

CHAPTER 3

ENFORCEMENT AND ADMINISTRATION

SECTION:

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10-3-1: **DUTY:** It is the duty of the planning Administrator or his/her authorized designee, to enforce all provisions of this title and, generally, as determined requisite refer all violations to the city attorney, entering actions in the courts when necessary, and his failure to do so shall not legalize any violation of such provisions, nor shall the failure of the city attorney to enter actions legalize any violation of such provisions.

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

10-3-2: **FAILURE TO OBTAIN A PERMIT:**

- A. Whenever the administrator becomes aware of an activity for which a permit is required by this ordinance, for which a permit has not been approved, or for which the permit has expired, he or she shall notify the occupant (and owner, if they are not the same) of the site to immediately cease all un-permitted activity.

- B. Notice shall be given by posting on the site or first class mail. If activity does not cease, the administrator shall ask the city attorney to take prompt action, as authorized by I.C. 67-6527, to end the un-permitted activity and, if a permit is not subsequently issued, to require restoration of the site to its original condition.
- C. Required restoration shall include restoration of vegetative cover where sites have been graded in violation of this title.

10-3-3: **ENFORCEMENT ACTIONS:** The process for enforcement of this ordinance shall be as described here.

- A. The administrator shall notify the occupant (and owner, if they are not the same) of the violation by first class mail and/or posting on the site. The notice shall describe the violation, cite the sections of this ordinance being violated, and order the occupant to attain compliance in given time determined by the administrator.
- B. Any person who receives a notice of violation may request inspection by the administrator to show that compliance has been attained in a given time determined by the administrator.
 - 1. File a written request with the administrator for an extension of time to attain compliance, with such extensions being limited to a maximum of 60 days and culminated by an inspection to show that compliance has been attained; or
 - 2. File an appeal of the administrator's notice, following the appeals procedure of 10-1-13.
- C. The administrator shall notify any occupant or owner who fails to attain compliance within the specified time, or to show, on appeal, that a violation has not occurred, that the council will hold a hearing to consider legal action on the violation at a specified date, time, and place. This notice shall be posted on the site and sent by first class mail at least 15 days before that hearing, repeat the description of the violation from the original notice, and cite the penalties that may be imposed for violations of this ordinance, as established in 10-3-4 of this title.
- D. The council shall hold a hearing to consider action on the violation. The occupant or owner shall be permitted to present evidence that a violation has not occurred. If the council finds that a violation has occurred it may:
 - 1. Specify a time within which compliance shall be attained or the matter automatically pursued by the city attorney; or
 - 2. Direct the city attorney to immediately initiate civil and/or criminal actions to bring the building or use into compliance.

- E. Violation as Basis for Application: A violation of this ordinance can not be remedied by the filing of an application for a permit. The violation must be corrected and the site must be in full compliance with this ordinance before an application for a permit may be filed.

10-3-4: **PENALTIES:** Violations of this ordinance shall be a misdemeanor, and shall be punishable by a fine in any amount not exceeding the Idaho State maximum, or by imprisonment of not longer than 30 days, or by both fine and imprisonment. Each day in which a violation continues shall be considered a separate offense. (Ord. 94-1101, 11-1-1994, Ord 10-1027, 10- 27-10)

10-3-5: **DEVELOPMENT AGREEMENT:** Development agreements are a tool to be used by the Council as a condition of development.

- A. Initiation: Method Of Initiation: A development agreement may be initiated for the development of a particular parcel of land or collection of parcels of land through the following methods:

1. On application by the property owner.
2. On recommendation of the administrator.
3. On recommendation of the Commission.

In Either Case: In the event of either of the above, all time limits required by this code may be stayed upon affirmative vote of the commission or council.

- B. Form: A development agreement shall be in the form required by the Administrator. No agreement shall be accepted by the zoning administrator which does not include the following:

1. An affidavit by the owner of the parcel agreeing to submit the parcel to a development agreement.
2. The specific use or uses of the parcel for which the development agreement is sought.
3. The allowed or conditional use for which application has been made.
4. A concept plan of the project to be developed on the parcel. The concept plan shall include:
 1. A description of the density allowed or sought.
 2. Maximum height, size, and location of any structures on the property.

5. The time required to begin the use on the property.
6. A statement by the owner of the parcel that failure to comply with the commitments in the development agreement shall be deemed consent to rezone the use to the pre existing zone or, in the case of an initial zone at annexation, a zone deemed appropriate by the council.
7. Any other matter mutually agreeable to the parties.
8. Requirement for a financial guarantee pursuant to chapter 18 section 3:A.23 to cover infrastructure construction to completion, consistent with city public works standards.
9. A covenant to the effect that in the event the development agreement is violated by the developer after written notification is given to the developer for more than 30 days that the plat shall be reverted and terminated, and/or any permit granted shall be nullified.

- C. Approval: The council may require a development agreement be executed to allow a rezone if, in the opinion of the council, approval of the requested rezone does not satisfy the requirements set forth in the zoning ordinance for rezone approval, but the particular project or use contemplated has a value to the community that would justify the use of a development agreement.
1. A development agreement may not allow a use on the parcel that is not a permitted or conditional use in the requested zone.
 2. Development agreements may be approved by the council only after a public hearing. The public hearing shall follow the notice and hearing provisions of Idaho Code section 67-6509.
 3. The council may add conditions, terms, duties or obligations to the development agreement.
- D. Recordation: Following approval of a development agreement by the city council, the development agreement shall be recorded in the office of the county recorder at the expense of the property owner. The development agreement, and all conditions, terms, duties or obligations included therein, shall run with the land and shall be considered continuing obligations of the owner or subsequent owner and each other person acquiring an interest in the property.
- E. Duty to Comply: An owner, subsequent owner, and each other person acquiring an interest in property that is restricted by a development agreement adopted pursuant to this chapter, shall comply with the terms,

conditions, obligations and duties contained in the development agreement.

F. Modification: A development agreement may be modified by the city council only after complying with the notice and public hearing provisions of Idaho Code section 67-6509.

G. Termination:

1. Hearing Required: A development agreement may be terminated by the city council for failure to comply with the commitments expressed in the development agreement. Such termination shall take place after a public hearing on the termination at which time testimony shall be taken to establish noncompliance with the conditions, terms, obligations or duties contained within the development agreement. The public hearing shall follow the notice and hearing provisions of Idaho Code section 67-6509.

2. Failure to Comply or Termination of the Agreement: Upon termination of the development agreement, the property shall revert to the previous zone assigned prior to adoption of the development agreement or, in the case of an initial zone at annexation, a zone deemed appropriate by the council.

10-3-6: **Costs:** All cost borne by the City in process of considering any application made under this title, including but not limited to attorney fees, engineering fees, and outside consulting fees shall be reimbursed by the applicant prior to the issuance of any permit. (Ord. 10-0811 amd. 08-11-10.)