



**Lewiston Planning & Zoning Commission
REGULAR MEETING AGENDA
January 14, 2026 - 5:30 PM
Bell Building – Second Floor Conference Room – 215 D Street
Lewiston, Idaho 83501**

Seating will be available on a first-come, first-served basis.

I. CALL TO ORDER

II. ELECTION OF CHAIR AND VICE CHAIR FOR 2026 (ACTION ITEM): A chairperson and vice-chairperson shall be elected from among the commission members at the first regularly scheduled meeting in January, unless some other time is deemed feasible by the commission, pursuant to the Planning and Zoning Commission Bylaws, Article III A.

III. CITIZENS COMMENTS

An opportunity for citizens to address the Commission with comments and/or questions about Planning and Zoning Commission-related matters that are not a public hearing action item on this agenda. Citizens are asked to limit their time to three (3) minutes each.

IV. ACTIVE AGENDA

A. APPROVAL OF DECEMBER 10, 2025 MEETING MINUTES (ACTION ITEM)

B. PUBLIC HEARING AND SUBSEQUENT DELIBERATION AND DIRECTION TO STAFF REGARDING THE REASONED STATEMENT FOR CONDITIONAL USE PERMIT APPLICATION CUP-25-6 BY CHARLENE RICARD OF ABILITY INTERVENTIONS LLC (ACTION ITEM): The applicant requests Conditional Use Permit approval for a daycare center (13 or more) children at 3323 4th Street in the Low Density Residential, R2A, Zoning district. Daycare Centers are permitted as a Conditional Use in the R2A Zone subject to the special conditions of section 37-20.1(5) of Lewiston City Code. - Action Item ()

C. INITIATION OF ZONING CODE AMENDMENT ZA-04-25, WIRELESS COMMUNICATION FACILITIES (ACTION ITEM): Zoning code amendment ZA-04-25 proposes amendments to Chapter 37, Article XVII in accordance with House Bill No. 180 that amended Chapter 65, Title 67 of Idaho Code regarding telecommunications facilities and broadband infrastructure. - Action Item ()

V. STAFF-COMMISSION COMMUNICATIONS

A. SOLICITING COMMISSIONER ATTENDANCE FOR THE NEXT REGULARLY SCHEDULED MEETING OF JANUARY 28, 2026 (PUBLIC HEARING ON CONDITIONAL USE PERMIT AND WORK SHOP ON PROPOSED RESIDENTIAL UPZONE).

VI. ADJOURNMENT - Action Item

The City of Lewiston is committed to providing access and reasonable accommodation in its services, programs, and activities and encourages qualified persons with disabilities to participate. If you anticipate needing any type of accommodation or have questions about the physical access provided at this meeting, please contact Nikki Province, ADA Coordinator, at least forty-eight (48) hours in advance of the meeting at 208-746-3671 x 6211.

City of Lewiston

Planning and Zoning Commission Bylaws

Article I. Name

The name of this advisory board or commission is the Planning and Zoning Commission, hereafter referred to as the "Commission".

Article II. Membership

The Commission shall consist of seven (7) voting members.

Article III. Officers

A. The officers of the Commission shall be a chairperson and vice-chairperson elected from among the Commission members at the first regularly scheduled meeting in January, or at such other time as the Commission deems feasible.

B. Officers shall serve a term of one (1) year from the meeting at which they are elected and until their successors are duly elected.

C. The chairperson shall preside at all meetings of the Commission, authorize calls for any special meetings, appoint all committees, execute all documents authorized by the Commission, serve as an *ex officio* voting member of all committees, and generally perform all duties associated with that office.

D. The vice-chairperson, in the event of the absence or disability of the chairperson or of a vacancy in that office, shall assume and perform the duties and functions of the chairperson.

E. In the event of the absence of the chairperson and vice-chairperson, those Commission members present shall elect, by majority vote, a temporary chairperson for that meeting. Should the chairperson or vice-chairperson arrive, the temporary chairperson shall relinquish the chair upon the conclusion of the item of business then in consideration before the Commission.

Article IV. Meetings and Minutes

A. All Commission meetings shall be governed by the Idaho Open Meetings Law, I.C. §§ 74-201 *et seq.*; and all Commission records shall be subject to the Idaho Public Records Act, I.C. §§ 74-101 *et seq.*, and the City of Lewiston records retention schedule.

B. Regular meetings shall be held on second and fourth Wednesday of each month at five thirty (5:30) p.m. in the large, second floor meeting room of the Community Development Department office building at 215 D Street, or at such other location or time as shall be designed in advance. If a day fixed for a regular meeting falls on a holiday recognized by the City of Lewiston, then such meeting shall be cancelled.

C. Special meetings may be called by a consensus of the Commission, the chairperson, or the staff liaison. If the time and place of a special meeting has not been determined at a regular meeting with all

Commission members present, then a notice of the time and place of the special meeting shall be sent to all Commission members as soon as practicable.

D. Unless otherwise provided by law, a quorum for the transaction of business at any meeting shall consist of a majority of the currently appointed voting members of the Commission.

E. Meeting minutes of the Commission shall comply with Idaho Code Title 74, Chapter 2. Meeting minutes shall be maintained in accordance with the City of Lewiston records retention schedule.

Article V. Rules of Debate

A. *Recognition by chairperson and interruptions prohibited.* A Commission member desiring to speak at a meeting shall address the chairperson and, upon recognition by the chairperson, shall confine himself or herself to the question under debate. A Commission member, once recognized by the chairperson, shall not be interrupted when speaking.

B. *Call for the question.* A Commission member may call for the question upon being recognized by the chairperson. If the motion to call for the question is seconded, debate shall not be allowed, and the motion must be approved by two-thirds (2/3) of the Commission members present. If the motion is so approved, the Commission shall immediately vote on the underlying question without further debate.

Article VI. Committees

A. As authorized by the Commission, the chairperson may appoint committees of one (1) or more Commission members and/or members of the community at large, each for such specific purposes as the business of the Commission may require from time-to-time. A committee shall be considered to be discharged upon completion of the purpose for which it was appointed and after a final report is made to the Commission.

B. All committees shall make a progress report to the Commission at each Commission meeting.

C. No committee shall have other than advisory powers unless, by suitable action of the Commission, it is granted specific power to act.

D. All committee meetings shall be governed by the Idaho Open Meetings Law, I.C. §§ 74-201 *et seq.*; and all committee records shall be subject to the Idaho Public Records Act, I.C. §§ 74-101 *et seq.*, and the City of Lewiston records retention schedule.

Article VII. General

A. *Voting.* An affirmative vote of the majority of all Commission members present at the time shall be necessary to approve any action before the Commission. A motion shall fail if votes upon such motion are tied. The chairperson may vote upon and may move or second a proposal before the Commission. Unless otherwise provided by law, every Commission member present when a question is put forth shall vote for or against the same. Unless excused from voting, if a Commission member refuses or fails to vote, and the result of such refusal or failure creates a tie, that Commission member's vote shall be counted as an "aye." If a Commission member is excused from voting, that member may be counted for purposes of determining a quorum, but shall not be counted toward the minimum number of votes required to pass or reject a motion.

B. *Conflicts of interest.* Commission members shall adhere to the applicable provisions in Idaho Code regarding conflicts of interest.

C. *Conflicts.* In the event of a conflict between a provision in these Bylaws, the Lewiston City Code, and/or Idaho Code, the order of priority shall be Idaho Code, the Lewiston City Code, and these Bylaws.

D. *Amendments.* The Commission may amend the number of voting members (Article II); when officers will be elected and the duties of additional officers, if applicable (Article III); and the date, time, and location of regular meetings (Article IV) upon majority vote of the full Commission; approval from the City Council shall not be required to amend such provisions. However, the remaining provisions of these Bylaws shall not be amended by the Commission without prior approval from the City Council.

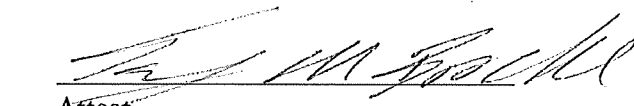
These Bylaws were adopted by the Commission on March 11, 2020. These Bylaws shall replace and supersede any previously-adopted Bylaws of the Commission.



Signature of Commission Chair

March 11, 2020

Date



Attest

December 10, 2025

The LEWISTON PLANNING AND ZONING COMMISSION met in the Community Development Department Second Floor Conference Room at 215 "D" Street. Chair Iacoboni called the meeting to order at 5:30 p.m.

I. CALL TO ORDER

COMMISSIONERS PRESENT: Gabriel Iacoboni, Chair; Emily Wolf, Vice Chair; Shaunita Cable; Cynthia Ball; Kevin Kelly; Zach Battles arriving at 5:31 pm

COMMISSIONERS EXCUSED: Maureen Anderson;

STAFF MEMBERS PRESENT: Joel Plaskon, City Planner; Jennifer Tengono, City Attorney

II. CITIZENS COMMENTS

None

III. ACTIVE AGENDA

A. APPROVAL OF NOVEMBER 12, 2025 MEETING MINUTES (ACTION ITEM)

Commissioners Ball and Cable moved and seconded, respectively, approval of the November 12, 2025 meeting minutes as written. The motion carried 4-0-1 with Commissioner Kelly abstaining.

B. PUBLIC HEARING AND RECOMMENDATION TO CITY COUNCIL ON ZONING CODE AMENDMENT ZA-05-25, PARKING LOTS (ACTION ITEM):

Chair Iacoboni explained the public hearing process, opened the public hearing and asked for a staff presentation.

Staff Plaskon provided a verbal summary of potential zoning code changes proposed with ZA-05-25, amending the provisions for new and existing parking lots.

Commissioner Kelly asked for clarification on the definition of dust palliative.

Staff Plakon stated it is like mag chloride or varieties of it. Used as a de-icer also used on dirt and gravel roads for dust control.

There being no further questions for the staff, and no public testimony, Chair Iacoboni closed the public hearing.

After deliberation and discussion, Commissioners Kelly and Battles moved and seconded, respectively, to recommend approval of ZA-05-25 to City Council. The motion carried 6-0.

IV. STAFF-COMMISSION COMMUNICATIONS:

A. Cancellation of next regular scheduled meeting of December 24, 2025.

All commissioners present are okay with the December 24, 2025, meeting being canceled. It is a City of Lewiston holiday, & the offices will be closed.

B. Recognition and appreciation of Kevin Kelly for his service on the Planning and Zoning Commission.

Commissioner Kelly was presented with a plaque recognizing his service on the Planning and Zoning Commission.

Staff Plaskon stated that last night at City Council, the empty Planning and Zoning Commission seat was appointed and the new member's first meeting will be January 14th, 2026. There will be a public hearing at the January 14th, 2026, meeting for a Conditional Use Permit.

V. ADJOURN

There being no further business, Commissioners Kelly and Ball moved and seconded, respectively, to adjourn. The motion carried 6-0, and the Planning and Zoning Commission adjourned at approximately 5:49 p.m.

RESPECTFULLY SUBMITTED,

Dawn Ortiz,
Recording Secretary

Chairperson or Acting Chairperson
Planning and Zoning Commission

Approved this _____ day of _____, 2026.



STAFF USE ONLY	
Case Number:	_____
Hearing Date:	_____
Nature of CUP Application:	_____

APPLICATION FOR CONDITIONAL USE PERMIT

(Pre-application meeting strongly encouraged)

Conditional use means a use permitted in a particular zone district upon showing that such use in a specified location will comply with all the conditions and standards as specified in Chapter 37 of the City Code, including any additional conditions of approval recommended by the Planning and Zoning Commission.

Pursuant to Idaho Code Section 67-6512(f), exceptions or waivers of standards, other than use, in the Zoning Chapter may be permitted by the Commission through issuance of a conditional use permit only when the exceptions or waivers of standards are incidental to the conditional use permit being considered by the commission.

By submitting this application to the City of Lewiston you are entering a quasi-judicial process. As such, you must not discuss the application with any member of the Lewiston Planning and Zoning Commission, or the Lewiston City Council, outside of the public hearing at which this matter will be heard.

APPLICANT INFORMATION

Full Name: Ricard Charlene M Date: 12/8/25
Last First M.I.

Address: 3323 - 4th St.
Street Address Apartment/Unit #

Lewiston ID 83501
City State ZIP Code

Phone: 208-553-0402 Email: cricard@abilityinterventions.com

OWNERSHIP INFORMATION

Property Owner Name: Charlene Ricard

Phone: 208-553-0402 Email: cricard@gmail.com

Mailing Address: 70 Box 2169, Lewiston, ID 83501

PROPERTY INFORMATION

Street Address of Subject Property: 3323 - 4th St, Lewiston, ID 83501

Subdivision Name: John C. Snyder

Block: 26

Lot: Lots 1, 2, 3

OR attach the most current deed if not part of a subdivision.

Property Zoning: _____

NATURE OF YOUR REQUEST

PLEASE ANSWER THE FOLLOWING QUESTIONS ON A SEPARATE SHEET OF PAPER.

1. Please describe the nature of your conditional use request. You should address pertinent issues, which may include: number of employees, hours of operation, anticipated traffic volume increase, health, safety, compatibility with neighboring land use, site access, on-site traffic flow, off street parking, loading/unloading, pick-up/drop-off, landscaping, and other planned on-site improvements.
2. What public facilities and utilities are available to serve your site? Describe the adequacy to serve the use requested. You should provide specific information regarding water supply, sewage, traffic impacts, stormwater detention and drainage, garbage service and other pertinent utilities and services.
3.
 - a. Will the proposed use result in conditions that will tend to generate nuisances (including but not limited to noise, dust, glare, vibrations, odors and the like) and, if so, how will the nuisances be mitigated?
 - b. Describe how/why the proposed use is a public necessity or, if it is not, describe how it is a benefit to the public.
 - c. Describe how the character of the proposed use, if developed according to the plans as submitted, will be in harmony with the area in which it is to be located.
 - d. Describe how the proposed use will not endanger the environment or the public health or safety.
 - e. Describe how the proposed use will be in substantial conformance with the comprehensive plan of the city.

PLAN INFORMATION

Site plans and floor plans are required. Floor plans shall accurately depict room sizes and uses, as well as doorways, windows, walls, hallways and stairways. Building elevation drawings may also be required, as determined by the City Planner.

Site plans shall include the following:

- Property lines, including dimensions;
- Street address or legal description;
- North arrow and scale;
- Setbacks between buildings and property lines;

- All building locations, size and uses, labeled as existing and/or proposed;
- Driveways and parking spaces;
- Landscaping;
- Location of garbage dumpsters *N/A*
- Other information, as directed by the Community Development Director, necessary to fully explain and describe the nature of the request.

The plans, as approved or modified by the Planning and Zoning Commission, shall be deemed a part of the applicant's conditional use permit and all use and development shall comply with the plans, application and conditions of approval set by the Planning and Zoning Commission, as well as all applicable City Codes. Nothing in a conditional use permit approval shall be interpreted as allowing the owner or applicant variation from current ordinances that were not specifically addressed at the time of conditional use permit approval.

APPLICATION SUBMITTAL AND PROCESSING

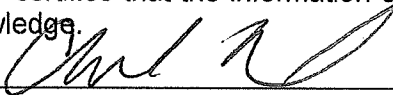
Incomplete applications will not be processed.

Application fee must be paid at the time of submittal.

Expect a five to seven working day application review period prior to commitment to schedule the required public hearing. Corrected or additional information may be required after application submittal, based upon application review.

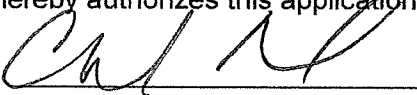
APPLICANT'S CERTIFICATION

The applicant(s) hereby certifies that the information contained in this application is true and correct to the best of my/our knowledge.

Signature of Applicant: 

Date: 12/8/25

The Property Owner hereby authorizes this application:

Signature of Owner: 

Date: 12/8/25

Nature of Request

1. This request involves adding preschool and/or daycare services to an already established developmental disability agency. There may be a slight increase of traffic volume, however parking is located on a street that services other medical facilities across the street. There is ample parking in the parking lot so off street parking is not necessary. Landscaping is in progress that includes trimming overgrowth and cutting down shrubs too sharp or unsafe for children.

2. The site has adequate facilities and utilities. It has three bathrooms including a handicap accessible bathroom. Water, sewer, electricity, etc. are established as well as garbage and recycling services.

3a. No anticipated nuisances aside from the sound of children playing when they are outside.

b. The daycare/preschool can benefit the public by offering them care for children who may have special needs or developmental disabilities w/ trained staff on site.

c. The daycare/preschool adds services to an already established facility providing services to children.

d. There are no risks to public health or safety. All parking is located on the premise so there is little risk of endangerment to the public.

e. Having sufficient childcare facilities directly supports working families and children's developmental needs.

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Lewiston Planning and Zoning Commission will conduct a public hearing at which you may provide comments/testimony on

Wednesday January 14, 2026 at 5:30 pm.

**COMMUNITY DEVELOPMENT DEPARTMENT BUILDING
2ND FLOOR MEETING ROOM,
215 D STREET LEWISTON, ID 83501**

Seating will be available on a first-come, first-served basis.

This public hearing will be to determine approval or denial of the following proposal:

PUBLIC HEARING AND SUBSEQUENT DELIBERATION AND DIRECTION TO STAFF REGARDING THE REASONED STATEMENT FOR CONDITIONAL USE PERMIT APPLICATION CUP-25-6 BY CHARLENE RICARD OF ABILITY INTERVENTIONS LLC (ACTION ITEM): The applicant requests Conditional Use Permit approval for a daycare center (13 or more children) and preschool at 3323 4th Street in the Low Density Residential, R2A, Zoning District. Daycare Centers are permitted as a Conditional Use in the R2A Zone subject to the special conditions of section 37-20.1 (5) of Lewiston City Code.

FOR FURTHER INFORMATION ABOUT THIS PROPOSAL contact Katie Hollingshead at the Community Development Department at khollingshead@cityoflewiston.org or (208) 746-1318, ext. 7261.

Submission of Written Comments/Testimony: To ensure that written comments can be forwarded to the Planning and Zoning Commission and relevant city staff prior to the hearing, please submit comments/testimony no later than **5:00 p.m. on Tuesday January 13, 2026** by: Emailing dortiz@cityoflewiston.org or mailing to: Dawn Ortiz, Community Development Department, PO Box 617, Lewiston, ID 83501.

Comments/Testimony for public hearings may also be given in-person at the meeting, during the public hearing.

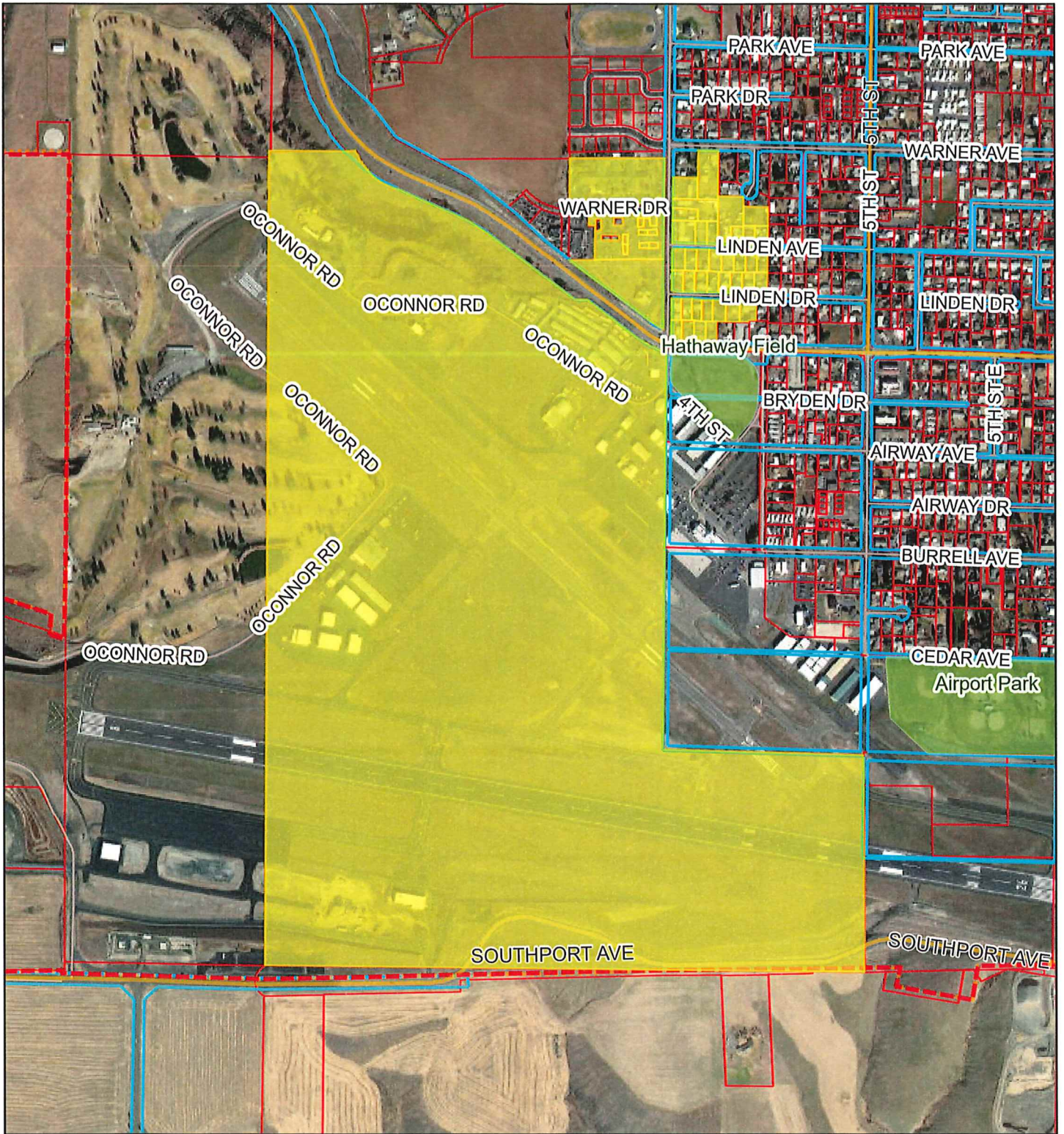
Public Hearing notice publication date: Sunday December 28, 2025.

The City of Lewiston is committed to providing access and reasonable accommodation in its services, programs, and activities and encourages qualified persons with disabilities to participate. If you anticipate needing any type of accommodation or have questions about the physical access provided at this meeting, please contact the meeting coordinator, Dawn Ortiz, at least forty-eight (48) hours in advance of the meeting at dortiz@cityoflewiston.org or (208) 746-1318, ext. 7265.
















NUMBER	OWNER1	OWNER2	MAIL_ADD1	MAIL_CITY	MAIL_ST	MAIL_ZIP	SITE_ADD
RPL355W55X002B	CRR PROPERTIES L L C		406 BURRELL AVE N31	LEWISTON	ID	83501	3318 4TH ST
RPL00260060020	SPRUELL JAMES		PO BOX 1502	LEWISTON	ID	83501	410 LINDEN DR
RPL00260030020	PRESNELL SAM R &	PRESNELL MYRA L	411 LINDEN AVE	LEWISTON	ID	83501	411 LINDEN AVE
RPL00260050060	GARDUNO GEORGE J &	GARDUNO KATHRYN A	927 GUN CLUB RD	LEWISTON	ID	83501	404 LINDEN DR
RPL00260030075	LIND TAYLOR &	LIND ALYSSA	3310 4TH STREET C	LEWISTON	ID	83501	3310 4TH ST C
RPL00260040085	BINGEMAN VARYL		407 LINDEN AVE	LEWISTON	ID	83501	407 LINDEN AVE
RPL06900000100	LEACHMAN BRIAN O &	LEACHMAN KRISTINA A	405 LINDEN DR	LEWISTON	ID	83501	405 LINDEN DR
RPL00260040090	MARTIN SHIRLEY M &	MARTIN TROY M FAMILY TRUST	409 LINDEN AVE	LEWISTON	ID	83501	409 LINDEN AVE
RPL06900000080	BONILLA MARTIN &	LICONA ELVIA	409 LINDEN DR	LEWISTON	ID	83501	409 LINDEN DR
RPL00260060005	APPLEFORD LYNN D		418 LINDEN AVE	LEWISTON	ID	83501	418 LINDEN AVE
RPL00260060000	GRISANTI ROGELIO &	GRISANTI KELLI R	420 LINDEN AVE	LEWISTON	ID	83501	420 LINDEN AVE
RPL00260050075	DANIEL JAMES D II &	DANIEL FLORENCE B	403 BRYDEN AVE	LEWISTON	ID	83501	403 BRYDEN AVE
RPL355W55X001B	LEAVITT ERIN &	LEAVITT MARY	6378 HEPTON LN	LEWISTON	ID	83501	3326 4TH ST SUITE 2
RPL00260030060	PARRISH KELLY R &	PARRISH LISA	413 LINDEN AVE	LEWISTON	ID	83501	413 LINDEN AVE
RPL00260030065	OLANDER TERRY L		419 LINDEN AVE	LEWISTON	ID	83501	419 LINDEN AVE
RPL06900000020	ABILITY INTERVENTIONS LLC		PO BOX 2169	LEWISTON	ID	83501	3323 4TH ST
RPL355W55X005B	LEWISTON DENTAL HOLDING LLC		1207 MORNINGSIDE DR	REXBURG	ID	83440	3326 4TH ST SUITE 3
RPL355W55X004B	JIMKIT PROPERTIES LLC		336 WARNER DR STE B	LEWISTON	ID	83501	336 WARNER DR STE B
RPL00260050065	THYKESON MARIE G		402 LINDEN DR	LEWISTON	ID	83501	402 LINDEN DR
RPL355W55X004A	ROUBIDOUX MARK MITCHELL II		3808 DUTHIE BLVD	LEWISTON	ID	83501	336 WARNER DR STE A
RPL355W55X0030	PICKARD MICHAEL &	PICKARD KENDRA	221 PANORAMA DR	MOSCOW	ID	83843	3316 4TH ST
RPL00260040001	METZ EUGENE B &	METZ DENISE M	410 WARNER AVE	LEWISTON	ID	83501	410 WARNER AVE
RPL00260040060	MAYER TERRY L &	MAYER DONNA L	3311 4TH ST	LEWISTON	ID	83501	3311 4TH ST
RPL00260050085	REAGAN KYLIE &	REAGAN AUSTIN	409 BRYDEN AVE	LEWISTON	ID	83501	409 BRYDEN AVE
RPL06900000090	WASHBURN JUDITH K		407 LINDEN DR	LEWISTON	ID	83501	407 LINDEN DR
RPL00260060060	TUMELSON NATHAN D &	TUMELSON TARA M	416 LINDEN DR	LEWISTON	ID	83501	416 LINDEN DR
RPL00260050050	FLORES BARBARA G		408 LINDEN DR	LEWISTON	ID	83501	408 LINDEN DR
RPL00260060025	MCCANN RONALD ROBERT		PO BOX 632	BOVILL	ID	83806	414 LINDEN DR
RPL02590010020	CORNISH AERIANE LACHELLE &	GENZER JOBEY MICHAEL	415 LINDEN DR	LEWISTON	ID	83501	415 LINDEN DR
RPL00260050070	BYERS KELLY M		401 BRYDEN AVE	LEWISTON	ID	83501	401 BRYDEN AVE
RPL02590010010	BUNTIN LESLIE &	BUNTIN SUSAN LIVING TRUST	417 LINDEN DR	LEWISTON	ID	83501	417 LINDEN DR
RPL00260040075	BEIER BRANDEN R		1029 MAIN ST	LEWISTON	ID	83501	3315 4TH ST
RPL00260040040	VONTERSCH-MCGAHUEY JANICE M		3309 4TH ST	LEWISTON	ID	83501	3309 4TH ST
RPL355W0182402	CLEARWATER MEDICAL INVESTORS		3001 KEITH ST	CLEVELAND	TN	37312	325 WARNER DR
RPL355W55X001A	LEAVITT ERIN G &	LEAVITT MARY	3326 4TH ST	LEWISTON	ID	83501	3326 4TH ST SUITE 1
RPL355W55X002A	CRR PROPERTIES L L C		406 BURRELL AVE N31	LEWISTON	ID	83501	3318 4TH ST
RPL06900000060	DUMAN SANDRA L &	DUMAN MARK A	416 LINDEN AVE	LEWISTON	ID	83501	416 LINDEN AVE
RPL00260030070	SETTLES TERRILL W &	SETTLES KATHERINE R	421 LINDEN AVE	LEWISTON	ID	83501	421 LINDEN AVE
RPL00260040070	SMITH PATTY A		7440 HUCKLEBERRY CIR	ANCHORAGE	AK	99502	3313 4TH ST
RPL355W55X005A	LEWISTON DENTAL HOLDING LLC		1207 MORNINGSIDE DR	REXBURG	ID	83440	3326 4TH ST SUITE 4
RPL06900000110	FONNESBECK GARY V &	FONNESBECK LANA M	3327 4TH ST	LEWISTON	ID	83501	3327 4TH ST
RPL00260050055	WIEBER STEVEN J		406 LINDEN DR	LEWISTON	ID	83501	406 LINDEN DR

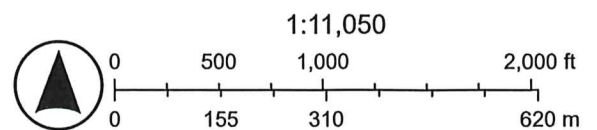
RPL00260060070	LINDEN LEWISTON HOUSE LLC		4084 E 169 N	RIGBY	ID	83442	419 LINDEN DR
RPL06900000070	COONS LORI A		411 LINDEN DR	LEWISTON	ID	83501	411 LINDEN DR
RPL06900000050	HART AUSTIN &	HART BRITA	412 LINDEN AVE UNIT A	LEWISTON	ID	83501	412 LINDEN AVE
RPL06900000040	KLEMANN JAMES PETER PURCELL &	KLEMANN AMY ELLIS	410 LINDEN AVE	LEWISTON	ID	83501	410 LINDEN AVE
RPL00260050080	RICHIE BROCK A		407 BYRDEN AVE	LEWISTON	ID	83501	407 BRYDEN AVE

City of Lewiston



12/10/2025, 3:10:51 PM

- | | |
|--|--|
|  adSites result |  adSites |
|  Primary Street Reference |  World Imagery |
|  URBAN MINOR ARTERIAL |  Low Resolution 15m Imagery |
|  City Limit |  High Resolution 60cm Imagery |
|  Area City Impact |  High Resolution 30cm Imagery |
|  City Parks |  Citations |
|  ROW |  2.4m Resolution Metadata |
|  Street | |



Vantor



PLANNER'S STAFF REPORT
COMMUNITY DEVELOPMENT DEPARTMENT

Date: 12/16/2025

Case File Number: CUP-25-6

Applicant:

Charlene Ricard
3323 4th Street
Lewiston, ID 83501

Property Owner:

Charlene Ricard
3323 4th Street
Lewiston, ID 83501

Site Location:

3323 4th Street
Lewiston, ID 83501

Request/Proposal: The applicant requests Conditional Use Permit approval for a daycare center (13 or more children) at 3323 4th Street in the Low Density Residential, R2A, Zoning district. Daycare Centers are permitted as a Conditional Use in the R2A Zone subject to the special conditions of section 37-20.1(5) of Lewiston City Code.

Subject Property and Surrounding Land Uses:

The subject property is three (3) parcels of approximately 34,412 square feet that have a medical office building, accessory storage building and parking lot. The medical office building was approved via Conditional Use Permit Cu-37-75 in 1975 and has housed various medical practitioners. It currently operates as a

CUP-25-6

developmental disability agency. Surrounding uses are a mix of commercial to the west and single family and multi family to the north, south and east.

Related Or Other Pending Discretionary Actions:

Conditional Use Permit CU-37-75 was granted to allow the construction of a medical office building for two physicians.

Flood Plain, Wetlands, EPA Regulated Site:

NA

Code References:

Sec. 37-3. Definitions.

Conditional use means a use permitted in a particular zone district upon showing that such use in a specified location will comply with all the conditions and standards as specified in this chapter, including any additional conditions of approval, and when approved by the planning and zoning commission.

(Ord. No. 4108, § 2, 8-15-94)

DIVISION 4. - LOW DENSITY RESIDENTIAL ZONE R-2A

- **Sec. 37-34. - R-2a low density residential zone.**

Purpose. To provide land for lower density residential development with the keeping of livestock as a conditional use.

(Ord. No. 4108, § 2, 8-15-94; Ord. No. 4161, § 4, 7-1-96; Ord. No. 4249, § 13, 10-25-99)

- **Sec. 37-35. - Uses permitted outright.**

In an R-2A zone, the following uses and their accessory uses are permitted outright subject to the provisions of article iv:

- (1) Bed and breakfast facilities, subject to the special conditions of [section 37-13.1\(1\)](#) of this Code;
- (2) Church, subject to the special conditions of [section 37-20.1\(2\)](#) of this Code;
- (3) Class A manufactured home;
- (4) Commercial uses legally established as of December 31, 2004, and which have maintained a valid business and occupation permit;
- (5) Family day care, subject to the special conditions of [section 37-13.1\(2\)](#) of this Code;
- (6) Manufactured home park, subject to the provisions of [chapter 23](#) of this Code, with a maximum density of nine (9) dwelling units per acre;
- (7) Mortuary, subject to the special conditions of [section 37-20.1\(1\)](#) of this Code;
- (8) Park, subject to the special conditions of [section 37-20.1\(4\)](#) of this Code;
- (9) School, subject to the special conditions of [section 37-20.1\(3\)](#) of this Code;
- (10) Single-family dwelling;
- (11) Tiny house village, subject to the provisions of [chapter 23](#) of this Code, with a maximum density of nine (9) dwelling units per acre;
- (12) Two-family dwelling.

(Ord. No. 4108, § 2, 8-15-94; Ord. No. 4249, § 14, 10-25-99; Ord. No. 4385, § 5, 2-14-05; Ord. No. 4398, § 8, 1-9-06; [Ord. No. 4841](#), § 6, 11-14-22)

- **Sec. 37-36. - Conditional uses permitted.**

CUP-25-6

In an R-2A zone, the following uses and their accessory uses are permitted when authorized in accordance with the standards and requirements in articles IV and IX:

- (1) Repealed by Ord. No. 4742.
 - (2) Day care center, subject to the special conditions of [section 37-20.1\(5\)](#) of this Code;
 - (3) Group day care, subject to the special conditions of [section 37-13.1\(3\)](#) of this Code;
 - (4) Intermediate care facility;
 - (5) Keeping of livestock, subject to the standards of [sections 37-195](#) through [37-199](#) of this Code;
 - (6) Long-term care facility;
 - (7) Intensification, or expansion of commercial uses of ten (10) percent of the building area or more which were legally established and licensed for business and occupation;
 - (8) Multifamily dwelling, meeting the standards of [section 37-124.1](#) of this Code;
 - (9) Noncommercial kennel, subject to commercial kennel standards of [section 37-163\(15\)](#) of this Code;
 - (10) Preschool, subject to the special conditions of [section 37-20.1\(6\)](#) of this Code;
 - (11) Public use, or any use conducted by a private company or nonprofit organization that is substantially the same as or substantially similar to a use normally conducted by a public agency;
 - (12) Re-establishment of a commercial use which was legally established but where the business and occupation license has lapsed for a period not to exceed one (1) year;
 - (13) Replacement of a nonconforming residential use not located abutting a principal or minor arterial street, as identified in the Lewiston Comprehensive Transportation Plan, subject to setback and yard requirements of the R-2 zone;
 - (14) Semi-public use, or any use conducted by a private company or nonprofit organization that is substantially the same as or substantially similar to a use normally conducted by a semi-public agency;
 - (15) Manufactured home park, subject to the provisions of [chapter 23](#) of this Code, with a density greater than nine (9) dwelling units per acre;
 - (16) Small lot development subject to the requirements of [section 37-33](#), standards for small lot development;
 - (17) Tiny house village, subject to the provisions of [chapter 23](#) of this Code, with a density greater than nine (9) dwelling units per acre.
- (Ord. No. 4108, § 2, 8-15-94; Ord. No. 4249, § 15, 10-25-99; Ord. No. 4322, § 5, 12-9-02; Ord. No. 4328, § 2, 3-24-03; Ord. No. 4354, § 2, 3-29-04; Ord. No. 4385, § 6, 2-14-05; Ord. No. 4398, § 9, 1-9-06; Ord. No. 4433, § 3, 1-9-06; Ord. No. 4499, § 2, 1-28-08; Ord. No. 4531, § 3, 7-13-09; Ord. No. 4656, § 2, 3-28-16; Ord. No. 4676, § 5, 11-28-16; Ord. No. 4742, § 2G, 8-19-19; Ord. No. 4799, § 4, 3-8-21; [Ord. No. 4841](#), § 7, 11-14-22)

• **Sec. 37-37. - Lot size.**

In an R-2A zone, the minimum lot size shall be as follows:

- (1) For a single-family dwelling, the minimum lot area shall be seven thousand five hundred (7,500) square feet, subject to [sections 32-45\(f\)\(1\)](#) and [36-103](#) of this Code.
- (2) For a two-family dwelling, the minimum lot area shall be ten thousand (10,000) square feet, and connection to a municipal sanitary sewer system must be provided.
- (3) For a multifamily dwelling, the minimum lot area shall be ten thousand (10,000) square feet plus four thousand (4,000) square feet for each dwelling unit over two (2), and connection to a municipal sanitary sewer system must be provided.
- (4) Lot width shall be a minimum of seventy (70) feet.
- (5) Lot depth shall be a minimum of one hundred (100) feet.
- (6) Two-family dwelling units constructed as a use permitted outright in this zone and constructed so as to share a common or adjoining side wall shall be allowed to legally split into two (2) minimum five thousand (5,000) square foot lots, provided the front and rear setbacks are in compliance with this chapter and the side yard opposite the zero-lot line shall be a minimum of fifteen (15) feet. In no case shall the minimum width of the zero-lot line lot be less than fifty (50) feet nor the depth less than eighty (80) feet.

(Ord. No. 4108, § 2, 8-15-94; Ord. No. 4381, § 2, 1-24-05; Ord. No. 4499, § 2, 1-28-08; Ord. No. 4676, § 6, 11-28-16)

- **Sec. 37-38. - Yards.**

Except as provided in article VIII, in an R-2A zone the minimum yard requirements shall be as follows:

- (1) A front yard shall be a minimum of twenty (20) feet or thirty-five (35) feet from the centerline of the street, whichever is greater.
- (2) A side yard shall be a minimum of five (5) feet and the total of both side yards shall be a minimum of fifteen (15) feet, except that on corner lots the side yard on the street side shall be a minimum of fifteen (15) feet or thirty-five (35) feet from the centerline of the street, whichever is greater.
- (3) A rear yard shall be a minimum of twenty (20) feet.

(Ord. No. 4108, § 2, 8-15-94)

- **Sec. 37-39. - Lot coverage.**

In an R-2A zone buildings shall not cover more than forty (40) percent of the lot.

(Ord. No. 4108, § 2, 8-15-94)

- **Sec. 37-40. - Height of buildings.**

In an R-2A zone, no building shall exceed a height of thirty-five (35) feet.

(Ord. No. 4108, § 2, 8-15-94)

Sec. 37-20.1. - Special conditions.

(5) *Day care center, thirteen (13) children or over.*

(a) A business license is required in accordance with [chapter 21](#) of this Code.

(b) The size of the site is shown to be reasonable for the intended use.

(c) Access to the site meets all applicable ordinances.

(d) The surrounding property will not otherwise be adversely affected.

(e) Off-street parking and pick-up/drop-off area shall be provided.

Sec. 37-149. - Parking requirements based on land use

Parking shall be provided according to the use of the structure or land. When square feet are specified, then the area measured shall be the gross floor area of the building, but shall exclude any space within a building devoted to off-street parking or loading. When the number of employees is specified, persons counted shall be those working on the premises, including proprietors, during the largest shift at peak session. For both new and existing developments, except within central business district described in [section 37-145](#) of this chapter, the minimum number of parking spaces required shall be fifty (50) percent and the maximum number of parking spaces allowed shall be one hundred (100) percent of the following in accordance with [section 37-123.1](#), except that there shall be no maximum off-street parking for a single-family dwelling.

c. Day care center: Two (2) spaces, plus one (1) space for every employee on the maximum shift; a paved unobstructed pick up space with adequate stacking area (as determined by the community development director) shall be provided in addition to standard driveway and parking requirements;

c. Preschool nursery or kindergarten (primary school): Two (2) spaces per teacher.

o. Medical and dental clinic: Two (2) spaces for each examination room, treatment room, or patient station plus one (1) space for each doctor;

Sec. 37-160. Authorization to grant or deny conditional uses.

(a) Uses designated in this chapter as conditional uses may be permitted upon authorization by the commission in accordance with the standards and procedures established in this article. The commission may impose, in addition to those standards and requirements expressly specified by this chapter, any additional conditions which it considers necessary to protect the best interests of the surrounding property or the city as a whole. Those conditions may include, but are not limited to:

- (1) More restrictive standards than generally required, such as increased lot or yard size, with limitations or increased parking space requirements;
- (2) Minimizing adverse impacts, such as limiting the number, size and location of signs and requiring screening, diking, fencing or landscaping;
- (3) Controlling the timing, sequence, and duration of development;
- (4) Designating the exact location and nature of development and assuring that it is maintained properly;
- (5) Requiring the provision of on-site or off-site public facilities.

(b) Pursuant to Idaho Code Section [67-6512\(f\)](#), exceptions or waivers of standards, other than use, in this chapter may be permitted by the commission through issuance of a conditional use permit only when the exceptions or waivers of standards are incidental to the conditional use permit being considered by the commission.

(c) The commission shall consider the following relevant criteria and standards when considering whether to grant a conditional use permit and/or an exception or waiver of standard that is incidental to a conditional use permit:

- (1) The proposed use (will/will not) result in conditions that will tend to generate nuisances (including but not limited to noise, dust, glare, vibrations, odors and the like) or, if so, that any anticipated nuisances will be appropriately mitigated.
- (2) The proposed use (is/is not) a public necessity (and/but) (is/is not) justified by the applicant and deemed to be of benefit to the public.
- (3) The character of the proposed use, if developed according to the plan as submitted, (will/will not) be in harmony with the area in which it is to be located.
- (4) The proposed use (will/will not) endanger the environment or the public health or safety.

(5) The proposed use (will/will not) be in substantial conformance with the comprehensive plan.

(d) Any use which is granted and permitted as a conditional use in a particular zone under the terms of this chapter shall be deemed to be a conforming use in said zone. A use existing prior to August 15, 1994, and which is classified in this chapter as a conditional use, shall be considered a conforming use. Any future change or alteration in existing structures shall be permitted outright, provided required permits are obtained and standards complied with. Any change in use shall be subject to the regulations of the zone in which it is located.

(e) Any increase in lot area for a use allowed by conditional use shall require the approval of the planning and zoning commission in the same manner as the original application.

(f) Upon approval by the planning and zoning commission of the findings of fact, conclusions of law and decision, those decisions that create uses that may be transferred with the land shall be filed on record in the office of the Nez Perce County recorder.

(g) Authorization of a conditional use shall be void after twelve (12) months unless:

(1) A building permit pursuant thereto has been applied for;

(2) Where no building permit is required, the intent of the conditional use has been fulfilled; or

(3) Substantial progress towards completion of the project has been accomplished, as determined by the community development director.

(h) The community development director may extend the expiration date of a conditional use permit to six (6) months upon written request of the applicant. The decision to grant or deny the extension shall be based on the following criteria:

(1) Application for extension is received prior to the expiration date;

(2) The conditional use remains consistent with the comprehensive plan and conditional uses allowed with the zone;

(3) The applicant can show progress towards establishing the conditional use;

(4) The applicant can show that circumstances specific to the conditional use and beyond the applicant's control warrant an extension of time. (Ord. No. 4108, § 2, 8-15-94; Ord. No. 4530, § 1, 4-27-09; Ord. No. 4631, § 1, 7-13-15; Ord. No. 4651, § 1, 2-22-16)

Sec. 37-161. Application for a conditional use.

(a) A property owner or his agent may initiate a request for a conditional use or for the modification of an existing conditional use by filing an application with the community development department on forms prescribed in Article XIII. The application shall be submitted at least twenty (20) working days prior to the meeting at which it will be considered. The application for a conditional use shall be accompanied by a site plan drawn neatly and accurately and to an appropriate scale showing at least the following items:

CUP-25-6

- (1) Property lines;
- (2) Street address or legal description;
- (3) Zoning of the property;
- (4) Setbacks measured from the property lines;
- (5) All building locations, size of buildings and overhangs;
- (6) Driveways and parking spaces;
- (7) Landscaping;
- (8) The size, location and nature of the requested use;
- (9) The location and size of all existing and proposed signs;
- (10) Location of solid waste disposal and collection facilities;
- (11) Other information, as directed by the community development department, necessary to fully explain and describe the nature of the request.

(b) The general site plan, as approved or modified by the commission, shall be made a part of the applicant's file and all construction and development shall comply with the conditions of approval set by the commission as well as all applicable city codes. Nothing in this general site plan approval shall be interpreted as allowing the owner or applicant variation from current ordinances that were not specifically addressed at the time of permit approval. (Ord. No. 4108, § 2, 8-15-94)

Sec. 37-162. Public hearing on a conditional use. SHARE

Before the commission shall act upon a request for a conditional use, it shall hold a public hearing pursuant to section [37-184](#) of this chapter. (Ord. No. 4108, § 2, 8-15-94)

Comprehensive Plan:

The subject property is located in the Comprehensive Plan's Future Land Use Map designation of Neighborhood Commercial. Neighborhood Commercial areas provide low-mid intensity commercial services primarily for surrounding residents. More intense and larger scale businesses should be located at intersections of collectors and arterial roadways and should be less intense. These areas may also provide a transition from more intense commercial or industrial uses to less intense and smaller scale residential areas. Examples of commercial services for this designation are pharmacies, convenience stores, laundry/dry cleaning services, childcare centers, and small scale professional offices.

Goals, Objectives and Actions that are applicable to this application are as follows:

LU.1.3 Balance land uses. Establish land use patterns that accommodate various land uses in proportion to the needs of the community.

LU.1.3.2 Evaluate the zoning code to enable compatible uses in more locations to minimize the distance between residences and needed services.

ED2.2 Support partners to mitigate barriers to employee retention. Collaborate with appropriate organizations to help retain Lewiston's workforce.

Input From Other Departments/Agencies:

From the Fire Department: "Plans/permits shall be submitted to the building department for the change of occupancy (currently B occupancy to E or I). Current license for the facility does not include plans/details indicating use of the accessory structure and will need to be provided prior to any use other than storage. Fire approves the CUP provided the facility complies with IBC/IFC requirements.

From the Public Works Department, Engineering Division; "No comments. Approved."

Analysis:

The subject property is three (3) city lots, approximately .79 acres in size, located at the corner of 4th Street and Linden Avenue. It contains an office building, detached storage building and two (2) parking lots and was originally approved in 1975 under Conditional Use Permit CU-37-75 as a medical office building to accommodate two physicians. The applicant currently operates Ability Interventions, which is a developmental disability agency, from this location. The applicant is requesting Conditional Use Permit approval to add daycare services at this location.

The subject property is located in the Low Density Residential, R2A, Zoning district and is surrounded by single family and small multifamily residences on the north, east and south sides. Properties to the west include Pacific Cataract and Lazer Institute (approved under CU-5-00), the Bryden Canyon Professional Center (approved under Cu-9-70, CU-4-74, CU-3-75, CU-19-75, CU-31-77, and CU-19-84) and Life Care Center (approved under CU-14-95). The subject property is identified as Neighborhood Commercial on the Future Land Use Map. Neighborhood Commercial areas are to provide low-mid intensity commercial services primarily for surrounding residents and provides examples of childcare centers and small scale professional offices as appropriate commercial services. 4th Street is identified as a collector road and the Neighborhood Commercial designation states that access should be provided from a collector or arterial roadway with adequate access for the proposed use. Linden Avenue is a local road and is used for access to the secondary parking lot, there is not a through connection between the two parking lots on the property.

The subject property contains two parking lots with 22 parking stalls between them. One lot is immediately adjacent to the building with 16 stalls and the second is on the northeast side of the building with an additional 6 parking stalls. The subject property has existing mature landscaping and a large grassed play area on the east side of the building.

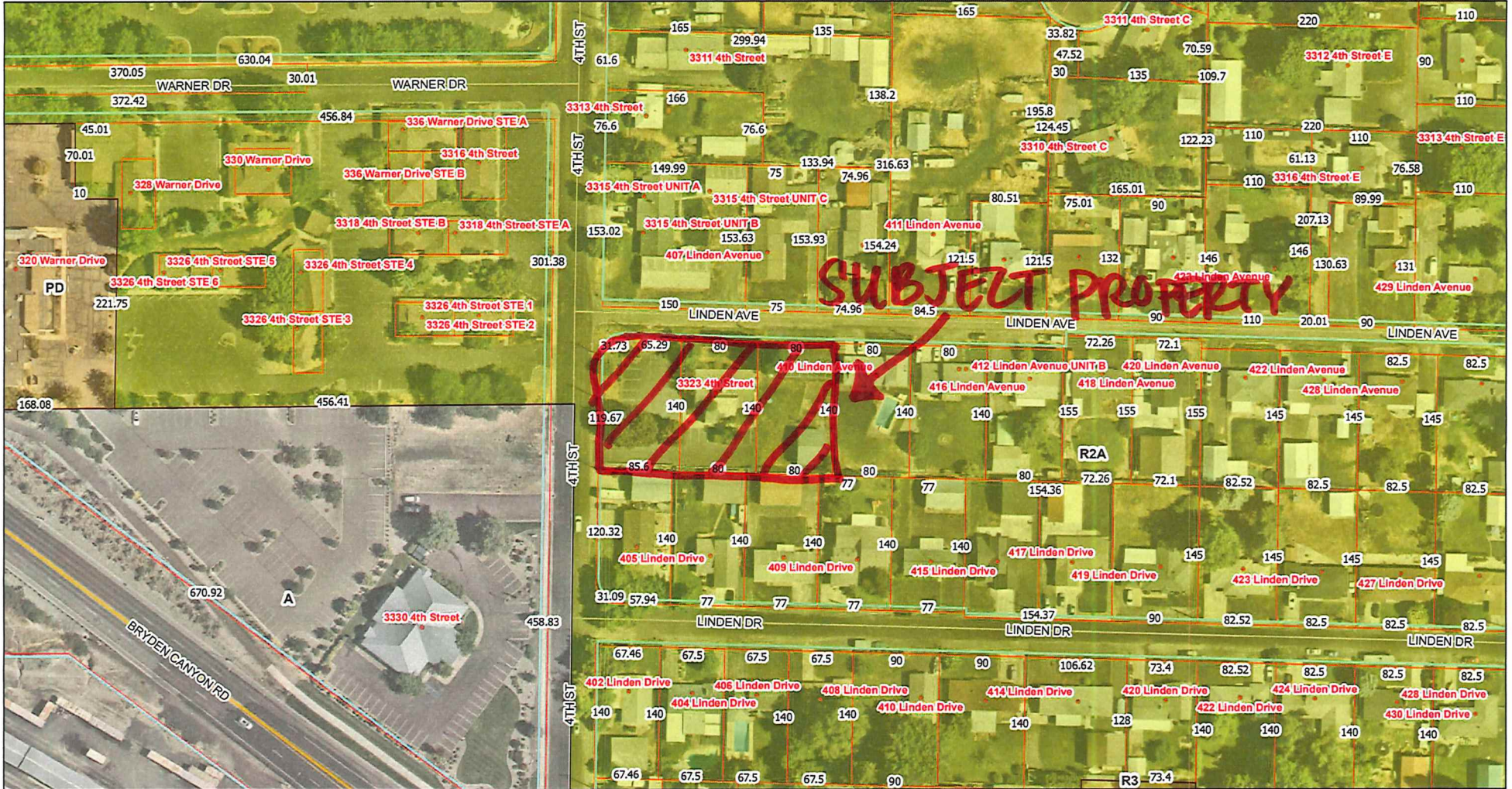
As stated in the application, Ability Interventions provides services for developmental disabled persons and is proposing to add daycare services that would benefit children who may have special needs or developmental disabilities with specially trained staff. The daycare center would operate Monday through Friday from 9 am to 6 pm. As stated in the application, the applicant is working on the landscaping and would be required to meet the State of Idaho's standards for daycares. All childcare facilities throughout the state are now licensed by the state of Idaho. Locations are inspected yearly by Public Health for a health and safety inspection and a fire inspection is conducted every two years as part of the licensing process. Public Health reports that two (2) daycares within the city of Lewiston have closed in 2025.

Relevant Criteria and Standards:

See attached reasoned statement worksheet.

Prepared By:

Katie Hollingshead
(208) 746-1318, ext. 7261
khollingshead@cityoflewiston.org
P.O.Box 617
Lewiston, ID 83501



1/2/2026, 10:52:27 AM

Primary Street Reference

URBAN MINOR ARTERIAL

City Limit

cd_Zoning

PD - PLANNED UNIT DEVELOPMENT

R2A - LOW DENSITY RESIDENTIAL(LIVESTOCK)

R3 - MEDIUM DENSITY RESIDENTIAL

A - AIRPORT

ROW

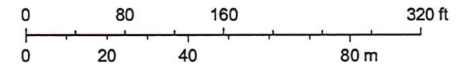
Street

Address

adSites

Parcel Annotation

1:1,199

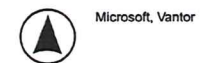
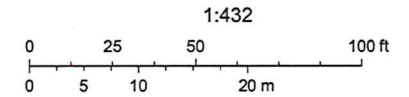


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- City Limit
- Street
- adSites
- ROW
- Address
- 150 Parcel Annotation



**CITY OF LEWISTON PLANNING AND ZONING COMMISSION
REASONED STATEMENT OF RELEVANT CRITERIA AND STANDARDS
FOR GRANTING OR DENIAL OF CONDITIONAL USE PERMIT**

This document shall serve as memorialization of the rationale for the granting or denial of a Conditional Use Permit, which shall be based upon relevant criteria and standards, including the Lewiston Comprehensive Plan, Lewiston City Code, and Idaho Code. *See* I.C. § 67-6535.

I. APPLICATION NUMBER:

II. APPLICANT'S NAME AND ADDRESS:

III. IDENTIFICATION AND/OR LOCATION OF SUBJECT PROPERTY:

IV. DATE OF PUBLIC HEARING:

V. NAME OF HEARING BODY:

Lewiston Planning and Zoning Commission

VI. NATURE OF SUBJECT CONDITIONAL USE PERMIT APPLICATION:

VII. DECISION:

The Lewiston Planning and Zoning Commission [APPROVES/DENIES] XXX.

VIII. CONDITIONS OF APPROVAL:

Pursuant to Lewiston City Code § 37-160, the Planning and Zoning Commission may impose conditions upon approval of a conditional use permit. This conditional use permit is subject to the following conditions:

XXX.

IX. TERMINATION OF CONDITIONAL USE PERMIT:

Pursuant to Lewiston City Code § 37-160, authorization of a conditional use permit shall be void after twelve (12) months unless:

(1) A building permit pursuant thereto has been applied for;

(2) Where no building permit is required, the intent of the conditional use has been fulfilled; or

REASONED STATEMENT OF RELEVANT CRITERIA AND STANDARDS
FOR CUP^{xx-xxxxxx}

Page 1 of 4

(3) Substantial progress towards completion of the project has been accomplished, as determined by the community development director.

X. RELEVANT CONTESTED FACTS RELIED UPON:

The relevant contested facts relied upon are:

XI. RELEVANT CRITERIA AND STANDARDS:

The following relevant criteria, standards, facts, and considerations are hereby declared as reasons for the decision on this conditional use permit:

1. The proposed use (**will/will not**) result in conditions that will tend to generate nuisances (such as noise, dust, glare, vibrations, and odors) or, if so, any anticipated nuisances will be appropriately mitigated. Applicable commentary:
2. The proposed use (**is/is not**) a public necessity (**and/but**) (**is/is not**) justified by the applicant and deemed to be of benefit to the public. Applicable commentary:
3. The character of the proposed use, if developed according to the plan as submitted, (**will/will not**) be in harmony with the area in which it is to be located. Applicable commentary:
4. The proposed use (**will/will not**) endanger the environment or the public health or safety. Applicable commentary:
5. The proposed use (**will/will not**) be in substantial conformance with the Comprehensive Plan. Applicable commentary:
6. Pursuant to Idaho Code § 67-6512, the conditional use permit may be granted subject to the ability of political subdivisions, including school districts, to provide services for the proposed use. Applicable commentary:
7. The proposed rezone (**is/is not**) in conformance with Idaho Code 67-6537, Use of Surface and Ground Water. Applicable commentary:

Pursuant to Idaho Code § 67-6519(5)(c), if the decision on this application is to deny it and the applicant **could not** take actions to obtain approval, the explanation is:

REASONED STATEMENT OF RELEVANT CRITERIA AND STANDARDS
FOR CUP~~XX-XXXXXX~~
Page 2 of 4

Pursuant to Idaho Code § 67-6519(5)(c), if the decision on this application is to deny it and the applicant could take actions to obtain approval, such actions might include:

NOTICE TO APPLICANT AND AFFECTED PERSONS: An applicant or affected person may file a written request for reconsideration with the City Clerk to request that the Planning and Zoning Commission reconsider its final decision within fourteen (14) calendar days by 5:00 p.m. on the fourteenth (14th) day after the Planning and Zoning Commission has adopted this Reasoned Statement of Relevant Criteria and Standards. The written request for reconsideration shall include, at a minimum, the following information: (i) the name and address of the applicant or affected person requesting reconsideration, (ii) the specific deficiencies in the decision for which reconsideration is sought, and (iii) a description of any procedural injury or substantial harm to real property interest(s) suffered as a result of the decision, all in accordance with Lewiston City Code § 37-185(b)(1). A form may be obtained from the City Clerk. A request for reconsideration shall be a mandatory exhaustion of an applicant or affected person's administrative remedies prior to the filing of an appeal of the Planning and Zoning Commission's decision to the City Council.

Within fourteen (14) calendar days after the Planning and Zoning Commission has adopted its written decision on reconsideration, an applicant or affected person may file with the City Clerk a written notice of appeal to the City Council, in accordance with Lewiston City Code § 37-185(c). A form may be obtained from the City Clerk. The written notice of appeal shall include, at a minimum, the following information: (1) the name and address of the applicant or affected person, (ii) identification of the section(s) of the Lewiston City Code or applicable state or federal law(s) that has been incorrectly applied or violated and a description of how they have been incorrectly applied or violated, and (iii) a description of the real or potential prejudice to a substantial right of the applicant or affected person. The fee required by Lewiston City Code § 37-188 shall be deposited with the City Clerk within the fourteen (14)-day period. If an appeal is not filed and/or the fee required by Lewiston City Code § 37-188 is not deposited within the fourteen (14)-day period, then the decision of the Planning and Zoning Commission shall be final.

Every final decision rendered shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to Idaho Code § 67-8003. The mailing of a signed and dated copy of this Reasoned Statement of Relevant Criteria and Standards by the City to the applicant shall constitute compliance with such notice requirement. An applicant denied an application or an affected person aggrieved by a final decision concerning matters identified in Idaho Code § 67-6521(1)(a) may, within twenty-eight (28) days after all remedies have been exhausted under local ordinance, as described above, seek judicial review under the procedures provided by Title 67, Chapter 52, Idaho Code.

By: _____
Signature of Planning and Zoning Commission Chair or Vice Chair or Acting Chair

Printed: _____

Date of Signature: _____

ATTEST: _____
Tanya Brocke, Community Development Specialist

- (5) *Day care center, thirteen (13) children or over.*
 - (a) The size of the site is shown to be reasonable for the intended use.
 - (b) The surrounding property will not otherwise be adversely affected.
 - (c) Off-street parking and pick-up/drop-off area shall be provided.

ARTICLE XVII. ~~TELE~~WIRELESS COMMUNICATION FACILITIES REGULATIONS

Sec. 37-215. Purpose.

The provisions of this article shall be known as the ~~telecommunications facilities and broadband infrastructure~~~~wireless communication facilities~~ regulations. It is the purpose of these provisions to delineate restrictions, development standards and siting criteria, and establish removal procedures in order to protect the city from the uncontrolled siting of ~~telecommunications facilities~~~~wireless communication facilities~~ in locations that have significant adverse effects and cause irreparable harm. It is further the purpose of these provisions:

- (1) To protect the community's visual quality and safety while facilitating the reasonable and balanced provision of wireless communication services. More specifically, it is the city's goal to minimize the visual impact of ~~telecommunication facilities~~~~wireless communication facilities~~ on the community, particularly in and near residential zones, the central business district, the Normal Hill heritage overlay zone, and historic districts;
- (2) To promote and protect the public health, safety and welfare, preserve the aesthetic character of the Lewiston community, and to reasonably regulate the development and operation of ~~telecommunications facilities~~~~wireless communication facilities~~ within the city to the extent permitted under state and federal law;
- (3) To minimize the impact of ~~telecommunication facilities~~~~wireless communication facilities~~ by establishing standards for siting design and screening;
- (4) To preserve the opportunity for continued and growing service from the wireless industry;
- (5) To accommodate the growing need and demand for wireless communication services;
- (6) To establish clear guidelines and standards and an orderly process for review intended to facilitate the deployment of ~~broadband infrastructure~~~~wireless transmission equipment~~, to provide advanced communication services to the city, its residents, businesses and community at large;
- (7) To minimize the number of new towers and encourage the collocation of antennas of more than one (1) wireless communication service provider on a single tower or ~~telecommunications WCF~~ support structure;
- (8) To ensure city zoning regulations are applied consistently with federal and state telecommunications laws, rules, regulations and controlling court decisions; and
- (9) To provide regulations that are specifically not intended to, and shall not be interpreted or applied to: (a) prohibit or effectively prohibit the provision of wireless services, (b) unreasonably discriminate among functionally equivalent service providers, or (c) regulate ~~telecommunications facilities~~~~wireless communication facilities~~ and ~~broadband infrastructure~~~~wireless transmission equipment~~ on the basis of the environmental effects of radio frequency emissions to the extent that such emissions comply with the standards established by the Federal Communications Commission.

(Ord. No. 4742, § 1, 8-19-19; Ord. No. 4790, § 1, 11-23-20)

Sec. 37-216. Definitions.

As used in this article, the following terms shall have the meanings set forth below:

Antenna is a telecommunications facilityWCF and means any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that sends or receives digital signals, analog signals, radio frequencies or wireless communication signals.

Antenna array is a telecommunications facilityWCF and means a group of antenna elements, not including small cells, and associated mounting hardware, transmission lines, or other appurtenances that share a common attachment device for the sole purpose of transmitting or receiving wireless communication signals.

Applicant means any person engaged in the business of providing wireless communication services or the broadband wireless communication infrastructure required for wireless communication services and who submits an application.

Application means the process by which an applicant submits a written request on a form provided by the city and indicates a desire to be granted a permit pursuant to this article. A complete application means all written documentation, in whatever form or forum, made by an applicant to the city concerning the construction of telecommunication wireless communication facilities; the wireless services proposed to be provided; and any other matter pertaining to a proposed system or service, including, if applicable and without limitation, information related to a request for a conditional use permit or an exception to a standard.

Base station is a telecommunications facilityWCF and means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this article or any equipment associated with a tower.

- (1) The term includes, but is not limited to, equipment associated with wireless communication services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul.
- (2) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small cell networks).
- (3) The term includes any structure other than a tower that, at the time the relevant application is filed with the city under this article, supports or houses equipment described in this section that has been reviewed and approved under the applicable zoning or siting process, or under state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
- (4) The term does not include any structure that, at the time the relevant application is filed with the state or the city under this article, does not support or house equipment described in this section.

Breakpoint design technology means the ability of a tower to break at a specified point so that the entire tower does not collapse.

Broadband means wide bandwidth communication transmissions allowing high speed internet access with an ability to simultaneously transport multiple signals and traffic types at a minimum transmission speed of one hundred (100) megabits per second for downloads and twenty (20) megabits per second for uploads, or as may otherwise be defined in Idaho Code Section 40-517, as may be amended from time to time.

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Broadband Infrastructure means networks of deployed telecommunications equipment, conduit, and technologies necessary to provide broadband and other advanced telecommunications services to wholesalers or end users, including but not limited to private homes, businesses, commercial establishments, schools or public institutions, or as may otherwise be defined in Idaho Code Section 40-517, as may be amended from time to time.

Broadband Provider means any entity that:

(1) Provides broadband services, including but not limited to a telecommunications provider, cable service provider, broadband provider, cellular provider, political subdivision that provides broadband services, electric cooperative that provides broadband services, electric utility that provides broadband services, state government entity that provides broadband services, tribal government that provides broadband services, or internet service provider; or

(2) Builds broadband infrastructure, including but not limited to a port, nonprofit organization, or private-public partnership established for the purpose of expanding broadband in the state;

(3) or as may otherwise be defined in Idaho Code Section 40-517, as may be amended from time to time.

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Central business district means that area described as the central business district in section 37-145 of this Code.

City means City of Lewiston, Idaho.

Collocation means mounting or installing an antenna facility on a preexisting structure and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure. For purposes of an eligible facilities request, "collocation" means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Commercial zone means the following zoning districts within the City of Lewiston: the local commercial (C-1) zone; the tourist commercial (C-2) zone; the community commercial (C-3) zone; the general commercial (C-4) zone; the central commercial (C-5) zone, except that portion of the C-5 zone located in the central business district; the regional commercial (C-6) zone; the light industrial (M-1) zone; the heavy industrial (M-2) zone; the planned unit development (PD) zone, where commercial uses are allowed; the port (P) zone; and the airport (A) zone.

Community development director means the director of the community development department of the City of Lewiston and his/her designee(s).

Distributed antenna system or DAS is a telecommunications facilityWCF and means a central network consisting of equipment that can both transmit and receive to support multiple antenna locations throughout the desired coverage area.

Eligible facilities request means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

- (1) Collocation of new transmission equipment;
- (2) Removal of transmission equipment; or
- (3) Replacement of transmission equipment.

Eligible support structure is a telecommunications facilityWCF and means any tower or base station as defined in this section; provided, that it is existing at the time the relevant application is filed with the city under this article.

Existing means a tower or base station that has been reviewed and approved under an applicable zoning or siting process, or under another state or local regulatory review process; provided, that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

FAA means the Federal Aviation Administration.

FCC means the Federal Communications Commission.

Historic district(s) means that historic district(s) described in chapter 19.5 of this Code.

Macro cell means a ~~telecommunications facility~~WCF and means a high-powered ~~telecommunications~~wireless ~~communication~~ facility that provides broad network coverage (typically one (1) mile or greater). Generally, macro cell antennas are mounted on ground-based towers, rooftops and other existing structures, at a height that provides a clear view over the surrounding buildings and terrain. Macro cells are typically capable of hosting multiple wireless service providers and accompanied by base stations.

Mixed use zone means the following zoning districts within the City of Lewiston: The Bryden Avenue special planning area A (BASPA) zone; the North Lewiston mixed use development (MXD-NL) zone; the Normal Hill special planning area mixed use (NHMU) zone; and the planned unit development (PD) zone, where commercial and residential uses are allowed.

Normal Hill heritage overlay zone or NHHO means the NHHO zone described in chapter 37, article III of this Code.

~~*Operator* means any person who provides service over a wireless communication system and directly or through one (1) or more persons owns a controlling interest in such system, or who otherwise controls or is responsible for the operation of such a system.~~

Person means and includes any individual, corporation, limited liability company, partnership, association, joint stock company, trust, or any other legal entity, but not the city.

Protected areas means all real property located in residential zones, within two hundred (200) feet of a residential zone, the central business district, the Normal Hill heritage overlay zone, and all historic districts.

~~*Provider* means an operator, wireless infrastructure provider, or wireless services provider.~~

Residential zone means the following zoning districts within the City of Lewiston: The agricultural transitional (F-2) zone; the suburban residential (R-1) zone; the low density residential (R-2) zone; the low density residential (R-2A) zone; the medium density residential (R-3) zone; the higher density residential (R-4) zone; the Bryden Avenue special planning area B (BASPAB) zone; the Normal Hill north (NHN) zone; the Normal Hill south (NHS) zone; and the planned unit development (PUD) zone, where residential uses are allowed.

RF means radio frequency emissions at such levels as are determined by the FCC.

Rights-of-way means the same as defined or referenced in chapter 31 of this Code.

Site means, in relation to a tower that is not in the public right-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site. In relation to a support structure that is not in the public right-of-way other than a tower, site means an area in proximity to the structure and to other transmission equipment already deployed on the ground.

Small cells and small wireless facilities mean facilities that meet the following conditions:

- (1) The facilities:
 - a. Are mounted on structures fifty (50) feet or less in height, including their antennas;
 - b. Are mounted on structures no more than ten (10) percent taller than other adjacent structures; or
 - c. Do not extend existing structures on which they are located to a height of more than fifty (50) feet or by more than ten (10) percent, whichever is greater;
- (2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three (3) cubic feet in volume;
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any preexisting associated equipment on the structure, is no more than twenty-eight (28) cubic feet in volume;

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- (4) The facilities do not require antenna structure registration under federal law;
 - (5) The facilities are not located on tribal land as defined under federal law; and
 - (6) The facilities do not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified under federal law.

Stealth design means a design that minimizes the visual impact of ~~telecommunication~~wireless communication facilities by camouflaging, disguising, screening or blending into the surrounding environment. Examples of stealth design include, but are not limited to, WCFs disguised as trees (monopines), flagpoles, utility and light poles, bell towers, clock towers, ball field lights, and architecturally screened roof-mounted antennas.

Substantial change means a modification that substantially changes the physical dimensions of a tower or base station, as provided in 47 CFR § 1.6100(b)(7), as amended from time to time.

Tower is a ~~telecommunications facility~~WCF and means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and associated facilities, including structures that are constructed for wireless communication services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul, and the associated site.

Tower height means the vertical distance measured from the base of the tower structure at grade to the highest point of the structure, including the antenna; or, where the tower is mounted on a rooftop, the vertical distance at grade from the base of the building to the highest point of the tower structure, including the antenna. A lightning rod, not to exceed ten (10) feet in height, shall not be included within tower height.

Telecommunications~~WCF~~ *support structure* means any tower, building, pole, water tank, water tower, or other structure to which an antenna is or antennas are attached.

Tele~~Wireless~~ *communication facilities*~~or WCF~~ means equipment for the transmission or reception of:

- (1) Radio frequency signals or other wireless communications; or
- (2) Other signals for communications purposes. Such equipment may consist of, for example, antennas, antenna arrays, base stations, distributed antenna systems, macro cells, small cells, towers, and transmission equipment; or
- (3) Broadband infrastructure.

~~Wireless infrastructure provider means a person, other than a wireless services provider, that builds or installs wireless communication transmission equipment, wireless facilities' utility poles, or wireless support structures.~~

~~Wireless services provider means a person that provides wireless services.~~

(Ord. No. 4742, § 1, 8-19-19; Ord. No. 4790, § 2, 11-23-20)

Sec. 37-217. Applicability.

- (a) The regulations set forth in this article shall apply to all ~~telecommunications facilities~~WCFs located or proposed to be located within the city, except in public rights-of-way. ~~Tele~~Wireless-communication facilities regulations that apply to public rights-of-way within the City of Lewiston are addressed in chapter 31, article VI, of this Code.
- (b) Exempt facilities. The following are exempt from this article:
 - (1) FCC-licensed amateur (ham) radio facilities;

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- (2) Satellite earth stations, dishes and/or antennas used for private television reception not exceeding one (1) meter in diameter;
 - (3) A government-owned telecommunications facilityWCF installed upon the declaration of a state of emergency by the federal, state, or local government, or a written determination of public necessity by the city; except that such facility must comply with all federal and state requirements. The telecommunications facilityWCF shall be exempt from the provisions of this article for up to one (1) month after the duration of the state of emergency;
 - (4) A temporary telecommunications facilityWCF installed for providing coverage of a special event, such as news coverage or a sporting event. At least five (5) business days' written notice shall be given to the community development department prior to installation of such temporary telecommunications facilityWCF. Such temporary telecommunication facilitiesWCFs shall only be allowed two (2) weeks before and one (1) week after the special event; and
 - (5) Other temporary telecommunications facilityWCFs installed for a period of up to ninety (90) days. At least five (5) business days' written notice shall be given to the community development department prior to the installation of such temporary telecommunication facilityWCF. Additionally, such temporary telecommunications facilityWCF shall comply with applicable setbacks and height requirements in residential zones, historic district(s), and the Normal Hill heritage overlay zone.

(Ord. No. 4742, § 1, 8-19-19)

Sec. 37-218. General requirements.

- (a) All telecommunication facilitiesWCFs shall comply with the following regulations:
 - (1) *Color.* All telecommunication facilitiesWCFs shall be placed and colored to blend into their surroundings. The use of grays, blues, greens, dark bronze, browns or other site specific colors may be appropriate; however, each case should be evaluated individually.
 - (2) *Lighting.* Security lighting for the equipment shelters or cabinets and other on the ground ancillary equipment is permitted, as long as it is appropriately down shielded to keep light within the boundaries of the site.
 - (3) *State or federal requirements.* Towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas.
 - (4) *Permits.* All telecommunication facilitiesWCFs shall be required to obtain permits in accordance with chapter 10 of this Code.
 - (5) *Certificate of appropriateness.* All telecommunication facilitiesWCFs located in historic district(s) or the Normal Hill heritage overlay zone shall be required to obtain a certificate of appropriateness from the historic preservation commission so that the telecommunication facilitiesWCF's stealth design blends into the historic district(s) or into the Normal Hill heritage overlay zone in accordance with code requirements for new construction. All telecommunication facilitiesWCFs that are proposed to be located in a historic district(s) or the Normal Hill heritage overlay zone shall be subject to the additional regulations governing those areas, including, but not limited to, securing a certificate of appropriateness when required. The processes for obtaining a certificate of appropriateness and conditional use permit shall proceed simultaneously.
 - (6) *Airport notice.* When seeking an administrative permit or approval pursuant to this article, except when making an eligible facilities request, the applicant shall notify the Lewiston-Nez Perce County Regional Airport. A copy of such notice shall be submitted with the filing of an application to the city

(Supp. No. 9)

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and shall include a site plan and either an elevation drawing or a photo simulation of the proposed telecommunication facilityWCF indicating the proposed height of the telecommunication facilityWCF.

- (7) *Signs.* A telecommunication facilityWCF shall not bear any signage or advertisement other than signage required by law or expressly required by the city.
- (8) *Visual impact.* All telecommunication facilitiesWCFs, except for those located in the commercial and mixed use zones, shall be sited and designed to minimize adverse visual impacts on surrounding properties and the traveling public to the greatest extent reasonably possible, but without adverse impact to the proper functioning of the telecommunication facilityWCF. Such telecommunication facilityWCFs and equipment enclosures shall be integrated through location, design, and/or screening to blend in with or be hidden within the existing characteristics of the site.
- (9) *Use of stealth design.* Stealth design is required as provided in table 1 of section 37-222 of this Code, and concealment techniques must be appropriate given the proposed location, design, visual environment, and nearby uses, structures, and natural features. Stealth design shall be designed and constructed to substantially conform to surrounding building designs or natural settings, so as to be visually unobtrusive.
- (10) *Installation on city property.* Installation of any telecommunication facilityWCF on city-owned property requires a duly executed written agreement with the city prior to installation.
- (11) *Equipment mounting.* All equipment shall be mounted as close as possible to the structure, pole, or building so as to reduce the overall visual profile to the maximum extent feasible.
- (12) *Setbacks and fencing.*
 - a. If any setback prescribed within this chapter requires a greater distance than required in this article, the greater distance shall apply.
 - b. A sight-obscuring fence no less than six (6) feet in height from the finished grade shall be constructed around any macro cell tower, including around related support or guy anchors, and around its base station. Access shall only be through a locked gate.
- (13) *Collocation encouraged.* A written statement shall be provided demonstrating the applicant's willingness to allow transmission equipment owned by others to collocate with the proposed wireless communication facility whenever technically and economically feasible.
- (14) *Accessory uses.*
 - a. Accessory uses shall be limited to such structures and equipment that are necessary for transmission or reception functions, and shall not include broadcast studios, offices, vehicles or equipment storage, or other uses not essential to the transmission or reception functions.
 - b. All accessory buildings shall be constructed of building materials equal to or better than those of the primary building on the site, built to blend into the surrounding architectural style, and subject to applicable permits.
 - c. No equipment shall be stored or vehicle parked on the site of the tower, unless used in direct support of the antennas or the tower that is being repaired.
 - d. In protected areas, all accessory equipment located at the base of a WCF shall be located or placed (at the applicant's choice) in an existing building, underground, or in an equipment shelter or cabinet that is:
 1. Designed to blend in with existing surroundings, using architecturally compatible construction and colors; and

2. Located so as to be as unobtrusive as possible consistent with the proper functioning of the telecommunication facilityWCF.

(15) *Compliance report.* A written report shall be prepared by a licensed professional engineer or another person with demonstrated expertise in the field of RF engineering. Such report shall attest that the proposed telecommunication facilityWCF (whether it be new or replacement equipment) complies with the RF emissions limits established by the FCC. Such report shall be submitted with every permit application.

(b) Site design flexibility. Individual telecommunication facilityWCF sites vary in the location of adjacent buildings, existing trees, topography, and other local variables. By mandating certain design standards, there may result a project that could have been less intrusive if the location of the various elements of the project could have been placed in more appropriate locations within a given site. Therefore, the telecommunications facilityWCF and supporting equipment may be installed so as to best camouflage, disguise or conceal them, to make the telecommunication facilityWCF more closely compatible with and blend into the setting or host structure, upon approval from the community development director or the planning and zoning commission, as applicable.

(Ord. No. 4742, § 1, 8-19-19; Ord. No. 4790, § 3, 11-23-20)

Sec. 37-219. Building-mounted telecommunication facilitiesWCFs.

With the exception of commercial and mixed use zones:

- (1) All transmission equipment shall be concealed within existing architectural features to the maximum extent feasible. Any new architectural features proposed to conceal the transmission equipment shall be designed to mimic the existing underlying structure, shall be proportional to the existing underlying structure or conform to the underlying use, and shall use materials in similar quality, finish, color, and texture as the existing underlying structure.
- (2) All roof-mounted transmission equipment shall be set back from all roof edges to the maximum extent feasible consistent with the need for "line-of-sight" transmission and reception of signals.
- (3) Antenna arrays and supporting transmission equipment shall be installed so as to camouflage, disguise, or conceal them to make them closely compatible with and blend into the setting or host structure.

Towers located on roofs shall be subject to the provisions of section 37-222 of this Code rather than this section.

(Ord. No. 4742, § 1, 8-19-19)

Sec. 37-220. Antenna arrays.

(a) Unless a conditional use permit is obtained, antenna arrays shall not be permitted:

- (1) In residential zones;
- (2) On single-family houses and duplexes;
- (3) On signs;
- (4) In historic districts; or
- (5) In the Normal Hill heritage overlay zone.

The notice and procedural provisions of article IX of this chapter ("conditional uses") and the factors set forth in section 37-222(h) of this Code (substituting "antenna array" for "tower") shall apply to conditional use permits sought for the purpose of locating antenna arrays in one (1) of the preceding zones.

- (b) Subject to subsection (a) of this section, antenna arrays are permitted if located on an existing structure such that they do not extend more than fifteen (15) feet above said structure.

(Ord. No. 4742, § 1, 8-19-19)

Sec. 37-221. Small cells and distributed antenna systems.

- (a) Small cells are allowed in all zones, provided the applicant complies with all federal laws and state laws and requirements and structural industry standards.
- (b) Small cells are subject to approval via permits and administrative review unless their installation requires the construction of a pole that exceeds the maximum height limitation of the affected zoning district or building. If the height limitation is exceeded, an exception pursuant to section 37-223 of this article is required. An exception shall not be required for replacement utility support structures, so long as the height of a replacement structure, including antennas, is no greater than ten (10) feet taller than the existing utility support structure.
- (c) Distributed antenna systems are allowed in all zones, provided the applicant complies with all federal laws and state laws and requirements and structural industry standards.
- (d) Distributed antenna systems are subject to approval via permits and administrative review.

(Ord. No. 4742, § 1, 8-19-19; Ord. No. 4790, § 4, 11-23-20)

Sec. 37-222. Towers.

- (a) *Preferred macro cell tower locations.* The following siting priorities, for wireless infrastructure providers, ordered from most-preferred (1) to least-preferred (7), are as follows and require an alternative sites analysis, as set forth in subsection (e) of this section:
 - (1) City-owned property and facilities, except those in protected areas, and not including rights-of-way;
 - (2) Commercial zones, except the central business district;
 - (3) Mixed-use zones;
 - (4) Rights-of-way in nonresidential zones;
 - (5) City-owned property and facilities in protected areas, but not including rights-of-way;
 - (6) Other parcels of land in protected areas, but not including rights-of-way;
 - (7) Rights-of-way in protected areas.
- (b) *Towers in protected areas.* Towers in protected areas are permitted only upon the issuance of a conditional use permit, pursuant to the requirements set forth in subsection (h) of this section.
- (c) *Height restrictions and stealth design for towers.* Towers shall be subject to the height restrictions and stealth design requirements set forth below in Table 1:

Zone	Maximum Tower Height	Stealth Design ⁽¹⁾
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(Supp. No. 9)

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Residential Zones	35 feet	Required
Central Business District	45 feet	Required
Normal Hill Heritage Overlay	35 feet	Required
Historic District(s)	45 feet	Required
Commercial Zones	120 feet ^[2]	Optional
Mixed Use Zones	90 feet ^[2]	Optional
[1] Stealth design is subject to approval by the community development director, the planning and zoning commission, or historic preservation commission, as appropriate, based upon the general requirements in section 37-218 of this Code.		
[2] An additional thirty (30) feet in height is allowed if applicant uses stealth design.		

(d) *Setback requirements.*

- (1) A tower shall be set back from property lines as required by the zone in which the tower is located or a minimum of one (1) foot for every foot of tower height, whichever produces the greater setback, unless the tower is constructed with breakpoint design technology. If the tower has been constructed using breakpoint design technology, the minimum setback distance shall be equal to one hundred ten (110) percent of the distance from the top of the tower to the breakpoint level of the tower, or the applicable zone's minimum side setback requirements, whichever is greater. For example, on a one hundred-foot tall tower with a breakpoint design at eighty (80) feet, the minimum setback requirement would either be:
- a. Twenty-two (22) feet (one hundred ten (110) percent of twenty (20) feet, the distance from the top of the tower to the breakpoint); or
 - b. The minimum side setback requirements for that zone, whichever is greater.

If an applicant proposes to use breakpoint design technology to reduce the required setback, the issuance of the building permit for the tower shall be conditioned, in part, upon approval of the tower design, including the breakpoint design, by a structural engineer licensed in Idaho.

- (2) All equipment shelters, cabinets, or other on the ground ancillary equipment shall meet the setback requirement of the zone in which it is located.

(e) *Alternative sites.*

- (1) *Analysis.*
- a. For proposed towers, the applicant must address the city's preferred tower locations with a detailed explanation justifying why a site of higher priority was not selected. The city's tower location preferences must be addressed in a clear and complete written alternative sites analysis that shows at least three (3) higher ranked, alternative sites considered that are in the geographic range of the service coverage objectives of the applicant, together with a factually

detailed and meaningful comparative analysis between each alternative site and the proposed site that explains the substantive reasons why the applicant rejected each alternative site.

- b. A complete alternative sites analysis provided under this subsection may include less than three (3) alternative sites so long as the applicant provides a factually detailed written rationale for why it could not identify at least three (3) potentially available, higher ranked, alternative sites.
- c. For purposes of disqualifying potential collocations or alternative sites for the failure to meet the applicant's service coverage or capacity objectives, the applicant shall provide:
 - 1. A description of its objective, whether it be to address a deficiency in coverage, capacity, or frequency;
 - 2. Detailed maps or other exhibits with clear and concise RF data to illustrate that the objective is not met using the alternative (whether it be collocation or a more preferred location); and
 - 3. A description of why the alternative (collocation or a more preferred location) does not meet the objective.
- d. An applicant must apply for and be granted a conditional use permit in order to locate a tower at an alternative site. The notice and procedural provisions of article IX of this chapter ("Conditional Uses") and the factors set forth in subsection (h) of this section shall apply to conditional use permits sought for the purpose of locating a tower at an alternative site. For a sitting application that requires a conditional use permit, the governing board shall, within thirty (30) days, hold a public hearing to approve, approve with modification, or deny the application.

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- (2) *Documentation.* The following materials shall be submitted with an alternative sites analysis:
 - a. A copy of the applicant's FCC license or registration.
 - b. A color visual analysis that includes to-scale visual simulations that show unobstructed before-and-after construction daytime and clear-weather views from at least four (4) angles, together with a map that shows the location of each view, including all equipment and ground wires.
 - c. A written analysis that explains how the proposed design complies with the applicable design standards under this article to the maximum extent feasible. A complete design justification must identify all applicable design standards under this article and provide a factually detailed reason why the proposed design either complies or cannot feasibly comply.
 - d. A noise study for the proposed tower and all associated equipment.
 - e. A scaled site plan clearly indicating the location, type, height, and width of the proposed tower; on-site improvements; land uses and zoning; adjacent land uses and zoning (including when adjacent to the county); separation distances from a tower to property lines; adjacent roadways; buildings on adjoining properties; photo simulations; a depiction of all proposed transmission equipment; proposed means of access; setbacks from property lines; elevation drawings or renderings of the proposed tower; identification and dimensions of property lines and lease lines; and any other structures, topography, parking, utility runs, or other information deemed by the community development department to be necessary to assess compliance with this article.
 - f. Legal description of the entire lot and/or leased site (if applicable) on which the tower is proposed to be located.
 - g. The setback distance between the proposed tower and the nearest residential unit and the nearest residentially zoned property.

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- h. The separation distance from other towers described in the inventory of existing sites submitted pursuant to this article shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known.
 - i. A landscape plan showing locations and types of trees and shrubs.
 - j. Location, type, height, and color of fencing and, if applicable, the method of camouflage and illumination.
 - k. A description of compliance with all applicable federal, state, and local laws.
 - l. Identification of cellular sites owned or operated by the applicant in the municipality.
 - m. A written statement of purpose, which shall minimally include:
 - 1. A description of the objective to be achieved;
 - 2. A to-scale map that identifies the proposed site location and the targeted service area to be benefited by the proposed project; and
 - 3. Full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites.

These materials shall be reviewed, signed, and sealed by an Idaho-licensed professional engineer.

- (f) *Separation requirements.* No macro cell tower may be constructed within one-half (½) mile of an existing macro cell tower unless an exception is obtained pursuant to section 37-223 of this Code or through a conditional use permit waiving or modifying this separation standard pursuant to article IX of this chapter ("conditional uses") and the applicant can demonstrate that:
 - (1) The existing macro cell tower is not available or feasible for collocation of an additional wireless communication facility;
 - (2) The location of the existing macro cell tower does not satisfy the operational requirements of the applicant; or
 - (3) Another departure from this standard is needed.

Factors to be considered in determining whether an applicant has made this demonstration include those listed in subsection (h) of this section.

- (g) *Inventory of existing sites.* Each applicant, at the time of its application for a macro cell, shall provide to the community development department an inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of the city or within one (1) mile of the border thereof, including specific information about the location, height, and design of each tower or antenna. The community development department may share such information with other applicants applying for administrative approvals or conditional use permits under this article or other organizations seeking to locate macro cells within the jurisdiction of the city; provided, however, that the community development department is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
- (h) *Conditional use permit for towers.* In applying for a conditional use permit for a tower, the notice and procedural provisions of article IX of this chapter ("conditional uses") shall apply, except that for a sitting application that requires a conditional use permit, the governing board shall, within thirty (30) days, hold a public hearing to approve, approve with modification, or deny the application, pursuant to Idaho Code

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[Section 67-6540\(a\)](#). Additionally, an applicant shall notify the Lewiston-Nez Perce County Regional Airport if a tower is proposed to be located within a three-mile radius of the center of the Lewiston-Nez Perce County Regional Airport. Further, the applicant shall address and the planning and zoning commission shall consider the following factors in determining whether to issue a conditional use permit for a tower, in lieu of the factors set forth in article IX of this chapter. The planning and zoning commission may waive or reduce the burden on the applicant of one (1) or more of these factors if the commission concludes that the purposes of this article are, nevertheless, served thereby.

- (1) Whether the proposed tower meets the other applicable provisions of this article.
- (2) Surrounding topography, trees, buildings and antennas that would impair RF signals.
- (3) Proximity of the tower to residential structures and residential zone boundaries and whether the tower impairs the view shed.
- (4) Proximity of the tower to structures in historic district(s) or in the Normal Hill heritage overlay zone so as to impair visual aesthetics.
- (5) Nature of uses on adjacent and nearby properties and compatibility with those uses.
- (6) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
- (7) Whether existing structures or towers are available in accordance with this section and located within the geographic area that meets the applicant's service coverage and structural requirements.
- (8) Whether existing towers or structures have sufficient structural strength to support applicant's proposed antenna and related equipment.
- (9) Whether the applicant demonstrates that there are other limiting factors not enumerated herein that render existing towers and structures unsuitable.
- (10) Whether the [telecommunication facility](#)WCF will be within the RF emission limits allowed by the FCC. The applicant shall provide documentation from an expert regarding this requirement. The FCC shall determine whether the applicant's proposed antenna would cause electromagnetic interference with antennas on existing towers or structures, or whether antennas on existing towers or structures would cause interference with the applicant's proposed antenna.
- (11) Whether the tower will comply with FAA requirements, rules, regulations, and orders.

(Ord. No. 4742, § 1, 8-19-19; Ord. No. 4790, § 5, 11-23-20)

Sec. 37-223. Exceptions to standards.

- (a) *Applicability.* No [telecommunication facility](#)WCF shall be developed or modified contrary to any applicable development standard set forth in this article unless an exception has been granted pursuant to this section or through a conditional use permit waiving or modifying a development standard pursuant to article IX of this chapter ("conditional uses").
- (b) *Procedure type.* An exception to an applicable [telecommunication facility](#)WCF development standard shall require approval by the planning and zoning commission in lieu of article XI of this chapter ("variances"); provided, however, the notice and procedural requirements in article XI of this chapter ("variances") shall apply to exceptions sought pursuant to this section.
- (c) *Submittal requirements.* An application for an exception to an applicable [telecommunication facility](#)WCF development standard shall include the following:
 - (1) Payment of the required fee, as adopted by resolution of the city council.

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(Supp. No. 9)

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- (2) A description of the requested exception.
 - (3) A written statement demonstrating how the exception would not contradict or conflict with the purposes of this article.
 - (4) A site plan that includes:
 - a. Description of the proposed telecommunication facility'sWCF's design and dimensions, as it would appear with and without the exception.
 - b. Elevations showing all components of the telecommunication facilityWCF, as it would appear with and without the exception.
 - c. Color simulations of the telecommunication facilityWCF after construction demonstrating compatibility with the vicinity, as it would appear with and without the exception.
 - (5) An explanation that demonstrates the following:
 - a. The telecommunication facilityWCF development standard materially limits or inhibits the ability of the provider to compete in a fair and balanced legal and regulatory environment;
 - b. The problem can only be resolved by an exception to one (1) or more of the standards in this article;
 - c. The exception is narrowly tailored such that the telecommunication facilityWCF conforms to this article's standards to the greatest extent possible; and
 - d. The impact on development standards such as height, setbacks and landscape requirements.

(Ord. No. 4742, § 1, 8-19-19)

Sec. 37-224. Independent RF technical and other review.

- (a) Although the city intends for city staff to review applications to the extent feasible, the city may retain the services of an independent RF expert and other consultants of its choice to provide technical and other evaluations of permit applications for telecommunication facilitiesWCFs. The third party expert shall have recognized training or qualifications in their fields of radio frequency engineering or wireless communication facilities regulations.
- (b) The expert's review may include, but is not limited to:
 - (1) The accuracy and completeness of the items submitted with the application;
 - (2) The applicability of analysis and techniques and methodologies proposed by the applicant;
 - (3) The validity of conclusions reached by the applicant;
 - (4) Whether the proposed telecommunication facilityWCF complies with the applicable approval criteria set forth in this article; and
 - (5) An evaluation of the functionality of the equipment after addition or replacement.
- (c) The applicant shall pay the cost for any independent consultant fees through a deposit, estimated by the city, within ten (10) days of the city's request. When the city requests such payment, the application shall be deemed incomplete for purposes of application processing timelines until the deposit is received. In the event that such costs and fees do not exceed the deposit amount, the city shall refund any unused portion within thirty (30) days after the final permit is released or, if no final permit is released, within thirty (30) days after the city receives a written request from the applicant. If the costs and fees exceed the deposit amount, then the applicant shall pay the difference to the city before the permit is issued.

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(Supp. No. 9)

(Ord. No. 4742, § 1, 8-19-19)

Sec. 37-225. Final inspection.

A certificate of completion shall only be granted upon satisfactory evidence that the [telecommunication facility](#)WCF was installed in substantial compliance with the approved plans and photo simulations. If it is found that the WCF installation does not substantially comply with the approved plans and photo simulations, the applicant shall make any and all such changes required to bring the WCF installation into compliance promptly and in any event prior to putting the [telecommunication facility](#)WCF in operation. If the [telecommunication facility](#)WCF is not brought into substantial compliance within thirty (30) days of notice of noncompliance by the city, the applicant shall remove the noncompliant components.

(Ord. No. 4742, § 1, 8-19-19)

Sec. 37-226. Compliance.

- (a) All [telecommunication facilities](#)WCFs shall comply with all standards and regulations of the FCC and FAA and any state or other federal government agency with the authority to regulate wireless communication facilities.
- (b) The site and [telecommunication facilities](#)WCFs, including all landscaping, fencing and related transmission equipment, shall be maintained at all times in a neat and clean manner and in accordance with all approved plans.
- (c) All graffiti on [telecommunication facilities](#)WCFs shall be removed at the sole expense of the permittee after notification by the city to the owner/operator of the [telecommunication facilities](#)WCF.
- (d) If any FCC or FAA, state, or other governmental license or any other governmental approval to provide communication services is revoked as to any site permitted or authorized by the city, the permittee shall inform the city of the revocation within thirty (30) days of receiving notice of such revocation and cease using the site. The owner of the [telecommunication facility](#)WCF shall also be subject to the removal provisions of section 37-227 of this Code.

(Ord. No. 4742, § 1, 8-19-19)

Sec. 37-227. Removal of abandoned towers and antennas.

- (a) Any [telecommunication facility](#)WCF that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such [telecommunication facility](#)WCF shall so notify the city in writing and remove the same within ninety (90) days of giving notice to the city of such abandonment. Failure to remove an abandoned [telecommunication facility](#)WCF within said ninety (90) days shall be grounds to remove the [telecommunication facility](#)WCF at the owner's expense, including all costs and attorneys' fees.
- (b) Additionally, the city may contact the owner of the [telecommunication facility](#)WCF to make a determination as to whether such [telecommunication facility](#)WCF is abandoned. If the owner of such [telecommunication facility](#)WCF does not respond within ninety (90) days, the city may remove the [telecommunication facility](#)WCF (including its foundation) at the owner's expense, including all costs and attorneys' fees associated with such removal. Such notice by the city shall be by certified mail, return receipt requested; or posted on or near the [telecommunication facility](#)WCF for fifteen (15) days; or both. Irrespective of any agreement between them to the contrary, the owner of such abandoned WCF and the owner of a building or land upon which the [telecommunication facility](#)WCF is located shall be jointly and severally responsible for the removal of abandoned [telecommunication facility](#)WCF.

(Supp. No. 9)

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- (c) If there are two (2) or more users of a telecommunication facilityWCF, then this section shall not become effective until all users cease using the telecommunication facilityWCF.

(Ord. No. 4742, § 1, 8-19-19)

Sec. 37-228. Indemnification.

Each permit issued for a telecommunication facilityWCF located on city property shall be deemed to have as a condition of the permit a requirement that the applicant defend, indemnify, and hold harmless the city and its officers, agents, employees, volunteers, and contractors from any and all liability, damages, or charges (including attorneys' fees and expenses) arising out of claims, suits, demands, or causes of action as a result of the permit process, a granted permit, construction, location, performance, operation, maintenance, repair, installation, replacement, removal, or restoration of the telecommunication facilityWCF.

(Ord. No. 4742, § 1, 8-19-19)

Sec. 37-229. Eligible facilities modification request.

- (a) *Purpose.* This section implements Section 6409(a) of the Spectrum Act (47 U.S.C. Section 1455(a)), as it may be amended from time to time and as interpreted by the FCC in its Report and Order No. 14-153 and Declaratory Ruling and Third Report and Order released September 27, 2018 (FCC 18-133), and the Declaratory Ruling and Notice of Proposed Rulemaking released June 10, 2020 (FCC 20-75), which requires a state or local government to approve any eligible facilities request for a modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. Eligible facilities requests shall be governed solely by the provisions in this section and federal law.

(b) *Application review.*

- (1) *Application.* The community development department shall prepare and make publicly available an application form, which form shall be used by the applicant. No information may be required from an applicant for any documentation intended to illustrate the need for any such wireless facilities or to justify the business decision to modify such wireless facilities.
- (2) *Review.* The community development department shall, within sixty (60) days of the date on which an applicant satisfies both of the following criteria, review and act upon the application, subject to the tolling provisions set forth below:
 - a. The applicant takes the first procedural step that the city requires as part of its Section 6409(a) regulatory review process, and, to the extent that the applicant has not done so as part of the first required procedural step;
 - b. The applicant submits written documentation that addresses the eligible facilities request criteria and indicates that the proposed modification will not cause a substantial change to an existing structure.

The community development department shall make its final decision to approve or deny the application, and advise the applicant in writing of its final decision.

- (3) *Tolling of the time frame for review.* The sixty-day review period may be tolled only by mutual agreement between the community development department and the applicant, or in cases where the community development department determines that the application is incomplete.
 - a. To toll the time frame for incompleteness, the community development department must provide written notice to the applicant within twenty-one~~hirty~~ (21)~~30~~ business days of

Commented [JP2]: We need add preceding the following application type processing sections a section addressing the new I.C Secs. 67-6540(2-8). That's the part that really got my head spinning.

Commented [KH3R2]: I think we just add that section at the end. It applies if we did not make a decision in a timely manner, then it either goes for public hearing or is automatically approved.

(Supp. No. 9)

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application submission, specifically delineating all missing documents or information required in the application.

- b. The time frame for review begins running again when the applicant makes a supplemental submission in response to the community development department's notice of incompleteness.
 - c. Following a supplemental submission, the community development department shall have ten (10) days to notify the applicant if the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
- (4) *Failure to act.* In the event the community development department fails to approve or deny a complete application under this section within the time frame for review (accounting for any tolling), the request shall be deemed granted provided the applicant notifies the community development department in writing after the review period has expired.
- (c) *Change in federal law.* If federal law changes regarding an eligible facilities request, then this section shall be deemed amended to comply with federal law without further action by the city.

(Ord. No. 4742, § 1, 8-19-19; Ord. No. 4790, § 6, 11-23-20)

Sec. 37-230. Small wireless facilities—Collocation on existing structures.

- (a) *Purpose.* This section implements a shot clock that is contained in the FCC's Declaratory Ruling and Third Report and Order released September 27, 2018, regarding the collocation of small wireless facilities on existing structures.
- (b) *Application review.*
- (1) *Application.* The community development department shall prepare and make publicly available an application form, which form shall be used by the applicant.
 - (2) *Review.* Upon submission of an application for collocation of small wireless facilities on an existing structure pursuant to this section, the community development department shall, within sixty (60) days (subject to resetting of the shot clock and the tolling provisions set forth below), review such application, make its final decision to approve or deny the application, and advise the applicant in writing of its final decision.
 - (3) *Tolling of the time frame for review.* The sixty-day review period begins to run when the application is submitted. The community development department shall notify the applicant in writing within ten (10) days as to whether the application is incomplete. Upon resubmission by the applicant, a new sixty-day shot clock shall commence, and the community development department shall have ten (10) days to notify the applicant again of an incomplete application. The shot clock may be tolled only by mutual agreement between the community development department and the applicant, or in cases where the community development department determines upon a resubmission that the application is incomplete.
- a. The time frame is tolled in the case of subsequent notices pursuant to the procedures identified in this section. Subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

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(Supp. No. 9)

(4) *Failure to act.* In the event the community development department fails to approve or deny a complete application under this section within the time frame for review (accounting for resetting the shot clock once or any tolling), the applicant may pursue judicial relief.

(c) *Change in federal law.* If federal law changes regarding the collocation of small wireless facilities on an existing structure, then this section shall be deemed amended to comply with federal law without further action by the city.

(Ord. No. 4742, § 1, 8-19-19; Ord. No. 4790, § 7, 11-23-20)

Sec. 37-231. Small wireless facilities—Deployment on a new structure.

(a) *Purpose.* This section implements a shot clock that is contained in the FCC's Declaratory Ruling and Third Report and Order released September 27, 2018, regarding the deployment of small wireless facilities on a new structure.

(b) *Application review.*

(1) *Application.* The community development department shall prepare and make publicly available an application form, which form shall be used by the applicant.

(2) *Review.* Upon submission of an application for the deployment of small wireless facilities on a new structure pursuant to this section, the community development department shall, within ninety (90) days (subject to resetting of the shot clock and the tolling provisions set forth below), review such application, make its final decision to approve or deny the application, and advise the applicant in writing of its final decision.

(3) *Tolling of the time frame for review.* The ninety-day review period begins to run when the application is submitted. The community development department shall notify the applicant in writing within ten (10) days as to whether the application is incomplete. Upon resubmission by the applicant, a new ninety-day shot clock shall commence, and the community development department shall have ten (10) days to notify the applicant again of an incomplete application. The shot clock may be tolled only by mutual agreement between the community development department and the applicant, or in cases where the community development department determines upon a resubmission that the application is incomplete.

a. The time frame is tolled in the case of subsequent notices pursuant to the procedures identified in this section. Subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.

(4) *Failure to act.* In the event the community development department fails to approve or deny a complete application under this section within the time frame for review (accounting for resetting the shot clock once or any tolling), the applicant may pursue judicial relief.

(c) *Change in federal law.* If federal law changes regarding the deployment of small wireless facilities on a new structure, then this section shall be deemed amended to comply with federal law without further action by the city.

(Ord. No. 4742, § 1, 8-19-19; Ord. No. 4790, § 8, 11-23-20)

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(Supp. No. 9)

Sec. 37-232. Collocation applications for other than small wireless facilities using an existing structure.

- (a) *Purpose.* This section implements, in part, 47 U.S.C. Section 332(c)(7) of the Federal Communications Act of 1934, as it may be amended from time to time and as interpreted by the FCC in its Report and Order No. 14-153 and Declaratory Ruling and Third Report and Order released September 27, 2018. The following time frames apply to applications for collocation for other than small wireless facilities using an existing structure.
- (b) *Application review.*
- (1) *Application.* The community development department shall prepare and make publicly available an application form, which shall be used by the applicant.
 - (2) *Review.* Upon submission of an application for a collocation for other than small wireless facilities using an existing structure pursuant to this section, the community development department shall, within ~~sixty-ninety~~ (6090) days (subject to the tolling provisions set forth below), review such application, make its final decision to approve or deny the application, and advise the applicant in writing of its final decision.
 - (3) *Tolling of the time frame for review.* The ~~sixty-ninety~~-day review period begins to run when the application is submitted, and may be tolled only by mutual agreement between the community development department and the applicant, or in cases where the community development department determines that the application is incomplete.
 - a. To toll the time frame for incompleteness, the community development department must provide written notice to the applicant within ~~twenty-one~~ (2130) ~~business~~ days of application submission, specifically delineating all missing documents or information required in the application.
 - b. The time frame for review begins running again when the applicant makes a supplemental submission in response to the community development department's notice of incompleteness.
 - c. Following a supplemental submission, the community development department shall notify the applicant within ten (10) days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
 - (4) *Failure to act.* In the event the community development department fails to approve or deny a complete application under this section within the time frame for review (accounting for any tolling), the applicant may pursue judicial relief.
- (c) *Change in federal law.* If federal law changes regarding collocations for other than small wireless facilities using an existing structure, this section shall be deemed amended to comply with federal law without further action by the city.

(Ord. No. 4742, § 1, 8-19-19; Ord. No. 4790, § 9, 11-23-20)

Sec. 37-233. Application to deploy a facility other than a small wireless facility using a new structure (new macro cell tower applications).

- (a) *Purpose.* This section also implements, in part, 47 U.S.C. Section 332(c)(7) of the Federal Communications Act of 1934, as it may be amended from time to time and as interpreted by the FCC in its Report and Order No.

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(Supp. No. 9)

14-153 and Declaratory Ruling and Third Report and Order released September 27, 2018. The following time frames apply to applications to deploy a facility other than small wireless facilities using a new structure.

(b) *Application review.*

- (1) *Application.* The community development department shall prepare and make publicly available an application form, which shall be used by the applicant.
- (2) *Review.* The community development department shall approve or deny an application to deploy a facility other than a small wireless facility using a new structure, which does not require a conditional use permit or exception approval by the planning and zoning commission, and notify the applicant of such decision within one hundred fifty (150) days, subject to the tolling provisions set forth below. If an application requires a conditional use permit or exception approval by the planning and zoning commission in addition to the required permit from the community development department, then both the planning and zoning commission and the community development department shall approve or deny their respective applications within one hundred fifty (150) days, subject to the tolling provisions set forth below.
- (3) *Tolling of the time frame for review.* The one hundred fifty-day review period begins to run when the application is submitted, and may be tolled only by mutual agreement between the community development department and the applicant, or in cases where the community development department determines that the application is incomplete.
 - a. To toll the time frame for incompleteness, the community development department must provide written notice to the applicant within ~~twenty-one~~^{thirty} (21~~0~~³⁰) business days of submission of the application, specifically delineating all missing documents or information required in the application.
 - b. The time frame for review begins running again when the applicant makes a supplemental submission in response to the community development department's notice of incompleteness.
 - c. Following a supplemental submission, the community development department shall notify the applicant within ten (10) days if the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the procedures identified in this section. Second or subsequent notices of incompleteness may not specify missing documents or information that was not delineated in the original notice of incompleteness.
- (4) *Failure to act.* In the event that an application to deploy a facility other than a small wireless facility using a new structure is not approved or denied within the required time frame for review (accounting for any tolling), the applicant may pursue judicial relief.

- (c) *Change in federal law.* If federal law changes regarding the deployment of a facility other than a small wireless facility using a new structure, this section shall be deemed amended to comply with federal law without further action by the city.

(Ord. No. 4742, § 1, 8-19-19; Ord. No. 4790, § 10, 11-23-20)

Sec. 37-234. Application fees.

In connection with the filing of an application, the applicant shall pay all applicable application fees, as set by resolution of the city council.

(Ord. No. 4742, § 1, 8-19-19)

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(Supp. No. 9)

Sec. 37-235. Laws, rules, and regulations.

This article shall be subject to all applicable laws, rules, and regulations.

(Ord. No. 4742, § 1, 8-19-19)

Sec. 37-236. Severability.

The various parts, sentences, paragraphs, sections, and clauses of this article are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this article shall not be affected thereby.

(Ord. No. 4742, § 1, 8-19-19)



Idaho Statutes

Idaho Statutes are updated to the website July 1 following the legislative session.

TITLE 67

STATE GOVERNMENT AND STATE AFFAIRS

CHAPTER 65

LOCAL LAND USE PLANNING

67-6540. SITING OF TELECOMMUNICATIONS FACILITIES AND BROADBAND INFRASTRUCTURE. (1) A city, county, or highway district shall approve, approve with modification, or deny a siting application for a telecommunications or cable service facility, for telecommunications or cable equipment, or for broadband infrastructure within a reasonable period of time as defined in subsection (7)(b) of this section.

(2) If the city, county, or highway district fails to approve, approve with modification, or deny the application within a reasonable period of time as defined in subsection (7)(b) of this section:

(a) For a siting application that requires a special use permit as provided for in section 67-6512, Idaho Code, or a variance as provided for in section 67-6516, Idaho Code, the governing board shall, within thirty (30) days, hold a public hearing to approve, approve with modification, or deny the application; and

(b) For a siting application that complies with the jurisdiction's applicable zoning ordinances and does not require a special use permit as provided for in section 67-6512, Idaho Code, or a variance as provided for in section 67-6516, Idaho Code, the application shall be deemed approved.

(3) If an application is incomplete, the city, county, or highway district shall notify the applicant in writing within twenty-one (21) business days of submittal of the application. The notice shall inform the applicant of the specific requirements necessary to complete the application. The provisions under subsection (2) of this section shall apply only if the applicant satisfies the specific requirements of the notice and submits a complete application within five (5) business days of receipt of the notice. The tolling period for an application pursuant to this subsection shall be from the day after the date when the siting authority notifies the applicant the application is incomplete pursuant to this subsection until the date when the applicant submits all the documents and information identified to render the application complete.

(4) The reasonable period of time pursuant to subsection (7)(b) of this section may be extended by mutual agreement between the applicant and the city, county, or highway district.

(5) The automatic approval provisions of subsection (2) of this section shall only apply if:

(a) The applicant provided all public notices required under applicable law; and

(b) The applicant provided notice to the city, county, or highway district that the reasonable period of time expired and that the application is deemed approved pursuant to this section.

(6) Within thirty (30) days of the notice provided pursuant to subsection (5)(b) of this section, the city, county, or highway district may seek judicial review regarding the application pursuant to the provisions of this section.

(7) As used in this section, the following terms have the following meanings:

(a) "Broadband infrastructure" has the same meaning as that term is defined in section 40-517, Idaho Code.

(b) "Reasonable period of time" for an application means:

(i) For broadband infrastructure permits, sixty (60) days;

(ii) To collocate a small wireless facility on existing equipment, sixty (60) days;

(iii) To deploy a small wireless facility on new equipment, ninety (90) days;

(iv) To collocate a facility other than a small wireless facility on existing equipment, ninety (90) days; and

(v) To deploy a facility other than a small wireless facility on new equipment, one hundred fifty (150) days.

(8) This section shall not apply to any request for modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station and that involves:

(a) Collocation of new transmission equipment;

(b) Removal of transmission equipment; or

(c) Replacement of transmission equipment.

(9) Except as provided in subsection (1) of this section, nothing in this section limits or affects the authority of a city, county, or highway district over decisions regarding the placement, construction, and modification of a wireless telecommunications facility.

History:

[67-6540, added 2025, ch. 325, sec. 2, p. 1342.]

How current is this law?



Idaho Statutes

Idaho Statutes are updated to the website July 1 following the legislative session.

TITLE 40
HIGHWAYS AND BRIDGES
CHAPTER 5

IDAHO TRANSPORTATION DEPARTMENT

40-517. DEFINITIONS. As used in sections 40-515 through 40-520, Idaho Code:

(1) "Broadband" means wide bandwidth communication transmissions allowing high speed internet access with an ability to simultaneously transport multiple signals and traffic types at a minimum transmission speed of one hundred (100) megabits per second for downloads and twenty (20) megabits per second for uploads.

(2) "Broadband infrastructure" means networks of deployed telecommunications equipment, conduit, and technologies necessary to provide broadband and other advanced telecommunications services to wholesalers or end users, including but not limited to private homes, businesses, commercial establishments, schools, or public institutions.

(3) "Broadband provider" means any entity that:

(a) Provides broadband services, including but not limited to a telecommunications provider, cable service provider, broadband provider, cellular provider, political subdivision that provides broadband services, electric cooperative that provides broadband services, electric utility that provides broadband services, state government entity that provides broadband services, tribal government that provides broadband services, or internet service provider; or

(b) Builds broadband infrastructure, including but not limited to a port, nonprofit organization, or private-public partnership established for the purpose of expanding broadband in the state.

(4) "Department" means the Idaho transportation department.

(5) "Dig Once Policy" means a policy or practice that minimizes the number and scale of excavations or construction and costs when installing broadband infrastructure in highway rights-of-way.

(6) "Highway" means a road that is part of the state highway system.

(7) "Longitudinal access" means access to or use of any part of a right-of-way of a highway that extends generally parallel to the right-of-way for a total of one hundred (100) or more linear feet.

History:

[40-517, added 2022, ch. 208, sec. 3, p. 671.]

How current is this law?