

## FREMONT COUNTY ORDINANCE NO 2011-01

**TEXT AMENDMENT OF THE FREMONT COUNTY DEVELOPMENT CODE; APPENDIX I – DETAILED PERFORMANCE STANDARDS FOR RESIDENTIAL BUSINESSES AND LODGINGS**

AN ORDINANCE AMENDING THE FREMONT COUNTY DEVELOPMENT CODE, APPENDIX I – HOME OCCUPATIONS; TO RENAME APPENDIX I AS PERFORMANCE STANDARDS FOR RESIDENTIAL BUSINESSES AND LODGINGS; TO PROVIDE OPPORTUNITIES FOR HOME-BASED BUSINESSES INCLUDING THE TRANSIENT RENTAL OF STRUCTURES INCIDENTAL TO AND COMPATIBLE WITH SURROUNDING RESIDENTIAL AND AGRICULTURAL USES; TO PROMOTE ECONOMIC SELF-SUFFICIENCY OF COUNTY RESIDENTS; AND TO REDUCE COMMUTING WITHIN THE COUNTY WITHOUT REQUIRING A ZONING CHANGE, WHILE PROTECTING THE GENERAL HEALTH, WELFARE, AND SAFETY AND ENJOYMENT OF PROPERTY BY ADJACENT LANDOWNERS; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREMONT COUNTY, IDAHO THAT THE DEVELOPMENT CODE IS AMENDED AS FOLLOWS:

The Fremont County Development Code Appendix I – Home Occupations, previously amended by Ordinance 2010-01 shall be repealed and replaced in its entirety with the following text:

**APPENDIX I – PERFORMANCE STANDARDS FOR RESIDENTIAL BUSINESSES AND LODGINGS**

**1.01 Purpose.** The purpose of this Appendix is to provide opportunities for home-based businesses incidental to and compatible with surrounding residential or agricultural use, to promote economic self-sufficiency of County residents, and to reduce commuting within the County without requiring a zoning change while protecting the general health, welfare, and safety and enjoyment of property by adjacent landowners.

**1.02 Scope.** The provisions of this Appendix apply to the owners and operators of any home-based occupation, home-based business, home-based care facility or group home, or home-based lodging in any Rural Conservation, Rural Living, or Rural Infill zone (2010 Edition); or any South Fremont, North Fremont or Island Park zoning district (2003 Edition).

**1.03 Permit Required.** Except as provided for herein, approved residential businesses or lodgings require a residential business/lodging permit based on the specific acceptable use, subject to the time limitations and other restrictions of Chapter 3 of this Ordinance and this Appendix.

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**1.04 Acceptable Uses.** Subject to the restrictions of this Appendix and this Ordinance, the following uses may qualify for a residential business or lodging permit (Industrial uses do not qualify for home occupation):

**1.04.010** Home Occupation

**1.04.020** Home Based Business

**1.04.030** Residential Care Facility or Group Home

**1.04.040** Transient Rental, Bed and Breakfast, Lodge, Small Hotel, or Motel

**1.05 Unacceptable Uses.** The following uses are not incidental to or compatible with residential activities, and are expressly prohibited:

**1.05.010** Medical and dental offices, clinics, and laboratories;

**1.05.020** Mini storage;

**1.05.030** Pest control;

**1.05.040** Pool cleaning;

**1.05.050** Storage of equipment, materials, and other accessories to the construction and service trades;

**1.05.060** Veterinary services;

**1.05.070** Any other use determined by the Administrator to be not incidental or compatible with residential activities; or any other use which violates any applicable law.

**1.06 Conditions of Approval.** Approval of a residential business/lodging permit does not change any requirement of this Ordinance applicable to the dwelling to which it is accessory, including all requirements of the adopted residential building codes and public health codes. Where any requirement of this Appendix differs from that of this Ordinance, the more restrictive requirement shall prevail.

**1.07 Permit Duration.** A residential business/lodging permit shall be valid for two (2) years from the date of approval. A permit may be renewed for an additional two (2) years with the payment of a renewal fee as published and amended along with the submission of the renewal application and all applicable forms and reports.

***DIVISION 1 – GENERAL PROVISIONS***

**1.08 Water.** Applicant must demonstrate an adequate and continuing supply of safe drinking water for all areas served by a Residential Business/Lodging permit. The water supply must also be sufficient to meet the needs of fire suppression to the satisfaction of the County Fire Official. Failure to meet this standard may result in denial of a permit.

**1.08.010 Municipal Water.** If Applicant's dwelling is served by a municipal water service, Applicant must submit written evidence from the water service provider that the service account is in good standing and of adequate service capacity for the proposed home business or lodging use. This verification is required to be updated and submitted with any renewal application.

**1.08.020 Well Water.** If Applicant's dwelling is served by either a private or community well, Applicant must submit the results of a water sample test from a professional water testing service or laboratory of water drawn from inside the dwelling. This test must be performed immediately prior to each renewal period, with a copy of the lab report submitted with the renewal application. The test shall demonstrate that the water is potable and safe to drink according to the standards published by the U.S. Environmental Protection Agency.

**1.08.030 Corrective Action.** If water sampling demonstrates that water is unsafe to drink, Applicant must work with the Eastern Idaho Public Health District to attempt to correct the deficiency before a permit will be issued.

**a. Alternative Sourced Water.** If the main water supply cannot be corrected to deliver safe drinking water, an alternative source of safe drinking water may be provided to meet the requirements of this section. Bottled potable water delivery is an acceptable alternative source.

**1.09 Sewer or Septic.** Applicant must demonstrate an adequate and continuing capacity for wastewater disposal based on the proposed residential business or lodging use.

**1.09.010 Sewer.** If Applicant's dwelling is served by a municipal or county sewer system, Applicant must submit written evidence from the sewer service provider that the service account is in good standing and of adequate service capacity for the proposed residential business or lodging use. This verification is required to be updated and submitted with any renewal application.

**1.09.020 Septic.** If Applicant's dwelling is served by either a private or community septic system, Applicant must submit the results of both a "condition" evaluation and a "capacity" evaluation, as explained below. The condition evaluation must be performed immediately prior to each renewal period, with a copy of the inspector's report submitted with the renewal application. The condition or capacity of the septic system may limit the proposed uses available under a residential business/lodging permit.

**a. Individual/Subsurface Sewage Disposal Rules.** Based on published guidance from the Idaho Department of Environmental Quality, Fremont County has determined daily wastewater capacity requirements for approved uses in this Appendix, based on gallons per day (GPD).

(1) Home Occupations: Unregulated.

(2) Residential Businesses: 250 GPD per dwelling (1-3 bedrooms), plus 50 GPD per additional bedroom (4+ bedrooms), plus 20 gallons per day (GPD) per non-resident employee.

(3) Residential Care Facilities/Group Homes: 40 GPD per resident / resident staff, plus 15 GPD per non-resident staff.

(4) Transient Rental Lodging: 40 GPD per person.

**b. Condition Evaluation.** The Applicant must submit an evaluation report from a professional septic system installer or servicer rating the overall condition of the septic system, the septic tank capacity, the next recommended date for septic tank pumping, and any observed concerns with installation, condition, and performance.

**c. Capacity Evaluation.** Fremont County will only accept an evaluation from Eastern Idaho Public Health District stating the rated peak and continuous capacity of the installed septic system, which is included on all septic installation permits. This capacity rating will be used to determine the maximum allowable guest occupancy or employee count for an approved residential business or lodging permit. An Applicant may retrofit or replace a septic system to achieve higher capacity and upon installation verification by Eastern Idaho Public Health District, the residential business or lodging permit will be amended without charge, as long as the proposed amended use remains in the same permit class as the previously granted permit.

(1) Septic tank capacity shall be equal to two (2) times the average daily flow as determined from the daily wastewater flow per person for each permitted use.

## 1.10 Fire Protection.

**1.10.010 Smoke Detectors.** The Applicant shall be responsible for installing, testing, and maintaining smoke detectors specific to the proposed residential business or lodging use, per manufacturer's instructions and as required by code. All detectors shall be tested semi-annually per the manufacturer's instructions. Specific guidelines for proper installation and maintenance can be obtained from the Fremont County Planning and Building Department or the local fire department.

**a. Applicability.** Smoke detectors are required for every residential business/lodging permit.

**b. Installation.** Approved, listed, labeled and operable smoke detectors must be minimally located inside each sleeping room and at the top of each stairway in a manner consistent with the manufacturer's recommendations, and in all other places required by adopted building code of Fremont County.

**1.10.020 Carbon Monoxide Detectors.** The Applicant shall be responsible for installing, testing, and maintaining carbon monoxide detectors specific to the proposed home occupancy use, per manufacturer's instructions. All detectors shall be tested semi-annually per the manufacturer's instructions.

**a. Applicability.** Carbon monoxide detectors are required if Applicant's property is heated with fossil fuel, has a fuel-fired appliance, has a fireplace, or has an attached garage.

**b. Installation.** Carbon monoxide detectors must be installed within 15 feet of the entrance to each bedroom, sleeping area, rest area, break room, or other room or space used for sleeping purposes.

**c. Power Source.** Carbon monoxide detectors must be installed in one of the following methods:

(1) Wired directly into the home's electrical system.

(2) Directly plugged into an electrical outlet. This outlet must be unswitched.

(3) Battery powered alarms can be attached to a wall or ceiling, in accordance with National Fire Protection Association standard 720.

**1.10.030 Fire Extinguishers.** The Applicant shall be responsible for installing, testing, and maintaining fire extinguishers specific to the proposed home occupancy use, per manufacturer's instructions and as required by code. All extinguishers shall be tested semi-annually per the manufacturer's instructions.

**a. Applicability.** Fire extinguishers are required for every residential business/lodging permit.

**b. Installation.** One approved, listed, and labeled fire extinguisher rated for kitchen fires must be located near the kitchen or food preparation area and at least one approved, listed, and labeled fire extinguisher rated for general fires must be located near the sleeping rooms in a lodging use.

**1.10.040 Open Burning Ordinance.** The Applicant shall be responsible to understand the Fremont County Open Burning Ordinance (Ordinance 2010-02), to post the Open Burning Ordinance in a conspicuous place, and to inform all employees, guests, tenants, lodgers, and visitors of the ordinance and its consequences.

**1.11 Solid Waste.** Applicant will provide a sufficient number of suitable garbage receptacles to fully contain all solid waste generated by the proposed residential business or lodging use, which shall be disposed of on a weekly basis. Except on collection day, these garbage receptacles shall not be readily visible from the street (see I.1.14). Trash in plastic bags shall not be placed outside of garbage receptacles. Where applicable, animal- and pest-proof garbage receptacles must be used. There shall not be any uncontained litter or odor noticeable at or beyond the property line.

**1.12 Nuisances.** Applicant's proposed use shall not cause noise to exceed the standards of Appendix H - Standards for Noise.

**1.13 Off-Street Parking.** Residential businesses or lodgings shall provide off-street parking for all employees, guests, lodgers, visitors, etc., and any vehicles associated with the proposed use in compliance with the requirements of Appendix C - Detailed Performance Standards for Off-Street Parking and Loading. All camper trailers, boat trailers, utility trailers, transport trailers, or any other type of trailer must also be parked off-street.

**1.14 Outdoor Storage.** The storage of any materials or solid waste associated with a residential business or lodging shall be:

**1.14.010** within an enclosed structure, or

**1.14.020** within an area that is effectively screened from public view.

**1.15 Heavy Commercial Vehicles.** A heavy commercial vehicle is a vehicle or mechanized construction equipment unit that is used primarily for business purposes. One truck and trailer with a single piece of construction equipment shall be considered two vehicles.

**1.15.010** Agricultural vehicles and agricultural operations are exempt.

**1.16 Signs.** Excluding any contact information sign, residential businesses or lodgings may display only the following signs:

**1.16.010** one non-illuminated wall sign of no more than six (6) square feet, and

**1.16.020** one non-illuminated, on-site directional sign of no more than four (4) square feet.

**1.17 Idaho State Tax Commission Registration.** Applicants must provide their Idaho State Tax Commission Registration information. Failure to collect and remit any and all applicable sales and use taxes may result in permit suspension or revocation.

**1.18 Inspection.** The Applicant shall grant permission to Fremont County and Eastern Idaho Public Health District to perform a physical inspection of that part of the dwelling and premises used for home occupancy once a year. The County will notify Applicant with at least five (5) days' notice of an upcoming inspection and will conduct the inspection during traditional business hours. The inspection shall be constrained to only those applicable items defined in this Ordinance and Appendix.

**1.19 Compliance.** The County shall, in writing, notify the Applicant of any deficiencies identified in the inspection, along with the reasons therefore, and serve such notice either by personal service or by certified mail, with service being effective upon mailing. Any deficiencies identified during an inspection must be corrected within thirty (30) days of notice, with written evidence of the corrections provided to the County. Failure to correct deficiencies in the allotted time may result in suspension or revocation of the Residential Business/Lodging Permit. If the same deficiency is found to occur three (3) times within the permitted time period, the permit shall be revoked with Applicant prohibited from re-applying for two (2) years from the date of the revocation.

**1.20 Enforcement.** The enforcement standards contained in Chapter 3 of this Ordinance shall apply to this Appendix.

#### *DIVISION 2 – HOME OCCUPATION*

**1.21 Home Occupations.** Home occupation means a commercial-like activity conducted solely by the occupants of a particular dwelling unit in a manner incidental to and subordinate to the use of the dwelling unit as a residence.

**1.22 Exempt from Permitting.** General home occupations do not require a residential business/lodging permit and are allowed in all zones where the home occupation meets all of the following standards:

**1.22.010** The use shall be clearly incidental and subordinate to the residential or agricultural use of the property and shall not change the character thereof;

**1.22.020** All business is conducted within the primary residence on a parcel, except that an accessory structure may be used for professional office or similar type home occupations;

**1.22.030** All business activities are conducted by a person or persons residing on the premises. No nonresident employees shall be allowed. No employees may report to work at the site of the home occupation;

**1.22.040** There is no outside storage of materials or goods used or manufactured as a part of the home occupation. No hazardous material other than those commonly found within a residence shall be used or stored on the site. Such materials and equipment shall be limited to quantities that do not constitute a fire, health or safety hazard;

**1.22.050** There shall be no storage or parking of heavy commercial vehicles as defined in I.1.15;

**1.22.060** The use shall not create additional pedestrian, automobile or truck traffic in excess of the normal amount typical for the area. Client or customer visits to the site shall be limited to not more than three per day, and ten per week;

**1.22.070** No signage of any kind may be displayed;

**1.22.080** Only one vehicle no larger than one ton truck may be used by the occupant directly or indirectly in connection with a home occupation;

**1.22.090** The home occupation shall not encroach into any required parking, setback, or open space areas; and

**1.22.100** In accordance with this Ordinance, the use shall not create or cause noise, dust, vibration, odor, gas, fumes, toxic or hazardous materials, smoke, glare or electrical interference or other hazards nuisances.

**1.23 Residential Business Permit May Be Required.** In the event that the proposed home occupation use does not meet all the requirements of this Division 2, the use shall be considered a residential business and must meet the requirements of Division 3 of this Appendix.

### ***DIVISION 3 – RESIDENTIAL BUSINESS***

**1.24 Residential Business.** Residential business means a commercial-type activity conducted solely by the occupants of a particular dwelling unit in a manner incidental to and subordinate to the use of the dwelling unit as a residence, but that may have non-resident employees and/or frequent customer visits to the residence. Transient rental lodging (Division 5) is not a residential business as same is defined herein.

**1.25 Purpose.** The purpose of these provisions is to allow, in suitable locations, more intensive home occupation uses which:

**1.25.010** allow residents greater economic self-sufficiency,

**1.25.020** indirectly support agriculture by enhancing the economic viability of living on agricultural property,

**1.25.030** minimally impact neighboring properties, and

**1.25.040** are clearly subordinate to primary residential or agricultural uses, and do not diminish agricultural viability or neighborhood character.

**1.26 Permit Required.** A Class I permit shall be required, pursuant to Chapter 3, for expanded home occupations that exceed the standards set forth in Division 2, above.

**1.27 Standards.** Residential business uses shall be subject to all of the following:

**1.27.010** The minimum lot size shall be one acre, gross;

**1.27.020** Site of residential business has direct access to a public road or contributes to a road maintenance association;

**1.27.030** All business is conducted within the primary residence on a parcel, except that an accessory structure may be used for professional office or similar type home occupations. A detached structure used for a residential business shall not exceed the following:

a. If located in Rural Conservation or Rural Living zones (2010 Edition); or South Fremont, North Fremont, or Island Park zoning district (2003 Edition), 3,000 square feet and is adequately buffered from adjacent property as determined by the Administrator as per the setbacks and buffering requirements of this Ordinance; and

b. If located in Rural Infill (2010 Edition), 1,500 square feet.

**1.27.040** Noise shall not exceed the levels set forth in Appendix H. The Administrator may require a noise analysis to be submitted by the Applicant to verify compliance of this requirement;

**1.27.050** The number of vehicle trips generated by customers or clients shall not exceed ten per day;

**1.27.060** The business shall be owned and operated by a person or persons residing on the premises, and there shall be no more than two employees other than residents of the premises;

**1.27.070** Except as permitted by Table 4.4 of Chapter 4, no retail sales shall occur on the premises;

**1.27.080** Areas used for the storage of equipment, supplies, materials, or goods used or manufactured as a part of the home occupation shall be screened from view of adjacent property and public roads;

**1.27.090** As required by Appendix C, there shall be adequate parking on the site to accommodate employees and customers, in addition to the required residential parking spaces; and

**1.27.100** The storage of heavy commercial vehicles, as defined in I.1.15, used in conjunction with a residential business pursuant to this Division 3 shall be subject to the following restrictions:

- a. Not permitted in Rural Infill zone districts;
- b. Limited to two vehicles in Rural Living and Rural Conservation, and all agricultural zone districts.

**1.28 Class II Permit May Be Required.** In the event that the proposed residential business use does not meet all the requirements of this Division 3, it does not qualify for a Residential Business/Lodging Permit, is hereby defined as a commercial/industrial use, and must meet the commercial/industrial requirements of this Ordinance, including proper commercial/industrial zoning.

#### ***DIVISION 4 – RESIDENTIAL CARE FACILITY OR GROUP HOME***

**1.29 Residential Care Facility or Group Home.** Defined as a living arrangement in which people with special needs, especially older people with disabilities, reside in a facility that provides help with everyday tasks such as bathing, dressing, and taking medication. Also defined as children's institutions which include, but are not limited to, foster homes, maternity homes, children's therapeutic outdoor programs, or any facilities providing treatment, therapy or rehabilitation for children.

**1.30 Exempt from Permitting.** In accordance with I.C. 67-6531, residential care facilities or group homes do not require a residential business/lodging permit and are allowed in all zones where the use meets all of the following standards:

**1.30.010** The residential care facility must have eight (8) or fewer unrelated persons with disabilities or elderly persons reside and who are supervised at the group residence in connection with their disability or age related infirmity.

**1.30.020** Resident staff, if employed, need not be related to each other or to any of the persons with disabilities or elderly persons residing in the group residence.

**1.30.030** No more than two (2) of such staff shall reside in the dwelling at any one time.

**1.31 Exception to Permit Exemption.** The exemption from permitting provided for in I.1.30 of this section shall not apply to tenancy or planned tenancy in a group residence by persons who are under the supervision of the state board of correction pursuant to I.C. 20-219, or who are required to register pursuant to I.C. 18-83 or I.C. 18-84, or

whose tenancy would otherwise constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

**1.32 Additional Certification and Licensure.** As required in I.C. 67-6532(1), the Idaho Department of Health and Welfare may require group residences, as defined in I.C. 67-6531, to be licensed and set minimum standards for providing services or operation. Such licensure may be under the residential or assisted living facility rules or under the intermediate care facilities for people with intellectual disabilities or related conditions rules or under rules specifically written for such group residences.

**1.33 Class II Permit May Be Required.** If the proposed residential care facility or group home use does not meet all the requirements of this Division 4, it does not qualify for a Residential Business/Lodging Permit, is hereby defined as a commercial use, and must meet the commercial requirements of this Ordinance, including proper commercial zoning.

***DIVISION 5 – RESIDENTIAL TRANSIENT RENTAL LODGING: BED & BREAKFAST ESTABLISHMENT / CABIN / HOME / LODGE / SMALL HOTEL OR MOTEL***

**1.34 Transient Rental.** Transient rental lodging or occupancy means the use of a structure or some part thereof for rental or occupancy for sleeping or lodging for terms of 30 consecutive days or less, in exchange for a fee or other similar consideration.

**1.35 Purpose.** The purpose of these provisions is to allow in suitable residential locations where land use incompatibilities can be minimized, transient rental uses which:

**1.35.010** allow residents greater economic self-sufficiency,

**1.35.020** indirectly support agriculture by enhancing the economic viability of living on agricultural property,

**1.35.030** minimally impact neighboring properties, and

**1.35.040** are clearly subordinate to primary residential or agricultural uses, and do not diminish agricultural viability or neighborhood character.

**1.36 Use Definitions.** The following terms are defined as they are meant in this Appendix:

**1.36.010 Bed & Breakfast.** A Bed & Breakfast establishment is difficult to clearly define, as a number of similar, but distinct uses all fall into this general category. The following types of uses would all be considered a “Bed & Breakfast:”

- a. Homestay, Host Home.** This type of establishment is an owner-occupied private home where the business of paying guests is secondary to its use as a private residence. The hosts are primarily interested in meeting new people and making some additional monies while continuing their present employment or retirement. Breakfast is the only meal served. In some instances, it may be an un-hosted apartment where breakfast is self-serve.
- b. B&B, Bed-And-Breakfast.** Formerly a single family dwelling usually in the 4-5-room range, this owner-occupied establishment has an equally mixed use as home and lodging with lodging superseding home more often than not.
- c. Bed & Breakfast Inn.** Generally small, owner-operated businesses providing the primary financial support of the owner. Usually the owner lives on premises. The building's primary usage is for business. Breakfast is the only meal served and only to overnight guests. The inn may host events such as weddings, small business meetings, etc.
- d. Country Inn.** A business offering overnight lodging and meals where the owner is actively involved in daily operations, often living on site. These establishments are, in fact, Bed & Breakfast inns which serve at least one meal in addition to breakfast, and operate as "restaurants" as well as overnight lodging accommodations. A country inn with a full-service restaurant serves these additional meals to the general public.
- e. Bed & Breakfast/Self-Contained Cottage.** A detached building affording privacy and seclusion to guests, with owner providing minimal services. Breakfast is delivered to the room, taken with others in a central dining room or placed prior to arrival (or upon daily cleaning) in the cottage kitchen facilities. The owner is usually available for questions, but generally guests choose this style of B&B when they want little help. The light personal touch and memorable B&B decor further distinguish this genre from the vacation rental/condo.
- 1.36.020 Cabin.** A cabin is generally a smaller, rustic building or structure designed as a second or vacation home and may be offered for rent in whole or part to related or non-related parties. Typically, the owner is not present during periods of transient rental.
- 1.36.030 Home (or dwelling).** A home is a building, structure, or portion thereof used extensively for residential occupancy, including single-family, two-family, and multifamily dwellings, but not including hotels, motels, lodging houses, or other explicitly commercial buildings or structures. A dwelling is most simply defined as a legally permitted building or structure that contains a sleeping habitation, sanitary facilities, and a facility for heating food. A home may be offered in whole or part to related or non-related parties. Generally, the owner is not present during periods of transient rental.

**1.36.040 Lodge.** A rustic structure typical of or reminiscent of the historical look and feel of area structures, and offering overnight visitor accommodations. These uses may include facilities available to the general public, including, without limitation, meeting and dining facilities, provided these are an integral part of the lodge.

**1.36.050 Small Hotel or Motel.** A commercial establishment offering overnight visitor accommodations, but not providing room rentals on an hourly basis. These uses include facilities available to the general public, including, without limitation, meeting and dining facilities, provided these are an integral part of the hotel or motel operations.

**1.37 Permit Required.** Transient rental uses in residential areas require a residential business/lodging permit, and may be permitted under one of two classes of permits:

**1.37.010 Minor Transient Use.** A minor transient use is the transient rental use of a home, building, or structure, in whole or part, for any purpose permitted in this Appendix to no more than fifteen (15) total occupants for any overnight stay. A Class I Residential Business/Lodging Permit shall be required, pursuant to Chapter 3.

**1.37.020 Expanded Transient Use.** An expanded transient use is the transient rental use of a home, building, or structure, in whole or part, for any purpose permitted in this Appendix to more than fifteen (15) but no more than thirty (30) total occupants for any overnight stay. A Class II Conditional Use Residential Business/Lodging Permit shall be required, pursuant to Chapter 3.

**1.37.030 Major Transient.** A major transient use is the transient rental use of a home, building, or structure, in whole or part, to more than thirty (30) total occupants for any overnight stay, does not qualify for a Residential Business/Lodging Permit, is hereby defined as a commercial use, and must meet the commercial requirements of this Ordinance, including proper commercial zoning.

**1.38 Standards.** Transient rental uses shall be subject to the following:

**1.38.010 Signage.** A contact person or agent within the local Fremont County calling area must be identified on the application, be reasonably available by phone, and able to respond if there is a problem during the dwelling's use as a transient rental. The name and phone number of the contact person shall be posted inconspicuously on the transient rental building, but where a neighbor can easily read it

**1.38.020 Access Requirements.** Transient rentals must have independent, improved access to the adjacent public, County, or State roadway which shall not include shared driveway access, unless by mutual consent.

**1.38.030 Capacity.**

**a. Individual Capacity.** Each occupant requires 150 square feet of that heated, habitable portion of the home offered for transient rental use. The size of home may restrict the number of overnight occupants that might be otherwise permitted. As an example, a 3,000 square foot home would permit a maximum of twenty (20) occupants (20 people x 150 square feet each = 3,000 square feet).

**b. Maximum Capacity.** The total number of occupants permitted for any overnight stay may not exceed fifteen (15) for a minor transient use and may not exceed thirty (30) for an expanded transient use.

**1.39 Class II Commercial Permit May Be Required.** In the event that the proposed transient rental use does not meet all the requirements of this Division 5, the use shall be considered "major transient," does not qualify for a Residential Business/Lodging Permit, is hereby defined as a commercial use, and must meet the commercial requirements of this Ordinance, including proper commercial zoning.


**EFFECTIVE DATE:**

This ordinance shall become effective upon publication, as required by law.

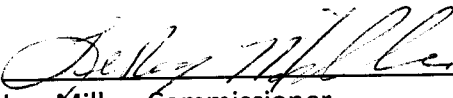
Duly approved, passed and adopted this 29<sup>th</sup> day of November, 2010, by the BOARD OF COUNTY COMMISSIONERS:



Paul Romrell, Chairman

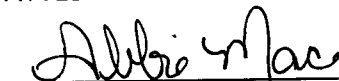


Ronald "Skip" Hurt, Commissioner



Lee Miller, Commissioner

ATTEST:

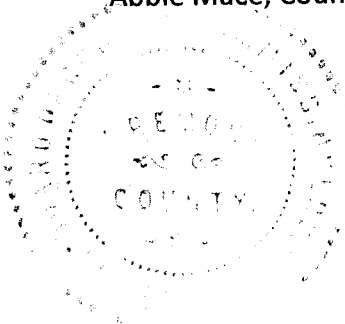


Abbie Mace, County Clerk

APPROVED AS TO FORM:



Joette Lookabaugh, Prosecuting Attorney



**MEMO**

**TO:** FREMONT COUNTY BOARD OF COUNTY COMMISSIONERS

**DATE:** November 24<sup>th</sup>, 2010

**STAFF:** Stephen Loosli, Planning and Building Administrator

**FILE:** APPENDIX I –PERFORMANCE STANDARDS FOR RESIDENTIAL BUSINESSES AND LODGINGS

**APPLICANT:** FREMONT COUNTY

**SUBJECT:** TEXT AMENDMENT OF THE FREMONT COUNTY DEVELOPMENT CODE; APPENDIX I – DETAILED PERFORMANCE STANDARDS FOR RESIDENTIAL BUSINESSES AND LODGINGS

**FILE No.:** 10-044

**NATURE OF APPLICATION**

This is a public hearing on a text amendment to the Fremont County Development Code before the Fremont County Board of Commissioners.

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**PROPOSED TEXT AMENDMENT**

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**1.01 Purpose.** The purpose of this Appendix is to provide opportunities for home-based businesses incidental to and compatible with surrounding residential or agricultural use, to promote economic self-sufficiency of County residents, and to reduce commuting within the County without requiring a zoning change while protecting the general health, welfare, and safety and enjoyment of property by adjacent landowners.

**1.02 Scope.** The provisions of this Appendix apply to the owners and operators of any home-based occupation, home-based business, home-based care facility or group home, or home-based lodging in any Rural Conservation, Rural Living, or Rural Infill zone (2010 Edition); or any South Fremont, North Fremont or Island Park zoning district (2003 Edition).

**1.03 Permit Required.** Except as provided for herein, approved residential businesses or lodgings require a residential business/lodging permit based on the specific acceptable use, subject to the time limitations and other restrictions of Chapter 3 of this Ordinance and this Appendix.

**1.04 Acceptable Uses.** Subject to the restrictions of this Appendix and this Ordinance, the following uses may qualify for a residential business or lodging permit (Industrial uses do not qualify for home occupation):

**1.04.010** Home Occupation

**1.04.020** Home Based Business

**1.04.030** Residential Care Facility or Group Home

**1.04.040** Transient Rental, Bed and Breakfast, Lodge, Small Hotel, or Motel

**1.05 Unacceptable Uses.** The following uses are not incidental to or compatible with residential activities, and are expressly prohibited:

**1.05.010** Medical and dental offices, clinics, and laboratories;

**1.05.020** Mini storage;

**1.05.030** Pest control;

**1.05.040** Pool cleaning;

**1.05.050** Storage of equipment, materials, and other accessories to the construction and service trades;

**1.05.060** Veterinary services;

**1.05.070** Any other use determined by the Administrator to be not incidental or compatible with residential activities; or any other use which violates any applicable law.

**1.06 Conditions of Approval.** Approval of a residential business/lodging permit does not change any requirement of this Ordinance applicable to the dwelling to which it is accessory, including all requirements of the adopted residential building codes and public health codes. Where any requirement of this Appendix differs from that of this Ordinance, the more restrictive requirement shall prevail.

**1.07 Permit Duration.** A residential business/lodging permit shall be valid for two (2) years from the date of approval. A permit may be renewed for an additional two (2) years with the payment of a renewal fee as published and amended along with the submission of the renewal application and all applicable forms and reports.

#### ***DIVISION 1 – GENERAL PROVISIONS***

**1.08 Water.** Applicant must demonstrate an adequate and continuing supply of safe drinking water for all areas served by a Residential Business/Lodging permit. The water supply must also be sufficient to meet the needs of fire suppression to the satisfaction of the County Fire Official. Failure to meet this standard may result in denial of a permit.

**1.08.010 Municipal Water.** If Applicant's dwelling is served by a municipal water service, Applicant must submit written evidence from the water service provider that the service account is in good standing and of adequate service capacity for the proposed home business or lodging use. This verification is required to be updated and submitted with any renewal application.

**1.08.020 Well Water.** If Applicant's dwelling is served by either a private or community well, Applicant must submit the results of a water sample test from a professional water testing service or laboratory of water drawn from inside the dwelling. This test must be performed immediately prior to each renewal period, with a copy of the lab report submitted with the renewal application. The test shall demonstrate that the water is potable and safe to drink according to the standards published by the U.S. Environmental Protection Agency.

**1.08.030 Corrective Action.** If water sampling demonstrates that water is unsafe to drink, Applicant must work with the Eastern Idaho Public Health District to attempt to correct the deficiency before a permit will be issued.

**a. Alternative Sourced Water.** If the main water supply cannot be corrected to deliver safe drinking water, an alternative source of safe drinking water may be

provided to meet the requirements of this section. Bottled potable water delivery is an acceptable alternative source.

**1.09 Sewer or Septic.** Applicant must demonstrate an adequate and continuing capacity for wastewater disposal based on the proposed residential business or lodging use.

**1.09.010 Sewer.** If Applicant's dwelling is served by a municipal or county sewer system, Applicant must submit written evidence from the sewer service provider that the service account is in good standing and of adequate service capacity for the proposed residential business or lodging use. This verification is required to be updated and submitted with any renewal application.

**1.09.020 Septic.** If Applicant's dwelling is served by either a private or community septic system, Applicant must submit the results of both a "condition" evaluation and a "capacity" evaluation, as explained below. The condition evaluation must be performed immediately prior to each renewal period, with a copy of the inspector's report submitted with the renewal application. The condition or capacity of the septic system may limit the proposed uses available under a residential business/lodging permit.

**a. Individual/Subsurface Sewage Disposal Rules.** Based on published guidance from the Idaho Department of Environmental Quality, Fremont County has determined daily wastewater capacity requirements for approved uses in this Appendix, based on gallons per day (GPD).

(1) Home Occupations: Unregulated.

(2) Residential Businesses: 250 GPD per dwelling (1-3 bedrooms), plus 50 GPD per additional bedroom (4+ bedrooms), plus 20 gallons per day (GPD) per non-resident employee.

(3) Residential Care Facilities/Group Homes: 40 GPD per resident / resident staff, plus 15 GPD per non-resident staff.

(4) Transient Rental Lodging: 40 GPD per person.

**b. Condition Evaluation.** The Applicant must submit an evaluation report from a professional septic system installer or servicer rating the overall condition of the septic system, the septic tank capacity, the next recommended date for septic tank pumping, and any observed concerns with installation, condition, and performance.

**c. Capacity Evaluation.** Fremont County will only accept an evaluation from Eastern Idaho Public Health District stating the rated peak and continuous capacity of the installed septic system, which is included on all septic installation

permits. This capacity rating will be used to determine the maximum allowable guest occupancy or employee count for an approved residential business or lodging permit. An Applicant may retrofit or replace a septic system to achieve higher capacity and upon installation verification by Eastern Idaho Public Health District, the residential business or lodging permit will be amended without charge, as long as the proposed amended use remains in the same permit class as the previously granted permit.

- (1) Septic tank capacity shall be equal to two (2) times the average daily flow as determined from the daily wastewater flow per person for each permitted use.

## 1.10 Fire Protection.

**1.10.010 Smoke Detectors.** The Applicant shall be responsible for installing, testing, and maintaining smoke detectors specific to the proposed residential business or lodging use, per manufacturer's instructions and as required by code. All detectors shall be tested semi-annually per the manufacturer's instructions. Specific guidelines for proper installation and maintenance can be obtained from the Fremont County Planning and Building Department or the local fire department.

**a. Applicability.** Smoke detectors are required for every residential business/lodging permit.

**b. Installation.** Approved, listed, labeled and operable smoke detectors must be minimally located inside each sleeping room and at the top of each stairway in a manner consistent with the manufacturer's recommendations, and in all other places required by adopted building code of Fremont County.

**1.10.020 Carbon Monoxide Detectors.** The Applicant shall be responsible for installing, testing, and maintaining carbon monoxide detectors specific to the proposed home occupancy use, per manufacturer's instructions. All detectors shall be tested semi-annually per the manufacturer's instructions.

**a. Applicability.** Carbon monoxide detectors are required if Applicant's property is heated with fossil fuel, has a fuel-fired appliance, has a fireplace, or has an attached garage.

**b. Installation.** Carbon monoxide detectors must be installed within 15 feet of the entrance to each bedroom, sleeping area, rest area, break room, or other room or space used for sleeping purposes.

**c. Power Source.** Carbon monoxide detectors must be installed in one of the following methods:

- (1) Wired directly into the home's electrical system.

(2) Directly plugged into an electrical outlet. This outlet must be unswitched.

(3) Battery powered alarms can be attached to a wall or ceiling, in accordance with National Fire Protection Association standard 720.

**1.10.030 Fire Extinguishers.** The Applicant shall be responsible for installing, testing, and maintaining fire extinguishers specific to the proposed home occupancy use, per manufacturer's instructions and as required by code. All extinguishers shall be tested semi-annually per the manufacturer's instructions.

**a. Applicability.** Fire extinguishers are required for every residential business/lodging permit.

**b. Installation.** One approved, listed, and labeled fire extinguisher rated for kitchen fires must be located near the kitchen or food preparation area and at least one approved, listed, and labeled fire extinguisher rated for general fires must be located near the sleeping rooms in a lodging use.

**1.10.040 Open Burning Ordinance.** The Applicant shall be responsible to understand the Fremont County Open Burning Ordinance (Ordinance 2010-02), to post the Open Burning Ordinance in a conspicuous place, and to inform all employees, guests, tenants, lodgers, and visitors of the ordinance and its consequences.

**1.11 Solid Waste.** Applicant will provide a sufficient number of suitable garbage receptacles to fully contain all solid waste generated by the proposed residential business or lodging use, which shall be disposed of on a weekly basis. Except on collection day, these garbage receptacles shall not be readily visible from the street (see I.1.14). Trash in plastic bags shall not be placed outside of garbage receptacles. Where applicable, animal- and pest-proof garbage receptacles must be used. There shall not be any uncontained litter or odor noticeable at or beyond the property line.

**1.12 Nuisances.** Applicant's proposed use shall not cause noise to exceed the standards of Appendix H - Standards for Noise.

**1.13 Off-Street Parking.** Residential businesses or lodgings shall provide off-street parking for all employees, guests, lodgers, visitors, etc., and any vehicles associated with the proposed use in compliance with the requirements of Appendix C - Detailed Performance Standards for Off-Street Parking and Loading. All camper trailers, boat trailers, utility trailers, transport trailers, or any other type of trailer must also be parked off-street.

**1.14 Outdoor Storage.** The storage of any materials or solid waste associated with a residential business or lodging shall be:

1.14.010 within an enclosed structure, or

1.14.020 within an area that is effectively screened from public view.

**1.15 Heavy Commercial Vehicles.** A heavy commercial vehicle is a vehicle or mechanized construction equipment unit that is used primarily for business purposes. One truck and trailer with a single piece of construction equipment shall be considered two vehicles.

1.15.010 Agricultural vehicles and agricultural operations are exempt.

**1.16 Signs.** Excluding any contact information sign, residential businesses or lodgings may display only the following signs:

1.16.010 one non-illuminated wall sign of no more than six (6) square feet, and

1.16.020 one non-illuminated, on-site directional sign of no more than four (4) square feet.

**1.17 Idaho State Tax Commission Registration.** Applicants must provide their Idaho State Tax Commission Registration information. Failure to collect and remit any and all applicable sales and use taxes may result in permit suspension or revocation.

**1.18 Inspection.** The Applicant shall grant permission to Fremont County and Eastern Idaho Public Health District to perform a physical inspection of that part of the dwelling and premises used for home occupancy once a year. The County will notify Applicant with at least five (5) days' notice of an upcoming inspection and will conduct the inspection during traditional business hours. The inspection shall be constrained to only those applicable items defined in this Ordinance and Appendix.

**1.19 Compliance.** The County shall, in writing, notify the Applicant of any deficiencies identified in the inspection, along with the reasons therefore, and serve such notice either by personal service or by certified mail, with service being effective upon mailing. Any deficiencies identified during an inspection must be corrected within thirty (30) days of notice, with written evidence of the corrections provided to the County. Failure to correct deficiencies in the allotted time may result in suspension or revocation of the Residential Business/Lodging Permit. If the same deficiency is found to occur three (3) times within the permitted time period, the permit shall be revoked with Applicant prohibited from re-applying for two (2) years from the date of the revocation.

**1.20 Enforcement.** The enforcement standards contained in Chapter 3 of this Ordinance shall apply to this Appendix.

## ***DIVISION 2 – HOME OCCUPATION***

**1.21 Home Occupations.** Home occupation means a commercial-like activity conducted solely by the occupants of a particular dwelling unit in a manner incidental to and subordinate to the use of the dwelling unit as a residence.

**1.22 Exempt from Permitting.** General home occupations do not require a residential business/lodging permit and are allowed in all zones where the home occupation meets all of the following standards:

**1.22.010** The use shall be clearly incidental and subordinate to the residential or agricultural use of the property and shall not change the character thereof;

**1.22.020** All business is conducted within the primary residence on a parcel, except that an accessory structure may be used for professional office or similar type home occupations;

**1.22.030** All business activities are conducted by a person or persons residing on the premises. No nonresident employees shall be allowed. No employees may report to work at the site of the home occupation;

**1.22.040** There is no outside storage of materials or goods used or manufactured as a part of the home occupation. No hazardous material other than those commonly found within a residence shall be used or stored on the site. Such materials and equipment shall be limited to quantities that do not constitute a fire, health or safety hazard;

**1.22.050** There shall be no storage or parking of heavy commercial vehicles as defined in I.1.15;

**1.22.060** The use shall not create additional pedestrian, automobile or truck traffic in excess of the normal amount typical for the area. Client or customer visits to the site shall be limited to not more than three per day, and ten per week;

**1.22.070** No signage of any kind may be displayed;

**1.22.080** Only one vehicle no larger than one ton truck may be used by the occupant directly or indirectly in connection with a home occupation;

**1.22.090** The home occupation shall not encroach into any required parking, setback, or open space areas; and

**1.22.100** In accordance with this Ordinance, the use shall not create or cause noise, dust, vibration, odor, gas, fumes, toxic or hazardous materials, smoke, glare or electrical interference or other hazards nuisances.

**1.23 Residential Business Permit May Be Required.** In the event that the proposed home occupation use does not meet all the requirements of this Division 2, the use

shall be considered a residential business and must meet the requirements of Division 3 of this Appendix.

***DIVISION 3 – RESIDENTIAL BUSINESS***

**1.24 Residential Business.** Residential business means a commercial-type activity conducted solely by the occupants of a particular dwelling unit in a manner incidental to and subordinate to the use of the dwelling unit as a residence, but that may have non-resident employees and/or frequent customer visits to the residence. Transient rental lodging (Division 5) is not a residential business as same is defined herein.

**1.25 Purpose.** The purpose of these provisions is to allow, in suitable locations, more intensive home occupation uses which:

**1.25.010** allow residents greater economic self-sufficiency,

**1.25.020** indirectly support agriculture by enhancing the economic viability of living on agricultural property,

**1.25.030** minimally impact neighboring properties, and

**1.25.040** are clearly subordinate to primary residential or agricultural uses, and do not diminish agricultural viability or neighborhood character.

**1.26 Permit Required.** A Class I permit shall be required, pursuant to Chapter 3, for expanded home occupations that exceed the standards set forth in Division 2, above.

**1.27 Standards.** Residential business uses shall be subject to all of the following:

**1.27.010** The minimum lot size shall be one acre, gross;

**1.27.020** Site of residential business has direct access to a public road or contributes to a road maintenance association;

**1.27.030** All business is conducted within the primary residence on a parcel, except that an accessory structure may be used for professional office or similar type home occupations. A detached structure used for a residential business shall not exceed the following:

a. If located in Rural Conservation or Rural Living zones (2010 Edition); or South Fremont, North Fremont, or Island Park zoning district (2003 Edition), 3,000 square feet and is adequately buffered from adjacent property as determined by the Administrator as per the setbacks and buffering requirements of this Ordinance; and

b. If located in Rural Infill (2010 Edition), 1,500 square feet.

**1.27.040** Noise shall not exceed the levels set forth in Appendix H. The Administrator may require a noise analysis to be submitted by the Applicant to verify compliance of this requirement;

**1.27.050** The number of vehicle trips generated by customers or clients shall not exceed ten per day;

**1.27.060** The business shall be owned and operated by a person or persons residing on the premises, and there shall be no more than two employees other than residents of the premises;

**1.27.070** Except as permitted by Table 4.4 of Chapter 4, no retail sales shall occur on the premises;

**1.27.080** Areas used for the storage of equipment, supplies, materials, or goods used or manufactured as a part of the home occupation shall be screened from view of adjacent property and public roads;

**1.27.090** As required by Appendix C, there shall be adequate parking on the site to accommodate employees and customers, in addition to the required residential parking spaces; and

**1.27.100** The storage of heavy commercial vehicles, as defined in I.1.15, used in conjunction with a residential business pursuant to this Division 3 shall be subject to the following restrictions:

- a. Not permitted in Rural Infill zone districts;
- b. Limited to two vehicles in Rural Living and Rural Conservation, and all agricultural zone districts.

**1.28 Class II Permit May Be Required.** In the event that the proposed residential business use does not meet all the requirements of this Division 3, it does not qualify for a Residential Business/Lodging Permit, is hereby defined as a commercial/industrial use, and must meet the commercial/industrial requirements of this Ordinance, including proper commercial/industrial zoning.

#### ***DIVISION 4 – RESIDENTIAL CARE FACILITY OR GROUP HOME***

**1.29 Residential Care Facility or Group Home.** Defined as a living arrangement in which people with special needs, especially older people with disabilities, reside in a facility that provides help with everyday tasks such as bathing, dressing, and taking medication. Also defined as children's institutions which include, but are not limited to, foster homes, maternity homes, children's therapeutic outdoor programs, or any facilities providing treatment, therapy or rehabilitation for children.

**1.30 Exempt from Permitting.** In accordance with I.C. 67-6531, residential care facilities or group homes do not require a residential business/lodging permit and are allowed in all zones where the use meets all of the following standards:

**1.30.010** The residential care facility must have eight (8) or fewer unrelated persons with disabilities or elderly persons reside and who are supervised at the group residence in connection with their disability or age related infirmity.

**1.30.020** Resident staff, if employed, need not be related to each other or to any of the persons with disabilities or elderly persons residing in the group residence.

**1.30.030** No more than two (2) of such staff shall reside in the dwelling at any one time.

**1.31 Exception to Permit Exemption.** The exemption from permitting provided for in I.1.30 of this section shall not apply to tenancy or planned tenancy in a group residence by persons who are under the supervision of the state board of correction pursuant to I.C. 20-219, or who are required to register pursuant to I.C. 18-83 or I.C. 18-84, or whose tenancy would otherwise constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

**1.32 Additional Certification and Licensure.** As required in I.C. 67-6532(1), the Idaho Department of Health and Welfare may require group residences, as defined in I.C. 67-6531, to be licensed and set minimum standards for providing services or operation. Such licensure may be under the residential or assisted living facility rules or under the intermediate care facilities for people with intellectual disabilities or related conditions rules or under rules specifically written for such group residences.

**1.33 Class II Permit May Be Required.** If the proposed residential care facility or group home use does not meet all the requirements of this Division 4, it does not qualify for a Residential Business/Lodging Permit, is hereby defined as a commercial use, and must meet the commercial requirements of this Ordinance, including proper commercial zoning.

***DIVISION 5 – RESIDENTIAL TRANSIENT RENTAL LODGING: BED & BREAKFAST ESTABLISHMENT / CABIN / HOME / LODGE / SMALL HOTEL OR MOTEL***

**1.34 Transient Rental.** Transient rental lodging or occupancy means the use of a structure or some part thereof for rental or occupancy for sleeping or lodging for terms of 30 consecutive days or less, in exchange for a fee or other similar consideration.

**1.35 Purpose.** The purpose of these provisions is to allow in suitable residential locations where land use incompatibilities can be minimized, transient rental uses which:

**1.35.010** allow residents greater economic self-sufficiency,

**1.35.020** indirectly support agriculture by enhancing the economic viability of living on agricultural property,

**1.35.030** minimally impact neighboring properties, and

**1.35.040** are clearly subordinate to primary residential or agricultural uses, and do not diminish agricultural viability or neighborhood character.

**1.36 Use Definitions.** The following terms are defined as they are meant in this Appendix:

**1.36.010 Bed & Breakfast.** A Bed & Breakfast establishment is difficult to clearly define, as a number of similar, but distinct uses all fall into this general category. The following types of uses would all be considered a "Bed & Breakfast:"

**a. Homestay, Host Home.** This type of establishment is an owner-occupied private home where the business of paying guests is secondary to its use as a private residence. The hosts are primarily interested in meeting new people and making some additional monies while continuing their present employment or retirement. Breakfast is the only meal served. In some instances, it may be an un-hosted apartment where breakfast is self-serve.

**b. B&B, Bed-And-Breakfast.** Formerly a single family dwelling usually in the 4-5-room range, this owner-occupied establishment has an equally mixed use as home and lodging with lodging superseding home more often than not.

**c. Bed & Breakfast Inn.** Generally small, owner-operated businesses providing the primary financial support of the owner. Usually the owner lives on premises. The building's primary usage is for business. Breakfast is the only meal served and only to overnight guests. The inn may host events such as weddings, small business meetings, etc.

**d. Country Inn.** A business offering overnight lodging and meals where the owner is actively involved in daily operations, often living on site. These establishments are, in fact, Bed & Breakfast inns which serve at least one meal in addition to breakfast, and operate as "restaurants" as well as overnight lodging accommodations. A country inn with a full-service restaurant serves these additional meals to the general public.

**e. Bed & Breakfast/Self-Contained Cottage.** A detached building affording privacy and seclusion to guests, with owner providing minimal services. Breakfast is delivered to the room, taken with others in a central dining room or placed prior to arrival (or upon daily cleaning) in the cottage kitchen facilities.

The owner is usually available for questions, but generally guests choose this style of B&B when they want little help. The light personal touch and memorable B&B decor further distinguish this genre from the vacation rental/condo.

**1.36.020 Cabin.** A cabin is generally a smaller, rustic building or structure designed as a second or vacation home and may be offered for rent in whole or part to related or non-related parties. Typically, the owner is not present during periods of transient rental.

**1.36.030 Home (or dwelling).** A home is a building, structure, or portion thereof used extensively for residential occupancy, including single-family, two-family, and multifamily dwellings, but not including hotels, motels, lodging houses, or other explicitly commercial buildings or structures. A dwelling is most simply defined as a legally permitted building or structure that contains a sleeping habitation, sanitary facilities, and a facility for heating food. A home may be offered in whole or part to related or non-related parties. Generally, the owner is not present during periods of transient rental.

**1.36.040 Lodge.** A rustic structure typical of or reminiscent of the historical look and feel of area structures, and offering overnight visitor accommodations. These uses may include facilities available to the general public, including, without limitation, meeting and dining facilities, provided these are an integral part of the lodge.

**1.36.050 Small Hotel or Motel.** A commercial establishment offering overnight visitor accommodations, but not providing room rentals on an hourly basis. These uses include facilities available to the general public, including, without limitation, meeting and dining facilities, provided these are an integral part of the hotel or motel operations.

**1.37 Permit Required.** Transient rental uses in residential areas require a residential business/lodging permit, and may be permitted under one of two classes of permits:

**1.37.010 Minor Transient Use.** A minor transient use is the transient rental use of a home, building, or structure, in whole or part, for any purpose permitted in this Appendix to no more than fifteen (15) total occupants for any overnight stay. A Class I Residential Business/Lodging Permit shall be required, pursuant to Chapter 3.

**1.37.020 Expanded Transient Use.** An expanded transient use is the transient rental use of a home, building, or structure, in whole or part, for any purpose permitted in this Appendix to more than fifteen (15) but no more than thirty (30) total occupants for any overnight stay. A Class II Conditional Use Residential Business/Lodging Permit shall be required, pursuant to Chapter 3.

**1.37.030 Major Transient.** A major transient use is the transient rental use of a home, building, or structure, in whole or part, to more than thirty (30) total occupants

for any overnight stay, does not qualify for a Residential Business/Lodging Permit, is hereby defined as a commercial use, and must meet the commercial requirements of this Ordinance, including proper commercial zoning.

**1.38 Standards.** Transient rental uses shall be subject to the following:

**1.38.010 Signage.** A contact person or agent within the local Fremont County calling area must be identified on the application, be reasonably available by phone, and able to respond if there is a problem during the dwelling's use as a transient rental. The name and phone number of the contact person shall be posted inconspicuously on the transient rental building, but where a neighbor can easily read it

**1.38.020 Access Requirements.** Transient rentals must have independent, improved access to the adjacent public, County, or State roadway which shall not include shared driveway access, unless by mutual consent.

**1.38.030 Capacity.**

**a. Individual Capacity.** Each occupant requires 150 square feet of that heated, habitable portion of the home offered for transient rental use. The size of home may restrict the number of overnight occupants that might be otherwise permitted. As an example, a 3,000 square foot home would permit a maximum of twenty (20) occupants (20 people x 150 square feet each = 3,000 square feet).

**b. Maximum Capacity.** The total number of occupants permitted for any overnight stay may not exceed fifteen (15) for a minor transient use and may not exceed thirty (30) for an expanded transient use.

**1.39 Class II Commercial Permit May Be Required.** In the event that the proposed transient rental use does not meet all the requirements of this Division 5, the use shall be considered "major transient," does not qualify for a Residential Business/Lodging Permit, is hereby defined as a commercial use, and must meet the commercial requirements of this Ordinance, including proper commercial zoning.

## APPLICABLE LAW

Local Ordinance requirements for amendments to the development code:

*Fremont County Development Code, Chapter 3, Division 5 - Amendments*

**Z. Amendments.** Any person may petition for the amendment of the comprehensive plan or this ordinance. The amendment procedure shall be as described here and in I.C. 67-6509 or I.C. 67-6511, respectively.

1. The developer shall file a properly completed application form, the required supporting materials, and the required application fee with the administrator.
2. The administrator shall place a hearing on the application on the agenda of the next regular commission meeting for which the notice requirements can be met and at which time will allow its proper consideration. Notice requirements for an amendment shall be as set by I.C. 67-6509 or I.C. 67-6511(b).
3. The administrator may contract with a planner for professional review of the application, with the cost of that review being covered by the application fee. Such reviews shall be prepared in the form of a written report submitted to the administrator for use at the hearing. The administrator shall, upon its receipt, provide a copy of this report to the developer and place it on file for public review with the other application materials.
4. The commission shall conduct a hearing on the proposed amendment following the procedure established in III.O. No application for an amendment shall be reviewed if the developer or a representative is not present.
5. In the case of proposed plan amendments, the commission shall determine whether the proposed amendment is consistent with the public interest, and recommend that the board approve or disapprove it accordingly. In the case of proposed ordinance amendments, the commission shall determine whether the proposed amendment is consistent with the comprehensive plan, and recommend that the board approve or disapprove it accordingly.
6. The administrator shall convey the commission's recommendation to the board and, unless the application is withdrawn, place a hearing on the application on the agenda of the next regular board meeting for which the notice requirements can be met and at which time will allow its proper consideration. Notice shall be provided in the same manner as for the hearing before the commission.
7. The board shall conduct a hearing on the proposed amendment following the procedure established in III.O. No application for an amendment shall be reviewed if the person who petitioned for the amendment or a representative is not present.
8. **The board shall determine whether the proposed amendment is consistent with the public interest and/or the comprehensive plan and approve or disapprove it accordingly.**
9. The administrator shall notify the developer and interested parties of the board's decision within 10 days. No amendment to this ordinance shall become effective until that amendment has been adopted as an ordinance and published as required by law.

...

This proposed amendment was initiated by the Board of County Commissioners and the application was signed by the Chairman or his representative, the Administrator. The required findings for adoption are 1) no conflict with the comprehensive plan and 2) consistency with the public interest. The Board is free to deliberate on these points. Planning staff concludes that there are no conflicts with the comprehensive plan.

Idaho Code requires the Planning & Zoning Commission to make recommendations to the Board on proposed amendments to its subdivision and zoning ordinances and the comprehensive plan in 67-6509, 67-6511, and 67-6513. There is no requirement in Idaho Code for the Board to have their own hearing on a recommendation from the P&Z on an amendment. However, the FCDC does require a hearing by the Board prior to adopting an amendment to the plan or development code.

### **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

#### **FINDINGS OF FACT**

If any of these Findings of Fact are deemed Conclusions of Law, they are incorporated into the Conclusions of Law section.

- A. The Board finds that this application is comprised of:
  - 1. Application forms prepared and submitted by the Applicant.
  - 2. All other information contained in File No. 10-044.
- B. As to procedural items, the Board finds the following:
  - 1. In accordance with FCDC Chapter III, Division 5 – Amendments, Z.1., the Applicant submitted the required application for a Development Code Amendment on October 6, 2010.
  - 2. On October 6, 2010, the Planning and Building Department accepted File No. 10-044 and scheduled it for public hearing before the Fremont County Planning & Zoning Commission on October 25, 2010.
  - 3. Legal notice of the Commission’s public hearing was published in the Standard Journal on October 9<sup>th</sup>, 2010, and October 16<sup>th</sup>, 2010.
  - 4. The Commission held a public hearing on October 25<sup>th</sup>, 2010, and recommended adoption of the amendment to the Board.
  - 5. The Board accepted the recommendation of the Commission and scheduled its own public hearing before the full Board of County Commissioners on November 18, 2010.
  - 6. Legal notice of the Board’s public hearing was published in the Standard Journal on November 4<sup>th</sup>, 2010, and November 11<sup>th</sup>, 2010.
  - 7. The Board held a public hearing on November 18<sup>th</sup>, 2010, and exercised its right to render a decision within 60 days of the hearing’s conclusion.
- C. As to the site description, the Commission finds the following:
  - 1. Parcel Numbers and Location – This is a county-wide application.
  - 2. Applicant – Fremont County Board of Commissioners

151 W 1<sup>st</sup> North  
St. Anthony, ID 83445

**RECOMMENDATION**

Staff recommends that the Board approve File No. 10-044, Appendix I – Performance Standards for Residential Businesses and Lodgings.

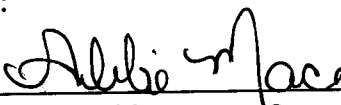
**ORDER**

The Fremont County Board of Commissioners approves File No. 10-044 for adoption.

Dated this 29<sup>th</sup> Day of November, 2010.

By:   
Paul Romrell, Chairman

ATTEST:

By:   
Abbie Mace, County Clerk

