

**CITY OF MACKAY,  
IDAHO  
CODE OF  
ORDINANCES**

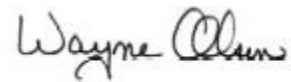


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## PREFACE

This Code of Ordinances may not reflect the most current legislation adopted by the City of Mackay. The City of Mackay provides this document for informational purposes only. This document should not be relied upon as the definitive authority for legislation for the City of Mackay. Additionally, the formatting and pagination of the posted documents varies from the formatting and pagination of the Ordinances. The official printed copy of an Ordinances should be consulted prior to any action being taken.

This volume of the City Code of the City of Mackay, Idaho, as supplemented, contains all active general ordinances adopted by the City beginning with ordinances passed prior to October 1, 2022. This revision contains Ordinance #471-Vendor License which was passed on December 13, 2022, superseded Ordinance #467 (same Title).. Users of this Code should contact the City Clerk to determine if any provision of this Code has been amended, superseded or repealed after that date.



Mayor, City of Mackay

January 16, 2023



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# TITLE 1 ADMINISTRATION GENERAL

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## CHAPTER 1 ADMINISTRATIVE PROVISIONS

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1-1-1: OFFICIAL NAME OF CITY: Under the authority of Chapter 429, Idaho Session Laws of 1967, The official name of the City shall be the "City of Mackay, Idaho." (Ord. 229)

1-1-2: MACKAY PRECINCT: All territory within the City Limits shall be one voting precinct and the Mayor and City Council shall be elected at large by all of the eligible voters residing in the City. (Ord. 229)

1-1-3: CORPORATE SEAL DESIGN: The corporate seal of the City shall be one and eleven sixteenths' inches (1-11/16") in diameter and the inner circle shall be one and one sixteenths inches (1-1/16") in diameter. The space between the two (2) circles shall bear the words "City of Mackay, Custer County, Idaho," and the space within the inner circle shall bear the words "Seal."

1-1-4: ADOPTION OF SEAL: The seal described above is adopted as the corporate seal of the City of Mackay, Custer County, Idaho.

1-1-5: CUSTODIAN OF CORPORATE SEAL: The Clerk shall be the custodian of the corporate seal of the City.

1-1-6: OFFICIAL NEWSPAPER: The Arco Advertiser is designated as the official newspaper of the City. All writings required to be published by the City under any law of the State, or any provision of this Code, shall be published in the official newspaper. (Ord. 274)

1-1-7: DATUM POINT ESTABLISHED: For the purpose of surveys and establishing grades in streets, avenue, alleys and block intersections in the City, the datum points

shall be taken from the map of the City dated 1902 on file with the Custer County recorder.

1-1-8: OFFICIAL CITY MAP: A map of the City, kept current by the Custer County Assessor which map shall be known as the Official Map of the City. The boundaries of the City as shown on said map shall constitute the official city limits of the City. Such map shall be deemed to be a part of this Code as fully as if set forth herein.

1-1-9: PUBLIC RECORDS CUSTODIAN: The Clerk is hereby designated as the custodian of City public records to receive public record requests and for other purposes of Idaho Code Title 74, Chapter 1 (Idaho Public Records Act). Additionally, the Assistant Clerk, and any other custodian designated from time to time by Resolution by the Council, shall serve as the alternate public records custodian for contingencies. (Ord. 445)

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1-2-1: APPOINTMENT: The Mayor shall, subject to confirmation by the Council, appoint a city clerk, treasurer, city attorney, and such other appointive officers deemed necessary for the efficient operation of the City. The Mayor may suspend or remove any person from an appointive office, subject to the confirming vote of a majority of the Council, and the Council may, by unanimous vote without the Mayor's concurrence, suspend or remove such officers. (Idaho Code §50-204)

1-2-2: DUTIES: All appointed officers shall have such duties as prescribed in the Job Description approved by the Council. (Idaho Code §50-204)

1-2-3: BONDS: No bond shall be required of any appointive officer except as expressly required by Idaho Code. (Idaho Code §50-204)

1-2-4: REPORTS AND ACCOUNTS: The Mayor and City Council may require any appointive officer to exhibit their accounts, papers or other documents and to make written reports pertaining to their office. (Idaho Code §50-605)

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#### 1-3-1: PRESENTATION AND ALLOWANCE OF CLAIMS:

(A) All claims for payment for goods or services for which a written purchase order or contract has been duly approved or authorized by the Council shall be filed with the Clerk prior to payment thereof. All such claims shall be reviewed by the Clerk and if found correct, shall be certified to and approved by the Mayor prior to submission to the Council.

(B) All bills shall be accepted, certified for payment and paid within sixty (60) calendar days after the billing is delivered to the Clerk, unless the claimant and the City have agreed by written contract for a longer period of time in which payment is to be made.

(C) All claims, accounts or invoices shall state in detail the nature of each item for which payment is sought, the date the same became due and shall be accompanied by an affidavit of the claimant or their authorized agent stating that the service was performed or that the article was furnished as therein stated, or that the liability has accrued and that the same is a just and correct statement of the claim.

(D) All claims for which payment has not been made within the time frame set forth above shall bear interest at the rate provided in Section 63-3045, Idaho Code, unless a different rate of interest or date of accrual has been agreed upon in writing between the City and the claimant.

(E) Unless otherwise agreed in writing, no payment shall be made for partial deliveries or partial completion of any services.

(F) Upon presentation of the claim to the Council, the claim may be allowed in whole or in part, and if rejected, it shall not be again considered by the Council except upon a majority vote of the whole Council to reconsider the claim.

(G) Payment of such claims shall in all other respects conform to the provisions of Idaho Code Section 67-2302.

1-3-2: TORT CLAIMS: All claims for damages against the City shall be filed with the Clerk within the time and in the manner specified by Chapter 9, Title 6, Idaho Code. When the claim is filed, the Clerk shall date stamp the claim and execute an acknowledgment of the receipt of the claim. A claim shall be considered filed upon delivery of the claim to the Clerk and upon delivery to the claimant of a date stamped, acknowledged copy of the claim. All claims shall be presented to the insurer of the City of Mackay for further investigation. If the insurer denies the claim, the Claimant must take the matter to the District Court. § 6-906, 6-910, 6-924)

1-3-3: ACCEPTANCE OF PAYMENT: Whenever the Council orders payment of any claim, whether in whole or in part, acceptance of any warrant or check by the claimant shall be considered a settlement in full of said claim, and the same shall not be presented for further allowance, unless upon an affirmative vote of three members of the Council.

1-3-4: PAYMENT OF CLAIMS: All claims allowed against the City shall be paid by warrant or check drawn upon the Treasurer, and signed by the Mayor, with the corporate seal of the City affixed thereto. Such warrants or checks shall also contain a statement of the amount of the appropriation and such other information as will adequately identify the claim.

1-3-5: REGISTER OF WARRANTS: The Clerk shall keep a register of all warrants drawn on the Treasurer showing the number, the date and the name of the payee, for what drawn, and upon what fund. Upon the return of the canceled warrant, the Clerk shall note in the register the date of their return.

1-3-6: PAYMENT OF REGISTERED WARRANTS: The Treasurer shall keep a register of the warrants showing the number, date, amount of each warrant, the name of the payee, for what drawn, the funds on which drawn, the date of presentment, the date of payment, and the amount paid thereon. Should any warrant be presented for payment and sufficient funds are not available to pay the same, the Treasurer shall sign the warrant and endorse thereon the words: "Presented but not paid for want of funds," giving the date of presentation and specifying the rate of interest such warrant shall draw. All warrants shall be paid in the order of presentation and registered by the Treasurer out of the appropriate funds. All warrants shall be canceled by the Treasurer when paid and shall be returned to the Clerk.

1-3-7: CANCELED WARRANTS TO BE FILED: Canceled warrants returned by the Treasurer shall be filed in the office of the Clerk.

1-3-8: DESIGNATION OF DEPOSITORIES: The Ireland Bank, U.S. Bank and East Idaho Credit Union are hereby designated as the official depositories of the City. Notwithstanding the foregoing, the Council may designate other depositories by ordinance or resolution.

1-3-9: DEPOSIT OF PUBLIC FUNDS BY TREASURER: Except where public moneys in the custody of the Treasurer at any one time are less than \$1,000, the Treasurer shall deposit, and at all times keep on deposit, in such designated depositories, all public moneys coming into their hands.

1-3-10: INVESTMENT OF IDLE FUNDS: The Treasurer is hereby authorized and empowered to invest surplus or idle funds of the City in any investment permitted by Idaho Code Section 67-1210, and interest received on all such investments, unless otherwise required by law or ordinance, shall be paid into the general fund of the City.

1-3-11: COMPLIANCE WITH STATE LAW: The deposit and investment of all public moneys of the City shall conform in all respects to the Idaho Public Depository Law, as set forth in Chapter 1, Title 57, Idaho Code.

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#### 1-4-1: GENERAL CITY CODE RULES OF GENERAL CONSTRUCTION:

A. All general provisions, terms, phrases, and expressions contained in this Code shall be liberally construed in order to carry out the true intent and meaning of the Code. Code provisions represent the minimum requirements adopted by the Council for the promotion and sustaining of public health, safety, and general welfare. Where any specific provision of this Code imposes greater restrictions upon the subject matter than a general provision imposed by this Code, the provision imposing the greater restriction or regulation shall be deemed to be controlling.

B. WORDS. Except as expressly stated in this Code, all words shall have their ordinary, generally accepted meaning. Whenever any word in this Code is used in either the singular or in the plural form, then such word shall be deemed to include both the plural and singular forms of such word, unless the context indicates otherwise.

C. GENDER USAGE: When any person is referred to in any provision of this Code by use of the masculine gender, then such reference shall be deemed to include all genders.

D. PRIORITY OF ORDINANCES ADOPTED: In the event of a discrepancy or conflict between this Code and any subsequent ordinances amending the same provision of this Code, then the provision of the most recent ordinance shall prevail.

E. REFERENCES TO DAY, MONTH, QUARTER, YEAR: "Day" shall be any twenty-four (24) hour period from midnight to midnight. "Month" shall mean one (1) of any of the twelve (12) Gregorian calendar months. "Year" shall mean one (1) Gregorian calendar year and shall include a leap year, where applicable. Whenever certain hours are named herein, they shall mean current local time (e.g. Mountain Standard Time or Daylight Saving Time) as it is applied to the Code provision

F. JOB TITLES AND DELEGATION TO SUBORDINATES: Where the title or job position of an elected official, administrative officer, City employee, or Department Director is used in this Code (e.g., Mayor, Clerk, City Attorney, Public Works Director, Fire Chief, Chief of Police, etc.), such shall include all subordinates, employees, agents, and representatives, who are authorized to act or to perform a duty in their behalf unless a Code provision specifies otherwise.



G. LIABILITY AND RESPONSIBILITY OF EMPLOYER OR AGENT: All violations of this Code shall constitute an infraction, unless specified otherwise. Liability of employers and agents occur/exists when a provision of this Code prohibits the commission or omission of an act regulated by this Code. Not only the person actually doing the prohibited thing or omitting the directed act, but also the employer and all other persons concerned or aiding or abetting the person shall be guilty of the offense described and shall be liable for the penalty set forth in the Code.

H. SEVERABILITY: Should any title, section, subsection, provision, part, or portion of this Code or of any Ordinance which may be hereafter passed, approved, and published as required by law, be declared by any court of competent jurisdiction to be unconstitutional or void, such adjudication shall in no way affect the remaining portion of such title, section, subsection, provision, part, or portion of this Code.

I. CAPTIONS AND HEADINGS: The captions, headings, and titles used at the commencement of each title, provision, heading, section, or subsection of this Code are used only to indicate general content and shall not limit, modify, or in any manner affect the scope, meaning, or intent of the title, provision, heading, section, or subsection.

1-4-2: GENERAL CODE DEFINITIONS: Whenever the following words or terms are used in this Code, they shall have the meanings ascribed below:

AGENT: A person authorized to act on behalf of another

AIRPORT: The Mackay Airport

CITY: The City of Mackay, County of Custer, State of Idaho, established pursuant to the Idaho Constitution

CLERK: The person approved by the Council pursuant to Idaho Code Title 50, Chapter 2

CODE: "The Code" or "this Code" shall mean the collected current Ordinances of the City, including, but not limited to, the Zoning Code, Sign Code, Subdivision Code, and City-adopted Uniform or International Codes

COUNCIL: The lawfully elected or appointed members of City Council of the City pursuant to Idaho Code Title 50, Chapter 7

CRIME: An act in violation of this Code, unless specified otherwise

FELONY: A crime, as defined under Idaho Code, Title 18, Chapter 1

**HIGHWAY:** A travel way, as defined at Idaho Code Title 49, Chapter 1

**IDAHO CODE:** The Idaho Code or State law shall mean the Idaho State Constitution and the Idaho Statutes containing the General Laws of Idaho

**INFRACTION:** A civil public offense, not constituting a crime and which is punishable only by a fine for which no incarceration may be imposed

**KNOWINGLY:** A person acts “knowingly” when they realize what they are doing, is aware of the nature of their conduct, and did not act through ignorance, mistake, or accident

**LAND, REAL ESTATE, REAL PROPERTY:** Land, and everything which is naturally part of the land or permanently added to or built upon land. This definition also includes intangible legal interests in land, such as tenements, hereditaments, water rights, possessory rights, and other legal claims

**LICENSE:** The permission granted for the carrying on of a business, trade, profession, or occupation

**MISDEMEANOR:** Every crime except a felony or infraction

**NEGLECT, NEGLIGENCE, NEGLIGENT, AND NEGLIGENTLY:** The failure to exercise reasonable care that would protect others against an unreasonable risk of harm. A person acts “negligently” when they should be aware of a substantial and unjustifiably risk that harm will likely result from their conduct and a reasonable person would have observed the risk in the actor’s situation

**OATH:** An act that obligates a person to publicly commit to a norm or duty and includes “affirmation”, “swear”, and “affirm”. Every mode or oral statement under oath or affirmation is included in the term “testify” and, if written, included in the term “depose”

**OCCUPANT:** Any person who is or has the right to be physically present or to the use, in the whole or any part, of a building, property, or land whether alone or with others

**OFFENSE:** A crime or other violation of this Code

**OPERATOR:** The person who is generally in charge of or responsible for conducting any business, profession, or enterprise

**ORDINANCE:** A general health, safety, or welfare regulation applicable within City limits, adopted pursuant to the authority delegated to the City by the Idaho Constitution, Idaho Code

**OWNER:** Any person owning or possessing or acquiring a financial or possessory interest in real or personal property, including any part owner, joint owner, tenant in common, joint tenant, remainderman, or person holding an equitable or a life estate or reversionary interest of any kind. This definition includes part owners, joint owners, tenants in common, joint tenants, and lessees of buildings or land, regardless of whether the lease is for the whole or part of such building or land

**PERSON:** A human being or group of individuals and any public or private corporation, firm, partnership, trust, estate, sole proprietorship, joint stock company, cooperative, association, organization, government, body corporate and politic, or any other entity recognized under Idaho law

**PERSONAL PROPERTY:** Any movable or intangible thing that is subject to ownership and not classified as real property. This definition includes money, goods, chattels, evidence of debt, and general intangibles, as these terms are defined by the Idaho Uniform Commercial Code, Idaho Code Title 28, as amended

**PREMISES:** A building and the contiguous land to the building

**PROPERTY:** Includes both real and personal property

**RESOLUTION:** Council adopted statement of policy or intent but which is not an Ordinance

**RIGHT-OF-WAY:** The privilege of the immediate use of the roadway or other property

**SIGNATURE:** Includes any name, mark, or sign written with the intent to authenticate any instrument of writing

**STATE:** The State of Idaho

**STREET:** All public roads, highways, ways, alleys, and rights-of-way and easements used for the movement of vehicular traffic, including any public sidewalks adjacent thereto

**TECHNICAL SPECIFICATIONS AND STANDARDS MANUAL:** The Manual, adopted by Resolution of the Council, a copy of which shall be kept on file with the City Clerk and shall be available to members of the public

TENANT: A person who pays rent in exchange for a possessory right to use or occupy another's land, typically under a lease or a similar agreement

THOROUGHFARE: Includes highways, streets, alleys, lanes, courts, boulevards, public ways, public squares, public spaces, and sidewalks

WILLFULLY: Some definitions of "willfully" are very closely related with definitions of "knowingly." The United States Supreme Court distinguishes between "knowingly" and "willfully" by requiring the government to prove that a defendant acted with a "bad purpose" to establish "willfully." "Willfully" requires that the government prove that the defendant knew their conduct was unlawful and that the defendant intended to do something that the law forbids. *Bryan v. United States*, 524 U.S. 184 (1998)

WRITING: Includes, but is not limited to, handwriting, typewriting, printing, Photostatting, photographing and every means of recording, including letters, words, pictures, sounds or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, or other documents.

## CHAPTER 5 COUNCIL

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1-5-1: REGULAR MEETINGS: Two (2) regular meetings of the City Council shall be held each month, respectively on the second and fourth Tuesdays of each month, The regular meeting place shall be the City Council Room located in the City Hall Regular meetings shall commence at 6:00 p.m. The Mayor shall have the power to recess any meeting to a different place or time upon giving lawful notice thereof. (Idaho Code §50-705)

1-5-2: SPECIAL MEETINGS: Any Council member may call a special meeting of the Council provided the object of which shall be submitted to the Council in writing, and the call and object of the meeting and all minutes required to be kept by law shall be entered upon the journal kept by the Clerk. (Idaho Code §50-706)

1-5-4 OATH; TERM OF OFFICE: The Council members shall take office after ascribing to the oath of office and upon receipt of their certificates of election. Subscription to the oath of office and delivery of the certificates of election shall be done at the first regular Council meeting in January of the year following a general election. Newly elected members shall be sworn into office in the same order as the number of votes cast for each member at the same election, with the member receiving the most votes to be sworn first. Each member shall serve for a term of four (4) years, or until their successor is elected and sworn, whichever is longer. (Idaho Code §50-702)

1-5-5: SALARY OF COUNCIL MEMBERS: In addition to compensation for which a City employee is eligible (PERSI contribution, travel reimbursement, and the like) the Council members shall receive a monthly salary of fifty-five dollars (\$55), , provided such salary can be increased only by a vote of the citizens of Mackay during any City general election. (Idaho Code §50-203) (Ord. 303)

1-5-6: PRESIDENT OF THE COUNCIL: At the first regular Council meeting in January of the year following a general election, the Council shall elect one of the Council

members as President of the Council. The President of the Council shall preside at all meetings in the absence of the Mayor. During any temporary absence or disability of the Mayor, the President of the Council shall exercise the office of the Mayor until the Mayor shall return or the disability is removed. In case of vacancy in the office of Mayor, the President shall exercise the office of Mayor until such vacancy is filled. In the temporary absence of the Mayor and the President of the Council, the senior member of the Council, as determined from the date and order of swearing in, shall temporarily serve as the President of the Council until the Mayor or President returns. (Idaho Code §§50-608, §50-702)

1-5-8: FUNDS CONTROLLED BY COUNCIL: All monies and funds belonging to or controlled by the City shall be controlled and administered by the Mayor and Council in the manner required by law and subject to all ordinances and rules and regulations adopted by the Council as may be necessary for the efficient and prudent use and protection of the same. (Idaho Code §50-708)

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1-6-1: DECLARATION OF CANDIDACY: Each candidate shall file a Declaration of Candidacy with the Clerk before any Petition of Nomination is signed or circulated. Such declaration shall be in substantially the following form: (Idaho Code §50-407)

#### DECLARATION OF CANDIDACY

I, the undersigned, being a qualified elector of the City of Idaho Falls, State of Idaho, hereby declare myself to be a candidate for the office of City Councilmember, for a term of four (4) years, to be voted for at the election to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and certify that I possess or will possess the legal qualifications to fill said office, and that my mailing address is \_\_\_\_\_, Mackay, Idaho \_\_\_\_\_.

(Signed)  
Candidate

STATE OF IDAHO

: ss.

County of Custer

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public for Idaho

Residing at: \_\_\_\_\_

My commission expires: \_\_\_\_\_

1-6-2: ELECTIONS AND PETITIONS FOR NOMINATION: All elections shall be nonpartisan in nature and shall be conducted in the manner provided in Chapter 4, Title 50, Idaho Code. Candidates for election to the Council shall be nominated by petition in the manner provided by Idaho Code.

1-6-3: FORM OF PETITION: Petitions of Nomination shall be in substantially the same form as follows:

PETITION OF NOMINATION

We, the undersigned, do hereby join in a petition for the nomination of \_\_\_\_\_, whose residence is at (street address) \_\_\_\_\_, Mackay, Idaho, for the office of City Councilmember, at the general City election to be held in the City of Mackay on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and do further certify that we are registered qualified electors for the council seat designated above.

(Signed) (Name--printed) (Address) (Date)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This petition of nomination, if found insufficient, shall be returned to (name), at (address) , Idaho. (Idaho Code §50-407)

1-6-4: VALIDITY OF SIGNATURES: All persons who sign the petition shall record thereon the correct date on which they sign the petition. Any signatures obtained in violation of this Chapter shall be void.

1-6-5: ELECTION OR APPOINTMENT BY COUNCIL SEAT: All members of the Council shall be elected or appointed at large to the Council. Council seats are not to be numbered. The City Clerk shall maintain a record of the election dates of each Council Member and when that Member will be up for reelection. (Idaho Code §50-707)

1-6-6: RUN-OFF ELECTIONS CITY COUNCIL SEATS: Run-off elections are not required in the City of Mackay. Councilmembers are elected at large. Two (2) seats are normally up for election at the same time. The candidate who receives the most votes is elected to one (1) of the seats while the candidate who receives the second most votes is elected to the other seats. In the event of a tie between the candidates receiving the second and third highest number of votes cast, the winner is determined with a coin toss as prescribed by Idaho Code. §§50-612, 34-1210)

1-6-7: RUN-OFF ELECTIONS MAYOR: Run-off elections are not held in the City of Mackay. The Mayor is the candidate who receives the most votes. Should there be a tie vote, the Mayor is selected with the toss of a coin in accordance with Idaho Code. (Idaho Code §§50-612, 34-1210)



## CHAPTER 7 EMPLOYEE POLICIES AND PROCEDURES

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1-7-1: APPOINTMENT: All appointive officers and all employees of the City shall serve at the discretion of the Mayor and Council and shall have no right of continued employment or employment benefits, except as agreed in writing and expressly approved by the Council or as authorized in the City Personnel Policy Manual, as expressly approved by the Council. (Resolution 2022-03, dated 3-22-2022)

1-7-2: PERSONNEL POLICY AND CODE OF CONDUCT: All employees shall be subject to the Personnel Policy Manual as approved by the Council, except to the extent such Personnel Policy Manual is inconsistent any written contract approved by the Council, in which case, the contract shall control. (Resolution 2022-03, dated 3-22-2022)

1-7-3: COMPENSATION: All employees, including appointive officers, shall receive such salaries, benefits, and other compensation as determined by the Council by ordinance (including the City's annual amended appropriation ordinance), resolution, written collective bargaining agreement, or other agreement. Employees are required to submit a weekly time sheet.

1-7-4: RULES AND REGULATIONS: All employees shall abide by rules and regulations adopted by the Council and included in the City Procedures Manual adopted by the City Council and the Mayor. (Resolution 2022-06, dated 5-24-2022)

1-7-5: AVAILABILITY OF POLICIES: Any person hired after the effective date of this Code shall be given a copy of the Personnel Policy Manual, and the Procedures Manual. Notwithstanding the foregoing, nothing herein shall prevent the application or enforcement of any policy or procedure set forth in the Personnel Policy In the event an employee fails to receive a copy thereof at the time of their employment. One copy of the Manuals shall be maintained in the office of the Clerk, If the Personnel Policy Manual or Procedure Manual is amended or modified after the effective date of this Code, a copy of such amendment or modification shall be posted for a period of not less than two weeks in the office of the Clerk,

1-7-6: DEFERRED COMPENSATION: The Mayor and City Council may, by ordinance or by contract, provide for any retirement plan, deferred compensation plan, insurance benefits or other program benefits permitted by law.

## CHAPTER 8 ENTERPRISE FUNDS

### SECTION:

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1-8-1: **DEFINITION:** Enterprise Funds are defined as follows for the purpose of this Ordinance: A fund established by the City to account for operations of an enterprise activity (See Section 1-2-2:). Enterprise funds generally are segregated as to purpose and use from other funds and accounts of the governmental entity with the intent that revenues generated by the enterprise activity and deposited to the enterprise fund will be devoted principally to funding all operations of the enterprise activity. In some cases, the City may be permitted to use funds in an enterprise fund for other purposes and to use other funds to pay costs otherwise payable from the enterprise fund.

1-8-2: **ACTIVITIES:** Enterprise Activities are defined as follows: A revenue-generating facility or system that provides funds necessary to pay to finance its construction or improvement. The debt incurred for such facility or system is self-liquidating when the facility or system produces sufficient revenues to cover all debt service and other requirements imposed under the bond contract. Common examples include airports, water and sewer systems and power supply systems.

1-8-3: **DECLARATION OF SYSTEM:** Using the above definitions, the City of Mackay has one (1) Enterprise Activity and therefore one (1) Enterprise Fund. The City of Mackay Sewer and Water System was constructed and is maintained by funds generated by bonds and collecting sewer and water fees from those who use the system, which includes all households within the City Limits. Property Taxes are not used to maintain the systems.

1-8-4: **NON-SYSTEMS:** The City receives revenue from the following sources which are not considered as Enterprise Activities: Oscar Wornek Business Park Buildings #1 and #2 rent; Reservations Fees for camping at the City Tourist Park; License Fees (Vendor and Liquor); and donations. The Business Park Buildings, and the Tourist Park receive funding from the General Fund for operation and maintenance, which comes from property taxes. Revenue received from the Business Park Buildings and the Tourist Park is considered to be General Fund revenue.

1-8-5: RIGHTS RESERVED: The City reserves the right to transfer monies from the Enterprise Activity to the General Fund in accordance with Idaho Code 50-1014 "The city council of the cities may transfer an unexpended balance in one fund to the credit of another fund."

1-8-6: SEVERABILITY: Provisions of this Ordinance shall be deemed severable and the invalidity of any provision of this Ordinance shall not affect the validity of remaining provisions.

## CHAPTER 9      GENERAL PENALTY PROVISIONS

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1-9-1: MISDEMEANOR PENALTY: Whenever any act or omission constitutes a crime not constituting a felony or infraction and no specific penalty is stated in this Code, such crime shall be punishable by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment for not more than six (6) months, or by both such fine and imprisonment for any single violation. (Idaho Code §18-113)

1-9-2: INFRACTIONS: Whenever any person commits an infraction and no specific penalty is provided for such act, such person shall be punishable by an infraction fine in an amount set from time to time by Resolution of the Council and authorized by Idaho Code, and no imprisonment may be imposed. (Idaho Code §18-111)

1-9-3: APPLICABILITY OF PENALTY: The penalties provided in this Chapter shall be applied as though they were a part of every separate section of this Code.

1-9-4: MULTIPLE VIOLATIONS: Whenever the same person violates the same section of this Code on two or more days, then each violation on each day shall be deemed a separate offense and shall be separately punishable for each such offense.

1-9-5: PROSECUTORIAL DISCRETION: Whenever the same offense, act or omission is punishable under different sections of this Code, the City Prosecuting Attorney may elect under which section to proceed; but no more than one sentence of imprisonment may be imposed against the same person for the same offense, provided that evocation of a license or permit shall not be considered a penalty so as to bar imposition of a penalty under this Code.

1-9-6: PENALTY AGAINST OFFICERS: The penalty provisions of this Chapter shall not apply to any section of this Code which designates the duties of any officer or employee of the City unless the intention to impose a fine or penalty is specifically and clearly expressed in the section creating the duty.

## CHAPTER 10 INITIATIVE, REFERENDUM AND RECALL

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1-10-1: DIRECT LEGISLATION: (A) The people of the City of Mackay, in addition to the method of legislation otherwise provided, shall have the power of direct legislation by initiative and referendum. (Idaho Code §34-1801B)

(B) For the purposes of this Chapter, "initiative" means the right of the people at an election to adopt, amend or repeal legislation. "Referendum" means the right of the people at an election to reject legislation adopted by the City Council.

#### 1-10-2: APPROVAL OF INITIAL PETITIONS FOR INITIATIVE AND REFERENDUM:

(A) Before beginning to circulate any petition for the referendum to the people of any ordinance passed by the City Council, or for any ordinance proposed by initiative, the person or persons or organization or organizations under whose authority the measure is to be referred or initiated shall send or deliver to the Clerk an initial petition duly signed by at least twenty (20) qualified electors of the City. A full and correct copy of the ordinance or measure so proposed by initiative petition, or a full and correct copy of the ordinance or measure on which the referendum is demanded, as the case may be, shall be attached to such initial petition. An electronic or digital copy of the proposed ordinance or measure, in Word, using such storage media as may be determined by the

Clerk, shall also accompany the filing. Ordinances proposed by initiative shall contain a blank line for the ordinance number and a descriptive title at the top of the page, an ordaining clause as required by Section 50-901, Idaho Code, separately numbered sections with descriptive section titles, signature lines for the Mayor and Clerk, and shall generally conform to the ordinance style determined by the Clerk. The Clerk shall, upon request, provide to the petitioners a sample copy of an ordinance conforming to such style. Upon request, the Clerk shall also provide to such persons one photocopy or digital copy of any ordinance or Chapter in the City Code which is proposed to be subject to referendum.

(B) Upon receipt of a complete petition conforming to the requirements of the preceding section, the Clerk shall expeditiously determine whether the petition contains the requisite number of signatures and conforms to the required ordinance style. In making such determination, the Clerk may consult with the Custer County Election Clerk in order to determine whether all signators on the petition are qualified electors. Upon completion of such determination, the Clerk shall forthwith notify the petitioner or petitioners of such determination. If the requisite number of signatures is reflected upon the petition, and the petition and accompanying measure are in proper form and style, the Clerk shall file the petition in their office and immediately transmit a copy of the petition to the City Attorney for the issuance of the certificate of review as provided in section three (3) of this Chapter.

(C) Initial petitions for referendum containing the requisite number of signatures shall be filed with the Clerk not less than sixty (60) days following final publication of the subject ordinance, as provided in §50-901, Idaho Code.

(D) Concurrently with the filing of an initial petition for initiative or referendum, the petitioner or petitioners shall complete and deliver to the Clerk an application form stating their name, mailing address and telephone number. The application form shall be in such form as may be prescribed by the Clerk. (Idaho Code §34-1801B)

#### 1-10-3: REVIEW OF INITIATIVE AND REFERENDUM PETITIONS BY CITY

ATTORNEY: (A) After receiving a copy of the petition from the Clerk, the City Attorney may confer with the petitioner and shall, within twenty (20) business days from receipt thereof, review the proposal for matters of substantive import and shall recommend to the petitioner such revisions or alterations of the measure as may be deemed necessary and appropriate. The recommendations of the City Attorney shall be advisory only and the petitioner may accept or reject them in whole or in part. The City Attorney shall issue and file a certificate of review with the Clerk certifying that he has reviewed the measure for form and style and that the recommendations thereon, if any, have been delivered to the petitioner. Such certificate shall be issued whether or not the petitioner accepts the City Attorney's recommendations. The certificate of review shall be available for public inspection in the office of the Clerk. Within fifteen (15) business

days after the filing of the certificate of review, the petitioner, if they desire to proceed with sponsorship of the petition, shall file the measure with the Clerk who shall assign a number to the measure and shall forthwith submit to the City Attorney two (2) copies of the measure filed. Within five (5) business days after receiving such copies, the City Attorney shall provide a ballot title therefor and return one of said copies to the Clerk, together with the ballot title so prepared by them. A copy of the ballot title as prepared by the City Attorney shall be furnished by the Clerk with their approved form of any initiative or referendum petition, as provided herein, to the person or persons or organization or organizations under whose authority the measure is initiated or referred. The approved ballot title shall be used and printed on each petition or copy thereof when in circulation; the short title shall be printed in type not less than twenty (20) points on the covers of all such petitions circulated for signatures. The ballot title shall contain (1) a distinctive short title not exceeding twenty (20) words by which the measure is commonly referred to or spoken of and which shall be printed in the foot margin of each signature sheet of the petition, and (2) a statement title expressing in not more than two hundred (200) words the purpose of the measure. In drafting such ballot title, the City Attorney shall provide a true and impartial statement of the purpose of the measure. The ballot title shall be included as part of the measure when it is printed on the official ballot for any election to consider an initiative or referendum measure.

(B) Any person who is dissatisfied with the ballot title or the short title provided by the City Attorney, may petition to the District Court of Custer County, praying for a different title and setting forth the reason why the title prepared by the City Attorney is insufficient, prejudicial or unfair. No petition shall be allowed from the decision of the City Attorney on a ballot title unless the same is taken within twenty (20) days after the ballot title is filed in the office of the Clerk. The District Court of Custer County shall thereupon examine the measure, hear argument, and in its decision thereon certify to the Clerk a ballot title and a short title for the measure in accordance with this section. The Clerk shall print on the official ballot for any special election subsequently ordered, the title thus certified. Any qualified elector of the City may, at any time after the City Attorney has issued a certificate of review, bring an action in the District Court of Custer County to determine the constitutionality of any initiative.

(C) Upon printing of the petition with the measure number, and title page and ballot title approved by the City Attorney, or the Court, as the case may be, the petition shall be deemed final and may thereafter be circulated for signature in the manner described in the next section. Any petition circulated without compliance with sections of this Chapter shall be void and shall not be submitted for public vote or approval until such compliance has been made. (Idaho Code §34-1801B)

#### 1-10-4: CIRCULATION OF FINAL PETITIONS:

(A) After the form of the initiative or referendum petition has been finally approved and a ballot title assigned, it may be circulated, and signatures thereon sought by the



person or persons whose organization or organizations under whose authority the measure is to be referred or initiated. Any person who physically circulates any petition for an initiative or referendum shall be a qualified elector of the City. All signatures affixed to each copy of the petition shall be signed in the presence of the person circulating such copy.

(B) All petitions for the initiative and for the referendum and copies circulated for signatures shall be printed on good quality bond or ledger paper in the form and manner as approved by the Clerk. Each petition and copy circulated shall have as its first page a cover page which contains the short title and petition number as required under this Chapter. Before any petition or copy is circulated for signature, a full and correct copy of the measure so proposed by initiative petition shall be stapled or otherwise physically attached thereto. Each petition or copy may be separately numbered for convenience in handling. To every referendum and every copy of a referendum petition circulated for signature shall be similarly attached a cover page and a full and correct copy of the ordinance on which the referendum is demanded. Each such copy may also be separately numbered in like manner as initiative petitions.

(C) Initiative petitions shall be in substantially the following form:

Initiative Petition No. \_\_\_\_

**WARNING**

**IT IS A MISDEMEANOR FOR ANYONE TO SIGN ANY INITIATIVE OR REFERENDUM PETITION WITH ANY NAME OTHER THAN THEIR OWN, OR TO KNOWINGLY SIGN THEIR NAME MORE THAN ONCE FOR THE MEASURE, OR TO SIGN SUCH PETITION WHEN THEY ARE NOT A QUALIFIED ELECTOR.**

We, the undersigned, being qualified electors of the City of Mackay, State of Idaho, hereby declare that we have read, or heard read at length, section by section, the proposed ordinance or measure attached hereto as Exhibit "A" and fully understand its contents, meaning and purpose, and believe it should become a law of the City for the following reasons: (here state the reasons in not more than two hundred (200) words). We herewith request such ordinance or measure be submitted to a vote of the people, if not first passed by the City Council.

No.	Printed Name	Street Address/City Zip	Signature	Date
1	_____	_____	_____	_____
2	_____	_____	_____	_____
3	_____	_____	_____	_____
4	_____	_____	_____	_____
5	_____	_____	_____	_____
6	_____	_____	_____	_____
7	_____	_____	_____	_____

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25 \_\_\_\_\_  
26 \_\_\_\_\_

State of Idaho)

: ss.

County of Custer

I, \_\_\_\_\_, being first duly sworn, say: That I am a qualified elector of the City of Mackay; that every person who signed this copy of the foregoing petition signed their name thereto in my presence; I believe that each signer has correctly stated their name, address and signature date and that each signer is a qualified elector of the City of Mackay.

\_\_\_\_\_  
(Signature)

(Street address)

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

(Notary Seal) State of Idaho

Residing at: \_\_\_\_\_

(D) Referendum petitions shall be in substantially the same form as initiative petitions, except they shall have the following caption "Referendum Petition No. \_\_\_\_" and shall contain the following petition language: "We, the undersigned, being qualified electors of the City of Mackay, Idaho, declare that we have read, or heard read in full (insert ordinance number subject to referendum) and we understand its contents, meaning and purpose and believe it should not become a law of the City for the following reasons: (State reasons why ordinance should not be passed in two hundred (200) words or

less.) We request that a referendum vote be called on this ordinance at a special election called for such purpose."

(E) Any number of copies of the petition and proposed ordinance or referred ordinance may be circulated at the same time and when filed with the Clerk all shall be considered as one petition, but each copy of the petition must be separately numbered and verified by a qualified elector of the City prior to its filing with the Clerk.

(F) Any final petition or copy thereof circulated in violation of this Chapter or §§ 1-9-2 or 1-9-3 of this Chapter shall be void. Any signature signed in violation of this Chapter shall be void. (Idaho Code §34-1801B)

#### 1-10-5: FILING AND EXAMINATION OF FINAL INITIATIVE OR REFERENDUM

PETITIONS: (A) Each copy of an initiative or referendum petition with signatures thereon, accompanied by the proposed or referred ordinance physically attached to each such copy, shall be filed with the Clerk, along with a statement by the petitioner or petitioners requesting the filing of the petition and further requesting a special election be held on the measure attached to the petition. Such filing shall be made within one hundred eighty (180) days after the date of the Clerk's final approval in accordance with this Chapter. Multiple filings of the same petition or copies thereof shall not be permitted and any petition or copy thereof or signature sheet filed after the first filing of a final measure shall be void, provided however nothing herein shall be construed to prohibit the filing of additional signature sheets in accordance with subsection (C) of this section.

(B) In order to qualify for submission of the measure to the voters at a special election, the petition for initiative or referendum must be signed by qualified electors, the total number of which equals or exceeds twenty percent (20%) of the total number of voters who voted at the last general election of the City.

(C) Upon the filing of such final petition, the Clerk shall verify whether or not the petition is signed by the requisite number of qualified electors and otherwise conforms to state law and the provisions of this Chapter. Verification of the petition and the signatures thereon by the Clerk shall be required by Idaho Code Title 34, Chapter 18. The signatures affixed to the initial initiative or referendum petition shall be considered in determining whether the requisite number of signatures has been obtained and shall for such purposes be thereafter considered as part of the final petition. The Clerk shall attach to the petition a certificate showing the result of such examination and if the petition is found insufficient, the certificate shall state the reasons therefor and the changes necessary to conform to law. The Clerk may request the advice and counsel from the City Attorney for the purpose of determining the sufficiency of the petition. The Clerk's certificate shall be filed in the Clerk's office within fourteen (14) days after the petition was filed with the Clerk, and the Clerk shall notify the person filing such petition

of the filing of the Clerk's certificate, which notice shall be in writing and shall be delivered within three (3) business days after the filing of the certificate. If, by the Clerk's certificate, the petition is shown to be insufficient or defective, it may be amended, additional signatures added, or otherwise perfected, within thirty (30) days from the date of said certificate. If the petition is not so perfected and filed with the Clerk within such thirty (30) daytime frame, the Clerk shall declare the petition null and void.

(D) Upon determining that the required number of signatures has been met and that the petition and signatures conform to the requirements of this Chapter, the Clerk shall issue a final certification and shall order an election be held on the next available election date allowed under Section 34-106, Idaho Code. The Clerk shall submit a copy of such certification and order to the Council at its next regular meeting, provided however, if the Clerk's certification is made less than two (2) business days prior to the next regular Council meeting, the certificate and order may be submitted to the Council at the next following regular Council meeting.

(E) If the Clerk shall refuse to accept, file or certify any petition for the initiative or for the referendum in proper form and with the requisite number of signatures of qualified electors thereto attached, or to order a special election as required under this Chapter, any citizen may apply, within ten (10) business days after such refusal, to the District Court for a writ of mandamus to compel the Clerk to do so. Alternatively, if the Clerk shall improvidently accept, file or certify any petition for the initiative or for the referendum, or improvidently order a special election, any citizen may similarly apply, within ten (10) business days after such acceptance, filing or certification, to the District Court for a writ of prohibition to prohibit such action. If the District Court grants the writ of mandamus, the Clerk shall then file the writ in their office, with a certified copy of the judgment or writ attached thereto, as of the date on which it was originally offered for filing in their office and shall proceed as directed by such writ. On a determination that a writ of prohibition should be granted, the court may enjoin the Clerk and any other elected or appointed officer from certifying or printing on the official ballot for the ensuing election the initiative or referendum measure which was the subject of such writ. All such suits shall be advanced on the court docket and heard and decided by the court as quickly as possible. (Idaho Code §34-1801B)

1-10-6: REMOVAL OF SIGNATURES: (A) The signer of any final initiative or referendum petition may remove their own name from the petition by crossing out, obliterating or otherwise defacing their own signature at any time prior to the time when the petition is presented to the Clerk for signature verification in accordance with Section 1-10-5 of this Chapter. (Idaho Code §34-1801B)

(B) The signer of any final initiative or referendum petition may have their name removed from the petition at any time after presentation of the petition to the Clerk but prior to issuance of the Clerk's certification in accordance with §1-10-5(E) hereof, by

presenting or submitting to the Clerk a signed statement that the signer desires to have their name removed from the petition. The statement shall contain sufficient information to clearly identify the signer. The Clerk shall immediately strike the signer's name from the petition and adjust the total number of certified signatures on the petition accordingly. The statement shall be attached to and become a part of the initiative or referendum petition. (Idaho Code §34-1801B)

1-10-7: DELIVERY OF NOTICES TO PETITIONER: Delivery of any notice required or allowed under this Chapter shall be presumed complete upon its physical delivery to the petitioner or petitioners, or upon its deposit into the U.S. mail, postage prepaid, certified mail, return receipt request, addressed to the address of the petitioner or petitioners specified in the application filed in accordance with Section 1-10-2 hereof. (Idaho Code §34-1801B)

1-10-8: SIGNATURE REQUIREMENTS: The requirements for signature, verification of valid petitions, printing of petitions and time limits, except as expressly modified herein, shall generally conform to Chapter 18, Title 34, Idaho Code. (Idaho Code §34-1801B)

1-10-9: SUBMISSION TO POPULAR VOTE:

(A) Unless the City Council shall, within twenty (20) days after the date of the Clerk's certificate and Order issued under Section 1-6-5 (D) hereto, pass the proposed ordinance without alteration, a special election shall be held on the next available date permitted under Section 34-106, Idaho Code for the purpose of submitting such ordinance to the electorate. If a majority of the electors voting on the proposed initiative measure vote in favor thereof, the same shall thereupon or at the time fixed therein, become effective as a City ordinance. (Idaho Code §34-1801B)

(B) Unless the Council shall, within twenty (20) days after the date of the Clerk's certificate and Order issued under Section 1-9-5 (D) hereto, repeal a referred ordinance, a special election shall be held on the next available date permitted under Section 34-106, Idaho Code for the purpose of submitting such ordinance to the electorate. If a majority of the voters voting on the measure vote in favor of such repeal, the ordinance shall thereupon become null and void. (Idaho Code §34-1801B)

1-10-10: PROHIBITED ACTIONS; PENALTIES: (A) It shall be unlawful for any person to knowingly sign their own name more than once to any petition allowed under this Chapter or to sign their name to any such petition knowing themselves at the time of such signing not to be qualified to sign the same.

(B) Any person circulating a petition, who knows, or who in the exercise of reasonable care should know, that a signature is forged and who shall thereafter fail to strike through and thereby void such signature, and any person in a position of supervision of

such person who suffers or permits a forged signature to remain on a petition filed with the Clerk, shall be guilty of a misdemeanor.

(C) It shall be unlawful for any person to knowingly make any false statement regarding their residency in a petition or to falsely represent their residency to any person circulating a petition, in order to induce the circulating person to allow such person to sign a petition under this Chapter.

(D) It shall be unlawful for any person who circulates a petition to swear to the oath required of persons who circulate a petition under this Chapter, if such person knows or has reason to know their oath is false in any material respect.

(E) It shall be unlawful for any person who has undertaken to circulate an approved petition to leave unattended any petition or copy thereof authorized under this Chapter for the purpose of gathering signatures in such person's absence.

(F) It shall be unlawful for any person submitting an application for an initial petition under Section 1-10-2 of this Chapter to refuse to allow any person to remove their name from a signed copy of a final petition, in the manner allowed under Section 1-10-6 hereof.

(G) It shall be unlawful for any person to physically attach a copy of the ordinance proposed by initiative or the ordinance proposed to be subject to referendum, to any initial or final petition that has been signed without such ordinance or measure attached thereto or to file or present for filing with the Clerk any such petition, with knowledge that the petition has been so altered.

(H) It shall be unlawful for any person to file in the office the Clerk any petition allowed under this Chapter to which is attached, appended or subscribed any signature which the person so filing such petition knows to be false or fraudulent or not the genuine signature of the person purporting to sign such petition, or whose name is attached, appended or subscribed thereto.

(I) It shall be unlawful for any person to circulate or cause to be circulated any petition allowed under this Chapter, knowing the same to contain false, forged or fictitious names.

(J) It shall be unlawful for any person to make any false affidavit concerning any petition allowed under this Chapter, or the signatures appended thereto.

(K) It shall be unlawful for any public official or employee to knowingly to make any false return, certification or affidavit concerning any petition allowed under this Chapter, or the signatures appended thereto. (Idaho Code §34-1801B)

1-10-11: COMPUTATION OF TIME: All references to the term "day" or "days" shall be deemed to refer to a calendar day, unless specific reference is made to a "business" day. The term "business" day shall mean any day of the week between Monday and Friday inclusive, except legal holidays prescribed by Idaho Code Section 73-108. The time in which any act provided herein must be done shall be calculated in the manner set forth in Idaho Code Section 73-109.

1-10-12: SUBMISSION ON COUNCIL'S OWN MOTION: The Council may submit to popular vote, for adoption or rejection, at any election any initiative or referendum ordinance or measure in the same manner and with the same force and effect as provided herein. The Council may also call a special advisory election to obtain a non-binding vote on any matter. (Idaho Code §34-1801B)

1-10-13: FORM OF BALLOT: The form of ballot and method of voting on any initiative or referendum petition shall be the same as in any general City election. If more than one initiative or referendum measure qualifies for the same election, then each measure shall be submitted on the ballot with a separate measure number, consistent with the ballot title and number determined by the City Attorney. (Idaho Code §34-1801B)

1-10-14: PUBLICATION: The Clerk shall publish every proposed initiative or referred ordinance at least twice in the official newspaper of this City before the date of the election at which such proposition or ordinance is to be voted upon. All special elections held pursuant to this Chapter shall be conducted, the votes canvassed, and the result declared, in the same manner as provided by law in respect to other City elections. (Idaho Code §34-1801B)

1-10-15: INCONSISTENT MEASURES: Nothing herein shall prevent two or more initiative measures concerning the same subject matter from being voted upon at the same election, provided however, if both initiative measures are approved and are inconsistent in any respect, the measure receiving the highest number of votes shall prevail, and the other shall entirely fail to become law. (Idaho Code §34-1801B)

1-10-16: REQUIRED TIME BETWEEN ELECTIONS: No special referendum or initiative election may be held upon any consecutive election day permitted under Idaho Code Section 34-106, with respect to any initiative or referendum measure concerning the same or substantially the same subject matter. (Idaho Code §34-1801B)

1-10-17: LIMITATIONS ON RIGHT: The right of initiative or referendum shall not be exercised with respect to any measure pertaining to issuance of bonds, tax levies, fiscal appropriations, planning or zoning matters, matters involving administrative discretion or any other matter in conflict with the Constitution and laws of the State of Idaho. Such right or rights shall, to the extent consistent with the Constitution of the State of Idaho,

be limited to legislative matters and shall not be exercised to impair any vested contract or property right or deprive any person of due process of law. (Idaho Code §34-1801B)

1-10-18: RECALL: The Mayor and members of the City Council shall be subject to recall in accordance with Chapter 17, Title 34, Idaho Code. Appointive officers of the City shall not be subject to recall. (Idaho Code §34-1801B)



## CHAPTER 11      MAYOR

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1-11-1: **POWERS AND DUTIES:** The Mayor shall be the chief executive officer of the City and shall have authority to hire, terminate, discipline, supervise and control all appointive officers and employees of the City, in the manner provided by this Code or State law. The Mayor shall preside at all meetings of the City Council and may determine the order of business, subject to such rules as the Council may provide by ordinance. The Mayor shall have a vote only when the vote of the Council is equally divided at any meeting where a quorum is present. The Mayor shall have the power to veto any ordinance, resolution or action taken by the Council, provided the Council may override such veto by a vote of one-half plus one of the members of the full Council. (Idaho Code §§50-602, 50-611)

The Mayor shall have the authority and responsibility to enforce all police ordinances and regulations. The Mayor shall have authority to administer oaths and shall have all powers, prerogatives and authority conferred by ordinance, by the laws of the State and as may be conferred by resolution of the City Council. (Idaho Code §50-606)

1-11-2: **TERM:** The term of office of the Mayor shall be for a period of four years, commencing upon the issuance of a certificate of election at the first regular Council meeting in January following his or her election. Any vacancy in the office of Mayor shall be filled in the manner provided by State law. (Idaho Code §§50-601, 50-608)

1-11-3: **SPECIAL MEETINGS:** The Mayor may call special meetings of the Council, the object of which shall be submitted to the Council in writing and the call and object of which, as well as the minutes required to be kept by law, shall be entered in the journal of the City Clerk. (Idaho Code §50-604)

1-11-4: MESSAGES TO COUNCIL. The mayor shall, from time to time, communicate to the City Council such information and recommend such measures as, in his opinion, may tend to the improvement of the finances, the protection, the health, the security, the ornament, the comfort, and the general welfare and prosperity of the city. (Idaho Code §50-603)

1-11-5: ORDINANCES AND CONTRACTS: The Mayor shall execute all ordinances, resolutions and contracts approved by the Council, including deeds, bonds, warrants and other agreements to which the City is a party. (Idaho Code §50-607)

1-11-6: MAYOR MAY OFFER REWARD: The Mayor may offer a reward for the arrest and conviction of any person who violates this Code, as provided by law.

1-11-7: ACCOUNTS AND REPORTS OF OFFICERS: The Mayor may require any officer or employee of the City to exhibit all accounts, files or other papers pertaining to such office or employment and to report to the Council in writing regarding any subject or matter pertaining thereto. (Idaho Code §50-605)

1-11-8: EXTRATERRITORIAL POWERS: The Mayor shall have the following powers over all persons, places, and activities located within the corporate boundaries of the City, as authorized, delegated, and permitted by Idaho Code: (A) To prevent, remove, and abate nuisances, at the expense of the person causing or maintaining the same

(B) To enforce all health and quarantine laws and ordinances against any person or Place

(C) To enforce all laws and ordinances regulating or prohibiting the loading, storage and transportation of hazardous materials or chemicals

(D) To enforce all platting, zoning, street and surface drainage ordinances

(E) To enforce all ordinances and to exercise all police powers conferred upon the City, except taxation, regarding offenses. (Idaho Code §50-606)

1-11-9: COMPENSATION OF MAYOR: In addition to compensation for which a City employee is eligible (PERSI contribution, travel reimbursement, and the like), the Mayor shall receive a monthly salary of seventy-five dollars (\$75), provided such salary can be increased only by a vote of the citizens of Mackay during any City general election. (Idaho Code §50-203) (Ord. 303)

1-11-10: AID TO ENFORCE LAWS: The Mayor may call on every citizen residing in the City over the age of twenty-one (21) years to aid in enforcing the laws. (Idaho Code §50-609)

## CHAPTER 12 OATH, BONDS AND OFFICIAL CONDUCT

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1-12-1: OATH: Every elective officer of the City, before duty, shall take and subscribe before a person authorized to administer public oaths, an oath substantially in the following form: (Idaho Code §50-204)

“I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, the Constitution and Laws of the State of Idaho and the City of Mackay, and that I will faithfully discharge the duties of (insert office) according to the best of my ability.”

Said oath shall be certified by the officer before whom it was taken and the subscribed oath and certification shall be filed with the Clerk.

1-12-2: BONDS: Before performing any duties of their respective offices, the following officers shall furnish an official bond: Clerk, Treasurer, The public officials, officers, or employees of the City, who are required to provide a bond before entering upon the performance of their duties, shall, through the City's liability insurance coverage, be deemed to have coverage compliant with provisions of Idaho Code §59-804 for the terms and responsibilities of such public officials, officers, or employees, to the extent required by the Idaho Code bonding requirements for public officials. The fee for the required bonds shall be paid by the City and shall be deemed by the Mayor and the Council to have been executed by such public officials, officers, and employees. (Idaho Code §50-204)

1-12-3: QUALIFICATIONS OF ELECTIVE OFFICERS: No person shall hold any elective office unless they are a qualified elector of the City at the time of their election. (Idaho Code §50-601, §50-702)

1-12-4: INTEREST IN CONTRACTS: No elective or appointive officer of the City shall have any interest in any contract prohibited by state law. No employee of the City shall have any interest in any contract in which they shall have any official discretion regarding the execution or administration thereof. (Idaho Code §§74-501, 18-1359 (1)(d))

1-12-5: NEPOTISM: It shall be unlawful for any elective or appointive officer of the City to appoint or vote for the appointment of any person related to such officer or any of their associates in office by affinity or consanguinity within the second degree to any clerkship, office, position, employment or duty when the salary or compensation of such appointee is to be paid out of public funds. (Idaho Code §18-1359 (1)(f)(3))

1-12-6: PAYMENTS UNLAWFUL: No officer or employee of the City shall pay out of any public funds under their control or to draw or authorize the drawing of any warrant or authority for payment out of any public fund, any salary or compensation of a person who is ineligible under the preceding section. (Idaho Code §18-1359 (1)(e))

1-12-7: PAYMENTS FOR PUBLIC SERVICES PROHIBITED: It shall be unlawful for any officer or employee of the City of Mackay to personally accept payment for any service performed by such employee in the ordinary course of employment. (Idaho Code §18-1359 (1)(b))

1-12-8: PUBLIC ACCOUNTS REQUIRED: It shall be unlawful for any elective or appointive officer who receives fees for services, or who receives public monies for safekeeping, to fail to keep a public account in which all receipts of fees or monies are entered. Such account shall also include a statement of whom and on what account such monies or fees are received. It shall also be unlawful for any elected or appointed officer to fail to keep a like account of all disbursements of public monies and to whom and on what account the same were paid.

1-12-9: BRIBERY: It shall be unlawful for any officer or employee of the City to accept any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant or to accept any benefit as consideration for a violation of a known legal duty as a public servant. This prohibition shall not include trivial benefits not to exceed a value of fifty dollars (\$50.00) incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality. (Idaho Code §18-1359 (1)(b))

1-12-10: COMPENSATION FOR PAST OFFICIAL BEHAVIOR: It shall be unlawful for any officer or employee of the City to accept or agree to accept any pecuniary benefit as

compensation for having as a public servant, given the decision, opinion, recommendation or vote favorable to another or for having otherwise exercised a discretion in their favor, or for having violated their duty.

1-12-11: COMPENSATION FOR ASSISTING PRIVATE INTERESTS: It shall be unlawful for any officer or employee of the City to solicit accept or agree to accept compensation for advice or other assistance in preparing or promoting a bill, contract, claim or other transaction or proposal as to which such officer or employee knows that they have or is likely to have an official discretion to exercise. (Idaho Code §18-1359)

1-12-12: INTEREST IN SALES: It shall be unlawful for any officer or employee of the City to be a purchaser at any sale made by them in their official capacity, or to act as a vendor at any purchase made by them in their official capacity.

1-12-13: UNLAWFUL PAYMENT OF WARRANTS: It shall be unlawful for any officer or employee of the City charged with the disbursement of public monies to pay any warrant or any other evidence of indebtedness when the same has been purchased, sold, received or transferred contrary to the provisions of this Chapter.

## CHAPTER 13      OFFICIAL CITY CODE

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1-13-1 TITLE: This codification of the general ordinances of the City of Mackay is declared to be the official "City of Mackay.Code of Ordinances."

1-13-2: ACCEPTANCE: Any official copy of this Code, shall be received without further proof in all courts and in all administrative tribunals of this State.

1-13-3: AMENDMENTS: Any ordinance amending this Code shall set forth the Chapter, Title and Section number of the section or sections to be amended. All such ordinances shall comply with the provisions of this Code and Chapter 9, Title 50, Idaho Code, regarding passage, execution and publication of ordinances. All such amendments shall be promptly codified by the City Clerk, and such ordinance shall be promptly published and filed in its proper place.

1-13-4: MAINTENANCE OF CITY CODE: Upon codification, the City Clerk shall promptly forward a copy of each page thereof to each person having an official copy of the City Code. The City Clerk may collect a fee for each copy of the City Code and an annual fee for maintenance thereof, provided such fees shall be established by resolution or ordinance duly passed by the City Council.

## CHAPTER 14 OPEN MEETINGS

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1-14-1: OPEN MEETINGS: All regular and special meetings of the Council shall be open to the public, except the Council may retire into a closed executive session upon a majority roll-call vote recorded in the minutes of the meetings after the presiding officer has identified the statutory authorization for such meeting under the provisions of the Idaho Code. (Idaho Code § 74-201)

1-14-2: EXECUTIVE SESSIONS: Executive sessions may be held only if the reason for the session is approved by Idaho Code. (Idaho Code §74-206)

1-14-3: NOTIFICATION: Regular meetings of the City Council are posted five (5) calendar days prior to the meeting. If the City Council should designate a specific date and time at their January meeting, additional positions are only required if the meeting date, time, or place is changed. The notice requirement for meetings shall be satisfied by posting such notices and agendas in a prominent place in City Hall. The notice for meetings shall also be posted electronically online on the City website. (Idaho Code §74-204)

No special meeting shall be held without at least a twenty-four (24) hour meeting notice, unless an emergency exists as defined in Idaho Code. The notice required under this Section shall include at a minimum the meeting date, time, place and name of the City of Mackay. (Idaho Code §74-204)

1-14-4: AGENDA: Meeting agenda shall be posted forty-eight (48) hours prior to the meeting unless otherwise provided by statute. The agendas shall also be posted electronically online on the City website. (Idaho Code §74-204)

1-14-5: MEETING MINUTES: Written minutes of all meetings shall be taken. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law. All minutes shall be available to the public within a reasonable time after the



meeting, and shall include at least the following information: (A) All members of the Council present

(B) All motions, resolutions, orders, or ordinances proposed and their disposition

(C) The results of all votes, and upon the request of a member, the vote of each member, by name.

Minutes pertaining to an executive session shall include a reference to the specific statutory subsection authorizing the executive session and shall also provide sufficient detail to identify the purpose and topic of the executive session but shall not contain information sufficient to compromise the purpose of going into executive session. (Idaho Code §74-205)

1-14-6: DECISIONS: No final decision for which an affirmative vote of a majority of the Council is required by law, may be made while the Council is in executive session. For the purposes hereof, the term "meeting" shall mean any meeting of the members of the Council for the purpose of making a decision or deliberating toward a decision on any matter. Nothing herein shall apply to any meeting of less than a quorum of the members of the Council. (Idaho Code § 74-206)

## CHAPTER 15 ORDINANCES

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1-15-1: PRESENTMENT OF ORDINANCES: The passage or adoption of every ordinance shall be by roll call of the council with the yea or nay of each being recorded, and to pass or adopt any ordinance, a majority of the council shall be required. (Idaho Code §50-601)

1-15-2: MANNER OF PASSAGE: Every ordinance shall be read at three different Council meetings, two (2) readings of which may be by title only, and one (1) reading of which shall be in full, unless one-half plus one of the members of the Council shall dispense with this rule. An ordinance shall contain no subject which is not clearly expressed in its title and no ordinance or sections thereof shall be revised or amended unless the new ordinance contains the entire ordinance or sections as revised or amended, and the ordinance or section so revised or amended is repealed in its entirety. The passage or adoption of ordinances of a general and permanent nature, shall be by roll call and the yeas and nays shall be recorded by the Clerk. To pass or adopt any ordinance, a concurrence of a majority of the Council shall be sufficient, unless a greater number of votes is required by this Code or by state law. (Idaho Code §50-902)

1-15-3: PASSAGE: When any ordinance is, passed it shall forthwith be signed by the Mayor and attested by the Clerk, and the date of its passage by the Council shall be stated thereon. The Clerk shall certify its authenticity, passage and execution using the seal of the City impressed on the original thereof. Before an ordinance can take effect and within one (1) month after they are passed, they must be published in full or by summary as provided in section 50-901A (Idaho Code §50-902)

1-15-4: VETO BY MAYOR; PASSAGE OVER MAYOR'S VETO: If the Mayor neglects or refuses to sign an ordinance, they shall return the same to the Council with their objections and veto in writing on or before the date of the next regular meeting of the Council following its passage. When an ordinance is so returned by the Mayor the Council may reconsider the same. If three members of the Council approve the ordinance, it shall become law notwithstanding the Mayor's veto. (Idaho Code §50-611)

1-15-5: VETO CERTIFICATE: When any ordinance has been passed over the Mayor's veto, the Clerk shall attach a certificate to the ordinance stating the same was vetoed by the Mayor and that it received the required vote of the Council and the date of such action. (Idaho Code §50-611)

1-15-6: BECOMING LAW WITHOUT MAYOR'S SIGNATURE: If the Mayor refuses or neglects to sign any ordinance and fails to return the same to the Council in accordance with Section 1-10-4 above, it shall become effective without their signature. (Idaho Code §50-611)

1-15-7: CERTIFICATE: When any ordinance has become effective without the signature of the Mayor, the Clerk shall certify thereon that the Mayor has failed to sign or veto the ordinance, and that it has become effective without his signature. (Idaho Code §50-611)

1-15-8: PASSAGE DATE: An ordinance shall be considered passed on the date of its execution by the Mayor. In the case of passage pursuant to Section 1-10-4 the ordinance shall be deemed passed on the date of the regular meeting at which the ordinance was passed by the Council over the Mayor's veto. In the case of passage pursuant to Section 1-10-6, the ordinance shall be deemed passed at the conclusion of the next regular meeting following the meeting at which it was originally passed by the Council.

1-15-9: PUBLICATION AND EFFECTIVE DATE: All ordinances shall become effective upon their publication in the Official Newspaper and proof of publication thereof is filed with the Clerk. In lieu of publishing the entire ordinance, the City may publish a summary of the ordinance in accordance with Section 50-901(A), Idaho Code. Approval of the summary by the Council and the City Attorney shall be conclusive with respect to the completeness, adequacy and accuracy of the summary. (Idaho Code §§50-901A)

1-15-10: RECORDING OF ORDINANCES: The Clerk shall keep all original ordinances as passed, executed and published (bound) in a book or pamphlet provided by the City. (Idaho Code §§50-901, 50-903, 50-905)

## CHAPTER 16 PUBLIC RECORDS

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1-16-1: RIGHT TO EXAMINE: Every person has a right to examine and take a copy of any public record. (Idaho Code §74-102)

1-16-2: COPY OF RECORD: the custodian of any public record shall give the person, on demand, a certified copy of the record if it is of a nature permitting such copying or shall furnish reasonable opportunity to inspect or copy such record. (Idaho Code §74-102)

1-16-3: WRITTEN REQUEST: The City of Mackay requires that a request for public records be submitted in writing that specifically describes the subject matter and records sought, a specific date range for when the records sought were created. The requesting party shall be as specific as possible when requesting records. A request shall describe records sought in sufficient detail to enable the City Clerk to locate such records with reasonable effort. The request shall also provide the requester's name, mailing address, e-mail address and telephone number. A request for public records and delivery of the public records may be made by electronic mail. (Idaho Code §74-102)

1-16-4: GRANT OR DENY: The custodian shall either grant or deny a person's request to examine or copy public records within three (3) working days of the date of the receipt of the request for examination or copying. If it is determined by the custodian that a longer period of time is needed to locate or retrieve the public records, the custodian shall so notify the person requesting to examine or copy the records in writing and shall provide the public records to the person no later than ten (10) working days following the person's request. Provided however, if it is determined the existing electronic record requested will first have to be converted to another electronic format. If

the custodian fails to respond within ten (10) working days following the request the request shall be deemed to be denied. (Idaho Code §74-103)

1-16-5: NOTICE OF DENIAL: The Mayor shall notify the requesting person in writing of the denial or partial denial of the request for the public record. The notice of denial or partial denial shall state that the attorney for the City has reviewed the request or shall state that the City has had an opportunity to consult with an attorney regarding the request for examination or copying of a record and has chosen not to do so. The notice of denial or partial denial also shall indicate the statutory authority for the denial and indicate clearly the person's right to appeal the denial or partial denial and the time periods for doing so. (Idaho Code §74-103)

1-16-6: NO CUSTODIAN INQUIRY: The custodian shall make no inquiry of any person who requests a public record, except: (A) To verify the identity of the requester in accordance with section 74-113, Idaho Code.

(B) To ensure that the requested record or information will not be used for purposes of a mailing or telephone list prohibited by section 74-120, Idaho Code, or as otherwise provided by law.

(C) As required for purposes of protecting personal information from disclosure under chapter 2, title 49, Idaho Code, and federal law. (Idaho Code §74-102)

1-16-7: NO CUSTODIAN REVIEW: The custodian shall not review, examine or scrutinize any copy, photograph or memoranda in the possession of any such person and shall extend to the person all reasonable comfort and facility for the full exercise of the right granted. (Idaho Code §74-102)

1-16-8: VIGILANCE: Custodian shall maintain vigilance: Nothing herein contained shall prevent the custodian from maintaining such vigilance as is required to prevent alteration of any public record while it is being examined. (Idaho Code §74-102)

1-16-9: EXAMINATION PERIOD: Examination of public records under the authority of this Chapter must be conducted during regular office or working hours. (Idaho Code §74-102)

1-16-10: FEES: The City of Mackay may establish fees to recover the actual labor and copying costs associated with locating and copying documents If the request is for more than one hundred (100) pages, requires deleting of nonpublic information, or the actual labor associated with the request exceeds two (2) person hours. The City may charge for copying which cannot exceed the actual cost for copying. A requestor may not file multiple requests to avoid payment of fees. The Custodian may require payment in advance. (Idaho Code §74-102)

1-16-11: DESIGNATION OF CUSTODIAN: The City designates the City Clerk/Treasurer, the Deputy Clerk as custodian or custodians for all public records, and any public official having custody of, control of, or authorized access to public records and also includes all delegates of such officials, employees or representatives. (Idaho Code §74-102)

## CHAPTER 17      SAVING CLAUSE

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1-17-1: REPEAL OF GENERAL ORDINANCES: All general ordinances of the City are hereby repealed, except as herein specifically preserved or are by implication reserved from repeal, subject to the saving clauses herein contained, excluding without limitation the special ordinances relating to the following subjects: Tax levies, appropriation of public monies, boundaries and annexations, franchises, ordinances granting special rights to persons or correspondence, contracts, issuance of warrants, public salaries, ordinances establishing name or vacating streets, alleys or other public places, improvement districts, bonds, local elections, the sale or exchange of real estate, sign ordinances, economic development, urban renewal, public utilities, zoning and all special ordinances of any kind, except for those provisions in such special ordinances which this Code expressly amends.

1-17-2: PUBLIC UTILITY ORDINANCES: No ordinance or section thereof relating to the conduct, duties, service or rates of public utilities shall be repealed by the adoption of this Code or by the preceding section, except as this Code specifically provides for such repeal.

1-17-3: SAVING CLAUSE: Any ordinance amending or repealing any Section of this Chapter shall not be deemed or construed to abate any pending action based upon such amended or repealed Section, nor shall the passage of such ordinance prevent the arrest, prosecution and punishment of any violation of such Section committed prior to the effective date of such ordinance.

## **TITLE 2 BUILDING REGULATIONS**

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## CHAPTER 1 BUILDING (ZONING) PERMIT (Ord. 443)

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1-1-1: REQUIREMENT: City of Mackay Planning and Zoning Chapter requires a Building (Zoning) Permit for activities identified in said Code within the City of Mackay.

1-1-2: FORM: Applicant shall obtain FORM COM-BP-1-1.18, "Application for Building (Zoning) Permit," from the City Clerk/Deputy Clerk, and complete said form with required attachments in their entirety.

1-1-3: FEE: The Applicant shall return FORM COM-BP-1-1.18, and required attached forms, along with the required fee to the City Clerk for submittal to the Planning and Zoning (P&Z) Commission for review.

1-1-4: REVIEW: The P&Z Commission shall review the submitted FORM COM-BP-1-1.18 for compliance with the requirements of City of Mackay Title 9 and provide a recommendation to the City of Mackay Public Works Supervisor.

1-1-5: PUBLIC WORKS: The Public Works Supervisor shall review the submitted FORM COM-BP-1-1.18 to verify setback requirements specified in Title 9 have been met.

1-1-6: ADDITIONAL INFORMATION: If either the P&Z Commission or the Public Works Supervisor have questions, they shall contact the Applicant for clarification or additional information as necessary.

1-1-7: RECOMMENDATION: Upon receiving a recommendation for approval from the P&Z Commission, verification that setback requirements have been met from the Public Works Supervisor, and the required fee; the City Clerk shall issue "Building (Zoning) Permit," FORM COM-BP-4-1.18 to the Applicant.

1-1-8: REJECTION: If either the P&Z Commission or the Public Works Supervisor rejects the submitted FORM COM-BP-1-1.18, the City Clerk shall indicate "Rejected" on said form and return to the Applicant along with the reason(s) for the rejection.

1-1-9: APPEAL: Applicant receiving a "Rejected" FORM COM-BP-1-1.18, may appeal to the Mackay City Council in accordance with Title 9, Chapter 14 and Chapter 15.

1-1-10: SEVERABILITY: Provisions of this Chapter shall be deemed severable, and the invalidity of any provision shall not affect the validity of remaining provisions.

## **CHAPTER 2            STANDARDS AND TECHNICAL SPECIFICATIONS (Ord. 464)**

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**2-2-1: ADOPTS STANDARD:** The City of Mackay, hereby adopts the current Idaho Standards for Public Works Construction, along with future updates, as standards for approval and design of construction projects within the City limits. Any person proposing a project in the City, shall conform to the City of Mackay Public Works Standards and Technical Specifications, Divisions and Sections applicable to the intended project as a minimum when designing said project.

**2-2-2: APPLICABILITY:** The City of Mackay Public Works Standards and Technical Specifications shall apply to all new construction and reconstruction.

**2-2-3: BUILDING PERMIT:** Before beginning any construction within the City, the contractor or developer must file an application for a building permit, following the requirements of City of Mackay Code 2-1.

**2-2-4: COSTRUCTION PLANS:** Construction plans must be in sufficient detail to permit professional engineering certification that the plans conform to City requirements. This requirement shall not apply to work that is insignificant, as defined by Idaho Code §54-1218(2).

**2-2-5: ENGINEERING REVIEW:** City of Mackay engineering review may require additional information and/or plans as deemed necessary to properly understand the permit application and approve the plans to enable the City in approving a building permit.

**2-2-6: INSPECTION:** All construction within the City is subject to inspection by the City or its representative, and the City reserves the right to reject any construction completed prior to issuance of a building permit or construction not in compliance with City standards. Any construction determined by the City or its representative to be in violation of this Ordinance shall be corrected by the property owner at no cost to the

City prior to acceptance by the City of Mackay. Dependent upon the stage of development, the failure to comply with this Ordinance shall result in ineligibility to receive final approval or a certificate of occupation as well as revocation of any applicable building permit.

2-2-7: REVISIONS: The City of Mackay Public Works Standards and Technical Specifications may be revised or updated at any time without revising and amending this Chapter.

# TITLE 3 BUSINESS REGULATIONS

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## CHAPTER 1      BED AND BREAKFAST ESTABLISHMENTS (Ord. 468)

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3-1-1: DEFINITIONS: "Short-Term Rental" shall be defined as:

(A) The use, occupancy, rent or lease, for direct or indirect remuneration, of a structure or any portion thereof constructed for single-household or multihousehold occupancy or of any other residential property for an effective term of thirty consecutive calendar days or less.

(B) The commercial use, by any person, of a residential property for hostel, hotel, inn, lodging, motel, resort, bed and breakfast, or other transient lodging uses where term of occupancy, possession, or tenancy of the property by the person entitled to such occupancy, possession or tenancy for a term of thirty consecutive days or less.

(C) For purposes of this Chapter, "remuneration" means compensation, money, rent, or other bargained for consideration given in return for occupancy, possession, or tenancy for a term of thirty consecutive days or less.

3-1-2: NOT A HOME BUSINESS: A Short-term rental is not a home business permitted under any other provision of the Mackay City Code.

3-1-3: GRANDFATHER: Any short-term rental business established prior to March 3, 2015, in an area of the City of Mackay designated as "Residential" is considered a lawful non-conforming use but must comply with all other requirements herein.

3-1-4: OWNER TO BE BILLED: Water and Sewer fees for short-term rental facilities shall be billed to the owner of the facility at the Commercial 1 rate as a minimum in accordance with City of Mackay Ordinances 452 and 453.

3-1-5: VIOLATION: Violation of this Chapter including any referenced Chapter(s) shall result in immediate revocation of the City Business License Certificate and the Sales Tax Permit. This shall result in the closing of the business and discontinuing of City services including Water and Sewer.

3-1-6: PENALTIES: Violation of this Chapter shall result in a fine of one thousand dollars (\$1,000.00); and any referenced Chapter violation shall also result in the fines and penalties specified in each of those Chapters.

3-1-7: SEVERABILITY: Provisions of this Chapter shall be deemed severable and the invalidity of any provision of this Chapter shall not affect the validity of remaining provisions.

## CHAPTER 2 BUSINESS LICENSES (Ord. 467)

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3-2-1: LICENSE REQUIRED: It shall be unlawful for any individual, organization, firm, corporation, etc. to offer goods or services for sale or rent without a valid City of Mackay Business License. Businesses shall obtain the license referenced herein prior to opening for business. This Chapter is applicable to the following:

(A) Retail or Wholesale Stores, Convenience Stores, Service/Gas Stations, Restaurants/Cafes/Drive-ins, Bars, Bed and Breakfasts, Home Businesses.

(B) Service Providers such as electricians, plumbers, mechanics, carpenters, heating and ventilation technicians, etc., who's business offices are located outside the City of Mackay; but who come to Mackay to provide these services within the City Limits;

(C) Any business that collects and submits Idaho State Sales Tax.

3-2-2: RESORT CITY: The City of Mackay is a Resort City which collects a City Sales Tax. Business subject to collection of these taxes must obtain a City Sales Permit. See Chapter 4-1.

3-2-3: VENDOR'S LICENSE: City of Mackay requires any and all vendors selling outside of established store fronts to have a City of Mackay Vendor's License to do business in the City. Sales of some items exempted from requiring a Vendor's License are not exempted from having a City of Mackay Business License. See Chapter 4-3

3-2-4: APPLICATION FOR LICENSE: Applicants for a business license shall complete FORM COM-BLC 1-9.21 available from the City Clerk. This form shall be presented to the City Clerk along with the required fee for approval. Fee shall be established by the City Council and reviewed annually. FORM COM-BLC 1-9.21 shall be used to renew the license annually. Application for a City of Mackay Business License shall include name and address of business; owner(s) of the business; description of the business; kinds of goods to be sold; types of sales to be solicited; and/or services to be provided.



3-2-5: APPROVAL OF LICENSE: Forms received by the Clerk will be review for approval. The Clerk shall notify the applicant of the results of the review. License shall be issued for a period of one (1) year. If the application is denied, the applicant may appeal the application to the full City Council.

3-2-6: ISSUANCE OF LICENSE: The license issued to the licensee shall be prominently displayed in the place of business.

3-2-7: AGREEMENT: The licensee agrees to abide by the stipulations set forth in this Chapter, and shall defend, indemnify, and hold blameless the City of Mackay, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees arising out of or in conjunction with the performance of this license.

3.2.8: VIOLATION: Any individual, business, firm, corporation, etc. who shall violate the provisions of this Ordinance shall be guilty of an infraction and upon conviction shall be punished by a fine of one thousand dollars (\$1000.00) plus court costs. Each day of violation shall be considered a separate violation punishable as herein described.

3-2-9: SEVERABLEITY: Provisions of this Chapter shall be deemed severable, and the invalidity of any provision shall not affect the validity of remaining provisions.

## CHAPTER 3

## CITY SALES TAX (Ord. 450)

### SECTION:

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3-3-1: FINDINGS: The City Council of the City of Mackay hereby finds that a) the City of Mackay is a municipal corporation and a political subdivision of the State of Idaho, organized under the general laws of the State of Idaho, b) the population of the City of Mackay is less than 10,000 according to the most recent census, c) the City of Mackay has a significant economic dependence upon visitors and travelers passing through or staying in the City of Mackay, and d) the City of Mackay derives a major portion of its economic well-being from businesses catering to recreational needs and meeting needs of people traveling to the City of Mackay for an extended period of time. Based on these findings, the Mackay City Council finds that the City of Mackay is a resort city as defined by Idaho Code §50-1044. See also City of Mackay Code 3-4.

3-3-2: DEFINITIONS: For the purposes of this Ordinance, the following terms, phrases, words and derivations shall have the meaning given herein:

(A) "City" shall mean the municipal corporation of the City of Mackay, Custer County, Idaho.

(B) "City Clerk" shall mean the duly appointed and acting city clerk for the City, and his/her duly authorized deputy.

(C) "Hotel-Motel" shall mean any business including hotels, motels, condominiums, bed and breakfasts, tourist homes, other sleeping accommodations and any other business which in the regular course of business rents or leases for occupancy temporary lodging to individuals, with or without meals, except where a residence is maintained continuously under terms of a lease or similar agreement for a period in excess of thirty (30) days. This definition also includes spaces rented for parking of Recreational Vehicles.

(D) "Liquor By-The-Drink" shall mean and include all of the following: (A) "Alcohol" means the product of distillation of any fermented liquor, rectified either once or oftener, whatever may be the origin thereof, or synthetic ethyl alcohol. (B) "Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including, among other things, brandy, rum, whiskey, and gin. (C) "Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits (grapes, apples, etc.) or other agricultural products containing sugar (honey, milk, etc.). (D) "Beer" means any alcoholic beverage obtained from the fermentation of sugar, barley, hops, malt, yeast and similar ingredients. (E) Any liquid or solid, patented or not, containing alcohol, spirits, or wine and susceptible to being consumed by a human being, for beverage purposes.

(E) "Occupancy Charge" shall mean the total amount charged for rental use or temporary occupancy of a room, RV parking space, or living unit in a Hotel-Motel/Bed and Breakfast, etc., valued in money, whether paid in money or otherwise, without any deduction.

(F) "Person" or "person" shall mean any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit.

(G) "Restaurant Food" shall mean all food, meals or drinks, and non-depreciable goods and services directly consumed by customers included in the charged thereof, which are furnished, prepared and sold on the premises, or for takeout, and which are customarily furnished, prepared and sold as the primary use of the premises.

(H) "Retail Sale" shall mean the sale of Liquor By-The-Drink for consumption on the premises and/or sale of Restaurant/Bed and Breakfast Food on the premises, or for takeout, other than resale in the regular course of business, and shall include any transfer of money, title, exchange, barter or credit, conditional or otherwise, in any manner or by any means whatsoever as consideration.

(I) "Sale" or "sale" shall mean any transfer of title, exchange or barter, conditional or otherwise, of tangible personal property for a consideration and shall include any similar transfer of possession found by the state tax commission to be in lieu of, or equivalent to, a transfer of title, exchange or barter. For the purpose of this definition, sale shall include the lease or rental of tangible personal property.

(J) "Sales Price" shall mean the total amount for which Liquor By-The-Drink or Restaurant/Bed and Breakfast Food is sold, and the total amount of Occupancy Charge, including services agreed to be rendered as a part of the sale, rental or lease, valued in money, whether paid in money or otherwise, without any deduction.

(K) "Taxpayer" shall mean any person subject to or liable for any tax or payment of any tax imposed under this ordinance.

3-3-3: OCCUPANCY: A tax is hereby imposed at the rate of three percent (3%) on the Occupancy Charge for each Hotel-Motel/Bed and Breakfast, etc. room, RV parking space, or living unit rented or leased within the City. The Hotel-Motel/Bed and Breakfast occupancy tax shall apply to and be computed on the rental of all Hotel-Motel/Bed and Breakfast rooms including all credit, installment, conditional or similar rental or lease fees at the time the Occupancy Charge is charged. The occupancy tax shall be collected by the owner of the Hotel-Motel/Bed and Breakfast or his authorized agent from the renter or lessee.

3-3-4: LIQUOR BY THE DRINK: A tax is hereby imposed at the rate of three percent (3%) of the Sales Price upon each Retail Sale of Liquor By-The-Drink within the City. The tax shall apply to and be computed on all Retail Sales of Liquor By-The-Drink including credit, or similar sales at the time of the sale. The Liquor By-The-Drink tax shall be collected by the retailer from the consumer.

3-3-5: FOOD TAX: A tax is hereby imposed at the rate of three percent (3%) of the Sales Price upon each Retail Sale of Restaurant/Bed and Breakfast Food within the City. The tax shall apply to and be computed on all Retail Sales of Restaurant/Bed and Breakfast Food including credit, or similar sales at the time of the sale. The Restaurant/Bed and Breakfast Food tax shall be collected by the retailer from the consumer.

3-3-6: RECREATIONAL EQUIPMENT: A tax is hereby imposed at the rate of three percent (3%) of the Rental Fee upon each Fee charged for the use of Recreational Equipment rented within the City. The tax shall apply to and be computed on all Rental Fees for Recreational Equipment including credit, or similar fees at the time of the rental. The Recreational Equipment tax shall be collected by the retailer from the consumer.

3-3-7: BRACKET SYSTEM: When the Sales Price involves a fraction of a dollar, the non-property tax shall be collected on that fractional portion of the price adding thereto the tax based upon the following bracket system:

\$.01 to \$.24 \$0.00

.25 to .49 0.01

50 to .74 0.02

75 to .99 0.03

(Each whole dollar \$0.03)

The retailer shall calculate the tax upon the entire amount of purchases of the consumer made at a particular time subject to this ordinance, and not separately upon each item purchased. The retailer may retain any amount collected under the bracket system which is in excess of the amount of tax for which he is liable to the City during the period as compensation for the work of collecting the tax.

3-3-8: MONIES COLLECTED: All monies collected and/or retained under the provisions of this Ordinance shall be held in trust for the City and for payment thereof to the Idaho State Tax Commission or if authorized by the City Council to the City Clerk in the manner and at the times provided in this Ordinance.

3-3-9: DURATION: The local option non-property taxes authorized and collected under this Code are hereby imposed for a duration of ten (10) years from the effective date of this Ordinance.

3-3-10: DEDICATION OF FUNDS: The local option non-property tax revenue derived from and collected under this ordinance shall be used for the following purposes: (A) Emergency services (law enforcement, fire protection, etc.); (B) Street repair, enhancements, snow removal, equipment maintenance, grant matching funds; (C) Park maintenance and upgrade,, restrooms, playground equipment, equipment maintenance, grant matching funds; (D) Airport maintenance, improvement, grant matching funds; (E) Cost associated with the administering of this Ordinance.

3-3-11: MUNICIPAL PROPERTY TAX RELIEF FUND: There is hereby created in the office of the City Clerk a fund to be designated as the "Municipal Property Tax Relief Fund." All monies collected under this Ordinance, and not otherwise budgeted by the City Council, shall be placed by the City Clerk into the municipal property tax relief fund.

All monies collected and placed into said fund shall be used to replace City property taxes in the ensuing fiscal year.

3-3-12: COLLECTION OF TAX: The City Clerk of the City of Mackay is hereby authorized and empowered to administer, regulate and collect payment of all non-property taxes adopted and imposed by this Code. Said Clerk shall have all of the powers set forth in this Ordinance together with those additional powers necessary and proper to carry out the provisions of this Ordinance. The City Clerk may also designate and collect said non-property taxes. It is the intent of the City Council that the City Clerk designates to the Idaho State Tax Commission the role of administration regulation and collection under this provision, references to the City Clerk shall be deemed to refer to the Idaho State Tax Commission as applicable. The costs incurred by the State Tax Commission shall be reimbursed from the proceeds collected.

3-3-13: PERMIT REQUIRED: (A) Every person desiring to engage in or conduct business of renting Hotel-Motel/Bed and Breakfast rooms RV parking spaces, and selling Liquor By-The-Drink, Restaurant/Bed and Breakfast Food within the City, and/or Rental of recreational equipment shall file with the City Clerk an application for a municipal local option non-property tax permit for each place of business. A separate permit is required for each place of business within the City. Every application for such a permit shall be made upon a form prescribed by the City Clerk and shall set forth the name under which the applicant transacts or intends to transact business, the location of the business or places of business, and such other information as the City Clerk may require. The application shall be signed by the owner, if he is a natural person; or in the case of an association or limited liability company, by member or partner; or in the case of a corporation, by an executive officer or other person authorized by the corporation to sign the application; or in the case of a partnership, by a partner; or in the case of any other legal entity, by an authorized person. Initial permits shall be issued upon completion of the application for each permit sought.

(B) Upon filing an application meeting the requirements set out above, the City Clerk shall issue to each applicant a permit for each place of business. A permit shall not be assignable and shall be valid only for the person or entity in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the location for which it was issued. Issuance of a such permit may be subject to additional requirements as set forth in this ordinance. (C) On the face of the permit shall be affixed a municipal local option non-property tax number which shall be used by the applicant as an identifying number of all filing, payment and correspondence with regard to the non-property tax imposed under this Code.

3-3-14: PAYMENT TO CITY: (A) The taxes imposed by this Code shall be computed and paid for each calendar month. The taxes imposed by this Code are due and payable to the City Clerk on or before the twenty-fifth day of the succeeding month. The

amount of tax paid shall be computed on the total dollar value of the RV parking space and Occupancy Charges, and of the Sale Price of the Retail Sale of Liquor By-The-Drink, Restaurant/Bed and Breakfast Food, and/or Recreational Equipment Rental. Each person required to hold a City local option non-property tax permit and number shall file a City local option non-property tax return and a copy of their Idaho State Sales Tax Return for the month at the same time the taxes imposed by this ordinance are paid to the City Clerk, unless the person has been permitted in writing by the Idaho State Tax Commission to file quarterly sales or use tax returns. Persons who have been permitted to file other than quarterly returns shall notify the City Clerk in writing and the City Clerk thereupon may require reporting of state tax returns over some other period.

(B) The first payment of taxes under this Code shall be due and payable together on August 25, 2019, for that period beginning July 1, 2019, and ending July 31, 2019. Thereafter all payments shall be made monthly, or as scheduled by the Idaho State Tax Commission. (C) A municipal local option non-property tax return shall be filed each and every month by every person engaging in the rental or lease of RV parking spaces and Hotel-Motel/Bed and Breakfast rooms and in the sale of Liquor By-The-Drink sale of Restaurant/Bed and Breakfast Food, and/or Recreational Equipment rental regardless of whether any tax is due. Returns shall be signed by the person required to file the return or by a duly authorized agent.

3-3-15: AUDIT: (A) The City Clerk may order an audit of any Taxpayer under this Code for the purpose of ascertaining the correctness or completeness of any return or payment.

(B) If any error or omission is discovered in such audits or in any other way, the City Clerk may compute and determine the amount of tax due upon the basis of facts obtained from such information within the City Clerk's possession and assert a deficiency. One or more deficiency determinations may be made for the amount due for one or for more than one period. In making such a determination, the City Clerk may offset overpayments against amounts due. Further, such determinations shall be made for the period or periods in respect to which the person fails to make a return and shall be based upon any information which is in the City Clerk's possession.

(C) The City Clerk shall give written notice of his or her determination and the amount of the deficiency, including interest at a rate of interest per annum equal to the New York prime rate of interest as expressed in the Wall Street Journal, from the date due, to the person from whom such deficiency amount is due. Such notice may be given personally or mailed to the person at the address furnished to the City Clerk in the non-property tax permit application.

3-3-16: PETITION: (A) Any person against whom a deficiency determination is made under this Code, or any person directly interested, may petition in writing for a

redetermination within thirty (30) days after service upon the person of notice thereof. If the petition for redetermination is not filed within the thirty (30) day period, the determination becomes final at the expiration of the period.

(B) If a petition for redetermination is filed within the thirty (30) day period, the City Clerk shall reconsider the determination and, if the person so requests in the petition, grant the person oral hearing and give said person ten (10) days' notice of the time and place of the hearing personally or by mail addressed to the person at the address furnished to the City Clerk in the person's application for a non-property tax permit.

3-3-17: REDETERMINATION: A) When a redetermination is made, the City Clerk shall give notice to the Taxpayer against whom the redetermination is made. Within thirty (30) days of the date upon which such notice of redetermination is mailed or served, the Taxpayer may file an appeal with the City Council or may file a complaint with the District Court for review of the City Clerk's redetermination. There shall be no right of review to the City Council nor to the District Court on the determination of taxes due made by the City Clerk unless a petition for redetermination has been timely filed. No assessment of a deficiency in respect to the tax imposed by this ordinance or proceeding to collect for its collection shall be made, begun or prosecuted until such notice has been mailed to the Taxpayer and expiration of such thirty (30) day period after notice of redetermination, nor if a protest is filed until a decision on the protest becomes final. If the Taxpayer does not protest to the City Council or file an action in District Court within the time prescribed in this Chapter, the deficiency shall be assessed and shall become due and payable upon notice and demand from the City Clerk.

(B) Interest upon any deficiency shall be assessed at the same time as the deficiency and shall become due and payable upon notice and demand from the City Clerk and shall be collected as part of the tax at a rate per annum equal to the New York prime rate of interest as expressed in the Wall Street Journal, from the date prescribed for payment of the tax.

3-3-18: CORRECTNESS OF PAYMENT: As soon as practical after a monthly, or as scheduled by the Idaho State Tax Commission. City local option non-property tax return and payment is filed, the City Clerk shall examine the same, and determine the correct amount of the tax. For the purpose of ascertaining the correctness of any payment, determining the amount of tax due where none has been made, determining the liability of any person for any tax payable under this ordinance or the liability at law or in equity of any person in respect to any tax provided by this ordinance, or collecting any such liability, the City Clerk is authorized:

(A) To examine the books, papers, records or other data which may be relevant or material to the inquiry.



(B) To summon the person liable for the tax or any officer, agent or employee of such person, or any person having possession, custody or care of books of accounting containing entries relating to the business of the person liable for the tax, to appear before the City Clerk, at a time and place named in its summons to produce such books, papers, records or other data and/or give such testimony under oath as may be relevant or material to such inquiry.

3-3-19: OVERPAYMENT: (A) If the City Clerk determines that any amount due under this Code has been paid more than once or has been erroneously or illegally collected or computed, the City Clerk shall set forth that fact in its records and the excess amount paid or collected may be credited on any amount due or payable to the City Clerk for non-property taxes from that person, and any balance refunded to the person by whom it was paid or to his successors, administrators or executors.

(B) No such credit or refund shall be allowed or made after one year from the time the payment was made unless before the expiration of such period a claim therefore is filed by the Taxpayer.

(C) Interest shall be allowed on the amount of such credits or refunds at a rate of interest per annum equal to the New York prime rate of interest as expressed in the Wall Street Journal from the date which such tax was paid.

(D) Appeal from the City Clerk's decision denying in part or in whole a claim for refund shall be made in accordance with the laws of the State of Idaho with regard to claims against municipalities.

3-3-20: LIABILITY: Every person with a duty to account for or pay over any tax imposed by this Code on behalf of a corporation, limited liability company, partnership or other legal entity, as an officer, employee or agent of the entity, shall be personally liable for payment of such tax, plus penalties and interest.

3-3-21: STATUTE OF LIMITATIONS: (A) The amount of taxes imposed under this Code shall be assessed within three (3) years of the time the return upon which the tax asserted to be due was or should have been filed, whichever is later; provided, however, if a deficiency determination or assessment has been made within the prescribed time, such tax may be collected within a period of six (6) years after assessment. The running of limitations provided by this section shall be suspended for the period during which the City Clerk is prohibited from making the assessment or from collecting or proceeding in court due to a petition for redetermination or an appeal therefrom, and for thirty (30) days thereafter.

(B) In the cases of taxes due during the lifetime of a decedent, the tax shall be assessed and proceedings for collection begun with six (6) months after written request therefore (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent unless the assessment is stayed by a petition for redetermination or any appeal there from.

(C) In the case of a false or fraudulent return with intent to evade tax, or of a failure to file a return, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time within three (3) years after the date of the discovery of the facts constituting the fraud, or discovery of the failure to file.

3-3-22: SALE OF BUSINESS: (A) If a vendor liable for any amount of tax due under this Code sells out his business or stocks and goods, the vendee shall make an inquiry to the City Clerk and withhold from the purchase price any amount of tax that may be due under this Code until such time as the vendor produces a receipt stating that no amount is due

(B) If the purchaser of business or stock of goods fails to withhold from the purchase price, as above required, the purchaser or officer, employee or agent of the entity is personally liable for the payment of the amount required to be withheld by him, which amount shall become immediately due and payable with interest as herein provided, and suit may be filed within the time limit set forth in Section 3-3-20 (A) of this Code.

3-3-23: RECORD KEEPING: (A) The City Clerk shall enforce the provisions of this Code and may prescribe, adopt and enforce rules and regulations relating to its administration and enforcement. The City Clerk may employ qualified auditors for examination of Taxpayer's books and records, and shall also employ such accountants, investigators, assistants, clerks, and other personnel as are necessary for the efficient administration of this ordinance and may delegate authority to his or her representatives to conduct hearings, or perform other duties imposed by this ordinance.

(B) Every RV Park owner, Hotel-Motel/Bed and Breakfast owner, seller of Liquor By-The-Drink, seller of Restaurant/Bed and Breakfast Food, and/or Rental of Recreational Equipment in this City shall keep such records, receipts, invoices, and other pertinent papers as the City Clerk may require. Every such RV Park owner, Hotel-Motel/Bed and Breakfast owner, seller of Liquor By-The-Drink, seller of Restaurant/Bed and Breakfast Food, and/or Rental of Recreational Equipment who files tax payments required under this Code shall keep all such records for not less than four (4) years after making such payments unless the City Clerk in writing authorizes their destruction.

C) The City Clerk, or any person authorized in writing by the clerk, may examine the books, papers, records and equipment of any person renting RV parking spaces, any Hotel-Motel/Bed and Breakfast owner, any person selling Liquor By-The-Drink, any

person selling Restaurant/Bed and Breakfast Food, Rental of Recreational Equipment or any person liable for any tax thereon, and may investigate the character of the business of the person in order to verify the accuracy of any return made, or if no return is made by the person, to ascertain and determine the amount required to be paid. Any persons who rent RV parking spaces, any Hotel-Motel/Bed and Breakfast owners, any persons who sell Liquor By-The-Drink, any persons who sell Restaurant/Bed and Breakfast Food, and Rental of Recreational Equipment whose pertinent records are kept outside of the City, must bring the records to the City for examination by the City Clerk upon request of the City Clerk, or by agreement with the City Clerk permit an auditor designated by the City Clerk to visit the place where the records are kept, and there audit such records.

3-3-24: VIOLATIONS: (A) Any person who violates any provision of this Code shall be guilty of a misdemeanor, punishable by up to one year in the county jail, and/or three hundred dollars (\$300.00) fine, or both. Furthermore, each month in which a person fails to report, or intentionally fails to accurately compute, or intentionally fails to accurately disclose the total amount of sales or rentals or the amount of tax to be paid, as imposed under this ordinance, shall be considered a separate offense.

(B) Any person who violates any provision of this Code shall have his City local option non-property tax permit and tax number revoked. The City Clerk shall send written notice of revocation of the permit and tax number to the permit holder by mailing the permit certified mail to the address given on the permit application. The permit holder shall have ten (10) days from the date the notice is mailed to file a written request for appeal with the City Council, challenging the revocation. If no appeal is timely made, the revocation becomes final. Whenever a person subject to this Code has had a permit and tax number revoked, the City Clerk shall not reissue the permit nor issue a new permit to the person until the person places with the City Clerk a bond or other sufficient security in the amount equal to three (3) times the actual, determined or estimated average monthly amount of tax payable by such person pursuant to this ordinance.

(C) The City Clerk, whenever it is deemed necessary to ensure compliance with this Code, may require any person subject to this ordinance to place with the City Clerk such security as the City Clerk may determine, but not in an amount greater than three (3) times the estimated average monthly amount payable by such person pursuant to this Code. The amount of the security may be increased or decreased by the City Clerk at any time, subject to the limitations set forth above.

(D) Any person who violates any provision of this Code shall have all City of Mackay beer license(s), and wine license(s), and retail liquor by-the-drink license(s) revoked.

(E) Any amount of tax due under this Code for which a person fails to report or accurately compute, shall become a lien upon the property of the Taxpayer on the date

that the same becomes due, and the City may seek to enforce the lien and collect all taxes and interest due together with the reasonable costs of collection, including attorney's fees, in a court of competent jurisdiction.

(F) For the purpose of proper administration of this Code and to prevent evasion of local option non-property taxes, the burden of proving that the rental of an RV parking space, or a Hotel-Motel/Bed and Breakfast room or the Retail Sale of Liquor By-The-Drink or Restaurant/Bed and Breakfast Food or the Rental of Recreational Equipment is not subject to a local option non-property tax imposed by this Ordinance, is upon the person who makes the sale or rental in question.

3-3-25: TAX EVASION: Any person who is required to collect, truthfully account for and pay over any tax imposed by this Code and who willfully fails to collect such a tax or truthfully account for or pay over such a tax, or willfully attempts in any manner to evade or defeat such a tax or payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to five percent (5%) per month for a maximum of twenty-five percent (25%) of the amount of the tax evaded, or not collected, or not accounted for and paid over. The City Clerk shall determine and assess such penalties, and the same shall become due and payable upon notice and demand from the City Clerk. The City Clerk shall send written notice of such penalty charge to the permit holder by mailing the notice by certified mail to the address given on the permit application. The permit holder shall have ten (10) days from the date the notice is mailed to file a written request of appeal with the City Council challenging the penalty charge determination. If no appeal is timely made, the penalty charge determination becomes final.

3-3-26: STATE EXEMPTED: All transactions by the State of Idaho, otherwise subject to imposition of the taxes imposed by this Ordinance, are exempt from the provisions of this ordinance.

3-3-27: SEVERABILITY: 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.

**CHAPTER 4**  
**439)**

**INTOXICATING BEVERAGE LICENSE (Ord. 433 &**

**SECTION:**

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3-4-1: DELCARATION: It is hereby declared to be the intent of the City Council to aid and assist by whatever means possible, for the consistency in alcoholic beverage regulation among and between agencies of Idaho having such jurisdiction. Toward that ed, adoption of the Alcoholic Beverages Laws by the City of Mackay is a necessary means of assuring maximum uniformity within the State.

3-4-2: ADOPTION OF STATE LAWS: The City hereby adopts for the purpose of establishing rules and regulations for alcoholic beverages in the City the Idaho Alcoholic Beverages Laws, more particularly Title 23, Idaho Code, and as the same may hereafter be revised by the Idaho Legislature, or amended by the governing body, and the same is hereby adopted and incorporated as a Chapter of the City Code as fully as through set froth at length herein.

3-4-3: DEFINITION: For the purpose of this Chapter, intoxicating beverages shall include any beverage that requires a license from the State of Idaho, in accordance with Idaho Code Title 23, for retail sales either in closed containers for consumption off premises of point of sales, or by the drink and consumed at the point of sales. This Chapter does not apply to State of Idaho liquor stores.

3-4-4: LICENSE TYPE: A City of Mackay Intoxicating Beverage License must be obtained prior to any sale of intoxicating beverages within the City Limits. Licenses will be issued for the following types of sales:

- Liquor By The Drink Consumed On Premises;
- Beer Consumed On Premises;
- Beer Consumed Off Premises;
- Wine Consumed On Premises;
- Wine Consumed Off Premises;

Or a combination of the above.

3-4-5: AUTHORIZATION: The City Council hereby authorizes the Clerk of the City of Mackay, in conjunction with the Mayor, to issue an Intoxicating Beverage License to the holder of a current, valid State of Idaho permit/license and any required Custer County permit/license. The City Intoxicating Beverage License shall authorize sale of the beverage type(s) authorized by the State/County within the Mackay City Limits. Revocation or cancellation of any State of Idaho/Custer County permit/license shall automatically void any Intoxicating Beverage License issued by the City of Mackay. City of Mackay Intoxicating Beverage Licenses shall not be transferable.

3-4-6: CATERING PERMIT: An Alcoholic Beverage Catering Permit shall be required in order to sell beer or wine at an event, festival or convention. An Alcoholic Beverage Catering Permit is issued to a holder of a current City of Mackay Intoxicating Beverage License for a time period not to exceed five (5) consecutive days, with an option to request one (1) permit extension on the same terms and conditions as the original permit; or at a party for a time period not to exceed two (2) consecutive days. City of Mackay Alcoholic Beverage Catering Permit shall not be transferable.

3-4-7: The City Council shall establish the fee(s) for each type of license or permit by Resolution. License/Permit fee imposed by the City of Mackay is exclusive of and apart from any fee which may be imposed by the State or County for the sale of intoxicating beverages. Fees shall be reviewed and changed as deemed necessary by the Council.

3-4-8: HOURS OF SALES: Pursuant to Idaho Code §23-927, vendors lawfully licensed and permitted to sell liquor by the drink, beer or wine by the State and City, may sell liquor by the drink, beer, and wine on Sunday, Memorial Day and Thanksgiving Day and until 2 o'clock A.M. within the limits of the City of Mackay.

3-4-9: VIOLATION: Any person who violates any of the provisions of this Chapter or fails to comply with any of the terms and conditions of this Chapter shall be guilty of a misdemeanor.

## CHAPTER 5

## RESORT CITY (Ord. 447)

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3-5-1: DEFINITION: Idaho Code §50-1044 defines a Resort City as any city with a population not in excess of the thousand (10,000) according to the most recent census within the State of Idaho organized under the general laws of the State, a city that derives the major portion of its economic well-being from businesses catering to recreational needs and meeting needs of people traveling to that destination city for an extended period of time.

3-5-2: INCORPORATION: The City of Mackay was incorporated under the laws of the State of Idaho on November 14, 1901 and has a population of 511 as of 2020.

3-5-3: ECONOMY: The Mayor and City Council finds the City of Mackay derives a major portion of its economic well-being from catering to recreational need. The City has:  
(A) two (2) free camping areas within City Limits, one (1) free camping area within two (2) miles, three (3) RV Parks within eight (8) miles, two (2) Motels within the City, and one (1) Motel within two (2) miles gas.

(B) one (1) full-service grocery store, two (2) convenience stores (four cafes, one (1) drive-in, (Summer Only), two (2) gas stations, four (4) bars and a liquor store, and two (2) sports shops.

(C) five (5) City parks with restroom, an RV sanitary dump station, a museum, a nine (9) hole golf course, an airport, (3) ATV designated unloading and parking areas with signage to miles of trails.

(D) the Big Lost River bordering the City and the Mackay Reservoir is within five (5) miles with a boat dock and landing as well as a BLM maintained camp site.

(E) hunting and fishing areas surround the City.

(F) unlimited hiking area with Mt. Borah the highest peak in Idaho less than 20 miles to trail head.

(G) the Historic “Mine Hill” scenic trail and trail to Lower Cedar Creek spring/fall.

3-5-4: BURDEN: The Mayor and Mackay City Council find that visitors and travelers to the City of Mackay require municipal services which place an undue burden upon City taxpayers: (A) the City has three hundred eighty-nine (389) sewer and water customers.

(B) of those sewer and water customers, three hundred twenty-eight (328) Residential users.

(C) one hundred twenty-one (121) or 36.8% of the Residential users are non-Mackay residents and fifty (50) to sixty (60) of the non-Mackay residents have their water turned off during the winter months.

3-5-5: IMPACT: The Mayor and Mackay City Council find that the volume of visitors has increased the impact on City services, including emergency response services, and increased the impact on City parks, streets and other City infrastructure.

3-5-6: DECLARATION: The City Council of the City of Mackay hereby finds that a) the city of Mackay is a municipal corporation and a political subdivision of the State of Idaho; organized under the general laws of the State of Idaho; b) the population of the City of Mackay is less than 10,000 according to the most recent census; c) the City of Mackay has a significant economic dependence upon visitors and travelers passing through and staying in the City of Mackay; and d) the City of Mackay derives a major portion of its economic well-being from businesses catering to recreational needs and meeting needs of people traveling to the City of Mackay for an extended period of time. Based on these findings the Mackay City Council finds that the City of Mackay is a resort city as defined by Idaho Code §50-1044.



## CHAPTER 6      VENDOR LICENSES (Ord. 471)

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3-6-1: VENDOR LICENSE REQUIRED: It shall be unlawful for any person, organization, or business, etc. to offer goods or services for rent or sale or offer to purchase goods from a stand or vehicle open to street access, which has a temporary or portable business located in a stand, vehicle, wagon, trailer, etc. within the incorporated limits of the City of Mackay whether located on public or private property without a license issued by the City of Mackay to engage in said business. A separate license is required for each Vendor Stand or space even if operated by the same owner or organization.

3-6-2: EXEMPTION: The provisions of this Ordinance shall not apply to the following:

A. Sale of **farm** or **garden products** by the person(s) who grows or produces those products.

B. Sales of **household** and **personal products** including but not limited to Watkins, Mary Kay, Avon, Schwan's, etc. made by way of internet/phone solicitation, parties, or door-to-door sales.

C. **Garage, Yard**, or similar sales by individuals at their place of residents or place of business *not exceeding two (2) separate sales in one (1) calendar year*, not to exceed three (3) days each in duration. Sale items shall not include business inventory or items which have been purchased for resale at another similar sale.

D. Retailers selling at an **Event**, if the Event Promotor or Sponsor has obtained an Event Identification (ID) Number from the Idaho State Tax Commission provided that the individual *retailer/seller does not participate in selling at more than two (2) separate Identified Events in one (1) calendar year*.

**Example:** (1) The Mackay Summer Market obtains an Event ID# from the State Tax Commission. This Event is considered as one (1) Event.

(2) The Mackay Winter Fest Committee obtains an Event ID# from the State Tax Commission. This Event is considered as one (1) Event.

(3) The Mackay FFA obtains an Event ID# from the State Tax Commission for the Christmas Bazaar. This Event is considered as one (1) Event.

Any individual, person, group, organization, etc. can sell their items or products at any combination of the **TWO (2)** above identified Events (1), (2), (3) and **are not required** to purchase a City of Mackay Vendor License in accordance with the requirements of this Title.

Any individual, person, group, organization, etc. desiring to sell their items or products at all **THREE (3)** of the above identified Events (1), (2), (3) **ARE REQUIRED** to purchase a City of Mackay Vendor License in accordance with the requirements of this Title.

Any individual, person, group, organization, etc. desiring to sell their items or products at any of the above identified Events and who have sold or are selling at other Events not located within the City Limits of the City of Mackay shall comply with the State of Idaho two (2) limit rule to receive this exemption.

**E. Fundraising sales, Not EVENTS** as identified in “D” above by the school or school groups, local service groups, or non-profit organizations, Boy Scouts and Girl Scouts, Fire Department, EMS, American Legion, Churches, etc. or any non-profit organization exempt from taxation as provided by 26 USC §501 and meeting all the requirements for exemptions provided by 26 USC §503.

**Example 1:** The Mackay BBQ is held each year as a City Activity. It is **not an Event** as defined by State Tax Law as **No Vendors are Allowed**. Only those identified in “E” above are allowed to sell at the BBQ. And are not required to have a Vendor License under State Tax Law.

**Example 2:** The City of Mackay Independence Day Celebration is **not an Event** as defined by State Tax Law as **No Vendors are Allowed as part of the celebration which is covered by City of Mackay insurance**. Only those identified in “E” above are allowed to sell as part of the celebration activity and are not required to have a Vendor License. The City recognizes the School and School groups only to sell at this activity.

However, this does not preclude another **Promoter-Sponsor** from obtaining permission from the City of Mackay, to use part of the Kid’s Park not associated with the Independence Day Celebration for a **separate Event** .which must comply with the requirements of this Ordinance .

**Example 3:** Any of those identified in “E” above may hold a fundraising activity on their own to raise money for their group. These fundraisers would be limited to two (2)

fundraisers in a one (1) year period. Including participating in a Promotor Sponsored Event.

3-6-3: DISPLAY OF LICENSE: The license issued to the licensee shall be exhibited in a conspicuous place if the licensee is using a vehicle or structure in the business otherwise it must be displayed on the outside of the sales area during hours of operation

3-6-4: PLACE OF OPERATION: No licensee shall operate on any public street or sidewalk, or parking area of the City; nor shall he/she/they be permitted to operate in any congested area where the operations might impede or inconvenience the public unless authorized in the license to do so. This license does not preclude the issuance of special operation permits by the City or the granting of permission to sell and/or operate on private property. City license is required to operate on private property if within the City limits.

3-6-5: COLLECTION OF TRASH: All trash or debris accumulated within twenty (20) feet of any vending stand or vehicle shall be collected by the vendor and deposited in trash containers. All vendors selling food or beverages must provide trash receptacles adjacent to or as part of their stands. Vendors are responsible for trash removal. If vendor fails to remove trash, they will be subject to the fine stated in Section 12 and will not be issued a Vendor's License in the future.

3-6-6 AGREEMENT:-The Applicant agrees to abide by the stipulations set forth in this Title and shall defend, indemnify, and hold the City of Mackay, its officers, officials, employees, and volunteers harmless for any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or in conjunction with the performance of this license.

3-6-7: VIOLATION: Any person, business, firm, company, or corporation who shall violate any of the provisions of this Title shall be guilty of an infraction and upon conviction shall be punished by a fine of one hundred dollars (\$100.00) plus court costs. Each day licensee is in violation shall be considered a separate violation.

3-6-8: SEVERABILITY:-Provisions of this Title shall be deemed severable and the invalidity of any provision of this Ordinance shall not affect the validity of the remaining provisions.

**TITLE 4      COMMISSIONS AND COMMITTEES**

<b>CHAPTER:</b>	<b>SUBJECT:</b>	<b>Page</b>
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## CHAPTER 1

## PLANNING AND ZONING COMMISSION

### SECTION:

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4-1-1: ESTABLISHMENT: The Planning and Zoning Commission (Commission) for the City consisting of no less than four (4) and no more than ten (10) members, who shall be appointed by the Mayor and confirmed by the City Council of the City of Mackay, Idaho (City Council) is hereby created. The creation and functions of the Commission shall conform to the requirements of the State of Idaho Statute Title 67 State Government and State Affairs, Chapter 65 Local Land Use Planning, as amended, Idaho Code Sections 67-6501 through 67-6538 (Idaho Code). The Commission shall prepare, and the City Council approve rules of operation, in accordance with the Idaho Code, defining and describing the purpose, membership, selection of committees and consultants, meetings and records, remuneration, duties and powers, and deactivation of the Commission. (Title 9, 9-1-2(A))

4-1-2: MEMBERSHIP AND TERMS. The initial Commission shall consist of four (4) to ten (10) Commissioners, appointed by the Mayor and confirmed by the City Council, of which a majority shall reside within the City limits and no more than two (2) shall reside within the area of City impact. No member of the City Council, Custer County Commissioners, or any City employee, full or part time, shall serve on the Commission. Commissioners shall be voting members who have resided in Custer County, Idaho, at least two (2) years prior to their appointment and shall remain a resident of the county during their service. The initial terms of the first appointed members, for periods of one (1), two (2), or three (3) years, distributed as evenly as possible among the members. Subsequent members shall be appointed for a term of three (3) years. No person shall serve more than two (2) full consecutive terms without specific concurrence by two-thirds (2/3) of the City Council adopted by motion and recorded in the minutes. Vacancies occurring otherwise than through expiration of terms shall be filled in the same manner as the original appointment. Commissioners may be removed for cause by a majority vote of the Council. (Title 9 9-1-2(B))

4-1-3: MEETINGS AND COMPENSATION. The Commission shall elect its own chairman and create or fill such other offices as it may determine necessary, and one regular meeting shall be held each month for not less than nine (9) months in each year. All meetings shall be compliant with the Idaho Open Meeting law and a majority of the

hall constitutes a quorum at any meeting. A record of meetings, hearings, resolutions, studies, findings, permits, and actions taken shall be maintained. All records shall be open to the public. Commission activities shall be without remuneration unless specifically approved in advance by the Council. (Title 9 9-1-2C)

4-1-4: DUTIES AND POWERS. The Commission shall have those duties and powers enumerated in Chapter 65, Title 67, Idaho Code, including, but not limited to the following: (A) Provide leadership and guidance for the update of the Comprehensive Plan for the physical development of the City.

(B) Make recommendations for the physical development of the City through the formation of zoning districts.

(C) Make recommendations concerning the designing, widening, extending and locating of streets, roads, and highways.

(D) Make recommendations concerning density of population and development of land within the City and its area of impact.

(E) Make recommendations concerning the future growth, development and beautification of the City with respect to its public buildings, streets, parks, and other facilities within the area of impact.

(F) Advise individuals concerning planning and zoning requirements and ordinances.

(G) Identify and recommend the adoption of applicable codes and standards governing the construction or modification of structures or land uses.

(H) Receive and make recommendations concerning any and all maps, plats, and replats of lands as encompassed by the approved Comprehensive Plan, which require the approval of the Council.

(I) Recommend the boundaries of zoning districts and propose regulations to be enforced therein for the purpose of promoting health, safety, social values, and the general welfare of the City by regulating and restricting the erection, construction, reconstruction, alteration, repair or use of structures or land within the City, and to hold public hearings thereon. (Ord. 424 1-2,D)

## CHAPTER 2

## TREE COMMITTEE (Ord.357)

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4-2-1: CREATION AND PURPOSE: The City of Mackay hereby establishes and creates a committee which shall be called the "Tree Committee." The purpose of the Committee is to carry out the tree program, as constituted by the duties of the committee set forth in this Chapter, within the City of Mackay. The Committee shall serve under the direction and supervision of the City Council and shall consist of a minimum of five (5) members; one (1) member shall be a Planning and Zoning Commission Member, one (1) member shall be a parks maintenance worker, one (1) member shall be a City Council Member or the Mayor, and one (1) or more members shall be at large.

4-2-2: DUTIES: (A) the Tree Committee shall have the following duties: (1) The Committee shall review and approve or reject all landscaping applications required to be submitted by this Chapter for the development of parks, landscaped areas and planting of street trees, and shall oversee such development and planting, for the welfare of trees, shrubs and other vegetation, in and upon public rights-of-way, public land subdivision entrances within the City.

(2) The committee shall seek to preserve any trees of areas of trees within the City determined by the Committee to have historical significance.

(3) The Committee shall recommend the pruning, spraying, or removal of trees and shrubs upon private property upon a finding that such action is necessary to prevent the spread of injurious pests or disease to trees and shrubs in and upon public rights-of-ways, public lands and subdivision entrances within the City.

(4) The Committee shall prepare a tree list consisting of acceptable trees for planting in and upon public rights-of-way, shall describe varieties, including their cold hardiness and size, and proper planting, including tree spacing, and post-planting care and instructions.

(5) The Committee shall review and approve or reject applications for planting or removing trees in or upon public rights-of-way, public lands and subdivision entrances within the City.

(6) In performing the duties set forth in this Chapter, the Committee shall consult, as appropriate, with any governmental entity having control of public rights-of-way or public lands within the City.

4-2-3: EXPENDITURES: The Committee may expend, subject to the approval of the City Council, funds and goods that it receives from public or private sources.

4-2-4: REGULATIONS: Landscaping applications and plans must be submitted to and approved by the Committee, prior to any person landscaping public right-of-way, public lands or subdivision entrances within the City.

4-2-5: TREE PLANTING: No person shall plant a tree or shrub in or upon a public right-of-way, public land or subdivision entrance within the City without first submitting an application to the Committee and obtaining the Committee's approval thereon. Applications for tree and shrub planting shall be filed with the City Clerk.

4-2-6: REMOVAL OF TREES: No person shall remove a tree or shrub from a public right-of-way, public land, or subdivision entrance within the City without submitting an application to the Committee and obtaining the Committee's approval thereon. Applications for tree or shrub removal shall be filed with the City Clerk.

4-2-7: REMOVAL OF TRAFFIC HAZARDS: (A) It shall be the responsibility of the owner of property to remove from his or her property any tree, shrub or other vegetation obstructing sight so as to constitute a traffic hazard. Sight obstructions shall not extend more than three (3) feet (3') in height above the existing street center line elevation within the vision triangle of vehicle operators. The boundaries of the vision triangle are defined by measuring from the intersection of the edges of two (2) adjacent streets forty (40) feet (40') along each street and connecting the two (2) points with a straight line. The sight distance obstruction is also applicable to railroad and highway grade crossings.

(B) When the City determines upon the basis of an investigation that a traffic hazard exists, it shall notify the owner of the property upon which the traffic hazard is located and order that the traffic hazard be removed within thirty (30) days.



The failure of the owner to remove the traffic hazard shall constitute a misdemeanor, and every day the owner fails to remove the obstruction shall be a separate and distinct offense.

4-2-8: INJURIOUS PESTS OR DISEASES: (A) All injurious pests and diseases infecting any tree or shrub within the City are hereby declared to be public nuisances. (B) The owner of property abutting a public right-of-way, public land or entrance to a subdivision within the City, the trees or shrubs upon which property are infected with any injurious pests or disease, shall stop the infestation of said pests, and their eggs or larvae, and spread of said disease, to any tree or shrub located in or upon said public right-of-way, public land or subdivision entrance.

4-2-9: ACTION BY THE CITY: In the event the owner of, or the owner of property abutting a public right-of-way, public land or subdivision entrance within the City fail to eradicate injurious pests, including eggs or larvae, or disease, the City, after reasonable notification to the owner, may take appropriate action to eradicate the injurious pests or disease, under the supervision of the City Maintenance Foreman and the costs and charges incurred thereby are declared to be a lien upon the real property owned by such person and collected as provided for in Section 50-1008, Idaho Code.

4-2-10: AUTHORITY OF THE CITY: Nothing in this Chapter shall be construed as prohibiting the City from eradicating injurious pests and disease or pruning trees or shrubs, in or upon a public right-of-way, public land or subdivision entrance.

4-2-11: APPEAL: Any person aggrieved by the action of the City Maintenance Foreman may appeal to the Committee by delivery of written notice of the City of Mackay. The Committee shall hold a hearing upon reasonable notice being given to the appellant. Any person aggrieved by the action of the Committee may appeal to the City Council by delivery of written notice to the City.

4-2-12: SCHEDULE OF FEES, CHARGES AND EXPENSES: The City Council shall establish a schedule of fees, charges and expenses for processing applications required by this Chapter and for other matters pertaining to the enforcement of the provisions of this Chapter. Said schedule shall be posted in the Mackay City Hall and may be amended only by Resolution of the City Council. Until all applicable fees, charges and expenses have been paid in full, no action shall be taken on any application or appeal.

4-2-13: PENALTIES: Any violation of the provisions of this Chapter shall be a misdemeanor.

## TITLE 5 CRIMINAL CODE

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## CHAPTER 1      ANIMAL CONTROL (Ord. 437 &437-A1)

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#### 5-1-1: DEFINITIONS:

(A) "At Large" means of the premises of the owner and not under the control of the owner or member of his/her family

(B) Kennel is defined for the purpose of this Chapter as any property maintained for the purpose of breeding, raising training, boarding or selling dogs and any property where more than three (3) Dogs or cats are harbored or kept.

(C) Pets means either dogs or cats. Domesticated animals normally raised on farms or ranches, and exotic animals are not considered pets per this Chapter and are prohibited within the City of Mackay unless authorized in writing by the City Clerk.

A Permit (FORM COM ACF-1-7.19) to keep Chickens and Sheep raised as 4H/FFA animals is available for the City Clerk for a fee of \$5.00.

(D) Owner means any person owing, keeping, harboring a pet or feeding a stray dog or cat.

5-1-2: LICENSE REQUIRED: All dogs within the City of Mackay are to be registered by licensing said dog at the City Hall. A licensing fee of \$7,50 per year per dog or \$25.00 per dog for a five (5) year licensing period shall be paid to the City upon registering a

dog. Re-registration of said dog will be required upon expiration license. There shall be no refund should a dog die prior to the expiration of the dog's license.

Cats are considered to be indoor pets and as such are not required to be registered by licensing. Cats running at large are considered to be feral cats.

5-1-3: NUMBER OF PETS ALLOWED: The number of pets that an owner may possess shall be limited. Pets that are contained in enclosures within a home such as in cages, terrariums, tanks, etc., are not subject to this Chapter and not to be included when determining the number of pets allowed. There shall be no exception to this limit. Keeping or harboring of pets owned by others shall be limited to fourteen (14) days and limited to two (2) pets.

The number of pets shall be limited to any combination of dogs and cats not to exceed four (4) animals total.

5-1-4: FEEDING STRAYS: Feeding of dogs or cats that are not owned by those providing the food (Strays) is discouraged. Providing food shall automatically make the provider of said food the responsible owner of the animal(s) being fed and therefore responsible for compliance with all sections of this Chapter and any damages caused by said animals. Such animals shall be included when counting the number of pets allowed in Section §5-1-3.

5-1-5: CAPTURING FERAL ANIMALS: The capture and spaying/neutering of any stray/feral animal and subsequently releasing those animals back into the environment from which they were captured is defined as abandonment and is subject to punishment as a misdemeanor in accordance with Idaho Code Title 15, Chapter 35.

5-1-6: RUNNING AT LARGE: It shall be unlawful for any owner of a pet to allow that pet to run at large. When walking dogs within the City of Mackay, the dog(s) shall be on a leash and under control of the person walking the dog at all times. Cats are not required to be on a leash when accompanied by the owner.

5-1-7: VIOLATION: If any pet is found running at large in violation of Section §5-1-6, the owner, upon identification, shall be issued a citation for violation of Section §5-1-6, of this Chapter and subject to a fine of \$25.00 per pet. Dangerous or unsafe pets running at large, which cannot be captured safely by live trapping, catch pole, or other humane method may be put down (killed).

5-1-8: NUISANCE PETS: It shall be unlawful for any owner of keeper of any pet to permit that pet to become nuisance to neighbors. A barking dog(s) is considered a nuisance if (1) continual barking of the dog(s) for an extended period of time (time in excess of thirty (30) minutes per instance); (2) pets running at large; or (3) complaints to

City Officials regarding said pet(s). At large or stray animals, including feral cats, are considered nuisances.

The owner shall be issued a verbal warning and required to remedy the problem. A written citation will be issued for the second notice of violation and will be subjected to a fine of \$25.00. The owner shall be issued a written citation, fined \$50.00 and required to remove the pet(s) upon a third nuisance report.

The owner of any animal shall be responsible for any and all property damage caused by their pets. See Section §5-1-1(D) for the definition of owner.

5-1-9: POUND: The City of Mackay does not maintain a Pound, Shelter, Kennel, or any other similar enclosure for housing/containment of animals. The City does not provide an Animal Control Officer. Nuisance animals or animals running at large are to be reported to the City Clerk during regular business hours, and a City employee will assist in identifying the owner of the animal if unknown and issuing citations if necessary. Custer County Sheriff's Department shall be available for issuing of citations as deemed necessary by the City.

5-1-10: NEIGHBORHOOD HELP: Neighbors are encouraged to help one another and help keep calls to the City Clerk at a minimum. Calls to the Clerk should be a last resort after other attempts to have the owner control their pets have not resulted in satisfactory remediation of the violation(s). The City will provide live traps to assist property owners in the capture of fetal cats/ raccoons/skunks/etc. on their own property. Disposal of the trapped animal is the responsibility of the property owner and not the City of Mackay.

5-1-11: CITY PROPERTY: Owners of pets may walk them on City Property and in the City Parks. Owners are forbidden to walk their pets on property which they do not own. Owners walking their pets on City Property or in the City Parks are required to collect and properly dispose of any solid waste deposited therein. See also Section §5-1-6. Failure to properly dispose of pet waste deposited in the aforementioned locations could result in a fine of \$50.00 per violation.

5-1-12: RABIES: whenever it becomes necessary to safeguard the public from the dangers of rabies, the Mayor, if deemed necessary, shall issue a proclamation ordering everyone owning or keeping a pet to confine it securely on the owner's property.

5-1-13: OBSERVATION: If any pet is believed to have rabies such pet shall be placed under the observation of a veterinarian at the expense of the owner.

5-1-14: KENNEL: It shall be unlawful for any person to operate a kennel anywhere within the City of Mackay. Anyone found operating a kennel in violation of this Chapter

shall be fined \$300.00 and the owner of the animals will be required to dispose of all pets in excess of the number of pets allowed in Section §5-7-3.

5-1-15: PUBLIC NUISANCE: Any violation of the terms of this Code shall be deemed a Public Nuisance and subject to injunction under the Laws of the State of Idaho and Codes of the City of Mackay

## **CHAPTER 2      COURT COST FOR ORDINANCE VIOLATIONS (Ord. 438)**

### **SECTION**

5-2-1: Court Costs

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5-2-1: COURT COSTS: For any person having been found by the Court of violating an Ordinance of the City of Mackay punishable as an infraction, Court Costs or fees as set by Idaho Code or Court Rules as applicable, and as amended from time to time shall be assessed and imposed by the Court in addition to any set fine or penalty prescribed by Ordinances of the City of Mackay pursuant to Idaho Code §18-113A.

## CHAPTER 3      DISTURBING THE PEACE (Ord. 462)

### SECTION

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5-3-1: ADOPTS STATE LAW: The City of Mackay (City), Custer County, Idaho invokes the State of Idaho Title 18, Chapter 64, §18-6409 as follows:

5-3- 2: DISTURBING THE PEACE: (1) Every person who maliciously and willfully disturbs the peace or quiet of any neighborhood, family or person, by loud or unusual noise, or by tumultuous or offensive conduct, or by threatening, traducing, quarreling, challenging to fight or fighting, or fires any gun or pistol, or uses any vulgar, profane or indecent language within the presence or hearing of children, in a loud and boisterous manner, is guilty of a misdemeanor.

5-3-3 EFFECTIVE HOURS: The City of Mackay hereby states this Ordinance shall be in effect twenty-four (24) hours each day, seven day each week, with no exceptions.

5-3-4: DEFINITIONS:

(A) LOUD AMPLIFICATION DEVICE: Any equipment designed or used for sound production, reproduction or amplification, including, but not limited to, any radio, television, phonograph, musical instrument, stereo, tape player, compact disc player, loudspeaker, public address (PA) system, sound amplifier or comparable sound broadcasting device.

(B) PERSON: Any individual association, organization of entity having a legally recognized existence, whether public of private.

(C) PLACE OF RESIDENCE: Any building or portion thereof adapted or used and intended for the overnight accommodation of persons. In the event the building is used for multiple individual units (such as, apartment, condominium, hotel, motel, duplex, triplex, etc.) each individual unit shall be considered a separate residence for the purpose of this Ordinance.



(D) PLAINLY AUDIBLE: Sound for which the information content is clearly communicated to the listener, including, but not limited to, understandable spoken speech, comprehension of whether a voice is raised or normal, comprehensible musical rhythms, melody or instrumentation and the source of which is identifiable to the listener.

5-3-5: LOUD AMPLIFICATION DEVICE: It shall be unlawful for any person to operate or permit the operation of any loud amplification device in such a manner that the sound therefrom:

(A) Is plainly audible within any place of residence not the source of the sound; or

(B) Is plainly audible upon a public right-of-way or street at a distance of one hundred feet (100') or more from the source of such sound.

5-3-6: CITATIONS: (A) Peace Officer Citation: Any peace officer or person empowered to enforce this Ordinance is authorized to issue a citation upon his own observation of a violation without the necessity of a citizen complainant's signature on said citation. By signing the citation, the officer or person is certifying that he has reasonable grounds to believe that the person cited committed the offense contrary to law.

(B) Citizen Citation: A citation may also be signed by any citizen or person in whose presence an alleged violation of this Ordinance occurred and be witnessed by a peace officer or person empowered to enforce this Ordinance whose name shall be endorsed on the citation.

5-3-7: VIOLATION: If conviction of violating this Chapter is (1) punishable by imprisonment in a county jail not exceeding six (6) months, or (2) by a fine not exceeding one thousand dollars (\$1,000), or by both. (Idaho Code 18-113); plus, court costs.

**CHAPTER 4          ENGINE COMPRESSION BRAKES (Ord. 392)**

**SECTION**

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5-4-1: ENGINE BRAKE PROHIBITED: No person shall, while operating a motor vehicle within the City apply or otherwise use “Jake Brakes,” Engine Compression Brakes, or any similar braking system which emits a clearly audible noise when measured at a distance of fifty (50) feet directly from the source. Engine Compression Brakes are defined as a braking system which uses compressed air from a motor vehicles engine to slow the vehicle.

5-4-2: VIOLATION: Any person who violates this Chapter shall be guilty of a misdemeanor. Punishment is by imprisonment in the County jail not exceeding six (6) months, or by a fine not exceeding one thousand (1,000) dollars (\$1,000), or by both.

## CHAPTER 5 OPEN BURNING (Ord. 436)

### SECTION

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5-5-5: Burn Ban	99
5-5-6: Violation	99

5-5-1: INCINERATION PROHIBITED: It shall be unlawful for any person to burn or incinerate household garbage, refuse, trash, rubbish, debris, construction of remodeling waste, treated wood of any kind, or any other such matter, within the City limits of Mackay at any time.

5-5-2: BURN BARRELS: Burn barrels are strictly forbidden.

5-5-3: YARD WASTE: Burning or incinerating of yard waste such as dry grass clippings, tree or shrub trimmings, brush, leaves and other such waste is permitted under the following conditions:

(A) A burn permit has been obtained from the City Clerk

(B) Opening burning shall not take place within twenty-five (25) feet of any structure

(C) Opening burning shall not take place unless weather conditions are conducive for controlling the burn

(D) Open burning shall take place between the hours of 8:00 a.m. and 8:00 p.m.

(E) A competent person at least eighteen (18) years of age shall attend the fire until the fire has been extinguished (ashes are cold to the touch)

(F) Sufficient tools and equipment shall be immediately available for use of the person identified in "E" above to extinguish the fire. Such equipment may include but not be limited to: hose connected to functional water supply rake, shove, fire extinguisher, or other fire extinguishing equipment suitable to control or contain the open burn

(G) Open burn shall be extinguished (ashes are cold to the touch) prior to 8:00 p.m.

(H) Open burn shall not be allowed to smolder, but must have flame sufficient to consume material being burned

5-5-4: RESPONSIBLE PERSON: The person responsible for the open burn shall extinguish the open burn completely before leaving the area for any reason whatsoever; or upon the order of the Fire Chief/Assistant, or a Law Enforcement Officer. An order to extinguish an open burn may be for any of the following reasons:

(A) Conducting an open burn in violation of this Chapter

(B) Insufficient of unsuitable personnel present to control the open burn

(C) A change from favorable to unfavorable weather or burning conditions

(D) Conducting an open burn that is determined to be dangerous or a nuisance

5-5-5: BURN BAN: The Mayor, upon the advice of the Fire Chief, shall have the authority to rescind open burning immediately, if it is determined that atmospheric, weather, hazardous conditions, or local circumstances, constitute a threat to public safety, health, or property.

5-5-6: VIOLATAION: A person(s) violating this Chapter shall be guilty of an infraction and subject to a fine of \$50.00.

## CHAPTER 6      PEACOCKS (Ord. 396)

### SECTION

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6-1-1: PEACOCKS PROHIBITED: No person shall allow, raise, or otherwise keep peacocks, peahens or guinea fowl within the City limits of the City of Mackay, Idaho. Provided further, that any person who owns peacocks, peahens, and/or guinea fowl within the City limits of the City of Mackay, Idaho as of the effective date of this Chapter shall have ninety (90) days from the effective date of this Chapter to remove said fowls from within the City limits of Mackay, Idaho.

6-1-2: VIOLATION: Any person violating section 6-1-1 of this Chapter shall be deemed guilty of a misdemeanor subject to a fine of up to three hundred (300) dollars (\$300) or six (6) months in the County jail, or both such fine and imprisonment.

6-1-3: DECLARED NUISANCE: Violations of this Chapter are hereby declared to be a nuisance and the person creating or allowing the same shall, upon notification from the City of Mackay, promptly abate, correct or remove the nuisance. If such nuisance is not abated, corrected or removed within thirty (30) days after written notice from the City, the City or its agents may prevent, correct, or remove and summarily abate the nuisance without judicial process at the expense of the party creating or maintaining the same and levy a special assessment as provided in Idaho Codes §§50-334, and 50-1008, on the land or premises whereon the nuisance is situated to defray the cost or to reimburse the City for the civil action, including abatement, injunction and/or damages in which event the City shall be entitled to all costs including attorney's fees for the prosecution of such action.

## **CHAPTER 7      TRAILING LIVESTOCK (Ord. 304)**

### **SECTION**

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5-7-1: PERMIT REQUIRED: It shall be unlawful for any person or organization to trail or drive livestock through the City limits of Mackay without first obtaining a permit.

5-7-2: PERMIT PROCEDURE/CLEANUP FEE: Any person or organization who desires to trail or drive livestock through the City limits of Mackay must first apply to the Mayor of the City of Mackay for a permit, stating the date the livestock will be trailed or driven through Mackay, the approximate number of livestock, and the person responsible for said livestock. The Mayor, when granting the permit, shall specify the route to be used by the applicant, and shall collect a cleanup fee from the applicant if deemed necessary by the Mayor.

5-7-3: VIOLATION: Violation of this Chapter shall be a misdemeanor, punishable by a fine not exceeding three hundred (300) dollars (\$300) and/or a jail sentence not to exceed six (6) months for each violation.

## **TITLE 6 HEALTH AND PUBLIC SAFETY**

<b>CHAPTER:</b>	<b>SUBJECT:</b>	<b>PAGE:</b>
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# CHAPTER 1      EMERGENCY OPERATIONS PLAN (Ord. 451)

## SECTION

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6-1-1: EMERGENCY PLAN: The Mayor and City Council have determined it to be in the best interest of the City; to adopt and implement an Emergency Operations Plan for the City of Mackay.

6-1-2: ADOPTION: The Mayor and City Council hereby adopts the City of Mackay Emergency Operations Plan dated March 2019 and any future updates to that Plan.

6-1-3: UPDATE: The City of Mackay Emergency Operations Plan may be updated and/or amended without having to amend this Chapter.

6-1-4: SEVERABILITY: 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.



## CHAPTER 2 FIREWORKS (Ord. 435)

### SECTION

6-2-1: Adopts Fireworks Act	Page <b>104</b>
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6-2-1: ADOPTS FIREWORKS ACT: The City hereby adopts Title 39, Chapter 26 of the Idaho Code known as the “Fireworks Act of 1997,” for the purpose of establishing rules and regulations for fireworks within the limits of the City of Mackay and as the same may be revised hereafter by the Idaho Legislature, or amended by the governing body. The same is hereby adopted and incorporated as a Chapter of the City of Mackay Code fully as though set forth at length herein.

An electronic copy of the current revision of the Fireworks Act of 1997 shall be made available by the City Clerk for examination and use by the public. The Act is also available at <http://legislature.idaho.gov/Title39T39CH26.htm>.

**CHAPTER 3      HAZARDOUS SUBSTANCE RESPONSE (Ord. 341)**

**SECTION**

6-3-1: Local Emergence Response:	Page 105
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6-3-1: LOCAL EMERGENCE RESPONSE: The City of Mackay hereby designates the Idaho State Police as the local emergency response authority (LERA) for hazardous substance incidents occurring within the corporate limits of the City of Mackay.

# TITLE 7 MOTOR VEHICLE REGULATIONS

<b>CHAPTER:</b>	<b>SUBJECT:</b>	<b>PAGE:</b>
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## CHAPTER 1      OFF HIGHWAY VEHICLES (Ord. 422)

### SECTION:

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7-1-1: LOCAL USE: Title 49 Idaho Code, Chapter 4, paragraph 401A states: "Any political subdivision of the state of Idaho may, but only after sufficient public notice is given and a public hearing held, adopt local ordinances or resolutions designating highways or sections of highways under its jurisdiction which are closed to all terrain vehicles, utility type vehicles, specialty off-highway vehicles and motorbikes licensed pursuant to this chapter and numbered pursuant to section 67-7122, Idaho Code."

7-1-2: DEFINITIONS: Definitions of Motor Vehicles as used in this Chapter are taken from Idaho Code Title 49 Chapter 1 and Idaho Code Title 67 Chapter 71:

(A) "All-terrain vehicle" or "ATV" means any recreational motor vehicle designed for or capable of traveling off developed roadways and highways with three (3) or more tires and fifty (50) inches or less in width, having a wheelbase of sixty-one (61) inches or less, has handlebar steering and a seat designed to be straddled by the operator.

(B) "Motorbike" means any self-propelled two (2) wheeled motorcycle or motor-driven cycle, excluding tractor, designed for or capable of traveling off developed roadways and highways and also referred to as trail bikes, enduro bikes, trials bikes, motocross bikes or dual-purpose motorcycles.

(C) "Off-highway vehicle" means an all-terrain vehicle, motorbike, specialty off-highway vehicle or utility type vehicle as defined in this Chapter.

(D) "Operator" means any person who is in physical control of a motorbike, all-terrain vehicle, utility type vehicle, specialty off-highway vehicle or snowmobile.

(E) "Passenger" is defined for the purpose of this Ordinance only, as any person on/in a vehicle defined in this Section of this Chapter, who is not the Operator of said vehicle.

(F) "Public roadway" means all portions of any highway [Street or Alley] which are controlled by an authority other than the Idaho transportation department (such as the City of Mackay)

(G) "Snowmobile" means any self-propelled vehicle under two thousand (2,000) pounds un-laden gross weight, designed primarily for travel on snow or ice or over natural terrain, which may be steered by tracks, skis, or runners.

(H) "Specialty off-highway vehicle" means any vehicle manufactured, designed or constructed exclusively for off-highway operation that does not fit the definition of an all-terrain vehicle, utility type vehicle or motorbike as defined in this Section. For the purpose of this Chapter only, golf carts shall be included in this definition.

(I) "Staging Area" is defined for the purpose of this Chapter only, as that area where those vehicles defined in this Section of this Chapter may be transferred from their transport conveyance, and where the transport conveyances may remain while the said vehicles are in use elsewhere.

(J) "Utility type vehicle" or "UTV" means any recreational motor vehicle other than an ATV [such as Side by Sides (SXSs)], motorbike or snowmobile as defined in this Section, designed for and capable of travel over designated roads, traveling on four (4) or more tires, maximum width less than seventy-four (74) inches, maximum weight less than two thousand (2,000) pounds, and having a wheelbase of one hundred ten (110) inches or less. A utility type vehicle must have a minimum width of fifty (50) inches, a minimum weight of at least nine hundred (900) pounds or a wheelbase of over sixty-one (61) inches. Utility type vehicle does not include golf carts, vehicles specially designed to carry a disabled person, implements of husbandry as defined in section §49-110(2), Idaho Code, or vehicles otherwise registered under title 49, Idaho Code. A "utility type vehicle" or "UTV" also means a recreational off-highway vehicle or ROV.

7-1-3: EXCLUSION: This Chapter does not apply to those vehicles defined in Section §7-3-2 that are registered and licensed for use on State of Idaho highways in accordance with Idaho Code §49-401A or being similarly registered and licensed in another State. Those vehicles shall be operated in accordance with Idaho Code on any City Street.

7-1-4: DRIVERS LICENSE: The operator of any vehicle defined in this Chapter within the City of Mackay must have a valid Driver's License in accordance with Idaho Code §49-301 (or other valid State Driver's License), including a motorcycle endorsement for operation of motorbikes in accordance with Idaho Code §49-304.

7-1-5: HELMETS REQUIRED: The operator of any vehicle defined in this Chapter and any passenger under the age of eighteen (18) must wear an approved safety helmet as

defined in Idaho Code 49-666, when riding within the City of Mackay. Idaho Code §49-666 "No person under eighteen (18) years of age shall ride upon or be permitted to operate a motorcycle, motorbike, utility type vehicle or an all-terrain vehicle unless at all times when so operating or riding upon the vehicle he is wearing, as part of his motorcycle, motorbike, UTV or ATV equipment, a protective safety helmet of a type and quality equal to or better than the standards established for helmets by the director, except the provisions of this Chapter shall not apply when such vehicles are operated or ridden on private property, or when used as an implement of husbandry."

7-1-6: OPERATION OF VEHICLES: Vehicles defined in this Chapter may be operated on any street or alley within the City of Mackay in accordance with the following stipulations:

(A) Operation of said vehicles shall be limited to the hours of 7:00 a.m. to 10:00 p.m. on weekdays and Sunday/between 7:00 a.m. and 12:00 p.m. on Saturdays

(B) Vehicles are prohibited from being operated up and down, or around and around the same streets, blocks, alleys etc. in any continuous pattern

(C) All traffic control devices such as stop signs, yield signs, and traffic laws applying to the operation of motor vehicles in the State of Idaho (except highway licensing requirements) shall be followed and will be enforced

(D) ATVs, UTVs, and motorbikes must meet the requirements for Off-Highway operation as defined in Idaho Code §67-7122 and Snowmobiles must be numbered in accordance with Idaho Code §67-7103 in that they must have valid registration sticker, liability insurance with proof of insurance, muffler and spark arrestor.

(E) Owners of vehicles defined in this Chapter will be held responsible for ensuring the requirements of this Chapter are met. Owners allowing, either accidentally or willfully, the violation of these Sections shall be deemed as creating a public nuisance and may be fined \$100.00 per violation.

7-1-7: SIDEWALKS: ATVs and UTVs may be operated on the sidewalks of the City of Mackay when equipped with snow removal equipment and only for the purpose of snow removal.

7-1-8: STAGING AREAS: Vehicles may be offloaded at the Staging Area located at the corner of Main and Salmon Streets, and at the corner of Capitol Avenue and Vaden Street. Vehicles may also be offloaded at the Mackay City Rodeo Grounds located at the end of Capitol Avenue, when other events that may conflict are not being held. This does not preclude the offloading of vehicles at a private residence so long as the conveyance is not parked on City streets or alleys.

7-1-9: ENFORCEMENT: Provisions of this Chapter and all State of Idaho motor vehicle laws are to be enforced by Custer County Sheriff's Department in contract with the City of Mackay. First offenders shall be issued a Warning Citation. Repeat Offenders shall be fined \$100.00 per violation. Violation for traveling along U.S. Highway 93 will also be enforced by Idaho State Police and subject to State penalties.

7-1-10: VIOLATION: Any violation of the terms of this Chapter shall be deemed a Public Nuisance and subject to injunction under the Laws of the State of Idaho and the Codes of the City of Mackay.

**CHAPTER 2      STREET SPEED LIMIT (Ord. 293)**

**SECTION:**

7-2-1: Maximum Speed Limit

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7-2-1: MAXIMUM SPEED LIMIT: Where no special hazard exists that requires lower speed for the safety of life and property, the maximum lawful speed on all public streets of the City of Mackay, Idaho is twenty (20) miles per hour (20 mph) and no person shall drive a vehicle at a speed in excess of twenty (20) miles per hour (20 mph) on any public street of the City of Mackay, Idaho.



## CHAPTER 3      TRAFFIC LAWS (Ord. 429)

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7-3-1: ADOPT STATE CODE: It is hereby declared to be the intent of the City Council to aid and assist by whatever means possible, for the consistency in traffic regulation among and between agencies of Idaho having such jurisdiction. Toward that end adoption of Idaho Motor Vehicle Laws by the City of Mackay is a Necessary means of assuring maximum uniformity within the State.

7-3-2: MOTOR VEHICLE CODE: The City hereby adopts for the purpose of establishing rules and regulations for the use of all streets and public thoroughfares of the City the Idaho Motor Vehicle Laws, more particularly Title 49, Idaho Code, and as the same may hereafter be revised by the Idaho Legislature, or amended by the governing body, and the same hereby adopted and incorporated as a Code of the City as fully as though set forth at length herein.

The current Idaho Motor Vehicle Laws, shall be made available electronically by the City Clerk for use and examination of and by the public or may be obtained at <http://legislature.idaho.gov/idstat/title49/T49.htm>

7-3-3: ESTABLISH SPEED LIMITS: In accordance with Idaho Code, Title 49 Chapter 2, Section 207, the City of Mackay may establish by Code, the speed limit(s) to be posted on the streets of the City.

7-3-4: PARKING: On-Street parking on the City rights-of-way shall be parallel with the street and five (5) feet from the maintained edge of the street, unless there is sufficient space to angle park such that the vehicle so parked is a minimum of five (5) feet from the maintained edge of the street. Parking on Main Street between Salmon and Spruce Streets shall be angle parking as indicated by pavement markings. Parking in alleys is prohibited.

7-3-5: VIOLATION: Any person found violating this Chapter shall be guilty of an infraction and subjected to fines and penalties upon conviction as established by the State of Idaho.

## **TITLE 8                      PUBLIC UTILITIES AND PROPERTY**

<b>CHAPTER:</b>	<b>SUBJECT:</b>	<b>PAGE</b>
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6	Tourist Park	
7	Trees and Shrubbery	
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## CHAPTER 1 AIRPORT REGULATIONS AND FEES (Ord. 457)

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8-1-1: OWNERSHIP: The City of Mackay (City), Custer County, Idaho owns and maintains the Mackay City Airport and adjacent facilities, for the use and benefit of all citizens of Mackay and Custer County.

8-1-2: AIRPORT COMMITTEE: The City of Mackay has an established Airport Committee. This Committee consists of a Member of the Mackay City Council appointed by the Mayor; and members selected from the community with an interest in aviation. The Airport Committee shall assist the City in maintaining and improving the Mackay Airport and services; and shall review requests for use of Mackay Airport Facilities and provide recommendations for approval/denial to the City Council.

8-1-3: AIRPORT MANAGER: The Mayor with concurrence of the City Council shall appoint an Airport Manager.

8-1-4: RULES AND REGULATIONS: The City of Mackay shall develop Rules and Regulations as minimum standards for the Mackay City Airport to be implemented in conjunction with this Chapter.

8-1-5: NON-AERONAUTICAL PURPOSES: Federal Aviation Administration through statute, regulation and agreements with public airports require that any proposal to temporarily close an airport for non-aeronautical purposes must be approved. Idaho Department of Transportation, Aeronautical Division has similar requirements.

8-1-6: DEFINITIONS: Non-aeronautical use includes, in part, such special outdoor events as sports car races, drag racing, vehicle racing, City or county fairs, parades, model and remote-controlled airplane/drone flying and etc.

8-1-7: AGREEMENTS: The City of Mackay has entered into agreements with various organizations, which have provided grant money for construction, maintenance, and improvements to the airport runway, taxiway, heliport and adjacent facilities, to keep the airport open and limit use to approved aeronautical purposes only.

8-1-8: NOT CONSIDERED: The City of Mackay will not consider any use of the airport landing strip runway, or the helipad for any activity, event, or use other than considered as normal use of an airport for aeronautical purposes.

8-1-9: CONSIDERED EVENTS: The City of Mackay will consider use of other Airport property/facilities not excluded in this Chapter for non-aeronautical events in accordance with the following:

(A) Use Application shall be completed

(B) Use Application shall be submitted allowing sufficient time for the City to apply for any FFA or State of Idaho approval for a non-aeronautical use should the City approve the requested use.

(C) Users shall, in addition to completing the application for use, provide proof of insurance for the event/activity being conducted in the amount of five hundred thousand dollars (\$500,000.00).

8-1-10: DEPOSIT: A damage deposit of two hundred dollars (\$200.00) shall be included with the request for use application. This deposit shall be returned upon inspection by the City and it is determined the facilities used are in as good or better condition than when the event/activity was held.

8-1-11: FEES: Charges for use of the Mackay City Airport, such as landing fees, tie-down fees, etc., shall be established by Resolution of the City Council.

8-1-12: VIOLATION: Any violation of the terms of this Ordinance shall be deemed Trespassing and subject to injunction under the Laws of the State of Idaho and the Ordinances of the City of Mackay.

## CHAPTER 2      BASEBALL FIELD USE (Ord. 463)

### SECTION

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8-2-1: OWNERSHIP: The City of Mackay (City), Custer County, Idaho owns and maintains the Mackay Baseball field and adjacent facilities including but not limited to a restroom, for the use and benefit of all citizens of Mackay and Custer County.

8-2-2: NON-EXCLUSIVE AGREEMENT; The City has entered into a non-exclusive agreement with the Mackay Baseball Association (MBA) which allows the MBA to schedule events in the Mackay Baseball field in exchange for maintenance of the said field.

8-2-3: APPROVEMENTS: Any improvements made by organizations, entities, clubs, associations, etc. to the Mackay Baseball field shall become the property of the City of Mackay.

8-2-4: USE BY OTHERS: The City establishes the following procedure to allow the use of the field by others, other than the MBA; and to provide for the security and maintenance of the City owned property.(A) The Mackay Baseball Field shall be secured at all times when there are no events scheduled in the said field. Restroom facilities shall be unlocked during events and during those months of the year when the water to those facilities is not subject to freezing

(B) Use of the Mackay Baseball field may be reserved for short term (less than five (5) days) events by completing an application for Use Permit, FORM COM-BF-1-3.21 available from the City Clerk for use of said facilities. The request shall be submitted to the Mayor for approval a minimum of seven (7) working days prior to the event taking place.

1. The Mackay School students, and other youth organizations are not subject to this requirement. They may use the field at any time it has not been scheduled for other events (see item 2 below).
2. Leaders/Advisors of the organizations listed in item 1 above are required to notify the City Clerk of their need to use the Mackay Baseball Field. Permission will be granted by the City Clerk if no other scheduled events are to take place during the requested use period.

(C) Users (Mackay Baseball Association is excluded from this requirement for regular games and practices only) desiring a permit to use the field for an event shall, in addition to completing the application for permit, provide proof of insurance for the event/activity being conducted in the amount of five hundred thousand dollars (\$500,000.00), or submit objective evidence that all participants in said activity or event have signed waivers holding the Permit Holder, and the City

of Mackay blameless and indemnify the City against any and all claims arising out of participation in the permitted event/activity.

(D) The City of Mackay shall charge no fee for the use of the Mackay Baseball Field. However, to ensure those who use those facilities show respect for public property, a damage deposit of two hundred dollars (\$200.00) shall be included with the request for use permit. This deposit shall be returned upon inspection by the City and it is determined the facilities used are in as good or better condition than when the event/activity was held.

(E) Those that use the Mackay Baseball Field and are not subject to a use permit, are under obligation to leave the said facilities in as found or better condition or use of said facilities will be denied in the future.

(F) The City reserves the right to cancel or reschedule any and all events, schedule events, and use the Mackay Baseball Field and associated facilities as the Mayor and City Council see fit for the betterment of the community.

8-2-4: VIOLATION: Any violation of the terms of this Chapter shall be deemed Trespassing and subject to injunction under the Laws of the State of Idaho and the Ordinances of the City of Mackay.

## CHAPTER 3      RODEO GROUND USE (Ord. 425)

### SECTION

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8-3-1: OWNERSHIP: The City of Mackay (City), Custer County, Idaho owns and maintains the Mackay Rodeo Arena and adjacent facilities including but not limited to a cooking facility and restrooms, for the use and benefit of all citizens of Mackay and Custer County.

8-3-2: NON-EXCLUSIVE AGREEMENT: The City has entered into a non-exclusive agreement with the Mackay Rodeo Association (MRA) which allows the MRA to schedule events in the Mackay Rodeo Arena in exchange for maintenance of the said arena.

8-3-3: USE BY OTHERS: The City establishes the following procedure to allow the use by organizations other than the MRA; and to provide for the security and maintenance of the City owned property.

(A) The Mackay Rodeo Arena and Cooking Facilities shall be locked and secured at all times when there are no events scheduled in the said arena. Restroom facilities shall be unlocked during events and during those months of the year when the water to those facilities is not subject to freezing

(B) Use of the Mackay Rodeo Arena and/or Cooking Facilities may be reserved for short term (less than five (5) days) events by completing an application available from the City Clerk for Use Permit for use of said facilities. The request shall be submitted to the Mayor for approval a minimum of seven (7) working days prior to the event taking place.

1. The Mackay High School Rodeo Club, members of Mackay High School Chapter of Future Farmers of America (FFA), members of Custer County 4H Clubs, and other youth organizations are not subject to this requirement.
2. Leaders/Advisors of the organizations listed above are required to notify the City Clerk of their need to use the Mackay Rodeo Arena/Facilities one (1) day in advance of said use and obtain a key to the desired facility(ies) to be used. Permission will be granted by the City Clerk if no other scheduled events are to take place during the requested use period.

(C) Users desiring a Use Permit shall, in addition to completing the application for permit, provide proof of insurance for the event/activity being conducted in the amount of one million dollars (\$1,000,000.00), or submit objective evidence that all participants in said activity or event have signed waivers holding the Permit Holder, and the City of Mackay blameless and indemnify the City against any and all claims arising out of participation in the permitted event/activity.

(D) The City of Mackay shall charge no fee for the use of the Mackay Rodeo Ground, Cooking Facilities, and Restrooms. However, to ensure those who use those facilities show respect for public property, a damage deposit of two hundred dollars (\$200.00) shall be included with the request for use permit. This deposit shall be returned upon inspection by the City and it is determined the facilities used are in as good or better condition than when the event/activity was held.

(E) Those that use the Mackay Rodeo Arena, Cooking Facilities, and Restrooms and are not subject to a use permit, are under obligation to leave the said facilities in as found or better condition or use of said facilities will be denied in the future.

(F) The City reserves the right to cancel or reschedule any and all events, schedule events, and use the Mackay Rodeo Arena and associated facilities as the Mayor and City Council see fit for the betterment of the community.

8-3-4: VIOLATION: Any violation of the terms of this Ordinance shall be deemed Trespassing and subject to injunction under the Laws of the State of Idaho and the Ordinances of the City of Mackay.



## **CHAPTER 4       SEWER SERVICE (Ord. 453)**

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8-4-1: DEFINITIONS: Unless the context specifically indicates otherwise, the meanings of terms used in this Code shall be as follows:

(A) BOD OR BIOCHEMICAL OXYGEN DEMAND: the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty degrees Celsius (20°), expressed in milligrams per liter.

(B) BUILDING DRAIN: That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the wall of the building and conveys it to the building sewer, beginning five (5) feet outside the inner of the building wall.

(C) BUILDING SEWER: The extension from the building drain to the point of connection with the public sewer or other place of disposal.

(D) CITY: The City of Mackay, Custer County, Idaho, or its authorized or designated agent, representative or deputy thereto.

(E) COMBINED SEWER: A sewer receiving both surface runoff and sewage.

- (F) GARGACE: Solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage, and sale of produce.
- (G) INDUSTRIAL WASTES: The liquid wastes from industrial manufacturing processes, trade or businesses as distinct from sanitary wastes.
- (H) MULTIPLE-BUILDING DEVELOPMENT: Includes the various types of developments that would have common or joint ownership areas such as mobile home parks or courts, shopping centers, etc.
- (I) NATURAL OUTLET: Any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.
- (J) pH: The logarithm of the reciprocal of the weights of hydrogen ions in grams per liter of solution
- (K) PERSON: Any individual, firm, company, association, society, corporation or group
- (L) PROPERLY SHREDDED GARBAGE: The wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (1/2) inch in any dimension.
- (M) PUBLIC SEWER: A sewer in which all owners of abutting properties have equal rights, and which is controlled by public authority.
- (N) SANITARY SEWER: A sewer which carries sewage and to which storm, surface and ground waters are not intentionally admitted.
- (O) SERVICE CONNECTION: The point at which the building sewer connects to the public sewer.
- (P) SEWAGE: A combination of the water carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface and storm waters as may be present.
- (Q) SEWAGE TREATMENT PLANT: Any arrangement of devices and structures used of treating sewage.
- (R) SEWER: A pipe or conduit for carrying sewage.
- (S) SEWER USER: Any individual, firm, company, association, society or corporation or group who has connected to the sewerage system.

(T) SEWEWAGE WORKS: All facilities for collecting, pumping, treating and disposing of sewage.

(U) SHALL OR MAY: "Shall" is mandatory; "may" is permissive.

(V) SLUG: Any discharge of water, sewage or industrial waste which in concentration of any given constituent or in quantity of flow, exceeds, for any period of duration longer than fifteen (15) minutes, more than five (5) times the average twenty-four (24) hour concentration of flows for normal operation.

(W) STORM DRAIN OR STORM SEWER: A sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted water such as cooling water.

(X) SUSPENDED SOLIDS: Solids that either float on the surface of, or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

(Y) WATERCOURSE: A channel in which a flow of water occurs, either continuously or intermittently.

8-4-2: APPLICABILITY: The provisions of this Code shall apply to all property within the corporate limits of the City, and any special users outside of the corporate limits of the City, including all property owned or occupied by the United States of America, Custer County and the State of Idaho.

8-4-3: CONNECTION REQUIRED: The owner or occupant of any house, building or property situated within the City used for residential, commercial, industrial, governmental or recreational use, or other purpose, which is abutting on or having access to any street alley or right of way in which there is located a public sewer of said City is hereby required to cease using any other method of disposing of sewage, waste or polluted water and, at his expense to connect such building directly with the public sewer in accordance with the provisions of this Code, within sixty (60) days after date of official notice from the City to do so; provided, however, that said sewer is within two hundred (200) feet of any property line of the building to be served or common property line in a multiple building development.

8-4-4: SERVICE AREA: The City of Mackay sewer system services all areas within the corporate limits of the City of Mackay.

8-4-5: GURARANTEES OR WARRANTIES: The City shall not provide any guarantees or warranties of any kind or nature for availability of services provided. The City shall not

be responsible for damage resulting from the interruption in service or from the lack of service. Temporary suspension of service by the City for improvements and repairs may occur as necessary.

8-4-6: OWNERSHIP: The City of Mackay owns the sewer system including all sewer mains, valves, fittings, lift stations, and other appurtenances up to the connections of the system(s) with the property Owner's sewer line(s). City equipment on the real property remains the property of the City and may be repaired, replaced, or removed by City employees at any time without consent of the property owner. No payment will be made to the property owner for the right to install, maintain, replace, or remove City equipment on his premises.

8-4-7: WRITTEN APPLICATION: All owners of property within the City Limits shall submit a written application to connect to the City sewer system by completing an application form available from the City Clerk during normal business hours. The application is a written request for service and does not bind the City to provide service. The City of Mackay shall only provide sewer services to the property owner of record. Exception: The Mayor and Council have discretion to grant an exception to a purchaser if satisfied that a purchase is occurring if the requestors of sewer service are in the process of purchasing the property where the service is to be provided.

8-4-8: FEE: A fee for each initial sewer connection to the City sewer system shall be charged, which charge shall not be refundable by the City. This fee shall be established or amended by Resolution of the City Council.

8-4-9: CASH DEPOSIT: Prior to receiving sewer services, the property owner shall submit a written request for sewer service by completing an application form available from the City Clerk along with the cash deposit for services.

8-4-10: BASE RATE: There shall be a base rate for water and sewer service required on all service connections. The base rate for sewer service shall be established or amended by Resolution of the City Council.

8-4-11: ACKNOWLEDGMENT SIGNATURE: The application form and connection fee shall be required to obtain sewer service. The application form shall be signed or executed by the user acknowledging the terms and conditions of use pursuant to this Code and any rules promulgated hereunder by Resolutions of the City Council.

8-4-12: PROPERTY TRANSFER: If ownership of property is transferred from one individual to another; both the former owner and the new owner shall notify the City Clerk of the property transfer. If the former owner has a delinquent account, sewer and water service will not be provided to the new owner until the former owner's account has been paid in full. The new owner shall apply for sewer services as required in this Code.

8-4-13: ACCOUNT: If an account becomes delinquent and it is necessary to turn off the water service. The deposit shall be applied to the unpaid balance due on the account. Water and sewer service will not be restored to that premises until all outstanding bills due the City have been paid and the cash deposit replaced, together with a turn-on fee for water service. Any such account delinquency shall constitute a lien on the property to the extent permitted by the laws of the State of Idaho and all such terms and conditions acknowledged and agreed to when applying for services.

8-4-14: TRENCHING/PIPE LAYING: All trenching and laying of pipe to be connected from the property line of any inhabitable property within the City to the City sewer line shall be performed exclusively by the owner of the real property, at the owner's expense, and under the supervision of the City or its representatives that the City deems appropriate. If the trenching and laying of pipe must cross City property, such as a City alley or street, the property owner shall be responsible for costs incurred to restore the alley or street to the condition existing prior to the trenching including paving. Trenching across City property shall be approved in writing (Building Permit) prior to commencing any trenching. Trenching across a City street or alley and the laying of pipe shall be completed such that the use of said street or alley can be restored within forty-eight (48) hours. The landowner shall use only material(s) approved by the City. The City shall approve connecting the lines(s) to the City system after ensuring that all applicable fees and material costs have been received by the City.

8-4-15: OWN AND MAINTAIN: The City of Mackay shall own and maintain the entire service connection once installed. Maintenance on the systems shall only be performed by authorized employees of the City or other authorized agents of the City.

8-4-16: MULTIPLE SERVICE CONNECTIONS: The City may, at its option, serve two (2) or more premises with one connection. On these service connections, the diameter of such joint lines shall be sufficient to provide a carrying capacity of not less than the combined capacity of individual service lines of the same size.

8-4-17: SERVICE EXTENSIONS: Service extensions from an existing service to other occupancies or ownerships than that for which the existing service was intended shall not be permitted. There shall be one connection per residence and one account per residence.

8-4-18: MULTIPLE SERVICES: The owner of a single parcel of property may apply for and receive as many services as he and his tenants may require, provided his application or applications meet the requirements of the policies, and regulations. However, the property owner shall be required to pay for all services.

8-4-19: RIGHT TO REFUSE SERVICE: (A) The City of Mackay reserves the right to refuse service or to discontinue service to any property located within the City Limits if

the City Public Works Supervisor determines the plumbing, facilities, appliances, or equipment using the sewer is dangerous, or unsafe. Service may also be refused or discontinued if the demands are detrimental to other users due to excess demand or inadequate service. The City shall refuse service or discontinue service to any premises where it is deemed necessary by the City to protect the City from fraud or abuse. The City shall notify a property owner (sewer user of record) when used wastefully or negligently that seriously affects the general sewer service. If the conditions are not corrected upon notification the City will discontinue water service.

(B) Where water service had been discontinued for any reason and the water is turned on by someone other than an authorized City employee, the water will then be shut off at the water main or the meter removed.

8-4-20: INHABITABLE PROPERTY/MEDIATOR: (A): Owners of inhabitable property within the City Limits shall be responsible for all charges for sewer services provided by the City to their property.

(B) The City will not serve as a mediator between the landlord and the renter to resolve discrepancies, issues, contract agreements, etc.

8-4-21: SERVICE CHARGE: A monthly service charge shall be billed for each premises connected to the City sewer system. All sewer charges shall be due and payable to the City no later than ten (10) days after billing. Any account for sewer services which remains unpaid after the tenth day of the month following that in which the billing was sent by the City Clerk shall entitle the City without further notice, to immediately shut off and discontinue sewer and water service to the property to which the bill was sent.

8-4-22: UNLAWFUL DISPOSAL: It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the City, or in any area under the jurisdiction of the City, any human or animal excrement, garbage or other objectional waste.

8-4-23: UNLAWFUL DISCHARGE: It shall be unlawful to discharge to any natural outlet within the City, or in any area under the jurisdiction of said City, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Code.

8-4-24: DISCHARGES PROHIBITED: No person shall discharge or cause to be discharged any storm water, surface water, ground water, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer.

8-4-25: STORM WATER: Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers, or to a natural outlet approved by the City. Industrial cooling water or unpolluted process waters may be discharged, on approval of the City, to a storm sewer or natural outlet.

8-4-26: LIST OF PROHIBITED WASTES: (A) No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers: (A) any gasoline, benzene, naphtha, oil, fuel oil or other flammable or explosive liquid, solid or gas

(B) any waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with the wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment lagoon, including, but not limited to, cyanides in excess of two (2) milligrams per liter as CN in the wastes as discharge to the public sewer.

(C) any waters or wastes having a pH lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works.

(D) solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of sewage works such as, but not limited to ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch, manure, hair and fleshing, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders

8-4-27: DISCHARGE OF WASTES WHICH HARM SYSTEM PROHIBITED: no person shall discharge or cause to be discharged the following described substances, materials, waters or wastes if it appears likely, in the opinion of the City, that such wastes can harm either the sewers, sewage treatment process or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property or constitute a nuisance. In forming its opinion as to the acceptability of these wastes, the City will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant and other pertinent factors, the substances prohibited are:

(A) any liquid or vapor having a temperature higher than one hundred fifty (150) degrees Fahrenheit (65° C)



(B) any water or waste containing fats, wax grease or oils, whether emulsified or not, in excess of fifty (50) milligrams per liter (50 mg/l) or containing substances which may solidify or become viscous at temperatures between thirty-two (32) degrees and one hundred fifty (150) degrees Fahrenheit (0 and 65°).

(C) any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor or three-fourths (3/4) horsepower or greater shall be subject to the review and approval of the City.

(D) any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not. No discharge of any liquid with a pH lower than the s.u.

(E) Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances; or wastes exerting any excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the City for such materials.

(F) any waters or wastes containing phenols or other taste or odor producing substances, in such concentrations exceeding limits which may be established by the City as necessary, after treatment of the composite sewage, to meet the requirements of the State, Federal or other public agencies of jurisdiction for such discharge to the receiving waters.

(G) any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the City in compliance with applicable State or Federal regulations.

(H) any waters or wastes having a pH in excess of 9.5.

(I) Materials which exert or cause: (1) Unusual concentrations of inert suspended solids (such as, but not limited to, fuller's earth, lime slurries and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate).

(J) excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).

(K) unusual BOD, chemical oxygen demand or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works.

(L) unusual volume of flow or concentration of wastes constituting "slugs" as defined herein.

(M) waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

8.4.28: OPTIONS: (A) if any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated previously in this Code, and which, in the judgement of the City, may have a deleterious effect upon the sewage works, processes, equipment or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance the City may a: reject the wastes; b: require pretreatment to an acceptable condition for discharge to the public sewers; c: require control over the quantities and rates of discharge; and/or d: require payment to cover the added costs of handling and treating the wastes not covered by existing taxes or sewer charges.

(B) If the City permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the City and subject to the requirements of all applicable codes, ordinances and laws.

8-4-29: INTERCEPTORS PROVIDED: Grease, oil and sand interceptors shall be provided when, in the opinion of the City, they are necessary for the proper handling of liquid waste containing grease in excessive amounts, or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the City and shall be located as to be readily and easily accessible for cleaning and inspection.

8-4-30: PRELIMINARY TREATMENT: Where preliminary treatment or flow equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation the the owner, at his expense.

8-4-31: MANHOLE: When required by the City, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessibly and fairly located, and shall be constructed in accordance with plans approved by the City. The manhole shall be installed by the owner, at his expense, and shall be maintained by him so as to be safe and accessible at all times.

8-4-32: STANDARD METHODS FOR THE EXAMINATION OF WATER AND WASTEWATER: All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this Code shall be determined in accordance

with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, and shall be determined at the control manhole provided or upon suitable samples taken at said control manhole. In the event that no special manhole has been required; the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb and property. The owner shall be responsible for all sampling required and any resulting associated expenses.

8-4-33: SPECIAL AGREEMENT: No statement contained in this Code shall be construed as preventing any special agreement or arrangement between the City and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the City for treatment, subject to payment therefor by the industrial concern.

8-4-34: VIOLATIONS: Any property owner or sewer user violating the provisions of this Code shall, upon notice by the City, immediately install such preliminary treatment through separators, traps and/or chemical, physical or biochemical processes as will make and assure that the sewage contributed from such property or premises will meet the requirements of this Code.

8-4-35: PROPOSED PRELIMINARY TREATMENT: The admission into the public sewers of any water or wastes having a) biochemical oxygen demand (BOD) greater than three hundred (300) milligrams per liter (300 mg/l), or b) suspended solids in excess of three hundred (300) milligrams per liter (300 mg/l), shall be subjected to review and approval of the City. Where necessary, in the opinion of the City, the owner shall provide, at his expense, such preliminary treatment as may be necessary to reduce the BOD to three hundred (300) milligrams per liter (300 mg/l) and the suspended solids to three hundred (300) milligrams per liter (300 mg/l). Plans, specifications and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the City and the State of Idaho, Department of Environmental Quality, and no construction of such facilities shall be commenced until said approvals are obtained, in writing.

8-4-36: CITY REGULATIONS: All materials and workmanship in the installation of building sewers and service connections shall conform to the following regulations: (A) No unauthorized person shall uncover, make any connection with or opening into, use alter or disturb any public sewer of appurtenance thereof without first obtaining a building permit from the City. The permit is not to be issued until all sewer connection charges and fees have been paid in full. The permit application shall be supplemented by any plans, specification or other information considered pertinent in the judgement of

the City. A permit fee, adopted by Resolution of the City Council for a residential or commercial sewer service, shall be paid to the City at the time the application is filed. The amount of the permit and inspection fee for an industrial waste sewer service will vary with each permit and shall be established by the City at the time of the application.

(B) All costs and expenses incident to the installation and connection of the building sewer and service connection shall be borne by the owner.

(C) A separate and independent building sewer and service connection shall be provided for every building; except where one building stands at the rear of another on an interior lot and no separate sewer is available or can be constructed to the rear building through an adjoining alley, courtyard or driveway; the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

8-4-37: OLD BUILDING SEWERS: May be used in connection with new buildings only when they are found, on examination and being treated as required by the City, to meet all requirements of this Code.

8-4-38: PLUMBING CODE: The materials of construction of the building sewer and service connections and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building code as in or may be adopted by the City, and of the Idaho State Plumbing Code.

8-4-39: PIPE DIAMETER/LAYING REQUIREMENTS: (A) the building sewer from the building drain to the public sewer and the service connection thereto shall not be smaller than four (4) inch (4") diameter sewer pipe. The minimum grade or slope of the building sewer shall be as follows: (1) Four (4) inch (4") diameter sewer pipe shall be laid on a grade of not less than one-fourth (1/4) inch (1/4") per foot.

(2) Six (6) inch diameter sewer pipe shall be laid on a grade of not less than one-eighth (1/8) inch (2/8") per foot.

(3) Eight (8) inch diameter sewer pipe shall be laid on a grade of not less than four (4) feet (4') per one thousand (1,000) Feet.

(B) The alignment of the building sewer from the outlet of the building drain to the public sewer connection shall be straight, with no bends warps or sags permitted except with the permission of the City. The trench bottom shall be cut to proper grade so that when the pipe is laid, the body or barrel of the pipe shall be on solid material, bell holes are to be excavated in the trench bottom at all pipe joints.

8-4-40: SURFACE WATER CONNECTIONS PROHIBITED: No person shall make connection to roof downspouts, exterior foundation drains, areaway drains or other sources of surface runoff or ground water to a building sewer or building drain which in turn is connected, directly or indirectly, to a public sanitary sewer.

8-4-41: ADDITIONAL CODE REQUIREMENTS: The service connection to the public sewer shall conform to the requirements of the building code as adopted by the City, and to the requirements of the Idaho State Plumbing Code. In addition, the materials and workmanship of the service connection shall meet the following requirements:

(A) A precast service connection tee shall be fitted onto the sewer pipeline at the appropriate point and near the center of a length of the public sewer pipe to avoid breaking the bell or the spigot end of the sewer pipe. The service connection tee shall be installed as a watertight connection to the outside of the public sewer, care being taken not to extend the building sewer line into the public sewer line, therefore creating a possible restriction. The invert of the building sewer line at the service connection tee shall be equal to two-thirds ( $2/3$ ) of the diameter of the public sewer. All foreign material shall be removed from the sewer and there shall be a permanent connection which is gastight and watertight between the public sewer line and the building sewer line.

(B) The building sewer tee connection to reinforced sewer pipelines shall be made as specified, except that in cutting a hole in a reinforced pipe for installation of the service tee, extreme care shall be exercised to avoid damage to the pipe. The hole for the tee shall be carefully chipped first to expose the reinforcing steel and the steel cut by torch or saw. No chisel cutting of the reinforcing steel of any character will be permitted.

(C) In lieu of a standard tee service connection, a riser service connection may be made to sewer lines that are deep below ground surface. The branch or riser shall be connected the same as a tee, except that it shall be set vertically over the public sewer pipe and extended vertically upward such that the top of the riser is not to be less than five (5) feet (5") below the surface of the ground.

8-4-42: NOTIFICATION OF CITY: The applicant for the building sewer permit shall notify the City when the building sewer is ready for inspection and connection to the public sewer.

8-4-43: EXCAVATIONS RESTORED: All excavations for building sewer installations shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public properties disturbed in the course of the work shall be restored in a manner satisfactory to the City.

8-4-44: PUBLIC WORKS DIRECTOR MAKES CONNECTIONS: The connection of the building sewer to the public sewer shall be made by the City Public Works Director or authorized representative.

8-4-45: CITY APPROVAL MUST BE ISSUED: No connection of any kind to a public sewer line shall be made and no sewage shall be permitted to flow through such connection except pursuant to inspection of and approval issued by the City.

8-4-46: REJECTION OF MATERIAL OR WORKMANSHIP: The City may reject any material or workmanship, specified this Code, for cause and upon such order, rejected material shall be removed and replaced with approved material. Disapproved workmanship shall cause the removal and replacement of all materials involved, including appurtenances, excavations, backfilling and other work items.

8-4-47: BACKFILLING SPECIFICATIONS: Backfilling of building sewers and service connections within the limits of public rights of way or easements shall conform to special specifications promulgated by the City for sewer installation and shall be subject to inspection by and approval of the City.

8-4-48: SERVICE ACCESS FEE: In addition to any sewer permit and inspection fees, the owner shall be required to pay a service access fee. The amount of the fee shall be in accordance with the rate schedule adopted by Resolution of the City Council.

8-4-49: COMPLETION TIME FRAME: All work on a sewer service connection shall be completed, including approval by the City, within ninety (90) days of the date of the issuance of the permit and, in the event the work is not completed and approved within such time, the permit shall lapse. In the event the permit for sewer connection lapses, the owner can reapply, and the Public Works Director can credit to the owner a reasonable amount depending upon the extent of the completion of the connection which is the subject of the permit for the new inspection fee and sewer service connection fee shall also be credited so long as the reapplication is made within one (1) year of the issuance of the original permit.

8-4-50: PUBLIC SANITARY SEWER NOT AVAILABLE: Where e a public sanitary sewer is not available under the provisions of this Code, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this Code. (A) Before commencement of construction of a private sewage disposal system, the owner shall first obtain a Building Permit from the City. The application for said permit shall be made on a form furnished by the City, which the applicant shall supplement by plans, specifications and other information as may be deemed necessary by the City. A permit and inspection fee shall be paid to the City at the time the application is filed.

(B) A permit for a private sewage disposal system shall not be effective until the installation is completed to the satisfaction of the City. The City shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the

permit shall notify the City when the work is ready for final inspection and before any underground works are covered. The inspection shall be made by the City within forty-eight (48) hours after receipt of notice from applicant.

(C) The type, capacity, location and layout of a private sewage disposal system shall comply with all the rules, regulations and recommendations of the State Department of Health. No septic tank or cesspool shall be permitted to discharge into any public sewer or natural outlet.

(D) At such time as a public sewer becomes available to property served by a private sewage disposal system, a direct connection shall be made to the public sewer in compliance with this Code, and any septic tank, cesspool or similar private sewage disposal facility shall be abandoned and filled with suitable material.

(E) The owners shall operate and maintain the private sewage disposal facility in a sanitary manner at all times and at no expense to the City.

(F) no statement contained in this Chapter shall be construed to interfere with any additional requirements that may be imposed by the State Department of Health.

8-4-51: PRIVY, SEPTIC TANK, ETC. PROHIBITED: Except as herein provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage.

8-4-52: HABITAT MUST HAVE DISPOSAL SERVICE: It shall be unlawful, and no person shall inhabit any building whether residential or otherwise unless it is receiving service from either the public sanitary sewer or a private sewage disposal system complying with the provisions of this Code.

8-4-53: MALICIOUS OBSTRUCTION OF FLOW: No unauthorized person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the sewerage works. It shall be unlawful for any person to deposit any garbage, ruggish, dead animal or any substance tending to obstruct the flow of the sewer in any manhole, cleanout or sewer opening

8-4-54: AGREEMENTS WITH LINE EXTENDERS: The City may enter into sewer system extension and reimbursement agreements with property owners who extend and/or oversize the sewer main extension to serve a benefited area in addition to the property owner's property which agreement may provide that subsequent connectors to the sewer main extension during a prescribed period of time, not to exceed a ten (10) year period, that will be charged with a proportional late comer's fee based upon area served.

(A) The City may then charge subsequent connectors to the sewer main extension late comer fees in addition to the connection fees and user charges normally assessed to a user in accordance with an extension and reimbursement agreement due to the fact that the subsequent connector has not contributed to the costs of the extended line;

(B) The City may then reimburse the property owner(s) in accordance with the extension and reimbursement agreement with the collected late comer fees (less administrative costs) for the costs of the sewer line extension and/or oversized portion of the sewer line extension.

8-4-55: EXTENSION BEYOND CITY LIMITS: The conditions under which the City may extend its domestic sewer service outside of the City limits are as follows:

(A) No extension of the City's domestic sewer service and its sewer mains outside of the City shall be commenced until an agreement is entered into with the property owner(s) who seek(s) the domestic sewer service and the City of Mackay, which agreement provides: (1) complete identification of the land and lots to receive domestic sewer services that are the subject of the agreement.

(2) Any such agreement shall include a provision for latecomer user connection fees for the pro rata costs of the sewer main extension project and a projection on density and the number of residential and/or other units to be served in the development as well as those lands outside the development projected to be served by the sewer line extension and or oversized line, with a projection on the rate of development and a cut off, not to exceed a ten (10) year period cost.

(3) In the event the City requires oversizing of the sewer main extension, the agreement may provide for the payment of late comer fees and for the remittance of late comer fees (less administrative costs) to the property owner(s) for a stated period of time.

(4) The agreement shall include that (a) all costs of the sewer main extension and/or oversizing be borne by the developer or his agent, and recovery costs shall be divided on the basis of acres served

(b) the ordinances, policies and regulations of the city which govern its sewer utility apply to the subject real property to which domestic sewer service will be provided

(c) the developer and subsequent purchasers of the subject real property consent to the real property's annexation into the City of Mackay and enter into an annexation agreement with the City of Mackay prior to receiving sewer service

(5) the agreement be recorded



8-4-56: DECLARED A PUBLIC NUISANCE: Any violation of the terms of this Code shall be deemed a Public Nuisance under the laws of the State of Idaho and shall also be subject to injunction under the laws of the State of Idaho and the Ordinances of the City of Mackay

8-4-57: PENALTIES: Any person who discharges or causes to be discharged any substance, whether liquid or solid, whether human or animal excrement, garbage or other waste into the sewage disposal system or the public sanitary sewer of the City, other than by means of a service connection, and/or any person violating Sections of this Chapter shall be guilty of a misdemeanor as defined by the laws of the State of Idaho. All other violations of this Code shall constitute an infraction with a fine of three hundred (300) dollars (\$300), notwithstanding any other provisions herein stating otherwise. Each day a violation occurred shall be considered a separate violation.

8-4-58: PERMIT TO DISCHARGE: The City of Mackay may issue permits to allow discharge of domestic sewage pumped by licensed individuals from septic tanks, portable toilets (porta-potty), or recreational vehicles into the City sewer system. The location site for the dumping into the sewage shall be designated by the City Public Works Director.

8-4-59: FEE FOR DUMPING: The fee charged for dumping of pumped sewage into the City sewer system shall be determined by Resolution of the City Council.

8-4-60: RESALE PROHIBITED: Resale of sewer services is prohibited.

8-4-61: IN CASE OF EMERGENCY: In case of emergency as safety risk, risk of property damage etc., the City Public Works Supervisor is hereby authorized to use his discretion, training, and knowledge to remedy the situation: and, then notify the Mayor and City Council of his actions.

8-4-62: SEVERABILITY: 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.

## CHAPTER 5      TRANSFER OF CITY PROPERTY (Ord. 432)

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8-5-1: EXEMPTIONS: City of Mackay property agreements, trades, exchanges, transfers, which have been recorded on legal documents recognized by the State of Idaho such as Bills of Sale, Quit Claim Deeds, or lease agreements and so recorded as legally required are not subject to this Chapter

8-5-2: NO LONGER ENGAGE: The City of Mackay shall no longer engage in the transfer of City property to other entities, organizations, individuals, etc. for any reason

8-5-3: MAY SELL: The City of Mackay may elect to sell City property as deemed in the best interest of the City. Should the City decide to sell City property, said property shall be assessed and sold at fair market value

8-5-4: MAY LEASE: The City of Mackay may choose to lease or rent City property to organizations when sale of said property is not in the best interest of the City; the ownership of said property is to be retained by the City, and the City wishes to stipulate conditions of use of said property. Lease agreement(s) shall be prepared by the City; signed by the leasing organization; and recorded with the Custer County Recorder or will not be considered valid.

## CHAPTER 6 TOURIST PARK USE (Ord. 461)

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8-6-1: OWNERSHIP: The City of Mackay (City), Custer County, Idaho owns and maintains the Mackay City Tourist Park and adjacent facilities, for the use and benefit of all citizens.

8-6-2: RULES AND REGULATIONS: The City of Mackay shall develop Rules and Regulations as minimum standards for the Mackay City Tourist Park.

8-6-3: AGREEMENTS: The City of Mackay has entered into agreements with various organizations, which have provided grant money for construction, maintenance, and improvements to the Tourist Park.

8-6-4: ACTIVITIES: The City of Mackay will not consider any use of the Tourist Park for any activity, event, or use other than considered as normal use of a city park.

8-6-5: OPEN: The Tourist Park will open for use on Memorial Day and will close following Labor Day weekend. The Mayor may authorize changes to these dates.

8-6-6: CAMP HOST: The Camp Host is hereby Authorized by the Mayor in accordance with Idaho Code 60-509 to Enforce this Chapter as written to ensure the health and safety of those using the City of Mackay Tourist Park. This includes issuing of Citations.

8-6-7: GAZEBO: Use of the Gazebo/Pavilion/Band Stand shall be for only those purposes for which it was designed. Camping, cooking in, or enclosing (putting up temporary walls with any material) is strictly PROHIBITED.

8-6-8: FREE CAMPING: Camping spots in the Tourist Park may be used without fee for two (2) days and two (2) nights provided the spots used have not been reserved.

8-6-9: RESERVATIONS: Camping spots in the Tourist Park may be reserved for up to five (5) consecutive days by paying a reservation fee established by Resolution of the City Council. A camp spot is reserved for the applicant's licensed vehicle only. Additional RV(s) must pay a reservation fee for another camping spot.

8-6-10: RULES AND REGULATIONS: The City of Mackay hereby establishes the following rules and regulations for use of the Tourist Park:

(A) All campers must check in with the Camp Host (if provided-see signage).

(B) Dry camping only is provided at the Tourist Park. No water, sewer, or electrical connections are provided.

(C) The City Tourist Park shall be closed for watering, mowing, and maintenance on Tuesday and Wednesday of each week.

(D) A fire ring and a picnic table are provided in each camp spot. Moving of a fire ring or table is prohibited.

(E) Building a fire pit or rock fire ring is prohibited.

(F) The loop road is to provide access to the camp spots. Continuous driving of any motorized vehicle around the loop road is prohibited.

(G) All dogs must be on a leash. Roaming dogs or dogs left unattended are prohibited. Owners are required to remove and dispose of any pet waste immediately!

8-6-11: EVENT RESERVATIONS: Portions of the City of Mackay Tourist Park may be reserved for events, such as family reunions, provided camping spots are not reserved. Campers with previous reservations will not be asked to leave.

8-6-12: APPLICATION FORM: In order to reserve the Tourist Park for any event, the Tourist Park Use Application form must be completed. Form is available online or at the City Hall during normal business hours.

8-6-13: INSURANCE: Any individual, group, organization, etc. desiring to reserve any Tourist Park Facility other than a camping spot shall provide the City with proof of insurance for their event, activity, etc. in the amount of five hundred thousand dollars (\$500,000.00), in lieu of insurance a notarized document holding the City of Mackay blameless for any damages to personal property, incident, accident, etc. Documentation must be provided with the Application form and any deposits or fees.

8-6-14: FEE: A damage/cleaning fee shall be included with the request for use application. This fee will be determined by Resolution of the City Council.

8-6-15: RIGHTS RETAINED: The City of Mackay retains the right to reserve the entire Tourist Park for events as deemed necessary. The City also retains the right to close the Park if needed for safety/health reasons. Those with reservations will be notified by email and fees paid refunded.

8-6-16: Violation: Any violation of the terms of this Chapter shall be deemed Trespassing and subject to injunction under the Laws of the State of Idaho and the Ordinances of the City of Mackay.

## CHAPTER 7      USE OF PUBLIC SIDEWALKS (Ord. 424)

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8-7-1: TEMPORARY SIGNS: Temporary signs are not permanently affixed and may be moved from place to place, including all devices such as banners, pennants, and flags, as well as “A” frame (sandwich), sidewalk, curb, and reader board signs intended to be displayed for a limited time. Temporary signs may be two (2) sided and not exceed six (6) square feet per side.

8-7-2: TIME: Such signs may be erected two (2) months before the event or holiday and must be removed within one (1) week after the event or holiday. Temporary sign placement is required to be off the roadway. In the case of business/commercial use, signs must be placed and removed daily if located on City property.

8-7-3: LOCATION: Locations Where Signs May Not Be Erected:

(A) No signs may be erected or display within the State highway, City street, or County road right-of-way.

(B) In the event of a corner lot, signs must conform to requirements of Title 9, §9-1-5.

8-7-4: SPECIAL USE PERMIT: Any sign that does not fit into these regulations may be approved, denied, or approved on conditions through the Special Use Permit process as delineated in Title 9, Chapter 14.

## **CHAPTER 8      WATER SERVICE (Ord. 452)**

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8-8-1: WATER SERVICE: The City of Mackay water system services all areas within the corporate limits of the City of Mackay. The City will exercise reasonable diligence and care to deliver a continuous supply of safe and potable water and to avoid so far as possible interruption in delivery.

8-8-2: NO LIABILITY ASSUMED: The City will not be liable for damage resulting from the interruption in service or from the lack of service. Temporary suspension of service by the City for improvements and repairs will be necessary as conditions warrant. Whenever possible, all customers affected will be notified prior to suspension of services.

8-8-3: OWNERSHIP/ OBSTRUCTIONS: (A) The City of Mackay owns the water system including all water mains, valves, fittings, meters, hydrants, and other appurtenances up to the connections of the system(s) with the property owner's water line(s). City equipment on the real property repairs the property of the City and may be repaired, replaced, or removed by City employees at any time without consent of the property owner. No payment will be made to the property owner for the right to install, maintain, replace, or remove City equipment on his premises.

(B) It shall be unlawful for any person to obstruct access to City equipment including water meters, water shut-off valves in any way; and it is further unlawful for any person to fail to remove such obstructions after the person has been notified either verbal or written notice to remove such obstruction. Written notice may be posted on the obstruction, if the person responsible for the obstruction cannot be located or is unknown. Persons not removing obstructions immediately when notified verbally or within twenty-four (24) hours after receiving written notice shall be guilty of an infraction and shall be fined one hundred (100) dollars (\$100) per day until obstruction is removed. The City reserves the right to remove any obstruction after giving notice and shall charge the person responsible for the obstruction cost of removal (minimum of \$100.00) and impoundment if the owner of the obstruction cannot be located immediately, the obstruction will be removed by the City and impounded, in which case the City cannot be held liable for any damages caused by such removal.

8-8-4: REQUIRED TO CONNECT: (A) Owners of inhabitable property within the City Limits and any boundary of said property being within two hundred (200) feet of a water distribution service line of the City systems shall be required to connect to those systems. Inhabitable property is herein defined for the purposes of this Code as any parcel of land with a dwelling, improved by new construction for dwelling to be occupied and occupied or used by any person or person, or as a commercial business.

(B) The owner or person in charge shall make or cause to be made, such connection(s) within sixty (60) days after receiving official notice from the City to so connect or



receiving an approved Building Permit issued by the City for construction of a structure on the property.

**8-8-5: OWNER REQUEST FOR SERVICE/FEE/YEARLY  
GUARANTEE/CONTRACT/TRANSFER OF PROPERTY/DELIQUENT ACCOUNT:**

(A) A owners of property within the City Limits shall request in writing their desire to connect to the City water system by completing an application form, available from the City Clerk during normal business Hours. The City of Mackay will no longer provide water service to anyone but the property owner of record. Exception: Requestors of water service who are in the process of purchasing the property where the service is to be provided are considered the owner for purposes of this Code.

(B) A fee for each initial water connection to the City water system shall be charged by the City. This connection [access] fee shall be determined by Resolution of the City Council and shall not be refundable by the City. These fees do not include the cost of water meter of materials which will be charged at the applicable going business rate.

(C) A yearly guarantee for service equivalent to the yearly base rate for water service shall be required on all service connections. The monthly base rate charge for water shall be applied to this guarantee. Any amount remaining after the monthly payment for services shall be billed the property in the December billing. This guarantee shall transfer with any sale of the property and be permanently granted to the City as long as City water service lines exist on said property.

(D) Prior to receiving water services, the property owner/applicant shall submit a written request for water service by completing an application form, available from the City Clerk during normal business hours. The water connection fee (cash deposit) shall be determined by Resolution of the City Council. This fee is not to be considered as a payment on account. In the event the service is discontinued, the fee will be applied to the closing bill and any amount in excess of the closing amount shall be refunded. No interest shall be paid on the fee.

(E) The application is a written request for service and does not bind the City to provide service(s). If the City approves the request, the requestor shall sign a written application [contract] with the City of Mackay for the service(s).

(F) If ownership of property is transferred from one individual to another, both the former owner and the new owner shall notify the City Clerk of the property transfer. If the former owner has a delinquent account, water service will not be provided to the new owner until the former owner's account has been paid in full. The new owner shall apply for water services as required in this Chapter.

(G) if an account becomes delinquent and it is necessary to turn off the service, the deposit shall be applied to the unpaid balance due on the account. Water service will not be restored to that premises until all outstanding bills due the City have been paid And the cash deposit replaced, together with a turn-on fee equivalent to the monthly base rate being charged for water service.

(H) Should a property owner desire a change in size, character, or extent of equipment or operation which would result in a change in the amount of water used, different from that identified in the initial request (application form) for connection to the water system service, the property owner shall submit an application form requesting such a change in service.

#### 8-8-6: TRENCHING/PIPE LAYING/LOCATION/SIZE/CONTROL

VALVE/UNAUTHORIZED OPERATION/BACKFLOW PREVENTION/AUTHORIZED MAINTENANCE/DUAL SERVICE/SERVICE EXTENSIONS: (A) all trenching and laying of pipe to be connected to the City water systems from the property line of any inhabitable property within the City to the City water line shall be performed exclusively by the owner of the real property, at the owner's expense, and under the supervision of the City or its representatives that the City deems appropriate. If the trenching and laying of pipe must cross City property, such as a City alley or street, the property owner shall be responsible for costs incurred to restore the alley or street to the condition existing prior to the trenching including paving. Trenching across City property shall be approved in writing (Building Permit) by the City Council prior to commencing any trenching. Trenching across or alley and the laying of pipe shall be completed such that the use of said street or alley can be restored within forty-eight (48) hours. The landowner shall use only material(s) approved by the City. The City shall connect the pipe(s) to the City system(s) after ensuring that all applicable fees and material costs have been received by the City. Nominal water service pipe size is three quarter (3/4) inch (3/4") in diameter. Justification must be provided by the property owner and approved by the City Council based upon intended water usage and a review by the City of Mackay Public Works Supervisor.

(B) When the water main is located in a public right-of-way, the water meter shall be placed as close to that boundary of the right-of-way line and the property line of the property being serviced. No additional fee shall be charged for this type of connection provided the length of the City service line does not exceed the width of the right-of-way. Where the water main is located on an easement or publicly owned property other than designated rights-of-way, the services shall be installed to the boundary of the easement or public property by the City, provided the length of City service line does not exceed thirty (30) feet. If, in either case cited above, the length of City water service line to the water meter location exceeds the maximum stated, the property owner shall pay the extra costs of the service lines on the basis of actual cost to the City for labor, materials, and equipment plus fifteen (15) percent (15%).

(C) Permanent changes in the size of the service line requested by the property owner shall be paid by the property owner on the basis of actual costs to the City for making the change.

(D) The property owner shall install a control valve approved by the City Public Works Supervisor in the service line as close to the water meter as possible (on the delivery side of the meter), the operation of which will control the entire water supply to the premises served. In the event service is discontinued for any reason, a control valve must be installed, if none exists as provided by this Chapter.

(E) It shall be a violation of this Chapter for any other than the City Public Works Supervisor or other employee of the City, to operate, cause, to permit unauthorized operation of any water meter stop or any appurtenance(s) on any City water connection.

(F) All new connections to the City water system shall include a backflow prevention device. Sprinkler irrigation systems and recreational vehicles with Permits to Park shall also have a backflow prevention device installed and inspected by the City Public Works Supervisor prior to providing water service.

(G) The City of Mackay shall own and maintain the entire service connection once installed. Maintenance on the systems shall only be performed by authorized employees of the City.

(H) The City may, at its option, serve two (2) or more premises with one (1) connection. On new service connections, the diameter of such joint lines shall be sufficient to provide a carrying capacity of not less than the combined capacity of individual service lines of the same size as the water meters to be installed.

(I) Service extensions from an existing service to other occupancies or ownerships than that for which the existing service was intended shall not be permitted nor shall separate residences be permitted to receive service through one (1) meter except under special considerations approved by the City Council.

8-8-7: CROSS CONNECTION(S): Cross connection(s) shall not be allowed. Cross connection is defined for the purpose of this Code as any physical connections between the City water system and another water supply (including standby fire water service connections). The U.S. Environmental Protection Agency prohibits cross connections. Water service shall be terminated immediately upon discovery or notification of a cross connection. Water service will not be restored until the cross connection has been eliminated. Property owners using or allowing the use of one or more water sources in addition to receiving water from the City water system on the same property shall maintain a separate system for each; and the City water supply facilities shall be

separated from any and all other systems by an air gap not less than one (1) foot, or if in the ground, by not less than five (5) feet.

8-8-8: NUMBER OF SERVICES: The owner of a single parcel of property may apply for and receive as many services as he and his tenants may require, provided, and regulations. However, the property owner shall be required to pay for all services.

8-8-9: GRANT OF EASEMENT: (A) Each property owner requesting initial City services for water, grants to the City of Mackay an easement and right-of-way on and across said property for installation and maintenance of water mains and the necessary valves and equipment in connection therewith. This easement and right-of-way shall transfer with any sale of the property and be permanently granted to the City so long as City service lines exist on said property.

(B) All duly appointed employees of the City shall have free access at all reasonable hours of the day to any and all parts or structures and premises in which water is or may be delivered for the purposes of inspecting connections, the conditions or being delivered. The city does not, however, assume the duty of inspecting the owner's line, plumbing, and equipment, and shall not be responsible, therefore.

8-8-10: RIGHT TO REFUSE OR DISCONTINUE SERVICE: (A) The City of Mackay reserves the right to refuse service or to discontinue service to any property located within the City Limits if the City Public Works Supervisor determines the plumbing, facilities, appliances, or equipment using the water is dangerous, or unsafe. Water service may also be refused or discontinued if the water demands are detrimental to other water users due to excessive demand or inadequate service. The City shall refuse service or discontinue service to any premises where it is deemed necessary to protect the City from fraud or abuse. The City shall notify a property owner when water is being used wastefully or negligently that seriously affects the general water service. If the conditions are not corrected upon notification the City will discontinue service.

(B) Where water service had been discontinued for any reason and the water is turned on by someone other than an authorized City employee, the water will then be shut off at the water main or the meter removed.

8-8-11: CITY NOT LIABLE: The City of Mackay shall not be held liable for any loss or damage of any nature whatsoever caused by any defect in the property owners' line, plumbing, or equipment; nor shall the City be liable for loss or damage due to interruption of service or temporary changes in pressure. The City shall not be held responsible for damages of any nature caused by water being shut off because of nonpayment for service.

8-8-12: PROPER OWNER LIABILITY: The property owner shall be held liable for any tenant, agent, employee, contractor, licensees, or permittees. Damage to equipment shall include but not be limited to breaking of seals and locks, tampering with meters, injury to meters, including but not limited to damages by hot water, steam, and damaged meter boxes, curb stops, meter stops, and other appurtenances.

8-8-13: RESPONSIBLE FOR CHARGES/KNOW REQUIREMENTS/ CITY DOES NOT MEDIATE: (A) Owners of inhabitable property within the City Limits shall be responsible for all charges for water services provided by the City to their property.

(B) It shall be the property owner's responsibility to obtain a copy of this Code Title and become knowledgeable of the requirements contained therein. The City Clerk shall provide a copy upon request. The City will not serve as mediator between the landlord and the renter to resolve discrepancies, issues, contract agreements, etc.

8-8-14: WATER RATES/FIRE PROTECTION SYSTEMS: (A) Water rates shall be set by the City Council by Resolution duly passed at any regular or special session of the City Council, which rates shall be published in the newspaper of record within thirty (30) days of passing by the City Council.

(B) No charge will be made for water used in the standby fire protection services to extinguish accidental fires or for routine testing of the system. All fire protection systems shall have a flow detection meter installed and will not be cross connected with any other water system. Backflow preventers shall also be installed. If it is determined that water provided to a standby fire protection device is being diverted for other use, service to that system will be discontinued and the owner shall be responsible for paying the City estimated cost for water used.

(C) Water charges shall be reviewed annually and updated by Resolution of the Council, to reflect actual costs of operation, maintenance, replacement, and financing of the water system and its facilities.

8-8-15: CLASSES OF SERVICE: The following classes of service have been identified for billing purposes; Residential, Commercial, Standby Fire, and Contract:

(A) Residential services shall consist of all services for domestic purposes, single family dwellings, homes, and municipal purposes.

(B) Commercial service shall consist of those services where water is used for multiple family dwellings and businesses.

(C) Standby Fire service shall consist of those services where water is available or used for fire protection in building having fire suppression systems such as sprinklers and are either or the dry pipe or wet pipe types.

(D) Contract services shall consist of those services for bulk acquisition, industrial or independent water district purposes under contracts authorized by the City Council.

8-8-16: SPECIAL USE CONTRACTS: When an applicant's requirements for water are unusual or large, such as an independent water district, or necessitate considerable special or reserve equipment of capacity, the City by authorization of the City Council reserves the right to make special contracts, the provision of which are different from and have exceptions to the regularly published water rates, rules, and regulations. These special contracts shall be in writing, signed by the applicant, approved by the City Council, and signed by the Mayor of the City

8-8-17: MONTHLY SERVICE CHARGE/IRRIGATION METER/READING METERS/LATE PENALTIES/DISPUTES/HARDSHIP: (A) A monthly service charge shall be billed for each premises connected to the City water system. Exceptions to the monthly billing are as follows: (1) Multiple users on one connection will be billed for each occupied single-family dwelling, or occupied unit of a duplex. The City shall determine the number of premises on one connection and shall also determine the number of monthly service charges to be billed. If the number of premises changes, it shall be entirely the responsibility of the owner to promptly notify the City in writing as to the revised number of premises subject to a monthly service charge. This written notice must be received by the City before the last day of the month in which the change occurred.

(2) Water meters connect to sprinkler systems used only for summer irrigation will be charged for the number of gallons of water used. The Base rate will apply to the premises meter. Meters will be read before turning on the sprinkler system each year. Cost of the irrigation meter, materials, and installation shall be paid by the property owner.

(B) Water meters will be read monthly to determine the amount of water used during the months of May through October. Meters will be read to the nearest one thousand (1,000) gallons. The base rate for water services as established by Resolution of the City Council shall be charged for the months of November through April. This allows water users to run water at their premises should they desire to do so to keep their service lines from freezing during the winter months. If water meters are allowed to freeze; the property owner shall pay the City a service fee for services to thaw the meter.

(C) In the event it becomes impossible or impractical to read a meter on the regular reading date, the water consumption shall be prorated on the basis of thirty (30) days per month and the total water consumption for billing purposes for that period shall be estimated based upon previous water usage for past months.

(D) The City will bill the customer for water consumed when a meter is found which does not register water usage. The amount will be computed using an estimate of consumption based either on the customer's prior use during the same season of the year, or on a comparison with the use of other customers receiving the same class of service during the same season and under similar circumstances and conditions.

(E) All meters supplying a premise shall be billed separately, except, where the City has for operating purposes, installed two (2) or more meters, the reading may be combined for billing.

(F) The City will keep an accurate account of all meter readings and such account shall be offered at all times, places, and courts as prima facie evidence of the water provided to a premise.

(G) All water charges shall be due and payable to the City no later than ten (10) days after billing. Any account for water services which remains unpaid after the tenth Day of the month following that in which the billing was sent by the City, shall entitle the City Without further notice, to immediately shut off and discontinue water service to the property for which the billing was sent.

(H) A ten (10) percent (10%) fee shall be imposed by the City on all delinquent water charges and the user shall remain in default until both the delinquent water account and the 10% fee have been paid in full. The ten (10) percent (10%) fee shall be applied to the first month's billing that becomes delinquent:

EXAMPLE: Monthly Rate = \$35.00 was not paid and becomes delinquent: Fee [penalty] =  $\$35.00 \times .10 = \$3.50$ . Total amount due =  $\$38.50$  + interest from (I) below.

(I) The City shall charge interest in the amount of five (5) percent (5%) monthly on the unpaid balance of any delinquent water bill (excluding the 10% penalty). Upon receipt of a written installment plan signed by the customer for payment of the overdue amount place any service charges and fees, the interest charge will be dropped on all future monthly billings. Should the customer default one (1) month on the installment plan, the interest charge will be reinstated and continue to be applied to all future monthly billings until the account has been paid in full.

EXAMPLE: Monthly rate = \$35.00 was not paid and becomes delinquent; Fee [penalty] =  $\$35.00 \times .10 = \$3.50$ . Monthly rate + penalty =  $\$38.50$ . Interest charge =  $\$35 \times .05 = \$1.75$ . Total amount due = monthly rate + fee [penalty] + interest =  $\$35.00 + \$3.50 + \$1.75 = \$40.25$ .

(J) In case water service is discontinued for non-payment of a delinquent account and/or penalty, service shall not be restored until the delinquent account plus fee is

paid; and, in addition thereto a deposit as required in this Chapter; and a sum equal to the fees for water disconnecting and reinstating said service.

(K) When a customer disputes the correctness of a bill, he shall deposit the amount of the disputed bill at the time the complaint is lodged, to preclude termination of service pending final settlement of the bill or bills. Subsequent bills shall be paid or placed on deposit in a similar manner. Failure of the customer to make such deposit(s) shall result in termination of service.

(L) In cases of extreme hardship, the City shall have the discretion of continuing service for water or renewing service to a delinquent account that has been shut off; upon receipt of a written installment plan signed by the customer for payment of the overdue amount plus any service charges and penalties.

8-8-18: DELINQUENT ACCOUNT: (A) When an account for services (sewer and water) becomes delinquent, the City Clerk shall send a shut-off notice to the property owner. Notice shall state a date on which water will be shut off if delinquent account is not paid in full prior to that date.

(B) On the date designated in the shut-off notice, the City Public Works Supervisor or his designee shall deliver a written notice to the customer stating the water service is being turned off until all delinquent accounts and service charges have been paid in full. The water service shall immediately be terminated. A delivery of notice to the premises served by the water meter shall be considered a notice to the customer.

8-8-19: OWNER LIABLE FOR FEES/PROPERTY LIEN: The owner, to the extent permitted by law, and occupant of any such premises using the domestic water system shall be jointly and severally liable for all fees and charges due for services received from the City's domestic water system. If an account becomes delinquent and it is necessary to turn off the water service, the service will not be restored to that premises until all outstanding bills due the City have been paid and the cash deposit replaced, together with a turn-on fee for water service. Any such water and sewer account delinquency shall constitute a lien on the property to the extent permitted by the laws of the State of Idaho and all other such terms and conditions of service. The city Clerk may make and file a lien as directed by the Mayor of the City of Mackay. The City may also recover the amounts due of water charges, penalties, attorney's fees and costs, through all available legal and equitable remedies under the laws of the State of Idaho.

8-8-20: REGULATION OF IRRIGATION HOURS/VIOLATION/WATER SHORTAGE: (A) The City Council is authorized to regulate and specify the hours and conditions for use of water from the City water system for irrigation use within the City. This shall be done by Resolution. A copy of the Resolution specifying the hours and conditions shall be



effective upon posting the same in three (3) conspicuous places within the City or publishing once in the official newspaper of the City of Mackay.

(B) The City or its authorized representative shall have the right to discontinue water service to any person violating the hour and conditions for irrigation if said person refuses to comply or continues to violate such conditions after first being notified verbally or in writing by the City or its authorized representative.

(C) The City reserves the right to give preferences in the manner of furnishing service in the event of a shortage of water supply.

8-8-21: NOTICES TO CUSTOMERS/COMPLAINTS FROM CUSTOMERS: (A) Notices from the City to owners receiving water services will normally be given in writing and either mailed or delivered to the last known address. Where conditions warrant and in emergencies the City may make notification either by telephone or messenger.

(B) Notices or complaints from property owners shall be in writing and submitted to the City Clerk during regular business hours. In an emergency the notice may be submitted orally to the City Public Works Supervisor and followed with a written notice to the City Clerk.

8-8-22: AUTHORIZED PERSONNEL ONLY/PENALTY FOR VIOLATION: It shall be unlawful for any person except those persons authorized by the City in the performance of their duty, to disconnect or reconnect any water service to any property within the City of Mackay, or to tamper with, alter, damage or injure any water meter, valve, hydrant, gate, connection, pipe, line or any other facility or accessory of the City water system. Any person violating the provisions hereof shall be guilty of a misdemeanor and upon conviction thereof, shall be subject to such penalties as are prescribed by State law. The City may also pursue recovering of civil damages through all legal remedies available under the laws of the State of Idaho beyond criminal restitution if necessary.

8-8-23: CITY WATER METERS: (A) The City will own, install and maintain all water meters. The city will not pay rent or any other charge for a meter or other water facilities including housing and connections on any property owner's premises. Water meters shall be sealed by the City Public Works Supervisor at the time of installation, and no seal shall be altered or broken except by an authorized City employee. The City Public Works Supervisor shall determine the type of meter to be installed based upon the property owner's request, projected water usage and ability of the City to supply the requested service.

(B) Meter shall normally be placed at the curb or property line; the meter will be installed wherever the property owner desires within reason. The location shall be approved by

the City Public Works Supervisor. Meters will not be located in driveways or other location where damage to the meter or its related parts may occur.

(C) All meters shall be tested prior to installation. No meter will be placed in service or allowed to remain in service which is known to have an error in registration in excess of two (2) percent (2%) under conditions of normal operation

(D) Meter test will be conducted in accordance with standards of practice established by the American Water Works Association.

(E) The property owner may request as reasonable, the City to test the meter servicing his premises. The City will require the requestor to deposit the testing fee with the City Clerk. This fee shall be an estimate of the cost of testing the meter as determined by the City Public Works Supervisor. The deposit will be returned to the requester if the test reveals the meter to register more than two (2) percent (2%) under the standard test conditions, However, if the meter tests within two (2) percent (2%) accuracy, the deposit shall be retained by the City. The requestor may witness any meter tests which they request.

(F) No credits or debits will be borne by the City or the property owner should the tested meter show variance high or low, from the accuracy defined above.

(G) The City Public Works Supervisor may upon comparison of past water usage, test a meter that appears not to be registering properly. The City may choose to adjust the charges accordingly if the meter either over registers or under registers. No charge for meter testing will be made to the property owner for the meter test under these conditions.

(H) The joining of several property owner's premises to take advantage of the single minimum charges and large quantity rates shall be prohibited. Except under special contract, in writing, with approval of the City Council.

(I) If for any reason a change in the size of a meter and service is required, the installation will be accomplished on the basis of a new connection, and the property owner shall submit a new application form. Meters or services moved for the convenience of the property owner will be at the customer' expense.

8-8-24: TEMPORARY WATER SERVICE: (A) Water service of a temporary nature may be requested. Applicants shall be required to pay in advance the estimated cost of installation and removal of metering equipment and materials, plus a depreciation charge for the use of equipment and material furnished by the City.

(B) The Applicant shall be responsible for all costs associated with the temporary service connection including water meter and materials. A deposit sufficient to cover bills for water during the entire period of such temporary service and cover the replacement cost of any equipment loaned to the Applicant by the City, shall be paid to the City Clerk prior to installation of any temporary service.

(C) The Applicant shall be held responsible for any damages to the temporary service and any loaned materials. If loaned equipment is returned in satisfactory condition, that portion of the deposit will be returned to the Applicant along with any surplus amount paid for water not used.

(D) Temporary service connections shall be disconnected and terminated within six (6) months after installation unless an extension of time is requested by the Applicant in writing and approved by the City.

8-8-25: DISCONTINUATION OF SERVICE: Discontinuation of service may be requested when any premises supplied with water service by the City is about to be vacated. This notice shall be in writing and presented, along with a shut-off fee, to the City Clerk at least two (2) days prior to the desired shut-off date, specifying the date service is to be discontinued. Although the delivery of water to the premises has been discontinued, the ability to service said property still exists and the owner shall be charged the amount of the base rate remaining unpaid through monthly billing; or the amount remaining unpaid shall be added to the December billing.

8-8-26: RESTORATION OF SERVICE: (A) Restoration of service may be requested by the owner by submitting a written request along with a turn-on fee, to the City Clerk at least two (2) days prior to the desired turn-on date, specifying the date service is to be restored. Water will not be turned on unless the residence is occupied at the time scheduled.

(B) Restoration of service after termination of service for nonpayment of bills shall be made after payment of current and past due charges and penalties and posting a deposit therein before provided as if a new water user.

(C) Restoration of service after termination of service for unsafe facilities, water waste, fraud, abuse, or for noncompliance with any of the policies, rules, and regulations will only be made after the irregularity has been corrected and the City has been assured that the irregularity will not re-occur. The service charge shall be as if a new water user in addition to any other charges due or past due that the City may have incurred to correct the irregularity.

8-8-27: LARGE QUANTITY OF WATER DESIRED: (A) when an abnormally large quantity of water is desired for filling a swimming pool, pond, or for other purposes,

arrangements must be made with the City prior to taking such water. The cost of the water shall be the bulk acquisition rate set by Resolution of the City Council, and payment in full shall be made at the time the water is provided.

(B) Permission to take water in unusual quantities will be given only if the City facilities and other consumers are not inconvenienced.

8-8-28: FIRE HYDRANTS: (A) No person or persons other than those designated and authorized by the City shall open any fire hydrant belonging to the City; attempt to draw water from it or in any manner damage or tamper with the hydrant. A violation of this Chapter shall be a misdemeanor.

(B) No tool other than special hydrant wrenches shall be used to operate a hydrant valve. In cases where a temporary service has been granted and will receive water through a fire hydrant, an auxiliary external valve will be provided to control the flow of water.

(C) When a hydrant has been installed in the locations specified by the property authority, the City has fulfilled its obligation. If a property owner or other party desires to change the size, type or location of the hydrant, he shall bear all costs of such changes. Any changes in the location of a fire hydrant must be approved by the City and the Fire Department.

8-8-29: MAIN LINE EXTENSIONS: (A) Water main line extensions within the City limits not presently served shall be installed under procedures to be established by the City Council by Resolution as the need arises. Sub dividers for newly portioned properties will assume all costs of service line extensions on their property. Extensions shall be approved by the City Council. Approval will be partially based on the ability of the City to provide services without impacting current services.

(B) the City will make service main line extensions only on rights-of-way, easements, or publicly owned property. Easement or permits secured for extensions shall be obtained in the name of the City of Mackay, along with all rights and title to the line extensions at the time the service provided to the customers paying for the extension(s).

8-8-30: RESALE OF WATER PROHIBITED: Resale of water services is prohibited.

8-8-31: SCHEDULE WATER TURN-ON/TURN-OFF: All requests to have private water turned on/off shall be made two (2) days in advance by calling City Hall at 208-588-2274. Water turn off/on shall be scheduled as soon as manpower becomes available, during normal work hours (emergency shut off excluded). Non-emergency turns on/off will NOT be provided after hours, holidays, weekends; and,

8-8-32: CHANGES TO THIS CHAPTER: No employee of the City of Mackay is authorized to suspend or alter any of the policies, rules, and/or regulation cited in this Code. Changes to this Chapter shall be made as determined by the City Council using due process. In case of emergency, the City Public Works Supervisor is hereby authorized to use his discretion, training, and knowledge to remedy the situation; and, then notify the Mayor and Council of his actions.

8-8-33: VIOLATION OF THIS CHAPTER: Any person found violating this Chapter shall be guilty of an infraction with a three hundred (300) dollar (\$300) fine upon conviction, unless expressly stated otherwise in this Chapter. Additionally, any violation of the terms of this Chapter shall be deemed a Public Nuisance and subject to all criminal and civil remedies of the laws of the State of Idaho for nuisance as well as subject to injunction and damages under the laws of the State of Idaho and the Codes of the City of Mackay.

## TITLE 9 ZONING AND PLANNING

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## CHAPTER 1: ZONING DEFINITIONS, GENERAL PROVISIONS

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9-1-1: TITLE AND PURPOSE: This Title shall be known and cited as “The Zoning Title (Ordinance) of the City of Mackay, Idaho (City).” The purpose of this Title is to provide Planning and Zoning to lessen congestion in other streets, to promote health and the general welfare, open space, to prevent overcrowding of land, to facilitate the adequate provision for transportation, water, sewage, streets, parks, and other requirements, all with the purpose of conserving the value of structures and land and to encourage the most appropriate use of land within the City.

9-1-2: PLANNING AND ZONING COMMISSION: (A) A Planning and Zoning Commission Is hereby created and established as a joint Planning and Zoning Commission (Commission) for the City consisting of no less than four (4) and no more than ten (10) members, who shall be appointed by the Mayor and confirmed by the City Council of the City of Mackay, Idaho (City Council). The creation and functions of the Commission shall conform to the requirements of the State of Idaho Statute Title 67 State Government and State Affairs, Chapter 65 Local Land Use Planning, as amended, Idaho Code Sections 67-6501 through 67-6538 (Idaho Code). The commission shall prepare, and the City Council approve rules of operation, in accordance with the Idaho Code, defining and describing the purpose, membership, selection of committees and consultants, meetings and records, remuneration, duties and powers, and deactivation of the Commission.

(B) Membership and Terms. The initial Commission shall consist of four (4) to ten (10) Commissioners, appointed by the Mayor and confirmed by the City Council, of which a majority shall reside within the City limits and no more than two (2) shall reside within the area of City impact. No member of the City Council, Custer County Commissioners, or any City employee, full or part time, shall serve on the Commission. Commissioners

shall be voting members who have resided in Custer County, Idaho, at least two (2) years prior to their appointment and shall remain a resident of the County during their service. The initial terms of the first appointed members, for periods of one (1), two (2), or three (3) years, distributed as evenly as possible among the members. Subsequent members shall be appointed for a term of three (3) years. No person shall serve more than two (2) full consecutive terms without specific concurrence by two-thirds (2/3) of the City Council adopted by motion and recorded in the minutes. Vacancies occurring otherwise than through expiration of terms shall be filled in the same manner as the original appointment. Commissioners may be removed for cause by a majority vote of the Council.

(C) MEETINGS AND COMPENSATION: The Commission shall elect its own chairman and create or fill such other offices as it may determine necessary, and one regular meeting shall be held each month for not less than nine (9) months in each year. All meetings shall be compliant with the Idaho Open Meeting law and a majority of the hall constitutes a quorum at any meeting. A record of meetings, hearings, resolutions, studies, findings, permits, and actions taken shall be maintained. All records shall be open to the public. Commission activities shall be without remuneration unless specifically approved in advance by the Council.

(D) Duties and Powers. The Commission shall have those duties and powers enumerated in Chapter 65, Title 67, Idaho Code, including, but not limited to the following: (1) Provide leadership and guidance for the update of the Comprehensive Plan for the physical development of the City.

(2) Make recommendations for the physical development of the City through the formation of zoning districts.

(3) Make recommendations concerning the designing, widening, extending and locating of streets, roads, and highways.

(4) Make recommendations concerning density of population and development of land within the City and its area of impact.

(5) Make recommendations concerning the future growth, development and beautification of the City with respect to its public buildings, streets, parks, and other facilities within the area of impact.

(6) Advise individuals concerning planning and zoning requirements and ordinances.

(7) Identify and recommend the adoption of applicable codes and standards governing the construction or modification of structures or land uses.



(8) Receive and make recommendations concerning any and all maps, plats, and replats of lands as encompassed by the approved Comprehensive Plan, which require the approval of the Council.

(9) Recommend the boundaries of zoning districts and propose regulations to be enforced therein for the purpose of promoting health, safety, social values, and the general welfare of the City by regulating and restricting the erection, construction, reconstruction, alteration, repair or use of structures or land within the City, and to hold public hearings thereon.

9-1-3: DEFINITIONS: (A) For the purpose of this Ordinance, certain terms or words used herein shall be interpreted as follows:

(1) The word "person" includes a firm, association, organization, partnership, trust, company, or corporation, as well as an individual.

(2) The present tense includes the future tense, the singular number includes the plural and the plural number includes the singular.

(3) The word "shall" is a mandatory requirement, the word "may" is a permissive requirement and the word "should" is a preferred usage.

(4) The words "used" or "occupied" include the words "intended, designed or arranged to be used or occupied".

(5) The word "lot" includes the words "plot," "parcel," and "tract".

(6) The words "used for" include "designed for" and vice versa: words used in the present tense include the future.

#### (B) MEANING OF TERMS OR WORDS

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

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

(3) Accessory Dwelling: See Dwelling, Accessory.

(4) Access: A legally and physically defined area available and practical for motor vehicle ingress and egress to parcels, areas or tracts of land. In determining practicality, physical factors may be considered. The following are types or forms of access:

(a) State Highway: A public road, including its entire right-of-way, under the jurisdiction of the State of Idaho/Idaho Transportation Department.

(b) County Road: A public road, including its entire right-of-way, under the jurisdiction of Custer County or the Lost River Highway District.

(c) City Street and Alley Ways: A public road including right-of-way under the jurisdiction of the City.

(d) Private Road: A road, which provides access to parcels, areas or tracts of land and has been approved by the City for use as a private road. A private road shall be considered that portion of a lot or parcel that is used for access purposes. A private road is not repaired, plowed or otherwise maintained by the City nor can the City contract for its maintenance.

(e) U.S. Forest Service and Bureau of Land Management Roads: A federally owned easement or right-of-way, which provide access to federally owned land.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(22) Day Use Areas: Land or premises, other than outdoor amusement facilities, designed to be used by members of the public for a fee or otherwise, for outdoor recreation purposes without overnight usage. Such areas include such uses and

facilities as parks, playgrounds, picnic sites, tennis courts, athletic fields and golf courses.

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

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

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

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

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

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

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

(30) Engineer: Any person who is licensed or registered in the State to practice professional engineering.

(31) Feedlot, Commercial: See definition for AFO and CAFO.

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

(33) Flood Plain: A floodplain is defined and controlled through the Flood Control Chapter, which is adopted in its entirety as Chapter 21 of this Title.

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

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

(36) Golf Course: A tract of land for playing golf.

(37) Grazing: The feeding of animals on growing foliage.

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

(39) Health Authority: The Eastern Idaho Health District.

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

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

(42) Hospital: See Medical Facilities.

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

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

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

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

(47) Inn: See Hotel/Motel

(48) Junk Yard: See Wrecking/Junk Yard

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

(50) Land Coverage: A structure or covering that prevents more than twenty-five (25) percent of normal precipitation from directly reaching the surface of the land. Such structures and coverings include roofs, surfaces that are paved such as roads, streets, sidewalks, driveways, parking lots, tennis courts, patios, and lands so used that the soil will be compacted so as to prevent substantial infiltration.

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

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

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

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

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

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

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

(58) Non-Conforming Use: The use of a structure or premises conflicting with provisions of this Title.

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

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

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

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

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

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

(65) Parcel: An area of land under single ownership.

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

(67) Parking Space, Off-Street: See Parking Lot.

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

(69) Plan: Comprehensive Plan.

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

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

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

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

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

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

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

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

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

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

(80) Road: See Access.

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



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

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

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

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

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

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

(88) Slaughterhouse: See Meat Packing Plant. A slaughterhouse may or may not involve the preparation of meat products for packaging and distribution.

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

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

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

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

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

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

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

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

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

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

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

(100) Walkway: See Sidewalk.

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

(102) Water Storage: The containment of water for all uses.

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

9-1-4: CONFORMANCE AND PERMITS REQUIRED: No structure shall be erected, altered, or moved; nor any structure or land be used for any use other than is permitted in the zoned area in which such structure or land is located.

9-1-5: HEIGHT AND AREA REQUIREMENTS: Except, as herein provided, no structure or alteration of any structure, shall be permitted unless such action conforms to the regulations of the zoned area in which it is located. No structure may exceed thirty (30)

feet above grade except as provided in Exceptions to Area Requirements. (A) The front, rear and side yard requirements shall be waived where dwelling units are erected above stores, shops, or other commercial uses, not requiring such yards.

(B) No lot area shall be so reduced that the front, rear, or side yard shall be smaller than prescribed by this Title.

(C) The property owner shall remove any vegetation or any obstruction creating a visual obstruction. Visual obstructions shall not extend more than three (3) feet in height above the existing street center line within the vision triangle of vehicle operators defined by measuring from the intersection of the edges of two (2) perpendicular streets forty (40) feet along each street and connecting the two (2) points with a straight line. The sight distance is also applicable to railroad and highway grade crossings.

(D) On lots of irregular shape where the yard regulations can be determined but cannot be reasonably met, or on lots so located that appropriate improvements cannot be secured through strict adherence to the yard regulations, the yard regulations may be modified by the Council through the variance process.

9-1-6: YARDS IN THE CASE OF CORNER LOTS: Lots located on corners shall meet the front yard setback on both sides facing the public streets or rights-of-way for the zone in which they are located.

9-1-7: IMPROVEMENTS: (A) If concrete curb and gutter and sidewalks are required by the Council, then they shall be Constructed in accordance with City and/or State Regulations.

(B) All commercial and industrial business public parking areas shall be lit at night during business hours, and all outside lighting shall be so arranged as to prevent any nuisance or inconvenience to neighboring properties. All lighting shall meet the requirements of this Title.

(C) No part of any service station pump island shall be closer than twelve (12) feet to any property line in any zoned area in which a service station is a permitted use and no marquee or canopy above a service station pump island located in a zoned area shall be closer than ten (10) feet to any property line.

9-1-8: SCREENING: Where any lot or parcel located in a commercial or industrial zone is used for any use other than residential and abuts and/or adjoins any lot located in a district, said lot or parcel shall be screened from the residential lot(s) by solid fencing, or masonry walls. Screening shall be designed to provide obstruction of view with a height of not less than six (6) feet on all sides and be constructed to reduce noise and to eliminate trash from blowing into the residential lot(s).

9-1-9: INTERPRETATIONS: The Council shall have the authority in accordance with Idaho Code to interpret the provisions of the Title.

## CHAPTER 2: ZONES, MAPS

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9-2-1: ZONES ESTABLISHED: The City is hereby divided into the following zoning areas:

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

9-2-2: BOUNDARIES AND AMENDMENTS: The boundaries of the zones provided herein are established and shown on a certain map which is designated "Official Zoning Map" which is on file in the office of the City Clerk. This map and all subsequent annexations and all amendments as may be made are hereby declared to be a part of this Title. All zones and boundaries thereon provided are hereby confirmed and all notations, references and other information shown thereon are declared to be a part of this Title. All subsequent changes in boundaries of zones shall be made according to law and by ordinance. When so made and designated on said map, then said changes shall be effective and by reference shall become a part of this Title.

9-2-3 CITY OF MACKAY ZONING MAP: See Exhibit 1 for a zoning map of the City. Where the zoning map designates different zones on a single lot or parcel under one ownership, the owner shall have the option to decide which zone requirements will be met.

## CHAPTER 3: RESIDENTIAL ZONE – “R”

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9-3-1: PERMITTED USE: (A) Single family dwelling

(B) Multi-family dwelling

(D) Low-income housing

(E) Accessory buildings and uses.

9-3-2: SPECIAL USES: The Council may, after notice and public hearing, permit the following uses where such uses are deemed essential or desirable to the public convenience or welfare. The Commission shall have the authority to recommend such conditions and safeguards, as it deems necessary to protect the best interests of the surrounding property or neighborhood. The following special uses may be permitted in the “R” Zone with a variance approved by Commission: (A) Private kindergarten, daycare or nursery, private schools

(B) Nursing or convalescent homes or assisted living facilities

(C) Home occupations

(D) Manufactured home park or recreational vehicle parks

(E) Public service utilities and uses or structures

(F) Religious facilities

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

9-3-3: YARDS: No more than 40% of the lot may be occupied by the home. (A) Front Yards: A front yard shall be provided of a depth of not less than twenty (20) feet from any City street right of way.

(B) Rear Yards: A rear yard shall be provided of a depth of not less than twenty (20) feet from any City street right of way and five (5) feet from any City alley twenty (20) feet in width and ten (10) feet from any City alley less than twenty (20) feet in width.

(C) Side Yards: No part of any residence or attachment shall be closer than ten (10) feet from the edge of the side property line, including eaves, measured as if the side property line extended vertically for an indefinite distance.

(D) Detached Accessory Buildings: Detached accessory buildings may be constructed on the rear yard area only and no closer than five (5) feet to any side of rear lot line or closer than ten (10) feet to the rearmost wall of the main building.

9-3-4: LOT AREA: The minimum lot area per dwelling unit shall not be less than five thousand (5,000) square feet. No more than one (1) dwelling may be erected on a lot.

9-3-5: BUILDING HEIGHT: The height of a two (2) story residence shall be no greater than twenty-five (25) feet from grade.

9-3-6: OFF STREET PARKING: The number of off-street parking spaces recommended shall be no less than one (1) space per dwelling unit.

## CHAPTER 4: COMMERCIAL ZONE - “C”

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9-4-5: Off Street Parking	177

9-4-1: PERMITTED USES: (A) Recreation areas and amusement enterprises

(B) Motor vehicle or trailer sales and service

(C) Service stations

(D) Food preparation shops

(E) Banks and financial institutions

(F) Personal service shops

(G) Printed material sales and services

(H) Educational facilities

(I) Business & professional offices

(J) Clothing care services

(K) Dry goods and tailoring sales and services

(L) Florist or gift shop

(M) Food storage facilities

(N) Grocery, fruit, vegetable, meat or delicatessen store

(O) Hardware, building supply, furniture, or appliance store

(P) Hospitals and sanatoriums



(Q) Hotels, motels, tourist accommodations

(R) Mortuaries

(S) Package liquor stores

(T) Photographic shops

(U) Plant nurseries

(V) Public storage facilities

(W) Lumber yards

(X) Restaurants and bars

(Y) Movie theaters

(Z) Accessory uses when located on the same lot where all products are offered for sale at retail on the premises.

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

9-4-2: SPECIAL USES: The Commission may, after notice and public hearing, permit the following uses where such uses are deemed essential or desirable to the public convenience or welfare. The Commission shall have the authority to recommend such conditions and safeguards, as it deems necessary to protect the best interests of the surrounding property or neighborhood. The following special uses may be permitted in the "C" zone: (A) Auditoriums, stadiums, arenas, and similar uses

(B) Recreational vehicle parks

(C) Religious facilities

(D) Research and development centers for experimental or scientific investigation of materials, methods or products

(E) Bus and railroad stations

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

9-4-3: LOT AREAS: No uses other than commercial.

9-4-4: BUILDING HEIGHT: The height of a two (2) story commercial building shall be no greater than thirty (30) feet from grade.

9-4-5: OFF STREET PARKING: Every building or portion of building hereafter erected shall be provided with permanently available and maintained parking spaces. The purpose of off-street parking is to provide safety for the public while considering property value for commercial enterprises. The number of off-street parking spaces recommended shall be commensurate with the size, use, and occupancy of the facility as recommended by the Commission with two (2) spaces per one thousand (1,000) square feet of building size minus the common areas as a guideline.

## CHAPTER 5: INDUSTRIAL ZONE – “I”

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9-5-4: Off Street Parking	179

9-5-1: PERMITTED USES: (A). Any use permitted in Zone “C” with the exception of residential uses.

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

9-5-2: SPECIAL USES: The Commission may, after notice and public hearing, permit the following uses where such uses are deemed essential or desirable to the public convenience or welfare. The Commission shall have the authority to recommend such conditions and safeguards as it deems necessary to protect the best interests of the surrounding property or neighborhood. The following special uses may be permitted in the “I” zones with variance (A) Airports or heliports

(B) Industrial or business parks

(C) Public service uses or structures

(D) Research and development centers for experimental or scientific investigation of materials, methods or products.

(E) Security structure for watchman or guard

(F) Heavy Industrial uses

(G) Any other structure necessary to the operation of these defined permitted industrial uses. Any other structure necessary to the operation of these defined permitted industrial uses.

(H) Other uses deemed appropriate to the Commission may be considered under a Special Use Application.

9-5-3: LOT AREA: (A) Minimum lot size shall be 8000 square feet

(B) Ten (10) foot setbacks on sides and rear to remain unobstructed, and twenty (20) foot in front for parking.

(C) Thirty-five (35) foot maximum height

(D) Building footprint size, no larger than 75% of lot size

9-5-4: OFF STREET PARKING: The number of off-street parking spaces recommended shall be commensurate with the size, use, and occupancy of the facility as recommended by the Commission and may be considered by the Council under a Special Use Application.

## CHAPTER 6: AGRICULTURAL-LOW DENSITY ZONE – “AR”

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9-6-1: PERMITTED USES: (A) Single family dwellings, not be more than one residential building on one acre of land

(B) Educational facilities

(C) Accessory buildings and uses secondary to that of normal agricultural activities

(D) Agricultural uses including AFO's allowing up to two (2) animal units per acre, but not including CAFO's. No livestock may be kept unless: (1) A minimum of one-half (1/2) acre of land is provided and maintained for each animal unit.

(2) Each animal is properly fed, watered, and maintained.

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

6-2 SPECIAL USES: The Commission may, after notice and public hearing, permit the following uses where such uses are deemed essential or desirable to the public convenience or welfare. The Commission shall have the authority to recommend such conditions and safeguards as it deems necessary to protect the best interests of the surrounding property or the following special uses may be permitted in the “AR” zone:

(A) Public service uses or structures

(B) Home occupations directly related to land

(C) Agriculture does not include the operation or maintenance of meat packing, animal processing plants, and slaughterhouse facilities. Other uses deemed appropriate by the Commission may be considered by the Council under a Special Use Application.

9-6-3: YARDS: (A) Front Yards: A front yard shall be provided of a depth of not less than twenty (20) feet from a public road right-of-way.

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

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

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

9-6-4: OFF STREET PARKING: Each farm or dwelling unit shall provide adequate off-street parking for all necessary farm and private vehicles and equipment.

## CHAPTER 7: AIRPORT ZONE – “AP”

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9-7-1: ZONE ESTABLISHED: No structure, tree, or other obstruction, shall be erected or maintained in excess of the applicable height limit established for each of the following zones surrounding the City Airport located easterly of the City in Sections 27 and 28 T. 7 N., R. 24 E., Boise Meridian, Custer County Idaho.

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

(B) Clear Zone: Longitudinally centered on the runway and with a width of one-hundred twenty (120) feet in width for the entire length of the runway and extending two hundred (200) feet beyond each end of the runway. Within this clear zone no structures or obstructions shall be erected or maintained in excess of the elevation of the nearest point on the runway centerline.

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

(D) Lateral Zones: Sloping outward and upward seven (7) feet horizontally for each one (1) foot vertically, extending outward and upward at right angles to the runway centerline extended, beginning from the sides of the clear zone and the sides of the approach zones, and extending to a height of one-hundred fifty (150) feet above the airport elevation. No structures or obstructions shall be erected or maintained.

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

9-7-2: Require Removal: Nothing in this Ordinance shall be construed to require the removal or alteration of any building, structure or tree not conforming to the terms hereof and in existence as of the effective date of this Ordinance.

## **CHAPTER 8: PUBLIC USE OVERLAY ZONE “P”**

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9-8-1: PUBLIC USE OVERLAY ZONE ESTABLISHED: In any location where a public use exists or is established through an approved Special Use Application, an overlay zone will be shown on the City Zoning Map. Such zone is an overlay zone and exists on top of the existing zoning.

9-8-2: REVERSION TO EXISTING ZONING: If at any time the public nature of the use of the facility, structure or land is discontinued, the property shall revert to the underlying zoning.



## CHAPTER 9: NON-CONFORMING USES

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9-9-1: NONCONFORMING USE: (A) The lawful use of any structure or land documented to have been in existence at the time of the enactment of this Title may be continued, although such use does not conform with the provisions of this Title, provided the following are met: (1) Unsafe Structures: Nothing in this Title shall prevent the strengthening or restoring to a safe condition any portion of a structure declared unsafe by a proper authority; as long as the footprint and use of the structure remains the same.

(2) Alterations: A nonconforming structure may be altered, or reconstructed to its original footprint provided such work does not exceed one-hundred (100) percent of the replacement value of the structure in any five (5) year period, unless the structure is changed to a conforming use.

(3) Changes: No nonconforming structure or use shall be changed to a different nonconforming use.

(4) Restoration: Nothing in this Title shall prevent the reconstruction or repair, and continued use of any nonconforming structure damaged by accident, or act of nature, subsequent to the date of this Title, wherein the expense of such work does not exceed one hundred (100) percent of the replacement value of the structure at the time such damage occurred unless the structure is deemed historical or has historical status.

(5) Wear and Tear: Nothing in this Title shall prevent the reconstruction or repair of a nonconforming structure or part thereof existing at the effective date of this Title, rendered necessary by wear and tear, deterioration, or depreciation.

(6) Abandonment: A nonconforming use of a structure or land where the grandfathered use has been abandoned shall not thereafter be returned to such nonconforming use. A nonconforming use shall be considered abandoned after one (1) year (except as provided in Section §9-9-2 when: (a) The intent of the owner to discontinue the use is declared by the owner.

(b) The characteristics of the nonconforming use have been removed and have not been replaced by similar characteristics within one (1) year, unless other facts show intention to resume the nonconforming use.

(c) It has been replaced by a conforming use.

(7) Displacement: No nonconforming use shall be extended to displace a conforming use.

(8) Unlawful Use Not Authorized: Nothing in this Title shall be interpreted as authorization for or approval of the continued use of a structure or land violation of any ordinance or law in effect at the time of the effective date of this Title.

(9) Zoning District Changes: Whenever the boundaries of a zoning district are changed to transfer an area to another district of a different classification, the foregoing provisions shall also apply to any nonconforming uses existing therein.

9-9-2: CONTINUATION OF A NON-CONFORMING USE: (A) If the non-use of a non-conforming structure or use continues for a period of one (1) year or longer, the Commission and the Council shall, by written request, require that the owner declare his intention with respect to the continued non-use in writing within sixty (60) days of receipt of the request. If the owner elects to continue the non-use, he shall notify the Commission and the Council in writing of his intention. If the property owner complies with the requirements of this Section, his right to nonconforming use in the future for its designed purpose shall continue for the period of one (1) year and subject to annual review and possible renewal notwithstanding any change in the zoning of the property.

(B) The property owner may voluntarily elect to withdraw the nonconforming use by filing with the City Clerk an affidavit of withdrawn use. If the property is redesigned for a different use, the property owner shall be deemed to have abandoned any grandfathered right to the prior nonconforming use of the property.

(C) For purposes of this section "designed purpose" means the use for which the structure or use were originally intended, designed, and approved pursuant to any applicable planning and zoning ordinances in effect at the time. The provisions of this Section shall not be construed to prohibit the Commission and the Council from passing or enforcing any other law or ordinance for the protection of the public health, safety or welfare.

## CHAPTER 10: SIGN REGULATIONS

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9-10-1: RESIDENTIAL: (A) Each dwelling, or office shall be permitted only one (1) motionless sign except on corner lots where one (1) on each wall is allowed.

(B) No part of any lighting element of any sign shall be nearer than seven (7) feet above the ground unless adequately protected.

(C) No sign shall be larger than four (4) square feet in area nor shall measure more than four (4) feet in any direction unless approved by the Commission.

(D) Any sign pertaining to home occupation or profession shall be single-faced and announce only the occupant's name, occupation and/or the trade name of the structure to which it pertains.

9-10-2: COMMERCIAL AND INDUSTRIAL: (A) Attached signs on or within the structure are not limited to number. (1) All signs are limited to thirty-two (32) square feet per sign or twenty-five (25) percent of the wall area, which the sign is to be mounted, whichever is smaller.

(2) All lighting elements of exterior signs shall be a minimum of nine (9) feet above the ground unless adequately protected.

(B) The number of permanent unattached signs permitted for each business or property shall be limited to one (1).

(C) The maximum size of any of said signs shall not be in excess of sixty-four (64) square feet.

(D) All sign lighting shall be shielded to prevent any nuisance or inconvenience to the neighboring properties as required in this Title.

(E) No sign shall project any more than four (4) feet beyond the property line.

(F) Any unattached sign shall be no higher than twenty (20) feet above grade and reside in the front setback or side setback (in the case of corner lot of the property).

9-10-3: TEMPORARY SIGNS: Temporary signs are not permanently affixed and may be moved from place to place, including all devices such as banners, pennants, and flags, as well as "A" frame (sandwich), sidewalk, curb, and reader board signs intended to be displayed for a limited time, including election signs, and holiday displays. Such signs may be erected two (2) months before the event or holiday and must be removed within one (1) week after the event or holiday. Temporary sign placement is required to be off the roadway. In the case of business/commercial use, signs must be placed and removed daily if located on City property. Temporary signs may be two (2) sided and not exceed six (6) square feet per side.

9-10-4: LOCATIONS WHERE SIGNS MAY NOT BE ERECTED: (A) No signs may be erected or display within the State highway, City street, or County road right-of-way.

(B) In the event of a corner lot, signs must conform to requirements of Title §9-1-6.

9-10-5: SPECIAL PERMIT FOR SIGNS OUTSIDE REGULATIONS: Any sign that does not fit into these regulations may be approved, denied, or approved on conditions through the Special Use Permit process as delineated in Chapter 14.

## CHAPTER 11: LIGHTING

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9-11-1: PURPOSE: The general purpose of this Chapter is to protect and promote the public health, safety and quality of life, by establishing regulations and a process of review for exterior lighting. This Chapter establishes standards for exterior lighting in order to accomplish the following: (A) To protect against direct glare of excessive lighting.

(B) To provide safe roadways for motorists, cyclists, and pedestrians.

(C) To prevent light trespass in all areas of the City.

(D) To provide lighting guidelines.

9-11-2: SCOPE: All exterior lighting installed after the effective date of the Chapter in any and all zoning areas in the City shall be in conformance with the requirements established by this Chapter and any other applicable ordinances.

9-11-3: DEFINITIONS: (A) Existing lighting: Any and all lighting installed prior to the effective date of this Chapter.

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

(C) HPS: High Pressure Sodium.

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

9-11-4: Criteria: Any new outdoor lighting installed, or any existing lighting being replaced shall include a down lit and full cut-off shade. Any internally lit signage shall not exceed acceptable levels as determined by the Commission and the Council.

## CHAPTER 12: SUPPLEMENTARY REGULATIONS

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9-12-1: REGULATIONS: These regulations qualify or supplement the zoning district use and regulations appearing elsewhere in this Title and require a variance subject to approval of the Commission and the Council: (A) Open or lattice-enclosed fire escapes, fireproof outside stairways and balconies opening upon fire towers, projecting into a rear or side yard not more than five (5) feet are permitted.

(B) All permanent dwellings shall be placed on a permanent concrete foundation or equivalent.

(C) All single-family dwellings converted to multiple-family dwellings must contain not less than six hundred (600) square feet of livable floor area per individual household.

(D) Where a uniform setback line has been established or observed on one side of a street, no building shall be erected or structurally altered beyond such setback line.

(E) Front Yard, Exceptions: In areas where lots are developed with a front yard that is greater or less than the minimum required for the zoning district by this Title, the following rule shall apply: Any new structure or addition in front thereof shall not be closer to the street right of way than the average of the front yard of the first building on each side within a distance of two hundred (200) feet measured from building to building, except as follows: (1) Buildings located entirely on the rear half of a lot shall not be counted.

(2) If no building exists on one side of a lot within two hundred (200) feet of the lot in question, the minimum front yard shall be the same as the building on the other side.

(F) Structures Permitted Above Height Limit: The building height limitations of twenty-five (25) feet for residential and thirty (30) feet for commercial of this Ordinance may be modified as follows: chimneys, cooling towers, elevator bulkheads, fire towers, monuments, bell towers, stacks, radio or television towers or necessary mechanical appurtenances.

(G) Parking and Storage of Abandoned Vehicles: No inoperable and/or unregistered vehicles of any kind or type, including farm implements and/ or equipment, shall be parked or stored on any commercial, industrial or residential property within City limits

other than in a completely enclosed structure, or behind a sight obscuring enclosure or solid fence.

(H) Animals: No person shall keep any livestock within the City limits except as expressly permitted by, and in conformity with other Chapters of this Title. The keeping of livestock, full or part time, is allowed provided that the use has occurred prior to the adoption of this Title and in "AR" zone only.

(I) Bulk Storage of Flammable Liquids and Gases or Corrosive Materials, Above Ground and For Resale, Chemicals, Pesticides, Fertilizer Storage and Manufacturing and any Hazardous Material: (1) Requires written approval of the Fire Authority having jurisdiction.

(2) Requires suitable loading and unloading spaces and off-street parking facilities meeting the approval of the Fire Authority.

(3) Conforms to requirements of Idaho Code.

(4) Allowed in "I" zone only.

(J) Drive-In Restaurant: (1) The Planning and Zoning Commission may require a sight-obscuring fence along the property lines that abut a residential use.

(2) Shall provide for adequate trash receptacles.

(3) Shall avoid the direction of night lighting off the property lines.

(K) Filling, Grading, or Other Earth Moving Activities: (1) Shall take place in such a manner as to result in the smallest amount of bare ground exposed for the shortest time feasible.

(2) Shall not result in damage to a floodway, channel, or natural drainage way.

(3) The Commission may require restoration of surface to original condition.

(L) Home Businesses: (1) No more than two (2) persons other than members of the family residing on the premises shall be engaged in such home business.

(2) The use of the dwelling, or any accessory structure, shall be clearly incidental and subordinate to the residential purposes. Not more than twenty-five (25) percent of the floor area of the dwelling shall be used in the home occupation.

(3) No change is permitted in the outside appearance of the structure or premises, or other visible evidence of the conduct of such home business other than signs, which shall meet the sign requirements as in Chapter 9-10 of this Title.

(4) No equipment or process shall be used which creates noise, vibration, glare, fumes, odors, electrical interference, or other nuisance detectable off the lot.

(M) Landfills, Incinerators: No landfills or incinerators shall be allowed within City limits.

(N) Outdoor Storage of Commercial and Industrial Materials: Allowed only in Industrial "I" Zone.

(O) Wrecking Yard and Junk Yard, Public or Private: No wrecking/junk yards shall be allowed within the City limits.

(P) Wind turbines, which create audible noise heard beyond the owner's yard, are not allowed in the City limits.

(Q) Cell towers are not allowed within City limits.



## CHAPTER 13: MANUFACTURED HOMES/RECREATIONAL VEHICLES

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9-13-1: MANUFACTURED HOMES: Except for manufactured homes currently situated in the City, no manufactured or mobile home shall be allowed in the City of Mackay unless it meets the following criteria: (A). Meet all requirements for residential development within the zone in which it is located.

(B) No manufactured home may be placed within the City after the effective date of this Chapter unless it meets the rehabilitation standards as specified in Title 44 of the Idaho Code.

9-13-2: PUBLIC INFRASTRUCTURE REQUIRED: City services, including but not limited to, sewer and water, will not be placed in service for any new placement of any manufactured home or mobile home, including relocations within the City, until all terms of this and all other applicable Chapters are met.

9-13-3: PERMITS REQUIRED: All manufactured or mobile homes shall require a building permit from the City and an electrical and plumbing permit from the State of Idaho.

9-13-4: MANUFACTURED HOME PARK STANDARDS: Manufactured home parks shall be subject to the same requirements of site-built homes.

9-13-5: RECREATIONAL VEHICLES: No recreational vehicle shall be occupied within the City except in established RV Parks and as noted in Chapter 9-20 of this Title.

9-13-6: Recreational Vehicle Park Standards: The following standards shall be provided in all recreational vehicle parks: (A) Site Selection (1) Topography: The topography must be favorable to good site drainage, minimum grading, recreational vehicle placement, and ease of maintenance.

(2) Availability of Utilities: The site must be readily accessible to public utilities, including water, sewerage, and electricity.

(3) Necessary Land Area: The area of the recreational vehicle park must be sufficient in size to accommodate: (a) The number of recreational vehicle spaces desired.

(b) Roads and parking areas for motor vehicles, buildings.

(B) Site Improvements: The physical improvements of the site must be arranged to provide: (1) A convenient means of pedestrian and vehicular access to each recreational vehicle space, parking areas, and accessory buildings.

(2) Hook-up to city water and sewer services.

(3) Electrical service for lighting and power.

(C) Spacing: A plan of the proposed recreational vehicle park must be developed for approval of the City indicating the layout of the recreational vehicle spaces, roads, walks, service buildings, service areas, utilities, and necessary grading. Determination must be made in the initial planning stage on the number of recreational vehicles to be accommodated. (1) Spacing of Recreational Vehicle: The minimum side to side spacing between recreational vehicles and between any buildings must be fifteen (15) feet. End-to-end spacing no minimum. Ten (10) feet from the park property line.

(D) Roads, Walks and Parking Areas: (1) General Circulation: Safety and convenience must be a major consideration in the layout of roads, walks, and parking areas within the recreational vehicle park. All roads must be continuous.

(2) Servicing: Suitable vehicular access for fire-fighting equipment, delivery of fuel, removal of garbage and refuse, and for other necessary services must be provided.

(3) Width of Roads and Parking Areas: Main access roads, excluding parking, are recommended to be two lane and at least twenty-four (24) feet wide.

(4) Parking Area: The same number of motor vehicle parking spaces must be provided as the number of recreational vehicle spaces.

(E) Fire Prevention: The park area shall be subject to the rules and regulations of the fire prevention authority.

(F) Regulations: No permanent additions of any kind shall be built onto, nor become a part of, any recreational vehicle. The wheels of a coach shall not be removed, except temporarily when necessary for repairs. Jacks or stabilizers may be placed under the frame of the coach to prevent movement on the springs while the coach is parked and occupied. No owner or person in charge of a dog, cat, or other pet animal shall permit it

to run at large, or to commit any nuisance within the limits of any recreational home park.

## CHAPTER 14: VARIANCES AND APPEALS

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9-14-1: COMMISSION AND COUNCIL POWERS: The Commission and Council shall have the following authority to vary the application and terms of this Title subject to the laws of the State of Idaho and subject to appropriate conditions and safeguards in harmony with the purpose and intent of this Title with the public interest and the most appropriate development of the neighborhood: (A) The Commission and Council shall consider variances to the terms of this Title, which will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Title will result in unnecessary hardship and under such conditions that the spirit of this Title shall be observed and substantial justice done.

A variance shall not be considered a right or special privilege but may be granted to an applicant only upon showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest. In acting upon such variance, the Commission shall make full investigation and shall only recommend granting a variance upon finding that the following are true:

(1) That the granting of the variance will not be in conflict with the spirit and intent of the comprehensive plan for the City and will not affect a change in zoning.

(2) That there are exceptional or extraordinary physical circumstances or conditions, applicable to the property involved, or the intended use thereof causing undue hardship, which do not apply generally to the property or class of use in the zone, so that a denial of the relief sought will result in: (a) Undue loss in value of the property.

(b) Inability to preserve the property rights of the owner.

(c) The prevention of reasonable enjoyment of any property right of the owner.

(d) Such hardship shall be proven by the owner.

(3) That the granting of such relief will not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements of other property owners, or the quiet enjoyment of such property improvements.

(4) That the reason for a variance was not caused by the owners or previous owners actions.

9-14-2: PROCEDURE: (A) The Council shall hold a public hearing on all application for appeals, review and variances based upon full review and submission of recommendation by Commission with the following special conditions required:

(1) For application for variances to this Title, the Council shall mail a written notice of said hearing at least fifteen (15) days prior to the hearing date to the applicant and to owners of property adjacent to the property in question. Failure to mail such notice to every property owner due to clerical omissions shall not affect the validity of any hearing or determination of the Council.

(2) At least fifteen (15) days prior to the public hearing date, notice of the time and place of such hearing shall be given by at least one (1) publication in a newspaper of general circulation within the City of Mackay.

(B) For applications for variances to this Title, the applicant shall be charged the fee to cover the cost of advertising and processing.

(C) Unless otherwise stated in the Council's minutes, all variance permits shall be issued and work shall commence within six (6) months from the date that such variance is granted; otherwise, the variance permit shall no longer be considered valid.

(D) Upon receipt of a written notice by the property owner of appeal as a result of the recommended action of the Commission and payment of a filing fee in an amount established by the Council by Resolution, the Council shall set a hearing date to consider all information, testimony and Commission's minutes of the public hearing to reach a decision to uphold, conditionally uphold, or overrule the decision of the Commission. The Council can overrule the Commission by a favorable vote of a simple majority of the full Council.

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

## CHAPTER 15: SPECIAL USE AND ZONING PERMITS

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9-15-1: BUILDING PERMIT REQUIRED: No fence or building shall be constructed, erected or altered structurally in any zoning district established by this Title and no sign erected in the Commercial, Industrial or Airport Zones unless a Building Permit has been approved by the Commission and the Council and issued by the City Clerk. All permits shall be issued only in conformity herewith and shall be valid only for a period of one (1) year. If action is not taken by applicant during the one (1) year period, then the applicant must reapply.

(A) Application for Permit: Prior to the proposed construction or alteration, applications for building permits shall first be submitted to the City Clerk. Whenever the Council grants or denies a permit, it shall specify the Chapter used in evaluating the application, the reasons for approval or denial and the actions, if any, that the applicant could take to obtain a permit.

(B) Permit Fee: Permit fee costs shall be established by Council Resolution.

(C) Review of Decision: An applicant denied a permit or aggrieved by a decision of the City Clerk may, within sixty (60) days, seek review by the Commission, and if further aggrieved may seek review by the Council.

9-15-2: PROCEDURE FOR SPECIAL USE PERMIT: (A) A Special Use Permit may be granted to an applicant upon fee paid pursuant to fee schedule as established by Resolution of the Council, if the proposed use is otherwise prohibited by the terms of the Title, but may be allowed with conditions under specific provisions of the Title and when it is not in conflict with the intent of the Comprehensive Plan.

(B) Content of Application: An application for Special Use Permit shall be filed with the Commission by at least one (1) owner or lessee of property for which such special use is proposed. At a minimum, the application shall contain all the following information:

(1) Name, address, and telephone number of applicant.

(2) Legal description of property.

(3) Description of existing use.

(4) Zoning district.

(5) Description of proposed special use.

(6) A plan drawn to scale of the proposed site for the special use showing the location of all buildings, parking, and loading area, traffic access and traffic circulation, open spaces, landscaping, refuse, and service areas, utilities, signs, yards, and such other information as the commission may require in determining if the proposed special use meets the intent of this Title.

(7) A narrative statement evaluating the effects on adjoining property, the effect of such elements as noise, glare, odor, fumes, and vibration which may adversely affect adjoining property value; a discussion of the general compatibility with adjacent and other properties in the district; and the relationship of the proposed use to the Comprehensive Plan.

(C) Procedure for Permit: Prior to granting a Special Use Permit, at least one (1) public hearing in which interested persons shall have an opportunity to be heard shall be held. At least fifteen (15) days prior to the hearing, notice of the time and place and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the jurisdiction. Notice may also be made available to other newspapers, radio and television stations serving the jurisdiction for use as a public service announcement. Notice shall also be provided to property owners and residents within the land being considered, three hundred (300) feet beyond the external boundaries of the land being considered, and any additional area that may be substantially impacted by the proposed special use as determined by the Commission. When notice is required to two hundred (200) or more property owners or residents, in lieu of the mailing notification, three (3) notices in the newspaper or paper of general circulation is sufficient; provided, the third notice appear ten (10) days prior to the public hearing.

(D) Action by the Commission and Council: Within a reasonable time period after the public hearing, the Commission shall grant its approval, conditional approval, or disapproval of the application as presented to the Council.

(E) Upon granting of a Special Use Permit, conditions may be attached by the Commission and Council to a Special Use Permit including, but not limited to the following: (1) Minimizing adverse impact on other development.

(2) Controlling the sequence and time of development.

(3) Controlling the duration of special use.

- (4) Ensuring that development is maintained properly.
  - (5) Designating the exact location and nature of development.
  - (6) Requiring the provision for on-site or off-site public facilities or services.
  - (7) Requiring more restrictive standards than those generally required in this Title.
- (F) Prior to recommending a Special Use Permit, the Commission may request studies from the developer or public agencies concerning social, economic, fiscal, and environmental effects of the proposed special use. A Special Use Permit shall not be considered as establishing a binding precedent to grant other Special Use Permits. A Special Use Permit is not transferable from one (1) parcel of land to another, or one (1) entity or person to another. Upon granting or denying an application, the Commission shall specify:
- (1) The Chapter and standards used in evaluating the application.
  - (2) The facts and reasons for approval or denial.
  - (3) The actions, if any, that the applicant could take to obtain a permit.

9-15-3: REVIEW OF DECISION: An applicant denied a permit or aggrieved by a decision of the Commission may, within sixty (60) days, seek review by the Council.



## CHAPTER 16: REZONING PROCESS

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9-16-1: GENERAL: Whenever the public necessity, convenience, general welfare, or good zoning practices require, the Council may, after receipt of recommendation thereon from the Commission and subject to procedures provided by law, amend, supplement, change or repeal the regulations, restrictions, and boundaries or classification of property.

9-16-2: INITIATION OF ZONING AMENDMENTS: Amendments to this Title may be initiated in one (1) of the following ways: (A) By adoption of a motion by the Commission.

(B) By adoption of a motion by the Council.

(C) By the filing of an application by a property owner or a person who has existing interest in property within the area proposed to be changed or affected by said amendment.

9-16-3: CONTENTS OF APPLICATION: Applications for amendments to the Official Zoning Map adopted as part of this Title shall contain at least the following information:

(A) Name, address, and telephone number of applicant.

(B) Proposed amending ordinance, approved as to form by the Council.

(C) Present land use.

(D) Present zoning district.

(E) Proposed use.

(F) Proposed zoning district.

(G) A vicinity map at a scale showing property lines, thoroughfares, existing and proposed zoning and such other items as the Commission or Council may require.

(H) A list of all property owners and their mailing addresses who are within three hundred (300) feet or as determined by the Commission of the external boundaries of the land being considered.

(I) A statement on how the proposed amendment relates to the Comprehensive Plan, availability of public facilities, and compatibility with the surrounding area.

(J) A fee according to schedule as established by resolution of the Council.

9-16-4: TRANSMITTAL TO THE COMMISSION: Requests for an amendment to the zoning ordinance shall be submitted to the Commission who shall evaluate the request to determine the extent and nature of the amendment requested. (A) If the request is in accordance with the adopted Comprehensive Plan, the Commission may recommend, and the Council may adopt or reject the ordinance amendment under the notice and hearing procedures as herein provided.

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

9-16-5: COMMISSION PUBLIC HEARING: The Commission shall hold a public hearing and make recommendations of proposed zoning amendments. Zoning amendments may consist of text or map revisions. (A) Zoning Ordinance Text Amendment: The Commission, prior to recommending a Zoning Ordinance Text Amendment to the Council, shall conduct at least one (1) public hearing in which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of time and place, and the amendment shall be published in the official newspaper or paper of general circulation within the county. Following the Commission's hearing, if the Commission makes a material change from what was presented at the public hearing: further notice and hearing shall be provided before the Commission forwards the amendment with its recommendation to the Council, if the Council will not conduct a subsequent public hearing concerning the proposed change. If the Council will conduct a subsequent public hearing, notice of the Commission recommendation shall be included in the notice of public hearing provided by the Council.

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

9-16-6: RECOMMENDATION BY COMMISSION: Within a period of thirty (30) days after the public hearing of the proposed amendment, the Commission shall transmit its recommendation to the Council. The Commission may recommend that the amendment be granted as requested, or it may recommend that the amendment be denied. If the amendment is denied, the Commission may submit recommendations for more favorable action. The Commission shall ensure that any favorable recommendations for amendments are in accordance with the Comprehensive Plan established goals and objectives.

9-16-7: ACTION BY THE COUNCIL: (A) The Council, prior to adopting, revising, or rejecting the amendment to the Zoning Ordinance as recommended by the Commission shall conduct at least one (1) public hearing using the same notice and hearing procedures as the Commission. Following the Council hearing, if the Council makes a material change from what was presented at the public hearing; further notice and hearing shall be provided before the Council adopts the amendment.

(B) Within a reasonable time period, not to exceed sixty (60) days after the public hearing of the proposed amendment, the Council shall accept the recommendation of the Commission's report unless rejected by a vote of a majority of the Council.

(C) Upon granting or denying an application to amend the Zoning Ordinance, the Council shall specify: (1) The Ordinance and standards used in evaluating the application.

(2) The facts and reasons for approval or denial.

(3) The actions, if any, that the applicant could take to obtain a permit.

9-16-8: RESUBMISSION OF APPLICATION: No application for reclassification of any property which has been denied by the Council shall be resubmitted, in either substantially the same form or with reference to substantially the same premises for the same purposes within a period of one (1) year from the date of such final action, unless there is an amendment in the Comprehensive Plan which resulted from a change in conditions as applying to the specific property under consideration.

9-16-9: ZONING UPON ANNEXATION: Prior to annexation of an unincorporated area to the City, the Commission shall make a recommendation to the City Council for changes to the Comprehensive Plan and Zoning Ordinance for the unincorporated area.

## CHAPTER 17: DEVELOPMENT AGREEMENTS

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9-17-1: **PURPOSE:** The purpose of a development agreement is to provide a means to allow the Council to place conditions and/or restrictions on a rezone or other development to mitigate the impact of the rezone or development and to provide a means for delineating the commitments, obligations, and responsibilities of the parties (e.g. government agencies, developers, individuals) involved.

9-17-2: **APPLICABILITY:** As a condition of rezoning or development, at any time during any stage of the development permitting process, a development agreement may be requested by the Council, recommended by the Commission or it may be requested by the developer.

9-17-3: **AGREEMENT PROPOSAL:** In the event a development agreement is submitted or in the event a development agreement is deemed appropriate by the Commission during or after a public hearing, the reasons for proposing forwarded to the Council with the Commission's findings and recommendation.

9-17-4: **RECOMMENDATION:** In the event the Council makes a finding that a development agreement would be in the best interest of the City, but where no development agreement was recommended by the Commission and presented to

the Council, the Council shall remand the matter back to the Commission with best interest of the City and the developer, that it be made a part of the public hearing process and that it be included in the Commission's recommendations.

9-17-5: CONTENT: (A) A request for a development agreement shall be in addition to an application for rezone. A request for a development agreement shall contain the following: (1) An Affidavit by the property owner, if the owner is not the same as the applicant, agreeing that the property subject to the rezone will be subject to a binding development agreement.

(2) The specific use or uses of the property affected by the development agreement.

(3) The concept plan, which shall include, but not be limited to three (3) at least 11"x17" site plans and one (1) 8 1/2"x11" drawing showing: (a) Existing structure(s) that will remain, labeled as to existing and proposed uses.

(b) Building footprint(s), height, number of stories, proposed uses (office, retail, restaurant), and square footage of proposed structures. If residential, overall density and number of dwelling units per building.

(c) North arrow.

(d) Scale.

(e) Property boundaries.

(f) Names of applicant, owners if different than applicant, preparer and project.

(g) Size of project.

(h) Existing vegetation.

(i) Existing and proposed grades for hillside developments.

(j) Parking areas with total number of parking spaces.

(k) Locations and widths of right of way, easements, canals, ditches and property lines.

(l) Drainage features.

(m) Conceptual landscape plan.

(n) Interior streets and access street.

(o) Estimated cost of project.

(4) The time period for which the agreement is to be valid.

(5) A statement that failure to comply with all of the commitments in the approved development agreement shall be deemed a consent to rezone the property to its preexisting state or to the preexisting zone.

(6) If the development agreement is being requested by the applicant, as opposed to having been required by the Council or by the commission, a statement must be included wherein the applicant agrees that all time limits set forth by this ordinance are waived.

(7) A timeline and/or phasing schedule.

9-17-6: PROCESS: (A) Whenever a development agreement is requested or proposed, the City shall work with the applicant to prepare the agreement. In addition to the information required in this Chapter, any additional uses may be addressed. Those issues may include, but are not limited to, density, site design, mitigation of impact on surrounding neighborhoods, appearance, provision of utilities, public services or public facilities, and any use restrictions.

(B) The Commission shall hold a public hearing to consider the proposed development agreement simultaneously with its hearing to consider the requested rezone or other development request. After its hearing, the Commission shall make a recommendation to the Council and in its recommendation, it may recommend approval or denial of the development agreement, or it may recommend additional terms, conditions, duties or obligations which should be covered by the agreement.

(C) After the Council receives the recommendation from the Commission, the Council shall hold a public hearing on the proposed development agreement. After conducting its public hearing and considering the recommendation of the Commission, the Council shall approve, deny or modify the agreement as the Council, in its discretion deems necessary. After approval by the Council, a development agreement may be modified only by the permission of the Council and after complying with the notice requirements as set forth in Idaho Code section §67-6509.

9-17-7: RECORD: Development agreements shall be recorded in the office of the County Recorder and shall take effect upon adoption of the amendment of the Zoning Ordinance or approval of a subdivision or other development.

9-17-8: AGREEMENT BINDING: Development agreements shall be binding upon the owner or developer and the City as set out in Idaho Code section 67-6511A.

9-17-9: TERMINATION, REVERSAL: A development agreement may be terminated and the zoning designation upon which the use is based reversed, upon the failure of the owner or developer or any successor or assignee thereof to fulfill any of the requirements of the development agreement within the stated time set in the agreement or upon the failure of the owner or developer or their successors or assignees, to act in the manner agreed upon, and after complying with the notice and hearing requirements as set forth in Idaho Code section 67-6509.

9-17-10: SUBSEQUENT OWNERS: Each subsequent owner, any successor or assignee, or any person who shall thereafter acquire an interest in the property, shall take that interest subject to the terms and conditions which are set out in the development agreement, and they shall conform to and abide by the terms and conditions of that agreement.

9-17-11: COUNCIL OBLIGATION: By permitting or requesting a development agreement the Council does not obligate itself to adopt any proposed zoning ordinance or approve any development. The Council is obligated once they have signed the agreement.

9-17-12: WRITTEN CONSENT: A written development agreement shall be deemed written consent to rezone the affected property and the commitment of the owner or developer or any successor or assignee to comply with the conditions imposed by the development agreement.

9-17-13: VIOLATION, ENFORCEMENT: Development agreements may be enforced by any person through any means permitted by law. That relief shall include, but not necessarily be limited to, specific performance, injunctive relief, or through the criminal process for violation of any provision of the Zoning or Subdivision Ordinance as outlined in this Title and provided for in Idaho State Code Section 67-6527.

9-17-14: DEVELOPER AS APPLICANT: A developer shall be considered the applicant in any development agreement. In the event that a developer consists of more than one person or entity, all persons who will be engaged in the development shall be bound by the agreement.

9-17-15: OTHER AGREEMENTS, TERMS AND CONDITIONS: In addition to a development agreement as set forth above, the Council may enter into agreements that require certain terms and conditions to be complied with as a condition of subdivision approval. One of the terms of any agreement may be that in the event a developer does not comply with the agreement, subdivision approval may be withdrawn.



9-17-16: PERFORMANCE BOND OR SURETY BOND: A developer shall be required to obtain a Performance Bond or Surety Bond as defined by terms and definition of this Title.

## CHAPTER 18: ADMINISTRATION

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9-18-1: MEDIATION: Mediation of planning and zoning issues may be provided in accordance with Idaho Code 67-6510 and any revisions.

9-18-2: PRIVATE PROPERTY RIGHTS: In considering any development application under this Code the Commission shall consider the following questions to ensure the protection of private property rights under Idaho Code. (A) Does the regulation or action result in the permanent or temporary physical occupation of the property?

(B) Does the regulation or action require a property owner to dedicate a portion of property or grant an easement?

(C) Does the regulation deprive the owner of all economically viable uses of the property?

(D) Does the regulation have a significant impact on the landowner's economic interest?

(E) Does the regulation deny a fundamental attribute of ownership?

(F) Does the regulation serve the same purpose that would be served by directly prohibiting the use or action; and does the condition imposed substantially advance that purpose?

9-18-3: DESIGNATED FEE: All applications for amendment, reclassification, special use, or variances, shall be accompanied by a filing fee set by Resolution causing the applicant to reimburse the City for all costs incurred in publication and/or mailing.

9-18-4: AREA OF CITY IMPACT: The purpose of the Areas of City Impact is to identify lands within the County where land use decisions are controlled by mutual agreement of the City and County through an area of City impact agreement. Such agreements shall be in compliance with the Custer County Comprehensive Plan and the City of Mackay Comprehensive Plan.

## CHAPTER 19 TEMPORARY USES

### SECTION

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9-19-1: TEMPORARY HOUSING: (A) landowner who resides or intends to reside on the subject property must apply for a Temporary Use Permit: one per parcel, for placement of a recreational vehicle (RV), or any other structure approved by the Council for any of the following reasons: (A) While a single-family dwelling is being constructed. The temporary use permit will only be issued based upon the application and issuance of a Building Permit for the proposed construction. The time on the temporary use permit will be limited to twelve (12) months.

(B) Construction trailer intended for residential or security purposes on a construction site.

(C) Construction trailers, equipment, and materials used in conjunction with construction work only may be permitted in any district during the period construction work is in progress.

# CHAPTER 20 RECREATIONAL VEHICLE OCCUPANCY, STORAGE AND PARKING (Ord 424-A1)

## SECTION

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- 9-20-1: Definitions
- 9-20-2: Protect Health, Safety, Welfare
- 9-20-3: Severability

### 9-20-1: DEFINITIONS:

(A) DWELLING UNIT: One or more rooms designated for, or used as a residence for, not more than one family. The term does not imply or include such type of occupation as a lodging or boarding house, club, hotel, or group home, nor shall the term include recreational vehicles.

(B) RECREATIONAL VEHICLE (RV): A motor home, travel trailer, truck camper, fifth-wheel trailer, a park model recreational vehicle as defined by Idaho Code titles 39 and 49, converted bus, van or other vehicle, or camping trailer that is designed and used for temporary living quarters. The RV may be under its own power or be mounted or drawn by another vehicle. In no case shall a recreational vehicle be considered a dwelling unit.

(C) RECREATIONAL VEHICLE LOT: A parcel of ground in a recreational vehicle park intended to be rented as a place to park a recreational vehicle for temporary dwelling purposes.

(D) RECREATIONAL VEHICLE PARK: A plot of land, zoned commercial, designed and engineered for occupancy and use by recreational vehicles.

9-20-2: PROTECT HEALTH, SAFETY, WELFARE: To protect the health and safety and welfare of persons occupying Recreational Vehicles (RVs) and to address the service and neighborhood impacts of such occupancy, the following standards shall apply in all zoning districts, but shall not apply to properly zoned and approved Recreational Vehicle Parks or the designated areas for temporary public use in Subsection (F) below:

(A) A Recreational Vehicle is not considered a dwelling or residence. Occupancy of a recreational vehicle (RV) on a private lot or parcel shall not exceed fourteen (14) days in any consecutive twelve (12) month period, unless located within a permitted recreational vehicle park or as subjected to Chapter 9. The number of occupied RV's is limited to one such vehicle per lot or parcel.

(B) Occupancy shall mean eating, sleeping, living, cooking, or other use of the unit for human habitation.

(C) To protect the property rights of adjoining neighbors from snow and rain shed, fire hazards, and to retain solar access, the RV shall meet the following minimum setbacks, whether stored or occupied:

(1) Twenty (20') feet from any City street including right of way.

(2) Ten (10') feet from an alley.

(3) Ten (10') feet from the property lines. This shall include any expansion/extension of the RV.

(D) To prevent street congestion and potential hazards, an RV shall not be parked or left standing on any public street, alley, right of way, or public parking area. Exception: an RV may be parked temporarily (24 hrs.) in the above locations to conduct business, make store purchases, etc. provided the RV is parked thirty (30') feet from an intersection. Occupancy of the RV is prohibited.

(E) An RV may be used as a temporary dwelling unit while a residence is under construction provided: (1) A City of Mackay building permit for a residence has been issued for the same site and parcel as the proposed RV temporary dwelling.

(2) The building permit for the residence remains active.

(3) The occupancy shall cease within one-hundred-eighty (180) days of the building permit issuance. The City may grant an occupancy extension when completion of the residence is delayed due to unforeseen circumstances such as weather, site development issues, or other events outside the control of the landowner. The extension shall not exceed one-hundred-eighty (180) days.

(4) Approved temporary water and sewer provisions are available.

(F) Designated RV use areas: (1) Mackay Tourist Park: RV parking and occupancy is permitted within the designated areas of the Mackay Tourist Park and shall be limited to a maximum number of days or nights as set by Resolution by the City Council as amended from time to time along with all other use rules and regulations governing the Mackay Tourist Park and facilities.

(2) Centennial Park on Salmon Street: Use and Occupancy shall be limited to hours of use as set by Resolution of the City Council as amended from time to time along with all other rules and regulations governing the use of the Centennial Park and facilities.

(G) Grandfathering of Parking Permits. The recreation vehicles granted a permit to park by the City shall continue to be recognized as valid until the current permit expires.

(H) Non-Conforming Uses for RVs: Chapter 9 of this Title shall apply. Chapter 9, §9-9-2, C states, "For purposes of this section "designed purpose" means the use for which

the structure or use were originally intended, designed, and approved pursuant to any applicable planning and zoning ordinances in effect at the time.” The “designed purpose” or the originally intended purpose of an RV is for recreational use only and not for a dwelling.

9-20-3: SEVERABILITY: In case any provision in this Ordinance shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

## CHAPTER 21: FLOODING

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9-21-1: STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES: (A) Minimize Statutory Authority: The Legislature of the State of Idaho in I.C. 46-1020 through I.C. 46-1024, authorized local government units to adopt a floodplain map and floodplain management ordinance that identifies floodplains and that sets forth minimum development requirements in floodplains that are designed to promote the public health, safety, and general welfare of its citizenry.

(B) Findings of Fact: The flood hazard areas of Mackay, Idaho are subject to periodic inundation that results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood relief and protection, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare. (1) These flood losses are caused by structures in flood hazard areas, which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages, and by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities.

(2) Local government units have the primary responsibility for planning, adoption and enforcement of land use regulations to accomplish proper floodplain management.

(C) Statement of Purpose: It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to: (1) Require that development that is vulnerable to floods, including structures and facilities necessary for the general health, safety and welfare of citizens, be protected against flood damage at the time of initial construction.

(2) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which increase flood heights, velocities, or erosion.

(3) Control filling, grading, dredging and other development which may increase flood damage or erosion.

(4) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or that may increase flood hazards to other lands.

(5) Preserve and restore natural floodplains, stream channels, and natural protective barriers which carry and store flood waters.

(D) Objective: The objectives of this Ordinance are to: (1) Protect human life, health and property.

(2) Minimize damage to public facilities and utilities such as water purification and sewage treatment plants, water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains.

(3) Help maintain a stable tax base by providing for the sound use and development of flood prone areas and minimize expenditure of public money for costly flood control projects.

(4) Minimize the need for rescue and emergency services associated with flooding and generally undertaken at the expense of the general public.

(5) Minimize prolonged business interruptions.

9-21-2: DEFINITIONS: Words or phrases used in this Chapter shall be interpreted according to the meaning they have in common usage. (1) Base Flood means flood having a one (1) percent chance of being equaled or exceeded each year.

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

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

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

(5) Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from: (a) The overflow of inland or tidal waters.

(b) The unusual and rapid accumulation or runoff of surface waters from any source.



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

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

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

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

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

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

(11) Recreational Vehicle means a vehicle that is: (a) Built on a single chassis.

(b) 400 square feet or less when measured at the largest horizontal projection.

(c) Designed to be self-propelled or permanently towed by a light duty truck.

(d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

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

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

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

(15) Substantial improvement means reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent (50%) of the market value of the structure before the "start of construction" of the improvement. This term includes structures, which have incurred "repetitive loss" or "substantial damage," regardless of the actual repair work performed. The market value of the structure should be (a) the appraised value of the structure prior to the start of the initial repair or improvement, or (b) in the case of damage, the value of the structure prior to the damage occurring. This term includes structures which have incurred "substantial damage", regardless of the actual amount of repair work performed. The term does not include either: (a) A project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications, which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (b) Alteration of a Historic Structure provided that the alteration will not preclude the structure's continued designation as a Historic Structure.

9-21-3: GENERAL PROVISIONS: (A) Lands to Which This Chapter Applies: This Chapter shall apply to all Special Flood Hazard Areas within the jurisdiction of City of Mackay. Nothing in this Chapter is intended to allow uses or structures that are otherwise prohibited by the zoning ordinance.

(B) Basis for Area of Special Flood Hazard: The Special Flood Hazard Areas identified by the Federal Emergency Management Agency in its Flood Insurance Study (FIS) for City of Mackay, dated March 4, 1988, with accompanying Flood Insurance Rate Maps (FIRM) or Digital Flood Insurance Rate Maps (DFIRM), and other supporting data, are adopted by reference and declared a part of this Chapter. The FIS and the FIRM are on file.

(C) Establishment of Floodplain Development Permit: A Floodplain Development Permit shall be required prior to development activities in Special Flood Hazard Areas established.

(D) Interpretation: In the interpretation and application of this Chapter all provisions shall be: (1) Considered as minimum requirements.

(2) Liberally construed in favor of the governing body.

(3) Deemed neither to limit nor repeal any other powers granted under State statutes.

(E) Warning and Disclaimer of Liability: The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This Chapter does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This Chapter shall not create liability on the part of City of Mackay or by any officer or employee thereof for flood damages that result from reliance on this Chapter, or an administrative decision lawfully made hereunder.

9-21-4: ADMINISTRATION: (A) Designation of Floodplain Ordinance Administrator: The City Public Works Supervisor is hereby appointed as the Floodplain Administrator who is responsible for administering and implementing the provisions of this Chapter.

(B) Permit Procedures: Application for a Floodplain Development Permit shall be made to the Floodplain Administrator on forms furnished by the administrator or the administrator's designee prior to starting development activities. Specifically, the following information is required: (1) Application Stage (a) Plans in duplicate drawn to scale with elevations of the project area and the nature, location, dimensions of existing and proposed structures, earthen fill placement, storage of materials or equipment and drainage facilities.

(b) Elevation in relation to the Flood Protection Elevation, or highest adjacent grade, of the lowest floor level, including crawlspaces or basement, of all proposed structures.

(c) Elevation to which any non-residential structure will be flood proofed.

(d) Design certification from a registered professional engineer or architect that any proposed non-residential flood-proofed structure will meet the flood-proofing criteria in §9-21-5(F)(2) of this Chapter.

(e) Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development.

(2) Construction Stage (a) For all new construction and substantial improvements, the permit holder shall provide to the Floodplain Administrator an as-built certification of the floor elevation or flood-proofing level, using appropriate FEMA elevation or flood proofing certificate, immediately after the lowest floor or flood-proofing is completed. When flood proofing is utilized for non-residential structures, the certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by it.

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

(3) Technical Review: If the community does not have the expertise to evaluate the technical data that is part of the application, the community may contract for an independent engineering review or require a review by FEMA through the Letter of Map Revision process. The applicant will pay the costs of an independent technical review.

(4) Expiration of Floodplain Development Permit: All floodplain development permits shall be conditional upon the commencement of work within one (1) year. A floodplain development permit shall expire one (1) year after issuance unless the permitted activity has been substantially begun and thereafter is pursued to completion.

(C) Duties and Responsibilities of the Administrator: Duties of the Administrator shall include, but shall not be limited to: (1) Review all floodplain development permit applications to assure that the permit requirements of this Chapter have been satisfied.

(2) Review proposed development to assure that necessary permits have been received from governmental agencies from which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C.1334; the Endangered Species Act of 1973, 16 U.S.C. 1531-1544; and State of Idaho Stream Channel Alteration permits, Idaho Code, Title 42, Chapter 38 require that copies of such permits be provided and maintained on file.

(3) When Base Flood Elevation data or floodway data are not available, then the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source in order to administer the provisions of this Chapter.

(4) When Base Flood Elevations or other current engineering data are not available, the Floodplain Administrator shall take into account the flood hazards, to the extent they are known, to determine whether a proposed building site will be reasonably safe from flooding.

(5) Obtain, verify and record the actual elevation in relation to the vertical datum on the effective FIRM, or highest adjacent grade, of the lowest floor level, including basement, of all new construction or substantially improved structures.

(6) Obtain, verify and record the actual elevation, in relation to the vertical datum on the effective FIRM to which any new or substantially improved structures have been flood proofed.

(7) When flood proofing is utilized for a structure, the Floodplain Administrator shall obtain certification of design criteria from a registered professional engineer or architect.

(8) Where interpretation is needed of the exact location of boundaries of the Areas of Special Flood Hazard including regulatory floodway (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Chapter.

(9) All records pertaining to the provisions of this ordinance shall be maintained in the office of the city/county clerk or his/her designee and shall be open for public inspection.

9-21-5: PROVISIONS FOR FLOOD HAZARD REDUCTION: (A) Subdivision Standards:

(1) All subdivision proposals shall be consistent with the need to minimize flood damage.

(2) All subdivision preliminary plats/development plans shall include the mapped flood hazard zones from the effective FIRM.

(3) Base flood elevation data shall be generated and/or provided for subdivision proposals and all other proposed development, including manufactured home parks and subdivisions, greater than fifty lots or five acres, whichever is less.

(4) All subdivisions shall have public utilities and facilities such as sewer, gas, electric and water systems located and constructed to minimize flood damage.

(5) All subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

(B) Construction Standards: In all Areas of Special Flood Hazard the following provisions are required. (1) New construction and substantial improvements of an existing structure shall be anchored to prevent flotation, collapse or lateral movement of the structure.

(2) New construction and substantial improvements of an existing structure shall be constructed with materials and utility equipment resistant to flood damage.

(3) New construction or substantial improvements of an existing structure shall be constructed by methods and practices that minimize flood damage.

(4) All new construction or substantial improvements of an existing structure that includes a fully enclosed area located below the lowest floor formed by the foundation and other exterior walls shall be designed to be an unfinished or flood resistant enclosure. The enclosure shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater. Designs for complying with this requirement must be certified by a licensed professional engineer or architect or meet the following minimum criteria: (a) Provide a minimum of two (2) openings with a total net area of not less (i) than one square inch for every square foot of enclosed area subject to flooding

(ii) the bottom of all openings shall be no higher than one foot above the higher of the exterior or interior grade or floor immediately below the opening.

(iii) devices provided permit the automatic flow of floodwater in both directions without manual intervention.

(b) To comply with the "Lowest Floor" criteria of this ordinance, the unfinished or flood resistant enclosure shall only be used for parking of vehicles, limited storage of maintenance equipment used in connection with the premises, or entry to the elevated area.

(c) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.

(d) For crawlspace foundation types, construction must follow the guidelines in FEMA TB 11-01, Crawlspace Construction for Structures Located in Special Flood Hazard Areas: National Flood Insurance Program Interim Guidance, specifically:

(i) Below grade crawlspaces are prohibited at sites where the velocity of floodwaters exceed five (5) feet per second.

(iii) Height of the below grade crawlspace, measured from the lowest interior grade of the crawlspace to the bottom of the floor joist must not exceed four (4) feet at any point.

(iv) Contain an adequate drainage system that removes floodwaters from the interior area of the crawlspace.

(5) All heating and air conditioning equipment and components, all electrical, ventilation, plumbing, and other facilities shall be designed and/or elevated to prevent water from entering or accumulating within the components during flooding.

(6) New and replacement water supply systems shall be designed to minimize or to eliminate infiltration of floodwaters into the system.

(7) New and replacement sanitary sewage systems shall be designed to minimize or to eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

(8) On-site waste disposal systems shall be located and constructed to avoid functional impairment, or contamination from them, during flooding.

(9) Any alteration, repair, reconstruction or improvement to a structure that is not compliant with the provisions of this Chapter, shall be undertaken only if the nonconformity is minimal in order to meet health and safety standards.

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

(1) Manufactured homes placed or substantially improved: (a) On individual lots or parcel.

(b) In new or substantially improved manufactured home parks or subdivisions.

(c) In expansions to existing manufactured home parks or sub-divisions, or on a site in an existing manufactured home park or subdivision where a manufactured home has incurred "substantial damage" as the result of a flood, must have the lowest floor, including basement, elevated to the Flood Protection Elevation.

(2) Manufactured homes placed or substantially improved in an existing manufactured home park or subdivision may be elevated so that either: (a) The lowest floor of the manufactured home is elevated to the Flood Protection Elevation (1) or one foot above the level of the base flood elevation, whichever is higher.

(b) The manufactured home chassis is elevated and supported by reinforced piers (or other foundation elements of at least an equivalent strength) of no less than thirty-six (36) inches above the highest adjacent grade.

(3) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to, and consistent with, applicable State requirements.

(4) Manufactured homes placed on solid perimeter walls shall meet the flood vent requirements in §9-21-5(B)(4) of this Chapter.

(D) Accessory Structures: Relief from the elevation or dry flood-proofing standards may be granted for an accessory structure containing no more than one hundred (100) square feet (100 sq ft.). Such a structure must meet the following standards:

(1) It shall not be used for human habitation.

(2) It shall be constructed of flood resistant materials.

(3) It shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters.

(4) It shall be firmly anchored to prevent flotation.

(5) Services such as electrical and heating equipment shall be elevated or flood proofed to or above the Flood Protection Elevation.

(6) It shall meet the opening requirements of §9-21-5(B)(4) of this Chapter.

(E) Recreational Vehicle Standards: In all Areas of Special Flood Hazard, Recreational Vehicles, that are an allowed use or structure under the zoning Title, must either:

(1) Be on the site for fewer than 180 consecutive days.

(2) Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached structures or addition.

(3) The recreational vehicle must meet all the requirements for "New Construction," including the anchoring and elevation requirements.

(F) Floodway Standards: The following provisions shall apply in a floodway:

(1) A project in the regulatory floodway must undergo an encroachment review to determine its effect on flood flows. An encroachment analysis must include:

(a) Determination and documentation that the filling, grading or construction of a structure will not obstruct flood flows and will not cause an increase in flood heights upstream or adjacent to the project site.

(b) Determination and documentation that grading, excavation, channel improvements, bridge and culvert replacements that remove an obstruction, do not cause increases in downstream flood flows.



(c) Certification and documentation by a licensed professional engineer that the project will not result in a rise in flood heights.

(d) The Administrator may make the encroachment determination for minor projects.

(2) An encroachment in the floodway or floodplain that will cause an increase in the base flood elevation in excess of the allowable level must have a Conditional Letter of Map Revision granted by FEMA before it will be permitted.

(G) Standards for Zones with Base Flood Elevations: In Special Flood Hazard Areas designated A1-30, AE, AH, A (with estimated BFE), the following provisions are required: (1) New construction and substantial improvements where base flood elevation data are available, new construction or substantial improvement of any structure or manufactured home shall have the lowest floor, including basement, constructed at or above the community's Flood Protection Elevation. If solid foundation perimeter walls are used to elevate a structure, openings sufficient to facilitate the unimpeded movement of floodwaters shall be provided in accordance with the construction standards in §9-21-5(B)(4) of this Chapter.

(2) Non-Residential Construction: New construction or the substantial improvement of any non-residential structure located in zones A1-30, AE, or AH must be flood-proofed if the new construction or improvement is not elevated. The structure and attendant utility and sanitary facilities must be designed to be watertight to the Flood Protection Elevation or to be one (1) foot above the base flood elevation, whichever is higher, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A licensed professional engineer or architect must certify that the design and methods of construction are in accordance with accepted standards of practice for meeting these provisions and shall provide certification to the Administrator.

(3) Where the floodway has not been determined, applicants of proposed projects that increase the base flood elevation more than one foot are required to obtain and submit to the Floodplain Administrator, a Conditional Letter of Map Revision (CLOMR) preconstruction.

(4) Post construction, the applicant must apply to FEMA for a Letter of Map Revision for changes to the flood hazard map proposed in the CLOMR.

(5) In AH Zones, drainage paths shall be provided to guide floodwater around and away from proposed and existing structures.

(H) Standards for Zones Without Base Flood Elevations and/or Floodway (A Zones)

These standards apply in Special Flood Hazard Areas where streams exist, but no base flood elevation data have been provided (A Zones), or where base flood data have been provided but a floodway has not been delineated. (1) When base flood elevation or floodway data have not been identified by FEMA in a Flood Insurance Study and /or Flood Insurance Rate Maps, then the Floodplain Administrator shall obtain, review, and reasonably utilize scientific or historic base flood elevation and floodway data available from a federal, state, or other source, in order to administer this ordinance. If data are not available from any source, only then provisions 2 and 3 shall apply. Where the floodplain administrator has obtained base flood elevation data, applicants of proposed projects that increase the base flood elevation more than one foot shall obtain a Conditional Letter of Map Revision preconstruction and a Letter of Map Revision post construction.

(2) No encroachments, including structures or fill, shall be located within an area equal to the width of the stream or fifty feet, whichever is greater, measure from the ordinary high-water mark, and unless certification by a licensed professional engineer documents that the encroachment will not result in any increase in flood levels during the base flood.

(3) In special flood hazard areas without base flood elevation data, new construction and substantial improvements of existing structures shall have the lowest floor of the lowest enclosed area (including basement or crawlspace) elevated no less than two (2) feet above the highest adjacent grade at the building site. Openings sufficient to facilitate the unimpeded movement of floodwaters shall be provided in accordance with the construction standards in §9-21-5(B)(4) of this Chapter.

(l) Standards for Areas of Shallow Flooding (AO Zones): Shallow flooding areas designated AO Zones, are Areas of Special Flood Hazard that have base flood depths of one (1) to three (3) feet, with no clearly defined channel. The following provisions apply: (1) All new construction and substantial improvements of residential and nonresidential structures shall have the lowest floor, including basement, elevated above the adjacent grade at least as high as the flood depth number specified in feet on the Flood Insurance Rate Map (FIRM). If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least two feet (2) above the highest adjacent grade. Openings sufficient to facilitate the unimpeded movement of floodwaters shall be provided in accordance with the construction standards in §9-21-5(B)(4) of this Chapter.

(2) New construction or the substantial improvement of a non-residential structure may be flood proofed in lieu of elevation. The structure and attendant utility and sanitary facilities must be designed to be watertight to the specified base flood level or at least two (2) feet above highest adjacent grade, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting

hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting these provisions and shall provide certification to the Floodplain Administrator.

(3) Drainage paths shall be provided to guide floodwater around and away from all proposed and existing structures.

(J) Alteration of a Watercourse: (A) watercourse is considered altered when any change occurs within its banks. (1) The bank full flood carrying capacity of the altered or relocated portion of the watercourse shall not be diminished. Prior to issuance of a floodplain development permit, the applicant must submit a description of the extent to which any water course will be altered or relocated as a result of the proposed development and submit certification by a registered professional engineer that the bank full flood carrying capacity of the water course will not be diminished.

(2) Adjacent communities, the U.S. Army Corps of Engineers and the Idaho Department of Water Resources Stream Channel Alteration program must be notified prior to any alteration or relocation of water source. Evidence of notification must be submitted to the floodplain administrator and to the Federal Emergency Management Agency.

(3) The applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of the watercourse so that the flood carrying capacity will not be diminished.

(4) The applicant shall meet the requirements to submit technical data in Sections K (1) and K (2) when an alteration of a watercourse results in the relocation or elimination of the special flood hazard area, including the placement of culverts.

(K) Requirement to Submit New Technical Data: (1) For all development proposals that impact floodway delineations or base flood elevations, the community shall ensure that technical data reflecting such changes be submitted to FEMA within six (6) months of the date such information becomes available. These development proposals include: (a) Floodway encroachments that increase or decrease base flood elevations or alter floodway boundaries.

(b) Fill sites to be used for the placement of proposed structures where the applicant desires to remove the site from the special flood hazard area.

(c) Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts.

(d) Subdivision or large-scale development proposals requiring establishment of base flood elevations according to §9-21-5(A)(3) of this Section.

(2) It is the responsibility of the applicant to have technical data prepared in a format required for a Conditional Letter of Map Revision or Letter of Map Revision and submitted to FEMA. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.

9-21-6: VARIANCE AND APPEAL PROCEDURES: (A) Variance: (1) An application for a variance must be submitted to the City Clerk on the form provided by the City of Mackay and include at a minimum the same information required for a building permit and an explanation for the basis for the variance request.

(2) Upon receipt of a completed application for a variance, the variance request will be set for public hearing at the next City Council meeting in which time is available for the matter to be heard.

(3) Prior to the public hearing, Notice of the hearing will be published in the official newspaper of the City at least fifteen (15) days prior to the hearing. In addition to the newspaper publication, written notice shall be provided to all adjoining property owners.

(4) The burden to show that the variance is warranted and meets the criteria set out herein is on the applicant.

(B) Criteria for Variances: (1) Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a small or irregularly shaped lot contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases the technical justification required for issuing the variance increases.

(2) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.

(3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(4) Variances may be issued upon: (a) A showing by the applicant of good and sufficient cause.

(b) A determination that failure to grant the variance would result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws and ordinances.

(5) Variances pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods.

(6) Variances should be issued for non-residential buildings in very limited circumstances.

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

(D) Appeals: The City Council shall hear and decide appeals from the interpretations of the Administrator. (1) An appeal must be filed with the City Clerk within fourteen (14) days of the date of any permit denial or interpretation of the Administrator. Failure to timely file an appeal shall be considered a failure to exhaust the administrative remedies. The appeal must set out the interpretation of the Administrator and a narrative setting forth the facts relied upon by the appellant and the appellants claim regarding the error in the interpretation.

(2) Upon receipt of a completed appeal, the appeal will be scheduled for the next available City Council meeting to be heard. The City Council shall consider the following in ruling on an appeal. All technical evaluations, all relevant factors, standards specified in other sections of this Chapter, including: (a) The danger that materials may be swept onto other lands to the injury of others.

(b) The danger to life and property due to flooding or erosion damage.

(c) The susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the individual landowner.

(d) The importance of the services provided by the proposed facility to the community.

(e) The necessity of the facility to a waterfront location, where applicable.

(f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.

(g) The compatibility of the proposed use with existing and anticipated development.

(h) The relationship of the proposed use to the comprehensive plan and flood plain

management program for that area.

(i) The safety of access to the property in times of flooding for ordinary and emergency Vehicles.

(j) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.

(k) The cost of providing government services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

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

## CHAPTER 22: ABANDONED BUILDINGS AND PERSONALTY

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9-22-1: DEFINITIONS: Words or phrases used in this Section shall be interpreted according to the meaning they have in common usage. (A) Abandoned and open building means any commercial or residential structure, and all outbuildings and garages used in connection therewith, within the City, which is not presently inhabited by the owner or person legally entitled to possession thereof, which because of the dilapidated condition of windows, doors, walls or roof, is open to entrance by any persons or animals, and which cause of such condition, creates condition tending to reduce the value of property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute attractive nuisances creating a hazard to health and safety of minors, to create a harborage for rodents and insects, and to be injurious to the health, safety and general welfare.

(B) Abandoned, wrecked and junked means, with reference to vehicles, an unsightly motor vehicle which meets any one of the following qualifications: (1) Vehicle does not have a current valid state registration and license plate.

(2) Vehicle cannot be safely operated under its own power.

(C) Machinery means all articles of industrial, farm or domestic machinery or equipment, and any and all metal or wooden machinery, motors, equipment and tools.

(D) Major household furnishings and appliances means all articles usually referred to as major household furnishings and appliances used in housekeeping, including, but not limited to, chairs, tables, davenport, beds, refrigerators, stoves, washers, driers, furnaces, and grease, oil and paint containers of five gallons or over capacity.

(E) Motor vehicles means any vehicle propelled or drawn by power other than muscular power, designed to travel on the ground by wheels, treads, runners or slides and to transport persons or property or pull machinery, including, but not limited to, automobiles, trailers, motorcycles and tractors.

(F) Person means any individual, corporation or partnership.

9-22-2: PROHIBITED ACTS DESIGNATED: It is unlawful for any person to place, allow, discard, maintain, park or store any abandoned, wrecked or junked vehicle, major household furnishing or appliance or machinery, or parts thereof, as herein defined, upon any public street, alley, sidewalk or other public property within the City of Mackay, Idaho.

9-22-3: PROHIBITED ACTS EXCEPTIONS: It is unlawful for any person, whether he be owner, tenant, occupant or lessee of any private property or premises, to maintain or allow any abandoned and open building for a period of time exceeding sixty (60) days, or to place, allow, discard, maintain, park, store or permit it be placed, allowed, discarded, maintained, parked or stored upon said property or premises for a period of time exceeding thirty (30) days any abandoned, wrecked or junked vehicle, major household furnishing or appliance or machinery, or parts thereof, as herein defined; provided, however, that the provisions of this paragraph shall not apply to any property or premises where said vehicle, furnishing, appliance or machinery, or parts thereof are housed within a building or fence so as to not be visible from the street or other public or private property or stored or parked in a lawful manner in connection with or incidental to a business or commercial enterprise which is primary or principal use of said property or premises.

9-22-4: SECURANCE OR REMOVAL REQUIRED: The City or its representative may order any such building secured against entry by persons or animals within thirty (30) days, and may order any such abandoned, wrecked, or junked vehicle, major household furnishing or appliance or machinery or parts thereof, removed within (30) days. Notice of such order shall be placed upon the building, vehicle, furnishing, appliance, machinery, or part thereof, and a copy of such notice shall be served upon any adult person occupying the premises on which such item is located, if any, and upon the record owner of the building or item, if known. If there is no occupant or owner, a notice affixed to the building or upon any other prominent object upon the premises shall constitute notice to such owner or occupant of the premises and the owner of such building or item involved; provided, that if such owner or occupant is only temporarily absent, such notice shall be by certified mail. Violations of this Chapter Section are hereby declared to be a nuisance and if securance or removal is not accomplished within the time and in the manner prescribed by the order of notice, the City or its authorized agent may prevent, remove and summarily abate the nuisance without judicial process at the expense of the parties creating or maintaining the same and file a Mechanics Lien as provided in Idaho Code, Title 45, Chapter 5 on the land or premises whereon the nuisance is situated to defray the cost or to reimburse the City for the cost of abating the same; or the City may bring any appropriate civil action, including abatement, injunction and/or damages, in which event the City shall be entitled to all costs including attorney fees in the prosecuting of such action. Any abandoned, wrecked or junked vehicle, major household furnishings or appliances or machinery, or part thereof removed by the City in accordance herewith, shall be offered for sale to the



highest and best bidder at public auction after two (2) publications in the official newspaper of the City in compliance with Idaho Code, Title 49, Chapter 18. The proceeds of the sale shall be used to pay expenses of removal and impounding and of sale, and if the proceeds are not sufficient thereof, the balance shall immediately become due and owing from the owner, or from the occupant of the premises if not paid by such owner.

## CHAPTER 23: ENFORCEMENT

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9-23-1: METHODS OF ENFORCEMENT: The provisions of this Ordinance shall be enforced by the following methods: (A) Requirement of a zoning permit.

(B) Inspection and ordering removal of violations.

(C) Criminal liability.

(D) Injunction.

9-23-2: ZONING PERMIT: Building permits are required for: (A) New construction of homes, business buildings, outbuildings, sprinkling systems.

(B) New fences, sidewalks, or driveways. Replacement of existing fences, sidewalks, or driveways DO NOT need a building permit if placed in the exact same location.

(C) Any time buildings are demolished or moved, into, within, or out of City limits.

(D) Any structure changes that modify the footprint or might otherwise have an effect on property setback.

9-23-3: INSPECTION: The authorized representative of the City is hereby empowered to cause any structure or tract of land to be inspected and examined, and to order in writing the remedying of any condition found to exist in violation of any provisions of this ordinance. After any such order has been served, no work shall proceed on any structure or tract of land covered by such order, except to correct such violation.

9-23-4: ENFORCEMENT ACTIONS: The process for enforcement of this Title shall be as described here: (A) The City shall notify the occupant (and owner, if they are not the same) of the violation by citation, first class mail and/or posting on the site. The notice

shall describe the violation, cite the sections of this ordinance being violated, and order the occupant to attain compliance within ten (10) days.

(B) Any person who receives a notice of violation may request inspection by the City to show that compliance has been attained within the ten (10) days allowed, or:

(1) File a written request with the City for an extension of time to attain compliance, with such extensions being limited to a maximum of sixty (60) days and culminated by an inspection to show that compliance has been attained.

(2) File an appeal of the City's notice, following the appeals procedure.

(C) The City shall notify any occupant or owner who fails to attain compliance within the specified time, or to show, on appeal, that a violation has not occurred. This notice shall be posted on the site and sent by first class mail, repeat the description of the violation from the original notice, and state the penalties that may be imposed for violations of this Title.

(D) The City may proceed with mitigation of the violation at the cost of the property owner. The City will submit an invoice for such mitigation and if unpaid may file a lien against the property until such invoice is paid. City may also restrict further development or other permits for the property until such invoice is paid.

9-23-5: CRIMINAL LIABILITY: A person shall be charged with a misdemeanor in any case where: (A) Any violation of any of the provisions of this Title exists in any building or any other structure or on a tract of land.

(B) An order to remove any such violation has been served upon the owner, general agent, lessee or tenant of the structure or tract of land (or any part thereof), or upon the architect, building, contractor or any other person who commits or assists in any such violation.

(C) Such person shall fail to comply with such order within ten (10) days after service thereof.

9-23-6: INJUNCTION: In addition to any of the foregoing remedies, the City Attorney, acting on behalf of the City Council may maintain an action for an injunction to restrain any violation of this Title.

9-23-7: PENALTY: Any person, firm or corporation violating any provisions of this Ordinance, upon conviction thereof, shall be fined in accordance with Idaho State Code for each offense or by imprisonment for a period of not more than thirty (30) days or by both such fines and imprisonment. Each day during which the illegal erection,

construction, alteration, maintenance or use continues may be deemed a separate offense.

9-23-8: PENALTIES FOR NON-COMPLIANCE: No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Title and other applicable regulations. Violations of the provisions of this Title by failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with grants of variance or special exceptions shall constitute a misdemeanor. Any person who violates this Title or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than one thousand (\$1,000) or imprisoned for not more than one hundred eighty-five (180) days, or both. Each day the violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Mackay from taking such other lawful actions as is necessary to prevent or remedy any violation.

## **CHAPTER 24: SEVERABILITY**

### **SECTION**

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9-24-1: Severability	236

9-24-1: SEVRABILITY: This ordinance is hereby declared to be severable. Should any portion of this ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and shall be read to carry out the purpose(s) of the ordinance before the declaration of partial invalidity.

## **CHAPTER 25: REPEAL**

### **SECTION**

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9-25-1: Repeal	237

9-25-1: REPEAL: This Section hereby repeals Ordinances 61, 241, 252, 262, 271, 281, 285, 318, 328, 418, and 420, and any other Ordinances, Resolutions, or items contained in minutes of meetings of the City Council found to be in conflict with this Title.

EXHIBIT 1



**Legend**

-  Residential (R)
-  Commercial (C)
-  Industrial (I)
-  Public (P)
-  Airport (AP)
-  Agricultural (AR)
-  City Limits

**City of Mackay  
Zoning Map  
Custer County, Idaho**

10/09/2008

02/10/2009

**Revised 5-24-2022**