

CHAPTER 1
SITE DEVELOPMENT

SECTION:

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11-1-1: **PURPOSE:** These regulations are adopted for the following purposes:

- A. To promote the public health, safety and general welfare of the citizens of the city without preventing the reasonable development of land.
- B. To encourage site development on public and private property, including clearing, excavation, filling, tree trimming and pruning, in such a manner as to minimize hazards to life, health and property.
- C. To preserve and enhance the city's physical and aesthetic character by preventing untimely and indiscriminate removal or destruction of trees, bushes, hedges, shrubs, ground cover, or other landscaping material.
- D. To minimize surface water runoff and diversion which may contribute to flooding or erosion.

- E. To reduce siltation in the city's streams, storm sewer systems and public roadside improvements.
- F. To reduce the risk of slides and the creation of unstable city sites.
- G. To promote city and site planning practices that are consistent with the city's natural topography, soils and vegetative features while at the same time recognizing that certain factors such as insects, disease, danger of fallings, proximity to existing and proposed structures and improvements, interference with utility services, protection of scenic views, and the realization of a reasonable enjoyment of property may require the removal of certain trees, bushes, shrubs, hedges, ground cover, or other landscaping materials.
- H. To ensure prompt development, restoration and replanting and effective erosion control of property after land clearing and grading.
- I. To implement the goals and objectives of all city, county, state and federal law controlling soil conservation, environmental protection, excavating, timber, logging, supply stabilization acts and other environmental acts which may be passed from time to time.
- J. To implement and further the city's comprehensive plan.
- K. To implement and further the city's plan within the city's area of impact. (Ord. 2004-02, 5-17-2004)

11-1-2: **DEFINITIONS:** As used in this chapter, the following words and terms shall have the meanings ascribed to them in this section:

CITY AND/OR CITY PROPERTIES:	The city of Wallace, Shoshone County, Idaho, all of the real property dedicated, deeded or leased to the city or otherwise under the physical control of the city, including, but not limited to, public rights of way, city parks.
CLEARING:	Any activity which removes the vegetative cover and/or trees including, but not limited to, root mat removal and/or topsoil removal.

CONTIGUOUS LAND:	Parcels adjoining and touching other land and having the same owner regardless of whether or not portions of the parcels have separate tax lot numbers, or were purchased at different times, lie in different sections, are different government lots or are separated from each other by public or private road or rights of way.
EXCAVATION:	Any cutting, digging, scooping or other methods of removing earth or vegetative materials.
FILLING:	Any depositing or stockpiling of earth materials.
GRADING:	Any excavating or filling of earth materials or any combination thereof, including the real property in its excavated or filled condition.
GROUND COVER:	Types of vegetation which are normally terrestrial and shall include, but not be limited to, trees less than six inches (6") in diameter measured at four and one-half feet (4 ¹ / ₂ ') above the ground level.
OWNER:	The legal or record owner or owners of real property within the Wallace city limits.
PARCEL:	Real property within the boundaries of an ad valorem tax lot description as found in the Shoshone County ad valorem tax records.
PARKWAY:	That portion of a street between the roadway and a sidewalk.
PERSON:	Any individual, firm, corporation, partnership, limited partnership, association, limited liability company, professional corporation, or any group or combination acting as a unit.
ROADWAY:	That portion of a public street improved, designed or ordinarily used by the general public for vehicle travel.
SIDEWALK:	That portion of a public sidewalk improved, designed or ordinarily used by the general public for pedestrian travel.

SIGNIFICANT TREE: Any tree that meets the following specifications:

A. Native type species as described in the following table, which shall include, but not be limited to, those listed below and which have merchantable value:

COMMON NORTH IDAHO NATIVE TREES SPECIES

<u>Common Name</u>	<u>Scientific Name</u>
Conifers:	
Douglas fir	Pseudotsuga menziesii
Engelmann spruce	Picea engelmannii
Grand fir	Abies grandis
Lodgepole pine	Pinus contorta
Mountain hemlock	Tsuga mertensiana
Ponderosa pine	Pinus ponderosa
Subalpine fir	Abies lasiocarpa
Western hemlock	Tsuga heterophylla
Western larch or tamarack	Larix occidentalis
Western red cedar	Thuja plicata
Western white pine	Pinus monticola
Hardwoods:	
Black cottonwood	Populus trichocarpa
Mountain ash	Fraxinus species
Paper birch	Betula papyrifera
Quaking aspen	Populus tremuloides

B. Other native and nonnative type species which have a diameter of four inches (4") or more measured at four and one-half feet (4 1/2') above the adjacent ground level.

SLASH: The residue left on the ground after natural or human caused disturbances.

STREET: The entire width between the boundary lines of a public right of way dedicated or deeded to the city for use by the general public for purposes of vehicular travel, whether or not maintained by the city and whether or not open for vehicular traffic.

TREE: Living, standing woody plant having a trunk or combination of trunks with a diameter of two inches (2") or more measured at four and one-half feet (4 $\frac{1}{2}$ ') above the ground level. (Ord. 2004-02, 5-17-2004)

11-1-3: AUTHORITY AND CONTROL; PERMIT OR APPROVAL REQUIRED: The city of Wallace, Idaho, shall have authority and control over all trees, earth materials, or other landscaping materials, lying within the Wallace city limits. No person shall engage in land clearing, grading, excavation, logging of significant trees, hedges, bushes or shrubbery or trimming, pruning or removal of the same within the city limits or its area of impact without having complied with the following:

A. Land Clearing And Grading Permit: Obtaining a land clearing and grading permit from the city by submitting an appropriate application to the city clerk. Said procedure for securing such permit shall be as follows:

1. **Application For Certificate Of Appropriateness:** Obtain from the city clerk an application for a certificate of appropriateness which shall be approved of by the historic Wallace preservation commission/Wallace planning and zoning commission (hereinafter referred to as the planning and zoning commission) after a hearing is held and a proposed plan for the project is approved.

2. **Certificate Of Compliance:** Having obtained from the appropriate local, state or federal agency a certificate of compliance, or permit, e.g., fire hazard management agreement, notification of forest practice agreement with the Idaho state department of lands, or other like certificate or permit from such agencies as the department of water quality, environmental protection agency, bureau of lands, bureau of land management, national and/or state forest service or other appropriate agency.

3. **Approval Of Permit:** Following approval of the certificate of appropriateness, and the receipt by the property owner of all other necessary or required certificates or permits, the owner shall cause each such certificate or permit to be filed with the city clerk, who may issue a permit or certificate of appropriateness only upon the final approval of a majority vote of the city planning and zoning commission. (Ord. 2004-02, 5-17-2004)

11-1-4: APPLICATION:

- A. **Form; Required Information:** An application for a land clearing permit or certificate of appropriateness shall be submitted on a form provided by the city. Accompanying such form shall be the following:
1. **Plot Plan:** General plot plan that shall include the following information:
 - a. General vicinity map;
 - b. Property boundaries indicating extent and location of proposed clearing and grading activities, road, skid trails, and major physical features of the property (i.e., streams, ravines, etc.);
 - c. Location and dimensions of buffer areas to be maintained or established, and locations and description of proposed erosion control devices or structures which shall be in accordance with Idaho best management practices;
 - d. Identification and location of any significant trees;
 - e. Slash treatment plan.
 2. **Additional Information:** As determined at the discretion of the city planning and zoning commission, other information as deemed appropriate to this chapter may be required in instances related to geologic hazard, shoreline protection, or project scope.
- B. **Permit Fee:** A permit fee of twenty five dollars (\$25.00) for each acre or portion thereof, or such fee as later amended by resolution and the majority vote of the city council.
- C. **Review By Officials:**
1. **Decision Within Five Days:** The city clerk, upon receipt of an application for a permit or certificate of appropriateness and receipt of all other necessary and appropriate local, state and federal certificates or permits, shall submit the application, certificates and permits to the city planning and zoning commission, who shall hold a hearing and render a decision by a majority vote of the commission whether to issue said permit or certificate of appropriateness, which decision shall be made within five (5) working days from the date of submission of a completed application, unless an extension is

authorized by the applicant or good cause shown why such an extension is necessary.

2. Extension: If such an extension is required, the applicant shall receive a written notification from the commission as to the basis for said extension and the length of the extension with a date specific upon which the decision will be rendered.

- D. Term Or Extension Of Permit: Any permit granted under this chapter shall expire six (6) months from the date of issuance. Upon a showing of good cause, a permit may be extended by a majority vote of the city planning and zoning commission for one additional six (6) month period.
- E. Amendment To Plans: Once a land clearing permit or certificate of appropriateness is issued, no change or amendment shall be made to the approved plans without the written authorization by a majority vote of the city planning and zoning commission.
- F. Revocation, Suspension, Termination Of A Permit Or Certificate Of Appropriateness: The permit or certificate of appropriateness may be revoked, suspended, or terminated by the city because of incorrect information supplied in the owner's applications, any violation of the provisions of this chapter, or other violations of local, state or federal laws, rules or regulations.
- G. Notice Posted: No work shall commence until a copy of the permit or certificate of appropriateness is posted by the city on the subject site and two (2) other locations for a period of five (5) days prior to commencement of clearing or grading activities, road or skid trail activities or other activities permitted under this chapter.
- H. Penalty Fee: A fine of three hundred dollars (\$300.00) for each day the owner violates the provisions of this chapter shall be assessed against the owner of the real property upon which the activity of clearing, grading, excavation, or similar activity contemplated herein is conducted prior to the issuance of a permit or certificate of appropriateness.
- I. Appeal: An aggrieved party may appeal any decision of the city planning and zoning commission, and/or Wallace city council as herein provided. (Ord. 2004-02, 5-17-2004)

11-1-5: **USE OF FEES:** Revenues raised from application fees and penalty fines shall be placed into a general revenue fund set aside for the specific purpose of covering expenses of enforcement of this chapter, purchasing and planting trees and other landscaping materials on public property and rights of way. (Ord. 2004-02, 5-17-2004)

11-1-6: **PERFORMANCE BOND:**

- A. **Surety Bonds:** The city may require bonds in such form and amounts as may be deemed necessary to assure that the work shall be completed in accordance with the permit. Bonds, if required, shall be furnished by the property owner, or other person or agent in control of the property.

- B. **Cash Bond; Instrument Of Credit:** In lieu of a surety bond, the applicant may file a cash bond or instrument of credit with the city clerk in an amount equal to that which would be required in the surety bond. The amount of such bond shall not exceed the estimated costs of the total restoration work planned. (Ord. 2004-02, 5-17-2004)

11-1-7: **SIGNIFICANT TREES:** No significant trees, as defined by section 11-1-2 of this chapter, shall be removed without first obtaining a land clearing permit or certificate of appropriateness from the city of Wallace. Development plans may be required to be modified or changed by the city when necessary to preserve individual trees or groups of trees and in order to remain consistent with the objectives and goals of this chapter. (Ord. 2004-02, 5-17-2004)

11-1-8: **EXEMPTIONS:** The following shall be exempt from the provisions of this chapter:

- A. Projects requiring majority approval by the historic Wallace preservation commission/Wallace planning and zoning commission under title 13 of this code, and that are not inconsistent with this chapter, and/or by the majority approval of the city council; provided, that land clearing and/or grading on such projects shall take place only after majority approval of the city planning and zoning commission and shall be in accordance with such approval, and the criteria and information required of the applicable city, county, state or federal law, rules and regulations.

- B. Land clearing and grading in emergency situations involving immediate danger to life or property.
- C. The removal of dead trees or of diseased or damaged trees which constitute a hazard to life or property; as evidenced by a written statement submitted to the city planning and zoning commission by a qualified expert.
- D. Cemetery graves. (Ord. 2004-02, 5-17-2004)

11-1-9: **STANDARDS:** All land clearing and grading, including clearing and grading exempt from the requirements for a permit in section 11-1-8 of this chapter, as well as clearing and grading authorized by the city pursuant to this chapter, shall conform to the following standards and provisions unless otherwise recommended in an approved soil engineering, engineering geology, hydrology or forest management plan where the alternate procedures will be equal or superior in achieving the policies of this chapter. In addition, the following standards and provisions shall be the governing criteria for the issuance or denial of land clearing and grading permits or certificate of appropriateness under this chapter:

A. General Regulations:

1. The clearing and/or grading will not create or contribute to landslides, accelerated soil creepage, settlement and subsidence or hazards associated with strong ground motion and soil liquefaction.
2. The proposal shall contain reasonable provisions for the preservation of natural land and water features, vegetation, drainage and other indigenous natural features of the site.
3. The clearing, grading or excavating will not create or contribute to flooding, erosion, or increased turbidity, siltation or other forms of pollution.
4. No ground cover or trees which are within a maximum of fifteen feet (15') of the annual high water mark of creeks, streams, lakes and other shoreline areas or within ten feet (10') of the top of the bank of same shall be removed, nor shall any mechanical equipment operate in such areas; provided, that conditions deemed by the city to constitute a public nuisance may be removed, and provided that a property owner shall not be prohibited from making landscaping improvements where such improvements are consistent with the

aims of this chapter, and where the owner can convincingly demonstrate such consistency to the city.

5. The clearing and/or grading will be undertaken in such a manner as to preserve and enhance the city's aesthetic and historic character. Vegetative screens or buffer strips shall be maintained or reestablished in a timely manner with approved plantings along public streets and adjoining property boundaries, or approved alternate clearing techniques consistent with the aims of this chapter as administered by the city. Development shall be initiated or a vegetative screen or buffer established within six (6) months or sooner of the date of initiation of land clearing or grading activities.

6. Clearing and grading operations shall be conducted so as to expose the smallest practical area of soil to erosion for the least possible time, consistent with an anticipated build-out schedule.

7. The clearing, grading and excavating activities shall be performed in accordance with all city, county, state and federal laws, rules and regulations in all respects; including, but not limited to, those pertaining to air and water pollution, noise control, and environmental protection.

8. Slash shall be removed from cleared site within ninety (90) days from the completion of the operation or sooner. At the discretion of the city planning and zoning commission an extension of the ninety (90) day period can be granted. Any slash project not completed within this time frame, including any period of extension, shall be in violation of this chapter and each day such violation remains shall be considered a separate and distinct offense and shall be prosecuted as such.

B. Cuts And Fills: The following provisions shall apply to cuts and fills, unless otherwise waived by the city.

1. Cut slopes shall be no steeper than is safe for the intended use. Cut slopes greater than five feet (5') in height shall be no steeper than two (2) horizontal to one vertical, except where approved retaining walls are engineered and installed and where trenches are refilled with material from the excavation; revegetation with native trees and grasses or other landscaping materials.

2. The ground surface shall be prepared to receive fill by removing vegetation, unapproved fill, topsoil and other unsuitable materials as determined by the city. Where the slopes are five to one (5:1) or

steeper, by the excavation of relatively level steps into the slope on which the fill is to be placed.

3. Fill slopes shall not be constructed on natural slopes that are steeper than two to one (2:1).

4. The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes exceeding five feet (5') in depth shall be no steeper than two (2) horizontal to one vertical, except where approved retaining walls are engineered and installed.

5. When the owner of any parcel shall raise, lower or alter the level or existing grade of a site by a fill or excavation, he shall at his own expense protect all adjoining property from encroachment by such fill or from danger of collapse due to such excavation either by the erection of an engineered retaining wall or by sloping the sides of such fill or excavation entirely within the confines of the site.

6. Cut and fill slopes shall be provided with subsurface drainage to retain slope stability.

7. The faces of slopes shall be prepared and maintained to control erosion. Check dams, riprap, plantings, terraces, diversion ditches, sedimentation ponds, straw bales, or other devices or methods shall be employed to control erosion and provide safety. Devices or procedures for erosion protection shall be initiated as soon as possible during grading operations and shall be maintained in operable condition by the owner. (Ord. 2004-02, 5-17-2004)

11-1-10: **TREE TRIMMING:** It shall be the duty and obligation of the owner of real property to maintain the following:

- A. Trees on or within the city limits shall at all times be trimmed and pruned so that there shall be a minimum of seven and one-half feet ($7\frac{1}{2}$ ') clear space between the surface of the sidewalk or parkway and the overhanging branches and leaves. The overhanging branches and leaves shall at all times be trimmed or pruned so that there is a minimum of twelve feet (12') of clear space between the surface of the roadway and the overhanging branches and leaves.
- B. The branches and/or leaves of any tree, bush, hedge, shrubbery or other landscaping material, which overhang or jut out, or encroach into or upon any sidewalk, parkway or roadway such that it creates a hazard to, or impediment to the progress or vision of any person

traveling on any such thoroughfare within the city limits, or which covers, endangers or impairs the view of any traffic control device, or advisory sign, including any branch or leaves within any restricted areas posted within the city limits.

- C. Failure to maintain such standards by the owner is hereby designated and declared to be a public nuisance, and any remedy otherwise available to the city for abating a public nuisance shall be available to the city under these circumstances. (Ord. 2004-02, 5-17-2004)

11-1-11: **UNLAWFUL ABUSE OF TREES:** It shall be unlawful for any person to intentionally abuse, damage or mutilate any tree, bush, hedge, shrub or other landscaping material, on any parkway, sidewalk, roadway, street, alley, or other public or private property opened to the public, or upon city property, or to attach or place any rope or wire, other than one used to support a damaged or broken tree, or to attach any electrical wire or other thing to any tree, bush, hedge or shrubbery within the city limits, or to damage any tree, bush, hedge or shrub by causing or permitting to cause any gaseous liquid, or other substance that can harm or damage any such tree, bush, hedge, shrub, or any landscaping material, or do any act that might endanger the public health, safety and welfare. Any person in violation of this section shall be guilty of a misdemeanor, punishable as provided for in section 1-4-1 of this code. (Ord. 2004-02, 5-17-2004)

11-1-12: **APPEAL:**

- A. **Right To Appeal:** Any person aggrieved by any action of the city planning and zoning commission may, within thirty (30) calendar days of such action, file a written notice of appeal with the city clerk. The notice of appeal shall set forth with specificity the grounds for such an appeal.
- B. **Hearing By Council:** Upon receipt of a written appeal, the city council shall set a hearing date. Notice of said hearing shall be mailed, postage prepaid to the person filing the appeal, or his attorney or representative of record. Notice of the hearing shall also be published one time in the local newspaper giving the public notification of said hearing. Notice shall also be posted at city hall.
- C. **Purpose Of Hearing:** The purpose of the hearing is to allow the city council to consider all information presented to the commission, the

testimony, if any presented to the commission and all records involved in the action from which the appeal is taken and to hear and determine the grounds for appeal.

- D. **Decision On Appeal:** Following the hearing, the city council shall within fifteen (15) calendar days affirm, modify or reverse the city planning and zoning commission's decision.
- E. **Final Action Of Council:** The city council shall take final action on an appeal by entering findings of fact from the record, any applicable conclusions of law and its final decision.
- F. **Appeal From City Council Decision:** The action of the city council affirming, modifying or reversing the city planning and zoning commission's decision or action shall be final unless within thirty (30) days from the date of the decision the aggrieved party obtains a writ of certiorari from the district court of Shoshone County, state of Idaho, for the purpose of review of the decision rendered by the city council. (Ord. 2004-02, 5-17-2004)

11-1-13: VIOLATION; PENALTY:

- A. **Misdemeanor Violation:** Violation of the provisions of this chapter or failure to comply with any of its requirements shall constitute a misdemeanor and shall be punishable as provided in section 1-4-1 of this code.
- B. **Continuing Violation:** Each day such violation continues shall be considered a separate, distinct offense, subject to the above penalties for each day such offense continues.
- C. **Separate Offense:** Any person who commits, participates in, assists or maintains such violation may be found guilty of a separate offense and shall suffer the penalties as set forth in subsection A of this section for each day such participation, assistance or maintenance continues. Each day shall be considered a separate, distinct offense.
- D. **Public Nuisance:** In addition to the penalties set forth in subsections A, B and C of this section, any violation of the provisions of this chapter shall be considered a public nuisance and may be abated through proceedings for injunctive or similar relief in district court or other court of competent jurisdiction.

- E. Issuance Of City Permits Withheld; Corrective Action: Upon determination that a violation of the provisions of this chapter has occurred, the city shall withhold issuance, or terminate the city permit or certificate of appropriateness for the affected property until corrective action is taken by the responsible party. However, if mitigating circumstances exist and reasonable commitments for corrective action are made, the city may issue a permit or certificate of appropriateness. Such corrective action may include:
1. Restoration of surface vegetation with plant material similar in character and extent as existed prior to the unauthorized clearing.
 2. Implementation of drainage and erosion control measures.
 3. Replanting of mature trees (not seedlings or saplings), or other vegetation or landscaping materials, to replace those lost through unauthorized clearing or excavation. (Ord. 2004-02, 5-17-2004)

CHAPTER 2

EXCAVATION CONTROL

SECTION:

- 11-2-1: Purpose And Scope
- 11-2-2: Construction, Demolition And Renovation
- 11-2-3: Excavations; Exemptions
- 11-2-4: Subdivisions And Planned Unit Developments
- 11-2-5: Funding; Enforcement
- 11-2-6: Violations

11-2-1: **PURPOSE AND SCOPE:** The purpose of this chapter is to put in place procedures and methods to ensure that remediated yards and other remediated areas of the city of Wallace are preserved and protected from recontamination or damage and to ensure the citizens are not exposed to unacceptable health hazards as a consequence of disturbances of unremediated lands. The methods to ensure the foregoing are primarily accomplished through barriers and caps protection and by educational programs. Soil management, management of barriers and excavation control are the primary focus of this chapter. (Ord. 2008-01, 2-13-2008)

11-2-2: **CONSTRUCTION, DEMOLITION AND RENOVATION:**

- A. The following work within the municipal boundaries of the city of Wallace, Idaho, shall require a city building permit and an institutional controls program (ICP) permit from the Panhandle health district no. 1 (hereinafter referred to as "district"):
1. Construction of new buildings and additions to existing buildings, which require excavation;
 2. Demolition of buildings, which require excavation;
 3. Renovation of buildings which would result in excavation; and

4. Such other things that would be required by other rules of the state of Idaho involving the institutional controls program (ICP).
- B. Applications for institutional controls program permits from the district shall be obtained from the health district office, Kellogg, Idaho, and shall be issued (or the need for a permit waived) by the district prior to the issuance of the city building permit. Upon issuance of both permits each shall be filed with the Wallace city clerk.
- C. Applications for an institutional controls program permit shall be made to the district within thirty (30) days of submitting an application to the city for a building permit. The city building permit and the institutional controls program permit, when required, must be approved and issued prior to the applicant commencing work.
- D. In the event a city building permit is not required, an institutional controls program permit shall nonetheless be required for excavations, except as exempted, for the purpose of providing for contaminated soil management. (Ord. 2008-01, 2-13-2008)

11-2-3: **EXCAVATIONS; EXEMPTIONS:** All excavations set forth in section 11-2-2 of this chapter, except as herein exempted, shall require an institutional controls program permit from the district. Applications for such permits shall be available at the health district office, Kellogg, Idaho. This requirement shall not apply: a) to excavations of less than one cubic yard of earthen material, or b) to excavations in a remediated area which does not penetrate the visible delineation lines between remediated and unremediated soil (this barrier is at approximately 1 foot in lawn areas and 2 feet in garden areas) and which do not reduce the depth of the barrier, or c) to areas which have been totally remediated. If an institutional controls program permit is required, such permit must be approved and issued by the district prior to excavation. (Ord. 2008-01, 2-13-2008)

11-2-4: **SUBDIVISIONS AND PLANNED UNIT DEVELOPMENTS:** All subdivisions and planned unit developments in the city of Wallace which require excavation shall require an institutional controls program permit and approval from the district of the developer's plan for dealing with contaminated soil. Such approval shall be obtained prior to final plat approval and prior to commencing work. (Ord. 2008-01, 2-13-2008)

11-2-5: **FUNDING; ENFORCEMENT:** All funding required for enforcement, monitoring and compliance, including, but not limited to, repository sites, visual barriers, clean soil, staff and educational materials shall be the responsibility of the state of Idaho and the U.S. environmental protection agency. (Ord. 2008-01, 2-13-2008)

11-2-6: **VIOLATIONS:**

- A. Should any person fail to obtain such permits from the city of Wallace or the district or fail to comply with the provisions of this chapter as required, the building permit(s), the institutional controls program permit(s), or subdivision permit(s) issued shall be void and the person in such violation of this chapter shall be deemed to have committed a misdemeanor for each day of such violation. Such violation shall be punishable by a fine not to exceed three hundred dollars (\$300.00), up to thirty (30) days in jail, or by both such fine and imprisonment.
- B. In addition, for a violation of this chapter, the city of Wallace may institute any appropriate action or proceeding, including temporary or injunctive relief to prevent violations of this chapter. (Ord. 2008-01, 2-13-2008)

