drainage ditches, laterals and canals crossing, intersecting and lying adjacent or contiguous to lands used for multiple family dwelling, kindergarten, school, nursery, manufactured home community or mobile home park uses to be covered or fenced with a chain link or equivalent fence at least four feet (4') high and securely fastened at its base at all places where either or both banks of said ditch, lateral or canal touch any of said uses of land, except that the Commission may waive this restriction in whole or in part if it is found that the covering or fencing will not serve the public interests in an individual case.
- K. Compliance with the Hillside regulations as administered by the Boise Public Works Department when any slope is 15% or greater.
- L. Private streets must be approved by the Boise City Council.
- M. Denial of a conditional use permit or approval of a conditional use permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis and procedures provided for by Section 11-08-03 of this Ordinance.

(6281, Amended, 12/02/2003; Ord. 5894, Amended, 02/24/1999)

#### **Section 11-06-04.15 Development Standards**

The Planning and Zoning Commission may approve as part of a conditional use a change from required setbacks, off-street parking, fence heights, and other standards particular to that development. The applicant shall specify in the conditional use application the standards from which a change is being requested. The Commission shall review all such requests in accordance with Section 11-06-11; VARIANCES TO THE ZONING ORDINANCE, except as provided in Section 11-06-05, PLANNED DEVELOPMENTS.

(Ord. No. 5547, Amended, 06/14/94; Ord. No. 5637, Amended, 06/20/95; Ord. No. 5644, Amended, 07/11/95; Ord. No. 5680, Amended, 11/21/95; Ord. No. 5691, Amended, 12/27/95)  
(5916, Amended, 05/18/1999)

#### **Section 11-06-05 PLANNED DEVELOPMENTS**

**Section 11-06-05.01 Justification**

A planned development is a parcel of land which is planned and developed as a unit under single ownership or control, containing one or more uses, buildings and common open space or recreational facilities.

The planned development process provides an opportunity for land development that preserves natural features, allows efficient provision of services, and provides common open spaces or other amenities not found in traditional lot-by-lot development. The process also provides for the consistent application of conditions of approval for the various phases of a planned development. Every planned development requires a conditional use application, and shall be subject to all conditional use procedures.

**Section 11-06-05.02 Use Exceptions**

In the case of planned developments greater than five (5) acres in size in residential, limited office commercial or industrial districts, the Commission may authorize specified uses not permitted by the use regulations of the district in which the development is located. The purpose of this provision is to avoid single-use projects that generate high levels of traffic and to promote other uses which are functionally integrated with and provide services to the primary use.

- A. That the uses permitted by such exception are strongly related to the primary use and are intended and designed to provide services or facilities useful and convenient to the primary use.
- B. That the uses permitted by such exception are integrated into the larger project through the following features:
  - 1) The use exception site shall be located in proximity to and therefore within reasonable walking distance of all portions of the primary use.
  - 2) One or more of the main vehicular accesses to the primary site shall also serve as the main access(es) for the use exception site.
  - 3) Pedestrian and/or bicycle pathway connections shall be provided from the primary use.
  - 4) Buildings on the use exception site shall be oriented to facility access from the primary use.
  - 5) Architecture and building bulk shall reflect or compliment the primary use.
  - 6) Landscaping concepts from the primary use shall be continued onto the use of the exception site.
  - 7) Signage shall be low profile and consistent with any sign package submitted for the primary use.
- C. That the uses permitted by the exception are neighborhood or community-serving in nature and in scale and do not constitute a regional-serving use.
- D. That the uses permitted by such exception are not of such a nature or so located as to be detrimental to the surrounding neighborhood; and

- E. That no more than twenty percent (20%) of the total area of the planned development shall be devoted to the uses permitted by the exception; and
- F. That the development is phased so that the construction of the excepted use or uses will be justified by the construction of all or a proportionate phase of the permitted use; and
- G. That projects in areas with slopes of 15% gradient or greater comply with the Hillside regulations of the City of Boise as administered by the Boise Public Works Department.
- H. That the conceptually approved excepted uses shall be subject to Design Review approval prior to issuance of a building permit.

(5804, Amended, 07/22/1997)

### **Section 11-06-05.03 Development Standards**

The Planning and Zoning Commission may approve planned unit developments in accordance with the following standards:

- A. Changes from the development standards of the underlying zone may be approved. For planned unit developments in the R-1M District, only minor changes consistent with the purpose of the R-1M zone may be approved.
- B. Planned Development Size: The minimum size for a planned development shall be as follows:
  - 1. Planned residential development - no minimum.
  - 2. Planned commercial development - one (1) acres.
  - 3. Planned industrial development - five (5) acres.
  - 4. Planned office development - two (2) acres.
- C. Residential Density: The number of dwelling units allowed in a planned development shall be calculated by dividing the gross area, less the area set aside for nonresidential uses (that is, office, commercial or industrial), by the minimum lot area per dwelling unit required by the zone in which the site is located.
- D. Amenities: Two or more of the following amenities shall be provided as part of each planned development greater than one (1) acres in size:
  - 1. Energy conservation measures such as solar access with active solar heating or water heating capacity, or water conservation measures such as adherence to water-efficient landscaping principals including the use of drought-tolerant native and naturalized plants.
  - 2. Private active recreational facilities such as a swimming pool, tennis court, or or playground, picnic area, etc. of a size appropriate to meet the needs of the development.
  - 3. Landscaped open space of at least 10% of gross area excluding required setbacks.

4. Provision for public access to or additions to the Boise River Greenbelt, neighborhood park system or other public open space.
  5. A Class I public bicycle circulation system to connect to existing or planned routes on the periphery of the development. Such facilities shall be designed and constructed in accordance with The Bicycle Pedestrian Design Manual for Ada County.
  6. Other amenities as approved by the Planning and Zoning Commission.
- E. All residential planned developments on less than 1 acre shall provide each dwelling unit with a minimum of one-hundred (100) sq. ft. of usable private open space. The Planning and Zoning Commission should evaluate each project on its own merits and allow variations to the open space standard where it can be shown that the provided space meets the intent and purpose of the ordinance.
- F. Required Setbacks: Attached structures may be permitted in planned developments.
- Along the periphery of planned developments, yards shall be provided as required by the regulations of the district in which the development is located unless the Commission provides an exception as provided for in Section 11-06-11.05. Where development already exists at the periphery, the yards shall, where practical, be matched. For example, side yards should be provided adjacent to side yards, rear yards adjacent to rear yards and front yards opposite front yards.
- G. Service drive design and construction shall comply with the requirements of the Zoning Ordinance. Private street design and construction shall comply with the requirements of the Subdivision Ordinance.
- H. Residential Infill Planned Developments: Lots within the City of Boise which are located within areas already largely developed (at least 80% of the land within 300 ft. of the exterior boundaries of the subject lot) and to which municipal fire, police, sewer, water and school services are already available may qualify for infill development. In reviewing infill planned development, the Commission may allow exceptions to paragraphs A-G of Section 11-06-05.3.
1. The applicant shall submit documentation that the site qualifies as an infill site with the conditional use application. Verification of infill may be in the form of recent aerial photographs. In addition, the developer shall provide documentation regarding the availability of the following services: (1) water, (2) sewer, (3) fire coverage and (4) public schools.
  2. The applicant shall demonstrate the design is compatible with the existing neighborhood and adjoining properties by taking into account product type, height, bulk and site location.
- I. Hillside and Foothill Development: The Boise City Hillside and Foothill Area Development Ordinance as set forth in Chapter 14 of this ordinance shall apply to all projects within hillside areas. The provisions of the Hillside and Foothill Area Development Ordinance shall apply to any development proposal with any topographical slope exceeding fifteen percent (15%) or where adverse conditions related to slope stability, erosion or sedimentation exists as determined by the City Engineer.

All preliminary soils, geology, hydrology, grading and drainage information required by the

Hillside and Foothills Area Development Ordinance shall be submitted along with the application for conditional use. Prior to the issuance of building permits, all final engineering reports including a revegetation plan must be submitted and approved by the Public Works Department. The Planning Director shall coordinate all hillside conditional use applications with the City Engineer to assure that all ordinance requirements have been met prior to authorizing the issuance of a building permit.

- J. Compliance with the Micro-Pathway Regulations of the Boise City Code.
- K. Residential Uses: A variety of housing types or residential uses may be included in planned developments including attached units (duplexes, townhomes), detached units (patio homes), single family units (except mobile homes and stock manufactured homes, see section 11-06-06.8), and multiple family units (triplexes, 4-plexes, 6-plexes, etc.) regardless of the zoning classification of the district, provided that the overall density of the zone is maintained. Duplexes reviewed as part of a planned development shall meet the design criteria of section 11-05-05.

(6459, Amended, 03/21/2006; 6331, Amended, 07/13/2004; 6315, Amended, 04/20/2004; 6183, Amended, 10/01/2002; 5916, Amended, 05/18/1999; Ord. 5894, Amended, 02/24/1999; 5233, Amended, 05/08/1990)

#### **Section 11-06-05.04 Application Procedure**

- A. A conditional use application for a planned development may be submitted in one or two stages:
1. As a detailed conditional use application; or
  2. Any Commission-level conditional use application may be submitted and processed as a concept plan. The applicant must specify on the application form that concept approval is being requested. A concept approval is a statement by the City of Boise that a general development plan including the general arrangement of uses, density, location of major streets, open spaces, utilities, etc. is acceptable. A concept review allows the applicant to obtain approval of a general development plan without incurring the expense of preparing detailed building plans until after the concept approval. It provides the developer and the City with guidelines for the design of each phase of a project. Supporting information will be required for concept applications as specified by the Planning Director.

Each phase of a concept approval requires detailed conditional use approval through a new application, fee and public hearing. The only exception to the detailed conditional use requirement are those concept approvals which are specifically authorized by the Commission to proceed directly to Design Review without a detailed conditional use approval. Submittal requirements for detailed conditional use applications are the same as for standard conditional use applications that are processed and reviewed in one step.

- B. The concept and detailed conditional use applications are both subject to the public hearing requirements of Section 11-03-06 and the conditional use requirements of Sections 11-06-04 and 11-06-05.
- C. Concurrent review of other applications may be required. In cases where subdivision platting is being proposed or would be required, concurrent review of the conditional use and subdivision plat is required when the Planning Director determines that regulations of the subdivision

ordinance, including but not limited to private streets, apply to the design of the proposed development.

- D. Denial of a planned unit development (PUD) permit or approval of a PUD permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis and procedures provided for in Section 11-08-13 of this ordinance.

(6281, Amended, 12/02/2003)

#### **Section 11-06-05.05 Staff Review Procedure**

The Planning Director may extend the review/processing period for large planned development applications to a maximum of 66 days from the cut-off date prior to which the application was submitted. This extended review period is to allow for adequate staff research and analysis, agency review and comment, coordination with other city departments, and coordination with the applicant. Planned development applications for which additional review time is required shall be subject to the following procedures:

- A. A summary of the development proposal shall be presented to the City Council as an information item during a scheduled Pre-Council meeting prior to the submittal of the staff report to the Planning and Zoning Commission.
- B. Recommended conditions of approval submitted to the Planning and Zoning Commission and made available to the public shall not be altered by staff or any other party prior to the public hearing. The Commission may alter or modify conditions of approval.

#### **Section 11-06-05.06 Planned Developments; Developer Benefits**

Planned developments are intended to provide certain benefits to the public and to the developer. The installation of public improvements (streets, water, sewer, street lights, etc.) and two or more of the amenities set forth in Section 11-06-05.3.D. ensure a public benefit. To provide the developer with an incentive to utilize the planned development process, the following allowances may be incorporated into a planned development proposal:

- A. A variety of housing types may be included in the project including attached units, detached units, single family units and multiple family units.
- B. The minimum lot size of the zoning district may be reduced within the density limits of the district.
- C. Planned developments may use private streets and service drives that are designed and constructed to the standards of the Zoning and Subdivision Ordinances, however, no such roadway shall be permitted unless it is found to be in compliance with sections 9-20-7E and 11-10-4.3 of the Boise City Code.
- D. Setbacks for buildings within the interior of the project may be less than required in the zoning district.
- E. The conditions of approval applied to a large planned development concept plan shall be applied consistently to each subsequent phase unless otherwise agreed to by both the applicant and

the Commission.

F. Uses which are not allowed within the zoning district may be allowed as part of the planned development subject to the 20% exception requirements of Section 11-6-5.2.

G. Buildings may be clustered to preserve foothills, river areas and other environmentally sensitive areas as open space.

(5691, Amended, 12/27/1995; 5637, Amended, 06/20/1995; 5547, Amended, 06/14/1994; 5233, Amended, 05/08/1990)

## **Section 11-06-05.07 Foothills Planned Development Ordinance**

### **11-06-05.07.01. Purpose and Intent**

The purpose of the Foothills Planned Development Ordinance is to implement residential subdivision density and design elements of the *Boise City Foothills Policy Plan* (The Plan) and the *Boise City Comprehensive Plan*. It is also designed to protect and promote preservation of contiguous areas of Foothills open space that contain important and significant natural and cultural resource values, as identified in The Plan and this ordinance.

### **11-06-05.07.02. Applicability**

The Foothills Planned Development Ordinance shall apply to all proposed developments in the Boise City Foothills Planning Area where an annexation and/or rezone is required.

### **11-06-05.07.03. General Application and Development Requirements**

1. All developments shall be processed as Planned Developments (PDs) under Section 11-06-05 of the *Boise City Zoning Ordinance*.
2. Planned development proposals shall include applications for an annexation, a development agreement, a preliminary plat subdivision, a "Hillside and Foothill Areas Development" permit, and where applicable, a floodplain permit. The initial applications may consist of conceptual applications as described in Appendix A, Phase II.
3. Upon annexation the buildable areas of the PD shall be zoned "R-1A," Single-Family Residential, with the density and design further controlled by the provisions of this ordinance. Slope protection and preserved open space areas shall be zoned A-1 or A-2.
4. Developments shall be required to connect to municipal water and sewer services and participate in other municipal service districts as applicable.
5. Density bonuses do not add to buildable area to be developed, they simply add to the number of units allowed.

### **11-06-05.07.04. Density Bonus**

A density bonus pursuant to the formula in Table 1 shall be granted in return for the provision of preserved open space.

A. Basic Provisions:

1. The base density on parcels proposed for development is that given for the existing Boise City or Ada County zone(s).

2. The density bonus is based upon the ratio of buildable area to be preserved as open space, to the buildable area to be developed. See the Definitions section for the definition of “Buildable Area.”
3. The base density units may be added to the density bonus units without the requirement for additional open space preservation.
4. A developer may propose open space/density bonus points between those identified in Table 1, provided that the curve of the formula is unchanged.
5. The density formula may be adjusted to allow density transfers from other non-contiguous parcels at such time as a Transfer of Development Rights (TDR) ordinance is adopted and in effect..

B. Preserved Open Space Eligible for a Density Bonus as per the formula in Table 1, shall meet the following requirements:

1. Lands of 25% slope or less, one acre or greater in size, with a minimum average width of 30 feet.
2. Public rights-of-way that meet requirements of this section, serve to connect development pockets, and provide access to public open space may be included in the density calculation for open space, but roads within a development pocket shall not be included. Rights-of-way that have dwelling units fronting or siding onto them shall not be included.
3. Other lands classified as Priority Open Space in section C below.

**Table 1 - Density Bonus Formula\***

<b>Built Area Percent</b>	<b>Open Space Dedicated Percent</b>	<b>Density Bonus Units /Acre</b>	<i>Example</i>	
			<i>Buildable Area On 100 acres After Open Space Set-Aside</i>	<i># of Bonus Units</i>
<b>75%</b>	<b>25%</b>	<b>0.5</b>	75.0	38
<b>69%</b>	<b>31%</b>	<b>0.75</b>	68.8	52
<b>63%</b>	<b>38%</b>	<b>1.0</b>	62.5	63
<b>56%</b>	<b>44%</b>	<b>1.25</b>	56.3	70
<b>50%</b>	<b>50%</b>	<b>1.5</b>	50.0	75
<b>44%</b>	<b>56%</b>	<b>1.75</b>	43.8	77
<b>38%</b>	<b>63%</b>	<b>2.25</b>	37.5	84
<b>31%</b>	<b>69%</b>	<b>3.0</b>	31.3	94
<b>25%</b>	<b>75%</b>	<b>4.0</b>	25.0	100

\*1) The base density of one unit per forty acres for the entire project area may be added to the number of units allowed by the density bonus formula.

C. Other Open Space Allowances:

The City recognizes that the foothills provide a great degree of variability in landforms, environmental habitats and cultural resources. Some areas may have a combination of characteristics that cause them to be considered worthy of special incentives for preservation, even if they do not meet the normal size, slope or dimensional requirements necessary to qualify as Open Space Eligible for a Density Bonus as per Section 11-06-05.7.4.B above. When these areas are identified on a property and proposed for preservation, the Planning and Zoning Commission may classify them as Priority Open Space and allow all or a portion of them to qualify for the granting of a density bonus.

In order to qualify for a density bonus, Priority Open Space lands must demonstrate at least four of eleven characteristics established for high priority open space lands. There must also be a demonstrable increase in the public value of the resource by such allowance that would not be realized by strict adherence to the other provisions of this code.

Priority Open Space Characteristics:

Of the following eleven characteristics of high priority open space, at least four must co-exist on a property for consideration as Priority Open Space Eligible for a Density Bonus:

1. Wetlands
2. Riparian areas
3. Rare plant communities
4. Critical deer and elk winter range and migration corridors
5. Boise City Historic Preservation Committee: Potential Public Preservation Sites
6. Unique geologic or visual features
7. Archeologic or other historic sites
8. Trails and trail-heads designated in the Ada County Ridge to Rivers Pathway Plan
9. Other public trails and trail heads as approved by the Boise City Parks and Recreation Board
10. Lands adjacent to publicly-held open spaces
11. Lands adjacent to areas that are, or have the potential to be, designated and set aside as public open space lands in accordance with the provisions of this ordinance.

Criteria for Determining Demonstrable Increase in Public Value of Priority Open Space:

In allowing density bonus credit for priority open space in steeply sloped areas or in fragmented pieces, there must be a demonstrable increase in the public value of the resource by such allowance. Demonstrable increase in value may include but is not limited to the following:

1. Allowance for public access.

2. Protection from alteration of important vegetation, terrain or scenic views and vistas that could otherwise occur from a permitted use such as mining, logging, grazing or construction of utilities or infrastructure.
3. Linkage of interspersed eligible open space areas into a more biologically complete and continuous wildlife corridor.
4. Dedication or discounted sale to a willing public agency.

Planning and Zoning Commission Consideration of Priority Open Space:

It is not the intent of this section to broadly allow the designation of highly fragmented or steeply sloped land as open space, to the total exclusion of the normal requirements of clustering and set aside of buildable area open space. Priority Open Space, when it exists, should be used in balance with other forms of eligible open space to meet the requirements of this code.

When the applicant demonstrates that a portion of his property not otherwise qualified as Open Space Eligible for a Density Bonus as per Section 11-06-05.7.4.B, does meet the above-listed criteria, the Commission may classify it as Priority Open Space and allow some or all of it to qualify for the granting of a density bonus. The amount allowed to qualify as Open Space Eligible for a Density Bonus shall be discretionary based upon the degree to which it meets or exceeds the minimum criteria established in this section. The Planning and Zoning Commission shall seek the input of the Idaho Department of Fish and Game, the Boise City Parks and Recreation Board and other public agencies with expertise in the issue at hand, in determining the proper amount to be allowed to be set aside in return for a density bonus.

D. **Golf Courses Allowed in Open Space** Golf courses may be permitted in designated preserved open space areas, provided that they are of the Links type in which players hit from a tee box to a green with the intervening spaces maintained in a primarily natural condition. These golf courses shall be characterized by the use of native plants with natural landform contours left intact. Parking lots, club houses, driving ranges, maintenance facilities and similar golf related uses shall not be counted as open space contributory to the density bonus. Designated trails and park sites must be preserved in or around the golf course.

E. The following are ineligible for inclusion as preserved open space in the density bonus calculation, except as may be provided in paragraphs "C" of this section:

1. Urban developed uses such as club houses, tennis courts, swimming pools, dirt bike tracks, golf driving ranges and similar uses that dramatically alter land from its natural state, and/or uses that may be considered a commercial land use of the site.
2. Internal park sites. Park sites may only be included as eligible open space when they are left in a primarily natural condition and include a significant opening from the subdivision into a larger designated open space area outside the subdivision.

**11-06-05.07.05. General Design Criteria**

A. Foothills Planned Developments shall be designed to meet the following general criteria:

1. Residential uses shall be clustered within development pockets rather than scattered throughout the property, while preserving the remaining land in separate parcel(s) of permanent open space.

2. Designated open space areas shall be linked to other open spaces to the greatest extent possible.
3. Road and trail access to adjacent properties shall be provided to prevent landlocked parcels and/or breaks in the trail systems.
4. Disturbance of the land shall be minimized and development shall be avoided in areas that would necessitate excessive grading, cut and fill.
5. Development pockets shall be sited and designed in compliance with policies in The Plan concerning clustering, environmental protection, open space conservation and scenic and aesthetic goals.
6. Fire safety and protection measures to reduce the threat of wildfires shall be incorporated into the design in accordance with *Uniform Fire Code* and *Boise City Code* Title 7. Such measures shall include internal residential sprinkling systems, defensible space for the structures and the provision of safe evacuation routes for residents in case of wildfire.
7. Gated developments are prohibited due to the potential for such limited access to restrict or delay emergency response in the Foothills.
8. The crossing of designated open space, floodways, wetlands and areas of high wildlife habitat value with roads and infrastructure shall be avoided to the greatest extent possible.
9. A mixture of dwelling unit types is allowed, including single family and multi-family units.
10. Neighborhood commercial and service commercial uses are allowed, but they must be designed to reflect and conform to the height, mass, materials and site design of the residential structures in the PD.
11. Setbacks and other dimensional standards may be varied to suit the conditions.

B. Trails are required in Foothills Planned Developments according to the following:

1. There shall be public access to public trails contiguous to and/or intersecting the subject parcel(s).
2. Trail design should preserve the natural scenic and wildlife habitat values.
3. The *Ada County Ridge-To-Rivers Pathway Plan* shall be used as a guide for trail locations.
4. Trails shall be secured through dedication, easement or other such binding mechanism, and shown on the subdivision plat.
5. If no contiguous and/or intersecting public trails exist or are proposed, private trails may be established through the common open space area, provided that the design preserves the natural character and wildlife habitat value of the open space area.

C. The general design and use of preserved open space shall comply with the following requirements:

1. Preserve contiguous areas of open space, both within the subject parcel and adjacent parcels, by aligning them along common corridors to the extent possible.
2. Maintain open space in a “natural condition,” ungraded and left in indigenous plant species as much as possible. Noxious and invasive weeds are not considered part of the indigenous plant population and are not protected by this ordinance.
3. Preserve areas of highest wildlife habitat value and contiguous wildlife migration corridors in designated Wildlife Habitat Areas, as defined on the map, Figure 2-1, in The Plan. This requirement is subject to the approval of the Idaho State Fish and Game Department.
4. Preserve unique geologic and historic features, defined as Heritage sites and sites designated for historic preservation by City, State and Federal agencies.
5. Exclude development from geologic hazard areas, specifically landslide areas, and areas with unstable soils.

**11-06-05.07.06. Building and Grading Disturbance Envelopes**

1. Building envelopes depicting the limits of building footprints shall be shown on the final Conditional Use site plan for all structures and facilities in the planned development.
2. Parcels with slopes greater than 25% shall be shown on the Conditional Use permit with a disturbance envelope that defines the area outside of which no grading will be allowed. The purpose is to protect neighboring properties, storm water drainage systems, and other infrastructure from the collapse or failure of non-approved poorly designed cuts and fills.

**11-06-05.07.07. Ownership and Maintenance of Open Space**

Open space areas may be owned and maintained as follows:

1. Owned and maintained by and for the use of the homeowners’ association of the project of which it is a part; or,
2. Joined with preserved open space lands held by any neighboring homeowner’s association, or, preservation through an organization with adjacent lands held in permanent open space which would then be jointly maintained under an agreement contained in the Conditional Use Permit and/or Development Agreement with the City; or,
3. Dedicated or sold to the city, if recommended for approval by the Boise City Board of Parks and Recreation Commission, or other public agency, or private land trust for open space uses as may be approved in the Development Agreement and/or the Conditional Use and approved by the City Council; or,

4. Other open space preservation strategies under sole or joint ownership, such as deed restrictions, or conservation easements, may be set up, and executed when approved by the city.
5. Where the goals and policies of the *Ada County Ridge-To-Rivers Pathway Plan*, the Boise City Heritage Preservation Committee: Potential Public Preservation Sites plan, *Boise City Comprehensive Plans* and/or *Ada County Comprehensive Plans* and their referenced plans specify the need for public trails or open space, easements for public lands or trails may be required as part of the development's permanent open space. These trails or open spaces may be held in private ownership with an easement, or may be purchased by the city, or dedicated to the city for that use by the landowner(s).
6. Specific agricultural or utility use exceptions may be permitted in open spaces, including livestock grazing, community gardens, irrigation ponds or storm water retention ponds. These uses shall not include buildings or structures except those necessary appurtenances required by those uses, such as dams and irrigation/drainage systems. These use exceptions shall comply with the policies of The Plan, shall be shown on the conditional use site plan, and shall not degrade the value of the permanent open space.
7. Fencing shall not encroach into or bisect preserved open space areas.
8. The city will accept no responsibility for the costs for maintenance of open space or recreational facilities unless the Boise City Board of Parks and Recreation Commission and the Boise City Council specifically approves such charges.

**11-06-05.07.08. Other Foothills Planned Development Requirements**

Nothing in this section shall be construed to relieve an applicant from fully meeting other requirements of the *Boise City Foothills Policy Plan*, the "Hillside and Foothill Areas Development Ordinance," or other Chapters of the *Boise City Zoning Ordinance*.

**11-06-05.07.09. Definitions**

**AREA WITH A SLOPE GREATER THAN 25%:**

An area with a natural (pre-grading) slope greater than 25%, mapped to a minimum resolution of 6,000 square feet in area, also called a Non-Buildable Area.

**AREA WITH A SLOPE OF 25% OR LESS:**

An area with a natural (pre-grading) slope of 25% or less, mapped to a minimum resolution of 6,000 square feet in area, also called a Buildable Area.

**BOISE CITY FOOTHILLS PLANNING AREA:**

The area defined in the *Foothills Policy Plan* and the *Boise City Comprehensive Plan* within the Boise City Area of Impact Boundary.

**BUILDABLE AREA:**

Lands with a slope of 25% or less are buildable areas, if outside floodways or geologic hazards. Buildable areas must be designated in the Conditional Use site plan as either development pockets or permanent open space in the ratio chosen under the density bonus formula. Buildable area is determined by natural topography, not by post-construction graded contours.

**DEVELOPMENT POCKETS:**

These are the buildable areas designated on the site plan and plat map where the structures and appurtenances will be clustered. These areas will be largely less than 25% slope but may contain fragments of steeper areas as needed to accommodate the site design.

**FOOTHILLS PLANNED DEVELOPMENT:**

A parcel or parcels of land which is planned and developed as a unit under single ownership or control, containing several uses, buildings and common open space or recreational facilities. It is a type of development characterized by master planning for the project as a whole, with clustered structures to preserve usable open space and other natural features, with a mixture of housing types within the permitted densities. This development may include neighborhood commercial and service uses.

**HERITAGE SITES:**

Sites within the Foothills Planning Area with historic, geologic or cultural value, including threatened or endangered species habitat, as listed in the publication *Potential Public Preservation Sites*, by the Boise City Heritage Preservation Committee, 1993, and other sites designated as historic by City, State or Federal agencies.

**NON-BUILDABLE AREA:**

Lands with a slope greater than 25% are non-buildable areas and do not qualify as a development pocket, nor are they eligible to be calculated as open space for establishing a density bonus, unless classified as Priority Open Space.

**OPEN SPACE ELIGIBLE FOR DENSITY BONUS (ELIGIBLE OPEN SPACE):**

An area of one acre or greater in size with a slope of 25% or less and a minimum average width of 30 feet, which is set aside as preserved open space in return for an increase in density on other buildable areas of the site, according to the density bonus formula. Other open space areas which do not meet these criteria may also be counted as open space eligible for the density bonus if they meet the criteria established in section 11-06-05.7.4.C for Priority Open Space, and are approved by the Planning and Zoning Commission.

**PERCENT SLOPE:**

Percent slope is the vertical rise divided by the horizontal distance within which the vertical rise takes place.

**PRESERVED OPEN SPACE:**

Land dedicated on the plat and defined in the Conditional Use permit for the very limited uses of undeveloped natural open space, wildlife habitat and recreational uses, and applied toward the granting of a density bonus based upon such open space preservation. Preserved Open Space may be either public or private, or any combination of the two, and shall be permanent.

**PRIORITY OPEN SPACE:**

Unique lands which exhibit at least four of the eleven characteristics or factors listed in Section 11-06-05.7.4.C. These lands may not meet the size, slope or dimensional criteria for Open Space Eligible for Density Bonus, but may still be allowed to be set aside as preserved open space for purposes of the granting of a density bonus. The type, location and amount of priority open space eligible for a density bonus is to be determined by the Planning & Zoning Commission based upon how many of the priority open space factors they exhibit, as well as upon a demonstration that the public value of the open space will be enhanced by such allowance.

**RIPARIAN AREAS:**

Relating to or living or located on the bank of a natural water course as a stream or river. The stream corridor consisting of riparian vegetation, stream carved topography and features that define a continuous corridor on either side of a stream or pond therein.

**SLOPE PROTECTION AREA:**

This is a non-buildable area with a slope greater than 25% that does not qualify as buildable area for the density bonus within either a development pocket or preserved open space, and is designated as such on the conditional use site plan and the subdivision plat.

**Appendix A**

Application Submitting Requirements:

The following items are required for a Foothills Planned Development application, in addition to those items required for submitting of a standard Planned Development application under Section 11-06-05, and a “Hillside and Foothill Area Development” permit application under Section 11-14.

1. A slope analysis in map and table form depicting areas and polygon labels for:
  - a. All buildable areas, based on two foot contour intervals;
  - b. All non-buildable areas based on five foot contour intervals;
  - c. Buildable areas equal to, or greater, than one acre in size labeled as such on map and table.
  
2. A special area analysis in map and table form depicting the general locations of:
  - a. Floodways, floodway fringes, wetlands and riparian areas;
  - b. Deer and elk migration corridors as determined by the Idaho State Fish and Game Department and found on maps referenced in The Plan;
  - c. Location of rare, threatened and endangered plant species and communities regulated under the Endangered Species Act of 1973, and administered by U. S. Fish and Wildlife Service Division of Endangered Species;
  - d. Geologic and/or historic features of note and sites designated as Heritage sites.
  - e. Potential buildable ridge tops visible as skyline features from below the Foothills.
  
3. A capital improvements/infrastructure analysis and map of existing and proposed locations of roads, sewers, drainage and storm water facilities, utilities, schools, parks and fire stations.
  
4. A recreation analysis in map and table form as appropriate showing locations of existing or proposed trails as established in the *Ada County Ridge-to-Rivers Pathway Plan*, existing or proposed trail heads, interpretive areas and other facilities.
  
5. An adjacent parcel analysis of lands within 300 feet of the subject property, in map form, depicting:
  - a. Existing lots and dwellings;
  - b. General topography;
  - c. Existing and proposed public trails designated by the *Ada County Ridge-To-Rivers Pathway Plan*;
  - d. Geologic and/or historic features of note and sites designated as Heritage sites;
  - e. Public rights-of-way and potential road access points.

**Foothills Planned Development Design Process and Application Form Checklist:**

The intent of the process is to allow the applicant and staff to work together to insure that there is a clear understanding about the critical issues prior to the application submitting and throughout the hearings. The applicant should follow this order of events in analyzing, designing and applying for the project.

**Phase I - Pre-application:**

1. Meet with the city staff about basic design issues before development of a conceptual design.
2. Meet or confer with surrounding landowners about the potential for cooperative development plans.
3. Do a sketch map of the project area and adjacent parcels showing general soil characteristics, slopes, wildlife habitat, permanent open space and/or public lands, drainage courses, unique geologic and historic features, public trails, and other features of note.
4. Meet with city staff about design issues based on sketch map findings.

**Phase II - Preliminary/Conceptual Design requirements for Annexation, Development Agreement, Conceptual Conditional Use, Conceptual Preliminary Subdivision Plat, Conceptual Hillside and Floodplain permit applications:**

5. Map potential buildable areas.
6. Determine which preserved open space/cluster density formula will be applied based upon site characteristics, access and market constraints.
7. Identify proposed preserved open space area(s) based upon site characteristics including wildlife habitat values, soil conditions, geologic hazards, access constraints, drainage patterns, unique features, etc.
8. Apply the density bonus formula to the remaining buildable area, according to the Table 1, to determine how many dwelling units may be permitted.
9. Lay out the cluster subdivision with roads, drainage system and the appropriate number of lots in the development pockets.
10. Prepare a fire protection plan following guidelines set by the Boise City Fire Department.
11. Prepare a traffic analysis and traffic plan consistent with requirements of the *Destination 2020 Regional Transportation Plan for Ada County* and its subsequent amendments and updates.
12. Prepare a traffic mitigation plan including appropriate neighborhood protection, traffic calming and buffering techniques.
13. Prepare a general grading plan under the conceptual "Hillside and Foothill Area Development" ordinance.

14. Prepare an infrastructure phasing plan.
15. Prepare a building and grading disturbance envelope plan.
16. Complete any other items required by The Plan, The Planned Development Ordinance, Ch. 11-06-05, the Floodplain Ordinance, Ch. 11-12, and the “Hillside and Foothill Areas Development Ordinance,” Ch. 11-14.

**Phase III - Final Conditional Use, Hillside Permit, Floodplain Permit, Annexation, Development Agreement and Preliminary Plat Subdivision applications:**

17. Meet with city staff about design issues based on conceptual approval findings;
18. Prepare the applications for preliminary plat and final conditional use, Hillside permit, Floodplain permit, a revegetation and reclamation plan and other required applications and plans.

**Appendix B**

Sample conservation easement document and deed restriction statement:

In reference to the requirements for ownership and maintenance of open space in section 11-06-05.07.07, a sample conservation easement document is provided. This example is taken from the New Hampshire State Code.

Conveyances Of Realty And Interests Therein, Conservation and Preservation Restrictions

A conservation restriction shall mean a right to prohibit or require, a limitation upon, or an obligation to perform, acts on or with respect to, or uses of, a land or water area, whether stated in the form of a restriction, easement, covenant or condition, in any deed, will, or other instrument executed by or on behalf of the owner of the area or in any order of taking, which right, limitation, or obligation is appropriate to retaining or maintaining such land or water area, including improvements thereon, predominantly in its natural, scenic, or open condition, or in any other use or condition consistent with the protection of environmental quality.

**Appendix C**

Maps and guides to the regulated features in the Foothills:

In reference to the requirements for submitting applications in section 11-06-05.07.12 and 07.13, maps and guides to the features noted will be available to applicants.

*Boise City Foothills Policy Plan* Goal 1 Objective 2 Policy 1:

1) The Foothills Land Use Map provides a generalized depiction of potentially buildable areas based upon slope. At the time of zone change or development application, the developer shall submit detailed documents depicting wildlife habitat areas, existing slopes, geology and soils. This data shall be used to make more detailed determinations regarding the extent of the buildable area governed by the policies of this plan and the Hillside and Foothill Area Development ordinance;

2) Figure 2-1 Wildlife Habitat Areas;

- 3) Deer and Elk migration corridors;
- 4) Boise City Heritage Preservation Committee: *Potential Public Preservation Sites*.

1. The proposed use; its bulk, height, intensity and location on the property; and all grading, paving and other associated site development modifications, are consistent with preserving the core values of the property as identified in the Comprehensive Plan or other appropriate guiding document, entitlement or deed restriction associated with the property.

2. The proposed use is consistent with the applicable open space requirements and allowances of the Foothills Planned Development Ordinance.

3. The use is compatible with, or can be conditioned to be compatible with, adjacent land uses. Conditions may include limitations on type, size, amount, location or operation of the use and all other property development modifications associated with the use.  
(6472, Amended, 05/23/2006; 6023, Added, 12/05/2000)

#### **Section 11-06-06 OTHER CONDITIONAL USE APPROVALS**

There are certain conditional uses that require consideration of additional approval criteria unique to the specific application. In reviewing such applications the Commission must consider the standards of approval set forth for each conditional use described below in addition to the general criteria and findings set forth for conditional use permits in Section 11-6-4.13 of this Ordinance. An application and fee are required for each request in accordance with Sections 11-3-2 and 11-3-3 of this Ordinance.

(5777, Amended, 01/28/1997)

#### **Section 11-06-06.02 Child Care Facilities**

Child care centers are subject to the following restrictions in addition to the standards of approval shown in Table 11.

- A. Intermediate child care centers (13-20 children) shall be located on the edge of a neighborhood rather than in the center.
- B. Large child care centers shall be located on a collector or arterial street; or if providing service for school age children, shall be within three hundred feet (300') walking distance of the outer periphery of the school grounds; or the facility shall be located in a structure designed for large groups such as a church, school, grange hall or social center.

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**TABLE 11**  
**COMMISSION LEVEL STANDARDS OF APPROVAL - CHILD CARE FACILITIES**  
**(Amended by Ord. 5233, 5-8-90)**

Boise Municipal Code

<u>STANDARDS OF APPROVAL</u>	<u>GROUP CHILD CARE, NOT IN-HOME (7-12 CHILDREN)</u>	<u>INTERMEDIATE CHILD CARE CENTER (13-20 CHILDREN)</u>	<u>LARGE CHILD CARE CENTER (21 OR MORE CHILDREN)</u>
A. Provide a minimum outdoor play area of 100 sq. ft. per child on-site. This area requirement may be waived or modified if appropriate open space with connecting public sidewalks or paths are located near the facility and that open space can be used by the children as a play area; or the program of the facility is such, that the size of a group of children using the play area at any one time conforms to the 100 sq. ft. per child criteria.	X	X	X
B. Provide a minimum of 35 sq. ft. of in-door gross floor area per child.	X	X	X
C. Secure and maintain a child care license from the City of Boise and the State of Idaho.	X	X	X
D. Comply with the regulations where applicable by law or jurisdiction of the Boise City Fire Department and the health inspector.	X	X	X
E. Provide at minimum, 1 off-street parking space per 10 children, with a minimum of 2 Spaces required regardless of the number of children. Parking in special parking districts shall be provided according to Section 11-10-06, Table 13.	X	X	X
F. Provide for an on-site child pick-up area designated to prevent vehicles from backing onto the roadway (backing into an alley is permissible).	If located on a collector or arterial street	X	X
G. Signs. The applicant's proposal for signage should be submitted and considered during the review process	One 12 sq. ft. attached sign	One 20 sq. ft. attached sign	As allowed by applicable zoning district
H. The lot size shall be adequate to provide for parking, child pick-up area, play area, screening and setbacks.	X	X	X

- C. The Planning Director may also require the following standards to protect adjacent properties from adverse impacts or to protect the health, safety and welfare of the children.
1. Fencing or landscape screening of the facility to protect adjacent properties from activities of the facility, or to protect the children from adverse activities such as traffic on arterial or collector streets, at intersections or to screen adjacent properties; or
  2. Additional setback to play areas from any property line to protect adjacent properties or to protect children from busy streets, irrigation ditches, animal pastures and other similar conflicts; or
  3. Any other conditions deemed necessary by the Planning Director to protect the health, safety and welfare of the children or to protect adjacent property owners from adverse impacts.
- D. Adult Day Care Standards: Adult Day Care, as defined, have different use characteristics from other allowed uses, and therefore, require additional standards to be determined by the Planning Director.
1. There shall be adequate access for physically handicapped patrons of the facility.
  2. If located on an arterial or collector street, provide for an on-site patron pick-up area designed to prevent vehicles from backing onto the street (backing into an alley is permissible).
  3. The use shall meet the occupancy requirements of the City Fire Department.
  4. All required licenses must be obtained from the City of Boise or the State of Idaho, if applicable.

(6315, Amended, 04/20/2004; Ord. 5919, Amended, 07/28/1999; 5777, Amended, 01/28/1997; 5233, Amended, 05/08/1990)

### **Section 11-06-06.03 Multiple Family Dwellings in the R-3 District**

Within the R-3 district two or more multiple family structures per lot or more than 20 units per acre must be submitted as a planned development which requires a conditional use application. In reviewing such application, the Commission shall make the following findings:

- A. The Commission must establish findings of fact as detailed in Section 11-6-4.13 A-E for conditional uses and Section 11-6-5 for planned developments; and
- B. The minimum usable open space or recreational space requirement shall be equal to thirty percent (30%) of the land area occupied by residential structures. For the purpose of this section, usable open space or recreational space shall include landscaped areas, court yards, balconies, patios, sun decks, pedestrian walkways, playground areas, swimming pools and all other exterior or interior recreational areas. Such areas must be readily accessible to the occupants of the building. Usable open space or recreational space shall not include driveways, parking areas, or loading areas. The open space or recreational space requirement may be reduced for projects

which abut open space or recreational facilities; and

- C. Building and site design shall provide for a transition into the surrounding neighborhood to ensure compatibility. Factors to be considered are setbacks, building height, building materials, bulk, roof design, parking area locations, landscaped area locations and other factors necessary to ensure adequate transition; and
- D. Parking Areas:
  - 1. Surface parking shall be designed to avoid large masses of parking areas.
  - 2. The Commission may require that all or any Portion of the on-site parking be provided below grade (under building or plaza areas) as a means of increasing the size of usable open space, reducing the paved surface area, and improving the overall design and appearance.
  - 3. Parking areas and dwellings shall be located to minimize walking distances.
- E. The pedestrian circulation system shall be integrated into the surrounding neighborhood and shall provide connections from dwellings to parking areas, open space or recreational facilities and any shared facilities. Sidewalks shall be of adequate width to accommodate the expected pedestrian traffic in high use areas; and
- F. Natural features, views and other potential site amenities should be retained and incorporated into the design; and
- G. Principal buildings connected by breezeways, covered hallways or any other similar type of protected walkway shall be treated as separate buildings on separate zoning lots for setback or spacing purposes.

(5777, Amended, 01/28/1997)

**Section 11-06-06.04 High Rise Multiple Family Dwellings**

Density Increases and Exceptions: Lot Area, Density Limitations and Height Limits: The minimum lot area, maximum density and maximum height limits in the Multiple Family (R-3), Limited Office (L-O) and Commercial (C-1, C-2 & C-3) zoning districts may be altered for multiple family dwellings if authorized by conditional use permits subject to the following conditions and restrictions.

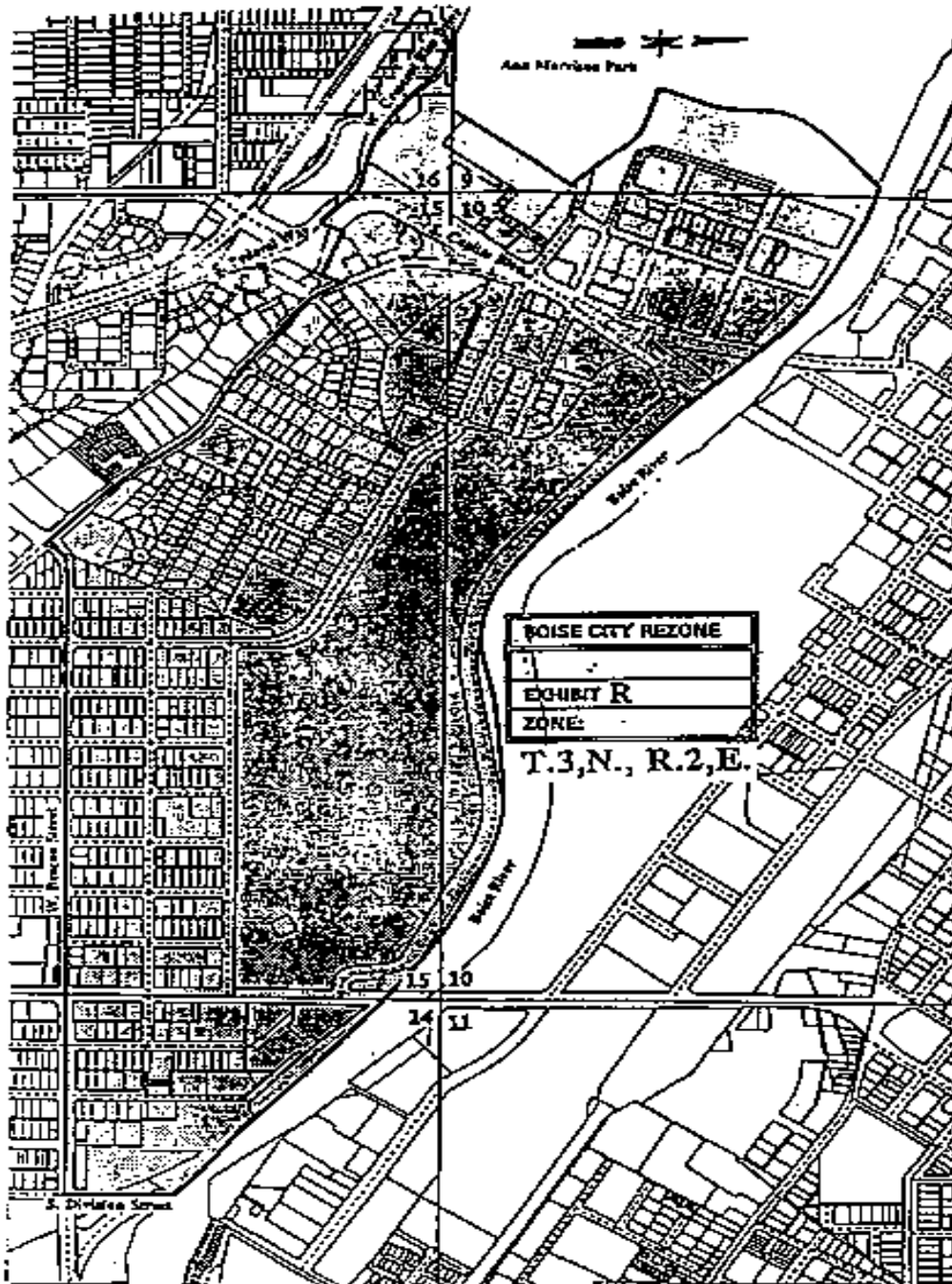
- A. Density increases shall be limited to multiple family, limited office and commercial zoning districts in the vicinity of Boise State University. The boundary of the area in which density increases may be granted is generally described as follows:

An area of land located in the Northeast Quarter of Section 16, East half of Section 9, South half of Section 10, Northwest Quarter of Section 14, North half of Section 15 Township 3 North, Range 2 East of the Boise Meridian, Ada County, Idaho, more particularly described as follows:

Beginning at the center line of South Division Street and West Beacon Street; thence westerly along the center line of West Beacon Street to center line of West Boise Avenue; thence

northwesterly along West Boise Avenue to a point approximately 150.00 feet, more or less, northwesterly of the prolongation of the northwesterly right-of-way line of South Martha Street; thence South 29°52'00" West, 121.00 feet, more or less, to a point separating the R-3D and R-1C Zoning District; thence North 68°07'00" West, 284.5 feet, more or less, to a point separating the R-3D and R-1C Zoning District; thence North 72°10'00" West, 109.00 feet, more or less, to the prolongation of center line of vacated South First Street; thence southwesterly along the center line of said vacated South First Street to the center line of South Federal Way; thence northwesterly along the center line of South Federal Way to the South Capital Boulevard and West Crescent Rim Drive intersection; thence northwesterly along the center line of West Crescent Rim Drive to a point 215.00, more or less, Northwesterly of the prolongation of South Ruby Street, said point being on the Northerly Section line of Section 16, Township 3 North, Range 2 East of the Boise Meridian, Ada County, Idaho and the southerly boundary of Ann Morrison Park; thence easterly, northeasterly, northwesterly along the meandering westerly boundary line of Ann Morrison Park to the south shore line of the Boise River; thence southeasterly along the south shore line of the Boise River to the prolongation of center line of South Division Street; thence southerly along the prolongation and center line of South Division Street to the center line of West Beacon Street, the Point of Beginning.

- B. New construction in neighborhoods determined by the Commission to be historically sensitive must be architecturally compatible with the adjacent and surrounding neighborhood.
- C. Sites within districts designated on the National Register of Historic Places or on sites which have been designated by Boise City as City Historic Districts, landmarks or properties shall be reviewed by the Boise City Historic Preservation Commission prior to any granting of a density increase.
- D. The maximum density granted by a density increase shall not exceed one (1) dwelling unit per five hundred (500) square feet of lot area, unless specifically approved by the Planning & Zoning Commission. (Amended by Ord. 5381, 03-17-92)
- E. The Planning and Zoning Commission must establish findings of fact as detailed in Section 11-6-4.13, A.-E.
- F. The minimum average lot width shall be sixty feet (60'), except that corner lots shall be at least seventy feet (70') and shall provide a minimum street frontage of not less than thirty feet (30').
- G. The floor area ratio of all buildings, structures and required off-street parking area, excluding below grade parking, shall not be a higher number than 1.5, unless specifically approved by the Planning & Zoning Commission. (Amended by Ord. 5381, 03-17-92)
- H. No building or structure shall have a height in excess of forty-five feet (45'), unless specifically approved by the Planning & Zoning Commission. (Amended by Ord. 5381, 03-17-92)



(5777, Amended, 01/28/1997)

**Section 11-06-06.05 Drive-up Windows: Purpose and Regulations**

No drive-up window establishment shall be permitted unless the Planning and Zoning Commission finds that the design and operation of the establishment is substantially in compliance with the following requirements and conditions, which shall be in addition to those required in Section 11-06-04.13.

Boise Municipal Code

- A. That the location of the establishment shall not cause an increase of commercial traffic in nearby residential neighborhoods, increase general traffic congestion where serious congestion problems already exist, or cause other significant adverse impacts on public or private property in the vicinity of the site. The advice of the appropriate transportation authority shall be solicited for the purpose of evaluating existing and projected levels of service and the effects of projected turning movements on highway safety; and
- B. That the internal circulation on the site provides for pedestrians to walk from parking lots to the lobby entrance(s) without traversing the waiting lane(s) for the drive-up window; and
- C. That the waiting lane(s) be of sufficient length to provide for anticipated average monthly peak volumes; and
- D. That design, signage or operational characteristics of the establishment prevent or discourage vehicles from waiting for service on public sidewalks or streets; and
- E. That drive-in waiting lanes be designed so that curbs, gates or other devices do not prevent a vehicle from leaving a waiting lane; and
- F. That all lights and other illuminated materials shall be designed, positioned, shielded, directed and located to prevent glare from falling on adjoining properties. Screening of lights may be required as a secondary measure of mitigation. Illumination levels shall not exceed 2 foot-candles as measured one foot above the ground at property lines shared with residentially zoned or used parcels; and
- G. That the design, operation and sign characteristics of the project will attempt to minimize air pollution and wasteful consumption of fuel; and
- H. Landscaping shall screen drive-up aisles from the public right-of-way and shall be used to minimize the visual impact of vehicular lights, readerboard signs and directional signs; and
- I. Drive-through lanes shall be setback at least 10 feet from adjacent residentially zoned or used property. This buffer shall include both coniferous trees and sound abatement walls; and
- J. In accordance with section 11-06-04.14 (Conditional Use; Limitations), the Planning and Zoning Commission has the authority to limit the hours of operation, and may impose such restrictions on drive-up window establishments; and
- K. In accordance with Section 11-0406.10 (Use Standards), in C-1 districts a 200' setback from residential use or zone is required for the drive-through window or lane where the primary use of the window is food service. The 200' setback shall be measured from any part of the window or drive-through lane to the nearest lot or parcel used or zoned residentially; and
- L. That all communication systems shall not exceed a noise measurement of 55 decibels at any residential property lines adjoining the site or across the alley from the site.
- M. Drive-up windows in the C-5 district shall be subject to the following standards and provisions.
  - 1. The drive-up window and all stacking and escape lanes shall be located within a structure. The drive-up window facility shall be secondary to the principal uses of the

structure in which the drive-up facility is located. The following design requirements shall apply:

- a. All lanes used for ingress, stacking, service, and egress shall be integrated safely and effectively with circulation and parking within the structure.
  - b. No additional curb cuts shall be allowed to provide access for drive-up facilities within an existing or new structure. Existing curb cuts, however, may be relocated.
  - c. Traffic associated with the drive-up facility shall not inhibit safe access and exiting from parking spaces or the structure's entrances or exits.
2. Where it is essential that the drive-up facility have its own ingress to and/or egress from the structure, said ingress and egress shall be limited to a single lane where it intersects a public street and sidewalk.
  3. The location and design of the drive-up facility shall minimize blank walls on street-facing exteriors of the building and disruption of existing or potential retail and other active ground floor uses.
  4. Drive-up windows in the C-5 district are not subject to paragraphs E and L of this section.
  5. All entrance and exit points that may be utilized for the drive-up facility shall incorporate the following minimum safety features:
    - a. There shall be a visible pedestrian warning where walkways intersect entrance and exit points.
    - b. An approved auditory warning device and an approved non-auditory device shall be installed on both sides of all exit points. The devices may be combined into one device and shall flash and produce an auditory sound to warn against exiting vehicles.

(6353, Amended, 10/12/2004; 6315, Amended, 04/20/2004; 6007, Amended, 07/25/2000; 5916, Amended, 05/18/1999; 5820, Amended, 10/28/1997, Drive-up Windows; 5777, Amended, 01/28/1997)

#### **Section 11-06-06.06 Sexually Oriented Business**

The purpose of these regulations is to allow the reasonable location of a Sexually Oriented Business within the City in a manner which will protect property values, neighborhoods and residents from the potential adverse secondary effects of sexually oriented businesses while providing to those who desire to patronize sexually oriented businesses such opportunity in appropriate areas within the City. It is not the intent of this ordinance to suppress any speech activities protected by the First Amendment of the United States Constitution, but to impose content neutral regulations which address the adverse secondary effects sexually oriented businesses may have on adjoining properties and the immediate neighborhood.

It has been determined, and reflected in the land use studies of various US cities, that businesses which have as their primary purpose the selling, renting or showing of sexually explicit materials have negative secondary impacts upon surrounding businesses and residences. The experience in

other US cities is that the location of a sexually oriented business significantly increases the incidence of crimes, especially sex offenses, including rape, indecent exposure, lewd and lascivious behavior, and child molestation.

It has been determined, and reflected in the land use studies of various US cities, that the operation of sexually oriented businesses in business districts which are immediately adjacent to and which serve residential neighborhoods has a deleterious effect on both the business and the residential segments of the neighborhood, causing blight and down-grading of property values.

It is the intent of these regulations to allow sexually oriented businesses to exist within the City in various dispersed locations rather than to allow them to concentrate in any one business area. It is further the purpose of these regulations to require separation requirements between sexually oriented businesses and residential uses, churches, parks and educational institutions in an effort to buffer these uses from the secondary impacts created by sexually oriented business activity.

1. **PROHIBITION**

No person shall operate or conduct a Sexually Oriented Business upon any property or premises unless in conformance with this title. A violation of this provision may be enforced through administrative civil and/or criminal remedies.

In order to approve a conditional use permit for a Sexually Oriented Business, the Commission must determine that the following conditions are met:

- A. Such business shall not be located within one thousand feet (1,000 ft.) of a public or parochial school or daycare as defined and licensed by Boise City, public park or playground; nor shall such business be located within one thousand feet (1,000 ft.) of a bar or tavern or other premises serving alcohol or a Sexually Oriented Business; and
- B. Such business shall not be located within one-thousand (1,000 ft.) of a religious institution. Distance shall be measured as in subsection "E" below; and
- C. Such business shall not be located within one-thousand feet (1,000 ft.) of any other Sexually Oriented Business. Distance shall be measured as in subsection "E" below; and
- D. Such business shall not be located on a lot or parcel that is within five-hundred feet (500 ft.) of a residential use or zone. Distance shall be measured as in subsection "E" below; and
- E. Distance shall be measured in a straight line from property line closest to the property line of the nearest school, park, playground, religious institution or other sexually oriented business. These standards shall apply regardless of the political jurisdiction in which schools, parks, or churches or other adult businesses are located; and
- F. The sign package and exterior building design must be submitted with the conditional use application for review by the Commission. Advertisements, displays, or other promotional materials shall not be shown or exhibited so as to be visible to the public from the exterior of the building; No advertising signs, billboards, displays, advertisements, or other promotional materials depicting Specified Anatomical Areas or Specified Sexual Activities or displaying instruments, devices or paraphernalia designed for use in connection with Specified Anatomical

Areas or Specified Sexual Activities shall be shown or exhibited so as to be visible to the public from the exterior of the building; and

- G. Lobby and entrance areas should be designed so as to minimize obstruction of sidewalks during operating hours and shall be oriented and consistent with other commercial activities in the area; and
- H. All building openings, entries, windows, and the like, shall be located, covered, or screened in such a manner as to prevent a view into the interior, so that personnel, instruments, devices, paraphernalia, and body parts thereof, which are associated in any manner with Specified Anatomical Areas or Specified Sexual Activities, cannot be viewed from streets, sidewalks and adjacent private properties; and
- I. No loudspeakers or sound equipment shall be used for such businesses that can be discerned by the public outside the building; and
- J. The disposal of garbage and trash containing sexually explicit materials must be disposed of in a manner which prevents minors from having access to the material; and
- K. For purposes of this Ordinance, the above conditions and standards shall be applicable in the following circumstances:
  - 1. The opening or commencement of any sexually oriented business as a new business.
  - 2. The conversion of an existing business, or any part of any existing business, or any part of any existing business to any of the Sexually Oriented Businesses regulated herein.
  - 3. The addition or expansion of any business to include any of the Sexually Oriented Businesses regulated herein.
  - 4. The voluntary relocation of any such business.
- L. Hours of operation are from 4:00 p.m. to 2:00 a.m. One security staff is required for each 20 required parking spaces or fraction thereof. The hours of operation shall be visibly posted on all entrances and exits.
- M. On-site security must be present during all hours of operation.
- N. These provisions shall not be construed as permitting any use or act which is otherwise prohibited or made punishable by law.
- O. No sexually oriented materials or performances shall be disseminated, performed for, by or upon minors. Signs prohibiting minors upon premises shall be visibly posted on all entrances and exits.
- P. All areas of a sexually oriented business shall be illuminated at a minimum of 20 footcandles, normally maintained and evenly distributed at ground level. Except, adult motels shall only be required to be illuminated at a minimum of 20 footcandles in public areas. And, adult theaters and cabarets shall only be required to be illuminated at a minimum of 5 footcandles. During performances, adult theaters and cabarets may reduce the lighting to be no less than 1.25

footcandles.

- Q. An adult motion picture show or adult arcade shall limit the maximum number of image producing devices to the maximum occupancy load permitted in any room or partitioned portion of a room in which an image producing device is located.

2. **TIMELINE FOR DECISIONS CONCERNING SEXUALLY ORIENTED BUSINESSES AND BIKINI BARS**

Applications that have been placed on the Planning & Zoning Commission public hearing agenda shall only be deferred by the Commission for a maximum of sixty (60) days from the initial hearing unless a longer deferral is agreed to, in writing or requested at a public hearing, by the applicant, or by a specific finding at the public hearing that a limited delay is necessary due to the lack of a quorum or the lateness of the hour at the conclusion of the hearing to make a reasonable decision. The delay can only be until the next scheduled meeting of the Commission where a decision to approve or deny must be made. For Sexually Oriented Business and Bikini Bars only, the Commission must hold a public hearing within forty-five (45) days after the cutoff for which the application is submitted and make a decision within forty-five (45) days after the hearing is held unless the applicant agrees to a deferral. If no decision is made within forty-five (45) days after hearing, then the request will be deemed approved for a Sexually Oriented Business or Bikini Bar only. A request for deferral may be initiated by a member of the Commission, the applicant, the Planning Staff or the public. All deferral requests shall be in writing. Scheduled agenda items shall only be deferred by the Commission within the public hearing. Any decision of the Planning and Zoning Commission on an application for a Sexually Oriented Business or Bikini Bar may be appealed to the Boise City Council within ten (10) days following the Commission decision. The Council shall hold a hearing within forty-five (45) days following the filing of such appeal. If the applicant has not requested a deferral, a decision as to whether or not a conditional use is approved must be made within forty-five (45) days from initial hearing date for cases involving a Sexually Oriented Business or Bikini Bar. Failure of the City Council to make a decision within forty-five (45) days, shall be deemed as an approval for a Sexually Oriented Business or Bikini Bar only. Council shall issue a temporary conditional use permit on the occasion where they had previously approved an application and it was then appealed to the District Court by an appellant that is not the applicant.

3. **BIKINI BAR**

The owner of a premise, serving alcohol, which features live performers wearing bikinis or swimsuits must obtain a conditional use permit prior to operating said business.

In order to approve a conditional use permit for such use, the Commission must assure that the following conditions are met:

- A. The Bikini Bar must be located at least 1,000 feet from any public or parochial school or day care licensed by the City of Boise, public park or playground.
- B. The Bikini Bar must be located at least 1,000 feet from any church.
- C. The Bikini Bar shall not be located within 1,000 feet from any other such premise.
- D. The Bikini Bar shall not be located within three hundred feet (300') of any residential use

or zone.

#### 4. CONSTRUCTION AND SEVERABILITY

It is the intention of the City of Boise that the provisions of this ordinance be construed, enforced and interpreted in such a manner as will cause the least possible interference with any affected rights of speech, due process, equal protection or other fundamental right. This ordinance and each section and provision thereof are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of this chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections or provisions to any person, business, or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid.

(6120, Amended, 01/29/2002; 6071, Amended, 06/19/2001; 5777, Amended, 01/28/1997)

#### **Section 11-06-06.07 Mobile Home Parks and Manufactured Home Communities, General Requirements and Allowances:**

##### **11-06-06.07.01 Applicability:**

Requests to expand or create a mobile home park or manufactured home community shall comply with the regulations of this section. For the purposes of this section, an expansion is the addition of land area, or the addition of a unit or units to an existing mobile home park or manufactured home community beyond what has been previously approved or found legally existing. Such development may be either subdivided or land-leased.

Exceptions:

- A. This section is not applicable to the replacement or enlargement of a dwelling unit within an existing mobile home park.
- B. The regulations of this section shall apply only to the expansion of a mobile home park or manufactured home community, and may not be used retroactively to areas of the site not proposed for said expansion.
- C. Developments that solely contain enhanced manufactured homes are not bound to the requirements of this section.

##### **11-06-06.07.02: Base Development Standards**

- A. Manufactured home communities may not be located in city designated Historic Districts.
- B. Manufactured home communities shall consist of no fewer than ten (10) manufactured homes.
- C. Residential Density: The number of dwelling units allowed shall be calculated by dividing the gross area by the minimum lot area per dwelling unit required by the zone in which the site is located.

For infill sites, the Planning and Zoning Commission may allow up to a 20% increase in the

density allowed in the zoning district as an development incentive. The applicant shall submit documentation that the site qualifies as an infill site with the conditional use application.

D. Unit Type:

1. Manufactured Home Communities may include any combination of enhanced and stock manufactured homes. Mobile homes, travel trailers and recreational vehicles are prohibited in any such community for use as a dwelling unit.
2. Mobile Home Parks may include any combination of mobile homes, rehabilitated mobile homes, and manufactured homes. Travel trailers and recreational vehicles are prohibited in any such community for use as a dwelling unit.

**11-06-06.07.03: Manufactured Home Community & Mobile Home Park Improvement Requirements:**

- A. If the development is to be subdivided, streets shall be public and built in conformance with Highway District construction standards.
- B. Utilities shall be installed underground.
- C. Units within the community or park shall be connected to a wet line sewer and a central water facility.
- D. Public street lighting shall be designed, constructed and dedicated to the city in accordance with the requirements of the Boise City Public Works Department.
- E. Provisions for drainage of the community or park and dwelling units therein shall be made in accordance with a drainage plan reviewed and approved by the Boise City Public Works Department.
- F. Subdivisions shall comply with the requirements of the subdivision ordinance. Likewise, conversions of approved land-lease developments to subdivisions shall be bound to the requirements of the subdivision ordinance.
- G. Screening and buffers shall be required along all perimeter property lines, except where the natural features of the land provide either a buffer or screen. The screen shall consist of continuous six (6) foot high fencing or landscaping, or combination thereof. Communities adjacent to arterial or collector streets shall be buffered with 30' of additional land area and landscaping for arterial streets, and 20' of additional land area and landscaping for collector streets.

**11-06-06.07.04 Dwelling Unit Design Features**

To assure that manufactured homes and developments containing such homes are compatible with the existing neighborhood, it is appropriate that the City require additional design standards and features. Applicable design features include, but are not limited to, the following features:

- A. The dwelling unit has a roof pitch of 2:12 (two inches of rise to twelve inches of run).
- B. The dwelling unit has a foundation fascia that is similar in appearance and durability to the masonry foundation or other foundation systems comparable with site-built dwellings and

approved by the Planning and Development Services Department. It shall surround the entire perimeter of the structure and completely enclose the space between the siding and the finished grade.

- C. The dwelling unit and attached accessory structure(s) have exterior siding and roofing which in material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the city or which is comparable to the predominant material used on surrounding dwellings.
- D. The use of identical floor plans or unit designs on adjacent lots is discouraged. Variety of floor plans and unit designs is required.
- E. In R-1M districts manufactured homes and developments containing such homes, shall comply with all the design requirements of the R-1M district as outlined in Section 11-04-03.7 Table 2B (R-1M Residential District Dimensional Requirements) and; Section 11-04-04.1 J (Special Standards for the R-1M District).

**11-06-06.07.05: Home Space or Lot Improvement Requirements**

- A. There are no minimum dimensional requirements for lots or home spaces, however, lot and home spaces shall be shown to be large enough to accommodate the dwelling, required parking, usable private open space, area for accessory storage units and building setbacks. In order to assure adequate lot or home space size, the application site plan shall delineate a conceptual arrangement of all city requirements within each lot or home space of the community. Provided that city code is complied with, actual placement of these features may vary from the approved conceptual arrangement, as deemed appropriate by the Planning Director.
- B. Amenities: A minimum of 400 square feet of usable private open space, being fifteen feet (15') wide at its narrowest dimension, shall be provided within each lot or home space's side or rear yard area. This requirement may be reduced to no less than 200 square feet if the difference is placed in common facilities provided for the community as a whole.
- C. A minimum of two (2) off-street parking spaces per dwelling unit shall be provided within the community. Residential parking spaces shall not be located further than 600 feet from the dwelling unit. Tandem parking is allowed if parking is provided on the lot or home space.
- D. Setback and Unit Spacing Requirements:
  - 1. Periphery Setbacks: Along the periphery of the development, yards shall be provided as required by the regulations of the district in which the development is located. Where development already exists at the periphery, the yard setbacks shall be matched. For example, side yards shall be provided adjacent to side yards, rear yards adjacent to rear yards and front yards opposite front yards.
  - 2. Internal Front and Street Side Yard: The unit shall be setback a minimum of ten feet (10') from the street as measured from the back of sidewalk, or back of curb in cases where no sidewalks are planned. The front yard setbacks of adjacent units are required to vary by no less than three feet (3'), which shall be noted or delineated on the approved site plan. Street side yard setbacks shall be a minimum of ten feet (10').
  - 3. Required parking: Parking shall be setback a minimum of ten feet (10') from the back of

sidewalk or back of curb in cases where no sidewalks are planned.

4. Interior Side and Rear Yards: In order to maximize yard area utility, side and rear yard setbacks may be zero feet (0'). A minimum separation of ten feet (10') between dwelling units is required. Detached accessory structures shall comply with the standard setback requirements of the zoning ordinance.

(6155, Renumbered, 05/28/2002; Ord. 5894, Amended, 02/09/1999; 5777, Amended, 01/28/1997)

#### **Section 11-06-06.08 Exceptions to Parking Requirements**

Parking space requirements for a particular use as established by Section 11-10-05, Table 13 of the Boise City Code may be reduced upon application for conditional use approval in accordance with Section 11-10-1 F. of the code. Joint or mixed use of off-street parking facilities may be approved by a conditional use permit submitted in accordance with Section 11-10-3 of the Boise City Code.

(6155, Renumbered, 05/28/2002; 5777, Amended, 01/28/1997)

#### **Section 11-06-06.09 Conversion or Restoration of a Nonconforming Use**

The conversion of a nonconforming use to any use other than an allowed use is prohibited except upon application and issuance of a zoning certificate in accordance with the provisions of Section 11-05-01.01, Boise City Code; provided, however, that such zoning certificate will not be granted unless the Planning Director makes all of the following findings of fact:

- A. That the proposed conversion is compatible with the Comprehensive Plan, the purposes of Title 11 of the Boise City code, and with surrounding land uses; and
- B. That such proposed conversion will not place an undue burden on existing transportation and service facilities in the vicinity of the application; and
- C. That such proposed conversion will be in compliance with all requirements and provisions of the Boise City Code; and
- D. That the continuation of a nonconforming use without the benefit of such conversion would be likely to result in a deterioration of the neighborhood.

(6155, Renumbered, 05/28/2002; 6096, Amended, 10/23/2001; 5777, Amended, 01/28/1997)

#### **Section 11-06-06.10 Restoration of Damaged Nonconforming Buildings**

Any nonconforming building or mobile home destroyed by fire or other calamity to an extent of fifty percent (50%) or more of the appraised value may not be restored unless such restoration shall make the building a conforming building and any intended use shall be a conforming use, or unless approval for such restoration is obtained through application and issuance of a conditional use permit in accordance with the above Section.

(6155, Renumbered, 05/28/2002; 5777, Amended, 01/28/1997)

#### **Section 11-06-06.11 Expansion of Conditional Uses and Legal Nonconforming Uses:**

Expansions to conditional uses or legal nonconforming uses which exceed twenty percent (20%) of the existing facility (based on square footage or other dimensional measure) require conditional use

approval by the Planning and Zoning Commission. Approval of such requests shall be based upon the following findings:

- A. That the proposed conversion, restoration, enlargement or expansion will not alter the zoning classification of the nonconforming use; and
- B. That the proposed conversion, restoration, enlargement or expansion conforms to all existing requirements of the Boise City Code; and
- C. That the proposed conversion, restoration, enlargement or expansion will not place an undue burden on existing transportation and service facilities in the vicinity; and
- D. That the proposed enlargement or expansion is not inimical to the best interest of the surrounding neighborhood.

Any illegal expansion of a nonconforming use will result in the loss of the legal nonconforming use status of that project.

(6155, Renumbered, 05/28/2002; 5777, Amended, 01/28/1997)

**Section 11-06-06.12 General Height Exceptions**

Conditional use approval from the Planning and Zoning Commission is required to exceed the height limits set forth in this ordinance. The Commission's decision on height exceptions shall be based upon the criteria set forth in Section 11-06-04.13.

(6155, Renumbered, 05/28/2002; 5916, Amended, 05/18/1999; 5777, Amended, 01/28/1997; 5233, Amended, 05/08/1990)

**Section 11-06-06.13 Public Services, Height Exception**

Public service poles, towers or similar installations (excluding wireless communication facilities, which are addressed in Section 11-18 of this code) of a height of seventy feet (70') or greater must be approved by conditional use permit. The Planning and Zoning Commission must make the findings required by Section 11-6-4.13 of this Ordinance and the following additional findings: (Amended by Ord. 5233, 5-8-90)

- A. That the pole or tower locations and heights -
  - 1. Do not interfere with airport height restrictions; and
  - 2. Minimize disturbance to views from established residential areas; and
  - 3. Minimize disturbance to or interference with view of city, state, or federally registered historic structures; and
  - 4. Do not obstruct clear vision triangles or otherwise threaten motorist or pedestrian safety; and
  - 5. Minimize conflict with existing uses; and
  - 6. Are within route corridors already established or use by rail, automobile traffic arterials,

or electrical transmission; and

7. Are within route corridors which provide for a satisfactory level of energy efficient transmission of the product (electrical energy or other signals); or
8. Are the best available alternative placements and heights, even though they do not comply perfectly with all the above findings.

(6155, Renumbered, 05/28/2002; 5863, Amended, 09/22/1998; 5777, Amended, 01/28/1997)

**Section 11-06-06.14 Professional, Administrative and Business Offices in M-1 and M-2 Districts**

Professional, administrative and business offices are conditional uses in the M-1 and M-2 districts and are subject to the following criteria as well as those in Section 11-6-4.13. (Amended by Ord. 5233, 5-8-90)

- A. That amenities (which may include but are not limited to visual screening, orientation, and placement of buildings, parking and access areas) are provided for the future office to buffer the impact of any conflicting land uses; and
- B. That the lot or parcel occupied by such offices abuts a public right-of-way which separates such lot or parcel from residential or office zones or uses; or
- C. Where the use of the subject property for such offices will not encroach upon or conflict with existing industrial development or that which may be reasonably expected to develop.

(6155, Renumbered, 05/28/2002; 5777, Amended, 01/28/1997)

**Section 11-06-06.15 Composting Facility**

Any composting facility shall submit a site and operational plan with their application for a conditional use permit. That plan shall demonstrate compliance with the following requirements.

(Enacted by Ord. 5337, 8-27-91)

- A. Composting piles or windrows shall be constructed which are no larger than can be managed in a nuisance-free manner by the proposed equipment and composting technology.
- B. Additional area shall be provided at no less than 15% of size of the active composting pile or windrow area for staging, curing, and storage;
- C. A minimum 50' setback shall be maintained from the property boundary or public right-of-way to any active processing area of the facility including any area used for storage, active composting, and curing;
- D. A minimum 200' buffer zone between the active composting pile or windrow and any existing adjacent residentially zoned or occupied property shall be maintained;
- E. Compliance with all applicable state or federal laws, regulations or standards pertaining to water quality, air quality, and solid waste management shall be required;

- F. No composting facility shall be allowed in a floodplain;
- G. Surface slope of 1-5% grade shall be required for any composting facility;
- H. Adequate fencing, barriers or screening shall be required for all composting facilities;
- I. Public access shall be limited to those times when an attendant is on duty and during limited operating hours;
- J. Adequate space shall be provided between the piles or windrows to allow access to vehicles, including fire fighting equipment;
- K. Non-compostable residues shall be disposed or processed at a permitted solid waste disposal facility in accordance with local, state, and federal laws, regulations and standards.
- L. All organic materials received at the composting facility shall be removed from any containers unless the containers are of a biodegradable type in which case the container shall be opened before composting;
- M. A permanent sign must be posted and maintained at the composting facility showing the nature of the project, facility name, address and telephone number of operator, operating hours, materials that may be received by the facility, and the phrase, "NO DUMPING OF GARBAGE, TRASH, OR RUBBISH ALLOWED."

(Ord. No. 5475, Amended, 08/10/93; Ord. No. 5587, Amended, 11/15/94; Ord. No. 5622, Amended, 03/14/95; Ord. No. 5691, Amended, 12/27/95)

(6155, Renumbered, 05/28/2002; 5777, Amended, 01/28/1997)

#### **Section 11-06-06.16 Public School Facilities**

When considering a conditional use permit application for a public school facility, the commission shall make the following findings, which shall be in addition to those required in Section 11-06-04.13:

- A. That the project will not have a negative effect on adjacent roads and highways due to increased vehicular, bicycle and pedestrian traffic volumes.
- B. That the Idaho transportation department, the appropriate local highway jurisdiction or both have reviewed the application and reported on the following issues as appropriate: the land use master plan; school bus plan; access safety; pedestrian plan; crossing guard plan; barriers between highways and school; location of school zone; need for flashing beacon; need for traffic control signal; anticipated future improvements; speed on adjacent highways; traffic volumes on adjacent highways; effect upon the highway's level of service; need for acceleration or deceleration lanes; internal traffic circulation; anticipated development of surrounding undeveloped parcels; zoning in the vicinity; access control of adjacent highways; required striping and signing modifications; funding of highway improvements to accommodate development; proposed highway projects in the vicinity; and any other issues as may be considered appropriate to the particular application.

(6315, Added, 04/20/2004)

**Section 11-06-07 GENERAL EXCEPTIONS**

**Section 11-06-07.01 General**

The Commission may grant the following general exceptions to the requirements of this Title, subject to the procedures, provisions, and findings of Section 11-6-4. (Amended by Ord. 5233, 5-8-90)

- A. When a lot or parcel has one-half (1/2) or less of its area in a district more restrictive than the district which includes the remainder, the Commission may permit the regulation of the less restrictive district to be applied to the entire lot or parcel. More than one property owner may combine lots or parcels as a planned development and receive consideration under this paragraph.
- B. Where a lot located in an R-1A, R-1B, R-1C, or R-2 District has a lot line that abuts property zoned for multiple family, commercial or industrial uses, the Commission may permit, by conditional use permit pursuant to Section 11-6-4.13, up to seventy five feet (75') of adjoining portion of such lot to be used for any use permitted in the Multiple Family R-3 District.

**Section 11-06-08 SPECIAL EXCEPTIONS**

The Planning and Zoning Commission shall review all requests for special exceptions and make recommendations to the City Council.

- A. Justification: Finding that there are certain uses that because of their normal nature or design are not commonly permitted in a given district, but that with special consideration by the applicant to the standards of the area, impact, design and existing uses, the said use may benefit the immediate community, the City Council may approve, with conditions as outlined below, any use as requested by an applicant as a conditional use under the Special Exceptions provision.
- B. Intent: It is the intent of this Section to promote infilling of built areas of the community with minimal community impact. In all districts it is intended to allow uses of equal or lessor impact than those permitted uses in the district. The Special Exception shall not increase density of a permitted use in a residential district, unless it will adaptively reuse a building which is on the historical register of the City or Federal government and which has an existing gross floor area of greater than 5,000 sq. ft.
- C. Procedure for Filing: Any person may apply for a Special Exception under this Section upon submittal of an application on a form prescribed by the Commission and accompanied by a filing fee as specified herein all answers to questions as prescribed in the form shall be used to validate the application by the Planning Director. The Planning Director shall reject any application which does not fully contain the following:
  - 1. Complete detailed description of the proposed use including, but not limited to, the following: hours of operation, number of employees, expected number of daily customers, anticipated number of needed parking spaces, noise to be generated, signs and other impacts, where applicable; and
  - 2. All applications shall be accompanied by appropriate architectural and site development

plans to scale which shall show building location, landscaping, prominent existing trees, ground treatment, fences, off-street parking and circulation, location and size of adjacent streets, north arrow and property lines, drawings of the major exterior elevations showing exterior building treatment, existing grade and proposed new grades; and

3. All applications shall contain a detailed statement explaining how and why the proposed use is appropriate to the site and neighborhood and why such use will not adversely impact the site and neighborhood; and
4. All applications shall contain a written statement, justified with submitted drawings, that the applicant does not require or request a variance in bulk, setback or sign regulations from those required in the existing zoning district of the proposed location.

D. Action by Planning and Zoning Commission:

1. At every special exception hearing before the Planning and Zoning Commission, the Commission shall hear all persons interested in the subject matter then pending before it. Not later than ten (10) days after the conclusion of the hearing, the Commission shall file with the City Clerk a written report of the proceedings before and by the Planning and Zoning Commission at each hearing and its recommendations to the Council. Any recommendation of the Commission relating to a Special Exception shall be in writing and must include in its recommendation all of the following findings of fact, based upon the evidence presented, and supporting the purposes and objectives of said Special Exception:
  - a. That the Zoning Ordinance does not anticipate that such a use could be a desirable use in the zone under special circumstances; and
  - b. That the use will produce an equal or reduced impact upon the site or neighborhood than would an allowed use; and
  - c. That the location of the proposed use is compatible to other land uses in the general neighborhood area and does not place an undue burden on existing transportation and service facilities in the vicinity; and
  - d. That the site is of sufficient size to accommodate the proposed use and all yards, open spaces, walls and fences, parking, loading, landscaping and such other features as are required by this Ordinance; and
  - e. That the site is appropriate for such proposed use and that proper zoning for the proposed use is not available in the general neighborhood; and
  - f. That natural features and existing trees are appropriately preserved and integrated with the project and that the finished grading, storm drainage and landscaping are consistent with the established or contemplated character of the neighborhood; and
  - g. That access to the property and internal vehicular circulation thereon are safe and convenient for pedestrians, cyclists, automobiles and service vehicles and are designed such as to have minimal impact upon the surrounding neighborhood and traffic

operations; and

h. The approval, denial or modification of the Special Exception does not provide precedent for any other parcel in the City.

2. The Planning and Zoning Commission must list, as part of its report to the Council, those "special circumstances" which are not anticipated by the Zoning Ordinance.

3. The Planning and Zoning Commission may make recommendations as to specific conditions for approval which would allow establishment of the proposed use in a compatible manner with the neighborhood. Such conditions shall be imposed in accordance with the provisions of Section 11-6-4.14 of the Boise City Code.

### **Section 11-06-09 VARIANCES TO THE FLOODPLAIN ORDINANCE**

Any variance to the requirements of the Floodplain Ordinance shall require review and approval by the Planning and Zoning Commission in accordance with the criteria and procedures of Section 11-12-05. An application and fee shall be submitted to the Planning Director for scheduling before the Commission.

(Ord. No. 5691, Amended, 12/27/95; Ord. No. 5750, Amended, 08/27/96)

### **Section 11-06-10 SIGN VARIANCES**

A sign variance is a request to vary from the standard for background area, height, illumination, number of signs, location, projection and clearance, or any other standard prescribed in the sign code, except that sign variances may not be applied to signs that are prohibited. In accordance with the public hearing requirements of this ordinance, the Planning and Zoning Commission shall have the authority to deny, approve or approve with modifications, a sign variance. All of the following findings of fact shall be considered and clearly established by the Planning and Zoning Commission when granting a sign variance in whole or in part:

#### Findings

- 1) That no variance shall be granted unless it can be shown that there are special circumstances applicable to the property involving the size, shape, topography, location or surroundings, which do not apply generally to other properties in the same zoning district that are not the result of voluntary actions of the applicant; and
- 2) That the granting of such sign variance will not constitute a grant of special privilege that is inconsistent with the limitations upon other property in the vicinity and zone in which such property is situated; and
- 3) That non-conforming signs in the vicinity surrounding the subject site may not be used to set the standard for or be compared with applications for new signs, and shall not be used as justification for a hardship or special circumstance; and
- 4) The sign variance is the minimum necessary to alleviate the identified hardship or exceptional circumstance; and

- 5) The approval, denial or modification of any sign variance shall not provide precedent for any other sign variance in the city; and
- 6) The granting of the sign variance will not be materially detrimental to the public welfare or injurious to the properties or improvements in the vicinity.

(Ord. No. 5691, Amended, 12/27/95)(5821, Amended, 10/28/1997)

## **Section 11-06-11 VARIANCES TO THE ZONING ORDINANCE**

### **Section 11-06-11.01 Definition**

A variance is a modification of the requirements of this Ordinance as to lot size, lot coverage, lot width, street frontage, setback requirements, parking requirements, loading requirements, 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. A variance shall not be considered a right or special privilege but may be granted to an applicant upon a showing of undue hardship because of characteristics of the site, or unique circumstances relating to the intended use, and that the variance is not in conflict with the public interest.

### **Section 11-06-11.02 Application Required**

Every person desiring a variance from the provisions of this Ordinance shall submit an application upon a form prescribed by the Planning Director and pay a fee in accordance with the current fee schedule.

### **Section 11-06-11.03 Opportunity to be Heard**

Prior to granting a variance, notice and an opportunity to be heard shall be provided to property owners, purchasers of record and residents within the land being considered and adjoining the parcel under consideration. All requests for variance shall be heard and decided by the Planning and Zoning Commission in a public hearing scheduled and advertised in accordance with Sections 11-3-6 and 11-3-6.1 of this ordinance except that mailed notice be provided to the applicant and to each property owner, purchaser of record or resident within the land being considered and adjoining the parcel under consideration (including those properties across a street, alley, canal or other right-of-way) advising them of the time and place of the hearing. (Ord. 5211, 1-16-90)

### **Section 11-06-11.04 Action by the Commission**

The Commission must approve, approve conditionally, deny or modify the variance request. In acting upon such variance, the Commission shall review the findings of Staff and shall grant a variance upon finding that the following are true:

- A. That the granting of the variance will not be in conflict with the spirit and intent of the Comprehensive General Plan for the City, and will not effect a change in zoning;
- B. That there is either a hardship associated with the property itself or an exceptional circumstance

relating to the intended use of the property which is not generally applicable to property or permitted uses in the district.

- C. The granting of such relief will not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements of other property owners, or the quiet enjoyment of such property or improvement.

**Section 11-06-11.05 Variance**

The Commission may grant a variance as part of a conditional use application without requiring a separate application and hearing as long as the notice requirements of Section 11-6-11.3 are met and the findings in Section 11-6-11.4 above are made.

**Section 11-06-11.06 Effective Date**

Approval of any variance by the Commission shall become final after a lapse of ten (10) calendar days from the date of the decision to allow for the filing of appeals in accordance with Section 11-3-7.2.

**Section 11-06-11.07 Waiver of Appeal Period**

The applicant may request a waiver of the ten (10) day appeal period for an approved variance. Such request must be filed in writing and shall be accompanied by the signatures of all adjacent property owners indicating they do not object to the waiver request. The Planning Director shall review all pertinent information and issue a decision on the request within two (2) working days from the date upon which the request was filed. The Planning Director cannot waive the appeal period for any application to which a written or verbal protest was submitted.

**Section 11-06-11.08 Application, Resubmittal**

No application for a variance which has been denied by the Commission (or by the Council on appeal) shall be resubmitted in either the same or substantially the same form in less than one (1) year from the date of final action.

**Section 11-06-11.09 Term of Variance**

The term of a variance approval shall not exceed 18 months. Within this period the holder of a variance must initiate construction of the project.

**Section 11-06-11.10 Extension of a Variance**

The holder of a valid variance approval may submit a written request for a one-year extension of the variance approval for consideration by the Commission. A maximum of three such extensions may be granted. (Amended by Ord. 5233, 5-8-90)

**Section 11-06-11.11 Appeal of Variance Decisions**

The decision of the Planning and Zoning Commission on variance requests may be appealed to

the Boise City Council in accordance with Section 11-3-7.2 of this ordinance. A letter explaining the basis of the appeal and a fee as established in the current fee schedule must be submitted to the Planning Staff within the ten (10) day appeal period.

(5895, Amended, 02/23/1999)

**Section 11-06-11.12 Denial of a Variance Permit or Approval of a Variance with Conditions Unacceptable to the Landowner**

Denial of a variance permit or approval of a variance with conditions unacceptable to the landowner may be subject to the regulatory taking analysis and procedures provided for in Section 11-08-13 of this ordinance.

(6281, Added, 12/02/2003)

**Section 11-06-12 APPEALS OF ADMINISTRATIVE DECISIONS**

**Section 11-06-12.01 General**

The Planning and Zoning Commission shall hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by the Planning Director in the interpretation or enforcement of this Ordinance. In exercising the above powers, the Commission may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as it considers warranted by the evidence before it and to that end shall have all the powers of the officer from whom the appeal is taken.

**Section 11-06-12.02 Initiation of Application**

Any person aggrieved by any decision of the Planning Director may file an appeal. Such appeal shall be made within ten (10) calendar days from such decision. If the tenth day falls on a weekend or holiday the appeal may be filed on the next work day by 5:00 p.m. (Amended by Ord. 5233, 5-8-90)

**Section 11-06-12.03 Application and Fee**

Every person wanting to appeal an administrative decision shall file a notice of appeal stating the grounds for the appeal and fee with the Planning Director in accordance with current fee schedules.

**Section 11-06-12.04 Action by the Planning Director**

The Planning Director shall review all appeal applications for compliance with the requirements of Section 11-6-12. Upon acceptance of application for appeal, the Planning Director shall transmit to the Commission the record of the subject hearing. The filing of an appeal stays further action (subdivision, design review, conditional use, etc.) on the request which has been appealed, unless the Planning Director determines that a stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Commission upon application or notice to the Planning Director and upon notice to the chairman of the Commission or by a Court of Record.

**Section 11-06-12.05 Hearings, Publications and Notice**

The Commission shall hear the appeal at the public hearing following the cut-off date prior to which the appeal was submitted. Notice for the public hearing shall be as set forth in Section 11-3-6 of this Ordinance.

**Section 11-06-12.06 Action by the Commission**

The Commission shall thereafter, upon due cause being shown, confirm wholly or partly, modify or reverse the decision from which appeal is made, and, not later than ten (10) days after the conclusion of such hearing, shall file with the City Clerk a written report stating the action taken at such hearing. (Ord. 5169, 6-20-89)