

AGENDA ITEM SUMMARY

DATE: 7/28/2008

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____

SUBJECT:

Hailey Ordinance No. 1010

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Following the Council's review of this ordinance at your last meeting, I have revised language found in Section 2.04.010.06(5), which addresses reconsideration of a decision. The new language is in bold print. There are two revisions. First, the motion for reconsideration is now limited to legal issues. Under this draft, new evidence is not a sufficient reason to seek a reconsideration. Second, I have outlined a two step hearing process if the city wishes to reconsider a decision. The first step does not require a public hearing, while the second step would require a public hearing with adequate notice.

If you have any questions, please contact me. Thanks.

Ned

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS

Budget Line Item # _____ Case # _____
Estimated Hours Spent to Date: _____ YTD Line Item Balance \$ _____
Staff Contact: _____ Estimated Completion Date: _____
Comments: _____ Phone # _____

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

<input type="checkbox"/> City Attorney	<input type="checkbox"/> Clerk / Finance Director	<input type="checkbox"/> Engineer	<input type="checkbox"/> Building
<input type="checkbox"/> Library	<input type="checkbox"/> Planning	<input type="checkbox"/> Fire Dept.	_____
<input type="checkbox"/> Safety Committee	<input type="checkbox"/> P & Z Commission	<input type="checkbox"/> Police	_____
<input type="checkbox"/> Streets	<input type="checkbox"/> Public Works, Parks	<input type="checkbox"/> Mayor	_____

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Conduct a public hearing, and if appropriate, make a motion to approve Ordinance No. 1010 and to conduct a first reading of the ordinance.

FOLLOW-UP REMARKS:

6/23 - Council approved to continue this in next mtg - July 14, 2008.

7/14 - discussion around specifics steps for reconsideration. -

7/28 - legal revisions made by N. Williamson to spell out procedures more clearly - Council to perform 1st reading - 70.

8/11 - 2nd Reading conducted

8/18 or 8/25 - 3rd Reading

HAILEY ORDINANCE NO. 1010

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING SECTION 2.04.010.05 OF THE HAILEY MUNICIPAL CODE TO PROVIDE PUBLIC HEARING PROCEDURES FOR EX PARTE COMMUNICATIONS, SITE VISITS AND NEW EVIDENCE; AMENDING SECTION 2.04.010.06 OF THE HAILEY MUNICIPAL CODE TO DELETE ANY REFERENCE TO ROBERT'S RULES OF ORDER AND TO CREATE PROCEDURES FOR MOTIONS; BY AMENDING CHAPTER 2.04 OF THE HAILEY MUNICIPAL CODE TO ADD A NEW SECTION 2.04.010.07 PROVIDING FOR PROCEDURES FOR SITE VISITS; BY PROVIDING FOR A SEVERABILITY CLAUSE; BY PROVIDING FOR A REPEALER CLAUSE; AND BY PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the City of Hailey has adopted an ordinance, creating Chapter 2.04 of the Hailey Municipal Code, providing for procedures for public hearings;

WHEREAS, the Hailey City Council believes it prudent to establish procedures for ex parte communications, site visits, new evidence and making motions; and

WHEREAS, the Mayor and the City Council find that amendments to Chapter 2.04 of the Hailey Municipal Code will clarify the procedures of public meetings by the Hailey City Council and Planning and Zoning Commission.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, AS FOLLOWS:

Section 1. Section 2.04.010.05 of the Hailey Municipal Code is amended by the deletion of the stricken language and addition of the underlined language, as follows:

2.04.010.05 Public Hearings. If Idaho law or Hailey Ordinance requires a public hearing, the following procedure shall be followed with regard to all public hearings conducted by and before the City Council and the Planning and Zoning Commission:

1. City staff shall present an introduction and orientation;

2. The Mayor, City Council Members and Planning and Zoning Commission Members shall disclose whether they have viewed the property subject of the public hearing, and whether they have had an ex parte communication with the applicant, a member of the public or a representative of the applicant or a member of the public about the application being considered. The approximate date and who was present during a site visit should be disclosed. Ex parte communications must be disclosed by identifying the person and the person's employment or affiliation, and by providing a general description of the communication.

23. The applicant or interested party shall be then afforded the opportunity to present and explanation of the application, request or other matter being considered by the City Council or Planning and Zoning Commission;

34. The members of the City Council or Planning and Zoning Commission shall ~~then~~ have the opportunity to direct questions to the applicant or interested party;

45. Public hearing shall then take place, and members of the public shall being afforded the opportunity to be heard. The presiding officer shall have the discretion to set limits as to the time each individual may speak and/or the number of times each individual may speak. The presiding officer shall also have the authority to set an overall time limit for the entire public hearing;

56. After completion of all testimony and/or public comment, or at the conclusion of the time limit set for the public hearing, whichever shall first occur, the public hearing shall be closed;

6. ~~The members of the City Council or Planning and Zoning Commission shall then have an opportunity to direct questions to the staff and/or the applicant or interested party;~~

7. The applicant shall be afforded a right to rebut any testimony or evidence presented as public comment;

8. In the event new material evidence is introduced after the public hearing is closed, the presiding officer shall again open the public hearing for the limited purpose of addressing the new evidence, in which case the applicant shall again be afforded a right to rebut any additional testimony or evidence.

89. A decision may then be rendered on the merits of the application or matter before the City Council or Planning and Zoning Commission, and shall be based on written findings of fact and conclusions of law to be prepared by the staff and presented for adoption at the next regular meeting of the City Council or Planning and Zoning Commission; and

910. Any matter under consideration by the City Council or Planning and Zoning Commission may by a motion properly made, seconded, and passed, tabled to a date uncertain or continued to a date certain, at which time the matter will be taken up again for action or decision.

Section 2. Section 2.04.010.06 of the Hailey Municipal Code is amended by the deletion of the stricken language and addition of the underlined language, as follows:

2.04.010.06 ~~Robert's Rules of Order. All actions taken shall be pursuant to Robert's Rules of Order, except that an item may be discussed and deliberated upon without a motion.~~

Motions.

1. All actions and decisions of the City Council or Planning and Zoning Commission are formalized by the process of making and voting on motions. After a public hearing is closed, the City Council or Planning and Zoning Commission shall deliberate. After deliberation a motion shall be made and seconded. Further deliberation may occur once a motion is made and seconded. The chair shall ask for a motion and vote. Those Council Members or Commissioners in favor of the motion say "aye"; those Council Members or Commissioners opposed to the motion say "no".
2. After a motion is made and there has been discussion on the motion, if an amendment has been suggested and discussed, then a motion to amend the motion is required. A motion should be amended as follows:

- a. A Council Member or Commissioner makes a motion to amend stating the amendment.
 - b. A Council Member or Commissioner seconds the amendment.
 - c. Chair asks for a vote on the amendment.
 - d. If amendment carries, the Chair then asks for a vote on the “entire motion as amended.”
 - e. If amendment fails, Chair asks for a vote on the “original motion.”
3. If a motion has been voted on and the motion needs to be withdrawn, then a motion to withdraw the approved motion is required. A motion should be withdrawn as follows:
- a. A Council Member or Commissioner makes a motion to withdraw stating what motion is being withdrawn.
 - b. A Council Member or Commissioner seconds the motion to withdraw.
 - c. Chair asks for a vote on the motion to withdraw.
 - d. If the motion to withdraw carries, then a new motion can then be made, seconded and voted on.
4. If a motion has been voted on and if voting members believe it is appropriate to reconsider the motion, then a motion for reconsideration is required at the next scheduled regular meeting of the City Council or Planning and Zoning Commission. Except as otherwise provided herein, motions for reconsideration shall only be made by a Council Member or Commissioner. A motion for reconsideration should be made as follows:
- a. A Council Member or Commissioner who voted on the prevailing side of the motion in question has to make a motion for reconsideration stating what motion is being reconsidered.
 - b. A Council Member or Commissioner who voted on the prevailing side of the motion in question has to second.
 - c. Chair asks for a vote on the motion for reconsideration.
 - d. If the motion for reconsideration carries, deliberation can then occur on the matter and a new motion can be made, seconded and voted on.
5. An applicant may file a motion for reconsideration with the City Council or the Planning and Zoning Commission within fifteen (15) days of the date of the certificate of service on the findings of fact and conclusions of law. **A motion for reconsideration shall be limited to legal issues. New evidence shall not be a basis for reconsideration of a prior decision.** The applicant’s motion for reconsideration shall be heard at the next available hearing before the City Council or Planning and Zoning Commission. **If a motion for reconsideration is filed, the City Council or the Planning and Zoning Commission, as the case may be, shall first decide whether to grant a motion for reconsideration. If a motion for reconsideration is denied, the original decision shall remain in full force and effect. If a motion for reconsideration is granted, the City Council or the Planning and Zoning Commission, as the case may be, shall then conduct a public hearing**

allowing for legal notice to be provided, during which time the original decision may be remain in full force and effect or be modified. The time for an appeal shall be terminated by the filing of a timely motion for reconsideration which, if granted, could affect the findings of fact and conclusions of law. The time for an appeal begins to run when a motion for reconsideration is denied, or if granted, after the date of the certificate of service on the **final findings of fact and conclusions of law on the application.**

Section 3. Chapter 2.04 of the Hailey Municipal Code is amended by the addition of a new Section 2.04.010.07, as follows:

2.04.10.07 **Site Visits.** If the City Council or Planning and Zoning Commission wish to conduct a site visit, a motion should be made during a public hearing to conduct a site visit on a date certain. In such a case, the site visit should be conducted by the presiding officer and an audio recording should be maintained of the site visit.

Section 4. **Severability Clause.** If any section, paragraph, sentence or provision hereof or the application thereof to any particular circumstances shall ever be held invalid or unenforceable, such holding shall not affect the remainder hereof, which shall continue in full force and effect and applicable to all circumstances to which it may validly apply.

Section 5. **Repealer Clause.** All Ordinances or Resolutions or parts thereof in conflict herewith are hereby repealed and rescinded.

Section 6. **Effective Date.** This Ordinance shall be in full force and effect after its passage, approval and publication according to law.

PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL and approved by the Mayor this ____ day of _____, 2008.

Richard L. Davis, Mayor
City of Hailey

ATTEST:

Mary Cone, City Clerk

