

STAFF REPORT

TO: Hailey City Council

FROM: Mariel Platt, Planner 

RE: Final Plat – Barker

HEARING: October 12, 2009

Applicant: Richard Barker

Location: Lots 9-12 and south ½ of Lot 8, Block 61, Hailey Townsite (317 Spruce Street East)

Zoning: Limited Residential-1 (LR-1) within the Townsite Overlay

Note: Staff analysis is in lighter type.

Notice

Notice for the public hearing was published in the Idaho Mountain Express and mailed to property owners within 300 feet on September 23, 2009.

Application

Richard Barker, represented by Gordon Williams, has submitted an application for Final Plat approval for the subdivision of Lots 9-12 and the south ½ of Lot 8, Block 61, Hailey Townsite into 2 lots, 6,482 and 7,000 square feet respectively.

Section 3.4.1 of the Subdivision Ordinance allows for applications platting four or fewer residential building parcels to be reviewed through the short plat procedure. In this procedure, the Hearing Examiner or Commission reviews the preliminary plat only. Upon preliminary plan approval, the applicant may submit a final plat application within one year for a public hearing before the Council .

Procedural History

The application was heard by the Hailey Hearing Examiner on August 24, 2009 and approved with conditions.

SECTION 2 - PERMITS.

2.9 No permit for the construction of any building shall be issued upon any land for which all improvements required for the protection of health and the provision of safety, (including but not necessarily limited to an approved potable water system, an approved wastewater system to accept sewage, and asphalt paving of the streets) have not been installed, inspected, and accepted by the City of Hailey, with the following exception: Building permits may be issued for any building in a development for which plats have been recorded and security provided,

but the streets have not yet been completed with asphalt due to winter conditions. In such instances, the street shall be constructed as an all-weather surface to City Standards to the satisfaction of the City Engineer, and shall be kept clear to the satisfaction of the Fire Chief. No Final Inspection approval or Certificate of Occupancy shall be granted until all improvements, including asphalt, have been installed, inspected and accepted.

Notice of this requirement is hereby given to the applicant, and included as a recommended condition of approval.

SECTION 3 – PROCEDURE

3.3 Final Plat Approval.

The final plat, prepared by a Professional Land Surveyor, must be submitted within one (1) calendar year from the date of approval of the preliminary plat, unless otherwise allowed for within a phasing agreement or as otherwise provided herein. Plats not submitted for final approval within one (1) year or according to the phasing agreement; shall be considered expired and preliminary plat approval shall become null and void. The Council may extend the deadline for submitting the final plat upon holding a public hearing.

The preliminary plat application was heard by the Hailey Hearing Examiner on August 24, 2009. This is a short plat procedure; the final plat is permitted to go directly to the Council.

3.3.2 The administrator shall review the final plat application to ensure that the application submitted is consistent with the approved preliminary plat. The conditions imposed on the preliminary plat approval must be either completed or shown on plans or the plat prior to any public notice for final plat approval.

The final plat is consistent with the preliminary plat approved by the Hearing Examiner. Conditions of preliminary plat approval have been met or are carried over.

Hailey Hearing Examiner Conditions of Preliminary Plat Approval

a) All Fire Department and Building Department requirements shall be met.

This condition has been carried over.

b) All City infrastructure requirements shall be met as outlined in Section 5 of the Hailey Subdivision Ordinance. Detailed plans for all infrastructure to be installed or improved at or adjacent to the site shall be submitted for Department Head approval and shall meet City Standards where required. Infrastructure to be completed at the applicant's sole expense include, but will not be limited to, the following requirements and improvements:

1. **In lieu fees or sidewalks are required. If sidewalk improvements are made, it shall be installed along both Spruce Street and 4th Avenue, adjacent to the subject properties and shall be installed in accordance with the City Standards.**

The applicant has submitted an approved estimate for in-lieu sidewalks and requests that the Council consider this option.

2. **Water and sewer service to Lot 9A shall be installed to City Standards and shall include a sewer service tap inspection by the Wastewater Department.**

This condition has been met.

3. **If deemed necessary by the Water Department, insulation of the water line may be required**

This condition was not deemed necessary by the Water Department.

- c) **Issuance of permits for the construction of buildings within the proposed subdivision shall be subject to Section 2.9 of the Subdivision Ordinance.**

This condition has been carried over.

- d) **All improvements and other requirements shall be completed and accepted, or surety provided pursuant to Sections 3.3.7 and 5.9.1 of the Subdivision Ordinance, prior to recordation of the final plat.**

This condition has been carried over.

- e) **The final plat must be submitted within one (1) calendar year from the date of approval of the preliminary plat, unless otherwise allowed for within a phasing agreement.**

This condition has been carried over.

- f) **Any subdivision inspection fees due shall be paid prior to recording the final plat.**

The amount owed is \$1,000. This condition should be carried over.

- g) **Any application development impact fees shall be paid prior to recording the final plat.**

This condition should be carried over.

Department Comments

Life/safety: No comment was received.
Water and Sewer: No issues.
Engineering: No issues.

Standards of Evaluation

SECTION 4 – DEVELOPMENT STANDARDS

Development standards were reviewed in detail during the preliminary plat approval process. Please refer to the preliminary plat Findings of Fact and Decision. No changes have been made to the plat since preliminary plat approval.

SECTION 5 - IMPROVEMENTS REQUIRED.

- 5.1** It shall be a requirement of the Developer to construct the minimum improvements set forth herein and any required improvements for the subdivision, all to City Standards.
- 5.1.1** Six (6) copies of all improvement plans shall be filed with the City Engineer and made available to each department head. Upon final approval two (2) sets of revised plans shall be returned to the Developer at the pre-construction conference with the City Engineer's written approval thereon. One set of final plans shall be on-site at all times for inspection purposes and to note all field changes upon.
- 5.1.2** Prior to the start of any construction, it shall be required that a pre-construction meeting be conducted with the Developer or his authorized representative/engineer, the contractor, the City Engineer and appropriate City departments. An approved set of plans shall be provided to the Developer and contractor at or shortly after this meeting.
- 5.1.3** The Developer shall guarantee all improvements pursuant to this Section for no less than one year from the date of final acceptance by the City, except that parks shall be guaranteed and maintained by the Developer for a period of two years.
- 5.2** The Developer shall construct all streets, alleys, curb and gutter, lighting, sidewalks, street trees and landscaping, and irrigation systems to meet City Standards, the requirements of this ordinance, the approval of the Council, and to the finished grades which have been officially approved by the City Engineer as shown upon approved plans and profiles. The Developer shall pave all streets and alleys with an asphalt plant-mix, and shall chip-seal streets and alleys within one year of construction.
- 5.2.1** Street cuts made for the installation of services under any existing improved public street shall be repaired in a manner which shall satisfy the Street Superintendent, shall have been approved by the Hailey City Engineer or his authorized representative, and shall meet City Standards. Repair may include patching, skim coats of asphalt or, if the total area of asphalt removed exceeds 25% of the street area, the complete removal and replacement of all paving adjacent to the development. Street cut repairs shall also be guaranteed for no less than one year.

- 5.2.2 Street name signs and traffic control signs shall be erected by the Developer in accordance with City Standards, and the street name signs and traffic control signs shall thereafter be maintained by the City.

Not applicable.

- 5.2.3 Street lights in the Recreational Green Belt, Limited Residential, General Residential, and Transitional zoning districts are not required improvements. Where proposed, street lighting in all zoning districts shall meet all requirements of Chapter VIII B of the Hailey Zoning Ordinance.

Not applicable.

- 5.3 The Developer shall construct a municipal sanitary sewer connection for each and every developable lot within the development. The Developer shall provide sewer mains of adequate size and configuration in accordance with City Standards, and all federal, state, and local regulations. Such mains shall provide wastewater flow throughout the development. All sewer plans shall be submitted to the City Engineer for review and approval. At the City Engineer's discretion, plans may be required to be submitted to the Idaho Department of Environmental Quality (DEQ) for review and comments.

- 5.4 The developer shall construct a municipal potable water connection, water meter and water meter vault in accordance with City Standards, or other equipment as may be approved by the City Engineer, for each and every developable lot within the development. The Developer shall provide water mains and services of adequate size and configuration in accordance with City Standards, and all federal, state, and local regulations. Such water connection shall provide all necessary appurtenances for fire protection, including fire hydrants, which shall be located in accordance with the IFC and under the approval of the Hailey Fire Chief. All water plans shall be submitted to the City Engineer for review and approval. At the City Engineer's discretion, plans may be required to be submitted to the Idaho Department of Environmental Quality (DEQ) for review and comments.

This condition has been met.

- 5.4.1 Within the Townsite Overlay District, where water main lines within the alley are less than six (6) feet deep, the developer shall install insulating material (blue board insulation or similar material) for each and every individual water service line and main line between and including the subject property and the nearest public street, as recommended by the City Engineer.

The City Engineer has deemed this standard not applicable.

- 5.5 The Developer shall provide drainage areas of adequate size and number to meet the approval of the Street Superintendent and the City Engineer or his authorized representative.
- 5.6 The Developer shall construct each and every individual service connection and all necessary trunk lines, and/or conduits for those improvements, for natural gas, electricity, telephone, and cable television to the property line before placing base gravel for the street or alley.
- 5.7 The Developer shall improve all parks and Green Space areas as presented to and approved by the Commission and Council.
- Not applicable.
- 5.8 All improvements are to be installed under the specifications and inspection of the City Engineer or his authorized representative. The minimum construction requirements shall meet City Standards or the Department of Environmental Quality (DEQ) standards, whichever is the more stringent.
- 5.9 Installation of all infrastructure improvements must be completed by the Developer, and inspected and accepted by the City prior to signature of the plat by City representatives, or according to a phasing agreement. A post-construction conference shall be requested by the Developer and/or contractor and conducted with the developer and/or contractor, the City Engineer, and appropriate City departments to determine a punch list of items for final acceptance.
- 5.9.1 The Developer may, in lieu of actual construction, provide to the City security pursuant to Section 3.3.7, for all infrastructure improvements to be completed by Developer after the final plat has been signed by City representatives.
- 5.10 Prior to the acceptance by the City of any improvements installed by the Developer, three (3) sets of "as-built plans and specifications" certified by the Developer's engineer shall be filed with the City Engineer.

Summary and Suggested Conditions

The City Council shall hold a public hearing and approve, conditionally approve, or deny the final plat application. The following conditions are suggested to be placed on any approval of this application:

- a) All City infrastructure requirements shall be met as outlined in Section 5 of the Hailey Subdivision Ordinance. Detailed plans for all infrastructure to be installed or improved at or adjacent to the site shall be submitted for Department Head approval and shall meet City Standards where required. Infrastructure to be completed at the applicant's sole expense include, but will not be limited to, the following

requirements and improvements:

1. In lieu fees or sidewalks are required. If sidewalk improvements are made, improvements shall be installed along both Spruce Street and 4th Avenue, adjacent to the subject properties and shall be installed in accordance with the City Standards. If in lieu fees are accepted by the Council, the amount due is \$4,083.20 (110% of the estimate approved by the City Engineer).
- b) Issuance of permits for the construction of buildings within the proposed subdivision shall be subject to Section 2.9 of the Subdivision Ordinance.
- c) All improvements and other requirements shall be completed and accepted, or surety provided pursuant to Sections 3.3.7 and 5.9.1 of the Subdivision Ordinance, prior to recordation of the final plat.
- d) The final plat shall be recorded within one year of the date of final plat approval. The final plat submitted for signature shall conform to the requirements found in Article 50-1301 (et. seq.) of the Idaho Code (as amended) and to the requirements set forth by Blaine County for digital plat submittals. The applicant shall provide the City with a letter-size or ledger-size photocopy of the recorded plat showing the instrument number and date of recordation.
- e) A subdivision inspection fee in the amount of \$1,000 is due and shall be paid prior to recording the final plat.
- f) Any applicable development impact fees shall be paid prior to recording the final plat.

Motion Language

Approval:

Motion to approve Richard Barker's subdivision application for Final Plat approval of Lots 9-12 and the south ½ of Lot 8, Block 61, Hailey Townsite into 2 lots, 6,482 and 7,000 square feet respectively, finding that the project is in conformance with the Hailey Subdivision Ordinance No. 821, and all applicable requirements of the Hailey Zoning Ordinance No. 532, Hailey Comprehensive Plan and City Standards; with conditions () through ().

Denial:

Motion to deny Richard Barker's subdivision application for Final Plat approval of Lots 9-12 and the south ½ of Lot 8, Block 61, Hailey Townsite into 2 lots, 6,482 and 7,000 square feet respectively [the Council should cite which standards are not met and provided the reason why each identified standard is not met].

Continuation:

Motion to continue the public hearing upon Richard Barker's subdivision application for Final Plat approval of Lots 9-12 and the south ½ of Lot 8, Block 61, Hailey Townsite into 2 lots, 6,482 and 7,000 square feet respectively to _____ [the Council should specify a date].

AGENDA ITEM SUMMARY

DATE: 10/12/2009

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____



SUBJECT:

Rezone of Lots 4-10, Block 126

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

At our last meeting, I requested more time to prepare the development agreement(s) for the rezones of Lots 1 through 10, Block 126. Lots 1 through 3, Block 126, are owned by the City of Hailey (Wood River Rural Fire Station) and Lots 4 through 10, Block 126, are owned by the school district (former Silver Creek Alternative School site). I have drafted a development agreement for the school district property. I do not believe it is appropriate to require a development agreement for the Hailey property. I have also enclosed a proposed ordinance for a rezone of the school property.

Ned

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Case # _____
Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: _____ Phone # _____
Comments:

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

<input checked="" 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:

Make a motion to approve the Development Agreement and authorize the mayor to sign.
Make a motion to approve the rezone ordinance and conduct the first reading of the ordinance.

FOLLOW-UP REMARKS:

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is dated this ___ day of October, 2009, by and between the CITY OF HAILEY, IDAHO, a municipal corporation ("City") and the BLAINE COUNTY SCHOOL DISTRICT No. 61 ("Owner") (collectively the City and Owner are referred to as the "Parties").

RECITALS

A. The City is a municipal corporation possessing all powers granted to municipalities under the applicable provisions of the Idaho Code, including the power to zone and enforce zoning within the boundaries of the property, and the power to contract.

B. The Blaine County School District No. 61 is the owner in fee simple of a parcel of property located in the City of Hailey, Idaho, more particularly described as Lots 4 through 10, inclusive, Block 126 Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder (the "Property").

C. The Owner has filed an application to rezone the Property from General Residential (GR) to Limited Business (LB), all in accordance with and pursuant to the provisions of the City's Zoning Ordinance. The Property is also subject to the Townsite Overlay (TO) zoning district and will remain subject to Townsite Overlay (TO) zoning district upon the rezone to Limited Business (LB).

D. The Owner intends to operate a Technology Department. The use of the building would be divided into the following four components: 1) receiving and distribution of new computer equipment as well as service of existing computer equipment for the entire school district, 2) software and test score managing for the district, 3) teacher training on the use of software and computers, and 4) housing and maintenance of the main computer server facilities for the district. Schools are a permitted use in GR, but the definition of School, listed in the Hailey Zoning Ordinance, is not appropriate for the proposed use; therefore, a rezone to LB would allow the use to be considered under the permitted use of "other education services."

E. The City upon acceptance and execution of this Agreement has duly noticed, and shall pass an ordinance, and in conformity with the laws of the City of Hailey, and the State of Idaho, thereby zoning the Property as Limited Business (LB).

F. The Parties agree the Property shall be developed in accordance with the terms and conditions of this Agreement and any additional conditions and requirements imposed by the City during the approval of the rezone application.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises, agreements, terms and conditions set forth herein, the Parties covenant and agree as follows:

1) Incorporation of Recitals. The Recitals set forth above are an integral part of this Agreement and are fully incorporated herein by this reference.

2) Zoning Designation. Upon approval of this Agreement the Property shall be classified and zoned Limited Business (LB). The Parties acknowledge that rezoning of the Property cannot exist solely by virtue of this Agreement.

3) Restricted Use. In further consideration of the terms and conditions herein, the Owner agrees that the Property will be restricted in use to the LB district's permitted and accessory uses, and the public use and public service facility conditional uses.

4) Reversion. In further consideration of the terms and conditions herein, the Owner agrees that the Property will automatically revert back to a General Residential (GR) zoning district with the overlay zoning district of the Townsite Overlay (TO) if the Property is not used as a public use or public service facility.

5) Parking Improvements. The Owner shall improve the on-site parking area at the rear of the Property with six (6) parallel parking spaces, install a sidewalk in front of the Property, and improve the parking area of the Third Avenue right-of-way with 13 regular parking spaces plus one (1) ADA parking space in front of the Property. On-site parking shall be developed in accordance with the Findings of Fact, and Conclusions of Law, adopted by the City on the 28th day of September, 2009, and the Hailey City Standards, in the following manner:

- a) Surfacing shall be compacted road mix per the city standards of a street shoulder.
- b) The road mix surface will be large enough, in width and length, per the drawings submitted by the architect for (6) total vehicles to park; which is (3) to the north of the middle/ lowest landing of the stairway and (3) spaces to the south. No stall striping will be required.
- c) A drainage swale shall be installed and continuous on a north-south axis just east of the west property line (on the Property) between the parallel parking spaces and the Property's west boundary.
- d) The improved area shall consist of parallel parking spaces on the Property to connect with/ align to the edge of existing asphalt in the City right-of-way.

6) Police Powers. Except as otherwise expressly provided herein, nothing contained herein is intended to limit the police powers of the City or its discretion in review of subsequent applications regarding development of the Property. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation not expressly provided for herein, including, without limitation, applicable building codes, fire codes, zoning ordinance and subdivision ordinance requirements for the Property.

7) Amendment. This Agreement may be revised, amended, or canceled in whole or in part, only by means of a written instrument executed by the applicable parties hereto and as evidenced by amended plats and development plans.

8) Remedies. In the event the Property is not developed in accordance with this Agreement, or if Owner, or its successors and assigns, if any, materially breach, default or fail to perform any material obligation under this Agreement and do not cure such breach, default or failure within thirty (30) days after written notice from City of the breach, default or failure, or in the case of a breach which is incapable of being cured within a thirty (30) day time period, the Owner, fails within thirty (30) days after written notice from City to commence to cure the same and thereafter to prosecute the cure of such breach with due diligence and continuity, the City has the right to take any and all remedies allowed at law or equity against the defaulting party. Subject to the conditions set forth herein, in the event of a breach of this Agreement, in addition to all other remedies of law or in equity, this Agreement shall be enforceable by specific performance by either party hereto. All remedies shall be cumulative.

9) Notices. All notices and communications under this Agreement shall be in writing and shall be (i) delivered in person or (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or by overnight express carrier, addressed in each case to the party's address set forth in the introductory paragraph of this Agreement, or (iii) sent by facsimile with the original to follow by mail in the manner described above. It is provided, however, that any party may change its respective address for purposes of receipt of any such communication by giving ten (10) days prior written notice of such change to the other party hereto in the manner provided above. All notices sent pursuant to the terms of this paragraph shall be deemed received (i) if sent by overnight, express carrier, on the next business day immediately following the day sent, (ii) if sent by registered or certified mail, on the third business day following the day sent or (iii) if sent by facsimile on the date so sent.

10) Successors and Assigns; Covenant Running with Land. This Agreement shall inure to the benefit of the City and Owner and their respective heirs, successors and assigns. This Agreement, including all covenants, terms, and conditions set forth herein, shall be and shall be and is hereby declared a covenant running with the land with regard to the Property, or any portion thereof, and is binding on both parties to this Agreement as well as their respective heirs, successors and assigns.

11) Recordation and Release. This Agreement shall be recorded with the Blaine County Recorder by the Owner, at its cost.

12) No Waiver. In the event that the City or Owner, or their successors and assigns, do not strictly comply with any of the obligations and duties set forth herein, thereby causing a default under this Agreement, any forbearance of any kind that may be granted or allowed by Owner, the City, or their successors and assigns, to the other party under this Agreement, shall not in any manner be deemed or construed as waiving or surrendering any of the conditions or covenants of this Agreement with regard to any subsequent default or breach.

13) Partial Invalidity. In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of any law, or by reason of the interpretation placed thereon by any court or other governmental body, this Agreement shall be construed as not containing such provision and the invalidity of such provision

shall not affect the validity of any other provision hereof, and any and all other provisions hereof which otherwise are lawful and valid shall remain in full force and effect.

14) Entire Agreement. This Agreement sets forth the entire understanding of the Parties, and shall not be changed or terminated orally. Any other agreements between the parties, express or implied, are hereby cancelled and of no further force nor effect. It is understood and agreed by the parties hereto that there are no verbal or written promises, agreements, stipulations or other representations of any kind or character, express or implied, other than as set forth in writing in this Agreement.

15) Authority. Each of the persons executing this Agreement represents and warrants that he has the lawful authority and authorization to execute this Agreement, as well as all deeds, easements, liens and other documents required hereunder, for and on behalf of the entity executing this Agreement.

16) No Third Party Rights. This Agreement shall be for the sole benefit of the Parties and/or their successors and assigns, and no covenants or agreements herein shall be for the benefit of or create any rights in favor of any third parties.

17) Governing Law. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Idaho.

18) Time of Essence. Time is of the essence in this Agreement.

19) Necessary Acts. Each party agrees to perform any further acts and execute any documents that may be reasonably necessary to effect the purpose of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written herein.

“CITY”

CITY OF HAILEY

By: _____
Richard L. Davis, Mayor

ATTEST:

Mary Cone, Hailey City Clerk

HAILEY ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING HAILEY'S ZONING ORDINANCE, ORDINANCE NO. 532, AND THE OFFICIAL ZONING MAP INCORPORATED THEREIN, BY CHANGING THE ZONING DISTRICT DESIGNATION OF THE HAILEY ZONING MAP, LOTS 4 THROUGH 10, BLOCK 126, HAILEY TOWNSITE, FROM GENERAL RESIDENTIAL (GR) TO LIMITED BUSINESS (LB); PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the Hailey City Council has found that the following amendment to the Hailey Official Zoning Map will generally conform to the Hailey Comprehensive Plan;

WHEREAS, the Hailey City Council has found that essential public facilities and services are available to support the full range of proposed uses without creating excessive additional requirements at public cost for the public facilities and services;

WHEREAS, the Hailey City Council has found that the proposed uses are compatible with the surrounding area;

WHEREAS, the Hailey City Council has found that the amendment will promote the public health, safety and general welfare of the general public; and

WHEREAS, the City of Hailey has entered into an Agreement, subject o Section 67-6511A of Idaho Code, with the owner of said property and for the purpose of regulating the use of said property.

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

Section 1. Hailey Ordinance No. 532 and Hailey Official Zoning Map incorporated therein are hereby amended by changing the zoning district designation of Lots 4 through 10, Block 126, Hailey Townsite, from General Residential (GR) to Limited Business (LB), subject to a development agreement to be recorded with the Blaine County Recorder, pursuant to Idaho Code Section 67-6511A, and Hailey Zoning Ordinance Section 14.8.

Section 2. Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 3. All City of Hailey ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

Section 4. This ordinance shall be in full force and effect from and after the required three (3) readings, approval, and publication according to law.

PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED BY THE MAYOR
THIS ____ DAY OF _____, 2009.

Richard L. Davis, Mayor, City of Hailey

Attest:

Mary Cone, City Clerk

Introduction

The purpose of this document is to provide a comprehensive overview of the project's objectives, scope, and the methodology used to achieve the desired outcomes. This document is intended for the project team and stakeholders, providing a clear understanding of the project's goals and the steps required to complete it.

The project is designed to address the current challenges faced by the organization and to implement a solution that will improve efficiency and reduce costs. The project team has conducted extensive research and analysis to identify the most effective approach to solving these issues.

The project will be implemented in a phased manner, starting with the initial planning and design phase. This will be followed by the development and testing of the solution, and finally, the deployment and evaluation of the results. The project team will provide regular updates and reports to the stakeholders throughout the project.

The project team is committed to ensuring that the project is completed on time and within budget. We will maintain open communication with all stakeholders and will be available to answer any questions or concerns. We believe that this project will have a significant positive impact on the organization and its future success.

The project team consists of experienced professionals with a proven track record in project management and implementation. We have the necessary resources and expertise to successfully complete this project. We are confident that the project will meet all the requirements and deliver the expected results.

The project team will work closely with the stakeholders to ensure that the project is aligned with their needs and expectations. We will provide regular updates and reports to keep everyone informed of the project's progress. We will also be available to provide any additional information or support that may be required.

The project team is committed to transparency and accountability. We will provide a clear and concise report on the project's progress and results. We will also be available to discuss any issues or concerns that may arise. We believe that this project will be a success and we are excited to see the results.

The project team is committed to continuous improvement and learning. We will evaluate the project's performance and identify areas for improvement. We will use this information to inform future projects and ensure that we are always providing the best possible service to our stakeholders.

We thank you for your interest in this project and for your support. We are confident that this project will be a success and we are excited to see the results. We will continue to work hard to ensure that the project is completed on time and within budget.

AGENDA ITEM SUMMARY

DATE: 10/12/2009

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: 

SUBJECT:

Rezone of Lots 1-3, Block 126

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

At our last meeting, I requested more time to prepare the development agreement(s) for the rezones of Lots 1 through 10, Block 126. Lots 1 through 3, Block 126, are owned by the City of Hailey (Wood River Rural Fire Station) and Lots 4 through 10, Block 126, are owned by the school district (former Silver Creek Alternative School site). I do not believe it is appropriate to require a development agreement for the Hailey property. For the Hailey property, I believe the Council could either rezone the property by adopting the enclosed ordinance or decline the rezone request at this time.

Ned

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Case # _____
Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: _____ Phone # _____
Comments:

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

City Attorney _____ Clerk / Finance Director _____ Engineer _____ Building _____
_____ Library _____ Planning _____ Fire Dept. _____
_____ Safety Committee _____ P & Z Commission _____ Police _____
_____ Streets _____ Public Works, Parks _____ Mayor _____

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Make a motion to approve the rezone ordinance and conduct the first reading of the ordinance, or elect not to approve the rezone.

FOLLOW-UP REMARKS:

HAILEY ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING HAILEY'S ZONING ORDINANCE, ORDINANCE NO. 532, AND THE OFFICIAL ZONING MAP INCORPORATED THEREIN, BY CHANGING THE ZONING DISTRICT DESIGNATION OF THE HAILEY ZONING MAP, LOTS 1, 2, AND 3, BLOCK 126, HAILEY TOWNSITE, FROM GENERAL RESIDENTIAL (GR) TO LIMITED BUSINESS (LB); PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the Hailey City Council has found that the following amendment to the Hailey Official Zoning Map will generally conform to the Hailey Comprehensive Plan;

WHEREAS, the Hailey City Council has found that essential public facilities and services are available to support the full range of proposed uses without creating excessive additional requirements at public cost for the public facilities and services;

WHEREAS, the Hailey City Council has found that the proposed uses are compatible with the surrounding area;

WHEREAS, the Hailey City Council has found that the amendment will promote the public health, safety and general welfare of the general public; and

WHEREAS, the City of Hailey has entered into an Agreement, subject o Section 67-6511A of Idaho Code, with the lessee of said property and for the purpose of regulating the use of said property.

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

Section 1. Hailey Ordinance No. 532 and Hailey Official Zoning Map incorporated therein are hereby amended by changing the zoning district designation of Lots 1, 2, and 3, Block 126, Hailey Townsite, from General Residential (GR) to Limited Business (LB).

Section 2. Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 3. All City of Hailey ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

Section 4. This ordinance shall be in full force and effect from and after the required three (3) readings, approval, and publication according to law.

PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED BY THE MAYOR
THIS ____ DAY OF _____, 2009.

Richard L. Davis, Mayor, City of Hailey

Attest:

Mary Cone, City Clerk

AGENDA ITEM SUMMARY

DATE: 10/12/2009

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____



SUBJECT:

Hailey Ordinance No. 1031 (Nuisance Ordinance)

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

See attached memo.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Case # _____
Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: _____ Phone # _____
Comments: _____

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

<input checked="" 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 on the proposed ordinance. If the Council wishes to proceed with the adoption of proposed Hailey Ordinance No. 1031, make a motion to adopt the proposed nuisance and conduct the first reading of Hailey Ordinance No. 1031.

FOLLOW-UP REMARKS:

MEMORANDUM

TO: Mayor Rick Davis and Hailey City Council Members

FROM: Ned C. Williamson

DATE: October 12, 2009

RE: Proposed Nuisance Ordinance

I want to address several issues involving the proposed nuisance ordinance. First and foremost, I was asked to redraft our present ordinance codified as Chapter 8.08 following a court decision in a criminal case. In that case, the magistrate orally opined that the definition of a nuisance was void for vagueness. Specifically, the court found the phrase "interferes with the reasonable enjoyment of property by neighbors" was vague. By the way, this language is consistent with state law. In my research, I found that many other cities used the general definitions found in state law for a nuisance but then the cities specifically enumerate examples of nuisances. I believe that approach is legal and will satisfy the court's concern about vagueness.

Second, I would like to outline some important concepts about nuisances. A nuisance can be treated as a public nuisance or a private nuisance. Courts have created several definitions of a public nuisance and a private nuisance. In general terms, a public nuisance must affect an interest common to the general public and may be prosecuted as a crime, while a private nuisance is peculiar to one person and cannot be prosecuted as a crime. As drafted, the ordinance may be used by the city in either a civil or criminal action. In the event the city declined to enforce the ordinance for various reasons (*e.g.*, lack of resources or the violation was not substantial), then a private property owner could seek a private action to remove the nuisance. *See* Section 8.04.090.

Traditionally, nuisance ordinances allow for the remedy of abatement of a nuisance. Before there is an abatement of a nuisance, the property owner is entitled to due process of law, which specifically means notice and an opportunity to be heard. Section 8.04.040 outlines the procedural due process requirements. Following due process, a governmental entity is then entitled to summarily abate the nuisance. Court cases do not necessarily require a court order to abate a nuisance.

Finally, I will address the Council comments from the last hearing and when appropriate, I will highlight pertinent legal issues. I was not present for the last hearing but the City Administrator advised me of the Council's comments. I will address most of those comments. The changes are found in the redlined version of the ordinance in the Council's packet.

- Section 8.04.020 adds the definition of "Public Place."

Mayor Rick Davis
Hailey City Council Members
October 12, 2009
Page 2

- Section 8.04.030(2) includes the storage of vehicles on property other than driveways or designated parking spaces. I was told that the Council wanted to include parking on lawns as a nuisance. This provision may be controversial and may be difficult to enforce.
- Section 8.04.030(11) requires a potential injury to persons or property.
- Section 8.04.030(12) permits the repair of a vehicle for less than 30 days.
- Section 8.04.030(14) creates an exception for domestic animals.
- Section 8.04.070 allows abatement without a court order if the nuisance is an immediate health hazard. In all other cases, abatement would require a court order. In both cases (emergency or non-emergencies), the city would still be required to provide due process consisting of notice and an opportunity to be heard. As noted earlier in this memo, abatement may be ordered by a governmental entity without court order, but only if the government provided due process. The proposed ordinance provides even greater protection to property owners in non-emergency cases because abatement would only happen after judicial involvement.
- Section 8.04.090 now includes the language, which was previously in Section 8.04.070, allowing the city to either initiate a civil or criminal action.

I have had further discussions with Council Member Haemmerle about his concerns with the proposed ordinance. Council Member Haemmerle believes private individuals should be able to pursue a private nuisance action if the city does not pursue a civil or criminal action. Accordingly, I revised the definition of "Nuisance" to delete the reference to a public nuisance and expanded the scope of the enumerated nuisances so that a nuisance could occur if there was impact from a Public Place or adjacent property. Those changes are redlined. *See Sections 8.04.030(1)(2)(10) and (11).*

Please contact me if you have any questions in advance of Monday's meeting. Thank you.

HAILEY ORDINANCE NO. 1031

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, REPEALING CHAPTERS 8.04 AND 8.08 OF THE HAILEY MUNICIPAL CODE, AND REPLACING CHAPTER 8.04 OF THE HAILEY MUNICIPAL CODE TO PROVIDE A PURPOSE SECTION, TO PROVIDE DEFINITIONS, TO ENUMERATE SPECIFIC NUISANCES, TO ESTABLISH A NUISANCE ABATEMENT NOTICE, TO REQUIRE ABATEMENT OF A NUISANCE, TO PROVIDE AN APPEAL PROCESS, TO ALLOW THE COLLECTION OF ABATEMENT COSTS BY THE CITY, TO ESTABLISH PROHIBITED ACTS, AND TO PROVIDE A PENALTY PROVISION FOR VIOLATIONS OF CHAPTER 8.04 OF THE HAILEY MUNICIPAL CODE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the City of Hailey has previously adopted Chapter 8.08 of the Hailey Municipal Code, which regulates the public nuisances;

WHEREAS, in order to promote the health, safety and welfare of the general public, the Mayor and the City Council of the City of Hailey desire to amend Title 8 of the Hailey Municipal Code by repealing Chapter 8.08 and replacing it with a new Chapter 8.04, to provide for regulation of public nuisances;

WHEREAS, the City of Hailey also desires to amend Chapter 8.08 of the Hailey Municipal Code to provide for a procedure to abate public nuisances; and

WHEREAS, the City of Hailey also desires to consolidate the Chapters 8.04 and 8.08 into a new Chapter 8.04.

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

Section 1. Chapters 8.04 and 8.08 of the Hailey Municipal Code are hereby repealed in their entirety and replaced with a new Chapter 8.04, as follows:

Chapter 8.04

HEALTH AND SAFETY

Sections:

8.04.010	Purpose
8.04.020	Definitions
8.04.030	Nuisances Enumerated
8.04.040	Nuisance Abatement Notice
8.04.050	Abatement Required
8.04.060	Appeal
8.04.070	Abatement by City—Costs
8.04.080	Prohibited Acts

8.04.090 Violation—Penalty

8.04.010 Purpose. It is the purpose of this chapter to promote the public health, safety and general welfare by regulating public nuisances within the city, by providing for the abatement of such nuisances, by prohibiting those conditions that create health or safety hazards, by prohibiting those conditions which interfere with the enjoyment of public or private property, by controlling the deposit and burning of litter, and by prohibiting littering.

8.04.020 Definitions. For purposes of this Chapter 8.04, the following capitalized words and phrases shall apply as defined herein:

“Building Materials” shall mean and include lumber, plumbing materials, wallboard, sheet metal, plaster, brick, cement, asphalt, concrete block, roofing material, cans of paint and similar materials.

“Garbage” includes all putrescible waste, except sewage and body waste, including waste from accumulated animal food or vegetable matter, and including waste that attends the preparation, use, cooking, dealing in or storing meat, fish, fowl, fruit and vegetables that shall include all of such wastes or accumulations of vegetable matter of residences, restaurants, hotels and places where food is prepared for human consumption. Garbage shall not include recognized industrial by-products.

“Garbage Container” shall mean any and all containers and cans used for the storage and/or collection of waste, Refuse, Garbage and/or Rubbish.

“Junk” shall mean all appliances or parts thereof, all parts of motor vehicles, tires, all iron or other metal, plastics, glass, paper, cardboard, rubber, lumber, wood (excepting stacked firewood), mattresses, disabled trailers or parts thereof, all of which meet one of the following requirements:

- (a) Are discarded;
- (b) Are unusable;
- (c) Are broken; or
- (d) Have not been used for their primary and original purpose for a period of six months.

“Nuisance” shall mean any condition or use of property which a) injures or endangers the comfort, health or safety of others, b) is indecent, or offensive to the senses, c) obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, stream, canal, or basin, or any public park, square, street, alley, sidewalk or highway, or d) is enumerated to be a Nuisance by Section 8.04.030 of the Hailey Municipal Code,

Deleted: be considered a public nuisance and shall

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“Owner” and “Occupant,” wherever used in this chapter, may be used interchangeably, and shall mean every person in possession, charge or in control of any dwelling, flat, roominghouse, or any eating place, shop, place of business, manufacturing or business establishment where Garbage or other Refuse is created or accumulated.

“Public Place” shall mean any property owned by, or dedicated to, the City of Hailey for the purposes of providing city services and general circulation to the public. Such rights-of-way include, but are not limited to public streets, alleys and sidewalks.

“Refuse” shall mean solid wastes, including Garbage and Rubbish.

“Rubbish” shall mean Refuse other than Garbage, tin cans, bottles, leaves, weeds and cuttings from trees, lawns, shrubs, and gardens or other waste materials produced in the normal course of doing business, or everyday living. Rubbish shall not include recognizable industrial by-products.

“Street Tree” shall mean any tree, shrub, or other woody vegetation on lands within City of Hailey street rights-of-way.

“Waste” means unwanted solid, liquid, or gaseous materials.

8.04.030 Nuisances Enumerated. Without limitation of the generality of the definition of Nuisance, the following acts, omissions, conditions and things are declared to be and constitute a Nuisance:

(1) Storing or accumulating, or permitting the storage or accumulation, of Junk on any premises where the Junk is exposed to view from any Public Place, or adjacent property.

Deleted: public place

(2) Except as otherwise provide, the storing or accumulating, or permitting the storage or accumulation, of automobiles, trucks or other motor vehicles, or trailers or campers on any property except on driveways or designated parking spaces where such vehicles, trailers or campers are exposed to view from any Public Place or adjacent property; provided, however, occasional parking of vehicles, trailers and campers on property not on driveways or designated parking spaces for purposes of delivery or maintenance shall not be considered a Nuisance.

(3) The accumulation, or permitting the accumulation of, tin cans, bottles, trash, litter, Waste or Refuse of any nature on any premises, or any dangerous accumulation of weeds, trash, dirt, filth, waste shrubs, lawn or yard trimmings, except in Garbage Containers maintained for regular collection. Regularly maintained compost piles shall not be considered a Nuisance.

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(4) Permitting the existence of i) any dilapidated, abandoned or partially destroyed building or structure, or ii) any unused building or structure which is not properly secured from entry, or failing to materially complete the exterior of any building or structure commenced and left unfinished for a period of six (6) months or more.

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(5) Storing, or permitting to be stored, any toxic, radioactive, caustic, flammable, explosive or other dangerous or hazardous substances, except when stored in compliance with the requirements of all regulatory agencies having jurisdiction.

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(6) Permitting the existence of any putrid, unsound or unwholesome bones, meat, hides or skins, or the whole or any part of any dead animal, fish or fowl.

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(7) Privies, vaults, cesspools, sumps, pits, excavations or like places which are not securely protected, or which are foul or malodorous.

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(8) Leaving or permitting to remain outside of any dwelling, building, or other structure, or within any unoccupied or abandoned building, dwelling, or other structure, under the control of any person, and in a place accessible to the public, any abandoned, unattended or discarded icebox, freezer, refrigerator or other container which has an airtight door or

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lid, snap lock or other locking device which may not be released from the inside, without first removing such door or lid, snap lock or other locking device from such icebox, freezer, refrigerator or container.

(9) Any unguarded or abandoned pit, well or hole dangerous to life or of more than two feet (2') in depth on any unenclosed lot, without substantial covering, protection or fencing.

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(10) The accumulation, or permitting the accumulation, of Building Materials or objects of any nature where the same endangers property or safety, or constitutes a fire hazard, or where the Building Materials are exposed to view from any Public Place or adjacent property before or after the duration of a valid building permit.

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Deleted: public place

(11) The existence of any fence or other structure or thing on private property abutting or fronting upon any Public Place or adjacent property which is in a sagging, leaning, decayed or otherwise dilapidated or unsafe condition and which may injure persons or property on a Public Place or adjacent property.

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(12) The existence or maintenance on any premises of a storage area, junkyard or dumping ground for the wrecking or disassembling of automobiles, trucks, trailers, house trailers, boats, tractors or other vehicle or machinery of any kind, or for the storing or leaving of worn out, wrecked, inoperative or abandoned automobiles, trucks, trailers, house trailers, boats, tractors or other vehicle or machinery of any kind or of any major parts thereof; provided, however that an automobile wrecking yard or other junkyard, or storage area for machinery or equipment where the same are permitted by the city zoning regulations or where the same are being used by contractors or builders or by other persons during the construction of a project at the site is not a Nuisance; and further provided that the repair of a vehicle by the owner of property for a period not to exceed thirty (30) day is not a Nuisance.

(13) Visible vehicle tires not mounted on a vehicle, vehicle bodies or parts, bed mattresses or springs, water heaters or other large household appliances.

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(14) Animal manure in any quantity which creates a public health hazard, other than manure from domesticated pets; provided, however, animal manure may be used on a property in such a manner and for such purposes as are compatible with customary methods of good husbandry.

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(15) Any loud and unnecessary noises, as enumerated in Section 9.04.030 of the Hailey Municipal Code, as amended.

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(16) All other uses or structures which are declared to be Nuisances by city ordinance, or building, fire or life safety codes.

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8.04.040 Nuisance Abatement Notice.

A. If it is determined that a Nuisance exists on any lot, place or area, or any street, sidewalk or public right-of-way abutting the same, the city shall cause a notice to be issued to abate such Nuisance. Such notice shall contain a description of the property in terms reasonably sufficient to identify the location of the Nuisance, describe the Nuisance in terms reasonably sufficient to identify the same, direct abatement of the Nuisance, and specify the penalty provisions and appeal process as herein provided.

B. The abatement notice may be served in the following manner:

1. By personal service on the Owner of the lot, place or area, if the Owner lives within the city, and by personal service on the Occupant or person in charge or control of the property, if such person can be identified; or,

2. If the Owner does not live within the city, by registered mail to the Owner at the address shown on the last available assessment roll, or as otherwise known, and, by personal service on the Occupant or person in charge or control of the property, if such person can be identified; or

3. Should the Owner not be known or have an available address, the posting at a conspicuous place on the land, on abutting public right-of-way, and the publication of an advertisement at least once a week, for a period of two weeks, in a newspaper of general circulation, and by personal service on the Occupant or person in charge or control of the property, if such person can be identified. The newspaper advertisement shall be a general notice that the property has been posted and shall contain a general statement of the effect of such posting.

8.04.050 Abatement Required. It shall be the duty of the Owner, or person occupying or controlling any lot, place or area in the city which has been declared a Nuisance as provided herein, within fifteen (15) days of posting, mailing or personal service of the Nuisance abatement notice to remove the Nuisance. Upon the failure, neglect or refusal of any Owner or Occupant so notified to remove the Nuisance, the city may cause legal action to be taken.

8.04.060 Appeal. Within fifteen (15) days from the date of posting, mailing or personal service of the required Nuisance abatement notice to the Owner or person occupying or controlling such lots or areas affected, such Owner or persons may appeal to the city council. Such appeals shall be in writing and shall be filed with the city clerk. At the time of filing an appeal, the appellant shall pay a fee for the appeal as established by resolution. At the regular meeting of the city council, not less than ten (10) days nor more than thirty (30) days thereafter, the city council shall proceed to hear and pass upon such appeal and the decision of the city council thereupon shall be final and conclusive.

8.04.070 Abatement by City – Costs. ~~If a Nuisance is deemed to be an immediate health hazard, the city may proceed with the removal work specified in the notice for removal of such a Nuisance, and the cost of the work shall be paid by the Owner or Occupant or other person in control of the property. Upon the failure, neglect or refusal of any Owner or Occupant so notified to remove the Nuisance as required by court order, the city may proceed with the removal work specified in the notice for removal of such a Nuisance, and the cost of the work shall be paid by the Owner or Occupant or other person in control of the property. The expenses of removal by the city of any Nuisance found under the provisions of this chapter shall constitute a lien upon the property.~~

Deleted: Upon the failure, neglect or refusal of any Owner or Occupant so notified to remove the Nuisance within the time specified herein

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Deleted: The city may, at its option, institute a civil action for the removal and the abatement of such Nuisance, or may institute a criminal action under this Chapter 8.04.

8.04.080 Prohibited Acts.

A. It is unlawful for an Owner or Occupant to fail, neglect or refuse to remove a Nuisance from a property within the City of Hailey within the time set forth in an abatement notice served upon the Owner or Occupant in accordance with Section 8.04.040(B), above.

B. It is unlawful for any person to throw or deposit, or cause to be thrown or deposited upon any public street, alley, highway, ground, sidewalk, or any private vacant lot within the City of Hailey, any Refuse or Waste.

C. It is unlawful for any person to burn or cause to be burned on any public street or alley within the City of Hailey any Refuse or Waste.

C. It is unlawful for any person to dump, deposit or place any Garbage, Refuse, Waste or Rubbish on private property or in any Garbage Container within the City of Hailey without the authorization of the Owner or Occupant.

8.04.090 Violation-Penalty. Any person who violates any provision of this Chapter shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than one thousand dollars (\$1000.00) or imprisoned in the county jail for a period of not more than six (6) months, or by both such fine and imprisonment. The city may, at its option, institute a civil action for the removal and the abatement of such Nuisance, or may institute a criminal action under this Chapter 8.04. The rights and remedies provided by this ordinance are cumulative and the use of any one right or remedy shall not preclude the City of Hailey from pursuing any or all other remedies the city may have by law, statute, ordinance or otherwise. This ordinance does not preclude the right of a private party to seek private enforcement of this ordinance against a party violating this Ordinance, but does not provide any private right of enforcement against the city for failure to enforce the provisions of this ordinance.

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Section 2. 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 3. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 4. This Ordinance shall be in full force and effect from and 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 _____, 2009.

Richard L. Davis, Mayor, City of Hailey

Attest:

Mary Cone, City Clerk

HAILEY ORDINANCE NO. 1031

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, REPEALING CHAPTERS 8.04 AND 8.08 OF THE HAILEY MUNICIPAL CODE, AND REPLACING CHAPTER 8.04 OF THE HAILEY MUNICIPAL CODE TO PROVIDE A PURPOSE SECTION, TO PROVIDE DEFINITIONS, TO ENUMERATE SPECIFIC NUISANCES, TO ESTABLISH A NUISANCE ABATEMENT NOTICE, TO REQUIRE ABATEMENT OF A NUISANCE, TO PROVIDE AN APPEAL PROCESS, TO ALLOW THE COLLECTION OF ABATEMENT COSTS BY THE CITY, TO ESTABLISH PROHIBITED ACTS, AND TO PROVIDE A PENALTY PROVISION FOR VIOLATIONS OF CHAPTER 8.04 OF THE HAILEY MUNICIPAL CODE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the City of Hailey has previously adopted Chapter 8.08 of the Hailey Municipal Code, which regulates the public nuisances;

WHEREAS, in order to promote the health, safety and welfare of the general public, the Mayor and the City Council of the City of Hailey desire to amend Title 8 of the Hailey Municipal Code by repealing Chapter 8.08 and replacing it with a new Chapter 8.04, to provide for regulation of public nuisances;

WHEREAS, the City of Hailey also desires to amend Chapter 8.08 of the Hailey Municipal Code to provide for a procedure to abate public nuisances; and

WHEREAS, the City of Hailey also desires to consolidate the Chapters 8.04 and 8.08 into a new Chapter 8.04.

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

Section 1. Chapters 8.04 and 8.08 of the Hailey Municipal Code are hereby repealed in their entirety and replaced with a new Chapter 8.04, as follows:

Chapter 8.04

HEALTH AND SAFETY

Sections:

8.04.010	Purpose
8.04.020	Definitions
8.04.030	Nuisances Enumerated
8.04.040	Nuisance Abatement Notice
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8.04.060	Appeal
8.04.070	Abatement by City—Costs
8.04.080	Prohibited Acts

8.04.090 Violation—Penalty

8.04.010 Purpose. It is the purpose of this chapter to promote the public health, safety and general welfare by regulating public nuisances within the city, by providing for the abatement of such nuisances, by prohibiting those conditions that create health or safety hazards, by prohibiting those conditions which interfere with the enjoyment of public or private property, by controlling the deposit and burning of litter, and by prohibiting littering.

8.04.020 Definitions. For purposes of this Chapter 8.04, the following capitalized words and phrases shall apply as defined herein:

“Building Materials” shall mean and include lumber, plumbing materials, wallboard, sheet metal, plaster, brick, cement, asphalt, concrete block, roofing material, cans of paint and similar materials.

“Garbage” includes all putrescible waste, except sewage and body waste, including waste from accumulated animal food or vegetable matter, and including waste that attends the preparation, use, cooking, dealing in or storing meat, fish, fowl, fruit and vegetables that shall include all of such wastes or accumulations of vegetable matter of residences, restaurants, hotels and places where food is prepared for human consumption. Garbage shall not include recognized industrial by-products.

“Garbage Container” shall mean any and all containers and cans used for the storage and/or collection of waste, Refuse, Garbage and/or Rubbish.

“Junk” shall mean all appliances or parts thereof, all parts of motor vehicles, tires, all iron or other metal, plastics, glass, paper, cardboard, rubber, lumber, wood (excepting stacked firewood), mattresses, disabled trailers or parts thereof, all of which meet one of the following requirements:

- (a) Are discarded;
- (b) Are unusable;
- (c) Are broken; or
- (d) Have not been used for their primary and original purpose for a period of six months.

“Nuisance” shall mean any condition or use of property which a) injures or endangers the comfort, health or safety of others, b) is indecent, or offensive to the senses, c) obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, stream, canal, or basin, or any public park, square, street, alley, sidewalk or highway, or d) is enumerated to be a Nuisance by Section 8.04.030 of the Hailey Municipal Code.

“Owner” and “Occupant,” wherever used in this chapter, may be used interchangeably, and shall mean every person in possession, charge or in control of any dwelling, flat, roominghouse, or any eating place, shop, place of business, manufacturing or business establishment where Garbage or other Refuse is created or accumulated.

“Public Place” shall mean any property owned by, or dedicated to, the City of Hailey for the purposes of providing city services and general circulation to the public. Such rights-of-way include, but are not limited to public streets, alleys and sidewalks.

“Refuse” shall mean solid wastes, including Garbage and Rubbish.

“Rubbish” shall mean Refuse other than Garbage, tin cans, bottles, leaves, weeds and cuttings from trees, lawns, shrubs, and gardens or other waste materials produced in the normal course of doing business, or everyday living. Rubbish shall not include recognizable industrial by-products.

“Street Tree” shall mean any tree, shrub, or other woody vegetation on lands within City of Hailey street rights-of-way.

“Waste” means unwanted solid, liquid, or gaseous materials.

8.04.030 Nuisances Enumerated. Without limitation of the generality of the definition of Nuisance, the following acts, omissions, conditions and things are declared to be and constitute a Nuisance:

- (1) Storing or accumulating, or permitting the storage or accumulation, of Junk on any premises where the Junk is exposed to view from any Public Place, or adjacent property.
- (2) Except as otherwise provide, the storing or accumulating, or permitting the storage or accumulation, of automobiles, trucks or other motor vehicles, or trailers or campers on any property except on driveways or designated parking spaces where such vehicles, trailers or campers are exposed to view from any Public Place or adjacent property; provided, however, occasional parking of vehicles, trailers and campers on property not on driveways or designated parking spaces for purposes of delivery or maintenance shall not be considered a Nuisance.
- (3) The accumulation, or permitting the accumulation of, tin cans, bottles, trash, litter, Waste or Refuse of any nature on any premises, or any dangerous accumulation of weeds, trash, dirt, filth, waste shrubs, lawn or yard trimmings, except in Garbage Containers maintained for regular collection. Regularly maintained compost piles shall not be considered a Nuisance.
- (4) Permitting the existence of i) any dilapidated, abandoned or partially destroyed building or structure, or ii) any unused building or structure which is not properly secured from entry, or failing to materially complete the exterior of any building or structure commenced and left unfinished for a period of six (6) months or more.
- (5) Storing, or permitting to be stored, any toxic, radioactive, caustic, flammable, explosive or other dangerous or hazardous substances, except when stored in compliance with the requirements of all regulatory agencies having jurisdiction.
- (6) Permitting the existence of any putrid, unsound or unwholesome bones, meat, hides or skins, or the whole or any part of any dead animal, fish or fowl.
- (7) Privies, vaults, cesspools, sumps, pits, excavations or like places which are not securely protected, or which are foul or malodorous.
- (8) Leaving or permitting to remain outside of any dwelling, building, or other structure, or within any unoccupied or abandoned building, dwelling, or other structure, under the control of any person, and in a place accessible to the public, any abandoned, unattended or discarded icebox, freezer, refrigerator or other container which has an airtight door or

lid, snap lock or other locking device which may not be released from the inside, without first removing such door or lid, snap lock or other locking device from such icebox, freezer, refrigerator or container.

(9) Any unguarded or abandoned pit, well or hole dangerous to life or of more than two feet (2') in depth on any unenclosed lot, without substantial covering, protection or fencing.

(10) The accumulation, or permitting the accumulation, of Building Materials or objects of any nature where the same endangers property or safety, or constitutes a fire hazard, or where the Building Materials are exposed to view from any Public Place or adjacent property before or after the duration of a valid building permit.

(11) The existence of any fence or other structure or thing on private property abutting or fronting upon any Public Place or adjacent property which is in a sagging, leaning, decayed or otherwise dilapidated or unsafe condition and which may injure persons or property on a Public Place or adjacent property.

(12) The existence or maintenance on any premises of a storage area, junkyard or dumping ground for the wrecking or disassembling of automobiles, trucks, trailers, house trailers, boats, tractors or other vehicle or machinery of any kind, or for the storing or leaving of worn out, wrecked, inoperative or abandoned automobiles, trucks, trailers, house trailers, boats, tractors or other vehicle or machinery of any kind or of any major parts thereof; provided, however that an automobile wrecking yard or other junkyard, or storage area for machinery or equipment where the same are permitted by the city zoning regulations or where the same are being used by contractors or builders or by other persons during the construction of a project at the site is not a Nuisance; and further provided that the repair of a vehicle by the owner of property for a period not to exceed thirty (30) day is not a Nuisance.

(13) Visible vehicle tires not mounted on a vehicle, vehicle bodies or parts, bed mattresses or springs, water heaters or other large household appliances.

(14) Animal manure in any quantity which creates a public health hazard, other than manure from domesticated pets; provided, however, animal manure may be used on a property in such a manner and for such purposes as are compatible with customary methods of good husbandry.

(15) Any loud and unnecessary noises, as enumerated in Section 9.04.030 of the Hailey Municipal Code, as amended.

(16) All other uses or structures which are declared to be Nuisances by city ordinance, or building, fire or life safety codes.

8.04.040 Nuisance Abatement Notice.

A. If it is determined that a Nuisance exists on any lot, place or area, or any street, sidewalk or public right-of-way abutting the same, the city shall cause a notice to be issued to abate such Nuisance. Such notice shall contain a description of the property in terms reasonably sufficient to identify the location of the Nuisance, describe the Nuisance in terms reasonably sufficient to identify the same, direct abatement of the Nuisance, and specify the penalty provisions and appeal process as herein provided.

B. The abatement notice may be served in the following manner:

1. By personal service on the Owner of the lot, place or area, if the Owner lives within the city, and by personal service on the Occupant or person in charge or control of the property, if such person can be identified; or,

2. If the Owner does not live within the city, by registered mail to the Owner at the address shown on the last available assessment roll, or as otherwise known, and, by personal service on the Occupant or person in charge or control of the property, if such person can be identified; or

3. Should the Owner not be known or have an available address, the posting at a conspicuous place on the land, on abutting public right-of-way, and the publication of an advertisement at least once a week, for a period of two weeks, in a newspaper of general circulation, and by personal service on the Occupant or person in charge or control of the property, if such person can be identified. The newspaper advertisement shall be a general notice that the property has been posted and shall contain a general statement of the effect of such posting.

8.04.050 Abatement Required. It shall be the duty of the Owner, or person occupying or controlling any lot, place or area in the city which has been declared a Nuisance as provided herein, within fifteen (15) days of posting, mailing or personal service of the Nuisance abatement notice to remove the Nuisance. Upon the failure, neglect or refusal of any Owner or Occupant so notified to remove the Nuisance, the city may cause legal action to be taken.

8.04.060 Appeal. Within fifteen (15) days from the date of posting, mailing or personal service of the required Nuisance abatement notice to the Owner or person occupying or controlling such lots or areas affected, such Owner or persons may appeal to the city council. Such appeals shall be in writing and shall be filed with the city clerk. At the time of filing an appeal, the appellant shall pay a fee for the appeal as established by resolution. At the regular meeting of the city council, not less than ten (10) days nor more than thirty (30) days thereafter, the city council shall proceed to hear and pass upon such appeal and the decision of the city council thereupon shall be final and conclusive.

8.04.070 Abatement by City – Costs. If a Nuisance is deemed to be an immediate health hazard, the city may proceed with the removal work specified in the notice for removal of such a Nuisance, and the cost of the work shall be paid by the Owner or Occupant or other person in control of the property. Upon the failure, neglect or refusal of any Owner or Occupant so notified to remove the Nuisance as required by court order, the city may proceed with the removal work specified in the notice for removal of such a Nuisance, and the cost of the work shall be paid by the Owner or Occupant or other person in control of the property. The expenses of removal by the city of any Nuisance found under the provisions of this chapter shall constitute a lien upon the property.

8.04.080 Prohibited Acts.

A. It is unlawful for an Owner or Occupant to fail, neglect or refuse to remove a Nuisance from a property within the City of Hailey within the time set forth in an abatement notice served upon the Owner or Occupant in accordance with Section 8.04.040(B), above.

B. It is unlawful for any person to throw or deposit, or cause to be thrown or deposited upon any public street, alley, highway, ground, sidewalk, or any private vacant lot within the City of Hailey, any Refuse or Waste.

C. It is unlawful for any person to burn or cause to be burned on any public street or alley within the City of Hailey any Refuse or Waste.

C. It is unlawful for any person to dump, deposit or place any Garbage, Refuse, Waste or Rubbish on private property or in any Garbage Container within the City of Hailey without the authorization of the Owner or Occupant.

8.04.090 Violation—Penalty. Any person who violates any provision of this Chapter shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than one thousand dollars (\$1000.00) or imprisoned in the county jail for a period of not more than six (6) months, or by both such fine and imprisonment. The city may, at its option, institute a civil action for the removal and the abatement of such Nuisance, or may institute a criminal action under this Chapter 8.04. The rights and remedies provided by this ordinance are cumulative and the use of any one right or remedy shall not preclude the City of Hailey from pursuing any or all other remedies the city may have by law, statute, ordinance or otherwise. This ordinance does not preclude the right of a private party to seek private enforcement of this ordinance against a party violating this Ordinance, but does not provide any private right of enforcement against the city for failure to enforce the provisions of this ordinance.

Section 2. 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 3. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 4. This Ordinance shall be in full force and effect from and 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 _____, 2009.

Richard L. Davis, Mayor, City of Hailey

Attest:

Mary Cone, City Clerk

