CHAPTER 21

LEGISLATIVE AMENDMENTS

21-1. GENERAL

21-1.01 If the public necessity, convenience, general welfare, or approved zoning practices require, the board may amend, supplement, change or repeal the provisions of the comprehensive plan and this ordinance, pursuant to the procedures outlined herein.

21-1.02 The planning and zoning commission should specifically review the comprehensive plan at the January and July meeting of each calendar year for the purpose of maintaining the plan's currency and effectiveness. If changes are deemed necessary, the planning and zoning commission shall initiate proceedings for such changes pursuant to the procedures outlined herein.

21-1.03 Unless otherwise stated, the procedures stated herein for amending, changing or revising the comprehensive plan and ordinance are considered legislative matters and may be discussed and considered by the commission and the board as outlined below, without limit of time.

21-2. AMENDING THE ORDINANCE AND COMPREHENSIVE PLAN

21-2.01 AMENDMENT PROPOSALS TO BE SPONSORED

A. All proposals for legislative amendments to the ordinance or comprehensive plan, except those describe in paragraph "C" below, shall be sponsored by either the board as a whole or by one of its individual members. Staff, a member of the public, or the planning and zoning commission by way of an adopted motion, may solicit such sponsorship. Solicitation of the board as whole shall only be conducted at a regularly scheduled meeting. The process for soliciting an individual board member shall be left to the discretion of that member.

B. Once sponsorship has been secured, the proposal shall, except for as outlined in the paragraph below, be reduced to writing and should include such additional information as:

1) The names of those persons bringing the proposal, including that of the sponsor.
2) A copy of that section of the ordinance or comprehensive plan that is the subject of the proposed amendment that shows both the current and proposed amended language.

3) A narrative explanation of the reason for the requested change, as well as an explanation of the effect the proposed change will have on the comprehensive plan and on the ordinance as a whole.
4) A description of any evidence available that supports the proposed change.
5) If the proposal is for an amendment to the comprehensive plan, a description of how such proposed amendment will affect subsections (a) through (o) of Idaho Code Section 67-6508

C. A landowner or person having a recorded interest in certain property may act as his own sponsor when he is proposing to amend the ordinance's zoning map or the comprehensive plan's future land use map, and when such amendment pertains solely to the person's property, or to his property and a select few contiguous neighboring parcels of property. Proposals for amendments brought in this manner shall be by application, which shall contain the following information:

1) Name, address and telephone number of the applicant.
2) Present land use.
3) Present zoning district/future land use.
4) Proposed zoning district/future land use.
5) A vicinity map, drawn to a scale approved by the administrator, showing property lines, thoroughfares, existing and proposed zoning and such other items as the administrator may require.
6) A list of the names and addresses of all property owners who are within one-half (1/2) mile of the external boundaries of the land being considered.
7) A statement indicating how the proposed amendment relates to the comprehensive plan, the availability of public facilities, the compatibility with the surrounding area, and quantitative data that will verify that re-zoning or amendment to the plan will not cause economic, social, or physical stress on existing uses of surrounding areas.
8) A fee as established by the board. (Ordinance 2010-10)

21-3 DEBATE AND CONSIDERATION OVER LEGISLATIVE AMENDMENTS(Ordinance 2010-10)

21-3.01 BY THE PLANNING AND ZONING COMMISSION

A. Sponsored proposals for all legislative amendments shall be submitted to the planning and zoning commission, which shall evaluate the request to determine the extent and nature of the proposed amendment. (Ordinance 2010-10)

B. Prior to making any recommendations to the board, the planning and zoning commission shall set a time at which interested persons shall have an opportunity to speak to the commission about the proposed legislative amendment(s).

C. At least fifteen (15) days prior to the date set for public comment to be allowed, notice of the time and place to present such comment shall be provided, along with a summary of the proposed amendment to be considered, by publishing such notice in an official newspaper or paper of general circulation within Jerome County.

1) Provided that in the case of a zoning district boundary change, additional notice shall be provided by mail to property owners or purchasers of record within the land being considered, and within one half (1/2) mile 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 commission.

2) Notice shall also be posted on the premises not less than one (1) week prior to the hearing.

3) All political subdivisions providing services to the areas under the board's jurisdiction shall be given notice of recommendations by the planning and zoning commission, to the board, that involve amendments to the comprehensive plan or zoning map. The administrator shall provide such notice to the political subdivisions at least fifteen (15) days prior to the board hearing public comment and considering such recommendations.

D. Without being regulated by time, the planning and zoning commission shall, after consideration of the comprehensive plan, public comment and any other information thought relevant, recommend to the board that the proposed legislative amendment be approved, denied or modified; or it may determine that further information, modifications or discussions are needed prior to any recommendations being made to the board. (Ordinance 2010-10)

21-3.02 THE BOARD OF COUNTY COMMISSIONERS

A. The board, prior to adopting, revising, or rejecting any proposed legislative amendment, shall evaluate the requested amendment(s), as well as the recommendations of the commission. (Ordinance 2010-10)

B. The board's evaluation shall include a public comment period to be noticed, held and conducted in the same manner as prescribed for the commission under section 21-3.01 above.

C. If the board, following the hearing, makes a material change from that which was originally proposed, additional notice that reflects the material change shall be given in the manner prescribed in the above paragraph, and another opportunity for the public to present comments shall be allowed before the board makes a final decision.

D. In making its decision, the board should consider the comprehensive plan, the commission's recommendations, public comment and any other information it deems relevant. The board may adopt, revise, or reject the proposed legislative amendment by a simple majority vote, or it may continue the matter for further information, debate or discussion. The board shall not be under any limit of time in reaching a final decision on a proposal sponsored by the board or one of its members. Amendments to the comprehensive plan or zoning map shall only be approved by a majority vote by the full board. (Ordinance 2010-10)

E. A legislative amendment to the ordinance shall not take effect until the relevant terms of Idaho Code Section 31-715 have been complied with. Upon becoming effective, the amended ordinance shall thereafter be made a part of the Jerome County Zoning Ordinance. (Ordinance 2010-10)

F. No amendment of the comprehensive plan shall be effective unless adopted by resolution by the board. A copy of the amended comprehensive plan shall accompany each adopting resolution and shall be kept on file with the county clerk.

21-4 HEARING PROCEDURES FOR QUASI-JUDICIAL AMENDMENTS

Applications brought pursuant to section 21-2.01(C) shall be deemed quasi-judicial in nature and the hearing procedure for such shall be as set forth ~~under~~ in Chapter 23 ~~section 23-5, chapter 23~~ of ~~this zoning ordinance~~the JCZO. Notice for hearings on such quasi-judicial matters shall be as prescribed by section 21-3.01 above. (Ordinance 2010-10)

21-5 DEVELOPMENT AGREEMENTS

As a condition of approving a rezone request, the planning and zoning commission may recommend, and the board may require or permit an owner or developer to make a written commitment concerning the use or development of the subject parcel. (Ordinance 2010-10)

21-5.01 INITIATION OF AGREEMENTS

A development agreement may be initiated for the rezoning of a particular parcel of land or collection of parcels of land through the following methods:

1) By the applicant including a proposed development agreement along with his application for a rezone.
2) By the planning and zoning commission or the board recommending or requiring such an agreement following a hearing on an application for a rezone. (Ordinance 2010-10)

21-5.02 FORM OF AGREEMENTS

An agreement shall be in a form agreeable to the parties, however no force or effect shall be given to any agreement that does not contain the following:

1) Legal name, title and addresses of the applicant, property owner and/or others with a direct vested interest in the conditional zoning development agreement and rezone request.

2) A legal description of the property that is the subject of the rezone request. Such legal description must be acceptable to the county.

3) An affidavit by the owner of the subject parcel indicating an understanding and agreement that:

    a) Failure to comply with the commitments in the agreement shall be deemed consent to rezone the property to the pre-existing zone;
    b) The reversion back to the pre-existing zone of the subject parcel will occur at the time of termination of the agreement; and
    c) That the costs of rezoning the parcel back to its original zone shall be paid by the owner, and that the county may place a lien on such parcel until such time that all are paid.

4) Signatures of all applicants, owners, developers, or lawfully authorized agents, shall be notarized, and in the case of lawfully authorized agents, properly executed powers of attorney in a form acceptable to the county's legal counsel shall be presented to the director and shall be made part of the agreement.

5) A clause that the commitment shall run with the land and be binding on the heirs, assigns, and successors in interest of the owner and/or developer.

6) Any other matter mutually agreeable to the parties. This may include, but is not limited to, bonding, letters of credit, or other fiscal guarantees.(Ordinance 2010-10)

21-5.03 HEARING PROCESS FOR AGREEMENTS AND APPROVAL:

A. The planning and zoning commission may recommend, and the board may adopt, or it may require on its own accord without recommendations from the commission, a development agreement to be executed as a condition for approval of a rezone application in order to ensure implementation of the project as represented by the applicant and to promote the general health, safety, comfort, convenience, and welfare of the citizens of Jerome County.

B. A development agreement shall not allow a use of the property that is not a permitted or specially permitted use in the zone requested.

C. If an applicant contemplates and proposes a development agreement, he shall include such proposal along with his application for a rezone. The rezone application shall then be brought before the planning and zoning commission, following the normal notice and hearings procedures set forth under chapter 23 of the Ordinance. The development agreement, in full or through summary, shall be made part of the notice given for the rezone application that is required by section 21-3.01. At the hearing, the planning and zoning commission may recommend that the board adopt or reject the development agreement as proposed by the applicant, or it may recommend adoption of the proposed agreement with additional conditions, terms, duties or obligations being placed on top of, or in place of, some or all of those originally proposed by the applicant.

D. If an agreement is not contemplated by the applicant, but does formulate with the planning and zoning commission during its hearing or discussions on a rezone application, and the commission makes the zoning agreement part of its recommendations to the board, then notice of the recommended agreement shall be advertised along with the rest of the recommendations as provided in section 21-3.01. At the hearing before the board, the board may adopt or reject the development agreement as recommended by the commission, or it may adopt the recommended agreement with additional conditions, terms, duties or obligations being placed on top of, or in place of, some or all of those originally recommended by the commission.

D. If the applicant did not contemplate a development agreement, nor did the planning and zoning commission during its proceedings, but the board does determine, at its hearing on a rezone application, that such an agreement is necessary, then such a determination shall be deemed a

material change as identified in section 21-3.02(C), and accordingly, before the finalization of any such agreement, the board shall provide additional notice and hearings as outlined per that section. (Ordinance 2010-10)

21-5.04 RECORDING OF AGREEMENTS

Following the board's approval of a development agreement and the adoption of the companion ordinance conditionally rezoning the subject property, the agreement shall be recorded in the office of the county recorder at the expense of the property owner or applicant. The recorded agreement shall take effect and be in force upon adoption of the approval order or publication of the ordinance rezoning the subject property, whichever occurs later. The agreement, and all conditions, terms, duties or obligations included therein, shall run with the land and shall be considered to be continuing obligations of the owner, all subsequent owners and any other person acquiring an interest in the property. (Ordinance 2010-10)

21-5.05 DUTY TO COMPLY WITH TERMS OF AGREEMENT

Any owner, subsequent or otherwise, and any other person acquiring an interest in property that is restricted by an agreement adopted pursuant to this chapter, shall comply with all terms, conditions, obligations and duties contained in the agreement. (Ordinance 2010-10)

21-5.06 MODIFICATION OF AGREEMENTS

A. No substantial modification of an agreement may be made without approval of the board, unless the modification is required by changes in state or federal laws, rules, or regulations. An agreement may be modified by the board, without public comment or hearing, only after an affirmative finding by the board that the proposed modification is not a substantial change to the terms and conditions of the agreement, or that the modification is required by changes in state or federal laws, rules, or regulations.
B. After recording of a development agreement, any party bound by the agreement may seek to modify the agreement. Requests for modification of a conditional zoning development agreement shall comply with the procedures set forth in this chapter, and may also follow any procedures contained in the original agreement which are consistent with those set forth in this chapter. The board may approve a substantial modification of a previously adopted agreement based upon the following criteria:

    1) A public hearing is held in front of the board that complies with the notice and hearing procedures set forth in section 21-7.01.

2) A finding that the circumstances surrounding the agreement currently in effect have changed and that the proposed modification will:

a) Preserve the enjoyment of a substantial property right of the owner;
b) Not be detrimental to the public welfare; and
c) Not be injurious to other property in the surrounding neighborhood.(Ordinance 2010-10)

21-5.07 TERMINATION OF AGREEMENTS

A. A development agreement may be terminated by the board upon a finding of non-compliance by any party of any term, condition, obligation or duty contained in the agreement; or upon a finding that the agreement is no longer relevant or applicable given circumstances or conditions having changed since implementation of the agreement. Termination of an agreement based on a breach may be done without the consent of the breaching party and without the consent of any other party to the agreement. Termination based on changing circumstances or conditions may occur upon a finding by the board that such termination will be in accordance with the provisions of 21-5.06(B)(2)(a)(b) and (c).

B. A finding of the board to terminate an agreement shall only be made after a public hearing is held and that complies with the notice and hearing procedures of section 21-3.01. At such hearing, only evidence that is relevant (evidence regarding compliance or non-compliance in matters concerning breach: or evidence of changed or unchanged circumstances or conditions in matters concerning relevancy of the agreement) shall be heard.

C. A development agreement may contain conditions and procedures for termination of the agreement that are contrary to those stated here, and which shall be controlling over those stated here, if all parties to the agreement had accepted and agreed upon such conditions and/or procedures at the time the agreement was created. (Ordinance 2010-10)

21-5.08 ZONE REVERTANCE UPON TERMINATION OF AGREEMENT

A. A development agreement terminated because of a breach shall cause the property that was the subject of the agreement to revert back and be zoned as it was at the time the rezone request was made and that resulted in the adoption of the agreement in the first place. If such a zone is no longer recognized by the county, or if such a zone would now be in conflict with the comprehensive plan, then the type of zone that most closely conforms to the characteristics and requirements of the pre-

existing zone and that is in accordance with the comprehensive plan, as determined by the administrator, shall be applied. At that time, all uses of the property that are not permitted within the reverted zone shall immediately cease.

B. Any and all costs incurred by Jerome County as a result of an agreement being terminated for non-compliance shall be paid by the owner of the subject property. The administrator may cause a lien in the amount owed to be placed upon the subject property until such time that the county has recovered its costs and been made whole. (Ordinance 2010-10)

21-5.09 ENFORCEMENT OF AGREEMENTS

Development agreements may be enforced by the county through any means deemed to be appropriate, including but not limited to, specific enforcement, injunctive relief or damages for violation of any provision of this chapter or of any agreement approved pursuant to the provisions of this Ordinance. The foregoing enforcement options available to the county shall not be deemed exclusive. (Ordinance 2010-10)

21-6. RESUBMISSION OF APPLICATION

A proposal to amend the zoning map that has been previously denied by the board, shall not be resubmitted in either substantially the same form or with reference to substantially the same premises for the same purpose within a period of one (1) year from the date of such final action, unless there has been an amendment to the comprehensive plan which changes the conditions that apply to the specific area under consideration. (Ordinance 2010-10)