



Mayor Robert E. Simison

City Council Members:

Treg Bernt
Joe Borton
Luke Cavener

Brad Hoaglund
Jessica Perreault
Liz Strader

MEMORANDUM

DATE: October 11, 2022

FROM: Emily Kane, Deputy City Attorney

RE: Recommended updates to Meridian City Code (Phase 1)

The City of Meridian's 2021–2025 Strategic Plan includes this goal: "Empower employees to innovate operations, update ordinances and simplify processes in order to improve effectiveness and provide premier services to our citizens." One of the enumerated strategies supporting this goal is to "perform a complete review of all ordinances, codes and policies in the City of Meridian to assess their value and relevance to the community."

The City Attorney's Office has prepared a two-phase plan to implement this strategy. In Phase 1, we propose to delete or amend provisions of City Code that are of no current value or relevance because they are outdated, superfluous, redundant, in conflict with subsequently adopted laws, or present urgent vulnerabilities or complications for City operations or services provided to the community. In Phase 2, our office will propose a more comprehensive overhaul and restructuring of the City Code with the goals of improving clarity, consistency, effectiveness, and navigational utility.

The Phase 1 proposed deletions and amendments are described below, both in summary form, and then with the long form of the code text that we propose be deleted or amended.

SUMMARY OF PROPOSED UPDATES:

	Code Section	Code Subject	Recommended Action	Reasoning
1	1-1-3	Repeal of general ordinances passed prior to adoption of City Code	Reference overall savings clause.	Reference to one general severability clause will allow deletion of the several savings clauses throughout the code.
2	1-2-2(A)	Penalty provisions	Remove provision that says 1-2-2 default penalty applies to every section.	Conflicts with section 1-2-1(A).

3	1-2-2(B)	One recovery for same offense	Delete.	Unnecessary limitation; prohibits charging someone for repeat offense.
4	1-5-1	Corporate seal	Delete references to printing seal on all official documents, records, warrants.	Seal does not go on all documents and records unless certified. The Clerk does not process/handle warrants.
5	1-6-4(A)(3)	Designated positions in the Mayor's office	Update language.	"Community Relations Specialist" is now designated as "Community Relations and Policy Advisor."
6	1-7-10	Procedure for request for reconsideration	Update language.	Updates for clarity as to: - When administrative remedies are exhausted following reconsideration - Modified decisions should also end in request for reconsideration + written decision on request for reconsideration in order to avoid confusion regarding when 28-day countdown for judicial review begins.
7	3-4-1	Definitions (of temporary uses)	Delete definitions of subdivision model homes and subdivision real estate sales offices.	These definitions will not be needed due to the elimination of the provisions requiring temporary use permits for subdivision model homes and subdivision real estate sales offices.
8	3-4-6(F)	Temporary uses – standards for promotional sales units	Re-insert inadvertently deleted time limit for promotional sales units.	Correcting a clerical oversight. This provision was in the original ordinance but is now missing from the code. All other types of temporary sales units have time limits.
9	3-4-9	Temporary uses – standards for subdivision model homes	Delete.	The Building Division, Title 10, and the International Building Code adequately cover public safety issues related to model homes. This section has become redundant and thus obsolete.
10	3-4-10	Temporary uses – standards for real estate sales offices	Delete.	The Building Division, Title 10, and the International Building Code adequately cover public safety issues related to real estate sales offices. This section has become redundant and thus obsolete.
11	Title 3, Chapter 10	Adult entertainment	Delete chapter.	Covered by the UDC – the Clerk's Office does not and cannot issue licenses for this use as the language envisions. UDC section 11-4-3-16 contains specific use standards for adult entertainment establishments.

				UDC section 11-1A-1 previously incorporated this definition by reference (“ <i>Entertainment, adult</i> . Adult entertainment shall be as defined in title 3, chapter 10 of this code...”), but the UDC definition has now been updated to incorporate this text.
12	3-11-2, 3-11-3, and 3-11-5	Requiring permit from the Clerk’s Office for mobile home parks.	Delete provisions.	The Clerk’s Office does not and should not issue permits for mobile home parks. UDC and LLUPA control land use approvals and processes.
13	4-2-5	Interfering with city employee or official’s entry onto private or public property to enforce City Code.	Delete section.	Conflicts with Fourth Amendment of U.S. Constitution.
14	5-3-9(A)	City employee authorized to grant exemption from IDEQ burning restrictions	Change authorized party from Clerk to Fire Chief or designee.	Fire Department is subject matter expert, not Clerk.
15	5-3-10	Severability clause	Delete section.	General severability clause in section 1-1-5; we don’t need this one.
16	6-2-9	Severability clause	Delete section.	General severability clause in section 1-1-5; we don’t need this one.
17	6-4-1	Curfew	Add language to (B) clarifying that First Amendment Activity is not restricted; delete language classifying offender as “juvenile delinquent”; delete penalty for parent; clarify that penalties are set by Idaho Code.	Necessary to comply with <i>Nunez v. City of San Diego</i> , 114 F.3d 935 (9 th Cir. 1997). City penalties for curfew violations are now preempted. Per Idaho Code section 20-549, violation of city curfew is an infraction with a \$150 fine.

18	6-4-2	Minor possession and smoking of cigarettes	Delete section.	Covered by Idaho Code section 39-5703, which has a graduated penalty for purchase and possession of tobacco by a minor. Per Idaho Code section 39-5713, local ordinances regarding tobacco sales are prohibited.
19	7-1-6(A)	Speeding in parks and alleys	Delete provision regarding speeding in parks; delete definition of alley.	Park speed limit is covered by Meridian City Code section 13-2-6(Q)(3); definition of alley is covered by/conflicts with Idaho Code section 49-102(10).
20	7-1-8(A)	U-turns	Delete provisions redundant to state code; add restriction on U-turns that impede traffic.	Covered by Idaho Code sections 49-645 and 49-801.
21	7-1-12	Negligent driving	Delete provisions redundant to state code regarding drag racing.	Covered by Idaho Code section 49-1424(1).
22	8-1-7	Severability clause	Delete section.	General severability clause in section 1-1-5; we don't need this one.
23	8-2-12	City Council duty to act	Delete severability clause	General severability clause in section 1-1-5; we don't need this one.
24	9-1-19(E)	EPA water testing charge incorporated into rates	Delete provision.	Public Works is OK with deletion. We do charge this (and other mandatory regulatory fees) but the amount is outdated and there is no reason to call out this particular regulatory fee since it is one of several others included in water rates.
25	9-1-23	Council has authority to amend water regulations and rates	Delete section.	Covered by authority in Title 50; provision regarding retroactive application of changed water rates is unnecessary and may cause unintended limitations.

CODE PROVISIONS WITH PROPOSED CHANGES:

I

1-1-3. - Repeal of general ordinances.

All general ordinances of the City passed prior to the adoption of this Code are hereby repealed, except such as are included in this Code or are by necessary implication herein reserved from repeal (subject to the saving clauses contained in section 1-1-5 ~~the following sections~~), and excluding the following ordinances which are not hereby repealed: Tax levy ordinances; appropriation ordinances; ordinances relating to boundaries and annexations; franchise ordinances and other ordinances granting special rights to persons or corporations; contract ordinances and ordinances authorizing the execution of a contract or the issuance of warrants; salary ordinances; ordinances establishing, naming or vacating streets, alleys or other public places; improvement ordinances; bond ordinances; ordinances relating to elections;

Commented [EK1]: General severability clause in section 1-1-5; we don't need one in every section.

ordinances relating to the transfer or acceptance of real estate by or from the City; and all special ordinances.

2 & 3

1-2-2. - Application of provisions.

A. *Application of penalty provisions.* 1. ~~The penalty provided in this chapter shall be applicable to every section of this Code the same as though it were a part of each and every separate section. Any person convicted of a violation of any section of this Code where any duty is prescribed or obligation imposed or where any action which is of a continuing nature is forbidden or is declared to be unlawful shall be deemed guilty of a misdemeanor unless otherwise provided. A separate offense shall be deemed committed upon each day such duty or obligation remains unperformed or such act continues unless otherwise specifically provided in this Code.~~

Commented [EK2]: Covered in/conflicts with 1-2-1(A).

~~B. 2. *Acts or omissions mandated by Code.* Whenever the doing of any act or the omission to do any act constitutes a breach of any section or provision of this Code, and there shall be no fine or penalty specifically declared for such breach, the provisions of this chapter shall apply.~~

~~B. *One recovery for same offense.* In all cases where the same offense is made punishable or is created by different clauses or sections of this Code, the prosecuting officer may elect under which to proceed, but not more than one (1) recovery shall be had against the same person for the same offense; provided, that the revocation of a license or permit shall not be considered a recovery or penalty so as to bar any other penalty being enforced.~~

Commented [EK3]: Unnecessary limitation; arguably prohibits charging someone with repeat offense if previously penalized for violation.

4

1-5-1. - Corporate seal.

* * *

C. *City Clerk custodian of seal.* The City Clerk shall be the custodian of the corporate seal of the city and shall affix said seal's imprint upon all ~~official documents, records, ordinances, resolutions, proclamations, licenses, and warrants~~ and certified copies of records.

Commented [EK4]: Unclear what is meant by "official documents, records." Seal does not go on all documents and records unless certified.

Commented [EK5]: The Clerk does not process/handle warrants.

5

1-6-4. - Designated positions in the Mayor's office.

A. *Designated positions in the Mayor's office.* The following designated positions in the Mayor's office shall have job descriptions that are approved by Human Resources:

1. Chief of Staff;
2. Executive Assistant to the Mayor;
3. ~~Community Relations Specialist and Policy Advisor;~~ and
4. Programs and Events Specialist.

Commented [EK6]: Updated with correct title.

6

1-7-10. - Procedure for request for reconsideration.

~~A. Pursuant to Idaho Code section 67-6535(2)(b) (Local Land Use Planning Act), the following procedure, regarding a request for reconsideration of a City Council land use decision, the following procedure must be strictly followed:~~

~~1. A. After final approval of the City Council approves its findings of facts, conclusions of law, decision, and order, any the applicant or an affected person, as defined by Idaho Code the Local Land Use Planning Act (Idaho Code sections 67-6501 et seq., may request reconsideration of the final decision of the City Council, in accordance with the provisions of this section.~~

Commented [EK7]: Updates for clarity, particularly as to when administrative remedies are exhausted. Modified decisions should also end in request for reconsideration and written decision on request for reconsideration in order to avoid confusion regarding when 28-day countdown for judicial review begins.

~~2. B.~~ Such request must be in writing and filed by personal service to the City Clerk within fourteen (14) days of the final ~~approval~~ decision. Failure to timely or personally serve the City Clerk shall ~~be deemed a failure to request reconsideration~~ be a valid basis for summary denial of the request without consideration by City Council. The party filing the request for reconsideration shall provide a copy of the request to the City Community Development Department and ~~the~~ the City Attorney's Office.

~~3. C.~~ The request must identify specific deficiencies in the ~~decision~~ matter for which reconsideration is sought.

~~4. D.~~ If the request is timely and properly filed; by the applicant or an affected person, and ~~meets the requirement of identifying~~ identifies specific deficiencies in the ~~land use decision~~, the City Clerk shall schedule the ~~request to be considered~~ reconsideration at a regularly scheduled meeting of the City Council.

~~5. E.~~ The City Clerk shall provide to the party filing the request for reconsideration, and to the applicant, notice of the date, time, and place of the meeting at which City Council will consider the request.

~~6. F.~~ In considering the request for reconsideration, City Council shall ~~take no~~ not receive or consider new evidence or testimony, but shall confine its decision to the record ~~as it relates to the written request supporting the final decision~~.

~~G.~~ Following ~~consideration of the request~~ reconsideration, the Council ~~may~~ shall affirm, reverse, or modify its decision, or ~~Council may~~ direct a new public hearing on the ~~decision~~ matter.

1. If City Council reverses or modifies its decision, Council shall enter new findings of facts, conclusions of law, decision, and order regarding the reversed or modified decision. In this event, exhaustion of administrative remedies for the purpose of judicial review shall include City Council's reconsideration of the new, final decision.

2. If City Council holds a new public hearing on the matter, Council shall enter new findings of facts, conclusions of law, decision, and order following such hearing. In this event, exhaustion of administrative remedies for the purpose of judicial review shall include seeking City Council's reconsideration of the new, final decision.

~~7. H.~~ Within sixty (60) days of the City Clerk's receipt of the request for reconsideration, the City Attorney shall prepare, and the City Clerk shall provide to the party requesting reconsideration, a written decision on the request for reconsideration.

7

3-4-1. - Definitions

Subdivision model home means a dwelling which serves as an exhibit or example of dwellings constructed or to be constructed within the subdivision in which such model home is located. Where a dwelling is both a subdivision model home and a subdivision real estate sales office, this definition shall apply.

Subdivision real estate sales office means a structure from which lots and/or dwellings are sold, rented, or offered for sale or rent, where such structure is located in the subdivision containing such real estate. Where a structure is both a subdivision model home and a subdivision real estate sales office, the definition of "subdivision model home" shall apply.

8

3-4-6. - Temporary uses—Standards for promotional sales units.

Commented [EK8]: DELETE - These definitions will not be needed due to the elimination of the provisions requiring temporary use permits for subdivision model homes and subdivision real estate sales offices.

* * *

~~F.~~ **Time period.** Promotional sales units shall be limited to a period of time not to exceed one hundred sixty (160) days, whether such days are consecutive or not, per property, per calendar year. The location of a promotional sales unit on a site for any portion of a day, whether or not the permanent proprietor is open for business, shall constitute one (1) day for purposes of this subsection.

Commented [EK9]: Correcting a clerical oversight. This provision was in the original ordinance but is now missing from the code. All other types of temporary sales units have time limits; it is unknown when the deletion occurred, but it was inadvertent.

~~F-G.~~ **Penalty.** A violation of this section shall be an infraction punishable by a penalty of one hundred dollars (\$100.00). In addition to such penalty, any person violating, allowing, or causing any provision of this section shall be subject to any and all other applicable administrative, criminal, and/or civil penalties. Each day upon which a violation of this section occurs and/or continues may be deemed a separate and distinct violation.

~~G- H.~~ **Enforcement.** Peace officers and/or Code Enforcement Officers shall be empowered to enforce the provisions of this section. An officer may call upon the services of the planning, fire, parks and recreation or other appropriate city departments to assist in the enforcement of the provisions of this section. An officer may investigate any use or activity which he or she reasonably believes violates the provisions of this section. If an officer reasonably believes that a provision of this section has been violated, the officer may issue a citation to the person responsible for the violation or upon the owner or lawful possessor of the real property at or upon which the violation occurred. Such citation shall be served in accordance with the provisions of the Idaho Infraction Rules, which are incorporated herein by this reference.

9

3-4-9. - Temporary uses—Standards for subdivision model homes.

In addition to the standards for all temporary uses as set forth above, the following standards for time, place, and manner of operation or occurrence of subdivision model homes shall also apply:

Commented [EK10]: DELETE - The Building Division, Title 10, and the International Building Code adequately cover public safety issues related to model homes. This section has become redundant and thus obsolete.

A. Purpose of structure. Where a structure is both a subdivision model home and a subdivision real estate sales office, such structure shall be subject to the standards for a subdivision model home.

B. Location. A subdivision model home shall be located at or upon a lot or lots within the subdivision containing the lots and/or dwellings of which such subdivision model home serves as an exhibit or example. It shall be unlawful to operate or cause the operation of a subdivision model home at or upon a lot or lots which is/are not within the subdivision containing the lots and/or dwellings of which such subdivision model home serves as an exhibit or example.

C. Suitable for sale. A subdivision model home shall be located only within a structure that is suitable for sale and/or use as a residential dwelling unit. It shall be unlawful to operate or cause the operation of a subdivision model home within a structure that is not suitable for sale and/or use as a residential dwelling unit. While such residential dwelling unit is temporarily used as the subdivision model home, such unit shall obtain any and all permits required by title 10 of this Code. It shall be unlawful to operate or cause the operation of a subdivision model home without any and all permits required by title 10 of this Code.

D. Principal use. The principal use of the subdivision model home shall be as an exhibit or example of lots and/or dwellings within the subdivision or planned unit development in which the subdivision model home is located. It shall be unlawful for any person to use or allow the use of a subdivision model home as a financial institution of any sort, including as an appraisal, loan, or closing office.

E. Operation. A subdivision model home may be operated only until either there are no newly constructed lots or dwellings for sale or rent within the subdivision in which the subdivision model home is located or three hundred sixty-five (365) days following the date of issuance of the temporary use permit, whichever occurs first. It shall be unlawful to operate or cause the operation of a

subdivision model home either where no lots or newly constructed dwellings are for sale or rent within the subdivision in which the subdivision model home is located or after three hundred sixty-five (365) days following the date of issuance of the temporary use permit, whichever occurs first.

F. *Signs.* The following provisions shall apply to any and all temporary signs related to a subdivision model home:

1. No more than one (1) temporary sign per one (1) subdivision model home shall be installed, erected, posted, or displayed for the purpose of identifying, promoting, advertising, or directing patrons to such subdivision model home. It shall be unlawful for any person to install, erect, post, or display or to allow or cause the installation, erection, posting, or display of more than one (1) temporary sign per one (1) subdivision model home identifying, promoting, advertising, or directing patrons to such subdivision model home.
2. The area of any temporary sign installed, erected, posted, or displayed for the purpose of identifying, promoting, advertising, or directing patrons to a subdivision model home shall not exceed sixteen (16) square feet. It shall be unlawful for any person to install, erect, post, or display or to allow or cause the installation, erection, posting, or display of a temporary sign identifying, promoting, advertising, or directing patrons to a subdivision model home where the area of such temporary sign exceeds sixteen (16) square feet.
3. It shall be unlawful for any person to install, erect, post, or display or to allow or cause the installation, erection, posting, or display of any temporary sign identifying, promoting, advertising, or directing patrons to a subdivision model home upon any property other than that property upon which the subdivision model home is located.
4. Any and all temporary signs identifying, promoting, advertising, or directing patrons to a subdivision model home shall be removed within twenty-four (24) hours of the conclusion of such temporary use.

G. *Penalty.* A violation of this section shall be an infraction punishable by a penalty of one hundred dollars (\$100.00). In addition to such penalty, any person violating, allowing, or causing any provision of this section shall be subject to any and all other applicable administrative, criminal, and/or civil penalties. Each day upon which a violation of this section occurs and/or continues may be deemed a separate and distinct violation.

H. *Enforcement.* Peace officers and/or Code Enforcement Officers shall be empowered to enforce the provisions of this section. An officer may call upon the services of the planning, fire, parks and recreation or other appropriate city departments to assist in the enforcement of the provisions of this section. An officer may investigate any use or activity which he or she reasonably believes violates the provisions of this section. If an officer reasonably believes that a provision of this section has been violated, the officer may issue a citation to the person responsible for the violation or upon the owner or lawful possessor of the real property at or upon which the violation occurred. Such citation shall be served in accordance with the provisions of the Idaho Infraction Rules, which are incorporated herein by this reference.

10

3-4-10. - Temporary uses—Standards for subdivision real estate sales offices.

In addition to the standards for all temporary uses as set forth above, the following standards for time, place, and manner of operation or occurrence of subdivision real estate sales offices shall also apply:

A. *Purpose of structure.* Where a structure is both a subdivision model home and a subdivision real estate sales office, such structure shall be subject to the standards for a subdivision model home.

Commented [EK11]: DELETE - The Building Division, Title 10, and the International Building Code adequately cover public safety issues related to real estate sales offices. This section has become redundant and thus obsolete.

B. *Licenses, permits, and certificates.* The operation of a subdivision real estate sales office without the following valid and current licenses, permits, and/or certifications shall be unlawful:

1. A City of Meridian temporary use permit.
2. Any and all licenses, permits, and/or certifications required by title 10 of this Code.

C. *Location.* A subdivision real estate sales office shall be located at or upon a lot or lots within the subdivision containing the lots and/or dwellings being sold from such subdivision real estate sales office. It shall be unlawful to operate or cause the operation of a subdivision real estate sales office at or upon a lot or lots which is/are not within the subdivision containing the lots and/or dwellings being sold from such subdivision real estate sales office.

D. *Principal use.* The principal use of the subdivision real estate sales office shall be the sale of lots and/or dwellings within the subdivision or planned unit development in which the subdivision real estate sales office is located. It shall be unlawful for any person to use or allow the use of a subdivision real estate sales office as a financial institution of any sort, including as an appraisal, loan, or closing office.

E. *Operation.* A subdivision real estate sales office may remain only until either there are no newly constructed lots or dwellings for sale or rent within the subdivision in which the subdivision real estate sales office is located or three hundred sixty-five (365) days following the date of issuance of the temporary use permit, whichever occurs first. It shall be unlawful to operate or cause the operation of a subdivision real estate sales office either where no lots or newly constructed dwellings are for sale or rent or after three hundred sixty-five (365) days following the date of issuance of the temporary use permit, whichever occurs first unless such subdivision real estate sales office is converted to a dwelling in accordance with all applicable provisions of law, including titles 10 and 11 of this Code.

F. *Permits.* A subdivision real estate sales office shall obtain any and all permits required by title 10 of this Code. It shall be unlawful to operate or cause the operation of a subdivision real estate sales office without any and all permits required by title 10 of this Code.

G. *Signs.* The following provisions shall apply to any and all temporary signs related to a subdivision real estate sales office:

1. No more than one (1) temporary sign per one (1) subdivision real estate sales office shall be installed, erected, posted, or displayed for the purpose of identifying, promoting, advertising, or directing patrons to such subdivision real estate sales office. It shall be unlawful for any person to install, erect, post, or display or to allow or cause the installation, erection, posting, or display of more than one (1) temporary sign per one (1) subdivision real estate sales office identifying, promoting, advertising, or directing patrons to such subdivision real estate sales office.
2. The area of any temporary sign installed, erected, posted, or displayed for the purpose of identifying, promoting, advertising, or directing patrons to a subdivision real estate sales office shall not exceed sixteen (16) square feet. It shall be unlawful for any person to install, erect, post, or display or to allow or cause the installation, erection, posting, or display of a temporary sign identifying, promoting, advertising, or directing patrons to a subdivision real estate sales office where the area of such temporary sign exceeds sixteen (16) square feet.
3. It shall be unlawful for any person to install, erect, post, or display or to allow or cause the installation, erection, posting, or display of any temporary sign identifying, promoting, advertising, or directing patrons to a subdivision real estate sales office upon any property other than that property upon which the subdivision real estate sales office is located.
4. Any and all temporary signs identifying, promoting, advertising, or directing patrons to a subdivision real estate sales office shall be removed within twenty-four (24) hours of the conclusion of such temporary use.

H. *Penalty.* A violation of this section shall be an infraction punishable by a penalty of one hundred dollars (\$100.00). In addition to such penalty, any person violating, allowing, or causing any provision of this section shall be subject to any and all other applicable administrative, criminal, and/or civil penalties. Each day upon which a violation of this section occurs and/or continues may be deemed a separate and distinct violation.

I. *Enforcement.* Peace officers and/or Code Enforcement Officers shall be empowered to enforce the provisions of this section. An officer may call upon the services of the planning, fire, parks and recreation or other appropriate city departments to assist in the enforcement of the provisions of this section. An officer may investigate any use or activity which he or she reasonably believes violates the provisions of this section. If an officer reasonably believes that a provision of this section has been violated, the officer may issue a citation to the person responsible for the violation or upon the owner or lawful possessor of the real property at or upon which the violation occurred. Such citation shall be served in accordance with the provisions of the Idaho Infraction Rules, which are incorporated herein by this reference.

II

CHAPTER 10. - ADULT ENTERTAINMENT

3-10-1. - Definitions.

The following definitions are applicable to this chapter:

Adult arcade machines means machines which are used by an individual to view films, videos, or segments of films, which distinguish, characterize, or emphasize matters depicting, describing or relating to activities of a sexual nature for the purposes of adult entertainment.

Adult business means an adult store, adult theater, adult entertainment establishment or adult business which also includes any business that operates adult arcade machines on its premises.

Adult entertainment establishment means any place of business, or commercial establishment, wherein the entertainment or activity therein consists of substantially nude persons dancing with or without music or engaged in movements of a sexual nature wherein the patron is directly or indirectly charged a fee or required to make a purchase in order to view the entertainment or activity which consists of persons exhibiting or modeling lingerie, bikinis or similarly styled garments, or where the patron, directly or indirectly, is charged a fee to engage in personal contact by employees, devices or equipment, or by personnel provided by the establishment.

A. An establishment which has semi-nude dancing or strip tease performances, whether these occur regularly or occasionally.

B. "Adult dancing" includes, but is not limited to: erotic, exotic, striptease, bikini or lingerie and shall mean and relate to any performance, preview, play, show, skit, film, dance or other exhibition performed before an audience depicting, describing or relating to activities of a sexual nature for the purposes of adult entertainment.

C. "Substantially nude" as used in this section shall mean dressed in a manner so as not to display any portion of the female breast below the top of the areola, or displaying any portion of any person's pubic hair, anus, cleft of the buttocks, vulva or genitals. This definition of "adult entertainment establishments" is to include, but not be limited to, bathhouses, massage parlors, lingerie, modeling studios, or related or similar activities.

D. Establishments which have as their sole purpose the improvement of health and physical fitness through special equipment and facilities, rather than entertainment, as herein above described, are specifically excluded.

Adult store means:

Commented [EK12]: DELETE - Covered by the UDC – the Clerk's Office does not and cannot issue licenses for this use as the language envisions. UDC section 11-4-3-16 contains specific use standards for adult entertainment establishments. UDC section 11-1A-1 previously incorporated this definition by reference ("Entertainment, adult. Adult entertainment shall be as defined in title 3, chapter 10 of this code..."), but the UDC definition has now been updated to incorporate this text.

- A. An establishment having as a substantial or significant portion of its stock or trade, books, magazines or films which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to adult entertainment;
- B. An establishment with a segment or section devoted to the sale or display of such material; or
- C. An establishment which sells or displays for sale devices designed to stimulate sexual arousal by contact with the skin or bodily orifices.

Adult theater means an establishment, either enclosed or in the open air, used for presenting to an audience through film or live performance material distinguished or characterized by emphasis on matter depicting, describing or relating to activities of a sexual nature for the purposes of adult entertainment.

Holding company means:

- A. Any corporation, firm, partnership, trust or other form of business organization not a natural person which, directly or indirectly:
 - 1. Owns;
 - 2. Has the power or right to control; or
 - 3. Holds with the power to vote, all or any part of the outstanding voting securities of a corporation which holds or applies for a license required by this chapter.
- B. For the purposes of this section, in addition to any other reasonable meaning of the words used, a holding company "indirectly" has, holds or owns any power, right or security mentioned in subsection (A) of this definition if it does so through any subsidiaries, however many such subsidiaries may intervene between the holding company and the corporate licensee or applicant.

Intermediary company means any corporation, firm, partnership, trust or other form of business organization other than a natural person which:

- A. Is a holding company with respect to a corporation which holds or applies for a license required by this chapter.
- B. Is a subsidiary with respect to any holding company.

Subsidiary means:

- A. Any corporation all or any part of whose outstanding equity securities are:
 - 1. Owned;
 - 2. Subject to a power or right of control; or
 - 3. Held with power to vote, by a holding company or intermediary company; or
- B. Any firm, partnership, trust or other form of business organization not a natural person, all or any interest in which is:
 - 1. Owned;
 - 2. Subject to a power or right of control; or
 - 3. Held with power to vote, by a holding company or intermediary company.

3-10-2. - Persons subject to license.

Whenever in this chapter a license is required for the maintenance, operation or conduct of any business or establishment, or for doing business or engaging in any activity or occupation, any person or corporation shall be subject to the requirement, if by himself or through an agent, employee or partner he holds himself out as being engaged in the business or occupation; or solicits patronage therefor, actively or passively; or performs or attempts to perform any part of such business or occupation in the city.

3-10-3. - Licensing focus.

This chapter is not designed to define, nor regulate, the sale, loan, distribution, dissemination, presentation or exhibition, of material or live conduct which is obscene. This chapter is designed to license establishments that provide adult entertainment or themes of a distinct sexual nature.

3-10-4. - License required; alcohol license prohibited.

A. *License required.* It shall be unlawful for any person to operate within the city limits any adult store, adult theater, adult arcade machine business, or adult entertainment establishment, without first obtaining an appropriately classified license to do so as set forth in section 3-10-5 of this chapter.

B. *Alcohol license prohibited.* No beer, wine or liquor license shall be issued to any adult theater, adult store, adult arcade business or adult entertainment establishment business as described above.

3-10-5. - License classifications.

Class A: Adult store which does not admit persons eighteen (18) years or younger.

Class B: Adult store which admits customers eighteen (18) years or younger to purchase publications or items not relating to specified sexual activities or specified anatomical areas but which has a portion of its premises devoted to the sale or display of such publications, films, or sexual devices.

Class C: Adult theater.

Class D: Adult arcade machines.

Class E: Any adult entertainment establishment which may also include the elements of Class A, C, and D but not Class B.

3-10-6. - Application for license.

An application for a license to operate one (1) of the establishments described in subsection 3-10-4.A of this Chapter shall be made to the City Clerk in such form and manner as prescribed by the City Council accompanied by the annual fee hereinafter prescribed, but the application shall contain at least the following:

A. The name and residence address of the applicant.

B. The name and address of each employee.

C. If applicant is a corporation, the names and resident addresses of each of the officers, directors and managers of said corporation and of each stockholder owning more than ten (10) percent of the stock of the corporation and the address of the corporation itself, if different from the address of the proposed establishment.

D. If applicant is a partnership, the names and addresses of each of the partners, including any limited partners and the address of the partnership itself, if different from the address proposed for the establishment.

E. Written proof that the applicant is over the age of eighteen (18) years.

F. The business, occupation, or employment of the applicant for the three (3) years immediately preceding the date of the application including the names, dates of, location and nature of same.

G. The number of adult arcade machines to be installed, if any, and the name, address and employer of the owner of said machines. If the owner is a corporation, the names and resident addresses of each of the officers, directors and managers of said corporation and of each stockholder owning more than ten (10) percent of the stock of the corporation and the address of the corporation itself, if different from the address of the proposed establishment(s).

H. The class of license applied for and a statement why the proposed establishment falls within the requested classification.

I. If the applicant is seeking a Class B adult store license, a description of the manner in which minors will be prevented from viewing publications, films of specified sexual activities or sexual anatomical areas.

J. If a Class A adult store license is being requested, a statement whether the applicant will display for sale or sell any device designed to be used to stimulate sexual arousal or arousal by contact with the human skin or bodily orifices.

K. A diagram of the floor plan and number of square feet and on-premises parking spaces.

L. If the applicant is seeking a Class C adult theater license, a statement whether the entertainment will be live or on film. If live, a statement as to the nature of the live entertainment, e.g., burlesque, dance, musical, drama, etc.

M. If a Class E adult entertainment license is sought, a statement of the type and nature of entertainment, whether Class A items are to be sold or offered for sale, and if adult arcade machines, including the number of, will be available for patronage.

N. The date on which the applicant intends to open for business.

O. The type and nature of activity desired to be licensed and whether the type of activity shall at any time require the total exclusion of minors from the premises.

P. A legal description of the real property on which the premises is to be located, the name and address of the record owner; the name and address of each lienholder; the name and address of each party to a valid and subsisting contract of sale, deed of trust or other agreement the subject of which is the aforesaid real property. If any of the persons sought to be identified by this section is a corporation, the names and resident addresses of the officers, directors and managers of said corporation and of each stockholder owning more than ten (10) percent of the stock of the corporation and the address of the corporation itself, if different from the address of the proposed establishment.

Q. If any of the information supplied pursuant to this section becomes outdated by virtue of changes in the operation of the business or otherwise needs to be supplemented, the licensee shall provide the City Clerk with the modified or supplemental data within ten (10) days of the change or addition being effective.

R. As to subsections (C), (G) and (P) of this section, if the owner or applicant corporation is an "intermediary company" as defined in section 3-10-1 of this chapter, the identity of each related "holding company" or "subsidiary" as those terms are defined in section 3-10-1 of this chapter. In providing the identity of each such corporation, the applicant shall furnish the names and addresses of each of the officers, directors and managers and of each stockholder owning more than ten (10) percent of the stock of the corporation, and the address of the corporation.

3-10-7. - Control by City Clerk.

The City Clerk shall, within three (3) working days of a receipt of an application for license required by this Chapter submit a complete copy of the application to the Planning and Zoning Commission, Building Inspector, Central District Health Department of the State of Idaho, Fire Inspector for the city, City Attorney, City Engineer, Ada County Highway Department and the Chief of Police.

3-10-8. - Investigation by city officials and other agencies.

On receipt of an application for licensing from the City Clerk as required by this chapter, respective city officials and other governmental agencies shall commence investigations as to whether the physical plant of the proposed establishment is in conformity with the state law and City Council within ten (10) days of receiving the license application and state whether the proposed establishment is in compliance with the applicable ordinances, state laws and regulations. It shall further be the duty of each respective official agency, should a license subsequently be granted to the applicant, to examine and inspect such place licensed on a regular basis to determine continuing conformity to the applicable laws and regulations. If, during such routine inspection, a discrepancy is noted, the official noting such discrepancy shall so advise the licensee in writing. The licensee shall have ten (10) days within which to correct the discrepancy. Reasonable extensions of time will be granted the licensee if the discrepancy cannot be eliminated within a ten-day period.

3-10-9. - Issuance of license.

A. *Submission of application and report to Council.* When the City Clerk has received a report and recommendation from each of the officials or agencies designated in section 3-10-6 of this chapter, and not later than twenty (20) days from the filing of the application, the City Clerk shall submit the license application and official reports to the City Council for inclusion in the Council agenda.

B. *Council action.* The City Council shall act upon the application at the next regular scheduled meeting after submission of the application by the City Clerk. If each of the designated officials or agencies has determined that the proposed business establishment is in conformity with all applicable city and state laws, and if it appears that there are no material misrepresentations or fraud in the application or in connection with the investigation by the city officials or other governmental agencies, the City Council shall grant a license to the applicant.

3-10-10. - Further investigation by City Council.

The City Council, prior to the issuance of any license requested by this chapter and after review of the submitted application, may undertake further investigation if it has reasonable cause to believe that the applicant has or is attempting to perpetrate a fraud or material misrepresentation on the city. Such further investigation may be completed and written findings issued at or prior to the next regular meeting following the meeting at which such application was initially considered. Upon a finding by the Council that the material misrepresentation or fraud has been perpetrated either in the application or in connection with the investigation by city officials or other governmental agencies, said application may be denied by the City Council. Nothing in this section shall be construed to permit any investigation into the substantive content of the publications or films to be displayed or sold by the applicant.

3-10-11. - License fees.

A. *Fees established.* The following annual license fees must be paid to the city at the time the license application is submitted:

Class A license: Three hundred dollars (\$300.00).

Class B license: One hundred twenty-five dollars (\$125.00).

Class C license: Two hundred dollars (\$200.00).

Class D license: Fifty dollars (\$50.00) per adult arcade machine.

Class E license: Three hundred dollars (\$300.00) plus applicable fees for Class A content and fees for each arcade machine under Class D.

B. *Renewals.* The request for renewal of licenses must be made on forms supplied by the City Clerk and such requests must be submitted by December 1 for renewal for the next calendar year. Each renewal application must be accompanied by the annual fee set forth in subsection (A) of this section.

C. *Proration of fee.* Where an application for a new license is made after January 1, the applicable fee shall be apportioned in accordance with the number of days remaining in the calendar year.

3-10-12. - Misdemeanor.

It shall be a misdemeanor for an applicant or licensee to make a material misrepresentation on his application, to perpetrate a fraud on any investigative official or agency or to operate a business licensed under this chapter in contravention to the laws of the state or the ordinances of the city.

3-10-13. - Revocation of license.

The licensee shall be responsible for the operation of the licensed premises in conformity with the ordinances of the city and the state. Upon a conviction of the licensee or the agent or employee of the licensee of violating any law or ordinance including this chapter, intended to protect the health, welfare or safety of individuals in this state and which violation occurs in the course of the main business activity licensed under this chapter, and not incidental thereto, the City Council may revoke all licenses held by the licensee under this chapter for a period up to and including eighteen (18) months from the date of conviction. Upon expiration of the period of revocation, the applicant will be eligible to reapply for a license according to the procedures and requirements of this chapter.

3-10-14. - Procedure for license revocation.

A. *Hearing.* Any revocation of a license pursuant to this Chapter shall not occur until a hearing is held before the City Council. Twenty (20) days' written notice of the time and place of the hearing and the nature of the grounds for such revocation sufficient to inform the licensee and enable him to respond shall be given. The licensee shall have the right to appear at said hearing in person or by counsel to present evidence and argument on the licensee's behalf and cross-examine witnesses.

B. *Council ruling.* The City Council shall make a ruling based on the evidence presented to it at the hearing. Thereafter, the licensee shall be informed in writing of the Council's decision. If the Council by majority vote favors revocation, such revocation shall take effect when personal service of the written decision is made upon the licensee or an agent or employee of said licensee.

3-10-15. - Prior location and license lapse.

Nothing in this chapter shall in any way affect the rights of present adult businesses to continue their operation so long as they adhere to the provisions of this chapter, including submission of properly completed applications within thirty (30) days of the effective date hereof and otherwise maintain a current license. Once an existing operation obtains a classified license, any subsequent change in classification shall be treated as a new use and must qualify under the provisions of this chapter. If there is a failure to timely renew a license, any subsequent application must satisfy all the requirements of this chapter.

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3-11-2. - Mobile home park permit; conditions and requirements.

- A. *Permit required; conditions.* It shall be unlawful for any person to construct, alter, extend or operate any mobile home park within the limits of the city unless he holds a valid permit issued by the City Clerk annually, in the name of such person for the specific trailer court, for the specific construction, alteration or extension proposed.
1. *Parks in residence zones; requirements.* Trailer courts may be allowed in Residential Zone A or Residential Zone B as designated in the city by special permit of the Planning and Zoning Commission and the City Council after public hearing and a showing to the satisfaction of the Planning and Zoning Commission that such action will be compatible to the overall development of the area where the trailer court is proposed to be constructed and will be in accordance with the general purposes of the zoning ordinances of the city; and provided, that before a permit is issued by the Commission, there shall be on file in the office of the City Clerk, the written consent of the owners of seventy-five (75) percent of the area of all the property within the boundary line of an area determined by the intersection of lines drawn three hundred (300) feet at right angles out from and parallel to all sides of the tract whereupon such trailer court is to be erected or occupied, or property zoned for this specific purpose after a public hearing.
 2. *Street dedication; boundary around tract.*
 - a. Where dedicated street rights-of-way are encountered, they shall be included in establishing the three hundred-foot boundary line around the tract, but further they shall not be included in any area calculation.
 - b. For a property that is partially within the boundary and partially outside the boundary, only that area within the prescribed three hundred-foot boundary is to be included in the percentage of area analysis.
 - c. The method, as outlined herein, for establishing the three hundred-foot boundary line applies for all the tracts of land whether they be rectangular, curvilinear or irregular; and furthermore, the exterior boundary line may be rectangular, curvilinear and irregular, and will not necessarily be in conformity with any surrounding lot, block and/or property lines.
 3. *Buildings outside trailer court; locations.* In any area of the city, regardless of the zoning designation, each boundary of any "trailer court" as defined in this chapter must be at least two hundred (200) feet from the foundation of any permanent residential building located outside the trailer court unless the trailer court is separated from such permanent residential building by a natural or artificial barrier that meets the approval of the City Council, or unless seventy-five (75) percent or more of the property owners of the residential buildings in the area within the said two hundred (200) feet from such trailer court gave consent thereto by a formal petition filed with the Planning and Zoning Commission and City Council.
- B. *Renewal permit.* It is not necessary to file a complete plan when applying for an annual renewal permit, provided there are not to be any remodeling or alterations done.
- C. *Application for permit; contents.* All applications for permits shall contain the following:
1. Name and address of applicant.
 2. Location and legal description of the mobile home park.

Commented [EK13]: DELETE Sections 3-11-2, 3-11-3, 3-11-5 – The Clerk’s Office does not issue permits for MHPs. UDC and LLUPA controls.

3. Complete engineering plans and specifications of the proposed park showing, but not limited to, the following:
 - a. The area and dimensions of the tract of land;
 - b. The number, location and size of all mobile home lots;
 - c. The location and width of roadways and walkways; or must conform to requirements of the city subdivision regulations (title 11 of this Code);
 - d. The location of water and sewer lines and riser pipes;
 - e. Plans and specifications of the water supply and refuse and sewer disposal facilities;
 - f. Plans and specifications of all buildings constructed or to be constructed within the mobile home park;
 - g. The location and details of lighting and electrical systems;
 - h. All plans and specifications to indicate distances, depths, setbacks, separations;
 - i. Double frontage lots backing on streets shall be prohibited from using exterior roadway as entrance or exit purposes;
 - j. All lot dimensions are to be shown on all lot lines;
 - k. Radii at curbs at street intersections at lot corners should be rounded as per city subdivision regulations (title 11 of this Code);
 - l. Exterior boundaries of plat drawings must be tied to at least two (2) county or city monuments as per city subdivision regulations (title 11 of this Code);
 - m. All lots are to be numbered by progressive numbers in each block separately as per city subdivision regulations (title 11 of this Code).
 - D. *Issuance of permit.* When upon review of the application, the City Council is satisfied that the proposed plan meets the requirements of this chapter, a permit shall be issued.
 - E. *Permit denial; hearing.* Any person whose application for a permit under this chapter has been denied may request and shall be granted a hearing on the matter before the health authority under the procedure provided by section 3-11-5 of this chapter.
- 3-11-3. - Permit for operation of mobile home park.
- A. *Permit required.* It shall be unlawful for any person to operate any mobile home park within the limits of the city unless he holds a valid permit by the City Clerk in the name of such person for the specific mobile home park. All applications for permits shall be made to the City Council, who shall issue a permit upon compliance by the applicant with the provisions of this chapter.
 - B. *Transfer of permit.* Every person holding a permit shall give notice in writing to the City Council within twenty-four (24) hours after having sold, transferred, given away, leased or otherwise disposed of interest in or control of any mobile home park. Such notice shall include the name and address of the person succeeding to the ownership or control of such mobile home park. Upon application in writing for transfer of the permit, the permit shall be transferred if the mobile home park is in compliance with all applicable provisions of this chapter.
 - C. *Application for permit; contents; fees.*
 1. *Contents of application; deposit.*
 - a. Application for original permit shall be in writing, signed by the applicant, accompanied by an affidavit of the applicant as to the truth of the application and by the deposit of a fee of ten dollars (\$10.00) and shall contain:
 - (1) The name and address of the applicant;
 - (2) The location and legal description of the mobile home park; and
 - (3) A site plan of the mobile home park showing all mobile home lots, structures, roads, walkways and other service facilities.

- b. One (1) tentative plat shall be drawn to a scale of one (1) inch to fifty (50) feet or larger and another tentative plat shall be drawn to a scale of one (1) inch to three hundred (300) feet, to accompany application.
- 2. *Renewal of permit.* Applications for renewals of permits shall be made in writing by the holders of the permit and shall be accompanied by the deposit of a fee of ten dollars (\$10.00) and shall contain any change in the information submitted since the original permit was issued or the latest renewal granted.
- D. *Permit denial; hearing.* Any person whose application for a permit under this chapter has been denied may request and shall be granted a hearing on the matter before the City Council under the procedure provided by section 3-11-5 of this chapter.
- E. *Health regulations; inspection.* Whenever, upon inspection of any mobile home park, the health authority finds that conditions or practices exist which are in violation of any provisions of this chapter, the health authority shall give notice in writing in accordance with section 3-11-5 of this chapter to the person to whom the permit was issued, that unless such conditions or practices are corrected within a reasonable period of time specified in the notice by the health authority, the permit shall be suspended. At the end of such period, the health authority shall reinspect such mobile home park and, if such conditions or practices have not been corrected, he shall suspend the permit and give notice in writing of such suspension to the person to whom the permit is issued. Upon receipt of notice of such suspension, such person shall cease operation of such mobile home park except as provided in section 3-11-5 of this chapter.

* * *

3-11-5. - Notices, hearings and orders.

- A. *Notice of violation.* Whenever the City Council determines that there are reasonable grounds to believe that there has been a violation of any provision of this chapter, they shall give notice of such alleged violation to the person to whom the permit was issued, as hereinafter provided. Such notice shall:
 - 1. Be put in writing;
 - 2. Include a statement of the reasons for its issuance;
 - 3. Allow a reasonable time for the performance of any act it requires;
 - 4. Be served upon the owner or his agent as the case may require; provided, that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been sent by registered mail to his last known address, or when a copy thereof has been posted in a conspicuous place in or about the dwelling affected by the notice, or when he has been served with such notice by any method authorized or required by the laws of this state;
 - 5. Contain an outline of remedial action which, if taken, will effect compliance with the provisions of this chapter and with regulations adopted pursuant thereto.
- B. *Petition to request hearing; conducting hearing.*
 - 1. *Request.* Any person affected by any notice which has been issued in connection with the enforcement of any provision of this chapter may request and shall be granted a hearing on the matter before the City Council; provided, that such person shall file in the office of the City Clerk a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within ten (10) days after the day the notice was served. The filing of the request for a hearing shall operate as a stay of the notice and the suspension except in the case of an order issued under subsection (E) of this section.
 - 2. *Hearing.* Upon receipt of such petition, the City Council shall set a time and place for such hearing and shall give the petitioner written notice thereof. At such hearing the petitioner shall be given an opportunity to be heard and to show why such notice should be modified or withdrawn. The hearing shall be commenced not later than ten (10) days after the day on which the petition was filed; provided, that upon application of the petitioner, the City Council may postpone the date of

the hearing for a reasonable time beyond such ten (10) day period when in his judgment the petitioner has submitted good and sufficient reasons for such postponement.

- C. *Findings of council.* After such hearing, the City Council shall sustain, modify or withdraw the notice, depending upon his findings as to compliance or noncompliance with the provisions of this chapter and of regulations adopted pursuant thereto. If the City Council should sustain or modify such notice, it shall be deemed to be an order. Any notice served pursuant to subsection (A)(4) of this section shall automatically become an order if a written petition for a hearing shall not have been filed in the office of the City Clerk within ten (10) days after such notice was served. After a hearing in the case of any notice suspending any permit required by this Chapter, or by any regulation adopted pursuant thereto, when such notice shall have been sustained by the City Council, the permit shall be deemed to have been revoked. Any such permit which shall have been suspended by a notice shall be deemed to be automatically revoked if a petition for hearing shall not have been filed in the office of the City Clerk within ten (10) days after such notice was served.
- D. *Proceedings public record.* The proceedings at such a hearing, including the findings and decision of the City Council, and together with a copy of every notice and order related thereto shall be entered as a matter of public record in the office of the City Clerk but the transcript of the proceedings need not be transcribed unless judicial review of the decision is sought as provided by this section. Any person aggrieved by the decision of the City Council may seek relief therefrom in any court of competent jurisdiction, as provided by the laws of this state.
- E. *Health emergency; order to remedy.* Whenever the health authority finds that an emergency exists which requires immediate action to protect the public health, he may without notice or hearing issue an order reciting the existence of such an emergency and requiring that such action be taken as he may deem necessary to meet the emergency including the suspension of the permit or license. Notwithstanding any other provisions of this chapter, such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately, but upon petition to the City Council shall be afforded a hearing as soon as possible. The provisions of subsections (C) and (D) of this section shall be applicable to such hearing and the order issued thereafter.

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4-2-5. - Hindering authorized person.

It shall be unlawful, and a misdemeanor to interfere with, hinder or refuse to allow any authorized city official or employee to enter upon private or public property to enforce the provisions of this chapter.

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5-3-9. - Exemptions.

- A. *Grant by City Clerk.* The City Clerk shall grant exemptions from this chapter if it is determined by the ~~City Clerk~~ **Fire Chief or Designee** that:
1. A solid fuel heating appliance is the sole source of heat for the structure in which it is situated; or
 2. Using alternative heating would cause an unreasonable economic hardship.
- B. *Denial of exemption; hearing.* Any person denied an exemption under this chapter shall be provided, at the option of the applicant for the exemption, a hearing before the Mayor and City Council.
- C. *Noneligibility for exemption.* Any building constructed after the effective date hereof shall not be eligible for an exemption from this chapter.

Commented [EK14]: DELETE – Conflicts with Fourth Amendment of U.S. Constitution

Commented [EK15]: Fire Department is subject matter expert and health authority.

5-3-10. - Severability.

If any provision or section of this chapter shall be held to be invalid by a court of competent jurisdiction, then such provision or section shall be considered separately and apart from the remaining provisions or sections of this chapter, which shall remain in full force and effect.

Commented [EK16]: DELETE – General severability clause in section 1-1-5; we don't need this one.

6-2-9. - Severability.

If any provision or section of this chapter shall be held to be invalid by a court of competent jurisdiction, then such provision or section shall be considered separately and apart from the remaining provisions or sections of this chapter, which shall remain in full force and effect.

Commented [EK17]: DELETE – General severability clause in section 1-1-5; we don't need this one.

6-4-1. - Curfew.

- A. *Age and hour restrictions.* It shall be unlawful for any person under the age of eighteen (18) years to be or to remain, and it shall be unlawful for any parent, guardian, or other person having the care and custody of any person under the age of eighteen (18) years to permit such person to be or to remain, in or upon any street, alley, public ground, public place or any place open to the public or exposed to public use within the corporate limits of the city between the hours of 12:00 midnight and 5:00 a.m.
- B. *Exceptions.* The provisions of subsection (A) of this section shall not apply to any person who is accompanied by his or her parents, guardian, or other adult person having the care and custody of him or her, nor to any person who is in the performance of any errand or duty directed by his or her parents, guardian, or other adult person having the care and custody of him or her, nor to any person who is actually at the time engaged in legitimate employment for profit, nor to any person who is engaged in activity protected by the First Amendment of the United States Constitution.
- C. ~~*Underage violator deemed juvenile delinquent.* Any person under the age of eighteen (18) years violating this section shall be deemed a juvenile delinquent under the laws of the State of Idaho.~~
- D. ~~*Penalty for parent or guardian.* Any parent, guardian, or other adult person having the care and custody of any person under the age of eighteen (18) years who shall violate the provisions of this section, upon conviction thereof, shall be subject to penalty as provided in section 1-2-1 of this Code.~~
- C. *Penalty.* Penalties for a violation of this section shall be as set forth in Idaho Code section 20-549.

Commented [EK18]: Necessary addition to comply with *Nunez v. City of San Diego*, 114 F.3d 935 (9th Cir. 1997).

Commented [EK19]: Outdated and unnecessary label.

Commented [EK20]: These provisions do not apply to parents/adults.

Commented [EK21]: City penalties for curfew violations are now preempted. Per Idaho Code, violation of city curfew is an infraction with a \$150 fine; arrest prohibited.

6-4-2. - Cigarettes or tobacco possession; sales.

- A. *Purchase, possession prohibited.* It shall be unlawful for any person under the age of eighteen (18) years to buy, accept or have in his possession any cigarette, cigar or tobacco in any form, or to buy, accept or have in his possession any cigarette paper or other paper or wrapper intended for the wrapping of tobacco into the form of a cigarette.
- B. *Selling or giving to minors prohibited.* It shall be unlawful for any person to sell or give away, directly or indirectly, to any person under the age of eighteen (18) years any cigarette, cigar or tobacco in any form or to sell or give away, directly or indirectly, to any person under the age of eighteen (18) years any cigarette paper or other paper or wrapper intended for the wrapping of tobacco into the form of a cigarette.

Commented [EK22]: DELETE – Covered by Idaho Code section 39-5703, which has a graduated penalty for purchase and possession of tobacco by a minor. Per Idaho Code section 39-5713, local ordinances regarding tobacco sales are prohibited. Per Idaho Code section 39-5713, local ordinances regarding tobacco sales are prohibited.

7-1-6. - Speed restrictions.

No person shall drive a vehicle, except emergency vehicles, at a greater speed than designated as follows.

A. ~~Parks and alleys~~ Alleys. In any ~~public park, or in any alley,~~ fifteen (15) miles per hour. ~~The term "alley" shall mean a minor public way providing secondary access at the back or side of a property for vehicle or pedestrian traffic.~~

Commented [EK23]: Park speed limit is covered by Meridian City Code section 13-2-6(Q)(3).

Commented [EK24]: Covered by/conflicts with Idaho Code section 49-102(10).

B. *City streets*. On all other streets in Meridian, twenty-five (25) miles per hour, or as otherwise posted.

7-1-8. - U-turns.A. *Restrictions.*

1. No U-turn or turn reversing the direction of travel shall be made.
 - a. ~~At any intersection in which "No U Turn" signs are erected, or~~
 - b. ~~In a designated "no passing" zone; or~~
 - a.e. Within a "school zone" as defined by this Code; or
 - b.d. At any place other than at an intersection, unless there be sufficient space to make such turn without backing or impeding traffic, and of not less than five hundred (500) feet of roadway with a clear and unobstructed view by drivers from either direction, a proper signal is made, and said turn can be performed safely.
 - c. In a manner which impedes traffic.
2. For the purposes of this section "safely" shall mean that the party making the U-turn or turn reversing the direction of travel shall be responsible to establish that this maneuver can be made with due care to drivers and pedestrians at, adjacent to, or upon the roadway and with due care in regards to the current conditions of the roadway and driving conditions. ~~It shall be unlawful to impede traffic with this driving maneuver.~~

Commented [EK25]: Covered by Idaho Code section 49-801.

Commented [EK26]: Covered by Idaho Code section 49-645.

7-1-12. - Negligent driving.

It shall be unlawful for any person to operate a motor vehicle ~~in a negligent manner over and along the highways, streets or alleys of this city. For the purpose of this section, to "operate in a negligent manner" shall be construed to mean the operation of a motor vehicle in the following manner.~~

A. ~~The engaging in any motor vehicle speed contest or exhibition of speed; and/or~~

B. ~~Excessive, unreasonable, rapid acceleration of a motor vehicle; and/or~~

C. ~~The operation of a motor vehicle~~ where the operator has less than full control of the speed and direction of movement of the vehicle. The collision by a vehicle with any stationary object shall be prima facie evidence of a violation of this section.

Commented [EK27]: Covered by Idaho Code section 49-1424(1)

8-1-7. - Severability.

If any provision, clause, sentence, or paragraph of this title or the application thereof to any person or circumstance shall be held to be invalid by a court of competent jurisdiction, then such provision or section shall be considered separately and apart from the remaining provisions or section of this chapter, which shall remain in full force and effect, and to this end, the provisions of this title are hereby declared to be severable.

Commented [EK28]: DELETE – General severability clause in section 1-1-5; we don't need this one.

8-2-12. - ~~Validity.~~ City Council duties.

- A. ~~*Validity of remaining portions.* Should any section, subsection, paragraph, sentence, clause or phrase of this chapter, or any particular application thereof, be declared unconstitutional or invalid for any reason by a court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this chapter.~~
- B. ~~*Failure of Commission to act.*~~ If in an instance the commission fails to act or carry out its responsibilities according to the regulations contained herein, the Council shall assume all the duties of the commission as herein specified in relation to the application concerned.

Commented [EK29]: General severability clause in section 1-1-5; we don't need this one.

9-1-19. - Monthly rates.

* * *

- E. ~~*Pass-through charge to user.*~~ The United States Environmental Protection Agency has required the State of Idaho to test drinking water and the State of Idaho through the Department of Environmental Quality, has passed the cost of such testing down to local governmental and private water suppliers. The city must pass the cost of such testing to the water users. Therefore, each water user shall be charged a monthly water assessment of twenty-five cents (\$0.25) until the Department of Environmental Quality amends or retracts this testing charge.

Commented [EK30]: DELETE – We do charge this (and other regulatory fees) but the amount is outdated and there is no reason to call out this particular regulatory fee since it is one of several others included in water rates. (Public Works is OK with deletion.)

9-1-23. - Authority to amend regulations.

Nothing herein contained shall prohibit the Mayor and Council from amending, altering, or adding to the provisions of this chapter in relation to the water supply or the rules of same which may be adopted in conformity therewith. Provided, that no alteration in water rates shall apply to any charge upon, or contract made with, an owner under this chapter until after the expiration of the time for which such charge was made or contract entered into. Hereafter when, and/or if, the Mayor and City Council deem it advisable to alter the water or installation rates or charges as in this chapter recorded, such changes shall be made by resolution.

Commented [EK31]: DELETE – Language is covered by authority in Title 50; provision regarding retroactive application of changed water rates is unnecessary and may cause unintended limitations.