

TITLE 17

ZONING REGULATIONS

CHAPTER 17.01

GENERAL ZONING PROVISIONS

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These regulations shall hereafter be known, cited and referred to as the *DEVELOPMENT REGULATIONS OF THE CITY OF KIMBERLY* and shall include all zoning and subdivision regulations governing developments under the jurisdiction of the city. (Ord. 542, 2007)

17.01.020: AUTHORITY:

A. Pursuant to the powers and jurisdictions vested through the laws, statutes and regulations of the state of Idaho, the city council of the city of Kimberly does hereby exercise the power and authority to adopt zoning and subdivision regulations to regulate development of lands under its jurisdiction. Such regulation of the development of land and the attachment of reasonable conditions to land development is an exercise of valid police power delegated by the state to this city. The developer has the duty of compliance with reasonable conditions laid down by said council for design, dedication, improvement and restrictive use of the land so as to conform to the physical and economical development of the municipality and the safety and general welfare of the future property owners in the subdivision and of the community at large.

B. Under the power and authority so vested, the council hereby declares that no building permit or certificate of zoning compliance shall be issued for any parcel or plat of land subject to the regulations nor shall any excavation or filling of land or construction of any public or private improvements take place or be commenced thereon, except in conformity with these regulations and no land subject to these regulations shall be subdivided and sold or offered for sale until the owner has obtained approval of a final plat in accordance with the regulations and the approved plat is filed with the county recorder. (Ord. 542, 2007)

17.01.030: JURISDICTION:

A. These regulations shall apply to all lands and improvements within the corporate city limits.

B. These regulations shall apply to lands and improvements outside the corporate city limits that:

1. Are within the designated "area of impact" and are not incorporated into an active agricultural unit of twenty (20) acres or more;

2. Are under written agreement by past or present owners to be regulated in return for enjoying the benefits of certain services normally available only to in-city lands.

C. For subdivision regulation only, all lands within one mile of the corporate city limits are subject by state law to the city's ordinances. (Ord. 542, 2007)

17.01.040: POLICY OF CITY:

It is hereby declared to be the policy of the city of Kimberly to consider the development of land within the jurisdiction of the city subject to the control of the city and to adopt development regulations to facilitate accomplishment of the goals and objectives of any comprehensive plans of the city for the orderly, planned, efficient and economical development of the city.

It shall be the general policy of the city that:

A. All land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace.

B. Land shall not be subdivided until all available public facilities and improvements exist or have been given proper consideration by the city council and proper provisions have been made for drainage, water, sewage and capital improvements such as schools, parks, recreation facilities, transportation facilities and improvements.

C. All existing and proposed public improvements shall conform to and be properly related to any proposals shown in a comprehensive plan, official map or capital budget and program of the city.

D. It is intended that these regulations shall supplement and facilitate the enforcement of the provisions and standards contained in any building and housing codes, zoning ordinances, comprehensive plans, official maps, land use plans and capital budgets and programs adopted by the city. (Ord. 542, 2007)

17.01.050: PURPOSE:

Pursuant to the general policy of the city of Kimberly, these regulations are adopted for the following purposes:

A. To protect and provide for the public health, safety and general welfare of the municipality and surrounding area.

B. To guide the future growth and development of the municipality and surrounding area, in accordance with any comprehensive plan of the city.

C. To provide for adequate light, air and privacy, to secure safety from fire, flood and other danger, and to prevent overcrowding of the land and undue congestion of population.

D. To protect the character and the social and economic stability of all parts of the municipality and surrounding area, and to encourage the orderly and beneficial development of all parts of the municipality and the surrounding area.

E. To protect and conserve the value of land throughout the municipality and surrounding area and the value of buildings and improvements upon such land, and to minimize the conflicts among the uses of land and buildings.

F. To guide public and private policy and action in order to provide adequate and efficient transportation, water, sewerage, schools, parks, playgrounds, recreation and other public requirements and facilities.

G. To provide the most beneficial relationship between the uses of land and buildings and the circulation of traffic throughout the municipality and surrounding area, having particular regard to the avoidance of congestion in the streets and highways, and the pedestrian traffic movements appropriate to the various uses of land and buildings and to provide for the proper location and width of streets and building lines.

H. To establish reasonable standards of design and procedures for subdivisions and resubdivisions, in order to further the orderly layout and use of land; and to ensure proper legal descriptions and monumenting of subdivided land.

I. To ensure that public facilities are available and will have a sufficient capacity to serve any proposed development.

J. To prevent the pollution of air, streams and ponds; to assure the adequacy of drainage facilities; to safeguard the water table and water resources; and to encourage sustainable use and management of natural resources throughout the municipality and surrounding area in order to preserve the integrity, stability and beauty of the community, the ecosystem and the value of the land.

K. To preserve the natural beauty and topography of the municipality and surrounding area and to ensure appropriate development with regard to these natural features.

L. To provide for open spaces through the most efficient design and layout of the land, including the use of average density in providing for minimum width and area of lots, while preserving the density of land as established in this title.

M. To minimize public and private losses due to flood conditions as follows:

1. To minimize expenditure of public money and costly flood control projects;

2. To minimize the need for rescue and relief efforts associated with flooding which are generally undertaken at the expense of the general public;

3. To minimize prolonged business interruptions;

4. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;

5. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

6. To ensure that potential buyers are notified that property is in an area of special flood hazard; and

7. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions. (Ord. 542, 2007)

17.01.060: INTERPRETATION:

The administrator shall be responsible for the interpretation of these regulations and any interpretation and application of the regulations shall be the minimum requirements for the promotion of the public health, safety and general welfare. This is not intended to abrogate any appeal rights provided herein or by other statute or law. (Ord. 542, 2007)

17.01.070: CONFLICTS OF LAW:

A. These regulations are not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute or other provision of law. Where any provisions of these regulations impose restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher standards shall control.

B. These regulations are not intended to abrogate any easement, covenant or any other private agreement or restriction. Where the provisions of these regulations are more restrictive or impose higher standards or regulations than such easement, covenant, or other private agreement or restriction, the requirements of these regulations shall govern. Where the provisions of the easement, covenant or private agreement or restriction impose duties and obligations more restrictive or higher standards than the requirements of these regulations, or the determinations of the city council or the municipality in approving a subdivision or in enforcing these regulations, and such private provisions are not consistent with these regulations or determinations thereunder, then such private provisions shall be operative and supplemental to these regulations and determinations made thereunder will not be enforced by the city. (Ord. 542, 2007)

17.01.080: SEVERABILITY:

If any part or provision of these regulations or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operating to the part, provision or application directly involved in all controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of these regulations or the application thereof to other persons or circumstances. The city council hereby declares that it would have enacted the remainder of these regulations even without any such part, provision or application. (Ord. 542, 2007)

17.01.090: SAVING PROVISION:

These regulations shall not be construed as abating any action now pending under, or by virtue of, prior existing subdivision regulations, or as discontinuing, abating, modifying or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm or corporation, or as waiving any rights of the municipality under any section or provision existing at the time of adoption of these regulations, or as vacating or annulling any rights obtained by any person, firm or corporation, by lawful action of the municipality except as shall be expressly provided for in these regulations. (Ord. 542, 2007)

17.01.100: AMENDMENTS:

For the purpose of providing for the public health, safety and general welfare, the city may, from time to time, amend the provisions imposed by these development regulations. The city in the manner prescribed by law shall hold public hearings on all proposed amendments. (Ord. 542, 2007)

17.01.110: VIOLATION AND PENALTIES:

Whenever a violation of this title occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall fully state the causes and basis of the same and shall be filed with the administrator. The administrator shall properly record such complaint, immediately investigate the same and take such action, or cause the same to be taken thereon as provided by this title. The city attorney of the city of Kimberly shall, in addition to taking whatever criminal action is deemed necessary, take steps to civilly enjoin any violation of this title.

Any violation of the provisions of this title or a failure to comply with any of its requirements excluding section 17.07.100 of this title shall constitute a misdemeanor. Each day such violation continues beyond notice shall be considered a separate offense. The landowner, tenant, developer, builder, public official or any other person who commits, participates in, assists in or maintains such continuing violation may be found guilty of a separate offense for each day the violation continues as aforesaid. Nothing herein contained shall prevent the council or any other public official or private citizen from taking such lawful action as is necessary to restrain or prevent any violation of this title or the Idaho Code.

Provided, however, that where property has been made nonconforming or where an existing nonconforming use has been increased by the exercise of eminent domain, it shall not be a violation and no penalty, either civil or criminal, shall result. Persons desiring to change or modify the use of said nonconforming properties in a manner which would, but for the exercise of eminent domain, be permitted outright, may apply for a special use permit, which permit may be granted with due consideration given to the health, safety and welfare of the citizens of the city.

Any person convicted of violating any of the provisions of this title excluding section 17.07.100 of this title shall be punishable by imprisonment of a term not to exceed ninety (90) days, a fine not to exceed three hundred dollars (\$300.00) or by both such fine and imprisonment, or as the court shall deem necessary in the interest of justice. (Ord. 636, 2016)

17.01.120: SCHEDULE OF FEES, CHARGES AND EXPENSES:

The council shall establish a schedule of fees, charges and expenses and collection procedure for zoning permits, amendments, appeals, variances, special use permits, plan approvals, and other matters pertaining to the administration and enforcement of this title requiring investigations, inspections, legal advertising, postage, and other similar matters. The schedule of fees may be altered or amended by only the council. Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on an application or appeal.

In addition the applicant or appellant shall pay applicable costs of all transcripts, publication costs, legal costs, engineering

and similar costs incurred by Kimberly with regard thereto. Also, if a development, phasing or other agreement is required; the applicant shall reimburse Kimberly for the legal expenses and engineer expenses incurred by Kimberly with regard thereto. After the actual costs are determined the applicant/appellant shall pay any additional costs prior to the final hearing on the matter. If any estimated costs paid at time of application submittal exceed the actual costs collected, then Kimberly shall reimburse the applicant/appellant the difference. (Ord. 631, 2016)

CHAPTER 17.02

DEFINITIONS

SECTION:

17.02.010: Terms Defined

17.02.010: TERMS DEFINED:

For the purposes of this title certain words used herein shall mean what is indicated in this chapter.

The present tense includes the future tense, and the singular number includes the plural and the plural number includes the singular.

The word "shall" or "will" is a mandatory requirement, the word "may" is a permissive requirement.

The word "used" or "occupied" includes the words "intended, designed or arranged to be used or occupied".

ACCESS EASEMENT: An easement across one or more adjacent properties to allow vehicular access to an otherwise inaccessible area at any time.

ACCESSORY BUILDING, ATTACHED: An accessory building that is attached to a structure and complies with adopted Building/Fire Codes.

ACCESSORY BUILDING, DETACHED: An accessory building that is detached from a structure and complies with adopted Building/Fire Code separations.

ACCESSORY DWELLING UNIT (ADU): An attached or detached dwelling which is secondary in nature that cannot be sold separately from the primary unit and is compliant with all zoning and building regulations. An "accessory dwelling unit" provides complete, independent living facilities for one or more persons, including permanent facilities for living, sleeping, eating, cooking and sanitation on the same lot as the permitted uses and is not to be constructed as an addition to a duplex or multi-family unit. Accessory dwelling unit sizes for the R-1 Super zone, R2 Limited zone, and R 3 General zone shall comply with table A of this definition. Accessory dwelling units shall be subject to Planning and Zoning Commission approval and preapproval for availability of water and sewer services. Accessory dwelling units shall be assessed for applicable water and sewer connection fees and a monthly user fee equal to a primary residence.

TABLE A

Lot Size	Maximum Accessory Dwelling Unit Size
7,000 - 9,000 sq. ft.	1,000 sq. ft. (gross)
10,000 - 15,000 sq. ft.	1,200 sq. ft. (gross)
16,000 sq. ft. - 1 acre	1,400 sq. ft. (gross)
Over 1 acre	1,600 sq. ft. (gross)

ACCESSORY USE OR STRUCTURE: A use or structure that is incidental and subordinate to the principal allowed use of a property and located on the same lot as the principal allowed use. Examples of accessory uses or structures but not limited to are. personal swimming pool, hot tub, garden/shed or a storage building. not a shipping container.

ADMINISTRATOR: A person who is legally vested with the right of administration of this title.

AGRICULTURAL LAND: Land used for the raising of plant crops and animals on pasture, but excluding feedlots and dairies.

AGRICULTURAL USES: Tilling of soil, horticulture, floriculture, forestry, fisheries, viticulture, raising crops, livestock, farming, dairying and animal husbandry including all uses customarily accessory and incidental thereto, but excluding slaughterhouses, fertilizer works, boneyards and commercial feedlots. Processing and retailing of animal and human consumed products raised and processed on the premises shall also be considered as being within the definition of agricultural uses.

ALLEY: See definition of street.

AMUSEMENT CENTERS. INDOOR ONLY: See indoor recreational facility.

ANIMAL, SMALL AND LARGE: An animal shall be considered small if it is a domestic pet normally kept in a home and weighs less than one hundred fifty (150) pounds at maturity. All other animals shall be classed as large animals.

ANIMATED SIGN: A sign with action or motion, flashing, color, changes requiring electrical energy, electronic or manufactured sources of supply, but not including wind actuated elements such as flags, banners or specialty items. This definition does not include public service signs such as time and temperature units.

APARTMENT HOTEL: A building or portion thereof designed for or containing either individual guestrooms or suites of rooms and dwelling units.

APPLIANCE REPAIR: The repair of a household or office device operated by gas or electrical current.

APPROVED: Applicable to Title 17, unless otherwise indicated, shall mean by the Council, P & Z Commission, City Administrator, Planning and Zoning Administrator, Public Works Director/Engineer, CSO, Building Official and City Clerk Treasurer. Applicable approvals delegated herein to administrative personnel of the City are subject to review and final determination by the Council.

ARCHITECTURAL LANDSCAPE WALL: A wall that is constructed out of masonry or concrete and is located outdoors / outside and provides an enclosure or barrier to prevent straying from within or intrusion into. For the purpose of this title, an architectural landscape wall shall be dually identified as a closed vision fence.

ARCHITECTURAL PROJECTION: Any projection which is not intended for occupancy and which extends beyond the face of an exterior wall of a building but shall not include signs. Examples of such projections are cornices, eaves, canopies, sunshades, gutters, chimneys, flues, belt courses, etc. For carports or canopies the architectural projection shall be measured from the support posts unless said posts are located more than three feet (3') from the outer edge of the carport or canopy roof. In such case a maximum of three feet (3') shall be considered the architectural projection.

AREA OF IMPACT: The area surrounding the City as established by mutual agreement with the County of Twin Falls in conformance with State law.

AREA OF SPECIAL FLOOD HAZARD: The land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year.

AUTO BODY REPAIR: Fender-chassis work/rebuild, frame repair, painting/paint booth, utilizing a DEQ approved exhaust system, painting in a State Fire Marshal approved paint booth, all vehicle and part storage shall be within a building or completely visually screened.

AUTOMOBILE AND RECREATIONAL VEHICLE RENTAL/STORAGE YARDS: Parking and/or storage of new and/or used automobiles and recreational vehicles, which may or may not be capable of immediate operation under their own power.

AUTOMOBILE IMPOUND FACILITY: Excluding a Police Impound facility: a facility that provides temporary outdoor storage for three (3) or more vehicles that are to be claimed by titleholders or their agents, provided that no vehicle shall be stored at said facility for more than forty five (45) days and must remain mechanically operable and licensed at all times, or a parcel of land or a building that is used for the storage of wrecked motor vehicles usually awaiting insurance adjustment or transport to a repair shop and where motor vehicles are kept for a period of time not exceeding fourteen (14) days.

AUTOMOBILE, MOBILE HOME, TRAVEL TRAILER AND FARM IMPLEMENT REPAIR: The repair of automobiles, mobile homes, travel trailers and farm implements.

AUTOMOBILE, MOBILE HOME, TRAVEL TRAILER AND FARM IMPLEMENT SALES AREAS: An open area, other than a street used for the display, sale or rental of new or used automobiles, mobile homes, travel trailers, or farm implements but not including repair work except minor incidental repair of same to be displayed, sold or rented on the premises.

AUTOMOBILE WRECKING: The dismantling or wrecking of two (2) or more motor vehicles, or motorized RV's.

AUTOMOBILE WRECKING YARD: Any area where automobile wrecking is carried out and/or accumulation of parts thereof are stored in the open and are not restored to operating condition within six (6) months of notification; or any land, building or structure used for the wrecking or storing of such motor vehicles.

AUTOMOBILE WRECKING YARD AND JUNKYARD: Any area where automobile wrecking is carried out and/or accumulation of parts thereof are stored in the open; or any land, building or structure used for the wrecking or storing of such motor vehicles or property containing any dismantled, abandoned, nonoperating, junked, damaged or destroyed household goods and equipment, motor vehicles, machinery or miscellaneous property.

BAKERY OR BAKERY GOODS STORE: A facility providing specialty food products, wholesale/retail, which may be prepared and baked/processed onsite.

BARBER, BEAUTY SHOP: See Professional Services.

BASE FLOOD: The flood having a one percent (1%) chance of being equaled or exceeded in any given year per adopted FEMA Maps.

BASEMENT: A portion of living space in a dwelling unit all or at least one-half (1/2) of its height below the average level of the adjoining ground.

BEST MANAGEMENT PRACTICES (BMPs): Those methods or practices to prevent or reduce water pollution and include, but are not limited to, structural and nonstructural controls, and operation and maintenance procedures. BMPs can be applied before, during, and after pollution producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

BICYCLEWAY: A public way designed for the use of nonmotorized vehicles.

BLOCK: A group of lots, tracts or parcels within well-defined boundaries, usually streets.

BONE-YARD: A storage area, enclosed or open that is commonly referred to as a salvage yard and is used for storage of materials including but not limited to signs, disassembled auto parts, storage of non-operating equipment/vehicles,

equipment from residential uses, farming operations, commercial uses, industrial uses, city and county highway districts and public works operations.

BUILDING: Any structure or device having a roof supported by columns or by walls and intended or used for shelter, housing or enclosure of persons, animals, plants, chattels or items of property not real-estate-land.

BUILDING LINE: See definition of line, building.

BUILDING PERMIT: A permit issued by the official building inspector, or P & Z Administrator in accordance to adopted State of Idaho Building Codes, and Kimberly building permit codes. which shall support any building alterations and new construction.

BUILDING SUPPLY OUTLET: A facility providing building supplies which may be in covered buildings, shelters, or in open yard settings. wholesale or retail.

BULK COMMODITY STORAGE PROCESSING: Outside non-enclosed bulk storage, mixing, loading and unloading of products such as but not limited to, cottonseed, beet pulp, wood chips/straw, animal bedding, grain products raw and processed, gravel, sand and road treatment-maintenance materials shall be prohibited in all zones excluding the Industrial Zone.

BUS BARN STORAGE REPAIR MAINTENANCE: The repair, maintenance and storage of buses on private or public property.

BUSINESS PARK: A development approved through the PUD process that contains a number of separate manufacturing, commercial, office and supporting uses and open space.

CALL CENTER: An operational center set up to utilize telecommunication and computer technologies to automate various high volume inbound and/or outbound telephone activities and services.

CANYON RIM: The point at which the average land slope begins to exceed fifteen percent (15%) in its descent to the canyon floor.

CANYON RIM SETBACK: The shortest distance between the canyon rim and the exterior wall of any building for which a canyon rim setback is required.

CARPORT, ATTACHED: Having all or parts of the carport structure attached to a dwelling or other structure, and complies with adopted Building/Fire Codes.

CARPORT, DETACHED: A roofed structure of which all sides and ends are not enclosed and is not attached to another structure, and complies with adopted Building/Fire Codes.

CASHIER'S BOOTH: A building not exceeding sixty (60) square feet which is used solely for the receipt of money from automotive and petroleum products and which contains no items for sale.

CEMETERY: Land used or intended to be used for the burial of the human or animal dead and dedicated for cemetery purposes, including crematories, mausoleums and mortuaries if operated in connection with and within the boundaries of such cemetery for which perpetual care and maintenance are provided.

CHANGE OF USE: A change of use from one of the following categories to another:

Agricultural processing.

Agriculture.

Communications and utilities.

Cultural facilities.

Government facilities.

Manufacturing.

Medical facilities.

Miscellaneous.

Parks.

Public assembly.

Residential.

Retail trade.

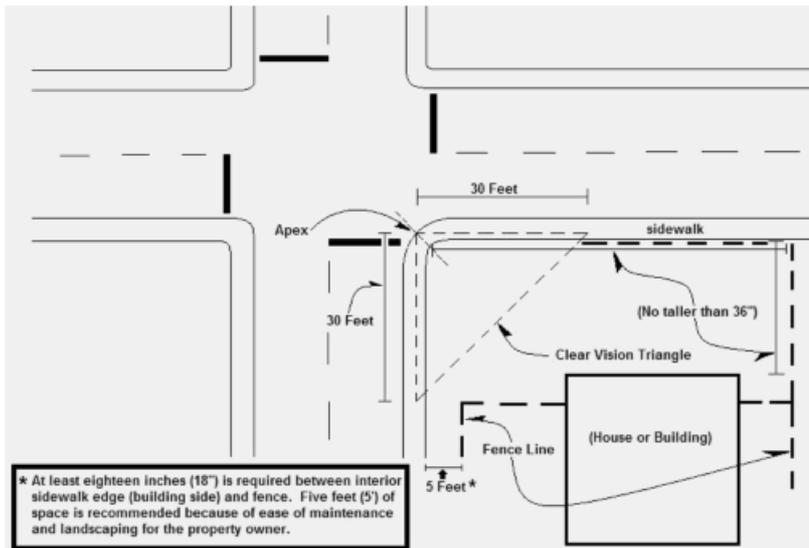
Services.

Sports facilities.

Transportation.

Wholesale trade.

CLEAR VISION TRIANGLE (See Diagram): The area of corner lots that incorporates the front or back property line and a side property line that meet creating a corner along roadways, hence creating an angle that extends from the apex of the corner to a point on both property lines that is measured thirty feet (30') from the apex.



COLLOCATION: The use of a single support system on the ground by more than one carrier or several support systems on an existing building or structure by more than one carrier.

COMMERCIAL USE: A structure, building, or area intended for commercial uses such as but not limited to, the selling, bartering or swapping of any merchandise, commodities, objects or services, bank-savings - loan, cabinet manufacturing - sales, car wash, drug store, food store, delicatessen, creamery, frozen food locker, food processing, fromagerie, bottling, packaging, shipping, receiving, furniture sales, gift shop, HVAC fabrication-service, repair, sales, laboratory, medical, dental, motel-hotel, nursery for flowers and plants, office, medical professional, photographic studio, optician, photographic studio, pharmacy, printing-blueprinting, restaurant-bar, retail store-services, sign shop, tire shop.

COMMISSION: The City of Kimberly Planning and Zoning Commission.

COMMON AREA: Lands or real estate intended for the common use of a group of people all of whom have an undivided common interest in the real estate.

COMMON AREA (CONDOMINIUM): The separate interest in a condominium.

COMMON AREA, LIMITED: A common area within a condominium ownership that is restricted in use to include only a part of the group of persons who have a common interest in a condominium project.

COMMON, INTEREST IN: Every interest created in favor of several persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes or unless declared in its creation to be a joint interest or unless acquired as community property.

COMMON WALL: A wall located upon or at the division line between adjoining premises and use, intended to be used or available to be used by both owners of such premises in the construction or maintenance of improvement on their respective properties.

COMPREHENSIVE PLAN: The overall guiding document for all development within the legal jurisdiction of the City of Kimberly.

CONCESSION: A building or structure having less than three hundred (300) square feet of area that is used for the sale of food, beverages and/or souvenirs.

CONDOMINIUM OWNERSHIP: An estate consisting of: a) an undivided interest in common in real property, in an interest or interests in real property or in any combination thereof, together with b) a separate interest in real property, in an interest or interests in real property, or any combination thereof.

CONDOMINIUM PLAT: The drawing of a division of real property into individual interests in common together with a separate interest in the real property for the purpose of establishing condominium ownership together with the declaration that is filed according to law with the County Recorder.

COTTAGE BUSINESS: A small, individually owned business or concern that functions without altering the residential character of the neighborhood and which does not create any negative impacts on the public health, safety, and general welfare of the adjacent property owners.

COUNCIL: The City of Kimberly City Council.

COUNTY: Twin Falls County, Idaho, and its Governing Board.

COVENANT: A written promise or pledge.

DAYCARE SERVICE: Services offered by persons who are paid to supervise or care for six (6) or more persons, including the resident children, for less than fourteen (14) hours per day, but excluding those businesses or religious institutions which provide incidental daycare service for patrons or attendees while parents are on the premises.

DEDICATION: The setting apart of land or interest in land for use by the public by ordinance, resolution or entry in the official minutes as by the recording of a plat. Dedicated land becomes public land upon the acceptance by the local Governing Authority.

DETENTION FACILITY: A facility used for the custody or confinement of persons.

DEVELOPER: The owner or his legally authorized agent, of lands or structures to be developed.

DEVELOPMENT: Lands within the boundaries of an area that are platted or mapped in accordance with this title that are intended to be improved by the construction or addition of buildings or other structures by: mining, dredging, filling, grading, paving, excavation or drilling.

DIRECTIONAL SIGNS: On premises incidental signs designed to guide or direct pedestrians or vehicular traffic.

DORMITORY/ FRATERNITY/ SORORITY HOUSE: A rooming house or residence hall occupied by students or human occupancies.

DRIVE-IN ESTABLISHMENT: A commercial establishment, excluding gasoline service stations, in which business is conducted while the customers are vehicle occupants. Drive-In Establishments shall be required to have an escape lane allowing a vehicle to leave the drive-in lane.

DWELLING: A building or portion thereof designed exclusively for residential occupancy, compliant with HUD - Housing Urban Development standards and adopted International Building and Residential Codes, including modular homes and manufactured homes, but not including hotels, boarding and lodging houses and RVs.

DWELLING, MULTIPLE: A building or portion thereof, designed for three (3) or more households, living independently of each other and including apartment hotels.

DWELLING, ONE HOUSEHOLD: A detached building containing one dwelling unit, one manufactured dwelling unit or one modular dwelling unit.

DWELLING, TWO HOUSEHOLD: A building designed, and compliant with adopted Building Codes to be used exclusively for occupancy for two (2) households living independently of each other including duplexes, semidetached houses and separately owned shared wall dwellings.

DWELLING UNIT: Space within the dwelling designed to accommodate all normal cooking, sleeping and sanitation needs of the residents, compliant with adopted Building Codes.

EASEMENT: A right of use for a stated purpose, falling short of ownership granted by a property owner to the public or to another person and restricting the property owner's use of the property by prohibiting the construction of any permanent building or structure over the easement and by prohibiting any other stated restriction of use.

ENGINEER: A professional engineer registered in the State of Idaho, as defined in Idaho Code section 54-1202.

ENGINEER, CITY: A licensed engineer retained by the City.

EQUESTRIAN FACILITIES: A facility created and maintained for the purpose of accommodating, training or competing equids, especially horses. Barns, stables, or riding facility.

EQUESTRIANWAY: A public way designed to be used for horseback riding.

FACADE MOUNTED: Directly attached or affixed to the elevation of a building, tank, or other structure.

FARM: An area twenty (20) acres or more in the area of impact which is being used for the purpose of producing food, fiber, seed stock, fodder or oil producing crops.

FEEDLOT AND DAIRIES: Land used primarily for the feeding of farm animals where the number of animals being fed exceeds five (5) per acre.

FENCE: An enclosure or barrier to prevent straying from within or intrusion into.

FENCE, BARBED WIRE: A fence that is constructed of steel fencing wire that has sharp edges or points arranged at intervals along the wire strand.

FENCE, CLOSED: A fence that restricts or impedes vision or sight through the fence by more than twenty percent (20%).

FENCE, ELECTRIC: A fence that has electric current, constant or pulsing, flowing through the lateral wire(s) of the fence.

FENCE, OPEN: A fence that does not restrict or impede vision or sight through the fence by more than twenty percent (20%).

FINISH FLOOR: Any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a

combination thereof. A floor used only for storage purposes is not a "finish floor".

FLOOD INSURANCE RATE MAP: The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY: The official report provided by the Federal Insurance Administration that includes flood profiles, the flood boundary-floodway map, and the water source elevation of the base flood.

FLOOD OR FLOODWATERS: A temporary overflow of water on lands not normally covered by water.

FLOODPLAIN: The relatively flat areas or lowlands adjoining the channel of a watercourse, or areas where drainage is or may be restricted by manmade structures which have been or may be covered partially or wholly by floodwater, but shall compose an area not less than that area confined by the 50-year flood and shall not exceed that area confined by the 100-year flood.

FLOODPLAIN REGULATIONS: The codes, ordinances and other regulations relating to the use of land and construction within the channel and floodplain areas, including zoning ordinances, subdivision regulations, Building Codes, Housing Codes, setback requirements, open area regulations and similar methods of control affecting the use and development of the areas.

FLOODPROOFING: Any combination of structural and nonstructural additions, changes or adjustments to properties and structures which reduce or eliminate flood damages to lands, water and sanitary facilities, structures and contents of buildings.

FLOODWAY: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water elevation more than one foot (1').

FREESTANDING TOWER: A tower not physically attached to a building or structure. A tower is attached to the ground by a foundation.

FRONT: The front of a building shall be the wall so designated by the building official which best conforms to the intent of this title. The front property line shall be the lot line most nearly parallel to the front of a building. In designating the front of a building, the building official and Planning and Zoning Administrator shall base their decision on the location of the door that provides the principal access into the building and/or the location of the traffic-way that provides the principal access to the property. The decision of the building official and Planning and Zoning Administrator may be appealed to the Planning and Zoning Commission for interpretation of the intent of this title and final determination of the designated front.

FRONTAGE, ENTIRE: All the property fronting on one side of a street between intersecting streets, or between a street and a right-of-way, waterway, end of dead end street or City boundary, measured along the street line. An intersecting street shall determine only the boundary of the frontage on the side of the street that it intersects.

GARAGE, ATTACHED: A garage having all or part of one wall common to the dwelling or to a covered porch attached to the dwelling.

GARAGE, DETACHED: A garage that is completely surrounded by open space.

GARAGE, PRIVATE: A building or portion of a building in which only motor vehicles used by the tenants of the building on the premises are stored or kept.

GOLF COURSE: A course on which golf is played.

GOVERNING AUTHORITY: The City Council of the City of Kimberly, Idaho.

GOVERNMENTAL FACILITIES: Facilities owned and operated by a governmental agency for the benefit of the general public.

GRAIN OR LEGUME STORAGE: A facility with storage buildings to warehouse and store grain and legume products, bulk boxed or bagged. or on site where grain commodities are stored in the open, with no shelter.

H-1 FACILITIES: Facilities for storage, handling, use or sale of hazardous and highly flammable or explosive materials other than flammable liquids as defined by the International Building Code adopted by the City Council.

HEIGHT: The vertical distance measured from the highest point on the top of the curb or future curb adjacent to the subject property.

HEIGHT OF BUILDING: The vertical distance measured at any point from the highest point of the roof directly to the lowest point of natural grade along the building foundation perimeter prior to any site excavation, grading or filing or to the lowest point of the grade existing, whichever is lowest. This provision shall not apply to flagpoles, lightning rods, weather vanes, antennas or chimneys, but not chases constructed with regard thereto.

HIGHWAY: A street designated as a highway by an appropriate State or Federal agency.

HILLSIDE SUBDIVISION: Any subdivision or portion thereof having an average slope of ten percent (10%) or more.

HIPPOTHERAPY, AND ANIMAL BOARDING FACILITY: Equine-assisted therapy (EAT) encompasses a range of treatments that involve activities with horses and other equines to promote human physical and mental health.

HISTORIC SITES: Sites established by the City, County, State or Federal government as historic monuments that should be preserved.

HOME OCCUPATION: A service, excluding daycare, offered by the resident of a household unit or the sale of items handcrafted on the premises by the resident of a household unit providing the service, sale or handcrafting is performed only by the resident therein and providing the area used in performing the home occupation does not exceed four hundred (400) square feet in area and providing there is no exterior indication of the home occupation. Services which generate no traffic to the premises or which use no vehicles and would normally be found incidental to a residential use shall be exempt from this definition.

HORTICULTURAL SERVICES: Services which support horticultural activities such as quality control laboratories and soil and chemistry testing.

HOSPITAL: An institution providing health services, primarily for inpatient and medical or surgical care of the sick or injured, including outpatient department, training facilities, central service facilities and staff offices. Hospitals are assumed to be for humans unless otherwise indicated and shall be distinguished from a nursing home by offering primarily short term rather than long term care.

HOTEL: Any building containing six (6) or more rooms intended or designed to be used, or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests.

HOUSEHOLD: An individual or two (2) or more individuals related by blood, marriage, legal adoption or guardianship, together with any servants or a group of four (4) or less persons who are unrelated and reside together for more than thirty (30) days.

HOUSEHOLD BUILDING: A single building containing one or more household units.

HOUSEHOLD UNIT: A room or group of rooms within a building containing cooking and bathroom facilities intended for use and occupancy by one family. Site built, manufactured homes and modular buildings must comply with minimum area requirements of the adopted Building Code. The smallest a household unit can be and still meet these requirements is one hundred fifty (150) square feet of floor area.

ICE MANUFACTURE/COLD STORAGE PLANT: A facility/structure that manufactures ice, and provides commodity, cold/frozen storage.

ILLUMINATED SIGN: A sign in which a source of light is used in order to make the message readable. This definition shall include internally and externally lighted signs.

IMPROVEMENT: Any alteration to the land or other physical constructions associated with subdivisions and building site developments.

IN-HOME DAYCARE SERVICE: Daycare service in a home in which the provider lives full time.

INDOOR RECREATIONAL FACILITY: A building in which recreational activities such as ice or roller skating, bowling, dancing, card games, swimming, tennis, video games, billiards, bingo and other similar activities take place.

KENNEL: Premises where more than three (3) but no more than six (6) dogs are raised, kept, housed, or boarded.

LARGE ANIMAL: Is defined as a non-domestic animal, not kept in a home, weighing more than one hundred fifty (150) pounds at maturity.

LARGE ANIMAL FACILITY: A facility utilizing large animals as defined in this chapter, which may provide professional support uses including, but not limited to, large animal veterinary care, canine/equine training, large animal boarding, human and large animal physical rehabilitation, hippotherapy, medical therapeutic treatment utilizing canines and large equines.

LARGE SCALE DEVELOPMENT: A subdivision which consists of sixty (60) or more lots or dwelling units or which contains forty (40) acres or more.

LAUNDROMAT- COMMERCIAL OR SELF-SERVICE: A facility which provides for washing and drying of clothing and household items which may be a self-service facility or a facility which receives the customer's items, cleans them, and provides a customer pickup/collection area.

LATTICE TOWER: A support structure that consists of a network of crossed metal braces, forming a tower that is usually triangular or square in cross section. Roof mounted towers not exceeding two feet (2') in width in any cross section and not exceeding fifty feet (50') in height shall not be considered lattice towers.

LESSEE: A person holding a legally enforceable lease.

LINE, BUILDING: One of four (4) perpendicular lines established by the building official for the purpose of measuring setbacks. The lines shall be established parallel to predominate building walls/foundations or vertical support posts which support a roof, canopy, patio cover, carport or porch entry cover, whichever provides the greater distance between the property line and the structures most exterior point, excluding architectural features not intended for occupancy, such as a chimney chase, provided minimum fire separations between adjacent structures are complied with.

LINE, PROPERTY: The legal boundary of a parcel of real property established by survey pins/stakes.

LOADING SPACE: An off street space or berth on the same lot with a building or contiguous to a group of buildings for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and which abuts upon a street, alley or other appropriate means of access.

LOT: Unless otherwise defined, a parcel of land with sufficient size to meet the minimum requirements of this title for use, dimensional standards and off street parking and which is owned by a single person with a separate interest or a group of persons with a separate interest together with an interest in common in the real property.

LOT AREA: The total area of a lot measured on a horizontal plane within the boundary lines exclusive of public and private roads, and easements of access to other property.

LOT, CONDOMINIUM: For the purposes of a condominium, a lot shall be the farthest exterior boundary of the real property upon which the project is situated.

LOT, CORNER: A lot situated at the intersection of two (2) or more streets.

LOT DEPTH: The horizontal distance between the front and rear lot lines, measured along the median between the two (2) side lot lines.

LOT, INTERIOR: A lot other than a corner lot.

LOT LINE ADJUSTMENT: A modification of boundary lines between existing lots, parcels of land, or properties, or modification of easement lines, which does not reduce the area, frontage, width, depth, or building setback lines of each lot, parcel of land, or property below the minimum zoning area regulations and which does not create additional lots or new streets. A lot line adjustment does not vacate the platted lot lines or easements of a recorded subdivision. A lot line adjustment does not divide lands nor is it a substitute for dividing lands through the City's lot split or subdivision platting procedures. A lot line adjustment action shall be consistent with the City's comprehensive plan.

LOT, PLATTED: A lot or individual parcel shown on a plat.

LOT, REVERSED CORNER: A corner lot, the side street line of which is substantially a continuation of the front lot line of the lot to its rear.

MAINTENANCE EASEMENT: An easement granted for the purpose of providing access for repair and maintenance of the appurtenant property in zero lot line subdivisions.

MANAGEMENT BODY: A person or group of persons created in accordance with this title to manage a development and maintain all common areas.

MANAGEMENT BODY (CONDOMINIUM): Any person or persons managing a project and includes the condominium owners acting themselves, a corporation or association of which the owners are members or stockholders, a body of governors or directors elected by the owners, or a management agent selected by the owners, corporation or association, or by the board or named in the declaration.

MANUFACTURED HOME: Structures that are regulated by the Federal Department of Housing and Urban Development (HUD) and are legal for use only as a single family dwelling, constructed according to HUD/HFA mobile home construction and safety standards, transportable in one or more sections, which, in the traveling mode, is eight (8) body feet or more in width or is forty (40) body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, and with respect to which the manufacturer has filed all certifications required by the Secretary of HUD and complies with the standards established under 42 USC 5401 et seq., and all applicable laws of the State of Idaho and the City of Kimberly, Idaho.

MANUFACTURING USE: The fabricating or assembling of materials into finished or partially finished products by hand or by the use of machinery, but excluding home occupations, activities creating products in which the process does not yield any vapor, liquid or solid waste materials, and crafts made in conjunction with retail business which may include, but not be limited to, ceramics, mosaics, fabrics, jewelry, leather goods, silk screening, dress designing, sculpturing and woodcarving.

MARQUEE: A permanent roofed structure supported by the main building and projecting over a public way.

MASTER DEVELOPMENT PLAN: A plan showing a carrier's expected network of wireless communication facilities within the City and its area of impact.

MEDICAL PROFESSIONAL OFFICE: A facility providing human health care such as but not limited to a dentist, doctor, physician, optometrist, ear-eye-nose-throat care giver, chiropractor, kidney center, infusion center and a same day surgery center.

MINISTOREAGE FACILITY: A storage facility with enclosed units having independent access from the outside of each unit, via vehicle circulation lanes, with optional on-site caretaker housing.

MOBILE HOME: A pre-HUD 1976 mobile home, not to include recreational vehicles or travel trailers, over four hundred (400) square feet interior area, provides an independent living area that is transportable in one or more sections, built on a permanent chassis, and designed to be used as a dwelling with or without a permanent foundation, when connected to the required utilities.

MOBILE HOME PARK: Any tract of land that is divided into rental spaces under common ownership or management for the

purpose of locating two (2) or more manufactured and/or mobile homes for dwelling purposes.

MOBILE HOME, TEMPORARY: A nonself-propelled vehicle of less than four hundred (400) square feet interior area designed, constructed or intended for temporary residential use.

MOBILE VENDORS: A temporary vendor with a licensed mobile self-contained trailer, vehicle or van, which is operated by the owner, may conduct retail and wholesale, sales in the Commercial Gateway, Commercial Business, Residential Professional, Parks and Industrial Zone, upon approval of a Special Use Permit, processed by the Kimberly Planning and Zoning Commission, in accordance with Id. Code 67-6509 notice and public hearing procedures. Temporary mobile vendor permits excluding, Christmas Tree Sales, Fire Works Sales, and the annual Kimberly Good Neighbor event shall be restricted to ten (10), days, per calendar year, unless extended by the Planning and Zoning Administrator.

MODULAR STRUCTURES/HOMES - NON-RESIDENTIAL: A structure designed, and constructed off site, compliant with adopted IBC-International Building Codes, not attached to mobile/transport frame work, constructed with floor joists typical of site-built construction, which are permanently attached to a back filled concrete foundation, or concrete slab on grade.

MONUMENT: Any permanent marker either of concrete, galvanized iron pipe, or iron steel rods, used to identify any tract, parcel, lot or street lines, as specified in the Idaho Code.

MONUMENT SIGN: A freestanding sign with a solid base attached to the ground, extending predominantly in a vertical design. The base width of the sign structure is continued to or near the top of the monument sign. Structural supports are designed to be similar and incorporated into the sign construction, providing architectural features which complement the sign design. Rock signs are considered monument signs. Pole type, freestanding sign supports are not considered monument signs, unless the support poles are enclosed within the monument sign structure, casing.

MOVING-SHIPPING STORAGE CONTAINERS: A metal container built offsite, delivered and placed on private property, to be used and accessed by the private property owner for storage on a temporary basis. Container shall not be placed on the private property more than three (3) months and the use shall expire. Upon request by the property owner, an extension may be granted by the Planning and Zoning Administrator for a specific site, that is under construction, with an active building permit, which has not been issued a Certificate of Occupancy by the City of Kimberly, preventing the container from being emptied. Extensions may be granted on a daily basis and not exceed sixty (60) days. Containers shall be removed from the site upon the established building permit expiration date. Moving-shipping storage containers, individually or in multiples in any zoning district, shall not be used for a commercial, public mini-storage facilities.

MULTIPLE OCCUPANCY BUILDING: A building containing more than two (2) businesses or households.

NONCONFORMING BUILDING: A building or structure not conforming to the provisions of this title but which was lawfully existing at the time of adoption of this title.

NONCONFORMING USE: A use not conforming to the provisions of this title but which was lawfully existing at the time of adoption of this title.

NURSING HOME: A building housing any facility, however named, whether operated for profit or not, the purpose of which is to provide skilled nursing care and related medical services for more than eight (8) individuals suffering from illness, disease, injury, deformity or requiring care because of old age. Also known as a "rest home" includes rest homes, assisted living and retirement homes.

OFF PREMISES SIGN: A sign mounted on property other than that occupied by the business being advertised by said sign.

ON PREMISES SIGN: A sign mounted on property that is occupied by the business being advertised by said sign.

100-YEAR FLOOD: The highest level of flooding that, on average, is likely to occur once every one hundred (100) years and/or that has a one percent (1%) chance of occurring each year. Subject land is depicted on adopted FEMA Maps and shall be developed in accordance to the FEMA regulations.

OPEN SPACE: An area retaining a natural ground cover free of any buildings, structures, streets or parking areas.

ORIGINAL PARCEL OF LAND: A lot or tract as recorded on any plat or record on file in the Office of the County Recorder, or an unplatted contiguous parcel of land held in one ownership and of record at the effective date hereof. In cases of "unrecorded matters of fact", the commission shall use its best judgment to determine a fair designation.

ORPHANAGE: A rooming house or residence hall occupied by orphaned children.

OVERNIGHT RV FACILITY/ CAMPGROUND/ RECREATION VEHICLE PARK: A park facility which is developed to allow and support the temporary parking of RV's for overnight stays or extended stays. Parking spaces may provide electrical services, telecommunication services, water and sewer connections. A general store, propane re-fill component, showers and restrooms are permitted. Onsite managers shall be required at such time occupancy occurs of the RV park, regardless of the type of occupancy, from tents to motorhomes.

OWNER: Any person or group of persons having legal title to real property that is subject to this title.

PARKING SPACE, AUTOMOBILE: An enclosed or unenclosed surfaced area of not less than twenty feet by nine feet (20' x 9') in size, together with access and maneuvering space sufficient to permit a standard automobile to be parked within the surfaced area, permanently reserved for the temporary parking or storage of one automobile. The total space shall be not less than two hundred seventy (270) square feet.

PATIO, COVERED: See definitions of carport, attached and carport, detached.

PEDESTRIAN PICK UP SHELTER: A structure primarily used by persons waiting for public transportation or using pedestrian trails.

PEDESTRIANWAY: A public way designed to be used as a walkway for pedestrians.

PERFORMANCE BOND: An amount of money or other negotiable security paid by the developer or his surety to the City Clerk, which guarantees that the developer will perform all actions required by the Governing Body regarding an approved plat, and provides that if the developer defaults and fails to comply with the provisions of an approved plat, the developer or his surety will pay damages up to the limit of the bond, or the surety will itself complete the requirements of the approved plat.

PERMANENT: Not less than six (6) months.

PERSON: Any individual or any corporation, joint venture, limited partnership, partnership, firm, association, trustee, trust or other similar legal entity or organization.

PLANNED UNIT DEVELOPMENT: A tract of land not less than two (2) acres unless otherwise approved by the commission, on which a variety of residential, commercial and manufacturing uses may coexist in a preplanned environment with more flexible standards than normally apply to the use of land in a standard zoning district.

PLAT: The drawings, certifications, descriptions and approvals of a division or proposed division of real property into two (2) or more lots, blocks, parcels, sites, plots, units, common areas, limited common areas or other descriptive designations of real property for the purpose of offering for sale, lease or development, either on the installment plan or upon any and all other plans, terms and conditions to any person having a separate interest or an individual interest in common together with a separate interest in any or all of the real property.

PORCH: A covered entrance to a building.

PREMISES: A parcel of land or contiguous parcels of land with their appurtenances and buildings which are under one ownership or control.

PRIVATE: Belonging to a person or group of persons and not for the public or open to the public.

PRIVATE WAY: Any right-of-way or easement platted across real property owned by the person platting the private way and intended for the general or special use of a person or persons, owned and maintained by the property owner/HOA, rather than the general public.

PROFESSIONAL SERVICES: Services offered by persons engaged in the legal, engineering, architectural, design, planning, accounting, auditing, educational and related professions and persons who service the human body and mind and are services commonly referenced as office, medical and professional which support uses including, but not limited to, human healthcare, cosmetology, property caretaker onsite, small animal veterinary care, canine training, small animal boarding, human and small animal physical rehabilitation.

PROJECT: A development.

PROJECT (CONDOMINIUM): The entirety of the property divided or to be divided into condominiums.

PROJECTING DOUBLE FACED BUILDING SIGN: A double faced sign which projects more than twelve inches (12") over public property, and which uses a building wall as its main source of support.

PROPERTY (CONDOMINIUM): The land described in the declaration, recorded together with any building, improvement or structure thereon, and every easement or right appurtenant thereto, and all personal property intended for use in connection therewith or for the use, benefit or enjoyment of the condominium owners.

PUBLIC: Public lands or development Owned by Federal, State, or local government or subdivision thereof. Examples are but not limited to public parks used for recreation, sports athletic fields, and community events.

PUBLIC WAY: Any right-of-way or easement dedicated or platted across real property owned by the person dedicating or platting the public way and intended for the general or special use of the public; or any right-of-way or easement legally obtained by the City through the use thereof providing such public way has not been vacated by the City Council.

REAL PROPERTY: Real estate consisting of: a) lands, possessory rights to land, ditch and water rights, and mining claims, both lode and placer; b) that which is affixed to land; and c) that which is appurtenant to the land.

REAR: The rear of a building and rear property line shall be the wall and lot line most nearly parallel to the front wall and lot line.

RECREATIONAL AND SPORTING VEHICLES: Travel and tent trailers, campers designed to be mounted on a pickup truck, motor homes, boats and accessories, motorcycles, recreational type snow machines and related all-terrain vehicles designed to be used on and off the highway system, which are required to be public right-of-way compliant under the laws of the Idaho Transportation Department.

RECREATIONAL VEHICLE AND CAMPING PARK: Any tract of land that is divided into rental spaces under common ownership or management for the purpose of locating recreational vehicles, travel trailers or tents for dwelling purposes for a

period not to exceed six (6) months.

RELIGIOUS FACILITIES: A building intended for the worship of a god or similar being or idea and its related facilities such as meeting halls, gyms, a household unit for persons employed in the building, and schools for religious teachings.

RELIGIOUS QUARTERS: A rooming house or residence hall occupied by persons employed by a single religious organization.

REPRODUCIBLE DRAWING: A permanent drawing prepared in black ink or an archival photographic image process conforming to the standards established by the American National Standards Institute on a polyester material four-thousandths of an inch (0.004") thick with a matte finish.

RESERVE STRIP: A strip of land between a partial street and adjacent property, which is reserved or held in public ownership for future street extension or widening.

RESIDENCE HALL: A building without cooking facilities where one or more rooms without cooking facilities are occupied by separate households for more than thirty (30) days without board.

RESIDENTIAL HOTEL: A residence hall or rooming house having one or more rooms occupied by separate households where more than seventy five percent (75%) of the households reside for more than thirty (30) days.

RESIDENTIAL USE: Any use designed or intended to meet the cooking, sleeping and sanitary needs of one or more individuals.

RETIREMENT HOME: A rooming house or residence hall occupied by retired persons.

REVOLVING SIGN: A sign that rotates or radiates about an axis.

RIGHT-OF-WAY: A strip of land dedicated or reserved for use as a public way that normally includes streets, alleys, sidewalks and other public utilities or service area.

ROADSIDE STAND: Examples of these structures commonly used for farmers markets, espresso drive-ups, flea markets and bazars may include, mobile portable units, stationary buildings, barns, tents, cargo vans / trailers. These structures and mobile units typically utilize adjacent land areas, for marketing, selling of commodities, onsite parking, loading and unloading areas. These structures and mobile units and associated uses are normally on private property. Occasionally the Roadside Stand structures and mobile units may be on public property, if approved by the applicable governing jurisdiction. All signage for advertisement of the Roadside Stand use shall be approved by the Planning and Zoning Department.

ROOF PROJECTIONS: Chimneys, smokestacks, church spires, flagpoles, radio and television antennas or towers, masts, cooling towers, elevator shafts and other similar projections.

ROOF SIGN: A sign erected upon or above a roof or parapet wall of a building and which is wholly or partially supported by said building. Supports must be an integral part of the design. No exposed wires or struts.

ROOMING - BOARDING HOUSE/BED AND BREAKFAST: A structure owner-occupied resulting from the conversion of a one-family dwelling, or constructed as a rooming - boarding, bed and breakfast structure, which is used for providing overnight accommodations and a morning meal to not more than eight (8) transient lodgers, and containing not more than five bedrooms for such lodgers. A building with common cooking facilities, food refrigeration components, rooms with limited cooking/food refrigeration facilities, which may be occupied by separate households.

SANITARIUM, SANATORIUM: A private hospital, whether or not such facility is operated for profit.

SCHOOL: Any place primarily used for teaching.

SERVICE BUILDING: A permanent building or buildings designed to provide service facilities to the inhabitants or uses of any development.

SERVICE ROAD: A dedicated minor way that is used for vehicular access to back or side of residential property otherwise abutting on a street.

SERVICE STATION: A building or portion thereof and land used for supplying fuel, oil and minor accessories for motor vehicles at retail direct to the customer and for making minor emergency repairs.

SETBACK: The measured distance from a property line, to a structure within which a building may be prohibited. Setbacks are measured from platted property boundary lines to the vertical wall/foundation.

SHELTER HOME: Building or facility, however named, operated on either a profit or nonprofit basis for the purpose of providing a home with necessary supervision for three (3) or more persons not related to the owner and who are unable to care for themselves.

SHOP FOR BUILDING CONTRACTOR: A structure used to contain/shelter building materials, construction tools, vehicles, associated offices, customer service areas, and restrooms.

SIDE: The side of a building and side property line shall be the wall and lot line most nearly perpendicular to the front wall and lot line.

SIGN: Any face of any lettered or pictorial device and/or structure designated to inform or attract attention.

SIGN STRUCTURE: Any structure that supports or is capable of supporting any "sign" as defined in this section. A sign structure must be an integral part of the sign design.

SPECIAL USE PERMIT: A permit granted by the commission for a permanent use that is listed in the Special Use Category, otherwise prohibited but may be allowed under specific provisions when not in conflict with a comprehensive plan.

STANDARD SPECIFICATIONS: The specifications as specified in this title or as officially adopted by the City Council.

STATE: State of Idaho.

STORAGE FACILITY COMPLEX: A facility complex, with storage units constructed inside a structure, where each unit does not have independent outside access, where groups of interior units are accessed through a common entrance/exit door with optional on-site caretaker housing.

STORMWATER: Stormwater runoff, snowmelt, and surface runoff and drainage.

STORMWATER RETENTION/COLLECTION FACILITY: Those methods or devices that collect and hold the stormwater runoff for dissipation or disbursement through infiltration and/or evaporation, designed and compliant with ISPWC standards.

STREET: A right-of-way that provides access to adjacent properties, the dedication of which has been officially accepted. The term "street" also includes the terms highway, thoroughfare, parkway, road, avenue, boulevard, lane, place and other such terms.

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

Arterial: A street designated for the purpose of carrying fast and/or heavy traffic.

Collector: A street designed for the purpose of carrying traffic from local streets to other collector streets and/or arterial streets.

Cul-De-Sac: A street connected to another street at one end only as provided with a turnaround space at its terminus.

Frontage: A local street parallel to and adjacent to an arterial street to provide access to abutting properties.

Half Street: A street comprised of one-half ($1/2$) of the width required to conform to a standard City street section.

Local: A street that has the primary purpose of providing access to abutting properties.

Loop: A local street with both terminal points on the same street of origin.

Partial: A dedicated right-of-way providing only a portion of the required street width, usually along the edge of a subdivision or tract of land.

Private: A street that is not accepted for public use or maintenance that provides vehicular and pedestrian access.

Stub Street: A street that terminates without provisions for a turnaround area.

STREET GRADE: The officially established grade of the street upon which a lot fronts. If there is no officially established grade, the existing grade of the street shall be taken as the street grade.

STRUCTURAL ALTERATIONS: Any change which would tend to prolong the life of the supporting structural members of a building or structure, such as bearing walls, columns, beams or girders.

STRUCTURES: Anything constructed or erected, the use of which requires location on the ground or attachment to something having a fixed location on the ground. Among other things, structures include buildings, mobile homes, walls, fences and billboards.

SUBDISTRICTS, BASIC AND SECONDARY: A zoning designation that provides flexibility for the development of a homogenous unit without compromising the health, safety or general welfare of the community.

SUBDIVIDER: The individual, firm, corporation, partnership, association, syndicate, trust or other legal entity that executes the application and initiates proceedings for the subdivision of land in accordance with the provision of this title. The subdivider need not be the owner of the property; however, he shall be an agent of the owner or have sufficient proprietary rights in the property to represent the owner.

SUBDIVISION: The result of an act of dividing an original lot, tract or parcel of land into more than one part for the purpose of transfer of ownership of development; which shall also include the dedication of public streets and other rights-of-way and the addition to, or creation of, a cemetery. However this title shall not apply to the following:

- A. An adjustment of lot lines as shown on a recorded plat which does not reduce the area, frontage, width, depth or building setback lines of each building site below the minimum zoning requirements, and does not change the original number of lots in any block of the recorded plat;
- B. An allocation of land in the settlement of an estate or a decedent or a court decree for the distribution of property;
- C. The unwilling sale of land as a result of legal condemnation as defined and allowed in the Idaho Code;
- D. Widening of existing streets to conform to a comprehensive plan;

E. The acquisition of a street right-of-way by a public agency in conformance with a comprehensive plan; and

F. The exchange of land for the purpose of straightening property boundaries, which does not result in the change of the present land use.

SURVEYOR: A land surveyor who meets the requirements of Idaho Code section 54-1202.

TEMPORARY COMMERCIAL MOBILE UNIT: A mobile building constructed off site, temporarily placed on a site, providing a place for contractors to review plans, manage the site being developed or a temporary commercial mobile unit to conduct commercial business operations in, while the permanent structure is being constructed on the same site. A temporary commercial mobile unit shall be removed within twelve (12) months or sooner, from date of placement, unless an extension is granted by the Planning and Zoning Administrator due to the permanent structure under construction, not receiving a certificate of occupancy.

TENNIS COURTS/BASKET BALL COURTS/PICKLE BALL COURT: A hard surfaced court developed with applicable netting, striping and perimeter fencing for the use of tennis, basketball and pickle ball or other similar games.

THEATER, OUTDOOR DRIVE-IN: An open lot or part thereof, with its appurtenant facilities, devoted primarily to the showing of moving pictures or theatrical productions, on a paid admission basis, to patrons seated in automobiles or on outdoor seats.

TIME AND TEMPERATURE SIGN: A sign involving a panel that displays the time and temperature with flashing lamps or exposed neon.

TOTAL STRUCTURE (CONDOMINIUM): The structure within which is contained all of the units of the condominium.

TOURIST COURT: A group of attached or detached buildings containing individual sleeping or living units designed for, or used temporarily by, automobile tourists or transients, with parking spaces conveniently located to each unit and including auto courts, motels, or motor lodges.

TOWNHOUSE: A single-family dwelling with party walls and no side yards between abutting dwellings.

TRAFFICWAY: A public way or a private way whose primary use is for movement of motorized vehicles.

TRAILER, CAMP CAR OR TRAILER HOUSE: Any unit used for living or for sleeping purposes which is equipped with wheels or similar device used for the purpose of transporting said unit from place to place, whether by motor power or other means, and such vehicles that are used as aforesaid that have had the wheels or equipment removed.

TRANSIENT LODGING: A rooming house or residence hall having one or more rooms occupied by separate families where less than seventy five percent (75%) of the families reside for more than thirty (30) days.

UNATTENDED VEHICLE: A vehicle parked for more than twenty four (24) hours in one location.

UNDER MARQUEE SIGN: A lighted or unlighted display attached to the underside of a marquee protruding over public or private sidewalks or right-of-way.

UNIT: A separate interest in real property in a condominium or townhouse ownership.

UNPLATTED AREA: Any area that has not been subdivided according to law.

USE: An activity or purpose, for which land or premises or a building thereon is designed, arranged or intended, or for which it is occupied or maintained, let or leased.

UTILITY POLE: A telephone, power, light, cable television, or flag pole. Light poles shall include street, stadium and security light poles.

VARIANCE: A modification of the requirements of this title.

VEHICLE: Every device upon or by which any person or property is or may be transported or drawn upon a public or private highway, right of way, street or alley, except devices moved by human power or used exclusively upon stationary rails or tracks.

VETERINARY CLINIC: A facility providing medical care, shelter, pasturing, grooming, boarding and training for animals including, but not limited to, horses, canines, chickens, felines, goats, llamas, swine, sheep, fowl and aquatic species.

VICINITY MAP: A drawing which sets forth by dimensions or other descriptive means the relationship of a proposed development to other nearby developments, trafficways or other landmarks within the general area in order to better locate and orient the area in question.

WALL: The full width or length of a building, including recessed windows or doors.

WIRELESS COMMUNICATIONS FACILITY: A facility that transmits and/or receives electromagnetic signals, including antennas, microwave dishes, parabolic antennas, directional antennas and other types of equipment for the transmission or reception of such signals, towers or similar structures supporting the equipment, equipment buildings, shelters, cabinets, and other facilities.

YARD: An open space on a lot, unoccupied and unobstructed from the ground upward except as otherwise provided in this title.

YARD, FRONT: A yard extending between side lot lines across the front of a lot and from the front lot line to the nearest part of a building, excluding architectural projections. Any street frontage is considered a front yard.

YARD, REAR: A yard extending between side lot lines across the rear of the lot and from the rear lot line to the rear of the principal building, excluding architectural projections.

YARD, SIDE: A yard extending from the principal building to the side lot line on both sides of the principal building between the lines establishing the front and rear yards, excluding architectural projections.

ZERO LOT LINE: A line created by the placement of a building line upon a side lot line or creation of a side lot line that bisects a common wall. (Ord. 655, 2018; Ord. 656, 2019; Ord. 665, 2020; Ord. 666, 5-25-2021; Ord. 677 § 8, 2023)

CHAPTER 17.03

DISTRICTS

SECTION:

17.03.010: Map

17.03.020: Conformance With Zoning Districts

17.03.030: Nonconforming Uses Or Buildings

17.03.010: MAP:

The official zoning map shall serve as the true record of zoning district boundaries established by the city of Kimberly. In order to separate land uses which are incompatible and to mitigate the effects of land uses which conflict, the city is divided into zoning districts as depicted upon the official zoning map of the city which is adopted and made a part of this title as though fully set out in this title. The zoning district map is available for public view at the office of the Kimberly city clerk, 132 Main Street North, Kimberly, Idaho. (Ord. 542, 2007)

17.03.020: CONFORMANCE WITH ZONING DISTRICTS:

A. Any land located within a zoning district designated on the "official zoning map" shall only be used or occupied and any building structure or improvement thereon shall only be used, occupied, placed, replaced, erected, reerected, constructed, reconstructed, altered, extended, enlarged, modified, removed or moved as this title permits for the zoning district in which the same is located.

B. No use, dimensional requirement, sign, off street parking area or improvement existing on or after the effective date hereof shall be reduced or altered below the minimum requirements of this title except as provided herein. (Ord. 542, 2007)

17.03.030: NONCONFORMING USES OR BUILDINGS:

A building or use made nonconforming but which was lawfully existing or under construction at the time of adoption hereof may continue to be used or occupied, subject to the provisions of this section.

A. Discontinuance Of Nonconforming Uses And Buildings:

1. Uses: For any of the following reasons, a nonconforming use shall be discontinued and further use of the property shall conform to the provisions of this title:

- a. When a nonconforming use involving a building is discontinued from use for a period of one year.
 - b. When a nonconforming use not involving a building is discontinued from use for a period of six (6) months.
 - c. When a nonconforming use is replaced by another nonconforming use, in which case both the initial and subsequent use shall be discontinued. The initial nonconforming use may not be reinstated.
 - d. When a nonconforming use involving a building or structure having an appraised value less than two thousand dollars (\$2,000.00) or involving no building or structure is still in existence two (2) years after the effective date hereof.
2. Buildings: A nonconforming building shall be discontinued and removed or brought into conformance with the provisions of this title within two (2) years after the effective date hereof if the building or structure has an appraised value of less than two thousand dollars (\$2,000.00) or if the modification to bring it into conformance with the provisions of this title will cost less than five hundred dollars (\$500.00).

B. Replacement Of Nonconforming Building: A nonconforming building or conforming building housing a nonconforming use damaged by fire, collapse, explosion or act of God, subsequent to the effective date hereof, may be replaced or repaired providing: 1) the new building does not have a nonconforming feature that the original building did not have, 2) the new building does not exceed the size of the original building except as provided by subsection D of this section, 3) a nonconforming use is not expanded or changed, and 4) a building permit for the replacement or repair is issued within six (6) months of the date of the damage. The planning and zoning commission may approve requests for extensions within the original six (6) months.

C. Expansion Of Nonconforming Building Or Nonconforming Use: Except as provided hereinafter:

1. No building or structural alteration, improvement or reconstruction shall be made which expands a nonconforming building or conforming building housing a nonconforming use beyond any part of the existing wall or roofline.

2. No additional buildings or structures may be constructed or relocated on the property to house the same or any other nonconforming use. Under no circumstances may the person or entity responsible for a nonconforming building or use expand such building or use by the acquisition of additional real property.

3. No person or entity may acquire additional real property to bring the nonconforming building or use into conformance with this title unless the use shall also conform to the requirements of this title.

D. Permits To Expand Nonconforming Buildings Or Conforming Buildings Housing A Nonconforming Use: The city planning and zoning commission may authorize the issuance of a "nonconforming expansion permit".

1. Application: The application for a nonconforming building expansion permit shall be filed with the zoning administrator and shall include and require, as a minimum:

- a. Name, address and phone number of the applicant.
- b. Legal description of the property.
- c. Description of the existing use.
- d. The reason the property, building or use is nonconforming to the requirements of this title.
- e. Existing zoning district.
- f. A narrative statement of the type of proposed expansion, including a descriptive statement of the intended expansion, the reason therefor and the cost thereof.
- g. Site development plans to scale showing building locations, landscaping, permanent existing trees, ground treatment, fences, off street parking and circulation, location and size of adjacent street, north arrow and property lines, drawings of major exterior elevations, building materials, existing grade and proposed new grades.
- h. A narrative statement evaluating the effects on adjoining property and a discussion on the general compatibility with the adjacent and other properties in the district.
- i. A narrative statement evaluating the costs of a total relocation of the nonconforming building or use to an appropriately zoned site.

2. Review Of Application: The commission shall review the application against the following considerations:

- a. Will the proposed expansion be harmonious with and in accordance with the general objectives of the comprehensive plan and/or zoning regulation?
- b. Will the proposed expansion be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity?
- c. Will the proposed expansion involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any person, property or to the general welfare of the surrounding neighborhood by reason of excessive production of traffic, noise, smoke, fumes, glare or odors?
- d. Will the proposed expansion have any other adverse impact on the surrounding neighborhood?
- e. Considerations relating to traffic safety and traffic congestion:
 - (1) The effect of the site development plan on traffic conditions on contiguous streets.
 - (2) The layout of the site with respect to locations and dimensions of vehicular and pedestrian entrances, exits, drives and walkways.
 - (3) The arrangement and adequacy of off street parking facilities to prevent traffic congestion.
 - (4) The location arrangement and dimensions of truck loading and unloading facilities.
 - (5) The circulation patterns within boundaries of the development.
 - (6) The surfacing and lighting of off street uses.
- f. Considerations relating to outdoor advertising and noise:
 - (1) The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures in relation to the creation of traffic hazards and the appearance and harmony with adjacent developments.
 - (2) The nuisance effect of additional noise.
- g. Considerations relating to landscaping:
 - (1) The location, height and materials of walls, fences, hedges and screen plantings to ensure harmony with adjacent developments or to conceal storage areas, utility installation or other unsightly development.
 - (2) The planting of ground cover or surfacing to prevent dust and erosion.
 - (3) The unnecessary destruction of existing healthy trees.
 - (4) The restoration of natural vegetation.
 - (5) The aesthetic effects on motorists, bicyclists and pedestrians passing along public right of way adjacent to or included within the development.
- h. Considerations relating to buildings and site layout: The considerations of exterior design in relation to adjoining structures in height, bulk and area openings, breaks in the facades and facing on streets, line and pitch of roof and arrangement of structure on the parcel.

i. Considerations relating to drainage and utilities:

(1) The effect of the site development plan in relation to the adequacy of the storm and surface water drainage proposals.

(2) The use of city sewer and water.

(3) The underground placement of utilities.

3. Hearing Process: Prior to granting a nonconforming building expansion permit, at least one public hearing shall be held before the planning and zoning commission. At said hearings, all interested persons shall have the opportunity to be heard. At least fifteen (15) days prior to the intended hearing, a notice of the time and place and a brief summary of the proposal shall be published in the "Twin Falls Times News". A copy of the notices of public hearing shall be mailed via first class mail, by the zoning administrator to all property owners within three hundred feet (300') of the external boundaries of the property in question. The zoning administrator shall sign an affidavit of mailing and attach to the application with the names and addresses of all persons so notified. Where notice is required to two hundred (200) or more property owners, in lieu of mailing the notification of public hearing, three (3) notices in the newspaper or paper of general circulation shall be deemed sufficient. The last of said publications shall appear at least fifteen (15) days prior to the date set for public hearing.

4. Restrictions: The commission may impose special conditions designed to lessen the impact of the proposed expansion on the surrounding neighborhood and in order to make the proposed expansion more compatible with the same. Violation of such special conditions, when made a part of the terms under which the nonconforming building expansion permit is granted, shall be deemed a violation of this title.

5. Action By The Commission:

a. Within thirty (30) days after the public hearing, the commission shall approve, conditionally approve or disapprove the application as presented. If the application is approved or approved with modifications, the commission shall direct the administrator to issue a nonconforming building expansion permit listing the specific conditions specified by the commission for approval.

b. Prior to granting a nonconforming building expansion permit, the commission may request studies from the planning staff or public agencies concerning social, economic, fiscal and environmental effect of the proposed nonconforming building expansion permit. A nonconforming building expansion permit shall not be considered as establishing a binding precedent to grant other nonconforming building expansion permits.

c. Upon granting or denying an application, the commission shall specify:

(1) The regulations and standards used in evaluating the application.

(2) The reasons for approval or denial.

(3) The actions, if any, that the applicant could take to obtain a permit.

d. The applicant or any affected person, who appeared in person or in writing before the commission may appeal the decision of the commission to the council, provided a written appeal is submitted to the council within fifteen (15) days from the commission's action.

6. Notification To Applicant: Within ten (10) days after a decision has been rendered, the administrator shall provide the applicant with written notice of the action on the request.

7. Transfer, Review And Discontinuance Of Permits:

a. A nonconforming building expansion permit is not transferable from one parcel of land to another, but may be transferable from one owner to another, provided all conditions of the nonconforming building expansion permit continue to be met, and the permit so states.

b. Nonconforming building expansions that have not been completed within one year of the date of issuance of the nonconforming building expansion permit may be reviewed by the commission to determine if the facts and circumstances have changed. The commission may call for a new nonconforming building expansion permit application.

8. Appeal To The Council: Upon receipt of an appeal from the action of the commission, the council shall set a hearing date, under the same provisions as the commission hearing, to consider all information, testimony and the commission's minutes of the public hearing to reach a decision to uphold, conditionally uphold or overrule the decision of the commission. (Ord. 542, 2007)

CHAPTER 17.04

DISTRICT REGULATIONS

SECTION:

17.04.010: General

17.04.020: Residential - Super Limited (R1)

17.04.030: Residential - Limited (R2)

17.04.040: Residential - General (R3)

17.04.050: Mobile Home Park (MH)

17.04.060: Commercial - Business (CB)

17.04.070: Residential - Professional (RP)

17.04.080: Commercial - Gateway (CG)

17.04.085: Commercial - Interior (CI)

17.04.090: Light Industrial (LI)

17.04.100: School (S)

17.04.110: Agricultural - Residential (AR)

17.04.120: Agricultural (AG)

17.04.130: Official Building Height And Area Regulations

17.04.140: Wireless Communications Facilities

17.04.010: GENERAL:

A. Districts: To further the purposes stated in this title and the Comprehensive Plan of the City of Kimberly, the following names shall apply to zoning districts created by this title:

District Name	District Symbol
Residential - Super Limited	R1
Residential - Limited	R2
Residential - General	R3
Commercial - Business	CB
Commercial - Gateway	CG
Commercial - Interior	CI
Residential - Professional	RP
Light Industrial	LI
Agricultural	AG
Agricultural - Residential	AR
Mobile Home Park	MH
Planned Unit Development	PUD
Parks	P
School	S

B. Districts Defined: Zoning districts are restricted to use regulations particular to each district. Permitted and special uses are established for those uses that are allowed within the district. Permitted uses are set out for each district.

PERMITTED USE: The requirements for permitted use of lands within the City's jurisdiction, for building placement and site plan arrangement, and for related items concerning land use and development.

SPECIAL USE: A special use granted by the Zoning Board for a permanent use that is not in conflict with the Comprehensive Plan and that is not permitted outright because it may conflict with other uses in the district unless special provisions are taken. (Ord. 645, 2017; Ord. 542, 2007)

17.04.020: RESIDENTIAL - SUPER LIMITED (R1):

The purpose of this district is to promote and preserve residential development and to provide a low density residential

environment of single household dwellings in an area with ample space for personal privacy, private open space free from encroachment by commercial and industrial activities. Only such use as may not interfere unreasonably with the enjoyment of normal home activities shall be permitted.

A. Permitted Uses: Buildings, structures or premises shall be used and buildings and structures shall hereafter be erected, altered or enlarged only for the following uses:

Residential:

Accessory buildings, personal swimming pools and other accessory uses.

Single household dwellings.

B. Special Uses:

Cemetery.

Home occupations.

Religious facilities.

Schools.

C. Prohibited Uses: Uses not specifically stated above are prohibited unless administrative determination in accordance with the ordinances of the City of Kimberly is made that the use is similar enough to a use listed above that distinction between them is of little consequence. (Ord. 542, 2007)

17.04.030: RESIDENTIAL - LIMITED (R2):

The purpose of this district is to promote and preserve residential development and to provide a limited density residential environment of single household dwellings in an area with ample space for personal privacy, private open space free from encroachment by commercial and industrial activities. Only such use as may not interfere unreasonably with the enjoyment of normal home activities shall be permitted.

A. Permitted Uses: Buildings, structures or premises shall be used and buildings and structures shall hereafter be erected, altered or enlarged only for the following uses:

Residential:

Accessory buildings, personal swimming pools and other accessory uses.

Public park.

Single household dwellings.

B. Special Uses:

General:

Cemetery.

Home occupations.

Religious facilities.

Schools.

Temporary commercial mobile unit.

C. Prohibited Uses: Uses not specifically stated above are prohibited unless administrative determination in accordance with the ordinances of the City of Kimberly is made that the use is similar enough to a use listed above that distinction between them is of little consequence. (Ord. 655, 2018)

17.04.040: RESIDENTIAL - GENERAL (R3):

The purpose of this district is to promote and preserve residential development and to provide a medium density residential environment with a mix of both single and multiple household dwellings in an area to allow the present and future residents to live and play in an area with space for personal privacy, minimum vehicular traffic and free from encroachment by commercial and industrial activities. Only such use as may not interfere unreasonably with the enjoyment of normal home activities shall be permitted.

A. Permitted Uses: Buildings, structures or premises shall be used and buildings and structures shall hereafter be erected, altered or enlarged only for the following uses:

Residential:

Accessory buildings, personal swimming pools and other accessory uses.

Public park.

Religious facilities.

Rooming-boarding house.

Single household dwellings.

Two-family dwelling, multi-family dwellings constructed onsite. Manufactured homes constructed off site approved by HUD, are not legal for use as a two family/duplex dwelling.

B. Special Uses:

General:

Cemetery.

Fraternity-sorority house-dormitory.

Home occupations.

Schools.

Temporary commercial mobile unit.

C. Prohibited Uses: Uses not specifically stated above are prohibited unless administrative determination in accordance with the ordinances of the City of Kimberly is made that the use is similar enough to a use listed above that distinction between them is of little consequence. (Ord. 655, 2018)

17.04.050: MOBILE HOME PARK (MH):

The purpose of this district is to promote and preserve residential development and to provide housing alternatives of manufactured mobile homes in a specific tract of land divided into rental spaces under common ownership or management providing a residential environment with single household dwellings in an area to allow the present and future residents to live and play in an area with space for personal privacy, minimum vehicular traffic and free from encroachment by commercial and industrial activities. Only such use as may not interfere unreasonably with the enjoyment of normal home activities shall be permitted.

A. Permitted Uses: Buildings, structures or premises shall be used and buildings and structures shall hereafter be erected, altered or enlarged only for the following uses:

Residential:

Accessory buildings, personal swimming pools and other accessory uses.

Manufactured homes compliant with adopted Building Codes and HUD standards for single family dwelling use only.

Modular homes constructed in compliance with the adopted IRC - International Residential Code.

Religious facilities.

Single household dwellings.

B. Permitted Uses Upon Approval Of A Development Plan By The Planning And Zoning Commission:

Screened/RV/vehicle storage facility with or without roof cover.

The development plan shall require the submittal of a site plan and detail provided for applicable buffering between incompatible land uses/zones, a landscape plan, exterior building materials/colors, elevations of the building design, disclosed hours of operation, examples of down shielded exterior lighting, vehicle circulation patterns, emergency response/access provisions and examples of signage.

C. Special Uses:

Commercial:

Barber, beauty shop.

Laundromat - self-service center.

General:

Non-incident home occupation.

D. Prohibited Uses: Uses not specifically stated above are prohibited unless administrative determination in accordance with the ordinances of the City of Kimberly is made that the use is similar enough to a use listed above that distinction between them is of little consequence. (Ord. 655, 2018)

17.04.060: COMMERCIAL - BUSINESS (CB):

This district is intended to provide for commercial activities of various sizes from large retail stores to small specialty shops with residential opportunities for persons wishing to work and live in a unified environment.

A. Permitted Uses: Buildings, structures or premises shall be used and buildings and structures shall hereafter be erected, altered or enlarged only for the following uses:

Agricultural:

Roadside stands.

Commercial:

Amusement centers, indoor only.

Auto sales, service, storage, rental.

Bakery or bakery goods store.

Bakery specialty food products, wholesale/retail.

Bank, savings and loan.

Barber, beauty shop.

Bowling alley.

Building supply outlet.

Bus barn/storage/repair maintenance.

Cabinet sales.

Car wash.

Cemetery.

Cleaning, laundry agency.

Dance, music, voice studio - indoor gym - sports recreation, fitness facility.

Drive-in restaurant - food stand.

Drugstore.

Equipment rental and sales yard.

Food store, delicatessen, creamery.

Frozen food locker - food processing - fromagerie - bottling, packaging, shipping, receiving.

Furniture sales.

Gift shop.

HVAC fabrication - service-repair.

Hospital.

Hotel.

Laboratory - medical, dental.

Laundromat - self-service center.

Manufacturing, fabricating, cabinet building.

Mortuary.

Motel.

Nursery for children.

Nursery for flowers and plants.

Nursing home for the aged.

Office, medical, professional.

Parking lot, garage or facility.

Photographic studio.

Prescription pharmacy, optician.

Printing and blueprinting.

RV sales, storage, ministorage. Nonenclosed RV storage shall be screened.

Reducing salon - masseur.

Religious facility.

Restaurant - bar.

Retail stores and services.

School, college.

School, elementary - high school.

Service station.

Residential:

Home occupation.

Household buildings with a minimum of five (5) units.

Household units existing at the time this title is adopted.

Household units in upper floors of commercial buildings.

Rooming houses, residence halls, and residential hotels.

B. Permitted Uses Upon Approval Of A Development Plan By The Planning And Zoning Commission:

Ministorage facility with enclosed units having independent access from the outside of each unit, via vehicle circulation lanes, with optional on site caretaker housing.

Screened/RV/vehicle storage facility with or without roof cover.

The development plan shall require the submittal of a site plan and detail provided for applicable buffering between incompatible land uses/zones, a landscape plan, exterior building materials/colors, elevations of the building design, disclosed hours of operation, examples of down shielded exterior lighting, vehicle circulation patterns, emergency response/access provisions and examples of signage.

C. Special Uses - Special Use Permit Required: A special use permit may be granted by the commission for a use that is otherwise prohibited but may be allowed under specific provisions when not in conflict with a comprehensive plan.

Accessory dwelling unity (ADU).

Accessory use or structure.

Drive-in theater.

Mobile vendors.

Sign shop.

Small animal veterinary clinic.

Temporary commercial mobile unit.

Tire shop.

Trailer, mobile home/manufactured home, farm implementation sales yard.

D. Prohibited Uses: Uses not specifically stated above are prohibited unless administrative determination in accordance with the ordinances of the City of Kimberly is made that the use is similar enough to a use listed above that distinction between them is of little consequence.

E. Color Palette Requirement: Each building including its outside trim, siding, stucco, accents, and nonmasonry features shall be earth tone colors consistent with the color palette and color palette requirements found in section 17.07.120 of this title. (Ord. 655, 2018; Ord. 656, 2019; Ord. 665, 2020)

17.04.070: RESIDENTIAL - PROFESSIONAL (RP):

This district is intended to provide for professional office uses along or near specifically designated major arterials where increased traffic has impacted residential uses and in areas that are near large public or private medical facilities.

A. Permitted Uses: Buildings, structures or premises shall be used and buildings and structures shall thereafter be erected, altered or enlarged for the following uses:

Commercial:

Accountant offices.

Attorney offices.

Daycare facilities.

Medical professional offices.

Photographic studio.

Psychiatrist/psychologist offices.

Residential:

Home occupation.

Household buildings with a minimum of five (5) units.

Household units existing at the time this title is adopted.

Household units in upper floors of commercial buildings.

Rooming houses, residence halls, and residential hotels.

B. Special Uses - Special Use Permit Required: A special use permit may be granted by the commission for a permanent or temporary use that is otherwise prohibited but may be allowed under specific provisions when not in conflict with a comprehensive plan.÷

Accessory dwelling unit (ADU).

Accessory use or structure.

Agricultural:

Roadside stands.

Cemetery.

Commercial:

Barber, beauty shop.

Dance, music, voice studio.

Laboratory - medical, dental, optical.

Nursery for flowers and plants.

Nursing home for the aged.

Religious facilities.

School, college.

School, elementary - high school.

Fraternity-sorority house-dormitory.

Mobile vendors.

Religious facilities.

C. Prohibited Uses: Uses not specifically stated above are prohibited unless administrative determination in accordance with the ordinances of the City of Kimberly is made that the use is similar enough to a use listed above that distinction between them is of little consequence. (Ord. 542, 2007; Ord. 656, 2019; Ord. 665, 2020)

17.04.080: COMMERCIAL - GATEWAY (CG):

This district is intended to provide for commercial activities of various sizes from large retail stores to small specialty shops with residential opportunities for persons wishing to work and live in a unified environment.

All uses in the Commercial - Gateway Zoning must have appropriate landscaping plans, approved by the Administrator and/or Design Review Committee. The landscaped area for commercial uses must begin at the back of the curb of the property line and extend to a depth of at least twenty feet (20') and contain an undulating berm not less than four feet (4') high. Commercial uses must also provide adequate pedestrian access consistent with the standards enumerated in this title. The landscaping shall be designed to enhance the aesthetic qualities of the gateway area. The landscaping shall be completed before occupancy will be given.

A. Permitted Uses: Buildings, structures or premises shall be used and buildings and structures shall hereafter be erected, altered or enlarged only for the following uses:

Agricultural:

Roadside stands.

Commercial:

Amusement centers, indoor only.

Auto sales, service, storage, rental.

Bank, savings and loan.

Barber, beauty shop.

Bowling alley.

Building supply outlet.

Cabinet sales.

Car wash.

Cemetery.

Church.

Dance, music, voice studio - indoor recreation - sports athletic facilities, fitness gym.

Drive-in restaurant - food stand.

Drugstore.

Equipment rental and sales yard.

Food store, delicatessen.

Furniture/appliance sales.

Gift shop.

Hotel.

Laundromat - self-service center.

Manufacturing, fabricating, cabinet building uses shall be in enclosed buildings with applicable DEQ approved air exhaust systems.

Mortuary.

Motel.

Nursery for children.

Nursery for flowers and plants.

Nursing home for the aged.

Office, medical, professional.

Photographic studio.

Prescription pharmacy, optician.

Reducing salon - masseur.

Restaurant - bar.

Retail stores and services.

School, college.

School, elementary - high school.

Service station.

Storage facility complex, with storage units constructed inside a structure, where each unit does not have independent outside access, where groups of interior units are accessed through a common entrance/exit door, with optional on site caretaker housing.

Residential:

Home occupations.

Household buildings with a minimum of five (5) units.

Household units existing at the time this title is adopted.

Household units in upper floors of commercial buildings.

Public parks.

Rooming houses, residence halls, and residential hotels.

B. Permitted Uses Upon Approval Of A Development Plan By The Planning And Zoning Commission:

Ministorage facility with enclosed units having independent access from the outside of each unit, via vehicle circulation lanes, with optional on site caretaker housing.

Screened/RV/vehicle storage facility with or without roof cover.

The development plan shall require the submittal of a site plan and detail provided for applicable buffering between incompatible land uses/zones, a landscape plan, exterior building materials/colors, elevations of the building design, disclosed hours of operation, examples of down shielded exterior lighting, vehicle circulation patterns, emergency response/access provisions and examples of signage.

C. Special Uses - Special Use Permit Required: A special use permit may be granted by the commission for a use that is otherwise prohibited but may be allowed under specific provisions when not in conflict with a comprehensive plan.

Accessory dwelling unit (ADU).

Accessory use or structure.

Drive-in theater.

Large animal facility.

Mobile vendors.

Parking lot, garage or facility.

Small animal veterinary clinic.

Temporary commercial mobile unit.

D. Prohibited Uses: Uses not specifically stated above are prohibited unless administrative determination in accordance with the ordinances of the City of Kimberly is made that the use is similar enough to a use listed above that distinction between them is of little consequence.

E. Color Palette Requirement: Each building including its outside trim, siding, stucco, accents, and non-masonry features shall be earth tone colors consistent with the color palette and color palette requirements found in section 17.07.120 of this title. (Ord. 655, 2018; Ord. 656, 2019; Ord. 665, 2020)

17.04.085: COMMERCIAL - INTERIOR (CI):

This land use designation is primarily in the impact area per the August 2017 Comprehensive Map, exhibit A on file in the City, which depicts a three hundred foot (300') wide strip of land on the north and south sides of Center Street, located west of the Emerald/Center Street intersection, extending to 3400 East, a strip of land west of the Kimberly High School adjacent to Emerald Street and a strip of land on the north and south sides of Hwy 30, beginning at the east City limit boundary, extending to 3600 East.

Upon annexation, lands designated as Commercial Interior on the adopted Comprehensive Map should be zoned Commercial Interior to be in accordance with the comprehensive land use designation. The Commercial Interior Zone is intended to provide a buffer between Residential Zones and major collector streets and minor collector streets per the adopted 2009 Kimberly Transportation Plan. The Commercial Interior Zone provides for commercial activities of various sizes from retail stores to small specialty shops with residential opportunities for persons wishing to work and live in a harmonious environment.

The Commercial Interior Zone should be considered as a buffer zone between Residential Zones and Industrial Zones. Manufacturing and fabricating uses of products excluding those allowed in a home occupation shall be considered a special use.

All uses and developments in the Commercial - Interior Zoning District must comply with the landscaping components as follows:

The landscaped area must begin at the back of the curb or sidewalk if applicable and extend to a minimum depth of fifteen feet (15') from property line, vegetated with grass and shrubs and watered with a low water consumptive underground irrigation system. An undulating berm not less than two feet (2') high, a minimum of five feet (5') in width shall be installed onsite, adjacent to the public right-of-ways. Commercial uses must also provide adequate pedestrian accesses consistent with the standards enumerated in this title. The landscaping shall be designed to enhance the aesthetic qualities of the Commercial Interior area. The landscaping shall be completed before occupancy will be given.

A. Permitted Uses For Residential, Agriculture, And Commercial Uses:

Agricultural:

Agricultural uses.

Road side stands.

Commercial:

Amusement centers, indoor only.

Auto sales, service.
Bank, savings and loan.
Barber, beauty shop.
Bowling alley.
Car wash.
Church.
Dance, music, voice studio.
Day care facilities.
Drive-in restaurant - food stand.
Drug store.
Food store, delicatessen.
Furniture sales only.
Gift shop.
Laundromat - self-service center.
Mortuary.
Nursery for children.
Nursery for flowers and plants.
Nursing home for the aged.
Office, medical, professional.
Photographic studio.
Physicians center.
Prescription pharmacy, optician.
Reducing salon - masseur.
Restaurant - bar.
Retail stores and services.
School, college.
School, elementary - high school.
Service station - tire store.
Residential:
Home occupations.
Public parks.
Rooming halls, bed and breakfasts, residence halls, and residential hotels.
Single family dwellings and multiple housing units.
Structures and household/units and land uses existing at the time this title is adopted shall be legal conforming uses/structures.
Temporary commercial mobile unit.

B. Special Uses - Special Use Permit Required: A special use permit may be granted by the commission for a use that is otherwise prohibited but may be allowed under specific provisions when not in conflict with a comprehensive plan.

Accessory dwelling unit (ADU).

Accessory use or structure.

Manufacturing, assembly, fabrication, food processing. Food processing in the Commercial Interior Zone shall be limited to the raw products raised on the specific parcel, described in the special use permit, excluding home occupations. Land areas not depicted in the special use permit shall not be allowed to be used for increasing food processing or production unless approved by the Planning and Zoning Commission in a separate special use application.

Veterinary clinic, kennel.

C. Special Uses Upon Approval Of A Development Plan By The Planning And Zoning Commission:

Ministorage facility with enclosed units having independent access from the outside of each unit, via vehicle circulation lanes, with optional on site caretaker housing.

Screened/RV vehicle storage facility with or without roof cover.

The development plan shall require the submittal of a site plan and detail provided for applicable buffering between incompatible land uses/zones, a landscape plan, exterior building materials, colors, elevations of the building design, disclosed hours of operation, examples of down shielded exterior lighting, vehicle circulation patterns, emergency response/access provisions and examples of signage.

D. Prohibited Uses:

Expanded uses, increased capacities, increased production and processing not specifically linked to the approved special use permit site, acres, parcels and structures are prohibited. Examples including but not limited to products shipped from off site, such as milk, animals for slaughter and production of fuel from grain products.

Uses not specifically stated above are prohibited unless administrative determination in accordance with the ordinances of the City of Kimberly is made that the use is similar enough to a use listed above that distinction between them is of little consequence. (Ord. 655, 2018; Ord. 656, 2019; Ord. 665, 2020)

17.04.090: LIGHT INDUSTRIAL (LI):

This district is intended to provide for light nonpolluting and major traffic producing industries as well as commercial without residential encroachment.

A. Permitted Uses: Buildings, structures or premises shall be used and buildings and structures shall hereafter be erected, altered or enlarged only for the following uses:

Agricultural:

Roadside stands.

Commercial:

Amusement centers, indoor only.

Auto sales, service, storage, rental.

Bakery or bakery goods store.

Bank, savings and loan.

Barber, beauty shop.

Bowling alley.

Building supply outlet.

Car wash.

Cemetery.

Cleaning, laundry agency.

Dance, music, voice studio - indoor recreation - sports athletic facilities, fitness gym.

Drive-in restaurant - food stand.

Drugstore.

Equipment rental and sales yard.

Food store, delicatessen - food processing - fromagerie - bottling, packaging, shipping, receiving.

Frozen food locker.

Furniture refinishing.

Grain or legume storage.

Hospital.

Hotel.

Laboratory - medical, dental, optical.

Laundromat - self-service center.

Manufacturing, fabricating, cabinet building.

Mortuary.

Motel.

Nursery for children.

Nursery for flowers and plants.

Nursing home for the aged.

Office, medical, professional.

Photographic studio.

Prescription pharmacy, optician.

Printing and blueprinting.

RV storage, ministorage units. Storage areas not enclosed shall be visually screened.

Reducing salon - masseur.

Religious facilities.

Restaurant - bar.

Retail stores and services.

School, college.

School, elementary - high school.

Service station.

Shop for building contractor.

Sign shop.

Small animal veterinary clinic.

Trailer, mobile home, farm implementation sales yard.

Industrial:

Beverage bottling plant.

Billboard manufacture.

Contractor's storage yard.

Lumberyard - retail.

Machine shop.

Monument works, stone.

Planing mill.

Planned unit development.

Public utility yard.

Railroad yard or shops.

Terminal yard, trucking.

Warehousing - wholesaling.

Residential:

Home occupation.

Household units existing at the time this title is adopted.

B. Special Uses - Special Use Permit Required: A special use permit may be granted by the commission for a use that is otherwise prohibited but may be allowed under specific provisions when not in conflict with a comprehensive plan.

Commercial:

Accessory use or structure.

Kennel.

Large animal facility.

Laundry, commercial plant.

Parking lot, garage or facility.

Tire shop, including recapping.

General:

Drive-in theater.

Industrial:

Bulk commodity storage processing.

Ice manufacture - cold storage plant.

Residential:

Accessory buildings, personal swimming pools and other accessory uses.

Mobile home for residential use only.

Rooming-boarding house.

Single household dwellings.

Temporary commercial mobile unit.

Two-family dwelling, multi-family dwelling.

C. Prohibited Uses: Uses not specifically stated above are prohibited unless administrative determination in accordance with the ordinances of the City of Kimberly is made that the use is similar enough to a use listed above that distinction between them is of little consequence. (Ord. 655, 2018; Ord. 665, 2020)

17.04.100: SCHOOL (S):

The purpose of this zoning subdistrict is to foster and promote the creation of educational institutions for the benefit of the community including permitted on site caretaker housing, school sponsored events conducted on school property, utilizing commercial vendors including but not limited to, food, entertainment, fireworks, holiday events, musical / fine arts events, sports and athletic events, in-conjunction with the allowance of over-night RV/tent camping on school properties.

(Ord. 633, 2016; Ord. 682, 2023)

17.04.110: AGRICULTURAL - RESIDENTIAL (AR):

The purpose of this district is to permit the establishment of low density single-family dwellings in an agricultural setting with a minimum lot size of one acre or as provided in Twin Falls County zoning ordinance now existing or as hereafter to exist for Residential Agricultural District.

A. Permitted Uses: Buildings, structures or premises shall be used and buildings and structures shall hereafter be erected, altered or enlarged only for the following uses:

Agricultural:

Existing mobile homes. Existing mobile homes can be upgraded to the following standards: placed on permanent foundation, refurbished to HUD approved standards, and axles and tongue removed. An existing mobile home, if upgraded, cannot be reduced below its current existing size.

Farms - animals and pasture with five (5) animal units per acre.

Definition Of Animal Units
1 slaughter or feeder cow = 1 animal unit
1 dairy heifer = 1 animal unit
1 mature dairy cow (milk or dry) = 1.4 animal units
1 swine = 0.5 animal unit
1 sheep or lamb = 0.2 animal unit
1 horse = 2 animal units
1 turkey = 0.1 animal unit
1 chicken = 0.03 animal unit with liquid manure handling system, or 0.05 animal unit without liquid manure handling
1 furbearing animal = 0.66 animal unit

1 goat = 0.3 animal unit
1 llama = 1 animal unit

Farms - plants and trees.

Manufactured home. Manufactured homes must comply with Idaho Code sections 39-4105(8) and 67-6509A and this title.

Roadside stands.

Residential:

Accessory buildings, personal swimming pools and other accessory uses.

Caretaker housing, bed and breakfasts.

Home occupations.

Public parks.

Single household dwellings.

B. Special Uses:

General:

Cemetery.

Commercial greenhouses.

Commercial swimming pool.

Equestrian facilities.

Golf courses.

Overnight RV facility and/or campground.

Retail sales and service.

Tennis courts.

C. Prohibited Uses: Uses not specifically stated above are prohibited unless administrative determination in accordance with the ordinances of the City of Kimberly is made that the use is similar enough to a use listed above that distinction between them is of little consequence. (Ord. 647, 2017)

17.04.120: AGRICULTURAL (AG):

The impact area shall be zoned Agricultural (AG) in compliance with the City ordinance pertaining to the Agricultural District. With exception to those parcels of land twenty (20) acres or larger used solely for agricultural purposes.

This district is intended to preserve the rural integrity of areas adjacent to the City that will be available for orderly planned growth and can be efficiently served by City services as the need arises.

A. Permitted Uses: Buildings, structures or premises shall be used and buildings and structures shall hereafter be erected, altered or enlarged only for the following uses:

Agricultural:

Agricultural uses.

Farms - plants and trees.

Hippotherapy, animal boarding facility.

Roadside stands.

Commercial:

Religious facilities.

Veterinary clinic.

Residential:

Accessory buildings, personal swimming pools and other accessory uses.

Caretaker housing, bed and breakfast.

Home occupations.

Mobile home for residential use only.

Single household dwellings.

B. Special Uses: A special use may be granted for a permanent use that is not in conflict with the Comprehensive Plan and that is not permitted outright because it may conflict with other uses in the district unless special provisions are taken. Special use permits may be granted for the following uses:

Commercial:

Recreational vehicle park.

General:

Amusement centers, indoor only.

Dance, music, voice studio.

Equestrian facilities.

Kennel.

Nursery for children.

Nursery for flowers and plants.

Two-family dwelling.

C. Special Uses Upon Approval Of A Development Plan By The Planning And Zoning Commission:

Ministorage facility with enclosed units having independent access from the outside of each unit, via vehicle circulation lanes, with optional on site caretaker housing.

Screened/RV/vehicle storage facility with or without roof cover.

The development plan shall require the submittal of a site plan and detail provided for applicable buffering between incompatible land uses/zones, a landscape plan, exterior building materials/colors, elevations of the building design, disclosed hours of operation, examples of down shielded exterior lighting, vehicle circulation patterns, emergency response/access provisions and examples of signage.

D. Prohibited Uses: Uses not specifically stated above are prohibited unless administrative determination in accordance with the ordinances of the City of Kimberly is made that the use is similar enough to a use listed above that distinction between them is of little consequence. (Ord. 647, 2017)

17.04.130: OFFICIAL BUILDING HEIGHT AND AREA REGULATIONS:

MINIMUM YARD REQUIREMENTS

District	Maximum Building Height	Front	Rear	Interior Side	Street Side	Minimum Lot Area Per DU	Minimum Lot Width
R1	35'	25'	10'	7'	25'	Not less than 1 acre	100'
R2	35'	25'	10'	7'	25'	Not less than 8,000 sq. ft.	80'
R2 (04-1963 ¹)	35'	25'	10'	7'	25'	Not less than 6,000 sq. ft.	50'
R3	35'	25'	10'	7'	25'	Not less than 6,500 sq. ft.	65'
R3 (04-1963 ¹)	35'	25'	10'	7'	25'	Not less than 6,000 sq. ft.	50'
AG	35'	30'	30'	7'	30'	1 acre	80'
AR	35'	30'	30'	7'	30'	1 acre	60'
CB	35'	None	None	None	None	None	None
CG	35'	50'	None	None	None	None	None

CI	25'	30'	None	None	None	None	None
RP	60'	25'	10'	5'	25'	Not less than 5,000 sq. ft.	50'
LI	60'	30'	10'	15'	30'	None	None
MH	25'	15'	10'	15' between units	15'	None	None
S	As determined by the Planning and Zoning Commission						
P	As determined by the Planning and Zoning Commission						

Notes:

Lot Area For Duplex Multiplex Dwellings: The minimum lot area for a single story duplex shall be the minimum lot area per district. (Example - A single story duplex in the R-3 District requires a minimum of 6,500 square feet.) The minimum lot area for multiplex units, in excess of 2 units will increase over the minimum unit duplex lot area per district, by 2,000 square feet per dwelling unit. (Example - A single story 5 unit multiplex structure in the R-3 District requires a minimum lot area of 16,500 square feet.)

1. 04-1963 Revised Village Map Of Record Land Exceptions: The R-2 and R-3, 04-1963 Revised Village Map District criteria, does not apply to the tracts of land depicted as the Tyler's Addition, Summer's Subdivision, Turner's Addition, Albert Tract, Wilson Subdivision, Allen Park Division, Trailer Court, Brentwood Addition, Larson No. 1 and No. 2., Hamilton First Addition lots 1-3, Burrington's Subdivision, Carl Miller Add. Southlawn Subdivision, and Lattin Subdivision.

(Ord. 647, 2017; Ord. 682, 2023)

17.04.140: WIRELESS COMMUNICATIONS FACILITIES:

A. Definitions:

COLLOCATION: The use of a single support system on the ground by more than one carrier or several support systems on an existing building or structure by more than one carrier.

FACADE MOUNTED: Directly attached or affixed to the elevation of a building, tank, or other structure.

FREESTANDING TOWER: A tower not physically attached to a building or structure. A freestanding tower is attached to the ground by a foundation.

LATTICE TOWER: A support structure that consists of a network of crossed metal braces, forming a tower that is usually triangular or square in cross section.

MASTER DEVELOPMENT PLAN: A plan showing a carrier's expected network of wireless communication facilities within the City and its area of impact.

UTILITY POLE: A telephone, power, light, cable television, or flag pole. Light poles shall include street, stadium and security light poles.

WIRELESS COMMUNICATIONS FACILITY: An unstaffed facility that transmits and/or receives electromagnetic signals, including antennas, microwave dishes, parabolic antennas, directional antennas and other types of equipment for the transmission or reception of such signals, towers or similar structures supporting the equipment, equipment buildings, shelters, cabinets, and other facilities.

B. Regulations:

1. Use: The placement, use or modification of any wireless communication facility is subject to the provisions of this chapter.

a. Residential Zones: Freestanding towers are prohibited. Wireless communication facilities attached to utility poles or facades attached to nonresidential buildings are permitted subject to the provisions of this chapter.

b. Nonresidential Zones: Lattice towers are prohibited. Other wireless communication facilities are permitted subject to the provisions of this section.

2. Preferred Locations And Facility Types:

a. Site Selection Criteria: A master development plan is to be created, prior to any wireless communication facility permit request, based upon engineering constraints and desired areas of service. Wireless communication facilities shall be located on a master development plan in the following priority order:

(1) Collocation on an existing tower, structure or building. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate as described in this section;

(2) Publicly owned property;

(3) Other nonresidential buildings or vacant nonresidentially zoned land located in the area of impact to the east, to the southeast, to the south and to the southwest of the city limits.

b. Facility Types: Facility types are preferred in the following priority order:

- (1) Roof mounted.
- (2) Facade mounted.
- (3) Utility pole mounted.
- (4) Freestanding.

3. Collocation: Collocation is considered to be a visually unobtrusive installation method because the equipment is attached to an existing structure. Collocation of a wireless communication facility shall require only approval of the administrator. No new tower shall be permitted unless the applicant demonstrates that no existing tower or structure can accommodate the applicant's proposed wireless communication facility. Evidence submitted to demonstrate the unavailability of other towers or structures should address all of the following:

a. An RF engineering analysis of all utility poles, regardless of height, and of all towers or structures thirty five feet (35') in height or higher, within a one thousand three hundred twenty foot (1,320') radius of the proposed wireless communication facility site.

b. The fees, costs or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for collocation are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

4. Prohibitions: The following are prohibited or restricted:

- a. Lattice towers are prohibited.
- b. Interference with city and public safety communication systems and/or area television or radio broadcast is prohibited.
- c. Freestanding towers within residentially zoned areas are prohibited.
- d. Diagonal bracing is permitted only to anchor the antenna to an existing building to which the antenna is attached.

C. Application Procedure: The administrator shall be the granting authority for wireless communication facility collocating on existing structures or utility poles. All other wireless communication facilities shall require a special use permit from the planning and zoning commission. An application for a special use permit for a wireless communication facility shall contain the information set forth below, in addition to the standard application information required for all special use permits:

1. A site plan including location, type and height of the proposed wireless communication facility with setbacks, property lines, adjacent land uses, structures and zoning.

2. Elevation drawings or before and after photographs/drawings simulating and specifying the location and height of the antennas, support structures, equipment enclosures and other accessory uses.

3. The master development plan showing the location of all existing and proposed wireless communication facility sites of the applicant within the city and its area of impact, including the service area of each wireless communication facility.

4. Evidence demonstrating the unavailability of collocation, as set forth above.

5. Certification from the applicant's engineer that collocation of additional antennas for at least one additional provider is possible on the proposed pole, and a signed and notarized statement by the applicant agreeing to accommodate collocation of additional antennas on the tower and that the applicant agrees to enter into leases with other providers allowing use of the tower at a monthly lease rate not to exceed one-half ($\frac{1}{2}$) of the capital cost of the tower, excluding the equipment to be used exclusively by the applicant, paid over fifteen (15) years at seven percent (7%) interest. The maximum monthly lease rate shall be included in the application.

6. A lease agreement with the landowner that allows other providers to locate equipment on the subject property, and provides that if the provider fails to remove the wireless communication facility and equipment within ninety (90) days of its discontinued use, the responsibility for removal shall belong to the landowner.

D. Standards:

1. Roof Mounted:

a. Height: Roof mounted wireless communication facilities may extend above the highest portion of the roof, including parapet walls, by a distance equal to its distance to the nearest exterior wall.

b. Setback: Roof mounted wireless communication facilities shall be set back from the edge of the building the height of the antenna and support system.

c. Lighting: Lighting of antennas or support structures shall be prohibited except as required by the FAA.

2. Facade Mounted:

- a. Height: Facade mounted wireless communication facilities may not exceed five feet (5') above the facade to which it is attached.
- b. Setback: Maximum projection of eighteen inches (18"), but may not encroach into the public right of way.
- c. Attachment: The antenna and supporting electrical and mechanical equipment must be the same color as the supporting structure so as to make the antenna and related equipment as unobtrusive as possible.

3. Utility Pole Mounted:

- a. Height: Maximum height of one hundred thirty three percent (133%) of the height of the original utility pole.
- b. Lighting: Lighting of antennas or support structures shall be prohibited except as required by the FAA.
- c. Attachment: The antenna shall be either fully concealed within the utility pole or face mounted (not to exceed 18 inches from the face of the pole). Standoffs and amps platforms are prohibited.
- d. Pole Replacement: Existing utility poles may be replaced with a new utility pole of the same height, dimensions and appearance as the existing utility pole.
- e. Equipment Enclosures: Aboveground equipment enclosures on utility poles in the right of way shall not exceed twelve (12) cubic feet in volume and shall be constructed so as to minimize their visual impact. Aboveground equipment enclosures off the right of way shall meet building line setbacks in the underlying district, and shall be finished to blend in with the surrounding area. If a security fence is installed, landscaping and screening shall be installed to visually screen the aboveground equipment enclosure. Landscaping and screening shall consist of a combination of trees, foliage and shrubs of dense spacing in the form of either a screening wall or fence surrounded by a five foot (5') wide landscape planter, or a ten foot (10') wide landscape planter without a screening wall or fence. All landscaping shall be watered, fertilized and maintained as necessary. All dead plantings shall be replaced within thirty (30) days.
- f. Relocation Of Utilities: In the event the utilities located on a utility pole are relocated underground, the wireless communication facility shall be relocated to another location pursuant to the requirements of this chapter.

4. Freestanding:

- a. Height: Freestanding towers shall not exceed one hundred feet (100') in height as measured from the ground.
- b. Setback: Setbacks shall be measured from the base of the tower to the property line of the parcel on which it is located. Towers shall be set back from all residential and residentially zoned property one hundred twenty five percent (125%) of the tower height as measured from ground level.
- c. Color: Freestanding towers shall be painted a neutral earth tone color or otherwise camouflaged or disguised so as to make the tower as unobtrusive as possible.
- d. Attachment: The antenna shall be either fully concealed within the tower or face mounted (not to exceed 18 inches from the face of the tower). Standoffs and amps platforms are prohibited.
- e. Landscaping: Landscaping and screening shall be installed to visually screen the support structure and aboveground equipment enclosures. Landscaping and screening shall consist of a combination of trees, foliage and shrubs of dense spacing in the form of either a screening wall or fence surrounded by a five foot (5') wide landscape planter, or a ten foot (10') wide landscape planter without a screening wall or fence. All landscaping shall be watered, fertilized and maintained as necessary. All dead plantings shall be replaced within thirty (30) days.
- f. Lighting: Lighting of antennas or support structures shall be prohibited except as required by the FAA.
- g. Maintenance: All facilities and landscaping shall be properly maintained.

E. Abandonment: Upon abandonment or discontinuation of use, the carrier shall physically remove the wireless communication facility within ninety (90) days of the date of abandonment or discontinuation of use, and restore the site to its original condition. The carrier shall provide to the city, prior to issuance of a permit, a performance bond in the amount of twenty thousand dollars (\$20,000.00) or a bond equal to a written estimate from a qualified tower removal contractor to guarantee that the facility will be removed when no longer in use. The city shall be named as an obligee in the bond and must approve the bonding company. (Ord. 542, 2007: Ord. 496 § 1, 2001)

CHAPTER 17.05

SUBDISTRICTS

SECTION:

17.05.010: Designation Of Zoning Subdistricts

17.05.020: Map

17.05.030: Conformance With Zoning Subdistricts

17.05.010: DESIGNATION OF ZONING SUBDISTRICTS:

There are hereby established the following zoning subdistricts for the city:

Subdistrict Name	District Symbol
Planned unit development	PUD
Mobile home park	MH
School	S

(Ord. 542, 2007)

17.05.020: MAP:

In addition to showing the boundaries of all basic zoning subdistricts on the "official zoning map", there may also be established a map of all basic zoning subdistricts which is designated "development map" which, together with the ordinance creating the basic zoning subdistrict, shall be on file in the office of the city clerk. The ordinance and map together with all notations, references and other information shown thereon shall establish the conditions and requirements under which the basic zoning subdistrict designation was granted and when adopted according to law shall become effective and by reference shall become a part of this title. The number of the ordinance creating the basic zoning subdistrict shall be clearly shown on the "official zoning map", "development map" and any other official document relating to a particular zoning subdistrict.

The ordinance and map may encompass one or more zoning districts and one or more basic zoning subdistricts together with any appurtenant secondary zoning districts all within one particular zoning district whenever it can be shown to the satisfaction of the council that the mixture of zoning districts and subdistricts is compatible with the intent of the zoning subdistrict provisions and forms a homogeneous unit. (Ord. 542, 2007)

17.05.030: CONFORMANCE WITH ZONING SUBDISTRICTS:

A. Any land located within a zoning subdistrict designated on the "official zoning map" shall only be used or occupied and any building, structure or improvement thereon shall only be used, occupied, placed, replaced, erected, reerected, constructed, reconstructed, altered, extended, enlarged, modified, removed or moved as this title permits for the zoning subdistrict in which the same is located and as shown on the development map established by the creation of the zoning subdistrict in which the same is located.

B. No use, dimensional requirement, sign, off street parking area, improvement or other condition or requirement shown on a development map shall be changed or modified or left uncompleted except as herein provided. (Ord. 542, 2007)

CHAPTER 17.06

SUBDISTRICT REGULATIONS

SECTION:

17.06.010: Planned Unit Development Subdistrict PUD

17.06.020: Mobile Home Park Subdistrict MH

17.06.030: Business Park PUD

17.06.010: PLANNED UNIT DEVELOPMENT SUBDISTRICT PUD:

A. Purpose: This subdistrict is intended to:

1. Foster and promote a variety in the development pattern;
2. Encourage developers to use a creative approach in land development;
3. Retain and conserve natural land and topographic features;
4. Promote the creation and efficient use of open spaces;
5. Create flexibility and variety in the location of improvements on lots with diversity of the use of the land.

B. Overlay Concept: Each zoning district within a development may be overlaid by one or more zoning subdistricts having the same prefix as the underlying zoning district. Such a zoning subdistrict shall be called the basic zoning subdistrict. To allow for the mixing of certain uses and for increasing densities in a planned development, each basic zoning subdistrict may be overlaid by one or more secondary zoning subdistricts having a prefix which is different from the underlying zoning district and/or subdistrict.

C. Use Regulations: Any permitted or special use shown herein to be allowed in any zoning subdistrict whose prefix is the same as the zoning district. The following uses may be permitted:

1. In residential zoning subdistricts, the number of units per building shall be determined by commission and council action.
2. Private parks and playgrounds.

D. Property Development Standards: The following property development standards shall apply to all land and buildings in planned unit development subdistricts:

1. Project Size:

a. The minimum project size shall be two (2) acres for a basic zoning subdistrict unless the commission and city council find that property of less than two (2) acres is suitable as a planned unit development by virtue of:

- (1) Unique character; or
- (2) Topography or landscaping features; or
- (3) Its qualifying as an isolated problem area, as recommended by the planning department and determined by the planning commission.

b. The minimum project size of a subdistrict with a secondary subdistrict shall be as follows:

- (1) Residential subdistrict with a secondary overlay - ten (10) acres (secondary overlay not to exceed 10 percent of project).
- (2) Residential subdistrict with secondary residential overlay - ten (10) acres (secondary overlay not to exceed 50 percent of project size).
- (3) Commercial subdistrict with a secondary overlay - twenty (20) acres (secondary overlay not to exceed 10 percent of project).
- (4) Manufacturing subdistrict with secondary overlay - forty (40) acres (secondary overlay not to exceed 10 percent of project).

2. Density Per Acre: The density per acre of a subdistrict shall be in substantial conformity with that of the underlying zoning district. Buildings may be clustered and individual lot sizes may be reduced below the requirements of the underlying zoning district. In residential subdistricts the total number of dwelling units shall not exceed the number permitted in the underlying district per acre, multiplied by the number of acres in the development. The remaining land not contained in individual lots shall be set aside for parks and playgrounds. If there is a subsurface sewage disposal system, there can be no more than one residential unit per acre.

3. Building Height: The building height of a subdistrict shall not exceed that of the underlying zoning district.

4. Yards:

a. Along the periphery of subdistricts, yards shall be provided equal to the required front yard of the underlying zoning district. In unusual conditions in which impact on adjacent property may be lessened, the commission may recommend and the council may approve minor modifications to this setback requirement.

b. Spacing between principal buildings shall be at least equivalent to such spacing as would be required between buildings similarly developed under the terms of this title on separate zoning lots, due consideration being given to the openness normally afforded by intervening streets and alleys.

c. All buildings shall have a trafficway setback from centerline of forty five feet (45') on a public street and twenty five feet (25') on a private street.

5. Approval Of A PUD Subdistrict:

a. Preliminary Development Plan: The petitioner for a planned unit development subdistrict may, after preapplication conferences with the planning staff, submit a preliminary development plan to the commission for review, which development plan shall include the following:

- (1) The proposed site plan, showing building locations and land use areas;
- (2) Proposed traffic circulation, parking areas, pedestrian walks and landscaping;
- (3) Proposed construction sequence for buildings, streets, spaces and landscaped areas;
- (4) Existing zoning district boundaries;

(5) A survey of the property, including topography, buildings, watercourses, trees over six inches (6") in trunk diameter, streets, utility easements, drainage patterns, right of way and land use;

(6) Other requirements that the planning department, planning commission, or legislative body may request.

b. Public Hearing: After commission review, a public hearing shall be held before the commission and council for a zoning district and zoning map amendment.

c. Final Development Plan: Within one year after approval of the preliminary development plan, the petitioner shall submit to the planning commission a final development plan. This plan shall include the following information:

(1) Site Development Plan: The developer shall provide the commission with a colored rendering of adequate scale to show the completed development that will include at least the following where applicable:

- (A) Architectural style and building design.
- (B) Building materials and color.
- (C) Landscaping.
- (D) Screening.
- (E) Solid waste areas.
- (F) Parking.
- (G) Open space.

A concept site development plan may be approved by the commission and/or design review committee, but shall be conditioned upon approval of a final site development plan before final approval of the PUD or condominium subdivision.

(2) Homeowners' Association: The homeowners' association bylaws and other similar deed restrictions, which provide for the control and maintenance of all common areas, recreation facilities or open space, shall meet with the approval of the council. Any and all powers as specified in such agreements may also be assigned to the council and the city may elect to accept said powers for the purpose of assessing property for delinquencies and enforcement of motor vehicle regulations to protect the best interests of the owners involved and of the general public.

(3) Storage Areas: Storage areas shall be provided for the anticipated needs of boats, campers and trailers. For typical residential development, two hundred (200) square feet shall be provided every two (2) living units. This may be reduced by the council if there is a showing that the needs of a particular development are less.

(4) Parking Space: One additional parking space beyond that which is required by chapter 17.10 of this title may be required for every three (3) dwelling units to accommodate visitor parking.

(5) Maintenance Building: A maintenance building shall be provided, size and location to be suitable for the service needs that are necessary for the repair and maintenance of all common areas.

(6) Open Space: The location of open space shall be appropriate to the development and shall be of such shape and area to be usable and convenient to the residents of the development.

(7) Control During Development: Single ownership or control during development shall be required and a time limit may be imposed to guarantee the development is built and constructed as planned.

(8) Storm Drainage: Shall be provided the same as "new development and subdivision".

(9) Conformance: Such final development plan shall be in general conformance with the approved preliminary development plan.

(10) Final Approval: Final approval shall be binding on the development and changes from the final plan shall be subject to approval by the planning commission and legislative body.

(11) Extension Of Time Limit: The applicant may request extension of the time limit not later than thirty (30) days prior to the expiration of the base year limit.

6. Findings Required: The commission shall recommend to the council approval, approval with modifications, or disapproval of the final development plan. Upon approval, the plan shall constitute the zoning requirements and subdivision plat for the land in the planned unit development subdistricts.

7. Standards: Approval of planned unit development subdistrict shall be based on the following standards:

a. The proposed uses shall not be detrimental to present and potential surrounding uses; nor shall they be detrimental to the health, safety and general welfare of the public.

b. The density of the planned unit development shall be in substantial conformity with the density of surrounding zoning districts.

c. Any variation from the basic zoning district requirements must be warranted by the design and amenities incorporated in the final development plan.

d. The final development plan must be in conformance with the comprehensive land use plan.

e. Existing and proposed streets and utility services must be suitable and adequate for the proposed development.

f. The execution of a PUD agreement signed by the developer and the city that delineates commitments of the developer to the city and of the city to the developer. (Ord. 542, 2007)

17.06.020: MOBILE HOME PARK SUBDISTRICT MH:

A. Purpose: This subdistrict is intended to provide for placement of individually owned mobile homes on real property under a single ownership.

B. Overlay Districts: An MH subdistrict may overlay R3 and MH zoning districts.

C. Use Regulations:

Private parks and playgrounds.

Residential:

Accessory buildings, personal swimming pools and other accessory uses.

Permanent mobile homes.

Other uses as allowed by the commission and council to service only the mobile home park.

D. Property Development Standards: The following property development standards shall apply to all lands and buildings in mobile home park subdistricts:

1. Project Size: The minimum project size shall be five (5) acres.

2. Density Per Acre: The density per acre of a mobile home park subdistrict shall be in substantial conformity with that of the underlying zoning district. Buildings may be clustered and individual lot sizes may be reduced below the requirements of the underlying zoning district, provided the total number of dwelling units shall not exceed the number permitted in the underlying district per acre, multiplied by the number of acres in the development. If individual subsurface sewage disposal systems are used, the maximum density shall be one household per acre.

a. Have provisions for adequate open space and family recreational activities, including children's play areas.

3. Building Height: The building height of a mobile home park subdistrict shall not exceed that of the underlying zoning district.

4. Yards:

a. Along the periphery of a mobile home park subdistrict a twenty five foot (25') landscaped strip shall be provided and a minimum six foot (6') high screening fence shall be required within the twenty five foot (25') strip except along street frontages.

b. Spacing between principal buildings shall be at least equivalent to such spacing as would be required between buildings similarly developed under the terms of this title on separate zoning lots, due consideration being given to the openness normally afforded by intervening streets and alleys.

c. All buildings shall have a trafficway setback from centerline of forty five feet (45') on a public street and twenty five feet (25') on a private street.

d. Accessory structure envelopes shall be shown on the site plan of projects approved after the date of approval of this amendment. Projects approved prior to the adoption of this amendment may have accessory structures placed so as to meet setback requirements of this section, but such structures shall not be placed in the front nor in the twenty five foot (25') landscaped buffer around the perimeter of the project.

e. Each mobile home space shall have a concrete or asphalt surfaced area not less than twenty feet (20') wide by twenty two feet (22') in length, adjacent and accessible from the required sidewalk/street. This surfaced area shall be used for on site parking for each manufactured home space and shall be developed/installed by the park owner prior to occupancy of the manufactured home. Placement of mobile homes/manufactured homes shall comply with adopted building codes for separation between each home/structure. (Ord. 631, 2016: Ord. 542, 2007)

17.06.030: BUSINESS PARK PUD:

A "business park", as defined herein, may be established through the PUD process, with the following development requirements:

- A. All manufacturing activity shall take place inside an enclosed building.
- B. No outside storage of any product, material, or vehicles used in the loading, unloading or transportation of manufactured goods.
- C. No fumes, odors, noise or vibrations shall be allowed at the perimeter of the business park that is above typical residential background levels that are detectable from the outside of the building.
- D. Landscaping equal to ten percent (10%) of the site shall be provided with a master landscape plan approved through the PUD process. Parking lots of more than twenty five (25) vehicles shall have landscaped islands within the parking lot breaking up large asphalt areas. A thirty five foot (35') wide landscaped buffer with berming at least four feet (4') high shall be required on any street fronting any residential property.
- E. A master sign plan shall be approved as part of the PUD.
- F. Architectural standards shall be approved through the PUD process for buildings within the business park.
- G. The business park shall be located adjacent to major arterial and collector streets, with no direct access to local residential streets.
- H. There shall be a one hundred foot (100') building setback and a thirty five foot (35') parking lot setback from any street fronting a residential subdivision or adjacent to residential property or a residential zoning district. Buildings approved over thirty five feet (35') in height shall have four feet (4') additional setback for each foot of additional height over thirty five feet (35'). No building will exceed fifty feet (50') in height without a special use permit.
- I. The business park shall include a mixture of manufacturing and commercial uses.
- J. The business park shall be designed to encourage pedestrian and bicycle usage if located within one-half ($\frac{1}{2}$) mile of residential subdivisions.
- K. No hazardous materials exceeding the exempt quantities as provided by the international building code and international fire code shall be manufactured or warehoused in the business park. Only hazardous materials used in the manufacturing process are allowed. (Ord. 542, 2007)

CHAPTER 17.07

SUPPLEMENTARY REGULATIONS

SECTION:

17.07.010: Effect Of Supplementary Regulations

17.07.020: Sale Or Lease Of Required Space

17.07.030: Additional Height In RP, CB And LI Zoning Districts

17.07.040: Detached Accessory Building Setbacks In Residential Zoning Districts And Subdistricts

17.07.050: Front Yard Setbacks In Area Of Impact

17.07.060: Swimming Pools

17.07.070: Separate Ownership Of Units In Duplexes

17.07.080: Special Landscaping Requirements For Gateway Arterials

17.07.090: Vehicle Stacking Requirements For Drive-Through Facilities

17.07.100: Recreational Vehicles On Residential Lots

17.07.100.1: Violation, Penalty

17.07.110: Manufactured Homes On Residential Lots

17.07.120: Color Palette

17.07.130: Fences

17.07.010: EFFECT OF SUPPLEMENTARY REGULATIONS:

The regulations herein set forth qualify or supplement the regulations within zoning districts and subdistricts appearing elsewhere in this title. (Ord. 542, 2007)

17.07.020: SALE OR LEASE OF REQUIRED SPACE:

No space needed to meet the width, yard, area, parking or other requirements of this title for a lot or building may be sold or leased apart from such lot or building unless other space so complying is provided. (Ord. 542, 2007)

17.07.030: ADDITIONAL HEIGHT IN RP, CB AND LI ZONING DISTRICTS:

The Council may allow greater than "standard" building heights with or without extra setback requirements, in the RP, CB and LI Zoning Districts and subdistricts, providing all floors have a fire sprinkler system approved by the Fire Chief and City Engineer. The requirement for a fire sprinkler system may be waived by the Council, based on recommendations from the Fire Chief, for a building which is accessory to a farming use and not intended for human occupancy providing the property owner release the City for all fire protection responsibility and liability. (Ord. 542, 2007)

17.07.040: DETACHED ACCESSORY BUILDING SETBACKS IN RESIDENTIAL ZONING DISTRICTS AND SUBDISTRICTS:

Detached accessory buildings two hundred (200) square feet or less in size, not used for human occupancy may be built on the side or rear property line provided all of the following conditions are met:

- A. Written permission of adjacent property owner is obtained and provided to the City.
- B. Firewalls as required by the International Building Code (IBC) are constructed.
- C. Detached accessory structures used for storage of vehicles or RVs shall require a building permit, regardless of size.
- D. There is no water runoff from building onto adjacent property.
- E. The accessory building is not located closer than ten feet (10') to a main building.
- F. There is no architectural projection beyond the property line.
- G. Accessory buildings attached to other buildings shall require a building permit.
- H. Accessory buildings over two hundred (200) square feet shall require a building permit. (Ord. 649, 2018)

17.07.050: FRONT YARD SETBACKS IN AREA OF IMPACT:

All front yard setbacks on roads, streets and highways designated on the current "highway designation map", a copy of which is available for review from the City Clerk, shall conform to the setbacks required by that map. The setback requirements listed on the "highway designation map" shall supersede all other setback requirements. (Ord. 542, 2007)

17.07.060: SWIMMING POOLS:

Personal swimming pools (accessory to residential use) that are not completely enclosed within a building having solid walls shall be set back at least seven feet (7') from the property lines and shall be completely surrounded by a fence of at least

four feet (4') in height. There shall be no openings larger than thirty six (36) square inches, except for gates that shall be equipped with self-closing and self-latching devices. Public swimming pools shall comply with the rules and regulations promulgated by the Idaho Department of Health and Welfare and International Building Code for public swimming pools in Idaho. (Ord. 542, 2007)

17.07.070: SEPARATE OWNERSHIP OF UNITS IN DUPLEXES:

Duplexes may have the separate units sold to different owners under the following procedure:

A. An application for duplex split will be made with the Administrator on a form provided by the Administrator. The Administrator shall allow a duplex split upon receiving evidence that the following conditions have been made:

1. Each unit must have a lot area not less than the following:
 - a. R1: The minimum lot area shall be six thousand (6,000) square feet.
 - b. R2: The minimum lot area shall be five thousand five hundred (5,500) square feet.
 - c. R3: The minimum lot area shall be five thousand (5,000) square feet.
2. Firewalls as required by the International Building Code and the City of Kimberly Inspection Department have been provided between the units.
3. Separate sewer and water facilities are provided to each unit.
4. Two (2) off street parking spaces are provided for each unit. (Ord. 542, 2007)

17.07.080: SPECIAL LANDSCAPING REQUIREMENTS FOR GATEWAY ARTERIALS:

A. Gateway Arterials: Gateway arterials include the following streets: Main Street North, U.S. Highway 30, 3500 East, Kimberly Road, U.S. Highway 50.

B. Landscaping Requirements: In addition to, and as part of, the landscaping requirements specified elsewhere in this title, the following landscaping shall be provided, retained and maintained on all properties in commercial or industrial zoning districts and fronting gateway arterials: A landscaped strip at least ten feet (10') in width shall be provided immediately behind the sidewalk or future sidewalk when existing buildings are being remodeled, and thirty feet (30') when vacant land or cleared land is being developed. Any continuous landscaped strip exceeding forty feet (40') in length shall contain a twelve inch (12") minimum height undulating berm. Each separate section of the landscaping strip shall contain trees or shrubs. The plant types in each portion of the landscaping strip shall be as set forth in section 17.11.020 of this title. Each landscaped strip shall be kept clean and free of noxious and other weeds.

C. Hardship: In the case of the expansion of existing commercial developments, these requirements may be modified by the commission if it can be shown by the developer that strict compliance with these requirements will result in the removal of existing and proposed parking spaces below eighty five percent (85%) of the number of spaces required to serve the existing and proposed development. (Ord. 542, 2007)

17.07.090: VEHICLE STACKING REQUIREMENTS FOR DRIVE-THROUGH FACILITIES:

The following are minimum requirements for vehicle stacking for drive-through facilities:

- A. Fast food restaurants and drive-in banks: Nine (9) spaces, or such other number as approved by the Planning and Zoning Commission, but not less than six (6) spaces.
- B. All others: Six (6) spaces. (Ord. 542, 2007)

17.07.100: RECREATIONAL VEHICLES ON RESIDENTIAL LOTS:

Motor homes, camp trailers, campers and other similar recreational vehicles may be stored, maintained, loaded or unloaded on private property (but not occupied otherwise or connected to sewer, water or cable services, except in an approved RV park). The Zoning Administrator may approve a temporary RV usage permit (not to exceed 6 months per calendar year), for placement of an RV on private property during active on site construction or for short term guest RV usage on private property, not exceeding fourteen (14) days per calendar year. Temporary RV usage permits may be renewed upon the approval of the Planning and Zoning Administrator.

No motor homes, camp trailers, campers and other similar recreational vehicles may be parked on any street, easement, alley or public right-of-way.

Any violation of the provisions of this section or a failure to comply with any of its requirements shall constitute an infraction and be subject to the violation and penalty criteria of section 17.07.100.1 of this chapter. (Ord. 636, 2016)

17.07.100.1: VIOLATION, PENALTY:

A. The City officials shall issue one warning per calendar year. If the violation is not corrected within forty eight (48) hours, the owner, occupant or tenant shall be guilty of an infraction and shall be subject to a fine of one hundred dollars (\$100.00).

B. Any police officer of the City, upon finding a motor home, camp trailers, campers and other similar recreational vehicles in violation of this section 17.07.100 is authorized to remove or cause to be removed to a secure impound facility at the owner's expense. (Ord. 636, 2016)

17.07.110: MANUFACTURED HOMES ON RESIDENTIAL LOTS:

Manufactured homes shall comply with the following development standards:

- A. Shall be at least twenty four feet (24') wide, with a minimum floor area of nine hundred sixty (960) square feet.
- B. Shall have a nonmetallic, wood shake or asphalt shingle roof with a minimum slope of three to twelve (3/12) and a minimum six inch (6") eave.
- C. Shall have horizontal aluminum, simulated wood or wood siding.
- D. Shall have a foundation face that is similar in appearance and durability to the masonry foundation of site-built dwellings and which surrounds the entire perimeter of the structure and completely encloses the space between the siding and the finished grade.
- E. Shall be permanently affixed and set upon a foundation base having an anchoring system that is totally concealed under the structure. The running gear and towing hitch shall be removed.
- F. Shall obtain a building permit from the City Building Department to ensure that the manufactured home is placed on site to HUD standards set forth in circular letter no. 2-83, dated April 8, 1983, published by the Boise Service Office of HUD, regulating perimeter foundation, the anchoring of the structure to its foundation and other building requirements.
- G. Shall, in the Administrator's opinion, conform to the aesthetic and architectural style of the area.
- H. A manufactured home shall be constructed in compliance with HUD Manufactured Home Construction and Safety Standards established under 42 USC section 5401 et seq ¹ . Manufactured homes are regulated by the Federal Department of Housing and Urban Development (HUD), are legal for use only as a single-family dwelling and shall have permanent HUD plates attached to each section of the manufactured home specifying a year of construction and a serial number. (Ord. 655, 2018)

Notes

- ¹ 1. IC 39-4105.

17.07.120: COLOR PALETTE:

A. Color Palette Requirement: Each building in the Commercial- Business (CB) and Commercial-Gateway (CG) Zoning Districts, including each building's exterior trim, siding, stucco, accents, and nonmasonry features shall be earth tone colors consistent with the color palette and color palette requirements of this section:

1. Additional Color Palette Requirements:

a. Application: A no fee painting permit application shall be filled out and be submitted by the property owner/applicant to the Community Development Department, and such permit shall be approved by the Community Development Director or designee prior to the painting of any applicable building within the City or within its area of impact. A building permit for painting is not required.

b. Number Of Colors: In painting an applicable building, at least two (2) and up to three (3) of the approved palette colors shall be utilized.

c. Shading Variations: Minor shading variations to the color palette shall be approved by the Community Development Director or designee and may be substituted as color palette colors. These substitutions shall be identified and shown on the color palette variation form which shall be submitted to and be approved by the Community Development Director or designee prior to variation paint application.

d. Similar Colors: Equivalent colors matching those named and numbered on the color palette may be utilized.

e. Masonry: Masonry building materials (defined as brick, stone and/or block) used or installed upon exteriors of applicable buildings in the City or within its area of impact, shall be limited in color to their natural, unpainted color.

f. Allowable Time For Compliance: Any building made nonconforming with regard to the color palette requirements at the time of adoption of this section may remain nonconforming until such time the building is repainted, at which time it shall be brought into conformance. The provisions of section 17.03.030 of this title shall not apply to buildings which do not conform to the color palette requirements of this section. Future buildings shall comply with the color palette requirements during initial construction in order to receive certificate of occupancy upon completion of the building.

g. Appeal Of Color Palette Determinations: A decision regarding colors of the color palette may be appealed to the Planning and Zoning Commission, which may either uphold, overturn, or remand the decision back to the Community Development Director or designee to make a final determination. The commission's determination is the final determination.

h. Enforcement: Upon completion of painting of a building to comply with color palette requirements, the owner/applicant must notify the Community Development Department of such completion by filling out the color palette compliance letter and attaching pictures of the completed painted building, and either mail, fax, or e-mail the letter and photos to the Community Development Director or designee so completion can be certified.

2. Color Palette: Color palette is attached to the ordinance codified herein. (Ord. 602, 2013)

17.07.130: FENCES:

A. Regulations: Open and closed fences are permitted accessory uses in all districts and shall be regulated by the city of Kimberly planning and zoning coordinator or other appropriate zoning official. The following regulations shall govern the type, location, and construction of all fences within incorporated city limits and not the impact area. A fence permit is required for the renovation of twenty five feet (25') or more, or new construction/installation of a fence. No cost applications for a fence permit are available at city hall.

1. Electric And Barbed Wire Fences: Electric and barbed wire fences are prohibited in all zoning districts except as provided in this section.

2. Barbed Wire In School, Commercial And Industrial Districts (S, CG, CB And LI), And Wireless Communication Facilities: Barbed wire may be permitted in commercial, industrial, and school districts (CG, CB, LI and S), and wireless communication facilities only when used as the top section for security fences and shall be minimum of seventy two inches (72") or six feet (6') above grade to the bottom wire.

3. Barbed Wire In Agricultural Districts (AR And AG): Barbed wire fences may be permitted in agricultural districts (AR and AG) only upon application and approval of a special use permit pursuant to subsection 17.13.020B of this title. Applications for a fence permit and a special use permit shall be submitted for review and approval or denial prior to fence installation.

4. Electric Fences: Electric fences are prohibited in all districts except AG by special use permit application reviewed and approved by the planning and zoning commission pursuant to subsection 17.13.020B of this title. In addition to the requirements of subsection 17.13.020B of this title, the fence must be placed thirty six inches (36") or three feet (3') inside of an existing approved fence, well marked and posted in plain view "Danger Electric Fence in Use" and proof of property ownership and proof of insurance or permission from owner if leasing/renting and proof of insurance.

5. Access To Utility Meters, Utility Boxes And Fire Hydrants: Any existing fence or fence to be constructed which restricts access to any utility meter shall provide a way of access through the fence by hand gate. In addition, no fence shall be constructed within thirty six inches (36") or three feet (3') of utility meters and boxes, and seventy two inches (72") or six feet (6') of a fire hydrant or other emergency apparatus to ensure emergency access.

6. Open Fences: Open fences up to seventy two inches (72") or six feet (6') in height may be built to the property line in commercial and industrial (CB, CG and LI) districts. Privacy slats are permitted upon approval by the city of Kimberly planning and zoning coordinator or other appropriate zoning official.

7. Architectural Landscape Walls, Latticework, And Screens: For the purposes of this chapter, architectural landscape walls, latticework and screens shall be considered to be closed fences and shall be built and maintained in compliance with the provisions of this chapter.

8. Use Of Unsightly Materials: The use of boxes, sheet metal, old or decayed wood, broken masonry blocks, or other like unsightly materials for fencing shall be prohibited in all zones.

9. Maintenance: Maintenance of fences shall be the responsibility and at the expense of the property owner. Fences shall be maintained in an aesthetically pleasing condition and the affected area of any damaged or dilapidated fences shall be repaired or cleaned up within thirty (30) days of occurrence or thirty (30) days of a written notice given by city officials to repair or clean up said fence.

10. Clear Vision Triangle: Notwithstanding with any provision of this section, no fence shall exceed thirty six inches (36") or three feet (3') in height within the clear vision triangle.

B. Residential District Requirements: Fences may be erected in all residential districts (R1, R2, R3, RP and MH) subject to the following:

1. Closed fences to a height of thirty six inches (36") or three feet (3'), or open fences to a height of forty eight inches (48") or four feet (4') may be built from the front of the dwelling unit to the side property line, parallel to the side property line, to the front property line adhering to any easement requirements. Fences to a height of seventy two inches (72") or six feet (6') may be built from the front of the dwelling unit to the side property line, parallel to the side property line, to the rear property line adhering to any easement requirements;

2. Any fence, architectural landscape wall, or planting on or within the clear vision triangle shall be limited to thirty six inches (36") or three feet (3') in height measured from the crown of the street;

3. Closed fences to a height of thirty six inches (36") or three feet (3') or open fences to a height of forty eight inches (48") or four feet (4') may be built from the front of the dwelling unit to the front property line, parallel to the front property line, to the side property line adhering to any easement requirements. Fences to a height of seventy two inches (72") or six feet (6') may be built from the front of the dwelling unit to the rear property line, parallel to the rear property line, to the side property line adhering to any easement requirements;

4. Any developer intending to construct a boundary fence on the boundaries of a proposed subdivision shall show the fence on the preliminary plat and shall include with the preliminary plat the design, placement, height, specifications, and drawings of said fence, while adhering to the regulations and requirements of this chapter.

C. Provisions For Public Right Of Way: The policy for the permission to and the conditions and restrictions imposed by the permission to construct and erect fences within the public right of way are hereby established as follows:

1. Sidewalk Or Walkway: Where a sidewalk exists, an applicant may construct a fence adjacent to the sidewalk on the dwelling side, leaving at least eighteen inches (18") between the fence and sidewalk as an easement for maintenance of the sidewalk. When a sidewalk does not exist, the applicant must maintain legal property line placement.

2. Design: The design of the fence erected within the public right of way shall receive prior approval by the city of Kimberly planning and zoning coordinator or other appropriate zoning official and must be built in compliance with such prior approval and in accordance with plans and specifications submitted.

3. Height: Open fences erected within the public right of way may be built to a height of forty eight inches (48") or four feet (4') and closed fences may be built to a height of thirty six inches (36") or three feet (3') in the front setback area or seventy two inches (72") or six feet (6') in height from front of residential structure to back property line and shall otherwise comply with this title.

4. Construction And Safety: Regardless of the type of material used, fences shall be built of materials ensuring structural stability and safety.

5. Removal Required: Fences and all appurtenant structures or footings constructed on public rights of way shall be removed at the expense of the property owner within thirty (30) days after notification by the city designated representative. Any fence located in or on an easement shall provide a way of access through the fence, whether by hand gate or by removal or dismantling of fence, depending upon the type of access required, and shall be at the expense of the property owner.

6. Work Between Fence And Curb Or Street: All work (i.e., grading, seeding, or paving between the proposed fence to be erected on public right of way and curb or street travelway) shall be at the expense of the property owner and in accordance with the requirements and specifications of the city.

7. Fence Permits Required: If the city of Kimberly planning and zoning coordinator or other appropriate zoning official approves the application, the applicant must obtain a fence permit from the city as applicable before commencing the construction or erection of said fence; there is no cost associated with the fence permit.

D. Height Restrictions:

1. In all cases where a fence greater than seventy-two inches (72") or six feet (6') is proposed within any district, the owner/applicant submitting the fence permit shall also submit an application for a building, permit prior to fence construction or applicable height modification to the fence.

(Ord. 621, 2015; Ord. 682, 2023)

CHAPTER 17.08

AREA OF CITY IMPACT

SECTION:

17.08.010: Integration Of Recitals

17.08.020: Geographic Area Of City Impact

17.08.030: Governing Plan And Ordinance

17.08.040: Administration

17.08.050: Enforcement

17.08.060: Renegotiation

17.08.010: INTEGRATION OF RECITALS:

The recitals in this ordinance are incorporated in this chapter and by this reference made a part hereof. (Ord. 581, 2010; Ord. 662, 2020)

17.08.020: GEOGRAPHIC AREA OF CITY IMPACT:

The agreed upon Kimberly Area of City Impact, shall be as depicted on the current adopted Kimberly Zoning /Area of City Impact map, adopted per Ordinance No. 659, dated 12-10-2019 and the Kimberly Comprehensive map, adopted per Resolution No. 364, dated 10-22-2019 or as herein after modified. (Ord. 581, 2010; Ord. 662, 2020)

17.08.030: GOVERNING PLAN AND ORDINANCE:

A. Per the adopted Resolution No. 364, dated 10-22-2019, City of Kimberly comprehensive plan and Kimberly, Idaho, revised area of impact and comprehensive plan land use map, together with the City of Kimberly zoning and subdivision regulations contained in Kimberly City Code title 17, and the Kimberly Zoning/Area of City Impact map, adopted per Ordinance No. 659, dated 12-10-2019 are hereby adopted by reference by the County of Twin Falls to be in full force and effect in the area of City impact or as herein after modified.

B. Within the area of City impact, no provision of this subsection shall apply to any parcel of land twenty (20) acres or larger used solely for agricultural purposes. Within the area of City impact, this subsection shall apply to any parcel of land proposed to be used for nonagricultural purposes. (Ord. 581, 2010; Ord. 662, 2020)

17.08.040: ADMINISTRATION:

A. The Board of Commissioners for Twin Falls County hereby appoints the County Planning Administrator to administer the provisions of title 17 of the Kimberly City Code, as adopted by reference herein for the area of City impact, to provide assistance and guidance to the County Planning and Zoning Commission, and to perform the same duties for the area of City impact that are performed for the County of Twin Falls.

B. The Board of Commissioners of Twin Falls County hereby appoints and authorizes the County of Twin Falls and its agents and employees to issue zoning and building permits required by the regulations adopted herein, and to charge and collect fees for such administrative duties. The building permit fees for the area of impact shall be the same as established for the County.

C. The Board of Commissioners of Twin Falls County hereby appoints the Twin Falls County Planning and Zoning Commission to administer the area of City impact.

D. All applications for preliminary and final plats of subdivisions, vacations, zoning compliance permits, rezones, special use permits and variances shall be submitted to the Twin Falls County Planning and Zoning Administrator, Planning and Zoning Commission or County Commissioners. The County shall provide the City with notice and an opportunity to provide comment on these applications pursuant to the standards provided within Idaho Code §67-6509. The County Planning and Zoning Commission may approve the application as commented on by the city council, deny the application, modify or condition the application, or request further proceedings.

E. Any person, including the City of Kimberly, directly aggrieved and affected by a final decision of the Twin Falls County Planning and Zoning Administrator, Planning and Zoning Commission or County Commissioners regarding property located within the area of city impact may appeal to the board of County Commissioners, or applicable courts of law. All appeal hearings shall be based upon the record established by the Twin Falls County Planning and Zoning Commission. (Ord. 631, 2016; Ord. 581, 2010; Ord. 662, 2020)

17.08.050: ENFORCEMENT:

The Board of Commissioners of Twin Falls County appoints and authorizes the County of Twin Falls and its employees and agents to enforce compliance with the provisions of this subsection and the regulations adopted herein, and to institute civil action in district court on behalf of Twin Falls County. (Ord. 581, 2010; Ord. 662, 2020)

17.08.060: RENEGOTIATION:

The area of city impact may be reviewed and renegotiated at any time upon written request of either party hereto. In any event, pursuant to Idaho Code 67-6526(e). The governing boards shall undertake a review at least every ten (10) years of

the city impact plan and ordinance requirements to determine whether renegotiations are in the best interests of the citizenry. (Ord. 581, 2010; Ord. 662, 2020)

CHAPTER 17.09

SIGN REGULATIONS

SECTION:

17.09.010: General Sign Provisions

17.09.020: Allowed Use Of Signs

17.09.030: Nonconforming Signs

17.09.010: GENERAL SIGN PROVISIONS:

- A. No sign shall be allowed unless it conforms to the structural requirements of the building code and provisions contained herein. A monument sign on a lot/parcel of land, shall be counted when calculating the maximum number of allowable freestanding signs per parcel. A monument sign counts the same as a free-standing pole sign, on a lot/parcel of land.
- B. Traffic control signs conforming to the "Manual On Uniform Traffic Control Devices", which are installed or approved by the city, shall not be required to conform to these regulations. No traffic control sign or imitation thereof shall be erected except those approved by the city engineer.
- C. Each building shall display an address number which is not less than four inches (4") in height and plainly visible from the street and such number shall be allowed in addition to the signs permitted herein. The address number displayed shall correspond to the number issued by the zoning administrator.
- D. Signs on a nonconforming use may be permitted providing they meet the signing requirements of the most restrictive zoning district in which the use would be permitted and providing they do not, in the sound discretion of the commission, have an adverse effect on adjacent property.
- E. All signs, except permitted off premises signs, shall pertain only to the use or products located on the same property as the sign.
- F. The light from an allowed illuminated sign shall be arranged, directed and of such intensity that it does not create a hazard, nuisance or other adverse effect on adjacent property, motor vehicles or approved traffic control devices.
- G. All lighting elements of exterior signs shall be a minimum of nine feet (9') above the ground unless adequately protected to prevent injury if broken.
- H. No sign shall be animated, flashing or rotating. Electronic message centers displaying date, time, temperature, weather, messages of interest to the traveling public, and/or commercial messages relating to the use of the property upon which the center is located, when in compliance with the conditions in subsection 17.09.020R of this chapter, are however permissible to be animated and flashing.
- I. Signs inside buildings, which are not visible from outside the building, shall not be limited by this code.
- J. No sign shall project beyond the property line except those allowed herein to project over public ways. No sign shall project closer than two feet (2') to a vertical line projected from the face of a curb, or if no curb exists, the face of the future curb as determined by the city engineer based on the master street plan. The owner of a sign allowed to project over a public way shall relocate the sign immediately upon written notification by the city of a modification to the public way.
- K. No sign shall be higher than the standard height allowed by this title for buildings nor shall any sign located within eight feet (8') of the curb or future curb line have a sign face located between a point three and one-half feet (3.5') and a point eight feet (8') above the top of existing or future curb as determined by the city engineer.
- L. No sign foundations shall encroach into public right of way.
- M. All multiple occupancy buildings shall have sign plans submitted and approved by the administrator prior to issuance of sign permits for such buildings. The number of flush wall mounted signs, projecting wall mounted signs, roof mounted signs, canopy or marquee signs, freestanding signs, off premises signs, or a combination thereof shall be limited to three (3) per business. Through the submittal of an acceptable sign plan, the commission may approve one additional sign per business.
- N. The dimensions of a sign that uses a wall as part of the background for individual letters or words shall be established by using the interconnected series of perpendicular and parallel lines which most nearly conform to the intent of this chapter by forming an essentially rectangular shape.
- O. A permit shall be required on a form furnished by the city for all signs except temporary signs as defined in subsection 17.09.020E of this chapter, personal nameplate signs, building nameplate signs, window signs painted on the window glass, construction identification signs, and political signs.
- P. Two (2) temporary special event signs and decorations per premises may be allowed by the administrator for special events, grand openings, or holidays, limited to a maximum of once every six (6) months. Such signs and decorations may be erected two (2) days prior to a special event or holiday and shall be removed two (2) days following the event or holiday.

For grand openings, such signs may be used for no more than seven (7) days. No placement shall be allowed within the public right of way.

Q. A sign on a vehicle/trailer with wheels, being displayed on premises or off premises, messages cannot be used for the sole purpose of advertising. It is the responsibility of the property owners to provide proof that the vehicle has a legitimate business purpose other than acting as a sign. (Ord. 604, 2014; Ord. 542, 2007; Ord. 665, 2020)

17.09.020: ALLOWED USE OF SIGNS:

Only the following signs meeting the described standards shall be allowed. All other signs are prohibited.

A. Personal nameplate sign:

1. Definition: A sign that states the name of the occupant of a household unit.
2. Number: Each household unit may have one sign mounted on the building or freestanding.
3. Maximum size: Two (2) square feet.
4. Projection: No restriction.
5. Height: Not higher than seven feet (7').
6. Location: Allowed in all zoning districts and zoning subdistricts.

B. Building nameplate sign:

1. Definition: A sign mounted on a building with the sign parallel to the building wall and which is not directly illuminated which states the name of a building.
2. Number: Each building may have one sign.
3. Maximum size: Six (6) square feet.
4. Projection: Eighteen inches (18") from the building.
5. Height: Not higher than seven feet (7').
6. Location: Allowed in all zoning districts and zoning subdistricts.

C. Professional office overlay sign:

1. Definition: A sign which may be flush wall mounted or freestanding and which advertises an authorized special use in an RP overlay zoning district.
2. A flush wall mounted professional office overlay sign shall comply with the following standards:
 - a. Maximum number: Each special use or business within a special use building may have one sign per frontage.
 - b. Maximum size: The total square footage of signing per business shall not exceed twenty five (25) square feet.
 - c. Maximum projection: Eighteen inches (18") from a building.
 - d. Height: Not higher than the wall.
 - e. Illumination: May be illuminated.
 - f. Location: Allowed in all RP overlay zoning districts and zoning subdistricts.
3. A freestanding professional office overlay sign may be allowed only as follows:
 - a. On properties that meet the following standards:
 - (1) Medical facilities with emergency services and/or overnight patient care.
 - (2) Multiple building complexes (more than 2 buildings) with only one street frontage.
 - b. A freestanding sign shall meet the following standards:
 - (1) Maximum Number: One sign per premises.
 - (2) Maximum Size: One square foot of sign is allowed for every five feet (5') of street frontage on which the sign is proposed to be placed, but with a maximum sign size of thirty two (32) square feet.
 - (3) Maximum Projection: Not beyond the property line nor closer than eight feet (8') to the curb line or future curb line.
 - (4) Height: Five feet (5') in height is allowed for every fifty feet (50') of street frontage on which the sign is proposed to be placed, but with a maximum sign height of ten feet (10').
 - (5) Illumination: May be illuminated.
 - (6) Location: Allowed in all RP overlay zoning districts and zoning subdistricts.

D. Development sign:

1. Definition: A sign not internally illuminated which states the name of a particular development. Development signs are allowed only with special approval of the commission after it has determined that in its opinion the sign will not adversely affect the adjacent property.

2. Maximum number: Each vehicular entrance to the development may have one sign.
3. Maximum size: Thirty two (32) square feet.
4. Projection: Not beyond the property line.
5. Height: Not higher than seven feet (7').
6. Location: Allowed in all zoning subdistricts.

E. Temporary sign:

1. Definition: A sign not directly illuminated which advertises the sale, rent or lease of property on which said sign is located.

2. Maximum number: One sign.
3. Maximum size: Four (4) square feet in residential zoning districts; thirty two (32) square feet in commercial or manufacturing districts. Temporary promotional only signs, up to sixteen (16) square feet in area, shall be allowed in residential zoning districts.
4. Projection: No restriction.
5. Height: Not higher than seven feet (7') in any zoning district.
6. Location: Allowed in all zoning districts and zoning subdistricts.

F. Flush wall mounted sign:

1. Definition: A sign which may be illuminated, mounted on a building with the sign face parallel to the building wall or which may be painted on a building wall.

2. Maximum number: Each commercial use may have one sign for the first fifty feet (50') of linear wall that faces or is visible from a public way or parking area and one sign for each additional fifty feet (50') of linear wall that faces or is visible from a public way or parking area.

3. Maximum size: Three (3) square feet of area or linear foot of wall but not to exceed one hundred fifty (150) square feet.

4. Maximum projection: Not more than one and one-half feet ($1\frac{1}{2}$ ') from a wall. The projection may not be over a public way.

5. Height: Not higher than the wall.
6. Location: Allowed in all zoning districts and subdistricts except RP and residential.

G. Projecting wall mounted sign:

1. Definition: A sign which may be illuminated, mounted on a building with the sign face perpendicular to the building wall.

2. Maximum number: Each commercial use may have one sign on each wall that faces a public way or parking area.
3. Maximum size: No bigger than the building.
4. Maximum projection: Not over five feet (5') over a public right of way.
5. Height: Not higher than the wall nor lower than a point eight feet (8') above the ground.
6. Location: Allowed in all zoning districts and subdistricts except RP and residential.

H. Roof mounted sign:

1. Definition: A sign, which may be illuminated, mounted on the roof of a building. Roof mounted signs may be allowed only when sign supports appear to be an architectural and integral part of the building, free of any exposed bracing.

2. Maximum number: Each building may have one sign.
3. Maximum size: One square foot of area per linear foot of building wall that faces a public way by not to exceed one hundred fifty (150) square feet.
4. Maximum projection: Not beyond a vertical line projected from the building walls.
5. Height: No special restriction.

6. Location: Allowed in all zoning districts and zoning subdistricts except AG, residential and RP.

I. Canopy sign or marquee sign:

1. Definition: A sign, which may be illuminated, mounted on a vertical surface of a canopy or marquee.
2. Maximum number: No special limit.
3. Maximum size: One square foot of area per three (3) square feet of vertical canopy or marquee surface area.
4. Maximum projection: Not beyond the projection allowed by the building code for a canopy or marquee.
5. Height: Not higher or lower than the canopy or marquee.
6. Location: Allowed in all zoning districts and subdistricts except AG and residential.

J. Identification sign:

1. Definition: A sign which may be illuminated, which states the use within a building or the company name of the occupant of a building with the sign face perpendicular to the building.
2. Maximum number: Each commercial use may have one sign mounted under a canopy or marquee or projection from a building wall.
3. Maximum size: One foot (1') measured vertically and five feet (5') measured horizontally.
4. Maximum projection: Not more than fifty percent (50%) of the projection allowed by the building code for a canopy or marquee.
5. Height: Not lower than a point eight feet (8') above the ground.
6. Location: Allowed in all zoning districts and zoning subdistricts except AG and residential.

K. Window sign:

1. Definition: A permanent sign which may be illuminated, visible from outside of a building, which is painted on a window or hung inside of a building.
2. Maximum number: One sign per thirty two (32) square feet of window glass.
3. Maximum size: Not to exceed twenty five percent (25%) of glass area.
4. Projection: Not beyond the wall of the building.
5. Height: No special limit.
6. Location: Allowed in all commercial and industrial zones.

L. Freestanding sign:

1. Definition: A sign, which may be illuminated, mounted on a vertical column that is supported on the ground rather than a building.
2. Maximum number: Each premises may have one sign per street frontage, except that a gasoline service station may have an additional trade name sign if the premises has only one street frontage.
3. Maximum size: Two hundred (200) square feet in area in any projection except as provided below.
4. Projection: As provided in subsection 17.09.010J of this chapter.
5. Height: Not lower than a point twelve feet (12') above state property or nine feet (9') above City property.
6. Location: Allowed in all zoning districts and subdistricts except Residential and RP.

M. Monument Signage:

1. Monument Sign: A freestanding sign structure with a solid base attached to the ground, extending predominantly in a vertical design. The base width of the sign structure is continued to or near the top of the monument sign. Structural supports are designed to be similar to the sign construction, and incorporate architectural features which complement the sign design. Rock signs are considered monument signs. Pole type freestanding sign supports are not considered monument signs, unless the support poles are enclosed within the monument sign structure-casing.

2. For single-tenant buildings which are not within a "shopping center/plaza", monument signs shall not exceed eighteen feet (18') in height and the signage area shall not exceed seventy (70) square feet per side.

3. For multi-tenant buildings which are not within a "shopping center/plaza," monument signs shall not exceed twenty (20') in height and the signage area shall not exceed one hundred (90) square feet per side.

4. For single-tenant buildings which are within a "shopping center/plaza" monument signs shall not exceed twenty feet (20') in height and the sign area shall not exceed eighty (80) square feet per side.

5. For multi-tenant buildings which are within a "shopping center/plaza" the monument signs shall not exceed twenty-two feet (22') in height and the sign area shall not exceed one hundred (100) square feet per side.

6. For any single-tenant building or multi-tenant building which is not located in a shopping center, one monument sign per abutting street shall be permitted.

7. A "shopping center/plaza," shall be allowed one monument sign per street that it abuts for any site less than twenty (20) acres in size and two (2) signs per street that it abuts, for any site twenty (20) acres in size or larger. The height of any such "shopping center/plaza" sign shall not exceed eighteen feet (18') adjacent to a roadway that is not designated as a State Highway and shall not exceed twenty-five feet (25') adjacent to any State Highway. The (20) acre size criteria includes the accumulation of all platted lot acreage, in the "shopping center/plaza."

8. The minimum distance between monument signs on a single parcel, shall be one hundred fifty feet (150').

9. No monument sign shall be any closer than fifty feet (50') from a monument sign, or other freestanding sign, on an adjacent, separate parcel/platted lot.

10. Monument signs are permitted to be double faced.

N. Off premises sign:

1. Definition: A flush wall mounted, roof mounted or freestanding sign which may be illuminated and advertise a product, service person or other use which is not located on the same property as the sign. Off premises signs may be allowed only by special use permit and may be allowed in addition to other flush wall mounted, roof mounted or freestanding signs on a property.

2. Projection Or Height: The same for flush wall mounted, roof mounted or freestanding signs.

3. Maximum Size: Shall not exceed four hundred (400) square feet in any projection.

4. Distance And Spacing Requirements:

a. No off premises sign may be erected or placed on the same parcel/lot to within three hundred feet (300') in any direction of another off premises sign.

b. At any street intersection, there may be no more than four hundred (400) square feet of advertising sign area in any projection within two hundred fifty feet (250') as measured from the street corner curbs, provided that all other distance and spacing requirements are complied with.

c. In addition to finding that a proposed off premises sign complies with all general requirements and spacing regulations as described in subsections M4a and M4b of this section, the commission must make all of the following findings in permitting such a sign:

(1) That the location and placement of the sign will not endanger motorists or pedestrians and does not cause undue distraction to traffic on the adjacent street or impede views at street or railroad intersections.

(2) That the sign will not cover or blanket any prominent view of a structure or facade of historical or architectural significance.

(3) That the sign will not obstruct views of users of adjacent buildings to side yards, front yards or to open space.

(4) That the sign will not distract, intrude upon or negatively impact the visual quality of a public open space as a public recreation facility, square, plaza, courtyard and the like.

(5) That the sign is compatible with building heights of the existing neighborhood and does not impose a foreign or inharmonious element to an existing skyline.

(6) That the sign's lighting will not cause hazardous or unsafe driving conditions from motorists and will not glare, reflect or spill onto adjacent business or residential areas.

5. Location: Allowed in all zoning districts and subdistricts except AG, Residential and RP.

O. Construction identification sign:

1. Definition: A temporary sign not directly illuminated which provides information about a construction project in progress.

2. Maximum number: Each construction project may have one sign.

3. Maximum size: Fifty (50) square feet.

4. Projection: None beyond private property lines.

5. Height: Not higher than fourteen feet (14').

6. Location: Allowed in all zoning districts and subdistricts.

7. Duration: One year permitted by renewable permit upon application to the administrator.

P. Special sign:

1. Definition: A sign, which may be illuminated, which may be allowed by special approval of the commission and which designates emergency facilities or which designates separate buildings and building offices in multiple building complexes, or provides historical or other special information of public interest.

2. Maximum number, size, projection and height: Determined by the commission to be the minimum required to adequately serve the basic purpose.

3. Location: Allowed in all zoning districts and subdistricts.

Q. Service directional sign:

1. Definition: A sign, which may be illuminated and used to identify service bays, warehouses, etc.

2. Maximum number: Each bay or warehouse may have one sign flush mounted above the door.

3. Maximum size: One foot (1') measured vertically and not to exceed width of door horizontally.

4. Maximum projection: Not more than one and one-half feet (1.5') from a wall.

5. Height: Not higher than the wall.

6. Location: Allowed in all zoning districts and subdistricts except AG, residential, and RP.

R. Message center:

1. Definition: A sign which provides general public service information such as time, date, temperature, weather, directional information, messages of interest to the traveling public and commercial messages which are commonly used to augment business identification signs. Message centers may be allowed only by special use permit.

2. Maximum number, projection and height: Message centers may be included as part of other allowed flush wall mounted, roof mounted or freestanding signs.

3. Maximum size: Shall not exceed twenty five percent (25%) of the square footage of the sign in which it is located.

4. Distance and spacing requirements: Same as for off premises signs.

5. Location: Allowed in all zoning districts and subdistricts except AG and residential.

S. Electronic message center sign:

1. Definition: An electronic message center is an electronic sign which can be changed by electronic, electrical, and/or computerized process and may display date, time, temperature, weather, messages of interest to the traveling public, and/or commercial messages relating to the use of the property upon which the electronic message center is located. An electronic message center may be combined with a nonelectronic sign pertaining to the use or products located on the same property which may be illuminated (collectively "EMC"). The EMC may not be mounted on a building.

2. Maximum Number: Each premises may have one EMC. The one EMC shall be substituted as the freestanding sign permissible on the street frontage where the EMC is located.

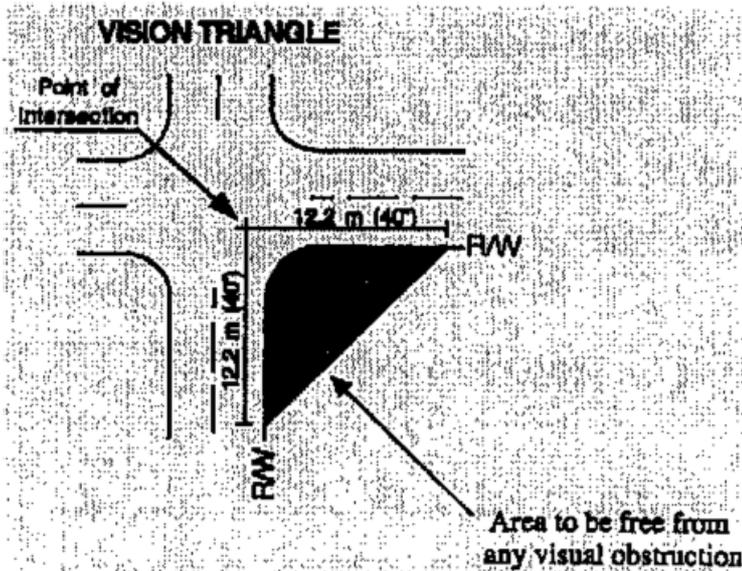
3. Maximum Size:

a. The electronic sign portion of an EMC may be up to eight feet (8') in width and four feet (4') in height and may be two (2) sided.

b. The nonelectronic sign portion of an EMC may be up to ten feet (10') in width and four feet (4') in height in total, and shall be mounted on the same base as the EMC.

4. Projection: No EMC shall project closer than twenty two feet (22') to a vertical line projected from the face of a curb, or if no curb exists, the face of the future curb as determined by the city engineer based on the master street plan. No EMC shall project closer than twenty two feet (22') to a vertical line projected from any property line. Additionally, no EMC shall be located within a forty foot (40') vision triangle area from any intersection of roads with other roads, private approaches, alleys, bike or pedestrian paths, or railroad crossings. Each of these distances is measured at the portion of the EMC closest to the property line or curb.

5. Height: An EMC shall not exceed twenty feet (20') in height as measured from unelevated finished grade directly below the EMC at ground level.



6. Location: An EMC is permissible only in commercial-gateway (CG) and school zoning districts.

7. Other Requirements:

- a. Each application for an EMC electronic sign must be accompanied by a site plan of the premises which includes colored side and front elevations of the proposed sign. The site plan must be approved by a registered engineer.
- b. A sign permit for an EMC shall not be issued until a building permit for a building on the premises has been issued.
- c. The location of an EMC shall not endanger pedestrians or motorists and shall not cause undue distraction to traffic on adjacent streets or impede views at street or railroad crossings/intersections.
- d. The luminance level of an EMC shall not exceed five thousand (5,000) cd/m^2 or nits, and all EMCs shall be equipped with automatic dimming capabilities, and in no event shall an EMC be arranged, directed or of such intensity that it creates a hazard, nuisance or other adverse effect on adjacent property, motor vehicles or approved traffic control devices.
- e. An EMC may flash the same frame one time in repetition. However, flashing the same frame on and off more than once in repetition is prohibited.
- f. An EMC shall not have a minimum display time of less than eight (8) seconds per frame. EMCs shall not include any illumination or image which moves continuously, appears to be in motion or has any moving or animated parts or video displays or broadcasts.
- g. EMCs must not emit or utilize any sound capable of being detected.
- h. An EMC shall be mounted on an enclosed aboveground base covered by or by a combination of stucco, decorative metal (non-tin), rock, simulated rock, and/or brick.
- i. All applicable state and federal sign regulations shall be complied with by the applicant.

T. Religious and educational institutional sign:

1. Definition: A sign which may be illuminated and flush wall mounted or freestanding, which advertises an authorized religious institution or public school in residential zoning districts. Religious and educational institutional signs are allowed only with special approval of the commission after it has determined that in its opinion the sign will not adversely affect and is compatible with the surrounding property.

2. Maximum Number: Each religious or educational institution may have one flush wall mounted sign and one freestanding sign.

3. Maximum Size: Thirty two (32) square feet.

4. Projection: A flush wall mounted sign shall not project more than eighteen inches (18") from a wall. A freestanding sign shall not project beyond the property line.

5. Height: Not higher than the building line.

6. Location: Allowed in all zoning districts and zoning subdistricts.

U. Directional off premises sign:

1. Definition: A freestanding or flush wall mounted sign which may be illuminated and which directs to and identifies a premises or two (2) or more premises not located on the same property as the sign. Directional off premises signs may be allowed with special approval of the commission.

2. Maximum number: Two (2) per premises being directed to and identified.
3. Maximum size: Shall not exceed fifty (50) square feet in any projection.
4. Projection or height: The same for flush wall mounted or freestanding signs.
5. Distance and spacing requirements: Same as for off premises signs.
6. Location: Allowed in all zoning districts and subdistricts except AG, Residential and RP.

V. Political sign:

1. Definition: A sign that promotes an individual or cause.
2. Maximum Number: None.
3. Maximum Size: None.
4. Projection: Not beyond the property line.
5. Height: Not beyond the maximum building height permitted in that zoning district.
6. Location: Allowed in all zoning districts and subdistricts.
7. Number Of Days Posted: Cannot be posted for more than sixty (60) days.
8. Placement: Cannot be posted so as to create a safety or traffic hazard.

W. Bench sign:

1. Definition: A sign incorporated on a bench designed and intended to be used for seating.
2. Maximum Size: The face of the sign incorporated on the bench seatback shall not exceed six feet (6') in length and two feet (2') in height.
3. Spacing: Shall not be placed within five hundred feet (500') in any direction from any other bench sign.
4. Location: Allowed by special use permit in CB, LI Zoning Districts and except any location prohibited by Idaho Code section 40-1910.
5. Sign Content: The content or advertising of the bench sign shall be by special use permit. No permit shall be granted without written consent of all property owners and tenants within one hundred fifty feet (150') of the proposed location.

X. Pole mounted Flags Exceeding twelve (12) feet in height:

1. Definition: A "pole mounted flag" is a piece of fabric or composite material, attached to a staff or cord on one end, allowing for raising, lowering and removal, which is mounted to a freestanding pole, and generally used as a symbol of a nation, state, political subdivision, or organization.
2. Place - location: A flag and its supporting structure may be located on public or private property, compliant with minimum setbacks, of five (5 feet) from subject property lines. Reduced setbacks may be considered by the Planning and Zoning Commission per special use permit approval. Recorded CC&R's may be applicable and enforced by the Subdivision HOA.
3. Public Display: Flags may be placed at public parks during social and athletic events.
4. Height: All flag pole height restrictions shall comply with the maximum height criteria, specified in the applicable Official Building Height regulations, Section 17.04.130 and compliant with the zoning district, of the subject property.
5. Size: The maximum size of a flag for residential districts shall not exceed thirty (30) square feet per parcel or lot of land and shall not exceed sixty (60) square feet per parcel or lot of land for non-residential districts. Larger flags exceeding sixty (60) square feet, may be considered by the Planning and Zoning Commission per special use permit approval.
6. Display Time: Flags generally used as a symbol of a nation, state, political subdivision, or organization may always be displayed, if the flag is illuminated during darkness.
7. Number of Flags allowed: A maximum of one (1) flag shall be allowed per parcel or lot of land. Additional flags may be considered by the Planning and Zoning Commission, per special use permit approval.

(Ord. 647, 2017; Ord. 604, 2014; Ord. 542, 2007; Ord. 656, 2019; Ord. 682, 2023)

17.09.030: NONCONFORMING SIGNS:

A. A sign that does not conform to the provisions of this title shall be termed a nonconforming sign. A nonconforming sign which was lawfully existing or under construction at the effective date hereof may continue to be used subject to the provisions of this section providing the following conditions are met:

1. All signs declared to be dangerous by a proper authority shall be strengthened or otherwise altered to make them safe.
2. No alterations or changes shall be made to a nonconforming sign except to bring it into compliance with any section

of this title; nor shall any nonconforming sign be replaced with another nonconforming sign except as provided by subsection B of this section.

B. A nonconforming sign may be altered or replaced by another nonconforming sign only upon prior approval of the Administrator. Application for such approval shall be on forms provided by the Administrator. The administrator shall make the following findings of fact as a prerequisite to approval:

1. That the proposed alteration or replacement is for a freestanding sign which is nonconforming due to there being more than one freestanding sign per building or premises or to zoning district prohibition.
2. That the proposed alteration or replacement conforms to all other existing requirements of this code.
3. That the proposed alteration or replacement is not inimical to the best interest of the surrounding neighborhood.
4. That the proposed alteration or replacement is for the purpose of removing ornamental projections and consolidating sign faces.

The administrator must review and make a determination of approval or denial within fifteen (15) days of receipt of application and will submit his or her findings in writing to the applicant. In the event the zoning administrator determines to approve said application, a radius notice must be sent, by first class mail, to all property owners within three hundred feet (300') of the property which is the subject of the application. Such notice must provide that any interested person may appeal the decision of the zoning administrator to the city council within fifteen (15) days of the date of the radius notice. The decision of the zoning administrator will not take effect until said appellate time has expired. In the event the zoning administrator denies such application, the applicant may appeal such decision to the city council within fifteen (15) days of the zoning administrator's decision.

C. Nonconforming signs shall be discontinued and further use of the sign shall conform to the provisions of this title for any of the following reasons:

1. If use of the sign or property on which the sign is located is discontinued for a period of six (6) months.
2. If use of the sign or property on which the sign is located is changed.
3. If a nonconforming sign has a value of less than one hundred dollars (\$100.00). (Ord. 542, 2007)

CHAPTER 17.10

OFF STREET PARKING AND LOADING

SECTION:

17.10.010: Spaces Required

17.10.020: Parking Layout

17.10.030: Required Number Of Spaces

17.10.040: Regulations For Parking Overlay Districts

17.10.010: SPACES REQUIRED:

A. Regulation: Off street parking and loading spaces conforming to the provisions of this title shall be provided in all zoning districts and subdistricts, when a building or structure is constructed, erected or enlarged, when the capacity of a building or structure is increased or when the use of a building or structure is changed.

B. Distance For Private Off Street Parking: The required off street parking location shall be located not more than the following distances measured along the sidewalk or a walkway available for public use from the primary entrance of the premises to the nearest entrance of the parking lot:

1. For retail or commercial customer parking, medical-dental clinics, religious facilities, restaurants, bars, entertainment facilities and residential use, three hundred fifty feet (350').

2. Employee parking for uses stated in subsection B1 of this section, five hundred feet (500').

C. Common Facilities For Joint And Mixed Uses: Joint or mixed use of off street parking facilities shall be as follows:

1. Mixed Uses: Total requirements for off street parking spaces shall be the sum of the requirements for various uses.

2. Joint Uses: The joint use of off street parking facilities is allowed provided:

a. The applicant shows that there is no substantial conflict in the principal operating hours of the building, structure or use for which the joint use of parking facilities is proposed;

b. The parking facility for such proposed joint use is not farther than three hundred fifty feet (350') for customers and five hundred feet (500') for employees from the building, structure or use required to provide off street parking; and

c. The parties concerned in the joint use of off street parking facilities shall submit a written agreement in a form to be recorded for such joint use, approved by the city attorney as to form and content and such agreement, when approved as conforming to the provisions of this chapter, shall be recorded in the office of the county recorder.

D. Commercial Or Manufacturing Uses: In addition to any off street parking required herein, all commercial or manufacturing uses in the RP or LI zoning districts and subdistricts shall provide adequate off street loading and unloading areas. As a minimum, any building over ten thousand (10,000) square feet shall provide one off street loading space which shall not measure less than forty feet by twelve feet (40' x 12') and shall have an unobstructed height of fourteen feet six inches (14'6") and shall be made permanently available for such purposes and shall be surfaced, improved and maintained as required in subsection 17.11.040B of this title. Additional spaces meeting the same standards may be required by the council upon recommendations of the administrator. Maneuvering for loading and unloading on public right of way, excluding alleys, shall be prohibited for buildings constructed after the adoption date hereof.

E. Insufficient Width: Whenever any developer is allowed by the council to plat, map or construct a public or private trafficway without sufficient width for on street parking, the adjacent property shall provide, in addition to the off street parking requirements of this chapter, off street parking equal to the amount of on street parking so eliminated. (Ord. 542, 2007)

17.10.020: PARKING LAYOUT:

A. Whenever off street parking is required by this code a parking layout drawing shall be submitted to and approved by the city engineer. The layout shall show a sketch of all parking spaces, access aisles, entrances to the site and exits from the site drawn to scale and the dimensions of each item shown and shall indicate all information necessary to determine the employee and customer parking requirements. The entrances to and/or exits from the parking site shall conform to the requirements of this code for driveway approaches. Parking spaces shall have a minimum size of nine feet by twenty feet (9' x 20'), or if parallel to the access aisle, nine feet by twenty three feet (9' x 23'), or if compact car space, seven feet six inches by fifteen feet (7'6" x 15') or if parallel to access aisle, seven feet six inches by eighteen feet (7'6" x 18').

B. Backing a vehicle from an off street parking space directly into a public trafficway creates a traffic hazard. Parking layouts requiring this maneuver shall not be approved by the city engineer except for residential uses exiting onto a local trafficway of low traffic volume. (Ord. 542, 2007)

17.10.030: REQUIRED NUMBER OF SPACES:

A. Minimum Number Of Spaces: Whenever off street parking is required by this title the minimum number of off street parking spaces to be provided shall be as follows except in the parking overlay districts:

REQUIRED NUMBER OF SPACES

Use	Parking Spaces
Use	Parking Spaces
Manufacturing:	
All manufacturing	To be determined by administrator
Public assembly:	
Bowling alley	7.0 per alley
Indoor recreation facilities, skating rinks, dance halls, game centers	1.0 per 250 square feet of total floor area
Racquetball, handball and tennis courts	3.5 per court
Single screen theaters, sports arenas and auditoriums	1.0 per 4 seats
Theaters containing 2 or more screens	1.0 per 5 seats
Others not defined	To be determined by administrator
Residential:	
Household buildings	2.0 per household unit
Household buildings, elderly project	0.5 per household unit
Nursing homes	0.25 per bed
Permanent mobile homes	2.0 per mobile home
Residential hotels	0.6 per bedroom
Rooming and boarding houses, residence halls, dormitories, retirement homes	1.2 per bedroom
Transient lodging	1.0 per unit
Retail trade:	
Bulk retail, farm equipment, motorized vehicles, sporting vehicles, mobile home sales, building materials, home furnishings and equipment, farm and garden supplies, etc.	To be determined (suggested: 1.0 per 600 square feet of sales, storage and outdoor display area)
Eating places, alcoholic beverages	1.0 per 4 seats or 8 feet of bench
Gasoline service station, fuel and automotive repair	1.0 per 300 square feet of total floor area
General retail, general merchandise, food, drugs, liquor, medical supplies, sporting goods, etc.	1.0 per 250 square feet of sales, storage and apparel, display area
Services:	
Beauty and barber shops	3.0 per chair
Building care/maintenance	3
Civic, social, fraternal organizations	1.0 per 4 persons maximum occupancy
Daycare, preschool	2.0 per teacher
Finance, insurance, real estate, photographic repair, professional and advertising, consumer credit, collection, duplication, stenographic news syndicate, employment, equipment rental, general building, contracting, construction trades, welfare and charitable services, business association, professional organizations, labor union/organizations	1.0 per 300 square feet of total floor area or to be determined
Funeral	1.0 per 4 seats or 8 feet of bench
High schools and colleges	1.0 per 4 persons (at maximum capacity)
Kindergarten, elementary and junior high schools	2.0 per classroom
Laundering/dry cleaning	4 per pick up window plus 0.5 per self-service machine
Religious facilities	1.0 per 4 seats or 8 feet of bench in main auditorium

Wholesale trade:	
Wholesale trade and warehousing	To be determined (suggested: 1.0 per 400 square feet of total floor area)

B. Floor And Display Areas: For the purposes of this section, "floor area" shall mean the sum of the areas of each building story. The dimensions used to calculate the area of each building story shall be measured to the outside face of all exterior walls excluding architectural features. "Floor and display area" shall mean the floor area plus any area outside the building used to display merchandise.

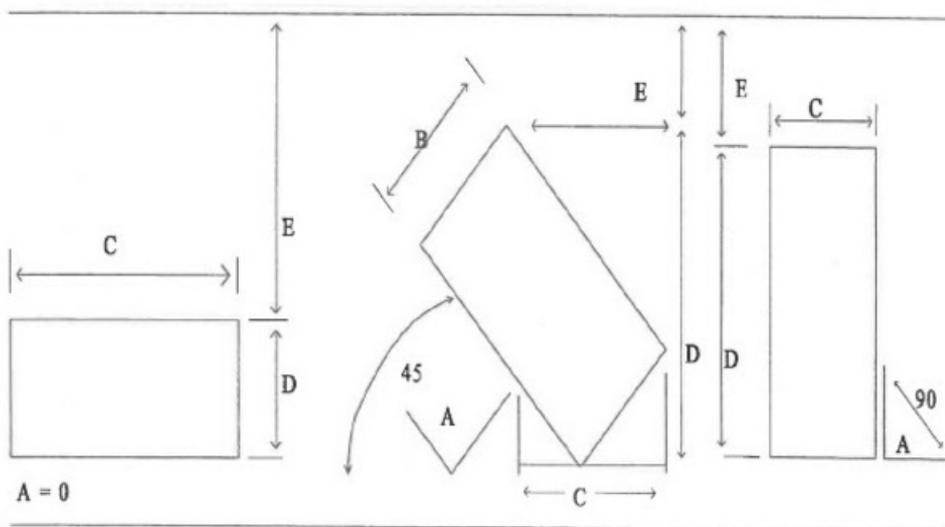
C. Staff Determination: The planning administrator shall determine parking space requirements for a use not specifically provided by this chapter, but the space shall be the same as a use which has similar traffic generating characteristics.

D. Compact Car Spaces: An allowance of thirty five percent (35%) of the total number of spaces required may be identified and used as compact car spaces. These spaces shall be conveniently located and provided with adequate above grade signage.

Except as otherwise approved by the city engineer for special conditions, parking aisles and access aisles shall have a minimum width for various parking angles as shown in the following chart:

MINIMUM STANDARDS FOR PARKING LOT DESIGN

Parking Angle A	Stall Width B	Curb Length Per Car C	Stall Depth D	Driveway Width E	
				One-Way	Two-Way
0°	9'0"	23'0"	9'0"	12'0"	24'0"
20°	9'0"	26'4"	15'3"	11'0"	24'0"
30°	9'0"	18'0"	17'8"	11'0"	24'0"
40°	9'0"	14'0"	19'6"	12'0"	24'0"
45°	9'0"	12'9"	20'5"	13'0"	24'0"
50°	9'0"	11'9"	21'0"	14'0"	24'0"
60°	9'0"	10'5"	21'10"	16'0"	24'0"
70°	9'0"	9'8"	21'10"	18'0"	24'0"
80°	9'0"	9'2"	21'4"	20'0"	24'0"
90°	9'0"	9'0"	20'0"	24'0"	24'0"



MINIMUM STANDARDS FOR COMPACT VEHICLES

Parking Angle A	Stall Width B	Curb Length Per Car C	Stall Depth D	Driveway Width E
45°	7'6"	10'6"	16'0"	11'0"
60°	7'6"	8'9"	16'9"	14'0"

75°	7'6"	7'10"	16'4"	17'5"
90°	7'6"	7'6"	15'0"	20'0"

(Ord. 542, 2007)

17.10.040: REGULATIONS FOR PARKING OVERLAY DISTRICTS:

The purpose of the parking overlay districts is established to accommodate the need for off street parking development alternatives in accordance with traffic patterns, ultimate densities and coordinated use of lands within the city. It is intended that the respective districts with which the parking district is combined shall have requirements particular to the land and uses that warrant off street parking variables to be applied.

The following regulations of this chapter shall apply to all land classified as a "parking district" (P). All uses are subject to the provisions of those districts. If any of the regulations specified in this section differ from corresponding regulations specified for a district with which the P district is combined, then the regulations of this district shall govern. (Ord. 542, 2007)

CHAPTER 17.11

REQUIRED IMPROVEMENTS

SECTION:

17.11.010: Improvements Required

17.11.015: Building Requirements For Commercial Buildings

17.11.020: Landscaping

17.11.030: Screening

17.11.040: Parking Areas

17.11.050: Streets

17.11.060: Sanitation Facilities

17.11.070: Water And Sewer

17.11.080: Drainage And Stormwater Management

17.11.090: Pressurized Irrigation

17.11.010: IMPROVEMENTS REQUIRED:

The improvements herein shall be required whenever a building or structure is constructed, placed, erected or enlarged or when there is a change of use of a building, structure or parcel of land. Unless otherwise provided, all required improvements shall be a condition of any building permit and they shall be completed prior to final inspection and occupancy of the building. If cost of improvements required by sections 17.11.020 through 17.11.060 of this chapter exceeds twenty five percent (25%) of the cost of the proposed private improvements, an agreement may be negotiated to allow the required improvements to be staged over a period of time not to exceed three (3) years. Whenever a building is constructed, placed, erected or enlarged and that building is in an isolated or undeveloped area, public improvements may be deferred by the council in cases where a deferral would otherwise be unavailable. Any improvements required by sections 17.11.020 through 17.11.060 of this chapter are not required for minor modifications or additions to existing buildings or structures when the modifications and improvements do not constitute more than a twenty five percent (25%) increase over the square footage of the existing buildings or a total increase in square footage over ten thousand (10,000) square feet, whichever is less, within any twelve (12) month period from date of completion or other expansion.

If a single building of a premises containing multiple buildings is expanded over twenty five percent (25%) of that building's square footage but less than a total of twenty five percent (25%) of the combined square footage of all buildings, the improvements required by sections 17.11.020 through 17.11.060 of this chapter shall be provided for the building being expanded only. If the expansion is greater than ten thousand (10,000) square feet or greater than twenty five percent (25%) of the combined footage of all buildings, the improvements required by sections 17.11.020 through 17.11.060 of this chapter shall be provided for the entire premises. (Ord. 542, 2007)

17.11.015: BUILDING REQUIREMENTS FOR COMMERCIAL BUILDINGS:

A. Exterior Appearance Of Buildings And Structures:

1. Primary exterior materials shall conform to the requirements found in this chapter.
2. Secondary materials used on the facade of a building are those that comprise less than ten percent (10%) of an elevation area. Permitted secondary materials are all primary materials, aluminum or other metal, cedar or similar quality decorative wood, stucco, EIFS, or other materials as approved by the planning and zoning administrator or his/her designee.
3. All buildings with a footprint of less than ten thousand (10,000) square feet shall incorporate a pitched, gabled, mansard, hipped, or otherwise sloped roof. All sloped roofs shall have a three (3) in twelve inch (12") minimum slope. Wood shingles are prohibited.
4. All buildings with a footprint of ten thousand (10,000) square feet and greater shall incorporate sloped roof elements including, but not limited to, pitched roofs on towers or arcades, sloped awnings, or sloped parapets. The sloped elements shall be provided along a minimum of sixty percent (60%) of each wall's length. All sloped roof elements shall have a three (3) in twelve inch (12") minimum slope. Wood shingles are prohibited.
5. In the CG, CI, CB, and RP zoning districts, an articulated parapet wall or cornice may be used in place of the sloped roof as required in subsections A3 and A4 of this section.
6. All buildings shall be designed to incorporate a form of architectural articulation every thirty feet (30'), both horizontally along each wall's length and vertically along each wall's height. Acceptable articulation may include the following:
 - a. Canopies, awnings, or porticos;
 - b. Recesses/projections;

- c. Arcades;
- d. Arches;
- e. Windows will follow the IBC section 2406.3 which will require safety/tempered glazing for most windows within eighteen inches (18") of the floor;
- f. Architectural details (such as tile work and moldings) integrated into the building facade;
- g. Articulated ground floor levels or base;
- h. Articulated cornice line;
- i. Integrated planters or wing walls that incorporate landscape and sitting areas;
- j. Offsets, reveals or projecting rib used to express architectural or structural bays;
- k. Accent materials (minimum 15 percent of exterior facade);
- l. Varied roof heights; or
- m. Other architectural features approved by the director of planning, or his/her designee.

7. All buildings shall be architecturally finished on all three (3) sides with the same materials, detailing, and features. The wall which faces the opposite (rear) of a public right of way of a building may be architecturally finished to match the remainder of the building in color only. (See definition of "front" in zoning ordinance.)

8. Windows shall have a maximum exterior visible reflectivity of twenty percent (20%), unless otherwise approved by the planning and zoning administrator or his/her designee. The intent of this provision is to prevent the safety hazard of light reflecting from the windows onto adjacent roadways.

9. All retail/commercial buildings with facades greater than two hundred feet (200') in length shall incorporate wall plane projections or recesses that are at least six feet (6') deep. Projections/recesses must be at least twenty five percent (25%) of the length of the facade. No uninterrupted length of facade may exceed one hundred feet (100') in length. This requirement does not apply to buildings developed and occupied entirely for office uses.

10. All buildings within a common development, as shown on a concept plan or preliminary site plan, shall have similar architectural styles, materials, and colors.

a. Conceptual facade plans and sample boards shall be submitted with the preliminary site plan application for all nonresidential uses. The purpose of the conceptual facade plan is to ensure consistency and compatibility for all buildings within a single development. Facade plans will be used only to ensure minimum standards are met.

b. A final facade plan and sample boards shall be submitted with the final site plan application for all nonresidential uses. Facade plans will be used only to ensure minimum standards are met.

11. All primary exterior materials shall be of natural texture and earth toned colors.

12. Corporate identities that conflict with the building design criteria shall be reviewed on a case by case basis and approved by the planning and zoning administrator or his/her designee. The applicant may appeal the decision to the planning and zoning commission and city council using the appeal procedure in subsection 17.13.010F of this title.

Exposed conduit, ladders, utility boxes, and drain spouts shall be painted to match the color of the building or an accent color. Natural metal finishes (patina) are an acceptable alternative to paint.

B. Exterior Construction Of Main Buildings:

1. The exterior facades of a main building or structure, excluding glass windows and doors, in the CG, CI, CB and RP zoning districts shall be constructed of one hundred percent (100%) masonry, unless otherwise specified in this title. Cementitious fiberboard is considered masonry, but may only constitute fifty percent (50%) of stories other than the first story. Cementitious fiberboard may also be used for architectural features, including window box outs, bay windows, roof dormers, garage door headers, columns, chimneys not part of an exterior wall, or other architectural features approved by the plan reviewer. Wood roof shingles are prohibited.

2. Metal buildings are permitted in the RP zoning district upon review by the planning and zoning commission and approval by the city council subject to:

- a. The maximum height of metal buildings is thirty five feet (35');
- b. The lot on which the building is constructed must have frontage only on streets with fifty feet (50') of right of way or greater;
- c. The lot containing a metal building shall be three hundred feet (300') from all zoning districts except light industrial;
- d. The wall of the building facing the street must be one hundred percent (100%) masonry, or stucco; and
- e. Other walls of the building visible from a street must have trees planted on thirty foot (30') centers within twenty five feet (25') of the building.

3. Exterior construction of maintenance buildings for golf courses, public or parochial schools, churches, or the city of Kimberly may be metal upon issuance of a special use permit. Exterior construction of buildings used for agricultural purposes in conjunction with a school may be metal upon issuance of a special use permit.

If an expansion or an addition to an existing metal building is not greater than ten percent (10%) or seven thousand (7,000) square feet, whichever is greater, the masonry requirements shall not apply to the expansion or addition to the existing metal building.

4. The city council may approve materials which are equivalent to, or exceed, the standards set forth in this section. (Ord. 576 § 2, 2009)

17.11.020: LANDSCAPING:

A. Minimum Standards: The required minimum size landscaped area shall, as a minimum, have the following plant life:

1. One tree per five hundred (500) square feet of landscaped area. At least fifty percent (50%) of the required trees shall be evergreens. All trees shall have a height of at least four feet (4') when planted.

2. One bush per three hundred (300) square feet of landscaped area. At least fifty percent (50%) of the required bushes shall be evergreens.

3. The commission and/or design review committee may approve alternative plans or designs to allow innovative landscaping.

B. Approval And Completion:

1. A landscaping plan conforming to the minimum requirements of this section shall be submitted for approval as part of the development map whenever a PUD or MH zoning subdistrict is submitted for approval. A landscaping plan conforming to the minimum requirements of this section shall be submitted for approval as part of the application for a building permit to construct a building.

2. Landscaping conforming to the approved landscaping plan shall be completed before a certificate of occupancy is issued for the appurtenant building or at such other time as may be agreed upon in writing by the administrator and landowner; however, said agreement shall not extend the completion date beyond the next normal planting season for the proposed vegetation.

3. All landscaping shall be maintained in a manner consistent with the minimum requirements of this section for as long as the building is occupied. (Ord. 542, 2007)

17.11.030: SCREENING:

A. Screening Required:

1. Screening shall be required between any residential use and any trade or manufacturing use in adjacent zoning districts or any zoning district where both such uses are permitted outright and may be required around any special use. The trade, manufacturing or special use shall provide any required screening. Screening shall not be required if a public trafficway other than a service road separates the two (2) uses.

2. Screening shall be required between an MH zoning subdistrict and any other zoning district or subdistrict except another MH subdistrict and screening may be required between a PUD or MH zoning subdistrict and any other zoning district or subdistrict. The zoning subdistrict shall provide any required screening.

3. No wrecking yard or wrecking house or junkyard or junk house shall be established unless the same shall be completely surrounded by a fence of wood, concrete or slatted chainlink not less than eight feet (8') in height from the level of the ground and completely obscuring the wreckage and parts therein from outside view.

B. Minimum Standards:

1. Screening shall be a minimum six foot (6') fence or wall or a landscaped area or any combination thereof. If it is a fence or wall it shall be constructed of wood, solid vinyl, metal, concrete or concrete block. If it is a landscaped area, it shall be evergreen bushes or trees and may include an earthen berm.

2. Whenever bushes or trees are used as screening, the screening height may not be less than three feet (3') at the time of planting, providing a minimum height of six feet (6') is achieved within six (6) years after planting.

3. Screening shall completely obscure objects inside the screened area when viewed from any angle outside the screened area and shall be constructed so as to reduce noise, lights and blowing trash.

C. Exceptions: Screening shall not be constructed so as to create a traffic hazard and it shall conform to the height restrictions in the chapters establishing dimensional standards in zoning districts and subdistricts. (Ord. 542, 2007)

17.11.040: PARKING AREAS:

A. Pedestrian Access: Access to each building shall be provided by connecting the principal entrance into each building to the parking areas intended for the use of the occupants with a sidewalk that is not more than three hundred feet (300') in length.

B. Surfacing: All parking and maneuvering areas shall be hard surfaced with Portland concrete or asphaltic concrete surface material. In the LI zoning district the requirement does not apply.

C. Striping: Parking areas that are intended to provide more than ten (10) spaces on a single site shall be marked off with a four inch by fifteen foot (4" x 15') long painted stripe along the sides of each parking space.

D. Lighting: Parking areas that are intended to provide more than eighteen (18) spaces on a single site shall have lighting that will provide at least one foot-candle of light at the ground surface on the entire parking site. Lighting shall be screened so that it does not directly illuminate any adjacent residential uses with more than one-fourth (0.25) of a foot-candle and so that it does not create a traffic hazard.

E. Vehicle Access:

1. Any motor vehicle entrance to a public trafficway from private property shall be considered a driveway approach and shall conform to the standards established herein.

2. The city engineer shall establish construction standards for all driveway approaches. The standard depressed curb type approach shall be constructed unless otherwise directed by the city engineer. The city engineer may require an arterial street driveway approach, with rounded curbing when traffic conditions on arterial streets warrant a more rapid entrance and exit through the driveway approach. This decision of the city engineer requiring an arterial street driveway approach may be appealed to city council. Nothing in this subsection should be construed to prevent the construction of an arterial street driveway approach, if desired by the property owner.

3. The City Engineer may allow driveway approaches conforming to the following standards, providing they do not pose any unusual traffic hazards:

a. Residential use driveway approaches: Shall not exceed twelve feet (12') for a single drive or twenty feet (20') for a double drive. Joint use drives between two (2) separate properties to serve multi-family residences will be allowed; however, the total width of the curb cut shall not exceed forty feet (40'). There shall be at least twenty five feet (25') between driveways entering curb between the end of a driveway and the end of a corner radius and at least two feet (2') between the end of a driveway and side property line.

b. Commercial and manufacturing use driveway approaches: Shall not exceed forty feet (40') nor be less than thirty feet (30') except one-way approaches which shall not be less than twelve feet (12'). There shall be at least twenty five feet (25') of curb between driveways and at least eighteen feet (18') of straight curb between the end of driveways and the end of a corner radius and at least thirteen feet (13') between the end of a driveway and a side property line when parking is allowed on the street.

c. The City Engineer may allow curb cuts up to sixty five feet (65') for commercial or industrial drives where it appears that it is necessary to accommodate large trucks and trailers and to reduce the distance between a commercial or industrial driveway and a side property line when on street parking is not allowed or not practical because of existing conditions. The public welfare, safety and convenience shall be considered in granting such applications.

d. The City Engineer may allow additional driveway width under the following conditions: the street is not an arterial or collector street; the traffic generated by the land use is minimal (no high traffic generating retail trade uses, services, residential uses or public assembly); a parking plan is submitted and adhered to that conforms to section 17.10.030 of this title; and driveways conform to standard slope and height dimensions to control drainage. (Ord. 542, 2007)

17.11.050: STREETS:

A. Adequate Access: No building shall be constructed or erected on a lot in a zoning district unless adequate access to a fifty foot (50') wide minimum standard all weather public trafficway is provided. Said access may be a private drive providing such drive conforms to the following chart and must be approved by the Public Works Supervisor, City Engineer and the City Fire Marshal:

	Private Driveway Length				
Width	100'	150'	200'	250'	300'
15'	5 units	4 units	n/a	n/a	n/a
20'	8 units	7 units	6 units	n/a	n/a
25'	10 units	10 units	8 units	8 units	n/a
30'	12 units	12 units	12 units	12 units	12 units

In commercial and manufacturing zoning districts, a private drive may not exceed three hundred feet (300') in length, must have a width of twenty feet (20') for one-way traffic and twenty five feet (25') for two-way traffic and may not serve a total building area of over fifty thousand (50,000) square feet.

The City Council may approve additional driveway length in excess of three hundred feet (300') in cases where isolated parcels of land cannot be developed with minimum fifty foot (50') dedicated right-of-way.

Such a private drive shall be surfaced with Portland concrete or asphaltic concrete. No zoning subdistrict will be allowed that does not have direct access to a fifty foot (50') wide minimum standard all weather paved public trafficway.

B. Curb, Gutter And Sidewalk:

1. New curbs, gutters and sidewalks shall be constructed at the expense of the property owner with, and at the same time as, all new construction or modification of existing buildings in accordance with City standards on all streets, within and adjacent to the development, and in all zoning districts except the Agricultural District, for all land uses, except where the Public Works Director determines that, due to the location or character of the development, new curbs, gutters and/or sidewalks need not be constructed.

2. The City Engineer may defer the construction of required curbs, gutters and/or sidewalks until other curbs, gutters and/or sidewalks are constructed adjacent to other lands in the neighborhood under any one or more of the following conditions:

a. If the total length of existing curb-gutter on both sides of the street in an existing development plus the length of the property in question is less than forty percent (40%) of the total property length adjacent to a standard block unless the curb-gutter will connect to an existing curb-gutter section. The standard block shall be the distance between two (2) intersecting streets or four hundred feet (400') whichever is less. The same criteria shall apply separately to sidewalks. All curb-gutter to be considered as existing shall be acceptable line and grade.

b. If another governmental agency having jurisdiction over a particular street requests the curb-gutter be deferred.

c. If existing curbs, gutters and/or sidewalks are in good repair and to an acceptable line and grade that conforms to the line and grade of other curbs, gutters and/or sidewalks in the standard block, it may be retained.

3. Curbs, gutters and sidewalks shall not be required or allowed to be constructed or may be deferred if, in the opinion of the City Engineer, the improvement would create a traffic hazard or an unusual drainage problem.

C. Construction Standards For Vertical And Rolled Curb: Both vertical and rolled curbs shall be allowed in the City in accordance with the provisions of this Code and in conformance with the standard construction design and specification for the same, as are on file in the City Engineer's Office. The most recent construction design and specifications shall prevail.

Standard detail C-2 (4 inch rolled curb) shall be used only when the following applicable conditions are met:

1. On local residential streets in new developments, when the top of curb to top of curb street drainage capacity is not exceeded by the peak flow generated during a 50-year 24-hour storm. It shall be the developer's engineering consultant's responsibility to compile and submit drainage calculations to the City for review and approval.

2. On residential cul-de-sac streets in new developments that meet the drainage requirements set forth in subsection C1 of this section.

3. On local residential streets in existing developments where no curb or gutter exists in the block under consideration and a study by the City Engineer indicates that the proposed installation will meet the drainage requirements set forth in subsection C1 of this section.

4. In all cases four inch (4") rolled curb shall be transitioned into six inch (6") vertical curb around all curb returns.

D. Public Improvement Requirements: In areas where two (2) or more zoning districts or subdistricts abut, and said zoning districts or subdistricts have different public improvement requirements, the Council may impose the least restrictive requirement if the Council finds that imposition of the least restrictive requirements will further the policies and purposes described in this title. (Ord. 647, 2017)

17.11.060: SANITATION FACILITIES:

A. Waste Pens: A waste pen of sufficient size to accommodate all trash or solid waste stored on the premises shall be provided in any zoning district or subdistrict except buildings containing two (2) or less household units. All waste pens shall be completely surrounded with a well maintained fence or wall of a type that will completely obscure from view all trash and waste stored in the pen except that in CB, LI and School Zoning Districts and Subdistricts. A commercial type self-loading metal trash container may be considered an adequate trash pen if properly maintained in a sanitary condition.

B. Incinerators: Incinerators or trash burners shall be permitted in the LI Zoning Districts and subdistricts for the burning of wood or paper products only, providing that such incinerators are fired with supplemental fuel and meet all requirements of any other State or local codes.

C. Wastewater: Overflow of water from air conditioners or other sources of wastewater shall not be permitted to discharge into alleys or street gutters. (Ord. 542, 2007)

17.11.070: WATER AND SEWER:

All buildings intended for human occupancy located within the City of Kimberly or requesting annexation, shall have adequate sanitary facilities and applicable fire suppression installed. Such facilities shall be connected to an approved domestic water source conforming to the water regulations of the City and to an approved wastewater system conforming to the wastewater regulations of the City and health authority.

(Ord. 542, 2007; Ord. 682, 2023)

17.11.080: DRAINAGE AND STORMWATER MANAGEMENT:

A. Best Management Practices: Building sites shall use best management practices (BMPs) to retain as much stormwater as possible on the property.

B. Highway Drainage: Drainage to a state highway shall be subject to the regulations of the Idaho transportation

department. Necessary permits shall be acquired by the developer.

C. Road Drainage: Drainage to a road under the care, custody and control of the Twin Falls highway district shall be subject to their regulations. Necessary permits shall be acquired by the developer.

D. Drainage To U.S. Waters Or Canals: No drainage shall be allowed from a building site directly to any waters of the United States or to any privately owned canal system.

E. Residential Subdivisions:

1. All residential subdivisions shall design and construct stormwater retention facility or facilities to retain the 100-year 24-hour rainstorm event.

2. The stormwater shall be detained and released over a forty eight (48) hour period or at a rate that is approved by the Twin Falls Canal Company or by any other entity that may govern the waterway downstream.

3. The stormwater dischargers releasing water from their retention area shall use best management practices (BMPs) to reduce the amount of pollutants from the water. Discharge water quality shall comply with the most current regulations or standards that may apply.

4. The retention facilities shall also have an overflow device that can convey the 100-year 24-hour rainstorm event, without damage to the retention facility. This structure should be designed to minimize any downstream safety problems.

5. Storm sewers shall be placed in a public right of way or minimum fifteen foot (15') wide easement. Easements shall also be required for the retention areas. The city reserves the right to modify the retention facilities to stay in compliance with any state or federal regulation.

F. Commercial And Industrial Developments: All commercial and industrial developments shall design and construct stormwater retention facilities to retain the 100-year 24-hour rainstorm event. No discharge of stormwater will be allowed from these areas.

G. Procedure For Review And Approval Of The Stormwater Management Plan: Review and approval by the city does not constitute an engineering review of project plans and calculations. The review is for the purpose of ensuring general conformance to city policies and requirements. The submitting engineer is solely responsible for the design. All submissions to the city shall be stamped by a professional engineer registered in the state of Idaho.

The following shall be submitted to the city:

1. Topographic survey of the development showing all drainage and irrigation water conveyance systems within the area encompassed by a line two hundred feet (200') outside the property line.

2. Peak flow calculations, with peak flows delineated on the drawings.

3. Runoff volume calculations.

4. Plans and profiles of new or modified drainage and irrigation water conveyance systems.

5. Plans, profiles and calculations for stormwater retention or detention facilities.

6. Flood routing computations for the 100-year 24-hour rainstorm event through any existing drainage conveyance systems.

7. Maintenance and operation manuals for stormwater facilities.

8. Infiltration rates where applicable.

9. Seasonal high ground water table elevations where applicable. This applies when the absorption of stormwater is used as a best management practice.

Facilities using absorption designs shall not intercept the postdevelopment ground water table. The bottom of the facility shall have a minimum four foot (4') vertical separation from the seasonal high ground water elevation and bedrock. The four foot (4') separation between the bottom of the facility and the seasonal high ground water table shall contain a sandy loam material to treat the water prior to entering the ground water. If the best management practices are utilized to pretreat the water prior to discharge into the absorption facility, the requirement for four feet (4') of sandy loam will be waived.

The seasonal high ground water table elevation shall be established and used for the facility design. The elevation of the seasonal high ground water table shall be determined by a monitoring well established at the facility site and monitored during the high ground water season. If available, Twin Falls health department ground water records may be used to establish the probable highest ground water elevation. The high ground water elevation shall be shown on the plans and be referenced to a nearby bench mark, the latitude and longitude of the well shall be shown on the plans. If ground water is encountered during construction of the facility at an elevation higher than that shown on the plans, the facility shall be redesigned to account for the higher elevation.

10. Soil classifications where applicable.

11. Flood routing of the 100-year 24-hour rainstorm event to the ultimate drainage system.

12. Copies of associated permits and discharge agreements.

13. Copy of the pollution prevention plan that is on file with the EPA for the development.

Prior to beginning of construction on any development site larger than five (5) acres, the developer or their representative must have a pollution prevention plan in place and must file a notice of intent (NOI) with the EPA, in accordance with NPDES (national pollutant discharge elimination system) requirements. The pollution prevention plan will include provisions for reducing sediment discharges from the construction site and tracking of mud onto roadways. A copy of this plan and the NOI shall be provided to the city prior to any site grading. Refer to 40 CFR chapter 1, section 122.26 stormwater discharges for NPDES requirements. (Ord. 542, 2007)

17.11.090: PRESSURIZED IRRIGATION:

A. System Installation Required: In each subdivision the developer shall provide pressurized irrigation water to each and every lot within the subdivision. The pressurized irrigation system shall be constructed and installed at the same time as the domestic water lines, but shall not necessarily be in the same trenches.

B. Cross Connections Prohibited: There shall be no cross connections between the domestic water lines and the irrigation water lines that do not comply with title 13, chapter 13.04, article II, of this code.

C. Approval By City Engineer: All such pressurized irrigation water systems shall be approved by the city engineer. (Ord. 542, 2007)

CHAPTER 17.12

SUBDIVISION PROVISIONS

SECTION:

17.12.010: General Subdivision Provisions

17.12.020: Procedure For Subdivision Approval

17.12.030: Design Standards

17.12.040: Improvement Standards

17.12.050: Special Development Subdivisions

17.12.060: Lot Line Adjustments

17.12.070: Water Regulations

17.12.010: GENERAL SUBDIVISION PROVISIONS:

A. General Provisions:

1. Authority: These regulations are authorized by title 50, chapter 13 and title 67, chapter 65 of the Idaho Code; and article 12, section 2 of the Idaho Constitution, as amended or subsequently codified.
2. Purpose: The purpose of these regulations is to promote the public health, safety and general welfare, and to provide for:
 - a. The harmonious development of the area;
 - b. The coordination of streets and roads within the subdivision with other existing or planned streets and roads;
 - c. Adequate open space for travel, light, air and recreational facilities;
 - d. Adequate transportation, water drainage and sanitary facilities;
 - e. The avoidance of scattered subdivision of land that would result in either of the following:
 - (1) The lack of water supply, sewer service, drainage, transportation or other public services; and
 - (2) The unnecessary imposition of an excessive expenditure of public funds for the supply of such services;
 - f. The requirements as to the extent and the manner in which:
 - (1) Roads shall be created and improved; and
 - (2) Water and sewer and other utility mains, piping connections or other facilities shall be installed;
 - g. The manner and form of making and filing of any plat; and
 - h. The administration of these regulations by defining the powers and duties of approval authorities.
3. Jurisdiction: These regulations shall apply to the subdividing of land within the corporate limits of the City including the property within one mile outside the corporate limits thereof. They shall also apply to the "area of impact" as established by agreement between the City and County in conformance with State law.
4. Interpretation: All subdivisions as defined shall be submitted for approval by the Council and shall comply with the provisions of these regulations. These regulations shall supplement all other regulations, and where at variance with other laws, regulations, ordinances or resolutions, the more restrictive requirements shall apply.
5. Administration: The administration of this title shall be conducted by the Administrator. The Administrator shall be appointed by the Mayor and the appointment shall be ratified by the Council. (Ord. 649, 2018: Ord. 542, 2007)

17.12.020: PROCEDURE FOR SUBDIVISION APPROVAL:

A. Subdivision Approval Required: Any person desiring to create a "subdivision" as herein defined shall submit all necessary applications to the Administrator on forms as provided by the City. No final plat shall be filed with the County Recorder or improvements made on the property until such plat is approved by the health authority as to water and sewer systems. No final plat shall be filed with the County recorder or improvements made on the property until the plat has been acted upon following public hearings held in accordance to title 50, chapter 13 and title 67, chapter 65 of the Idaho Code and article 12, section 2 of the Idaho Constitution on a preliminary plat and a public meeting held by the council on final plats prior to council approval. No lots shall be sold until the plat has been recorded in the office of the county recorder.

B. Preapplication:

1. Application: The developer shall submit a preapplication to enable the administrator to review and comment on the proposed subdivision. The preapplication shall include at least one copy of a sketch plan. The sketch plan shall include the

entire developmental scheme of the proposed subdivision, in schematic form and include the following:

- a. The general layout and approximate dimensions of streets, blocks and lots in sketch form;
- b. The existing conditions and characteristics of the land on and adjacent to the proposed subdivision site; and
- c. The areas set aside for schools, parks and other public facilities.

2. Fee: None required.

3. Administrator Action: The administrator shall notify the developer within fifteen (15) days from the date of receiving an acceptable preapplication as to the general conformance or nonconformance of the proposal with this title, and shall provide the necessary forms and checklists, as well as the additional following considerations:

a. Compliance of the proposed development with existing local or state policies, goals and objectives or comprehensive plans;

b. Determination if additional special permits or ordinance conflicts, such as rezone, special development permit or variance are needed and the manner of coordinating such permits;

c. Consideration of any unique environmental features or hazardous concerns that may be directly or indirectly associated with the subject property, such as areas that have been designated as areas of critical environmental concern, unique plant or animal life and floodplains; and

d. Consideration of other local and state agencies that the developer should contact before preparing a preliminary plat.

e. The city shall require the developer to mitigate the impact the subdivision will have on the ability of political subdivisions of the state, including school districts, to deliver services without compromising quality of service delivery to current residents or imposing substantial additional costs upon current residents to accommodate the proposed subdivision.

C. Preliminary Plat:

1. Application: The developer shall file with the administrator a complete subdivision application form and preliminary plat date as required in this title.

2. Combining Preliminary And Final Plats: The applicant may request that the subdivision application be processed as both a preliminary and final plat if all the following exist:

a. The proposed subdivision does not exceed ten (10) lots;

b. No new street dedication or street widening is involved;

c. No major special development considerations are involved, such as development in floodplain or hillside development; and

d. All required information for both preliminary and final plat is complete and in an acceptable form.

A request to combine both preliminary plat and final plat into one application shall be acted upon by the commission after receiving a recommendation by the administrator.

3. Content Of Preliminary Plat: The contents of the preliminary plat and related information shall be in such a form as stipulated by the commission; however, additional maps or data as deemed necessary by the administrator may also be required.

The developer shall submit to the administrator at least the following:

a. Five (5) copies of the preliminary plat of the proposed subdivision, drawn in accordance with the requirements hereinafter stated; each copy of the preliminary plat shall be on good quality paper, shall be drawn to a scale of not less than one-inch equals one hundred feet (1" = 100'), shall show the drafting date and a north arrow. Developer shall provide the same documents to, the following jurisdictions if applicable but not limited to, Rock Creek Fire District, Idaho Power, Intermountain Gas, tele-communications, Twin Falls Canal Co., Twin Falls Highway District, Kimberly School District, and Idaho Transportation Department. Proof of jurisdictions receiving the documents, is required to be submitted to the City prior to any public hearings being scheduled.

b. A written application requesting approval of the preliminary plat.

c. Appropriate information that sufficiently details the proposed development within any special development area, such as hillside, planned unit development, floodplain, cemetery, mobile home, large scale development, hazardous and unique areas of development.

d. To ensure adequate water supply to each new subdivision/development, all subdivision/development preliminary plat applications to the city will include water modeling results which indicates the new subdivision/development can be developed in a manner that will provide adequate water supply for domestic water and fire protection and the new subdivision/development will not adversely affect the city's ability to continue to provide adequate domestic water and fire protection to the existing water system users.

e. To ensure adequate sewer treatment service by the city, each subdivision/development preliminary plat application

to the city shall include sewer service treatment modeling results which indicates the new subdivision/development can be developed in a manner that will provide adequate sewer service and sewer treatment capacity by the city and the new subdivision/development will not adversely affect the city's ability to continue to provide adequate sewer treatment capacity to the existing sewer system users.

f. The cost of the water and sewer modeling will be the responsibility of the developer.

4. Requirement Of Preliminary Plats: The following shall be shown on the preliminary plat or shall be submitted separately together with any other pertinent information requested by the administrator:

a. The name of the proposed subdivision, which does not duplicate the name of any other subdivision in Twin Falls County.

b. The names, addresses and telephone numbers of the developers, the engineer or surveyor who prepared the plat and any other professional persons involved in the subdivision.

c. The names and addresses of all surrounding property owners both adjacent to and beyond any public thoroughfares within three hundred feet (300') from the subject property on record in the county assessor's office.

d. The legal description of the subdivision by section, township and range.

e. A statement of the intended use of the proposed subdivision, such as: Residential single-family, two-family and multiple housing, commercial, industrial, recreational or agricultural and a showing of any sites proposed for parks, playgrounds, schools, churches or other public uses.

f. A map of the entire area scheduled for development if the proposed subdivision is a portion of a larger holding intended for subsequent development.

g. A vicinity map showing the relationship of the proposed plat to the surrounding area (covering at least a 4 square mile area).

h. The land use and existing zoning of the proposed subdivision and the adjacent land.

i. Existing streets, street names, rights of way and roadway widths, including adjoining streets or roadways, along with type of surface and the existence of any curbs, gutters and/or sidewalks.

j. Approximate location and length of the boundary lines of each lot, parcel or site and the proposed lot and block numbers. Approximate acreage enclosed by subdivision.

k. Contour lines, shown at five foot (5') intervals where land slope is greater than twenty percent (20%) and at two foot (2') intervals where land slope is twenty percent (20%) or less, referenced to an established bench mark of the city vertical control system, including its location and elevation.

l. A site report and/or the approval of the appropriate health district if individual wells or septic tanks are proposed.

m. Location, size and direction of flow of all existing utilities, including, but not limited to, storm and sanitary sewers, irrigation laterals, ditches, drainage, bridges, culverts, water mains, fire hydrants, gas lines, power, telephone and streetlights. If utilities are not on or adjacent to the property, indicate direction and distance to nearest ones that can serve the subdivision.

n. A copy of any proposed restrictive covenants and/or deed restrictions.

o. Any dedications to the public and/or easements both public and private, together with a statement of location, dimensions and purpose of such on both the subject property and surrounding properties.

p. Any additional required information for special developments as specified in this title.

q. A statement as to whether or not any variance will be requested with respect to any provision of this title describing the particular provision, the variance requested and the reasons therefor.

r. Location, right of way width and name of all public or private trafficways, the location, right of way width and use of any proposed public or private pedestrianways or special ways, and a statement of intended improvements to be made thereto.

s. A statement as to what improvements will be made to existing utilities and what other on site improvements will be made.

t. Approximate lot, corner and easement locations of all adjacent subdivisions.

u. Location, size and direction of flow of all drainage, irrigation, sewer and water line improvements that will be part of the subdivision development.

v. Additional drainage requirements may be requested by the administrator.

5. Fees: A fee for processing and checking a preliminary plat shall be due at the time upon submittal of the preliminary plat to the administrator. The amount of the fee shall be established by resolution of the council.

6. Administrator Review:

a. Certification: Upon receipt of the preliminary plat, and all other required data as provided for herein, the administrator, after review by the city engineer, shall schedule a preapplication meeting with appropriate staff. After the results of the preapplication meeting have been addressed and appropriate corrections made to the preliminary plat, the administrator shall certify the application as complete and shall affix the date of application acceptance thereon. He shall, thereafter, place the preliminary plat on the agenda for consideration at the next regular meeting of the commission. The administrator shall deliver one copy of the preliminary plat to each member of the commission at least five (5) days prior to the meeting for plat consideration.

b. Review By Other Agencies: The administrator shall refer the preliminary plat and application to as many agencies as deemed necessary. Such agencies may include the following:

- (1) Other governing bodies having joint jurisdiction;
- (2) The appropriate utility companies, irrigation companies or districts and drainage districts;
- (3) The superintendent of the school district; and
- (4) Other agencies having an interest in the proposed subdivision.

c. Administrator Review: Upon expiration of the time allowance for department and agency review, the administrator shall prepare a recommendation to the commission.

7. Notification To Property Owners: The administrator shall certify that he has notified all adjoining property owners of the proposed subdivision. Such written notification shall be sent by first class mail at least ten (10) days prior to the commission meeting.

8. Commission Action:

a. Preliminary Plat Review: The commission shall review the preliminary plat, comments from the concerned persons and agencies and the report from the administrator to arrive at a decision on the preliminary plat.

b. Commission's Findings: In determining the acceptance of a proposed subdivision the commission shall consider the objectives of this title and at least the following:

- (1) The conformance of the subdivision with a comprehensive plan;
- (2) The availability of public services to accommodate the proposed development;
- (3) The continuity of the proposed development with the capital improvement program;
- (4) The public financial capability of supporting services for the proposed development; and
- (5) The other health, safety or environmental problems that may be brought to the commission's attention.

c. Action On Preliminary Plat: The commission may approve, conditionally approve, disapprove or table for additional information when acting on the preliminary plat. If tabled, approval or disapproval shall occur at the regular meeting following the meeting at which the plat is first considered by the commission. The action and the reasons for such action shall be stated in writing by the administrator and forwarded to the applicant. The administrator shall also forward a statement of the action taken and the reasons for such action together with a copy of the preliminary plat to the council for its information and record. Upon granting or denying a preliminary plat the commission shall specify:

- (1) The regulations and standards used in evaluating the application;
- (2) The reasons for approval or denial; and
- (3) The actions, if any that the applicant could take to obtain plat approval.

d. Developer's Agreement: Prior to final approval and filing of the plat, the developer shall enter into a subdivision development agreement with the city which will set forth any commitment or agreement to comply with any conditions set by the city and will set forth any commitments that the city has made to the developer.

e. Action On Combined Preliminary And Final Plat: If the commission's conclusion is favorable to the developer's request for the subdivision to be considered as both a preliminary plat and final subdivision, then a recommendation shall be forwarded to the council in the same manner as herein specified for a final plat. The commission may recommend that the combined application be approved, approved conditionally or disapproved.

9. Approval Period:

a. Failure to file and obtain the certification of the acceptance of the final plat application by the administrator within one year after action by the council shall cause all approvals of said preliminary plat to be null and void, unless an extension of time is applied for by the developer and granted by the council.

b. In the event that the development of the preliminary plat is made in successive contiguous segments in an orderly and reasonable manner, and conforms substantially to the approved preliminary plat, such segments, if submitted within successive intervals of one year may be considered for final approval without resubmission for preliminary plat approval.

D. Final Plat:

1. Application: After the approval or conditional approval of the preliminary plat, the developer may cause the total parcel, or any part thereof, to be surveyed, and a final plat prepared in accordance with the approved preliminary plat. The developer shall submit to the administrator five (5) copies of the final plat.

2. Content Of Final Plat: The final plat shall include and be in compliance with all items required under title 50, chapter 13 of the Idaho Code and shall be drawn at such a scale and contain lettering of such size as to enable the same to be placed on one sheet of eighteen inch by twenty seven inch (18" x 27") drawing paper, with no part of the drawing nearer to the edge than one inch (1"). The reverse of said sheet shall not be used for any portion of the drawing, but may contain written matter as to dedications, certifications and other information. If, because of the size or complexity, required information cannot be shown, additional sheets may be used provided they conform to this chapter. The final plat shall include at least the following:

- a. A written application for approval of such final plat as stipulated by the commission.
- b. Proof of current ownership of the real property included in the proposed final plat.
- c. Such other information as the administrator or commission may deem necessary to establish whether or not all proper parties have signed and/or approved said final plat.
- d. Conformance with the approved preliminary plat and meeting all requirements or conditions thereof.
- e. Conformance with all requirements and provisions of this title.
- f. Acceptable engineering practices and local standards established by the administrator.

3. Fees: At the time of submission of an application for a final plat, a fee as established by resolution of the council shall be paid.

4. Administrative Review:

a. Acceptance: Upon receipt of the final plat and compliance with all the requirements as provided for herein, the administrator, after review by the city engineer, shall certify the application as complete and shall affix the date of acceptance thereon.

b. Resubmittal Of Final Plat: The administrator shall review the final plat for compliance with the approved or conditionally approved preliminary plat. If the administrator determines that there is substantial difference in the final plat than that which was approved as a preliminary plat or conditions which have not been met, the administrator may require that the final plat be submitted to the commission in the same manner as requested in the preliminary plat process.

c. Submission To The Council: Upon the determination that the final plat is in compliance with the preliminary plat and all conditional requirements have been met, the administrator shall place the final plat on the council agenda at the next regular meeting.

5. Agency Review: The administrator may transmit one copy of the final plat, or other documents submitted, for review and recommendation to the departments and the agencies as he deems necessary to ensure compliance with preliminary approval and/or conditions of preliminary approval. Such agency review shall also include the construction standard of improvements, compliance with health standards, the cost estimate for all improvements and the legal review of the performance bond.

6. Council Action: The council, at its next meeting following receipt of the administrator's report, shall consider the commission's findings and comments from concerned persons and agencies to arrive at a decision on the final plat. The council shall approve, approve conditionally, disapprove or table the final plat for additional information. A copy of the approved plat shall be filed with the administrator. Upon granting or denying the final plat the council shall specify:

- a. The regulations and standards used in evaluating the application;
- b. The reasons for approval or denial; and
- c. The actions, if any, that the applicant could take to obtain approval.

7. Plans And Specifications: Prior to recording the final subdivision plat, the developer shall submit to the administrator checked copies of the final plans and specifications for streets, water, sewer, a master utility plan and other public improvements to be constructed.

All plans and specifications shall have sufficient detail, written information, vertical and horizontal dimensions to accurately locate the proposed improvements in the field and determine their relationship to other improvements. Such standards shall be established by the zoning administrator, public works supervisor, and city engineer.

- a. Financial guarantee of improvements;
- b. An approved weed management plan;
- c. Certification of water and sewer plan approval from the Idaho department of environmental quality;
- d. Street and utility plan approval from the Idaho department of transportation, as required;
- e. Street and utility plan approval from the Twin Falls highway district, as required;

- f. Gravity irrigation system plan approval from the Twin Falls Canal Company, as required;
 - g. An executed improvement agreement for developers;
 - h. Certification of the notice of intent and stormwater pollution prevention plan filed with the United States EPA;
 - i. A recorded conveyance to the city of Kimberly for water shares equal to one share per acre for new residential developments (2 acres or larger), and such other number of shares as agreed to between the city and the developer.
8. Fees: At the time of submittal of plans and specifications a fee to defray costs and expenses of plan checking as provided for by resolution of the city council shall be paid.
9. Approval Period: Final plat shall be filed with the county recorder within one year after written approval by the council; otherwise such approval shall become null and void unless prior to said expiration date an extension of time is applied for by the developer and granted by the council.
10. Method Of Recording: Upon approval of the final plat by the council, the developer's prepayment of recording fees, posting of surety bond or other acceptable guarantee and the inclusion of the following signatures on the final plat, the developer shall submit the final plat to the county recorder for recording:
- a. Certification and signature of the city council verifying that the subdivision has been approved;
 - b. Certification and signature of the city clerk, if required, and the city engineer verifying that the subdivision meets the city requirements and has been approved by the council; and
 - c. Certification of the sanitation restrictions on the face of the plat per Idaho Code section 50-1326.

(Ord. 636, 2016; Ord. 631, 2016; Ord. 542, 2007; Ord. 665, 2020; Ord. 682, 2023)

17.12.030: DESIGN STANDARDS:

- A. Minimum Design Standards Required: All plats submitted pursuant to the provisions of this chapter, and all subdivisions, improvements and facilities done, constructed or made in accordance with said provisions shall comply with the minimum design standards set forth hereinafter in this chapter; provided, however, that any more restrictive standards adopted by any highway district, state highway department or health agency shall prevail over those set forth herein; and further provided that any minimum lot size restrictions promulgated by the health authority shall prevail over those set forth herein.
- B. Dedication Of Streets: Within a proposed subdivision arterial and collector streets as shown on a comprehensive plan, shall be dedicated to the public in all cases; in general, all other streets shall also be dedicated to public use.
- C. Street Location: Street and road location shall conform to the following:
- 1. Street Location And Arrangements: All street locations shall conform to the Kimberly master street plan where applicable. Collector type streets may, for aesthetic reasons, curve and wind in accordance with these standards, but such trafficways shall maintain a grid type pattern approximately one-fourth ($\frac{1}{4}$) of a mile square.
 - 2. Stub Streets: Where adjoining areas are not subdivided, the arrangement of streets in new subdivisions shall be such that said streets extend to the boundary line of the tract to make provisions for the future extension of said streets into adjacent areas. A vehicular nonaccess reserve strip may be required and held in public ownership. Temporary cul-de-sacs shall be required.
 - 3. Relation To Topography: Streets shall be arranged in proper relation to topography so as to result in usable lots, safe streets and acceptable gradients.
 - 4. Alleys: Alleys shall be provided in multiple dwelling or commercial subdivisions unless other provisions are made for service access and off street loading and parking. Dead end alleys shall be prohibited in all cases.
 - 5. Cul-De-Sac Streets: Cul-de-sac streets shall not be more than six hundred feet (600') in length unless a secondary access has been approved by the city engineer and/or zoning administrator and shall terminate with an adequate turnaround having a minimum radius of fifty feet (50') for right of way.
 - 6. Half Streets: Half streets shall be prohibited, except where unusual circumstances make such necessary to the reasonable development of a tract, special justification shall be presented for variance requests to the commission. Whenever a tract to be subdivided borders on an existing half or partial street, the other part of the street shall be dedicated within such tract. A vehicular nonaccess reserve street may be required and held in public ownership.
 - 7. Private Streets: Private streets and roads shall be prohibited within a subdivision, except as provided by subsection 17.11.050A of this title, but may be allowed in subdistricts providing the private streets conform to city standards. Access from interior subdivision lots to public street may be allowed by private drives conforming to subsection 17.11.050A of this title.
- D. Street Specifications:
- 1. Street Right Of Way Widths: Street and road right of way widths shall conform to the adopted master street plan or comprehensive plan and the rule of the state department of highways and the highway district having jurisdiction; minimum right of way standards shall be in accordance with subsection M of this section.

2. Street Grades: Street grades shall not exceed ten percent (10%) on either local or collector streets and six percent (6%) for arterial streets. Minimum street grades shall be four-tenths percent (0.4%).

3. Street Alignment: Street alignment shall be as follows:

a. Horizontal Alignment: Horizontal alignment shall be in accordance with subsection M of this section.

b. Vertical Alignment: Minimum stopping sight distances shall be two hundred feet (200') from minor streets and designed in accordance with the design speed for collector and arterial streets.

E. Street Names: The naming of streets shall conform to the following:

1. Street names shall not duplicate any existing name within the limits of the city of Kimberly or the area of impact except where a new street is a continuation of an existing street. Street names, if spelled differently but phonetically similar, shall not be used. The city reserves the right to name or rename any streets.

2. All new streets shall be named as follows: Streets having predominantly north-south direction shall be named "street" or "way"; streets having a predominately east-west direction shall be named "avenue" or "road"; meandering streets shall be named "drive", "lane", "path", or "trail"; and cul-de-sacs shall be named "circle", "court" or "place".

3. When any new subdivision contains any street, which is a continuation of any street, such new street shall take the name of such existing street. No new street not a continuation of an existing street shall be given the same or similar name of any existing street. The city engineer shall have the power to change the name of any street on any map or plat submitted to make such map or plat conform to the provisions of this section.

F. Intersections:

1. Angle Of Intersection: Streets shall intersect at ninety degrees (90°) or as closely thereto as possible, and in no case shall streets intersect at less than seventy degrees (70°).

2. Sight Triangles: Minimum clear sight distance at all minor street intersections shall permit vehicles to be visible to the driver of another vehicle when each is one hundred feet (100') from the center of the intersection.

3. Number Of Streets: No more than two (2) streets shall cross at any one intersection.

4. "T" Intersections: "T" intersections may be used wherever such design will not restrict the free movement of traffic.

5. Centerline Offsets: Street centerlines shall be offset by a distance of at least one hundred twenty five feet (125').

6. Vertical Alignment Of Intersection: A nearly flat grade with appropriate drainage slopes is desirable within intersections. This flat section shall be extended a minimum of one hundred feet (100') each way from the intersection. An allowance of two percent (2%) maximum intersection grade in rolling terrain, and four percent (4%) in hilly terrain will be permitted.

G. Pedestrian Walkways: Right-of-way for pedestrian walkways in the middle of long blocks may be required where necessary to obtain convenient pedestrian circulation to schools, parks or shopping areas; the pedestrian easement shall be in accordance with subsection M of this section. Cul-de-sacs will be connected to other adjacent streets with cul-de-sacs within the proposed subdivision or existing subdivisions and to adjacent arterial or collector streets with paved pedestrian walkways at least five feet (5') wide within the applicable easements.

H. Utility And Drainageway Easements: Unobstructed utility easements shall be provided along front lot lines, rear lot lines and side lot lines when deemed necessary; total easement width shall be in accordance with subsection M of this section. Unobstructed drainage easements shall be provided as required by the Council. A lot drainage plan shall be submitted for approval as part of the plans and specifications required by subsection 17.12.020D7 of this chapter. All lots required by the plan to drain along rear and side lot lines shall have drainage easement widths determined by an Idaho licensed engineer and shall not be less than five feet (5') in width. The final plat and the recorded covenants shall specify that the rear and side yard drainageways shown in the approved drainage plan shall be neither obstructed nor substantially regraded by the property owners.

I. Lots: Lots shall conform to the following:

1. Zoning: The lot width, depth and total area shall not be less than the requirements of an applicable zoning district.

2. Future Arrangements: Where parcels of land are subdivided into unusually large lots (such as when large lots are approved for septic tanks), the parcels shall be divided, where feasible, so as to allow for the ultimate extension of adjacent streets through the middle of wide blocks. Whenever such future subdividing or lot splitting is contemplated the plan thereof shall be approved by the commission prior to the taking of such action.

3. Sufficient Area For Septic Tank: Where individual septic tanks have been authorized, sufficient area shall be provided for a replacement sewage disposal system.

J. Planting Strips And Reserve Strips: Planting strips and reserve strips shall conform to the following:

1. Planting Strips: Planting strips shall be required to be placed next to incompatible features such as highways, railroads, commercial or industrial uses to screen the view from residential properties. Such screening shall be a minimum of twenty feet (20') wide, and shall not be a part of the normal street right-of-way or utility easement.

2. Reserve Strips:

a. Private Reserve Strips: Privately held reserve strips controlling access to streets shall be prohibited.

b. Public Reserve Strips: A one foot (1') reserve may be required to be placed along half streets which are within the subdivision boundaries and shall be deeded in fee simple to the City for future street widening.

K. Public Sites, Open Spaces, Recreation And Stormwater Retention/Detention: Where it is determined that a proposed park, playground, school or other public use as shown on the future acquisition map, as authorized in Idaho Code section 67-6517, is located in whole or in part within a proposed subdivision the commission shall notify the appropriate public agency concerning the land proposed to be acquired. Within thirty (30) days of the date of notice, the public agency may request the Governing Body to suspend consideration on the subdivision for sixty (60) days. If an agreement is not reached within sixty (60) days the commission shall resume consideration of the subdivision.

No plat shall be approved unless it includes provision for open space, parks and recreation and stormwater retention/detention. Developers may combine land designated for stormwater retention/detention with the requirement of open space, parks and recreation with the approval of the Administrator and/or Design Review Committee.

1. A "park" is a parcel of land dedicated to the public, maintained for the primary purposes of recreation and open space. A "minipark" is a park that is a minimum of fifteen thousand (15,000) square feet. A "neighborhood park" is a park that includes at least three (3) acres of flat open space.

2. The developer of each residential subdivision, or any part thereof, without regard to the number of phases within the subdivision, shall set aside or acquire land within, adjacent to, or in the general vicinity of the subdivision for neighborhood parks. Neighborhood parks shall be located so as to serve the largest number of household lots, as is practical, without crossing an arterial street. The number of acres of land set aside for neighborhood parks shall be a minimum of the sum of the number of household units in the subdivision multiplied by 0.01. The zoning administrator, public works supervisor and/or the design review committee may approve up to fifty percent (50%) of this land contribution for development of walking/bicycle trails.

3. Development of miniparks and neighborhood parks shall include curbs, gutters, finish grading, sidewalks, power box, irrigation systems, ground cover, trees, picnic tables, benches and playground equipment, approved by the zoning administrator, public works supervisor and city engineer.

4. All park land shall be dedicated to the city upon completion of all required improvements, and accepted and maintained by the city after it is determined that all standards have been met.

5. The city council may determine that park land dedication or cash contributions are not required for subdivisions located out of the city limits based on city maintenance costs, lack of public benefit based on the distance/separation from developed areas of the city and the size. The city council may, at their discretion, approve and accept cash contributions in lieu of park land with improvements, which contributions shall be used for park land acquisition and/or park improvements within the boundaries of the arterial streets in which the development is located or where deemed appropriate by the council. The fee structure for cash contributions for acquisition of park land shall be the appraised value of the required land area at the time of the application. The appraisal shall be submitted by a mutually agreed upon appraiser and paid for by the applicant. The fee structure for park improvements, including all costs of acquisition, construction and all related costs, shall be based upon the estimated costs of an approved improvement provided by a qualified contractor and/or vendor.

6. Provide retention/detention basins within open space in the development to be maintained by a property owners' association. Provide safety signs on all retention/detention basins.

7. Provide retention/detention area at one location within the development to be maintained by the property owners' association.

8. Develop retention/detention within a parcel of land a minimum size of five (5) acres to be maintained by the property owners' association.

9. Develop retention/detention areas within greenways with bicycle and walking trails, to be dedicated to the public, if said greenway is part of an overall city trail system.

L. Restrictive Covenants: Restrictive covenants may be prepared and recorded as part of a subdivision. This is done to provide protection to future property owners by establishing higher standards than required under other regulations. The provisions within protective covenants are enforceable solely through civil actions and local governments shall not be required to enforce these provisions.

M. Right Of Way Requirements:

Type Of Public Way	Residential	Commercial	Manufacturing
Type Of Public Way	Residential	Commercial	Manufacturing
Minimum Right Of Way Width (In Feet)			
Trafficways:			
Alley		20	20
Collector street with bike lane/path	70	70	70

Collector street without bike lane/path	64	64	64
Local street	50	60	60
Major arterial street	100	100	100
Minor arterial street	80	80	80
One-way road	25	30	30
Service road	25	25	Not allowed
Special ways:			
Bicycle	15	15	15
Equestrian	20	20	20
Pedestrian	10	10	10
Easements:			
Access	10	10	15
Utility	15	15	15
Minimum Centerline Radius (In Feet)			
Trafficways:			
Alley			60
Arterial street	500	500	500
Collector street	200	250	300
Local street	100	150	200
One-way road	50	50	60
Service road	50	50	Not allowed
Special ways:			
All	25	25	25
Easements:			
All	0	0	0
Minimum Tangent Length (In Feet)			
Trafficways:			
Alley			0
Arterial street	400	400	400
Collector street	200	250	300
Local street	100	150	200
One-way road	100	150	200
Service road	0	0	Not allowed
Special ways	0	0	0
Easements	0	0	0
Minimum Cul-De-Sac (In Feet)			
Trafficways:			
All	100	100	100

(Ord. 649, 2018: Ord. 638, 2017: Ord. 631, 2016: Ord. 542, 2007)

17.12.040: IMPROVEMENT STANDARDS:

A. Responsibility For Plans: It shall be the responsibility of the developer of every proposed subdivision to have prepared by a registered engineer, a complete set of construction plans, including profiles, cross sections, specifications and other supporting data, for all required public streets, utilities and other facilities. Such construction plans shall be based on preliminary plans that have been approved with the preliminary plat, and shall be prepared in conjunction with the final plat. Construction plans are subject to approval by the responsible public agencies. All construction plans shall be prepared in accordance with the public agencies' standards or specifications.

B. Required Public Improvements: Every developer shall be required to install the following public and other improvements in accordance with the conditions and specifications as follows:

1. Monuments: Monuments shall be set in accordance with Idaho Code section 50-1303.
2. Streets And Alleys: All streets and alleys shall be constructed in accordance with the standards and specifications adopted by the Council.

3. Curbs And Gutters: Curbs and gutters shall be constructed on all streets and service roads. All construction shall be in accordance with the standards and specifications adopted by the Council.

4. Bicycle Pathways: A bicycle pathway shall be required within all subdivisions, as part of the public right-of-way or separate easement, as may be specified in an overall bicycle plan as adopted by the Council.

5. Installation Of Public Utilities: Underground utilities shall be required in all new subdivisions. Existing utilities or new large transmission lines shall not be required to be buried.

6. Driveways: All driveway openings in curbs shall be as specified by the administration, highway district or State Highway Department.

7. Storm Drainage: An adequate storm drainage system shall be required in all subdivisions. The requirements for each particular subdivision shall be established by the City Engineer and/or the Council. Construction shall follow the specifications and procedures established by the Council.

8. Public Water Supply And Sewer Systems: All new public water supply or sewer systems shall be an extension of an existing public system.

9. Fire Hydrants And Water Mains: Adequate fire protection shall be required in accordance with standards established by the City Engineer.

10. Street Name Signs: Street name signs shall be installed in the appropriate locations at each street intersection in accordance with the local standards. Cost of street signs shall be the responsibility of the developer.

11. Sidewalks And Pedestrian Walkways: Sidewalks shall be required on both sides of the street, except that where the average width of lots, as measured at the street frontage line or at the building setback line, is over two hundred ten feet (210'), sidewalks on only one side of the street may be allowed. These requirements may be waived by the Council due to the location and/or character of the development. Pedestrian walkways, when required, shall have easements at least ten feet (10') in width and include a paved walk at least five feet (5') in width. Sidewalks and crosswalks shall be constructed in accordance with the standards and specifications as adopted by the Council.

12. Greenbelt: Greenbelt or landscaping screening may be required for the protection of residential properties from adjacent major arterial streets, waterways, railroad rights-of-way or other features. Subdivision plats shall show the location of any greenbelt areas.

13. Street Lighting: Streetlights shall be required to be installed at intersections throughout the subdivision. Lighting shall be approved by the City Engineer and the cost shall be borne by the developer.

14. Mailboxes: Mailbox locations shall be reviewed and approved by the Zoning Administrator and/or the United States Postal Service.

15. Irrigation Water: Effective August 1, 2008, every subdivider or developer shall be required to install a pressure irrigation system in accordance with the conditions and specifications as follows:

a. The use of the City's potable water supply for irrigation in all new developments is strictly prohibited. For purposes of this section, the term "new development" means any new subdivision, PUD, or any development of any parcel of land larger than three-fourths ($\frac{3}{4}$) of an acre that is not part of a subdivision or PUD.

b. All new developments shall install a pressure irrigation system constructed to ISPWC standards and City standards per resolution 213, excluding, the SCADA system criteria, the connection to existing Municipal water system criteria and the building criteria prohibiting pre-constructed/self-contained building components. The building criteria shall allow for pre-constructed self-contained building modules for the pump station equipment. The PI system shall be approved by the City Engineer and the City Public Works Superintendent/Director. The pump station shall be operational before the first building permit is issued for that station's service area.

c. The City Council may approve a variance from the requirement of a pressure irrigation system, where, owing to special conditions, a literal enforcement of the provisions of this subsection would result in an unnecessary hardship.

(1) Special conditions may include, but are not limited to, small developments in terms of acreage, developments without viable access to irrigation water delivery, or developments without Twin Falls Canal Company water shares.

(2) Variances shall not be granted on the grounds of convenience or profit, but only where strict application of the provisions of this title would result in unnecessary hardship.

(3) A variance shall not be authorized from the requirement of an operating pressurized irrigation system unless an alternate provision has been approved by the City Council. Alternate systems may include, but shall not be limited to, required Xeriscaping (i.e., landscaping in ways that do not require supplemental irrigation), payment of an in lieu fee equal to the estimated cost of construction of an operating pressurized irrigation system (including land acquisition and value of water shares), or some combination of these or other acceptable options, approved by the City Engineer and Public Works Superintendent.

d. If the City Council and Public Works Director determine that the PI system is to be owned and maintained by the developer, Home Owners Association and home owners, applicable Twin Falls Canal Company water shares shall, not be conveyed to the City and that one irrigation water share for each acre of property within the development, shall be retained

within the development for all irrigation in perpetuity.

e. If the City Council and Public Works Director determine that the PI system is to be owned and maintained by the City, each new development shall convey one share of Twin Falls Canal Company for each acre of property within the development to the City before filing of the final plat.

f. All users connected to a pressurized irrigation system shall install automatic timers to ensure that conservation of and schedules for use of the water are met in the most efficient manner possible. Systems operating without the use of automatic timers will be in violation of this Code and subject to established fines and penalties herein.

g. Monthly fees for water districts will be established and assessed to each user by the City of Kimberly to maintain the pressure irrigation system. The fees will be calculated and assessed by total square footage of the lot size. The fee for calculation will be assessed at a rate of \$0.001325 per square foot of lot size and will be billed monthly at one-twelfth ($\frac{1}{12}$) the annual rate.

For example: A typical 8,000 square foot lot would be $\$0.001325 \times 8,000 = 10.60 \times 12 \text{ month}/1 \text{ year} = \127.20 annually. The monthly billing would then be $\frac{1}{12}$ the annual rate or \$10.60 a month.

The fees may be changed by resolution of the City Council.

h. All residences within the City of Kimberly with pressurized irrigation systems shall irrigate and water flowers, lawns, gardens, trees, and shrubs as follows: Residences with even number addresses shall water on Tuesdays, Thursdays, and Saturdays only; residences with odd number addresses shall water on Wednesdays, Fridays, and Sundays only.

C. Guarantee Of Completion Of Improvements:

1. Financial Guarantee Arrangements: In lieu of the actual installation of required public improvements before recording of the final plat, the Council may permit the developer to execute a trust and escrow agreement and record a notice prohibiting the sale of an undeveloped lot without a recorded developer's agreement between the developer and the City relating to that lot, or to provide a financial guarantee of performance in one or a combination of the following arrangements for those requirements which are over and beyond the requirements of any other agency responsible for the administration, operation and maintenance of the applicable public improvement:

a. Surety Bond:

(1) Accrual: The bond shall accrue to the City covering construction, operation and maintenance of the specific public improvement.

(2) Amount: The bond shall be in an amount equal to one hundred twenty five percent (125%) of the total estimated costs for completing construction of the specific public improvements, as estimated by the developer's consulting engineer and approved by the City Engineer.

(3) Term Length: The term length in which the bond is in force, for the duration of the phase of the project, shall be for a period of two (2) years minimum.

(4) Bonding For Surety Company: The bond shall be with a surety company authorized to do business in the State of Idaho, acceptable to the Council.

b. Cash Deposit, Certified Check, Negotiable Bond Or Irrevocable Bank Letter Of Credit By An Institution Licensed In The State Of Idaho And Approved By The Council:

(1) Treasurer, Escrow Agent Or Trust Company: A cash deposit, certified check, negotiable bond or an irrevocable bank letter of credit such surety acceptable by the Council, shall be deposited with an escrow agent or trust company.

(2) Dollar Value: The dollar value of the cash deposit, certified check, negotiable bond or irrevocable bank letter of credit shall be equal to one hundred twenty five percent (125%) of the estimated cost of construction for the specific public improvement, as estimated by the developer's consulting engineer and approved by the City Engineer.

(3) Escrow Time: The escrow time for the cash deposit, certified check, negotiable bond or irrevocable bank letter of credit shall be for two (2) years minimum or one year after subdivision is completed and accepted by the City Engineer.

(4) Progressive Payment: In the case of cash deposits or certified checks, an agreement between the Council and the developer may provide for progressive payment out of the cash deposit or reduction of the certified check, negotiable bond or irrevocable bank letter of credit, to the extent of the cost of the completed portion of the public improvement, in accordance with a previously entered into agreement.

2. Conditional Approval Of Final Plat: With respect to financial guarantees, the approval of all final subdivision plats shall be conditioned on the accomplishment of one of the following:

a. The construction of improvements required by this title shall have been completed by the developer and approved by the City Engineer.

b. Surety acceptable to the Council shall have been filed in the form of a cash deposit, certified check, negotiable bond, irrevocable bank letter of credit or surety bond.

3. Inspection Of Public Improvements Under Construction: Before approving a final plat and construction plans and specifications for public improvements, an agreement between the developer and the Council shall be made to provide for checking or inspecting the construction and its conformity to the submitted plans.

4. Penalty In Case Of A Failure To Complete The Construction Of A Public Improvement: In the event the developer shall, in any case, fail to complete such work within the period of time as required by the conditions of the guarantee for the completion of public improvements it shall be the responsibility of the Council to proceed to have such work completed. In order to accomplish this, the Council shall reimburse itself for the cost and expense thereof by appropriating the cash deposit, certified check, irrevocable bank letter of credit, or negotiable bond which the developer may have deposited in lieu of a surety bond, or may take such steps as may be necessary to require performance by the bonding or surety company, and as included in a written agreement between the Council and the developer. (Ord. 647, 2017: Ord. 563, 2008: Ord. 542, 2007)

17.12.050: SPECIAL DEVELOPMENT SUBDIVISIONS:

A. Purpose: The purpose of this section is to identify various types of developments that normally pose special concerns to the commission and elected officials when reviewing and acting upon subdivision requests. The provisions of this section are in addition to the plan requirements, design standards and improvement standards that are required by sections 17.12.020, 17.12.030 and 17.12.040 of this chapter.

B. Large Scale Development Subdivision: Due to the impact that a large scale development would have on public utilities and services, the developer shall submit the following information along with the preliminary plat:

1. Identification of all public services that would be provided to the development such as fire protection, police protection, central water, central sewer, road construction, parks and open space, recreation, maintenance, schools and solid waste collection.

2. Estimate of the public service costs to provide adequate service to the development.

3. Estimate of the tax revenue that will be generated from the development.

4. Suggest public means of financing the services of the development if the cost for the public services would not be offset by tax revenue received from the development.

5. The developer should submit a plan identifying how the developer intends to mitigate impacts of the development on the City.

6. The developer should submit a plan for stormwater retention/detention.

C. Planned Zero Lot Line Subdivision: Planned zero lot line developments shall be subject to requirements set forth in this title and also subject to all provisions contained herein.

1. Allowances: See section 17.04.130 of this title. Except for side yard and lot area requirements which are as specified below.

2. Site Development Plan: The developer shall provide the commission with the following:

a. Plat map with building envelopes to show location of each unit in the development project.

b. Common wall agreement, if applicable, that is acceptable to the commission.

c. Maintenance easement, if applicable, must be shown on the plat. This applies to one dwelling zero lot line unit without a common wall.

3. Requirements:

a. Lot Area:

(1) R1: The minimum lot area shall be not less than one acre.

(2) R2: The minimum lot area shall be not less than eight thousand (8,000) square feet for one dwelling unit.

(3) R3: The minimum lot area shall be six thousand five hundred (6,500) square feet.

b. Side Yard: No building is allowed within ten feet (10') of the side opposite the zero lot line.

c. Front Yard: Same as specified in section 17.04.130 of this title.

d. Rear Yard: Same as specified in section 17.04.130 of this title.

e. Restriction: The zero side yard cannot be adjacent to a public or private right of way.

f. Windows: No window shall be placed on the zero lot line.

g. Accessory Building: No accessory building shall be placed in the ten foot (10') side yard setback area as required above.

h. Lot Occupancy: No dwelling, including its accessory building, shall occupy more than sixty percent (60%) of the lot.

i. Projection: If a one dwelling unit, no portion of the dwelling or architectural projections other than rain gutters may

project over any property lines.

D. Subdivision Within An Area Of Critical Concern: Hazardous or unique areas may be designated as an area of critical concern by the council or by the state. Special consideration shall be given to any proposed development within an area of critical concern to assure that the development is necessary and desirable and in the public interest in view of the existing unique conditions. Hazardous or unique areas that may be designated as areas of critical concern are as follows:

Avalanche paths

Earthquake locations

Floodplain

Historical significance

Scenic areas

Unique animal life

Unique plant life

Unstable soil and rock formations

Other areas of critical concern

1. Plan Submission: The developer shall prepare and submit an environmental assessment along with the preliminary plan application for any development that is proposed within an area of critical concern.

2. Content Of Environmental Assessment: The content of the environmental assessment shall usually be prepared by an interdisciplinary team of professionals that shall provide the answers to the following questions:

- a. What changes will occur at the area of environmental concern as a result of the proposed development?
- b. What corrective action or alternative development plans could occur so as not to significantly change the area of environmental concern?
- c. What changes in the area of environmental concern are unavoidable?
- d. What beneficial or detrimental effects would the development have on the components of the ecosystem such as animal life, plant life, biotic diversity, social concerns, economic conditions, noise and visual conditions?

E. Subdivision Within A Floodplain:

1. Flood Areas: For any proposed subdivision that is located within a floodplain, the developer shall provide the commission with a development plan of adequate scale and supporting documentation that will show and explain at least the following:

- a. Location of all planned improvements.
- b. Location of the floodway and the floodway fringe as shown on FIA flood hazard boundary maps or as established by engineering studies and approved by the city engineer.
- c. Location of the present water channel.
- d. Any planned rerouting of waterways.
- e. All major drainageways.
- f. Areas of frequent flooding.
- g. Means of floodproofing buildings.
- h. Means of insuring loans for improvements within the floodplain.
- i. For subdivisions of fifty (50) or more lots or of five (5) acres of area or more, base flood elevations where flood elevation data has not been established.
- j. Stormwater drainage.

New construction and substantial improvements of residential structures within the floodplain shall have the lowest floor (including basement) elevated to or above the level of the 100-year flood, and for new construction or substantial improvements of nonresidential structures, the lowest floor (including basement) shall be elevated to or above the level of the 100-year flood, or together with attendant utility and sanitary facilities, shall be floodproofed up to the level of the 100-year flood.

2. Justification For Development: Upon the determination that buildings are planned within the floodplain or that alterations of any kind are anticipated within the floodplain area that will alter the flow of water, the developer shall demonstrate conclusively to the commission that such development will not present a hazard to life, limb or property and will not have adverse effects on the safety, use or stability of a public way or drainage channel or the natural environment.

No subdivision or part thereof shall be approved if levees, fills, structures or other features within the proposed subdivision will individually or collectively significantly increase flood flows, heights or damages. If only part of the proposed subdivision can be safely developed, the council shall limit development to that part and shall require that development proceed consistent with that determination.

The subdivision shall be reviewed to assure that:

- a. All such proposals are consistent with the need to minimize flood damage;
- b. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages;
- c. All necessary state and federal permits required for the development have been received pursuant to FEMA chapter 1, part 60, subpart 60.3(a)(2);
- d. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage;
- e. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated by the developer for subdivision proposals and other proposed developments which contain at least fifty (50) lots or five (5) acres, whichever is less;
- f. New or replacement water supply systems and/or sanitary sewage systems shall be designated to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters, and require on site waste disposal systems to be located so as to avoid impairment of such systems or contamination from such systems during flooding;
- g. In new or substantially improved manufactured home parks or manufactured home subdivisions:
 - (1) Stands or lots are to be elevated on compacted fill or pilings so that the lowest floor of the manufactured home is above the base flood level.
 - (2) Adequate lot surface drainage and access for a tractor are to be provided.
 - (3) In the instance of elevation on pilings, lots are to be large enough to permit steps, piling foundations are to be placed in stable soil no more than ten feet (10') apart and reinforcement is to be provided for pilings more than six feet (6') above the ground level.

F. Cemetery Subdivision:

1. Function: The developer shall provide the commission with written documentation that will sufficiently explain the functions of the proposed cemetery for either human or animal remains.
2. Compliance With Idaho Code: The developer shall submit a written statement that has been prepared by an attorney that adequately assures the compliance of the proposed cemetery with the procedural management requirements that are outlined in title 27, Idaho Code. (Ord. 542, 2007)

17.12.060: LOT LINE ADJUSTMENTS:

- A. Lot Line Adjustment Procedures: An applicant for a lot line adjustment shall complete the following procedures:
 1. Submittal of a draft record of survey showing:
 - a. The proposed parcel for adjustment (a hard copy 18 inches by 27 inches and an electronic copy 11 inches by 17 inches),
 - b. The present and proposed lots,
 - c. The correct street names abutting the property,
 - d. The written legal description of all proposed lots,
 - e. The square footage, width, and depth of proposed lots,
 - f. All existing buildings shown to meet building department and zoning setback requirements,
 - g. A note stating the zoning district in effect for the area,
 - h. All recorded easements, including those for sewer and water,
 - i. Affidavits of legal interests,
 - j. A narrative explaining the purpose of this lot line adjustment and expressing how the public is benefited by such action, and
 - k. Such additional information reasonably required for thorough review of the application and plat may be required of the applicant.
 2. The adjustment shall meet the definition of a "lot line adjustment" shown within section 17.02.010, "Terms Defined", of this title.

3. Mailed notice of the lot line adjustment, shall be provided to adjacent property owners, allowing for a ten (10) day comment period, from postage date. The planning and zoning administrator or designee may process the lot line adjustment application.

4. The city may take action on the lot line adjustment after administrative determination that the submittal complies with the definition of a "lot line adjustment".

5. A mylar of the record of survey, containing city engineer and city clerk signature areas shall then be submitted to the community development department, and upon obtainment of these signatures, the applicant shall record the mylar and provide evidence of such recording back to the community development department.

6. Upon tentative approval of the application by the director subject to any applicable conditions of approval and the regulations of subsection 17.12.010A of this chapter, the applicant or owner shall have one year to complete the following tasks:

- a. Cause the property to be surveyed and record of survey recorded;
- b. Execute and record the necessary deeds to accomplish the property boundary adjustments as approved;
- c. Obtain new tax parcel numbers from the Twin Falls County assessor; and
- d. Provide copies of the recorded record of survey, recorded deeds, and the new tax parcel numbers to the director.

(Ord. 631, 2016; Ord. 600, 2013; Ord. 665, 2020)

17.12.070: WATER REGULATIONS:

A. The provision of a public water system shall conform to the following standards: All subdivisions within the Kimberly city water service area shall comply with this chapter.

B. As a condition of annexation into the city and/or as a condition of approval of new development within the city, the landowner and/or developer shall:

1. Secure suitable surface water rights adequate to satisfy all irrigation, aesthetic, amenity, or recreation needs of the proposed development and/or property proposed to be annexed. Said water rights must be valid, existing water rights recognized by the Idaho department of water resources (the "department"). If any transfer, amendment or other proceedings are required under Idaho Code or department rule or regulation for the city's use of such water, the owner and/or developer shall be solely responsible for the city's costs of completing the same and the city's costs of obtaining all necessary approvals from the department as a condition of annexation and/or development, including costs associated with mitigation; and

2. Secure suitable groundwater rights adequate to satisfy all groundwater needs of the proposed development and/or property proposed to be annexed and transfer or assign said water rights to the city for inclusion into the city's municipal water supply system. Said water rights must be valid, existing water rights permitted or licensed by the department. If any transfer, amendment or other proceedings are required under Idaho Code or department rule or regulation for the city's use of such water, the owner and/or developer shall be solely responsible for the city's costs of completing the same and the city's costs of obtaining all necessary permits and approvals from the department as a condition of annexation and/or development, including costs of mitigation; and

3. Pay for the city's costs of construction of municipal supply well(s), distribution, storage, and treatment facilities necessary to meet the demands of the proposed annexed property and/or new development. The city engineer shall determine the necessary location, number, and capacity of well(s) based upon the proposed development or other improvements. Said wells shall be constructed to city standards. The owner and/or developer shall be solely responsible for the city's costs of obtaining all necessary permits and approvals for such wells as a condition of annexation and/or development, including the costs of any required mitigation. The design and construction of municipal supply wells shall be reviewed and inspected by the city engineer; and

a. At the option of the city, demands arising from more than one development may be served by a single well or centralized well with the costs thereof apportioned to the participating developments in proportion to their water demands.

4. Any well construction or development of groundwater resources shall be prohibited within the city's municipal water service area except as may be set forth in a development agreement or by a special purpose permit issued by the building official and approved by the city council. (Ord. 600, 2013; Ord. 540, 2007)

CHAPTER 17.13

PERMITS

SECTION:

17.13.010: Required Permits, Certificates

17.13.020: Available Permits

17.13.010: REQUIRED PERMITS, CERTIFICATES:

A. Building Permit:

1. Permit Required: No person shall erect, construct, enlarge, alter, repair, move, convert or demolish any building or structure in the city or area of impact, or cause the same to be done without first obtaining a separate building permit for each such building or structure from the city building official.

2. Application For Permit: To apply for a permit the applicant shall first obtain a septic system permit from the county health department, if required, and then file an application, in writing, on a form furnished for the purpose by the city building official, who shall determine the acceptability of the request in conformance with the 2006 international building code and who shall thereupon issue or deny the application.

B. Zoning Permit:

1. Permit Required: No building or other structure shall be erected, moved, added to or structurally altered, nor shall any building, structure or land be established or changed in use without a permit therefor issued by the administrator. Zoning permits shall be issued only in conformity with the provisions of this title. Any building, structure or land, which has been vacant for more than four (4) years, shall have lost its recognized use and a new zoning permit shall be required before a use is established.

2. Contents Of Application: The application for a zoning permit shall be signed by the owner or applicant attesting to the truth and exactness of all information supplied on the application. Each application shall clearly state that the permit shall expire and may be revoked if work has not begun or is not substantially completed within one year. At a minimum, the application shall contain the following information:

- a. Name, address and phone number of the applicant.
- b. Legal description of the property.
- c. Existing use.
- d. Proposed use.
- e. Zoning district.
- f. Plan, drawn to scale, showing the actual dimensions and the shape of the lot to be built upon; the exact size and location of existing buildings on the lot, if any; and the location and dimensions of the proposed building or alteration.
- g. Building heights.
- h. Number of off street parking spaces or loading berths.
- i. Number of dwelling units.
- j. Proposed sewer and water facilities.
- k. Such other matters as may be necessary to determine conformance with, and provide for, the enforcement of this title.

3. Approval Of Permit: Within thirty (30) days after the receipt of an application, the administrator shall either approve or disapprove the application in conformance with the provisions of this title. All zoning permits shall, however, be conditional upon the commencement of work within one year from the date of approval. One copy of the plans shall be returned to the applicant by the administrator after the administrator shall have marked such copy either as approved or disapproved and attested to same by his signature on such copy. One copy of plans, similarly marked shall be retained by the administrator. The administrator shall issue a placard, to be posted in a conspicuous place on the property in question, attesting to the fact that the use or alteration is in conformance with the provisions of this title.

4. Expiration Of Permit: If the work described in any zoning permit has not begun within one year from the date of issuance thereof, said permit shall expire.

C. Certificate Of Zoning Compliance: It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of zoning compliance shall have been issued therefor by the administrator stating that the proposed use of the building or land conforms to the requirements of this title and with all conditional provisions that may have been imposed.

D. Temporary Certificate Of Zoning Compliance: A temporary certificate of zoning compliance may be issued by the administrator for a period not exceeding six (6) months during alterations or partial occupancy of a building pending its completion.

E. Permits And Certificates Not To Be Used Other Than For The Purpose Issued: Zoning permits or certificates of zoning compliance issued on a basis of plans and applications approved by the administrator authorize only the use and arrangement set forth in such approved plans and applications or amendments thereto, and no other use, arrangement or construction contrary to that authorized shall be deemed a violation of this title. The administrator shall maintain a public record of all zoning permits and certificates of compliance.

F. Appeals:

1. Appeals to the council concerning the administrator's interpretation and administration of this title may be taken by any person aggrieved by a decision of said administrator. Said appeal shall be taken within twenty (20) days after the decision of the administrator by filing with the administrator a notice of appeal specifying the grounds upon which the appeal is to be taken. The administrator shall transmit to the council the appeal and all papers constituting the record upon which the appeal is based.

2. Upon receipt of an appeal from the action of the administrator the council shall, after publishing notice in a newspaper and giving written notice to all parties concerned at least fifteen (15) days in advance, hold a public hearing. A council's determination shall be final for all purposes. (Ord. 542, 2007)

17.13.020: AVAILABLE PERMITS:

A. Variance:

1. Definition: "Variance" is a modification of the requirements of this title as to lot size, lot coverage, width, depth, front yard, side yard, rear yard setbacks, parking space, height of buildings or other provisions of this title affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots and public ways.

2. Authority To Grant: The commission may authorize in specific cases which vary from the terms of this title as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this title would result in unnecessary hardship. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted or nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted or nonconforming use of lands, structures or buildings in other districts shall be considered grounds for issuance of a variance. Variances shall not be granted on the grounds of convenience or profit, but only where strict application of the provisions of this title would result in an unnecessary hardship or the loss of a building or site that is on a national, state or local register of historic places or sites.

3. Application: A variance from the terms of this title shall not be granted by the commission unless and until a written application for a variance is submitted to the administrator and the commission containing:

a. Name, address and phone number of applicant.

b. Legal description of property.

c. Description of nature of variance requested.

d. A narrative statement and documentation demonstrating that the building or site is not on a national, state or local register of historic places or sites, or that the requested variance conforms to all the following standards:

(1) That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district.

(2) That a literal interpretation of the provision of this title would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this title.

(3) That special conditions and circumstances do not result from the actions of the applicant.

(4) That granting the variance requested will not confer on the applicant any special privilege that is denied by this title to other lands, structures or buildings in the same district.

A variance shall not be granted unless the commission makes specific findings of fact based directly on the particular evidence presented to it which support conclusions that the above mentioned standards and conditions have been met by the applicant.

4. Supplementary Conditions And Safeguards: Under no circumstances shall the commission grant an appeal or variance to allow a use not permissible under the terms of this title in the district involved, or any use expressly or implicitly prohibited by the terms of this title in said district. In granting any appeal or variance, the commission may prescribe appropriate conditions and safeguards in conformity with this title. Violation of such conditions and safeguards, when made a part of the terms under which the appeal or variance is granted, shall be deemed a violation of this title.

5. Public Hearing: Prior to granting a variance permit, at least one public hearing before the commission in which interested persons shall have the opportunity to be heard shall be held. At least fifteen (15) days prior to the hearing, notice of the time and place and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the jurisdiction of the city. Notice may also be made available to other newspapers, radio and television

stations serving the jurisdiction for use as a public service announcement. Written notice shall also be provided to property owners within three hundred feet (300') of the parcel under consideration.

When notice is required to two hundred (200) or more property owners or residents, in lieu of the mailing notification, three (3) notices in the newspaper or paper of general circulation is sufficient; provided, the third notice appears ten (10) days prior to the public hearing.

6. Action By Commission: Within thirty (30) days after the public hearing the commission shall approve, conditionally approve, or disapprove the request for appeal of variance.

Upon the granting or denying an application the commission shall specify:

- a. The regulations and standards used in evaluating the application.
- b. The reasons for approval or denial.
- c. The actions, if any, that the applicant could take to obtain a permit.

The applicant or any affected person may appeal the decision of the commission to the council, provided a written appeal is submitted to the council within fifteen (15) days from the commission's decision.

7. Notification To Applicant: Within ten (10) days after a decision has been rendered, the administrator shall provide the applicant with written notice of the action on the request.

8. Appeal To Council: Upon receipt of an appeal from the action of the commission, the council shall set a hearing date under the same provisions as the commission hearing to consider all information, testimony and commission's minutes of the public hearing to reach a decision to uphold, conditionally uphold or overrule the decision.

B. Special Use:

1. Definition: A "special use" is a use otherwise prohibited by the terms of this title in a given zone, but which may be allowed with conditions under specific provisions of this title and when not in conflict with a comprehensive plan.

2. Authority To Grant: The commission may authorize in specific cases special uses, subject, however, to the minimum conditions and requirements of the zoning district in which they are located and subject to additional conditions and requirements necessary to protect the best interest of affected persons and the city as a whole.

3. Application: An application for special use permit shall be filed with the administrator by at least one owner or lessee of property for which such special use is proposed or for which an expansion of more than twenty five percent (25%) over the original square footage approved through the special use permit process or a total increase in square footage over ten thousand (10,000) square feet, whichever is less or relocation of an existing special use is proposed. At a minimum, the application shall contain the following information:

- a. Name, address and phone number of applicant.
- b. Legal description of property.
- c. Description of existing use.
- d. Zoning district.
- e. Description of proposed special use.
- f. A plan of the proposed site for the special use showing the location of all buildings, parking and loading areas, traffic access and traffic circulation, open spaces, landscaping, refuse and service areas, utilities, signs, yards and such other information as the commission may require to determine if the proposed special use meets the intent and requirements of this title.
- g. A narrative statement evaluating the effects on adjoining property; the effect of such elements as noise, glare, odor, fumes and vibration on adjoining property; a discussion of the general compatibility with adjacent and other properties in the district; and the relationship of the proposed use to the comprehensive plan.

4. Standards Applicable To Special Uses: The commission shall review the particular facts and circumstances of each proposed special use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

- a. Will, in fact, constitute a special use as established by zoning requirements for the zone involved.
- b. Will be harmonious with and in accordance with the general objectives or with any specific objective of a comprehensive plan and/or zoning regulations.
- c. Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area.
- d. Will not be hazardous or disturbing to existing or future neighboring uses.
- e. Will be served adequately by essential public facilities and services such as highways, streets, police and fire

protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons responsible for the establishment of the proposed use shall be able to provide adequately any such services.

f. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.

g. Will not involve use, activities, processes, material, equipment and conditions of operation that will be detrimental to any person, property or to the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.

h. Will have vehicular approaches to the property that shall be so designed as not to create any interference with traffic on surrounding public thoroughfares. All parking, loading, unloading for the special use, shall be onsite, not in any public right of way including alleys, unless otherwise approved by the Commission.

i. Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.

5. Restrictions: In granting any special use, the commission may prescribe appropriate conditions, bonds and safeguards in conformity with this title. Violations of such conditions, bonds or safeguards, when made a part of the terms under which the special use is granted, shall be deemed a violation of this title.

6. Public Hearing: Upon receipt of the application for a special use, the commission shall hold a public hearing before the commission in which interested persons shall have the opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of the time and place and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the jurisdiction of the city. Notice may also be made available to other newspapers, radio and television stations serving the jurisdiction for use as a public service announcement. Written notice shall also be provided to property owners within three hundred feet (300') of the parcel.

7. Action By The Commission: Within thirty (30) days after the public hearing, the commission shall approve, conditionally approve or disapprove the application as presented. If the application is approved or approved with modifications, the commission shall direct the administrator to issue a special use permit listing the specific conditions specified by the commission for approval.

Upon granting of a special use permit, conditions may be attached to a special use permit including, but not limited to, the following:

- a. Minimizing adverse impact on other developments.
- b. Controlling the sequence and timing of development.
- c. Controlling the duration of development.
- d. Assuring that development is maintained properly.
- e. Designating the exact location and nature of development.
- f. Requiring the provision for on site or off site public facilities or services.
- g. Requiring more restrictive standards than those generally required in this title.

Prior to granting a special use permit, the commission may request studies from the planning staff or public agencies concerning social, economic, fiscal and environmental effects of the proposed special use. A special use permit shall not be considered as establishing a binding precedent to grant other such special use permits.

8. Specifications For Granting Or Denying Application: Upon granting or denying an application the commission shall specify:

- a. The regulations and standards used in evaluating the application.
- b. The reasons for approval or denial.
- c. The actions, if any, that the applicant could take to obtain a permit.

The applicant or any affected person, who appeared in person or in writing before the commission may appeal the decision of the commission to the council, provided a written appeal is submitted to the council within fifteen (15) days from the commission's action.

9. Notification To Applicant: Within ten (10) days after a decision has been rendered the administrator shall provide the applicant with written notice of the action on the request.

10. Transfer, Review And Discontinuance Of Special Use Permits:

a. A special use permit is not transferable from one parcel of land to another, but may be transferable from one owner to another, provided all conditions for the special use continue to be met and the special use permit so provides.

b. Special use permits granted for in-home daycare services and home occupations are not transferable from one owner to another, nor from one parcel of land to another.

c. Special uses which have not been established within one year of the date of issuance of the special use permit,

may be reviewed by the commission to determine if the facts and circumstances have changed; the commission may call for a new special use permit application.

d. A special use, which has been discontinued for a period of one year, shall not be reestablished without a new special use permit.

e. Special use permits granted for dog kennels shall be reviewed annually by the commission no later than January 31 of each year to determine whether the holder of the special use permit is in compliance with this section, section 6.08.070 of this code and the conditions of said special use permit. If the commission finds the holder is not in compliance, the special use permit may be amended or revoked by the commission.

11. Appeal To The Council: Upon receipt of an appeal from the action of the commission, the council shall set a hearing date, under the same provisions as the commission hearing, to consider all information, testimony and the commission's minutes of the public hearing to reach a decision to uphold conditionally, uphold or overrule the decision of the commission.

12. Conditional Approval: If a special use permit is approved on condition that certain improvements be made to the subject property, no permit shall be issued until the applicant has provided proof that the conditions have been complied with. If the applicant fails to provide proof of compliance within six (6) months of approval, the special use permit shall be void.

C. Revocation Of Zoning Permits:

1. Any privilege, permit or license, hereinafter called permit, granted pursuant to this title, including any permit granted prior to the passage of this section, and with the exception of rezone requests, may be revoked for any of the following reasons:

- a. When a significant change in the use that does adversely impact neighboring developments occurs.
- b. For violation of supplementary conditions, safeguards and/or restrictions imposed by the city council or the planning and zoning commission at the time the permit was granted.
- c. Use of a zoning permit or certificate for a use other than the use of which said permit or certificate was issued.

2. A petition for revocation may be initiated in the following manner:

- a. By adoption of a motion by the commission for revocation of the permit.
- b. By adoption of a motion by the council for revocation of the permit.
- c. By the filing of a petition by an aggrieved property owner or person who has an existing interest in property within the area affected by the contested use.

3. Notice of initiation of revocation proceedings shall be provided to the permit holder in writing within fifteen (15) days of the filing of the petition for revocation or the passage of a motion initiating revocation proceedings. Notices shall include the following:

- a. The name of the party or parties petitioning for a permit revocation.
- b. The date and time of passage of a motion to revoke by the zoning body or the date of filing of the petition to revoke.
- c. The change in circumstances that has been alleged to have occurred and the adverse impact that said change in circumstances is expected to have.
- d. The supplementary conditions, safeguards and restrictions alleged to have been violated.

4. A public hearing on the motion or petition to revoke shall be held before the appropriate zoning body. The permit holder, city staff and/or any aggrieved party may present testimony or other evidence at said hearing. Said hearing shall be held within forty five (45) days of the filing of a petition for revocation or the passage of a motion initiating revocation proceedings.

5. The decision of the zoning body hearing a revocation proceeding shall be based on the record. If said zoning body finds substantial evidence on the record that continuance of the use in question will result in a significant adverse impact on the surrounding developments or other affected parties, and that the permit holder is unable or unwilling to alleviate the adversity, or, if said zoning body finds substantial evidence on the record that conditions, safeguards or restrictions imposed by the commission or council have been violated, the zoning body may revoke the permit in question.

6. A permit that has been revoked may be reinstated only by reapplying for said permit.

7. Within ten (10) days after a decision has been rendered, the administrator shall provide the permit holder with written notice of the action taken.

Upon receipt of a decision from the planning and zoning commission, an aggrieved party may appeal to the city council. The council shall set a hearing date and shall hold a public hearing pursuant to provisions provided herein. (Ord. 623, 2015; Ord. 656, 2019)

CHAPTER 17.14

AMENDMENTS

SECTION:

17.14.010: Authority To Amend

17.14.020: Initiation Of Zoning Amendments

17.14.030: Amendment Application Contents

17.14.035: Development Agreements

17.14.040: Commission Action

17.14.050: Public Hearing

17.14.060: Approval Or Denial Of Amendment

17.14.070: Action By Council

17.14.080: Resubmission Of Application

17.14.090: Zone Boundary Change; Publication Of Notice

17.14.010: AUTHORITY TO AMEND:

Whenever the public necessity, convenience, general welfare or good zoning practices require, the council may, by ordinance, after receipt of recommendation thereon from the commission and subject to procedures provided by law, amend, supplement, change or repeal the regulations, restrictions and boundaries or classification of property. (Ord. 542, 2007)

17.14.020: INITIATION OF ZONING AMENDMENTS:

Amendments to this title may be initiated in one of the following ways:

- A. By adoption of a motion by the commission.
- B. By adoption of a motion by the council.
- C. By the filing of an application by a property owner or a person who has an existing interest in property within the area proposed to be changed or affected by said amendment. (Ord. 542, 2007)

17.14.030: AMENDMENT APPLICATION CONTENTS:

Applications for amendments to the official zoning map adopted as part of this title shall be provided by the administrator and shall contain at least the following information:

- A. Name, address and phone number of applicant.
- B. Proposed amending ordinance, approved as to form by the council.
- C. Present land use.
- D. Present zoning district.
- E. Proposed use.
- F. Proposed zoning district.
- G. A vicinity map at scale approved by the administrator showing the property lines, thoroughfares, existing and proposed zoning and such other items as the administrator may require.
- H. A list of all property owners and their mailing addresses who are within three hundred feet (300') of the external boundaries of the land being considered.
- I. A statement on how the proposed amendment relates to a comprehensive plan, availability of public facilities and compatibility with the surrounding area.
- J. A fee as established by the council. (Ord. 542, 2007)

17.14.035: DEVELOPMENT AGREEMENTS:

In accordance with the notice and hearing procedures for zoning boundary changes in sections 17.14.050 through 17.14.090 of this chapter (including notice that a development agreement is part of the application for zoning map amendment), a property owner or developer may request, or the city may require, that an application for zoning map amendment or rezone be processed in conjunction with the execution of a development agreement. The development agreement will allow a change in the zoning for a specific project, with a specific use, to be developed on property in an area which may not be appropriate for all uses permitted outright or conditionally within the proposed zone. Approval of the development agreement, pursuant to this section, would permit the proposed use, with conditions, within the proposed zone.

Such conditional commitments in development agreements are in addition to the regulations provided for in the zoning district by this title, and are established to ensure compatibility of the resulting land use with the surrounding area. The use of a PUD permit process shall be the only means whereby the city of Kimberly will/shall entertain allowing uses in a zone not normally allowed therein; and a development agreement does not provide an exception.

A. Creation And Form: A request to enter into a development agreement shall be in a form developed by the planning and zoning coordinator and approved by the city council. The development agreement shall, as a condition of consideration by the planning and zoning commission or city council, include at a minimum the following:

1. A legal description of the subject property;
2. A list of the use(s) to be allowed;
3. Identification of development standards that shall be required under the development agreement;
4. The planned implementation of improvements with a construction and completion schedule;
5. Provisions for any dedication or reservation of all applicable land;
6. A site map showing all boundaries, the locations for permitted use(s), land area in acres, and natural features including water bodies and any other relevant features;
7. A provision that the property owner/developer acknowledges and agrees that failure to comply with the terms of the agreement shall result in a reversion of the zoning of the real property to the zoning existing immediately prior to the agreement, pursuant to the procedure set forth in Idaho Code section 67-6511A and this section;
8. A provision for the use of a financial guarantee for project completion if the proposal is developed in phases;
9. A provision specifying that unless modified or terminated by the city council, pursuant to subsection D of this section, the development agreement and all conditions, terms, duties and obligations included in said development agreement are binding on the owner of the property, each subsequent property owner and every person(s) acquiring interest in said property;
10. Any other conditions attached to the project through the public hearing process.

B. Safeguards: The following safeguards shall be applied:

1. A development agreement shall not prevent the city in subsequent actions related to the property from applying new rules, regulations or policies that do not conflict with commitments applicable to the property as set forth within any duly executed development agreement.
2. If the owner or developer fails to comply with a conditional commitment in a development agreement after completion of construction, the city may deal with the violation through all penalty provisions allowed under city ordinances and state law.
3. When a commitment is required to be satisfied prior to completion of construction, and it is not so satisfied, construction may be halted until compliance is established.

C. Recording: Agreements shall take effect and shall be recorded in the Twin Falls County recorder's office upon the adoption of the ordinance establishing the zoning map amendment by the city council or Twin Falls County board of commissioners if the property is in the area of impact. Should a development agreement be terminated by the city, and the zoning designation upon which the use is based be reversed, a document recording such termination and zoning reversal shall also be recorded by the city in the Twin Falls County recorder's office. An agreement shall be binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel.

D. Modification, Enforcement, And Termination Of Commitments: A development agreement may be modified by request of an applicant or the city only after receiving a recommendation by the planning and zoning commission and by an approval vote of the city council after compliance with the notice and hearing provisions for zoning boundary changes in sections 17.14.050 through 17.14.090 of this chapter. The following are circumstances where a modification may be considered:

1. A change to any of the terms or conditions of the original development agreement is proposed; and/or
2. A substantial change to any established positioning or exterior appearance of any structure over two hundred (200) square feet in area is proposed; and/or
3. A substantial change in infrastructure from what was agreed upon.

A development agreement may be terminated by the city, and the zoning designation granted by the agreement reversed to the zoning that was in effect on the pertinent site before the agreement was executed, upon the failure of the owner, developer, or each subsequent owner or each person acquiring an interest in the subject parcel, to comply with the commitments contained in the development agreement within two (2) years of approval by the city council or Twin Falls County board of commissioners. Exception: The failure to begin or complete site development of all or a portion of a project proposed under a development agreement does not necessarily have to serve as impetus to claim that an owner or developer has failed to comply with their commitments contained in their respective development agreement. Rather, such failure to begin or complete site development of all or a portion of a project proposed under a development agreement, shall serve as impetus to consider termination of an agreement and reversion of zoning. A hearing for termination may be

convened by the city council after complying with the same notice and hearing provisions required for a zoning boundary change and any relevant termination terms of the pertinent agreement. During the hearing, the council may vote to take no action, cause modification of the agreement if the applicant is willing, or terminate the agreement.

The two (2) year period of time for compliance with the commitments contained in the development agreement may be extended by the city for just cause, and upon application for such by the owner, after complying with the notice and hearing provisions required for a zoning boundary change.

In accordance with state law, the establishment of a development agreement and the written commitments contained therein shall provide written consent for the city council to change the zoning of the subject property to its prior designation upon failure of an applicant to comply with the conditions imposed by their agreement. (Ord. 619, 2014)

17.14.040: COMMISSION ACTION:

Zoning districts, zoning subdistricts and overlay districts shall be amended in the following manner:

A. Requests for an amendment to this title shall be submitted to the commission, which shall evaluate the request to determine the extent and nature of the amendment requested;

B. If the request is in accordance with a comprehensive plan, the commission may recommend and the council may adopt or reject the ordinance amendment under the notice and hearing procedures as herein provided; and

C. If the request is not in accordance with the comprehensive plan, the request shall be submitted to the commission or, in its absence, the council, which shall recommend and the council may adopt or reject an amendment to the comprehensive plan under the notice and hearing procedures provided in Idaho Code section 67-6509. After the comprehensive plan has been amended, this title may then be amended as hereinafter provided for. (Ord. 542, 2007)

17.14.050: PUBLIC HEARING:

The commission shall hold a public hearing and make recommendations on proposed zoning amendments. Zoning amendments may consist of text or map revisions.

A. Zoning Title Amendment: The commission, prior to recommending a zoning title amendment to the council, shall conduct at least one public hearing in which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of time and place and the amendment shall be published in the official newspaper or paper of general circulation within the jurisdiction of the city. Following the commission's hearing, if the commission makes a material change from what was presented at the public hearing, further notice and hearing shall be provided before the commission forwards the amendment with its recommendation to the council.

B. Zoning Map Amendment: The commission, prior to recommending a zoning map amendment that is in accordance with a comprehensive plan to the council, shall conduct at least one public hearing at which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of time and place and the amendment shall be published in the "Twin Falls Times News". Additional notice shall be provided by first class mail to property owners within the land being considered; three hundred feet (300') of the external boundaries of the land being considered; and any additional area that may be impacted by the proposed change as determined by the zoning administrator.

The administrator shall sign an affidavit stating that he has notified, in writing, the required property owners as to the purpose of the application, time and place of hearing, residents served, and date of service. A copy of the notification shall be attached to the affidavit.

When notice is required to two hundred (200) or more property owners or residents, notice of said proposed change and the hearing hereon shall be published in the "Twin Falls Times News" once a week for three (3) consecutive weeks, with at least one of said publications being fifteen (15) days prior to the date set for hearing on the proposed change and for which said notice is given. (Ord. 542, 2007)

17.14.060: APPROVAL OR DENIAL OF AMENDMENT:

Within sixty (60) days from the receipt of the proposed amendment, the commission shall transmit its recommendation to the council. The commission may recommend that the amendment be granted as requested, or it may recommend a modification of the amendment requested, or it may recommend that the amendment be denied. The commission shall ensure that any favorable recommendations for amendments are in accordance with the comprehensive plan and established goals and objectives. (Ord. 542, 2007)

17.14.070: ACTION BY COUNCIL:

The council, prior to adopting, revising or rejecting the amendment to this title as recommended by the commission shall conduct at least one public hearing using the same notice and hearing procedures as the commission. Following the council hearing, if said council makes a material change from what was presented at the public hearing, further notice and hearing shall be provided before the council adopts the amendment.

Upon granting or denying an application to amend this title, the council shall specify:

- A. The regulations and standards used in evaluating the application.
- B. The reasons for approval or denial.
- C. The actions, if any, that the applicant could take to obtain a permit.

In the event the council shall approve an amendment, such amendment shall thereafter be made a part of this title upon the

preparation and passage of an ordinance. (Ord. 542, 2007)

17.14.080: RESUBMISSION OF APPLICATION:

No application for a reclassification of any property which has been denied by the council shall be resubmitted in either substantially the same form or with reference to substantially the same premises for the same purposes within a period of one year from the date of such final action; unless there is an amendment in the comprehensive plan which resulted from a change in conditions as applying to the specific property under consideration. (Ord. 542, 2007)

17.14.090: ZONE BOUNDARY CHANGE; PUBLICATION OF NOTICE:

Whenever a zoning district boundary change is contemplated by the city, notice of said proposed zoning district boundary change and the hearing thereon shall be by publication in the "Twin Falls Times News" once a week for three (3) consecutive weeks, with at least one of said publications being fifteen (15) days prior to the date set for hearing on the proposed zoning district boundary change and for which said notice is given. (Ord. 542, 2007)

CHAPTER 17.15

ANNEXATION REGULATIONS

SECTION:

17.15.010: Commission Recommendation Required

17.15.020: Public Hearing; Commission

17.15.030: Public Hearing; Council

17.15.040: Amend Regulations

17.15.010: COMMISSION RECOMMENDATION REQUIRED:

Prior to annexation of an unincorporated area, the council shall request and receive a recommendation from the commission on the proposed plan and zoning ordinance changes for the unincorporated area. The council shall not hold a public hearing, give notice of a proposed hearing, nor take action upon the plan, amendment or repeal until recommendations have been received from the commission. (Ord. 542, 2007)

17.15.020: PUBLIC HEARING; COMMISSION:

A. The commission shall conduct at least one public hearing in which interested persons shall have an opportunity to be heard. The hearing shall not consider comments on annexation and shall be limited to the proposed plan and zoning changes.

B. At least fifteen (15) days prior to the hearing, notice of time and place, and a description of the proposed zoning changes for the unincorporated area shall be published in the "Twin Falls Times News". Additional notice shall be provided by first class mail to property owners within the land being considered; three hundred feet (300') of the external boundaries of the land being considered; and any additional area that may be impacted by the proposed change as determined by the zoning administrator. Notice shall be posted on the premises not less than one week prior to the public hearing.

The administrator shall sign an affidavit stating that he has notified in writing the required property owners as to the purpose of the application, time and place of hearing, residents served, and date of service. A copy of notification shall be attached to the affidavit.

When notice is required to two hundred (200) or more property owners, in lieu of the mail notification, three (3) notices in the "Twin Falls Times News" are sufficient; provided that the third notice appears ten (10) days prior to the public hearing. Following the commission's hearing, if the commission makes a material change from what was presented at the public hearing, further notice and hearing shall be provided before the commission forwards the proposal with its recommendations to the council. (Ord. 542, 2007)

17.15.030: PUBLIC HEARING; COUNCIL:

The council, prior to adoption, amendment or repeal of the plan or zoning ordinance, shall conduct at least one public hearing using the same notice and hearing procedures as the commission.

Following the hearing of the council, if the council makes a material change in the plan or zone, further notice and hearing shall be provided before the council adopts the plan or zone. (Ord. 542, 2007)

17.15.040: AMEND REGULATIONS:

Concurrently or immediately following the adoption of an ordinance of annexation, the council shall amend the planning and zoning regulations as shall be found to be necessary. (Ord. 542, 2007)

CHAPTER 17.16

VACATIONS AND DEDICATIONS

SECTION:

17.16.010: Petition Procedure

17.16.020: Publication And Filing Costs

17.16.010: PETITION PROCEDURE:

A. Petition Required: Any property owner desiring to vacate an existing subdivision, plat or part thereof or within one mile of the boundaries of the city, or within the city "area of impact", public right of way or easement, or desiring to dedicate a street right of way or easement shall complete and file a petition with the administrator.

B. Vacation Petition: The petition for vacation shall set forth the particular circumstances of the request to vacate; contain a legal description of the platted area or property to be vacated and the names of the persons affected thereby. In the case where lots have been sold in a platted area, the petition should include an acknowledged written statement from each of the owners of the aforesaid sold lots indicating whether or not they are in agreement with the proposed vacation.

C. Administration Action: Upon receipt of the completed petition, the administrator shall affix the date of petition acceptance thereon. The administrator shall place the petition on the agenda for consideration at the next regular meeting of the commission.

D. Public Hearing: The commission shall hold a public hearing and make recommendations on all petitions for vacation of an existing subdivision, plat or part thereof inside or within one mile of the boundaries of the city, or within the city "area of impact", and notice of said public hearing shall be given, by certified mail with return receipt, at least ten (10) days prior to the date of the public hearing to all property owners within three hundred feet (300') of the boundaries of the area described in the petition. Such notice of public hearing shall also be published once a week for two (2) consecutive weeks in the official newspaper of the city, the last of which shall not be less than seven (7) days prior to the date of said hearing.

E. Commission Recommendation: Within sixty (60) days from the receipt of the petition for vacation, the commission shall transmit its recommendation to the council. The commission may recommend that the vacation be granted or it may recommend a modification to the vacation, or it may recommend that the vacation be denied.

F. Action By Council: The council, prior to approving, modifying or denying the vacation, shall conduct a public hearing using the same notice and hearing procedures as the commission. Whenever public rights of way or lands are vacated, the council shall provide adjacent property owners with a quitclaim deed for the vacated rights of way in such proportions as are prescribed by law.

G. Dedication Petition: Petition for dedication shall set forth the particular circumstances of the request to dedicate; contain a legal description of the property to be dedicated and the names of the persons affected thereby.

H. Commission Action Not Required: No commission action is required for dedication.

I. Council Action: When considering a petition for dedication procedures, the council may approve, deny or modify the petition. When a dedication is approved, the required street improvements shall be constructed or a bond furnished, assuring the construction, prior to acceptance of the dedication. To complete the acceptance of any dedication of the land, the owner shall furnish to the council a deed describing and conveying such lands to be recorded with the county recorder. (Ord. 542, 2007)

17.16.020: PUBLICATION AND FILING COSTS:

All publications and filing costs shall be at the expense of the petitioner. (Ord. 542, 2007)

CHAPTER 17.17

ADMINISTRATION AND ENFORCEMENT

SECTION:

17.17.010: City Planning Administrator

17.17.020: Planning And Zoning Commission

17.17.030: Bylaws Of Planning And Zoning Commission

17.17.040: Procedures For The Conduct Of Hearings

17.17.050: Mediation

17.17.010: CITY PLANNING ADMINISTRATOR:

There is hereby created the position of city planning administrator. The city planning administrator shall be appointed by the mayor and the appointment confirmed by the council.

The city planning administrator, throughout this title referred to as administrator, shall administer the provisions of this title and provide assistance and guidance to the commission and the council, and in addition, shall have the following duties:

- A. Advise interested persons of the zoning title provisions.
- B. Aid and assist applicants in the preparation and expedition of required applications.
- C. Issue zoning permits, certificates of occupancy, notifications and such similar administrative duties.
- D. Investigate all violations of this title and notify in writing the person responsible for such violations, ordering the action necessary to correct such violation.
- E. Whenever there is doubt as to a classification of use not specifically mentioned in this title, the determination shall be made by the administrator. Such determination shall be based upon detailed description of the proposed use and such other information as may be required. The administrator shall make such investigations as are necessary to compare the nature and characteristics of the proposed use with those of listed uses in the various districts, and shall determine that the use is, in all essentials, pertinent to the objectives of this title of the same character as a use listed as allowed or as a special use permitted in one of such specified district or districts. No use added by such administrative determination shall permit in any district a use that is a special use permitted in such districts or in any less restricted district, nor shall same permit a use that is an allowed use in a less restrictive district. The determination of the administrator shall be final unless an appeal is made as hereinafter provided.
- F. Appeals to the commission concerning the administrator's interpretation and administration of this title may be taken by any person aggrieved by a decision of said administrator. Said appeal shall be taken within fifteen (15) days after the decision of the administrator by filing with the administrator a notice of appeal specifying the grounds upon which the appeal is to be taken. The administrator shall transmit to the commission the appeal and all papers constituting the record upon which the appeal is based.

Upon receipt of an appeal from the action of the administrator the commission shall, after publishing notice in a newspaper and giving written notice to all parties concerned at least fifteen (15) days in advance, hold a public hearing. The commission's determination shall be final unless appealed to the council within the same time and pursuant to the same procedure set forth above. (Ord. 542, 2007)

17.17.020: PLANNING AND ZONING COMMISSION:

There is hereby created a planning and zoning commission and throughout this title is referred to as the commission. The commission shall be constituted and shall function according to the bylaws herein set forth and shall have all of the power or authority to consider ordinances or to recommend amendments to or repeal of any portion of this title. The commission shall provide guidance and assistance to the council, holding public hearings as required by law, and shall grant or deny applications presented to the commission, and shall make timely written recommendations to the council in all matters relating to this title in which the council has final decision making powers. Any action taken by the commission which would be final unless appealed may be reviewed and heard by the council when an appeal is not made but the council determines, within fifteen (15) days of commission action, that there may be significant adverse impact as a result of the commission action. (Ord. 542, 2007)

17.17.030: BYLAWS OF PLANNING AND ZONING COMMISSION:

The following organizational bylaws for the planning and zoning commission are hereby adopted and the same shall be considered an integral part of this title and functional guidelines for said commission:

A. Creation And Purpose: There is hereby created a planning and zoning commission for the city of Kimberly, Idaho. In fulfilling the powers and duties by law conferred upon the commission, the commission shall, among other things, bear in mind the following considerations:

1. The protection of property rights and property values.

2. Public facilities and service costs.
3. The effect on the economy of the city of Kimberly, Idaho.
4. Environmental considerations.
5. Effects on prime agricultural, forestry and mining lands.
6. Organized and planned urban development within the city of Kimberly, Idaho.
7. The avoidance of undue concentration of population and overcrowding of land.
8. Land development compatible with land characteristics.
9. The protection of life and property in areas subject to natural hazards and disasters.
10. The protection of fish, wildlife, and recreational resources.
11. The avoidance of water and air pollution.

B. Membership And Term: The commission shall consist of five (5) voting members, all appointed by the mayor and confirmed by the majority vote of the Council. One (1) member will represent the City of Kimberly Area of Impact. The residency requirement in this paragraph is specifically waived for the member representing the Area of Impact. Each member must have resided in the county for two (2) years and must be a resident of the city prior to his appointment, and must remain a resident of the city during his service on the commission. The term of office for members shall be six (6) years. Vacancies occurring otherwise than through the expiration of terms shall be filled in the same manner as the original appointment. Members may be removed for cause by a majority vote of the council. Members shall be selected without respect to political affiliation.

C. Organization And Meetings:

1. Organization: Each commission shall elect a chairman and create and fill any other office that it may deem necessary. A commission may establish subcommittees, advisory committees, hearing examiners or neighborhood groups to advise and assist in carrying out the responsibilities. A commission may appoint nonvoting ex officio advisors as may be deemed necessary.

2. Rules, Records, And Meetings: Written organization papers or bylaws consistent with this title and other laws of the state for the transaction of business of the commission shall be adopted. A record of meetings, hearings, resolutions, studies, findings, permits and actions shall be open to the public. At least one regular meeting shall be held each month for not less than nine (9) months in a year. A majority of voting members of the commission shall constitute a quorum.

D. Special Meetings: Special meetings of the commission may be held at such times and at such places as agreed on by at least four (4) members at a regularly scheduled public meeting. Written notice of all such special meetings, including the time, date, and purpose of said meetings shall be provided to all members of the commission, including the alternate members. Provided that written notice of said special meeting may be waived by a member at said special meeting, duly entered and registered in the minutes of such meeting.

No business may be conducted at any such special meeting upon any application or request of any citizen except and unless notice of the request and of the special meeting has been published as required by law.

E. Order Of Business: All regular and special meetings of the commission shall be conducted by the chairman in an orderly fashion.

F. Vacancies And Removal Of Commission Members: Vacancies occurring other than through the expiration of appointed terms shall be filled in the same manner as the original appointments. A member appointed to fill an unexpired term shall serve the remainder of the unexpired term and may be appointed to one additional full term.

Members may be removed for cause only by a majority vote of the full council.

G. Conflict Of Interest: A member of the commission shall not participate in any proceeding or action when the member, his employer, or his employee, business partner or associate, his business, or any person related to him by affinity or consanguinity within the second degree, has an economic interest in the procedure or action. (Any meeting duly entered and recorded in the minutes, at which the action is being heard or considered.)

H. Duties Of Commission: Consistent with the purposes of the commission hereinabove set forth, the commission shall have the following duties together with such other duties as are prescribed by law:

1. Initiate proposed amendments to this title and conduct a biennial review of the complete zoning ordinance.
2. Review all proposed amendments to this title and make recommendations to the council.
3. Conduct a comprehensive planning process designed to prepare, implement, and review and update a comprehensive plan as required by law.
4. Review all districts, subdistricts and overlay districts and make recommendations to the council.
5. Grant special use permits as specified in this title and under the conditions as herein specified with such additional safeguards as will uphold the intent of this title.

6. Hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation or determination made by the administrator.

7. Authorize such variances from the terms of this title as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of this title will result in unnecessary hardship, and so that the spirit of this title shall be observed and substantial justice done.

8. Review the city zoning ordinance and any related ordinance and issue an annual report to the city council detailing any necessary changes to said ordinances. Such a report shall be made annually, or such lesser time as the commission desires.

I. Public Hearings: The chairman shall preside over and conduct all public hearings on all matters presented to the commission. No public hearings shall be held except and until notice has been provided the public in conformance with the statutes of the state of Idaho made and provided in such case. At such public hearings, the chairman shall present the matter for discussion and may, before the hearing commences, impose a time limit upon each individual who desires to comment.

At the close of all public hearings, the commission shall discuss and decide as hereinafter provided, the matter at issue and shall commit its decision or recommendation to the council in writing and the reasons therefor. If the application is denied, a roll call vote shall be taken on all issues and recorded in the minutes.

J. Quorum For The Conducting Of Business And Voting: A majority of the membership shall constitute a quorum for the transaction of business at any meeting of the commission. In constituting a quorum, the alternate member shall not be counted unless the alternate member is sitting with full voting privileges as herein provided.

In the event more than one regular member is absent or not sitting due to a conflict of interest, said member shall not be counted for the purposes of constituting a quorum.

Each member shall be entitled to one vote and the acts of a majority of a quorum present at any regular or special meeting shall be the acts of the commission.

K. Final Decisions: All decisions of the commission on issues not requiring the passing of an ordinance shall be final if not appealed to the council within thirty (30) days.

L. Bylaws: These bylaws may and shall be amended in the same manner provided for amendments to this title in general.

M. Expenditures And Staff: With approval of the council, the commission may receive and expend funds, goods and services from the federal government or agencies and instrumentalities of state or local governments or from civic and private sources and may contract with these entities and provide information and reports as necessary to secure aid. Expenditures by a commission shall be within the amounts appropriated by the council. (Ord. 542, 2007; amd. Ord. 666, 5-25-2021)

17.17.040: PROCEDURES FOR THE CONDUCT OF HEARINGS:

The following rules hereby established, shall be observed in the conduct of any public hearing before the city council of the city of Kimberly and the planning and zoning commission of the city of Kimberly, hereinafter referred to as the hearing body. The following rules shall be known as the "Kimberly rules of procedure":

A. Prior to opening the public hearing, the presiding officer shall review the public hearing process.

B. The applicant shall not make any changes to the application or proposal after publication of the notice of public hearing. If the applicant wishes to make a change to the application after the publication of the notice of public hearing, the applicant shall notify the administrator and the hearing shall be canceled, to be rescheduled after the changes are submitted for staff review.

C. All persons permitted to testify or speak before the hearing body at a public hearing shall write their name and residential address thereafter on sign-up sheets to be provided by the city. This rule shall not apply to staff or technical witnesses directed by the presiding officer to give evidence or information to the hearing body.

D. No person shall be permitted to speak before the hearing body at a public hearing until such person has approached the microphone at the podium and been recognized by the presiding officer.

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

F. Any exhibit introduced by any person shall be retained by the hearing body and made a part of the record therein.

G. The applicant will be limited to fifteen (15) minutes for the initial presentation, unless a written request for additional time is submitted prior to the hearing and the hearing body grants the request for additional time. The staff report shall follow the applicant's presentation. Members of the hearing body may then ask questions regarding the application. Testimony from the public may be limited by the presiding officer to no less than two (2) minutes per person. Five (5) or more persons receiving written notice of the public hearing may appoint a person to speak for them, which person shall be limited to fifteen (15) minutes for their presentation. Written comments, including e-mails, shall be either read into the record or displayed to the public on the overhead projector at the completion of public comment. Members of the hearing body may ask questions

of any person who has testified. The applicant will be permitted five (5) minutes for rebuttal. After all testimony has been given, the public hearing shall be closed and no additional information may be requested or given, unless the public hearing is reopened.

H. The speaker shall not be interrupted by members of the hearing body until his time limit has been expended or until he has finished his statement.

I. At the conclusion of a speaker's comments, each member, when recognized by the presiding officer, may be allowed to question the speaker and the speaker shall be limited to answers to the questions asked. The presiding officer may limit the time permitted for the answer. The question and answer period shall not be included in the speaker's time limit, as established.

J. Any person not conforming to any of the above rules may be prohibited from speaking before the public hearing. Should any person refuse to comply with such prohibition, he/she may be asked to leave the hearing, and thereafter removed from the room by order of the presiding officer.

K. The main motion on the application shall be in the affirmative, to approve the application, and may include conditions from the staff report. The main motion may be amended to establish or remove conditions. If the motion passes, the application is approved. If the motion fails, the application is deemed denied. Motions on appeals shall also be in the affirmative to approve the zoning action requested by the applicant.

L. The approval or denial of any application requiring a public hearing provided for in this title shall be based upon standards and criteria which shall be set forth in the comprehensive plan, zoning ordinance, or other appropriate ordinance or regulation of the city.

M. The approval or denial of any application requiring a public hearing provided for in this title shall be in writing in the form of findings of fact and conclusions of law that explain the criteria and standards considered relevant, state the facts relied upon, and explain the justification for the decision based on the criteria, standards and facts set forth. The comprehensive plan, the zoning ordinance, the zoning map, and all prior acts of the hearing body shall be considered, and are a part of the record of any public hearing.

N. For those applications that require an ordinance, staff will prepare and place on the next council agenda an ordinance with implementing language including all conditions as specified in the zoning action. The ordinance shall be published at the next available publication date.

O. A transcribable verbatim record of the public hearing shall be made and kept for a period of not less than six (6) months after a final decision on the matter. Upon written request and within the time period provided for the retention of the record, any person may have the record transcribed at his expense. (Ord. 542, 2007)

17.17.050: MEDIATION:

A. A provision for mediation is now required by the local planning act. The city will mediate disputes in accordance with Idaho Code 67-6510 adopted in 2000. (Ord. 542, 2007)

Chapter 17.18

SCHEDULE OF DEVELOPMENT IMPACT FEES, AND ASSESSMENT CRITERIA

SECTION:

17.18.010: Legislative Findings

17.18.020: Authority And Applicability

17.18.030: Intent

17.18.040: Definitions

17.18.050: Development Impact Fees Imposed

17.18.060: Service Areas

17.18.070: Use Of Development Impact Fee Funds

17.18.080: Refunds Of Development Impact Fees Paid

17.18.090: Credits Against Development Impact Fees

17.18.100: Appeals And Mediation

17.18.200: Enforcement And Collection

17.18.300: Miscellaneous Provisions

17.18.400: Penalty For Violation

17.18.010: LEGISLATIVE FINDINGS:

The city council of the city of Kimberly, Twin Falls County, Idaho, finds that

A. Based on the city of Kimberly comprehensive plan adopted by the city pursuant to chapter 65, title 67, Idaho Code, including, but not limited to, the capital improvements element of the comprehensive plan, and the general governmental goal of protecting the health, safety, and general welfare of the citizens of the city, it is necessary that the city's public improvement plan for:

1. Police;
2. Parks and recreation;
3. Library-community education;
4. Streets-public works;

5. Administration future updates of this plan - fiber optic communication upgrades, be expanded and improved to accommodate new development within the city.

Throughout this chapter, the system improvements for these four (5) types of public improvement plan are sometimes collectively referred to as the "city capital improvement plan.

B. The city has formed the development impact fee advisory committee required by Idaho Code section 67.8205, and that committee has performed the duties required of it pursuant to such statute. The city intends that the committee continue to exist and to perform those duties identified in Idaho Code section 67.8205 that occur following the adoption of development impact fees.

C. New residential and nonresidential development imposes and will impose increasing and excessive demands upon city capital improvement plan.

D. The revenues generated from new residential and nonresidential development often do not generate sufficient funds to provide the necessary improvements of these city capital improvement plan to accommodate new development.

E. New development is expected to continue, and will place ever increasing demands on the city to provide and expand city capital improvement plan to serve new development.

F. The city has planned for the improvement of the city capital improvement plan of the city of Kimberly comprehensive plan.

G. Chapter 82, title 67 of the Idaho Code (the Idaho development impact fee act) authorizes the city to adopt a development impact fee system to offset, recoup, or reimburse the portion of the costs of needed improvements to the city capital improvement plan caused by new development in the city.

H. The creation of an equitable development impact fee system would promote the purposes set forth in the Idaho development impact fee act, in that it would:

1. Ensure that adequate public improvement plan are available to serve new growth and development;
 2. Promote orderly growth and development by establishing uniform standards by which local governments may require that those who benefit from new growth and development pay a proportionate share of the cost of new public improvement plan needed to serve new growth and development;
 3. Ensure that those who benefit from new growth and development are required to pay no more than their proportionate share of the cost of public improvement plan needed to serve new growth and development; and
 4. Prevent duplicate and ad hoc development requirements.
- I. The creation of an equitable development impact fee system would enable the city to accommodate new development, and would assist the city to implement the capital improvements element of the comprehensive plan.
- J. In order to implement an equitable development impact fee system for the city capital improvement plan, the city engaged their City Administrator, P&Z administrator, City Engineer-Public Works Director, Legal Counsel, Police Chief, City Clerk, Librarian and Legal Counsel to prepare an impact fee study for these types of improvements. The resulting document is titled "City of Kimberly, ID Development Impact Fee Study," dated February 22, 2022 is hereby incorporated by reference.
- K. The methodology used in preparing the development impact fee study, when applied through this chapter, complies with all applicable provisions of Idaho law, including those set forth in Idaho statutes sections 67.8204(2), 67.8204(16), 67.8204(23), 67.8207 and 67.8209. The incorporation of the development impact fee study by reference satisfies the requirement in Idaho statutes section 67.8204(16) for a detailed description of the methodology by which the development impact fees were calculated, and the requirement in Idaho Code section 67.8204(24) for a description of acceptable levels of service for system improvements.
- L. The development impact fee study contains the capital improvements element of the city of Kimberly comprehensive plan, and such element has been prepared in conformance with the requirements of chapters 65 and 82 of title 67 of the Idaho Code.
- M. The development impact fee study sets forth reasonable methodologies and analyses for determining the impacts of various types of new development on the city capital improvement plan, and determines the cost of acquiring or constructing the improvements necessary to meet the demands for such improvement plan created by new development.
- N. In accordance with Idaho Code, the development impact fee study was based on actual system improvement costs or reasonable estimates of such costs. In addition, the development impact fee study uses a fee calculation methodology that is net of credits for the present value of revenues that will be generated by new growth and development based on historical funding patterns and that are anticipated to be available to pay for system improvements, including taxes, assessments, user fees, and intergovernmental transfers.
- O. The development impact fees described in this chapter are based on the development impact fee study, and do not exceed the costs of system improvements for city capital improvement plan to serve new development that will pay the development impact fees.
- P. The improvement plan for parks and recreation, streets, police, library, and administration included in the calculation of fees in the development impact fee study will benefit all new residential and nonresidential development throughout the city, and it is therefore appropriate to treat all areas of the city as a single service area for purposes of calculating, collecting, and spending the development impact fees collected from residential and nonresidential development.
- Q. There is both a rational nexus and a rough proportionality between the development impacts created by each type of development covered by this chapter and the development impact fees that such development will be required to pay.
- R. This chapter creates a system by which development impact fees paid by new development will be used to finance, defray, or reimburse a portion of the costs incurred by the city to acquire/construct improvements for city capital improvement plan in ways that benefit the development for which each development impact fee was paid within a reasonable period of time after the development impact fee is paid, and in conformance with Idaho Code section 67.8210.
- S. This chapter creates a system under which development impact fees shall not be used to correct existing deficiencies for any capital improvement plan, or to replace or rehabilitate existing improvements, or to pay for routine operation or maintenance of those improvement plan.
- T. This chapter creates a system under which there shall be no double payment of impact fees, in accordance with Idaho Code section 67.8204(19).
- U. This chapter is consistent with all applicable provisions of chapter 82, title 67, Idaho Code, concerning development impact fee ordinances. (Ord. 671, 2023)

17.18.020: AUTHORITY AND APPLICABILITY:

A. This chapter is enacted pursuant to the city's general police power, the authority granted to the city pursuant to chapters 65 and 82, title 67, Idaho Code, and other applicable laws of the state of Idaho.

B. This chapter shall apply to all areas of the city. (Ord. 671, 2023)

17.18.030: INTENT:

A. This chapter is adopted to be consistent with, and to help implement, the City of Kimberly comprehensive plan, and

particularly the capital improvements element of that plan.

B. The intent of this chapter is to ensure that new development bears a proportionate share of the cost of improvements to City capital improvement plan; to ensure that such proportionate share does not exceed the cost of improvements to such improvement plan required to accommodate new development; and to ensure that funds collected from new development are actually used for improvements to City capital improvement plan that benefit such new development.

C. It is the further intent of this chapter to be consistent with those principles for allocating a fair share of the cost of new capital improvement plan to new development, and for adopting development impact fee ordinances, established by chapter 82, title 67 of the Idaho Code.

D. It is not the intent of this chapter to collect any money from any new development in excess of the actual amount necessary to offset new demands for City capital improvement plan created by such new development.

E. It is not the intent of this chapter that any monies collected from any development impact fee deposited in an impact fee account ever be commingled with monies from a different impact fee account, or ever be used for a development impact fee component different from that for which the fee was paid, or ever be used to correct current deficiencies in the City capital improvement plan or ever be used to replace, rehabilitate, maintain, or operate any City facility. (Ord. 671, 2023)

17.18.040: DEFINITIONS:

For the purpose of this chapter, the following terms shall have the following meanings, some of which are assigned by Idaho Code section 67.8203, as indicated.

ACCOUNTS:	The parks capital improvement plan account, the street capital improvement plan account, the library improvement account, the administration improvement account, the police capital improvement plan account, and the capital improvement plan account, established as part of the Development Impact Fee Trust Fund established in section 17.18.050 of this chapter.
APPROPRIATE:	To legally obligate by contract or otherwise commit to use by appropriation or other official act of a governmental entity. Section 67.8203(2) Idaho Code.
BUILDING PERMIT:	A building permit issued by the building official permitting the construction of a building or structure within the City of Kimberly.
CAPITAL IMPROVEMENT:	An improvement with a useful life of ten (10) years or more, by new construction or other action that increases the service capacity of a public facility. Section 67.8203(3) Idaho Code.
CAPITAL IMPROVEMENTS ELEMENT:	A component of the City of Kimberly comprehensive plan adopted pursuant to chapter 65, title 67, Idaho Code, which component meets the requirements of a capital improvements plan pursuant to chapter 65, title 67 of the Idaho Code. Section 67.8203(4) Idaho Code.
CAPITAL IMPROVEMENTS PLAN:	A plan adopted pursuant to this chapter that identifies capital improvements for which development impact fees may be used as a funding source. Section 67.8203(5) Idaho Code.
CITY:	City of Kimberly, Idaho.
CITY COUNCIL:	The City Council of the City of Kimberly, Idaho.
DEVELOPER:	Any person or legal entity undertaking development, including a party that undertakes the subdivision of property pursuant to Idaho Code sections 50.18.0318 through 50.18.0334. Section 67.8203(6) Idaho Code.
DEVELOPMENT:	Any construction or installation of a building or structure, or any change in use of a building or structure, or any change in the use, character or appearance of land, that creates additional demand and need for public improvement plan or the subdivision of property that would permit any change in the use, character or appearance of land. Section 67.8203(7) Idaho Code.
DEVELOPMENT APPROVAL:	Any written authorization from a governmental entity that authorizes the commencement of a development. Section 67.8203(8) Idaho Code.
	The payment of money imposed as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve development. Section 67.8203(9) Idaho Code. In the context of this chapter, development impact fee means one of the four (4) impact fees defined for the four (4) city capital improvement plan elements, and development impact fees (in the plural) means all four (4) impact fees (or all of them that apply to the proposed development pursuant to this chapter). The term does not include:

DEVELOPMENT IMPACT FEE:	<p>A. A charge or fee to pay the administrative, plan review, or inspection costs associated with permits required for development;</p> <p>B. Connection or hookup charges;</p> <p>C. Availability charges for drainage, sewer, water or transportation for services provided directly to the development; or</p> <p>D. Amounts collected from a developer in a transaction in which the city or another governmental entity has incurred expenses in constructing capital improvements for the development if the owner or developer has agreed to be financially responsible for the construction or installation of the capital improvements, unless a written agreement is made pursuant to Idaho Code section 67.8209(3) for credit or reimbursement.</p>
DEVELOPMENT IMPACT FEE ADMINISTRATOR:	That individual designated is the Planning and Zoning Administrator or designee to administer the development impact fee system established by this chapter.
DEVELOPMENT IMPACT FEE STUDY:	The document entitled "City of Kimberly, Idaho Development Impact Fee Study And Capital Improvement Plans", dated February 22, 2022 approved by the Council, that sets forth reasonable methodologies and analyses for determining the impacts of various types of development on the city capital improvement plan and determines the cost of expansions to those improvement plan necessary to meet the demands created by new development.
DEVELOPMENT IMPACT FEE TRUST FUND:	<p>The trust fund established by section 17.18.070 of this chapter that includes:</p> <p>A. A parks capital improvement plan account;</p> <p>B. A street capital improvement plan account;</p> <p>C. A police capital improvement plan account;</p> <p>D. A library capital improvement plan account; and</p> <p>E. An administration plan account.</p> <p>The development impact fee trust fund is also sometimes called the development impact trust fund.</p>
DEVELOPMENT REQUIREMENT:	A requirement attached to a developmental approval or other governmental action approving or authorizing a particular development project including, but not limited to, a rezoning, which requirement compels the payment, dedication or contribution of goods, services, land, or money as a condition of approval. Section 67.8203(10) Idaho Code.
EXTRAORDINARY COSTS:	Those costs incurred as a result of an extraordinary impact. Section 67.8203(17) Idaho Code.
EXTRAORDINARY IMPACT:	<p>An impact that is reasonably determined by the governmental entity to:</p> <p>A. Result in the need for system improvements, the cost of which will significantly exceed the sum of the development impact fees to be generated from the project or the sum agreed to be paid pursuant to a development agreement as allowed by Idaho Code section 67.8214(2); or</p> <p>B. Result in the need for system improvements that are not identified in the capital improvements plan, Section 67.8203(12) Idaho Code.</p>
FEE PAYER:	A person or legal entity that pays or is required to pay a development impact fee. Taxing districts are expressly included within this definition of "fee payer", unless the taxing district enters into a written agreement with the City of Kimberly that provides otherwise. A fee payer may include a developer.
IMPACT GENERATING LAND DEVELOPMENT:	Land development designed or intended to permit a use of the land that will contain more dwelling units or floor space than the then existing use of the land, or the making of any material change in the use of any structure or land in a manner that increases demand for City capital improvement plan. The type of proposed impact generating land development shall be based on the proposed use of the land.

INDIVIDUAL ASSESSMENT:	A study prepared by a fee payer, calculating the cost of expansions or improvements to one or more of the City capital improvements elements required to serve the fee payer's proposed development, that is based on the established LOS standard, is performed on an average cost (not marginal cost) methodology, that uses the service units and unit construction costs stated in the development impact fee study, and is performed in compliance with any criteria for such studies established by this chapter or by the City.
LAND USE ASSUMPTIONS:	A description of the service area and projections of land uses, densities, intensities, and population in the service area over at least a twenty (20) year period. Section 67.8203(16) Idaho Code.
LEVEL OF SERVICE:	A measure of the relationship between service capacity and service demand for public improvement plan. Section 67.8203(17) Idaho Code.
MANUFACTURED HOME:	A structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one or more sections, that, in the traveling mode, is eight feet (8') or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and that is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure that meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development and complies with the standards established under 42 U.S.C. 5418 et seq. Section 67.8203(18) Idaho Code.
MODULAR BUILDING:	Any building or building component, other than a manufactured or mobile home, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site. Sections 67.8203(19) and 39.4318, Idaho Code.
PARKS CAPITAL IMPROVEMENT PLAN:	Open space lands, as well as buildings, improvements to land, and related equipment meeting the definition of "capital improvement", used for public parks, recreation, open space, and trail improvement plan included in the calculation of the park impact fee in the development impact fee study, and specifically including those related costs included in the definition of "system improvement costs", but not including maintenance, operations, or improvements that do not expand capacity.
PERSON:	An individual, corporation, governmental agency, business trust, estate, partnership, association, two (2) or more persons having a joint or common interest, or any other entity.
POLICE CAPITAL IMPROVEMENT PLAN:	Lands, as well as buildings, improvements to land, and related equipment and vehicles meeting the definition of "capital improvement", used for police improvement plan included in the calculation of the police impact fee in the development impact fee study, and specifically including those related costs included in the definition of "system improvement costs", but not including maintenance, operations, or improvements that do not expand capacity.
PRESENT VALUE:	The total current monetary value of past, present, or future payments, contributions or dedications of goods, services, materials, construction or money. Section 67.8203(20) Idaho Code.
PROJECT:	A particular development on an identified parcel of land. Section 67.8203(21) Idaho Code.
PROJECT IMPROVEMENTS:	Site improvements and improvement plan that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project. Section 67.8203(22) Idaho Code.
PROPORTIONATE SHARE:	That portion of the cost of system improvements determined pursuant to Idaho Code section 67.8207, that reasonably relates to the service demands and needs of the project. Section 67.8203(23) Idaho Code.

PUBLIC IMPROVEMENT PLAN:	<p>A. Water supply production, treatment, storage and distribution improvement plan;</p> <p>B. Wastewater collection, treatment and disposal improvement plan;</p> <p>C. Roads, streets and bridges, including rights of way, traffic signals, landscaping and any local components of State or Federal highways;</p> <p>D. Stormwater collection, retention, detention, treatment and disposal improvement plan, flood control improvement plan, and bank and shore protection and enhancement improvements;</p> <p>E. Parks, open space and recreation areas, and related capital improvements; and</p> <p>F. Public safety improvement plan, including law enforcement, administration and street lighting improvement plan.</p>
RECREATIONAL VEHICLE:	<p>A vehicular type unit primarily designed as temporary quarters for recreational, camping, or travel use, that either has its own motive power or is mounted on or drawn by another vehicle. Section 67.8203(25) Idaho Code.</p>
SERVICE AREA:	<p>Any defined geographic area identified by a governmental entity or by intergovernmental agreement in which specific public improvement plan provide service to development within the area defined, on the basis of sound planning or engineering principles or both. Section 67.8203(26) Idaho Code.</p>
SERVICE UNIT:	<p>A standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements. Section 67.8203(27) Idaho Code.</p>
STREET CAPITAL IMPROVEMENT PLAN:	<p>Lands, improvements to land, and equipment meeting the definition of "capital improvement," used for intersection improvements (signals, roundabouts, pedestrian crossings, etc.) and for improvements to arterial and collector roads (bridges, lanes, shoulders, pedestrian improvement plan, etc.) with the purpose of expanding capacity, included in the calculation of the street impact fee in the development impact fee study, and consistent with the capital improvements element, and specifically including those related costs included in the definition of "system improvement costs," but not including maintenance, operations, or improvements that do not expand capacity.</p>
SUCCESSOR IN INTEREST:	<p>A "person," as defined by this chapter, who gains a fee simple interest in land for which a development impact fee is paid or a credit is approved pursuant to the terms of this chapter.</p>
SYSTEM IMPROVEMENT COSTS:	<p>Costs incurred for construction or reconstruction of system improvements, including design, acquisition, engineering and other costs attributable thereto, and also including, without limitation, the type of costs described in Idaho Code section 50.18.0702(h), to provide additional public improvement plan needed to serve new growth and development. For clarification, system improvement costs do not include:</p> <p>A. Construction, acquisition or expansion of public improvement plan other than capital improvements identified in the capital improvements plan;</p> <p>B. Repair, operation or maintenance of existing or new capital improvements;</p> <p>C. Upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;</p> <p>D. Upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development;</p> <p>E. Administrative and operating costs of the governmental entity unless such costs are attributable to development of the capital improvement plan, as provided in Idaho Code section 67.8208; or</p> <p>F. Principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the governmental entity to finance capital improvements identified in the capital improvements plan, Section 67.8203(29) Idaho Code.</p>

SYSTEM IMPROVEMENTS:	In contrast to project improvements, means capital improvements to public improvement plan that are designed to provide service to a service area including, without limitation, the type of improvements described in Idaho Code section 50.18.0703, Section 67.8203(28) Idaho Code. For the purposes of this chapter, the system improvements are the park capital improvement plan, street capital improvement plan, administration capital improvement plan and police capital improvement plan. (Ord. 671, 2022)
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17.18.050: DEVELOPMENT IMPACT FEES IMPOSED:

A. Fee Obligation

1. After the effective date hereof, any person who commences any impact generating land development, except those exempted pursuant to subsection (B) of this section, shall be obligated to pay development impact fees upon commencement of such activity. The amount of the development impact fees shall be determined in accordance with this chapter.

2. If the fee payer is applying for an extension of a permit issued previously, then the development impact fees required to be paid shall be the net increase between the development impact fees applicable at the time of the current permit application and any development impact fees previously paid pursuant to this chapter to finance similar types of system improvements to accommodate demands created by the same development.

3. If the fee payer is applying for a permit to allow a change of use or for the expansion, redevelopment, or modification of an existing development, the development impact fees required to be paid shall be based on the net increase in the development impact fees for the new use as compared to the previous use.

B. Exemptions The following types of development shall be exempted from payment of the development impact fees. Any claim for exemption shall be made no later than the time when the applicant applies for the first building permit for the proposed development that creates the obligation to pay the development impact fees, and any claim for exemption not made at or before that time shall have been waived. The P & Z Administrator or a designee shall determine the validity of any claim for exemption pursuant to the criteria set forth below.

1. Rebuilding the same amount of floor space of a structure that was destroyed by fire or other catastrophe, providing the structure is rebuilt and ready for occupancy within two (2) years of its destruction;

2. Remodeling or repairing a structure that does not increase the number of service units;

3. Replacing a residential unit, including a manufactured home, with another residential unit on the same lot, provided that the number of service units does not increase;

4. Constructing an addition on a residential structure that does not increase the number of service units;

5. Placing a temporary construction trailer or office on a lot;

6. Adding uses that are typically accessory to residential uses, such as tennis courts or clubhouses, unless it can be clearly demonstrated that the use creates a significant impact on the capacity of system improvements;

7. The installation of a modular building, manufactured home, or recreational vehicle if the fee payer can demonstrate by documentation such as utility bills and tax records that either:

a. A modular building, manufactured home, or recreational vehicle was legally in place on the lot or space prior to the effective date hereof; or

b. A development impact fee has been paid previously for the installation of a modular building, manufactured home or recreational vehicle on that same lot or space;

8. Projects for which a development impact fee for each type of public facility covered by this chapter has previously been paid in an amount that equals or exceeds the development impact fee that would be required by this chapter;

9. Projects built by the Federal government or the State government; and

10. Projects which meet all of the following criteria may apply for an individualized assessment pursuant to subsection C4 of this section, except that the applicant may simply rely on the documented project history rather than retaining a qualified professional to prepare the individual assessment;

a. A development agreement was entered into by the project developer and the City setting forth the entitlements and obligations of the developer, which agreement was approved by the City Council prior to February 22, 2022; and

b. The final plat for the development, or site plan attached to the development agreement, was approved by the City prior to February 22, 2022; and

c. The development, through the terms of the development agreement, or otherwise, has built, or is obligated to build public improvement plan, which improvement plan are not "project improvements", in excess of the amount that would be collected under this chapter.

C. Fee Table and Calculation Of Amount Of Development Impact Fees

1. Fee Table:

Police fees			
	Residential	\$484.00	per dwelling unit
	Nonresidential	Retail \$0.22	per square foot
		Office \$0.22	
		LI \$0.22	
Police vehicles Residential		\$85.00	per dwelling unit
Police vehicles Nonresidential		Retail \$0.22	per square foot
		Office \$0.22	
		LI \$0.22	
Admin			
	Residential	\$50.00	per dwelling unit
	Nonresidential	Retail \$0.45	per square foot
		Office \$1.50	
		LI \$3.00	
Parks fees			
	Residential	\$221.00	per dwelling unit
	Nonresidential	n/a	
Street fees			
	Single family	\$270.00	per dwelling unit
	Retail	\$0.94	per square foot
	Office	\$0.94	per square foot
	Industrial	\$0.54	per square foot
	Hwy 30-3400 Int.	\$101.00	per dwelling unit
Library	Residential	\$70.00	per dwelling unit

This fee schedule shall be in effect thirty (30) days after the publication of this Ordinance.

On January 1, 2023, and on January 1 of each year thereafter in which an impact fee is in effect, the amount of the impact fee shall be automatically adjusted to account for year over year inflation increases in the cost of providing police, admin., parks and recreation, and street public improvement plan to serve new development utilizing the latest available municipal cost index as published by "American Cities and County Magazine." Nothing herein shall prevent the city from electing to maintain a then existing police, admin., library, parks and recreation, and street impact fee or from electing to waive the inflation adjustment for any given fiscal year, or years. Any such action to determine an inflation factor shall be by city council resolution.

2. Levels Of Service: Current data used to determine levels of service are as follows:

- a. 02-21-22, Police level of service - Kimberly city limits - 8.35 officers, 1 part time records clerk - 2020 Census population = 4,626 officers = 8.35 officers per 554 population.
- b. Parks and recreation level of service = 1 part time mower and 1 maintenance employee for 8.58 acres of park land. Developed park recreation open space = 8.58 acres per 539 population.
- c. City Street level of service from the 2019 Master Transportation Plan depicts a level of service D on hwy. 30 near the 30-Polk intersection and South Main-Elementary school access and service level B and C on remaining arterials and collectors at the P.M. peak period.

3. Using The Fee Table: Development impact fees shall be calculated using the fee table above (or as subsequently amended by Council per automatic adjustments criteria above) unless a) the fee payer requests an individualized assessment pursuant to subsection (C) 4 of this section, or b) the City designates the proposed development as a development of extraordinary impact in writing to the fee payer, in which case the provisions of subsection (C)5 of this section shall apply.

a. Any person who commences any new impact generating land development, except those exempted pursuant to this chapter, or those preparing an individual assessment pursuant to this chapter, shall pay all development impact fees

applicable to the proposed development, as determined by the fee table. Persons choosing to pay applicable development impact fees pursuant to the fee table shall be deemed to have made a full and complete payment of the project's proportionate share of City capital improvement plan costs for system improvements, except as noted in subsection 17.18.090 of this chapter.

b. If the proposed development is of a type not listed in the fee table, then the City shall apply the development impact fees applicable to the most nearly comparable type of land use listed in the fee table. The determination as to which type of development is most nearly comparable to the proposed development shall be made by referring to traffic generation rates for land uses published by the Institute of Transportation Engineers, and by identifying that land use listed in the fee table whose traffic generation rates are most comparable to the proposed land use. If no traffic generation rate for the proposed land use appears in a publication of the Institute of Transportation Engineers, or if it is not possible to determine which land use listed in the fee table has the most comparable traffic generation rates, then the most nearly comparable land use shall be determined by the P & Z Administrator based on comparison of other characteristics of the proposed land use (including employment or occupancy, the size of the facility, and the amount of parking to be provided) with the characteristics of those land uses listed in the fee table.

c. If the proposed development includes a mix of those uses listed in the fee table, then the development impact fees shall be determined by adding up the development impact fees that would be payable for each use as if it were a freestanding use pursuant to the fee table. For example, development impact fees for a church without ancillary improvement plan will be determined through the process in subsection (C)3.b of this section; but development impact fees for a church with a daycare center shall be established by adding 1) fees determined through the process in subsection (C)3.b. of this section for the church itself, and 2) fees identified in the fee table for the daycare portion of the facility.

d. If the fee payer requests that the city calculate the amount of development impact fees due pursuant to the fee table, the city shall notify the fee payer of such amount within thirty (30) days after receipt of that request.

4. Using An Individual Assessment:

a. In lieu of calculating the amount(s) of development impact fees by reference to the fee table, a fee payer may request that the amount of the required development impact fee be determined through an individual assessment for the proposed development. The individual assessment process shall permit consideration of studies, data, and any other relevant information submitted by the fee payer to adjust the amount of the fee. If a fee payer requests the use of an individual assessment, the fee payer shall be responsible for retaining a qualified professional to prepare the individual assessment that complies with the requirements of this chapter, at the fee payer's expense. The fee payer shall bear the burden of proving by clear and convincing evidence that the resulting individual assessment is a more accurate measure of its proportionate share of the cost of city capital improvements, based on the city's adopted levels of service, than the development impact fees that would otherwise be due pursuant to the fee table. The city may hire a professional consultant to review any independent impact fee calculation study on behalf of the city, and may charge the reasonable costs of such review to the fee payer.

b. Each individual assessment shall be based on the same level of service standards and unit costs for system improvements used in the development impact fee study, shall use an average cost (not a marginal cost) methodology, and shall document the relevant methodologies and assumptions used.

c. An application for an individual assessment may be submitted at any time that the number of dwelling units in the proposed development and the types and amounts of development in each nonresidential category identified in the fee table is known. The city shall issue a decision within thirty (30) days following receipt of a completed application for individual assessment and supporting information from the applicant, so as not to unreasonably delay subsequent applications for or issuance of building permits.

d. Each individual assessment shall be submitted to the P & Z Administrator or a designee, and may be accepted, rejected, or accepted with modifications by the P & Z Administrator or a designee as the basis for calculating development impact fees. The criteria for acceptance, rejection, or acceptance with modifications shall be whether the individual assessment is a more accurate measure of demand for the city capital improvements element(s) created by the proposed development, or the costs of those improvement plan, than the applicable fee shown in the fee table.

e. The decision by the P & Z Administrator or designee on an application for an individual assessment shall include an explanation of the calculation of the impact fee, shall specify the system improvement(s) for which the impact fee is intended to be used, and shall include an explanation of those factors identified in Idaho Code section 67.8207.

f. If an individual assessment is accepted or accepted with modifications by the P & Z Administrator or a designee then the development impact fees due under this chapter for such development shall be calculated according to such individual assessment.

5. Extraordinary Impacts:

a. If the city determines that a proposed development generates extraordinary impacts that will result in extraordinary costs, the city will notify the fee payer of such determination within thirty (30) days after receipt of a request for a certification pursuant to subsection D of this section or a request for a building permit or development approval, whichever occurs first. Such notice shall include a statement that the potential impacts of such development on system improvements are not adequately addressed by the development impact fee study, and that a supplemental study at the fee payer's expense will be required.

b. Circumstances that may lead to a determination of extraordinary impacts include, but are not limited to 1) an indication that traffic generation from the proposed development or activity will exceed those typical for a facility or activity of its type, 2) an indication that employment generated by the development or activity will exceed those typical for a facility or activity of its type, 3) an indication the assumptions used in the development impact fee study underestimate the level of activity or impact on city capital improvement plan from the proposed development or activity, or 4) an indication that levels of calls for law enforcement, fire, or emergency services from developments or activities owned or operated by the fee payer or its agents exceed the assumptions used in the development impact fee study.

c. Within thirty (30) days following the designation of a development with extraordinary impacts, the city shall meet with the fee payer to discuss whether the fee payer wants to 1) pay for the supplemental study necessary to determine the system improvement costs related to the proposed development, or 2) modify the proposal to avoid generating extraordinary impacts, or 3) withdraw the application for certification, building permit, or development approval.

d. If the fee payer agrees to pay for the supplemental study required to document the proposed development's proportionate share of system improvement costs, then the city and the fee payer shall jointly select an individual or organization acceptable to both to perform such study, the fee payer shall enter into a written agreement with such individual or organization to pay the costs of such study. Such agreement shall require the supplemental study to be completed within thirty (30) days of such written agreement, unless the fee payer agrees to a longer time.

e. Once the study has been completed, the fee payer may choose to 1) pay the proportionate share of system improvement costs documented by the supplemental study, or 2) modify the proposed development to reduce such costs, or 3) withdraw the application. If the fee payer agrees to pay the system improvement costs documented in the supplemental study, that agreement shall be reduced to writing between the city and the fee payer prior to review and consideration of any application for any development approval or building permit related to the proposed development.

f. Notwithstanding any agreement by the fee payer to pay the proportionate share of system improvement costs documented by the supplemental study, nothing in this chapter shall obligate the city to approve development that results in an extraordinary impact.

D. Certification After the development impact fees due for a proposed development have been calculated pursuant to the fee table or the individual assessment, the fee payer may request the P & Z Administrator or a designee for a certification of the amount of development impact fees due for that development. Within thirty (30) days after receiving such request, the P & Z Administrator or a designee shall issue a written certification of the amount of development impact fees due for the proposed development. Such certification shall establish the development impact fee so long as there is no material change to the particular project as identified in the individual assessment application, or the impact fee schedule set forth in the fee table. The certification shall include an explanation of the calculation of the impact fee including an explanation of factors considered under Idaho Code section 67.8207 and shall also specify the system improvement(s) for which the development impact fee is intended to be used.

E. Payment Of Fees:

1. All development impact fees due shall be paid to the city at the following times.

- a. If a building permit or building placement permit is required, then at the time such permit is issued;
- b. If no building permit or building placement permit is required, then at the time that construction commences; or
- c. At such other time as the applicant and the city have agreed to in writing, pursuant to applicable Idaho law.

2. All monies paid by a fee payer pursuant to the fee table shall be identified as development impact fees and shall be promptly deposited in the appropriate account(s) described in section 17.18.070 of this chapter.

3. A fee payer may pay a development impact fee under protest in order to avoid delay in the issuance of a building permit or development approval. A fee payer making a payment under protest shall not be estopped from exercising the right of appeal provided in section 17.18.100 of this chapter, nor shall such fee payer be estopped from receiving a refund of any amount deemed to have been illegally collected. (Ord. 671, 2022)

17.18.060: SERVICE AREAS:

The following service areas are established for each development impact fee element:

A. The park impact fee service area shall include the entire city, and park impact fees may be expended for park capital improvement plan located anywhere in the city.

B. The street impact fee service area shall include the entire city, and street impact fees may be expended for street capital purchases depicted in the development impact fee study.

C. The police impact fee service area shall include the entire city, and police impact fees may be expended for police capital improvement plan located anywhere in the city. (Ord. 671, 2022)

17.18.070: USE OF DEVELOPMENT IMPACT FEE FUNDS:

A. Establishment Of Trust Fund And Accounts:

1. A development impact fee trust fund (the "trust fund") is hereby established for the purpose of ensuring that the development impact fees collected pursuant to this chapter are used to address impacts reasonably attributable to new development for which the development impact fees are paid.

2. The trust fund shall be divided into six (6) accounts, a police capital improvement plan account, administration-fiber optic infrastructure account, a library account, a park recreation capital improvement plan account, a hwy 30/3400 account and a street capital improvement plan account.

3. The development impact fee trust fund accounts shall be maintained in an interest-bearing accounts. The interest earned on each account shall not be governed by Idaho Code section 57.18.027, but shall be considered funds of the account and shall be subject to the same restrictions on uses of funds as the development impact fees on which the interest is generated.

4. Monies in each account shall be spent in the order collected, on a first in/first out basis.

B. Deposit And Management Of The Trust Fund:

1. All development impact fees collected by the city pursuant to this chapter shall be promptly deposited into the appropriate account in the trust fund accounts.

2. The city shall maintain accounting records for each account.

3. As part of its annual audit process, the city shall prepare an annual report:

a. Describing the amount of all development impact fees collected, appropriated, or spent during the preceding year for each capital improvements element and service area; and

b. Describing the percentage of taxes and revenues from sources other than development impact fees collected, appropriated or spent for system improvements during the preceding year by capital improvements element and service area.

C. Limitations On Expenditures Of Fees In Accounts:

1. **Park And Recreation Impact Fee:** The monies collected from the park and recreation impact fee shall be used only to plan for, acquire, or construct park and recreation capital improvement plan, or to pay debt service on any portion of any future general obligation bond issue or revenue bond issue or similar instrument used to finance the acquisition or construction of park capital improvement plan within the city, or to reimburse the city for such costs.

2. **Street Impact Fee:** The monies collected from the street impact fee shall be used only to plan for and acquire or construct street capital improvement plan, or to pay debt service on any portion of any future general obligation bond issue or revenue bond issue or similar instrument used to finance the acquisition or construction of street capital improvement plan within the city, or to reimburse the city for such costs.

3. **Police Impact Fee:** The monies collected from the police impact fee shall be used only to plan for and acquire or construct police capital improvement plan, or to pay debt service on any portion of any future general obligation bond issue or revenue bond issue or similar instrument used to finance the acquisition or construction of public safety capital improvement plan within the city, or to reimburse the city for such costs.

4. **Administration Impact Fee:** The monies collected from the Administration impact fee shall be used only to update the development impact fee plan and for capital improvements to city hall for connection to fiber optic communications and associated equipment, in the capital improvement plan within the city, or to reimburse the city for such costs. Development impact fees shall not be used to pay for any purpose that does not involve system improvements that create additional service available to serve new growth and development.

5. **Library Impact Fee:** The monies collected from the library impact fee shall be used only to construct additional reading-educational space for enhanced summer reading programs at the north side of the existing library facility and associated equipment, in the capital improvement plan within the city, or to reimburse the city for such costs. Development impact fees shall not be used to pay for any purpose that does not involve system improvements that create additional service available to serve new growth and development.

6. **HWY 30/3400 Impact Fee:** The monies collected from the hwy 30/3400 impact fee shall be used only to plan for and acquire or construct street capital improvements, or similar instrument used to finance the acquisition or construction of street capital improvement plan within the city, or to reimburse the city for such costs. (Ord. 671, 2022)

17.18.080: REFUNDS OF DEVELOPMENT IMPACT FEES PAID:

A. **Duty To Refund:** Development impact fees shall be refunded to the fee payer, or to a successor in interest, in the following circumstances

1. Service is available but never provided;

2. A building permit, or permit for installation of a manufactured home, is denied or abandoned;

3. The fee payer pays a development impact fee under protest and a subsequent review of the fee paid or the completion of an individual assessment determines that the fee paid exceeded the proportionate share to which the governmental entity was entitled to receive; or

4. The city has collected a development impact fee and has failed to appropriate or expend the collected fees pursuant to subsection B of this section.

B. **Failure To Encumber Trust Funds or Commence Construction** any development impact fees paid shall be refunded if

the city has failed to commence construction of system improvements in accordance with this chapter, or to appropriate funds for such construction, within eight (8) years after the date on which such fee was paid. Any refund due shall be paid to the owner of record of the parcel for which the development impact fees were paid. The city may hold development impact fees for longer than eight (8) years if it identifies in writing 1) a reasonable cause why the fees should be held longer than eight (8) years; and 2) an anticipated date by which the fees will be expended, but in no event greater than eleven (11) years from the date they were collected. If the city complies with the previous sentence, then any development impact fees identified in such writing shall be refunded to the fee payer if the city has failed to commence construction of system improvements in accordance with this chapter, or to appropriate funds for such construction on or before the date identified in such writing.

C. No Refund Due: Later Changes to Development After a development impact fee has been paid pursuant to this chapter and after a certificate of occupancy has been issued, no refund of any part of such fee shall be made if the project for which the fee was paid is later demolished, destroyed, or is altered, reconstructed, or reconfigured so as to reduce the size of the project or the number of units in the project.

D. Interest Each refund shall include a refund of interest at one half (1/2) the legal rate provided for in Idaho Code section 28.22.18.004 from the date on which the fee was originally paid.

E. Timing The city shall make a determination of whether a refund is due within thirty (30) days after receipt of a written request for a refund from the owner of record of the property for which the fee was paid. When the right to a refund exists, the city shall send the refund to the owner of record within ninety (90) days after the city determines that a refund is due.

F. Standing Any person entitled to a refund shall have standing to sue for a refund under the provisions of this chapter if there has not been a timely payment of a refund pursuant to subsections A through E of this section. (Ord. 671, 2022)

17.18.090: CREDITS AGAINST DEVELOPMENT IMPACT FEES:

A. Credits To Be Issued When a developer, or their predecessor in title or interest, has constructed system improvements of the same category as a city capital improvements element, or contributed or dedicated land or money towards the completion of system improvements of the same category as a city capital improvements element, and the city has accepted such construction, contribution, or dedication, the city shall issue a credit against the development impact fees otherwise due for the same city capital improvements element in connection with the proposed development, as set forth in this section. Credit shall be issued regardless of whether the contribution or dedication to system improvements was required by the city as a condition of development approval or was offered by the developer and accepted by the city in writing, and regardless of whether the contribution or dedication was contributed by the developer or by a local improvement district controlled by the developer.

B. Limitations Credits against development impact fees shall not be given for:

1. Project improvements; or
2. Any construction, contribution, or dedication not agreed to in writing by the city prior to commencement of the construction, contribution, or dedication.

Credits issued for one city capital improvements element may not be used to reduce development impact fees due for a different capital improvements element. No credits shall be issued for system improvements contributed or dedicated prior to the effective date hereof.

C. Valuation Of Credit At Present Value:

1. Land Credit for qualifying land dedications shall, at the fee payer's option, be valued at the present value of:
 - a. One hundred percent (100%) of the most recent assessed value for such land as shown in the records of the county assessor; or
 - b. That fair market value established by a private appraiser acceptable to the city in an appraisal paid for by the fee payer.

In the event that city and the fee payer cannot agree upon an appraiser, either may petition the district court for appointment of an appraiser.

2. Improvements Credit for qualifying acquisition or construction of system improvements shall be valued by the city at the present value of such improvements based on complete engineering drawings, specifications, and construction cost estimates submitted by the fee payer to the city. The city shall determine the amount of credit due based on the information submitted, or, if it determines that such information is inaccurate or unreliable, then on alternative engineering or construction costs acceptable to the city as a more accurate measure of the value of the offered system improvements to the city.

D. When Credits Become Effective

1. Approved credits for land dedications shall become effective when the land has been conveyed to the city in a form acceptable to the city at no cost to the city, and has been accepted by the city. When such conditions have been met, the city shall note that fact in its records. Upon request of the fee payer, the city shall issue a letter stating the amount of credit available.

2. Approved credits for acquisition or construction of system improvements shall generally become effective when:

- a. All required construction has been completed and has been accepted by the city;
- b. A suitable maintenance and warranty bond has been received and approved by the city; and
- c. All design, construction, inspection, testing, bonding, and acceptance procedures have been completed in compliance with all applicable requirements of the city and the State of Idaho.

Approved credits for the construction of system improvements may become effective at an earlier date if the fee payer posts security in the form of a performance bond, irrevocable letter of credit, or escrow agreement and the amount and terms of such security are accepted by the P & Z Administrator or a designee. At a minimum, such security must be in the amount of the approved credit or an amount determined to be adequate to allow the city to construct the system improvements for which the credit was given, whichever is higher. When such conditions have been met, the city shall note that fact in its records. Upon request of the fee payer, the city shall issue a letter stating the amount of credit available.

E. Application Procedures

1. In order to obtain a credit against development impact fees otherwise due, a fee payer shall submit a written offer to dedicate to the P & Z Administrator or a designee for specific parcels of qualifying land or a written offer to contribute or construct specific system improvements to the city capital improvement plan in accordance with all applicable state or city design and construction standards, and shall specifically request a credit against the type of development impact fees for which the land dedication or system improvement is offered. No request for a credit against development impact fees shall be accepted unless a written offer to dedicate, contribute, or construct has previously been approved in writing by the city.

2. After receipt of the request for credit, the P & Z Administrator or a designee shall review the request and determine whether the land or system improvements offered for credit will reduce the costs of providing city capital improvement plan by an amount at least equal to the value of the credit. If the P & Z Administrator or a designee determines that the offered credit satisfies that criterion, then the credit shall be issued. The city shall complete its review and determination of an application for credit within thirty (30) days after receipt of an application for credit.

F. **Transferability Of Credit:** A credit may only be transferred by the fee payer that has received the credit to a successor in interest pursuant to the terms of this chapter. The credit may be used only to offset development impact fees for the same city capital improvements element for which the credit was issued. Credits shall be transferred by any written instrument clearly identifying which credits issued under this chapter are being transferred, the dollar amount of the credit being transferred, and the city capital improvements element for which the credit was issued. The instrument of transfer shall be signed by both the transferor and transferee, and a copy of the document shall be delivered to the P & Z Administrator or a designee for documentation of the change in ownership before it shall become effective.

G. **Accounting Of Credits:** Each time a request to use approved credits is presented to the city, the city shall reduce the amount of the development impact fees for the type of fee for which the credit is provided, and shall note in the city's records the amount of credit remaining, if any. Upon request of the fee payer or successor in interest to whom the credit was issued, the city shall issue a letter stating the amount of credit remaining.

H. **Credits Exceeding Fee Amounts Due:** If the credit due to a fee payer pursuant to subsections A through G of this section exceeds the development impact fee that would otherwise be due from the fee payer pursuant to section 17.18.90 of this chapter (whether calculated through the fee table in section 17.18.90 of this chapter or through an independent assessment), the fee payer may choose to receive such credit in the form of either 1) a credit against future development impact fees due for the same capital improvements element, or 2) a reimbursement from development impact fees paid by future development that impacts the system improvements contributed or dedicated by the fee payer. Unless otherwise stated in an agreement with the fee payer, the city shall be under no obligation to use any city funds, other than development impact fees paid by other development for the same city capital improvements element, to reimburse the fee payer for any credit in excess of development impact fees due.

I. **Written Agreement Required:** If credit or reimbursement is due to the fee payer pursuant to this section, the city shall enter into a written agreement with the fee payer, negotiated in good faith, prior to the contribution, dedication, or funding of the system improvements giving rise to the credit. The agreement shall provide for the amount of credit or the amount, time and form of reimbursement, and shall have a term not exceeding ten (10) years. (Ord. 671, 2022)

17.18.100: APPEALS AND MEDIATION:

Disputes regarding decisions made in the application of this chapter shall be resolved through appeal to the city council, or through mediation, as set forth below

A. Right To Appeal

1. Any fee payer that is or may be obligated to pay a development impact fee, or that claims a right to receive a refund, reimbursement, or credit under this chapter, and who is dissatisfied with a decision made by the P & Z Administrator or a designee in applying this chapter, shall first request that the P & Z Administrator reconsider the decision. A fee payer requesting reconsideration shall state in writing to the P & Z Administrator the reasons why the fee payer believes the decision to be in error. The P & Z Administrator shall issue a written decision confirming or modifying the decision within fifteen (15) days of receipt of a written request for reconsideration.

2. Any fee payer that is dissatisfied with the decision of the P & Z Administrator upon reconsideration pursuant to subsection A1 of this section, may appeal such decision to the city council. The fee payer shall have the burden of proving by clear and convincing evidence that the decision was in error.

3. In order to pursue the appeal described in subsection A2 of this section, the fee payer shall file a written notice of the appeal with the P & Z Administrator or a designee within thirty (30) days after the date of the reconsideration, or the date on which the fee payer submitted a payment of development impact fees under protest, whichever is later. Such written application shall include a statement describing why the fee payer believes that the decision was in error, together with copies of any documents that the fee payer believes support the claim.

4. The city council shall hear the appeal within sixty (60) days after receipt of a written notice of appeal. The fee payer shall have a right to be present and to present evidence in support of the appeal. The P & Z Administrator or designee who made the decision under appeal shall likewise have the right to be present and to present evidence in support of the decision. The criteria to be used by the city council in considering the appeal shall be whether: a) the decision or interpretation made by the P & Z Administrator after reconsideration, or b) the alternative decision or interpretation offered by the fee payer more accurately reflects the proportionate share of the costs of system improvements to city capital improvement plan necessary to serve new development and whether this chapter has been correctly applied. The city council shall issue a decision upholding, reversing, or modifying the decision being appealed within thirty (30) days after hearing the appeal.

B. Mediation:

1. Any fee payer that has a disagreement with the city regarding a development impact fee that is or may be due for a proposed development pursuant to this chapter, may enter into a voluntary agreement with the city to subject the disagreement to mediation by a qualified independent party acceptable to both the fee payer and the city.

2. Mediation may take place at any time following the filing of a timely appeal pursuant to this section, or as an alternative to such appeal, provided that the request for mediation is filed no later than the last date on which a timely appeal could be filed pursuant to subsection A of this section.

3. Participation in mediation does not preclude the fee payer from pursuing other remedies provided for in subsection A of this section.

4. If mediation is requested, any related mediation costs shall be shared equally by the fee payer and the city, and a written agreement regarding the payment of such costs shall be executed prior to the commencement of mediation.

5. In the event that mediation does not resolve the issues between the parties, the fee payer retains all rights to seek relief from a court of competent jurisdiction. (Ord. 671, 2022)

17.18.200: ENFORCEMENT AND COLLECTION:

When any development impact fee is due pursuant to the terms of this chapter, or pursuant to the terms of any written agreement between a fee payer and the city authorized by this chapter, and such fee has not been paid in a timely manner, the city may exercise any or all of the following powers, in any combination, to enforce the collection of the fee:

A. The city may withhold building permits or other development approvals related to the development for which the fee is due until all development impact fees due have been paid.

B. The city may withhold utility services from the development for which the fee is due until all development impact fees due have been paid.

C. The city may add to the amount of the fee interest at the legal rate provided for in Idaho Code section 28.22.18.004 from the date on which the fee was due.

D. The city may impose liens for failure to timely pay a development impact fee following procedures contained in chapter 5, title 45, Idaho Code. (Ord. 671, 2022)

17.18.300: MISCELLANEOUS PROVISIONS:

A. Nothing in this chapter shall be construed to create any additional right to develop real property or diminish the power of the city in regulating the orderly development of real property.

B. Nothing in this chapter shall obligate the city to approve any development request that may reasonably be expected to reduce levels of service below minimum acceptable levels established in the development impact fee study.

C. Nothing in this chapter shall restrict or diminish the power of the city:

1. To impose reasonable conditions on the annexation of any property to the city in accordance with Idaho Code, including conditions for recovery of project or system improvement costs required as a result of such voluntary annexation, or

2. To negotiate and execute development agreements that may impose additional conditions on development, including the recovery of project or system improvement costs, either in connection with a proposed annexation or in connection with any other development within the city.

D. Notwithstanding any other provision of this chapter, that portion of a project for which a complete application for a building permit has been received by the city prior to the effective date hereof shall not be subject to the development impact fees imposed by this chapter. If the resulting building permit is later revised or replaced after the effective date hereof, and the new building permit reflects a development density, intensity, or number of units more than ten percent (10%) higher than that reflected in the original building permit, then development impact fees may be charged on the difference in density, intensity, or number of units between the original and the revised or replacement building permit.

E. Nothing in this chapter shall restrict the city from requiring fee payer or an applicant for a development approval or building permit to construct reasonable project improvements required to serve the applicant's project, provided that such request does not duplicate a system improvement in a category for which costs were included in the development impact fee study.

F. Any monies, including any accrued interest not assigned to specific system improvements within such capital improvements program and not expended pursuant to section 17.18.070 of this chapter or refunded pursuant to section 17.18.070 of this chapter shall be retained in the same account until the next fiscal year.

G. The city shall be entitled to collect and retain a surcharge on each development impact fee collected in order to recoup that portion of the cost of preparing the capital improvements plan that is attributable to determining the development impact. Such surcharge does not exceed each development's proportionate share of the cost of preparing the plan.

H. If the city discovers an error in the development impact fee study that results in assessment or payment of more than a proportionate share of system improvement costs on any proposed development, the city shall 1) adjust the development impact fee to collect no more than a proportionate share or 2) discontinue the collection of any development impact fees until the error is corrected by ordinance.

I. If development impact fees are calculated and paid based on a mistake or misrepresentation, they shall be recalculated. Any amounts overpaid by a fee payer shall be refunded by the city within thirty (30) days after the City's acceptance of the recalculated amount, with interest at the legal rate provided for in Idaho Code section 28.22.18.004 from the date on which the fee was paid. Any amounts underpaid by the fee payer shall be paid to the City within thirty (30) days after the City's acceptance of the recalculated amount, with interest at the legal rate provided for in Idaho Code section 28.22.18.004 from the date on which the fee was paid. In the case of an underpayment to the City, the City may withhold issuance of building permits or development approvals for the project for which the development impact fee was paid until such underpayment is corrected, and if amounts owed to the City are not paid within such thirty (30) day period, the City may also repeal any building permits or development approvals issued in reliance on the previous payment of such development impact fee and refund such fee to the fee payer.

J. The City Council shall consider the Development Impact Fee Advisory Committee's recommended revision(s) to this chapter at least once every twelve (12) months. The committee's recommendations and the City Council's actions are intended to ensure that the benefits to a fee-paying development are equitable, in that the fee charged to the development shall not exceed a proportionate share of the costs of system improvements, and the procedures for administering development impact fees remain efficient.

K. Nothing in this chapter shall be construed to prevent or prohibit private agreements between developers, the City, the Idaho Transportation Department, and/or other governmental entities in regard to the construction or installation of system improvements or providing for credits or reimbursements for system improvement costs incurred by a developer or fee payer, including interproject transfers of credits, or providing for reimbursement for project improvements that are used or shared by more than one development project. If it can be shown that a proposed development has a direct impact on a public facility under the jurisdiction of the Idaho Transportation Department, then the agreement shall include a provision for the allocation of development impact fees collected from the developer or fee payer for the improvement of the public facility by the Idaho Transportation Department.

L. Violation of this chapter shall be a misdemeanor and shall be subject to those remedies provided in section 1.18.07 of this Code. Knowingly furnishing false information to any official of the City charged with the administration of this chapter on any matter relating to the administration of this chapter, including, without limitation, the furnishing of false information regarding the expected size, use, or impacts from a proposed development, shall be a violation of this chapter. (Ord. 671, 2022)

17.18.400: PENALTY FOR VIOLATION:

A. Violation of this chapter shall be a misdemeanor and shall subject the violator to those remedies provided in section 1.16.010 of Kimberly City Code.

B. Knowingly furnishing false information to any official of the City charged with the administration of this chapter on any matter relating to the administration of this chapter, including, without limitation, the furnishing of false information regarding the expected size, use, or impacts from a proposed development, shall be a violation of this chapter. (Ord. 671, 2022)

CHAPTER 17.19

ROCK CREEK RURAL FIRE PROTECTION DISTRICT SCHEDULE OF DEVELOPMENT IMPACT FEES, AND ASSESSMENT CRITERIA

SECTION:

17.19.010: Legislative Findings

17.19.020: Authority And Applicability

17.19.030: Intent

17.19.040: Definitions

17.19.050: Development Impact Fees Imposed

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17.19.090: Credits Against Development Impact Fees

17.19.100: Appeals And Mediation

17.19.200: Enforcement And Collection

17.19.300: Miscellaneous Provisions

17.19.400: Penalty For Violation

17.19.010: LEGISLATIVE FINDINGS:

The City of Kimberly and Rock Creek Rural Fire Protection District as located at 1559 Main St. North, Kimberly, Idaho, finds that:

A. Based on the city of Kimberly comprehensive plan adopted by the city pursuant to chapter 65, title 67, Idaho Code, including, but not limited to, the capital improvements element of the comprehensive plan, and the general governmental goal of protecting the health, safety, and general welfare of the citizens of the city, it is necessary that the Rock Creek Rural Fire Protection District's capital infrastructure plan for 1) Facilities, 2) Apparatus / Vehicles, 3) Capital - Related Research, per Exhibit "A" and "B" attached hereto, be expanded and improved to accommodate new development within the Rock Creek Rural Fire Protection District Boundaries as depicted in Exhibit "A" and "B" attached hereto. Throughout this chapter, the system improvements for these three (3) types of capital infrastructure improvements are sometimes collectively referred to as the "Rock Creek Rural Fire Protection District improvement plan.

B. Rock Creek Rural Fire Protection District has formed their development impact fee advisory committee required by Idaho Code section 67-8205, and that committee has performed the duties required of it pursuant to such statute. Rock Creek Rural Fire Protection District intends that the committee continue to exist and to perform those duties identified in Idaho Code section 67-8205 that occur following the adoption of development impact fees.

C. New residential and nonresidential development imposes and will impose increasing and excessive demands upon Rock Creek Rural Fire Protection District capital improvement plan.

D. The revenues generated from new residential and nonresidential development often do not generate sufficient funds to provide the necessary improvements of these Rock Creek Rural Fire Protection District capital improvement plan to accommodate new development.

E. New development is expected to continue, and will place ever increasing demands on the city to provide and expand Rock Creek Rural Fire Protection District capital improvement plan to serve new development.

F. The Rock Creek Rural Fire Protection District has planned for the Rock Creek Rural Fire Protection District capital improvement plan and the city of Kimberly shall amend their Comprehensive Plan to include the Rock Creek Rural Fire Protection District boundaries per Exhibit "A" and "B" attached hereto.

G. Chapter 82, title 67 of the Idaho Code (the Idaho development impact fee act) authorizes the City of Kimberly to adopt Ordinances and Resolutions for the Rock Creek Rural Fire Protection District, to adopt a development impact fee system, to offset, recoup, or reimburse the portion of the costs of needed improvements to the Rock Creek Rural Fire Protection District capital improvement plan caused by new development in the Rock Creek Rural Fire Protection District.

H. The creation of an equitable development impact fee system would promote the purposes set forth in the Idaho

development impact fee act, in that it would:

1. Ensure that adequate public improvement plan are available to serve new growth and development;
 2. Promote orderly growth and development by establishing uniform standards by which local governments may require that those who benefit from new growth and development pay a proportionate share of the cost of new public improvement plan needed to serve new growth and development;
 3. Ensure that those who benefit from new growth and development are required to pay no more than their proportionate share of the cost of public improvement plan needed to serve new growth and development; and
 4. Prevent duplicate and ad hoc development requirements.
- I. The creation of an equitable development impact fee system would enable the Rock Creek Rural Fire Protection District to accommodate new development, and would assist the Rock Creek Rural Fire Protection District to implement the capital improvements element of the comprehensive plan district boundaries.
- J. In order to implement an equitable development impact fee system for the Rock Creek Rural Fire Protection District capital improvement plan, the Rock Creek Rural Fire Protection District, engaged their Rock Creek Rural Fire Protection District development impact committee, Commission, Fire Chief, Administration, Legal Counsel, Police Chief, Kimberly City Administrator, Mayor, and City Council to prepare an impact fee study for these types of improvements. The resulting document is titled "Rock Creek Rural Fire Protection District of Kimberly, Id. Development Impact Fee Study, dated "amended April 10, 2023" and is hereby incorporated by reference as Exhibit "B".
- K. The methodology used in preparing the development impact fee study, when applied through this chapter, complies with all applicable provisions of Idaho law, including those set forth in Idaho statutes sections 67-8204(2), 67-8204(16), 67-8204(23), 67-8207 and 67-8209. The incorporation of the development impact fee study by reference satisfies the requirement in Idaho statutes section 67-8204(16) for a detailed description of the methodology by which the development impact fees were calculated, and the requirement in Idaho Code section 67-8204(24) for a description of acceptable levels of service for system improvements.
- L. The development impact fee study contains the capital improvements element of the Rock Creek Rural Fire Protection District and incorporated into the Kimberly comprehensive plan by reference of Ordinance No. 679, and such element has been prepared in conformance with the requirements of chapters 65 and 82 of title 67 of the Idaho Code.
- M. The development impact fee study sets forth reasonable methodologies and analyses for determining the impacts of various types of new development on the Rock Creek Rural Fire Protection District capital improvement plan, and determines the cost of acquiring or constructing the improvements necessary to meet the demands for such improvement plan created by new development.
- N. In accordance with Idaho Code, the development impact fee study was based on actual system improvement costs or reasonable estimates of such costs. In addition, the development impact fee study uses a fee calculation methodology that is net of credits for the present value of revenues that will be generated by new growth and development based on historical funding patterns and that are anticipated to be available to pay for system improvements, including current tax assessments, user fees, and intergovernmental transfers.
- O. The development impact fees described in this chapter are based on the development impact fee study, and do not exceed the costs of system improvements for Rock Creek Rural Fire Protection District capital improvement plan to serve new development that will pay the development impact fees.
- P. The improvement plan for Facilities, Apparatus / Vehicles and Capital - Related Research, included in the calculation of fees in the development impact fee study will benefit all new residential and nonresidential development throughout the Rock Creek Rural Fire Protection District, and it is therefore appropriate to treat all areas of the Rock Creek Rural Fire Protection District as a single service area for purposes of calculating, collecting, and spending the development impact fees collected from residential and nonresidential development.
- Q. There is both a rational nexus and a rough proportionality between the development impacts created by each type of development covered by this chapter and the development impact fees that such development will be required to pay.
- R. This chapter creates a system by which development impact fees paid by new development will be used to finance, defray, or reimburse a portion of the costs incurred by the Rock Creek Rural Fire Protection District to acquire / construct improvements for the Rock Creek Rural Fire Protection District capital improvement plan in ways that benefit the development for which each development impact fee was paid within a reasonable period of time after the development impact fee is paid, and in conformance with Idaho Code section 67-8210.
- S. This chapter creates a system under which development impact fees shall not be used to correct existing deficiencies for any capital improvement plan, or to replace or rehabilitate existing improvements, or to pay for routine operation or maintenance of those improvement plan.
- T. This chapter creates a system under which there shall be no double payment of impact fees, in accordance with Idaho Code section 67-8204(19).
- U. This chapter is consistent with all applicable provisions of chapter 82, title 67, Idaho Code, concerning development impact fee ordinances. (Ord. 679, 2023)

17.19.020: AUTHORITY AND APPLICABILITY:

A. This chapter is enacted pursuant to the City of Kimberly's general police power, the authority granted to the City of Kimberly to adopt Ordinance No. 679 to collect and disburse development impact fees to Rock Creek Rural Fire Protection District pursuant to chapters 65 and 82, title 67, Idaho Code, and other applicable laws of the state of Idaho.

B. This chapter shall apply to all areas of the Rock Creek Rural Fire Protection District. (Ord. 679, 2023)

17.19.030: INTENT:

A. This chapter is adopted to be consistent with, and to help implement, by the creation and adoption of Ordinance No. 679, the Rock Creek Rural Fire Protection District, particularly the capital improvements element of that plan and boundary map, incorporated in the Kimberly comprehensive plan as depicted in Exhibit "A" and "B" attached hereto.

B. The intent of this chapter is to ensure that new development bears a proportionate share of the cost of improvements to Rock Creek Rural Fire Protection District capital improvement plan; to ensure that such proportionate share does not exceed the cost of improvements to such improvement plan required to accommodate new development; and to ensure that funds collected from new development are actually used for improvements to Rock Creek Rural Fire Protection District capital improvement plan that benefit such new development.

C. It is the further intent of this chapter to be consistent with those principles for allocating a fair share of the cost of new capital improvement plan to new development, and for adopting development impact fee ordinances, established by chapter 82, title 67 of the Idaho Code.

D. It is not the intent of this chapter to collect any money from any new development in excess of the actual amount necessary to offset new demands for Rock Creek Rural Fire Protection District capital improvement plan created by such new development.

E. The expenditure of development impact fees shall be prohibited except in accordance with Idaho Code section 67-8210 and the Rock Creek Rural Fire Protection District's capital infrastructure plan for:

1. Facilities;
2. Apparatus/Vehicles;
3. Capital - Related Research, per Exhibit "A" and "B" attached hereto.

It is not the intent of this chapter that any monies collected from any development impact fee deposited in an impact fee account ever be commingled with monies from a different impact fee account, or ever be used for a development impact fee component different from that for which the fee was paid, or ever be used to correct current deficiencies in the Rock Creek Rural Fire Protection District capital improvement plan or ever be used to replace, rehabilitate, maintain, or operate any Rock Creek Rural Fire Protection District facility. (Ord. 679, 2023)

17.19.040: DEFINITIONS:

For the purpose of this chapter, the following terms shall have the following meanings, some of which are assigned by Idaho Code section 67-8203, as indicated.

ACCOUNTS:	The 1) Facilities, capital improvement plan account 2) Apparatus/Vehicles, capital improvement plan account 3) Capital - Related Research, capital improvement plan account, established as part of the Development Impact Fee Trust Fund established in section 17.19.070 (A) of this chapter.
APPROPRIATE:	To legally obligate by contract or otherwise commit to use by appropriation or other official act of a governmental entity. Section 67-8203(2) Idaho Code.
BUILDING PERMIT:	A building permit issued by the building official permitting the construction of a building or structure within the Rock Creek Rural Fire Protection District.
CAPITAL IMPROVEMENT:	An improvement with a useful life of ten (10) years or more, by new construction or other action that increases the service capacities of the Rock Creek Rural Fire Protection District. Section 67.8203(3) Idaho Code.
CAPITAL IMPROVEMENTS ELEMENT ROCK CREEK RURAL FIRE PROTECTION DISTRICT BOUNDARIES ESTABLISHED:	A component of the Kimberly comprehensive plan is to establish the Rock Creek Rural Fire Protection District boundaries per Ordinance No. 679, Exhibit "A" and "B" adopted pursuant to chapter 65, title 67, Idaho Code, which component meets the requirements of a capital improvements plan pursuant to chapter 65, title 67 of the Idaho Code. Section 67-8203(4) Idaho Code.
DEVELOPER:	Any person or legal entity undertaking development, including a party that undertakes the subdivision of property pursuant to Idaho Code sections 50-1301 through 50-1334. Section 67-8203(6) Idaho Code.

DEVELOPMENT:	Any construction or installation of a building or structure, or any change in use of a building or structure, or any change in the use, character or appearance of land, that creates additional demand and need for the Rock Creek Rural Protection District improvement plan or the subdivision of property that would permit any change in the use, character or appearance of land. Section 67-8203(7) Idaho Code.
DEVELOPMENT APPROVAL:	Any written authorization from a governmental entity that authorizes the commencement of a development. Section 67-8203(8) Idaho Code.
DEVELOPMENT IMPACT FEE:	<p>A payment made payable to the Rock Creek Rural Fire Protection District. The payment of money imposed as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve development. Section 67-8203(9) Idaho Code. In the context of this chapter, development impact fee means one of the three (3) impact fees defined for the three (3) Rock Creek Rural Fire Protection District capital improvement plan elements, and development impact fees (in the plural) means all three (3) impact fees (or all of them that apply to the proposed development pursuant to this chapter). The term does not include:</p> <p>A. Amounts collected from a developer in a transaction in which the Rock Creek Rural Fire Protection District or another governmental entity has incurred expenses in constructing capital improvements for the development if the owner or developer has agreed to be financially responsible for the construction or installation of the capital improvements, unless a written agreement is made pursuant to Idaho Code section 67-8209(3) for credit or reimbursement.</p>
DEVELOPMENT IMPACT FEE STUDY:	The document entitled "Rock Creek Rural Fire Protection District Exhibit "A" attached hereto, dated 02-07-2023, as presented to the Council, and recommended by the Kimberly Planning and Zoning Commission on March 15, 2023, depicts the Rock Creek Rural Fire Protection District boundaries and the three (3) types of capital infrastructure. The Final Report dated 04-10-2023, as presented at the Council public hearing on 04-11-2023 is attached hereto as Exhibit "B". The Final Report depicts the Rock Creek Rural Protection District Impact Fee Study and Capital Improvement Plan that sets forth reasonable methodologies and analyses for determining the impacts of various types of development on the Rock Creek Rural Fire Protection District capital improvement plan and determines the proportionate share of the cost of system improvements needed to serve the development improvement plan necessary to meet the demands created by new development.
DEVELOPMENT IMPACT FEE TRUST FUND:	The trust fund established by section 17.19.070 of this chapter that includes Rock Creek Rural Fire Protection District's capital infrastructure plan for 1) Facilities, 2) Apparatus / Vehicles, 3) Capital - Related Research, per Exhibit "A" and "B" attached hereto. The development impact fee trust fund is also sometimes called the development impact trust fund.
DEVELOPMENT REQUIREMENT:	A requirement attached to a developmental approval or other governmental action approving or authorizing a particular development project including, but not limited to, a rezoning, which requirement compels the payment, dedication or contribution of goods, services, land, or money as a condition of approval. Section 67-8203(10) Idaho Code.
EXTRAORDINARY COSTS:	Those costs incurred as a result of an extraordinary impact. Section 67-8203(17) Idaho Code.
EXTRAORDINARY IMPACT:	An impact that is reasonably determined by the governmental entity and Rock Creek Rural Fire Protection District to determine the need for system improvements, the cost of which will significantly exceed the sum of the development impact fees to be generated from the project or the sum agreed to be paid pursuant to a development agreement as allowed by Idaho Code section 67-8214(2), or b) result in the need for system improvements that are not identified in the capital improvements plan. Section 67-8203(12) Idaho Code.

FEE PAYER:	A person or legal entity that pays or is required to pay a development impact fee. Taxing districts are expressly included within this definition of "fee payer," unless the taxing district enters into a written agreement with the Rock Creek Rural Fire Protection District of Kimberly that provides otherwise. A fee payer may include a developer.
IMPACT GENERATING LAND DEVELOPMENT:	Land development designed or intended to permit a use of the land that will contain more dwelling units or floor space than the then existing use of the land, or the making of any material change in the use of any structure or land in a manner that increases demand for Rock Creek Rural Fire Protection District capital improvement plan. The type of proposed impact generating land development shall be based on the proposed use of the land.
INDIVIDUAL ASSESSMENT:	A study prepared by a fee payer, calculating the cost of expansions or improvements to one or more of the Rock Creek Rural Fire Protection District capital improvements elements required to serve the fee payer's proposed development, that is based on the established LOS standard, is performed on an average cost (not marginal cost) methodology, that uses the service units and unit construction costs stated in the development impact fee study, and is performed in compliance with any criteria for such studies established by this chapter or by the Rock Creek Rural Fire Protection District .
LAND USE ASSUMPTIONS:	A description of the service area and projections of land uses, densities, intensities, and population in the service area over at least a twenty (20) year period. Section 67-8203(16) Idaho Code.
LEVEL OF SERVICE:	A measure of the relationship between service capacities Rock Creek Rural Fire Protection District and service demand for public improvement plan. Section 67-8203(17) Idaho Code.
MANUFACTURED HOME:	A structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one or more sections, that, in the traveling mode, is eight feet (8') or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and that is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure that meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development and complies with the standards established under 42 U.S.C. 5418 et seq. Section 67-8203(18) Idaho Code.
MODULAR BUILDING:	Any building or building component, other than a manufactured or mobile home, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site. Sections 67-8203(19) and 39 Chapter 43, Idaho Code.
PERSON:	An individual, corporation, governmental agency, business trust, estate, partnership, association, two (2) or more persons having a joint or common interest, or any other entity.
PRESENT VALUE:	The total current monetary value of past, present, or future payments, contributions or dedications of goods, services, materials, construction or money. Section 67-8203(20) Idaho Code.
PROJECT:	A particular development on an identified parcel of land. Section 67-8203(21) Idaho Code.
PROJECT IMPROVEMENTS:	Site improvements and improvement plan that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project. Section 67-8203(22) Idaho Code.
PROPORTIONATE SHARE:	That portion of the cost of system improvements determined pursuant to Idaho Code section 67-8207, that reasonably relates to the service demands and needs of the project. Section 67-8203(23) Idaho Code.
RECREATIONAL VEHICLE:	A vehicular type unit primarily designed as temporary quarters for recreational, camping, or travel use, that either has its own motive power or is mounted on or drawn by another vehicle. Section 67-8203(25) Idaho Code.

ROCK CREEK RURAL FIRE PROTECTION DISTRICT CAPITAL IMPROVEMENTS PLAN (Three types of capital (3)):	A plan adopted pursuant to this chapter that identifies capital improvements for which development impact fees may be used as a funding source. Section 67-8203(5) Idaho Code.
FACILITIES:	Murtaugh Station - Relocate and Expand for Growth but not including maintenance, operations, or improvements that do not expand capacities within the Rock Creek Rural Fire Protection District.
APPARATUS/ VEHICLES:	Two additional Type 3 Trucks - One additional Ambulance
CAPITAL - RELATED RESEARCH:	Impact Fee Study
ROCK CREEK RURAL FIRE PROTECTION DISTRICT:	Rock Creek Rural Fire Protection District of Kimberly, Idaho.
ROCK CREEK RURAL FIRE PROTECTION DISTRICT COMMISSION:	The Rock Creek Rural Fire Protection District Commission of Kimberly, Idaho.
ROCK CREEK RURAL FIRE PROTECTION DISTRICT DEVELOPMENT IMPACT FEE ADMINISTRATOR:	That individual designated is the Rock Creek Rural Fire Protection District Fire Chief or designee to administer their development impact fee system established by this chapter.
SERVICE AREA:	Rock Creek Rural Fire Protection District boundaries as depicted in Exhibit "A" and "B" attached hereto. Any defined geographic area identified by a governmental entity or by intergovernmental agreement in which the Rock Creek Rural Fire Protection District capital improvement plan provides service to development within the area defined, on the basis of sound planning or engineering principles or both. Section 67-8203(26) Idaho Code.
SERVICE UNIT:	A standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements. Section 67-8203(27) Idaho Code.
SUCCESSOR IN INTEREST:	A "person", as defined by this chapter, who gains a fee simple interest in land for which a development impact fee is paid or a credit is approved pursuant to the terms of this chapter.
SYSTEM IMPROVEMENT COSTS:	Costs incurred for construction or reconstruction of the Rock Creek Rural Fire Protection District system improvements, including design, acquisition, engineering, and other costs attributable thereto, and also including, without limitation, the type of costs described in Idaho Code section 50-1702, to provide additional improvements needed to serve new growth and development. For clarification, system improvement costs do not include a) construction, acquisition or expansion of public improvement plan other than capital improvements identified in the capital improvements plan; b) repair, operation or maintenance of existing or new capital improvements; c) upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards; d) upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development; e) administrative and operating costs of the Rock Creek Rural Fire Protection District entity unless such costs are attributable to development of the capital improvement plan, as provided in Idaho Code section 67-8208; or f) principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the Rock Creek Rural Fire Protection District entity to finance capital improvements identified in the capital improvements plan. Section 67-8203(29) Idaho Code.

SYSTEM IMPROVEMENTS:	In contrast to project improvements, means capital improvements to the Rock Creek Rural Fire Protection District improvement plan that are designed to provide service to a service area including, without limitation, the type of improvements described in Idaho Code section 50-1703. Section 67-8203(28) Idaho Code. For the purposes of this chapter, the system improvements are Rock Creek Rural Fire Protection District's capital infrastructure plan for 1) Facilities, 2) Apparatus/Vehicles, 3) Capital - Related Research, per Exhibit "A" and "B" attached hereto. (Ord. 679, 2023)
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17.19.050: DEVELOPMENT IMPACT FEES IMPOSED:

A. Fee Obligation:

1. After the effective date hereof, any person who commences any impact generating land development, except those exempted pursuant to subsection (B) of this section, shall be obligated to pay development impact fees upon commencement of such activity. The amount of the development impact fees shall be determined in accordance with this chapter.
2. If the fee payer is applying for an extension of a permit issued previously, then the development impact fees required to be paid shall be the net increase between the development impact fees applicable at the time of the current permit application and any development impact fees previously paid pursuant to this chapter to finance similar types of system improvements to accommodate demands created by the same development.
3. If the fee payer is applying for a permit to allow a change of use or for the expansion, redevelopment, or modification of an existing development, the development impact fees required to be paid shall be based on the net increase in the development impact fees for the new use as compared to the previous use.

B. Exemptions: The following types of development shall be exempted from payment of the development impact fees. Any claim for exemption shall be made no later than the time when the applicant applies for the first building permit for the proposed development that creates the obligation to pay the development impact fees, and any claim for exemption not made at or before that time shall have been waived. The P & Z Administrator or a designee shall determine the validity of any claim for exemption pursuant to the criteria set forth below.

1. Rebuilding the same amount of floor space of a structure that was destroyed by fire or other catastrophe, providing the structure is rebuilt and ready for occupancy within two (2) years of its destruction;
2. Remodeling or repairing a structure that does not increase the number of service units;
3. Replacing a residential unit, including a manufactured home, with another residential unit on the same lot, provided that the number of service units does not increase;
4. Constructing an addition on a residential structure that does not increase the number of service units;
5. Placing a temporary construction trailer or office on a lot;
6. Adding uses that are typically accessory to residential uses, such as tennis courts or clubhouses, unless it can be clearly demonstrated that the use creates a significant impact on the capacities Rock Creek Rural Fire Protection District of system improvements;
7. The installation of a modular building, manufactured home, or recreational vehicle if the fee payer can demonstrate by documentation such as utility bills and tax records that either a) a modular building, manufactured home, or recreational vehicle was legally in place on the lot or space prior to the effective date hereof, or b) a development impact fee has been paid previously for the installation of a modular building, manufactured home or recreational vehicle on that same lot or space;
8. Projects for which a development impact fee for each type of public facility covered by this chapter has previously been paid in an amount that equals or exceeds the development impact fee that would be required by this chapter;
9. Projects built by the Federal government or the State government; and
10. Projects which meet all the following criteria may apply for an individualized assessment pursuant to subsection C(4) of this section, except that the applicant may simply rely on the documented project history rather than retaining a qualified professional to prepare the individual assessment;
 - a. A development agreement was entered into by the project developer and the Rock Creek Rural Fire Protection District setting forth the entitlements and obligations of the developer, which agreement was approved by the Rock Creek Rural Fire Protection District Council prior to April 25th, 2023;
 - b. The final plat for the development, or site plan attached to the development agreement, was approved by the Rock Creek Rural Fire Protection District prior to April 25th, 2023; and
 - c. The development, through the terms of the development agreement, or otherwise, has built, or is obligated to build public improvement plan, which improvement plan are not "project improvements", in excess of the amount that would be collected under this chapter.

C. Fee Table and Calculation Of Amount Of Development Impact Fees:

1. Fee Table

Facilities - Apparatus /Vehicles - Equipment - Capital Related Research - Impact Study			
	Residential	\$1,439.00	per dwelling unit
	Nonresidential	\$0.58	per square foot

This fee schedule shall be in effect upon publication according to law and the Kimberly P & Z Administrator receiving written notification from the Rock Creek Rural Fire Protection District Administrator, to begin assessing development impact fees.

On January 1, 2024, and on January 1 of each year thereafter in which an impact fee is in effect, the amount of the impact fee shall be automatically adjusted to account for year over year inflation increases in the actual capital improvement costs, supporting the Rock Creek Rural Fire Protection District's capital infrastructure plan, to serve new development utilizing the latest available municipal cost index as published by "American Cities and County Magazine". Nothing herein shall prevent the Rock Creek Rural Fire Protection District from electing to maintain an existing impact fee or from electing to waive the inflation adjustment for any given fiscal year, or years. Any such action to determine an inflation factor shall be by adoption of a resolution by the City of Kimberly upon receiving a recommendation from the Rock Creek Rural Fire Protection District Commission.

2. Levels of Service: Current data used to determine (CIP) Current Improvement Project Value for levels of service with Growth Portions for years 2023-2032 and years 2033-2042, per attached Exhibit "A" and "B" dated 02-07-2023 are as follows:

a. Facilities - CIP Value = \$4,860,000.00 for the entire district, with a Growth Portion of 25% or \$607,500 for yrs. 2023-2032, and a Growth Portion of 25% or \$607,500 for yrs. 2033-2042.

b. Apparatus/Vehicles = \$1,463,000 for the entire district, with a Growth Portion of 80% for two additional (2) Type 3 Trucks and one (1) additional Ambulance or \$1,170,400, for yrs. 2023-2032.

c. Capital-Related Research Impact Study = \$20,000 for the entire district, with a Growth Portion of 100% for yrs. 2023-2032.

3. Using The Fee Table: Development impact fees shall be calculated using the fee table above (or as subsequently amended by the Rock Creek Rural Fire Protection District Commission and Kimberly City Council per automatic adjustment criteria above) unless a) the fee payer requests an individualized assessment pursuant to subsection (C) 4 of this section, or b) the Rock Creek Rural Fire Protection District designates the proposed development as a development of extraordinary impact in writing to the fee payer, in which case the provisions of subsection (C) 5 of this section shall apply.

a. Any person who commences any new impact generating land development, except those exempted pursuant to this chapter, or those preparing an individual assessment pursuant to this chapter, shall pay all development impact fees applicable to the proposed development, as determined by the fee table. Persons choosing to pay applicable development impact fees pursuant to the fee table shall be deemed to have made a full and complete payment of the project's proportionate share of Rock Creek Rural Fire Protection District capital improvement plan costs for system improvements, except as noted in subsection 17.19.090 of this chapter.

b. If the proposed development is of a type not listed in the fee table, then the Kimberly P & Z Administrator and Rock Creek Rural Fire Protection District shall apply the development impact fees applicable to the most nearly comparable type of land use listed in the fee table. The determination as to which type of development is most nearly comparable to the proposed development shall be made by referring to traffic generation rates for land uses published by the Institute of Transportation Engineers, and by identifying that land use listed in the fee table whose traffic generation rates are most comparable to the proposed land use. If no traffic generation rate for the proposed land use appears in a publication of the Institute of Transportation Engineers, or if it is not possible to determine which land use listed in the fee table has the most comparable traffic generation rates, then the most nearly comparable land use shall be determined by the Kimberly P & Z Administrator and Rock Creek Rural Fire Protection District based on comparison of other characteristics of the proposed land use (including employment or occupancy, the size of the facility, and the amount of parking to be provided) with the characteristics of those land uses listed in the fee table.

c. If the proposed development includes a mix of those uses listed in the fee table, then the development impact fees shall be determined by adding up the development impact fees that would be payable for each use as if it were a freestanding use pursuant to the fee table. For example, development impact fees for a church without ancillary improvement plan will be determined through the process in subsection (C)3. b of this section; but development impact fees for a church with a daycare center shall be established by adding:

- (1) Fees determined through the process in subsection (C)3.b. of this section for the church itself; and
- (2) Fees identified in the fee table for the daycare portion of the facility.

d. If the fee payer requests that the Rock Creek Rural Fire Protection District calculate the amount of development impact fees due pursuant to the fee table, the Rock Creek Rural Fire Protection District shall notify the fee payer of such amount within thirty (30) days after receipt of that request.

4. Using An Individual Assessment:

a. In lieu of calculating the amount(s) of development impact fees by reference to the fee table, a fee payer may request that the amount of the required development impact fee be determined through an individual assessment for the proposed development. The individual assessment process shall permit consideration of studies, data, and any other relevant information submitted by the fee payer to adjust the amount of the fee. If a fee payer requests the use of an individual assessment, the fee payer shall be responsible for retaining a qualified professional to prepare the individual assessment that complies with the requirements of this chapter, at the fee payer's expense. The fee payer shall bear the burden of proving by clear and convincing evidence that the resulting individual assessment is a more accurate measure of its proportionate share of the cost of Rock Creek Rural Fire Protection District capital improvements, based on the Rock Creek Rural Fire Protection District's adopted levels of service, than the development impact fees that would otherwise be due pursuant to the fee table. The Rock Creek Rural Fire Protection District may hire a professional consultant to review any independent impact fee calculation study on behalf of the Rock Creek Rural Fire Protection District and may charge the reasonable costs of such review to the fee payer.

b. Each individual assessment shall be based on the same level of service standards and unit costs for system improvements used in the development impact fee study, shall use an average cost (not a marginal cost) methodology, and shall document the relevant methodologies and assumptions used.

c. An application for an individual assessment may be submitted at any time that the number of dwelling units in the proposed development and the types and amounts of development in each nonresidential category identified in the fee table is known. The Rock Creek Rural Fire Protection District shall issue a decision within thirty (30) days following receipt of a completed application for individual assessment and supporting information from the applicant, so as not to unreasonably delay subsequent applications for or issuance of building permits.

d. Each individual assessment shall be submitted to the Rock Creek Rural Fire Protection District, Kimberly P & Z Administrator or a designee, and may be accepted, rejected, or accepted with modifications by Rock Creek Rural Fire Protection District and the P & Z Administrator or a designee as the basis for calculating development impact fees. The criteria for acceptance, rejection, or acceptance with modifications shall be whether the individual assessment is a more accurate measure of demand for the Rock Creek Rural Fire Protection District capital improvement element(s) created by the proposed development, or the costs of those in the improvement plan with the applicable fee shown in the fee table.

e. The decision by the Rock Creek Rural Fire Protection District Administrator, or designee and the P & Z Administrator or designee on an application for an individual assessment shall include an explanation of the calculation of the impact fee, shall specify the system improvement(s) for which the impact fee is intended to be used, and shall include an explanation of those factors identified in Idaho Code section 67-8207.

f. If an individual assessment is accepted or accepted with modifications by the Rock Creek Rural Fire Protection District Administrator, or designee and P & Z Administrator or a designee then the development impact fees due under this chapter for such development shall be calculated according to such individual assessment.

5. Extraordinary Impacts:

a. If the Rock Creek Rural Fire Protection District Administrator, determines that a proposed development generates extraordinary impacts that will result in extraordinary costs, the Rock Creek Rural Fire Protection District Administrator, will notify the fee payer of such determination within thirty (30) days after receipt of a request for a certification pursuant to subsection 5(D) of this section or a request for a building permit or development approval, whichever occurs first. Such notice shall include a statement that the potential impacts of such development on system improvements are not adequately addressed by the development impact fee study, and that a supplemental study at the fee payer's expense will be required.

b. Circumstances that may lead to a determination of extraordinary impacts include, but are not limited to 1) an indication that traffic generation from the proposed development or activity will exceed those typical for a facility or activity of its type, 2) an indication that employment generated by the development or activity will exceed those typical for a facility or activity of its type, 3) an indication the assumptions used in the development impact fee study underestimate the level of activity or impact on Rock Creek Rural Fire Protection District capital improvement plan from the proposed development or activity, or 4) an indication that levels of calls for Rock Creek Rural Fire Protection District services from developments or activities owned or operated by the fee payer or its agents exceed the assumptions used in the development impact fee study.

c. Within thirty (30) days following the designation of a development with extraordinary impacts, the Rock Creek Rural Fire Protection District shall meet with the fee payer to discuss whether the fee payer wants to 1) pay for the supplemental study necessary to determine the system improvement costs related to the proposed development, or 2) modify the proposal to avoid generating extraordinary impacts, or 3) withdraw the application for certification, building permit, or development approval.

d. If the fee payer agrees to pay for the supplemental study required to document the proposed development's proportionate share of system improvement costs, then the Rock Creek Rural Fire Protection District Administrator and the fee payer shall jointly select an individual or organization acceptable to both to perform such study, the fee payer shall enter into a written agreement with such individual or organization to pay the costs of such study. Such agreement shall require the supplemental study to be completed within thirty (30) days of such written agreement, unless the fee payer agrees to a longer time.

e. Once the study has been completed, the fee payer may choose to 1) pay the proportionate share of system

improvement costs documented by the supplemental study, or 2) modify the proposed development to reduce such costs, or 3) withdraw the application. If the fee payer agrees to pay the system improvement costs documented in the supplemental study, that agreement shall be reduced to writing between the Rock Creek Rural Fire Protection District and the fee payer prior to review and consideration of any application for any development approval or building permit related to the proposed development.

f. Notwithstanding any agreement by the fee payer to pay the proportionate share of system improvement costs documented by the supplemental study, nothing in this chapter shall obligate the Rock Creek Rural Fire Protection District to approve development that results in an extraordinary impact.

D. Certification After the development impact fees due for a proposed development have been calculated pursuant to the fee table or the individual assessment, the fee payer may request the Kimberly P & Z Administrator, Rock Creek Rural Fire Protection District, or a designee for a certification of the amount of development impact fees due for that development. Within thirty (30) days after receiving such request, the P & Z Administrator or a designee shall issue a written certification of the amount of development impact fees due for the proposed development. Such certification shall establish the development impact fee so long as there is no material change to the particular project as identified in the individual assessment application, or the impact fee schedule set forth in the fee table. The certification shall include an explanation of the calculation of the impact fee including an explanation of factors considered under Idaho Code section 67-8207 and shall also specify the system improvement(s) for which the development impact fee is intended to be used.

E. Payment Of Fees:

1. All development impact fees due shall be made payable to Rock Creek Rural Fire Protection District in accordance to Section 17.19.020, and paid to the Rock Creek Rural Fire Protection District at the following times.

- a. If a building permit or building placement permit is required, then at the time such permit is issued; or
- b. If no building permit or building placement permit is required, then at the time that construction commences; or
- c. At such other time as the applicant and the Rock Creek Rural Fire Protection District have agreed to in writing, pursuant to applicable Idaho law.

2. All monies paid to Rock Creek Rural Fire Protection District by a fee payer pursuant to the fee table shall be identified as development impact fees and shall be promptly deposited in the appropriate Rock Creek Rural Fire Protection District account(s) described in section 17.19.070 of this chapter.

3. A fee payer may pay a Rock Creek Rural Fire Protection District development impact fee under protest in order to avoid delay in the issuance of a building permit or development approval. A fee payer making a payment under protest shall not be estopped from exercising the right of appeal provided in section 17.19.100 of this chapter, nor shall such fee payer be estopped from receiving a refund of any amount deemed to have been illegally collected. (Ord. 679, 2023)

17.19.060: SERVICE AREAS:

The following service areas are established for each development impact fee element:

A. The Rock Creek Rural Fire Protection District impact fee service area shall include the entire Rock Creek Rural Fire Protection District boundary as depicted in Exhibit "A" and "B" attached hereto. (Ord. 679, 2023)

17.19.070: USE OF DEVELOPMENT IMPACT FEE FUNDS:

A. Establishment Of Trust Fund Accounts:

1. Expenditure of Rock Creek Rural Fire Protection District development impact fees, shall be prohibited except in accordance with the requirements of section 67-8210.
2. Rock Creek Rural Fire Protection District shall establish a development impact fee trust fund (the "trust fund") for the purpose of ensuring that the development impact fees collected pursuant to this chapter are used to address impacts reasonably attributable to new development for which the development impact fees are paid.
3. The Rock Creek Rural Fire Protection District trust fund shall be divided into three (3) Capital Infrastructure accounts. A Facilities Capital Infrastructure account, Apparatus/Vehicles account and Capital-Related Research - Impact Fee Study account.
4. The Rock Creek Rural Fire Protection District development impact fee trust fund accounts shall be maintained in interest-bearing accounts. The interest earned on each account shall not be governed by Idaho Code section 57-127, but shall be considered funds of the account and shall be subject to the same restrictions on uses of funds as the development impact fees on which the interest is generated.
5. Monies in each account shall be spent in the order collected, on a first in/first out basis.

B. Deposit And Management of The Trust Fund:

1. All development impact fees/checks collected by the City of Kimberly pursuant to this chapter shall be promptly transferred to the Rock Creek Rural Fire Protection District Administrator or designee, to allow them to deposit the impact fees into their appropriate trust fund accounts.
2. The Rock Creek Rural Fire Protection District shall maintain a copy of each Rock Creek Rural Fire Protection District Development Impact Fee check.

3. As part of the Rock Creek Rural Fire Protection District's accounting audit process, the Rock Creek Rural Fire Protection District shall prepare an annual report (a) describing the amount of all development impact fees collected, and transferred from the City of Kimberly to the Rock Creek Rural Fire Protection District Administrator.

C. Limitations On Expenditures of Rock Creek Rural Fire Protection District Development Impact Fee Accounts:

1. Facilities: The monies collected from the Facilities Capital Infrastructure impact fees shall be used only to plan for, acquire land-relocate and construct the Murtaugh Fire Station in accordance with the Rock Creek Rural Fire Protection District capital infrastructure plan, or to pay debt service on any portion of any future general obligation bond issue or revenue bond issue or similar instrument used to finance the Facilities Capital Infrastructure Plan.

2. Apparatus/Vehicles: The monies collected from the Apparatus/Vehicle impact fee account shall be used only to acquire the Apparatus/Vehicles depicted on Exhibit "A," attached hereto or to pay debt service on any portion of any future general obligation bond issue or revenue bond issue or similar instrument used to finance the acquisition of Apparatus/Vehicles depicted in Exhibit "A" and "B" attached hereto.

3. Capital-Related Research - Impact Fee Study: The monies collected from the Capital-Related Research Impact Fee Study account, shall be used only to pay debt service on any portion of any future general obligation bond issue or revenue bond issue or similar instrument used to finance the Impact Fee Study: The monies collected from the Capital-Related Research - Impact Fee Study account shall be used only to pay for the Impact Fee Study, update the development impact fee plan in the capital improvement plan within the Rock Creek Rural Fire Protection District, or to reimburse the Rock Creek Rural Fire Protection District for such costs. Development impact fees shall not be used to pay for any purpose that does not involve system improvements that create additional service available to serve new growth and development. (Ord. 679, 2023)

17.19.080: REFUNDS OF DEVELOPMENT IMPACT FEES PAID:

A. Duty To Refund: Development impact fees shall be refunded to the fee payer, or to a successor in interest, in the following circumstances

1. Service is available but never provided;
2. A building permit, or permit for installation of a manufactured home, is denied, or abandoned;
3. The fee payer pays a development impact fee under protest and a subsequent review of the fee paid or the completion of an individual assessment determines that the fee paid exceeded the proportionate share to which the governmental entity was entitled to receive; or
4. The Rock Creek Rural Fire Protection District has collected a development impact fee and has failed to appropriate or expend the collected fees pursuant to subsection B of this section.

B. Failure To Encumber Trust Funds or Commence Construction any development impact fees paid shall be refunded if the Rock Creek Rural Fire Protection District has failed to commence construction of system improvements in accordance with this chapter, or to appropriate funds for such construction, within eight (8) years after the date on which such fee was paid. Any refund due shall be paid by Rock Creek Rural Fire Protection District to the owner of record of the parcel for which the development impact fees were paid. The Rock Creek Rural Fire Protection District may hold development impact fees for longer than eight (8) years if it identifies in writing 1) a reasonable cause why the fees should be held longer than eight (8) years; and 2) an anticipated date by which the fees will be expended, but in no event greater than eleven (11) years from the date they were collected. If the Rock Creek Rural Fire Protection District complies with the previous sentence, then any development impact fees identified in such writing shall be refunded to the fee payer if the Rock Creek Rural Fire Protection District has failed to commence construction of system improvements in accordance with this chapter, or to appropriate funds for such construction on or before the date identified in such writing.

C. No Refund Due: Later Changes to Development After a development impact fee has been paid pursuant to this chapter and after a certificate of occupancy has been issued, no refund of any part of such fee shall be made if the project for which the fee was paid is later demolished, destroyed, or is altered, reconstructed, or reconfigured so as to reduce the size of the project or the number of units in the project.

D. Interest: Each refund shall include a refund of interest at one half (½) the legal rate provided for in Idaho Code section 28-22-104 from the date on which the fee was originally paid.

E. Timing: The Rock Creek Rural Fire Protection District shall make a determination of whether a refund is due within thirty (30) days after receipt of a written request for a refund from the owner of record of the property for which the fee was paid. When the right to a refund exists, the Rock Creek Rural Fire Protection District shall refund the applicable fees, to the owner of record within ninety (90) days after the Rock Creek Rural Fire Protection District determines that a refund is due.

F. Standing: Any person entitled to a refund shall have standing to sue for a refund under the provisions of this chapter if there has not been a timely payment of a refund pursuant to subsections A through E of this section. (Ord. 679, 2023)

17.19.090: CREDITS AGAINST DEVELOPMENT IMPACT FEES:

A. Credits: To Be Issued When a developer, or their predecessor in title or interest, has constructed system improvements of the same category as a Rock Creek Rural Fire Protection District capital improvements element, or contributed or dedicated land or money towards the completion of system improvements of the same category as a Rock Creek Rural Fire Protection District capital improvements element, and the Rock Creek Rural Fire Protection District has accepted such construction, contribution, or dedication, the Rock Creek Rural Fire Protection District shall issue a credit

against the development impact fees otherwise due for the same Rock Creek Rural Fire Protection District capital improvements element in connection with the proposed development, as set forth in this section. Credit shall be issued regardless of whether the contribution or dedication to system improvements was required by the Rock Creek Rural Fire Protection District as a condition of development approval or was offered by the developer and accepted by the Rock Creek Rural Fire Protection District in writing, and regardless of whether the contribution or dedication was contributed by the developer or by a local improvement district controlled by the developer.

B. Limitations Credits against development impact fees shall not be given for 1) project improvements, or 2) any construction: contribution, or dedication not agreed to in writing by the Rock Creek Rural Fire Protection District prior to commencement of the construction, contribution, or dedication. Credits issued for one Rock Creek Rural Fire Protection District capital improvements element, may not be used to reduce development impact fees due for a different capital improvements element. No credits shall be issued for system improvements contributed or dedicated prior to the effective date hereof.

C. Valuation Of Credit at Present Value

1. Land Credit for qualifying land dedications shall, at the fee payer's option, be valued at the present value of a) one hundred percent (100%) of the most recent assessed value for such land as shown in the records of the county assessor, or b) that fair market value established by a private appraiser acceptable to the Rock Creek Rural Fire Protection District in an appraisal paid for by the fee payer. In the event that Rock Creek Rural Fire Protection District and the fee payer cannot agree upon an appraiser, either may petition the district court for appointment of an appraiser.

2. Improvements Credit for qualifying acquisition or construction of system improvements shall be valued by the Rock Creek Rural Fire Protection District at the present value of such improvements based on complete engineering drawings, specifications, and construction cost estimates submitted by the fee payer to the Rock Creek Rural Fire Protection District. The Rock Creek Rural Fire Protection District shall determine the amount of credit due based on the information submitted, or, if it determines that such information is inaccurate or unreliable, then on alternative engineering or construction costs acceptable to the Rock Creek Rural Fire Protection District as a more accurate measure of the value of the offered system improvements to the Rock Creek Rural Fire Protection District.

D. When Credits Become Effective:

1. Approved credits for land dedications shall become effective when the land has been conveyed to the Rock Creek Rural Fire Protection District in a form acceptable to the Rock Creek Rural Fire Protection District at no cost to the Rock Creek Rural Fire Protection District, and has been accepted by the Rock Creek Rural Fire Protection District. When such conditions have been met, the Rock Creek Rural Fire Protection District shall note that fact in its records. Upon request of the fee payer, the Rock Creek Rural Fire Protection District shall issue a letter stating the amount of credit available.

2. Approved credits for acquisition or construction of system improvements shall generally become effective when, a) all required construction has been completed and has been accepted by the Rock Creek Rural Fire Protection District, b) a suitable maintenance and warranty bond has been received and approved by the Rock Creek Rural Fire Protection District, and c) all design, construction, inspection, testing, bonding, and acceptance procedures have been completed in compliance with all applicable requirements of the Rock Creek Rural Fire Protection District and the state of Idaho. Approved credits for the construction of system improvements may become effective at an earlier date if the fee payer posts security in the form of a performance bond, irrevocable letter of credit, or escrow agreement and the amount and terms of such security are accepted by the P & Z Administrator or a designee. At a minimum, such security must be in the amount of the approved credit or an amount determined to be adequate to allow the Rock Creek Rural Fire Protection District to construct the system improvements for which the credit was given, whichever is higher. When such conditions have been met, the Rock Creek Rural Fire Protection District shall note that fact in its records. Upon request of the fee payer, the Rock Creek Rural Fire Protection District shall issue a letter stating the amount of credit available.

E. Application Procedures:

1. In order to obtain a credit against development impact fees otherwise due, a fee payer shall submit a written offer to the Rock Creek Rural Fire Protection District Administrator or a designee to dedicate specific parcels of qualifying land or a written offer to contribute or construct specific system improvements to the Rock Creek Rural Fire Protection District capital improvement plan in accordance with all applicable state or Rock Creek Rural Fire Protection District design and construction standards, and shall specifically request a credit against the type of development impact fees for which the land dedication or system improvement is offered. No request for a credit against development impact fees shall be accepted unless a written offer to dedicate, contribute, or construct has previously been approved in writing by the Rock Creek Rural Fire Protection District Administrator.

2. After receipt of the request for credit, the Rock Creek Rural Fire Protection District Administrator and Kimberly P & Z Administrator or a designee shall review the request and determine whether the land or system improvements offered for credit will reduce the costs of providing Rock Creek Rural Fire Protection District capital improvement plan by an amount at least equal to the value of the credit. If Rock Creek Rural Fire Protection District Administrator, the P & Z Administrator, or a designee determines that the offered credit satisfies that criterion, then Rock Creek Rural Fire Protection District shall process the credit to be issued. The Rock Creek Rural Fire Protection District Administrator shall complete its review and determination of an application for credit within thirty (30) days after receipt of an application for credit.

F. Transferability Of Credit: A credit may only be transferred by the fee payer that has received the credit to a successor in interest pursuant to the terms of this chapter. The credit may be used only to offset development impact fees for the same

Rock Creek Rural Fire Protection District capital improvements element for which the credit was issued. Credits shall be transferred by any written instrument from the fee payer, clearly identifying which credits issued under this chapter are being transferred, the dollar amount of the credit being transferred, and the Rock Creek Rural Fire Protection District capital improvements element for which the credit was issued. The instrument of transfer shall be signed by the Rock Creek Rural Fire Protection District Administrator, both the transferor and transferee, and a copy of the document shall be delivered to the Kimberly P & Z Administrator or a designee for documentation of the change in ownership before it shall become effective.

G. Accounting Of Credits: Each time a request to use approved credits is presented to the Rock Creek Rural Fire Protection District Administrator, the Rock Creek Rural Fire Protection District shall reduce the amount of the development impact fees for the type of fee for which the credit is provided, and shall note in the Rock Creek Rural Fire Protection District's records the amount of credit remaining, if any. Upon request of the fee payer or successor in interest to whom the credit was issued, the Rock Creek Rural Fire Protection District shall issue a letter stating the amount of credit remaining.

H. Credits Exceeding Fee Amounts Due: If the credit due to a fee payer pursuant to subsections A through G of this section, exceeds the development impact fee that would otherwise be due from the fee payer pursuant to section 17.19.90 of this chapter (whether calculated through the fee table in section 17.19.050 of this chapter or through an independent assessment), the fee payer may choose to receive such credit in the form of either 1) a credit against future development impact fees due for the same capital improvements element, or 2) a reimbursement from development impact fees paid by future development that impacts the system improvements contributed or dedicated by the fee payer. Unless otherwise stated in an agreement with the fee payer, the Rock Creek Rural Fire Protection District shall be under no obligation to use any Rock Creek Rural Fire Protection District funds, other than development impact fees paid by other development for the same Rock Creek Rural Fire Protection District capital improvements element, to reimburse the fee payer for any credit in excess of development impact fees due.

I. Written Agreement Required: If credit or reimbursement is due to the fee payer pursuant to this section, the Rock Creek Rural Fire Protection District Administrator shall enter into a written agreement with the fee payer, negotiated in good faith, prior to the contribution, dedication, or funding of the system improvements giving rise to the credit. The agreement shall provide for the amount of credit or the amount, time and form of reimbursement, and shall have a term not exceeding ten (10) years. (Ord. 679, 2023)

17.19.100: APPEALS AND MEDIATION:

Disputes regarding decisions made in the application of this chapter shall be resolved through appeal to the Rock Creek Rural Fire Protection District Administrator and Commission, or through mediation, as set forth below

A. Right To Appeal:

1. Any fee payer that is or may be obligated to pay a development impact fee, or that claims a right to receive a refund, reimbursement, or credit under this chapter, and who is dissatisfied with a decision made by the Rock Creek Rural Fire Protection District Administrator, Kimberly P & Z Administrator, or a designee in applying this chapter, shall first request that the Kimberly P & Z Administrator reconsider the decision. A fee payer requesting reconsideration shall state in writing to the Kimberly P & Z Administrator the reasons why the fee payer believes the decision to be in error. The Kimberly P & Z Administrator shall issue a written decision confirming or modifying the decision within fifteen (15) days of receipt of a written request for reconsideration.

2. Any fee payer that is dissatisfied with the decision of the Kimberly P & Z Administrator upon reconsideration pursuant to subsection A (1) of this section, may appeal such decision to the Rock Creek Rural Fire Protection District Administrator or Commission. The fee payer shall have the burden of proving by clear and convincing evidence that the decision was in error.

3. In order to pursue the appeal described in subsection A (2) of this section, the fee payer shall file a written notice of the appeal with the Kimberly P & Z Administrator or a designee within thirty (30) days after the date of the reconsideration, or the date on which the fee payer submitted a payment of development impact fees under protest, whichever is later. Such written application shall include a statement describing why the fee payer believes that the decision was in error, together with copies of any documents that the fee payer believes support the claim.

4. The Rock Creek Rural Fire Protection District Administrator and Commission shall hear the appeal within sixty (60) days after receipt of a written notice of appeal. The fee payer shall have a right to be present and to present evidence in support of the appeal. The Rock Creek Rural Fire Protection District Administrator and Kimberly P & Z Administrator or designee who made the decision under appeal shall likewise have the right to be present and to present evidence in support of the decision. The criteria to be used by the Rock Creek Rural Fire Protection District Commission in considering the appeal shall be whether a) the decision or interpretation made by the Kimberly P & Z Administrator after reconsideration, or b) the alternative decision or interpretation offered by the fee payer more accurately reflects the proportionate share of the costs of system improvements to the Rock Creek Rural Fire Protection District capital improvement plan necessary to serve new development and whether this chapter has been correctly applied. The Rock Creek Rural Fire Protection District Commission shall issue a decision upholding, reversing, or modifying the decision being appealed within thirty (30) days after hearing the appeal.

B. Mediation:

1. Any fee payer that has a disagreement with the Rock Creek Rural Fire Protection District regarding a development impact fee that is or may be due for a proposed development pursuant to this chapter, may enter into a voluntary agreement

with the Rock Creek Rural Fire Protection District to subject the disagreement to mediation by a qualified independent party acceptable to both the fee payer and the Rock Creek Rural Fire Protection District.

2. Mediation may take place at any time following the filing of a timely appeal pursuant to this section, or as an alternative to such appeal, provided that the request for mediation is filed no later than the last date on which a timely appeal could be filed pursuant to subsection A of this section.

3. Participation in mediation does not preclude the fee payer from pursuing other remedies provided for in subsection A of this section.

4. If mediation is requested, any related mediation costs shall be shared equally by the fee payer and the Rock Creek Rural Fire Protection District, and a written agreement regarding the payment of such costs shall be executed prior to the commencement of mediation.

5. In the event that mediation does not resolve the issues between the parties, the fee payer retains all rights to seek relief from a court of competent jurisdiction. (Ord. 679, 2023)

17.19.200: ENFORCEMENT AND COLLECTION:

When any development impact fee is due pursuant to the terms of this chapter, or pursuant to the terms of any written agreement between a fee payer Kimberly P & Z Administrator and the Rock Creek Rural Fire Protection District authorized by this chapter, and such fee has not been paid in a timely manner, the Rock Creek Rural Fire Protection District may exercise any or all of the following powers, in any combination, to enforce the collection of the fee

A. The Rock Creek Rural Fire Protection District may request the City of Kimberly withhold building permits or other development approvals related to the development for which the fee is due until all development impact fees due have been paid.

B. The Rock Creek Rural Fire Protection District may request the City of Kimberly withhold utility services from the development for which the fee is due until all development impact fees due have been paid.

C. The Rock Creek Rural Fire Protection District may add to the amount of the fee interest at the legal rate provided for in Idaho Code section 28-22-104 from the date on which the fee was due.

D. The Rock Creek Rural Fire Protection District may impose liens for failure to timely pay a development impact fee following procedures contained in chapter 5, title 45, Idaho Code. (Ord. 679, 2023)

17.19.300: MISCELLANEOUS PROVISIONS:

A. Nothing in this chapter shall be construed to create any additional right to develop real property or diminish the power of the Rock Creek Rural Fire Protection District in regulating the orderly development of real property.

B. Nothing in this chapter shall obligate the Rock Creek Rural Fire Protection District to approve any development request that may reasonably be expected to reduce levels of service below minimum acceptable levels established in the development impact fee study.

C. Nothing in this chapter shall restrict or diminish the power of the Kimberly P & Z Administrator and Rock Creek Rural Fire Protection District 1) to impose reasonable conditions on the annexation of any property to the Rock Creek Rural Fire Protection District in accordance with Idaho Code, including conditions for recovery of project or system improvement costs required as a result of such voluntary annexation, or 2) to negotiate and execute development agreements that may impose additional conditions on development, including the recovery of project or system improvement costs, either in connection with a proposed annexation or in connection with any other development within the Rock Creek Rural Fire Protection District

D. Notwithstanding any other provision of this chapter, that portion of a project for which a complete application for a building permit has been received by the Kimberly P & Z Administrator and the Rock Creek Rural Fire Protection District, prior to the effective date hereof shall not be subject to the development impact fees imposed by this chapter. If the resulting building permit is later revised or replaced after the effective date hereof, and the new building permit reflects a development density, intensity, or number of units more than ten percent (10%) higher than that reflected in the original building permit, then development impact fees may be charged on the difference in density, intensity, or number of units between the original and the revised or replacement building permit.

E. Nothing in this chapter shall restrict the Kimberly P & Z Administrator and Rock Creek Rural Fire Protection District from requiring fee payer or an applicant for a development approval or building permit to construct reasonable project improvements required to serve the applicant's project, provided that such request does not duplicate a system improvement in a category for which costs were included in the development impact fee study.

F. Any monies, including any accrued interest not assigned to specific system improvements within such capital improvements program and not expended pursuant to section 17.19.070 of this chapter or refunded pursuant to section 17.19.070 of this chapter shall be retained in the same account until the next fiscal year.

G. The Rock Creek Rural Fire Protection District shall be entitled to collect and retain a surcharge on each development impact fee collected in order to recoup that portion of the cost of preparing the capital improvements plan that is attributable to determining the development impact. Such surcharge does not exceed each development's proportionate share of the cost of preparing the plan.

H. If the Kimberly P & Z Administrator and Rock Creek Rural Fire Protection District, discovers an error in the

development impact fee study that results in assessment or payment of more than a proportionate share of system improvement costs on any proposed development, the Kimberly P & Z Administrator and Rock Creek Rural Fire Protection District shall 1) adjust the development impact fee to collect no more than a proportionate share or 2) discontinue the collection of any development impact fees until the error is corrected by ordinance.

I. If development impact fees are calculated and paid based on a mistake or misrepresentation, they shall be recalculated. Any amounts overpaid by a fee payer shall be refunded by the Rock Creek Rural Fire Protection District within thirty (30) days after the Rock Creek Rural Fire Protection District's acceptance of the recalculated amount, with interest at the legal rate provided for in Idaho Code section 28-22-104 from the date on which the fee was paid. Any amounts underpaid by the fee payer shall be paid to the Rock Creek Rural Fire Protection District within thirty (30) days after the Rock Creek Rural Fire Protection District's acceptance of the recalculated amount, with interest at the legal rate provided for in Idaho Code section 28-22-104 from the date on which the fee was paid. In the case of an underpayment to the Kimberly Planning and Zoning Administrator may withhold issuance of building permits or development approvals for the project for which the development impact fee was paid until such underpayment is corrected, and if amounts owed to the Rock Creek Rural Fire Protection District are not paid within such thirty (30) day period, the Kimberly Planning and Zoning Administrator may also repeal any building permits or development approvals issued in reliance on the previous payment of such development impact fee and refund such fee to the fee payer.

J. The Rock Creek Rural Fire Protection District Commission, shall consider their Development Impact Fee Advisory Committee's recommended revision(s) to this chapter at least once every twelve (12) months. Their committee's recommendations and the Rock Creek Rural Fire Protection District Commission actions are intended to ensure that the benefits to a fee-paying development are equitable, in that the fee charged to the development shall not exceed a proportionate share of the costs of system improvements, and the procedures for administering development impact fees remain efficient.

K. Nothing in this chapter shall be construed to prevent or prohibit private agreements between developers, the Rock Creek Rural Fire Protection District, City of Kimberly, Twin Falls Highway District, Twin Falls Canal Co., Kimberly School District, the Idaho Transportation Department, and/or other governmental entities in regard to the construction or installation of system improvements or providing for credits or reimbursements for system improvement costs incurred by a developer or fee payer, including interproject transfers of credits, or providing for reimbursement for project improvements that are used or shared by more than one development project. If it can be shown that a proposed development has a direct impact on a public facility under the jurisdiction noted herein above but not limited to, then the agreement shall include a provision for the allocation of development impact fees collected from the developer or fee payer for the Rock Creek Rural Fire Protection District improvements by the applicable jurisdiction. (Ord. 679, 2023)

17.19.400: PENALTY FOR VIOLATION:

A. Violation of this chapter shall be a misdemeanor and shall subject the violator to those remedies provided in Kimberly City Code, Chapter 1.16 Section 1.16.010.

B. Knowingly furnishing false information to any official of the Rock Creek Rural Fire Protection District charged with the administration of this chapter on any matter relating to the administration of this chapter, including, without limitation, the furnishing of false information regarding the expected size, use, or impacts from a proposed development, shall be a violation of this chapter. (Ord. 679, 2023)