

ORDINANCE NO. 2022-02

AN ORDINANCE OF THE CITY OF WALLACE, A MUNICIPAL CORPORATION PURSUANT TO THE LAWS OF THE STATE OF IDAHO, AMENDING WALLACE CITY CODE TITLE 11 BY ADOPTING A NEW CHAPTER 1, SITE DEVELOPMENT. THIS ORDINANCE PROVIDES DEFINITIONS; REQUIRES PERMITS AND APPROVAL FOR CERTAIN ACTIONS; PROVIDES AUTHORITY AND CONTROL; OUTLINES APPLICATION REQUIREMENTS AND PERFORMANCE BONDS; ALLOWING EXEMPTIONS TO CHAPTER REQUIREMENTS; SETTING STANDARDS FOR SITE DEVELOPMENT; OUTLINING TREE TRIMMING AS WELL AS THE UNLAWFUL ABUSE OF TREES; PROVIDES A PROCESS FOR APPEALS; PROVIDES VIOLATIONS AS WELL AS INFRACTION AND MISDEMEANOR PENALTIES; AND SETS AN EFFECTIVE DATE UPON PUBLICATION OF THIS SUMMARY.

BE IT HEREBY ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WALLACE, SHOSHONE COUNTY, IDAHO:

The City of Wallace hereby amends Wallace City code by repealing Chapter 1 Title 11 as previously enacted and hereby adopting a new Chapter 1 of Title 11, titled Site Development to read as follows:

CHAPTER 1

SITE DEVELOPMENT

SECTION:

- 11-1-1: Purpose
- 11-1-2: Definitions
- 11-1-3: Authority and Control; Permit or Approval Required
- 11-1-4: Application
- 11-1-5: Performance Bond
- 11-1-6: Exemptions
- 11-1-7: Standards
- 11-1-8: Tree Trimming
- 11-1-9: Unlawful Abuse of Trees
- 11-1-10: Appeal
- 11-1-11: Violation and Penalties
- 11-1-12: Effective Date

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, 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 interference with utility services, threats to life and property, improvements of structures, subjective aesthetic, and 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, 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, excavation, 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 and city parks.

CLEARING:

Any activity which removes one-third (1/3) or more of the existing vegetative cover, foliage, and/or whole trees including, but not limited to, root mat

removal and/or topsoil removal within any property line boundaries.

CONTIGUOUS LAND:

Parcels adjoining and touching other land and having the same owner regardless of whether or not portions of the parcels have separated tax lot number, or were purchased at different times, lie in different sections, are different government lots, or are separated from each other by public or private roads 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 to be limited to, tree less than four inches (4") in diameter measured at four feet six inches (4' 6") above the ground level directly adjacent to and at the highest existing point below that tree.

MAJOR PROJECT:

A project involving clearing or grading of more than five thousand (5,000) square feet of land, including but not limited to, soil, topsoil, rocks, sediment, vegetation, etc., removal or clearing of more than three (3) trees, or the excavation or filling of more than ten (10) cubic yards of material per contiguous parcel(s) per year.

MINOR PROJECT:

A project involving clearing, grading, tree removal, excavation, or fill that is less than five thousand (5,000) square feet of land, including but not limited to, soil, topsoil, rocks, sediment, vegetation, etc., removal or clearing of less than three (3) trees, or the excavation or filling of less than ten (10) cubic yards of material per contiguous parcel per

year.

OWNER:	The legal or record owner(s) 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.
PUBLIC TREE:	Any tree that is on city, county, or other public property owned by the city, including but not limited to, street rights-of way.
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 right-of-way improved, designed, or ordinarily used by the general public for pedestrian travel.
SIGNIFICANT TREE:	Any tree that has a trunk diameter of twelve inches (12") or more measured at four feet six inches (4' 6") above the ground level directly adjacent to and at the highest existing grade below that tree.
SLASH:	The vegetation 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 one erect perennial stem (trunk) at least three inches (3") in diameter at a point four feet six inches (4' 6") above the ground directly adjacent to and at the highest existing grade below that tree, a definitely formed crown of foliage, and a mature height of at least thirteen feet (13').

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 major projects, as defined herein, or any clearing or removal of any significant tree (public or private) 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, tree cutting, 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 shall issue a permit.
- B. 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.
 1. Removal of Public Tree(s): In the case of proposed removal of a public tree, a Certificate of Appropriateness shall only be granted with the approval of the mayor or a majority of the city council.

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. If the proposed action qualifies as a major project, then the following information shall accompany the application:
1. Property owner's name and applicant's name if different from owner;
 2. Legal description of the property, including parcel number(s);
 3. Plot Plan: General plot plan that shall include the following information:
 - a. General vicinity map;
 - b. Narrative description of the entire proposed project;
 - 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. Note whether any portion of the project, including removal of even one tree, is on city or other public property;
 - f. Site disturbance plan, drawn to scale, including adjacent roads, prominent features of the land, and location of proposed work;
 - g. Slash abatement plan(s);
 - h. Slope percentage information for entire project area.
 4. Property boundary description, 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.);
 - a. If proposed project involves site disturbance within five feet (5') of the property line, a survey shall be completed and provided with the application, or a verified agreement between the adjacent property owner(s) and the applicant shall be submitted with the application that includes a statement agreeing to the location of the property line and consent to the proposed work.
 5. Disclosure of any previous or existing code violation(s) on the parcel(s) and if/how they have been rectified;
 6. 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, stream, 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.
 - 1. Permit fees apply only to major projects. Fees shall be waived for all other permits required under Section 11-1-1.
- C. **Review by Officials:**
 - 1. **Decision Within Forty-Five (45) 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, which 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 forty-five (45) working days from the date of submission of a completed application, unless an extension is authorized by the applicant or the commission and good cause is 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 prior to the forty-five (45) working days from submission as to the basis for said extension and the length of the extension with a date specific upon which the decision is anticipated to be rendered.
- D. **Term or Extension of Permit:** Any permit granted under this chapter shall expire twelve (12) 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 twelve (12) month period.
- E. **Amendment to Plans:** Once a permit under this chapter 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:** Within five (5) business days of the submission of an application to the city clerk, the applicant shall prominently post a notice including a copy of the application in a conspicuous location adjacent to public right-of-way on the subject property. Notices shall not be nailed or screwed onto trees.
- H. **Appeal:** An aggrieved party may appeal any decision of the city planning and zoning commission and/or Wallace city council as herein provided.

11-1-5: PERFORMANCE BOND:

- A. Surety Bonds: On major projects, the planning and zoning commission 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. The amount of such bond shall not exceed the estimated costs of the total restoration work planned. Such estimation must be approved and signed off by the city engineer if no contractor estimate is available.
- B. Cash Bond or 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.

11-1-6: 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 nothing in this section exempts land clearing and/or grading on such projects requiring 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.
 - 1. Application after Project Complete: Within thirty (30) days after the danger has been resolved, if the actions taken included removing a significant tree, removing any public tree, or constituted a major project, an application for a certificate of appropriate shall be submitted for approval by the historic Wallace preservation commission/Wallace planning and zoning commission.
- C. Emergency: The removal of dead trees or of diseased or damaged trees which constitute an immediate hazard and removal is necessary to prevent loss of, or damage to, life or health and/or irreparable or serious damage to property.
- D. Cemetery graves.

11-1-7: STANDARDS: All land clearing and grading, including clearing and grading exempt from the requirements for a permit in section 11-1-4 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 land and water features created by natural processes (not man-made), 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 the 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. This stream setback restriction shall not apply to waters confined to artificial channels by vertical masonry walls which fully confine the annual high water mark of such waters.
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 sites within ninety (90) days from the completion of the operation. 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 (1) vertical ratio (2:1), except where approved retaining walls are engineered and installed and where trenches are refilled with material from the excavation, including but not limited to, 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, the excavation of relatively level steps shall be constructed 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) without an engineered retaining wall.
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 (1) vertical ratio (2:1), 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/she shall at their own expense protect all adjoining property from encroachment by such fill, from drainage runoff, 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. The Planning and Zoning commission may require cut and fill slopes be provided with subsurface drainage to retain slope stability, or require geotechnical and/or hydrological analysis by a qualified expert.
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.

11-1-8: **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.

11-1-9: UNLAWFUL ABUSE OF TREES: It shall be unlawful for any person to intentionally abuse, significantly damage or mutilate any tree on any parkway, sidewalk, roadway, street, alley, or other 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 within the city limits, or to damage any tree by chopping, scraping, or by dumping near the tree any substance that can harm or damage any such tree.

11-1-10: APPEAL:

- A. **Right to Appeal:** Any person aggrieved by any action of the city planning and zoning commission may, within fifteen (15) 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 in accordance with Wallace City Code Title 12 Chapter 7.
- C. **Purpose of Hearing:** The purpose of the hearing is to allow the city council to consider information presented to the commission. Evidence presented on appeal shall be confined to the record involved in the action from which the appeal is taken. The council shall hear oral argument made by parties based upon the record of the proceedings before the commission.
- 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 files an appeal with the District Court of the First Judicial District of the State of Idaho, in and for the County of Shoshone, in the manner prescribed by law.

11-1-11: VIOLATION AND PENALTIES:

- A. **Infraction Violation:** Violation of the provisions of this chapter or failure to comply with any of its requirements not otherwise designated below, shall constitute an infraction and may be punishable up to \$100 per violation and the Commission may require mitigation.
1. **Permit Violation:** For each day the owner of real property violates the provisions of Section 11-1-4, a fine of up to three hundred dollars (\$300) may 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 on major projects.
 2. **Significant Tree Violation:** In the case of a significant tree being removed, a minimum fine of one-hundred dollars (\$100) shall be assessed and the commission may require mitigation. Mitigation efforts may include but are not limited to offender replacing with a suitable tree of at least two inch (2") caliper within ninety (90) days.
 3. **Unlawful Abuse of Tree Violation:** Any person in violation of section 11-1-9 shall be guilty of an infraction, punishable up to one-hundred dollars (\$100) per violation.
- B. **Increasing Penalty:** A second and any subsequent conviction for violations of provisions of this chapter shall be a misdemeanor, punishable by a fine not to exceed one-thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one-hundred eighty (180) days, or both.
- C. **Separate and Continuing Violation:** Any person who commits, participates in, assists or maintains such violation may be found guilty of a separate, distinct offense and shall suffer the penalties as set forth in subsection A of this section for each day such participation, assistance or maintenance continues.
- 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 may be considered a public nuisance and shall be enforced in accordance with Wallace Code Title 4 Chapter 1.
- E. **Issuance of City Permits Withheld; Corrective Action:** Upon determination that a violation of the provisions of this chapter has occurred, the city may 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 planning and zoning commission 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.
4. Other mitigation measures as required by the Commission.


11-1-12: EFFECTIVE DATE:

This Ordinance shall be effective upon passage and publication as provided for by law.

PASSED by the City Council on April 13, 2022, upon the following roll call vote:

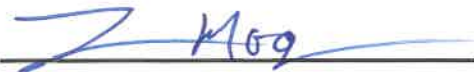
Council Member Elmer Mattila	AYE
Council Member Dave Deroos	AYE
Council Member Rick Shaffer	ABSENT
Council Member Dean Cooper	AYE
Council Member Michele Bisconer	AYE
Council Member Heather Branstetter	AYE

ATTEST:



City Clerk Kristina Larson, City of Wallace

APPROVED by me on April 13, 2022.



Lynn Mogensen, Mayor, City of Wallace

