

STAFF REPORT

TO: Hailey City Council
FROM: Mariel Platt, Planner 
RE: Zoning Ordinance Amendment – Article 11, Conditional Use Permits
HEARING: November 9, 2009

Note: Staff analysis is in lighter type.

Notice

Notice for the November 9, 2009 public hearing was published in the Idaho Mountain Express and mailed to public agencies and area media on October 21, 2009.

Proposal

Attached is the addition of Section 11.4.2, Small Scale Wind Energy Systems, to Hailey Zoning Ordinance proposed by the City. These amendments would establish standards for small scale wind energy systems.

Procedural History

The Planning and Zoning Commission held a public hearing on the proposed amendments on January 20 and February 17, 2009. The Commission recommended approval of the proposed amendments. The Council reviewed the amendments on June 8, 2009. No follow-up review or adoption of this amendment has occurred by the Council to date. Since the June 8th meeting staff has added language allowing for freestanding wind energy systems in commercial and industrial districts only. The addition of this language is in response to a request received by the Planning Department to allow for a freestanding small scale wind energy system. After reviewing the request, it occurred to staff that certain freestanding systems may be appropriate in specified locations as long as criteria is in place for review and approval through the conditional use permit process. The design and specifications for the proposed freestanding small scale wind energy system are attached and should be referred to as an example of a scenario where a freestanding system may be appropriate.

Small scale wind energy systems are important to consider when planning for the future of energy. They promote the development of local, clean, renewable energy source that produces no emissions, requires no mining, damming, combustion, or waste and help increase energy independence and security. By establishing these standards the City would provide clear standards to protect neighbors from potential nuisance impacts while avoiding overly restrictive, unnecessary provision – such as prohibition or overly stringent height restrictions, which substantially reduce the effectiveness of WESs, which discourage investment in them.

Rooftop or roof-mounted wind energy systems generate little to no noise, are less visually obtrusive, require less wind (they are poorly suited for high wind areas), and although their capacity to generate energy is smaller than that of larger freestanding systems, they can provide a significant portion of an occupant's energy needs.

Concurrently, amendments have been drafted and are being reviewed to allow for small rooftop wind energy systems as a conditional use in each Zoning District, excluding the Recreational Green Belt district and small scale freestanding wind energy systems in the B, LB, SCI, LI, TI, and A districts. The permitting process would protect the areas where rooftop and freestanding WECs might not be appropriate, for instance, in some residential areas. But it would not exclude roof-mounted WECs in residential zoning districts completely; recognizing that some residential areas that abut areas with unobstructed air spaces (i.e. not directly next to other homes or buildings), such as along the bike path, could benefit significantly from the increased winds experienced at those locations and could be an appropriate location for rooftop WECs. If approved, this amendment would require the applicant to submit additional materials to show that these standards are met and to provide information for permit review.

Standards of Evaluation

14.6 Criteria for Review. When evaluating any proposed amendment under this Article, the Hearing Examiner or Commission and Council shall make findings of fact on the following criteria:

1. The proposed amendment is in accordance with the Comprehensive Plan;

The Council should consider how the proposed amendments relate to the various policies and implementation items of the Comprehensive Plan, particularly the following:

Environment Section - Energy Conservation and Renewable Energy

1. Policy: Implement policies and programs that enhance opportunities for individuals, businesses and public organizations to limit the use of non-renewable energy resources by conserving energy and converting to renewable resources.

Implementation:

- a. Support private decisions to use renewable energy, publicly develop local renewable energy resources where economical and preserve future options for renewable energy so that they may be developed when they become cost effective.*
- b. Improve building codes and regulations to ensure energy and resource efficiency in new construction, remodels and renovation projects. If possible, determine minimum insulation and fenestration requirements for both residential and commercial projects.*

Implementation:

- b. Promote density, location and mix of land uses that decrease the length of required daily trips and encourage the consolidation or related trips.*

3. Policy: Prioritize energy conservation. Support and reward environmentally acceptable, sustainable energy sources, especially renewable resources such as solar, wind, hydroelectric, geothermal, biomass, cogeneration and district heating and cooling.

1.6 Natural Resources – Alternative Energy and Resource Conservation

Goal: Promote the use of alternative renewable energy sources as well as the conservation of natural resources.

1. Policy: Protect, enhance, and develop alternative energy sources.

Implementation:

- a. Promote the study and use of all types of renewable resources as alternatives to traditional energy sources.*

2. **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;**

It is not anticipated that this use would create any additional public costs for public facilities or services.

3. **The proposed uses are compatible with the surrounding area; and**

The proposed use would be a conditional use and compatibility would be determined on a case by case basis.

4. **The proposed amendment will promote the public health, safety and general welfare.**

The proposed amendment would create standards that would protect neighboring properties from nuisances such as noise and vibration. It would also require size and height limitations to provide protection of views. The amendments would allow for small scale rooftop and freestanding wind energy systems, where deemed appropriate through the conditional use permit process.

Summary

The Council shall hold a public hearing and determine whether the proposed amendments are in accordance with the applicable standards of evaluation.

The Council shall make a decision, with **findings on the four standards of evaluation** noted above. If the proposed change is approved, the Council shall pass an ordinance making said amendment part of Hailey Zoning Ordinance #532. The draft ordinance is attached.

Motion Language

Approval:

Motion to approve the proposed addition of a new section, Section 11.4.2, Small Scale Wind Energy Systems, finding that the amendments are in accordance with the Comprehensive Plan, 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, that the proposed uses are compatible with the surrounding area, and that the proposed amendment will promote the public health, safety and general welfare.

Denial:

Motion to deny the proposed addition of a new section, Section 11.4.2, Small Scale Wind Energy Systems, finding that _____ [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 the proposed addition of a new section, Section 11.4.2, Small Scale Wind Energy Systems, to _____ [the Council should specify a date].

HAILEY ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING ARTICLE 11 OF HAILEY'S ZONING ORDINANCE, ORDINANCE NO. 532, BY AMENDING SECTION 11.4, TO ESTABLISH A NEW SECTION, SECTION 11.4.2, TO ESTABLISH CONDITIONAL USE PERMIT STANDARDS FOR SMALL SCALE WIND ENERGY SYSTEMS; 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 Zoning Ordinance will generally conform to the Hailey Comprehensive Plan;

WHEREAS, the amendments will not create excessive additional requirements at public cost for public facilities and services;

WHEREAS, the amendment will be in accordance with the safety and welfare of the general public; and

WHEREAS, the proposed uses are compatible with the surrounding area.

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

Section 1. Hailey Zoning Ordinance No. 532, is hereby added with the addition of a new Section 11.4.2, as follows:

11.4.2 Small Scale Wind Energy Systems. For Small Scale Wind Energy Systems, the Commission or Hearing Examiner shall review the particular facts and circumstances of each proposed conditional use in terms of the following applicable standards:

- a. The height of roof-mounted WECs shall not exceed 15 feet beyond the maximum building height requirement for the applicable district. The measured height shall include the entire system, including the blade radius.
- b. The rotor diameter shall not exceed 7 meters for a freestanding or roof-mounted system.
- c. The height of freestanding WECs shall not exceed the maximum building height requirement for the applicable district.
- d. Freestanding WECs are limited to one per Lot.
- e. Minimum setback of freestanding WECs is two times the tower height from the property line, measured from the tallest point of WEC. This standard does not apply to roof mounted systems.
- f. Will comply with the maximum permissible noise level. Every use shall be operated such that the noise level produced does not inherently and recurrently exceed twenty (20) decibels beyond ambient noise levels, during the hours of 7:00 A.M. to 7:00 P.M.,

or ten (10) decibels beyond ambient noise level decibels during the hours of 7:00 P.M. to 7:00 A.M. During the hours of 7:00 A.M. to 7:00 P.M., the noise levels permitted may increase a maximum of five (5) decibels for a period not to exceed fifteen (15) minutes in any one (1) hour.

1. Measurement Along Property Boundary. Noise levels shall be measured at any point along any boundary line of the property on which the use is located.
 2. Measurement Along the Property Owner's building wall. Where there is more than one (1) property ownership in a building (*e.g.*, a condominium or attached townhome), the noise levels shall be measured along any adjacent wall of a property owner.
- g. Will generate no perceptible vibration. Every use shall be operated so that it does not inherently and recurrently generate a ground vibration that is perceptible, without instruments, at any point along any boundary line of the property on which the use is located. Where there is more than one (1) property ownership in a building (*e.g.*, a condominium or attached townhome), this standard shall be measured along any adjacent wall of a property owner.

Section 2. Severability Clause. 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. Repealer Clause. All City of Hailey ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

Section 4. Effective Date. 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, City of Hailey



Windspire® Specifications

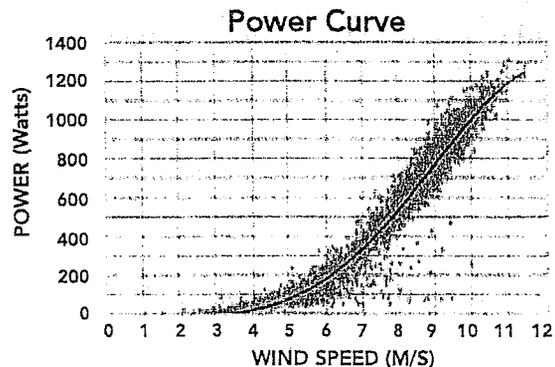
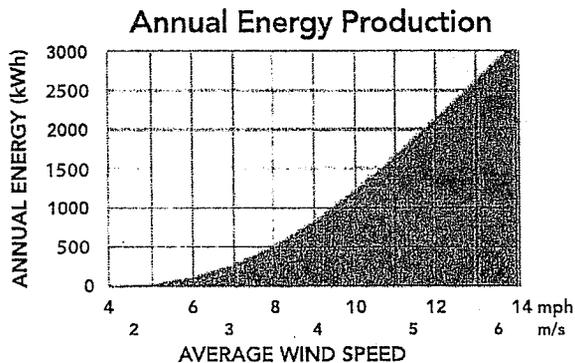
The Windspire® wind turbine is an aesthetically designed vertical axis wind turbine that operates quietly while generating electricity for immediate use in your home or business.

The Windspire® is also the lowest priced alternative energy appliance within the one kilowatt range on the market. And it's made in the USA.

Windspire® invites everyone to explore the potential of clean energy from the natural power of the wind.

Annual Energy Production (AEP)	2000 kWh ¹
Instantaneous Power Rating (IPR)	1.2 kW (1200 watts) ²
Standard Unit Height	30 ft 9.1 m (pole extension options available)
Total Weight	624 lb 283 kg
Unit color	Soft Silver
Sound output	6 dBA above ambient (15 mph wind, 6 ft from base)
Warranty	5 Year Limited
Rotor Type	Vertical Axis - Low Speed Giromill
Rotor Height / Diameter	20 ft 6.1 m / 4 ft 1.2 m
Swept Area	80 sq ft 7.43 sq m
Max Rotor Speed	400 RPM ³
Tip Speed Ratio	2.3
Speed Control	Redundant Electronic
Wind Tracking	Instantaneous
Generator	High Efficiency Brushless Permanent Magnet
Inverter	Inverter Custom Integrated Grid Tie 120 VAC 60 Hz
Inverter Certification	Meets IEEE 1547.1; UL 1741
Performance Monitor	Integrated Wireless Zigbee Modem
Cut-in Wind Speed	8 mph 3.6 m/s
AEP Average Wind Speed	12 mph 5.4 m/s
IPR Rated Wind Speed	25 mph 11.2 m/s
Survival Wind Speed	105 mph 47 m/s
Foundation	Poured Concrete
Foundation Size	2 ft diameter by 6 ft base ⁴
Rotor Material	Recycled Aircraft Grade Extruded Aluminum
Monopole/Structure Material	Recycled High Grade Steel
Paint	2 Coats, Corrosion-Resistant Industrial Grade Paint
Coatings	Rust Veto & Zinc Olive Drab

Notes: 1: AEP is based on the power curve and standard assumptions including a Rayleigh wind distribution and sea level air density. 2, 3: Performance is based on initial field test data. Final testing is currently underway. 4: Foundation size may vary for non-standard soil conditions or non-standard heights.



Data from Windward Test Site, Spanish Fork, Utah

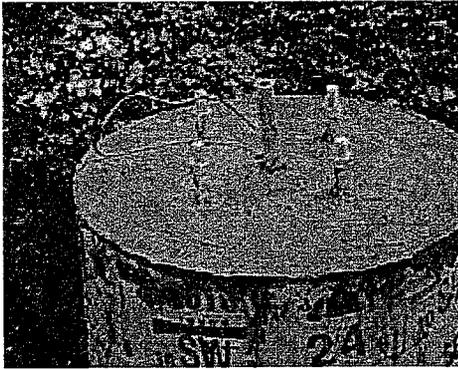
General
Rotor
Electronics
Wind Ratings
Construction

MADE IN USA

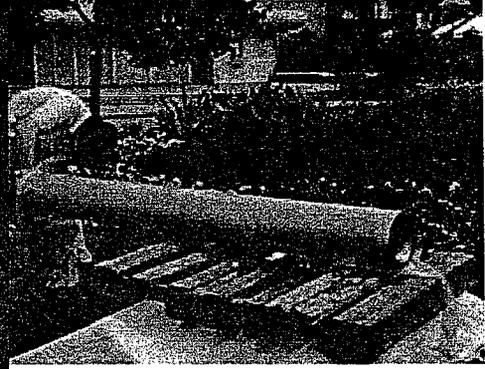


5450 Louie Lane, Reno NV 89511 · 775.857.4888 · www.windspire.info

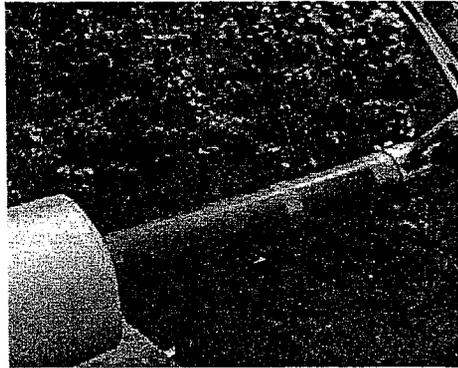
Installation is Simple and Fast!



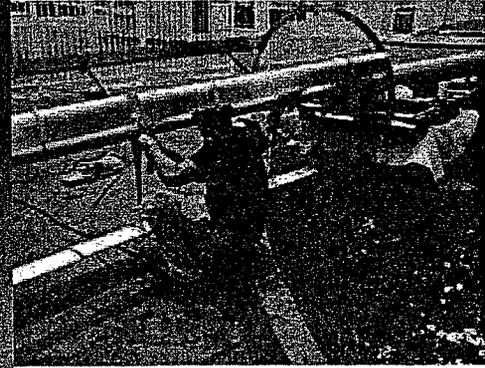
1. Set Concrete



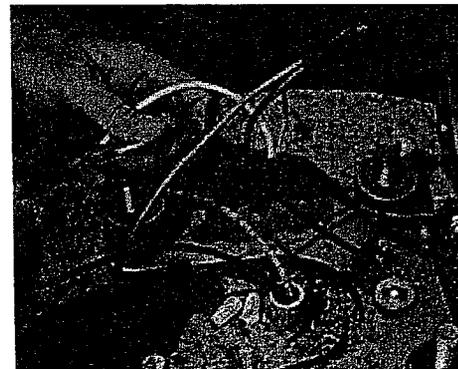
2. Install Base Pole



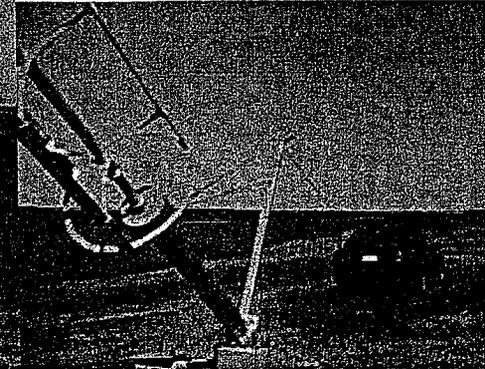
3. Install Top Pole



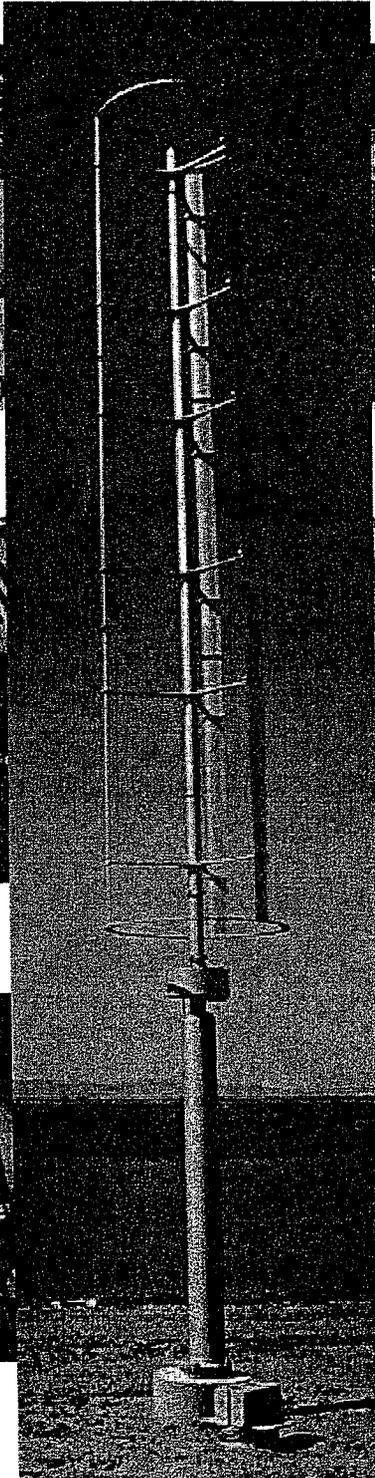
4. Assemble Rotor



5. Connect Electronics



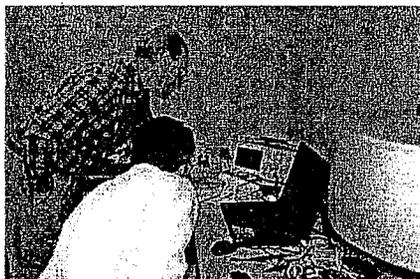
6. Erect Windspire





Mariah Power: A Wind Technology Company

Vertical Innovation, Technology Integration™



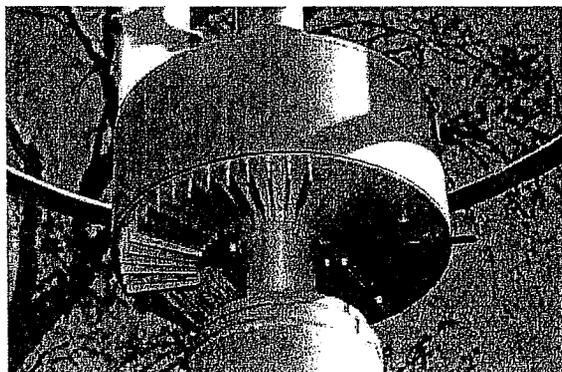
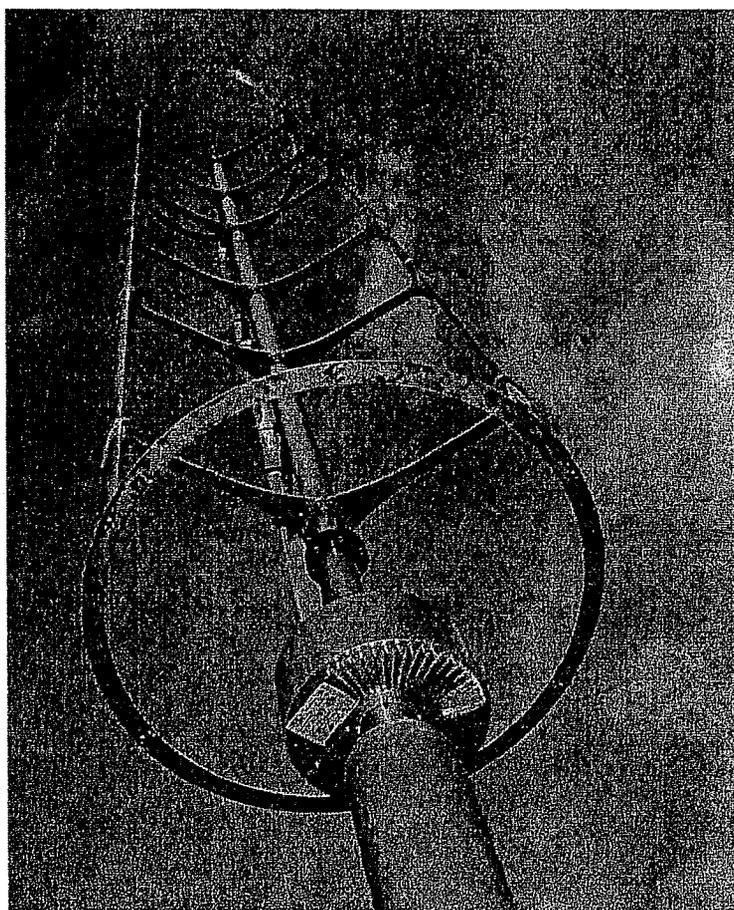
Mariah Power is a wind technology company specializing in advanced, small-scale wind power appliances. Our engineering team accounts for about two thirds of our staff, and covers a wide spectrum of disciplines, including electrical, mechanical, civil, structural, aeronautical, and software development engineering.

The team was assembled on the philosophy

of seeking innovative, experienced, and talented engineers who are willing to challenge the status quo and develop breakthrough solutions. With a combined total of over 90 patents and patents pending to their names, our technical team forms one of the most dynamic engineering teams in small-scale renewable energy. They bring together both experience from within the wind industry, and fresh thinking from other backgrounds.

Windspire®, a Complete Wind Energy System

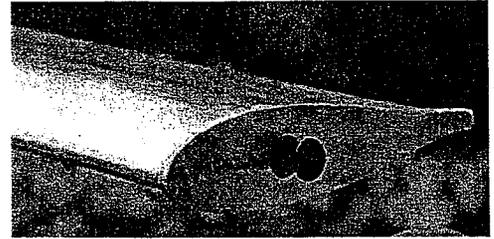
Our core product, the Windspire® vertical wind turbine, is the result of extensive engineering development work, and boasts many unique features that set it apart in the marketplace. One of the distinguishing features of the Windspire vertical wind turbine is that it was engineered as a complete



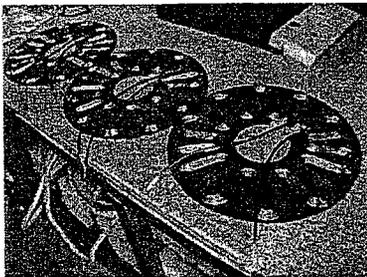
system. It includes more than a rotor that turns in the wind and a generator to generate power. It also includes an integrated inverter, the complete pole and structure, and a wireless monitoring system. The advantage of designing the Windspire from the ground up is that we were able to optimize each component to work together for maximum system efficiency at the lowest possible cost, a benefit we are proud to pass on to our customers.

Rotor

The rotor is the airfoil structure that spins in the wind, using lift to transform wind energy into mechanical (rotational) energy. The Windspire rotor employs an efficient giromill design with a large swept area for maximum energy capture. It is unique in its tall, narrow, minimalistic profile that makes it aesthetically appealing and appropriate for a wide variety of settings. The rotor is constructed with multiple airfoil segments to reduce strain and to transfer wind-induced stresses to the high strength center shaft. The rotor was designed with the aid of extensive aerodynamic computer modeling to maximize power production, done by the world's premier expert in Darrieus rotors. The mechanical system was further refined using advanced rotordynamic modeling of vibration modes, performed by another leading expert in rotordynamics.



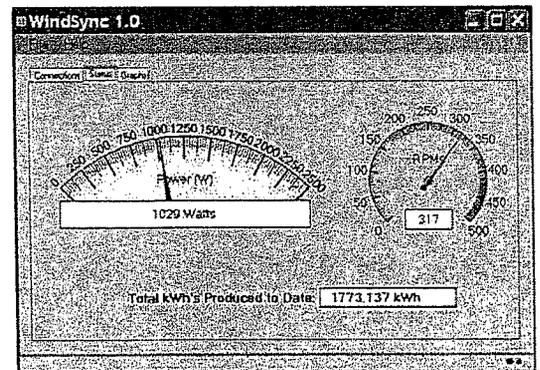
Generator



The generator takes the rotational energy and transforms it into electrical energy by driving a rotating magnetic flux through specialized copper windings, inducing current in them. The Windspire's very unique generator was developed by our own team, and served as a catalyst for the whole system. After working on a highly efficient air core permanent magnet generator technology for several years, Mariah Power was founded in 2005 with the integration of the generator into a wind turbine. The generator technology is unique in several ways: First, it minimizes magnetic-induced losses by using a special rotor and stator construction, resulting in very high efficiencies (up to 98%). Second, it is cog-free, for seamless rotation. Third, and perhaps most importantly, it operates most efficiently in low wind speeds. This is the opposite of most wind generators, and it allows the Windspire to capture more energy in the lower, more prevalent range of wind speeds.

Inverter

The inverter conditions the electricity that comes from the generator for use with various power systems, such as standard 120 volt and 240 volt AC electric grids, 3 phase power, and off-grid battery systems. Custom built for the Windspire, and integrated into the turbine, the computer-controlled inverter uses a peak power tracking algorithm to control the rotor speed and maximize energy production over a range of wind speeds. The inverter also protects the Windspire by applying a brake to limit rotation speeds in very high winds. The inverter includes a built-in wireless ZigBee modem that can directly transmit power generation information to your computer. Combined with our proprietary WindSync™ Software, you can monitor your Windspire's energy performance from your home or building. The Windspire inverter is UL 1741 and IEEE 1547 tested and certified.



Structure

The Windspire wind system uses its own engineered poles and structure that are designed for optimal operation of the turbine. The system utilizes an oversized ball bearing system, with greased-for-life mechanical bearings that provide for maintenance-free operation. Even the pole is specially designed, employing structural vibration damping for smooth operation. Made with high strength steel and hinged at the base, raising a Windspire is quick and easy. A standard Windspire assembly and installation can be done in as few as three hours, and does not require any heavy machinery.

Frequently Asked Questions

What is the difference between Energy and Power?

At wind speeds greater than 8 mph, the Windspire® will begin producing power, which is measured in Watts (W) or kilowatts (kW). Power output jumps up and down as quickly as the wind changes speed, so the industry measures output over time in kilowatt-hours (kWh) which is how many watts of power are consumed over a full hour. Your electric company charges you for energy usage based on a rate/kWh. Over the course of a year, the 1.2kW Windspire will produce approximately 2000 kWh in 12 mph average winds to help offset the energy you require from the electric company. This is approximately one-third to one-fifth of the energy usage of an average US home.

How Much Does a Windspire® Cost?

The Windspire is priced around \$6,500 before installation and rebates, with a limited 5-year warranty. Shipping costs vary the price.

Are There Tax Credits Available?

The Federal Government provides a 30 percent tax credit for the total cost of the unit, including installation. Many state and local municipalities also offer rebates, as do local power companies.

Is it Safe for Birds?

The Windspire® rotates at a lower speed than most wind turbines and is more visible to flying birds. So far, we have had no reports of collisions – and we have had one report of a nest built under an active unit.

Are There Specific Requirements for Potential Customers?

A Windspire® site requires land with unobstructed wind and adequate space for installation. The Windspire also needs at least class two winds – ideally class three (an average of 12 mph) – and a tie to the power grid.

Is the Windspire® a Grid-Tie or Off-Grid Product?

The currently available Windspire is grid-tie, which requires the unit to be tied into the local utility grid. An off-grid version of the Windspire® is in development and will be available soon.

Can I sell electricity back to the grid?

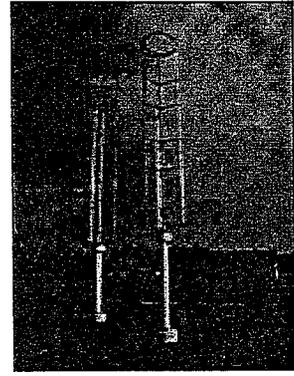
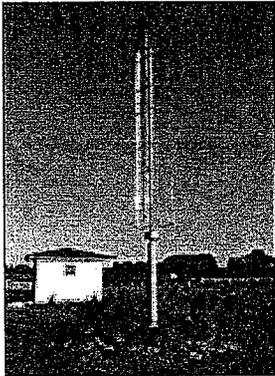
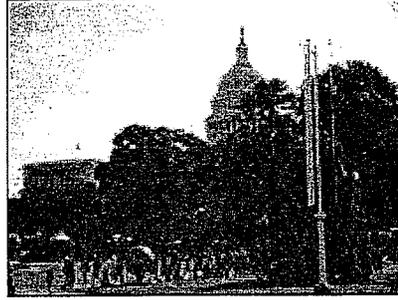
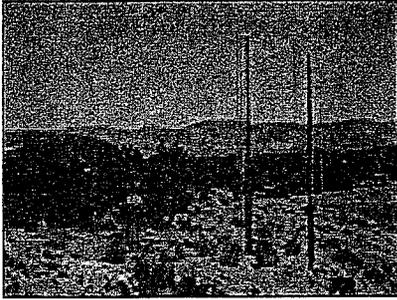
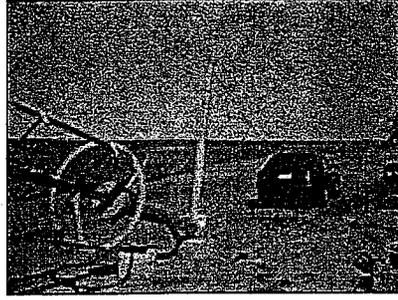
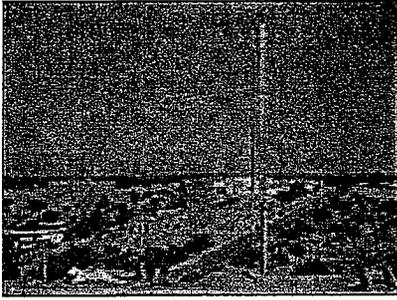
Some utilities offer net metering agreements that allow the sale of excess power back to the grid.

Is the Windspire® Independently Tested and Certified?

The Windspire is independently tested at Windward Engineering in Spanish Fork, Utah. This testing allows customers to know what level of power production to expect from specific wind ranges. The Windspire received ETL certification as of March 2008 for the U.S. and Canada, which includes UL and IEEE testing.

What Is the Maintenance?

The Windspire® requires zero maintenance as its ball bearings are greased for life. Durable construction enables it to produce power for 20+ years. A dual-layer paint coat, rust proof spray, and zinc plating are applied for weather protection.



AGENDA ITEM SUMMARY

DATE: 11/9/2009

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____

SUBJECT:

Ordinance No. 1031 (Nuisance Ordinance)

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

At the October 12 council meeting, the council tabled the discussion on the nuisance ordinance because the mayor and council member Haemmerle were absent. I received some very helpful comments from council member Haemmerle about the draft nuisance ordinance. I have incorporated many of council member Haemmerle's suggestions into the attached drafts. I am enclosing a redlined version of the ordinance which incorporates both my and Fritz's comments. In addition, I am enclosing a clean version of the ordinance.

Fritz has raised the following comments:

1. As previously drafted, Section 8.04.030(2) required parking on driveways and "designated parking spaces." I have now added a definition of "designated parking space" to include graveled or paved parking areas.

2. As previously drafted, Section 8.04.030(4) would make the Copper Ranch tennis facility a nuisance. I have now revised the language to make a building a nuisance if it is unfinished after the expiration of a building permit.

2. Section 8.04.030(10) may unduly restrict the storage of building materials. As drafted, storage of building materials would be permitted during the time of a building permit, but not before or after.

3. Section 8.04.030(11) controls fences. Of course, many fences lean or are in a weakened condition. In an effort, I added some language that would prohibit fences if they may injure persons or adjacent property. This may be one section that could be eliminated.

4. As previously drafted, Section 8.04.030(12) made the repair of a car a nuisance if the car was inoperative for more than 30 days, which may be too restrictive. I have added language allowing a property owner to repair a vehicle for any length of time if the vehicle is not visible from a Public Place or adjacent property.

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

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 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"/> _____
<input type="checkbox"/> Safety Committee	<input type="checkbox"/> P & Z Commission	<input type="checkbox"/> Police	<input type="checkbox"/> _____
<input type="checkbox"/> Streets	<input type="checkbox"/> Public Works, Parks	<input type="checkbox"/> Mayor	<input type="checkbox"/> _____

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

If the revisions are acceptable or if minor revisions are made, make a motion adopting Hailey Ordinance No. 1031 and authorizing the mayor to conduct a first reading of Hailey Ordinance No. 1031. Otherwise, make a motion to table or to continue to a date certain.

FOLLOW-UP REMARKS:

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.

“Designated Parking Space” shall mean a platted parking space or an improved parking space used to park vehicles, trailers and campers, primarily consisting of gravel, pavement, concrete, pavers or similar materials, but not consisting primarily of dirt or grass.

“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.

“Noxious Weeds” shall be as defined by Idaho Code § 22-2402, as amended, and the Idaho Administrative Rules.

~~“Nuisance” shall be considered a public nuisance and 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, ~~or by any other state or federal law.~~

"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~~ 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 where such vehicles, trailers or campers are exposed to view from any Public Place or adjacent property; provided, however, parking of vehicles, trailers and campers on Designated Parking Spaces and the occasional parking of vehicles, trailers and campers on property not on Designated Parking Spaces for purposes of delivery or maintenance shall not be considered a Nuisance.~~

(23) 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 Noxious Wweeds, 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.

(43) 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~~ after the expiration of a valid building permit.

(54) 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.

(65) 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.

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

(87) 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.

(98) 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.

(109) 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~~ Public Place or adjacent property before or after the duration of a valid building permit.

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

(124) 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; 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; and further provided that the repair of vehicle and storage related to the repair of the vehicle which are not visible from a Public Place or adjacent property is not a Nuisance.

Formatted: Font: Times New Roman, 12 pt

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

(143) Animal manure in any quantity ~~which is not securely protected from insects and the elements, or which is kept or handled in violation of any other ordinance of the city~~ 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.

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

(165) 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 Upon the failure, neglect or refusal of any Owner or Occupant so notified to remove the Nuisance within the time specified herein,~~ 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. ~~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. The notice, appeal and abatement provisions outlined herein do not apply where a private party seeks private enforcement.

Formatted: Indent: First line: 0.49", Tab stops: Not at 0.49" + 0.84"

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

