TO: Mayor and Council

FROM: Scott Spjute

ORDINANCE NUMBER: O-10-11

DATE: February 28, 2011

SUBJECT: Amendment to Title 11, Chapters 3, 5 & 6

ACTION REQUIRED: Three Readings

RECOMMENDATION: Approval

BACKGROUND: The amendment establishes a process for approving variances administratively. The amendment has been sent to numerous agencies and to every neighborhood association. Most feedback has been positive. The amendment will benefit the City and its citizens, and will not have a negative impact on properties adjacent to those where variances are granted. Ample opportunity will be provided for the public to express concern or opposition. Where there is opposition, the administrative process will not apply.

ATTACHMENTS: Amended Ordinance
ORDINANCE NO. __________________

BY THE COUNCIL: CLEGG, EBERLE, JORDAN, MCLEAN, SHEALY AND THOMSON

AN ORDINANCE (ZOA10-00009 / BOISE CITY) AMENDING TITLE 11, CHAPTERS 3, 5, AND 6 TO MAKE TYPOGRAPHICAL AND GRAMMATICAL CHANGES; AMENDING SECTION 11-05-14.C.2 TO DELETE AN INCONSISTENT REFERENCE TO SIGN CODE VARIANCES; AMENDING SECTION 11-06-10 BY DELETING THE REQUIREMENT THAT THE PLANNING AND ZONING COMMISSION REVIEW ALL SIGN VARIANCES AND BY DELETING CERTAIN REQUIRED FINDINGS FOR SIGN VARIANCES; AMENDING SECTION 11-06-11 BY ADDING THE HEARING EXAMINER AS AN AUTHORITY TO REVIEW NON-ADMINISTRATIVE VARIANCES, BY ELIMINATING THE COMMISSION AND HEARING EXAMINER’S ABILITY TO MODIFY A VARIANCE REQUEST, BY ELIMINATING A DEADLINE FOR ACTION BY THE PLANNING DIRECTOR, BY DELETING SECTION 11-06-11.08 IN ITS ENTIRETY AND RENUMBERING THE REMAINING SUBSECTIONS SEQUENTIALLY, AND BY EXTENDING THE VARIANCE APPROVAL TERM AND EXTENSION TERMS; ESTABLISHING A NEW SECTION 11-06-12 FOR ADMINISTRATIVE VARIANCES INCLUDING PROVIDING AUTHORITY TO THE ZONING ADMINISTRATOR TO GRANT VARIANCES UNDER SPECIFIED CIRCUMSTANCES AND ESTABLISHING AN APPLICATION AND HEARING PROCESS; APPROVING A SUMMARY OF THE ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BOISE CITY, IDAHO:

Section 1. That Title 11, Chapter 3, Sections 2 and 5.04, Boise City Code, shall be amended to read as follows:

Section 11-03-02 APPLICATION REQUIRED

Every person seeking zoning approval as herein defined shall submit an application to the Planning Director on a prescribed form, accompanied by the appropriate filing fee as approved by the City Council, and shall include the following: Application forms shall be accompanied by supporting information as defined by the application form and as required by the Zoning Ordinance and the Planning Director. All applications for conditional use permits, Commission-level conditional use permit modifications, variances, annexations, rezones, area-specific amendments to the Comprehensive Plan, and special exceptions submitted...
for review by the Planning and Zoning Commission shall include documentation of require the following:

A. A pre-application conference with the Boise City Planning Division staff and invited referral agencies must have been held not more than six months, nor less than one day prior to the submittal of the application. A pre-application conference verification form provided by the Planning staff must be completed and signed by the applicant or representative and a representative of the Planning staff during the pre-application conference, and submitted with the application.

B. The applicant shall hold a meeting with neighbors which provides the public an opportunity to review the proposed project. This meeting shall be held not more than six months nor less than five calendar days prior to submittal of the application. The location shall be within two miles of the project site. The meeting shall be held within two miles of the subject site, Monday through Thursday, excluding legal holidays, and start between 6:00 P.M. and 8:00 P.M. The applicant shall notify and invite to the meeting all residents and property owners within 300' of the exterior boundary of the application parcel. Notice of the meeting shall be provided to residents and property owners within 1,000 feet of the exterior boundary of the application parcel and the registered neighborhood association. For applications for sexually oriented businesses and bikini bars, the applicant shall notify and invite to the meeting all residents and property owners within 1,000 feet of the exterior boundary of the application parcel and the registered neighborhood association. The notice shall be provided to residents and property owners within 1,000 feet of the exterior boundary of the application parcel and the registered neighborhood association. For applications for sexually oriented businesses and bikini bars, the notice shall be mailed seven days prior to the meeting or hand-delivered five days prior to the meeting date. If mailed, the notice shall be postmarked a minimum of seven calendar days prior to the meeting date. If hand-delivered, the applicant must deliver the notice a minimum of five days prior to the meeting date.

C. The requirements in A and B also apply to variance applications; the meeting requirements of Sections 11-03-02.B For variances, shall be modified to include only the residents immediately adjacent (including those across a roadway, street, or alley) to the proposed project and the registered neighborhood association need be notified. The Planning Director shall determine the applicability of paragraphs A and B above to Conditional Use Modifications. Conditional Use Modifications that the Director are determined to be minor shall not be required to adhere to are exempt from the pre-application requirements.

Section 11-03-05.04 Application Resubmit
No application for conditional use, special exception or variance review which has been denied by the Commission or Council, shall be resubmitted in either the same or substantially the same form – as determined by the Director - in less than one year from the date of final action thereon unless resubmittal is approved to do so by the reviewing body. The Planning Director shall determine whether there has been substantial change in a resubmittal application.

Section 2: That Title 11, Chapter 5, Section 14.C.2, Boise City Code, shall be amended to read as follows:
Section 11-05-14 DESIGN REVIEW, ADMINISTRATIVE

Certain applications for Design Review of site and building development or alteration as specified below shall be reviewed by the Planning Director in accordance with the criteria listed in Section 11-07-03:

C. In all "DD" districts:
   1. All minor alterations to existing buildings.
   2. Signs designed in conformance with the provisions of the sign ordinance. Variances to the sign code are reviewed by the Planning and Zoning Commission.
   3. Parking Lots.
   4. Any canopies and awnings.

Section 3. That Title 11, Chapter 6, Sections 09 through 13, Boise City Code, shall be amended to read as follows:

Section 11-06-09 VARIANCES TO THE FLOODPLAIN ORDINANCE

Any variance to the requirements of the Floodplain Ordinance shall require review and approval must be approved by the Planning and Zoning Commission in accordance with the criteria and procedures of Section 11-12-05. An application and fee shall be submitted to the Planning Director for scheduling before the Commission.

Section 11-06-10 SIGN VARIANCES

A sign variance is a request to vary modification from the standards for background area, height, illumination, number of signs, location, projection, and clearance, or any other standard prescribed in the sign code, except that sign variances may not be applied to signs that are prohibited. In accordance with the public hearing requirements of this ordinance, the Planning and Zoning Commission shall have the authority to deny, approve, or approve with modifications, a sign variance. All of the following findings of fact shall be considered and clearly established by the Planning and Zoning Commission when granting must be made in order to grant a sign variance, in whole or in part:

Findings

1) That no variance shall be granted unless it can be shown that there are special circumstances applicable to the property involving the property's size, shape, topography, location or surroundings, which do not apply generally to other properties in the same zoning district vicinity that are not the result of voluntary actions of the applicant; and

2) That the granting of such sign variance will not constitute a grant of special privilege that is inconsistent with the limitations upon other property in the vicinity and zone in which such property is situated; and
3) B. That non-conforming signs in the vicinity surrounding the subject site may not be used to set the standard for or be compared with applications for new signs, and shall not be used as justification for a hardship or special circumstance.

4) C. The sign variance is the minimum necessary to alleviate the identified hardship or exceptional circumstance; and

5) The approval, denial or modification of any sign variance shall not provide precedent for any other sign variance in the city; and

6) D. The granting of the sign variance will not be materially detrimental to the public welfare or injurious to the properties or improvements in the vicinity.

Section 11-06-11 VARIANCES TO THE ZONING ORDINANCE

Section 11-06-11.01 Definition
A variance is a modification of the requirements of this Ordinance as to lot size, lot coverage, lot width, street frontage, setback requirements, parking requirements, loading requirements, or other ordinance provisions affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots. A variance shall not be considered a right or special privilege but may be granted to an applicant upon a showing of undue hardship because of characteristics of the site, or unique circumstances relating to the intended use, and that the variance is not in conflict with the public interest.

Section 11-06-11.02 Application Required
Every person desiring a variance from the provisions of this Ordinance shall submit an application with the appropriate form prescribed by the Planning Director and pay a fee in accordance with the current fee schedule is required.

Section 11-06-11.03 Opportunity to be Heard
Prior to granting a variance, notice and an opportunity to be heard shall be provided to property owners, purchasers of record and residents within the land being considered on and adjoining to the parcel under consideration. All requests for variance shall be heard and decided by the Planning and Zoning Commission or Hearing Examiner shall consider non-administrative variance requests after providing the public an opportunity to be heard in a public hearing scheduled and advertised in accordance with Sections 11-3-6 and 11-3-6.1, except that notice shall be provided only to property owners, purchasers of record and residents on and adjacent to the subject site of this ordinance except that mailed notice shall be provided to the applicant and to each property owner, purchaser of record or resident within the land being considered and adjoining the parcel under consideration (including those properties across a street—or alley, canal or other right-of-way) advising them of the time and place of the hearing.

Section 11-06-11.04 Action by the Commission Required Findings
The Commission must A variance request may be approved, approved conditionally, or denied, or modify the variance request. In acting upon such granting a variance, the Commission or
find the following are true: To approve, it must be found:

A. That the granting of the variance will not be in conflict with the spirit and intent of the Comprehensive General Plan for the City, and will not effect a change in zoning;

B. That there is either a hardship associated with the property itself or an exceptional circumstance relating to the intended use of the property which is not generally applicable to property or permitted uses in the district; and that,

C. 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 thereof of such other property or improvement.

Section 11-06-11.05 Variance with Conditional Use
The Commission or Hearing Examiner may grant a variance as part of a conditional use application permit without requiring a separate application and hearing as long as the notice requirements of Section 11-6-11.3 are met and the findings in Section 11-6-11.4 above are made.

Section 11-06-11.06 Effective Date
Approval of any variance by the Commission shall become final after a lapse of ten (10) calendar days from the date of the decision to allow for the filing of appeals in accordance with Section 11-3-7.2.

Section 11-06-11.07 Waiver of Appeal Period
The applicant may request a waiver of the ten (10) day appeal period for an approved variance. Such request must be filed in writing and shall be accompanied by the signatures of all adjacent property owners indicating they do not object to the waiver request. The Planning Director shall review all pertinent information and issue a decision on the request within two (2) working days from the date upon which the request was filed. The Planning Director cannot waive the appeal period for any application to which a written or verbal protest was submitted. Upon request, the Director may waive the ten day appeal period if the waiver will not be detrimental to the public interest and if signed approval from owners of adjacent properties is received.

Section 11-06-11.08 Application, Resubmitting
No application for a variance which has been denied by the Commission (or by the Council on appeal) shall be resubmitted in either the same or substantially the same form in less than one (1) year from the date of final action.

Section 11-06-11.09 Term of Variance
The term of a variance approval shall not exceed 24 months. Work must begin within this period the holder of a variance must initiate construction of the project.

Section 11-06-11.10 Extension of a Variance
The holder of a valid variance approval may submit a written request for a
Upon application, the original review body may grant up to three two one two-year extensions of the variance approval for consideration by the Commission. A maximum of three such extensions may be granted.

Section 11-06-11.140 Appeal of Variance Decisions
The decisions of the Planning and Zoning Commission on non-administrative variance requests may be appealed to the Boise City Council in accordance with Section 11-3-7.2. of this ordinance. A letter explaining the basis of the appeal form and a fee as established in the current fee schedule must be submitted to the Planning Staff within the ten (10) days appeal period of the decision.

Section 11-06-11.121 Denial of a Variance Permit or Approval of a Variance with Conditions Unacceptable to the Landowner Subject to Takings Analysis
Denial of a variance permit or approval of a variance with conditions unacceptable to the landowner may be subject to the regulatory taking analysis and procedures provided for in Section 11-08-13 of this ordinance.

11-06-12 ADMINISTRATIVE VARIANCES

11-06-12.01 Zoning Administrator Authority
The Zoning Administrator may grant variances to the standards of this title where it can be shown that strict application of this ordinance creates an undue hardship or where there is an exceptional circumstance related to the intended use of the property and where there is no opposition. Conditions may be attached to the granting of a variance to prevent adverse impact to surrounding properties.

11-06-12.02 Scope of Administrative Variances
Requests for relief from the following may be considered under the administrative variance process:
A. Fence and wall height.
B. Sign variances as defined in 11-06-10.
C. Any variance in a residential zone that is not associated with a project requiring conditional use approval.
D. Dimensional standards in non-residential zones, including setbacks, that vary no more than 35% from the zone standard.

11-06-12.03 Application
Applications must include the following:
A. A completed variance application form and supporting information.
B. The appropriate fee.
C. A written document bearing the signatures and addresses of all owners and residents of adjacent properties (including across streets or alleys) indicating no objections to the variance.

11-06-12.04. Opportunity to be Heard
The Zoning Administrator shall cause a notice to be sent to adjacent owners and residents and the neighborhood association inviting comments on the request within ten calendar days. If
application. If no adverse comments are received, the Zoning Administrator shall decide the issue within 21 days of acceptance of the application.

11-06-12.05 APPEALS

Appeals shall be heard by the Commission in accordance with 11-06-13.

Section 11-06-123 APPEALS OF ADMINISTRATIVE DECISIONS

Section 11-06-123.01 General
The Planning and Zoning Commission shall hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by the Planning Director or Zoning Administrator in the interpretation or enforcement of this Ordinance. In exercising the above powers, the Commission may, in conformity with the provisions of this Ordinance, reverse, affirm, wholly or partly, or may modify the order, decision or determination appealed from and may make such order, decision or determination as it considers warranted by the evidence before it and to that end shall have all the powers of the officer from whom the appeal is taken.

Section 11-06-123.02 Initiation of Application Filing an Appeal
Any person aggrieved by any decision of the Planning Director may file an appeal. Such appeal shall be made within ten (10) calendar days from such decision. If the tenth day falls on a weekend or holiday the appeal may be filed on the next work day by 5:00 p.m. Appeals of any decision or determination by the Planning Director or Zoning Administrator shall be submitted to the Planning Division with the appropriate form and fee within 10 days of the decision or determination.

Section 11-06-123.03 Application and Fee
Every person wanting to appeal an administrative decision shall file a notice of appeal stating the grounds for the appeal and fee with the Planning Director in accordance with current fee schedules.

Section 11-06-123.043 Action by the Planning Director
The Planning Director shall review all appeal applications for compliance with the requirements of Section 11-6-12. Upon acceptance of application for appeal, the Planning Director shall transmit to the Commission the record of the subject hearing. The filing of an appeal stays further action (subdivision, design review, conditional use, etc.) on associated zoning applications the request which has been appealed, unless the Planning Director determines that a stay would cause imminent peril to life or property undue harm to any involved party. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Commission upon application or notice to the Planning Director and upon notice to the chairman of the Commission or by a Court of Record.

Section 11-06-123.054 Hearings, Publications and Notice
The Commission shall hear the appeal at the public hearing following the cut-off date prior to which the appeal was submitted. Notice for the public hearing shall be as set forth in Section 11-3-6 of this Ordinance. Hearings shall be scheduled and conducted in accordance with Section 11-03-07.

Section 11-06-12.06 Action by the Commission
The Commission shall thereafter, upon due cause being shown, confirm wholly or partly, modify or reverse the decision from which appeal is made, and, not later than ten (10) days after the conclusion of such hearing, shall file with the City Clerk a written report stating the action taken at such hearing.

Section 4. That a Summary of this Ordinance, attached hereto as Exhibit “A,” be approved as to form and content.

Section 5. That this Ordinance shall be in full force and effect from and after its passage, approval, and publication.

PASSED by the Council of the City of Boise, Idaho, this _______ day of ____________. 2011

APPROVED by the Mayor of the City of Boise, Idaho this _______ day of ____________, 2011

APPROVED: ATTEST:

_____________________________ ______________________________
David H. Bieter CITY CLERK
MAYOR
EXHIBIT “A”

STATEMENT OF BOISE CITY ATTORNEY
AS TO ADEQUACY OF SUMMARY
OF ORDINANCE NO. ________________

The undersigned, Mary E. Watson, in her capacity as Assistant City Attorney of the City of Boise City, Idaho, hereby certifies that she is a legal advisor of the City and has reviewed a copy of the attached Summary of Ordinance No. ________________ of the City of Boise City, Idaho, and has found the same to be true and complete and provides adequate notice to the public pursuant to Idaho Code § 50-901A(3).

DATED this _____ day of March, 2011.

______________________________
MARY E. WATSON
Assistant Boise City Attorney

SUMMARY OF ORDINANCE NO. ________________
OF THE CITY OF BOISE CITY, IDAHO

PUBLIC NOTICE IS HEREBY GIVEN that the City of Boise City, Idaho, adopted at its regular meeting of the ___, day of _______________, 2011, that Ordinance No. ________________ entitled:

AN ORDINANCE (ZOA10-00009 / BOISE CITY) AMENDING TITLE 11, CHAPTERS 3, 5, AND 6 TO MAKE TYPOGRAPHICAL AND GRAMMATICAL CHANGES; AMENDING SECTION 11-05-14.C.2 TO DELETE AN INCONSISTENT REFERENCE TO SIGN CODE VARIANCES; AMENDING SECTION 11-06-10 BY DELETING THE REQUIREMENT THAT THE PLANNING AND ZONING COMMISSION REVIEW ALL SIGN VARIANCES AND BY DELETING CERTAIN REQUIRED FINDINGS FOR SIGN VARIANCES; AMENDING SECTION 11-06-11 BY ADDING THE HEARING EXAMINER AS AN AUTHORITY TO REVIEW NON-ADMINISTRATIVE VARIANCES, BY ELIMINATING THE COMMISSION AND HEARING EXAMINER’S ABILITY TO MODIFY A VARIANCE REQUEST, BY ELIMINATING A DEADLINE FOR ACTION BY THE PLANNING DIRECTOR, BY DELETING SECTION 11-06-11.08 IN ITS ENTIRETY AND RENUMBERING THE REMAINING SUBSECTIONS SEQUENTIALLY, AND BY EXTENDING THE VARIANCE APPROVAL TERM AND EXTENSION TERMS; ESTABLISHING A NEW SECTION 11-06-12 FOR ADMINISTRATIVE VARIANCES INCLUDING PROVIDING AUTHORITY TO THE ZONING ADMINISTRATOR TO GRANT VARIANCES UNDER SPECIFIED CIRCUMSTANCES AND ESTABLISHING AN APPLICATION AND HEARING
The ordinance amends various provisions of Boise City Code Title 11, Chapters 3, 5, and 6 by making typographic and grammatical changes meant to improve clarity and readability. Additionally, the ordinance amends Boise City Code Title 11, Chapter 5, Section 14 (“Design Review, Administrative”) to delete a reference to sign code variances as inconsistent due to the existence of Section 11-06-10. The ordinance goes on to amend Section 11-6-10 by deleting the requirement that the Planning and Zoning Commission review all sign variances; and by eliminating certain details of the required findings for sign variances dealing with location, special privilege, hardship, precedence, materiality, and injuriousness. Section 11-06-11 for handling regular (non-administrative) variances to the zoning ordinance is amended by listing the Hearing Examiner as an authority for public review of non-administrative variances; by eliminating the ability of the Commission and Hearing Examiner to modify a variance request; by eliminating the requirement that the Planning Director act on waivers to the variance appeal period within two (2) working days; by deleting Section 11-06-11.08 (“Application, Resubmitting”) in its entirety and renumbering the remaining subsections sequentially; and by extending the term of a variance approval from 18 to 24 months and allowing for two (2) two-year extensions of a variance approval. A new Section 11-06-12 is established for Administrative Variances which requires that the subsequent section of the chapter (“Appeals of Administrative Decisions) be renumbered Section 11-06-13. Section 11-06-12 provides authority to the Zoning Administrator to grant variances under certain circumstances (fence and wall height variances; sign variances; variances in residential zones when there is no associated conditional use approval; and non-residential variances to dimensional standards varying no more than 35% from the standard) when there is no public opposition to the variance request and when it can be shown that there is either undue hardship with strict application of Title 11 standards or exceptional circumstances related to the intended use of the subject property. Furthermore, this new Section 11-06-12 establishes the requirements of an administrative variance application; provides a ten day deadline for public opposition; allows the Zoning Administrator to decide the variance request within 21 days if there is no public opposition; and establishes that appeals are handled by the Planning and Zoning Commission in accordance with Section 11-06-13.

The effective date of the Ordinance is the date of its passage, approval and publication. A copy of the full text of the Ordinance is available at the City Clerk’s office, 150 North Capitol Boulevard, in Boise, Idaho 83701. Examination may be requested in writing or in person during regular business hours of the City Clerk’s office, from 8:00 a.m. until 5:00 p.m. pursuant to Section 50-901A(4), Idaho Code.
DATED this _____ day of_________________, 2011.

City of Boise City, Idaho

ATTEST:

______________________________
David H. Bieter
MAYOR

______________________________
CITY CLERK