

## ORDINANCE NO. 424

AN ORDINANCE OF THE CITY OF MACKAY, IDAHO, PROVIDING A ZONING ORDINANCE; PROVIDING THE PURPOSE AND TITLE OF SAID ORDINANCE; PROVIDING FOR DEFINITIONS; DIVIDING SAID CITY INTO ZONE DISTRICTS; DEFINING THE REGULATIONS AND RESTRICTIONS FOR BUILDINGS, USES, SIGNS, LOTS AND SETBACKS IN EACH DISTRICT; ADOPTING THE OFFICIAL ZONING MAP AND PROVIDING THE BOUNDARIES OF EACH DISTRICT; PROVIDING FOR OFF STREET PARKING AND GENERAL PROVISIONS AS TO DEVELOPMENT AND USE OF EACH DISTRICT; PROVIDING FOR SIGN REGULATIONS; PROVIDING FOR SUPPLEMENTAL REGULATIONS; PROVIDING FOR MANUFACTURED HOMES, MOBILE HOMES AND RECREATIONAL VEHICLE USES AND PARKS; PROVIDING FOR VARIANCES AND APPEALS; SPECIAL USE AND BUILDING PERMITS; REZONE PROCESS; DEVELOPMENT AGREEMENTS; PROVIDING FOR ADMINISTRATION; PROVIDING FOR LIGHTING STANDARDS; PROVIDING FOR TEMPORARY USES; PROVIDING FOR NON-CONFORMING USES; PROVIDING FOR ENFORCEMENT AND PENALTY FOR VIOLATION OF THIS ORDINANCE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MACKAY, CUSTER COUNTY, IDAHO:

Wherein the Mayor and Council of the City of Mackay, Idaho, finds that in order to promote the health, safety, and general welfare of the community and for the best interests of the community as a whole, said Council considers that restrictions and regulations shall be provided to restrict and regulate the height, number of stories, size of buildings and structures, and the percentage of lots to be occupied and the size of yards and other spaces, density of population and location and use of buildings, structures and land for trade, industry, residences and other purposes.

***NOTE: This Ordinance has been amended by City of Mackay Ordinance #448***

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## ORDINANCE NO. 424

### CHAPTER 1: ZONING DEFINITIONS, GENERAL PROVISIONS

#### 1-1 Title and Purpose

This Ordinance shall be known and cited as "The Zoning Ordinance (Ordinance) of the City of Mackay, Idaho (City)." The purpose of this Ordinance is to provide Planning and Zoning to lessen congestion in other streets, to promote health and the general welfare, open space, to prevent overcrowding of land, to facilitate the adequate provision for transportation, water, sewage, streets, parks, and other requirements, all with the purpose of conserving the value of structures and land and to encourage the most appropriate use of land within the City.

#### 1-2 Planning and Zoning Commission

- A. Is hereby created and established a joint Planning and Zoning Commission (Commission) for the City consisting of no less than four (4) and no more than ten (10) members, who shall be appointed by the Mayor and confirmed by the City Council of the City of Mackay, Idaho (City Council). The creation and functions of the Commission shall conform to the requirements of the State of Idaho Statute Title 67 *State Government and State Affairs*, Chapter 65 *Local Land Use Planning*, as amended, Idaho Code Sections 67-6501 through 67-6538 (Idaho Code). The Commission shall prepare, and the City Council approve rules of operation, in accordance with the Idaho Code, defining and describing the purpose, membership, selection of committees and consultants, meetings and records, remuneration, duties and powers, and deactivation of the Commission.
- B. Membership and Terms. The initial Commission shall consist of four (4) to ten (10) Commissioners, appointed by the Mayor and confirmed by the City Council, of which a majority shall reside within the City limits and no more than two (2) shall reside within the area of City impact. No member of the City Council, Custer County Commissioners, or any City employee, full or part time, shall serve on the Commission. Commissioners shall be voting members who have resided in Custer County, Idaho, at least two (2) years prior to their appointment and shall remain a resident of the county during their service. The initial terms of the first appointed members, for periods of one (1), two (2), or three (3) years, distributed as evenly as possible among the members. Subsequent members shall be appointed for a term of three (3) years. No person shall serve more than two (2) full consecutive terms without specific concurrence by two-thirds (2/3) of the City Council adopted by motion and recorded in the minutes. Vacancies occurring otherwise than through expiration of terms shall be filled in the same manner as the original appointment. Commissioners may be removed for cause by a majority vote of the Council.
- C. Meetings and Compensation. The Commission shall elect its own chairman and create or fill such other offices as it may determine necessary, and one regular meeting shall be held each month for not less than nine (9) months in each year. All meetings shall be compliant with the Idaho Open Meeting law and a majority of the hall constitutes a quorum at any meeting. A record of meetings, hearings, resolutions, studies, findings, permits, and actions taken shall be maintained. All records shall be open to the public. Commission activities shall be without remuneration unless specifically approved in advance by the Council.
- D. Duties and Powers. The Commission shall have those duties and powers enumerated in Chapter 65, Title 67, Idaho Code, including, but not limited to the following:
  1. Provide leadership and guidance for the update of the Comprehensive Plan for the physical development of the City.
  2. Make recommendations for the physical development of the City through the formation of zoning districts.
  3. Make recommendations concerning the designing, widening, extending and locating of streets, roads, and highways.

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4. Make recommendations concerning density of population and development of land within the City and its area of impact.
5. Make recommendations concerning the future growth, development and beautification of the City with respect to its public buildings, streets, parks, and other facilities within the area of impact.
6. Advise individuals concerning planning and zoning requirements and ordinances.
7. Identify and recommend the adoption of applicable codes and standards governing the construction or modification of structures or land uses.
8. Receive and make recommendations concerning any and all maps, plats, and re-plats of lands as encompassed by the approved Comprehensive Plan, which require the approval of the Council.
9. Recommend the boundaries of zoning districts and propose regulations to be enforced therein for the purpose of promoting health, safety, social values, and the general welfare of the City by regulating and restricting the erection, construction, reconstruction, alteration, repair or use of structures or land within the City, and to hold public hearings thereon.

### 1-3 Definitions

A. For the purpose of this Ordinance, certain terms or words used herein shall be interpreted as follows:

1. The word "person" includes a firm, association, organization, partnership, trust, company, or corporation, as well as an individual.
2. The present tense includes the future tense, the singular number includes the plural and the plural number includes the singular.
3. The word "shall" is a mandatory requirement, the word "may" is a permissive requirement and the word "should" is a preferred usage.
4. The words "used" or "occupied" include the words "intended, designed or arranged to be used or occupied".
5. The word "lot" includes the words "plot," "parcel," and "tract".
6. The words "used for" include "designed for" and vice versa: words used in the present tense include the future.

B. Meaning of Terms or Words

Abandoned Vehicle: Any vehicle located on public or private property that is inoperable and/or unregistered and not enclosed within a structure or solid fence.

Accessory: A use, structure or other facility customarily a part of any permitted use that is clearly incidental and secondary to the permitted use and which does not change the character of the permitted use, or affect other properties in the vicinity as long as usage does not violate any existing City code or ordinance.

Accessory Dwelling: See Dwelling, Accessory.

Access: A legally and physically defined area available and practical for motor vehicle ingress and egress to parcels, areas or tracts of land. In determining practicality, physical factors may be

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considered. The following are types or forms of access:

1. State Highway: A public road, including its entire right-of-way, under the jurisdiction of the State of Idaho/Idaho Transportation Department.
2. County Road: A public road, including its entire right-of-way, under the jurisdiction of Custer County or the Lost River Highway District.
3. City Street and Alley Ways: A public road including right-of-way under the jurisdiction of the City.
4. Private Road: A road, which provides access to parcels, areas or tracts of land and has been approved by the City for use as a private road. A private road shall be considered that portion of a lot or parcel that is used for access purposes. A private road is not repaired, plowed or otherwise maintained by the City nor can the City contract for its maintenance.
5. U.S. Forest Service and Bureau of Land Management Roads: A federally owned easement or right-of-way, which provide access to federally owned land.

Administrative Action: An action, as allowed by ordinance, that is taken by City staff and does not need the approval or action of the Commission.

AFO (Animal Feeding Operation): A contiguous area or parcel of land or the use of a contiguous area or parcel of land, upon which there are confined or fed livestock, fish, birds in enclosures or ponds for one-hundred and fifty (150) days or more of the year, which does not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season and which consists of any combination of animal units, which totals no more than one thousand (1000) animal units. For purposes of this Ordinance, areas or parcels of land are deemed contiguous when separated by county roads. Areas or parcels of land are deemed contiguous if they are not adjacent, but are owned or operated by the AFO operator.

Agriculture Uses: As regulated by the Idaho Department of Agriculture, the use of land for farming, dairying, pasturage, range, forestry, agriculture, horticulture, floriculture, viticulture, animal and poultry husbandry and the necessary accessory uses for packing, treating or storing the produce.

Airport: Any runway, land area or other facility designed or used either publicly or privately by any person for the landing and taking off of aircraft, including all necessary taxiways, aircraft storage and tie-down areas, and hangers.

Alley: Any unnamed secondary road at least ten (10) feet wide and not more than thirty (30) feet wide, usually behind properties, which has been dedicated or deeded to the public for public use as determined by existing City maps.

Animal Units: A unit of measurement for AFO/CAFO operation determined by multiplying the number of animals by the animal equivalency factor:

Bed and Breakfast: A professionally run facility providing temporary overnight accommodations where the owner-innkeeper is resident on the property. A bed and breakfast provides breakfast for overnight guests, but does not provide a restaurant and/or bar.

Building: A structure designed or used for residential, commercial, agricultural, or industrial uses. Buildings may be more specifically defined by function.

Bulk Storage: Activities and uses with associated structures devoted to the storage of products and substances in bulk quantities such as oil, gasoline, building materials, fertilizer, vehicles, and warehouses for consumer and other products



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CAFO (Confined Animal Feeding Operation): Same as AFO except that greater than one-thousand (1000) animal units are confined.

Carport: A roofed structure for vehicle storage lacking one or more walls, free standing or attached to another structure.

Commercial: The retail or wholesale sale or rental of any consumer service, process, product, article, substance, or commodity.

Commission: The Planning and Zoning Commission of Mackay, Idaho, as appointed by the Mayor and confirmed by the City Council of the City of Mackay, Idaho.

Communication Tower: A tower used as a base for any communication's system. A communication tower is not considered a utility substation.

Comprehensive Plan: A document providing current status and direction for the future growth and improvement of the City and has been duly adopted by the Council.

Contiguous Parcel or Lot: Any parcels of land under the same ownership that touch each other. If parcels are separated or divided by platted roads or county or state highways, or by rivers, they shall be considered contiguous.

Cultural Facilities: Uses, and facilities such as libraries, museums, art galleries, and auditoriums, zoological gardens, historic sites, and monuments.

Day Use Areas: Land or premises, other than outdoor amusement facilities, designed to be used by members of the public for a fee or otherwise, for outdoor recreation purposes without overnight usage. Such areas include such uses and facilities as parks, playgrounds, picnic sites, tennis courts, athletic fields and golf courses.

Development Agreement: A written agreement or commitment that affects the use or development of a parcel of property that is the subject of a rezone or development request.

Drive-In Establishment: An establishment, other than an automobile service station, which is designed to permit the occupants of vehicles, while remaining therein, to make purchase or receive services.

Dwelling: A structure, usually a building, used for human occupancy. A dwelling may be designed to house one or more separate individuals or related or unrelated groups, each occupying a distinct area. Dwellings may be described as single- or multiple-family, and may be constructed as separate physical units or co-joined buildings such as duplexes, apartments, condominiums, or town houses.

Dwelling, Rooming/Boarding House: A building designed to provide lodging and/or meals for paying occupants who may occupy individual or group rooms lacking food preparation facilities. Hotels and motels are not included.

Easement: Authorization by a property owner for the use of a specified designated part of his property for others or public entities for an agreed upon amount of time.

Educational Facilities: Buildings and other structures and land, designed to be used for providing general education, include elementary schools, secondary schools, vocational schools, colleges, and universities, as approved by the State.

Electrical Substation: Facilities for transforming electrical voltages from transmission voltages to lower transmission voltages or to distribution voltages.

Engineer: Any person who is licensed or registered in the State to practice professional

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engineering.

Feedlot, Commercial: See definition for AFO and CAFO.

Fire Protection Facilities: Public service structures and equipment used for fighting fires.

Flood Plain: A floodplain is defined and controlled through the Flood Control Ordinance, which is adopted in its entirety as Chapter 20 of this Ordinance.

Garage, Repair: Buildings and premises for maintenance and repair of motorized vehicles.

Garage, Residential: Buildings or parts of buildings for the storage of vehicles.

Golf Course: A tract of land for playing golf.

Grazing: The feeding of animals on growing foliage.

Habitable: A building deemed in a condition for human occupancy as set forth by: a thermally isolated, animal proof structure inclusive of a bathroom and kitchen facilities, which are temperature controlled with proper ventilation containing the basic functional utilities of water, sewer, electrical and/or propane/natural gas as compiled with International Building Codes.

Health Authority: The Eastern Idaho Health District.

Historic Site: A location used to commemorate some event or events in the past.

Home Occupation: Any business use conducted entirely within a dwelling by the inhabitants and in compliance with Ordinance.

Hospital: See Medical Facilities.

Hotel or Motel: A commercial building in which lodging is offered and provided to the public for compensation. As such, it is open to the public in contradistinction to a rooming or boarding house.

Industrial, Heavy: Manufacturing, processing, assembling, storing, testing, and similar industrial uses, which are generally major operations and extensive in character, require large sites, open storage and service areas, extensive services and facilities, and have the potential to generate some nuisances such as smoke, noise, vibration, dust, glare, hazardous waste or substances, air pollution and water pollution, and which comply with local, state, and federal environmental standards to be allowed only in an industrial zone.

Industrial, Light: Manufacturing or other industrial uses, which are usually small operations and normally free of objectionable or hazardous elements to be allowed only in industrial zone.

Industrial Park: An area of not less than one (1) acre that is developed to hold more than one (1) industrial use served by common infrastructure.

Inn: See Hotel/Motel

Junk Yard: See Wrecking/Junk Yard

Kennel: Any lot or premises or portion thereof, on which four (4) or more dogs, cats, or other household domestic animals are boarded, bred or cared for in return for compensation or kept for sale and permitted by the City in commercially zoned areas only.

Land Coverage: A structure or covering that prevents more than twenty-five (25) percent of normal precipitation from directly reaching the surface of the land. Such structures and coverings

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include roofs, surfaces that are paved such as roads, streets, sidewalks, driveways, parking lots, tennis courts, patios, and lands so used that the soil will be compacted so as to prevent substantial infiltration

Lot: An area of land to be used in connection with an activity.

Manufactured Home: A dwelling, transportable in one (1) or more sections, built on a permanent chassis and designed to be used with a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

Meat Packing Plant: A place of business where animals are slaughtered and/or their meat is prepared for market to be in industrial zone only. A meat packing plant may or may not involve the slaughter of animals.

Medical Facilities: Buildings and uses related to the practice of human medicine, including hospitals, clinics, convalescent homes, and nursing homes.

Mobile Home: A transportable dwelling, which is at least ten (10) body feet in width and forty (40) body feet in length, built on a permanent chassis and designed to be used as a dwelling with a permanent foundation when connected to the required utilities. Mobile homes do not include recreational vehicles.

Manufactured Housing Community: Any site or tract of land under single ownership, upon which ten (10) or more mobile/manufactured homes are parked, featuring either fee simple land sales or land leased or rented by the homeowner

Non-Conforming Structure: A structure or portion thereof built prior to the effective date of this Ordinance, and conflicting with the provisions of this Ordinance applicable to the zone in which it is situated.

Non-Conforming Use: The use of a structure or premises conflicting with provisions of this Ordinance.

Nuisance: Any condition that is deemed to endanger the health, safety, property values, or welfare of the citizens of the City. This could include excessive noise, vibration, odor or other conditions that may be detrimental to the surrounding properties.

Open Space: An area substantially open to the sky that may be on the same lot with a structure. The area may include, along with natural environmental features, water areas, swimming pools, tennis courts, and any other recreational facilities that the Commission deems permissive.

Original Parcel of Land: A lot or tract as recorded on any plat or record on file in the Office of the County Recorder, or any unplatted contiguous parcel of land held in one (1) ownership and of record as of November 10, 2003. The original vested owner retains original parcel date and rights.

Outdoor Amusement Facilities: Outdoor amusement facilities are those that characteristically contain a high proportion of structures, improvements, and land coverage in relation to uncovered land, machines and other devices, and are designed to be used by a large number of persons in relation to land area.

Overlay: A concept in which a superimposed area indicated by a map defines an area in which special restrictions or requirements are deemed necessary.

Owner: The individual, firm, association, syndicate, partnership, trust, or corporation or any other entity having any financial interest in the land.

Parcel: An area of land under single ownership.

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Parking Lot: A parcel of land used for the parking of motor vehicles.

Parking Space, Off-Street: See Parking Lot.

Performance Bond or Surety Bond: A financial guarantee by a sub divider or developer with the City in the amount of ten (10) percent or the City's cost outlay, whichever is higher of the construction costs mutually agreed upon with the City as dictated by a final and approved construction plan supported by an approved building permit guaranteeing the completion of physical improvements according to plans and specifications within the time prescribed by the agreement permit to be returned upon completion. A special document that is required for Zoning changes or Special Uses as delineated in this Ordinance

Plan: Comprehensive Plan.

Professional Offices: Offices and related spaces used for professional services such as provided by medical practitioners, lawyers, architects, engineers, and similar professions.

Public Service Facility: Power plants or substations, water treatment plants or pumping stations, sewage disposal or pumping plants and other similar public service structures operated by a public utility or by a municipal or other governmental agency.

Public Uses: Public parks, schools, administrative, and cultural structures, generally accessible to the public.

Recreational Use, Housing: Vacation dwellings occupied on a part-time, seasonal basis.

Recreational Vehicle: A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, fifth-wheel camper, and motor home.

Recreational Vehicle Lot: A parcel of ground in a recreational vehicle park intended to be rented as a place to park a recreational vehicle for temporary dwelling purposes.

Recreational Vehicle Park: A plot of land, zoned commercial, designed and engineered for occupancy and use by recreational vehicles.

Religious Facility: An institution affiliated with a religious entity with structures used for worship and other activities.

Research Activities: Research, development and testing related to such fields as chemical, pharmaceutical, medical, electrical, transportation, and engineering.

Right-of-Way: A strip of land taken or dedicated for use as a public way. In addition to the roadway, it normally incorporates the curbs, lawn strips, sidewalks, lighting, and drainage facilities, and may include special features such as grade separation, landscaped areas, viaducts and bridges.

Road: See Access.

Roadside Stand: A temporary structure designed or used for the display or sale of products or information.

Service Station: Structures and premises where gasoline, oil, and other motor vehicle accessories may be supplied and dispensed at retail, and where other sales and motor vehicle maintenance may be performed.

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Setback Line: A line established by this Ordinance generally parallel with and measured from the lot line, or where appropriate, from the center line of a road, defining the limits of a yard in which no building or structure may be located above ground except as provided in this Ordinance.

Sewage Lift Station: A pump or other device used to lift materials from drains or sewers.

Sewage Treatment Facilities: Structures and/or devices used to treat material from drains and sewers.

Shooting Range: A target range for firearms practice or competition.

Sidewalk: That portion of the road right-of-way outside of the roadway that is improved for the use of pedestrian traffic.

Slaughterhouse: See Meat Packing Plant. A slaughter house may or may not involve the preparation of meat products for packaging and distribution

Soil Class: A method of analyzing the value of land for agricultural purposes developed by the Soil Conservation Service. Soil is grouped into classes based on its limitations, such as soil thickness, steepness, water holding capacity, erodibility, length of growing season, and soil texture.

Solid Waste Transfer Sites: Parcels of land used for moving trash or garbage, not in liquid form, from one container to another. Limited to industrial zone only.

Special Use: A proposed use otherwise prohibited by the terms of the ordinance, which may be allowed with conditions under specific provisions provided by a variance.

Structure: Anything constructed or built, or any edifice of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. A structure is the highest category of things constructed, comprised of such things as buildings, bridges, fences, towers, walls, and signs.

Subdivision: Division of a lot, tract, or parcel of land into five (5) or more parts for the purpose of transfer of ownership, use, or development.

Transportation Facility: Structures and land used for such purposes as bus terminals, railroad stations, motor vehicle freight terminals, airports, and heliports.

Utilities; Overhead and Underground: Electric power distribution lines, telephone lines, cable television lines, and any other pipes or conduit and appurtenances used for the distribution of electricity, gas, water, sewage, or any other substance.

Vacation Rentals: Dwellings, cabins or other structures rented to temporary residents for whom it is not permanent lodging.

Variance: A modification of the requirements of this Ordinance. A variance is not a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site, and that the variance is not in conflict with the public interest in accordance with standards set forth in Chapter 14.

Veterinary Animal Hospital or Clinic: A place used for the practice of veterinary medicine. It may also include boarding.

Visual Obstruction: Anything that interferes with a clear view, particularly in relation to drivers at intersections.

Walkway: See Sidewalk.

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Water Crossing or Diversion Structure: Any structure designed to cross or alter any stream, river, or other body of water.

Water Storage: The containment of water for all uses.

Wrecking/Junk Yards: A parcel of land used for the dismantling or wrecking of motor vehicles, mobile homes, trailers; or the storage, sale, or dumping of dismantled, partially dismantled, inoperable, obsolete, or wrecked vehicles or their parts or where junk, waste, discarded or salvaged materials are stored or handled and yards for used building materials and pieces and places or yards for storage of salvaged buildings and structural steel materials and equipment for storage or sale. Allowed in industrial zone only and enclosed by a solid fence.

### 1-4 Conformance and Permits Required

No structure shall be erected, altered, or moved; nor any structure or land be used for any use other than is permitted in the zoned area in which such structure or land is located.

### 1-5 Height and Area Requirements

Except, as herein provided, no structure or alteration of any structure, shall be permitted unless such action conforms to the regulations of the zoned area in which it is located. No structure may exceed thirty (30) feet above grade except as provided in Exceptions to Area Requirements

- A. The front, rear and side yard requirements shall be waived where dwelling units are erected above stores, shops, or other commercial uses, not requiring such yards.
- B. No lot area shall be so reduced that the front, rear, or side yard shall be smaller than prescribed by this Ordinance.
- C. The property owner shall remove any vegetation or any obstruction creating a visual obstruction. Visual obstructions shall not extend more than three (3) feet in height above the existing street center line within the vision triangle of vehicle operators defined by measuring from the intersection of the edges of two (2) perpendicular streets forty (40) feet along each street and connecting the two (2) points with a straight line. The sight distance is also applicable to railroad and highway grade crossings.
- D. On lots of irregular shape where the yard regulations can be determined but cannot be reasonably met, or on lots so located that appropriate improvements cannot be secured through strict adherence to the yard regulations, the yard regulations may be modified by the Council through the variance process.

### 1-6 Yards in the Case of Corner Lots

Lots located on corners shall meet the front yard setback on both sides facing the public streets or rights-of-way for the zone in which they are located.

### 1-7 Improvements

- A. If concrete curb and gutter and sidewalks are required by the Council, then they shall be Constructed in accordance with City and/or State Regulations
- B. All commercial and industrial business public parking areas shall be lit at night during business hours, and all outside lighting shall be so arranged as to prevent any nuisance or inconvenience to neighboring properties. All lighting shall meet the requirements of this Ordinance.
- C. No part of any service station pump island shall be closer than twelve (12) feet to any property line in any zoned area in which a service station is a permitted use and no marquee or canopy above a service station pump island located in a zoned area shall be closer than ten (10) feet to any property line.

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### 1-8 Screening

Where any lot or parcel located in a commercial or industrial zone is used for any use other than residential and abuts and/or adjoins any lot located in a district, said lot or parcel shall be screened from the residential lot(s) by solid fencing, or masonry walls. Screening shall be designed to provide obstruction of view with a height of not less than six (6) feet on all sides and be constructed to reduce noise and to eliminate trash from blowing into the residential lot(s).

### 1-9 Interpretations

The Council shall have the authority in accordance to Idaho Code to interpret the provisions of the Ordinance.

## CHAPTER 2: ZONES, MAPS

### 2-1 Zones Established

The City is hereby divided into the following zoning areas:

ZONES	ABBREVIATION
1. Residential	R
2. Commercial	C
3. Industrial	I
4. Agricultural-Residential Low Density (1 acre)	AR
5. Airport	AP
6. Public Use Overlay	P

### 2-2 Boundaries and Amendments

The boundaries of the zones provided herein are established and shown on a certain map which is designated "Official Zoning Map" which is on file in the office of the City Clerk. This map and all subsequent annexations and all amendments as may be made are hereby declared to be a part of this Ordinance. All zones and boundaries thereon provided are hereby confirmed and all notations, references and other information shown thereon are declared to be a part of this Ordinance. All subsequent changes in boundaries of zones shall be made according to law and by ordinance. When so made and designated on said map, then said changes shall be effective and by reference shall become a part of this Ordinance.

### 2-3 City of Mackay Zoning Map

See Exhibit 1 for a zoning map of the City.

Where the zoning map designates different zones on a single lot or parcel under one ownership, the owner shall have the option to decide which zone requirements will be met.

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### CHAPTER 3: RESIDENTIAL ZONE – “R”

#### 3-1 Permitted Use

- A. Single family dwelling
- B. Multi-family dwelling
- C. Publicly funded schools and colleges
- D. Low income housing
- E. Accessory buildings and uses.

#### 3-2 Special Uses

The Council may, after notice and public hearing, permit the following uses where such uses are deemed essential or desirable to the public convenience or welfare. The Commission shall have the authority to impose such conditions and safeguards, as it deems necessary to protect the best interests of the surrounding property or neighborhood.

The following special uses may be permitted in the “R” Zone with a variance approved by Commission:

- A. Private kindergarten, daycare or nursery, private schools
- B. Nursing or convalescent homes or assisted living facilities
- C. Home occupations
- D. Manufactured home park or recreational vehicle parks
- E. Public service utilities and uses or structures
- F. Religious facilities

Other uses deemed appropriate by the Council and the Commission may be considered under a Special Use Application.

#### 3-3 Lot area

The minimum lot area per dwelling unit shall not be less than five thousand (5,000) square feet. No more than one (1) dwelling may be erected on a lot.

#### 3-4 Yards

No more than 40% of the lot may be occupied by the home.

- A. Front Yards: A front yard shall be provided of a depth of not less than twenty (20) feet from any City street right of way.
- B. Rear Yards: A rear yard shall be provided of a depth of not less than twenty (20) feet from any City street right of way and five (5) feet from any City alley twenty (20) feet in width and ten (10) feet from any City alley less than twenty (20) feet in width.
- C. Side Yards: No part of any residence or attachment shall be closer than ten (10) feet from the edge of the side property line, including eaves, measured as if the side property line extended vertically for an indefinite distance.
- D. Detached Accessory Buildings: Detached accessory buildings may be constructed on the rear yard area only and no closer than five (5) feet to any side of rear lot line or closer than ten (10)



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feet to the rearmost wall of the main building.

### **3-5 Building Height**

The height of a two (2) story residence shall be no greater than twenty-five (25) feet from grade.

### **3-6 Off Street Parking**

The number of off-street parking spaces recommended shall be no less than one (1) space per dwelling unit.

## **CHAPTER 4: COMMERCIAL ZONE - "C"**

### **4-1 Permitted Uses**

Recreation areas and amusement enterprises

- A. Motor vehicle or trailer sales and service
- B. Service stations
- C. Food preparation shops
- D. Banks and financial institutions
- E. Personal service shops
- F. Printed material sales and services
- G. Educational facilities
- H. Business & professional offices
- I. Clothing care services
- J. Dry goods and tailoring sales and services
- K. Florist or gift shop
- L. Food storage facilities
- M. Grocery, fruit, vegetable, meat or delicatessen store
- N. Hardware, building supply, furniture, or appliance store
- O. Hospitals and sanatoriums
- P. Hotels, motels, tourist accommodations
- Q. Mortuaries
- R. Package liquor stores
- S. Photographic shops
- T. Plant nurseries
- U. Public storage facilities
- V. Lumber yards

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- W. Restaurants and bars
- X. Movie theaters
- Y. Accessory uses when located on the same lot where all products are offered for sale at retail on the premises.

Other uses deemed acceptable by the Council and the Commission may be considered under a Special Use Application.

### 4-2 Special Uses

The Commission may, after notice and public hearing, permit the following uses where such uses are deemed essential or desirable to the public convenience or welfare. The Commission shall have the authority to recommend such conditions and safeguards, as it deems necessary to protect the best interests of the surrounding property or neighborhood. The following special uses may be permitted in the "C" zone:

- A. Auditoriums, stadiums, arenas, and similar uses
- B. Recreational vehicle parks
- C. Religious facilities
- D. Research and development centers for experimental or scientific investigation of materials, methods or products
- E. Bus and railroad stations

Other uses deemed acceptable by the Commission may be considered by the Council under a Special Use Application.

### 4-3 Lot Areas

No uses other than commercial.

### 4-4 Building Height

The height of a two (2) story commercial building shall be no greater than thirty (30) feet from grade.

### 4-5 Off Street Parking

Every building or portion of building hereafter erected shall be provided with permanently available and maintained parking spaces. The purpose of off-street parking is to provide safety for the public while considering property value for commercial enterprises. The number of off-street parking spaces recommended shall be commensurate with the size, use, and occupancy of the facility as recommended by the Commission with two (2) spaces per one thousand (1,000) square feet of building size minus the common areas as a guideline.

## CHAPTER 5: INDUSTRIAL ZONE – "I"

### 5-1 Permitted Uses

- A. Any use permitted in Zone "C" with the exception of residential uses.
- B. Manufacturing, processing, assembling, storing, testing, and similar industrial uses which are generally major operations and extensive in character, require large sites and open storage, are service areas, extensive services and facilities, and have the potential to generate some nuisances such as smoke, noise, vibration, odor, dust, glare, hazardous waste, hazardous substances, air pollution and water pollution, and which comply with local, state and federal environmental standards.

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### 5-2 Special Uses

The Commission may, after notice and public hearing, permit the following uses where such uses are deemed essential or desirable to the public convenience or welfare. The Commission shall have the authority to recommend such conditions and safe guards as it deems necessary to protect the best interests of the surrounding property or neighborhood.

- A. The following special uses may be permitted in the "I" zones with variance
- B. Airports or heliports
- C. Industrial or business parks
- D. Public service uses or structures
- E. Research and development centers for experimental or scientific investigation of materials, methods or products.
- F. Security structure for watchman or guard
- G. Heavy Industrial uses
- H. Any other structure necessary to the operation of these defined permitted industrial uses

Any other structure necessary to the operation of these defined permitted industrial uses.  
Other uses deemed appropriate to the Commission may be considered under a Special Use Application.

### 5-3 Lot Area

- A. Minimum lot size shall be 8000 square feet
- B. Ten (10) foot setbacks on sides and rear to remain unobstructed, and twenty (20) foot in front for parking.
- C. Thirty-five (35) foot maximum height
- D. Building footprint size, no larger than 75% of lot size

### 5-4 Off Street Parking

The number of off-street parking spaces recommended shall be commensurate with the size, use, and occupancy of the facility as recommended by the Commission and may be considered by the Council under a Special Use Application.

## CHAPTER 6: AGRICULTURAL-LOW DENSITY ZONE – "AR"

### 6-1 Permitted Uses

- A. Single family dwellings, not be more than one residential building on one acre of land
- B. Educational facilities
- C. Accessory buildings and uses secondary to that of normal agricultural activities
- D. Agricultural uses including AFO's allowing up to two (2) animal units per acre, but not including CAFO's. No livestock may be kept unless:
  - 1. A minimum of one-half (1/2) acre of land is provided and maintained for each animal unit.
  - 2. Each animal is properly fed, watered, and maintained.

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3. The land, on which each animal is kept, has a non-electrical or barbed wire fence that is adequate to secure and confine each animal in such a manner as to prevent unnecessary or offensive noises, and to prohibit the animals from impacting the adjacent properties.

### 6-2 Special Uses

The Commission may, after notice and public hearing, permit the following uses where such uses are deemed essential or desirable to the public convenience or welfare. The Commission shall have the authority to recommend such conditions and safeguards as it deems necessary to protect the best interests of the surrounding property or the following special uses may be permitted in the "AR" zone:

- A. Public service uses or structures
- B. Home occupations directly related to land
- C. Agriculture does not include the operation or maintenance of meat packing, animal processing plants, and slaughterhouse facilities.

Other uses deemed appropriate by the Commission may be considered by the Council under a Special Use Application.

### 6-3 Yards

- A. Front Yards: A front yard shall be provided of a depth of not less than twenty (20) feet from a public road right-of-way
- B. Rear Yards: A rear yard shall be provided of a depth of not less than ten (10) feet from a public road right-of-way
- C. Side Yards: A side yard shall be provided of a depth of not less than ten (10) feet from a public road right-of-way

Detached accessory building for farm or residential uses: A front yard shall be provided a depth of not less than twenty (20) feet from a public road right-of-way and a side yard not less than ten (10) feet from the side or back property line.

### 6-4 Off Street Parking

Each farm or dwelling unit shall provide adequate off-street parking for all necessary farm and private vehicles and equipment.

## CHAPTER 7: AIRPORT ZONE – "AP"

### 7-1 Zone Established

No structure, tree, or other obstruction, shall be erected or maintained in excess of the applicable height limit established for each of the following zones surrounding the City Airport located easterly of the City in Sections 27 and 28 T. 7 N., R. 24 E., Boise Meridian, Custer County Idaho.

- A. Primary Zone: Longitudinally centered on the runway and with a width of two hundred fifty (250) feet for the entire length of the runway, and extending two hundred (200) feet beyond each end of the runway. Within this primary zone no structures or obstructions shall be erected or maintained in excess of the airport elevation, which is five thousand eight hundred and ninety-one (5891) feet above sea level.
- B. Clear Zone: Longitudinally centered on the runway and with a width of one-hundred twenty (120) feet in width for the entire length of the runway, and extending two-hundred (200) feet beyond each end of the runway. Within this clear zone no structures or obstructions shall be erected or maintained in excess of the elevation of the nearest point on the runway centerline.

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- C. Approach Zones: Two-hundred fifty (250) feet in width beginning at each of the primary zones two-hundred (200) feet beyond each end of the runway, sloping outward and upward twenty (20) feet horizontally for each one (1) foot vertically, and widening uniformly to a width of four-hundred fifty (450) feet at a distance of one-thousand two hundred (1200) feet from each end of the runway, the centerline of such zones being the continuation of the centerline of the runway. No structures or obstructions shall be erected or maintained at a height so as to penetrate the herein described plane.
- D. Lateral Zones: Sloping outward and upward seven (7) feet horizontally for each one (1) foot vertically, extending outward and upward at right angles to the runway centerline extended, beginning from the sides of the clear zone and the sides of the approach zones, and extending to a height of one-hundred fifty (150) feet above the airport elevation. No structures or obstructions shall be erected or maintained

A copy of a map of the airport indicating the above zones is on file with the Mackay City Clerk.

### **7-2 Zone Established**

Nothing in this Ordinance shall be construed to require the removal or alteration of any building, structure or tree not conforming to the terms hereof and in existence as of the effective date of this Ordinance.

## **CHAPTER 8: PUBLIC USE OVERLAY ZONE "P"**

### **8-1 Public use Overlay Zone Established**

In any location where a public use exists or is established through an approved Special Use Application, an overlay zone will be shown on the City Zoning Map. Such zone is an overlay zone and exists on top of the existing zoning.

### **8-2 Reversion to Existing Zoning**

If at any time the public nature of the use of the facility, structure or land is discontinued, the property shall revert to the underlying zoning.

## **CHAPTER 9: NON-CONFORMING USES**

### **9-1 Nonconforming Use**

- A. The lawful use of any structure or land documented to have been in existence at the time of the enactment of this Ordinance may be continued, although such use does not conform with the provisions of this Ordinance, provided the following are met:
  - 1. Unsafe Structures: Nothing in this Ordinance shall prevent the strengthening or restoring to a safe condition any portion of a structure declared unsafe by a proper authority; as long as the footprint and use of the structure remains the same.
  - 2. Alterations: A nonconforming structure may be altered, or reconstructed to its original footprint provided such work does not exceed one-hundred (100) percent of the replacement value of the structure in any five (5) year period, unless the structure is changed to a conforming use.
  - 3. Changes: No nonconforming structure or use shall be changed to a different nonconforming use.
  - 4. Restoration: Nothing in this Ordinance shall prevent the reconstruction or repair, and continued use of any nonconforming structure damaged by accident, or act of nature, subsequent to the date of this Ordinance, wherein the expense of such work does not exceed one-hundred (100) percent of the replacement value of the structure at the time such damage occurred unless the structure is deemed historical or has historical status.
  - 5. Wear and Tear: Nothing in this Ordinance shall prevent the reconstruction or repair of a

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nonconforming structure or part thereof existing at the effective date of this Ordinance, rendered necessary by wear and tear, deterioration, or depreciation.

6. Abandonment: A nonconforming use of a structure or land where the grandfathered use has been abandoned shall not thereafter be returned to such nonconforming use. A nonconforming use shall be considered abandoned after one (1) year (except as provided in Chapter 9-2) when:
  - a. The intent of the owner to discontinue the use is declared by the owner; or,
  - b. The characteristics of the nonconforming use have been removed and have not been replaced by similar characteristics within one (1) year, unless other facts show intention to resume the nonconforming use; or,
  - c. It has been replaced by a conforming use.
7. Displacement: No nonconforming use shall be extended to displace a conforming use.
8. Unlawful Use Not Authorized: Nothing in this Ordinance shall be interpreted as authorization for or approval of the continued use of a structure or land violation of any ordinance or law in effect at the time of the effective date of this Ordinance.
9. Zoning District Changes: Whenever the boundaries of a zoning district are changed to transfer an area to another district of a different classification, the foregoing provisions shall also apply to any nonconforming uses existing therein.

### 9-2 Continuation of a Non-Conforming Use

- A. If the non-use of a non-conforming structure or use continues for a period of one (1) year or longer, the Commission and the Council shall, by written request, require that the owner declare his intention with respect to the continued non-use in writing within sixty (60) days of receipt of the request. If the owner elects to continue the non-use, he shall notify the Commission and the Council in writing of his intention. If the property owner complies with the requirements of this subsection, his right to nonconforming use in the future for its designed purpose shall continue for the period of one (1) year and subject to annual review and possible renewal notwithstanding any change in the zoning of the property.
- B. The property owner may voluntarily elect to withdraw the nonconforming use by filing with the City Clerk an affidavit of withdrawn use. If the property is redesigned for a different use, the property owner shall be deemed to have abandoned any grandfathered right to the prior nonconforming use of the property.
- C. For purposes of this section "designed purpose" means the use for which the structure or use were originally intended, designed, and approved pursuant to any applicable planning and zoning ordinances in effect at the time.

The provisions of this section shall not be construed to prohibit the Commission and the Council from passing or enforcing any other law or ordinance for the protection of the public health, safety or welfare.

## CHAPTER 10: SIGN REGULATIONS

### 10-1 Residential

- A. Each dwelling or office shall be permitted only one (1) motionless sign except on corner lots where one (1) on each wall is allowed.
- B. No part of any lighting element of any sign shall be nearer than seven (7) feet above the ground

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unless adequately protected.

- C. No sign shall be larger than four (4) square feet in area nor shall measure more than four (4) feet in any direction unless approved by the Commission.
- D. Any sign pertaining to home occupation or profession shall be single-faced and announce only the occupant's name, occupation and/or the trade name of the structure to which it pertains.

### 10-2 Commercial and Industrial

- A. Attached signs on or within the structure are not limited to number.
  - 1. All signs are limited to thirty-two (32) square feet per sign or twenty-five (25) percent of the wall area, which the sign is to be mounted, whichever is smaller.
  - 2. All lighting elements of exterior signs shall be a minimum of nine (9) feet above the ground unless adequately protected.
- B. The number of permanent unattached signs permitted for each business or property shall be limited to one (1).
- C. The maximum size of any of said signs shall not be in excess of sixty-four (64) square feet.
- D. All sign lighting shall be shielded to prevent any nuisance or inconvenience to the neighboring properties as required in this Ordinance.
- E. No sign shall project any more than four (4) feet beyond the property line.
- F. Any unattached sign shall be no higher than twenty (20) feet above grade and reside in the front setback or side setback (in the case of corner lot of the property).

### 10-3 Temporary Signs

Temporary signs are not permanently affixed and may be moved from place to place, including all devices such as banners, pennants, and flags, as well as "A" frame (sandwich), sidewalk, curb, and reader board signs intended to be displayed for a limited time, including election signs, and holiday displays. Such signs may be erected two (2) months before the event or holiday and must be removed within one (1) week after the event or holiday. Temporary sign placement is required to be off the roadway. In the case of business/commercial use, signs must be placed and removed daily if located on City property.

### 10-4 Locations Where Signs May Not Be Erected

- A. No signs may be erected or display within the State highway, City street, or County road right-of-way.
- B. In the event of a corner lot, signs must conform to requirements of Section 1-5.

### 10-5 Special Permit for Signs Outside Regulations

Any sign that does not fit into these regulations may be approved, denied, or approved on conditions through the Special Use Permit process as delineated in Chapter 15.

Temporary signs may be two (2) sided and not exceed six (6) square feet per side.

## CHAPTER 11: LIGHTING

### 11-1 Purpose

The general purpose of this Chapter is to protect and promote the public health, safety and quality of life, by establishing regulations and a process of review for exterior lighting. This Chapter establishes

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standards for exterior lighting in order to accomplish the following:

- A. To protect against direct glare of excessive lighting
- B. To provide safe roadways for motorists, cyclists, and pedestrians
- C. To prevent light trespass in all areas of the City
- D. To provide lighting guidelines.

### 11-2 Scope

All exterior lighting installed after the effective date of the Ordinance in any and all zoning areas in the City shall be in conformance with the requirements established by this Ordinance and any other applicable ordinances.

### 11-3 Definitions

Existing lighting: Any and all lighting installed prior to the effective date of this Ordinance.

Exterior lighting: Temporary or permanent lighting that is installed in such a manner to cause light rays to shine outside and includes all yard and street.

HPS: High Pressure Sodium.

Light Pollution: Any adverse effect of man-made light including, but not limited to, light trespass, up lighting, the uncomfortable distraction to the eye, or any man-made light that diminishes the ability to view the night sky; often used to denote urban sky glow.

### 11-4 Criteria

Any new outdoor lighting installed or any existing lighting being replaced shall include a down lit and full cut-off shade. Any internally lit signage shall not exceed acceptable levels as determined by the Commission and the Council.

## CHAPTER 12: SUPPLEMENTARY REGULATIONS

### 12-1 Regulations

These regulations qualify or supplement the zoning district use and regulations appearing elsewhere in this Ordinance and require a variance subject to approval of the Commission and the Council:

- A. Open or lattice-enclosed fire escapes, fireproof outside stairways and balconies opening upon fire towers, projecting into a rear or side yard not more than five (5) feet are permitted.
- B. All permanent dwellings shall be placed on a permanent concrete foundation or equivalent.
- C. All single-family dwellings converted to multiple-family dwellings must contain not less than six-hundred (600) square feet of livable floor area per individual household.
- D. Where a uniform setback line has been established or observed on one side of a street, no building shall be erected or structurally altered beyond such setback line.
- E. Front Yard, Exceptions: In areas where lots are developed with a front yard that is greater or less than the minimum required for the zoning district by this Ordinance, the following rule shall apply: Any new structure or addition in front thereof shall not be closer to the street right of way than the average of the front yard of the first building on each side within a distance of two-hundred (200) feet measured from building to building, except as follows:
  - 1. Buildings located entirely on the rear half of a lot shall not be counted.
  - 2. If no building exists on one side of a lot within two-hundred (200) feet of the lot in question, the minimum front yard shall be the same as the building on the other side.



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- F. Structures Permitted Above Height Limit: The building height limitations of twenty-five (25) feet for residential and thirty (30) feet for commercial of this Ordinance may be modified as follows: chimneys, cooling towers, elevator bulkheads, fire towers, monuments, bell towers, stacks, radio or television towers or necessary mechanical appurtenances.
- G. Parking and Storage of Abandoned Vehicles: No inoperable and/or unregistered vehicles of any kind or type, including farm implements and/ or equipment, shall be parked or stored on any commercial, industrial or residential property within City limits other than in a completely enclosed structure, or behind a sight obscuring enclosure or solid fence.
- H. Animals: No person shall keep any livestock within the City limits except as expressly permitted by, and in conformity with other chapters of this Ordinance. The keeping of livestock, full or part time, is allowed provided that the use has occurred prior to the adoption of this Ordinance and in "AR" zone only.
- I. Bulk Storage of Flammable Liquids and Gases or Corrosive Materials, Above Ground and For Resale, Chemicals, Pesticides, Fertilizer Storage and Manufacturing and any Hazardous Material:
1. Requires written approval of the Fire Authority having jurisdiction.
  2. Requires suitable loading and unloading spaces and off-street parking facilities meeting the approval of the Fire Authority.
  3. Conforms to requirements of Idaho Code.
  4. Allowed in "I" zone only.
- J. Drive-In Restaurant
1. The Planning and Zoning Commission may require a sight-obscuring fence along the property lines that abut a residential use.
  2. Shall provide for adequate trash receptacles.
  3. Shall avoid the direction of night lighting off the property lines.
- K. Filling, Grading, or Other Earth Moving Activities
1. Shall take place in such a manner as to result in the smallest amount of bare ground exposed for the shortest time feasible.
  2. Shall not result in damage to a floodway, channel, or natural drainage way.
  3. The Commission may require restoration of surface to original condition.
- L. Home Businesses
1. No more than two (2) persons other than members of the family residing on the premises shall be engaged in such home business.
  2. The use of the dwelling, or any accessory structure, shall be clearly incidental and subordinate to the residential purposes. Not more than twenty-five (25) percent of the floor area of the dwelling shall be used in the home occupation.
  3. No change is permitted in the outside appearance of the structure or premises, or other visible evidence of the conduct of such home business other than signs, which shall meet the

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sign requirements as in this Ordinance

4. No equipment or process shall be used which creates noise, vibration, glare, fumes, odors, electrical interference, or other nuisance detectable off the lot.
- M. Landfills, Incinerators: No landfills or incinerators shall be allowed within City limits.
- N. Outdoor Storage of Commercial and Industrial Materials: Allowed only in Industrial "I" Zone.
- O. Wrecking Yard and Junk Yard, Public or Private: No wrecking/junk yards shall be allowed within the City limits.
- P. Wind turbines, which create audible noise heard beyond the owner's yard, are not allowed in the City limits.
- Q. Cell towers are not allowed within City limits.

### CHAPTER 13: MANUFACTURED HOMES/RECREATIONAL VEHICLES

#### 13-1 Manufactured Homes

Except for manufactured homes currently situated in the City, no manufactured or mobile home shall be allowed in the City of Mackay unless it meets the following criteria:

- A. Meet all requirements for residential development within the zone in which it is located.
- B. No manufactured home may be placed within the City after the effective date of this Ordinance unless it meets the rehabilitation standards as specified in Title 44 of the Idaho Code.

#### 13-2 Public Infrastructure Required

City services, including but not limited to, sewer and water, will not be placed in service for any new placement of any manufactured home or mobile home, including relocations within the City, until all terms of this and all other applicable ordinances are met.

#### 13-3 Permits Required

All manufactured or mobile homes shall require a building permit from the City and an electrical and plumbing permit from the State of Idaho.

#### 13-4 Manufactured Home Park Standards

Manufactured home parks shall be subject to the same requirements of site-built homes.

#### 13-5 Recreational Vehicles

No recreational vehicle shall be occupied within the City except in established RV Parks and as noted in Chapter 20 of this Ordinance.

#### 13-6 Recreational Vehicle Park Standards

The following standards shall be provided in all recreational vehicle parks:

- A. Site Selection
  1. Topography: The topography must be favorable to good site drainage, minimum grading, recreational vehicle placement, and ease of maintenance.
  2. Availability of Utilities: The site must be readily accessible to public utilities, including water, sewerage, and electricity.
  3. Necessary Land Area: The area of the recreational vehicle park must be sufficient in size to accommodate:

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- a. The number of recreational vehicle spaces desired.
  - b. Roads and parking areas for motor vehicles, buildings.
- B. Site Improvements
- The physical improvements of the site must be arranged to provide:
1. A convenient means of pedestrian and vehicular access to each recreational vehicle space, parking areas, and accessory buildings.
  2. Hook-up to city water and sewer services.
  3. Electrical service for lighting and power.
- C. Spacing
- A plan of the proposed recreational vehicle park must be developed for approval of the City indicating the layout of the recreational vehicle spaces, roads, walks, service buildings, service areas, utilities, and necessary grading. Determination must be made in the initial planning stage on the number of recreational vehicles to be accommodated.
1. Spacing of Recreational Vehicle: The minimum side to side spacing between recreational vehicles and between any buildings must be fifteen (15) feet. End-to-end spacing no minimum. Ten (10) feet from the park property line.
- D. Roads, Walks and Parking Areas
1. General Circulation: Safety and convenience must be a major consideration in the layout of roads, walks, and parking areas within the recreational vehicle park. All roads must be continuous.
  2. Servicing: Suitable vehicular access for fire-fighting equipment, delivery of fuel, removal of garbage and refuse, and for other necessary services must be provided.
  3. Width of Roads and Parking Areas: Main access roads, excluding parking, are recommended to be two lane and at least twenty-four (24) feet wide.
  4. Parking Area: The same number of motor vehicle parking spaces must be provided as the number of recreational vehicle spaces.
- E. Fire Prevention
- The park area shall be subject to the rules and regulations of the fire prevention authority.
- F. Regulations
- No permanent additions of any kind shall be built onto, nor become a part of, any recreational vehicle. The wheels of a coach shall not be removed, except temporarily when necessary for repairs. Jacks or stabilizers may be placed under the frame of the coach to prevent movement on the springs while the coach is parked and occupied. No owner or person in charge of a dog, cat, or other pet animal shall permit it to run at large, or to commit any nuisance within the limits of any recreational home park.

## CHAPTER 14: VARIANCES AND APPEALS

### 14-1 Commission and Council Powers

The Commission and Council shall have the following authority to vary the application and terms of this Ordinance subject to the laws of the State of Idaho and subject to appropriate conditions and safeguards in harmony with the purpose and intent of this Ordinance with the public interest and the most appropriate development of the neighborhood:

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- A. The Commission and Council shall consider variances to the terms of this Ordinance, which will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this title will result in unnecessary hardship and under such conditions that the spirit of this title shall be observed and substantial justice done. A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest. In acting upon such variance the Commission shall make full investigation and shall only recommend granting a variance upon finding that the following are true:
1. That the granting of the variance will not be in conflict with the spirit and intent of the comprehensive plan for the City, and will not affect a change in zoning;
  2. That there are exceptional or extraordinary physical circumstances or conditions, applicable to the property involved, or the intended use thereof causing undue hardship, which do not apply generally to the property or class of use in the zone, so that a denial of the relief sought will result in:
    - a. Undue loss in value of the property
    - b. Inability to preserve the property rights of the owner
    - c. The prevention of reasonable enjoyment of any property right of the owner
    - d. Such hardship shall be proven by the owner.
  3. That the granting of such relief will not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements of other property owners, or the quiet enjoyment of such property improvements.
  4. That the reason for a variance was not caused by the owners or previous owners actions.

### 14-2 Procedure

- A. The Council shall hold a public hearing on all application for appeals, review and variances based upon full review and submission of recommendation by Commission with the following special conditions required:
1. For application for variances to this Ordinance, the Council shall mail a written notice of said hearing at least fifteen (15) days prior to the hearing date to the applicant and to owners of property adjacent to the property in question. Failure to mail such notice to every property owner due to clerical omissions shall not affect the validity of any hearing or determination of the Council.
  2. At least fifteen (15) days prior to the public hearing date, notice of the time and place of such hearing shall be given by at least one (1) publication in a newspaper of general circulation within the City of Mackay.
- B. For applications for variances to this Ordinance, the applicant shall be charged the fee to cover the cost of advertising and processing.
- C. Unless otherwise stated in the Council's minutes, all variance permits shall be issued and work shall commence within six (6) months from the date that such variance is granted; otherwise, the variance permit shall no longer be considered valid.
- D. Upon receipt of a written notice by the property owner of appeal as a result of the recommended action of the Commission and payment of a filing fee in an amount established by the Council by resolution, the Council shall set a hearing date to consider all information, testimony and

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Commission's minutes of the public hearing to reach a decision to uphold, conditionally uphold, or overrule the decision of the Commission. The Council can overrule the Commission by a favorable vote of a simple majority of the full Council.

- E. Applicant may only appeal one (1) time. Appeal must be made within a six (6) month period.

### **CHAPTER 15: SPECIAL USE AND ZONING PERMITS**

#### **15-1 Building Permit Required**

No fence or building shall be constructed, erected or altered structurally in any zoning district established by this Ordinance and no sign erected in the Commercial, Industrial or Airport Zones unless a Building permit has been approved by the Commission and the Council and issued by the City Clerk. All permits shall be issue only in conformity herewith and shall be valid only for a period of one (1) year. If action is not taken by applicant during the one (1) year period, then the applicant must reapply.

- A. Application for Permit: Prior to the proposed construction or alteration, applications for building permits shall first be submitted to the City Clerk. Whenever the Council grants or denies a permit, it shall specify the ordinance used in evaluating the application, the reasons for approval or denial and the actions, if any, that the applicant could take to obtain a permit.
- B. Permit Fee: Permit fee costs shall be established by Council resolution.
- C. Review of Decision: An applicant denied a permit or aggrieved by a decision of the City Clerk may, within sixty (60) days, seek review by the Commission, and if further aggrieved may seek review by the Council.

#### **15-2 Procedure for Special Use Permit**

- A. A Special Use Permit may be granted to an applicant upon fee paid pursuant to fee schedule as established by resolution of the Council, if the proposed use is otherwise prohibited by the terms of the Ordinance, but may be allowed with conditions under specific provisions of the Ordinance and when it is not in conflict with the intent of the Comprehensive Plan.
- B. Content of Application: An application for Special Use Permit shall be filed with the Commission by at least one (1) owner or lessee of property for which such special use is proposed. At a minimum, the application shall contain all the following information:
  - 1. Name, address, and telephone number of applicant;
  - 2. Legal description of property;
  - 3. Description of existing use;
  - 4. Zoning district;
  - 5. Description of proposed special use;
  - 6. A plan drawn to scale of the proposed site for the special use showing the location of all buildings, parking, and loading area, traffic access and traffic circulation, open spaces, landscaping, refuse, and service areas, utilities, signs, yards, and such other information as the commission may require to determine if the proposed special use meets the intent of this Ordinance; and,
  - 7. A narrative statement evaluating the effects on adjoining property, the effect of such elements as noise, glare, odor, fumes, and vibration which may adversely affect adjoining property value; a discussion of the general compatibility with adjacent and other properties in the district; and the relationship of the proposed use to the Comprehensive Plan.

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- C. Procedure for Permit: Prior to granting a Special Use Permit, at least one (1) public hearing in which interested persons shall have an opportunity to be heard shall be held. At least fifteen (15) days prior to the hearing notice of the time and place and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the jurisdiction. Notice may also be made available to other newspapers, radio and television stations serving the jurisdiction for use as a public service announcement. Notice shall also be provided to property owners and residents within the land being considered, three hundred (300) feet beyond the external boundaries of the land being considered, and any additional area that may be substantially impacted by the proposed special use as determined by the Commission. When notice is required to two-hundred (200) or more property owners or residents, in lieu of the mailing notification, three (3) notices in the newspaper or paper of general circulation is sufficient; provided, the third notice appear ten (10) days prior to the public hearing.
- D. Action by the Commission and Council: Within a reasonable time period after the public hearing, the Commission shall grant its approval, conditional approval, or disapproval of the application as presented to the Council.
- E. Upon granting of a Special Use Permit, conditions may be attached by the Commission and Council to a Special Use Permit including, but not limited to the following:
1. Minimizing adverse impact on other development;
  2. Controlling the sequence and time of development;
  3. Controlling the duration of special use;
  4. Ensuring that development is maintained properly;
  5. Designating the exact location and nature of development;
  6. Requiring the provision for on-site or off-site public facilities or services; and
  7. Requiring more restrictive standards than those generally required in this Ordinance.
- F. Prior to recommending a Special Use Permit, the Commission may request studies from the developer or public agencies concerning social, economic, fiscal, and environmental effects of the proposed special use. A Special Use Permit shall not be considered as establishing a binding precedent to grant other Special Use Permits. A Special Use Permit is not transferable from one (1) parcel of land to another, or one (1) entity or person to another. Upon granting or denying an application, the commission shall specify:
1. The ordinance and standards used in evaluating the application;
  2. The facts and reasons for approval or denial; and
  3. The actions, if any, that the applicant could take to obtain a permit.

### 15-3 Review of Decision

An applicant denied a permit or aggrieved by a decision of the Commission may, within sixty (60) days, seek review by the Council.

## CHAPTER 16: REZONING PROCESS

### 16-1 General

Whenever the public necessity, convenience, general welfare, or good zoning practices require, the Council may, after receipt of recommendation thereon from the Commission and subject to procedures provided by law, amend, supplement, change or repeal the regulations, restrictions, and boundaries or classification of property.

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### **16-2 Initiation of Zoning Amendments**

Amendments to this Ordinance may be initiated in one (1) of the following ways:

- A. By adoption of a motion by the Commission.
- B. By adoption of a motion by the Council.
- C. By the filing of an application by a property owner or a person who has existing interest in property within the area proposed to be changed or affected by said amendment.

### **16-3 Contents of Application**

Applications for amendments to the Official Zoning Map adopted as part of this Ordinance shall contain at least the following information:

- A. Name, address, and telephone number of applicant;
- B. Proposed amending ordinance, approved as to form by the Council;
- C. Present land use;
- D. Present zoning district;
- E. Proposed use;
- F. Proposed zoning district;
- G. A vicinity map at a scale showing property lines, thoroughfares, existing and proposed zoning and such other items as the Commission or Council may require;
- H. A list of all property owners and their mailing addresses who are within three-hundred (300) feet or as determined by the Commission of the external boundaries of the land being considered;
- I. A statement on how the proposed amendment relates to the Comprehensive Plan, availability of public facilities, and compatibility with the surrounding area, and;
- J. A fee according to schedule as established by resolution of the Council.

### **16-4 Transmittal to the Commission**

Requests for an amendment to the zoning ordinance shall be submitted to the Commission who shall evaluate the request to determine the extent and nature of the amendment requested.

- A. If the request is in accordance with the adopted Comprehensive Plan, the Commission may recommend and the Council may adopt or reject the ordinance amendment under the notice and hearing procedures as herein provided.
- B. If the request is not in accordance with the adopted Comprehensive Plan, the request shall be submitted to the Commission, which shall recommend, and the Council may adopt or reject an amendment to the Comprehensive Plan under the notice and hearing procedures provided in Section 67-6509, Idaho Code. After the Comprehensive Plan has been amended, the zoning ordinance may then be amended as hereinafter provided for.

### **16-5 Commission Public Hearing**

The Commission shall hold a public hearing and make recommendations or proposed zoning amendments. Zoning amendments may consist of text or map revisions.

- A. Zoning Ordinance Text Amendment: The Commission, prior to recommending a Zoning Ordinance Text Amendment to the Council, shall conduct at least one (1) public hearing in which

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interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of time and place, and the amendment shall be published in the official newspaper or paper of general circulation within the county. Following the Commission's hearing, if the Commission makes a material change from what was presented at the public hearing; further notice and hearing shall be provided before the Commission forwards the amendment with its recommendation to the Council, if the Council will not conduct a subsequent public hearing concerning the proposed change. If the Council will conduct a subsequent public hearing, notice of the Commission recommendation shall be included in the notice of public hearing provided by the Council.

- B. Zoning Ordinance Map Amendment: The Commission, prior to recommending a Zoning Ordinance Map Amendment that is in accordance with the Comprehensive Plan to the Council, shall conduct at least one (1) public meeting in which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the meeting, notice of time and place and the amendment shall be published in the official newspaper or paper of general circulation within the county. Additional notice shall be provided by mail to property owners and residents within the land being considered; three hundred (300) feet of the external boundaries of the land being considered; and any additional area that may be impacted by the proposed change as determined by the commission. When notice is required to two hundred (200) or more property owners or residents in lieu of the mail notification three (3) notices in the official newspaper or paper of general circulation is sufficient, provided that, the third notice appears not less than ten (10) days prior to the public hearing.

### **16-6 Recommendation by Commission**

Within a period of thirty (30) days after the public hearing of the proposed amendment, the commission shall transmit its recommendation to the Council. The Commission may recommend that the amendment be granted as requested, or it may recommend that the amendment be denied. If the amendment is denied, the Commission may submit recommendations for more favorable action. The Commission shall ensure that any favorable recommendations for amendments are in accordance with the Comprehensive Plan established goals and objectives.

### **16-7 Action by the Council**

- A. The Council, prior to adopting, revising, or rejecting the amendment to the Zoning Ordinance as recommended by the Commission shall conduct at least one (1) public hearing using the same notice and hearing procedures as the commission. Following the Council hearing, if the Council makes a material change from what was presented at the public hearing; further notice and hearing shall be provided before the Council adopts the amendment.
- B. Within a reasonable time period, not to exceed sixty (60) days after the public hearing of the proposed amendment, the Council shall accept the recommendation of the Commission's report unless rejected by a vote of a majority of the council.
- C. Upon granting or denying an application to amend the Zoning Ordinance, the Council shall specify:
  - 1. The Ordinance and standards used in evaluating the application;
  - 2. The facts and reasons for approval or denial, and;
  - 3. The actions, if any, that the applicant could take to obtain a permit.

### **16-8 Resubmission of Application**

No application for reclassification of any property which has been denied by the Council shall be resubmitted, in either substantially the same form or with reference to substantially the same premises for the same purposes within a period of one (1) year from the date of such final action; unless there is an amendment in the Comprehensive Plan which resulted from a change in conditions as applying to the specific property under consideration.



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### 16-9 Zoning upon Annexation

Prior to annexation of an unincorporated area to the City, the Commission shall make a recommendation to the City Council for changes to the Comprehensive Plan and Zoning Ordinance for the unincorporated area.

## CHAPTER 17: DEVELOPMENT AGREEMENTS

### 17-1 Purpose

The purpose of a development agreement is to provide a means to allow the Council to place conditions and/or restrictions on a rezone or other development to mitigate the impact of the rezone or development and to provide a means for delineating the commitments, obligations, and responsibilities of the parties (e.g. government agencies, developers, individuals) involved.

### 17-2 Applicability

As a condition of rezoning or development, at any time during any stage of the development permitting process, a development agreement may be requested by the Council, recommended by the Commission or it may be requested by the developer.

### 17-3 Agreement Proposal

In the event a development agreement is submitted or in the event a development agreement is deemed appropriate by the Commission during or after a public hearing, the reasons for proposing forwarded to the Council with the Commission's findings and recommendation.

### 17-4 Recommendation

In the event the Council makes a finding that a development agreement would be in the best interest of the City, but where no development agreement was recommended by the Commission and presented to the Council, the Council shall remand the matter back to the Commission with best interest of the City and the developer, that it be made a part of the public hearing process and that it be included in the Commission's recommendations.

### 17-5 Content

- A. A request for a development agreement shall be in addition to an application for rezone. A request for a development agreement shall contain the following:
  1. An Affidavit by the property owner, if the owner is not the same as the applicant, agreeing that the property subject to the rezone will be subject to a binding development agreement.
  2. The specific use or uses of the property affected by the development agreement.
  3. The concept plan, which shall include, but not be limited to three (3) at least 11"x17" site plans and one (1) 8 1/2"x11" drawing showing:
    - a. Existing structure(s) that will remain, labeled as to existing and proposed uses
    - b. Building footprint(s), height, number of stories, proposed uses (office, retail, restaurant), and square footage of proposed structures. If residential, overall density and number of dwelling units per building
    - c. North arrow
    - d. Scale
    - e. Property boundaries
    - f. Names of applicant, owners if different than applicant, preparer and project

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- g. Size of project
  - h. Existing vegetation
  - i. Existing and proposed grades for hillside developments
  - j. Parking areas with total number of parking spaces
  - k. Locations and widths of right of way, easements, canals, ditches and property lines
  - l. Drainage features
  - m. Conceptual landscape plan
  - n. Interior streets and access street
  - o. Estimated cost of project.
- 4. The time period for which the agreement is to be valid.
  - 5. A statement that failure to comply with all of the commitments in the approved development agreement shall be deemed a consent to rezone the property to its preexisting state or to the preexisting zone.
  - 6. If the development agreement is being requested by the applicant, as opposed to having been required by the Council or by the commission, a statement must be included wherein the applicant agrees that all time limits set forth by this ordinance are waived.
  - 7. A timeline and/or phasing schedule.

### 17-6 Process

- A. Whenever a development agreement is requested or proposed, the city shall work with the applicant to prepare the agreement. In addition to the information required in this Chapter, any additional uses may be addressed. Those issues may include, but are not limited to, density, site design, mitigation of impact on surrounding neighborhoods, appearance, provision of utilities, public services or public facilities, and any use restrictions.
- B. The Commission shall hold a public hearing to consider the proposed development agreement simultaneously with its hearing to consider the requested rezone or other development request. After its hearing the Commission shall make a recommendation to the Council and in its recommendation it may recommend approval or denial of the development agreement or it may recommend additional terms, conditions, duties or obligations which should be covered by the agreement.
- C. After the Council receives the recommendation from the Commission, the Council shall hold a public hearing on the proposed development agreement. After conducting its public hearing and considering the recommendation of the Commission, the Council shall approve, deny or modify the agreement as the Council, in its discretion deems necessary. After approval by the Council, a development agreement may be modified only by the permission of the Council and after complying with the notice requirements as set forth in Idaho Code section 67-6509.

### 17-7 Record

Development agreements shall be recorded in the office of the County Recorder and shall take effect upon adoption of the amendment of the Zoning Ordinance or approval of a subdivision or other development.

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### **17-8 Agreement Binding**

Development agreements shall be binding upon the owner or developer and the City as set out in Idaho Code section 67-6511A.

### **17-9 Termination, Reversal**

A development agreement may be terminated and the zoning designation upon which the use is based reversed, upon the failure of the owner or developer or any successor or assignee thereof to fulfill any of the requirements of the development agreement within the stated time set in the agreement or upon the failure of the owner or developer or their successors or assignees, to act in the manner agreed upon, and after complying with the notice and hearing requirements as set forth in Idaho Code section 67-6509.

### **17-10 Subsequent Owners**

Each subsequent owner, any successor or assignee, or any person who shall thereafter acquire an interest in the property, shall take that interest subject to the terms and conditions which are set out in the development agreement and they shall conform to and abide by the terms and conditions of that agreement.

### **17-11 Council Obligation**

By permitting or requesting a development agreement the Council does not obligate itself to adopt any proposed zoning ordinance or approve any development. The Council is obligated once they have signed the agreement.

### **17-12 Written Consent**

A written development agreement shall be deemed written consent to rezone the affected property and the commitment of the owner or developer or any successor or assignee to comply with the conditions imposed by the development agreement.

### **17-13 Violation, Enforcement**

Development agreements may be enforced by any person through any means permitted by law. That relief shall include, but not necessarily be limited to, specific performance, injunctive relief, or through the criminal process for violation of any provision of the Zoning or Subdivision Ordinance as outlined in this Ordinance and provided for in Idaho State Code Section 67-6527.

### **17-14 Developer as Applicant**

A developer shall be considered the applicant in any development agreement. In the event that a developer consists of more than one person or entity, all persons who will be engaged in the development shall be bound by the agreement.

### **17-15 Other Agreements, Terms and Conditions**

In addition to a development agreement as set forth above, the Council may enter into agreements that require certain terms and conditions to be complied with as a condition of subdivision approval. One of the terms of any agreement may be that in the event a developer does not comply with the agreement, subdivision approval may be withdrawn.

### **17-16 Performance Bond or Surety Bond**

A developer shall be required to obtain a Performance Bond or Surety Bond as defined by terms and definition of this Ordinance.

## **CHAPTER 18: ADMINISTRATION**

Mediation of planning and zoning issues may be provided in accordance with Idaho Code 67-6510 and any revisions.

### **18-1 Private Property Rights**

In considering any development application under this code the Commission shall consider the following questions to ensure the protection of private property rights under Idaho Code.

- A. Does the regulation or action result in the permanent or temporary physical occupation of the

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property?

- B. Does the regulation or action require a property owner to dedicate a portion of property or grant an easement?
- C. Does the regulation deprive the owner of all economically viable uses of the property?
- D. Does the regulation have a significant impact on the landowner's economic interest?
- E. Does the regulation deny a fundamental attribute of ownership?
- F. Does the regulation serve the same purpose that would be served by directly prohibiting the use or action; and does the condition imposed substantially advance that purpose?

### 18-2 Designated Fee

All applications for amendment, reclassification, special use, or variances, shall be accompanied by a filing fee set by resolution causing the applicant to reimburse the City for all costs incurred in publication and/or mailing.

### 18-3 Area of City Impact

The purpose of the Areas of City Impact is to identify lands within the county where land use decisions are controlled by mutual agreement of the City and county through an area of City impact agreement. Such agreements shall be in compliance with the Custer County Comprehensive Plan and the City of Mackay Comprehensive Plan.

## CHAPTER 19 TEMPORARY USES

### 19-1 Permit Required

Temporary Housing: A landowner who resides or intends to reside on the subject property must apply for a Temporary Use Permit: one per parcel, for placement of a recreational vehicle (RV), or any other structure approved by the Council for any of the following reasons:

- A. While a single-family dwelling is being constructed. The temporary use permit will only be issued based upon the application and issuance of a Building Permit for the proposed construction. The time on the temporary use permit will be limited to twelve (12) months.
- B. Construction trailer intended for residential or security purposes on a construction site.
- C. Construction trailers, equipment, and materials used in conjunction with construction work only may be permitted in any district during the period construction work is in progress.

## CHAPTER 20: SEASONAL RECREATIONAL VEHICLES *This Chapter was deleted in its entirety. Replaced with City of Mackay Ordinance #448. See Ord. #448 for changes.*

### ~~20-1 Definitions~~

~~Words or phrases used in this Section shall be interpreted according to the meaning they have in common usage.~~

- A. ~~Recreational Vehicle (RV) A manufactured vehicular unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities defined for the purpose of this Ordinance are:~~
  - 1. ~~Truck camper A portable unit constructed to provide temporary living quarters for recreational, travel or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pickup truck, and containing at least one (1) of the following facilities: stove; refrigerator or icebox; self-contained toilet, heater or air conditioner; potable water supply including a faucet and sink; separate 110-125 volt electrical power supply; or LP-gas supply. Truck campers originally constructed with an overall length~~

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- of six (6) feet or longer shall be titled as provided in Chapter 5 of Idaho Code Title 49. A truck camper does not include pickup hoods, shells or canopies.
2. Fold down camping trailer A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls, which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters, for recreational, camping or travel use.
  3. Travel trailer A vehicular unit, mounted on wheels designed to provide temporary living quarters for recreational, camping, travel or emergency use and of such size or weight as not to require special highway movement permits when towed by a motorized vehicle.
  4. Fifth-wheel trailer A vehicular unit equipped in the same manner as a travel trailer but constructed with a raised forward section that allows a bi-level floor plan. This style is designed to be towed by a vehicle equipped with a device known as a fifth-wheel hitch, which is typically installed in the bed of a pickup truck.
  5. Motor home A vehicular unit designed to provide temporary living quarters, built into an integral part or permanently attached to a self-propelled motor vehicle chassis. The vehicle must contain permanently installed independent life support systems which meet the national fire protection association (NFPA) 1192 standard on recreational vehicles, and provide at least four (4) of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating and/or air conditioning, a potable water supply system, including a faucet and sink, separate 110-125 volt electrical power supply and/or LP-gas supply.
  6. Park trailer A trailer designed to be towed by a motorized vehicle, and of such size and weight as not to require a special highway movement permit. It is designed for seasonal or temporary living quarters and may be connected to utilities necessary for operation of installed fixtures and appliances. It is built on a single permanent chassis and constructed to permit set up by persons without special skills.
- B. Recreational Vehicle Park A plot of land within the City limits, zoned commercial, designed and engineered for occupancy and use by recreational vehicles. RV Parks must meet any applicable State and Federal statutes and regulations.
- C. Vacant Lot A plot of land that is void of any structure that could provide year around permanent living quarters. Plot must be at least fifty (50) feet wide (street frontage) and one hundred (100) feet in depth (from edge of street). A Vacant Lot can be either an undeveloped lot with no electrical, sewer, water services or a developed lot with electrical, sewer, water services.
- D. Permit for Parking: A Permit granted by the City of Mackay allowing the owner of a recreational vehicle to park on a vacant lot which they own within the confines of the City. The Permit is issued at no cost and is valid for five (5) years so long as the holder of the Permit remains in compliance with the requirements of this Ordinance and the Permit.
- D. Permitted RV An RV that has been granted a Permit for Parking.

### 20-2 Parking Permit Required

No recreational vehicle shall be parked or occupied within the City of Mackay, except on the private property of the owner's residence; in established RV Parks; or on a Vacant Lot owned by the owner of the RV who has obtained a City issued Permit for Parking. There are three (3) exceptions: 1- parking and occupancy in the Mackay Tourist Park, which shall be limited to a maximum of three (3) days and two (2) nights unless more are authorized by the City Council; 2- parking and occupancy in the dump station area on Salmon Street which shall be limited to overnight; and 3- RV occupancy by visitors on the property of the person being visited for a maximum of fourteen (14) days. No parking or occupancy is allowed on the streets (including right-of-way) or alleys of the City (24 hour parking is allowed for loading/unloading of RV, but not for occupancy, so long as normal traffic patterns are not impeded).

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This Ordinance Chapter does not apply to RVs owned by residents of the City and parked or stored on their property of residence. However, this Ordinance shall apply to visitors of residents. Residents must insure that visitors who park RVs on their property comply with this Ordinance. Violation of this Section shall result in a citation being issued to the property owner with associated fine of \$100.00 and immediate removal of the visitor's RV.

Vacant Lot Parking shall be by permit only. The Owner of the Vacant Lot and RV shall present a Request for RV Parking form to the City Council for review and approval. The City Council shall review and approve/disapprove the request at a regular City Council meeting. Parking of the RV shall not be allowed until the Permit has been approved and issued to the Owner.

1. Lots used for Permitted RV parking shall be maintained free of all noxious weeds, unsightly weeds, trash, junk, and abandoned vehicles. Lawns are not required to be planted and maintained but are highly recommended.
2. Sheds located on the vacant lot must be painted and maintained or sided with a permanent type maintenance free siding. No permanent structures or additions (lean-to) attached to the RV to increase space in the RV or to provide sheltered entries are allowed.
3. Utilities provided by the City such as sewer and water, which exist on the vacant lot, will be connected to the Permitted RV. All connections to the City water system shall have a backflow preventer located between the Permitted RV connection and the connection to the City water system.
4. Number of RVs allowed to be parked on a vacant lot shall be limited to one (1) Permitted RV, belonging to the owner of the vacant lot, and one (1) visitor's RV on a 50 ft. by 100 ft. lot, and two (2) visitor's RVs on a 100 ft. by 100 ft. lot.
5. Location on Lot of the Permitted RV and any visitor's RV shall be a minimum of twenty (20) feet from any City street (including right-of-way) and fifteen (15) feet from an alley and 10 feet from an adjoining property line. This shall include any expansion/extension of the RV.
6. Truck Campers shall not be allowed to be removed (unloaded) from the transporting vehicle and left on the vacant lot for any amount of time. Truck Campers on any type of trailer will not be allowed.
7. Camping Trailers shall be stored and prepared for immediate travel when not occupied for more than seven (7) days.

### A. Permit to Park

Here in also referred to as Permit.

1. Cost of Permit will be established by Resolution of the City Council.
2. Permits shall be valid for three (3) years from the date of issue. Thirty (30) days prior to date of expiration, the holder of the Permit shall apply for a new Permit. Before the City Council shall issue a new Permit, the terms of the existing Permit shall be reviewed along with the existing conditions of the Vacant Lot; and the new Permit shall be approved or rejected by the City Council based on their review.
3. The City Clerk shall maintain an up to date log listing all issued Permits to Park. This log shall include: Name of Owner of Vacant Lot; Legal Address; Phone Number; Email Address if any; Street Address of Vacant Lot; State Issued License Plate (Tag) Number of RV or License Plate Number of Pick-up Truck, if the RV is a Truck Camper; Permit to Park Issue Number; and Date of Issue of Permit to Park.
4. Permit shall be prominently displayed by the RV Owner in the Permitted RV such that the Permit is visible to the City appointed inspector.

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5. Permit is not transferable.

### ~~20-8 No Permit to Park to Reside/Rent~~

~~No permit to park shall be issued to Owners who plan to use said RV as a permanent living space or rent their RV and/or Lot(s) to another party.~~

### ~~20-4 Violation is an Infraction~~

~~Any violation of any of the terms of this Ordinance Section shall be an infraction. RVs found in violation shall be removed by the owner within seven (7) days of notification of violation or the RV will be towed and impounded at the owner's expense. Visitor's RVs found in violation shall be removed immediately upon notification of violation.~~

### ~~20-5 Public Nuisance~~

~~Any violation of the terms of this Ordinance Section shall be deemed a Public Nuisance and subject to injunction under the Laws of the State of Idaho and the Ordinances of the City of Mackay.~~

## CHAPTER 21: FLOODING

### 21-1 Statutory Authorization, Findings of Fact, Purpose and Objectives

- A. Minimize Statutory Authority: The Legislature of the State of Idaho in I.C. 46-1020 through I.C. 46-1024, authorized local government units to adopt a floodplain map and floodplain management ordinance that identifies floodplains and that sets forth minimum development requirements in floodplains that are designed to promote the public health, safety, and general welfare of its citizenry.
- B. Findings of Fact: The flood hazard areas of Mackay, Idaho are subject to periodic inundation that results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood relief and protection, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
  1. These flood losses are caused by structures in flood hazard areas, which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages, and by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities.
  2. Local government units have the primary responsibility for planning, adoption and enforcement of land use regulations to accomplish proper floodplain management.
- C. Statement of Purpose: It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:
  1. Require that development that is vulnerable to floods, including structures and facilities necessary for the general health, safety and welfare of citizens, be protected against flood damage at the time of initial construction;
  2. Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which increase flood heights, velocities, or erosion;
  3. Control filling, grading, dredging and other development which may increase flood damage or erosion;
  4. Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or that may increase flood hazards to other lands;
  5. Preserve and restore natural floodplains, stream channels, and natural protective barriers

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which carry and store flood waters.

D. Objective: The objectives of this Ordinance are to:

1. Protect human life, health and property;
2. Minimize damage to public facilities and utilities such as water purification and sewage treatment plants, water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
3. Help maintain a stable tax base by providing for the sound use and development of flood prone areas and minimize expenditure of public money for costly flood control projects;
4. Minimize the need for rescue and emergency services associated with flooding and generally undertaken at the expense of the general public;
5. Minimize prolonged business interruptions.

### 21-2 Definitions

Words or phrases used in this Chapter shall be interpreted according to the meaning they have in common usage.

Base Flood means flood having a one (1) percent chance of being equaled or exceeded each year.

Base Flood Elevation (BFE) means the water surface elevation during the base flood in relation to a specified datum. The Base Flood Elevation (BFE) is depicted on the FIRM to the nearest foot and in the FIS to the nearest one foot.

Basement means the portion of a structure including crawlspace with its floor sub grade (below ground level) on all sides.

Development means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, and permanent storage of equipment or materials.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (a) The overflow of inland or tidal waters; or
- (b) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood Insurance Rate Map (FIRM) means an official map of a community, issued by the Federal Insurance Administration, delineating the areas of special flood hazard and/or risk premium zones applicable to the community.

Flood Insurance Study (FIS) means the official report by the Federal Insurance Administration evaluating flood hazards and containing flood profiles, floodway boundaries and water surface elevations of the base flood.

Flood Protection Elevation (FPE) means an elevation that corresponds to the elevation of the one percent (1%) chance annual flood (base flood), plus any increase in flood elevation due to floodway encroachment, 1 foot of freeboard.

Floodway (Regulatory Floodway) means the channel of a river or other watercourse and those portions of the floodplain adjoining the channel required to discharge and store the floodwater or flood flows associated with the regulatory flood.



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Lowest Floor means the lowest floor of the lowest enclosed area (including basement) used for living purposes, which includes working, storage, cooking and eating, or recreation, or any combination thereof. This includes any floor that could be converted to such a use including a basement or crawl space. An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a structure's lowest floor. The lowest floor is a determinate for the flood insurance premium for a building, home or business.

Manufactured Home means a structure, transportable in one or more sections built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "Manufactured Home" does not include a "Recreational Vehicle."

Recreational Vehicle means a vehicle that is:

1. Built on a single chassis,
2. 400 square feet or less when measured at the largest horizontal projection,
3. Designed to be self-propelled or permanently towed by a light duty truck, and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Structure means a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of its market value before the damage occurred.

Substantial improvement means reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures, which have incurred "repetitive loss" or "substantial damage," regardless of the actual repair work performed. The market value of the structure should be (1) the appraised value of the structure prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. This term includes structures which have incurred "substantial damage", regardless of the actual amount of repair work performed. The term does not include either:

1. A project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications, which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
2. Alteration of a Historic Structure provided that the alteration will not preclude the structure's continued designation as a Historic Structure.

### 21-3 General Provisions

- A. Lands to Which This Ordinance Applies: This Ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction of City of Mackay. Nothing in this Ordinance is intended to allow uses or structures that are otherwise prohibited by the zoning ordinance.
- B. Basis for Area of Special Flood Hazard: The Special Flood Hazard Areas identified by the Federal Emergency Management Agency in its Flood Insurance Study (FIS) for City of Mackay, dated March 4, 1988, with accompanying Flood Insurance Rate Maps (FIRM) or Digital Flood Insurance Rate Maps (DFIRM), and other supporting data, are adopted by reference and declared a part of

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this ordinance. The FIS and the FIRM are on file.

- C. Establishment of Floodplain Development Permit: A Floodplain Development Permit shall be required prior to development activities in Special Flood Hazard Areas established.
- D. Interpretation: In the interpretation and application of this ordinance all provisions shall be:
  - 1. Considered as minimum requirements;
  - 2. Liberally construed in favor of the governing body, and;
  - 3. Deemed neither to limit nor repeal any other powers granted under state statutes.
- E. Warning and Disclaimer of Liability: The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of City of Mackay or by any officer or employee thereof for flood damages that result from reliance on this ordinance or an administrative decision lawfully made hereunder.

### 21-4 Administration

- A. Designation of Floodplain Ordinance Administrator: The City Public Works Supervisor is hereby appointed as the Floodplain Administrator who is responsible for administering and implementing the provisions of this ordinance.
- B. Permit Procedures: Application for a Floodplain Development Permit shall be made to the Floodplain Administrator on forms furnished by the administrator or the administrator's designee prior to starting development activities. Specifically, the following information is required:
  - 1. Application Stage
    - a. Plans in duplicate drawn to scale with elevations of the project area and the nature, location, dimensions of existing and proposed structures, earthen fill placement, storage of materials or equipment and drainage facilities;
    - b. Elevation in relation to the Flood Protection Elevation, or highest adjacent grade, of the lowest floor level, including crawlspaces or basement, of all proposed structures;
    - c. Elevation to which any non-residential structure will be flood-proofed;
    - d. Design certification from a registered professional engineer or architect that any proposed non-residential flood-proofed structure will meet the flood-proofing criteria in 21-5.F.2 of this Chapter;
    - e. Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development, and;
  - 2. Construction Stage
    - a. For all new construction and substantial improvements, the permit holder shall provide to the Floodplain Administrator an as-built certification of the floor elevation or flood-proofing level, using appropriate FEMA elevation or flood-proofing certificate, immediately after the lowest floor or flood-proofing is completed. When flood proofing is utilized for non-residential structures, the certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by it.

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- b. Certificate deficiencies identified by the Floodplain Administrator shall be corrected by the permit holder immediately and prior to work proceeding. Failure to submit certification or failure to make the corrections shall be cause for the Floodplain Administrator to issue a stop-work order for the project.
3. Technical Review

If the community does not have the expertise to evaluate the technical data that is part of the application, the community may contract for an independent engineering review or require a review by FEMA through the Letter of Map Revision process. The applicant will pay the costs of an independent technical review.
4. Expiration of Floodplain Development Permit

All floodplain development permits shall be conditional upon the commencement of work within one (1) year. A floodplain development permit shall expire one (1) year after issuance unless the permitted activity has been substantially begun and thereafter is pursued to completion.
- C. Duties and Responsibilities of the Administrator: Duties of the Floodplain Administrator shall include, but shall not be limited to:
  1. Review all floodplain development permit applications to assure that the permit requirements of this ordinance have been satisfied.
  2. Review proposed development to assure that necessary permits have been received from governmental agencies from which approval is required by federal or state law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334; the Endangered Species Act of 1973, 16 U.S.C. 1531-1544; and State of Idaho Stream Channel Alteration permits, Idaho Code, Title 42, Chapter 38 require that copies of such permits be provided and maintained on file.
  3. When Base Flood Elevation data or floodway data are not available, then the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source in order to administer the provisions of this ordinance.
  4. When Base Flood Elevations or other current engineering data are not available, the Floodplain Administrator shall take into account the flood hazards, to the extent they are known, to determine whether a proposed building site will be reasonably safe from flooding.
  5. Obtain, verify and record the actual elevation in relation to the vertical datum on the effective FIRM, or highest adjacent grade, of the lowest floor level, including basement, of all new construction or substantially improved structures.
  6. Obtain, verify and record the actual elevation, in relation to the vertical datum on the effective FIRM to which any new or substantially improved structures have been flood-proofed.
  7. When flood proofing is utilized for a structure, the Floodplain Administrator shall obtain certification of design criteria from a registered professional engineer or architect.
  8. Where interpretation is needed of the exact location of boundaries of the Areas of Special Flood Hazard including regulatory floodway (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Ordinance.
  9. All records pertaining to the provisions of this ordinance shall be maintained in the office of the city/county clerk or his/her designee and shall be open for public inspection.

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### 21-5 Provisions for Flood Hazard Reduction

#### A. Subdivision Standards

1. All subdivision proposals shall be consistent with the need to minimize flood damage.
2. All subdivision preliminary plats/development plans shall include the mapped flood hazard zones from the effective FIRM.
3. Base flood elevation data shall be generated and/or provided for subdivision proposals and all other proposed development, including manufactured home parks and subdivisions, greater than fifty lots or five acres, whichever is less.
4. All subdivisions shall have public utilities and facilities such as sewer, gas, electric and water systems located and constructed to minimize flood damage.
5. All subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

#### B. Construction Standards

In all Areas of Special Flood Hazard the following provisions are required.

1. New construction and substantial improvements of an existing structure shall be anchored to prevent flotation, collapse or lateral movement of the structure.
2. New construction and substantial improvements of an existing structure shall be constructed with materials and utility equipment resistant to flood damage.
3. New construction or substantial improvements of an existing structure shall be constructed by methods and practices that minimize flood damage.
4. All new construction or substantial improvements of an existing structure that includes a fully enclosed area located below the lowest floor formed by the foundation and other exterior walls shall be designed to be an unfinished or flood resistant enclosure. The enclosure shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater. Designs for complying with this requirement must be certified by a licensed professional engineer or architect or meet the following minimum criteria:
  - a. Provide a minimum of two openings with a total net area of not less
    - i. than one square inch for every square foot of enclosed area subject to flooding;
    - ii. the bottom of all openings shall be no higher than one foot above the higher of the exterior or interior grade or floor immediately below the opening;
    - iii. devices provided permit the automatic flow of floodwater in both directions without manual intervention.
  - b. To comply with the "Lowest Floor" criteria of this ordinance, the unfinished or flood resistant enclosure shall only be used for parking of vehicles, limited storage of maintenance equipment used in connection with the premises, or entry to the elevated area.
  - c. The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.
  - d. For crawlspace foundation types, construction must follow the guidelines in FEMA TB 11-

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01, Crawlspace Construction for Structures Located in Special Flood Hazard Areas: National Flood Insurance Program Interim Guidance, specifically:

- i. Below grade crawlspaces are prohibited at sites where the velocity of floodwaters exceed 5 feet per second;
  - ii. Interior grade of the crawlspace below the BFE must not be more than 2 feet below the lowest adjacent exterior grade (LAG);
  - iii. Height of the below grade crawlspace, measured from the lowest interior grade of the crawlspace to the bottom of the floor joist must not exceed 4 feet at any point;
  - iv. Contain an adequate drainage system that removes floodwaters from the interior area of the crawlspace.
5. All heating and air conditioning equipment and components, all electrical, ventilation, plumbing, and other facilities shall be designed and/or elevated to prevent water from entering or accumulating within the components during flooding.
  6. New and replacement water supply systems shall be designed to minimize or to eliminate infiltration of floodwaters into the system.
  7. New and replacement sanitary sewage systems shall be designed to minimize or to eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
  8. On-site waste disposal systems shall be located and constructed to avoid functional impairment, or contamination from them, during flooding.
  9. Any alteration, repair, reconstruction or improvement to a structure that is not compliant with the provisions of this ordinance, shall be undertaken only if the nonconformity is minimal in order to meet health and safety standards.

### C. Manufactured Home Standards

In all Areas of Special Flood Hazard where the Flood Protection Elevation is established, these standards for manufactured homes and recreational vehicles that are an allowed use under the zoning ordinance shall apply:

1. Manufactured homes placed or substantially improved:
  - a. On individual lots or parcel
  - b. In new or substantially improved manufactured home parks or subdivisions
  - c. In expansions to existing manufactured home parks or sub-divisions, or on a site in an existing manufactured home park or subdivision where a manufactured home has incurred "substantial damage" as the result of a flood, must have the lowest floor, including basement, elevated to the Flood Protection Elevation.
2. Manufactured homes placed or substantially improved in an existing manufactured home park or subdivision may be elevated so that either:
  - a. The lowest floor of the manufactured home is elevated to the Flood Protection Elevation or one foot above the level of the base flood elevation, whichever is higher.
  - b. The manufactured home chassis is elevated and supported by reinforced piers (or other foundation elements of at least an equivalent strength) of no less than 36 inches above the highest adjacent grade.

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3. Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to, and consistent with, applicable state requirements.
4. Manufactured homes placed on solid perimeter walls shall meet the flood vent requirements in 21-5.B.4 of this Chapter.

### D. Accessory Structures

Relief from the elevation or dry flood-proofing standards may be granted for an accessory structure containing no more than 100 sq ft. Such a structure must meet the following standards:

1. It shall not be used for human habitation;
2. It shall be constructed of flood resistant materials;
3. It shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters;
4. It shall be firmly anchored to prevent flotation;
5. Services such as electrical and heating equipment shall be elevated or flood-proofed to or above the Flood Protection Elevation;
6. It shall meet the opening requirements of 21-5.B.4 of this Chapter.

### E. Recreational Vehicle Standards

In all Areas of Special Flood Hazard, Recreational Vehicles, that are an allowed use or structure under the zoning ordinance, must either:

1. Be on the site for fewer than 180 consecutive days;
2. Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached structures or addition, or
3. The recreational vehicle must meet all the requirements for "New Construction," including the anchoring and elevation requirements.

### F. Floodway Standards

The following provisions shall apply in a floodway:

1. A project in the regulatory floodway must undergo an encroachment review to determine its effect on flood flows. An encroachment analysis must include:
  - a. Determination and documentation that the filling, grading or construction of a structure will not obstruct flood flows and will not cause an increase in flood heights upstream or adjacent to the project site;
  - b. Determination and documentation that grading, excavation, channel improvements, bridge and culvert replacements that remove an obstruction, do not cause increases in downstream flood flows;
  - c. Certification and documentation by a licensed professional engineer that the project will not result in a rise in flood heights;
  - d. The Administrator may make the encroachment determination for minor projects.

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2. An encroachment in the floodway or floodplain that will cause an increase in the base flood elevation in excess of the allowable level must have a Conditional Letter of Map Revision granted by FEMA before it will be permitted.
- G. Standards for Zones with Base Flood Elevations  
In Special Flood Hazard Areas designated A1-30, AE, AH, A (with estimated BFE), the following provisions are required:
1. New construction and substantial improvements  
Where base flood elevation data are available, new construction or substantial improvement of any structure or manufactured home shall have the lowest floor, including basement, constructed at or above the community's Flood Protection Elevation. If solid foundation perimeter walls are used to elevate a structure, openings sufficient to facilitate the unimpeded movement of floodwaters shall be provided in accordance with the construction standards in 21-5.B.4 of this Chapter.
  2. Non-Residential Construction  
New construction or the substantial improvement of any non-residential structure located in zones A1-30, AE, or AH must be flood-proofed if the new construction or improvement is not elevated. The structure and attendant utility and sanitary facilities, must be designed to be water tight to the Flood Protection Elevation or to be one (1) foot above the base flood elevation, whichever is higher, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A licensed professional engineer or architect must certify that the design and methods of construction are in accordance with accepted standards of practice for meeting these provisions, and shall provide certification to the Administrator.
  3. Where the floodway has not been determined, applicants of proposed projects that increase the base flood elevation more than one foot are required to obtain and submit to the Floodplain Administrator, a Conditional Letter of Map Revision (CLOMR) preconstruction.
  4. Post construction, the applicant must apply to FEMA for a Letter of Map Revision for changes to the flood hazard map proposed in the CLOMR.
  5. In AH Zones, drainage paths shall be provided to guide floodwater around and away from proposed and existing structures.
- H. Standards for Zones Without Base Flood Elevations and/or Floodway (A Zones)  
These standards apply in Special Flood Hazard Areas where streams exist but no base flood elevation data have been provided (A Zones), or where base flood data have been provided but a floodway has not been delineated.
1. When base flood elevation or floodway data have not been identified by FEMA in a Flood Insurance Study and /or Flood Insurance Rate Maps, then the Floodplain Administrator shall obtain, review, and reasonably utilize scientific or historic base flood elevation and floodway data available from a federal, state, or other source, in order to administer this ordinance. If data are not available from any source, only then provisions 2 and 3 shall apply.  
  
Where the floodplain administrator has obtained base flood elevation data, applicants of proposed projects that increase the base flood elevation more than one foot shall obtain a Conditional Letter of Map Revision preconstruction and a Letter of Map Revision post construction.
  2. No encroachments, including structures or fill, shall be located within an area equal to the width of the stream or fifty feet, whichever is greater, measure from the ordinary high water mark, and unless certification by a licensed professional engineer documents that the encroachment will not result in any increase in flood levels during the base flood.

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3. In special flood hazard areas without base flood elevation data, new construction and substantial improvements of existing structures shall have the lowest floor of the lowest enclosed area (including basement or crawlspace) elevated no less than two feet above the highest adjacent grade at the building site. Openings sufficient to facilitate the unimpeded movement of floodwaters shall be provided in accordance with the construction standards in 21-5.B.4 of this Chapter.
- I. Standards for Areas of Shallow Flooding (AO Zones)
- Shallow flooding areas designated AO Zones, are Areas of Special Flood Hazard that have base flood depths of one to three feet, with no clearly defined channel. The following provisions apply:
1. All new construction and substantial improvements of residential and nonresidential structures shall have the lowest floor, including basement, elevated above the adjacent grade at least as high as the flood depth number specified in feet on the Flood Insurance Rate Map (FIRM). If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least two feet (2) above the highest adjacent grade. Openings sufficient to facilitate the unimpeded movement of floodwaters shall be provided in accordance with the construction standards in 21-5.B.4 of this Chapter.
  2. New construction or the substantial improvement of a non-residential structure may be flood-proofed in lieu of elevation. The structure and attendant utility and sanitary facilities must be designed to be water tight to the specified base flood level or at least two (2) feet above highest adjacent grade, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting these provisions, and shall provide certification to the Floodplain Administrator.
  3. Drainage paths shall be provided to guide floodwater around and away from all proposed and existing structures.
- J. Alteration of a Watercourse
- A watercourse is considered altered when any change occurs within its banks.
1. The bank full flood carrying capacity of the altered or relocated portion of the watercourse shall not be diminished. Prior to issuance of a floodplain development permit, the applicant must submit a description of the extent to which any water course will be altered or relocated as a result of the proposed development and submit certification by a registered professional engineer that the bank full flood carrying capacity of the water course will not be diminished.
  2. Adjacent communities, the U.S. Army Corps of Engineers and the Idaho Department of Water Resources Stream Channel Alteration program must be notified prior to any alteration or relocation of water source. Evidence of notification must be submitted to the floodplain administrator and to the Federal Emergency Management Agency.
  3. The applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of the watercourse so that the flood carrying capacity will not be diminished.
  4. The applicant shall meet the requirements to submit technical data in Sections K (1) and K (2) when an alteration of a watercourse results in the relocation or elimination of the special flood hazard area, including the placement of culverts.
- K. Requirement to Submit New Technical Data
1. For all development proposals that impact floodway delineations or base flood elevations, the community shall ensure that technical data reflecting such changes be submitted to FEMA within six months of the date such information becomes available. These development



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proposals include:

- a. Floodway encroachments that increase or decrease base flood elevations or alter floodway boundaries;
  - b. Fill sites to be used for the placement of proposed structures where the applicant desires to remove the site from the special flood hazard area;
  - c. Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts;
  - d. Subdivision or large-scale development proposals requiring establishment of base flood elevations according to 21-5.A.3 of this Section.
2. It is the responsibility of the applicant to have technical data prepared in a format required for a Conditional Letter of Map Revision or Letter of Map Revision and submitted to FEMA. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.

### 21-6 Variance and Appeal Procedures

#### A. Variance

1. An application for a variance must be submitted to the City Clerk on the form provided by the City of Mackay and include at a minimum the same information required for a building permit and an explanation for the basis for the variance request.
2. Upon receipt of a completed application for a variance, the variance request will be set for public hearing at the next City Council meeting in which time is available for the matter to be heard.
3. Prior to the public hearing, Notice of the hearing will be published in the official newspaper of the City at least fifteen (15) days prior to the hearing. In addition to the newspaper publication, written notice shall be provided to all adjoining property owners.
4. The burden to show that the variance is warranted and meets the criteria set out herein is on the applicant.

#### B. Criteria for Variances

1. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a small or irregularly shaped lot contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases the technical justification required for issuing the variance increases.
2. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
4. Variances may be issued upon:
  - a. A showing by the applicant of good and sufficient cause;
  - b. A determination that failure to grant the variance would result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause

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fraud on or victimization of the public, or conflict with existing local laws and ordinances.

5. Variances pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods.
6. Variances should be issued for non-residential buildings in very limited circumstances.

### C. Variance Decision

The decision to either grant or deny a variance shall be in writing and shall set forth the reasons for such approval and denial. If the variance is granted, the property owner shall be put on notice along with the written decision that the permitted building will have its lowest floor below the Flood Protection Elevation and that the cost of flood insurance likely will be commensurate with the increased flood damage risk.

### D. Appeals

The City Council shall hear and decide appeals from the interpretations of the Administrator.

1. An appeal must be filed with the City Clerk within fourteen (14) days of the date of any permit denial or interpretation of the Administrator. Failure to timely file an appeal shall be considered a failure to exhaust the administrative remedies. The appeal must set out the interpretation of the Administrator and a narrative setting forth the facts relied upon by the appellant and the appellants claim regarding the error in the interpretation.
2. Upon receipt of a completed appeal, the appeal will be scheduled for the next available City Council meeting to be heard. The City Council shall consider the following in ruling on an appeal. All technical evaluations, all relevant factors, standards specified in other sections of this Ordinance, including:
  - a. The danger that materials may be swept onto other lands to the injury of others;
  - b. The danger to life and property due to flooding or erosion damage;
  - c. The susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual landowner;
  - d. The importance of the services provided by the proposed facility to the community;
  - e. The necessity of the facility to a waterfront location, where applicable;
  - f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
  - g. The compatibility of the proposed use with existing and anticipated development;
  - h. The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
  - i. The safety of access to the property in times of flooding for ordinary and emergency vehicles;
  - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
  - k. The cost of providing government services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

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### E. Decision

The City Council decision on appeal shall be in writing and set out the facts, technical information and the legal basis for the decision.

## CHAPTER 22: ABANDONED BUILDINGS AND PERSONALTY

### 22-1 Definitions

Words or phrases used in this Section shall be interpreted according to the meaning they have in common usage.

- A. Abandoned and open building means any commercial or residential structure, and all outbuildings and garages used in connection therewith, within the City, which is not presently inhabited by the owner or person legally entitled to possession thereof, which because of the dilapidated condition of windows, doors, walls or roof, is open to entrance by any persons or animals, and which cause of such condition, creates condition tending to reduce the value of property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute attractive nuisances creating a hazard to health and safety of minors, to create a harborage for rodents and insects, and to be injurious to the health, safety and general welfare.
- B. Abandoned, wrecked and junked means, with reference to vehicles, an unsightly motor vehicle which meets any one of the following qualifications:
  - 1. Vehicle does not have a current valid state registration and license plate;
  - 2. Vehicle cannot be safely operated under its own power.
- C. Machinery means all articles of industrial, farm or domestic machinery or equipment, and any and all metal or wooden machinery, motors, equipment and tools.
- D. Major household furnishings and appliances means all articles usually referred to as major household furnishings and appliances used in housekeeping, including, but not limited to, chairs, tables, davenport, beds, refrigerators, stoves, washers, driers, furnaces, and grease, oil and paint containers of five gallons or over capacity.
- E. Motor vehicles means any vehicle propelled or drawn by power other than muscular power, designed to travel on the ground by wheels, treads, runners or slides and to transport persons or property or pull machinery, including, but not limited to, automobiles, trailers, motorcycles and tractors.
- F. Person means any individual, corporation or partnership.

### 21-2 Prohibited Acts—Designated

It is unlawful for any person to place, allow, discard, maintain, park or store any abandoned, wrecked or junked vehicle, major household furnishing or appliance or machinery, or parts thereof, as herein defined, upon any public street, alley, sidewalk or other public property within the City of Mackay, Idaho.

### 21-3 Prohibited Acts—Exceptions

It is unlawful for any person, whether he be owner, tenant, occupant or lessee of any private property or premises, to maintain or allow any abandoned and open building for a period of time exceeding sixty (60) days, or to place, allow, discard, maintain, park, store or permit it be placed, allowed, discarded, maintained, parked or stored upon said property or premises for a period of time exceeding thirty (30) days any abandoned, wrecked or junked vehicle, major household furnishing or appliance or machinery, or parts thereof, as herein defined; provided, however, that the provisions of this paragraph shall not apply to any property or premises where said vehicle, furnishing, appliance or machinery, or parts thereof are housed within a building or fence so as to not be visible from the street or other public or private property, or stored or parked in a lawful manner in connection with or incidental to a business or commercial enterprise which is primary or principal use of said property or premises.

## ORDINANCE NO. 424

### 21-4 Securance or Removal Required

The City or its representative may order any such building secured against entry by persons or animals within thirty (30) days, and may order any such abandoned, wrecked, or junked vehicle, major household furnishing or appliance or machinery or parts thereof, removed within (30) days. Notice of such order shall be placed upon the building, vehicle, furnishing, appliance, machinery, or part thereof, and a copy of such notice shall be served upon any adult person occupying the premises on which such item is located, if any, and upon the record owner of the building or item, if known. If there is no occupant or owner, a notice affixed to the building or upon any other prominent object upon the premises shall constitute notice to such owner or occupant of the premises and the owner of such building or item involved; provided, that if such owner or occupant is only temporarily absent, such notice shall be by certified mail. Violations of this Ordinance Section are hereby declared to be a nuisance and if securance or removal is not accomplished within the time and in the manner prescribed by the order of notice, the City or its authorized agent may prevent, remove and summarily abate the nuisance without judicial process at the expense of the parties creating or maintaining the same and file a Mechanics Lien as provided in Idaho Code, Title 45, Chapter 5 on the land or premises whereon the nuisance is situated to defray the cost or to reimburse the City for the cost of abating the same; or the City may bring any appropriate civil action, including abatement, injunction and/or damages, in which event the City shall be entitled to all costs including attorney fees in the prosecuting of such action. Any abandoned, wrecked or junked vehicle, major household furnishings or appliances or machinery, or part thereof removed by the City in accordance herewith, shall be offered for sale to the highest and best bidder at public auction after two publications in the official newspaper of the City in compliance with Idaho Code, Title 49, Chapter 18. The proceeds of the sale shall be used to pay expenses of removal and impounding and of sale, and if the proceeds are not sufficient thereof, the balance shall immediately become due and owing from the owner, or from the occupant of the premises if not paid by such owner.

## CHAPTER 23: ENFORCEMENT

### 23-1 Methods of Enforcement

The provisions of this Ordinance shall be enforced by the following methods:

- A. Requirement of a zoning permit;
- B. Inspection and ordering removal of violations;
- C. Criminal liability;
- D. Injunction.

### 23-2 Zoning Permit

Building permits are required for:

- A. New construction of homes, business buildings, outbuildings, sprinkling systems;
- B. New fences, sidewalks, or driveways. Replacement of existing fences, sidewalks, or driveways DO NOT need a building permit if placed in the exact same location;
- C. Any time buildings are demolished or moved, into, within, or out of City limits;
- D. Any structure changes that modify the footprint or might otherwise have an effect on property setback.

### 23-3 Inspection

The authorized representative of the City is hereby empowered to cause any structure or tract of land to be inspected and examined, and to order in writing the remedying of any condition found to exist in violation of any provisions of this ordinance. After any such order has been served, no work shall proceed on any structure or tract of land covered by such order, except to correct such violation.

## ORDINANCE NO. 424

### 23-4 Enforcement Actions

The process for enforcement of this Ordinance shall be as described here:

- A. The City shall notify the occupant (and owner, if they are not the same) of the violation by citation, first class mail and/or posting on the site. The notice shall describe the violation, cite the sections of this ordinance being violated, and order the occupant to attain compliance within ten (10) days.
- B. Any person who receives a notice of violation may request inspection by the city to show that compliance has been attained within the ten (10) days allowed, or:
  1. File a written request with the City for an extension of time to attain compliance, with such extensions being limited to a maximum of sixty (60) days and culminated by an inspection to show that compliance has been attained; or
  2. File an appeal of the City's notice, following the appeals procedure.
- C. The City shall notify any occupant or owner who fails to attain compliance within the specified time, or to show, on appeal, that a violation has not occurred. This notice shall be posted on the site and sent by first class mail, repeat the description of the violation from the original notice, and state the penalties that may be imposed for violations of this Ordinance.
- D. The City may proceed with mitigation of the violation at the cost of the property owner. The City will submit an invoice for such mitigation and if unpaid may file a lien against the property until such invoice is paid. City may also restrict further development or other permits for the property until such invoice is paid.

### 23-5 Criminal Liability

A person shall be charged of a misdemeanor in any case where:

- A. Any violation of any of the provisions of this Ordinance exists in any building or any other structure or on a tract of land.
- B. An order to remove any such violation has been served upon the owner, general agent, lessee or tenant of the structure or tract of land (or any part thereof), or upon the architect, building, contractor or any other person who commits or assists in any such violation.
- C. Such person shall fail to comply with such order within ten (10) days after service thereof.

### 23-6 Injunction

In addition to any of the foregoing remedies, the City Attorney, acting in behalf of the City Council may maintain an action for an injunction to restrain any violation of this ordinance.

### 23-7 Penalty

Any person, firm or corporation violating any provisions of this Ordinance, upon conviction thereof, shall be fined in accordance with Idaho State Code for each offense or by imprisonment for a period of not more than thirty (30) days or by both such fines and imprisonment. Each day during which the illegal erection, construction, alteration, maintenance or use continues may be deemed a separate offense.

### 23-8 Penalties for Non-Compliance

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Ordinance and other applicable regulations. Violations of the provisions of this Ordinance by failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with grants of variance or special exceptions shall constitute a misdemeanor. Any person who violates this Ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than one thousand (\$1,000) or imprisoned for not more than one hundred eighty-five (180) days, or both. Each day the violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Mackay from taking such other lawful actions as is necessary to prevent or remedy any violation.

**ORDINANCE NO. 424**

**CHAPTER 24: SAVING CLAUSE**

Ordinance number 61, 241, 252, 262, 271, 281, 285, 318, 328, 418, and 420 are repealed by this ordinance, but shall remain in force to authorize the arrest, prosecution, conviction, and punishment of a person who violates Ordinance numbers 61, 241, 252, 262, 271, 281, 285, 318, 328, 418, and 420 prior to the effective date of this ordinance.

**CHAPTER 25: SEVERABILITY**

This ordinance is hereby declared to be severable. Should any portion of this ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and shall be read to carry out the purpose(s) of the ordinance before the declaration of partial invalidity.

**CHAPTER 26: REPEAL**

This ordinance hereby repeals Ordinances 61, 241, 252, 262, 271, 281, 285, 318, 328, 418, and 420, and any other Ordinances, Resolutions, or items contained in minutes of meetings of the City Council found to be in conflict with this Ordinance.

**CHAPTER 27: EFFECTIVE DATE**

This Ordinance shall be in full force and effect from and after its passage, approval and publication, one-half plus one of the members of the full Council having voted to dispense with the rule providing that ordinances be read on three (3) different days, all as provided by law.

PASSED AND APPROVED by the City Council of the City of Mackay, County of Custer, State of Idaho, this 3<sup>rd</sup> day of March, 2015.

By: /S/ Wayne C. Olsen  
Wayne C. Olsen, Mayor

ATTEST: /S/ Suzanne Whitworth  
Suzanne Whitworth, City Clerk

**ORDINANCE NO. 424**

**EXHIBIT 1  
ZONING MAP OF THE CITY OF MACKAY**

Map is currently under construction and will be added upon completion and approval of the City Council without the necessity of approving this entire Ordinance.