



OFFICE OF THE CITY ATTORNEY

6015 Glenwood Street □ Garden City, Idaho 83714
Phone 208/472-2900 □ Fax 208/472-2996

TO: Mayor and Council
FROM: Charles I. Wadams, City Attorney
DATE: January 23, 2023
SUBJECT: Consideration of Proposed Ordinance No. 1032-22 (Permit Extensions)

ACTION REQUIRED: Within the City Council's discretion.

RECOMMENDATION: None.

FISCAL IMPACT/BUDGET IMPLICATIONS: There is no significant financial impact to the City.

BACKGROUND: The allotted time periods for permit extensions in the building regulations and development code vary from project to project. This ordinance sets forth a standard extension time and lengthens the amount of time granted for both permits and permit extensions in Title 7 and Title 8.

ANALYSIS: This ordinance amends criteria related permit extensions by providing uniform and reasonable time periods for extensions on permits governed by the development code. This ordinance proposes that the permit times be lengthened for subdivisions, extensions, and other permits under the development code. The goal is to reduce the number of permit extension requests and allow applicants reasonable time to complete their projects. The ultimate purpose of this ordinance is to make the permitting and permit extension processes more unified and usable to benefit staff as well as those submitting development applications.

A neighborhood meeting was held on Thursday, November 17, 2022. The public hearings were on Wednesday, December 21, 2022, in front of the Planning and Zoning Commission, and Monday, January 9, 2023, in front of City Council. Also on the agenda are ordinances related to sureties and accessory dwelling units. The second reading of proposed Ordinance No. 1032-22 is scheduled for January 23, 2023.

At the January 9, 2023 meeting, a discussion was held regarding whether this code amendment should be retroactive regarding extension requests on permits that were issued pursuant to the old version of code. An ordinance or statute in Idaho applies retroactively when the legislature or governing body expressly declares the ordinance or statute to be retroactive. If the City wants the amended code on permit extensions to apply retroactively on permits already issued, the City should expressly declare the amendment to be retroactive in the code.

An ordinance or statute is considered retroactive if it applies to events that occurred before the ordinance or statute was enacted. Retroactive laws can be controversial, as

SECOND MEMORANDUM ON PERMIT EXTENSIONS, CPAFY2023-0002 & PROPOSED ORDINANCE NO. 1032-22, P.1

they can change the legal consequences of actions that were taken before the law was in place.

“[I]n Idaho, a statute is not applied retroactively unless there is ‘clear legislative intent to that effect.’ In the absence of an express declaration of legislative intent that a statute apply retroactively, it will not be so applied.” *State ex rel. Wasden v. Daicel Chem. Indus., Ltd.*, 141 Idaho 102, 105, 106 P.3d 428, 431 (2005). In *Unity Light & Power Co. v. City of Burley*, 92 Idaho 499 (1968), the Idaho Supreme Court addressed whether the legislature had expressly declared a statute to be applied retroactively. *Id.* The enactment provided, “This act shall be in full force and effect from and after June 1, 1963.” Ch. 269, § 5, 1963 Idaho Sess. Laws 685, 689. In holding that the legislature had not expressly declared the act to be retroactive, the Court stated, “The legislature, in setting the effective date of the new statute, demonstrated an intent that it not be given retrospective effect.”

In Idaho, the constitutionality of retroactive laws can be challenged in court. The courts will determine whether the law is constitutional on a case-by-case basis. The Idaho Supreme Court has held that a law is unconstitutional if it impairs the obligations of contracts, or violates the Due Process Clause or the Ex Post Facto Clause of the United States Constitution or the Idaho Constitution. It is important to note that a retroactive law that is constitutional under the Idaho Constitution may still be deemed unconstitutional under the United States Constitution.

This ordinance does not present a significant fiscal impact to the City and serves to unify codified requirements for permit extensions. Therefore, I am recommending that this ordinance be passed if the required standards are satisfied and there is a nexus to a government interest, such as public health and safety.