



## OFFICE OF THE CITY ATTORNEY

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**TO:** Mayor and Council  
**FROM:** Charles Wadams, City Attorney  
**DATE:** April 25, 2022  
**SUBJECT:** Design Review and Surel Mitchell Work-Live-Create Overlay District Code Amendments, Proposed Ordinance No. 1024-22

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**ACTION REQUIRED:** Passing code amendments.

**RECOMMENDATION:** Adoption of amendments, and there are several options to choose from. It may be easier and faster to repeal the Surel Mitchell Work-Live-Create Overlay Zoning District rather than attempting to repair or overhaul it.

**BUDGET IMPLICATIONS:** There is no significant financial impact to the City if appropriate action is taken.

**BACKGROUND:** Title 8, Chapter 6, Article C, Section 3 and Chapter 7, Article A, Section 2 of the Garden City Code need to be amended to clarify requirements and definitions related to all Design Review findings. Additionally, Title 8, Chapter 3, Article C, Section 3 of the Garden City Code needs to be repaired or repealed to clarify requirements and definitions for the area currently known as the Surel Mitchell Work-Live-Create Overlay Zoning District. If the Surel Mitchell Work-Live-Create Overlay Zoning District is ultimately repealed, then the parking provisions in Garden City Code Section 8-4D should also be amended.

**RULES:** The Local Land Use Planning Act (LLUPA) requires that approval or denial of any application required or authorized under the LLUPA be based on standards and criteria set forth in a comprehensive plan, zoning ordinance, or other regulation. Idaho Code § 67-6535. The approval or denial of such an application must be in writing and must be accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the facts relied upon, and explains the rationale for the decision. Idaho Code § 67-6535(2). It is established that design review applications fall under LLUPA, and there are pragmatic reasons why the City prefers that design review falls under LLUPA.

The use of zoning to promote physical, aesthetic, and monetary goals has become normal practice. One effective and widely used method for regulating such goals, without having to rezone an entire city, is through the use of overlay districts. Overlay districts provide a means to integrate different development regulations across a specified area. Overlay districts are special zones that lay on top of existing zones to supplement or supersede existing regulations.

Overlay districts usually provide a higher level of regulation than that required by the existing zoning classification, and imposes additional burdens on a developer of land within the zone. However, they can also permit exceptions or require a less-restrictive guideline. If conflicting standards are given by an overlay district and the underlying zoning category, those of the overlay district generally take priority.

The boundaries of an overlay district may or may not coincide with the boundaries of the underlying zone, and an overlay district may contain parts of more than one existing zone. Overlay districts are used to accomplish a mixture of transportation, development, and land use goals. General examples include access management, protection of historic or natural resources, safety, standardization of a historic district, implementation of development guidelines, and protection of the quality of surface water. Overlay districts often complement a jurisdiction's comprehensive plan.

A specific example is an overlay district that seeks to preserve and promote the arts by providing incentives for high-density retail, commercial, and housing with arts-related benefits. Another example is the Boise Conservation Overlay District, which maintains adjacent neighborhoods by nurturing neighborhood associations, with a focus on positive improvements.

Overlay districts can be beneficial to municipalities because they allow existing zoning requirements to be superseded when appropriate. Overlay districts can be implemented by passing an ordinance that appends existing land use regulations, without having to go through the process of rewriting the underlying zoning regulations. If the overlay is on top of two or more underlying zoning districts, then creation of one overlay district may be less work than amending two or more underlying districts, which makes for a more streamlined zoning ordinance. Moreover, a municipality can modify an overlay district with less difficulty if it decides to change the requirements or coverage area.

A zoning ordinance will always include a zoning map that shows the municipality divided up into zoning districts. The overlay district, in the zoning ordinance, might have additional, or different, regulations that apply within the district overlaid on top of the typical zoning map. For example, it may be an overlay district along a river that flows through several different zoning districts. The desire may be to have a vegetation buffer and larger setback from the riverbank for the entire length of the river.

The overlay district tool can be used for several different things. It can be an overlay around: public water to prohibit certain polluting activities; or both sides of a river or lake to provide vegetation buffer areas; or greater setbacks along/around a lake shoreline for beach protection; or along a scenic road or highway with aesthetic regulations and greater setbacks. Common standards in an overlay zone may include building setbacks, density standards, lot sizes, impervious surface reduction, vegetation requirements, building floor height minimums, and flood-proofing to high water levels. However, modification of permitted uses is generally not a part of an overlay zone.

Overlay districts can accomplish the following goals: (1) provide design guidelines that create a particular look of an area; (2) protect valuable resources; (3) help meet goals and objectives of the community; and (4) maintain the base zones while addressing a special need of a particular area within a zone(s). It is important that such zoning has a defined need and purpose, and the restrictions and allowances in the zone must help satisfy the defined purpose.

A good overlay district ordinance should provide all of the following components:

**Purpose Statement** - Should tie the overlay to the goals and objectives of the comprehensive plan, cite the public necessity behind the intent, and make a direct connection to protecting the public health, safety, morals, general welfare, and aesthetics. Concerns about purposes behind overlay districts are often related to the documentation of public necessity, impacts on property values, and fairness of applicability to only a portion of the community.

**Defined Boundary** - The boundary or rule for the spatial definition of the overlay should be as simple and understandable as possible. Boundaries for the overlay district should be drawn based on reliable scientific factors, or other logical rationale for including properties within the boundary of the district, so that the resulting boundaries will be legally defensible. Boundary information should be provided in a way the public can understand.

**Application Procedures** - Additional information will be needed in the request for an overlay district to demonstrate compliance with the factors addressed in any overlay regulations. The procedures may be different from a public initiated request and a government initiated request.

**Special Definitions** - Specialized standards will likely require specialized terminology that must be defined.

**Standards for Review and Approval** - **The reviewing body needs guidance concerning how to determine compliance. If there are no standards for review and approval, an ordinance may be struck down for vagueness or decisions overturned as being arbitrary and capricious.**

**Appeals Process** - The term “hardship” should be carefully outlined to address unique situations and to avoid variances based on convenience rather than peculiar damages. The standing to appeal needs to be limited to “aggrieved parties” having direct and substantive claims in order to avoid groundless appeals.

**Resolution of Conflicting Provisions** - If the overlay intends to add new provisions above those existing in the underlying zoning districts, then it will

be necessary to prescribe which set of standards takes precedence in cases of a conflict.

However, an overlay zoning district should possibly be avoided in some situations. It is possible to impose multiple overlapping overlay districts on the same area. However, the resulting complexity may make such a scheme difficult to administer. It is possible that one overlay may have some inconsistent purposes to another overlay.

Additionally, overlay districts are commonly used when a municipality does not wish to alter the preexisting uses in a given district. If a proposed overlay district contemplates changing the types of permitted uses, or possible conditional uses, then it may be more appropriate to create a new underlying zoning district for that area. Usually, when creating an area that will have changed uses, it should be within its own underlying zoning district. An example may be an area along a river that has very special and unique characteristics, such as a wide river valley, plentiful wetlands, and geologic features. The area along the river is more than just a ribbon along both sides of the river, but rather includes more area. That area may deserve its own unique parcel sizes, setbacks, and specific list of permitted uses and conditional uses. This scenario likely describes a new underlying zoning district and not an overlay district.

Like most zoning ordinances, overlay districts and the decisions of municipalities are frequently challenged by individual landowners seeking variances or permission to engage in new construction. Overlay districts are typically challenged on substantive due process and equal protection claims. When there are such challenges, the municipality should be able to show a legitimate municipal interest in protection of an area, and show the zoning is “rationally related” to this interest. If in some situations, the strict enforcement of the overlay district requirements might be close to invoking a takings claim, the overlay district should provide for hardship variances or face possible court tests. Property owners and the real estate developers may allege that the overlay district deprives property value because it constrains the full use and enjoyment of their property.

However, as municipal governing bodies are given deference, direct challenges to such districts are not generally successful. For example, an overlay district was challenged as being void for vagueness in Blaine County in 2009. A statute is void for vagueness if somebody with ordinary intelligence must guess at its meaning. In *Terrazas v. Blaine Cty.*, 147 Idaho 193, 207 P.3d 169 (2009), the Idaho Supreme Court rejected an argument that Blaine County’s mountain overlay district (MOD) ordinance was void for vagueness, as well as a separate argument that it was inconsistently applied in violation of equal protection.

In *Terrazas*, the applicant argued that if staff and the county commissioners could not agree on what the ordinance means, it must be unconstitutionally vague. However, the Court looked at the language of the ordinance, and found it to be clear and correctly interpreted by the county commissioners. Landowners may be more successful in seeking variances or permission to engage in new construction by demonstrating either

that a municipality erred in its application of the zoning ordinance, or that the building at issue actually fits well with the overall character of the district.

Municipalities do have to be careful that an overlay district is not preempted by the state or federal government. For example, *Ralph Naylor Farms v. Latah Cty.*, 144 Idaho 806, 172 P.3d 1081 (2007), involved an ordinance adopted by Latah County creating the “Moscow Sub-basin Groundwater Management Overlay Zone.” The overlay district prohibited certain specified land uses that were found to consume large quantities of water. When the Director of the Planning and Building Department refused to accept an application for a conditional use permit on the basis that the use was prohibited under the overlay zone, the applicant challenged the validity of the overlay ordinance.

The Court invalidated the Latah County overlay district on the basis that it was preempted by the authority granted to the Idaho Department of Water Resources to regulate water resources. While the applicant was not awarded attorney fees in the *Naylor* case, it is important to note that a city or county that unsuccessfully defends its own decision may be subject to an award of attorney fees. Furthermore, an Idaho court has also invalidated an overlay district when it improperly delegated authority to set the district’s boundary to a state agency. See *Cove Springs Development, Inc. v. Blaine Cty.*, Case No. CV-2008-22 (Idaho, Fifth Judicial Dist., July 3, 2008).

Accordingly, the above-mentioned sections of the Garden City Code were modified so that requirements for design review applications are more clearly defined and set forth to enable the Design Review Committee to make appropriate findings regarding suitability of potential projects. Some of the changes are applicable to all design review applications. Other changes are applicable only within the Surel Mitchel Work-Live-Create Overlay Zoning District.

**ANALYSIS:** Garden City has a design review committee that reviews design review applications. Additionally, Garden City has several overlay zoning districts, such as the Surel Mitchel Work-Live-Create Overlay Zoning District. To comply with LLUPA, several changes to the Garden City Development Code are needed.

There are several recent cases that City Council should be aware of. First, *Cove Springs Dev., Inc. v. Blaine County*, CV-2008-22, Idaho 5th Judicial District:

Summary:

1. In Count 3 of the case, the County allowed the Idaho Fish & Game Department (IDFG) to “identify” classified lands as defined in their Zoning Ordinance. The Ordinance further stipulated that “prior to the planning or designating of any subdivision, the applicant shall contact IDFG and any other applicable agency or professional as determined by the administrator to identify any classified lands on the subject property.”
2. Those classified lands are part of the “Wildlife Overlay District.”

Issue: May the County allow IDF&G to determine zoning boundaries?

Findings: No. The Court found that the Wildlife Overlay District failed to provide “any objective criteria (or any criteria at all) to define its boundaries” other than IDF&G’s identification of classified lands. Because “the setting of zoning boundaries is a function that rests entirely with the designated agents of Blaine County,” the County unlawfully delegated all of its authority, thereby violating LLUPA.

1. “Blaine County has delegated to Fish and Game the ability *to set and establish law*---the boundary of a zoning district, which may not be delegated.”
2. “Exercise of the authority to zone and plan, whether by governing board or by the established [planning and zoning] commissions, is made mandatory by I.C. sec. 67-6503.” Quoting *Gumprecht v. City of Coeur d’Alene*, 104 Idaho 615, 617 (overruled on other grounds).
3. “The legislature clearly intended that the authority to enact comprehensive plans, establish zoning districts and adopt amendatory ordinances be exercised exclusively by city and county legislative or governing bodies and pursuant to specific prescribed procedures.”
4. “LLUPA preempts [this zoning ordinance] because it violates LLUPA’s assignment of decision-making authority to local officials and authorizes non-elected officials outside of county government to make binding determinations that affect the land use entitlement process.”
5. “If the County desires to make use of the expertise of IDF&G ... or any other expert, it should invite their views in the context of a hearing process that accommodates rebuttal of evidence and which reserves the final decision to the County, as mandated by LLUPA.”
  - a. “The result of that process should be the adoption of a map or objective criteria that clearly define the boundaries of the zone.”

Second, *Urrutia v. Blaine County*, 134 Idaho 353, 358, 2 P.3d 738, 743 (2000):

Background: Blaine County relied on the Blaine County Comprehensive plan to make determinations about land to be subdivided.

Rule/Outcome: Comprehensive plans may (1) be used to guide decisions involving revising or adopting a zoning ordinance and (2) be considered in conjunction with zoning ordinances when making a decisions, but may not be relied upon to determine permitted uses for various parcels in the jurisdiction. The County may only rely on adopted ordinances to determine the viability of proposed developments.

Issue: “The question presented is what is meant by the phrase in the subdivision ordinance requiring the Board to determine that the land to be subdivided “shall conform to the Comprehensive Plan.” Does that requirement comply with statutory authority?

Findings: No. “The Board erred in relying completely on the comprehensive plan in denying these applications, and should instead have crafted its findings of fact and

conclusions of law to demonstrate that the goals of the comprehensive plan were considered, but were simply used in conjunction with the zoning ordinances, the subdivision ordinance and any other applicable ordinances in evaluating the proposed developments. Because the Board acted in violation of the statutory provisions, we remand this issue for further consideration. I.C. § 67–5279(3).

1. First, the court distinguishes between an ordinance and a comprehensive plan under LLUPA: “A comprehensive plan reflects the “desirable goals and objectives, or desirable future situations” for the land within a jurisdiction. I.C. § 67–6508. This Court has held that a comprehensive plan does not operate as legally controlling zoning law, but rather serves to guide and advise the governmental agencies responsible for making zoning decisions. *South Fork Coalition v. Board of County Comm’rs of Bonneville County*, 117 Idaho 857, 863, 792 P.2d 882, 888 (1990) (quoting *Bone v. City of Lewiston*, 107 Idaho 844, 850, 693 P.2d 1046, 1052 (1984)); cf. *Sprenger, Grubb & Assocs., Inc., v. City of Hailey*, 127 Idaho 576, 585, 903 P.2d 741, 750 (1995); *Balser v. Kootenai County Board of Comm’rs*, 110 Idaho 37, 39, 714 P.2d 6, 8 (1986); *Ferguson v. Board of County Comm’rs for Ada County*, 110 Idaho 785, 787, 718 P.2d 1223, 1225 (1986).
2. “The Board may, therefore, refer to the comprehensive plan as a general guide in instances involving zoning decisions such as revising or adopting a zoning ordinance. A zoning ordinance, by contrast, reflects the permitted uses allowed for various parcels within the jurisdiction.”
3. “In determining whether the land “conforms to the comprehensive plan” for the purposes of a subdivision application, the Board is simply required to look at all facets of the comprehensive plan and assure that the land fits within all of the various considerations set forth in the plan. It is to be expected that the land to be subdivided may not agree with all provisions in the comprehensive plan, but a more specific analysis, resulting in denial of a subdivision application based solely on non-compliance with the comprehensive plan elevates the plan to the level of legally controlling zoning law.”
4. “Such a result affords the Board unbounded discretion in examining a subdivision application and allows the Board to effectively re-zone land based on the general language in the comprehensive plan.”
5. “As indicated above, the comprehensive plan is intended merely as a guideline whose primary use is in guiding zoning decisions.”

***Explanation of Proposed Amendments impacting all design review applications:***

The ability of the owner of real property inside the limits of Garden City to use land as he chooses is not limitless and subject to some oversight and restriction. In Garden City, there are geographical areas or zones in which landowners may only use their land for certain purposes and in certain ways.

Design applications go to the design committee who is required by city code to “work in partnership with applicants on design review,” to “act as the decision maker on design

applications,” and to “serve as an expert on all matters of design that come before the city.” Garden City Code 8-6A-2(D).

The City allows landowners, before they apply to the design committee for approval, to submit a request for a preapplication meeting. This process allows landowners to get what amounts to an advisory opinion about what the design committee is likely to do and allow the landowner to make changes to his proposed design, if he wishes, prior to seeking approval from the design committee itself.

Landowners whose applications are not approved by the design committee may appeal to the City Council. Any interested party may also appeal such decision to the City Council. It is treated as an “appeal” even though the word “review” is also used in the Garden City Code, and the City Council does not “review” the decision by the design committee so much as the City Council makes its own independent decision. However, consideration should be made in the future to whether a ‘de novo’ review is appropriate or if the process should be clarified.

#### Garden City Code § 8-6B-3(D)

Currently, there are several required findings for all design review approvals. Even if the City repeals the Surel Mitchel Work-Live-Create Overlay Zoning District, the findings for design review approvals would still need to be amended, which are located in Garden City Code § 8-6B-3(D):

Required Findings: In order to approve a design review application and based on the standards set forth in chapter 4, article C of this title, the design review committee shall make the following findings:

1. The proposed design is in conformance with the purpose of the zoning district and all dimensional regulations of that district;
2. The proposed design adheres to standards for the protection of health, safety, and general welfare;
3. The proposed design creates a sense of place and contributes to the uniqueness of the different districts and neighborhoods within the city;
4. The proposed design improves the accessibility of development to nonmotorized and public modes of transportation;
5. The proposed design supports a development pattern in nodes rather than strip commercial along arterial corridors;
6. The proposed design supports a compact development pattern that enables intensification of development and changes over time; and
7. The proposed design provides outdoor spaces and landscaping compatible with the southwest Idaho climatic conditions and that encourage pedestrian activity.

In 2013, the legislature amended Idaho Code § 67-6511 to require that governing bodies districts establish “clear and objective standards” for the districts. At the same time, it amended Idaho Code § 67-6535 to include the word “express,” i.e., to include the



command that governing bodies express those clear and objective criteria so that everyone will know what they are. See Idaho Code § 67-6535. Therefore, the Code should not have subjectivity in application reviews under LLUPA.

1. Examples from Other Local Governments regarding design review approvals

As I stated in a Legal Memorandum regarding Design Review Policy to the Mayor and Council dated February 19, 2020, it is helpful to look at other jurisdictions and the methods they employ for design review. However, design review practices from other jurisdictions should be reviewed with caution, as there is now an Idaho case that has assessed whether a local government's design review practices comply with LLUPA.

A. City of Meridian

The City of Meridian vests its Planning Director with the authority to make final decisions on administrative design review applications. Meridian City Code § 11-5A-2.E; Table 11-5A-2. The administrative design review process applies to all new non-single dwelling residential developments that would be subject to a conditional use permit, a certificate of zoning compliance, and/or a building permit. Meridian City Code § 11-5B-8. There are several exemptions for developments that are considered to be minor or would be screened from public view. *Id.* The Planning Director may, at his or her discretion, convene the Design Review Committee and request that it make a recommendation on an administrative design review application before the Planning Director makes a final decision. Meridian City Code § 11-5A-4.C. The City of Meridian does not require any neighborhood or public meeting or hearing for administrative applications, including administrative design review. *Id.* Notice of the Planning Director's final decision on administrative applications, including administrative design review, is provided to the applicant only. *Id.*

Aside from applications for administrative design review that the Planning Director specifically requests the Design Review Committee to review and make a recommendation on, the Design Review Committee does not act as a recommending body or a decision-making body in any other capacity. Meridian City Code § 11-5A-2.D; Table 11-5A-2.

In Meridian, in order to approve a design review application the decision maker shall "determine that the proposed structural and/or site designs conform to the standards" found in § 11-3A-19 "and meet or exceed the intent of the 'City of Meridian Architectural Standards Manual.'" The standards found in § 11-3A-19, "Structure and site design standards," include a purpose statement and an alternative compliance clause, as well as the following minimum standards:

1. *Architectural character.* Buildings shall be designed in accord with the "City of Meridian Architectural Standards Manual."
2. *Site design.*
  - a. Extend or improve streets, drive aisles, cross access easements or similar vehicular and pedestrian connections provided from adjacent properties.

b. For lots with frontage on a public street, a minimum of forty (40) percent of the buildable frontage of the property shall be occupied by building facades and/or public space. Within mixed use areas, and for large multi-building developments, buildings may be placed away from roadways if a minimum of thirty (30) percent of the buildable frontage is occupied by building facades and/or public space.

### 3. *Parking lots.*

a. For properties greater than two (2) acres in size, no more than fifty (50) percent of the total off street parking area for the site shall be located between building facades and abutting streets.

b. For properties two (2) acres or less in size, a maximum of a single drive aisle with parking on one (1) or both sides shall be allowed between the building facades and abutting streets. All other off-street parking areas shall not be located between the building facades and abutting streets.

c. The design and layout of internal site parking shall avoid long straight unbroken parking aisles, provide crossing drive aisles for internal circulation at approximately one hundred fifty-foot intervals, or provide parking that is perpendicular to the building.

d. Where on street parking is provided or where vehicle circulation is directed in front of building entries, integrate traffic calming strategies and techniques, such as landscape islands, bulb outs, and/or detailed crosswalks, to increase safety and enhance the development character.

e. In the traditional neighborhood districts parking shall be primarily located behind or to the side of buildings and public spaces, away from block corners and roadways.

f. When parking and drive-throughs cannot comply with the standards above, they shall be screened by berms, landscaping, walls, architectural elements, or a combination of these elements to produce an appropriate buffer adjacent to public spaces and roadways.

### 4. *Pedestrian walkways.*<sup>1</sup>

a. A continuous internal pedestrian walkway that is a minimum of five (5) feet in width shall be provided from the perimeter sidewalk to the main building entrance(s) for nonresidential uses. The walkway width shall be maintained clear of any obstructions, such as vehicles, outdoor sale displays, vending machines, or temporary structures.

b. The internal pedestrian walkway shall be distinguished from the vehicular driving surfaces through the use of pavers, colored or scored concrete, or bricks.

c. Unobstructed walkways at least five (5) feet in width shall be provided for any aisle length that is greater than one hundred fifty (150) parking spaces or two hundred (200) feet away from the primary building entrance(s).

d. The walkways shall have weather protection (including, but not limited to, an awning or arcade) within twenty (20) feet of all customer entrances.

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<sup>1</sup> In Garden City, pedestrian walkways are regulated in another portion of the code not being analyzed in this memo.

The alternative compliance clause stipulates that the decision maker may consider an alternative design proposal in certain circumstances, such as the location of existing structures preventing compliance with the standards or in a situation where strict adherence would create inconsistency in the design objectives of the proposed development. § 11-3A-19(C). The alternative compliance provisions are set forth in a separate section. § 11-5B-5.

#### B. City of Eagle

The City of Eagle imposes a Design Review Overlay District over all other zoning districts within the City. Eagle City Code § 8-2-1. The requirements set forth by the Design Review Overlay District apply to all major and minor proposed developments and changes to existing developments, with the exception of certain single-family dwellings and residential dwellings with a maximum of two dwelling units. Eagle City Code § 8-2A-1.

All design review applications are considered administrative applications, which are reviewed and decided by the Zoning Administrator, unless the application concerns: (1) one or more new buildings; (2) an addition to an existing building that is more than 25 percent of the existing gross floor area; (3) new building facades with material changes; (4) any addition to an existing building in which the existing building is 20,000 square feet or more; (5) master sign plans; and (6) any other application that can only be approved by suspending or relaxing some or all requirements of the more restrictive design standards when there is a conflict with other zoning regulations. Eagle City Code § 8-2A-9.A-B. Applications that fall under one or more of the six categories listed above are considered board-level design review applications. Eagle City Code § 8-2A-9.B. Such applications must be reviewed by the Design Review Board, which will issue a recommendation, and are subject to a final decision by the Eagle City Council. *Id.* It is up to the Zoning Administrator to determine whether an application is considered administrative or board-level. Eagle City Code § 8-2A-9.D.

An applicant must be notified that his or her board-level design review application will be reviewed at least seven days prior to the meeting of the Design Review Board. Eagle City Code § 8-2A-11. After the Eagle City Council receives the recommendation on an application from the Design Review Board, it shall approve, approve with additional conditions, remand for further consideration, or deny the application, as well as issue findings or adopt the Design Review Board's findings. Eagle City Code § 8-2A-13.C. The Zoning Administrator must then provide the applicant with written notice of the Eagle City Council's decision within seven days. *Id.*

The Zoning Administrator's decision on administrative design review applications may be appealed to the Design Review Board, which will review the existing record and thereafter make a recommendation to the City Council. Eagle City Code § 8-2A-14.A. The City Council must then take action and issue findings or adopt the Design Review Board's findings. *Id.* The Zoning Administrator must then provide the applicant with written notice of the Eagle City Council's decision on appeal within seven days. *Id.* A review of both

the Design Review Board and the Eagle City Council's meeting minutes indicates that no public hearings are held in front of the Design Review Board or the Eagle City Council on design review applications.

The City of Eagle has an incredibly detailed list of criteria that the Design Review Board must consider when reviewing a design review application. Eagle City Code § 8-2A-6. A thorough list of considerations is set forth for a variety of matters, including: (1) site design objectives; (2) landscaping; (3) grading and drainage; (4) signage; (5) utilities; and (6) building design, as well as architectural features, setbacks and lot coverage, and parking when applicable. Id. In Eagle, in order to approve a design review application the decision maker shall make the following findings (Eagle City Code 8-2A-13, "General Standards For Design Review"):

- A. There are no inconsistencies with the comprehensive plan; landscaping is permitted with the approval of a design review application within the zoning district;
- B. Is of a scale, intensity, and character that is in harmony with existing conforming and planned development in the vicinity of the site since the proposed common area landscaping is designed to complement the general vicinity;
- C. Is designed with adequate off street parking facilities in such a way as to not interfere with ingress/egress to the site and will serve the intended use so as to not cause conflict with adjacent uses as anticipated within the zoning district;
- D. Will not interfere with the visual character, quality, or appearance of the surrounding area and city, and where possible, enhance the continuity of thematically common architectural features;
- E. Will have facades, features, and other physical improvements that are designed as a whole, when viewed alone as well as in relationship to surrounding buildings and settings;
- F. Will not obstruct views and vistas as they pertain to the urban environment and in relation to artistic considerations;
- G. Will provide safe and convenient access to the property for both vehicles and pedestrians through patterned traffic circulation and connectivity to abutting development;
- H. Is in the interest of public health, safety, and general welfare promoting a pedestrian friendly and walkable environment in balance with protecting a viable residential center in the area; and
- I. No signs are proposed with this application. All signs, if proposed, will be required to be harmonious with the architectural design of the subdivision, and will not cover nor detract from desirable architectural features.

C. City of Caldwell

The City of Caldwell has a Design Review Commission that has authority to review "new construction, building additions, [and] exterior renovations" for developments located within the City Center Zoning District. Caldwell City Code § 02-37-05(2). The Design Review Commission has the ability to "approve, approve with conditions, or deny" such applications and hear appeals from staff-level decisions. Caldwell City Code § 02-37-

05(4). Decisions made by the Design Review Commission are appealable to the Caldwell City Council. Id. Interestingly, Caldwell City Code explicitly states that the Design Review Commission must comply with LLUPA, which may imply that the City of Caldwell has interpreted LLUPA to apply to design review actions. Caldwell City Code § 02-37-05(5).

Title 10, Chapter 12 of the Caldwell City Code sets forth general development and design standards for property that is within the City Center Zoning District, which the Design Review Commission has authority to review. The City of Caldwell Planning and Zoning Department is tasked with preparing a “design guideline booklet” for this zoning district. Caldwell City Code § 10-12-05(2)(C). The Caldwell Planning and Zoning Commission must hold a public hearing regarding the booklet and make a recommendation to the Caldwell City Council about adoption, amendment, or rejection. Caldwell City Code § 10-12-05(2)(D). Then, the Caldwell City Council must also hold a public hearing on the matter before it adopts the booklet. Caldwell City Code § 10-12-05(2)(D). When amendments to the booklet are proposed, the same procedures are followed. Caldwell City Code § 10-12-05(2)(G).

A design review applicant must first have a preapplication meeting prior to coming before the Design Review Commission. Caldwell City Code § 10-12-08(3). Applications before the Design Review Commission are subject to a public hearing in which property owners within 300-feet of the subject property have the right to participate. Caldwell City Code § 10-12-08(5)(A)(3)(A). Applicants and aggrieved parties that are property owners within 300-feet of the subject property also have the right to appeal the Design Review Commission’s decision to the Caldwell City Council within fifteen days of the written decision. Caldwell City Code § 10-12-08(5)(A)(5). If the application is ultimately approved, the applicant must submit an application for a building permit within one year of the design review approval unless he is granted an extension by the Planning and Zoning Director to avoid the decision being rendered null and void. Caldwell City Code § 10-12-08(6).

In Caldwell, in order to approve a design review application the decision maker shall determine that the proposed design aligns with the standards set forth in § 10-12. These standards include design requirements for City Center generally (§ 10-12-05), City Center Indian Creek Corridor (§ 10-12-06), City Center Historical District (§ 10-12-07), Outdoor Dining (§ 10-12-10), and general use (§ 10-12-04). The standards set forth are specific and thorough. For example, the design requirement standards for City Center generally (§ 10-12-05) include the following:

- A. Dimensional standards, such as minimum and maximum front, rear, and side yard setbacks, encroachments, lot area, width, and frontage, building height, easements, etc.;
- B. Standards for materials, colors, wall openings, and projecting elements such as facades and bay windows;
- C. Standards for building form, scale, and style precedents;
- D. Standards for pedestrian amenities, such as weather protection, benches, waste receptacles, drinking fountains, and bicycle racks;

- E. Standards for parking, including requirements for off street parking, parking structures, and surface parking lots;
- F. Standards for murals and blank walls;
- G. Standards for service areas and streetscape, such as right of ways, sidewalks, and lighting.

In addition to the thorough standards set forth, the design requirements section for Caldwell's Indian Creek Corridor also gives the decision maker "guiding principles" to refer to. § 10-12-06(B)(3):

- A. Relate new to existing development.
- B. Create a visually interesting and inviting environment.
- C. Strengthen the pedestrian environment.
- D. Promote sustainable design.
- E. Promote quality development.
- F. Address the special opportunity of Indian Creek.
- G. Create a distinctive skyline.
- H. Minimize the appearance of unattractive elements.
- I. Create linkages and passages.
- J. Create a multifunctional and attractive streetscape.
- K. Commit special attention to the design of civic and public spaces.

These guiding principles are reminiscent of Garden City's current required findings; however, they are more succinct and are followed by specific standards.

D. City of Boise

The City of Boise has a Design Review Committee that is under the Planning and Zoning Commission. § 11-02-04(1). The Boise Design Review Committee is tasked with reviewing development proposals within the design overlay zoning districts. § 11-02-04(1)(B). Design Review is a decision-making body for major projects and an appellate body for minor projects. § 11-03-02 Table 11-03.1; § 11-03-04(12). Additionally, Design Review recommends special design criteria districts to the Planning and Zoning Commission for adoption. § 11-02-04(1)(C). Persons who are aggrieved by a Design Review Decision may appeal to the Planning and Zoning Commission. § 11-03-02(B)(1)(a)-(b).

However, Boise is currently in the process of amending all of its Zoning Code. The executive summary of draft Module 2 of the Zoning Code rewrite is located at: <https://www.cityofboise.org/departments/planning-and-development-services/planning-and-zoning/zoning-code-rewrite/module-2-executive-summary/>. There is extensive discussion about parking requirements, and public outreach is ongoing.

Currently, before the project is submitted to design review, generally the following steps occur: (1) a pre-application conference, (2) a neighborhood meeting, (3) application

submittal, (4) notice for hearing, and (5) application processing. § 11-03.12. During application processing, the Director determines whether the project must be reviewed by Design Review. If the Design Review Committee is charged with reviewing a project, they are to make the following findings. §11-03-04(12)(C)(7)(c):

i. Site Design

- A. Traffic Impact: That traffic impact is minimized and the pedestrians and cyclists have been provided for through the use of sidewalks, pathways, landscaping, and safe parking lot design.
- B. Landscaping, Stabilization, And Screening: That landscaping screens buffer adjacent uses, and screen or conceal unsightly areas, including sites vacant due to demolition.
- C. Grading And Drainage: That on-site grading and drainage have been designed so as to minimize off- site impact and provide for erosion control.
- D. Signage: That signs provide for business identification, minimizes clutter comply with the sign regulations.
- E. Utilities: That utility systems do not detract from building design and that their size and location are appropriate and maintainable.

ii. Structure Design: The design (architecture) of buildings in the D and DD districts

- A. Building Mass: The building mass should be consistent with development in the immediate area.
- B. Building Facades: The height to width relationship should be compatible and consistent with the architecture in the area.
- C. Openings In The Facades: Openings in the facade shall be consistent with the architecture in the area. (For example, balconies, bays, and porches are encouraged with a minimum of monotonous flat planes to provide shadow relief).
- D. Exterior Materials: Exterior materials that complement surrounding development in terms of color and relief should be utilized.
- E. Commercial/Industrial Buildings Adjacent To Residential: The design shall minimize impacts on adjoining (including across a street or alley) residential uses and districts.

iii. Adopted Plans And Design Guidelines: Adopted plans and design guidelines in the appendix, including the Citywide and Downtown Design Standards and Guidelines as adopted by the City Council, are to be used in reviewing applications.

2. Specific issue with the Garden City Code § 8-6B-3(D)

In Garden City, under the current version of the municipal code, one of the required findings is the proposed design adheres to standards for the protection of health, safety, and general welfare. However, this has been found to be subjective without objective criteria. Anyone should be able to read the code along with an applicant's plan, and easily

determine if the plan will or will not be approved. Another example of a subjective standards is, “compatible with the intended character of a neighborhood.”

Therefore, the definition section in Garden City Code § 8-7A-2 is proposed to be modified to clarify the appropriate definitions for “health, safety, and general welfare” are “the elements identified within the purpose statement of the Local Land Use Planning Act (LLUPA), Idaho Code § 67-6502.” Idaho Code § 67-6502 currently states:

The purpose of this act shall be to promote the health, safety and general welfare of the people of the state of Idaho as follows:

(a) To protect property rights while making accommodations for other necessary types of development such as low-cost housing and mobile home parks.

(b) To ensure that adequate public facilities and services are provided to the people at reasonable cost.

(c) To ensure that the economy of the state and localities is protected.

(d) To ensure that the important environmental features of the state and localities are protected.

(e) To encourage the protection of prime agricultural, forestry and mining lands and land uses for production of food, fiber and minerals, as well as the economic benefits they provide to the community.

(f) To encourage urban and urban-type development within incorporated cities.

(g) To avoid undue concentration of population and overcrowding of land.

(h) To ensure that the development on land is commensurate with the physical characteristics of the land.

(i) To protect life and property in areas subject to natural hazards and disasters.

(j) To protect fish, wildlife and recreation resources.

(k) To avoid undue water and air pollution.

(l) To allow local school districts to participate in the community planning and development process so as to address public school needs and impacts on an ongoing basis.

(m) To protect public airports as essential community facilities that provide safe transportation alternatives and contribute to the economy of the state.

LLUPA contains the above objective standards that are easier to understand than the current Garden City Code. If the Idaho Code ever amends these standards, they will also be automatically updated in the Garden City Code.

Another requirement in Garden City Code § 8-6B-3(D) for design is that the application “improves the accessibility of development to non-motorized and public modes of transportation.” What does “improves accessibility of development” mean however? Currently, it means the design must improve access to that land by users of non-motorized transportation or users of public transportation. As written, the standard simply



requires the design to be an improvement in the accessibility by such users to the land being developed. But is this what the City Council intended?

Therefore, the proposed modifications also address pedestrian and bicycle accessibility requirements and clarify that only relevant zoning district dimensional regulations and purposes apply to each proposed design. Finally, this section is updated to make clear that proposed designs are to preserve and enhance the public's use and enjoyment of existing and planned public spaces.

### Garden City Code § 8-7A-2

As stated, definitions were included and updated for the terms "Health, Safety, and Welfare," "Mixed Use," and "Work-Live-Create Property" to give project proposers a better understanding of the City's expectations regarding those terms. However, the City Council should determine if there should be different objective standards or different definitions. Other terms have also been defined including "archeological sites," "Boise River," "waterways," and "wetlands".

### A Hybrid Between Various Codes:

It may also be possible to adopt a combination of wording from the other municipalities referenced above.<sup>2</sup> Meridian's code applies objective criteria, which Garden City may want to consider. If the council would only like to be the final decision maker for certain design review applications, it is possible that such an ordinance could be constitutional also. The constitutionality will depend on the specific wording and the reason for treating categories of design differently. However, it is important for the Garden City Code to have objective criteria for all design review applications.

Explanation of Proposed Amendments impacting Surel Mitchel Work-Live-Create Overlay Zoning District applications:

In addition to the base zoning districts, Garden City has overlaid on its zoning map the abovementioned "overlay districts," which include another set of restrictions on use and requirements for City oversight. One of the overlays is the Surel Mitchell Work-Live-Create overlay zoning district (WLC). There is also another overlay district, which is the Neighborhood Commercial Node (NCN). The code on the overlay districts should either be repaired or repealed.

Currently, the only dimensional requirements for development in the Surel Mitchell Work-Live-Create overlay zoning district are: a minimum set-back to accommodate a sidewalk (Garden City Code § 8-3C-3(A)(1)), minimum and maximum set-backs from the property line ((A)(2) and (3)), minimum set-backs for yards ((A)(4)-(6)), minimum set-backs from side streets ((A)(7)), and limitations on the size of development area and buildings ((A)(8)-(11)). The City Council should decide if it wants more, less, or different "dimensional requirements."

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<sup>2</sup> Boise is currently redrafting its design review code.

### Garden City Code § 8-3C-3(D) and (E)

The modifications to code in these two sections add wording to clarify that the Work-Live-Create proposed designs shall have a one (1) to one (1) ratio of working spaces to living spaces. However, is this the desire of the City Council? Should this be listed as a “dimensional requirement”?

### Garden City Code § 8-3C-3(G)

Structures in the Surel Mitchell Work-Live-Create overlay zoning district currently require one off-street parking space for each living unit. Additionally, Garden City Code § 8-3C-3(G)(2) reads: “Working spaces over 500 square feet of interior floor area shall be required to provide one parking space for every one thousand five hundred square feet or portion thereof; or the number of parking spaces needed to serve employees and patrons as determined by the planning and zoning commission. The language in Section 8-3C-3(G)(2) regarding the number of spaces required fails to comply with Idaho Code §§ 67-6511 and 67-6535. If the Surel Mitchell Work-Live-Create overlay zoning district is repealed, then the Council should also amend the parking provisions in Garden City Code Section 8-4D.

Governing bodies must express clear and objective standards in their comprehensive plan or their zoning ordinances for applicants to meet. They may not delegate to someone else, such as a state agency, to determine what the standards are on a development-by-development basis. Parking studies can be used but the City ultimately needs to determine the standards or criteria for parking regulations. The remainder of sub-section 8-3C-3(G)(2) is also vague.

The Council should decide if the meaning is: (1) working spaces over 500 square feet of interior floor area; (2) or a single interior room over that size dedicated to work; or (3) ten working spaces so dedicated of 60 square feet each; or (4) something else. If the design includes working spaces over 500 square feet of interior space, the design must also include one parking space for every 1,500 square feet of: (1) working space; or (2) total space?

Currently, “working spaces over 500 square feet of interior floor area...must provide one parking space” means any design having one, or more than one, working space that exceeds 500 square feet of interior floor area must also include at least one parking space. However, as written, this sub-section is irrelevant if a design does not include any working spaces over 500 square feet of interior floor area.

Accordingly, the wording in this section is edited to reflect that parking needs for Work-Live-Create proposed designs will be determined by Garden City established policy or demonstrated in a parking analysis. However, City Council should determine what the policy is, and should express clear and objective standards in the zoning ordinance. Any parking studies on a development-by-development basis need to be reviewed based on

objective criteria and not be a delegation to someone else to determine what the standards are.

The parking requirements currently in the Surel Mitchell Work-Live-Create overlay zoning district are less restrictive than the general regulations for parking and off street loading in Garden City Code § 8-4D. For example, a single-family dwelling under Garden City Code § 8-4D would require 1½ to 2½ parking spaces; whereas a single-family dwelling in the Surel Mitchell Work-Live-Create overlay zoning district would only require 1 parking space.

And what should the Code state about shared parking agreements? As stated below, the parking provisions, regarding shared parking agreements, currently in Garden City Code Section 8-4D are:

#### 8-4D-6 STANDARDS FOR ALTERNATIVES TO ON SITE PARKING:

Alternatives to providing on site parking are encouraged, including, but not limited to, shared use facilities, access to transit and availability of other forms of transportation such as carpools and vanpools.

A. Conditions: Conditions favorable to providing alternatives to on site parking are as follows:

1. Shared use:

- a. There are convenient pedestrian connections between separate properties;
- b. The properties and/or uses are within one-fourth (1/4) mile of each other;
- c. The principal operating hours of the uses are not in substantial conflict with one another; and
- d. Directional signs provide notice of the availability of parking.

2. Alternative transportation:

- a. There is a transit stop within one-fourth (1/4) mile of the use; or
- b. There is an incentive program for carpooling, vanpooling, or transit supported by the employer.
- c. There are shower facilities and lockers to support and encourage the use of nonmotorized transportation by employees.

B. Agreement:

1. All parties involved with a joint use parking area shall submit a written agreement to the planning official, signed by the applicable parties involved. The agreement shall specify the following:
  - a. Party or parties responsible for construction; and
  - b. Party or parties responsible for maintenance.
2. The applicant or owner shall record such agreement with the Ada County recorder prior to issuance of any permits.
3. The shared use parking agreement may be terminated by the parties only if off street parking is provided in conformance with this article and approved by the planning official prior to the termination.

The Council may want to review the requirements for shared parking agreements. Should the City even regulate parking requirements?

If the City Council decides to repeal the Surel Mitchell Work-Live-Create overlay zoning district, then the general regulations would control for parking and off street loading in Garden City Code § 8-4D. However, referring to 8-4D for parking requirements is also problematic. For example, the number of requisite parking spaces for non-residential and mixed use proposals are to be "determined by the planning official" based on several non-specific criteria. Therefore, G.C.C. § 8-4D should also be amended at some point in time.

***Currently, Garden City Code Section 8-4D Parking Provisions, states:***

ARTICLE D. PARKING AND OFF STREET LOADING PROVISIONS  
SECTION:

- 8-4D-1:** Purpose
- 8-4D-2:** Applicability
- 8-4D-3:** Parking Design And Improvement Standards
- 8-4D-4:** Parking Use Standards
- 8-4D-5:** Required Number Of Off Street Parking Spaces
- 8-4D-6:** Standards For Alternatives To On Site Parking
- 8-4D-7:** Off Street Loading Standards

8-4D-1 PURPOSE:

This article provides regulations and standards for vehicular and bicycle parking and loading facilities with the following purposes:

- A. To provide for off street parking and loading areas that minimize traffic hazards and congestion, and mitigates impacts on surrounding properties;
- B. To limit the amount of land required for parking with the consequent impacts on water quality and storm drainage;
- C. To maximize the use and efficiency of parking facilities;
- D. To recognize that each development has unique parking needs and to provide for a flexible approach for determining parking space requirements; and
- E. To provide for parking that is in scale and supports the pattern of compact, mixed use development identified in the city's comprehensive plan. (Ord. 898-08, 9-8-2008)

8-4D-2 APPLICABILITY:

- A. The design standards as set forth in section 8-4D-3, "Parking Design And Improvement Standards", of this article shall apply to any new construction, alteration, or moving of a structure or any new or more intense use of property. Except where there is a change in use, the provisions of this article shall not apply to any existing building or structure.
- B. Construction or modification of any parking area, except single-family residential parking areas, shall comply with plans that have been approved by the city.
- C. The number of required off street parking spaces, as set forth in section 8-4D-5 of this article, shall be provided for all allowed uses in any district. (Ord. 898-08, 9-8-2008)

### 8-4D-3 PARKING DESIGN AND IMPROVEMENT STANDARDS:

#### A. Design And Layout Of Parking Areas:

1. Required: All parking areas shall be designed and constructed to provide the type and number of off street parking spaces required by section 8-4D-5 of this article, and designed as required by this section.

#### 2. General Provisions For Location Of Parking Areas:

a. No part of any parking area for more than ten (10) vehicles shall be closer than twenty feet (20') to any dwelling unit, school, hospital or other institution for human care located on an adjoining lot, unless separated by screen in compliance with the provisions as set forth in article I, "Landscaping And Tree Protection Provisions", of this chapter.

b. If a parking area is located on the same lot with a single-family dwelling unit, the parking area may be located within the front yard required for such building if approved by the design committee and only if parking elsewhere is not feasible or possible.

c. Parking areas shall not be located closer than four feet (4') to any established street or alley right of way.

#### 3. Location And Design Of Parking Spaces For Residential Uses:

a. Parking spaces for detached residential dwelling units shall be located on the same lot as the dwelling which the space is intended to serve.

b. Parking for attached residential dwelling units shall be located not more than three hundred feet (300') from the structure(s).

c. The size of the parking space for a residential unit shall be at least ten feet by twenty feet (10' x 20'). Garage spaces shall be measured from the exterior dimensions.

d. Other requirements apply to the location of garages and carports as set forth in article B, "Design Provisions For Residential Structures", of this chapter.

#### 4. Nonresidential And Mixed Uses: Location of parking spaces and lots for nonresidential uses and mixed uses:

a. Parking shall be located not more than one-fourth (1/4) mile from the use, as allowed by the provisions set forth in section 8-4D-6 of this article.

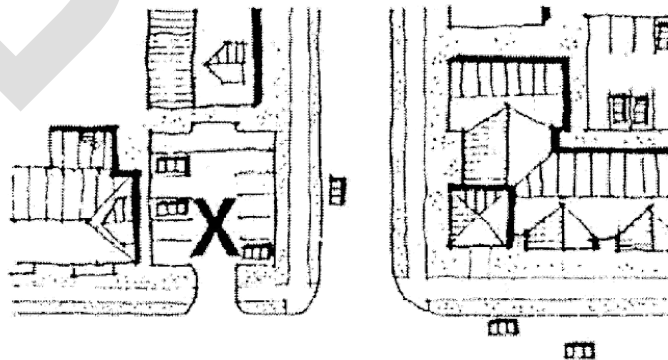
b. Parking lots shall not be located within forty feet (40') of a corner.

c. Parking spaces shall not interfere with the visibility and access to the main building entrance.

d. Off street parking spaces shall not be located in any required landscape area.

**Figure 8-4D-1**

#### **Acceptable And Unacceptable Location For A Parking Lot**



5. Other Requirements: Other requirements that apply to the location, layout and design of parking lots:
    - a. Parking lots shall be designed in compliance with the requirements as set forth in article C, "Design Provisions For Nonresidential Structures", of this chapter.
    - b. Parking lots shall be designed in accordance with article I, "Landscaping And Tree Protection Provisions", of this chapter.
  6. Parking Area Dimensional Standards: Parking lot layouts shall conform to the layouts and specifications identified in the "Garden City Design And Construction Guide", as amended.
  7. Parking Area Access Requirements:
    - a. Parking areas shall be designed in such a manner that any vehicle leaving or entering the parking area from, or onto, a public or private street shall be traveling in a forward motion. Except for an alley and parallel spaces, driveway configurations which require backing in, from, or out onto the street, are not allowed.
    - b. Parking areas shall be designed so that all vehicles are able to turn around within the site boundaries.
    - c. Access driveways for parking areas shall be located in such a way that any vehicle entering, or leaving, such an area shall be clearly visible by a pedestrian, or motorist, approaching the access or driveway from a public or private street. Access shall conform to the clear vision requirements in section 8-4E-3, "Public Street Connections", of this chapter and the vehicle and pedestrian circulation standards in section 8-4E-4, "Internal Circulation Standards", of this chapter.
  8. Handicapped Parking: Parking areas shall conform to Americans with disabilities act (ADA) standards for parking spaces. Parking spaces and access lanes shall be marked including handicapped symbols and signs.
- B. Improvements:
1. Surface: All off street parking areas and driveways into and through a parking area shall be improved with a compacted gravel base, not less than four inches (4") thick, surfaced with dustless material, including, but not limited to, asphalt, concrete, pavers, infiltration pavers, paver bricks, or recycled asphalt.
    - a. This standard shall not apply to temporary uses.
    - b. Residential uses may provide a substitute surface material where it can be demonstrated that the materials do not generate dust.
  2. Drainage: All parking and loading areas shall provide proper drainage of surface water to prevent the flow of water onto adjacent properties or walkways.
  3. Wheel Restraints: All off street parking areas for nonresidential uses shall be provided with a substantial wheel restraint to prevent cars from encroaching upon abutting private and public property or overhanging beyond the designated parking stall dimensions. This standard shall not apply to temporary uses.
  4. Overhangs: When a bumper overhangs onto a sidewalk or landscape area, the parking stall dimensions may be reduced two feet (2') in length if two feet (2') is added to the width of the sidewalk or landscaped area planted in ground cover.
  5. Lighting: Any parking area for nonresidential uses which is intended to be used during nondaylight hours shall be properly illuminated to avoid accidents. Any lights used to illuminate parking lots shall be so arranged as to reflect the light away from the adjoining property and be on a motion detector or timer.

C. Bicycle Parking Facilities: Space for bicycle parking shall be provided consistent with the following location and design standards:

1. Bicycle parking spaces shall:
  - a. Be a minimum space six feet (6') long by two feet (2') wide;
  - b. Be located as close as possible to the building entrance(s);
  - c. Be separated by a physical barrier to protect the bicycle from damage by motor vehicles if located within a vehicle parking area. The physical barrier can be curbs, poles, wheel stops, or other similar features;
  - d. Not impede pedestrian or vehicular circulation, and should be harmonious with their environment. The facilities shall be incorporated, whenever possible, into the structure's design or street furniture; and
  - e. Be located in highly well lighted areas to minimize theft and vandalism.
2. The bicycle support shall:
  - a. Support bicycles in a stable position without damage to the frame, wheels, or other components;
  - b. Provide for a bicycle to be locked to the frame and front wheel with one lock;
  - c. Be securely anchored to the lot surface so bicycles cannot be easily removed and shall be of sufficient strength to resist theft and vandalism; and
  - d. Not be placed too close to a wall or other obstruction so as to make use difficult. There shall be sufficient space (at least 24 inches) besides each parked bicycle to allow easy access. (Ord. 898-08, 9-8-2008)

#### 8-4D-4 PARKING USE STANDARDS:

A. Number Of Spaces: No use shall provide less than the minimum or more than the maximum number of off street parking spaces required under section 8-4D-5, "Required Number Of Off Street Parking Spaces", of this article.

B. Change Of Use: Upon any change of use, the number of vehicle parking spaces to be provided shall be calculated according to the requirements of this article for the new use.

C. Use Of Property; Phased Projects: The use of any property is conditional upon the unqualified continuance and availability of the parking as required by this code. In phased projects, individual phases of the project are exempt from the maximum parking standards, provided that the project does not exceed the maximum allowable parking at build-out.

D. Equivalent Facilities: No required parking area or space provided, as required by this article, shall later be eliminated, reduced, or converted in any manner unless other equivalent facilities approved by the city are provided.

E. Temporary Uses: Required parking spaces shall be used for vehicle parking only, except as may be allowed for a temporary use in compliance with the requirements as set forth in section 8-2C-36, "Temporary Uses", of this title.

F. Parking Use For Residential Dwellings:

1. Parking of one commercial vehicle as defined in chapter 7 of this title per property may be allowed, provided it is operated by the occupant and used to commute from home to work at an off site location or used as part of an approved home occupation;
2. Vehicles without current registration shall not be parked or stored on any residential property other than in an enclosed space;

3. One boat and one travel trailer less than six feet (6') in length may be stored in the side or rear yard;
4. Tandem parking use is allowed to meet the parking requirements; and
5. One on street parking space a minimum of twenty feet (20') in length may qualify as a required parking space. (Ord. 898-08, 9-8-2008)

**8-4D-5 REQUIRED NUMBER OF OFF STREET PARKING SPACES:**

A. Residential Uses: The minimum number of required off street vehicle parking for residential uses shall be in accord with table 8-4D-2 of this subsection.

**TABLE 8-4D-2  
REQUIRED PARKING SPACES FOR RESIDENTIAL USES**

Use	Total Required Parking Spaces Per Dwelling Unit	Required Parking Spaces Within An Enclosed Garage
Dwelling, multi-family:		
1 bedroom	1	1
More than 1 bedroom	2	1
Dwelling, single-family attached:		
1 bedroom	2	1
More than 1 bedroom	2	2
Dwelling, single-family detached	2	1
Dwelling, 2 unit:		
1 bedroom	2	1
More than 1 bedroom	2	2
For developments with more than 2 dwelling units there shall be 0.5 additional spaces/unit provided for guest parking.		

**B. Nonresidential And Mixed Uses:** The minimum and maximum number of required off street vehicle parking for nonresidential uses and mixed use shall be determined by the planning official based on the following criteria:

1. The specific use(s) proposed and/or on the property;
2. Uses in the vicinity of the property;
3. A traffic study, if prepared, forecasting the expected traffic and parking needs expected from the use(s);
4. The availability of on street, shared, and/or public parking within the vicinity of the use; and
5. The availability of public transit, vanpooling or other alternative transportation to serve the use.

C. Appeal: When in the determination of the planning official, there is insufficient parking or the proposed parking is oversupplied to meet the needs of the use(s), the planning official's determination may be appealed to the planning and zoning commission in accordance with the provisions set forth in section 8-6A-9, "Appeals", of this title.

D. Bicycle Parking Standards:



1. Bicycle parking facilities shall be provided for any new structure, or an addition to any existing structure, that exceeds fifteen thousand (15,000) square feet in gross floor area, or any multi-family development of three (3) or more units.
2. Bicycle parking facilities shall be provided in compliance with table 8-4D-3 of this subsection, with fractional requirements for bicycle parking over 0.5 to be rounded up.

**TABLE 8-4D-3  
REQUIRED BICYCLE PARKING SPACES**

Type Of Use	Minimum Number Of Bicycle Parking Spaces Required
All nonresidential structures	1 space per 20 vehicle spaces and 1 space per commercial tenant
Multi-family residential structures (3 or more dwelling units) including units in a mixed use project	1 space for every 6 dwelling units

(Ord. 898-08, 9-8-2008; amd. Ord. 975-15, 4-27-2015)

**8-4D-6 STANDARDS FOR ALTERNATIVES TO ON SITE PARKING:**

Alternatives to providing on site parking are encouraged, including, but not limited to, shared use facilities, access to transit and availability of other forms of transportation such as carpools and vanpools.

A. Conditions: Conditions favorable to providing alternatives to on site parking are as follows:

1. Shared use:

- a. There are convenient pedestrian connections between separate properties;
- b. The properties and/or uses are within one-fourth (1/4) mile of each other;
- c. The principal operating hours of the uses are not in substantial conflict with one another; and
- d. Directional signs provide notice of the availability of parking.

2. Alternative transportation:

- a. There is a transit stop within one-fourth (1/4) mile of the use; or
- b. There is an incentive program for carpooling, vanpooling, or transit supported by the employer.
- c. There are shower facilities and lockers to support and encourage the use of nonmotorized transportation by employees.

B. Agreement:

1. All parties involved with a joint use parking area shall submit a written agreement to the planning official, signed by the applicable parties involved. The agreement shall specify the following:

- a. Party or parties responsible for construction; and
- b. Party or parties responsible for maintenance.

2. The applicant or owner shall record such agreement with the Ada County recorder prior to issuance of any permits.

3. The shared use parking agreement may be terminated by the parties only if off street parking is provided in conformance with this article and approved by the planning official prior to the termination. (Ord. 898-08, 9-8-2008)

8-4D-7 OFF STREET LOADING STANDARDS:

A. Off Street Loading Space Requirements:

1. Off street loading spaces for nonresidential uses shall be provided as set forth in table 8-4D-4 of this subsection.

Gross Floor Area In Square Feet	Required Type And Number Of Spaces
0 to 36,000	1 type B
36,001 to 100,000	1 type A and 1 type B
Each additional 75,000 or fraction thereof	1 additional type A

2. Type A spaces shall be not less than twelve feet (12') in width and thirty five feet (35') in length. Type B spaces shall be not less than fifteen feet (15') in width and sixty five feet (65') in length. All spaces shall have fourteen feet (14') of vertical clearance. (Ord. 898-08, 9-8-2008)

B. Off Street Loading Access Requirements:

1. Access driveways for parking areas shall be located in such a way that any vehicle entering or leaving such an area shall be clearly visible by a pedestrian or motorist approaching the access or driveway from a public or private street. Access shall conform to the clear vision requirements and the vehicle and pedestrian circulation standards in article E, "Transportation And Connectivity Provisions", of this chapter. (Ord. 898-08, 9-8-2008; amd. Ord. 905-09, 3-23-2009)

2. Except for an alley, loading areas shall be designed so vehicles shall not back out into the street; or project into the public right of way or setback area.

3. Convenient access to loading spaces from streets or alleys shall be provided with not less than fifteen feet (15') in width.

C. Off Street Loading Requirements Adjacent To A Residential District:

1. No off street loading space shall be located closer than fifty feet (50') to a residential district unless fully enclosed or within an enclosure of walls twelve feet (12') high.

2. No off street loading space shall face an abutting residential district.

3. Any off street loading space located within fifty feet (50') of a residential district shall not operate between the hours of ten o'clock (10:00) P.M. and seven o'clock (7:00) A.M.

***The Below are Examples of Parking Regulations from Other Local Governments:***

**MERIDIAN**

11-3C-6(B)-(H)

B. The following standards shall apply for off street vehicle parking for nonresidential uses:

1. In all commercial and residential districts the requirement shall be one (1) space for every five hundred (500) square feet of gross floor area, except for self-service storage facilities which shall only require parking based on the gross floor area of any office space.

2. In all industrial districts the requirement shall be one (1) space for every two thousand (2,000) square feet of gross floor area, except for self-service storage facilities which shall only require parking based on the gross floor area of the office space.

3. In all traditional neighborhood districts the requirement shall be one (1) space for every one thousand (1,000) square feet of gross floor area. Lawfully existing structures in traditional neighborhood districts shall not be required to comply with the requirements of this section except when a proposed addition increases the number of off-street parking spaces normally required, then the applicant shall provide additional parking as set forth in this section.

4. In circumstances where there would appear to be a public safety issue, the director may request additional information from the applicant to determine if there is sufficient parking. When in the determination of the director there is insufficient parking, the applicant shall provide alternatives to off street parking as set forth in Section 11-3C-7 of this article. The determination by the director shall be based on the following criteria:

- a. The specific use(s) proposed and/or on the property;
  - b. Uses in the vicinity of the property;
  - c. A traffic study, if prepared, forecasting the expected traffic and parking needs expected from the use(s);
  - d. The availability of on street, shared, and/or public parking within the vicinity of the use; and/or
  - e. The availability of public transit, vanpooling or other alternative transportation to serve the use.
- C. Upon any change of use, the number of vehicle parking spaces to be provided shall be calculated according to the requirements of this article for the new use.
- D. It is the responsibility of the applicant to ensure that the size and number of handicap accessible spaces meets all Americans with Disabilities Act (ADA) requirements.
- E. The required vehicle parking spaces shall be provided and continuously maintained.
- F. No required parking area or space provided, as required by this article, shall later be eliminated, reduced, or converted in any manner unless other equivalent facilities approved by the director are provided.
- G. One (1) bicycle parking space shall be provided for every twenty-five (25) proposed vehicle parking spaces or portion thereof, except for single-family residences, two-family duplexes, and townhouses.
- H. If the calculation of the number of off-street parking spaces results in a fraction, such number shall be rounded up or down to the next whole number. fractions less than one-half (0.5) shall be rounded down to the whole number and fractions which are one-half (0.5) and greater shall be rounded up to the next higher whole number.

#### 11-3C-7. – Parking standard alternatives.

Alternatives to providing off-street parking as set forth in this section are encouraged in all developments. When required to meet minimum parking standards of Sections 11-3C-5 and 11-3C-6 of this article, alternatives shall include, but not be limited to, shared use facilities, public-private partnerships for facilities such as parking structures or bicycle locker and storage areas, access to transit and availability of other forms of transportation such as car pools and vanpools.

A. *Favorable conditions.* Conditions favorable to providing alternatives to off street parking are as follows:

1. *Shared use.*
  - a. There are convenient pedestrian connections between separate properties;
  - b. The properties and/or uses are within one thousand (1,000) feet of each other;

c. The principal operating hours of the uses are not in substantial conflict with one another; and

d. Directional signs provide notice of the availability of parking.

2. *Alternative transportation.*

a. There is a transit stop within one-fourth ( $\frac{1}{4}$ ) mile of the use; or

b. There is an incentive program for carpooling, vanpooling, or transit supported by the employer.

B. *Shared use agreement.*

1. All parties involved with the shared use parking area shall submit a written agreement to the director, signed by the applicable parties involved. The agreement shall specify the following:

a. Party or parties responsible for construction; and

b. Party or parties responsible for maintenance.

2. The applicant or owner shall record such agreement with the Ada County Recorder prior to issuance of any permits.

3. The shared use parking agreement may be terminated by the parties only if off street parking is provided in conformance with this article and approved by the director prior to the termination.

C. *Alternative transportation.* Where alternative modes of transportation are available, off street parking may be reduced by an equivalent amount to the demand that is met by the alternative transportation mode, as documented in a transportation plan prepared by a registered engineer.

D. *Old town (O-T) district alternatives.* To encourage creative parking solutions the following alternatives are also available to properties located in the old town (O-T) district.

1. *Credit.* Any addition or new construction on property where a lawful structure exists, the applicant is eligible for an existing structure credit. Off street parking for the existing square footage of a structure shall not be required, provided the applicant apply for a parking credit. Unless otherwise explicitly required by previous city approval, existing off-street parking need not be retained on properties where additions and new construction is proposed. The following must be satisfied to obtain a parking credit:

a. The existing square footage shall be verified through the Ada County Tax Assessor's records.

b. For existing structures to be demolished, the square footage of the new structure shall be equal to or greater than the existing structure.

c. For existing structures to be demolished, construction of a new structure shall commence within eighteen (18) months of demolition permit issuance.

2. *Innovative solutions.* The city recognizes that there may be innovative parking proposals that conform to the purpose, intent, and objectives of this article but were not anticipated in the specific regulations. This subsection sets forth a method for compliance in the event an innovative parking solution is proposed. The Director may approve, or recommend approval of, an innovative alternative parking solution in Old Town, when the following are satisfied:

a. *Meridian Development Corporation (MDC) recommendation.* The applicant or owner shall obtain a written recommendation on the parking compliance method proposed from the Meridian Development Corporation (MDC) board. Said recommendation from the MDC board shall accompany the submittal of a development application.

b. *Approval.* To grant approval, the director shall determine the following:

- (1) The solution proposed mitigates the additional demand created by the new or expanded use;
- (2) The proposal will not negatively impact nearby parking or impair the character of surrounding properties;
- (3) Strict adherence or application of the parking requirements on the subject site are not feasible or desirable in Old Town; and
- (4) The solution is not materially detrimental to public health, safety or welfare.

E. *Alternative off-street parking and loading plan.* The Director may approve, or recommend approval of, an alternative off street parking and loading plan, through the alternative compliance process specified in section 11-5B-5 of this title when the overall design, as proposed by the applicant, meets or exceeds the intent and the requirements of this article. Mitigating circumstances might include, but not be limited to, access to an adequate public transit system and/or an unusually low parking demand.

## **EAGLE**

### **8-4-2: APPLICATION OF PROVISIONS:**

A. No building or structure shall be erected, substantially altered, or its use changed unless permanently maintained off street parking and loading spaces have been provided in accordance with the provisions of this title.

B. The provisions of this chapter, except where there is a change of use, shall not apply to any existing building or structure. Where a new use involves no additions or enlargements, there shall be provided as many such spaces as may be required by this title.

C. Whenever a building, structure, or use, constructed or changed in use after the effective date hereof, is changed or enlarged in floor area, number of employees, number of dwelling units, seating capacity, or otherwise to create a need for an increase in the number of existing parking spaces per this title, additional parking spaces shall be provided so that the existing building, structure, or use, and proposed enlargement or change in use, shall then and thereafter comply with the full parking requirements set forth herein.

D. If more than one use is located on the site, the number of off street parking spaces shall be equal to the sum of the requirements prescribed for each use unless a joint/collective parking facility is approved as provided for in section 8-4-4-3 of this chapter.

<b>Type Of Use</b>	<b>Off Street Parking Spaces Required</b>
<b>RESIDENTIAL</b>	
Apartments or multi-family dwellings	For each unit with 2 or more bedrooms - 2 including 1 covered; for each 1 bedroom or studio unit - 1.5 including 1 covered. 0.25 spaces per unit shall be provided for guest parking. Garages shall not be used for household storage and shall be kept available for parking
Boarding houses, lodging houses,	1 for each sleeping room or 1 for each permanent occupant, whichever number is greater

dormitories and fraternity houses which have sleeping rooms	
Mobile home court (RV)	1 for each trailer/RV space
Mobile home or manufactured home park	For each unit with 2 or more bedrooms - 2 including 1 covered; for each 1 bedroom unit - 1 covered. 0.25 spaces per unit shall be provided for guest parking. Adjacent on street parking spaces on a local street may be credited toward the guest parking requirement
Single-family dwelling (lots less than 15,000 square feet)	2 including 1 covered
Single-family dwelling (lots 15,000 square feet or more)	2
Two-family dwelling	For each unit - 2 including 1 covered
<b>COMMERCIAL</b>	
Ambulance services	1 per 500 square feet of gross floor area; plus 2 enclosed ambulance storage spaces
Artist studios	1 per 1,000 square feet of gross floor area
Auction facility	As required with conditional use permit
Automobile washing facility	1 per 200 square feet of gross floor area of sales, office, or lounge area; plus queue for 3 cars per washing station
Automotive gas station/service shop or fuel islands	1 for each 2 gasoline pumps and 2 for each service bay (spaces in front of bays or pumps shall not be counted)
Automotive, mobile home, travel trailer, and/or farm implement sales	1 per 400 square feet of gross floor area; plus 1 per 500 square feet outdoor display
Automotive repair shop, body shop, or tire shop	1 per 225 square feet of gross floor area
Automotive storage	1 per 500 square feet of gross floor area of office space; plus 1 per 1,000 square feet of gross storage area
Banks/financial institutions	1 for each 200 square feet of gross floor area; plus queue for 4 cars per drive up window
Catering service	1 per 400 square feet of gross floor area
Childcare - family	1
Childcare - group	2
Childcare - daycare center	3 for each classroom but not less than 9 for the building
Churches and other places of religious assembly	1 for each 5 seats
Clinic	1 per 200 square feet of gross floor area
Club or lodge	1 per 100 square feet of gross floor area

Commercial entertainment facilities:	
Auditoriums, sports arenas, theaters and similar uses	1 for each 3 seats
Bowling alleys	3 for each alley or lane, plus 1 additional for each 100 square feet of the area used for restaurant, cocktail lounge, arcade area or similar use
Dance floors, skating rinks	1 per 100 square feet of gross floor area
Outdoor swimming pools, public or community or club	1 for each 4 persons' capacity, plus 1 for each 4 seats or 1 for each 30 square feet floor area used for seating purposes, whichever is greater
Tennis and racquetball clubs	3 per court
Communication facilities	1 per 500 square feet gross floor area
Convenience store	1 per 250 square feet gross floor area; plus 1 for each 2 gasoline pumps
Detention facilities	As specified by conditional use permit
Emergency health care	1 per 200 square feet of gross floor area
Emergency services	1 per 500 square feet of gross floor area; plus minimum of 2 enclosed vehicle storage spaces
Equipment rental and sales yard	1 per 400 square feet of gross floor area; plus 1 per 500 square feet outdoor display
Food and beverage sales	1 per 250 square feet of gross floor area
Health clubs, spas, and weight reduction salons	1 per 250 square feet of gross floor area
Home and business services	1 per 400 square feet of gross floor area
Hospitals	1 for each bed
Hotels, motels	1 for each sleeping room, plus 1 for each 2 employees
Kennel	1 per 400 square feet of gross floor area
Laboratories	1 per 500 square feet of gross floor area
Laundromat	1 per 300 square feet of gross floor area
Laundry	1 per 400 square feet of gross floor area; plus queue for 3 cars per drive up window
Maintenance and repair services	1 per 400 square feet of gross floor area; plus 1 per 500 square feet of outdoor storage area
Mortuaries, funeral parlors, and similar type uses	1 per 4 seats
Nursery, plant materials	1 per 500 square feet of outside display/ lathe house/green house area, plus 1 per 250 square feet gross floor area

Nursing/convalescent homes, sanitariums, children's homes, asylums and similar uses	1 for each 3 beds
Offices, business and professional	1 per 250 square feet of gross floor area
Offices, medical and dental	1 per 200 square feet of gross floor area
Pawn shops	1 per 250 square feet of gross floor area
Personal improvement	1 per 250 square feet of gross floor area
Personal services	1 per 250 square feet of gross floor area
Printing and/or blueprinting	1 per 400 square feet of gross floor area
Restaurant with drive-through	1 per 200 square feet of gross floor area; plus queue space for 5 cars for drive up service
Restaurants, dining rooms, taverns, nightclubs, etc.	1 per 150 square feet of gross floor area; plus 1 per 35 square feet dance floor
Retail sales of large items such as furniture and appliances	1 per 500 square feet of gross floor area; in the DDA and TDA 1 per 1,000 square feet of gross floor area shall be required for any such use and on street parking shall be included in the minimum requirement
Retail sales not listed under another use classification	1 per 250 square feet of gross floor area; in the DDA and TDA 1 per 500 square feet of gross floor area shall be required for any such use and on street parking shall be included in the minimum requirement
Riding academies/stables	1 per 4 stalls
Shop, contractors (and/or yard)	1 per 400 square feet gross floor area of shop; plus 1 per 1,000 square feet of gross storage area (indoor and outdoor)
Storage (enclosed building and/or fenced area)	1 per 1,000 square feet of gross storage area
Travel services	1 per 250 square feet of gross floor area
Vet clinic (animal hospital)	1 per 400 square feet of gross floor area
<b>INDUSTRIAL</b>	
Automotive wrecking yard or salvage	1 per 1,000 square feet gross storage area; plus 1 per 300 square feet office or sales area
Industry (custom)	1 per 1,000 square feet gross area used for industrial purposes; plus 1 per 300 square feet office or sales area
Industry (limited)	1 per 750 square feet of gross floor area used for industrial purposes; plus 1 per 300 square feet office or sales area
Industry (research and development)	1 per 500 square feet
Manufacturing facilities and processing plants	1 per 500 square feet gross area used for manufacturing/processing; plus 1 per 300 square feet office or sales area



Warehousing, wholesaling, distribution and storage	1 per 1,000 square feet gross area up to 20,000 square feet plus 1 per 2,000 square feet gross area over 20,000 square feet
<b>PUBLIC/SEMIPUBLIC</b>	
Business, technical and trade schools	1 for each 2 students
Colleges, universities	1 for each 4 students
Cultural facilities	1 per 300 square feet gross floor area; plus 1 per 90 square feet for area for assembly purposes
Elementary and junior high schools	2 for each classroom and 1 for every 5 seats in the auditoriums or assembly halls
Government offices	1 per 250 square feet gross floor area
High schools	As required with conditional use permit
Kindergartens, childcare centers, nursery schools and similar uses	3 for each classroom, but not less than 9 for the building
Libraries, museums and art galleries	1 for each 400 square feet floor area

\*Eagle also has loading space requirements, bicycle parking requirements, joint/collective parking specifications, and compact vehicle specifications.

Eagle only allows a reduced number of parking spaces when (1) there is a joint parking agreement that meets requisite criteria or (2) the project falls within two designated overlay zoning districts. Eagle's parking standards are objective. Staff is currently working on new parking regulations for Garden City but need instruction from the City Council.

**CONCLUSION:** Approvals and denials of any application under the LLUPA must be based on standards and criteria set forth in a comprehensive plan, zoning ordinance, or other regulation. Additionally, the approval or denial of such an application must be in writing and must be accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the facts relied upon, and explains the rationale for the decision. The proposed amendments impacting all design review applications provide clear criteria and standards for review.

The following options could be employed to address the identified deficiencies in the Garden City Code regarding the Surel Mitchel Work-Live-Create Overlay Zoning District: (1) amend the existing Overlay District ordinance to address the concerns identified; (2) repeal the Overlay District and adopt a new Overlay District or a new base zoning district; or (4) repeal the Overlay District and amend the general design standards. Therefore, Council will be presented with two alternative versions to Proposed Ordinance No. 1024-22 (one to repair and one to repeal the overlay district). Many more amendments to the Development Code will be forthcoming in the weeks and months to come. However, the above identified issues should be rectified as soon as possible.