

Moscow City Council



Regular Meeting ~Agenda~

www.ci.moscow.id.us

Laurie M. Hopkins
City Clerk

208.883.7015

Tuesday, September 3, 2024

7:00 PM

**Council Chambers
206 E. Third St.**

The Moscow Mayor, City Council and Staff welcome you to tonight's meeting. This meeting is open to the public. We appreciate and encourage public participation. For regular agenda items, an opportunity for public comment is sometimes provided after the staff report. However, the formality of procedures varies with the purpose and subject of the agenda item; therefore, the Mayor may exercise discretion in deciding when to allow public comment during the course of the proceedings and limitations may be placed on the time allowed for comments. Citizens wishing to comment on business that is not on the agenda will be provided the opportunity to do so during the public comment item on the agenda. If you plan to address the Council, you will find a list of "Tips for Addressing the Council" in the door pocket outside the City Council Chambers. Please note that Moscow City Council meetings are televised, videotaped and/or recorded. Links to view the City Council meeting live can be found on the City website, YouTube, Facebook and Spectrum Cable 1301. Thank you for your interest in City government.

PLEDGE OF ALLEGIANCE

CONSENT AGENDA

1. All Consent Items (ACTION ITEM)

A. Approval of Moscow City Council August 19, 2024 Minutes - Laurie M. Hopkins

B. School Resource Officer Memorandum of Understanding - Bill Belknap

For over 24 years, the Moscow Police Department has employed a School Resource Officer (SRO) to provide a law enforcement presence and additional resources to the Moscow School District (MSD) to assist in providing and maintaining a safe and healthy student environment. The City and MSD jointly fund the SRO position. The existing SRO agreement will expire at the end of September and staff has prepared a new agreement continuing the same terms and conditions as the prior agreement for the Council's consideration. The MOU has been reviewed and approved by the MSD administration. This was reviewed by the Administrative Committee on August 26, 2024, and recommended for approval.

ACTION: Approve the MOU with the Moscow School District to jointly fund the School Resource Officer position.

C. State/Local Agreement for Construction of the Public Avenue Corridor Safety Improvements - Alisa Anderson / Scott Bontrager

The City of Moscow's Public Avenue Corridor Safety Improvements project located in northeast Moscow is a 1,100-foot long corridor on Public Avenue from Polk Street to Lincoln Street. The project includes the installation of a permanent concrete splitter island at the intersection of Polk Street and Public Avenue and upgrading the roadway to include full 12-foot vehicle lanes and 5-foot bicycle lanes. Additional improvements include the installation of 2,200 linear feet of curb, gutter, and a 5-foot sidewalk. These improvements

will widen the roadway and eliminate roadside ditches, creating a more navigable corridor for both vehicles and pedestrians/cyclists. These improvements will provide a safer environment and help keep drivers on the road through the installation of curbing and advance warning signs for the curves. The reduction of several roadside hazards to include ditch lines, trees, and utility poles will greatly decrease the risk of injury accidents. Lastly, the installation of larger, retroreflective signs and thermoplastic crosswalk bars will increase stop compliance at intersections. The design was completed in June 2024 and the project is now ready to be put out to bid for construction, which requires the approval and execution of the State/Local Agreement and the corresponding Resolution. Construction is expected to occur in 2025.

This was reviewed by the Administrative Committee on August 26, 2024. The State/Local Agreement required revisions that were not initially expected to be completed until the date of the City Council meeting on September 3, 2024, so the agenda item was to be placed on the Regular Agenda. Since the revised State/Local agreement was received from LHTAC in time to include in the City Council agenda packet, the updated State/Local agreement is attached for approval as part of the Consent Agenda.

ACTION: Approve the State/Local Agreement and the corresponding Resolution for Construction of the Public Avenue Corridor Safety Improvements Project No. A022(402), Key No. 22402.

D. Moscowberfest Alcohol Use Request in Entertainment District - Amanda Argona

The Moscow Chamber of Commerce + Visitor Center is hosting their annual Moscowberfest on Saturday, September 28th, from 4 pm to 8 pm on Main Street between 3rd and 6th Streets. This event is now in its fourth year and is stylized in the spirit of fall folk festivals. The applicant anticipates no more than fifteen (15) licensed beer and/or wine vendors, up to fifteen (15) food vendors, and up to fifteen (15) vendors facilitating street games, activities, and competitions such as: face painting, knitting and spinning circle, children's crafts, rubber ninja throwing stars, stein holding, keg lifting, etc. The event has been reviewed and approved as of August 14, 2024. Following standard operating procedures for events with alcohol that are within the Entertainment District boundaries, The Moscow Chamber of Commerce + Visitor Center is requesting a temporary suspension of the open container law by resolution. Per Moscow City Code, Section 10-1-12; a draft resolution has been prepared for Council's consideration. This was reviewed by the Administrative Committee on August 26, 2024 and recommended for approval.

ACTION: Approve the resolution allowing for the temporary suspension of the open container law within the event footprint of Moscowberfest for the duration of the event.

REGULAR AGENDA

2. Mayors Appointments (ACTION ITEM)

3. Public Comment and Mayor's Response Period (limit 15 minutes)

4. Appeal of Board of Adjustment Decision Regarding 414 S. Main Street (ACTION ITEM) - Bill Belknap

On February 12, 2024, Brenda von Wandruszka (Applicant) requested a zoning determination regarding whether administrative offices of New Saint Andrews College could occupy a building currently addressed as 414 S. Main Street which previously was the location of the Moscow Contemporary Art Gallery. The City of Moscow Zoning Administrator issued Zoning Administrator Decision 2024-01 on February 21, 2024, which determined the proposed

occupancy would not be permissible under the Moscow Zoning Code. The Applicant requested reconsideration of the decision on March 1, 2024. On March 21, 2024, the Zoning Administrator issued Zoning Administrator Decision 2024-02 which affirmed the prior decision. On April 15, 2024, the Applicant filed an appeal to the Zoning Administrator's decision in accordance with Moscow City Code (MCC) 4-8-2. The appeal was considered by the Zoning Board of Adjustment on June 11, 2024. The Zoning Board of Adjustment reversed the decision of the Zoning Administrator as documented in their written decision dated June 18, 2024. On June 27, 2024, the Zoning Administrator filed an appeal of the Zoning Board of Adjustment's decision to the City Council in accordance with Moscow City Code 4-8-5. This matter is before the City Council for consideration.

PROPOSED ACTIONS: Council has the following options:

1. Sustain the Decision (in whole or in part)
2. Reverse the Decision (in whole or in part)
3. Remand the Matter to the Board of Adjustment (in whole or in part)

With any of the three options, staff should be directed to prepare a written decision reflecting Council's action.

5. Idaho Revolving Loan Fund Supplemental Revenue Bond Ordinance (ACTION ITEM) - Bill Belknap

In 2019, the City applied for and received an additional \$4.3 Million in low interest Revolving Loan Fund (RLF) funding from the Idaho Department of Environmental Quality (DEQ) and entered into a loan agreement with DEQ as approved by Council Resolution 2019-22. All the original identified projects are now complete, and the City is ready to convert the construction funding to permanent bond financing. DEQ will be the sole purchaser of the bonds through the State RLF program. The bonds will have a term of 20 years and an interest rate of 2.25%. The City's bond counsel has prepared a supplemental bond ordinance providing for the sale of the bonds for Council approval. This was reviewed by the Administrative Committee on August 26, 2024, and recommended for approval.

PROPOSED ACTIONS: Approve the Ordinance under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary; or consider the Ordinance on first reading and that it be read by title; or reject the Ordinance; or take such other action deemed appropriate.

6. City Supervisor Title Amendment Ordinances (ACTION ITEM) - Bill Belknap

The City of Moscow established the position of Administrative Assistant for the City of Moscow in 1959 through Ordinance 1001, passed on April 6th, 1959. The position as described in 1959, included keeping an inventory of all City property, acting as the City's purchasing agent, preparing the annual budget, serving as public relations officer, attending City Council meetings, overseeing all department operations, and long-range planning for the City, all under the supervision of the Mayor. At the Council meeting of May 14, 1959, Clair Inghram was appointed as the first person to occupy the newly created position, but the title that was utilized at the time of the appointment, as reflected in the meeting minutes was City Supervisor. Over the years the City amended Chapter 4 of Title 2 to formally change the title to City Supervisor in code. The title of City Supervisor is not commonly used in the public administration profession and there are no other similar positions within the State of Idaho. Pullman Washington was one of the few cities that retained the title of City Supervisor until a few years ago when they changed the title of City Supervisor to City Administrator, which is the common title utilized throughout Idaho and the nation. Staff is proposing to retain all duties and responsibilities, but to change the title of

the position to City Administrator. This recommendation was reviewed and approved by the Mayor and Council President and Vice President, and staff have prepared an ordinance to first amend Title 2, Chapter 4, and a second Ordinance to change all other City code references that has the title of City Supervisor to City Administrator. The proposal is before the full Council for consideration. This was reviewed by the Administrative Committee on August 26, 2024, and recommended for approval.

PROPOSED ACTIONS:

1. Approve the Ordinance amending Title 2, Chapters 5 and 14, under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary; or consider the Ordinance on first reading and that it be read by title; or reject the Ordinance; or take such other action deemed appropriate.
2. If the prior Ordinance is approved, recommend approval of the Ordinance amending all City Code references to City Supervisor and Deputy City Supervisor under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary; or consider the Ordinance on first reading and that it be read by title; or reject the Ordinance; or take such other action deemed appropriate.

REPORTS

City Council

Mayor

ADJOURN

NOTICE: It is the policy of the City of Moscow that all City-sponsored public meetings and events are accessible to all people. If you need assistance in participating in this meeting or event due to a disability under the ADA, please contact the City's ADA Coordinator by phone at (208) 883-7600, TDD (208) 883-7019, or by email at adacoordinator@ci.moscow.id.us at least 48 hours prior to the scheduled meeting or event to request an accommodation. The City of Moscow is committed to ensuring that all reasonable accommodation requests are fulfilled.

Moscow City Council



Regular Meeting ~Minutes~

www.ci.moscow.id.us

Laurie M. Hopkins
City Clerk

208.883.7015

Monday, August 19, 2024

7:00 PM

**Council Chambers
206 E. Third St.**

The meeting was called to order at 7:00 p.m.

PRESENT: Mayor Art Bettge, Bryce Blankenship, Drew Davis, Sandra Kelly, Hailey Lewis, Julia Parker, Gina Taruscio

STAFF: Bill Belknap, Mia Bautista, Tyler Palmer, David Schott, Sarah Banks, Laurie M. Hopkins

PLEDGE OF ALLEGIANCE

Council Member Parker led the Pledge of Allegiance.

CONSENT AGENDA

1. All Consent Items (ACTION ITEM)

A. Approval of Moscow City Council August 5, 2024 Minutes - Laurie M. Hopkins

B. Disbursement Report July 2024 - Sarah Decker

Staff presented the July 2024 Accounts Payable Report to the Public Works / Finance Committee on August 12th, 2024. The Committee received the report and approved the disbursements as presented.

ACTION: Accept the Disbursements Report for the month of July 2024.

C. Latah County Library District Building Lease Agreement Extension - David Schott

In 2014, the City of Moscow (City) and Latah County Library District (District) entered into a lease agreement for a ten (10) year term to lease the City-owned building located at 110 S Jefferson Street, Moscow, Idaho. The term of the Agreement is set to expire September 30, 2024.

The proposed amendment to the agreement would extend the current term of the agreement until September 30, 2025. All other terms and conditions of the Agreement shall remain in full force and effect. The Latah County Library District Board of Trustees hired April Hernandez, Library Director, after the retirement of the previous director. The request to extend the term of the existing agreement for one (1) year is to provide time for the Library District Director to become familiar with the partnership between the City and District. This was reviewed by the Public Works/Finance Committee on August 12, 2024 and recommended for approval.

ACTION: Approve the amendment to the 2014 Lease Agreement between the City of Moscow and Latah County Library District to extend the term of the current lease agreement until September 30, 2025.

D. Palouse Basin Aquifer Committee Memorandum of Agreement (MOA)- Tyler Palmer

The Palouse Basin Aquifer Committee (PBAC) operates under an interagency agreement that expired in August 2023. Following the expiration of the agreement, all participating entities approved a memorandum of agreement to continue to operate under the prior expired agreement

under the same terms and conditions to allow time to prepare a new agreement. The new agreement clarifies the function and role of PBAC and has been reviewed and approved by all participating entities. The agreement is before the City Council for consideration and approval.

ACTION: Approve the new Interstate Agreement for Moscow's participation in the Palouse Basin Aquifer Committee.

Kelly moved and Parker seconded to approve the consent agenda as presented. Roll Call Vote: Ayes: Unanimous. Nays: None. Abstentions: None. Motion carried.

REGULAR AGENDA

2. Mayors Appointments (ACTION ITEM)

None offered.

3. Public Comment and Mayor's Response Period (limit 15 minutes)

Nancy Tribble (Moscow) asked the City Council to create an ordinance for Friendship Square that says no smoking, no open containers and no disorderly conduct. It should also include a number people can call. Remax Connections moved adjacent to Friendship Square last year. They have dealt with yelling and cursing, watched people pour alcohol into coffee cups, and had to close door due to cigarette/cigar smoke. Police have been called 9 times in 30 days. It is difficult to quote the city code when there is no sign to quote. She has heard discouraging comments that people won't take their kids to the playground because of cursing and such. While she appreciates the police response, signs would be appreciated.

Ben Merkle (Moscow) wanted to speak on the amendments to the appeal procedures completed last summer. Mayor Bettge responded appeals are quasi-judicial. The subject matter is too close in relation to an appeal coming before the City Council. He would need to wait until after the appeal has been before the City Council.

4. Public Hearing - Open Budget for Fiscal Year 2023-2024 (FY2024) Review (ACTION ITEM) - Sarah Decker

The State of Idaho provides a process for cities to amend the original fiscal year budget appropriation ordinance in accordance with Idaho Code section 50-1003. The City completed its FY2024 budget adoption in August 2023 and headed into its FY2023 fiscal year-end. During the fiscal year-end, it was determined that two major operating funds, the general fund and sanitation fund, accumulated unanticipated and unappropriated fund balances. Additionally, during the FY2024 fiscal year, the City received an unanticipated federal grant award. The City Council authorized expenditures pertaining to this federal grant to assist the Moscow Police Department in purchasing electronic ticketing equipment to replace existing outdated units and purchase new units for eleven police vehicles. The staff is proposing to amend Ordinance 2023-07 in the amount of \$2,510,000 to accommodate both the unappropriated fund balances and the council-authorized grant revenue and expenditures. This was reviewed by the Public Works/Finance Committee on August 12, 2024, and recommended for approval.

PROPOSED ACTIONS: Conduct the public hearing, and after considering public testimony received, approve the Ordinance under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary; or consider the Ordinance on first reading and that it be read by title; or reject the Ordinance; or take such other action deemed appropriate.

Mayor Bettge opened the public hearing at 7:08 p.m. Decker introduced the item by detailing the changes to the expenditures and revenues to the FY2024 which total approximately \$2,510,000. General Fund, Sanitation Fund and Information Systems were affected.

Hearing no testimony, Mayor Bettge closed the public hearing at 7:12 p.m.

Kelly said they discussed the changes at the Public Works/Finance Committee. Parker moved to approve the Ordinance under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary. Kelly seconded. Roll Call Vote: Ayes: Unanimous. Nays: None. Abstentions: None. Motion carried.

Mayor Bettge read Ordinance 2024-14 by title:

AN ORDINANCE OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; AMENDING ORDINANCE NO. 2023 – 07, THE ANNUAL APPROPRIATION ORDINANCE FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2023 AND ENDING SEPTEMBER 30, 2024; TO APPROPRIATE MONIES IN THE SUM OF TWO MILLION FIVE HUNDRED TEN THOUSAND DOLLARS (2,510,000); PROVIDING FOR THIS ORDINANCE TO BE IN FULL FORCE AND EFFECT FROM AND AFTER ITS PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

REPORTS

City Council

Moscow Urban Renewal Agency – Kelly reported said the Agency is working on a strategic plan.

Moscow Volunteer Fire Department – Kelly said the volunteers/residents are back.

Farmers Market Commission – Parker said the Commission is working with vendors that weren't able to get into the market and ideas to help them towards approval during the jury process.

Moscow Pathways Commission - Davis said the Commission has a walking tour on September 17 beginning at Hordeman's pond.

Planning & Zoning Commission – Blankenship reported the Commission completed the update to the subdivision code and that will come before council soon.

SMART Transit – Lewis said the board/staff is working hard to keep transit running while hiring a new executive director.

Council members spoke on other meetings and events they attended.

Mayor

Mayor Bettge said he helped with a few airport tours and an airport ribbon cutting.

ADJOURN

It was moved, seconded and mutually agreed upon to adjourn at 7:24 p.m.

Arthur D. Bettge, Mayor

ATTEST:

Laurie M. Hopkins, City Clerk

COMMITTEE / CITY COUNCIL STAFF REPORT

DATE: Tuesday, September 3, 2024



AGENDA ITEM TITLE

School Resource Officer Memorandum of Understanding - Bill Belknap

RESPONSIBLE STAFF

Bill Belknap, City Supervisor

ADDITIONAL PRESENTER(S)

DESCRIPTION

For over 24 years, the Moscow Police Department has employed a School Resource Officer (SRO) to provide a law enforcement presence and additional resources to the Moscow School District (MSD) to assist in providing and maintaining a safe and healthy student environment. The City and MSD jointly fund the SRO position. The existing SRO agreement will expire at the end of September and staff has prepared a new agreement continuing the same terms and conditions as the prior agreement for the Council's consideration. The MOU has been reviewed and approved by the MSD administration. This was reviewed by the Administrative Committee on August 26, 2024, and recommended for approval.

REVIEWED BY

PROPOSED ACTIONS

ACTION: Approve the MOU with the Moscow School District to jointly fund the School Resource Officer position.

STAFF RECOMMENDATION

Approve the MOU with the Moscow School District to jointly fund the School Resource Officer position.

OTHER RESOURCES

FISCAL IMPACT

PERSONNEL IMPACT

ATTACHMENTS

1. MOU with MSD for SRO_2024Final

**MEMORANDUM OF UNDERSTANDING
FOR PROFESSIONAL SERVICES BETWEEN
CITY OF MOSCOW, IDAHO AND
MOSCOW SCHOOL DISTRICT NO. 281**

THIS MEMORANDUM OF UNDERSTANDING FOR PROFESSIONAL SERVICES BETWEEN CITY OF MOSCOW, IDAHO AND MOSCOW SCHOOL DISTRICT NO. 281 (hereinafter "MOU"), dated this _____ day of _____, 2024, is made and entered into by and between the City of Moscow, Idaho, 206 East Third Street, Moscow, Idaho, 83843, a municipal corporation of the State of Idaho (hereinafter "CITY") and Moscow School District No. 281, 650 North Cleveland, Moscow, Idaho, 83843, a political corporation of the State of Idaho (hereinafter "MSD").

INTRODUCTION

WHEREAS, CITY, through the Moscow Police Department (hereinafter "MPD") has been employing a School Resource Officer (SRO) position for over twenty-four (24) years to provide a law enforcement presence and additional resources to MSD in order to assist in providing and maintaining a safe and healthy student environment; and

WHEREAS, CITY has previously agreed to split the cost of the salary for the SRO position due to MSD's budgetary concerns; and

WHEREAS, MSD and CITY will continue to split the cost of the SRO position, as detailed herein; and

WHEREAS, it is deemed to be in the best interests of CITY and MSD to enter into this Agreement with MSD as hereinafter provided;

NOW, THEREFORE, CITY and MSD, in consideration of the mutual covenants and stipulations set out, do hereby agree that all matters stated above are found to be true and correct and are incorporated herein by reference as if copied in their entirety and shall be adopted with the following:

SECTION 1: TERMS AND CONDITIONS

- A. Term: Pursuant to the terms of this MOU, CITY shall designate a police officer to fill the request of MSD for a full-time SRO. This MOU shall commence on the first day of October, 2024 (the Commencement Date), and shall continue per the terms herein for a period of three (3) years, subject to renewal upon written agreement by both Parties.
- B. Cost: MSD shall fund fifty percent (50%) of the cost of the SRO position, which shall include the total annual salary, benefits, and overtime.

- C. **Payment:** MSD shall pay to CITY for the work of the SRO in the following manner. MSD shall make such payment in two (2) annual installments; the first installment shall be due the first day of October, and every October 1 this MOU is in effect, which shall be fifty percent (50%) of the budgeted cost of the SRO position, excluding overtime. Said amount will be provided to MSD by the 15th day of September every year this MOU is in effect. The second installment shall be paid by MSD after CITY submits an invoice to MSD for any overtime accrued for each fiscal year. CITY shall provide the request for reimbursement for overtime expenses by October 31 of every year this MOU is in effect. Payment shall be submitted no later than 30 days after receipt of invoice.
- D. **SRO Scope of Work:** The SRO shall be a sworn police officer of the MPD. In addition to the regular duties of a sworn police officer, the SRO shall be available to school staff and shall provide education to classes regarding information pertinent to specific curriculum, as well as act as the key liaison between MPD and MSD. The SRO shall carry out the scope of work in the following ways:
1. Primary contact/liaison between MPD and MSD personnel.
 2. Visible at school activities, when available.
 3. Work with students who are at risk regarding attendance concerns.
 4. Speak to classrooms regarding a variety of subjects, upon staff request.
 5. Be visible around school campus before school, after school, and during lunch times.
 6. Be the primary officer to respond when criminal acts occur on school property, when available.
- E. **SRO Uniform and Equipment:** The SRO shall wear a standard MPD uniform and will be armed at all times while on duty.
- F. **Location and Assignment of Work:** The SRO will serve all the schools operated by MSD.
- G. **Standard Operating Procedures for the SRO:**
1. The SRO shall strive to follow MSD policies and procedures related to law enforcement action within the schools, however should any of MSD's policies and procedures conflict with CITY personnel policies and MPD policies and procedures, the SRO shall adhere to CITY and MPD policies and procedures.
 2. The role of the SRO for MSD is twofold: (a) to function in the schools as a Law Enforcement Officer; and (b) to act as an information resource.
 3. The SRO will act as a liaison between MSD staff and MPD. It will be the duty of the SRO to help MSD staff with concerns or problems that might be law enforcement related. The SRO will conduct necessary research and involve appropriate personnel from MPD or the community to resolve concerns or problems raised by MSD.
 4. With approval of the SRO's Division Commander and MSD principals, the SRO may attend the following functions in an on-duty, paid status:
 - a. PTA meetings;
 - b. Staff meetings;
 - c. Dances;

- d. Sporting events; and
- e. Other school related events upon request by MSD or the SRO.

SECTION 2: MODIFICATION AND ASSIGNABILITY OF CONTRACT

This MOU contains the entire agreement between the Parties, and no statements, promises, or inducements made by either Party, or agents of either Party, are valid or binding unless contained herein. This MOU may not be enlarged, modified or altered except upon written agreement signed by the Parties hereto. MSD and CITY shall not assign any right, duties or obligations under this MOU to any other person or entity, governmental or otherwise, without the prior written approval of the other Party.

SECTION 3: TERMINATION OF MOU

If MSD ceases payment for the SRO, CITY may terminate this MOU in whole or in part at any time before the end of the three (3) year term. CITY will thereafter be entitled to receive payment for those services reasonably performed to the date of termination.

This Agreement is contingent upon CITY and MSD receiving the necessary funding to cover the obligations described herein. In the event that such funding is not received or appropriated, then, and in that event, CITY's and MSD's obligations under this Agreement shall cease and each Party shall be released from further performance under this Agreement without any liability to the other Party.

SECTION 4: ADHERENCE TO LAW REQUIRED

All applicable Federal, State, and Local statutes and regulations are hereby made a part of this MOU and shall be adhered to at all times. Violation of any of these statutes or regulations by CITY and/or MSD shall be deemed material and shall subject CITY and/or MSD to termination of this MOU.

SECTION 5: JURISDICTION AND VENUE

This MOU shall be construed under and governed by the laws of the State of Idaho. In the event of litigation concerning it, it is agreed that proper venue shall be the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah.

SECTION 6: INDEMNIFICATION

The Parties are governmental entities subject to statutory and constitutional restrictions concerning the acceptance of liability. The Parties liabilities are further governed by the Idaho Tort Claims Act. It is the intention of the Parties that each will be responsible for its own acts and omissions, and those of its officers and employees acting within the course and scope of their employment.

SECTION 7: LEGAL FEES

In the event either Party incurs legal expenses to enforce the terms and conditions of this MOU, the prevailing Party is entitled to recover reasonable attorney's fees and other costs and expenses whether the same are incurred with or without a lawsuit.

SECTION 8: NOTICE

All communication or notification to be given pursuant to this MOU shall be given to the following:

MSD:
Superintendent
Moscow School District
650 North Cleveland Street
Moscow, Idaho 83843

CITY:
Chief of Police
City of Moscow
206 East Third Street
Moscow, Idaho 83843

SECTION 9: NO JOINT VENTURE

Nothing contained in this MOU shall be in any way construed as creating a separate legal entity, or expressing or implying that the Parties have joined together in any joint venture partnership or agency relationship.

SECTION 10: INTERPRETATION AND SEVERABILITY

As a further condition of this MOU, CITY and MSD acknowledge that this MOU shall be deemed and construed to have been prepared mutually by each Party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any Party. The terms and conditions of this MOU shall be deemed severable. If any part of this MOU is held invalid or unenforceable, the remaining portions of the MOU shall remain in full force and effect.

SECTION 11: AUTHORITY TO EXECUTE

IN WITNESS WHEREOF, the undersigned Parties to this Agreement, by and through their respective representatives, certify that (1) this Agreement has been validly executed and delivered; (2) they have been granted the authority to sign this document on behalf of their respective entities; and (3) this Agreement constitutes a valid binding agreement of such Parties enforceable in accordance with its terms.

This Agreement may be executed in multiple counterparts that are provided to the other Parties by electronic mail transmission of a copy of the executed document in .pdf format, each of which shall constitute an original and all of which together shall constitute one in the same instrument. This Agreement may also be executed by the use of electronic signatures pursuant to Idaho Code §28-50-107. If electronic signatures are utilized, the acknowledgement before a notary is not required.

IN WITNESS WHEREOF, said MSD and CITY have caused this Agreement to be executed on the day and year first above written.

MSD:

CITY:

Shawn Tiegs, Superintendent

Arthur D. Bettge, Mayor

ATTEST:

Laurie M. Hopkins, City Clerk

ACKNOWLEDGMENT

STATE OF IDAHO)
) ss.
COUNTY OF LATAH)

On this _____ day of _____, 2024, before me, a Notary Public in and for said State, appeared Shawn Tiegs, known to me to be the person named above and acknowledged that he executed the foregoing document as the duly authorized representative.

Notary Public for the State of Idaho
Residing at _____
My commission expires _____

COMMITTEE / CITY COUNCIL STAFF REPORT

DATE: Tuesday, September 3, 2024



AGENDA ITEM TITLE

State/Local Agreement for Construction of the Public Avenue Corridor Safety Improvements - Alisa Anderson / Scott Bontrager

RESPONSIBLE STAFF

Alisa Anderson, Grants Manager, Scott Bontrager, City Engineer

ADDITIONAL PRESENTER(S)

DESCRIPTION

In January 2019, City staff submitted a grant application for the Public Avenue Corridor Safety Improvements project under Local Highway Safety Improvement Program (LHSIP). The LHSIP is a federal grant program administered through the Local Highway Technical Assistance Council (LHTAC) on behalf of the Idaho Transportation Department (ITD). The project includes a 1,100-foot-long corridor located on Public Avenue in northeastern Moscow between Polk Street and Lincoln Street. The design is focused on corridor safety and addresses the high rate of injury crashes and fatalities on this section of the roadway. The project includes the installation of a permanent concrete splitter island at the currently skewed intersection of Polk Street and Public Avenue and upgrading the roadway to include full 12-foot vehicle lanes and 5-foot bicycle lanes. The project will also include the installation of 2,200 linear feet of curb, gutter, and a 5-foot sidewalk. These improvements will widen the roadway and eliminate roadside ditches, creating a more navigable corridor for both vehicles and pedestrians/cyclists. These improvements will provide a safer environment and help keep drivers on the road through the installation of curbing and advance warning signs for the curves. The reduction of several roadside hazards to include ditch lines, trees, and utility poles will greatly decrease the risk of injury accidents. Lastly, the installation of larger, retroreflective signs and thermoplastic crosswalk bars will increase stop compliance at intersections.

The City received a notice of award in April 2019 with total project costs estimated to be \$880,000 to include grant funds of \$815,408 and a local match of 7.34% or \$64,592. The project was scheduled for design in 2021 and construction in 2022. In August 2020, the City executed a State/Local Agreement for Project Development and Design. Next, a Local Professional Services Agreement for \$96,078 for engineering and design was executed with HMM, LLC, on September 23, 2021, stating the work was to be completed by June 30, 2022. The project design completion was delayed until June 2024 due to many factors including COVID-19 and the need to negotiate and purchase an easement and obtain right-of-way which was not previously anticipated. Upgrades to the project, including a total reconstruction of the entire roadway width versus the prior planned widening improvements, the addition of a new underground storm drain system, and unprecedented post-COVID construction inflation have all increased the cost of construction from what was originally anticipated in 2019.

The new total project costs have now increased to \$2,214,482 with a federal grant award of \$1,515,400 (68%) and local match of 699,082 (32%) as shown in the attached "Worksheet for State/Local Construction Agreements" noting the grant award was increased by \$635,400 and local contribution to \$699,082. These cost increases are partially due to easement and right-of-way expenses, rebuilding of the entire roadway width, stormwater installation, and increased construction costs since 2019. The

State/Local Agreement and the corresponding Resolution are attached to this report which detail the construction project requirements. The project will be put out to bid during the Fall of 2024 with construction starting in early summer 2025.

This was reviewed by the Administrative Committee on August 26, 2024. The State/Local Agreement required revisions that were not initially expected to be completed until the date of the City Council meeting on September 3, 2024, so the agenda item was to be placed on the Regular Agenda. Since the revised State/Local agreement was received from LHTAC in time to include in the City Council agenda packet, the updated State/Local agreement is attached for approval as part of the Consent Agenda.

REVIEWED BY

This was reviewed by the Administrative Committee on August 26, 2024. The State/Local Agreement required revisions that were not initially expected to be completed until the date of the City Council meeting on September 3, 2024, so the agenda item was to be placed on the Regular Agenda. Since the revised State/Local agreement was received from LHTAC in time to include in the City Council agenda packet, the updated State/Local agreement is attached for approval as part of the Consent Agenda.

PROPOSED ACTIONS

ACTION: Approve the State/Local Agreement and the corresponding Resolution for Construction of the Public Avenue Corridor Safety Improvements Project No. A022(402), Key No. 22402.

STAFF RECOMMENDATION

Approve the State/Local Agreement and the corresponding Resolution for Construction of the Public Avenue Corridor Safety Improvements Project No. A022(402), Key No. 22402.

OTHER RESOURCES

FISCAL IMPACT

Local cash match of \$399,936, which is 20% of the total project costs of \$1,938,049 with a grant award of \$1,538,113 at 80%. Funds for this project are included in the Capital Improvement Plan.

PERSONNEL IMPACT

Engineering, Grants and Finance Divisions

ATTACHMENTS

1. Resolution 2024-__ State-Local Agreement; ITD LHSIP Public_final with attachment

RESOLUTION NO. 2024 – ____

A RESOLUTION OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, TO ENTER INTO AN AGREEMENT FOR CONSTRUCTION OF THE PUBLIC AVENUE CORRIDOR SAFETY IMPROVEMENTS PROJECT; PROVIDING THAT THIS RESOLUTION SHALL BE IN EFFECT UPON ITS PASSAGE AND APPROVAL.

WHEREAS, the City of Moscow (hereinafter “City”) submitted an application for funding to the Local Highway Safety Improvement Project (hereinafter “LHSIP”) on January 17, 2019, for the Public Avenue Corridor Safety Improvements Project (hereinafter “Project”); and

WHEREAS, the Idaho Transportation Department (hereinafter “ITD”) approved the application and has submitted State/Local Agreement (Construction) Project No. A022(402) Public Avenue Corridor Safety Improvements Project, Key No. 22402 (hereinafter “Agreement”) for City to accept and sign stating obligations of ITD and City for the construction of the Project; and

WHEREAS, ITD is responsible for obtaining compliance with laws, standards and procedural policies in the development, construction and maintenance of improvements made to the Federal-aid Highway System when there is federal participation in the costs of improvement; and

WHEREAS, certain functions to be performed by ITD involve the expenditure of City funds as set forth in the Agreement; and

WHEREAS, ITD can only pay for work associated with the State Highway system; and

WHEREAS, City is fully responsible for its share of Project costs;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Moscow that all matters stated above are found to be true and correct and are incorporated herein by reference as if copied in their entirety with the following:

1. That the City of Moscow shall accept and approve the STATE/LOCAL AGREEMENT (CONSTRUCTION) PROJECT NO. A022(402) PUBLIC AVENUE CORRIDOR SAFETY IMPROVEMENTS KEY NO. 22402; and
2. That the Mayor of the City of Moscow is hereby authorized and directed to sign the Agreement on behalf of the City of Moscow and the City Clerk is hereby authorized and directed to attest the signature of the Mayor and to impress the official seal of the City of Moscow on the aforesaid Agreement; and
3. That a true copy of the Agreement referred to herein be attached hereto and made a part thereof (Attachment “A”); and

- 4. That duly certified copies of this Resolution shall be furnished to the Idaho Transportation Department; and
- 5. That provisions of this Resolution shall be deemed severable and the invalidity of any provision of this Resolution shall not affect the validity of the remaining provisions; and
- 6. That this Resolution shall become effective upon its passage and approval.

PASSED on Motion by the Following Vote:

	Aye	Nay	Abstain	Absent
Hailey Lewis	_____	_____	_____	_____
Drew Davis	_____	_____	_____	_____
Sandra Kelly	_____	_____	_____	_____
Gina Taruscio	_____	_____	_____	_____
Julia Parker	_____	_____	_____	_____
Bryce Blankenship	_____	_____	_____	_____

ADOPTED by the City Council of the City of Moscow, Idaho and **APPROVED** by the Mayor of the City of Moscow, Idaho this _____ day of September, 2024.

Arthur D. Bettge, Mayor

CERTIFICATION and ATTESTATION. I hereby certify that the above is a true copy of a Resolution passed at a regular meeting of the City Council, City of Moscow, held on September _____, 2024, and attest to the Mayor’s signature.

Laurie M. Hopkins, City Clerk

Attachment "A"

**STATE/LOCAL AGREEMENT
(CONSTRUCTION)
PROJECT NO. A022(402)
PUBLIC AVE CORRIDOR SAFETY IMPROVEMENTS
KEY NO. 22402**

PARTIES

THIS AGREEMENT is made and entered into this _____ day of _____, _____, by and between the **IDAHO TRANSPORTATION BOARD** by and through the **IDAHO TRANSPORTATION DEPARTMENT**, hereafter called the State, and the **CITY OF MOSCOW**, acting by and through its MAYOR AND COUNCIL, hereafter called the Sponsor.

PURPOSE

The Sponsor has requested federal participation in the costs of Public Ave Corridor Safety Improvements. which has been designated as Project No. A022(402). This Agreement sets out the responsibilities of the parties in the construction and maintenance of the project.

Authority for this Agreement is established by Section 40-317 of the Idaho Code.

The Parties agree as follows:

SECTION I. GENERAL

1. This Agreement is entered into for the purpose of complying with certain provisions of the Federal-Aid Highway Act in obtaining federal participation in the construction of the project.
2. Federal participation in the costs of the project will be governed by the applicable sections of Title 23, U.S. Code (Highways) and rules and regulations prescribed or promulgated by the Federal Highway Administration, including, but not limited to, the requirements of 23 U.S.C. §313.23 and CFR §635.410.

*State/Local Agreement (Construction)
Public Ave Corridor Safety Improvements
Key No. 22402
Page No. 1*

3. Funds owed by the Sponsor shall be remitted to the State through the ITD payment portal at:
<https://apps.itd.idaho.gov/PayITD> .
4. All information, regulatory and warning signs, pavement or other markings, and traffic signals, the cost of which is not provided for in the plans and estimates, must be erected at the sole expense of the Sponsor upon the completion of the project.
5. The location, form and character of all signs, markings and signals installed on the project, initially or in the future, shall be in conformity with the Manual of Uniform Traffic Control Devices as adopted by the State.
6. This State/Local Agreement (Construction) upon its execution by both Parties, supplements the State/Local Agreement (Project Development) by and between the same parties, dated August 12, 2020.
7. Sufficient Appropriation. It is understood and agreed that the State is a governmental agency, and this Agreement shall in no way be construed so as to bind or obligate the State beyond the term of any particular appropriation of funds by the Federal Government or the State Legislature as may exist from time to time. The State reserves the right to terminate this Agreement if, in its sole judgment, the Federal Government or the legislature of the State of Idaho fails, neglects or refuses to appropriate sufficient funds as may be required for the State to continue payments. Any such termination shall take effect immediately upon notice and be otherwise effective as provided in this Agreement.

SECTION II. That the State shall:

1. Enter into an Agreement with the Federal Highway Administration covering the federal government's pro rata share of construction costs.
2. Advertise, open bids, prepare a contract estimate of cost based on the successful low bid and notify the Sponsor thereof.

3. Award a contract for construction of the project, based on the successful low bid, if it does not exceed the State's estimate of cost of construction by more than ten (10) percent. If the low bid exceeds the estimate by more than 10%, the bid will be evaluated, and if justified, the contract will be awarded and the Sponsor will be notified.
4. Obtain concurrence of the Sponsor before awarding the contract if the Sponsor's share of the low bid amount exceeds the amount set forth in Section III, Paragraph 1 by more than ten (10) percent.
5. Provide to the Sponsor sufficient copies of the Contract Proposal, Notice to Contractors, and approved construction plans.
6. Designate a resident engineer and other personnel, as the State deems necessary, to supervise and inspect construction of the project in accordance with the plans and specifications in the manner required by applicable state and federal regulations. This engineer, or his authorized representatives, will prepare all monthly and final contract estimates and change orders, and submit all change orders to the Sponsor for their concurrence. If the Sponsor's share of any change order exceeds \$1,000.00, the State will submit a statement to the Sponsor indicating the amount owed by the Sponsor.
7. Appoint the Local Highway Technical Assistance Council as the contract administrator for the State.
8. Notify the Sponsor when construction engineering and inspection (CE&I) costs have reached approximately 85% of the estimated cost for CE&I.
9. Maintain complete accounts of all project funds received and disbursed, which accounting will determine the final project costs.
10. Upon completion of the project, after all costs have been accumulated and the final voucher paid by the Federal Highway Administration, provide a statement to the Sponsor summarizing the estimated and actual costs,

indicating an adjustment for or against the Sponsor. Any excess funds transmitted by the Sponsor and not required for the project will be applied to any outstanding balance the Sponsor may have on a previously completed project. If no such outstanding balance exists, the excess funds will be returned to the Sponsor.

SECTION III. That the Sponsor shall:

1. Pay to the State before the advertisement for bids, the amount of **THREE HUNDRED NINETY-NINE THOUSAND NINE HUNDRED THIRTY-SIX DOLLARS (\$399,936)**, which is the Sponsor's estimated share of the cost for construction plus the Sponsor's local non-participation, plus preliminary engineering, and construction engineering & inspection (CE&I), and after deducting credit for the Sponsor's previous deposit as applies to Preliminary Engineering and the Sponsor's match for the consulting agreement. These costs and the Sponsor's match are detailed in the attached *Worksheet for State/Local Construction Agreements* marked Exhibit A. The actual cost to the Sponsor will be determined from the total quantities obtained by measurement plus the actual cost of engineering and contingencies required to complete the work. Construction engineering, inspection and contingencies will be approximately 29% of the total construction cost.
2. Upon approval of the lowest qualified bid received, if the Sponsor's share exceeds the amount set forth in Section III, Paragraph 1, transmit to the State the Sponsor's portion of such excess cost.
3. Authorize the State to administer the project and make any necessary changes and decisions within the general scope of the plans and specifications. Prior approval of the Sponsor will be obtained if it is necessary, during the life of the construction contract, to deviate from the plans and specifications to such a degree that the costs will be increased or the nature of the completed work will be significantly changed.

4. Designate an authorized representative to act on the Sponsor's behalf regarding action on change orders. That authorized representative's name is _____, Phone No. _____.
5. When change orders are submitted by the State for approval pursuant to Section II, Paragraph 6, the Sponsor or its authorized representative shall give approval of same as soon as possible, but no later than ten (10) calendar days after receipt of the change order. If approval is delayed, any claims due to that delay shall be the responsibility of the Sponsor.
6. Upon receipt of any statement referred to in Section II, Paragraphs 6 and 10, indicating an adjustment in cost against the Sponsor, promptly remit to the State a check or warrant in that amount.
7. Maintain the project upon completion to the satisfaction of the State. Such maintenance includes, but is not limited to, preservation of the entire roadway surface, shoulders, roadside cut and fill slopes, drainage structures, and such traffic control devices as are necessary for its safe and efficient utilization. Failure to maintain the project in a satisfactory manner will jeopardize the future allotment of federal-aid highway funds for projects within the Sponsor's jurisdiction.
8. To the extent permitted by Idaho law and as provided by the Idaho Tort Claims Act, indemnify, save harmless the State, regardless of outcome, from the expenses of and against suits, actions, claims or losses of every kind, nature and description, including costs, expenses and attorney fees that may be incurred by reason of any act or omission, neglect or misconduct of the Sponsor or its consultant in the design, construction and maintenance of the work which is the subject of this Agreement, or Sponsor's failure to comply with any state or federal statute, law, regulation or rule. Nothing contained herein shall be deemed to constitute a waiver of the State's sovereign immunity, which immunity is hereby expressly reserved.

EXECUTION

This Agreement is executed for the State by its Division Administrator, and executed for the Sponsor by the Mayor and Council, attested to by the City Clerk, with the imprinted corporate seal of the City of Moscow.

IDAHO TRANSPORTATION DEPARTMENT

Division Administrator

ATTEST:

CITY OF MOSCOW

City Clerk

Mayor

(SEAL)

By regular/special meeting
on _____.

wd:22402 SLA CN

WORKSHEET FOR STATE / LOCAL CONSTRUCTION AGREEMENTS

Key No: 22402
 Project No: A022(402)
 Project Name: Public Ave Corridor Safety Improvements
 Sponsor: City of Moscow, Latah County
 Description of work:

To improve safety with upgrades to the roadway which includes installation of approximately 2,200 linear feet of curb, gutter, and 5-foot sidewalk, widening the roadway and eliminating roadside ditches.

Date of State/Local Agreement for Project Development: 8/12/2020

TOTAL ESTIMATED COST OF CONSTRUCTION <i>Includes E&C</i>	\$1,756,074		
APPROVED FORCE ACCOUNT WORK	\$0		
PLUS PE BY STATE (from 2101)	\$4,000		
PLUS PL BY LHTAC (from 2101)	\$55,000		
PLUS PC (from PC Agreements)	\$122,975		
MINUS ALL NON-PARTICIPATING	\$291,074		
PARTICIPATING TOTAL	\$1,646,975		
MATCH PERCENTAGES		FEDERAL	LOCAL
PERCENTAGE AMOUNTS		92.66%	7.34%
MINUS FEDERAL MAXIMUM		\$1,526,087.04	\$120,887.97
ADD OVERAGE (If Any To Local)		\$0	
LOCAL SHARE OF CONSTRUCTION AMOUNT		1,526,087	\$0
			\$120,888

ADJUSTMENTS

PLUS ALL NON-PARTICIPATING (From above if work by contract)	\$291,074
MINUS FUNDS ADVANCED BY THE SPONSOR FOR STATE PE (from PD Agreement)	\$3,000
MINUS APPROVED FORCE ACCOUNT WORK (From above)	\$0
MINUS PRELIMINARY ENGINEERING PAID BY LOCAL	\$9,026
(If LPA has not rec'd reimbursement, use actual PC dollars paid by LPA)	
(If LPA has rec'd reimbursement, use local match % of actual PC dollars paid by LPA)	
(Amounts must be supported by District Records Inspector Audit)	

CONSTRUCTION AMOUNT REQUIRED FROM SPONSOR AFTER ADJUSTMENTS **\$399,936**

Construction Estimate (CN):	\$1,372,451.00	<u>Program Funds</u>	
Non-Bid Items :	\$10,000.00	CE:	\$10,000.00
Contingencies (5.00%):	\$68,623.00	CL:	\$54,000.00
Const Engineering (CE&I 19.673%):	\$251,000.00	CC:	\$220,000.00
Const Admin (CL 3.643%):	\$50,000.00	Contingency:	\$83,265.00
Const Admin (CE 0.291%):	\$4,000.00	CN:	\$1,116,735.00
TOTAL CN ESTIMATED COST:	\$1,756,074.00	<u>Local Share</u>	
		CN:	\$ 291,074.00
		CN & CEI OTIS:	\$1,775,074.00

Difference: \$19,000.00

Comments:

Design Agreement Administrator - Brian Wright, P.E.
 Resident Engineer - Jayme Coonce, P.E.

PREPARED BY: Craig Herndon & Ryan Rush

Date: 8/9/2024

RESOLUTION

WHEREAS, the Idaho Transportation Department, hereafter called the **STATE**, has submitted an Agreement stating obligations of the **STATE** and the **CITY OF MOSCOW**, hereafter called the **CITY**, for the public Ave Corridor Safety Improvements ; and

WHEREAS, the **STATE** is responsible for obtaining compliance with laws, standards and procedural policies in the development, construction and maintenance of improvements made to the Federal-aid Highway System when there is federal participation in the costs; and

WHEREAS, certain functions to be performed by the **STATE** involve the expenditure of funds as set forth in the Agreement; and

WHEREAS, The **STATE** can only pay for work associated with the State Highway system; and

WHEREAS, the **CITY** is fully responsible for its share of project costs; and

NOW, THEREFORE, BE IT RESOLVED:

1. That the Agreement for Federal Aid Highway Project A022(402) is hereby approved.
2. That the Mayor and the City Clerk are hereby authorized to execute the Agreement on behalf of the **CITY**.
3. That duly certified copies of the Resolution shall be furnished to the Idaho Transportation Department.

CERTIFICATION

I hereby certify that the above is a true copy of a Resolution passed at a *regular, duly* called special (X-out non-applicable term) meeting of the City Council, City of Moscow, held on

_____, _____.

(Seal)

City Clerk

COMMITTEE / CITY COUNCIL STAFF REPORT

DATE: Tuesday, September 3, 2024



AGENDA ITEM TITLE

Moscowberfest Alcohol Use Request in Entertainment District - Amanda Argona

RESPONSIBLE STAFF

Amanda Argona, Community Events Manager

ADDITIONAL PRESENTER(S)

DESCRIPTION

The Moscow Chamber of Commerce + Visitor Center is hosting their annual Moscowberfest on Saturday, September 28th, from 4 pm to 8 pm on Main Street between 3rd and 6th Streets. This event is now in its fourth year and is stylized in the spirit of fall folk festivals. The applicant anticipates no more than fifteen (15) licensed beer and/or wine vendors, up to fifteen (15) food vendors, and up to fifteen (15) vendors facilitating street games, activities, and competitions such as: face painting, knitting and spinning circle, children's crafts, rubber ninja throwing stars, stein holding, keg lifting, etc. The event has been reviewed and approved as of August 14, 2024.

Following standard operating procedures for events with alcohol that are within the Entertainment District boundaries, The Moscow Chamber of Commerce + Visitor Center is requesting a temporary suspension of the open container law by resolution. Per Moscow City Code, Section 10-1-12; a draft resolution has been prepared for Council's consideration.

REVIEWED BY

This was reviewed by the Administrative Committee on August 26, 2024 and recommended for approval.

PROPOSED ACTIONS

ACTION: Approve the resolution allowing for the temporary suspension of the open container law within the event footprint of Moscowberfest for the duration of the event.

STAFF RECOMMENDATION

Approve the resolution allowing for the temporary suspension of the open container law within the event footprint of Moscowberfest for the duration of the event.

OTHER RESOURCES

FISCAL IMPACT

PERSONNEL IMPACT

ATTACHMENTS

1. Resolution 2024 - Entertainment District Beer and Wine_ Moscowberfest_20240928_final

RESOLUTION NO. 2024-

A RESOLUTION OF THE CITY OF MOSCOW, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, TO ALLOW FOR THE TEMPORARY VENDING OF BEER AND WINE AND EXEMPTION TO THE OPEN CONTAINER PROHIBITION IN THE ENTERTAINMENT DISTRICT UNDER SPECIFIC REGULATIONS AND UNDER CERTAIN LIMITED CONDITIONS PURSUANT TO MOSCOW CITY CODE 10-1-12; PROVIDING THIS RESOLUTION TO BE EFFECTIVE UPON ITS PASSAGE AND APPROVAL.

WHEREAS, Moscow City Code Title 9, Chapter 6, Section 6-35 and Title 9, Chapter 8, Section 8-17 prohibit any person from selling, serving, giving away, dispensing, consuming or carrying any beer or wine in open containers on or in any public street, highway, alley, lane, sidewalk, public or private parking lot, conveyance, or primary and secondary school facility in the City of Moscow, Idaho (hereinafter “City”) except in accordance with specific regulations adopted by the Council by Resolution; and

WHEREAS, The Entertainment District is defined in Moscow City Code Title 10, Chapter 1, Section 1-12 as an exemption to the Open Containers Prohibition (hereinafter “The Entertainment District”) with Council approval; and

WHEREAS, The Moscow Chamber of Commerce + Visitor Center (hereinafter “the Event Sponsor”) desires to have its sponsored event, Moscowberfest (hereinafter “the Permitted Event”), in The Entertainment District (see Attachment “A”); and

WHEREAS, the Permitted Event (see Attachment “B”) is an event sponsored by the Event Sponsor, intended to promote family and community fellowship; and

WHEREAS, Council wishes to allow for the vending and responsible consumption of beer and wine under certain conditions, contained herein and during limited hours during the Permitted Event; and

WHEREAS, Council wishes to prohibit the sale and consumption of liquor during the Permitted Event; and

WHEREAS, Council believes the regulations contained herein are appropriate; and

WHEREAS, Council believes that the specific regulations contained herein balance health and safety concerns of citizens with the desire to promote responsible use of alcoholic beverages; and

WHEREAS, nothing contained in this Resolution is intended to waive other laws and regulations applicable to the sale and consumption of alcohol within City limits (including a requirement for a catering permit; a beer and wine permit for benevolent, charitable and public purpose events; or a winery sponsored event permit); and

WHEREAS, nothing contained within this Resolution is intended to endorse or support any particular belief, philosophy, or political position of the Event Sponsor or of the Permitted Event, and/or its affiliates, associations, contributors, supporters, participants, etc.;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Moscow, Idaho that all matters stated above are found to be true and correct and are incorporated herein by reference as if copied in their entirety and shall be adopted with the following:

SPECIFIC REGULATIONS ON THE SALE AND CONSUMPTION OF BEER AND WINE DURING MOSCOWBERFEST:

Intent:

This Resolution is intended to allow the sale and consumption of beer and wine only (not liquor), pursuant to these specific regulations and is not intended to amend or expand the Moscow City Code or any other applicable law or regulation beyond the scope of the particulars of this Resolution or beyond the hours of the Permitted Event. Other than as specifically provided herein, park, sanitary, health, litter, police, fire, sidewalk café, alcohol vending, and other laws and regulations shall be unaffected by this Resolution. This Resolution is not a waiver of any State, County, or local requirement of a permit or licensure related to sales and/or distribution of alcohol including a requirement for a catering permit; a beer and wine permit for benevolent, charitable and public purpose events; or a winery sponsored event permit. This Resolution shall not establish precedent nor shall it apply to any event other than the Permitted Event held on the 28th day of September, 2024, from 4 p.m. to 8 p.m.

Liability, Insurance and Safety:

1. No less than ten (10) days prior to the Permitted Event at which the licensed vendors will sell beer and/or wine, the Event Sponsor shall deliver to the Community Events Division one (1) copy of written proof that the licensed vendors have current, paid up, off-premise liquor liability insurance or special event insurance in an amount not less than One Million Dollars (\$1,000,000) combined single limits.
2. No less than ten (10) days prior to the first activity of the Permitted Event herein described, the Event Sponsor shall deliver to the Community Events Division one (1) copy of written proof that the Permitted Event has obtained current, paid up, general liability insurance or special event insurance in an amount not less than One Million Dollars (\$1,000,000) combined single limits. City shall be named as an additional insured on the insurance policy of the Event Sponsor. Such general liability insurance or special event insurance policy shall be primary to any other insurance related to these events and to that of any potential party subject to a claim related to the Permitted Event.
3. The Moscow Police Chief or designee is hereby empowered to order the immediate cessation of all activities allowed under this Resolution at any time they reasonably determine that it is in the best interest of City to do so. There shall be no appeal from a determination by the Moscow Police Chief or designee to terminate all or part of the Permitted Event.

Vendor:

1. There shall be no more than fifteen (15) licensed vendors selling beer and/or wine at the Permitted Event.
2. All beer and wine shall be sold only by a licensed vendor.

3. Every licensed vendor, shall obtain and shall comply with all alcohol related laws and regulations, including, but not limited to, the City requirement of a City catering permit; a State beer and wine permit for benevolent, charitable, or public purpose events; or a winery sponsored event permit.
4. The name, address, telephone number, alcohol license permit number of every licensed vendor, and proof of insurance covering the vendor's activities (as required herein) shall be provided to the Community Events Division no less than ten (10) days prior to the Permitted Event at which such licensed vendor shall sell beer and/or wine.
5. The City shall play no role in determining which vendors shall be selected to sell alcoholic beverages during the Permitted Event, unless it is a City sponsored event.
6. The Event Sponsor shall provide at least two (2) persons to check proper identification for those who shall be sold beer and/or wine during the Permitted Event. These persons shall be clearly identified and shall be stationed at a central identification checking station where they shall issue one (1) wristband per individual twenty-one (21) years of age or older.
7. The Event Sponsor shall provide at least two (2) law enforcement officers or two (2) guards from a recognized private security firm to provide security for the Permitted Event. Such officers or guards shall be clearly identified as such and shall be on duty at all times beer and/or wine is being served during the Permitted Event. The Chief of Police shall make the determination of whether law enforcement officers are required and in the event the Chief of Police approves the use of a private security firm, the Event Sponsor shall obtain written permission for use of said private security firm by the Chief of Police or designee.
8. The Event Sponsor and City both specifically understand and acknowledge that the Event Sponsor shall be solely responsible for any and all liability resulting from action or inaction, and/or negligence, and/or gross negligence by security provided by the Event Sponsor for the Permitted Event.

Sales and Consumption:

1. No less than ten (10) days prior to the Permitted Event at which the licensed vendors will sell beer and/or wine, the Event Sponsor shall deliver to the Community Events Division a finalized site map which shall be drawn to show the location, dimension of, and relative distance between the following within The Entertainment District: (a) the beer and wine sales area; and (b) the boundaries where the beer and wine shall be consumed. Said site design and any subsequent alterations shall be approved in writing by Moscow Deputy City Supervisor – Community Development or designee, and by the Moscow Chief of Police prior to the Permitted Event.
2. All beer and wine sales and dispensing shall take place within the area designated by the Event Sponsor and as shown on the site map required by this Resolution.
3. The Event Sponsor shall include an identification checking station and its general location on Event Site Map.
4. No person shall be allowed to purchase beer and/or wine other than within the area designated for beer and wine sales and dispensing as shown on the map required by this Resolution and only persons with a designated wristband shall be allowed to purchase, possess, and consume beer and/or wine.
5. All beer and wine shall be dispensed in and consumed from the designated Event container.
6. Every occupant within The Entertainment District shall provide identification to law enforcement officers or City employees at any point in time or location when requested to do so.

7. No person under twenty-one (21) years of age shall be allowed to wear the designated wristband at any time during the Permitted Event.
8. A sign shall be prominently posted at or near the area designated for beer and wine sales and dispensing stating that service to persons under twenty-one (21) years of age is prohibited.
9. Beer and wine shall be sold only within the designated area in The Entertainment District only between the hours of 4 p.m. and 8 p.m. local time on the 28th day of September 2024, during the Permitted Event.
10. Beer and wine shall be consumed only within The Entertainment District between the hours of 4 p.m. and 8 p.m. local time on the 28th day of September 2024, during the Permitted Event.
11. No person shall carry or consume any alcoholic beverage within The Entertainment District which is not purchased or dispensed from the licensed vendors at the Permitted Event. Consumption of alcohol outside of The Entertainment District, in any public street, highway, alley, lane, sidewalk, public or private parking lot, conveyance, or primary and secondary school facility in the City of Moscow, shall be considered a violation of the City's open container ordinance.

Fee:

The Event Sponsor shall submit to the Community Events Division, within ten (10) days of the event, any remaining required fees established by Council that is associated with this Resolution.

Failure To Comply:

Failure to comply with this Resolution shall expose any such person to all relevant civil and criminal consequences and may result in denial of subsequent applications for alcohol permits in public rights-of-way for a period of no less than five (5) years.

PASSED on Motion by the Following Vote:

	Aye	Nay	Abstain	Absent
Hailey Lewis	_____	_____	_____	_____
Drew Davis	_____	_____	_____	_____
Sandra Kelly	_____	_____	_____	_____
Gina Taruscio	_____	_____	_____	_____
Julia Parker	_____	_____	_____	_____
Bryce Blankenship	_____	_____	_____	_____

ADOPTED by the City Council of the City of Moscow, Idaho and **APPROVED** by the Mayor of the City of Moscow, Idaho this ____ day of _____, 2024.

Arthur D. Bettge, Mayor

CERTIFICATION and ATTESTATION. I hereby certify that the above is a true copy of a Resolution passed at a regular meeting of the City Council, City of Moscow, held on _____, 2024 and attest to the Mayor's signature.

Laurie M. Hopkins, City Clerk

DRAFT

Exhibit 'A' - Entertainment District Boundary



Attachment "B"

City of Moscow Community Events Division EVENT APPLICATION



*Thank you for your interest in organizing/sponsoring an Event in the City of Moscow!
Events by local citizens add to the cultural wealth of our town and may range from fun runs to political marches,
neighborhood block parties to street fairs.*

Submit completed forms electronically or physically to the Community Events office:
communityevents@ci.moscow.id.us or 221 East 2nd Street, Moscow. All applications must be legible.

The City reserves the right to request additional information reasonably necessary to make a fair determination as to issuance of a permit. Permits are issued on a first-come, first-served basis. According to Moscow City Code Title 10, Chapter 17, Section 17-4, event applications for regular or recurring events must be submitted at least sixty (60) days and not more than one hundred eighty (180) days before the proposed date of the event. Event applications for single, non-recurring events must be submitted at least ten (10) days and not more than one hundred eighty (180) days before the proposed date of the event.

Events with alcohol are to be submitted at least two (2) months prior to the event date to allow for adequate review and presentation to Administrative Committee and City Council. Administrative Committee meets on the 2nd and 4th Monday of each month and City Council meets on the 1st and 3rd Monday of each month pending no holiday delays or rescheduling of meetings.

1. Name of Event: Moscowberfest
2. Event Date(s): September 28, 2024
3. Event Location: Moscow Main St, 3rd - 6th, and 5th to the alley.
4. Are you requesting a street closure for Event? Yes ☒ No ☐

If yes, provide street closure location(s). List cross streets, intersections, building addresses, etc. Include these details on your site map (see item 27.)

3rd St through 6th St, 5th St to the alley between the Co-op and Storm Cellar, and back to Jackson with the first lane of the parking lot by the public bathrooms.

5. Do you require parking restrictions for the Event? Yes ☐ No ☒

If yes, list parking restrictions (i.e. no parking on day of event, parking restricted to a particular area, etc.).

No parking in the footprint of the event for the day.

6. Street Closure set-up/Load-in time: 2 PM Event(s) Start time: 4 PM
7. Event(s) End time: 8 PM Street Closure take-down/Load-out time: 10 PM
8. Is this a recurring Event (i.e. every 1st Thurs. or every Sat. May thru Oct.)? Yes ☐ No ☒
9. Is this an annual Event? Yes ☒ No ☐
10. Are you planning on having refreshments and/or food? Yes ☒ No ☐

EVENT APPLICATION – LAST UPDATED January 1, 2024

Page 1 of 8

City of Moscow Community Events Division
EVENT APPLICATION



If **yes**, describe your waste and recycling plan. Applicants are responsible for removing all waste from their event footprint and disposing of properly, including emptying permanent trash receptacles in the downtown area. Dumpsters located downtown are for private use.

MCOC+VC will be picking up recycle bins from the Moscow Recycling Center, provide extra garbage can for main st, and maintaining city garbage bins.

11. Are you planning on serving alcohol/having alcohol available for purchase at the Event?

Yes ☒ (continue to Q.12)

No ☐ (skip to Q.14)

All events with alcohol are required to have a Catering Permit.

This process is to be handled by your licensed alcohol Vendor.

Catering Permit applications are to be submitted to the City Clerk/Deputy City Clerk for approval.

12. Is the Event taking place in the public right-of-way (i.e. sidewalks, streets, etc.) within the City of Moscow Entertainment District? The Entertainment District allows for a temporary suspension of the Open Container law by Resolution of the City Council. See page 6 for a map of the Entertainment District.

Yes ☒ (continue to Q.13)

No ☐ (skip to item B.)

13. Are the Event organizers interested in pursuing a temporary suspension of the Open Container law by City Council Resolution?

Yes ☒ (see item A.)

No ☐ (skip to item B.)

A. Event organizers pursuing a temporary suspension by City Council Resolution of the Open Container law for their Event within the public right-of-way of the Entertainment District boundaries must satisfy the following conditions with their Event listed below, in addition to any requirements detailed in the Moscow City Code, as set forth by City Council Resolution, and/or Catering Permit:

- ☐ Include an identification checking station and its general location on Event Site Map. Identification checking station shall include a minimum of two (2) persons to check proper identification. These persons shall be clearly identified and be responsible for the issuance of wristbands denoting attendees are of legal drinking age.
- ☐ Submit the Alcohol Use Application and \$100 non-refundable fee upon approval of Event.
- ☐ Be present at City of Moscow Administrative Committee and City Council meetings regarding authorization of alcohol at Event by Resolution.
- ☐ Post signage and waste receptacles at Event entry and exit points. Signage to clearly state "No Alcohol Permitted Beyond this Area". Additional requirements may be mandated by City Council Resolution.

City of Moscow Community Events Division
EVENT APPLICATION



B. Event organizers requesting for alcohol use for their Event that takes place in the public right-of-way **NOT within the Entertainment District boundaries must satisfy the following conditions with their Event, in addition to following any requirements set forth by Resolution and/or Catering Permit. This option is also available to Event organizers who are **NOT** pursuing a temporary suspension by City Council Resolution of the Open Container law:**

- ☐ Include the location and estimated size of the beer garden on Event Site Map. Please note: barricades required for beer gardens are 8' in length.
- ☐ Complete and submit a Barrier Use Contract with this application.
- ☐ Submit the Alcohol Use Application and \$100 non-refundable fee upon approval of Event.
- ☐ Be present at City of Moscow Administrative Committee and City Council meetings regarding authorization of alcohol at Event by Resolution.

Upon approval from Council, remaining Event fees will be due, and applicant's vendor(s) are required to submit a Catering Permit application to the City Clerk/Deputy City Clerk. Any additional required paperwork outlined by the City Council Resolution and/or this process will also be due upon approval.

14. Are you planning on having a band or music? Yes ☒ No ☐

If yes, describe below any recording equipment, sound amplification equipment, etc. Submit a completed **Noise Exemption Permit Request** with this Event application.

Live Band with speakers in Friendship Square area.

15. Approximate number of persons, animals, and/or vehicles comprising the Event, the type(s) of animals and description of vehicles, and approximate number of participants and spectators in viewing attendance:

Estimated 2,000-4,000 People in attendance
Up to 15 Food vendors - serving brats, beer, wine, hotdogs
Up to 15 Alcohol vendors - serving beer, wine, seltzers
Up to 15 retail or street game vendors - face painting, knitting, spinning circle, crochet and yarn
kids crafts, rubber ninja stars to throw at foam targets, Hammerschlagen, and Steinholding,
strenght competition (kea lifting from NIAC)

16. Do you plan on having banners, signs, or other attention-getting devices in the Event? Yes ☒ No ☐

17. Do you plan on using any designated public facilities or infrastructure for the Event? Yes ☒ No ☐

If yes, list public facilities or infrastructure (i.e. public restrooms, picnic shelters, stages, etc.).

City of Moscow Community Events Division
EVENT APPLICATION



We are planning to use the city trashcans, public restrooms, Friendship square power, etc.

18. Are you requesting additional City Police services for escort services, traffic, and/or crowd control?
Yes ☒ No ☐

If yes, contact City of Moscow Police Department at 208-883-7059 to discuss and see attached Fee Schedule.

19. Please use this area to include more detail or attach additional pages for additional information about Event that is pertinent for us to know.

20. Organization Sponsoring Event: Moscow Chamber of Commerce + Visitor Center

21. Organization Address: 411 S Main St, Moscow, ID 83843

22. Organization Officers/Authorized Representatives: Alys Lease / Sam Martinet

23. Individual Responsible for Event Organization: Alys Lease

24. Individual's Address: 411 S Main St, Moscow, ID 83843

25. Individual's Day, Message, or Cell Phone Number: (208) 301-3881

26. Individual's E-mail: marketing@moscowchamber.com

27. City reserves the right to alter your route if the City determines the proposed route will require significant City services and/or severely limit transit opportunities in high traffic areas. Applicant understands and agrees that the City is reserving that right? If answers no, application may be denied. Yes ☒ No ☐

28. **Submit a Site Map with this application.** Event Applications without a Site Map will not be processed. Details on a Site Map may include but are not limited to locations of desired street closures, walking routes, assembly points, start and finish points, locations of food and beverage vendors, stages, service areas, etc. A blank map of downtown Moscow is available on page 7.

29. **Residential Neighborhood Block Parties:** Provide Proof of Insurance (Requirement may be waived at Discretion of City)

30. **All other Event Types (except Public Assembly):** Provide Proof of Insurance (Required – Certificate of Insurance must include the City of Moscow as an Additional Insured and list \$500,000 as the minimum amount of general liability or \$1,000,000 if alcohol is included.)

City of Moscow Community Events Division
EVENT APPLICATION



HOLD HARMLESS AGREEMENT:

The applicant/group/organization (hereinafter "SPONSOR"), through its duly and specifically authorized agents, hereby releases City of Moscow, Idaho (hereinafter "CITY") and agrees, contracts and covenants not to bring suit and agrees to defend, hold harmless, and indemnify CITY, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards, or liability to any person, including claims by SPONSOR's own agents, officers, employees and representatives, to which SPONSOR might otherwise be immune, arising from the Community Event, Block Party, Public Assembly, Parade or Sidewalk Walking Parade scheduled to occur as indicated on this application (hereinafter "Event"), including any Street Closure permitted under the terms of CITY's Policy on Street Closure. No SPONSOR shall be required to indemnify or hold harmless CITY for claims, actions and demands that arise out of CITY's sole negligence. Inspection, review and/or acceptance by CITY of any activity performed by or during the Event, or any activity or non-activity by CITY Police Officers or other officers, employees, agents or representatives of CITY, shall not be grounds for avoidance of any of the covenants of defense, indemnification or hold harmless by SPONSOR on behalf of CITY.

SPONSOR acknowledges it will abide by any and all Federal, State, or City of Moscow Public Health Directives and/or Regulations in effect at the time of the Event. SPONSOR agrees to comply with any and all Federal, State, or City of Moscow Public Health Directives and/or Regulations in effect at the time of the Event and ensure that all participants comply with said Directives and/or Regulations in effect at the time of the Event. SPONSOR agrees that if CITY determines she/he/they and/or any participant is not in compliance with said Directives and/or Regulations in effect at the time of the Event, CITY reserves the right to revoke the Event permit.

I, SPONSOR, certify under penalty of perjury pursuant to the law of the State of Idaho, that (1) I have read the foregoing Hold Harmless Agreement, understand it and agree with its contents and conditions; (2) I either have had an opportunity to speak with legal counsel or opted not to seek legal counsel prior to either signing this Agreement or electronically signing this Agreement by selecting the box below; and (3) understand that the terms of this Agreement are contractually and legally binding and that no verbal statement to the contrary, by any person, can void or alter the terms of this Agreement. I, SPONSOR, certify under penalty of perjury pursuant the law of the State of Idaho that the foregoing is true and correct and that I have the authority to bind the group or organization, if applicable, to this Agreement.

NAME: *[Signature]*

DATE: 08/05/2024

EVENT SPONSOR ELECTRONIC SIGNATURE:

☒ By checking this box as an electronic signature, I agree, declare, and certify under penalty of perjury pursuant to the law of the State of Idaho, that the foregoing is true and correct. I agree to all the terms and conditions that apply to the Community Event /Residential Neighborhood Block Party/Public Assembly/Street Parade/Sidewalk/Pathway Event, Permitting Process, and Hold Harmless Agreement. I certify under penalty of perjury pursuant to the law of the State of Idaho that I have authority to bind the group or organization, if applicable, to this Agreement. I am signing this document utilizing an alternative manner of providing an electric signature through agreeing to and checking the above box and understand this electronic signature is valid and binding upon me to the same force and effect as a handwritten signature.

EVENT SPONSOR NON-ELECTRONIC SIGNATURE:

(Required only if printing and submitting in person)

*The information on this form is Public Record and may be posted to a public website.
Moscow City Code Title 10, Chapter 17 is available from the City Clerk at PO Box 9203, Moscow, ID, 83843, or on the City's web page at <https://www.ci.moscow.id.us/393/City-Code>.*

FOR OFFICE USE ONLY

☐ Community Event without alcohol ☐ Sidewalk/Pathway Event (fun runs, trail runs, walk-a-thons)	☒ Community Event with alcohol ☐ Public Assembly – no fee (march, picket, rally, demonstration, etc.)	☐ Street Parade Event ☐ Residential Neighborhood Block Party Event
Date App Rec'd: <u>08/6/2024</u> Fees Due: <u>\$294 (\$100 alcohol use; \$194 street closure)</u> Fees Paid: _____		

EVENT APPLICATION – LAST UPDATED January 1, 2024

Page 5 of 8

NOISE EXEMPTION PERMIT REQUEST

Moscow City Code 10-11-2

(Please allow at least three business days in which to process this request)

Requested Event Date(s): 09/28/2024 Begin time: 4:00 PM End time: 8:00 PM

Event Location: Moscow Main St - 3rd-6th and 5th to the alley.

Amplified Music (DJ, party, etc.) ☐ No ☒ Yes

Alcoholic Beverages Available ☐ No ☒ Yes - Purchaser: Multiple Vendors
(Marking this box does not mean your request will be denied) (If hosted or catered, name of serving organization)

Live Band Performing ☐ No ☒ Yes - Group: _____

Describe the event: A Bavarian themed block party - Moscow's own Oktoberfest celebration.

(use back of this form if more space is needed)

Name of requesting person/Group/Organization: Moscow Chamber of Commerce + Visitor Center

Person responsible for Group or Organization: Alys Lease / Sam Martinet

Requesting Person's Address: 411 S Main St., Moscow, ID 83843

Phone Number: (208)301-3881

Email Address: marketing@moscowchamber.com

Daytime phone number is required

Permits will be returned by email unless otherwise requested

Responsible person available AT AND DURING this event: Alys Lease

Cell- or contact-phone during event: (208) 301-3881

Your signature is unconditional acceptance of all terms and conditions. This permit may be modified or revoked by City at any time if permit conditions are violated. Read the following carefully:

The applicant/group/organization hereby agrees to indemnify and hold harmless City of Moscow, Idaho from all claims, actions and demands of any kind whatsoever related to and/or arising out of the activity(ies) specified in this application and does hereby accept all risk and responsibility for any damage(s) stemming from such activity. Every Applicant requesting a noise Exemption Permit shall cooperate with law enforcement by adjusting the noise level in the event of any citizen complaint(s). In the event of non-compliance, law enforcement may revoke this permit. No applicant/group/organization shall be required to indemnify or hold harmless City of Moscow, Idaho for claims, actions and demands that arise out of City's sole negligence.

Requesting Person's Signature: _____ Date: 08/05/2024

☒ APPROVED ☐ DENIED

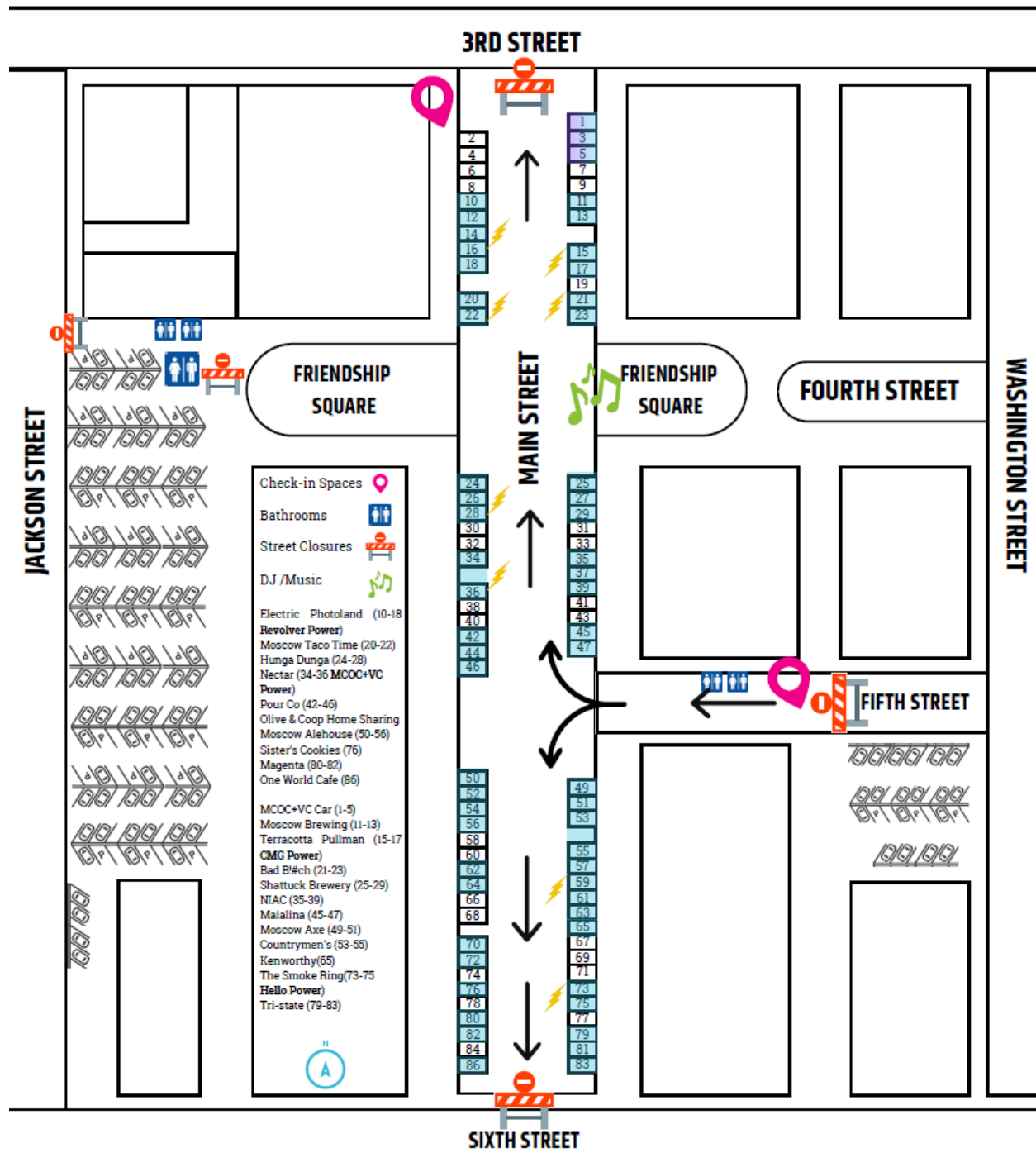
Date permit valid: Sept. 28, 2024

Hours permit valid: 4 pm - 8 pm

Noise level (dba) shall not exceed 85dba at ☒ source at ☐ property line

Other Conditions: _____

Police Chief or Designee (208) 883-7054







CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/18/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Troy Insurance Agency Inc 1822 18th Ave P.O. Box 796 Lewiston ID 83501		CONTACT NAME: Amanda Nelson PHONE (A/C, No, Ext): (208) 743-3541 FAX (A/C, No): (208) 743-3542 E-MAIL ADDRESS: amtroy@troyins.com	
INSURED Moscow Chamber of Commerce 411 South Main St Moscow ID 83843		INSURER(S) AFFORDING COVERAGE INSURER A: United States Liability Insurance Group INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES CERTIFICATE NUMBER: 2024-2025 LIABILITY REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:	Y		NBP1563070	01/30/2024	01/30/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ Liquor Liability \$ 1,000,000
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY			NBP1563070	01/30/2024	01/30/2025	COMBINED SINGLE LIMIT (Ea accident) \$ Included in CGL BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	☒ UMBRELLA LIAB ☐ EXCESS LIAB DED ☒ RETENTION \$ 0 WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			CUP1567801	01/30/2024	01/30/2025	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$ PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CITY OF MOSCOW IS LISTED AS ADDITIONAL INSURED ON THE GENERAL LIABILITY POLICY REFERENCED ABOVE WHERE REQUIRED BY WRITTEN CONTRACT FOR THE FOLLOWING EVENTS:

MOSCOW WINTERFEST, FEBRUARY 2024
CAMP MOSCOWANNA, JUNE 2024
MOSCOWBERFEST, AUGUST 2024
ALL EVENTS TAKING PLACE IN THE CITY OF MOSCOW, IDAHO 83843.

CERTIFICATE HOLDER CITY OF MOSCOW 208 E 3RD ST MOSCOW ID 83843	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	--

© 1988-2015 ACORD CORPORATION. All rights reserved.

ACORD 25 (2016/03)

The ACORD name and logo are registered marks of ACORD

Community Events Division Event Application Review									
Moscowberfest					Sept. 28, 2024 4 pm-8 pm				
Event Name					Date(s)/Time(s)				
DEPARTMENT/DIVISION DESIGNEE					EVENT(S) APPROVED/DENIED				
					☒				
Moscow Police Department					Approve Deny				
Officer presence required?					Officers available?				
☒ Yes ☐ No ☐ N/A					☒ Yes ☐ No ☐ N/A				
<u>Dan Ellinwood</u>					☒				
Dan Ellinwood (Aug 7, 2024 10:20 PDT)									
Moscow Volunteer Fire Department					Approve Deny				
<u>David R. Schott</u>					☒				
David R. Schott (Aug 7, 2024 15:46 PDT)									
Parks and Recreation Department					Approve Deny				
<u>Kyle Rainer</u>					☒				
Kyle Rainer (Aug 7, 2024 10:45 PDT)									
Community Development-Engineering Division					Approve Deny				
					☒				
Public Works-Environmental Services Division					Approve Deny				
<u>Steve Schulte</u>					☒				
Steve Schulte (Aug 7, 2024 12:03 PDT)									
Public Works-Streets Department					Approve Deny				
Street closure required?					ITD permit required?				
☒ Yes ☐ No ☐ N/A					☒ Yes* ☐ No ☐ N/A				
*Application will remain pending until ITD grants applicant a permit									
Time of street closure? 2 pm - 10 pm					Fees? \$154.00				
☐ Start ☐ End					☐ Daytime ☐ Nighttime				
<u>Laura Perrigo</u>					☒				
Laura Perrigo (Aug 14, 2024 13:38 PDT)									
City Clerk/Deputy City Clerk									

City of Moscow Community Events Division
ALCOHOL USE APPLICATION



Required for Events requesting Alcohol Use in the Moscow Downtown Central Business Zoning District or a Moscow Parks Facility.

City Council has the right to deny this application, but applicants may still move forward with their approved Event without alcohol.

Timeline for requesting Alcohol Use:

1. At least two months prior to Event, applicant submits Event Application or Parks Reservation for review.
2. Upon approval of Application or Reservation, applicant submits:
 - a. Alcohol Use application
 - b. Pays \$100 non-refundable Alcohol Use fee
 - c. Name(s) of licensed alcohol provider(s)
 - d. Events in a Moscow Park Facility also include:
 - i. Location of the beer/wine garden during the event with size dimensions, entry and exit points, and serving location. Provide as much detail as possible.
3. Staff drafts a Resolution according to the Event and communicates with applicant on security and insurance requirements.
4. Applicant must be present at Administrative Committee meeting (meetings are held on the 2nd and 4th Mondays of each month pending no holiday delays).
5. Applicant must be present at City Council meeting (meetings are held on the 1st and 3rd of each month pending no holiday delays).
6. Upon approval, applicant pays any remaining fees.

Event Name: Moscowberfest **Event Date(s):** 09/28/2024
Event Location: Moscow Main St, 3rd - 6th, 5th to the alley, and the first row of parking
Event Start time: 4:00 PM **Event End time:** 8:00 PM
Individual responsible per Event Application/Parks Reservation: Alys Lease

By signing this Alcohol Use application, applicant understands that their Event may not have alcohol unless approved by City Council, and that City Council has the right to deny Alcohol Use applications. Applicant also understands that the \$100 fee is non-refundable regardless of the decision issued by City Council.

 08/04/2024
Signature of Individual responsible for Event **Date**
Date Received: 08/06/2024 **Date non-refundable fee paid:** 8/16/2024



CITY OF MOSCOW
206 E. THIRD
MOSCOW, ID 83843
208-883-7000

PERMIT NUMBER: CE2024-26
EVENT DATE: Saturday, September 28, 2024
EVENT TIME: 4 pm – 8 pm

THIS IS TO CERTIFY THAT
Moscowberfest 2024
Alys Lease
411 S. Main St.
Moscow, ID 83843

IS HEREBY GRANTED A CITY OF MOSCOW COMMUNITY EVENT PERMIT FOR THE LOCATION NAMED BELOW WITHIN THE CORPORATE LIMITS OF THE CITY OF MOSCOW, IN CONFORMITY WITH THE PROVISIONS OF CHAPTER 17, TITLE 10 OF THE MOSCOW CITY CODE.

PERMIT TYPE: Community Event w/ Alcohol
PERMIT LOCATION: Main St. between 3rd and 6th St., 5th St. to Alley, and the 1st bay of the Jackson St. parking lot.

I, _____, CERTIFY UNDER PENALTY OF PERJURY PURSUANT TO THE LAWS OF THE STATE OF IDAHO, THAT THE FOREGOING IS TRUE AND CORRECT. I AGREE TO ALL THE TERMS AND CONDITIONS OF MOSCOW CITY CODE TITLE 10, CHAPTER 17 PARADE, PUBLIC ASSEMBLY AND RESOLUTION 2015-05 POLICY AND PROCEDURES FOR RIGHT-OF-WAY PERMITS. DAMAGE TO ANY PUBLIC IMPROVEMENTS ARE THE RESPONSIBILITY OF THE PERMIT HOLDER.

ISSUED THIS _____ DAY OF _____, 2024

(SIGNATURE OF LICENSEE)

DATE

(SIGNATURE OF STAFF)

DATE

COMMITTEE / CITY COUNCIL STAFF REPORT

DATE: Tuesday, September 3, 2024



AGENDA ITEM TITLE

Appeal of Board of Adjustment Decision Regarding 414 S. Main Street (ACTION ITEM) - Bill Belknap

RESPONSIBLE STAFF

Bill Belknap, City Supervisor

ADDITIONAL PRESENTER(S)

Cody Riddle, Deputy City Supervisor - Community Development, Michael Ray, Assistant CD Director/Planning Manager

DESCRIPTION

On February 12, 2024, Brenda von Wandruszka (Applicant) requested a zoning determination regarding whether administrative offices of New Saint Andrews College could occupy a building currently addressed as 414 S. Main Street which previously was the location of the Moscow Contemporary Art Gallery. The City of Moscow Zoning Administrator issued Zoning Administrator Decision 2024-01 on February 21, 2024, which determined the proposed occupancy would not be permissible under the Moscow Zoning Code. The Applicant requested reconsideration of the decision on March 1, 2024. On March 21, 2024, the Zoning Administrator issued Zoning Administrator Decision 2024-02 which affirmed the prior decision.

On April 15, 2024, the Applicant filed an appeal to the Zoning Administrator's decision in accordance with Moscow City Code (MCC) 4-8-2. The appeal was considered by the Zoning Board of Adjustment on June 11, 2024. The Zoning Board of Adjustment reversed the decision of the Zoning Administrator as documented in their written decision dated June 18, 2024. On June 27, 2024, the Zoning Administrator filed an appeal of the Zoning Board of Adjustment's decision to the City Council in accordance with Moscow City Code 4-8-5.

Per MCC 4-5-8.A "Grounds upon which an appeal to the City Council may be made following a final decision of the Board of Adjustment or of the Planning and Zoning Commission includes the following: 1. Decision violates statutory or constitutional provisions; 2. Decision exceeds statutory authority; 3. Decision was made upon unlawful procedure; 4. Decision was unsupported by substantial evidence in the records or as a whole; or 5. Decision was arbitrary, capricious, or an abuse of discretion. "

The Zoning Administrator has appealed the decision on the cited basis that the decision of the Zoning Board of Adjustment was both unsupported by substantial evidence in the written record and was arbitrary. Under MCC 4-8-9.B.3, the appellant must indicate in the appeal whether they are requesting oral argument before the Council. The Zoning Administrator did not request oral argument in their appeal filing. Under MCC 4-8-9.B.6, "If no oral argument is requested, City Staff will introduce the appeal, and then the Council may ask questions of the Appellant and City Staff and then the Council will conduct its deliberations."

According to MCC 4-8-5.C, the Council may sustain the decision in whole or in part, reverse the decision in whole or in part, or remand the decision where the appellant shows the Council that there is new

information that was not readily available at the time of the decision and that it would be in the public interest to develop such additional material information on the matter.

REVIEWED BY

PROPOSED ACTIONS

PROPOSED ACTIONS: Council has the following options:

1. Sustain the Decision (in whole or in part)
2. Reverse the Decision (in whole or in part)
3. Remand the Matter to the Board of Adjustment (in whole or in part)

With any of the three options, staff should be directed to prepare a written decision reflecting Council's action.

STAFF RECOMMENDATION

1. Sustain the Decision (in whole or in part)
2. Reverse the Decision (in whole or in part)
3. Remand the Matter to the Board of Adjustment (in whole or in part)

With any of the three options, staff should be directed to prepare a written decision reflecting Council's action.

OTHER RESOURCES

FISCAL IMPACT

PERSONNEL IMPACT

ATTACHMENTS

1. Public Meeting Notice
2. Exhibit A - Written Appeal to Zoning Board of Adjustment Decision
3. Exhibit B - Zoning Board of Adjustment Packet Materials
4. Exhibit C - Zoning Board of Appeals Meeting Presentation
5. Exhibit D - Zoning Board of Adjustment Written Decision
6. Exhibit E - Zoning Board of Adjustment June 11, 2024 Meeting Minutes
7. Exhibit F - Zoning Board of Adjustment Meeting Video Link
8. Exhibit G - Zoning Board of Adjustment Meeting Transcript
9. Exhibit H - Moscow City Code Title 4, Chapter 8
10. Exhibit I - Zoning Board of Adjustment June 18, 2024 Meeting Minutes

NOTICE OF PUBLIC MEETING

Appeal of a Board of Adjustment decision that occurred on June 11, 2024 regarding an appeal of a Zoning Administrator determination for 414 S Main Street. Permit Application LUP2024-0023

A public meeting at which you may be present will be conducted before City Council of the City of Moscow at which time the following proposal will be considered:

Appeal of a Board of Adjustment decision that occurred on June 11, 2024 regarding an appeal of a Zoning Administrator determination pertaining to the proposed use of a building located at 414 S Main St within the Central Business (CB) Zoning District, per Moscow City Code (MCC) 4-3-4.

Per MCC 4-8-2, new information that was not considered by the Board of Adjustment shall not be provided to or considered by City Council. No testimony other than that from the Appellant(s) and City Staff shall be taken or considered at the public meeting.

HEARING DATE: Tuesday, September 3, 2024

HEARING LOCATION: Council Chambers on the Second Floor of Moscow City Hall
206 East Third Street, Moscow, Idaho

MEETING TIME: 7:00 pm

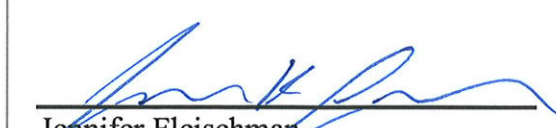
Note: Meeting start time is not necessarily indicative of hearing start time for the proposal advertised in this notice. Multiple hearings and/or agenda items may make it difficult to determine hearing start time, which could occur late in the meeting.

The file containing information on this matter is available for public review at the Community Development Department located in the Haddock Building at 504 S Washington Street, Moscow, Idaho. Call 883-7035 for a meeting agenda and further information about the matter. You may obtain further information about the public hearing process and procedures on the City's Website

at:

<https://www.ci.moscow.id.us/593/Public-Hearing-Notices>

Laurie M. Hopkins, Moscow City Clerk


Jennifer Fleischman,
Deputy City Clerk

Published: Saturday, August 24, 2024





City of Moscow
Community Development

Memo

To: Jennifer Fleischman, Deputy City Clerk-Community Development

From: Cody Riddle, Deputy City Supervisor-Community Development

Date: June 27, 2024

Re: Notice of Appeal: Zoning Board of Adjustment June 18, 2024 Decision re: Zoning Administrator Decision 2024-02 pertaining to 414 S. Main Street, Moscow, Idaho

Notice of Appeal

I, Cody Riddle, as a Deputy City Supervisor for the City of Moscow, am filing this Notice of Appeal as the City's representative, authorized by Moscow City Code (MCC) 4-8-5.A, and hereby appeal the June 18, 2024 decision of the Board of Adjustment (hereinafter referred to as "Board"). That decision reversed Zoning Administrator Decision 2024-02 regarding the use of property located at 414 S. Main Street in the Central Business (CB) Zoning District. The Zoning Administrator found the offices constitute a prohibited use under Moscow City Code, Title 4, Chapter 3, Section 3-2.E, and Section 3-4, and were therefore not permitted. The Board determined the proposal by Brenda Von Wandruszka, representing Rootforest, LLC, and Benjamin Merkle, representing New Saint Andrews College (NSA), to use the second floor of the building as administrative offices in direct support of the academic institution constitutes a permitted use.

Grounds for Appeal

The Board's decision to reverse Zoning Administrator Decision 2024-02 was both unsupported by substantial evidence in the written record and was arbitrary (MCC 4-8-5.A.4 & 5). The evidence, and oral argument provided at the hearing, supported the Zoning Administrator's original determination that the office space proposed on the second floor of the existing building, occupied by NSA, would be an expansion of a University, which is explicitly prohibited in the CB zone by Ordinance 2019-07, adopted by City Council in July of 2019.

As the transcript will illustrate, the Board's decision was conclusory. The Board failed to cite any specific evidence, information in the record, or ordinance provisions that justified reversal of Zoning Administrator Decision 2024-02. The Board arbitrarily found the proposed NSA administrative offices on the second floor of the building do not constitute an expansion of the College.

The Board's decision failed to consider the extensive code analysis and thorough evaluation of the evidence and supporting documentation in the record provided that informed the Zoning Administrator's determination. This analysis was summarized in oral argument, and provided in writing to the Board on pages 4-11 of 84 in their packet. That packet has been attached for your reference and is part of the record being provided to you for your review.

Requested Action – Reverse the Boards Decision

In summary, City staff maintains the introduction of new office space being used to support the function of NSA, not previously occupied by NSA, on the second floor of the 414 S. Main Street building is an impermissible expansion of the University. As authorized by MCC 4-8-5.C, Staff is requesting City Council reverse the decision of the Board, in whole. We believe the evidence, in what is already an extensive record, supports this action.

Pursuant to MCC 4-8-5.B.2. No oral argument is being requested before Council.

Cc: Bill Belknap, City Supervisor
Laurie Hopkins, City Clerk
Mia Bautista, City Attorney
Mike Ray, Zoning Administrator

Exhibit B - Zoning Board of Adjustment Packet Materials



City of Moscow Community Development

Memo

To: City of Moscow Zoning Board of Adjustment

From: Cody Riddle, Deputy City Supervisor-Community Development

Date: June 11, 2024

Re: Appeal of Zoning Administrator Decision 2024-02

Brenda Von Wandruszka, representing Rootforest, LLC, and Benjamin Merkle, representing New Saint Andrews College (NSA), are appealing the Zoning Administrator's Determination regarding the use of property located at 414 S. Main Street in the Central Business Zoning District (CB). Consistent with Moscow City Code (MCC) 4-8-2.B.2, both parties have requested the opportunity to present oral arguments before the Board. They will present their arguments following a Staff introduction of the appeal.

In addition to oral argument, the following records have been provided for review:

Page 2 - Background & Summary of Zoning Administrator Determination

Page 3 - Required Action & Staff Recommendation

Page 4 - Zoning Administrator Determination & Supporting Documents, issued March 21, 2024

Page 52 - Rootforest, LLC Appeal & Supporting Documents, received April 15, 2024

Page 70 - Benjamin Merkle Appeal & Supporting Documents, received April 15, 2024

Page 83 - Title 4, Chapter 8, Section 2 of MCC, Appeals of Zoning Administrator Decisions

BACKGROUND & SUMMARY OF ZONING ADMINISTRATOR DETERMINATION

On April 15, 2024 appeals were filed by Brenda Von Wandruszka and Benjamin Merkle concerning a March 21, 2024 Zoning Administrator Determination regarding the use of an existing building located at 414 S. Main Street in the Central Business District (CB).

That determination was in response to a request by New Saint Andrews College (NSA) to occupy the entire building previously used by Moscow Contemporary. They proposed to use the building as an art gallery, a retail space, and administrative offices to support the operations and functions of NSA. The offices would be occupied by NSA administrative staff, with no academic instruction or credit-bearing activities. The gallery would include rotating exhibits and support art classes for both adults and children in the community, similar to what the two prior art galleries, Moscow Contemporary and Prichard Art Gallery, offered.

After a detailed review of the materials provided by the property owner (Brenda Von Wandruszka) and potential tenant (Ben Merkle), and an evaluation of the applicable provisions of the MCC, the Zoning Administrator issued the following decision:

The proposed use of the building at 414 S. Main Street by NSA as an art gallery with an accessory art instruction and retail space is a permitted use so long as the operations of the gallery does not further the educational purposes of the college and does not include credit-bearing academic activities. The proposed administrative offices within the building would constitute a prohibited use under Moscow City Code, Title 4, Chapter 3, Section 3-2.E, and Section 3-4, and are therefore not permitted.

The detailed analysis that informed this decision is provided in the attached record. Ultimately, the Zoning Administrator found the introduction of office space, occupied by NSA, would be an expansion of a University, which is explicitly prohibited in the CB zone by Ordinance 2019-07, adopted by City Council in July of 2019.

As detailed in the appeals, the owner and prospective tenant believe the decision:

1. Exceeds the City's statutory authority
2. Was arbitrary, capricious, or an abuse of discretion
3. Violates statutory or constitutional provisions

REQUIRED ACTION & STAFF RECOMMENDATION

Pursuant to MCC 4-8-2.B.7, after considering the record, the reasons for the appeal, and the oral arguments, the Board shall take one or more of the following actions:

1. Sustain the Decision. Sustain the decision of the Zoning Administrator in whole or in part.
2. Reverse the Decision. Reverse the decision of the Zoning Administrator in whole or in part.
3. Remand the Decision. Remand the matter in whole or in part to the Zoning Administrator with comments and/or instructions for further consideration.

Staff has reviewed the appeal materials and maintains the Zoning Administrator decision of March 21, 2024 is consistent with MCC. It was based on a thorough evaluation of substantial evidence, does not exceed the statutory authority of the Administrator, and is not in violation of any statutory or constitutional provision. As a result, Staff **recommends Sustaining the Zoning Administrator decision, in whole.**

1. In accordance with the Board's decision, direct staff to prepare the written decision document.

ZONING ADMINISTRATOR DECISION & SUPPORTING DOCUMENTATION



Heart of the Arts

Arthur D. Bettge
Mayor

Gina Taruscio
Council President

Sandra Kelly
Council Vice-President

Bryce Blankenship
Council Member

Drew Davis
Council Member

Hailey Lewis
Council Member

Julia Parker
Council Member

Bill Belknap
City Supervisor

City of Moscow, City Hall
c/o Bill Belknap, City Supervisor
206 East 3rd Street
P.O. Box 9203
Moscow ID 83843
Phone (208) 883-7000
Fax (208) 883-7018

Website: www.ci.moscow.id.us
Hearing Impaired (208) 883-7019

Zoning Administrator Decision 2024-02

Date of Request: March 1, 2024.

February 12, 2024, was the date of the original request related to the property in question that resulted in Zoning Administrator Decision 2024-01. New information was submitted on March 1, 2024, with a request for reconsideration of Zoning Administrator Decision 2024-01, and per MCC 4-8-2.A. the Zoning Administrator shall consider the additional information and issue a new decision, which will be the basis for this Zoning Administrator Decision 2024-02.

Date of Decision: March 21, 2024

Person Requesting Decision of Zoning Administrator (Applicant): Brenda von Wandruszka, Rootforest LLC

Property Impacted by Decision: 414 S. Main Street, Moscow, Idaho

Zoning of Property in Question: Central Business District, hereinafter "CB"

Current Use of Property in Question: Art Gallery

Proposed Use of Property in Question: New Saint Andrews College (hereinafter "NSA") seeks occupancy and use of the entire building located at 414 S. Main Street. The proposal is for NSA to use the existing building as an art gallery, a retail space, and administrative offices to support the operations and functions of NSA. The offices are to be occupied by NSA administrative staff, and no academic instruction or credit-bearing activity are proposed. The art gallery would include rotating exhibits and the applicant wishes to continue to offer non-credit community art classes to both adults and children in the community, similar to what the prior art gallery, Moscow Contemporary, has offered.

Determination Requested: Brenda von Wandruszka seeks a reconsideration of Zoning Administrator Decision 2024-01. Ms. Von Wandruszka provided additional information to be considered and requested a determination as to whether or not the combination of uses as proposed constitute an allowed use of the subject property.

Background: The historic use of the building at 414 S. Main Street has been an art gallery since the 1980's. The University of Idaho operated the Prichard Art Gallery until the transition of the building to the Moscow Contemporary Art Gallery in 2021. It is the City's understanding that Moscow Contemporary operated their art gallery in a similar fashion to the Prichard Gallery, conducting artist exhibitions and also providing non-degree art education to children and adult members of the community. It is also the City's understanding that Moscow Contemporary utilized the entire building for the operations of their art gallery.

Zoning Administrator Decision 2024-02

1



On February 12, 2024, the City issued Zoning Administrator Decision 2024-01 related to the proposed use of the property in question. The City then met with Brenda von Wandruszka and Ben Merkle on March 1, 2024, to discuss the determination. Additional information was submitted during that meeting with a request for reconsideration of which required a new decision to be issued per MCC 4-8-2.A.

Zoning Regulations Pertinent to the Question Presented:

1. Moscow City Code Title 4, Chapter 11 authorizes the Zoning Administrator to administer and enforce the zoning code. The Administrator's duties include ordering discontinuance of illegal use of land, buildings or structures; removal of illegal additions, alterations, or structural changes; discontinuance of illegal work being done; or shall take other action authorized by the zoning code to insure compliance with or to prevent violation of its provisions. (MCC 4-11-1.A and B) The Zoning Administrator is further authorized to make interpretations on the allowance or prohibition of proposed uses in specific zoning districts. (MCC 4-3-3)

2. Moscow City Code Title 4, Chapter 1, Section 1-6.D.103 defines "Museums and Art Galleries" as follows:

Establishments primarily engaged in the preservation and exhibition of objects of historical, cultural, and/or educational value.

3. Moscow City Code Title 4, Chapter 3, Section 3-4 specifically lists art galleries and professional offices as allowed uses in the CB.

4. Moscow City Code Title 4, Chapter 1, Section 1-6.D.52 defines "Educational Services" as follows:

Establishments that provide instruction and training in a wide variety of subjects. The instruction and training is provided by specialized establishments, such as schools, colleges, universities, and training centers.

The North American Industry Classification System (NAICS), referenced in Moscow City Code for the purpose of making land use determinations, provides a more specific definition. NAICS 611310 (Colleges, Universities, and Professional Schools) are defined as follows:

This industry comprises establishments primarily engaged in furnishing academic courses and granting degrees at baccalaureate or graduate levels. The requirement for admission is at least a high school diploma or equivalent general academic training. Instruction may be provided in





diverse settings, such as the establishment's or client's training facilities, educational institutions, the workplace, or the home, and through diverse means, such as correspondence, television, the Internet, or other electronic and distance-learning methods. The training provided by these establishments may include the use of simulators and simulation methods.

5. Moscow City Code Title 4, Chapter 3, Section 3-4 specifically prohibits colleges and universities in the CB.
6. Moscow City Code Title 4, Chapter 1, Section 1-7.E.4 related to Nonconforming Uses of Structures and Premises in Combination, states that:

When a nonconforming use of a structure, or of a structure and premises in combination, is discontinued or abandoned for six (6) consecutive months or for eighteen (18) months during any three (3) year period, the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the zoning district in which the structure is located...

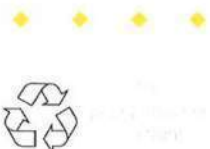
7. The North American Industry Classification System (NAICS), referenced in Moscow City Code for the purpose of making land use determinations, provides the following definition of Accounting, Tax Preparation, Bookkeeping, and Payroll Services (NAICS 54121):

*This industry comprises establishments **primarily engaged in** providing services, such as auditing of accounting records, designing accounting systems, preparing financial statements, developing budgets, preparing tax returns, processing payrolls, bookkeeping, and billing. (emphasis added)*

8. The North American Industry Classification System (NAICS), referenced in Moscow City Code for the purpose of making land use determinations, provides the following definition of Advertising Agencies (NAICS 541810):

*This industry comprises establishments **primarily engaged in** creating advertising campaigns and placing such advertising in periodicals, newspapers, radio and television, or other media. These establishments are organized to provide a full range of services (i.e., through in-house capabilities or subcontracting), including advice, creative services, account management, production of advertising material, media planning, and buying (i.e., placing advertising). (emphasis added)*

Analysis: The art gallery component of the proposed use of the building is a permitted use within the CB Zoning District and the building has historically been





used as an art gallery dating back to the 1980's. The additional function of the art gallery to provide non-degree art instruction to the community has also been documented as being a continuous component of the operation of the Prichard Art Gallery and more recently the Moscow Contemporary Art Gallery. The non-degree art instruction component of the art gallery is viewed as an accessory use to the operations of the gallery.

While the University of Idaho did operate the Prichard Art Gallery and the educational components of the gallery, it is the City's understanding that its operation was not for credit-bearing academic purposes. Furthermore, even if the University did provide credits related to the programming and operation of the Prichard Gallery, that right has since been divested with the conversion of the building to the Moscow Contemporary Art Gallery in 2021, since that gallery was not affiliated with the University. Any credit-bearing academic activities at that time would have been a non-conforming use, since the City Council had passed Ordinance 2019-07 on July 15, 2019, which prohibited new and expanded colleges and universities in the CB Zoning District. The Zoning Code states that when a nonconforming use of a structure is abandoned for six (6) consecutive months, "the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the zoning district in which the structure is located." MCC 4-1-7.E.4. Therefore, NSA may continue the operation of an art gallery with an accessory art instruction component so long as the operations of the gallery does not further the educational purposes of the college and does not include credit-bearing academic activities.

Historically, there has been a small retail space near the main entrance to the building, adjacent to Main Street. It's the City's understanding that NSA would like to continue the use of this portion of the building as a retail space. Retail sales is a permitted use within the CB Zoning District, therefore, NSA would be permitted to continue the use of this space for retail sales, which is more specifically defined within NAICS 44-45 (Retail Trade).

The final determination request pertains to the use of a series of offices on the second floor of the building. It's the City's understanding that NSA wishes to utilize and/or convert numerous rooms on the second floor to offices used to support the function of NSA, such as finance, recruitment, fundraising, and marketing. NSA is not requesting a determination whether private firms, companies or businesses that primarily engage in providing services of accounting, tax preparation, bookkeeping, payroll services, and advertising is permitted at the subject property. NSA, which meets the definition of "*establishments that provide instruction and training in a wide variety of subjects*", and "*establishments primarily engaged in furnishing academic courses and granting degrees at baccalaureate or graduate levels*" is requesting to expand the NSA operations and functions of NSA through utilizing the subject property for NSA administrative offices.





In spring of 2022, the City was contacted by NSA regarding a proposal to locate the non-academic operation of their Music Conservatory to the Nuart Theatre building. The proposal was to offer instrument and voice lessons, choral and orchestral ensembles, etc. to the local community. NSA also inquired about locating offices for the Hale Institute within the Nuart, which was portrayed as a law and policy think tank. Based upon the descriptions of the uses, NSA was advised that the non-academic music instruction would still be classified under the All Other Schools and Instruction Sector (NAICS 6114-6117), which would require a conditional use permit at the Nuart location. Based upon the description of the Hale Institute being a law and policy think tank providing no academic instruction, the use was most consistent with the Business, Professional, Political, Social Advocacy, Grantmaking, and Similar Organizations Sector (NAICS 8132/8133/8139), which is a permitted use within the CB Zone.

On July 6, 2022, the City received an email from Ben Merkle, President of NSA, stating that they were going back to the drawing board to think about how to make use of the space inside the zoning requirements. There were four offices within the Nuart building that they were planning on subleasing from Christ Church, who was the primary occupant of the building. The offices discussed were the marketing, fundraising, and recruitment offices, which do not interact with the student body. Without issuing an official determination, the City indicated that offices were a permitted use in the CB Zone so long as there is not any element of academic instruction, student counseling, gatherings, or similar activities occurring on-site.

Then on April 13, 2023, the City received the following email message from Ben Merkle:

Cody,

I'm circling back to the Nuart question. I think that this past year has gone well. As I reported previously, we have placed our marketing, recruitment, fundraising, and the office for the Hale Institute in the Nuart offices. Whenever recruitment has had prospective students visit, they have met them at the south campus building, not at the Nuart. Any meetings with students that Hale Institute staff have are also conducted at the south campus. We have used the theater space as one would for typical theater use - non credit bearing gatherings that would be typical for a public theater - like if we have a concert or a drama performance or a public lecture, that is not credit bearing but the sort of thing that you would rent a downtown theater for and invite the public. Anyhow, I think this has gone well and has been feasible for us. This next year we are being offered a longterm lease on this. And I don't want to sign if I'm not clear that this is all permitted. This next year we will plan on the same kind of use with two exceptions. I would like to move my finance team over there. This would be my CFO,



bookkeeper, and bursar. The only one of those people who would interact with students would be our bursar, who would in certain seasons need to meet with students about billing. So I would have the bursar conduct all student meetings at the South Campus building and not at the Nuart. The second exception would be our theater use. I wouldn't change the kind of use at all, but we would be using it more frequently. This past year we were subleasing from Christ Church, who still had the primary use of the theater. And so we only had limited times that we could use it. If we take this longterm lease then we will have primary use of the theater and will increase how often we use it. This would be things like a movie night, more theater productions, etc. I would continue to not allow credit bearing activity to happen there. And I would make sure that our music conservatory operations stay at our north campus location (music lessons, etc). So we would work to keep all use of the theater as typical public theater type activities.

Thanks.

Ben Merkle

Based upon the proposed use of the Nuart building, the City reviewed and subsequently issued Zoning Administrator Decision 2023-01 on June 6, 2023, which stated that the net result of the proposal would be an entire facility dedicated to furthering the mission and goals of the college by using the theater in a way to provide instruction, education, and/or training in a diverse setting by way of diverse means. In effect, the primary use of the property would no longer be considered a church. Rather, the proposed primary use of the subject property would be classified as a university. The Zoning Administrator's decision was that the proposed use of the Nuart building constituted a prohibited use under MCC 4-3-2.E. MCC 4-8-2 permits an affected person to appeal an interpretation or administration of the Zoning Code by the Zoning Administrator to the Board of Adjustment within thirty (30) days from receipt of the decision. No appeal was subsequently received for Zoning Administrator Decision 2023-01.

While the CB Zoning District does permit certain types of professional office uses, those professional offices are encompassed within certain industries within the NAICS classification system which the City has adopted. The other similar office uses such as Accounting, Tax Preparation, Bookkeeping, and Payroll Services (NAICS 54121) and Advertising Agencies (NAICS 541810) are all referencing individual establishments primarily engaged in those activities, typically for multiple clients. Offices which are a component of a broader establishment are part of that larger establishment, they are not their own establishment. Administrative offices which are part of a college and support the college in its purpose of furnishing academic courses and granting degrees at baccalaureate or graduate levels, would be classified under NAICS 611310 as Colleges, Universities, and





Professional Schools. These offices serve an essential function within colleges, whereas the college would not be able to function without them. Offices such as a finance department would be classified as offices of a college.

In the reconsideration request it was stated that nowhere under the subcategories of Educational Services does it include financial or development functions to support an educational institution. While that is true, if you look at all of the industries across the NAICS system, they all provide a general description of what the industry and establishments are primarily engaged in, but do not individually list what types of offices could be encompassed within the establishments. Take, for instance, a large department store where you're likely to have a finance department, marketing department, human resources department, etc. within the same company. Those offices aren't listed underneath that description either, because it's understood that those offices are a component of the larger (primary) establishment, they are not their own establishment.

In previous discussions with Brenda von Wandruszka and Ben Merkle, the University of Idaho's purchase of the former City of Moscow Police Station was brought up as being an example of why the NSA proposal at 414 S Main Street should be approved. The City of Moscow sold a building located in the CB Zoning District to the University of Idaho, who communicated at the time that the future use of the building was intended to be the relocated Prichard Art Gallery and a retail space. Since the purchase of the building, the University of Idaho has not proceeded with the remodeling of the building, with the exception of the painting of the exterior of the building. The City has not received any building plans which would identify proposed uses of the building, nor has there been a land use determination requested from the Community Development Department. The University's portrayal of the future uses of an art gallery and retail space during the purchase of the building are the same uses that the City has determined are permitted uses for NSA to operate at 414 S Main Street. There has been no discussions over the establishment of administrative offices for the University of Idaho at the old Police Department building, and there has been no official decision from the Zoning Administrator related to such a determination for the University.

Additionally, during the course of the discussions with Brenda von Wandruszka and Ben Merkle, it was mentioned that the City had heard that at some point in time the University of Idaho was interested in relocating their finance department to the old Daily News building and that they believed the use would have been permitted. This was a general statement that was made when discussing whether offices that serve an educational institution would be permitted or not in the CB Zoning District. The University of Idaho never discussed this proposal with the Community Development Department, never moved into the building, or requested a land use determination of whether finance offices would be a permitted use or not at that location. It was later determined through Zoning Administrator Decisions 2023-01



and 2024-01 that finance offices that are a function of a College or University are not a permitted use in the CB Zoning District.

As you are aware, the City Council had passed Ordinance 2019-07 on July 15, 2019, which effectively prohibited new and expanded colleges and universities in the CB Zoning District. Therefore, the use of a portion of the building for administrative offices for NSA would be a prohibited expansion of an existing college within the CB Zoning District.

Decision: The proposed use of the building at 414 S Main Street by NSA as an art gallery with an accessory art instruction and retail space is a permitted use so long as the operations of the gallery does not further the educational purposes of the college and does not include credit-bearing academic activities. The proposed administrative offices within the building would constitute a prohibited use under Moscow City Code, Title 4, Chapter 3, Section 3-2.E, and Section 3-4, and are therefore not permitted.

Documents and Information relied upon in making the determination: This determination is based on in-person conversations with Brenda von Wandruszka and Ben Merkle, as well as the attached email correspondence dated April 13, 2023 and February 12, 2024, that details the proposed use of the subject property. Also considered was the attached reconsideration request that was distributed on March 1, 2024, in addition to Zoning Administrator Decision 2023-01 and 2024-01.

Right to Appeal: Moscow City Code, Title 4, Chapter 8, Section 8-2, permits an applicant, City representative or affected person to appeal an interpretation or administration of the Zoning Code by the Zoning Administrator to the Board of Adjustment. Such appeal shall be made within thirty (30) days from receipt of this decision. An appeal shall be made by filing with the Zoning Administrator a written notice of appeal specifying the grounds thereof and paying an appeal fee established by Resolution. Upon the filing of an appeal, the Zoning Administrator shall submit to the Board of Adjustment all materials constituting the record upon which the appeal is made. The appeal process will be followed pursuant to MCC Title 4, Chapter 8.

Attachments

Reconsideration Request (March 1, 2024)
Zoning Administrator Decision 2024-01, with attachments (February 21, 2024)
Email Correspondence (February 12, 2024)
Email Correspondence (April 13, 2023)
Zoning Administrator Decision 2023-01, with attachments (June 6, 2023)



Appeal of Zoning Administrator Decision 2024-01

The City has determined that for New Saint Andrews College (NSA) to move our Development offices (our advertising branch which we call Marketing, our fundraising/grant writing branch which we call Fundraising, and our Recruitment department) along with our Finance offices into the second floor of the gallery space located at **414 S. Main Street** would be an expansion of the college's educational use in the Central Business Zoning District (CB), which would be a prohibited use.

I would like to appeal this determination for the following three reasons:

First, the City has already permitted NSA to move these uses into the CB Zone in July of 2022. To now prohibit this use is "arbitrary, capricious, or an abuse of discretion" as stated in Moscow City Code Title 4, § 8-2(B)(e).

New Saint Andrews College currently has its Finance and Development offices in the front office portion of the Nuart Theater, a property on 516 S. Main Street in the CB Zone. NSA subleases these offices from Christ Church, which holds the lease on the entire building.

Before moving into that space, I had first proposed to move some of our Music Conservatory offices into this space. However, when I met with Planning Manager Mike Ray and Deputy City Supervisor Cody Riddle (Zoning Administrator) I was told that the instruction component of the music classes would mean that these needed to stay in our North Campus building. I then wrote the following email message to Mike Ray on July 6, 2022:

"I went back to the drawing board to think through how we could make use of that space inside of the zoning constraints. I'm going to keep our Conservatory operations in the North Campus for the moment to keep things straightforward. We are planning now to move our development team into the Nuart space. This team consists of our marketing, fundraising, and recruitment offices. They are pretty much just business offices and do not interact significantly with the student body. I think we would probably just be subleasing from Christ Church. Thanks very much for your help."

Mike Ray replied with the following email message on July 11, 2022:

"Hi Ben, Thanks for the update, glad you are able to make this plan work. **We don't see an issue with your new plan, so long as activities like student counseling remain at a separate location**, which it sounds like they would. If anything else changes feel free to reach out and discuss.
Thanks, Mike."

With this approval from the City Planner, I moved the approved offices into the Nuart Theater. Afterwards, I received an email message from Deputy City Supervisor Cody Riddle on July 20, 2022. Cody was concerned that the NSA Recruitment team might bring student tours into the Nuart building:

“Thank you for the response. As Mike indicated, **office use is permissible in the zone**. It’s any element of academic instruction, student counseling, gatherings, and similar activities that create a challenge from a zoning perspective. The tours you reference would fall into that category. That’s more in line with what one would expect at a college. Those activities should originate and be conducted at one of the locations approved for academic use. I hope this provides better clarification. Please let us know if you have further questions. We’re happy to help.”

Because of this concern, the college agreed to have all student tours take place at the NSA South Campus (405 S. Main Street) and not occur at the Nuart—a commitment that we have carefully kept ever since. Clearly, in these two emails, Cody Riddle and Mike Ray both stated that NSA’s Development offices are permitted uses in the CB Zone.

In advance of taking any action, I was very transparent with the City about the moves that we were planning to make. I proactively went to the City offices before making any administrative office location changes to walk through the details of my plans. I had both Cody Riddle’s and Mike Ray’s explicit approval in the emails quoted above as well as in a number of in-person meetings.

Two of those in-person meetings took place from July 2022 through May 2023.

- 1) On July 5, 2022, Mike Ray and Cody Riddle explained to me that at one point the University of Idaho had been looking to locate their finance department into the former Daily News building. There would have been no students, and the offices were purely financial. They said that having a college’s financial offices in the CB Zone would be a permitted use.
- 2) On May 3, 2023, Cody Riddle explained that ownership or rental of office space does not matter. It’s not about who owns a building or who rents a building. It is the use that matters.

In the fall of 2023, our CFO, who had been operating remotely, relocated to Moscow and we moved our Finance offices into the Nuart offices, alongside the Development team (Marketing, Fundraising, and Recruitment). I have been transparent with the City in each move that I have made.

Now, as we ask to move the exact same offices one block north, we are now being told that these uses are not permitted in the CB Zone—same exact offices, same exact uses, but now prohibited. To restate my first point, the City is being arbitrary, capricious, and exhibiting an abuse of discretion in its interpretation and application of the code.

Second, to move these offices into 414 S. Main does not expand educational use in the CB Zone because Educational Services are defined as the provision of instruction. The City's restriction of our offices being moved into this space is a decision that "exceeds statutory authority" as stated in Moscow City Code Title 4, § 8-2(B)(b).

NAICS Sector 61 subsection 611310 (census.gov/naics) summarizes the thing that all educational uses hold in common— "All industries in the sector share this commonality of process, namely, labor inputs of instructor with the requisite subject matter expertise and teaching ability" (p. 509). Educational use is use that provides instruction.

Each of the subcategories under the NAICS definition of *educational services* describes permutations of instruction. Nowhere does it include uses like the financial or development functions to support to an educational institution. Even the final subcategory of *educational support services* (611710), which initially sounds like it might describe uses like finance or development, turns out to simply describe providing materials for colleges—job training, research in cognitive development, and publishing educational materials such as tests and assessments. The NAICS definition of *educational use*, and all the varieties of ways in which it can appear, is quite extensive. And yet nowhere in that definition can anything be found that supports the City's attempt to massively expand the definition of *educational use*. This is the plain reading of the NAICS definition.

This definition of *educational services* was mutually understood when we first worked with the City on putting our offices in the Nuart. As Cody said in his email "As Mike indicated, office use is permissible in the zone. It's any element of academic instruction, student counseling, gatherings, and similar activities that create a challenge from a zoning perspective."

In July of 2022, the City restricted its definition of *educational services* to direct instruction and working with students. We have consistently communicated with the City to ensure that we were abiding by that definition. And this is the definition of *educational use* that NSA is still maintaining as we look to move offices into 414 S. Main. NSA is not looking to expand the use of *educational services* into the CB Zone.

NSA currently has two properties that offer *educational services*, our North and South Campus buildings. These two properties are covered by two CUP's that limit the North Campus building to 300 students and our South Campus building to 200 students. You can tell that we are not expanding *educational use* because moving our Finance and Development offices into 414 S.

Main will not increase our number of permitted students, nor will it expand the locations where instruction will be given. We will only put expressly permitted uses in the gallery building.

According to Idaho Statute 67-6535, the City's decision "... shall be based upon standards and criteria which shall be set forth in the comprehensive plan, zoning ordinance or other appropriate ordinance or regulation of the city or county. Such approval standards and criteria shall be set forth in express terms in land use ordinances in order that permit applicants, interested residents and decision makers alike may know the express standards that must be met in order to obtain a requested permit or approval." The "express terms" of the zoning code do not support the City's decision. Rather, the City has created its own definition of the term *educational use*, in departure from NAICS's definitions. In doing so, the City has exceeded its statutory authority.

Third, the City is smuggling consideration of ownership into a zoning code that should only restrict use. Once again, the City "exceeds statutory authority" as stated in Moscow City Code Title 4, § 8-2(B)(b).

Zoning code is supposed to govern what kind of activity is done not who is doing the activity. But the City is arguing that if an administrative activity, such as doing payroll, supports an educational institution, then that financial activity essentially becomes an educational use. This argument smuggles ownership back into use and it contradicts the City's position that it clearly articulated when conveying the former police station to the University of Idaho, with the purpose of using that space as an art gallery and gift store.

1) Public Works/Finance (preliminary meeting to Moscow City Council) June 28, 2021.¹

Gary Riedner: "I want to make a clarification that ownership by an educational institution—zoning is about use. It's not about ownership. So, we don't see any issue with the proposed use that the U of I has indicated they want to use it for."

2) City Council (regular meeting) July 6, 2021.²

Gary Riedner: "Now I know a concern at Committee was because the University of Idaho is an educational institution and there are restrictions on the use of facilities in downtown for educational purposes. Was the University of Idaho going to use it for educational purposes? As Tony indicated during the Public Works/Finance Committee last week the university is purchasing it for a replacement for the Prichard Art Gallery and intends to use it as an art gallery and a retail space. Art galleries and retail spaces are uses of right in the Central Business District. So that seems to take care of the zoning issues and I know that Bill Belknap has had conversations with the U of I on that as well."

¹ <https://www.youtube.com/watch?v=4iaSaITSlo4&t=356s1> (begin at minute 17:45)

² <https://www.youtube.com/watch?v=lQVrywlolFw&t=1717s> (begin at minute 37:39)

3) City Council (regular meeting just before public hearing) August 2, 2021.³

Brandy Sullivan: "How about the use of it as a gallery versus an educational institution?"

Gary Riedner: "Those discussions as council knows there is a restriction on use of property in the Central Business District for educational purposes and the University of Idaho has been advised of that. We've been advised that they intend to use it as a gallery and a retail space both of which are uses of right in the Central Business District."

We see clearly here that the City understands that zoning is not a matter of ownership, but of use. And if a use is a by right, permitted use, then it does not matter who the user is.

To be clear, the uses that NSA wants to put into this space all constitute uses that are expressly permitted uses in the CB Zone. All activities of our finance team are covered by "54121 Accounting, Tax Preparation, Bookkeeping, and Payroll Services." Our Development Team activities are accurately summarized by "541810 Advertising Agency," as well as by other related permitted uses in the CB Zone. All uses that will be located in 414 S. Main will be expressly permitted uses. But the City is arguing that these uses are transformed into educational activity when they are used to serve a college. Again, this is smuggling ownership into use.

Each one of these departments that are in question has been, at various times, outsourced by the college to other companies. Our finance team was outsourced to the accounting firm Clifton, Larsen, and Allen from August 2019 through August 2021. Had this accounting firm been in Moscow, would their offices have been considered an educational use?

NSA's marketing was entirely outsourced to Canon Press from June 2020 to January 2022. Did Canon Press become an educational use during this contract?

Our fundraising has outsourced much of their work to Inquiry and Renegade. Do they need a CUP to operate in Moscow?

If I rehired each of these outsourced companies to cover NSA's Finance and Development departments once again, could these companies have offices downtown? Yes. They could because they would be performing explicitly permitted uses. But those exact same uses carried by a department of NSA, somehow no longer are evaluated by what they are doing, but who they are. The use is exactly the same. The only thing that has changed is ownership. The City is smuggling ownership into use.

What if we applied this principle to another downtown businesses? Is the Colter's Creek tasting room a vineyard? A vineyard would be prohibited in the CB Zone. But that tasting room exists solely to support the vineyard. And yet when it comes to Colter's Creek, we evaluate them based on use, not ownership. They are a tasting room, not a winery. Is Populi, which solely supports the

³ <https://www.youtube.com/watch?v=wYLFbwFFlr8> (begin at minute 2:21:12)

registrar function of colleges and universities, an *educational use* because of whom they serve? Would the business office of a manufacturing company be allowed on Main Street?

On the one hand, the City grants the distinction between ownership and use, and claims to base the decision on use. NSA is asking to put uses in 414 S. Main that are expressly permitted in the CB Zone. But the City is saying that these uses are not permitted, not because of what is being done, but because of who is doing it. The City is smuggling consideration of ownership into a determination that is supposed to be solely about use. As Gary Riedner said, "I want to make a clarification that ownership by an educational institution— zoning is about use. It's not about ownership."

Conclusion

According to the Land Use Table (Sec. 3-4 of Moscow City Code), Professional Services is a permitted use in the CB Zone, just as Museums and Art Galleries are a permitted use in the CB Zone. All of New Saint Andrews College's intended uses for 414 S. Main fall expressly under these headings according to the NAICS definitions. NSA is entitled to all by-right uses in the CB Zone. To prohibit this right is arbitrary and capricious and exceeds the City's statutory authority.



Heart of the Arts



Arthur D. Bettge
Mayor

Gina Taruscio
Council President

Sandra Kelly
Council Vice-President

Bryce Blankenship
Council Member

Drew Davis
Council Member

Hailey Lewis
Council Member

Julia Parker
Council Member



Bill Belknap
City Supervisor



City of Moscow, City Hall
c/o Bill Belknap, City Supervisor
206 East 3rd Street
P.O. Box 9203
Moscow ID 83843
Phone (208) 883-7000
Fax (208) 883-7018

Website: www.ci.moscow.id.us
Hearing Impaired (208) 883-7019



Zoning Administrator Decision 2024-01

Date of Request: February 12, 2024

Date of Decision: February 21, 2024

Person Requesting Decision of Zoning Administrator: Brenda von Wandruszka, Rootforest LLC

Property Impacted by Decision: 414 S. Main Street, Moscow, Idaho

Zoning of Property in Question: Central Business District, hereinafter "CB"

Current Use of Property in Question: Art Gallery

Proposed Use of Property in Question: New Saint Andrews College (hereinafter "NSA") seeks occupancy and use of the entire building located at 414 S. Main Street. The proposal is for NSA to use the existing building as an art gallery, a retail space, and administrative offices. The offices are to be occupied by administrative staff, and no academic instruction or credit-bearing activity are proposed. The art gallery would include rotating exhibits and the applicant wishes to continue to offer non-credit community art classes to both adults and children in the community, similar to what the prior art gallery, Moscow Contemporary, has offered.

Determination Requested: Brenda von Wandruszka seeks a determination as to whether or not the combination of uses as proposed constitute an allowed use of the subject property.

Background: The historic use of the building at 414 S. Main Street has been an art gallery since the 1980's. The University of Idaho operated the Prichard Art Gallery until the transition of the building to the Moscow Contemporary Art Gallery in 2021. It is the City's understanding that Moscow Contemporary operated their art gallery in a similar fashion to the Prichard Gallery, conducting artist exhibitions and also providing non-degree art education to children and adult members of the community. It is also the City's understanding that Moscow Contemporary utilized the entire building for the operations of their art gallery.

Zoning Regulations Pertinent to the Question Presented:

1. Moscow City Code Title 4, Chapter 11 authorizes the Zoning Administrator to administer and enforce the zoning code. The Administrator's duties include ordering discontinuance of illegal use of land, buildings or structures; removal of illegal additions, alterations, or structural changes; discontinuance of illegal work being done; or shall take other action

Zoning Administrator Decision 2024-01

1



authorized by the zoning code to insure compliance with or to prevent violation of its provisions. (MCC 4-11-1.A and B) The Zoning Administrator is further authorized to make interpretations on the allowance or prohibition of proposed uses in specific zoning districts. (MCC 4-3-3)

2. Moscow City Code Title 4, Chapter 1, Section 1-6.D.103 defines “Museums and Art Galleries” as follows:

Establishments primarily engaged in the preservation and exhibition of objects of historical, cultural, and/or educational value.

3. Moscow City Code Title 4, Chapter 3, Section 3-4 specifically lists art galleries and professional offices as allowed uses in the CB.

4. Moscow City Code Title 4, Chapter 1, Section 1-6.D.52 defines “Educational Services” as follows:

Establishments that provide instruction and training in a wide variety of subjects. The instruction and training is provided by specialized establishments, such as schools, colleges, universities, and training centers.

The North American Industry Classification System (NAICS), referenced in Moscow City Code for the purpose of making land use determinations, provides a more specific definition. NAICS 611310 (Colleges, Universities, and Professional Schools) are defined as follows:

This industry comprises establishments primarily engaged in furnishing academic courses and granting degrees at baccalaureate or graduate levels. The requirement for admission is at least a high school diploma or equivalent general academic training. Instruction may be provided in diverse settings, such as the establishment's or client's training facilities, educational institutions, the workplace, or the home, and through diverse means, such as correspondence, television, the Internet, or other electronic and distance-learning methods. The training provided by these establishments may include the use of simulators and simulation methods.

5. Moscow City Code Title 4, Chapter 3, Section 3-4 specifically prohibits colleges and universities in the CB.
6. Moscow City Code Title 4, Chapter 1, Section 1-7.E.4 related to Nonconforming Uses of Structures and Premises in Combination, states that:

When a nonconforming use of a structure, or of a structure and premises in combination, is discontinued or abandoned for six (6) consecutive months or for eighteen (18) months during any three (3) year period, the structure,





or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the zoning district in which the structure is located...

Analysis: The art gallery component of the proposed use of the building is a permitted use within the CB Zoning District and the building has historically been used as an art gallery dating back to the 1980's. The additional function of the art gallery to provide non-degree art instruction to the community has also been documented as being a continuous component of the operation of the Prichard Art Gallery and more recently the Moscow Contemporary Art Gallery. The non-degree art instruction component of the art gallery is viewed as an accessory use to the operations of the gallery.

While the University of Idaho did operate the Prichard Art Gallery and the educational components of the gallery, it is the City's understanding that its operation was not for credit-bearing academic purposes. Furthermore, even if the University did provide credits related to the programming and operation of the Prichard Gallery, that right has since been divested with the conversion of the building to the Moscow Contemporary Art Gallery in 2021, since that gallery was not affiliated with the University. Any credit-bearing academic activities at that time would have been a non-conforming use, since the City Council had passed Ordinance 2019-07 on July 15, 2019, which prohibited new and expanded colleges and universities in the CB Zoning District. The Zoning Code states that when a nonconforming use of a structure is abandoned for six (6) consecutive months, "the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the zoning district in which the structure is located." MCC 4-1-7.E.4. Therefore, NSA may continue the operation of an art gallery with an accessory art instruction component so long as the operations of the gallery does not further the educational purposes of the college and does not include credit-bearing academic activities.

Historically, there has been a small retail space near the main entrance to the building, adjacent to Main Street. It's the City's understanding that NSA would like to continue the use of this portion of the building as a retail space. Retail sales is a permitted use within the CB Zoning District, therefore, NSA would be permitted to continue the use of this space for retail sales, which is more specifically defined within NAICS 44-45 (Retail Trade).

The final determination request pertains to the use of a series of offices on the second floor of the building. It's the City's understanding that NSA wishes to utilize and/or convert numerous rooms on the second floor to offices used to support the function of NSA, such as finance, recruitment, fundraising, and marketing. While the CB Zoning District does permit certain types of professional office uses, those professional offices are encompassed within certain industries within the NAICS





classification system which the City has adopted. Administrative offices which are affiliated with NSA and support the college in its purpose of furnishing academic courses and granting degrees at baccalaureate or graduate levels, would be classified under NAICS 611310 as Colleges, Universities, and Professional Schools. As you are aware, the City Council had passed Ordinance 2019-07 on July 15, 2019, which effectively prohibited new and expanded colleges and universities in the CB Zoning District. Therefore, the use of a portion of the building for administrative offices for NSA would be a prohibited expansion of an existing college within the CB Zoning District.

Decision: The proposed use of the building at 414 S Main Street by NSA as an art gallery with an accessory art instruction and retail space is a permitted use so long as the operations of the gallery does not further the educational purposes of the college and does not include credit-bearing academic activities. The proposed administrative offices within the building would constitute a prohibited use under Moscow City Code, Title 4, Chapter 3, Section 3-2.E, and Section 3-4, and are therefore not permitted.

Documents/Information relied upon in making the determination: This determination is based on in-person conversations with Brenda von Wandruszka and Ben Merkle, as well as the attached email correspondence dated February 12, 2024 that details the proposed use of the subject property.

Right to Appeal: Moscow City Code, Title 4, Chapter 8, Section 8-2, permits an applicant, City representative or affected person to appeal an interpretation or administration of the Zoning Code by the Zoning Administrator to the Board of Adjustment. Such appeal shall be made within thirty (30) days from receipt of this decision. An appeal shall be made by filing with the Zoning Administrator a written notice of appeal specifying the grounds thereof and paying an appeal fee established by Resolution. Upon the filing of an appeal, the Zoning Administrator shall submit to the Board of Adjustment all materials constituting the record upon which the appeal is made. The appeal process will be followed pursuant to MCC Title 4, Chapter 8.

Attachments: Email Correspondence (February 12, 2024)



Michael Ray

From: brendav@turbonet.com
Sent: Monday, February 12, 2024 4:15 PM
To: Michael Ray; Cody Riddle
Cc: bmerkle@nsa.edu
Subject: FW: 414 S Main Street, Moscow ID 83843

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

From: brendav@turbonet.com <brendav@turbonet.com>
Sent: Monday, February 12, 2024 2:22 PM
To: 'rvw@uidaho.edu' <rvw@uidaho.edu>
Subject: 414 S Main Street, Moscow ID 83843

Dear Mike,

We are changing tenants at 414 S Main Street and are asking for a Zoning Certificate.

The University of Idaho (U of I) operated an art gallery in this building for approximately 40 years (from some time in 1980s until 2021). In May 2018, Ordinance 2018-7, in effect eliminated Educational Services in the downtown and now allows only those schools and instruction as defined in the North American Industry Classification System (NAICS 6114-6117) and has even excluded some of these uses within those subsectors. When the zone change occurred the U of I continued to use the building as it always had since the Code does allow legal uses to continue when amendments to the code no longer allow such uses. (Sec 1-7 A).

Therefore in 2021 when the U of I terminated their lease with us, our new tenant Moscow Contemporary used the building exactly as the U of I had, including the existing non-conforming educational uses. This use included, offering art classes to both adults and children, presentations by artists and discussions of their work.

Our new tenant will be New Saint Andrews College (NSA) and it is their intention to use the building primarily as an art gallery, a store, and as offices. All of these uses are Permitted in the CBD and are defined in NAICS -712110, 541, 5322. While acknowledging that NSA cannot use the building as a college as defined in Sector 61 of NAICS, we do believe that NSA, if they so wish, has the right to continue offering art education to both adults and children in the same way that Moscow Contemporary had been doing since 2021 because this use has been continuous since the 1980s.

You have asked that we show what uses will occur in certain parts of the building and what percentage of the building will be used for each use. This building was remodeled in the 1980s for use specifically as an art gallery and it does not lend itself to many other uses without substantial changes to the architecture. The primary use of the building by NSA will be as an art gallery and any other uses will be located in smaller areas of the building. We do not wish to restrict our Tenants by confining certain areas of the building to certain uses and we understand that they will be allowed to use the building for all Permitted Land Uses in the CBD, even though they may not be taking advantage of all their options at this time.

Brenda von Wandruszka
Rootforest LLC
1827 Daves Avenue

Moscow ID 83843
208-596-1951



Heart of the Arts

Arthur D. Bettge
Mayor

Maureen Laflin
Council President

Gina Taruscio
Council Vice-President

Drew Davis
Council Member

Sandra Kelly
Council Member

Hailey Lewis
Council Member

Julia Parker
Council Member

Bill Belknap
City Supervisor

City of Moscow, City Hall
c/o Bill Belknap, City Supervisor
206 East 3rd Street
P.O. Box 9203
Moscow ID 83843
Phone (208) 883-7000
Fax (208) 883-7018

Website: www.ci.moscow.id.us
Hearing Impaired (208) 883-7019

Zoning Administrator Decision 2023-01

Date of Request: May 9, 2023

Date of Decision: June 6, 2023

Person Requesting Decision of Zoning Administrator: Ben Merkle-President, New Saint Andrews College

Property Impacted by Decision: 516 S. Main Street, Moscow, Idaho

Zoning of Property in Question: Central Business District, hereinafter "CB"

Current Use of Property in Question: Religious Institution with Office Space

Proposed Use of Property in Question: New Saint Andrews College (hereinafter "NSA") seeks occupancy and use of the entire building located at 516 S. Main Street. The proposal is for NSA to use both the historic theater space and seven offices. The offices are to be occupied by administrative staff, and no academic instruction or credit-bearing activity are proposed. The theater would be used to host various events consistent with the historic use of the building. This includes providing opportunities for NSA students to participate in movies, live performances, lectures, debates, and church services, many of which would be open to the public, with the primary use to be for the benefit of the students of NSA.

Determination Requested: Ben Merkle, President of NSA, seeks a determination as to whether or not the combination of uses as proposed constitute an allowed use of the subject property.

Background: While the historic use of the building was a theater, it has most recently been used primarily as a religious institution. Both are allowed uses in the underlying CB zone (MCC 4-3-4). A small portion of the building has also historically supported professional office space for the religious institution and other organizations, including the college. To date, the office space has been a secondary or accessory use to the church.

Zoning Regulations Pertinent to the Question Presented:

1. Moscow City Code Title 4, Chapter 11 authorizes the Zoning Administrator to administer and enforce the zoning code. The Administrator's duties include ordering discontinuance of illegal use of land, buildings or structures; removal of illegal additions, alterations, or structural changes; discontinuance of illegal work being done; or shall take other action authorized by the zoning code to insure compliance with or to prevent violation of its provisions (MCC 4-11-1.A). The Zoning Administrator is



further authorized to make interpretations on the allowance or prohibition of proposed uses in specific zoning districts (MCC 4-3-3).

2. Moscow City Code Title 4, Chapter 3, Section 3-4 specifically lists professional offices, religious facilities, and movie theaters as allowed uses in the CB.
3. Moscow City Code Title 4, Chapter 1, Section 1-6.52 defines “Educational Services” as follows:

Establishments that provide instruction and training in a wide variety of subjects. The instruction and training is provided by specialized establishments, such as schools, colleges, universities, and training centers.

The North American Industry Classification System (NAICS), referenced in Moscow City Code for the purpose of making land use determinations, provides a more specific definition. NAICS 611310 (Colleges, Universities, and Professional Schools) are defined as follows:

This industry comprises establishments primarily engaged in furnishing academic courses and granting degrees at baccalaureate or graduate levels. The requirement for admission is at least a high school diploma or equivalent general academic training. Instruction may be provided in diverse settings, such as the establishment's or client's training facilities, educational institutions, the workplace, or the home, and through diverse means, such as correspondence, television, the Internet, or other electronic and distance-learning methods. The training provided by these establishments may include the use of simulators and simulation methods.

4. Moscow City Code Title 4, Chapter 3, Section 3-4 specifically prohibits universities in the CB.

Analysis: The individual uses proposed in the building are generally allowed. However, the issue with the proposed use by NSA is their cumulative impact, and relationship or direct correlation to an otherwise prohibited use in this location; a university. While the proposed use of the property is not for credit-bearing academic purposes, City Code does not make a distinction between academic instruction and support services and assembly space, like those proposed, when defining a university. While a small portion of the building has supported various offices, those were secondary to the primary, permitted use of a religious institution.

The administrative offices, when combined with operation of the theater by the college, constitutes a prohibited use. The fact that portions of the building will be open to the public, and others will function very similar to stand-alone allowed uses, does do not change the interpretation. The net result is an entire facility





dedicated to furthering the mission and goals of the college by using the theater in a way to provide instruction, education, and/or training in a diverse setting by way of diverse means. In effect, the primary use of the property would no longer be considered a church. Rather, the proposed primary use of the subject property would be classified as a university, as defined above.

Decision: In conclusion, your proposal, as described to date, constitutes a prohibited use under Moscow City Code, Title 4, Chapter 3, Section 3-2.E.

Documents/Information relied upon in making determination: This determination is based on in-person conversations with Ben Merkle, as well as the attached email correspondence dated between June 17, 2022 and May 11, 2023 that detail the proposed use of the subject property.

Right to Appeal: Moscow City Code, Title 4, Chapter 8, Section 8-2 permits an applicant, City representative or affected person to appeal an interpretation or administration of the Zoning Code by the Zoning Administrator to the Board of Adjustment. Such appeal shall be made within thirty (30) days from receipt of this decision. An appeal shall be made by filing with the Zoning Administrator a written notice of appeal specifying the grounds thereof and paying an appeal fee established by Resolution. Upon the filing of an appeal, the Zoning Administrator shall submit to the Board of Adjustment all materials constituting the record upon which the appeal is made. The appeal process will be followed pursuant to MCC Title 4, Chapter 8.

Cody Riddle
Deputy City Supervisor
Community Development

Attachments:

Email Correspondence (June 17, 2022-May 11, 2023)



Cody Riddle

From: Benjamin Merkle <bmerkle@nsa.edu>
Sent: Thursday, May 11, 2023 10:55 AM
To: Cody Riddle
Cc: rauch@mrlegal.com; maria@mrlegal.com
Subject: RE: Nuart Follow-Up

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Cody,
There are three offices upstairs and there are four offices downstairs. We are currently using all seven of them. And to be clear, this is the arrangement that I ran by you last summer, which you told me was permitted.

Ben Merkle
President
New Saint Andrews College



On May 11, 2023 at 7:17 AM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Hi Ben,

I'm working on the letter now. Could you tell me how many total office spaces are in the building, and of those, how many NSA would like to occupy?

Thanks,

Cody

From: Benjamin Merkle <bmerkle@nsa.edu>
Sent: Tuesday, May 9, 2023 9:49 AM
To: Cody Riddle <criddle@ci.moscow.id.us>
Subject: RE: Nuart Follow-Up

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Cody

We are not looking at increasing office space at all. We are using the same amount of office space next year as last year. There is no proposed increase in the office area. The only thing that we are looking at with regard to the office space is putting different people in those offices. But it would be the same amount of office space, no increase.

Yes, if you could give me a formal write up of this determination, that would be helpful.

Can you specify that we are allowed to continue to have non-credit bearing admin offices there?

The same as you have allowed up until now. And can you specify what theater usage we can have? So, if we continue to rent from Christ Church, can we rent the theater for certain events?

What restrictions would be on that?

Thanks

Ben Merkle

President

New Saint Andrews College



On May 9, 2023 at 7:56 AM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Good Morning Ben,

Thanks for the conversation yesterday. I wanted to follow up a little further on our discussion. The university's past use of a few office spaces in the building has largely been secondary or incidental to the primary, allowed use, a church. Our stance is that your proposal to occupy additional office space and assume primary use of the theater would effectively convert the use of the property to that of a university. We've talked a bit about credit bearing and non-credit bearing activities. We certainly considered that in evaluating your proposal. The code does not make a distinction in that way. Our view is that the activities/uses proposed are tied directly to, and in direct support of, the University. This expansion, or increase in occupancy, including any additional office space, would be prohibited.

As we discussed yesterday, I am happy to provide a formal, written determination that outlines this in greater detail. This would include language specifying an opportunity for appeal. Please let me know if this is how you'd like to proceed, and if you have any follow-up questions.

Thanks,

Cody Riddle

Deputy City Supervisor, Community Development, City of Moscow

Executive Director, Moscow Urban Renewal Agency

208.883.7027

criddle@ci.moscow.id.us

<image001.png>

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Friday, May 5, 2023 4:07 PM

To: Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Nuart Follow-Up

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

That works. I will pop over then.

Ben Merkle

President

New Saint Andrews College



On May 5, 2023 at 4:05 PM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Hi Ben,

How does 10:30am Monday sound?

Thanks,

Cody

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Friday, May 5, 2023 4:01 PM

To: Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Nuart Follow-Up

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

I can do 2 on Monday. But if we could go any earlier that would be good.

Also, it's not clear to me whether you are saying we can't use the theater space at the Nuart property or we can't use the Nuart property at all.

Ben Merkle

President

New Saint Andrews College



On May 5, 2023 at 3:55 PM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Hi Ben,

How does 2pm Monday sound? It's really the combination of uses, with the theater space, being used primarily in conjunction with, or as a component of the university that's a concern. We can talk through it more Monday if that works?

Thanks,

Cody Riddle

Deputy City Supervisor, Community Development, City of Moscow

Executive Director, Moscow Urban Renewal Agency

208.883.7027

criddle@ci.moscow.id.us

<image001.png>

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Friday, May 5, 2023 11:28 AM

To: Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Nuart Follow-Up

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Yeah. Let's do Monday. Can we get it before 2:30?

Also, can you be specific about which part of the plan for next year is a university use?

Ben Merkle

President

New Saint Andrews College



On May 5, 2023 at 11:21 AM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Hi Ben,

Thank you for the follow up information. I've looked at this quite closely, and without going into a lot of detail, at the end of the day, we see your proposal would in effect be a university use, which as you know, is prohibited in the underlying zone. I'm happy to sit down and chat through this further if you'd like, before issuing a formal determination. Is that something that would be of interest to you? I could find time as early as Monday.

Please let me know.

Thanks,

Cody Riddle

Deputy City Supervisor, Community Development, City of Moscow

Executive Director, Moscow Urban Renewal Agency

208.883.7027

criddle@ci.moscow.id.us

<image001.png>

From: Benjamin Merkle <bmerkle@nsa.edu>
Sent: Thursday, May 4, 2023 7:47 AM
To: Cody Riddle <criddle@ci.moscow.id.us>
Subject: Re: Nuart Follow-Up

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Cody,

The theater would not be limited to school functions. I have my COO working on a plan for our building use this next year. Our plan is for the Nuart Theater to be something that we offer to be rented out for non-college events. And so I am having him work on our policies for renting it out. I would anticipate that we will do a lot more renting the facility out than Christ Church has done because we would be more purposeful in using the space as a public theater. Also, most college events that would be held there would be open to the public as well - lectures, debates, concerts, theater performances, movie nights, etc. And when I say "lectures" I should be clear that I do not mean lectures for NSA classes, but public lectures that are not for credit but are intended for the general public.

As it is right now, Christ Church would continue to sublease from us for a small Sunday morning service. I don't know how long that will last for. But our current

plan is for us to keep renting to them. So a Sunday morning service will keep happening there.

The building has four offices and a reception desk on the first floor. The second floor has three offices, a conference room, and then stairs up to another kind

of peculiar lounge space. We would put administrative offices in these offices. No student services would go in these offices, nothing that students would be showing up for. If there was a student service element to anything that happened there, they would

meet at the North or South Campus and not at the Nuart. No teachers or professors would have offices there.

I hope this answers all your questions. But let me know if there is anything else I can answer.

Ben Merkle

President

New Saint Andrews College



On May 4, 2023 at 6:48 AM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Good Morning Ben,

Thank you for taking the time to walk me through your proposal for the use of the old Nuart Theater yesterday. I want to confirm a couple things before providing a determination. First, for the theater space, it's my understanding it would no longer be used regularly for church services. Rather, it would support performances by students, and provide a venue to host plays and other live productions. Is this correct? Would the facility have any sort of public component? Meaning, could someone reserve/rent the space for community events? Or, would the events be limited to school functions, similar to an auditorium often found on campus at a public school?

It's my understanding the remainder of the building houses office space. How many total offices are there, and would that space be occupied by anyone other than school administrators? I believe you indicated there would be no teachers/professors housed in the building?

Finally, it's my understanding the church function would effectively no longer occur on the premises, other than the occasional special event. Did I understand that correctly?

Your confirmation/clarification here is appreciated, and will help us make a final determination.

Thanks,

Cody Riddle

Cody Riddle

From: Benjamin Merkle <bmerkle@nsa.edu>
Sent: Thursday, May 4, 2023 7:47 AM
To: Cody Riddle
Subject: Re: Nuart Follow-Up

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Cody,

The theater would not be limited to school functions. I have my COO working on a plan for our building use this next year. Our plan is for the Nuart Theater to be something that we offer to be rented out for non-college events. And so I am having him work on our policies for renting it out. I would anticipate that we will do a lot more renting the facility out than Christ Church has done because we would be more purposeful in using the space as a public theater. Also, most college events that would be held there would be open to the public as well - lectures, debates, concerts, theater performances, movie nights, etc. And when I say "lectures" I should be clear that I do not mean lectures for NSA classes, but public lectures that are not for credit but are intended for the general public.

As it is right now, Christ Church would continue to sublease from us for a small Sunday morning service. I don't know how long that will last for. But our current plan is for us to keep renting to them. So a Sunday morning service will keep happening there.

The building has four offices and a reception desk on the first floor. The second floor has three offices, a conference room, and then stairs up to another kind of peculiar lounge space. We would put administrative offices in these offices. No student services would go in these offices, nothing that students would be showing up for. If there was a student service element to anything that happened there, they would meet at the North or South Campus and not at the Nuart. No teachers or professors would have offices there.

I hope this answers all your questions. But let me know if there is anything else I can answer.

Ben Merkle

President
New Saint Andrews College



On May 4, 2023 at 6:48 AM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Good Morning Ben,

Thank you for taking the time to walk me through your proposal for the use of the old Nuart Theater yesterday. I want to confirm a couple things before providing a determination. First, for the theater space, it's my understanding it would no longer be used regularly for church services. Rather, it would support performances by students, and provide a venue to host plays and other live productions. Is this correct? Would the facility have any sort of public component? Meaning, could someone reserve/rent the space for community events? Or, would the events be limited to school functions, similar to an auditorium often found on campus at a public school?

It's my understanding the remainder of the building houses office space. How many total offices are there, and would that space be occupied by anyone other than school administrators? I believe you indicated there would be no teachers/professors housed in the building?

Finally, it's my understanding the church function would effectively no longer occur on the premises, other than the occasional special event. Did I understand that correctly?

Your confirmation/clarification here is appreciated, and will help us make a final determination.

Thanks,

Cody Riddle

Deputy City Supervisor, Community Development, City of Moscow

Executive Director, Moscow Urban Renewal Agency

208.883.7027

criddle@ci.moscow.id.us

<image001.png>

Cody Riddle

From: Benjamin Merkle <bmerkle@nsa.edu>
Sent: Friday, April 28, 2023 4:24 PM
To: Cody Riddle
Subject: RE: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

That works.

Ben Merkle
President
New Saint Andrews College



On Apr 28, 2023 at 4:21 PM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Hi Ben,

How does Wednesday at 1pm sound?

Thanks!

Cody Riddle

Deputy City Supervisor, Community Development, City of Moscow

Executive Director, Moscow Urban Renewal Agency

208.883.7027

criddle@ci.moscow.id.us

<image001.png>

From: Benjamin Merkle <bmerkle@nsa.edu>
Sent: Friday, April 28, 2023 4:00 PM
To: Michael Ray <mray@ci.moscow.id.us>; Cody Riddle <criddle@ci.moscow.id.us>
Subject: RE: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Cody,
Yeah, I can do Monday from 3 on, Tuesday 10-1:30, and any time on Wed or Thu. What works for you?

Ben Merkle

President

New Saint Andrews College



On Apr 28, 2023 at 3:47 PM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Hi Ben,

I do have some concerns with the evolution/expansion of the use of the facility. Before making a final determination, I would appreciate the opportunity to sit down and chat through a few things. Are there a few days/times next week that might work for you?

Thanks,

Cody Riddle

Deputy City Supervisor, Community Development, City of Moscow

Executive Director, Moscow Urban Renewal Agency

208.883.7027

criddle@ci.moscow.id.us

<image001.png>

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Thursday, April 27, 2023 9:03 AM

To: Michael Ray <mray@ci.moscow.id.us>; Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Cody,
Just following up on this. Were you able to get the conversations that you needed to have?

Ben Merkle

President

New Saint Andrews College



On Apr 20, 2023 at 1:20 PM -0700, Benjamin Merkle <bmerkle@nsa.edu>, wrote:

Got it. Talk to you then.

Ben Merkle

President

New Saint Andrews College



On Apr 20, 2023 at 12:39 PM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Hi Ben,

Thank you for reaching out. I apologize for the delayed response. I'd like to discuss this a little further internally before formally responding. I'll get back with you next week.

Thanks,

Cody Riddle

Deputy City Supervisor, Community Development, City of Moscow

Executive Director, Moscow Urban Renewal Agency

208.883.7027

criddle@ci.moscow.id.us

<image001.png>

From: Benjamin Merkle <bmerkle@nsa.edu>
Sent: Thursday, April 13, 2023 8:47 AM
To: Michael Ray <mray@ci.moscow.id.us>; Cody Riddle <criddle@ci.moscow.id.us>
Subject: RE: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Cody,

I'm circling back to the Nuart question. I think that this past year has gone well. As I reported previously, we have placed our marketing, recruitment, fundraising, and the office for the Hale Institute in the Nuart offices. Whenever recruitment has had prospective students visit, they have met them at the south campus building, not at the Nuart. Any meetings with students that Hale Institute staff have are also conducted at the south campus. We have used the theater space as one would for typical theater use - non credit bearing gatherings that would be typical for a public theater - like if we have a concert or a drama performance or a public lecture, that is not credit bearing but the sort of thing that you would rent a downtown theater for and invite the public.

Anyhow, I think this has gone well and has been feasible for us. This next year we are being offered a longterm lease on this. And I don't want to sign if I'm not clear that this is all permitted.

This next year we will plan on the same kind of use with two exceptions. I would like to move my finance team over there. This would be my CFO, bookkeeper, and bursar. The only one of those people who would interact with students would be our bursar, who would in certain seasons need to meet with students about billing. So I would have the bursar conduct all student meetings at the South Campus building and not at the Nuart.

The second exception would be our theater use. I wouldn't change the kind of use at all, but we would be using it more frequently. This past year we were subleasing from Christ Church, who still had the primary use of the theater. And so we only had limited times that we could use it. If we take this longterm lease then we will have primary use of the theater and will increase how often we use it. This would be things like a movie night, more theater productions, etc. I would continue to not allow credit bearing activity to happen there. And I would make sure that our music conservatory operations stay at our north campus location (music lessons, etc). So we would work to keep all use of the theater as typical public theater type activities.

Thanks.

Ben Merkle

President

New Saint Andrews College



On Jul 20, 2022 at 11:46 AM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Hi Ben,

Thank you for the response. As Mike indicated, office use is permissible in the zone. It's any element of academic instruction, student counseling, gatherings, and similar activities that create a challenge from a zoning perspective. The tours you reference would fall into that category. That's more in line with what one would expect at a college. Those activities should originate and be conducted at one of the locations approved for academic use.

I hope this provides better clarification. Please let us know if you have further questions. We're happy to help.

Best,

Cody Riddle

Deputy City Supervisor, Community Development, City of Moscow

Executive Director, Moscow Urban Renewal Agency

208.883.7027

criddle@ci.moscow.id.us

<image001.png>

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Tuesday, July 19, 2022 6:43 PM

To: Michael Ray <mray@ci.moscow.id.us>; Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Cory,

That is tricky. Given the email I already received from Michael, I have moved ahead on renting this.

With regard to recruitment, by definition this is not with students. It serves prospective students and their families. This would be the function of one of the four offices, so 1/4 of the use. And the bulk of their contact is via phone, email, etc. We would have prospective students visit. And we have probably a half dozen visit weekends over the course of the year where students would gather at that office.

Ben Merkle

President

New Saint Andrews College



On Jul 19, 2022, 5:16 PM -0700, Cody Riddle <criddle@ci.moscow.id.us>, wrote:

Hi Ben,

I wanted follow up on this, as it still sounds like an integral part of the college. I'm specifically wondering if you can tell us more about the recruiting component mentioned below. Can you expand on that for us? I envision students coming and going, perhaps for tours or visits.

Any clarification you can provide would be appreciated.

Thanks,

Cody Riddle

Deputy City Supervisor, Community Development, City of Moscow

Executive Director, Moscow Urban Renewal Agency

208.883.7027

criddle@ci.moscow.id.us

<image001.png>

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Tuesday, July 12, 2022 6:38 AM

To: Michael Ray <mray@ci.moscow.id.us>

Cc: Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Got it. Yes, our registrar and other student services would stay at the South Campus. So there would not be student counseling here. Also, we may still put the Hale Institute here. Our Director of the Inst teaches two electives each year. But those lectures and recitations would happen at either the North or South Campus, not in the Nuart space.

Ben Merkle

President

New Saint Andrews College



On Jul 11, 2022, 2:43 PM -0700, Michael Ray <mray@ci.moscow.id.us>, wrote:

Hi Ben,

Thanks for the update, glad you are able to make this plan work. We don't see an issue with your new plan, so long as activities like student counseling remain at a separate location, which it sounds like they would. If anything else changes feel free to reach out and discuss.

Thanks,

Mike

Mike Ray, AICP

Planning Manager

City of Moscow

504 S. Washington Street

Moscow, ID 83843

mray@ci.moscow.id.us

(208) 883-7008

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Wednesday, July 6, 2022 5:56 PM

To: Michael Ray <mray@ci.moscow.id.us>

Cc: Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Mike,

Thanks for this and thanks for the meeting.

I went back to the drawing board to think through how we could make use of that space inside of the zoning constraints. I'm going to keep our Conservatory operations in the North Campus for the moment to keep things straightforward. We are planning now to move our development team into the Nuart space. This team consists of our marketing, fundraising, and recruitment offices. They are pretty much just business offices and do not interact significantly with the student body. I think we would probably just be subleasing from Christ Church.

Thanks very much for your help.

Ben Merkle

President

New Saint Andrews College



On Jul 5, 2022, 4:30 PM -0700, Michael Ray <mray@ci.moscow.id.us>, wrote:

Ben, you can find the relevant criteria and standards for a CUP on page 4 of the following link:

<https://www.ci.moscow.id.us/DocumentCenter/View/1291/Chapter-08---Appeals-Variances-Conditional-and-Special-Uses-PDF>

Let me know if you need anything further.

Thanks,

Mike

Mike Ray, AICP

Planning Manager

City of Moscow

504 S. Washington Street

Moscow, ID 83843

mray@ci.moscow.id.us

(208) 883-7008

From: Michael Ray <>

Sent: Thursday, June 30, 2022 8:54 AM

To: 'Benjamin Merkle' <bmerkle@nsa.edu>

Cc: Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Use of the Nuart Theatre

Great, see you Tuesday at 4pm. Have a good 4th of July weekend.

Mike

Mike Ray, AICP

Planning Manager

City of Moscow

504 S. Washington Street

Moscow, ID 83843

mray@ci.moscow.id.us

(208) 883-7008

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Thursday, June 30, 2022 8:50 AM

To: Michael Ray <mray@ci.moscow.id.us>

Cc: Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Mike,

Hah, yes, the 4th won't work. Let's do Tuesday at 4.

Ben Merkle

President

New Saint Andrews College



On Jun 30, 2022, 8:07 AM -0700, Michael Ray <mray@ci.moscow.id.us>, wrote:

Ben, Monday is the 4th of July, does Tuesday work? We have availability at 10am or 4pm.

Mike Ray, AICP

Planning Manager

City of Moscow

504 S. Washington Street

Moscow, ID 83843

mray@ci.moscow.id.us

(208) 883-7008

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Wednesday, June 29, 2022 5:02 PM

To: Michael Ray <mray@ci.moscow.id.us>

Cc: Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Monday is fine. What availability do you have then?

Ben Merkle

President

New Saint Andrews College



On Jun 29, 2022, 4:24 PM -0700, Michael Ray <mray@ci.moscow.id.us>, wrote:

Hi Ben,

I'm going to be out of the office on Friday, but if there was a day that worked for you next week I should be able to make that work. As an alternative, Cody Riddle, who is my boss will be in the office on Friday and may be able to meet with you if that is the only day that you have available. We have been discussing this internally so he is up to speed on what the discussion has been up to this point. So, whatever works best for you, just let me know.

Thanks,

Mike

Mike Ray, AICP

Planning Manager

City of Moscow

504 S. Washington Street

Moscow, ID 83843

mray@ci.moscow.id.us

(208) 883-7008

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Wednesday, June 29, 2022 3:36 PM

To: Michael Ray <mray@ci.moscow.id.us>

Cc: Cody Riddle <criddle@ci.moscow.id.us>

Subject: RE: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Mike,

Would you have availability on Friday to discuss this?

Ben Merkle

President



On Jun 27, 2022, 3:04 PM -0700, Michael Ray <mray@ci.moscow.id.us>, wrote:

Hi Ben,

Thanks for the update on NSA's plans for the fall. If you're looking for a more formal determination on whether the plans would be consistent with the zoning in the Central Business District, could you please expand a little on your description of the uses? For the conservatory, just so that I understand correctly, these will be faculty members of NSA who will be conducting music and voice lessons to people in the community? There will be no academic credit that will be provided to anyone attending these lessons? Will there be faculty offices that will be located in the building, or will this just be space for music instruction? Regarding the choral and orchestral ensembles, is the composition of these ensembles NSA students who are performing as part of an academic curriculum, or is this just intended to be a musical performance space for ensembles made up of people in the community, or both?

Based upon my review of your description so far, it's likely that the use is still going to fall under the Educational Services sector in the use table, but will be located in the All Other Schools and Instruction (NAICS 6114-6117) section. The specific NAICS number would be 611610 and is listed as Fine Arts Schools with a description as establishments primarily engaged in offering instruction in the arts, including dance, art, drama, and music. I've included a link below to that sector for your reference. The All Other Schools and Instruction (NAICS 6114-6117) category is a conditional use permit in the CB Zone, so you would need to apply for a CUP and a public hearing before the Board of Adjustment would be conducted, who will then render a decision.

<https://www.census.gov/naics/?input=611610&year=2012&details=611610>

It would also be helpful if I could understand a little more about the Hale Institute and how it relates to NSA. The website for the Institute states that it carries out its mission both through course study within the college curriculum and in wider public discourse through publication and symposia. Is the intention to just locate the Institute's offices there without any academic instruction occurring on-site? Will there be students visiting the Institute's offices as part of academic instruction that is occurring elsewhere, such as an advisor? If you could please expand upon how the Institute relates to NSA and these academic related questions that would be helpful for me to understand. Looking at the non-academic use, it appears that the most similar sector in the use table would be Business, Professional, Political, Social Advocacy, Grantmaking, and Similar Organizations (NAICS 8132/8133/8139) which is a permitted use in CB. I just need to fully understand the academic function of the Institute and how it relates to this location to be able to give you any further guidance.

Thanks in advance and I look forward to hearing back from you,

Mike

Mike Ray, AICP

Planning Manager

City of Moscow

504 S. Washington Street

Moscow, ID 83843

mray@ci.moscow.id.us

(208) 883-7008

From: Benjamin Merkle <bmerkle@nsa.edu>

Sent: Friday, June 17, 2022 3:18 PM

To: Michael Ray <mray@ci.moscow.id.us>

Subject: Use of the Nuart Theatre

CAUTION: This message originated from outside the City of Moscow's network. Exercise caution when clicking links or opening attachments. If in doubt, please contact Information Systems at extension 7004.

Mike,

Just writing to let you know that NSA will likely be leasing the Nuart Theatre this fall. Our plan is to locate the non-academic operations of the Music Conservatory there for now. The conservatory offers instrument and voice lessons, choral and orchestral ensembles, etc. to the local community. We will also put the offices for the Hale Institute there. This is a law and policy think tank. I believe that this is all in keeping with the city's zoning requirements.

Thanks,

Ben Merkle

President

New Saint Andrews College

ROOTFOREST, LLC APPEAL

LUP2024-0017

**COMMUNITY DEVELOPMENT**

Ph: 208-883-7035

504 S. Washington Street

jfleischman@ci.moscow.id.us

For City Use Only

Date Received		4-15-24	
Dept	Fee Type	Fees	Paid
CDV	Application Fee	\$281.00	4/15/24
Receipt Number		LUP2024-00	

APPLICATION FOR APPEAL (MCC 4-8-2 and 4-8-5)

(Please type or print plainly with blue ink.)

I, BRENDA VON WANDRUSZKA for ROOTFOREST LLC hereby appeal the decision of the:

Zoning Administrator



Board of Adjustment

Planning & Zoning
CommissionFile Number: _____ Address/Project: 414 S MAIN STREET**Grounds for Appeal:**

Appeals are limited to applicant(s), city representatives, or an affected person as defined by MCC 4-1-6.D.3.

Decision violates statutory or constitutional
provisions.Decision was unsupported by substantial
evidence in the records or as a whole.

Decision exceeds statutory authority.

Decision was arbitrary, capricious, or an abuse
of discretion.

Decision was made upon unlawful procedure.

Appellant(s) must attach a letter detailing the following to complete the application:

Supporting materials requested herein may be included as attachments to the letter.

1. Describe the original request and the specific final decision being appealed.
2. If you are not the original applicant or city representative, describe the testimony or evidence you presented or provided prior to the final decision being made.
3. Provide evidence supporting the grounds for appeal.
4. Provide evidence that the applicant is an "affected person", as defined by MCC, if not the original applicant or city representative.

Once your appeal has been accepted and a public meeting is set, you have the right to request or waive an oral argument:Are you requesting the opportunity to provide an oral argument? YES (Y/N)**Appellant:**Name: BRENDA VON WANDRUSZKA for ROOTFOREST LLC Phone: 208 596 1951Address: 1827 DAVES AVE, MOSCOW ID 83843 Email: brendav@turbonet.com**Notes:**

1. The only topics which may be discussed during the hearing are the specific reasons for the appeal as stated in the application.
2. The appeal process follows specific procedures outlined in Moscow City Code Title 4, Chapter 8.

I understand this information is a public record and may be posted to a public website. I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Bvondruszka
Signature of AppellantAPRIL 14 2024
Date

APPEAL OF ZONING ADMINISTRATOR DECISION 2024-01 TO THE BOARD OF ADJUSTMENT

Appellants: Rootforest LLC (property owner) and New Saint Andrews College (tenant)

1. Rootforest LLC is appealing the Zoning Administrator Decision 2024-01 dated February 21, 2024, on the grounds that the:

Decision violates statutory or constitutional provisions.

Decision exceeds statutory authority.

APPEAL BY ROOTFOREST LLC

Rootforest, LLC. owns a building located in the Central Business District Zone (CBD) at 414 South Main Street, in Moscow, and it is our desire to continue to use the building as a community art gallery in the same way as it has been used since the 1980s. The Zoning Administrator (ZA) has approved the use of the building as both an Art Gallery and Retail Space because these are PERMITTED uses in the CBD.

Since the passing of Ordinance No 2019-07 all education in the City is confined to the University District and any educational use in any other district must be approved through a conditional use permit. There were of course many educational uses throughout the City at the time the Ordinance was passed, and these all continued as continuing nonconforming uses. The educational activities in our building at 414 S Main Street continued for the same reason, and like Moscow Contemporary, New Saint Andrews College has the right to continue that educational use and the ZA agrees.

However, we cannot obtain a Zoning Certificate from the City of Moscow because of the Zoning Administrator's determination that our new tenant New Saint Andrews College (NSA) will use some of the space in the building as offices and that this use will be an expansion of the college in the CBD.

Ordinance No 2019-07 is the tool used to deny us this property right. The adoption of this ordinance was the consequence of the City Council's directive to the Planning and Zoning Commission in April 2019 to prepare "an ordinance which would prohibit additional or expanded universities and colleges in the CBZD". There is, however, nothing in the Zoning Code that gives the City the authority to make such a restriction. There is nowhere in the code that limits the footprint or number of any particular use. In any event offices are a PERMITTED use by right in the CBD.

The City has adopted the North American Industries Classification System (NAICS) and NAICS defines universities and colleges very clearly as institutions that are involved in teaching academic courses and granting degrees at baccalaureate and graduate levels.

Moscow City Code Title 4 Chapter 3 permits a number of different uses in the CBD BY RIGHT. PERMITTED USES appear in a USE TABLE in Section 3-2 and if a "P" appears in a cell of that Use Table it "indicates that the use is allowed by right". The numbers in the second column refer to where definitions can be found in NAICS.

The Permitted uses in the CBD include : Beverage Manufacture; Antenna Towers; Civic and Social Organizations; Community/Neighborhood Center; Government Office Buildings; Health Care Services; Museum and Art Galleries; Public Parks and Recreation Facilities operated by local government; Religious Facilities; Telecommunication Services; Consumer Goods Rental; Laundries and Dry Cleaners; Personal Care Services; Retail Sales; Electronic and Precision Equipment Repair and Maintenance; Bed and

Breakfast Inns; Hotels and Motels; Market and Community Gardens; Archery and Shooting Ranges; Bowling Centers; Dance Halls; Fitness Centers; Miniature Golf Facilities; Movie Theatres; Riding Stables; Stadiums and Sports Arenas; Agencies, Brokerages and Other Insurance Related Activities; Broadcasting Studios; Business, Professional, Political, Social Advocacy; Commercial Banking; Credit Unions and Savings Institutions; Construction Contractor Services; Data Processing; Hosting and Related Services; Professional, Scientific and Technical Services (NAICS 541), Publishing Industries (except internet); Real Estate Services; Securities Commodity Contracts and Other Financial Investments; Software Publishers; Drinking Places; Restaurants, and also PROFESSIONAL SCIENTIFIC AND TECHNICAL SERVICES, (NAICS 541)

The Zoning Code gives property owners the right to rent their property to ANYONE who will USE it for any purpose that is LEGALLY PERMITTED in a particular zone and when that right is denied, the City is depriving a property owner of a fundamental property right. Like all property owners we have the right to USE our property and allow our tenants to USE our property in a lawful manner as allowed by the Zoning Code and this is a protection we are afforded by the United States and Idaho Constitutions.

Ordinance No 2019-07 cannot be used to deny us this property right and arguing that while the educational component of what the building will be used for is permitted, but that the building may have no office is an underhand way of preventing the gallery from operating at all. In order to operate the gallery, many staff people are needed and they will consist of a range of professionals with grant writing abilities, fund raising abilities, legal knowledge, accounting, and so on. They all need office space and it is not the City's business to monitor who the staff people are - the Zoning Code is after all a USE code and not a WHO code,

We do not argue that the City has the right under the police power to divide the City into zoning districts, decide what uses are allowed in each zoning district, and to restrict certain uses in those districts. However, the Zoning Code does not give the City the prerogative to decide WHO can use a property in a particular way. Furthermore, we do not believe that it was the intention of the City administration that adopted this Ordinance to prevent either NSA or the University of Idaho (U of I) from occupying and using properties for legally permitted uses in the CBD. This is evidenced by the fact that in 2021, two years after Ordinance 2019-07 was adopted, the City of Moscow sold a building they owned in the CBD to the U of I. At that time Gary Riedner told the Public Works/Finance Committee meeting on June 28, 2021 and then at the City Council Meeting on July 6, 2021 and again on August 2, 2021: that *"uses of right are allowed in the Central Business District"* and that the City did not *"see any issue with the proposed use"* and *"uses of right in the Central Business District..... seems to take care of the zoning issues"* and *"Those discussions as council knows there is a restriction on use of property in the Central Business District for educational purposes and the University of Idaho has been advised of that. We have been advised that they intend to use it as a gallery and a retail space, both of which are uses of right in the Central Business District"*. (See the attached transcripts).

As a result, the City Council correctly allowed the City of Moscow to sell a building they owned in the CBD to the U of I and to allow the university to USE it for purposes that are legally permitted in the CBD. The City should be consistent and afford us the same right by allowing us to rent our building to New Saint Andrews College to USE for all LEGALLY PERMITTED USES.

To prohibit the use of the property at 414 S Main Street for an explicitly permitted purpose, brings us to the conclusion that this prohibition is based on WHO the prospective tenants are, rather than WHAT the property will be used for. This amounts to a discriminatory practice that has no place in our town. We

cannot be complicit in an action that excludes a segment of the population on the basis of religious, or other cultural, considerations.

Chapter 1

GENERAL PROVISIONS

- Sec. 1-1: Title
- Sec. 1-2: Authority
- Sec. 1-3: Purpose
- Sec. 1-4: Adoption of
Comprehensive Plan
- Sec. 1-5: Scope of Zoning Code
- Sec. 1-6: Definitions
- Sec. 1-7: Nonconformities

Sec. 1-1. Title.

Title 4, Land Use Regulations, of the Code, the Chapters and subparts contained therein, and its appurtenant maps shall be known as the "Moscow Zoning Code." The words "the Zoning Code" or "this Zoning Code" shall mean all or any part of the Moscow Zoning Code.

Sec. 1-2. Authority.

This Zoning Code is adopted pursuant to the authority conferred by Chapter 65, Title 67 and Chapter 13, Title 50 of the Idaho Code and to the home rule authority of Idaho cities granted by Article 12, Section 2 of the Idaho Constitution and Section 302 of Title 50, Idaho Code. The City shall designate a Zoning Administrator who shall have all responsibilities required to assist the City to comply with Federal, State and Local statutes and ordinances related to zoning and land use planning, including but not limited to the laws in Idaho Code Title 67, Chapter 65, and the City Zoning Code.

(Ord. 2021-09, 07/19/2021)

Sec. 1-3. Purpose.

The provisions of this Zoning Code shall be applied to fulfill the following purposes:

- A. Promote the health, safety and general welfare of the Moscow community.
- B. Encourage the most appropriate use of land within the City's jurisdiction to protect the natural and human environment.
- C. Mitigate the effects of incompatible land uses upon neighborhoods, public

facilities, and the community as a whole.

- D. Provide for public improvements which are serviceable and durable and which provide for effective service delivery by all public agencies.
- E. Preserve the positive aspects of existing neighborhoods while improving the neighborhoods which have fallen into disrepair.
- F. Provide adequate public services and community amenities in newly developing neighborhoods.
- G. Further the goals of the enabling statutes which grant authority to the City to enact ordinances regulating land use and development.

Sec. 1-4. Adoption of Comprehensive Plan.

The Comprehensive Plan of the City of Moscow is hereby adopted by reference as the policy guide for the application of the provisions of this Title. The words "the Plan" or "this Plan" shall mean the Comprehensive Plan of the City of Moscow throughout this Title. One (1) copy of the Plan, as it now exists and may be subsequently amended, shall be retained by the Clerk, available for public inspection during regular City business hours.

(Ord. 2021-09, 07/19/2021)

Sec. 1-5. Scope of Zoning Code.

This Zoning Code shall apply to buildings, structures, and lands situated within the City and to those buildings, structures and lands hereafter annexed to the City, and to those buildings, structures and lands situated within the Area of City Impact. The regulations set forth in this Zoning Code for each zoning district shall be minimum standards and shall be applied uniformly to each class or kind of structure or land, particularly as follows:

- A. No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered except in conformity with all of

- the regulations herein specified for the zoning district in which it is located.
- B. No building or other structure shall hereafter be erected or altered:
1. to exceed the height or bulk as herein required; or
 2. to accommodate or house a greater number of families than herein allowed; or
 3. to have narrower or smaller rear yards, front yards, side yards, or other open spaces than herein required; or
 4. in any other manner contrary to the provisions of this Zoning Code.
- C. No part of a yard, open space, or off-street parking or loading space required in connection with any building or use for the purpose of complying with this Zoning Code, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building or use, unless otherwise provided herein.
- D. No yard or lot existing at the time of passage of this Zoning Code shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Zoning Code shall meet at least the minimum requirements established by this Zoning Code.
(Ord. 1402, 11/05/79; Res. 93-03, 02/01/93; Ord. 2018-07, 05/21/2018)

Sec. 1-6. Definitions.

For the purpose of this Zoning Code, certain words and terms used herein are defined as follows:

- A. All words used in the present tense include the future tense; all words in the plural number include the singular number, and all words in the singular number include plural number; unless the natural construction of the wording indicates otherwise. The word "lot" includes the word "plot"; the word "building" includes the word "structure"; and the word "shall" is mandatory and not directory. The word "used" shall be deemed also to include "designed, intended or arranged to be

used."

- B. Where applicable, uses have been named and defined using the 2012 North American Industry Classification System (NAICS) which is the standard used by the Federal government in classifying business establishments. The uses that are defined by NAICS will have an associated NAICS code in parenthesis following the named use (i.e., *Bowling Centers (NAICS 713950)*). In many cases, this Code has used an abbreviated definition, which is further defined using the 2012 NAICS Manual that is published on the United States Census Bureau website. Many NAICS subsectors include multiple industries that are included within the subsector. In some circumstances, certain industries have specifically been excluded from subsectors because of incompatibility with certain zoning districts.
- C. Unless otherwise specified, all distances shall be measured horizontally.
- D. Definitions used herein:
1. *Accessory Dwelling Unit.* A secondary dwelling unit that is accessory to a single family dwelling on a single lot, containing complete housekeeping facilities and which is added to, created within, or detached from the principal dwelling unit and subject to the Specific Use Standards of this Code.
 2. *Accessory Use.* A minor or second use for which a lot, structure or building is designed or employed in conjunction with but subordinate to its primary use. The term is synonymous with "secondary use."
 3. *Affected Person.* A person who shows to the City, by a preponderance of evidence, that such person has an interest which may be adversely affected by the issuance or denial of a permit authorizing development or by a decision of the City.
 4. *Agencies, Brokerages and Other Insurance Related Activities*

Chapter 3

PERMITTED LAND USES

- Sec. 3-1: Introduction of Land Use Table
- Sec. 3-2: Interpretation of Land Use Table
- Sec. 3-3: Authorized Uses
- Sec. 3-4: Land Use Table
- Sec. 3-5: Specific Use Standards
- Sec. 3-6: Limitations on Uses Table
- Sec. 3-7: Performance Standards

Sec. 3-1. Introduction of Land Use Table.

The Land Use Table within Section 3.4 below lists the uses allowed within all base zoning districts. Each of the listed uses is defined in City Code Section 4-1-6, *Definitions*.

(Ord. 2018-07, 05/21/2018)

Sec. 3-2. Interpretation of Land Use Table.

- A. **Permitted Uses.** "P" in a cell indicates that the use is allowed by right, without special conditions other than those imposed upon other uses by right in the district. Permitted uses are subject to all other applicable regulations of this Code.
- B. **Permitted Accessory Uses.** "PA" in a cell indicates that the use is allowed only as accessory or incidental to a permitted principal use. An accessory use is generally designed or employed in conjunction with but subordinate to its primary use.
- C. **Conditional Uses.** "C" in a cell indicates that in the respective zoning district the use is allowed only if reviewed and approved in accordance with the

procedures in City Code Section 4-8-4, Conditional Uses. Conditional Uses are subject to all other applicable regulations of this Code. A "C" designation does not constitute an authorization or assurance that such use will be permitted. Rather, each Conditional Use Permit application shall be evaluated against the relevant criteria and standards contained within City Code Section 4-8-4(B), and may be approved or denied as the findings indicate appropriate.

- D. **Uses Subject to Specific Requirements.** "Px", "PAx", or "Cx" in a cell indicates that the use is subject to specific requirements contained within footnotes at the end of the use table.
- E. **Prohibited Uses.** A blank cell indicates that the use is not permitted in the respective zoning district.

(Ord. 2018-07, 05/21/2018)

Sec. 3-3. Authorized Uses.

This Zoning Code is an exclusive zoning ordinance wherein the stated uses are the only uses which are permitted in each zoning district. Those uses not listed as permitted or conditionally permitted are not authorized. The question whether a specific use is encompassed by a listed use shall be subject to the Zoning Administrator's or designee's reasonable discretion. Further, if a proposed use is not specifically listed within the Land Use Table, the Zoning Administrator or designee shall make a determination as to the zoning classification into which such use should be placed, based upon the most comparable use listed within the table.

(Ord. 2018-07, 05/21/2018)

§ 3-4

TITLE 4 — ZONING CODE

§ 3-4

Sec. 3-4. Land Use Table.

LAND USE TABLE																
P = Permitted Use PA = Permitted Accessory Use C = Conditional Use Permit Blank = Not Permitted																
RESIDENTIAL USES	NAICS 2012 Code No.	AF	FR	SR	R-1	R-2	R-3	R-4	RO	NB	RTO	CB	GB	MB	I	UMC U
Dwellings in Residential Zones²																
Single Family (up to 4 unrelated individuals)		P	P	P	P	P	P	P								
Two Family							P	P								
Twinhome							P	P								
Townhouse ¹							P	P								
Single Family (up to 6 unrelated individuals)		C	C	C	C	C	C	C								
Multiple Family (3 or more units)								P								
Mobile Home Parks								P								
Dwellings in Commercial Zones																
Above or behind a commercial use or on a secondary street frontage		See above, Dwellings in Residential Zones								P	P	P/C ³	P	P	PA ⁴	P/C ³ P
On the ground floor on primary street frontage									P	C		C	C	C	PA ⁴	C P
Group Living																
Boarding House (occupied by owner, up to 6 boarders)		P	C	C	C	C	C	P								
Dormitories																
Fraternity, Sorority, and Cooperative Houses	721310							C								P
Accessory Uses																P
Accessory Buildings or Structures (up to 1,000 sq ft)		PA	PA	PA	PA	PA	PA ¹⁵	PA ¹⁵	PA							
Accessory Buildings or Structures (1,001 to 1,500 sq ft)		C	C	C	C	C	C	C	C							
Accessory Buildings or Structures (no size limitation)										PA	PA	PA	PA	PA	PA	PA
Accessory Dwelling Unit ¹		PA	PA	PA	PA	PA	PA	PA								
Accessory Home Occupations Type I ¹		PA	PA	PA	PA	PA	PA	PA	PA	PA		PA	PA	PA	PA	PA
Accessory Home Occupations Type II ¹		C	C	C	C	C	C	C	PA	PA		PA	PA	PA	PA	PA
Accessory Gardens		PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA
NON-RESIDENTIAL USES	NAICS 2012 Code No.	AF	FR	SR	R-1	R-2	R-3	R-4	RO	NB	RTO	CB	GB	MB	I	UMC U
Agricultural Uses																
Agriculture, Animal Production	112	P/C ¹⁰	C ⁵													P
Agriculture, Crop Production	111	P														P
Animals and Fowl (as permitted by City Code Title 10)		PA	PA	PA	PA	PA	PA	PA	PA							
Animal Slaughtering and Processing	31161	C														P
Gardens (Market and Community) no on-site retail sales ¹		P	P	P	P	P	P	P	P	P		P	P	P	P	P
With on-site retail sales ¹		P	P	C	C	C	C	C	P	P		P	P	P	P	P
Sawmills	321113	C													C	
Amusement and Recreation Facilities																
Archery/Shooting Ranges (indoor only)	713990											P	P	P	P	P
Bowling Centers	713950											P	P	P	P	P
Dance Halls	713990											P	P	P	P	P
Fitness Centers	713940									P		P	P	P	P	P
Golf Courses and Country Clubs	713910	C	C	C	C	C	C	C	C							P
Miniature Golf Facilities	713990											P	P	P	P	P
Movie Theaters	512131											P	P	P	P	P
Riding Stables	713990	C										P	P	P	P	P
Stadiums and Sports Arenas (Ice/Roller Rinks, Gymnasiums, Ballfields)	713940						C	C				P	P	P	P	P
Animal-Related Business																
Veterinary Services	541940	C	C						P	P			P	P	P	
Pet Care Services ¹	812910	C	C							P ¹⁰				P	P	
Financial, Technology, and Professional Services																
Agencies, Brokerages and Other Insurance Related Activities	5242							P ⁶	P	P	P	P	P	P	P	P
Broadcasting Studios	515										P	P	P	P	P	P
Business, Professional, Political, Social Advocacy, Grantmaking, and Similar Organizations	8132/8133/8139	C	C					P ⁶	P	P	P	P	P	P	P	P
Commercial Banking, Credit Unions, and Savings Institutions	522110/120/130											P	P	P		
Construction Contractor Services	238											P	P	P	P	P
Data Processing, Hosting, and Related Services	518								P	P	P	P	P	P	P	P
Professional, Scientific, and Technical Services	541							P ⁶	P	P	P ¹¹	P ¹¹	P	P	P	P
Publishing Industries (except Internet)	511											P	P	P	P	P
Real Estate Services	531							P ⁶	P	P	P	P	P	P	P	P
Securities, Commodity Contracts, and Other Financial Investments	523							P ⁶	P	P	P	P	P	P	P	P
Software Publishers	5112							P ⁶	P	P	P	P	P	P	P	P
Food and Beverage Service																
Coffee/Espresso Stand										P		C	C	P	C	P
Drinking Places (Alcoholic Beverages)	722410											P	P	P	P	P
Restaurants	72251								P ⁶	P		P	P	P	P	P

§ 3-4

TITLE 4 — ZONING CODE

§ 3-4

NON-RESIDENTIAL USES	NAICS 2012 Code No.	AF	FR	SR	R-1	R-2	R-3	R-4	RO	NB	RTO	CB	GB	MB	I	UMC	U
Manufacturing																	
Beverage Manufacturing	3121									C		P	P	P	P	P	
Manufacturing, Heavy															C		
Manufacturing, Light													C	P	P	C	
Aerospace Product and Parts Manufacturing	3364										P		C	P	P	C	
Computer and Electronic Product Manufacturing	334										P		C	P	P	C	
Electrical Equipment, Appliance, and Component Manufacturing	335										P		C	P	P	C	
Medical Equipment and Supplies Manufacturing	3391										P		C	P	P	C	
Pharmaceutical and Medicine Manufacturing	3254										P		C	P	P	C	
Public/Institutional Uses																	
Antenna Towers (new)		C	C	C	C	C	C	C	C	C		C	C	C	C	C	C
Co-Location ¹⁴		P	P	P	P	P	P	P	P	P		P	P	P	P	P	P
Cemeteries	812220	C	C	C	C	C	C	C	C	C				C			
Child Day Care Services ¹																	P
Family, 5 or fewer children		PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	P	
Group, 6 to 12 children		P	P	P	P	P	P	P	P	P	C	C	C	C	C	C	P
Small, 13 to 20 children		C	C	C	C	C	P	P	P	P	C	C	C	C	C	C	P
Large, 21 or more children		C	C	C	C	C	C	C	C	P	C	C	C	C	C	C	P
Civic and Social Organizations	813410											P	P	P			P
Community/Neighborhood Center		C	C	C	C	C	C	C	P	P		P	P	P			P
Correctional Institutions	922140													C	C		
Educational Services																	
Elementary and Secondary Schools ¹	6111	C	C	C	C	C	C	C	C	C			C	C	C	C	P
Colleges, Universities, and Professional Schools	6112/6113								C	C			C	C	C	C	P
All Other Schools and Instruction	6114-6117								C	C	C ¹⁶	C	C	P	C	C	P
Fairgrounds		C	C	C	C	C	C	C	C	C				C			
Funeral Homes and Funeral Services	81221								C	C	P		C	P	P		
Government Office Buildings		C	C	C	C	C	C	C	C	C	P		P	P	P	P	P
Health Care Services (Ambulatory) (excluding 624410)	621							P ⁸	P	P	P ⁸	P	P	P	P	P	P
Hospitals	622											C	P	C			P
Museums and Art Galleries	712110							C	C	P			P	P		P	P
Nursing and Residential Care Facilities	623			C	C	C	C	C	C	C			P	P			
Public Parks & Recreational Facilities (operated by local government) ⁷		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Public Service and Utility Facilities		C	C	C	C	C	C	C	C	C	C	C	C	C	P	C	P
Religious Facilities	813110	C	C	C	C	C	C	C	C	C	P		P	P	P	C	P
Telecommunications Services ¹	517							P ⁸	P	P	P	P	P	P	P	P	P
Retail and Personal Services																	
Consumer Goods Rental	5322									P		P	P	P	P	P	P
Laundries and Drycleaners	812310/ 812320									P		P	P	P	P	P	P
Personal Care Services	8121								P	P		P	P	P	P	P	P
Retail Sales (excluding 4411, 444, 447, & 453930)	44-45								PA	P	PA	P	P	P	P	P	P
Large Retail Establishment ¹																P	
NON-RESIDENTIAL USES																	
Storage Services																	
Self-Storage Facilities	531130	C	C				P ¹	P ¹	P ¹	P ¹				P	P		
Warehousing and Storage	493										PA ¹²			C	P		
Wholesale Uses	423										PA ¹²			C	P		
Temporary Uses¹													P	P	P	P	P
Vehicles and Equipment																	
Automobile and RV Dealers	4411											C	C	P	P		
Automotive Repair and Maintenance	8111											C	C	P	P		
Building Material Sales & Garden Equipment/Supplies	444													P	P		
Commercial and Industrial Machinery and Equipment Repair and Maintenance	811310													C	P		
Electronic and Precision Equipment Repair and Maintenance	8112								P	P		P	P	P	P		
Gasoline Stations	447											C	C	P	P		
Heavy Equipment Sales (manufactured home dealers, farm and garden equipment)	453930 423820													C	P		
Off-Street Parking Areas		PA	PA	PA	PA	PA	PA	PA/C	P	P	PA	PA	P	P	P	P	P
Parking Lots and Garages	812930								P	P		C	P	P	P	P	P
Personal and Household Goods Repair and Maintenance	8114									P		P	P	P	P	P	
Railroad Yards and General Freight Trucking	488210/4841														P		
Rental and Leasing Services (excluding 5322)	532											C	C	P	P		
Scrap Yards/Material Recycling	423930														C		
Visitor Accommodations																	
Bed and Breakfast Inns		P	P	C	C	C	C	P	P	P		P	P	P		P	
Hotels and Motels	721110											P	P	P		P	P
RV Parks and Campgrounds	721211	C	C					C					P	P	P		P

USE ELEMENTS & EXCEEDANCES TO BULK & DIMENSIONAL REQUIREMENTS	AF	FR	SR	R-1	R-2	R-3	R-4	RO	NB	RTO	CB	GB	MB	I	UMC	U
Drive-Through Facilities ¹											P/C ¹³	C	P		C	
Exceedance of maximum building height (for permitted non-residential uses)	C	C	C	C	C	C	C	C	C	C	C	C			C ¹⁷	

NOTES

¹ Subject to Specific Use Standards within Section 4-3-4 of this Zoning Code

² Only one principal dwelling permitted per building lot in AF, FR, SR, R-1, and R-2 Zones

³ Residential dwellings located on ground floor on secondary street frontages require a Conditional Use Permit in CB and UMC Zone

⁴ One dwelling unit per lot is allowed where accessory to a permitted principal use

⁵ Feedlots must be on at least 20 acres of land and associated buildings must be set back at least 500 ft from the nearest property line

⁶ Use shall not exceed 2,000 sq ft of office space

⁷ Including all public facilities operated by local government (including but not limited to parks, recreational facilities, and recycling centers)

⁸ Excluding Outpatient Care Centers, Home Health Care Services, and Other Ambulatory Health Care Services (NAICS 6214, 6216, and 6219)

⁹ Restaurants shall not exceed 1,500 sq ft in the RO Zone

¹⁰ Indoor kennels only

¹¹ Excluding Veterinary Services

¹² Indoor storage only

¹³ Drive-up windows permitted for financial institutions only; Conditional Use Permit is required for drive-up windows associated with all other uses in the CB Zone

¹⁴ Antenna shall not extend more than 18 ft above, and shall not project more than 8 ft horizontally away from the existing tower or support structure

¹⁵ Or 600 sq ft per dwelling unit in R-3 and R-4 Zones

¹⁶ Business Schools and Computer and Management Training, and Technical and Trade Schools only, as defined by NAICS code number 6114 and 6115, and excluding aviation and flight training instruction schools, modeling schools, nursing schools, cosmetology schools, and truck driving schools

¹⁷ Residential or commercial uses may obtain a Conditional Use Permit for exceedance of the maximum building height in the UMC Zone

¹⁸ Feedlots with up to 20 animals are permitted by right. Feedlots between 20 and 200 animals require a Conditional Use Permit

(Ord. 2018-07, 05/21/2018; 2019-07, 07/15/2019)

Sec. 3-5. Specific Use Standards.**A. Accessory Dwelling Units:**

1. **Applicability and Purpose.** These standards shall apply to Accessory Dwelling Units which are permitted by this Code. These standards are intended to help promote the benefits of Accessory Dwelling Units, while also preserving neighborhood character and creating predictability and certainty for established neighborhoods.

2. Specific Standards.

a. **General.** Accessory Dwelling Units must meet all applicable regulations for the zoning district in which they are located, except as otherwise expressly stated within this Section.

b. **Size.** The floor area of the Accessory Dwelling Unit may not exceed six hundred (600) square feet or forty percent (40%) of the gross floor area of the principal dwelling, whichever is less.

c. **Maximum Occupancy.** The number of persons allowed to reside within an Accessory Dwelling Unit shall be limited to two (2).

d. Owner Occupancy.

i. Prior to the issuance of a building permit for an Accessory Dwelling Unit, the property owner must record a deed restriction upon the property which states that the property owner will reside on the property, within either the principal dwelling or Accessory Dwelling Unit. The deed restriction must be approved by the City Attorney and shall be binding upon the heirs, assigns, and subsequent purchasers of the property.

ii. Owner occupancy means a property owner, as reflected in real property records, who makes his or her legal residence at the property, as evidenced by voter registration or similar means and actually resides at the property for more than six (6) months out of any given year. Owner occupancy may also include a named natural person with an ownership or benefit in a private trust, but shall not extend to corporate trusts.

iii. The Zoning Administrator may waive this requirement for temporary absences

Sector 61--Educational Services^T

The Sector as a Whole

The Educational Services sector comprises establishments that provide instruction and training in a wide variety of subjects. This instruction and training is provided by specialized establishments, such as schools, colleges, universities, and training centers. These establishments may be privately owned and operated for profit or not for profit, or they may be publicly owned and operated. They may also offer food and/or accommodation services to their students.

Educational services are usually delivered by teachers or instructors that explain, tell, demonstrate, supervise, and direct learning. Instruction is imparted in diverse settings, such as educational institutions, the workplace, or the home, and through diverse means, such as correspondence, television, the Internet, or other electronic and distance-learning methods. The training provided by these establishments may include the use of simulators and simulation methods. It can be adapted to the particular needs of the students, for example sign language can replace verbal language for teaching students with hearing impairments. All industries in the sector share this commonality of process, namely, labor inputs of instructors with the requisite subject matter expertise and teaching ability.

611 Educational Services^T

Industries in the Educational Services subsector provide instruction and training in a wide variety of subjects. The instruction and training is provided by specialized establishments, such as schools, colleges, universities, and training centers.

The subsector is structured according to level and type of educational services. Elementary and secondary schools, junior colleges, and colleges, universities, and professional schools correspond to a recognized series of formal levels of education designated by diplomas, associate degrees (including equivalent certificates), and degrees. The remaining industry groups are based more on the type of instruction or training offered, and the levels are not always as formally defined. The establishments are often highly specialized, many offering instruction in a very limited subject matter, for example ski lessons or one specific computer software application. Within the subsector, the level and types of training that are required of the instructors and teachers vary depending on the industry.

Establishments that manage schools and other educational establishments on a contractual basis are classified in this subsector if they both manage the operation and provide the operating staff. Such establishments are classified in the Educational Services subsector based on the type of facility managed and operated.

Excluded from this subsector are establishments primarily engaged in publishing educational software or other educational materials without providing instruction. These establishments are classified in Subsector 513, Publishing Industries. Establishments that manage schools and other educational establishments on a contract or fee basis without providing the operating staff are classified in Subsector 561, Administrative and Support Services. Establishments primarily engaged in providing vocational rehabilitation services and establishments primarily engaged in providing child care services are classified in Subsector 624, Social Assistance.

6111 Elementary and Secondary Schools^T

61111 Elementary and Secondary Schools

See industry description for 611110.

611110 Elementary and Secondary Schools

This industry comprises establishments primarily engaged in furnishing academic courses and associated course work that comprise a basic preparatory education. A basic preparatory education ordinarily constitutes kindergarten through 12th grade. This industry includes school boards and school districts.

Illustrative Examples:

Elementary schools

Parochial schools, elementary or secondary

^T—Canadian, Mexican, and United States industries are comparable.

High schools
Primary schools
Charter schools
Kindergartens

Military academies, elementary or secondary
Schools for the physically disabled, elementary or secondary

Cross-References.

- Establishments primarily engaged in providing care and early learning opportunities for infants and children and also offering pre-kindergarten, kindergarten, and/or before- or after-school educational programs are classified in Industry 624410, Child Care Services; and
- College-level military academies are classified in Industry 611310, Colleges, Universities, and Professional Schools.

6112 Junior Colleges^T

61121 Junior Colleges^T

See industry description for 611210.

611210 Junior Colleges

This industry comprises establishments primarily engaged in furnishing academic, or academic and technical, courses and granting associate degrees, certificates, or diplomas below the baccalaureate level. The requirement for admission to an associate or equivalent degree program is at least a high school diploma or equivalent general academic training. Instruction may be provided in diverse settings, such as the establishment's or client's training facilities, educational institutions, the workplace, or the home, and through diverse means, such as correspondence, television, the Internet, or other electronic and distance-learning methods. The training provided by these establishments may include the use of simulators and simulation methods.

Cross-References.

Establishments primarily engaged in providing technical training without offering academic courses are classified in Industry 61151, Technical and Trade Schools.

6113 Colleges, Universities, and Professional Schools^T

61131 Colleges, Universities, and Professional Schools^T

See industry description for 611310.

611310 Colleges, Universities, and Professional Schools

This industry comprises establishments primarily engaged in furnishing academic courses and granting degrees at baccalaureate or graduate levels. The requirement for admission is at least a high school diploma or equivalent general academic training. Instruction may be provided in diverse settings, such as the establishment's or client's training facilities, educational institutions, the workplace, or the home, and through diverse means, such as correspondence, television, the Internet, or other electronic and distance-learning methods. The training provided by these establishments may include the use of simulators and simulation methods.

Illustrative Examples:

Colleges (except junior colleges)
Theological seminaries offering baccalaureate or graduate degrees
Military academies, college-level

Universities
Professional schools (e.g., business administration, dental, law, medical)

^T—Canadian, Mexican, and United States industries are comparable.

census.gov/naics

ORDINANCE NO. 2019 – 07

AN ORDINANCE OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE AMENDMENT OF MOSCOW CITY CODE TITLE 4, CHAPTER 3; PROVIDING FOR AMENDMENTS TO THE LAND USE TABLE FOR EDUCATIONAL SERVICES, HEALTH CARE SERVICES, SELF-STORAGE FACILITIES, COMMERCIAL AND INDUSTRIAL MACHINERY AND EQUIPMENT REPAIR AND MAINTENANCE, OFF-STREET PARKING AREAS, AND PARKING LOTS AND GARAGES; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE BE DEEMED SEVERABLE; AND PROVIDING FOR THIS ORDINANCE TO BE IN FULL FORCE AND EFFECT FROM THE DATE OF ITS PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, on August 20, 2018, City Council directed staff to develop a survey designed to gauge the perceptions of the community, property owners, and businesses operating within the Central Business Zoning District (CBZD) regarding current public/private universities and colleges within the CBZD, and additional or expanded public/private universities and colleges within the CBZD; and

WHEREAS, the survey was then sent out in the fall of 2018 to CB property and business owners as well as a random sample of the community; and

WHEREAS, the results of the survey were then discussed at the City Council meeting on April 1, 2019 and the Council then directed the Planning and Zoning Commission to prepare an ordinance which would prohibit additional or expanded universities and colleges in the CBZD; and

WHEREAS, the Planning and Zoning Commission then prepared the proposed ordinance which would eliminate certain educational services as permitted uses in the CBZD; and

WHEREAS, the Commission also reviewed other uses which staff has encountered challenges with in the past year and expanded the ordinance to include additional amendments to the land use table;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MOSCOW, IDAHO, AS FOLLOWS:

SECTION 1: That Moscow City Code Title 4, Chapter 3 be amended as follows:

• • •

Sec. 3-4. Land Use Table.

LAND USE TABLE																			
P = Permitted Use				PA = Permitted Accessory Use				C = Conditional Use Permit				Blank = Not Permitted							
RESIDENTIAL USES			NAICS 2012 Code No	AF	FR	SR	R-1	R-2	R-3	R-4	RO	NB	RTO	CB	GB	MB	I	UMC	U
Dwellings in Residential Zones ¹																			
Single Family (up to 4 unrelated individuals)				P	P	P	P	P	P	P									
Two Family									P	P									
Twinhome									P	P									
Townhouse ¹									P	P									
Single Family (up to 6 unrelated individuals)				C	C	C	C	C	C	P									
Multiple Family (3 or more units)										P									
Mobile Home Parks										P									
Dwellings in Commercial Zones																			
Above or behind a commercial use or on a secondary street frontage				See above, Dwellings in Residential Zones							P	P		PC ³	P	P	PA ⁴	PC ³	P
On the ground floor on primary street frontage											P	C		C	C	C	PA ⁴	C	P
Group Living																			
Boarding House (occupied by owner, up to 6 boarders)				P	C	C	C	C	C	P									
Dormitories																			P
Fraternity, Sorority, and Cooperative Houses			721310							C									P
Accessory Uses																			
Accessory Buildings or Structures (up to 1,000 sq ft)				PA	PA	PA	PA	PA	PA ⁵	PA ⁵	PA								
Accessory Buildings or Structures (1,001 to 1,500 sq ft)				C	C	C	C	C	C	C	C								
Accessory Buildings or Structures (no size limitation)												PA	PA	PA	PA	PA	PA	PA	PA
Accessory Dwelling Unit ¹				PA	PA	PA	PA	PA	PA	PA									
Accessory Home Occupations Type I ¹				PA	PA	PA	PA	PA	PA	PA	PA	PA		PA	PA	PA	PA	PA	PA
Accessory Home Occupations Type II ¹				C	C	C	C	C	C	C	PA	PA		PA	PA	PA	PA	PA	PA
Accessory Gardens				PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA
NON-RESIDENTIAL USES			NAICS 2012 Code No	AF	FR	SR	R-1	R-2	R-3	R-4	RO	NB	RTO	CB	GB	MB	I	UMC	U
Agricultural Uses																			
Agriculture, Animal Production			112	P/C ¹⁰	C ⁵														P
Agriculture, Crop Production			111	P															P
Animals and Fowl (as permitted by City Code Title 10)				PA	PA	PA	PA	PA	PA	PA	PA								
Animal Slaughtering and Processing			31161	C													P		P
Gardens (Market and Community) no on-site retail sales ¹				P	P	P	P	P	P	P	P	P		P	P	P	P	P	P
With on-site retail sales ¹				P	P	C	C	C	C	C	P	P		P	P	P	P	P	P
Sawmills			321113	C													C		
Amusement and Recreation Facilities																			
Archery/Shooting Ranges (indoor only)			713990											P	P	P	P	P	P
Bowling Centers			713950											P	P	P		P	P
Dance Halls			713990											P	P	P		P	P
Fitness Centers			713940									P		P	P	P		P	P
Golf Courses and Country Clubs			713910	C	C	C	C	C	C	C	C								P
Miniature Golf Facilities			713990											P	P	P		P	P
Movie Theaters			512131											P	P	P		P	P
Riding Stables			713990	C										P	P	P	P	P	P
Stadiums and Sports Arenas (Ice/Roller Rinks, Gymnasiums, Ballfields)			713940						C	C				P	P	P		P	P
Animal-Related Business																			
Veterinary Services			541940	C	C						P	P			P	P	P		
Pet Care Services ¹			812910	C	C							P ¹⁰				P	P		
Financial, Technology, and Professional Services																			
Agencies, Brokerages and Other Insurance Related Activities			5242							P ⁶	P	P	P	P	P	P		P	
Broadcasting Studios			515										P	P	P	P		P	
Business, Professional, Political, Social Advocacy, Grantmaking, and Similar Organizations			8132/8133/ 8139	C	C					P ⁶	P	P	P	P	P	P		P	
Commercial Banking, Credit Unions, and Savings Institutions			522110/120/ 130											P	P	P			
Construction Contractor Services			238											P	P	P	P	P	
Data Processing, Hosting, and Related Services			518								P	P	P	P	P	P	P	P	P
Professional, Scientific, and Technical Services			541							P ⁶	P	P	P ¹¹	P ¹¹	P	P	P	P ¹¹	P
Publishing Industries (except Internet)			511										P	P	P	P	P	P	P
Real Estate Services			531							P ⁶	P	P	P	P	P	P		P	
Securities, Commodity Contracts, and Other Financial Investments			523							P ⁶	P	P	P	P	P	P		P	
Software Publishers			5112							P ⁶	P	P	P	P	P	P	P	P	
Food and Beverage Service																			
Coffee/Espresso Stand												P		C	C	P		C	P
Drinking Places (Alcoholic Beverages)			722410											P	P	P		P	P
Restaurants			72251								P ⁶	P		P	P	P		P	P

NON-RESIDENTIAL USES		NAICS 2012 Code No.	AF	FR	SR	R-1	R-2	R-3	R-4	RO	NB	RTO	CB	GB	MB	I	UMC	U
Manufacturing																		
Beverage Manufacturing		3121									C		P	P	P	P	P	
Manufacturing, Heavy																C		
Manufacturing, Light																		
Aerospace Product and Parts Manufacturing		3364										P		C	P	P	C	
Computer and Electronic Product Manufacturing		334										P		C	P	P	C	
Electrical Equipment, Appliance, and Component Manufacturing		335										P		C	P	P	C	
Medical Equipment and Supplies Manufacturing		3391										P		C	P	P	C	
Pharmaceutical and Medicine Manufacturing		3254										P		C	P	P	C	
Public/Institutional Uses																		
Antenna Towers (new)			C	C	C	C	C	C	C	C	C		C	C	C	C	C	C
Co-Location ¹⁴			P	P	P	P	P	P	P	P	P		P	P	P	P	P	P
Cemeteries		812220	C	C	C	C	C	C	C	C					C			
Child Day Care Services ¹																		P
Family, 5 or fewer children			PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	PA	P	
Group, 6 to 12 children			P	P	P	P	P	P	P	P	P	C	C	C	C	C	P	
Small, 13 to 20 children			C	C	C	C	C	P	P	P	P	C	C	C	C	C	P	
Large, 21 or more children			C	C	C	C	C	C	C	C	P	C	C	C	C	C		
Civic and Social Organizations		813410											P	P	P		C	P
Community/Neighborhood Center			C	C	C	C	C	C	C	P	P		P	P	P			P
Correctional Institutions		922140														C		
Educational Services		61+	E ¹⁰	E ¹⁰	E ¹⁰	E ¹⁰	E ¹⁰	E ¹⁰	E	E	E	E ¹⁰	E	E	E	E	E	P
Elementary and Secondary Schools ¹		6111	C	C	C	C	C	C	C	C	C			C	C	C	C	P
Colleges, Universities, and Professional Schools		6112/6113							C	C	C			C	C	C	C	P
All Other Schools and Instruction		6114-6117							C	C	C	C ¹⁰	C	C	P	C	C	P
Fairgrounds			C	C	C	C	C	C	C	C					C			
Funeral Homes and Funeral Services		81221							C	C	P		C	P	P			
Government Office Buildings			C	C	C	C	C	C	C	C	P		P	P	P	P	P	P
Health Care Services (Ambulatory) (excluding 624410)		621							P ⁶	P	P	P ⁶	P	P	P	P	P	P
Hospitals		622											C	P	C			P
Museums and Art Galleries		712110							C	C	P		P	P	P		P	P
Nursing and Residential Care Facilities		623			C	C	C	C	C	C				P	P			
Public Parks & Recreational Facilities (operated by local government) ⁷			P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Public Service and Utility Facilities			C	C	C	C	C	C	C	C	C	C	C	C	C	P	C	P
Religious Facilities		813110	C	C	C	C	C	C	C	C	P		P	P	P		C	P
Telecommunications Services ¹		517							P ⁶	P	P	P	P	P	P	P	P	
Retail and Personal Services																		
Consumer Goods Rental		5322									P		P	P	P	P	P	P
Laundries and Drycleaners		812310/ 812320									P		P	P	P	P	P	P
Personal Care Services		8121								P	P		P	P	P	P	P	P
Retail Sales (excluding 4411, 444, 447, & 453930)		44-45								PA	P	PA	P	P	P	P	P	P
Large Retail Establishment ¹															P	P		
NON-RESIDENTIAL USES																		
Storage Services																		
Self-Storage Facilities		531130	C	C											C	P		
Warehousing and Storage		493										PA ¹²			C	P		
Wholesale Uses		423										PA ¹²			C	P		
Temporary Uses¹													P	P	P	P	P	
Vehicles and Equipment																		
Automobile and RV Dealers		4411											C	C	P	P		
Automotive Repair and Maintenance		8111											C	C	P	P		
Building Material Sales & Garden Equipment/Supplies		444													P	P		
Commercial and Industrial Machinery and Equipment Repair and Maintenance		811310													C	P		
Electronic and Precision Equipment Repair and Maintenance		8112								P	P		P	P	P	P		
Gasoline Stations		447											C	C	P	P		
Heavy Equipment Sales (manufactured home dealers, farm and garden equipment)		453930 423820													C	P		
Off-Street Parking Areas			PA	PA	PA	PA	PA	PA	PA	P	P	PA	PA	P	P	P	P	P
Parking Lots and Garages		812930	PA	PA	PA	PA	PA	PA	PA	P	P	PA	PA	P	P	P	P	P
Personal and Household Goods Repair and Maintenance		8114									P		P	P	P	P	P	
Railroad Yards and General Freight Trucking		488210/4841																
Rental and Leasing Services (excluding 5322)		532											C	C	P	P		
Scrap Yards/Material Recycling		423930														C		
Visitor Accommodations																		
Bed and Breakfast Inns			P	P	C	C	C	C	P	P	P		P	P	P		P	
Hotels and Motels		721110											P	P	P		P	P
RV Parks and Campgrounds		721211	C	C					C					P	P	P		P

USE ELEMENTS & EXCEEDANCES TO BULK & DIMENSIONAL REQUIREMENTS	AF	FR	SR	R-1	R-2	R-3	R-4	RO	NB	RTO	CB	GB	MB	I	UMC	U
Drive-Through Facilities ¹											P/C ¹³	C	P		C	
Exceedance of maximum building height (for permitted non-residential uses)	C	C	C	C	C	C	C	C	C	C	C	C			C ¹⁷	
NOTES																
¹ Subject to Specific Use Standards within Section 4-3-4 of this Zoning Code																
² Only one principal dwelling permitted per building lot in AF, FR, SR, R-1, and R-2 Zones																
³ Residential dwellings located on ground floor on secondary street frontages require a Conditional Use Permit in CB and UMC Zone																
⁴ One dwelling unit per lot is allowed where accessory to a permitted principal use																
⁵ Feedlots must be on at least 20 acres of land and associated buildings must be set back at least 500 ft from the nearest property line																
⁶ Use shall not exceed 2,000 sq ft of office space																
⁷ Including all public facilities operated by local government (including but not limited to parks, recreational facilities, and recycling centers)																
⁸ Excluding Outpatient Care Centers, Home Health Care Services, and Other Ambulatory Health Care Services (NAICS 6214, 6216, and 6219)																
⁹ Restaurants shall not exceed 1,500 sq ft in the RO Zone																
¹⁰ Indoor kennels only																
¹¹ Excluding Veterinary Services																
¹² Indoor storage only																
¹³ Drive-up windows permitted for financial institutions only, Conditional Use Permit is required for drive-up windows associated with all other uses in the CB Zone																
¹⁴ Antenna shall not extend more than 18 ft above, and shall not project more than 8 ft horizontally away from the existing tower or support structure																
¹⁵ Or 600 sq ft per dwelling unit in R-3 and R-4 Zones																
¹⁶ Business Schools and Computer and Management Training, and Technical and Trade Schools only, as defined by NAICS code number 6114 and 6115, and excluding aviation and flight training instruction schools, modeling schools, nursing schools, cosmetology schools, and truck driving schools																
¹⁷ Residential or commercial uses may obtain a Conditional Use Permit for exceedance of the maximum building height in the UMC Zone																
¹⁸ Feedlots with up to 20 animals are permitted by right. Feedlots between 20 and 200 animals require a Conditional Use Permit																
¹⁹ Elementary Schools, Secondary Schools, and Other Schools and Instruction only, as defined by NAICS code number 6111 and 6116																

...

SECTION 2: SEVERABILITY. Provisions of this Ordinance shall be deemed severable and the invalidity of any provision of this Ordinance shall not affect the validity of remaining provisions. The remaining sections of Title 4 shall be in full force and effect.

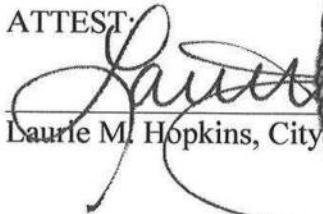
SECTION 3: EFFECT ON OTHER ORDINANCES. Where the definitions contained in this Ordinance are in conflict with relevant portions of the City of Moscow, Idaho, Municipal Code, the definitions contained within those portions of the Moscow Municipal Code will be unaffected until such time, if any, as they are amended to be consistent with this Ordinance.

SECTION 4: EFFECTIVE DATE. This Ordinance shall be effective upon its passage, approval, and publication according to law.

PASSED by the City Council and APPROVED by the Mayor this 15th day of July, 2019.


Bill Lambert, Mayor

ATTEST:


Laurie M. Hopkins, City Clerk



From gmail:

<https://mail.google.com/mail/u/1/?ogbl#sent/KtbxLwgswrbtJJtxfTqxGcktnWmnsbhdBB>

1) Public Works/Finance (preliminary meeting to Moscow City Council) June 28, 2021. Begin at minute 17:45.

<https://www.youtube.com/watch?v=4iaSa1TSlo4&t=356s1>

Transcription:

Gina Taruscio: "Will you talk about the conditional use permit and the educational institutions in the Central Business District?"

Gary Riedner: "That was a question that we talked about early on and the University of Idaho indicated and you probably saw President Green's press release last week indicating that the intent of the use is to use it for the Prichard Art Gallery in a new location for the Prichard Art Gallery. Community development indicates that art galleries are use right in the Central Business District and it exists there now. The U of I has been advised and shown them the code as what you can use it for and maybe Tony can address that but that was that discussion was aired out early on in the discussions."

Gina: "I just think that that would be a good clarification I want to make a clarification ownership by and educational institution zoning is about use. It's not about ownership, so we don't see any issue with the proposed use that the U of I has indicated they want to use for."

(Note: The following section is a summary and not a direct quote—You may want to listen to the fiscal reasoning for buying rather than leasing.)

Tony Broyles Special Assistant to the President for Strategic Initiatives (from U of I) talks about the gallery already being downtown. They had been leasing a space. Now they can buy and avoid leasing...

2) City Council (regular meeting) July 6, 2021. Begin at minute 37:39

<https://www.youtube.com/watch?v=IQVrywlolFw&t=1717s>

Transcription:

Gary Riedner: "Now I know a concern at Committee was because the University of Idaho is an educational institution and there are restrictions on the use of facilities in downtown for educational purposes. Was the University of Idaho going to use it for educational purposes as Tony indicated during the Public Works/Finance Committee last week the university is purchasing it for a replacement for the Prichard Art Gallery and intends to use it as an art gallery and a retail space. Art galleries and retail spaces are uses of right in the Central Business District. So that seems to take care of the zoning issues and I know that Bill Belnap has had conversations with the University of Idaho on that as well."

3) City Council (regular meeting just before public hearing) August 2, 2021. Begin at minute 2:21:12.

<https://www.youtube.com/watch?v=wYLFbwFFIr8>

Transcription:

Brandy Sullivan: "How about the use of it as a gallery versus an educational institution?"

Gary Riedner: "Those discussions as council knows there is a restriction on use of property in the Central Business District for educational purposes and the University of Idaho has been

advised of that. We've been advised that they intend to use it as a gallery and a retail space both of which are uses of right in the Central Business District."

Here's the link to the article about Prichard that mentions they do "related educational programming."

<https://www.uidaho.edu/caa/galleries-centers-and-labs/prichard/about>

🏠 / COLLEGE OF ART AND ARCHITECTURE / GALLERIES, CENTERS & LABS
/ PRICHARD ART GALLERY / ABOUT

About the Gallery

The Prichard Art Gallery is an outreach entity of the University of Idaho College of Art and Architecture. Established in 1982, the gallery serves the community and the university year-round by presenting a comprehensive and balanced schedule of exhibitions.

The gallery opened its first downtown Moscow location at the corner of 5th and Main St. in the fall of 1986 as the result of an extensive remodeling project. University of Idaho Associate Professor of Architecture William Bowler designed the interior space and students of the Department of Architecture carried out the renovation as a design build class. The galleries were renovated in 2005 and the Children's Studio was renovated and expanded in 2012-2015. In 2024, the Prichard Art Gallery is moving to a new building, at 118 E 4th St., within the former police station. Remodeling will begin in early 2023 with a plan to open the new space in late 2024.

The Prichard Art Gallery serves students and faculty within the College of Art and Architecture as well as the university by providing important educational experiences. Additionally, the gallery welcomes over 17,000 visitors annually, including approximately 1,700 students from area and regional schools. Through exhibition programming, outreach and related educational programming, the gallery is dedicated to the cultural enrichment of the university community, the Palouse, the State of Idaho, and the Northwest region.

BENJAMIN MERKLE APPEAL

LUP2024-0017

**COMMUNITY DEVELOPMENT**

Ph: 208-883-7035

504 S. Washington Street

jfleischman@ci.moscow.id.us

For City Use Only

Date Received		4-15-24	
Dept	Fee Type	Fees	Paid
CDV	Application Fee	\$281.00	
Receipt Number		LUP2024-00	

APPLICATION FOR APPEAL (MCC 4-8-2 and 4-8-5)

(Please type or print plainly with blue ink.)

I, Benjamin R Merkle, hereby appeal the decision of the:

Zoning Administrator



Board of Adjustment

Planning & Zoning
CommissionFile Number: ZAD 2024-02 Address/Project: 414 S. Main St.**Grounds for Appeal:**

Appeals are limited to applicant(s), city representatives, or an affected person as defined by MCC 4-1-6.D.3.



Decision violates statutory or constitutional provisions.



Decision was unsupported by substantial evidence in the records or as a whole.



Decision exceeds statutory authority.



Decision was arbitrary, capricious, or an abuse of discretion.



Decision was made upon unlawful procedure.

Appellant(s) must attach a letter detailing the following to complete the application:

Supporting materials requested herein may be included as attachments to the letter.

1. Describe the original request and the specific final decision being appealed.
2. If you are not the original applicant or city representative, describe the testimony or evidence you presented or provided prior to the final decision being made.
3. Provide evidence supporting the grounds for appeal.
4. Provide evidence that the applicant is an "affected person", as defined by MCC, if not the original applicant or city representative.

Once your appeal has been accepted and a public meeting is set, you have the right to request or waive an oral argument:Are you requesting the opportunity to provide an oral argument? Y (Y/N)**Appellant:**Name: Benjamin R Merkle Phone: 208 301 1948
Address: 528 E 1st St. Email: bmerkle@nsa.edu**Notes:**

1. The only topics which may be discussed during the hearing are the specific reasons for the appeal as stated in the application.
2. The appeal process follows specific procedures outlined in Moscow City Code Title 4, Chapter 8.

I understand this information is a public record and may be posted to a public website. I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Signature of Appellant

Date

4/15/24

APPLICATION FOR APPEAL FROM BEN MERKLE, NEW SAINT ANDREWS COLLEGE

1. Describe the original request and the specific final decision being appealed.

On February 12, 2024, Brenda von Wandruska requested a determination as to whether or not the combination of uses of 414 S. Main Street as an art gallery, retail space, and second-floor business/administrative offices constituted an allowed use of the subject property. This request was to accommodate New Saint Andrews College as we have signed a lease to use that space.

On February 21, 2024, Brenda von Wandruska received Zoning Administrator Decision 2024-01 stating that the proposed use of the building at 414 S. Main Street by NSA as an art gallery with an accessory art instruction and retail space is a permitted use, so long as the operations of the gallery do not further the educational purposes of the college and do not include credit-bearing academic activities, but that the proposed administrative offices within the building would constitute a prohibited use under MCC Title 4, §3-2(E) and MCC Title 4, §3-4.

On March 1, 2024, Brenda von Wandruska and NSA President Ben Merkle met with Zoning Administrator Cody Riddle and Planning Manager Mike Ray as per MCC Title 4, §8-2(A) in order to present additional information pertinent to the Zoning Administrator's interpretation/administration of the Zoning Code for consideration and issuance of a new decision as to whether or not the combination of uses as proposed constituted an allowed use of the subject property prior to consideration of an appeal by the Board of Adjustment.

On March 21, 2024, the City issued Zoning Administrator Decision 2024-02 with the identical decision as above which is that the proposed use of the building at 414 S. Main Street by NSA as an art gallery with an accessory art instruction and retail space is a permitted use, so long as the operations of the gallery do not further the educational purposes of the college and do not include credit-bearing academic activities, but that the proposed administrative offices within the building would constitute a prohibited use under MCC Title 4, §3-2(E) and MCC Title 4, §3-4.

2. If you are not the original applicant or city representative, describe the testimony or evidence you presented or provided prior to the final decision being made.

I am not the original applicant, but the requested testimony or evidence that I read aloud to Cody Riddle and Mike Ray is included in the City's Zoning Administrator Decision 2024-02.

3. Provide evidence supporting the grounds for appeal.

Evidence supporting the grounds for appeal consists of a new written submission that follows below. All of what was included in the March 1, 2024, meeting with Cody Riddle and Mike Ray is included here, and it has been amplified with further information. This is the document that needs to be read in its entirety in order to understand my claim.

4. Provide evidence that the applicant is an “affected person”, as defined by MCC, if not the original applicant or city representative.

I, Ben Merkle, am an “affected person,” as defined by MCC Title 4, §8-2(A) because I would like to rent 414 S. Main Street to use as an art gallery with an accessory art instruction and retail space with second-story accessory administrative offices as a permitted use.

Appeal of Zoning Administrator Decision 2024-02

The City has determined that for New Saint Andrews College (NSA) **to move our Development offices (our advertising branch which we call Marketing, our fundraising/grant writing branch which we call Fundraising, and our Recruitment department) along with our Finance offices into the second floor of the gallery space located at 414 S. Main Street** would be an expansion of the college's educational use in the Central Business Zoning District (CB), which would be a prohibited use.

I would like to appeal this determination for the following four reasons:

First, the City has already permitted NSA to move these uses into the CB Zone in July of 2022. To now prohibit this use is "arbitrary, capricious, or an abuse of discretion" as stated in Moscow City Code Title 4, § 8-2(B)(e).

New Saint Andrews College currently has its Finance and Development offices in the front office portion of the Nuart Theater, a property on 516 S. Main Street in the CB Zone. NSA subleases these offices from Christ Church, which holds the lease on the entire building.

Before moving into that space, I had first proposed to move some of our Music Conservatory offices into this space. However, when I met with Planning Manager Mike Ray and Deputy City Supervisor Cody Riddle (Zoning Administrator) I was told that the instruction component of the music classes would mean that these needed to stay in our North Campus building. I then wrote the following email message to Mike Ray on July 6, 2022:

"I went back to the drawing board to think through how we could make use of that space inside of the zoning constraints. I'm going to keep our Conservatory operations in the North Campus for the moment to keep things straightforward. We are planning now to move our development team into the Nuart space. This team consists of our marketing, fundraising, and recruitment offices. They are pretty much just business offices and do not interact significantly with the student body. I think we would probably just be subleasing from Christ Church. Thanks very much for your help."

Mike Ray replied with the following email message on July 11, 2022:

"Hi Ben, Thanks for the update, glad you are able to make this plan work. **We don't see an issue with your new plan, so long as activities like student counseling remain at a separate location**, which it sounds like they would. If

anything else changes feel free to reach out and discuss.
Thanks, Mike. (emphasis added)

With this approval from the City Planner, I moved the approved offices into the Nuart Theater. Afterwards, I received an email message from Deputy City Supervisor Cody Riddle on July 20, 2022. Cody was concerned that the NSA Recruitment team might bring student tours into the Nuart building:

“Thank you for the response. As Mike indicated, **office use is permissible in the zone**. It’s any element of academic instruction, student counseling, gatherings, and similar activities that create a challenge from a zoning perspective. The tours you reference would fall into that category. That’s more in line with what one would expect at a college. Those activities should originate and be conducted at one of the locations approved for academic use.
I hope this provides better clarification. Please let us know if you have further questions. We’re happy to help.” (emphasis added)

Because of this concern, the college agreed to have all student tours take place at the NSA South Campus (405 S. Main Street) and not occur at the Nuart—a commitment that we have carefully kept ever since. We have posted a sign outside of the Nuart offices directing students to take all student business to the South Campus building. Clearly, in these two emails, Cody Riddle and Mike Ray both stated that NSA’s development offices are permitted uses in the CB Zone. What was prohibited was the expansion of the provision of instruction. We have been careful to respect this boundary.

In advance of taking any action, I was very transparent with the City about the moves that we were planning to make. I proactively went to the City offices before making any administrative office location changes to walk through the details of my plans. I had both Cody Riddle’s and Mike Ray’s explicit approval in the emails quoted above as well as in a number of in-person meetings.

Two of those in-person meetings took place from July 2022 through May 2023.

- On July 5, 2022, Mike Ray and Cody Riddle explained to me that at one point the University of Idaho had been looking to locate their finance department into the former Daily News building. There would have been no students, and the offices were purely financial. They said that having a college’s financial offices in the CB Zone would be a permitted use. I don’t cite this as a precedent for us. Simply to illustrate the logic that the City was then using.

- On May 3, 2023, Cody Riddle explained that ownership or rental of office space does not matter. It's not about who owns a building or who rents a building. It is the use that matters.

Zoning Administrator Decision 2024-02 even confirms that the City originally gave approval to these uses. "Without issuing an official determination, **the City indicated that offices were a permitted use in the CB Zone** so long as there is not any element of academic instruction, student, counselling, gatherings, or similar activities occurring on-site." (emphasis added).

Here the City concedes that it had previously approved of this use. However, in the above quote, the qualification is given "without issuing an official determination. . ." This statement is a bit misleading because it implies that an official determination had been possible but was not sought out. This is not the case. When I first began pursuing this matter with the City, I asked about how I was to get determinations from the City regarding zoning. Here is Mike Ray's answer on May 12, 2022, "**The process of the Zoning Administrator making a determination is an informal process that is not codified in our City Code.** These determinations are a fairly common occurrence and we request an email or letter explaining what the proposed use is." As Mike states, at this time it was an informal process, which involved sending an email, which I did. The formal process of responding with a Zoning Administrator Decision did not exist in City Code until Ordinance 2023-04 was passed on July 17, 2023, amending MCC Title 4, Ch. 8. Sec 8-2. **In other words, it would be impossible to have a formal determination prior to July 17, 2023, because, as Mike Ray explained, only informal processes existed up to that point.**

Therefore, the approvals received by New Saint Andrews via email on July 11, 2022, and July 20, 2022, were official approvals. They were informal, but official. To dismiss these as not official because they were not issued as Zoning Administrator Decisions is to fault them for not being able to time travel to the future to July 17, 2023.

In the fall of 2023, our CFO, who had been operating remotely, relocated to Moscow and we moved our finance offices into the Nuart offices, alongside the Development team (Marketing, Fundraising, and Recruitment). At the same time, we moved two offices from the Nuart to the South Campus building so that the addition of the finance office to the Nuart did not constitute any administrative expansion within the Nuart. It was simply a rearranging of the seating arrangement. At the same time that the CFO moved into the Nuart, NSA received an option to rent the theater space in that building as well. I was interested in using the theater for public events and not for any NSA classes. I again reached out to the City to discuss these plans.

In our initial correspondence, Cody's position was that the office use, including the finance office was fine. It was only the addition of the theater space that was problematic. On May 5, 2023, he explained, "**It's really the combination of uses, with the theater space, being used**

primarily in conjunction with, or as a component of the university Business, Professional, Political, Social Advocacy that's a concern."

He then followed up with his official determination, the very first Zoning Administrator Decision 2023-01. In this decision, Cody said, **"The individual use proposed in the building are generally allowed."** The problem was the adding of the theater. As he later writes **"The administrative offices, when combined with operation of the theater by the college, constitutes a prohibited use."** I wanted to be clear that our current offices, development and finance, were approved by the City and wrote to Cody asking for this to be clear.

I also followed up with Cody in an in-person meeting on May 8, 2023, during which he confirmed that the administrative offices, including the CFO, were approved and that **ZAD 2023-01 only prohibited the addition of the theater.**

However, in ZAD 2024-02, the City now claims that "It was later determined through Zoning Administrator Decisions 2023-01 and 2024-01 that finance offices that are a function of a College or University are not a permitted use in the CB Zoning District." This is false and an attempt to rewrite the City's earlier decision.

The City has already officially approved the New Saint Andrews offices that are currently operating in the Nuart Theater as permitted uses in the CB Zone. Now, as NSA asks to move the exact same offices one block north, we are being told that these uses are not permitted in the CB Zone—same exact offices, same exact uses, but now prohibited. To restate my first point, the City is being arbitrary, capricious, and exhibiting an abuse of discretion in its interpretation and application of the code.

Second, to move these offices into 414 S. Main does not expand educational use in the CB Zone because Educational Services are defined as the provision of instruction. The City's restriction of our offices being moved into this space is a decision that "exceeds statutory authority" as stated in Moscow City Code Title 4, § 8-2(B)(b).

NAICS Sector 61 (census.gov/naics) summarizes the thing that all educational uses hold in common— "All industries in the sector share this commonality of process, namely, labor inputs of instructor with the requisite subject matter expertise and teaching ability" (p. 509). Educational use, according to NAICS, is use that provides instruction.

Each of the subcategories under the NAICS definition of *Educational Services* describes permutations of instruction. Nowhere does the NAICS description of *Educational Services* include uses like the financial or development functions to support an educational institution. Even the final subcategory of *Educational Support Services* (611710), which initially sounds like

it might describe supporting uses like finance or development, turns out to simply describe providing materials for colleges—job training, research in cognitive development, and publishing educational materials such as tests and assessments. The NAICS definition of *Educational Services*, and all the varieties of ways in which it can appear, is quite extensive. And yet nowhere in that definition can anything be found that supports the City's attempt to massively expand the definition of *educational services*. This is the plain reading of the NAICS definition.

This definition of *educational services* was mutually understood when we first worked with the City on putting our offices in the Nuart. As Cody said in his email referenced above, **"As Mike indicated, office use is permissible in the zone. It's any element of academic instruction, student counseling, gatherings, and similar activities that create a challenge from a zoning perspective."**

In July of 2022, the City restricted its definition of *educational services* to direct instruction and working with students. We have consistently communicated with the City to ensure that we were abiding by that definition. And this is the definition of *educational use* that NSA is still maintaining as we look to move offices into 414 S. Main. Because NSA is not proposing to expand instruction, NSA is not looking to expand the use of *educational services* into the CB Zone.

NSA currently has two properties that offer *educational services*, our North and South Campus buildings where all instruction occurs. These two properties are each covered by a CUP that limits the North Campus building to 300 students and the South Campus building to 200 students. You can tell that we are not expanding *educational services* because moving our finance and development offices into 414 S. Main will not increase our number of permitted students, nor will it expand the locations where instruction will be given. We will only put expressly permitted uses in the gallery building.

The City is attempting to expand its definition of *educational services* beyond its previous definition. In addition to contradicting the City's earlier position, this interpretation does not fit with NAICS.

If the City believes that a service that supports a college must be zoned as a college itself, it would be difficult to explain how the University of Idaho was able to place its Office of Civil Rights and Investigations at 530 S. Asbury Street, which is in the CB Zone. This office does not serve the general public, but rather it exclusively serves the University of Idaho. And yet it did not need a CUP to be located within the CB Zone. Why? Because when considering that question, the City considered the kind of work that was done, not whom they served.

The *Educational Services* section of NAICS (NAICS 611) even mentions that educational services are often supported by uses which should be designated as a different sector, that is *administrative and support services* (NAICS 561). When you consult the NAICS description of *administrative and support services*, it gives this introductory description of the nature of sector: “Industries in the Administrative and Support Services subsector group establishments engaged in activities that support the day-to-day operations of other organizations. The processes employed in this sector (e.g., general management, personnel administration, clerical activities, cleaning activities) are often integral parts of the activities of establishments found in all sectors of the economy... The individual industries of this subsector are defined on the basis of the particular process that they are engaged in and the particular services they provide” (NAICS 561).

It is important to note several things:

- First, *Educational Services* 611 recognizes that schools will be supported by uses that are classified differently (most importantly, by *Administrative and Support Services* 561).
- Second, *Administrative and Support Services* 561 supply services that are “integral parts of the activities of establishments. . .” This means that these are often services that are essential.
- Third, Administrative and Support Services are defined by their specific use, not by the industry that they support, the industry to which their use is essential.

We see here that according to NAICS a use can be “integral” or essential, while still being classified differently than the industry that it is supporting. And the NAICS definition of *Educational Services* even acknowledges this. The City’s insistence that it must classify NSA finance and development functions as *Educational Services* is not just absent in NAICS, but is contradicted by NAICS.

According to Idaho Statute 67-6535, the City’s decision “shall be based upon standards and criteria which shall be set forth in the comprehensive plan, zoning ordinance or other appropriate ordinance or regulation of the city or county. Such approval standards and criteria shall be set forth in express terms in land use ordinances in order that permit applicants, interested residents and decision makers alike may know the express standards that must be met in order to obtain a requested permit or approval.” The “express terms” of the zoning code do not support the City’s decision. Rather, the City has created its own definition of the term *educational use*, in departure from NAICS’s definitions. In doing so, the City has exceeded its statutory authority.

Third, the City is smuggling consideration of ownership into a zoning code that should only restrict use. Once again, the City “exceeds statutory authority” as stated in Moscow City Code Title 4, § 8-2(B)(b).

Zoning code is supposed to govern what kind of activity is done, not who is doing the activity. But the City is arguing that if an administrative activity, such as doing payroll, supports an educational institution, then that financial activity essentially becomes an educational use. This argument smuggles ownership back into use, and it contradicts the City’s position that it clearly articulated when conveying the former police station to the University of Idaho, with the purpose of using that space as an art gallery and gift store. The City publicly argued to the contrary at three different times regarding a similar situation with the University of Idaho.

- **Public Works/Finance (preliminary meeting to Moscow City Council) June 28, 2021.**^[1]

Gary Riedner: "I want to make a clarification that ownership by an educational institution— zoning is about use. It's not about ownership. So, we don't see any issue with the proposed use that the U of I has indicated they want to use it for."

- **City Council (regular meeting) July 6, 2021.**^[2]

Gary Riedner: "Now I know a concern at Committee was because the University of Idaho is an educational institution and there are restrictions on the use of facilities in downtown for educational purposes. Was the University of Idaho going to use it for educational purposes? As Tony indicated during the Public Works/Finance Committee last week the university is purchasing it for a replacement for the Prichard Art Gallery and intends to use it as an art gallery and a retail space. Art galleries and retail spaces are uses of right in the Central Business District. So that seems to take care of the zoning issues and I know that Bill Belknap has had conversations with the U of I on that as well."

- **City Council (regular meeting just before public hearing) August 2, 2021.**^[3]

Brandy Sullivan: "How about the use of it as a gallery versus an educational institution?"

Gary Riedner: "Those discussions as council knows there is a restriction on use of property in the Central Business District for educational purposes and the University of Idaho has been advised of that. We've been advised that they intend to use it as a gallery and a retail space both of which are uses of right in the Central Business District."

This same principle was communicated to me when I first began working with the City. As Mike Ray wrote to me on May 12, 2022, **“You are correct in that the zoning districts determine what uses are permitted and ownership does not factor into whether a use is permitted or**

not.” We see clearly here that the City understands that zoning is not a matter of ownership, but of use. And if a use is a by right, permitted use, then it does not matter who the user is.

To be clear, the uses that NSA wants to put into this space all constitute uses that are expressly permitted uses in the CB Zone. All activities of our finance team are covered by “54121 Accounting, Tax Preparation, Bookkeeping, and Payroll Services.” Our Development Team activities are accurately summarized by “541810 Advertising Agency,” as well as by other related permitted uses in the CB Zone. All uses that will be located in 414 S. Main will be expressly permitted uses. But the City is arguing that these uses are transformed into educational activity when they are used to serve a college. This is smuggling ownership into use.

The City argues that activities like finance are more essential to the function of the college and therefore have to be considered as if they are educational activities. This is contrary to the City’s earlier position (as illustrated in my reason #1 above), is contrary to the NAICS definitions (as illustrated in my reason #2 above), and this forces the City into arbitrary and capricious decisions.

For instance, over the past several years, each one of the departments that is in question has been outsourced by the college to other companies. Our finance team was outsourced to the accounting firm Clifton, Larsen, and Allen from August 2019 through August 2021. Had this accounting firm been in Moscow, would their offices have been considered an educational use? NSA’s marketing was entirely outsourced to Canon Press from June 2020 to January 2022. Did Canon Press become an educational use during this contract? Our fundraising has outsourced much of its work to a company called Inquiry and Renegade. Do they need a CUP to operate in Moscow? If these uses were all essential to NSA, then how was it that I was able to outsource them?

And, consider this— if I rehired each of these outsourced companies to cover NSA’s finance and development departments once again, could these companies have their offices downtown while having NSA as a client? Yes. They could because they would be performing explicitly permitted uses. In fact, these companies could rent the upstairs of the NSA gallery space and have NSA as a client. And this would be permitted. But those exact same uses carried by a department of NSA, are somehow no longer evaluated by what they are doing but by who they are. The use is exactly the same. Everything is the same. The only thing that has changed is ownership. The City is smuggling ownership into use.

Now, we could run the same thought experiment with the City’s previous interpretation of use, where we restrict use to the actual use. Under that understanding, if NSA outsourced the teaching of our math classes to another company, a company located in a different building in the CB

Zone, then we would still be in violation of the restriction against the expanding of *educational services* in the CB Zone.

On the one hand, the City grants the distinction between ownership and use, while claiming to base the decision on use. NSA is asking to put uses in 414 S. Main that are expressly permitted in the CB Zone. But the City is saying that these uses are not permitted, not because of what is being done, but because of who is doing it. The City is smuggling consideration of ownership into a determination that is supposed to be solely about use. As Gary Riedner said, "I want to make a clarification that ownership by an educational institution— zoning is about use. It's not about ownership."

Fourth, the City is drawing arbitrary and contradictory lines that handicap and contort our operations. This most recent determination is "arbitrary, capricious, or an abuse of discretion" as stated in Moscow City Code Title 4, § 8-2(B)(e).

Currently, NSA is approved to operate administrative offices on the first and second floors of the Nuart Theater office space. We are also approved to operate a gallery and a gift store at 414 S. Main St. But, according to this decision, we are not allowed to move the offices that are already approved to operate on Main into the same building that the gallery occupies. The same functions, the same zoning district. They can all exist in the CB Zone. But they can't all exist in the same building. Does this make any sense? If the goal of the City is to restrict the expansion of *educational services* in the CB Zone, what sense does it make to require the college to spread out, rather than to be located in just one building?

The City should consider that the move NSA has proposed actually strengthens the CB Zone. It takes what are currently administrative offices that are on the first floor of a Main Street building and moves them to the second floor, above what will then be a public art gallery and retail space. Consider Moscow City Code's description of the CB Zone. **"To promote pedestrian use, unbroken, street-level, commercial frontage is encouraged in this Zoning District"** (MCC Title 4 §2-4(K)). If the goal of this zone is to promote pedestrian use and street-level commercial frontage, then the City's determination here works against that goal.

Due to the Board of Adjustment (Board of Hearing Examiners) serving a quasi-judicial function, it is important to consider prior precedent set by the Board. Formerly, the Board adjudicated in a similar situation when it considered the impact on the CB Zone ground floor/street level by Gritman Medical Park's University of Idaho WWAMI program's request to use a third-floor location. In the August 29, 2017 minutes documenting the Approval of Relevant Criteria and Standards for Gritman Medical Park's University of Idaho WWAMI educational institution, the following statement outlines that "Board members discussed revisions to address the proposal's negligible cumulative impact on existing educational institutions, **and [found] no effect on the**

total ground floor surface area available in the CB District.” This motion was moved by Comstock and seconded by Bush. It was approved unanimously.

The Relevant Facts and Conclusions section states that when U of I’s WWAMI was “added to the existing School/Daycare and Educational Institutional uses, the total land area dedicated to such uses would be **41,364 sf or 3.3% of the total CB land area.**” Similarly, NSA’s business offices would have no effect on the total ground floor surface area available in the CB District. The Board also found that the total land area dedicated to Educational Institutions “will not have an adverse impact to the availability of retail and office space in the CB District. Given that this proposal will occupy the third floor of the building, it will have no effect on the total ground floor surface area available in the CB District” (page 4 of 6). Similarly, NSA business offices on the second floor of a building in the CB will have no effect on the total ground floor surface area available.

Conclusion

According to the Land Use Table (Sec. 3-4 of Moscow City Code), Professional Services are a permitted use in the CB Zone, just as Museums and Art Galleries are a permitted use in the CB Zone. All of New Saint Andrews College’s intended uses for 414 S. Main fall expressly under these headings according to the NAICS definitions. NSA is entitled to all by-right uses in the CB Zone. To prohibit this right not only contradicts the City’s statements in emails, in person, at public meetings, in Zoning Administrator Decision 2023-01, and in the District Purposes section for the Central Business Zoning District (Moscow City Code, Title 4 §2-4(K)). The City’s decision in Zoning Administrator Decision 2024-02 regarding administrative offices within the building at 414 S. Main is arbitrary and capricious and exceeds the City’s statutory authority.

[1] <https://www.youtube.com/watch?v=4iaSa1TSIo4&t=356s1> (begin at minute 17:45)

[2] <https://www.youtube.com/watch?v=lQVrywIolFw&t=1717s> (begin at minute 37:39)

[3] <https://www.youtube.com/watch?v=wYLFbwFFlr8> (begin at minute 2:21:12)

Chapter 8

APPEALS, VARIANCES,
CONDITIONAL AND SPECIAL USES

- Sec. 8-1: Duties of the Board of Adjustment
- Sec. 8-2: Appeals of Zoning Administrator Decisions
- Sec. 8-3: Variances
- Sec. 8-4: Conditional Uses
- Sec. 8-5: Appeals to City Council
- Sec. 8-6: Ability of Use Permits to Assume Variance Functions

Sec. 8-1. Duties of the Board of Adjustment.

The Board of Adjustment shall have the authority to grant, in particular cases and subject to appropriate conditions and safeguards, conditional use permits and variances as authorized by this Zoning Code. The Board of Adjustment shall also have the authority to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Zoning Administrator in enforcement of this Zoning Code.

Sec. 8-2. Appeals of Zoning Administrator Decisions.

A. Appeals to the Board of Adjustment concerning the interpretation or administration of this Zoning Code by the Zoning Administrator may be made by any applicant, City representative or affected person thereby. Such appeal shall be made within thirty (30) days from the date the appellant first knew of or, with reasonable diligence, could have known of such interpretation or administration of the Zoning Code by the Zoning Administrator. An appeal shall be made by filing with the Zoning Administrator a written notice specifying the grounds thereof. Should the appellant acquire additional information pertinent to the Zoning Administrator's interpretation or administration of the Zoning Code, the appellant shall present the additional

information to the Zoning Administrator for consideration and issuance of a new decision prior to consideration of an appeal by the Board of Adjustment.

- B. The Board of Adjustment shall fix a reasonable time for the consideration of the appeal within thirty (30) days of the receipt of notice of appeal by the Zoning Administrator. Consideration of the appeal shall be pursuant to the procedures contained herein. At the consideration on the appeal, the appellant and any affected person may appear in person or by agent or attorney.
 - 1. Grounds upon which an appeal to the Board of Adjustment may be made following a final decision of the Zoning Administrator:
 - a. Decision violates statutory or constitutional provisions;
 - b. Decision exceeds statutory authority;
 - c. Decision was made upon unlawful procedure;
 - d. Decision was unsupported by substantial evidence in the records or as a whole; or
 - e. Decision was arbitrary, capricious, or an abuse of discretion.
 - 2. Scope of Appeal. The appeal shall be limited to the issues raised in the written notice of appeal, which shall specifically state the allowed grounds upon which the appeal is being made to the Board of Adjustment as provided herein. The appellant must indicate in the appeal whether they are requesting oral argument before the Board of Adjustment.
 - 3. Record. The Zoning Administrator shall provide the Zoning Board of Adjustment all documentation, information, City ordinances, and records considered by the Zoning Administrator in making their final decision. New information that was not considered by the Zoning Administrator shall not be provided to or considered by the Zoning Board of Adjustment.
 - 4. Public Meeting. Upon receipt of the complete Record, City Clerk will notice

the matter for consideration before the Zoning Board of Adjustment as a noticed public meeting.

5. If no oral argument is requested, City Staff will introduce the appeal, and then the Board of Adjustment may ask questions of the Appellant and City Staff and then the Board of Adjustment will conduct its deliberations.

6. If oral argument is requested, the process for the Zoning Board of Adjustment to hear the appeal will proceed as follows:

a. Staff Introduction of Appeal. City staff shall provide an introduction of the facts pertaining to the appeal, the procedure followed by the Zoning Administrator, and answer questions about the content of the established Record.

b. Appellant Argument. Appellant will be allowed to argue the issues presented in the appeal. The time allowed for argument is set by the Chair of the Zoning Board of Adjustment.

c. Applicant, if not the Appellant, is permitted to offer a rebuttal. The time allowed is set by the Chair of the Zoning Board of Adjustment.

d. Appellant will be permitted a rebuttal to the Applicant's rebuttal. The time allowed is set by the Chair of the Zoning Board of Adjustment.

e. At the conclusion of arguments, the Zoning Board of Adjustment will conduct its deliberation.

7. After considering the record, the reasons for the appeal, and oral argument if requested, the Zoning Board of Adjustment shall take one or more of the following actions:

a. Sustain the Decision. Sustain the decision of the Zoning Administrator in whole or in part.

b. Reverse the Decision. Reverse the decision of the Zoning Administrator in whole or in part.

c. Remand the Decision. Remand the matter in whole or in part to the Zoning Administrator with comments and/or instructions for further

consideration. The Zoning Board of Adjustment shall remand an appeal in whole or in part for gathering additional material information, and a decision based upon the original and the additional presented evidence where the appellant shows the Zoning Board of Adjustment, by a preponderance of the evidence, that there is:

i. New material information which was not available or readily discoverable at the time of the final decision, and

ii. It is in the public interest to develop such additional material information on the matter.

C. Stay of Proceedings: The filing of an appeal shall stay all interpretations, proceedings and/or activities and furtherance of the action appealed from, including the issuance of building and/or other permits related to the subject property. A stay may be lifted, in whole or in part, only where the Zoning Administrator files a written affidavit with the City Clerk certifying that a stay would, in the opinion of the Zoning Administrator, not serve the purposes for which relevant Code provisions were intended or would cause endangerment to life and/or property. The Zoning Administrator should lift the stay, in whole or in part, only to the extent necessary to further the intent of relevant Code provisions. Where the Zoning Administrator files such an affidavit, interpretations, proceedings and/or activities shall not be stayed other than by the Board, Commission or Council before whom the matter is pending or by a Court of Record. A request for review of the Zoning Administrator's affidavit regarding the stay shall be heard with the consideration of the related appeal, if requested by an affected person not less than ten (10) days prior to such consideration.

D. The appellant shall submit an appeal fee established from time to time by the Council by resolution.

Exhibit C - Zoning Board of Appeals Meeting Presentation

Appeal of Zoning Administrator Decision-414 S. Main St.

Board of Adjustment-June 11, 2024



MEETING PROCEDURE

1. Staff Presentation
2. Questions of Staff
3. Presentation by NSA (10 Minutes)
4. Presentation by Property Owner (10 Minutes)
5. Questions of NSA & Owner
6. Final Questions of Staff
7. Deliberation & Decision



REQUIRED ACTION /PROCESS

Pursuant to MCC 4-8-2.B.7, after considering the record, the reasons for the appeal, and the oral arguments, the Board shall take one or more of the following actions:

1. Sustain the Decision. Sustain the decision of the Zoning Administrator in whole or in part.
2. Reverse the Decision. Reverse the decision of the Zoning Administrator in whole or in part.
3. Remand the Decision. Remand the matter in whole or in part to the Zoning Administrator with comments and/or instructions for further consideration.

BACKGROUND

New Saint Andrews College (NSA) seeks City approval to occupy the entire building located at 414 S. Main Street. The proposed use of the building would include an art gallery, retail space, and administrative offices associated with the college.

Official decision issued on March 21, 2024.



THE DECISION

The proposed use of the building at 414 S. Main Street by NSA as an art gallery with an accessory art instruction and retail space is a permitted use so long as the operations of the gallery does not further the educational purposes of the college and does not include credit-bearing academic activities. The proposed administrative offices within the building would constitute a prohibited use under Moscow City Code, Title 4, Chapter 3, Section 3-2.E, and Section 3-4, and are therefore not permitted.



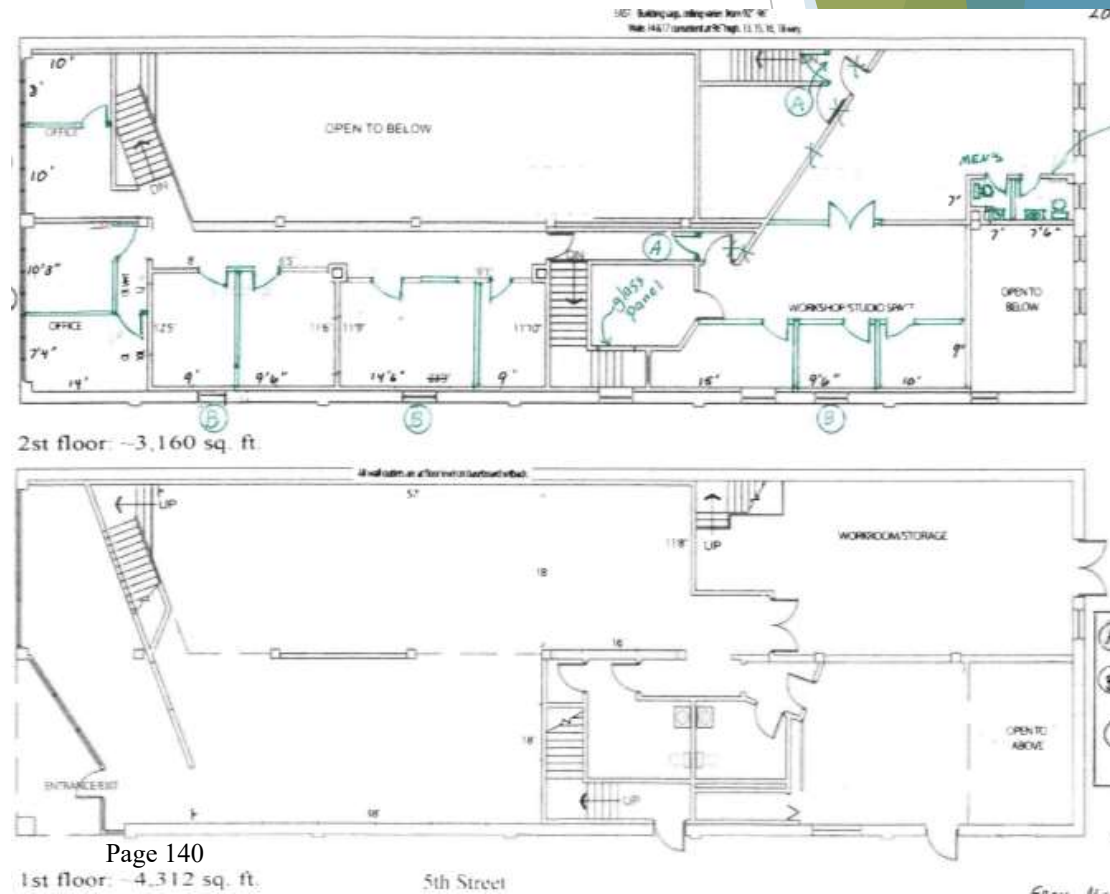
GROUNDS FOR THE APPEAL

1. Exceeds the City's statutory authority.
2. Was arbitrary, capricious, or an abuse of discretion.
3. Violates statutory or constitutional provisions.

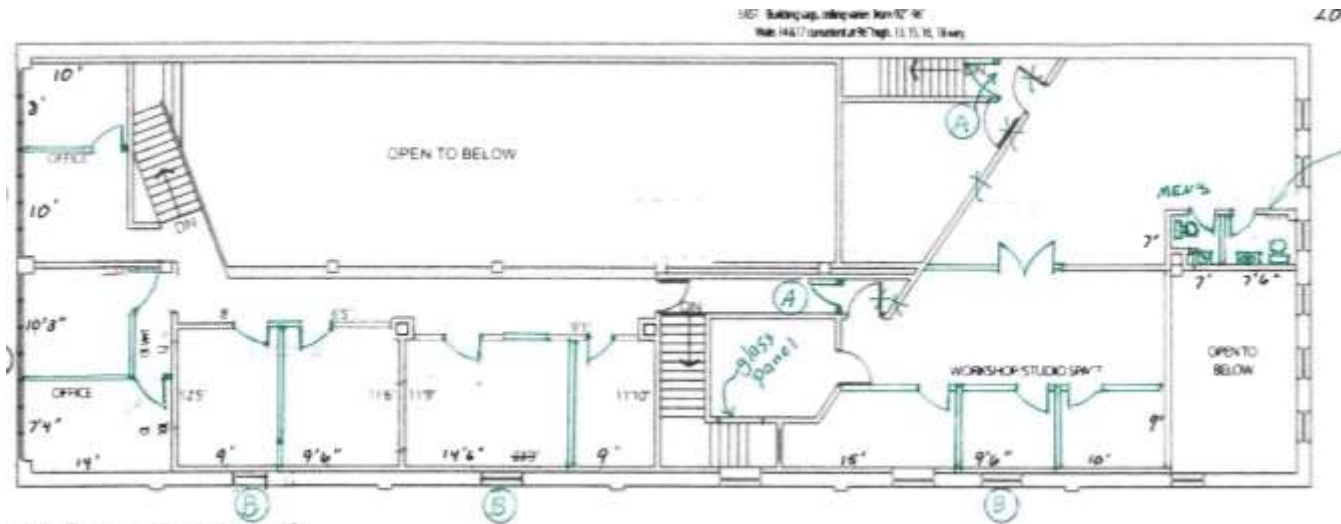


PROPERTY HISTORY

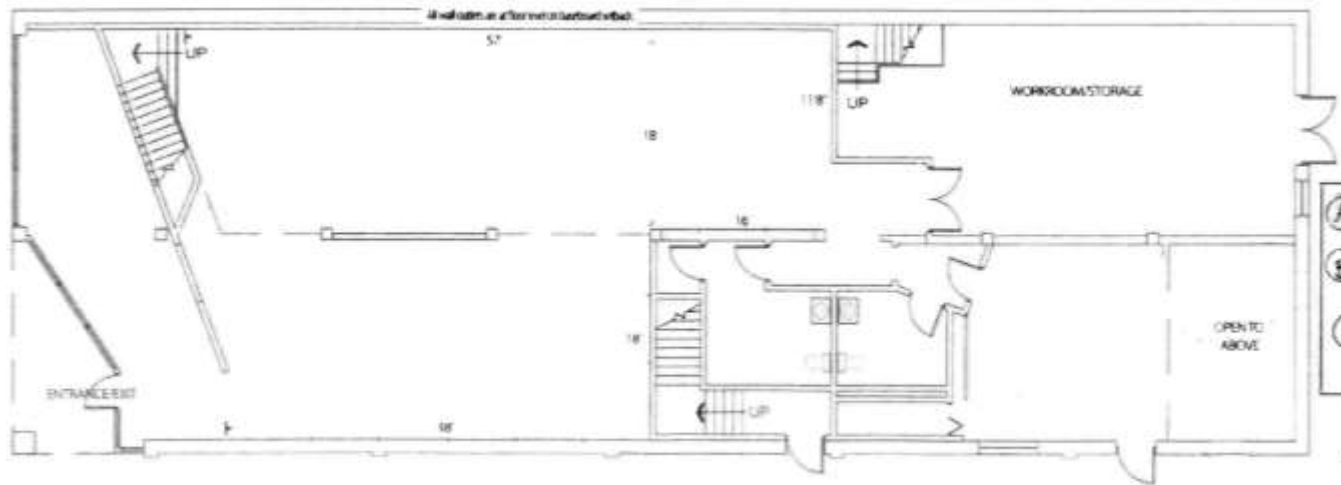
- Supported an art gallery, operated by the University of Idaho, since the 1980's.
- Transitioned to Moscow Contemporary in 2021.
- Moscow Contemporary recently vacated the space.



PROPOSED USE



2st floor: ~3,160 sq. ft.



1st floor: ~4,312 sq. ft.

5th Street

APPLICABLE ZONING REGULATIONS

ORDINANCE 2019-07 (Adopted July of 2019)

Prohibited new and expanded colleges and universities in the
CB Zoning District.

WHEREAS, on August 20, 2018, City Council directed staff to develop a survey designed to gauge the perceptions of the community, property owners, and businesses operating within the Central Business Zoning District (CBZD) regarding current public/private universities and colleges within the CBZD, and additional or expanded public/private universities and colleges within the CBZD; and

WHEREAS, the survey was then sent out in the fall of 2018 to CB property and business owners as well as a random sample of the community; and

WHEREAS, the results of the survey were then discussed at the City Council meeting on April 1, 2019 and the Council then directed the Planning and Zoning Commission to prepare an ordinance which would prohibit additional or expanded universities and colleges in the CBZD; and

WHEREAS, the Planning and Zoning Commission then prepared the proposed ordinance which would eliminate certain educational services as permitted uses in the CBZD; and

APPLICABLE ZONING REGULATIONS

DEFINITIONS

- Museums & Art Galleries
- Educational Services
- Colleges, Universities, & Professional Schools
- Accounting, Tax Preparation, Bookkeeping, & Payroll Services
- Advertising Agencies

*North American Industry Classification System (NAICS)

DEFINITIONS

Museums and Art Galleries (MCC)

Establishments primarily engaged in the preservation and exhibition of objects of historical, cultural, and/or educational value.

Educational Services (MCC)

Establishments that provide instruction and training in a wide variety of subjects. The instruction and training is provided by specialized establishments, such as schools, colleges, universities, and training centers.

Colleges, Universities, and Professional Schools (MCC)

This industry comprises establishments primarily engaged in furnishing academic courses and granting degrees at baccalaureate or graduate levels. The requirement for admission is at least a high school diploma or equivalent general academic training. Instruction may be provided in diverse settings, such as the establishment's or client's training facilities, educational institutions, the workplace, or the home, and through diverse means, such as correspondence, television, the Internet, or other electronic and distance-learning methods. The training provided by these establishments may include the use of simulators and simulation methods.

APPLICABLE ZONING REGULATIONS

Accounting, Tax Preparation, Bookkeeping, and Payroll Services (NAICS)

This industry comprises establishments **primarily engaged in** providing services, such as auditing of accounting records, designing accounting systems, preparing financial statements, developing budgets, preparing tax returns, processing payrolls, bookkeeping, and billing. (emphasis added)

Advertising Agencies (NAICS)

This industry comprises establishments **primarily engaged in** creating advertising campaigns and placing such advertising in periodicals, newspapers, radio and television, or other media. These establishments are organized to provide a full range of services (i.e., through in-house capabilities or subcontracting), including advice, creative services, account management, production of advertising material, media planning, and buying (i.e., placing advertising). (emphasis added)

KEY POINTS OF THE APPEAL(S)

- Already approved these uses in the CB Zone.
- Does not expand educational use in the CB Zone.
- Decision based on ownership as opposed to use.
- Legality of ORDINANCE 2019-07

CONCLUSION & RECOMMENDATION

Staff has reviewed the appeal materials and maintains the Zoning Administrator decision of March 21, 2024 is consistent with MCC. It was based on a thorough evaluation of substantial evidence, does not exceed the statutory authority of the Administrator, and is not in violation of any statutory or constitutional provision. As a result, Staff **recommends Sustaining the Zoning Administrator decision.**

MEETING PROCEDURE

1. Staff Presentation
2. Questions of Staff
3. Presentation by NSA (10 Minutes)
4. Presentation by Property Owner (10 Minutes)
5. Questions of NSA & Owner
6. Final Questions of Staff
7. Deliberation & Decision



QUESTIONS?



REQUIRED ACTION

Pursuant to MCC 4-8-2.B.7, after considering the record, the reasons for the appeal, and the oral arguments, the Board shall take one or more of the following actions:

1. Sustain the Decision. Sustain the decision of the Zoning Administrator in whole or in part.
2. Reverse the Decision. Reverse the decision of the Zoning Administrator in whole or in part.
3. Remand the Decision. Remand the matter in whole or in part to the Zoning Administrator with comments and/or instructions for further consideration.

Exhibit D - Zoning Board of Adjustment Written Decision

BEFORE THE BOARD OF ADJUSTMENT OF THE CITY OF MOSCOW, COUNTY OF LATAH, STATE OF IDAHO

WRITTEN DECISION OF THE BOARD OF ADJUSTMENT REGARDING THE APPEAL OF ZONING ADMINISTRATORS DECISION 2024-02 REGARDING THE PROPOSED USE OF A BUILDING LOCATED AT 414 S. MAIN ST IN THE CITY OF MOSCOW, IDAHO.

WHEREAS, on March 1, 2024, Brenda von Wandruszka representing Rootforest LLC, requested a decision from the City of Moscow Zoning Administrator related to the proposed use of a building located at 414 S Main Street in the City of Moscow, Idaho; and

WHEREAS, the proposed use of the building is for New Saint Andrews College (NSA) to use the existing building as an art gallery, a retail space, and administrative offices to support the operations and functions of NSA. The offices are to be occupied by NSA administrative staff, and no academic instruction or credit-bearing activity are proposed. The art gallery would include rotating exhibits and the applicant wishes to continue to offer non-credit community art classes to both adults and children in the community.

WHEREAS, on March 21, 2024, the Zoning Administrator issued Zoning Administrator Decision 2024-02 for the proposed use of the building located at 414 S Main Street, as described by Brenda von Wandruszka; and

WHEREAS, the Zoning Administrator determined that the proposed use of the building at 414 S Main Street by NSA as an art gallery with an accessory art instruction and retail space is a permitted use so long as the operations of the gallery does not further the educational purposes of the college and does not include credit-bearing academic activities. The proposed administrative offices within the building would constitute a prohibited use under Moscow City Code, Title 4, Chapter 3, Section 3-2.E, and Section 3-4, and are therefore not permitted; and

WHEREAS, on April 15, 2024, Benjamin Merkle representing NSA, and Brenda Von Wandruszka representing Rootforest, LLC, (hereinafter the appellants) filed a timely appeal of Zoning Administrator Decision 2024-02; and

WHEREAS, on June 11, 2024, the Zoning Board of Adjustment conducted a public meeting to consider the appeal of Zoning Administrator Decision 2024-02; and

WHEREAS, the Zoning Board of Adjustment reviewed Zoning Administrator Decision 2024-02, did not consider any new or additional evidence, and heard the appellant's arguments on the appeal; and

WHEREAS, the Board finds that the proposed NSA administrative offices on the second floor of the building do not constitute an expansion of the College based upon Ordinance 2019-07 and are permitted uses under the Land Use Table of Moscow City Code; and

WHEREAS, having considered Zoning Administrator Decision 2024-02, and having considered the issues presented by the appellants, the Board reversed the decision of the Zoning Administrator and determined that the proposed administrative offices within the building located at 414 S Main Street would constitute a permitted use under Moscow City Code, Title 4, Chapter 3, Section 3-2.E, and Section 3-4.

THE ZONING BOARD OF ADJUSTMENT OF THE CITY OF MOSCOW, IDAHO, AFTER DUE DELIBERATION AND CONSIDERATION OF ZONING ADMINISTRATOR DECISION 2024-02 AND HAVING CONSIDERED THE ISSUES PRESENTED BY THE APPELLANTS, HEREBY CONCLUDES:

DECISION

The Zoning Board of Adjustment hereby **REVERSES** the decision of the Zoning Administrator and determines that the proposed administrative offices within the building located at 414 S Main Street would constitute a permitted use under Moscow City Code, Title 4, Chapter 3, Section 3-2.E, and Section 3-4.

PASSED BY THE BOARD OF ADJUSTMENT OF THE CITY OF MOSCOW this 18 day of JUNE, 2024.



Joe Bazzoli, Chair
Board of Adjustment

CERTIFICATION. I hereby certify that the above is a true copy of the Board of Adjustment decision passed at a regular meeting of the Board of Adjustment, City of Moscow, held on June 18, 2024.

ATTEST:



Jennifer Fleischman, Deputy City Clerk

Exhibit E - Zoning Board of Adjustment June 11, 2024
meeting minutes

BOARD of ADJUSTMENT



Joe Bazzoli
Board Chair
BOA@ci.moscow.id.us

Public Hearing
~ Minutes~

Aimee Hennrich
Staff Liaison
208.883.7095

<http://www.ci.moscow.id.us/354/Board-of-Adjustment>

Tuesday
June 11, 2024

7:00 PM

Council Chambers
206 E Third Street

Bazzoli called the meeting to order at 6:58 PM

MEMBERS PRESENT: Joe Bazzoli, Chair; Marshall Comstock, Ivy Dickinson, Jerry Schutz
MEMBERS ABSENT: Steve Bush, Tim Kinkeade, Tim Thomson
STAFF: Jennifer Fleischman, Aimee Hennrich, Mike Ray, Cody Riddle

REGULAR AGENDA

1. Approval of May 22, 2024 Minutes (ACTION ITEM)

Schutz moved for approval of the minutes as written, seconded by Dickinson. Roll Call Vote; Ayes: Comstock, Dickinson, Schutz (3) Nays: None. Abstentions: Bazzoli (1). Motion carried.

2. Public Comment

Time limit 15 minutes. Members of the Public may speak to the Board regarding matters NOT on the Agenda nor currently pending before the Board of Adjustment. Please state your name and resident city for the record and limit your remarks to three (3) minutes.

None.

3. Appeal of a Zoning Administrator Determination Regarding the Proposed Use of a Building Located at 414 S Main St. Permit Application LUP2024-0017 (ACTION ITEM)

Appeal application for a Zoning Administrator Determination regarding the proposed use of a building located at 414 South Main Street within the Central Business (CB) Zoning District, per Moscow City Code (MCC) 4-3-4.

Staff clarified the procedure for opening and closing oral arguments during an Appeal. An Appeal does not follow the standard Public Hearing process where the public are invited to provide testimony. The Board will not be making a decision based on the usual criteria for a Conditional Use Permit or Variance. A Written Decision will be drafted by Staff after the motion has been made and passed, and will be presented for review and approval by the Board.

The Appeal Record opened at 7:02 PM

Cody Riddle (staff), Moscow, informed the Board that one of the appellants requested 15-minutes instead of the previously requested 10-minute oral argument, which the Board agreed to. Riddle provided a presentation outlining the appeal as described above, including background information, the Zoning Administrator's Decision (ZAD), grounds for the appeal, property history, and applicable zoning regulations. Riddle clarified that the proposed art gallery is a permitted use, by right.

The Board requested more information from Staff about MCC addressing Appeal procedures. It was pointed out that the ZAD does not place limitations depending on who owns the subject property, but on the proposed uses in the CB. Staff clarified the difference between statutory and constitutional provisions,

regarding grounds for an appeal. The Board's decision would not have to do with whether or not the Board agrees with Ordinance 2019-07 (ORD), but if the Zoning Administrator (ZA) interpreted it correctly.

Oral Argument started at 7:14 PM

Ben Merkle (appellant), Moscow, agreed that the ORD prohibits the expansion of a University in the CB and does not question the ORD. Merkle provided a background explanation of the process through which he requested the ZAD. The proposed administrative office space would be used by marketing, financial, and development staff for New Saint Andrew's College (NSA). He argued that the ZAD was arbitrary and capricious because of conflicting communications, and had outlined those in his appeal. He said that the definitions from the North American Industry Classification System (NAICS) had been expanded beyond the intent. Rhetorically, the appellant asked the Board if NSA could outsource their finance needs to a different company, would they not be allowed to operate in the CB? He requested the ability to move the NSA administrative offices currently housed in the Nuart Theatre to the art gallery second floor space.

Oral Argument finished at 7:27 PM

There were no questions from the Board for the first appellant.

Oral Argument started at 7:28 PM

Brenda von Wandruszka (appellant), Moscow, requested longer than the 10-minutes for oral argument. Her argument began with references to the Moscow Zoning Code and the NAICS. She said that the ZAD exceeded the scope of the Zoning Code and was limiting the original character of the building. She shared the NAICS definition of a University and argued that the ORD in 2019 did not affect the operation of the Prichard Art Gallery, as it was not considered a University. The appellant reviewed the background of tenant occupancy of the building. She pointed out the difference between Permitted Use, Permitted Accessory Use, and Non-Conforming Use, according to MCC. She referenced various Idaho State codes regarding restrictions of use in the CB, and argued that MCC is silent regarding the use or occupancy of buildings and land.

Oral Argument finished at 7:45 PM

Board asked the appellant about the previous tenants in the building, both of which were nonprofits who operated an art gallery and provided various classes and events for the community. The most recent tenant moved out in January of 2024, and NSA signed a lease for the space in February 2024. There is a 6-month time frame that a building can be unoccupied before legal non-conforming use rights are lost. There continued to be a discussion about the art gallery and use of the office spaces. There are currently two office spaces in the art gallery, previously used by staff for gallery operations. The proposed use of the additional proposed offices on the second floor of the gallery would be in support of NSA.

The Board asked Staff if Legal Counsel has provided input on the ZAD and the Appeal, but they have only been involved with appeal procedure guidance. Staff frequently respond to zoning inquiries in an informal capacity, and only usually makes a formal determination when those decisions are called into question. The proposed art gallery is a permitted use in the CB, including the workshop and office spaces used by gallery staff. There was a discussion about the intent of the ORD and how Staff made their decision with the information that was provided to them.

There was a discussion about general office spaces in the CB and their uses, as well as how the proposed use would be moving from the Nuart Theatre to the subject property. The Board asked Staff about the two Conditional Use Permits (CUP) for NSA and debated whether or not the proposed changes would be affected by either of the two permits. There was a conversation regarding the differences between other professional services and university support staff services. The Board talked about the decision actions required and how the process could move forward.

Board requested more information about the maximum capacity of NSA students, staff and faculty according to the CUPs. Staff informed the Board that a CUP is a restriction on the property, and not the entity who is using or owns the property. Merkle reiterated his motivation to move current administration offices from one building to another, both in the CB. It was concluded that the NSA CUP capped the school at 44 full-time employees and 300 students at their location at 112 N Main Street.

The Appeal Record closed at 8:17 PM

Schutz moved to sustain the Zoning Administrator Determination in whole, seconded by Dickinson. Staff requested more information about why the decision was sustained, to include in the Written Decision. The Board feels that the ORD is too vague to either reverse or sustain the ZAD, and the Appeal should go before City Council for their discussion and ultimate decision. The motion was withdrawn.

Schutz moved to reverse the Zoning Administrator Determination, and to allow New Saint Andrew's to occupy offices on the second floor of the art gallery at 414 S Main Street because they are not an expansion of a University according to Ordinance 2019-07 and it is a permitted use under the Land Use Table of Moscow City Code. The motion was seconded by Comstock. Roll Call Vote; Ayes: Unanimous (4). Nays: None. Abstentions: None. Motion carried.

Schutz moved to direct Staff to draft the Written Decision, seconded by Comstock. Roll Call Vote; Ayes: Unanimous (4). Nays: None. Abstentions: None. Motion carried.

REPORTS

ANNOUNCEMENTS

UPCOMING EVENTS/MEETINGS

The next Board of Adjustment meeting is scheduled for 7:00 PM on June 18, 2024.

The draft Written Decision will be presented at the next meeting for approval, as well as another Condition Use Permit application.

The meeting adjourned at 8:29 PM



Joe Bazzoli, Chair

6/18/2024
Date

**BEFORE THE BOARD OF ADJUSTMENT
OF THE CITY OF MOSCOW, COUNTY OF LATAH,
STATE OF IDAHO**

**WRITTEN DECISION OF THE BOARD OF ADJUSTMENT REGARDING THE
APPEAL OF ZONING ADMINISTRATORS DECISION 2024-02 REGARDING THE
PROPOSED USE OF A BUILDING LOCATED AT 414 S. MAIN ST IN THE CITY OF
MOSCOW, IDAHO.**

WHEREAS, on March 1, 2024, Brenda von Wandruszka representing Rootforest LLC, requested a decision from the City of Moscow Zoning Administrator related to the proposed use of a building located at 414 S Main Street in the City of Moscow, Idaho; and

WHEREAS, the proposed use of the building is for New Saint Andrews College (NSA) to use the existing building as an art gallery, a retail space, and administrative offices to support the operations and functions of NSA. The offices are to be occupied by NSA administrative staff, and no academic instruction or credit-bearing activity are proposed. The art gallery would include rotating exhibits and the applicant wishes to continue to offer non-credit community art classes to both adults and children in the community.

WHEREAS, on March 21, 2024, the Zoning Administrator issued Zoning Administrator Decision 2024-02 for the proposed use of the building located at 414 S Main Street, as described by Brenda von Wandruszka; and

WHEREAS, the Zoning Administrator determined that the proposed use of the building at 414 S Main Street by NSA as an art gallery with an accessory art instruction and retail space is a permitted use so long as the operations of the gallery does not further the educational purposes of the college and does not include credit-bearing academic activities. The proposed administrative offices within the building would constitute a prohibited use under Moscow City Code, Title 4, Chapter 3, Section 3-2.E, and Section 3-4, and are therefore not permitted; and

WHEREAS, on April 15, 2024, Benjamin Merkle representing NSA, and Brenda Von Wandruszka representing Rootforest, LLC, (hereinafter the appellants) filed a timely appeal of Zoning Administrator Decision 2024-02; and

WHEREAS, on June 11, 2024, the Zoning Board of Adjustment conducted a public meeting to consider the appeal of Zoning Administrator Decision 2024-02; and

WHEREAS, the Zoning Board of Adjustment reviewed Zoning Administrator Decision 2024-02, did not consider any new or additional evidence, and heard the appellant's arguments on the appeal; and

WHEREAS, the Board finds that the proposed NSA administrative offices on the second floor of the building do not constitute an expansion of the College based upon Ordinance 2019-07 and are permitted uses under the Land Use Table of Moscow City Code; and

WHEREAS, having considered Zoning Administrator Decision 2024-02, and having considered the issues presented by the appellants, the Board reversed the decision of the Zoning Administrator and determined that the proposed administrative offices within the building located at 414 S Main Street would constitute a permitted use under Moscow City Code, Title 4, Chapter 3, Section 3-2.E, and Section 3-4.

THE ZONING BOARD OF ADJUSTMENT OF THE CITY OF MOSCOW, IDAHO, AFTER DUE DELIBERATION AND CONSIDERATION OF ZONING ADMINISTRATOR DECISION 2024-02 AND HAVING CONSIDERED THE ISSUES PRESENTED BY THE APPELLANTS, HEREBY CONCLUDES:

DECISION

The Zoning Board of Adjustment hereby **REVERSES** the decision of the Zoning Administrator and determines that the proposed administrative offices within the building located at 414 S Main Street would constitute a permitted use under Moscow City Code, Title 4, Chapter 3, Section 3-2.E, and Section 3-4.

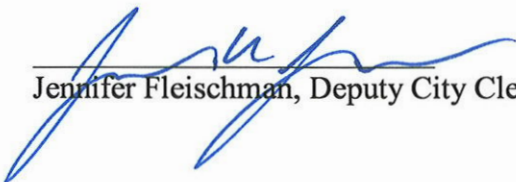
PASSED BY THE BOARD OF ADJUSTMENT OF THE CITY OF MOSCOW this 18 day of JUNE, 2024.



Joe Bazzoli, Chair
Board of Adjustment

CERTIFICATION. I hereby certify that the above is a true copy of the Board of Adjustment decision passed at a regular meeting of the Board of Adjustment, City of Moscow, held on June 18, 2024.

ATTEST:



Jennifer Fleischman, Deputy City Clerk

Exhibit F - Zoning Board of Adjustment Meeting Video

Zoning Board of Adjustment Meeting Video
Recording - [Click to View](#)

Exhibit G - Zoning Board of Adjustment Meeting Transcript

Appeal Record Transcript: Appeal of a Zoning Administrator Determination Regarding the Proposed Use of a Building Located at 414 S Main St. Appeal Application LUP2024-0017

The meeting was called to order at 6:58 PM

MEMBERS PRESENT: Joe Bazzoli, Chair; Marshall Comstock, Ivy Dickinson, Jerry Schutz

MEMBERS ABSENT: Steve Bush, Tim Kinkeade, Tim Thomson

STAFF: Jennifer Fleischman, Aimee Hennrich, Mike Ray, Cody Riddle

- 1 BAZZOLI: And Cody, before you start- on the meeting procedure, just as a clarification because
2 this one is different from any of the others that I've been a part of for the past...I won't
3 say how long. It's been a while. Staff will present. And then we'll have questions for
4 Staff. And then, there- two different Appellants will have their time to speak. And
5 then we ask them questions. And at that point, we're done right? We're done with
6 questions, from us to anybody?
- 7 RIDDLE: If you have any final questions for Staff, just procedurally, that would be fine. But if
8 you get back into the merits of things...
- 9 BAZZOLI: That's what I was concerned about.
- 10 RIDDLE: -you really shouldn't at that point. It'd just be-
- 11 BAZZOLI: I didn't know if opening up questions after all three presenters have presented opens
12 up-
- 13 RIDDLE: That's just procedurally, you should really stop there.
- 14 BAZZOLI: Okay. I- Marshall?
- 15 COMSTOCK: Well Cody, what if we wanted a clarification?
- 16 RIDDLE: So long- if it's just a black and white thing around procedure, that'd be just fine.
- 17 COMSTOCK: Okay.
- 18 RIDDLE: Yeah.
- 19 BAZZOLI: I just didn't know if-
- 20 RIDDLE: Now, I should-
- 21 BAZZOLI: -one person responds, another person-

1 RIDDLE: -clarify that if-

2 BAZZOLI: -has a rebuttal. I didn't want to create an issue where someone doesn't have the chance

3 to respond to something.

4 RIDDLE: If it really gets into it, to a lot of back and forth with Staff at that point, you really

5 would need to let the Appellants-

6 BAZZOLI: Okay, that-

7 RIDDLE: -respond. That's a-

8 BAZZOLI: -that's why I wondered what this order-

9 RIDDLE: It's a very dangerous cycle to get in to.

10 BAZZOLI: Right.

11 RIDDLE: Yeah.

12 BAZZOLI: That's why I'd rather have- just keep it straight forward.

13 COMSTOCK: And-

14 BAZZOLI: Marshall?

15 COMSTOCK: Clarify, Joe. And I thought- this is not a public hearing. So, the only people that will

16 have part of a presentation will be the Appellants and Staff. Or, a representative of the

17 Appellants?

18 RIDDLE: That's correct.

19 COMSTOCK: The public is not able to, like, like, in a normal public hearing. They're not able to-

20 RIDDLE: Correct, yes. No public testimony.

21 BAZZOLI: And in addition to that, for Staff up here- or the Board members up here- we're

22 actually not making a decision based on the seven criteria that we typically do. We're

23 making a decision on 'yay', 'nay', or 'take it back'. So, our motion at end isn't about

24 asking Staff to write the facts- finding- facts of finding and our relevant criteria. It's:

25 provide us the meeting minutes for the discussion this evening. So-

26 SCHUTZ: Okay.

1 BAZZOLI: -that's when one of you gets brave enough to make a motion, just understand that
2 that's- it needs to be along those lines.

3 SCHUTZ: K.

4 RAY: Mr. Chair? It would be a written decision, though, that you would be pretty much
5 instituting. So, you'd have to direct Staff to prepare the Written Decision based upon-
6 BAZZOLI: Based on the discussions.

7 RAY: -the Board's action tonight. Yup.

8 BAZZOLI: Thank you. With that all out of the way, all of the procedural stuff.

9 RIDDLE: Yeah.

10 BAZZOLI: Please.

11 RIDDLE: Thank you, Mr. Chairman, members of the Board. I would say just briefly, we
12 discussed very early on when we received this Appeal, there's discretion in the Code
13 for the Chair to establish how much time the Appellants are to receive in testimony. I
14 was just made aware that one of them needs about fifteen- sixteen minutes instead of
15 the ten. From a Staff prospective, we wouldn't object. As you mentioned, there's no
16 opportunity for public testimony or anything like that. So, the testimony tonight will
17 be fairly limited timewise. I'd encourage you to, you know, to allow that when it
18 comes to that. But...

19 BAZZOLI: Understood. And I've never been one to hold people to time. I figure if we all make
20 the time to come here, we might as well be able to-

21 RIDDLE: Yeah.

22 BAZZOLI: -state what you need to state.

23 RIDDLE: Yeah. So, with that we did touch on some of the procedure already. This item is very
24 unique for this Board to hear. There's the very specific procedure we did walk through
25 that is important that we follow. That's to protect the City's interests and absolutely
26 the Appellants rights in a matter like this. The- you know if, I would encourage you

1 if you have questions- as we get into the question and answer, that any sort of
2 questions are very, very direct. And not really an invitation for just additional
3 testimony and to get us off topic. You did mention already; public testimony will be
4 prohibited tonight. And that includes any kind of back and forth questions from the
5 audience to the Board, if that were to come up. So, as we get into things, as you
6 mentioned, there are three options. After you hear the testimony this evening, you do
7 have three options tonight. First, that you can sustain the decision that was made by
8 the Zoning Administrator: in short, you agree with that decision. You can reverse that-
9 reverse the decision of the Zoning Administrator. And in that instance, you would
10 need to find an error. And then third: you can remand the decision back to the Zoning
11 Administrator for further consideration. If you head down that road, you really need
12 to cite what was missing or what additional information would be needed that may
13 better inform, or lead to a different decision. So, just for a little background, or why
14 we are here. New Saint Andrew's College, or NSA, is seeking the City's approval to
15 occupy an entire building at 414 South Main Street. The proposed use of the building
16 would include an art gallery, retail space, and then administrative offices associated
17 with the College on that top floor. As you saw in the packet you were provided this
18 evening, on March 24th- March 21st of this year, a decision was made to where the
19 City- the Zoning Administrator approved- you can see the summary of that decision
20 here- found that that the gallery and retail space on that ground floor, as long as it did
21 not include credit-bearing academic activities, was permissible or consistent with the
22 Zoning Code. It did, however, find that the administrative offices on the building
23 would constitute a prohibited use under Moscow City Code, and would therefore be
24 prohibited. I think that's an important point as you hear some of the testimony tonight.
25 We don't debate the use as it was presented to us of that ground floor. It's the office
26 space in the upper floor that's in question, or prohibited from our perspective. In terms

1 of the Appeal itself, there's really three grounds in Code that which you can challenge
2 a decision like this. The first: that the decision exceeds the City's statutory authority.
3 Second, that it was arbitrary, capricious, or an abuse of discretion. Or third, that it
4 violates some statutory or constitutional provision. In terms of property history,
5 you're probably all fairly familiar with this but, the building or the property did
6 support an art gallery operated by the University of Idaho since sometime in the
7 1980's. Around 2021, that transitioned to the Moscow Contemporary and then, as you
8 are aware most very recently, Contemporary did vacate that space. So, that brings us
9 to the proposal now. The proposed use of the building, again, is that ground floor to
10 be used as art gallery- as an art gallery, very similar to the Contemporary space, and
11 then some retail- a retail component up front that you're all familiar with. And then
12 again, that upper floor- the desire is to convert that or to use that as office space
13 associated with the School [NSA]. In terms of zoning regulations that apply to the
14 question that we, or the Zoning Administrator, was presented. There's probably
15 nothing more significance or relevant to the case as Ordinance 2019-07, that was
16 adopted by City Council back in July of 2019. That Ordinance very clearly prohibited
17 new and expanded colleges and universities in the Central Business Zoning District.
18 In reaching our decision, it was a little more complex though in that there was- in that
19 we analyzed a number of definitions that you probably saw in the packet. And that's
20 based on the fact that, again, we're looking at the mus- the gallery space on the ground
21 floor that was pretty clearly defined, but then that office space in the upper floors. It's
22 that upper floor that really is the question. They want to use that as a series of offices,
23 that are pretty clearly integral and tied directly to the University [NSA]. That is, again,
24 prohibited by that Ordinance passed by Council back in 2019. You can see some of
25 the definitions on the screen here, that we used in making our determination, and there
26 were included in your packet. Again, the ground floor clearly, from Staff prospective,

1 falls within that museum or art gallery category. Then we get into educational
2 services, colleges, and universities. And again, it's not that ground floor that's in
3 question: it's that upper floor that we see as a con- as an expansion of a university use
4 downtown. Now the Appellant, I think you'll hear, contends that some of the office
5 uses are very similar to accounting, tax preparation, advertising agencies. And while
6 they are components of their desired use that resemble that, that's not the primary use
7 of that property. And we see those- the office use that they are looking at, as integral
8 to the University [NSA] and directly related, and counter to, that vision of that
9 Ordinance that was established by Council back in 2019 and never challenged. A few
10 other points you'll hear, I think, in the Appeal this evening that the City or Staff
11 already approved this uses in the Central Business District- Central Business Zone.
12 It's true that they did occupy portions of that Nuart Theater that was referenced in
13 your packet. But they did seek to expand that presence and that request was denied. I
14 think on page 24 of your packet, you see that denial in June of last year. But, really
15 the use of the Nuart isn't before you. Not really. It's not before you this evening.
16 Every situation is different, every mix of use is difference and it really doesn't have
17 any bearing on your decision this evening. I think you'll also hear that this doesn't-
18 that this proposal doesn't constitute an expansion of an educational use in the Central
19 Business Zone. Expansion isn't measured purely by- and I believe there's a citation
20 or a reference to the cap on another conditional use permit they have on number of
21 students. Expansion isn't tied solely to the number of students. It can be additional
22 office space. It could be expanded hours of operation, added offices, added
23 employees. All of which are kind of included in this proposal, by expanding that office
24 use. I think you'll probably hear that the decision was based on ownership as opposed
25 to use. And maybe some comparisons to- specifically the University of Idaho and the
26 sale of the old police department- police station. That's true, the City did sell that

1 property to the University of Idaho. And, at the time, they indicated their desire was
2 to use that as an art gallery and retail space. Just like NSA, who has been permitted in
3 the property we're talking about this evening. Again, retail and gallery: we didn't see
4 and don't see as an integral part of the University [NSA or UI]. Not fundamental to
5 their core mission. But those offices on that second floor we do, and we believe it
6 constitutes a prohibited use or an expansion of the University [NSA]- of university in
7 the downtown zone. I believe you'll finally- you'll hear that the Ordinance using to
8 deny this application is denying fundamental property right of the owner. That's not
9 the case. The desire to restrict expanded educational or university uses downtown was
10 established in 2019. That Ordinance has never been challenged. Again, I think the
11 broader vision is there was a concern- that there is a concern that the downtown could
12 slowly, perhaps, building by building, office space by office space, start to become a
13 campus. You know, so while there are components in, you know, in that building that
14 maybe function very similar to an accounting office, a tax office -something like that-
15 it very slowly becomes a single use in our downtown, which was one of the reasons
16 that that Ordinance was adopted back in 2019. And ultimately, what helped inform
17 our decision from a Staff perspective. There's just- there's not a desire for downtown
18 to again, building by building, become a campus or a single user. So, I believe that
19 summarizes the Appeal. You're going to hear a lot from the two Appellants this
20 evening. I'd be happy to answer any questions you might have for me at this time,
21 though. Thank you.

22 BAZZOLI: I have a couple. The Ordinance- that was established in 2019. The reference to City
23 Code MCC 4-8-2.b.2: when was that instituted and/or changed last?

24 RIDDLE: That's-

25 BAZZOLI: Prior to 2019, I'm assuming, but I thought I'd ask the question.

1 RIDDLE: That's the...That code references specific to the Appeal procedures. Not the use table
2 itself.

3 BAZZOLI: Okay.

4 RIDDLE: Yeah.

5 BAZZOLI: So, it's not something that has changed in the past couple of years, that-

6 RIDDLE: That, as it relates to the use itself?

7 BAZZOLI: Okay.

8 RIDDLE: No, it has not.

9 BAZZOLI: The other thing I would like to clarify, is that this isn't about who owns any given
10 property downtown. It's about how it's used. Correct?

11 RIDDLE: Absolutely.

12 BAZZOLI: Or how- it's classification?

13 RIDDLE: Correct.

14 BAZZOLI: Okay. Any other questions for...? No? Well, I don't want to monopolize this, but I
15 have one more question. In part of what we're supposed to review, one of them was
16 that it's not a violation of statutory or constitutional provisions. I'm not a lawyer. I'm
17 not real good at judicial history. Can you clarify for me the difference between a
18 statutory and a constitutional provision? I wouldn't know if someone's necessarily-

19 RIDDLE: If it's-

20 BAZZOLI: -was, you know, denied that or not.

21 RIDDLE: Yeah, it's really a very general statement that we're violating some sort of state or
22 federal law with this decision. And we're confident we are not.

23 BAZZOLI: Kay. So, statutory is in-

24 RIDDLE: Could be referencing-

25 BAZZOLI: -relative to-

26 RIDDLE: -it's a very general reference to-

1 BAZZOLI: -to constitutional?

2 RIDDLE: Yeah.

3 BAZZOLI: Kay.

4 COMSTOCK: Joe.

5 BAZZOLI: Marshall?

6 COMSTOCK: Yeah. So, Cody, one of the things too, is this decision is not whether we agree with

7 the Ordinance or not. The Ordinance is there. It was- it's a law of the City of Moscow.

8 So, it's not whether we agree with the Ordinance. It's whether the Zoning

9 Administrator made your- based your decision on the Ordinance that stands there.

10 What- doesn't have anything to do whether we agree with it or not.

11 RIDDLE: Absolutely correct.

12 COMSTOCK: Yup.

13 BAZZOLI: Kay. That's all I have. Thank you.

14 MERKLE: Good evening, I'm- am I supposed to do the name/address thing?

15 BAZZOLI: I believe so. I think so. That's what we do in the past.

16 MERKLE: It's a twitch I guess; I'll do it. I'm Ben Merkle, 528 East First Street. I'm the President

17 of New Saint Andrews College. So, members of the Board of Adjustment, I want to

18 thank you for your time in considering this matter. I know this is both a thorny and

19 contentious question, so I do really appreciate your willingness to walk through this

20 with me. I hope that you have been able to read my argument closely, which is on

21 pages 70-82. It's right at the end of your packet. They saved the best for last right

22 there. So, I hope you were able to read that closely, because that really is as precisely

23 as I can state it. The gist of my argument. But I do get a few minutes here to highlight

24 a couple elements from that argument. So, let me begin by saying that I understand

25 that Ordinance 2019-07, which we were just talking about, which was adopted by the

26 City Council in July of 2019. I understand that prohibits the expansion of educational

1 use in the Central Business Zone. I understand that and I'm not seeking to challenge
2 that. NSA has been conscious of this prohibition since the beginning of our dealings
3 with the City over this matter. It was because we wanted to be sure to not violate that
4 Ordinance, that I first went to the City with our plans to put business offices in the
5 Nuart Theater, back in the summer of 2022. We wanted to be careful and proactive to
6 make sure that we didn't get into trouble with that Ordinance. As a side note, a lot of
7 people have asked me why I went into the City in the first place to ask permission to
8 put those business offices in the Nuart. I've been told that it would have been better
9 to get forgiveness rather than permission. My answer has been that I wanted a
10 transparent and honest relationship with the City, where we were acting in good faith.
11 Because this, I went beforehand to get the City's approval for those offices that we
12 were putting into the Nuart. When I asked the City what the process was for getting
13 approval, I was told by Mike Ray- this is a quote from one of his emails: "*the process*
14 *of the Zoning Administrator making a determination is an informal process that is not*
15 *codified in our City Code. These determinations are fairly common occurrence and*
16 *we request an email or letter explaining what the proposed use is*". And so, I followed
17 this procedure, and I described the offices that we wanted to put into the Nuart
18 Theater. But in order to do so, I had to first establish what constituted an educational
19 use according to the City, to make sure that we didn't expand educational use in the
20 CB Zone. At first, I thought that we could put some of our music conservatory classes
21 there. But Mike and Cody explained that, although those classes were not college-
22 credit bearing, they were still educational uses. So, that is when I pivoted and
23 proposed putting business offices into that space. Mike and Cody both agreed that
24 these offices would be permitted uses in the Central Business Zone. And that's the
25 thing that I want to really emphasize, is that I described it all at the beginning and we
26 were told those are permitted uses in the Central Business Zone. I wrote to them quote:

1 *“we are planning now to move our development team into the Nuart space. This team*
2 *consists of our marketing, fundraising, and recruitment offices. They are pretty much*
3 *just business offices and do not interact significantly with the student body”*. That was
4 on 6 of July, 2022. Mike replied with this- is a quote: *“thanks for the update. Glad*
5 *you’re able to make this plan work. We don’t see an issue with your new plan, so long*
6 *as activities like student counseling remain at a separate location, which sounds like*
7 *they would”*. July 11, 2022. Cody then later confirmed this approval. Here’s a quote
8 from him: *“as Mike indicated, office use is permissible in the Zone”*. It’s permissible:
9 *“it’s any element of academic instruction, student counseling, gatherings, and similar*
10 *activities that create a challenge from a Zoning perspective”*. July 20, 2022. Mike
11 and Cody both made clear that this business office use was permitted, but that we
12 needed to be careful to not just keep academic instruction out of this building, but also
13 to make sure that the Nuart was not a space where students did business. We took this
14 caution very seriously. In fact, we put up a large sign at the entrance of the Nuart
15 telling students that if they needed to meet with any employee at the Nuart, they
16 needed to schedule an appointment in the main NSA building. We put this restriction
17 in our policy manual and we even included a clause in the work agreement for every
18 employee that was located in the Nuart, saying that if they met with a student it needed
19 to happen in the main NSA building and not in the Nuart. So, you need to see two
20 significant points here. First, we had approval from the Zoning Administrator for these
21 business offices at the Nuart Theater. These are permitted uses in the Central Business
22 Zone. Second, the City had made clear what would constitute an expansion of
23 educational use, and we have been very careful not to violate that prohibition of
24 expanding educational use. Therefore, when we are now planning to move those
25 approved uses one block down the road to the gallery space- from the Nuart to the
26 new gallery space- we’re looking to move those same offices one block down the

1 road, and are now told that those are not allowed uses. This is why I think that the
2 City is being quote: “*arbitrary and capricious*”, look- the grounds of the Appeal.
3 Black’s Law Dictionary defines capricious as given to sudden and unaccountable
4 changes of mood or behavior. I think this definition of capricious describes the City’s
5 actions. These uses have been approved in the Central Business Zone and then
6 suddenly they are not approved in the Central Business Zone, when I moved it one
7 block over. Now, I said at the beginning that NSA is not seeking to expand educational
8 use in the Central Business Zone. I should just really quickly comment on- it was
9 mentioned earlier that there was a moment when NSA wanted to expand in the Nuart
10 Theater and that was denied. The expansion was: we wanted to add the use of the
11 theater. We did not expand the office uses at all and in every determination I received
12 back from the City, we were told those offices- those are permitted. Those are
13 permitted. It was the attempt to add the theater, we were told we couldn’t do that so
14 we didn’t do that. Anyhow, what is happening is the City is seeking to expand the
15 definition of educational use. When I first met with Mike and Cody, educational use
16 was defined by them as, quote: “*academic instruction, student counseling, gatherings,*
17 *and similar activity*”. From my study of the NAICS description of educational use,
18 this definition made really good sense and it was a definition that we were able to be
19 committed to operating within. And we were very careful and transparent with the
20 City to make sure that we operated within that definition. But now that definition has
21 been expanded to include services that support an educational institution. And I
22 believe this is an expansion of that definition. This is why I also argue this decision
23 has exceeded the City’s statutory authority. Since the City’s initial approval of NSA’s
24 business office operation in the Nuart in the summer of 2022, the City has
25 significantly expanded the definition of educational use far beyond what the NAICS
26 language describes. But this expansion of the definition of educational use does not

1 just exceed the City's statutory authority, it also establishes a precedent that will
2 wreak havoc on Moscow Zoning, if applied consistently. The argument is, that if a
3 use supports a different industry, that use is to be classified for zoning purposes
4 according to the industry that the use supports. K? I use in my Appeal, the example
5 of Colter Creek Winery. Should the Colter Creek Tasting Room on Main Street be
6 classified according to the industry that it supports or according to the use it actually
7 provides? For zoning purposes, is that tasting room a vineyard/winery, or is it just a
8 tasting room? Do we classify it according to its use or according to the use of the
9 industry that it serves? Now I think that the City's answer is- well, it depends on
10 whether or not the use is essential to the business. If it's sort of, less than essential it
11 can be classified differently but if it's essential to the business it has to use that
12 businesses classification. As a side note, I don't know where that principle is
13 established in the Code. It would help if we could see that. If we could find that, then
14 that would solve a lot of questions. And I think that if we looked around for a little
15 bit, we would see how unrealistic of a standard that would start to be. I can remember
16 as a kid going to my dad's office in downtown Boise. From his office, you could see
17 the Boise Cascade building out the window. This is where the corporate headquarters
18 for Boise Cascade were housed. These were essential functions for running a lumber
19 company but they were located in downtown Boise. So, should that office have been
20 classified as a lumberyard or a business office? It was all corporate offices: finance,
21 PR, and all that sort of thing, but it was serving the lumber industry. So, which way
22 do you classify it? Obviously, essential. Essential services. Would you have to then
23 classify it as a lumberyard? If Schweitzer Engineering wanted to put a business office
24 in the Central Business Zone- if they want to put their payroll or something like that-
25 HR in somewhere in downtown Moscow, would you tell them no your accounting
26 department is a manufacturing use? If a company has a business office downtown, is

1 this Board going to tell them that because they perform an essential function for a
2 different industry, they have to be classified by that industry? If you establish that as
3 a precedent, I think that applying this principle consistently throughout Moscow
4 would be a nightmare. But if you use this principle against NSA and only against
5 NSA, but turned a blind eye to every other business doing this, then you will be acting
6 in a discriminatory fashion. Let me press this a little bit more on this concept of a use
7 being essential to a company. For several years, NSA outsourced our entire finance
8 function to a national accounting firm. Now the fact that we were able to outsource
9 it- just quick question, does that make it not essential? If we could move that outside
10 of our company- outsource it- send it to Washington where all the work was done,
11 does that make our finance not essential? How do you decide what is essential and
12 what isn't? I do think that's another pitfall. You're going to have to be deciding what's
13 essential functions and what isn't. But let's say that NSA decided to do that again,
14 only this time we chose a local firm like Hayden Ross. So, now Hayden Ross is doing
15 all of our bookkeeping, all of our finance, all of our payroll. Does Hayden Ross now
16 become an educational use because they're handling our bookkeeping? I think you
17 would agree that they stay an accounting firm. They're still an accounting firm, even
18 though they are doing work for us. But, could I rent the upstairs at the Pierian Gallery,
19 those offices, could I rent those spaces to Hayden Ross to do that work? I think that
20 you would agree that I could because they're a permitted use. It's fine to let an
21 accounting firm have an office upstairs in the Central Business Zone. But then you're
22 saying that I couldn't swap those exact same offices out with new people who are
23 doing the exact same work. Same space, same work, the only difference would be
24 who signs their W-2. That's the only difference. So, to summarize I'm requesting
25 approval to take offices that have already been approved, by the City, in the Central
26 Business Zone. The most significant change will be the, what have been up until now,

1 offices on the first and second floor in the Nuart- they're on the first and the second
2 floor, we're going to move them over and they're going to be entirely on the second
3 floor. So, we'll remove those offices from the pedestrian face of Main Street. The first
4 floor will be a public art gallery and gift store on Mount- on Main Street. The uses
5 that will happen up there are uses that are explicitly allowed by our Zoning Code, and
6 are uses that any other tenant could perform. In fact, I could lease that space to another
7 tenant and get that tenant to perform those exact uses on NSA's behalf. I could fill it
8 up with a bunch of different companies and then hire them to do my finance, my
9 marketing, my recruitment. I could rent that space to a finance and development
10 company and then hire that company to do finance and development for NSA. Now,
11 there's a much simpler way of handling these questions. And it's simpler because it
12 is the way that our Code's are actually written. Evaluate a zoning request based on
13 the use proposed and not on the ownership of the use. This is the way that the Code
14 is written. This is the way the City initially handled NSA's requests. And this is the
15 way that radically simplifies all of this. To be clear, the City has approved these uses
16 already in the Nuart Theater space. What we are asking is to be able to move these
17 approved uses to another building, also in the CB Zone. We are not asking to add
18 students to our campus. We are not asking to add new classrooms to our campus. We
19 are not asking to expand educational activity in the Central Business Zone. I
20 understand that expanding educational use in the CB Zone is prohibited and I'm ready
21 to live inside of that constraint. We are simply asking to be able to perform explicitly
22 permitted functions in the CB Zone. And the net effect of this decision would be to
23 put some business offices on the second floor of an art gallery. Thanks.

24 BAZZOLI: Well Mr. Merkle, you have already answered the two questions that I had. Does
25 anybody else have a question for Ben? Marshall? Alright.

26 MERKLE: Alright.

1 BAZZOLI: Thank you.

2 VON WANDRUSZKA:

3 Good evening. I'm Brenda Von Wandruszka and I own the property together with
4 Ray and Rob, at 414 South Main Street. And I'm hoping to take more than ten
5 minutes.

6 BAZZOLI: Fair enough, go ahead.

7 VON WANDRUSZKA:

8 Because I have a whole bundle of stuff...that I need to...prove to you by what I'm
9 going to say. The decision that you have to make tonight, as far as I'm concerned,
10 isn't a difficult one. We're asking for a Zoning Certificate at 414 Main Street, and to
11 make the decision about whether we're eligible for that Zoning Certificate or not, we
12 need only to look at the Zoning Code. The plain language of the Code, the fact that
13 you only have to look at two or three chapters of the Code, the concise and neat way
14 that the use table is arranged, together with the definitions of the North American
15 Industry's Classification System, NAICS, makes it easy. You all know that although
16 the Zoning Code changes, or is amended from time to time, these changes are not
17 intended to pull the rug out from under existing uses. And you can see that in the Code
18 at Chapter 1, Section 7. The Code says that: "*within the Zoning District established*
19 *by the Zoning Code, or amendments thereto, there exist lots, structures, uses of lands*
20 *and structures, and characteristics of uses and structures, which were lawful before*
21 *the Zoning Code was enacted, or amended, but which would be prohibited, regulated,*
22 *or restricted under the terms of the Zoning Code, or future amendment. It is the intent*
23 *of the Zoning Code to permit these nonconformities to continue until they are*
24 *removed, destroyed, or lost by time*". This building, at 414 South Main Street, has
25 been more than an art gallery and a community education center since the 1980's.
26 There have been art exhibits there. There have been afterschool and summer

1 education, for children and for adults, in a wide range of subjects. There have been
2 painting classes, and other art classes. There have been movies and videos, music,
3 yoga. There's been fundraisers and auctions, receptions and book readings,
4 discussions. Artists have sold their work in the gallery store. There have been artists
5 in residence. And many people have contributed to make this a successful space. It
6 really was a social hub and an important connection between the University of Idaho
7 and the downtown for many years. Since Rootforest purchased the building in 2004,
8 there have been three different tenants, including our present tenant, in the building.
9 And the use has been the same and will continue to be the same as it was since the
10 1980's. The existing tenant when we purchased, was the University of Idaho Prichard
11 Gallery. And although they offered a large array of educational activities, the use of
12 the building was never used as a university. You can see that from the NAICS
13 definition of universities...Oh, my goodness...NAICS defines universities, colleges,
14 and professional schools in 611310. It says: "*this industry comprises establishments*
15 *primarily engaged in furnishing academic courses, and granting degrees at the*
16 *baccalaureate and graduate levels. The requirement for admission is at least a high*
17 *school diploma, or equivalent general academic training*". And when you look at the
18 definition of educational services, generally in this industry, it's also very specific:
19 "*the educational services sector comprises establishments that provide instruction*
20 *and training in a wide variety of subjects. The instruction and training is provided by*
21 *specialized establishments, such as schools, colleges, universities, and training*
22 *centers*". In July of 2018 [2019], there was an amendment to the Zoning Code. It was
23 Ordinance 2019-07. And that amendment had no affect on the way the building was
24 used for two reasons. The building wasn't being used as a university, even though the
25 University of Idaho was the tenant. And the educational uses were not offered in any
26 formal sense by a specialized establishment. In August 2021, after approximately

1 forty years when the University of Idaho terminated their lease, we signed a lease that
2 same month with Moscow Contemporary. And they used the building in exactly the
3 same way that the University [UI] had done, with all those uses that I had mentioned
4 previously. And more. When that change occurred, the building- City Building
5 Official and the Fire Chief inspected the building, as they always do when tenants
6 change. No new Zoning Code- Zoning Certificate was required at the time. And this
7 was two years after the passing of the Ordinance 2019-07. The Community
8 Development Director, and the Zoning Administrator at the time, was Bill Belknap.
9 This year, in January 2024, Moscow Contemporary moved out and in February of
10 2024, New Saint Andrews College Pierian Gallery became our new tenant. It is their
11 intention to continue the use of the building in exactly the same way as the two
12 previous tenants had, and they'll be offering the same educational and community
13 activities. They have no intention of using the building as a college, or as a university,
14 or of creating a specialized establishment for education. This time, however, after the
15 inspection by the Building Official and the Fire Chief, we were informed that we
16 needed the- a Zoning Certificate and that we needed to describe all uses in the building
17 and where such uses would occur. In my experience, this was an unusual request. The
18 Zoning Administrator recognizes that the educational use in the building is a
19 continuing nonconforming use. However, he's characterizing this use as a permitted
20 accessory use rather than a permitted use. And I'll show you the difference...In the
21 Zoning Code, Section 3-2 Interpretation of a Land Use Table, a permitted use is
22 described as the- like this: 'P'- capital 'P' in a cell indicates that the use is allowed by
23 right, without special conditions other than those imposed upon other uses by right in
24 the district. Section 3-2.B. says a permitted accessory use, capital 'P', capital 'A', in
25 a cell indicates that the use is allowed only as accessory or incidental to the permitted
26 principal use. As an accessory use is generally designed or employed in conjunction

1 with, and subordinate, to the primary use. The educational use in this building has
2 been used in conjunction with other permitted uses, but it has never been subordinate
3 to the primary use. Education has always been integral to how the building has been
4 used, since the 1980's. The educational use should continue as a permitted
5 nonconforming use, as defined in Section 3.A- 3-2.A. This may seem like a small
6 semantic difference, but it is integral to how the building has been used in the past
7 and how we wish to use the building going forward. There's nothing in the Zoning
8 Code that allows the City to diminish the nonconforming use. And there's nothing in
9 the State Code that allows a nonconforming use to be diminished. If you look at the
10 January 27, 2024 edition of Idaho Land Use Handbook, it's the law and- of planning,
11 zoning, and property rights in Idaho. Which was written by a group of attorneys from
12 Givens Pursley attorney's LLP in Boise. You'll see that courts in Idaho have upheld
13 nonconforming uses. And it was useful for me, not having a lawyer, to use that
14 handbook...If I can find it...The Givens Pursley's law group says: "*nonconforming*
15 *uses is- a nonconforming use is a land- is a use of land that lawfully existed prior to*
16 *the enactment of a zoning ordinance and is maintained after the effective date of the*
17 *ordinance*". And they quote the lawsuit Baxter vs. City of Preston: "*the owner of a*
18 *lawful nonconforming use has the right to continue that use, despite the subsequent*
19 *enactment of conflicting zoning ordinances*". And they quote the lawsuit. Indeed, they
20 say: "*the maintenance of the existing use is constitutionally protected*". And you can
21 find that yourselves on page 90- 96. On page 96. And the reason for the
22 nonconforming use is that it protects the owner from abrupt termination of what had
23 been a lawful activity, or condition on the property. There have been many permitted
24 uses allowed in the Central Business Zoning District. Including the use of offices.
25 Permitted uses appear in the use table in Section 3-2. And if a 'P' appears in the cell
26 of the use table, it indicates that the use is allowed by right. To define what the various

1 uses mean, the NAICS definitions are in the very first column. And if you look at your
2 Zoning Code, Chapter 3, you'll see this very first code- this very first line tells you
3 what this- the NAICS definition is. All of the professions that have in the past, and
4 intend in the future, to occupy office spaces in the building, are permitted uses in the
5 Central Business Zoning District. And all are listed in NAICS column, Section 3-4 of
6 the Zoning Code. All are clearly defined and can be found primarily in NAICS 541.
7 But also, in NAICS 8132, 8133, 8139, and 511. NAICS actually has well over 900-
8 hundred pages of definitions. And they're very specific and very clear. These various
9 office uses are all found in offices throughout the zoning district- Central Business
10 Zoning District. The Code does not allow similar uses to be treated differently in the
11 same zoning district. And that you can find in State Code, Title 67, 6511. Which I
12 have here too, I think...The State Code says: "*all standards shall be uniform for each*
13 *class or kind of building throughout each district*". Therefore, there should be no
14 restriction on our right to use the building for all these allowed uses. The Zoning Code
15 is clear that regulations shall be applied uniformly to each class, or kind of structure,
16 or land. The Zoning Administrator argues that they use of professional offices in the
17 building is a violation of Zoning Code Amendment 2019-07. In July 2019, this
18 Ordinance amended the Zoning Code to eliminate quote: "*certain educational*
19 *services as permitted uses in the Central Business District*". And it prohibited
20 additional or expanded universities and colleges in the Central Business District. If
21 you look at the Ordinance, you'll see that it didn't amend any other parts of the Code
22 that referred to offices. There were changes to educational uses. There was some
23 changes to parking regulations and a couple of other changes. But offices remained a
24 permitted use in the Central Business Zoning District. And the administration offices,
25 that are real administration offices with New- associated with New Saint Andrews,
26 are in the building at 109 West Fourth Street. And you can easily walk up to the second

1 floor and see them there. Both the State Land Use Planning Act and the City Zoning
2 Code are concerned with buildings, structures, and lands. And once again, you can
3 find that in the Code. Section 1-5, which talks about the scope of the Zoning Code.
4 Says: “*this zoning code shall apply to buildings, structures, and lands*”. And they go
5 on and they talk throughout the Code of buildings, structures, and lands. The Code is
6 silent regarding who can be in a building, or in a structure, or on lands. Neither does
7 the Land Use Planning Act or the City Zoning Code regulate how many of a particular
8 use there can be. Imagine how silly it would be, if the City Council decided that there
9 were too many coffee houses in town, and that coffee houses were occupying too
10 many square feet in the downtown? Too many coffee drinkers hanging about? So, that
11 there should be no more coffee houses? The answer as to whether we’re entitled to a
12 Zoning Certificate is clear in the Zoning Code. The crux of the Zoning
13 Administrator’s argument is that the use of professional offices violates Ordinance
14 2019-07. Amendment 2019-07 does not affect the use of this building. We ask that
15 we be given the Zoning Certificate because it is our right. To do otherwise would be
16 an impermissible overreach of the broad power that the State has granted to all cities,
17 to divide the City into zoning districts, decide what uses are allowed in each zoning
18 district, and to restrict certain zoning districts- uses in that district. Nobody disputes
19 that we would love to have an art gallery downtown. However, remember that such a
20 gallery needs people to run it. And if these people who run it- and that these people
21 who run it will need offices. So, do you have any questions?

22 BAZZOLI: I have one question for you. The previous tenant: can you tell me about that particular
23 tenant or company? I lost it in all the paperwork. The-

24 VON WANDRUSZKA:

25 Moscow Contemporary?

26 BAZZOLI: Yes. Are they a non-profit? I’m assuming they weren’t a university of sorts. Can you-

1 VON WANDRUSZKA:
2 They weren't a university. Never was used- never used the building as a university.
3 The same director, who was the director of the University of Idaho Prichard Gallery,
4 Roger Rowley, was the director of Moscow Contemporary.
5 BAZZOLI: Okay, so-
6 VON WANDRUSZKA:
7 And the use remained exactly the same.
8 BAZZOLI: Right. Okay, so it was an independent museum, art gallery. Or like a museum-
9 VON WANDRUSZKA:
10 Museum, art gallery-
11 BAZZOLI: -probably not be the right word, but-
12 VON WANDRUSZKA:
13 -community space-
14 BAZZOLI: Okay-
15 VON WANDRUSZKA:
16 -dance hall, music-
17 BAZZOLI: Okay.
18 VON WANDRUSZKA:
19 -lots of people used it for lots of different reasons. It's never been just an art gallery.
20 And I'm sure that people like Jerry and Marshall, who've been here for a long time,
21 remember that. It's always just been a kind of free for all place where community
22 gathered. Where you could rub shoulders with Judge Stegner or John Judge. And with
23 Alvin Berg [Warnberg]. Just, all sorts of people.
24 SCHUTZ: I have a question. Brenda, you said that Moscow Contemporary moved out January
25 of this year? Okay. And, the lease was signed in February?
26 VON WANDRUSZKA:

1 Yeah. And the reason for that big rush is because the nonconforming use has a-

2 SCHUTZ: Six months.

3 VON WANDRUSZKA:

4 -time frame. Well, I can't remember exactly but, we didn't want to lose-

5 SCHUTZ: August.

6 VON WANDRUSZKA:

7 -any time.

8 SCHUTZ: Okay. Yeah, that was the second part of my question there. So, thank you.

9 DICKINSON: I have kind of a clarifying question to that. So, I understand that that there is that six-

10 month time window, but since Moscow Contemporary was not a university, it seems

11 like there use was not a nonconforming use. They were an independent- is that- I don't

12 know who to direct that to.

13 BAZZOLI: Well, I- actually, maybe I'll ask that question a different way. If the mus- if the art

14 gallery is being- is continued- continuing to be used by a different proprietor-

15 DICKINSON: Right.

16 BAZZOLI: It doesn't- my understanding, is that it wouldn't matter whether the lease changed the

17 next day or the next year or the next years. If it's still an art gallery, it's an art gallery.

18 DICKINSON: Okay.

19 BAZZOLI: So, it's only if the use changes.

20 DICKINSON: Okay.

21 BAZZOLI: Classification of the use. Am I- did I get that question right?

22 VON WANDRUSZKA:

23 Right.

24 BAZZOLI: Okay.

25 VON WANDRUSZKA:

1 And the art gallery never was a university. And it never was an educational service.
2 It was neither of those things.
3 DICKINSON: Yeah.
4 VON WANDRUSZKA:
5 Even though University of Idaho owned it. There were no faculty in there teaching
6 anything. They were volunteers and community people.
7 SCHUTZ: Brenda, I got another historical question if I may. The offices in question: how did the
8 University [UI] use it and how did MoC [Moscow Contemporary] use it?
9 VON WANDRUSZKA:
10 I don't know the details of how they used them. But they were always two very clear
11 offices on the upper level.
12 SCHUTZ: Those front ones, right as you go up the stairs-
13 VON WANDRUSZKA:
14 The front ones and various staff people have used them and I have been in the gallery
15 when people were working in back rooms and- I mean, the-
16 SCHUTZ: Are we talking about the- along the balcony where there were also other galleries that
17 they would have-
18 VON WANDRUSZKA:
19 Yes. Yeah.
20 SCHUTZ: -in some of those multiple shows they would do?
21 VON WANDRUSZKA:
22 And some of those are going to be offices for New Saint Andrews staff- supporting
23 staff. You cannot have a gallery- it's a very expensive enterprise. You need a
24 backbone to it and you need all those skills and administration that the University of
25 Idaho and New Saint Andrews can bring to the downtown. Because, then we'll-
26 otherwise we'll just be relying on the community to raise funds. And the community

1 is very generous. But it doesn't- it's too expensive to have a gallery without an
2 institute- the institutional support. And we are thrilled that the use can stay as a gallery.
3 Been a use ever since I came to the town in the late 1980's. It's always been there and
4 we could have rented it out to, you know, coffee house or a restaurant or several other
5 uses. We want it to be a gallery. It was developed in the 1980's by, you know, Jill
6 Dacey on her hands and knees put that floor in. It's a- to me, it's an iconic building
7 for Moscow and we should do everything we can to preserve it and it would be very
8 sad if we missed this opportunity...And it's in your hands.

9 BAZZOLI: Any other questions? Thank you... Alright, so since this is kind of new for the four
10 of us. The deliberation is on the four of us now. If we have questions for any of the
11 three presenters, I would strongly recommend that they be very specific. Just a
12 clarification, not an open-ended what-if type of question.

13 SCHUTZ: I got one.

14 BAZZOLI: Yes.

15 SCHUTZ: Mike, Cody, this one's for you. In one of the emails, one of you said something about
16 it being an informal process for getting that Zoning Permit. I remember my dear friend
17 Randy Fife, City Attorney, who said informal is never the friend of a Board. At what
18 point have you or has the City Attorney weighed in on to the decision that you've
19 made. Or is it going from you, with the Appellants, to us without the City Attorney
20 weighing in?

21 RIDDLE: They- Legal counsel has weighed in a little bit, just from a procedural standpoint.
22 Here, you know, here is the question we have been posed. Here's how, you know,
23 here's how we plan or anticipate, you know, answering that or approaching the
24 question. I think the big thing there is just establishing a clear record for you to, you
25 know, you to evaluate. But, really not getting into debating the, you know, the merits
26 of definitions or anything like that. Yeah.

1 SCHUTZ: Oh-

2 RIDDLE: But in terms of the formal/informal, Mike's right: we're posed with zoning questions
3 all the time on the use of property. I suppose where it becomes more formal is when
4 that's called into question, like it was here. And then you'd probably saw two or three
5 formal responses to the question. Just to establish a clear record, for you, for Council,
6 for property owner's, etc.

7 SCHUTZ: Okay. Yeah. Other question: am I right in remembering that the nonconforming use
8 has six-months before it expires?

9 RIDDLE: You're absolutely correct, but I think it's important to keep in mind: the gallery is an
10 allowed use. And even the Appellant acknowledges that there was never a university
11 or educational use in that space. So, from our perspective that's irrelevant because the
12 gallery is allowed-

13 SCHUTZ: What is the nonconforming use that we're dealing with in this?

14 RAY: We're not saying there's a nonconforming use as part of this. That the Appellant is,
15 but we're viewing that as a permitted accessory use to the gallery. So, there's always
16 an art workshop component, I believe, with the Contemporary and the Prichard. And
17 that's going to continue. I just can't be credit bearing. So, there was never any
18 university credit that was given for those types of classes. They were more community
19 classes, you know, painting, sculpting, things like that. And so, we're saying that can
20 continue with the gallery that's being proposed.

21 SCHUTZ: Okay.

22 COMSTOCK: I'll be as specific as I can, Joe.

23 BAZZOLI: Fair enough Marshall.

24 COMSTOCK: I'm trying to get it in my mind how you did your process of making the decision,
25 Cody and Mike. And, looked like you based your decision on the Ordinance and the
26 Ordinance created a new table. And, when this table and this Ordinance were

1 developed, there's some parts of it that seem a little vague to me. Now, I'm not saying
2 that I agree or disagree with that, but there are some parts in the whereas clauses when
3 it talks about educational things that's pretty vague. And then when you get into the
4 table, there are some parts of it that seem a little vague. And...if I was in your shoes
5 I'd probably- using the information available, I don't know whether I'd come down
6 to that same conclusion or not. Was there any further research done when the
7 Ordinance was brought before the Council about the discussion in the whereas
8 clauses? As any clarification in there? Or was it just a blanket...?

9 RAY: Well, the whereas really just describes the intent of the Ordinance. I mean, that's not
10 actual City Code. You have the City Code in the- in pretty much the crux of the
11 Ordinance-

12 COMSTOCK: I understand that, yeah. Yeah, I understand that. So. Yeah, I know you made your
13 decision on the information that was available to you.

14 RIDDLE: Yeah.

15 COMSTOCK: Okay. Just trying to get it in my thought process.

16 BAZZOLI: I have a specific question. Is that Ordinance, word for word, in this packet
17 somewhere? Or on a slide?

18 RIDDLE: It's in the packet to the extent- it's effectively a use table. The use table and the
19 definitions, and they are in your packet...Yup, and I think they were included in the
20 Appellant's- in some of their memoranda.

21 BAZZOLI: No, I was just talking about the wording.

22 RIDDLE: Starting on page- it looks like page 58 of 80- 84 in the packet. You can see permitted
23 land-

24 HENNRICH: It's right here.

25 RAY: 64.

26 RIDDLE: So, it's in there twice.

1 HENNRICH: Yeah.

2 RIDDLE: Yeah.

3 RAY: (inaudible)

4 BAZZOLI: Okay... Well, not as a question but just as a discussion amongst all of us. I don't think

5 that there has been any...rights is not the right word. A nonconforming use- there-

6 that's not being taken away. I don't think that that's what's happening here. There's

7 always been an office space. So, it's not about taking away office space. Every place

8 downtown has an office. A restaurant is an assembly space, but it has an office in it

9 as well as a kitchen. The architecture office downtown is production space, but it has

10 an office. Has a bathroom, it has storage, but it's not classified as a storage building.

11 It's not classified as assembly or business. This is clearly gallery. It's always been a

12 gallery. I think where the problem is coming in, in the variance and issues, is what-

13 it's not the fact that it's being used as office space. It's whether or not its university

14 expansion space. Granted, a museum or an art gallery or anything along those lines

15 needs office space to operate that main classification, as any other business. You can't

16 run a restaurant without having an office. You can't run a coffeehouse without having

17 an office and storage. Allegra needs an office, as well as printing space. I think where

18 I'm not seeing clear definition is that office space. Can it be used, and it should be

19 able to be used, to office or manage the museum- I keep calling it a museum- the art

20 gallery? Or is it an expansion of administrative functions for NSA? Now, where I

21 agree with Ben is this whole what constitutes a necessary thing? It's like, office space

22 is office space. Your accountant can be in your building or outside your building.

23 Could be in the downtown or just outside the downtown. The question, and I think

24 how this was interpreted from City Staff, is that it needs- it's an expansion of

25 university into that space. How they use that space- that's what I don't- I'm unclear

26 on. It's like, can- if there's no students going in but you still can't run a university any

1 more than you can run a restaurant without an office. Without accounting. Without all
2 those aspects that have nothing to do with food, or nothing to do with printing. So,
3 I...I just- a little feedback, I guess.

4 DICKINSON: Yeah.

5 BAZZOLI: I don't think anybody's rights have been taken away. The question is, can office space
6 be there? Definitely yes. It can. Who use's the office space and how? That's really
7 what's unclear here. Because if it was just the art gallery's management staff using
8 that space, we wouldn't be here. But, now- or if it was rented to anybody else that
9 isn't U of I, NSA, Moscow School District. It seems like this Ordinance is saying no,
10 that can't happen there because that's expansion of university and that's what the
11 Ordinance is geared towards.

12 SCHUTZ: I'm with you 100% here, but where I get a little bit fuzzy is what's the difference
13 between those offices at the Nuart moving down to the Prichard?

14 BAZZOLI: I have an answer to that one. I think.

15 SCHUTZ: Please.

16 BAZZOLI: In my opinion.

17 SCHUTZ: Because we have already allowed the office once-

18 BAZZOLI: Because if you agree- if we go by the Ordinance meaning that no university stuff, that
19 one was already existing. So, you cannot take that nonconforming use away. Which
20 is why I think that's not happening here. However, you can't change it or relocate it.
21 And I think that's where you- I think that's where the Code's...

22 DICKINSON: Well- yeah. It also seems like this is maybe an expansion and this doesn't- our packet
23 doesn't really cover it, but I think it's also a question of whether- I mean, there's two
24 conditional use permits for managing each of NSA's spaces. And is this an expansion
25 of what is allowed in those? And also, I assume, that those are- those spaces, like the-
26 what was permitted, was based on what those spaces could accommodate? So, why

1 the need to expand beyond that. And does that- I guess, this bleeds beyond this,
2 but...does that, you know, what does that do to those other, you know, conditional
3 use permits? And I'm new to this, so that's...

4 COMSTOCK: Well, we're all new, a little bit, to this.

5 BAZZOLI: Yeah.

6 COMSTOCK: The way I look at it, Joe, is that professional services/offices are a permitted use in
7 the Central Business Zone. So, the question is: has the tie been made between an
8 educational university use coming in as a non-permitted use in a business-permitted
9 space? And I think that's the way the decision was made. That they made that tie. If I
10 was-

11 DICKINSON: Well, the university's offices, you know, offices are exclusive to the university. Where
12 the other, like, other, you know, a financial office has many clients. So, they're serving
13 the whole community, all of the clients that come to them and they can take on as
14 many as they want. And that's a difference to me.

15 BAZZOLI: So, you're take on that would be then that they're providing the service for the user
16 not the general public.

17 DICKINSON: Right.

18 SCHUTZ: I remember all of our discussions in Planning and Zoning and we always tried to
19 weigh the Code with the word predictable. Brenda, as a business owner, should be
20 able to predictably go to that grid, say these are permitted uses, and everybody should
21 be able to move along.

22 BAZZOLI: I agree. And in addition to that-

23 SCHUTZ: And in this particular issue, a number of years ago the transactions took place that
24 allowed an educational institution in the middle of downtown. Knee jerk reaction:
25 create the Ordinance: don't expand it. And now we're at a point where, is it in fact an
26 expansion of administrative offices? I mean, and where I have heartburn is that we

1 already allowed them in CBD. So, to me it becomes, if it was okay to do it here then
2 it's okay to be doing it here because otherwise we have just changed our mind and
3 said- because we could have used the same Ordinance down here and said no, you
4 can't do that because you're expanding your- you're expanding the university or the
5 college. And so yeah, this- I still- I'm having problems wrapping my head around it
6 and I think people that are paid more than us should be the ones that are handling it
7 all.

8 BAZZOLI: Well, in addition to that knee jerk reaction, it was also mentioned items about parking
9 and student count. That was the knee jerk reaction. That was the issue back when this
10 was a-

11 SCHUTZ: Right.

12 BAZZOLI: -normal Board review over the conditional uses, about the amount of students, the
13 amount of parking, and how that was affecting downtown business. So, I think that
14 Ordinance was geared to address that kind of stuff. I don't think it's geared to address
15 and define-

16 SCHUTZ: The expansion.

17 BAZZOLI: -the expansion. It's not going to create more parking. It's clearly- they are not allowed
18 to- allow it to create more students. Trying to get this to a point where we can actually
19 make a recommendation one way or the other... You've been on P and Z.

20 SCHUTZ: I have. Marshall has too.

21 BAZZOLI: Marshall's done everything!

22 DICKINSON: That is true.

23 BAZZOLI: I can just blame Marshall. It's Marshall's fault I'm here.

24 COMSTOCK: I didn't sign this Ordinance.

25 BAZZOLI: No, no, no, you appointed me. I'm not elected or paid, but you appointed me! So, it's
26 your fault I'm here. Let's see. I don't see a way to do 1 or 2. I don't know how the

1 rest of- the three of you, but I'm just going to start getting to the nitty-gritty. I don't
2 see sustaining this in full. I don't see reversing it in full. Part 3, in remanding it for
3 reconsideration to define something specific that needs to be addressed to try to solve
4 this problem? And in my mind, that's defining within office space, which is clearly
5 allowed, I think university expansion is what's undefined. And so, I don't know
6 what's within- what the four of us can tell a Zoning Administrator to have to reanalyze
7 or revise the Code or the Ordinance to clarify that. I don't know what the process is
8 to that.

9 RIDDLE: And-

10 SCHUTZ: And that's one of the reasons that I asked the City Attorney question. Because,
11 ultimately if it does go further, City Council- the City Attorney is going to have to sit
12 down and make a ruling whether they want to defend it not.

13 BAZZOLI: I'll go on record right now and say this is going to further, regardless of which
14 direction we go. This is going to have to have to go to the next thing above us. We're
15 literally the hoop. I'm just trying to be a helpful hoop to go through, so that it gets
16 moved forward.

17 COMSTOCK: I think Cody has-

18 RIDDLE: Mr.-

19 BAZZOLI: Cody, can you-

20 RIDDLE: Mr. Chairman, if I might just briefly. You mentioned a remand with the idea of
21 perhaps modifying the Code? I think you referenced. Any sort of remand needs to be
22 for additional information based on the Code when the decision was made. We can't
23 go back and amend the Code to address this specific situation.

24 DICKINSON: That would be to move forward. In that case, it would have to move forward to be
25 reviewed by the-

26 COMSTOCK: City Council.

1 DICKINSON: City Council.

2 RIDDLE: Yeah, you can-

3 BAZZOLI: Well, I guess where I'm going with this is that the Code allows office space
4 downtown, clearly. Because, more than 50% of it is office space. Even the spa- places
5 that aren't defined as a B Classification: they have an office in them. However, the
6 Ordinance says no university expansion. A university has students, it has classes,
7 we've stated they aren't doing that. They're actually actively not doing that. But, a
8 university also has accounting. It has finance. It has marketing. How those affect
9 university expansion: that's not clear. And so, what we're saying is okay, because the
10 name on that office door is NSA employee X: 'my job is marketing'. Whereas before,
11 it was 'I'm employee/manager X for the art gallery'. So, it was never a question. What
12 happens in that office? Still the same functions. It's- so, that's what's unclear.

13 COMSTOCK: Yeah. It's hard- a little bit tough in my mind to say that the administrative offices are
14 clearly an increase in an educ- university purposes in the Central Business District.
15 It's, I think, it says that the administrative offices/professional services allowed. I
16 think it's a little bit of a stretch to say that because the university has those services
17 also...

18 BAZZOLI: That it's university expansion?

19 COMSTOCK: Yeah.

20 BAZZOLI: So, in- Okay, so not to put words in your mouth, but so that if that's the case, is- are
21 you saying that's not university expansion? That's just business expansion? I mean-

22 DICKINSON: But there's-

23 BAZZOLI: -it's two different terms, right? I mean-

24 COMSTOCK: It is, but-

25 BAZZOLI: -business use is allowed and university is not. So, but both have some of the same
26 functions.

1 COMSTOCK: Yeah.

2 DICKINSON: It's also my understanding that the university space for- that's permitted currently
3 with- under the conditional use permits, not only has restrictions on number of
4 students but has restrictions on number of staff. Is that-

5 COMSTOCK: I don't know about that.

6 BAZZOLI: I don't remember that, for sure. That's a specific question. Can anybody on Staff
7 answer that?

8 RAY: I believe its just students. I don't know that it's staff. We can find out really quick
9 though.

10 BAZZOLI: Actually, Ben, can you come to the microphone, if you have an answer to that
11 question? And I- and it might be that if you're limited to a number of students, your
12 staff to student ratio might be an internal thing anyway. So, you might actually be able
13 to answer that question anyway.

14 MERKLE: Yeah so, the question is: does the CUP limit...?

15 BAZZOLI: Your number of staff.

16 MERKLE: I believe that there is some, I don't know if it's faculty- if it specifies faculty or staff-
17 I thought there was some component of that to the CUP. We always just go by the
18 students because that seems to be the thing that really drives it.

19 BAZZOLI: Right. Okay, thank you. So then-

20 RAY: (inaudible)

21 BAZZOLI: -with that statement, I- my argument with you then would be that that's not university
22 growth, because the devil's advocate question would be: if they're growing in the
23 space that they can't grow out of, now you start taking administrative stuff and you
24 push them out. So, you've got more room for professors and students. But, if they
25 can't have more students and their ratio for professors to students, that takes away that
26 devil's advocate question. It's like, well they want more space downtown so they're

1 taking the administrative stuff and pushing it out. Which we all learned during
2 COVID, you can do. You don't need them in that building.

3 COMSTOCK: Yup.

4 SCHUTZ: Did Staff have an answer for you?

5 RAY: We're still waiting for it. Really our response would be that that's specific to those
6 other locations. As far as the number of staff. It really doesn't pertain to any other site,
7 because they're not-

8 (someone sneezes)

9 SCHUTZ: Bless you.

10 RAY: -permitted to locate in other- in any other area in the Central Business District. So,
11 but I can find the answer for you.

12 BAZZOLI: K.

13 MERKLE: Am I allowed to address that expansion question?

14 BAZZOLI: Yes. With my authority up here, I'm saying yes.

15 MERKLE: Just to say, like, I agree. Our CUP's limit our number of students. We've got a cap
16 and that limits how far we can grow. For us, the move from the Nuart to the gallery
17 space: it's not about expansion. We're taking offices and moving them a block. It's a-
18 so, we are leaving one building and going to another building. The reason for us
19 wanting to go to the gallery space is it allows us to create a gallery for the community.
20 That we can actually have a public gallery. As Brenda mentioned, it's very difficult
21 financially to support a public gallery. The- you- we- Moscow's a small town. We
22 don't have the revenue to support it. But by putting my admin offices in the second
23 floor, the rent that I was paying to the Nuart, I can now pay for the rent for this
24 building. By putting my offices on the second floor and now I have a building with a
25 gallery space that we can open up. And it does- I think it matches well with the mission
26 of NSA to be able to open up that space. But it is a public gallery. It's not about

1 expansion of university use or something like that for us. It's about, this gives us a
2 really unique chance to do something cool in Moscow.

3 BAZZOLI: Thanks.

4 RIDDLE: Just briefly. We found the old condition for 112 Main.

5 BAZZOLI: Ah, thank you.

6 RIDDLE: They did cap it at 300 students and 44 full-time equivalent staff. But, again that
7 condition applied to that, you know, to that property and that application.

8 BAZZOLI: Okay.

9 SCHUTZ: So, let's ask this question. If...we vacate the Zoning Administrator's Decision, where
10 do we go from there?

11 COMSTOCK: Say that again, Jerry.

12 SCHUTZ: If we vacate the decision that the Zoning Administrator made, or however they were
13 word that. Reverse. Do you get to appeal it?

14 RIDDLE: We have that right, yes.

15 SCHUTZ: Which, ultimately puts it back at the City Council again.

16 RIDDLE: Correct.

17 SCHUTZ: Either way, we don't win. So.

18 BAZZOLI: I said that before. I just said that we were a hoop. That's why I don't think 1 and 2
19 work. My thought is that we kick it back to the City Zoning Administrator to clarify
20 what uses fall under university expansion. Because all we have to go on is, is this
21 university expansion or not? Well, it's not expansion of the students, and the
22 classrooms, and the teaching, and the professors.

23 COMSTOCK: Or number of offices.

24 BAZZOLI: Or number of offices. Those offices already exist. They're moving from one building
25 to the other. That one's harder for me to agree on just because I know, just from what
26 I do, if I change the use in the building: I have to start from scratch. I don't get to

1 utilize what I'm allowed to continue to do. Which I don't always agree with either.
2 But, I lose that battle with the Building Inspector. But, if we kick it back to them to
3 clarify that. They clarify it, they come back: we still have this same thing? Or not?
4 COMSTOCK: Well, one thing, Joe, when you look at the permitted uses for the business uses and
5 professional uses in there. It's- clearly states that it's permitted in that zone. There's
6 no little asterisk by it that says "except in educational facilities". It doesn't send you
7 off in left-field to clarify it. So, to me, because it's a use- a permitted use in that zone,
8 it's, to me, a stretch to say that it's an expansion of the university. So, I would agree
9 that I'd like to see it remanded back and then-
10 DICKINSON: Cody put up some definitions, if-
11 COMSTOCK: -the Zoning Administrator can take it to the City Council.
12 BAZZOLI: Which is ultimately where it has to go to define the question that I can't answer right
13 now. And that is what constitutes that-
14 DICKINSON: But, if we remand it back will it come back to us?
15 SCHUTZ: Yeah. Correct.
16 DICKINSON: It's going to come back to us.
17 SCHUTZ: We're the next spot, so-
18 DICKINSON: So, if we remand it-
19 SCHUTZ: We say 'yes' or 'no'-
20 DICKINSON: -they're going to clarify something- we have to say what- and it's going to come right
21 back to us.
22 SCHUTZ: And then we're back here in this same no-win situation-
23 DICKINSON: Yeah.
24 SCHUTZ: -where if we say yes-
25 DICKINSON: So, we pretty much have- if we want it to go to City Council, we pretty much have to
26 pick 1 or 2.

1 BAZZOLI: That's how I'm beginning to see it now. I was beginning to think that we couldn't do
2 1 or 2.

3 DICKINSON: Cody put the definitions back up, if that helps.

4 SCHUTZ: I saw that and it doesn't help at all.

5 BAZZOLI: No, that was actually in here.

6 RAY: Yeah, there's going to be no more clarification from us. Everything's within the
7 NAICS system. So, it's a census bureau that defines all the NAICS categories and
8 numbers and, you know, I mean we could go out to the census bureau and look up all
9 those numbers and ex- what it lists underneath the descriptions of each one. So, there's
10 not going to be anything beyond that that we can, you know, dig up from somewhere
11 else.

12 BAZZOLI: K. So, what the four of us are trying to figure out is how do we force City Council
13 and City Attorney to look at this. Because, they're the elected, paid people and quite
14 frankly it's their Ordinance, whether we agree or disagree. As to whether or not you're
15 disallowing them to use the space or we're allowing them to use the space against the
16 intent. Because, I don't think anybody in here has- is- everyone is trying to make the
17 right call based on how they're interpreting this. And we're in the same boat. I-

18 RIDDLE: Yeah, really for it to proceed to the next step, the decision either needs to be sustained-

19 COMSTOCK: The Council does not have to remand it back to us. They can make the decision.

20 RIDDLE: Correct.

21 SCHUTZ: They can make a decision.

22 RIDDLE: Yes.

23 SCHUTZ: But they can also remand it back to us.

24 COMSTOCK: Yup.

25 BAZZOLI: They could.

26 SCHUTZ: They could.

1 BAZZOLI: And we just do a really bad job and it gets appealed back to them again.

2 SCHUTZ: And so-

3 RIDDLE: For this to proceed to Council, you need to either sustain or reverse the decision.

4 BAZZOLI: To force it into that next category.

5 RIDDLE: Correct.

6 COMSTOCK: We could just sustain the decision in part, asking further clarification on-

7 BAZZOLI: Of whether or not administrative functions are-

8 SCHUTZ: Expansion of a university.

9 BAZZOLI: -expansion of the university.

10 COMSTOCK: Yes.

11 BAZZOLI: But, university administrative functions are an expansion of the university.

12 COMSTOCK: Yes.

13 DICKINSON: I don't know that you can sustain in part. I think you just sustain or reverse.

14 COMSTOCK: Yeah, you can do it in part.

15 DICKINSON: Oh, you can?

16 SCHUTZ: Yeah, we can do in part.

17 SCHUTZ: Problem is, by doing it in part like that then the City Council has a chance to throw it

18 back at us. And then we have to- we're back here again. But, again it gets to City

19 Council. City Attorney's going to weigh in and at least-

20 BAZZOLI: Well, I guess-

21 SCHUTZ: -give us some kind of-

22 BAZZOLI: -I think that in part is kind of correct though, because, like I said, the ground floor

23 level- that's done-

24 SCHUTZ: That's done.

25 COMSTOCK: Right.

26 BAZZOLI: That's a no brainer.

1 RIDDLE: There really is- I guess, for clarification there's- from our perspective, there's one
2 part: it's the office- it's that office space upstairs. We're on the same page-
3 RAY: Yeah, there'd just be-
4 RIDDLE: -with the retail-
5 BAZZOLI: Right.
6 RAY: -there'd just be one part-
7 RIDDLE: -retail on the ground floor.
8 RAY: So...
9 RIDDLE: Yeah.
10 SCHUTZ: Do you want a motion? Or are we going to sit here and chat about it?
11 BAZZOLI: No, if you can verbalize a motion, the worst we do is decline it or someone just won't
12 second it. Or we could talk about it more.
13 SCHUTZ: Okay. So, I move that we sustain the decision by the Zoning Administrator in whole.
14 Putt-putt, no races.
15 DICKINSON: I'll second it.
16 COMSTOCK: Further discussion?
17 SCHUTZ: Yup.
18 BAZZOLI: Before we vote.
19 COMSTOCK: What does that give us, Jerry?
20 SCHUTZ: It gets it off of our table. And it gets it to the City Council. Because, I'm going to
21 assume-
22 COMSTOCK: Well-
23 SCHUTZ: -that they're going to go ahead-
24 COMSTOCK: -well, you're assuming-
25 SCHUTZ: -and they're going to appeal.
26 COMSTOCK: -something that may not happen.

1 SCHUTZ: Right.

2 COMSTOCK: I guess I don't like that.

3 RIDDLE: If you could please expand for the- yeah-

4 COMSTOCK: Yeah.

5 RIDDLE: -the motion and the second, we're fine. If you could expand so we can bring a Written

6 Decision back for you to adopt, to provide the why. Some justification for that?

7 Beyond, you know, beyond it, just proceeding to Council that would be helpful.

8 SCHUTZ: Okay.

9 BAZZOLI: I think I'm on the same page as you, in that if we side with the City, there's less

10 likelihood that the City Council's going to take any other action other than the City's

11 doing what the City does. If we side with the Appellant, then the City has to take the

12 action with the Council to clarify what we're really after.

13 SCHUTZ: Yeah, that'd be true.

14 BAZZOLI: Is that what you were thinking?

15 COMSTOCK: Yup.

16 SCHUTZ: Withdraw my motion. Would you withdraw your second?

17 DICKINSON: Sure.

18 BAZZOLI: K, motion withdrawn.

19 SCHUTZ: I will then move that we reverse the decision of the Zoning Administrator and allow

20 for the administrative offices on the second floor of the 114- or the old Prichard gallery

21 building. I don't know what you're calling it now.

22 RAY: 414.

23 SCHUTZ: Thank you. 414...South Main. So, in other words I'm saying put the offices there.

24 BAZZOLI: Because they're not an expansion of university-

25 SCHUTZ: Because they're not an expansion of the University [NSA] and it's clearly defined in

26 the Zoning Code, with a 'P', that those uses are permitted.

1 BAZZOLI: -office uses-

2 SCHUTZ: Under the-

3 BAZZOLI: An administrative office use.

4 SCHUTZ: Yeah, but it's under the definition of predictability of the Zoning Code. That a

5 business owner or a building owner should be able to look at that Zoning Code, as a

6 right, and say this is what I get to do.

7 COMSTOCK: I'll second that.

8 BAZZOLI: K. I have a motion. I have a second. As part of this discussion, I have a question for

9 Jennifer. Do you have a clear understanding of what the motion is? Okay.

10 FLEISCHMAN: We will need another one for the Written Decision.

11 BAZZOLI: Oh. Yes. We will. Okay so, that said. All in favor- and I'm going to go down the line.

12 SCHUTZ: Aye.

13 COMSTOCK: Aye.

14 DICKINSON: I'm just not sure. Like, I guess I'm still not grasping your-

15 BAZZOLI: You don't get to abstain.

16 DICKINSON: I know.

17 COMSTOCK: Not tonight.

18 DICKINSON: I just am not grasping- can we discuss more?

19 BAZZOLI: Yeah.

20 DICKINSON: Okay. So, I guess I'm- so, you're reasoning is that you- the City will then Appeal...?

21 BAZZOLI: Well-

22 COMSTOCK: Cody- can I ask him a question?

23 BAZZOLI: Sure.

24 COMSTOCK: Who can Appeal? Any aggrieved party? Any member of the City Council? The

25 Mayor?

1 RIDDLE: In this case, it's really the Zoning Administrator- in this case, there's really three
2 parties: the two Appellants and then the Zoning Administrator or City Staff.
3 BAZZOLI: Oh, so unlike everything else we do normally. Cause anybody can Appeal-
4 RIDDLE: It doesn't open this up to the general public Appealing, no.
5 RAY: You have to be an affected person. So, we had changed the Code a few years ago to
6 define 'affected person'.
7 BAZZOLI: I read- I saw that in there too.
8 RAY: Yeah.
9 DICKINSON: Okay.
10 SCHUTZ: So, really what I've done with the motion is put it back to the City Zoning
11 Administrator to decide if it's worth Appealing it to the next level. Or letting it happen.
12 BAZZOLI: To hopefully clarify what the Ordinance intent of 'expansion' fully includes.
13 DICKINSON: Okay.
14 SCHUTZ: And personally, I can say that I'm not sure it's the right decision. But I can't see us
15 getting out of this-
16 DICKINSON: Any other way.
17 SCHUTZ: -any other way. And we could sit here until 11 o'clock trying to decide that.
18 DICKINSON: Yeah, I don't want to do that... Okay, aye.
19 BAZZOLI: Aye. So, it's unanimous. Now, I need a motion for directing Staff to write a Written
20 Decision based on our discussions.
21 SCHUTZ: Can I just say so moved?
22 COMSTOCK: Yes.
23 SCHUTZ: Thank you.
24 BAZZOLI: I usually play mediator up here, I don't make motions. We have a motion. We have a
25 second. All in favor?
26 SCHUTZ: Aye.

1 COMSTOCK: Aye.

2 DICKINSON: Aye.

3 BAZZOLI: Aye. That's unanimous.

4 FLEISCHMAN: So, Joe was that you making the motion?

5 BAZZOLI: I did make the motion!

6 FLEISCHMAN: And Jerry-

7 BAZZOLI: And Jerry seconded.

8 SCHUTZ: No, I actually made the motion. Because he is the Chair and shouldn't be able to-

9 BAZZOLI: So, that technically that makes me the second?

10 SCHUTZ: Yeah?

11 BAZZOLI: Or did Marshall...?

12 SCHUTZ: Marshall seconded.

13 BAZZOLI: I thought I made the motion. But that's okay.

14 SCHUTZ: No, you can't make the motion.

15 COMSTOCK: You verbalized it.

16 SCHUTZ: You verbalized it, I moved it. Or, yeah.

17 FLEISCHMAN: (inaudible)

18 BAZZOLI: Yup. It was a unanimous decision. That much I know and remember. Okay, so that

19 get's us to the next item on the Agenda.....

Chapter 8

APPEALS, VARIANCES, CONDITIONAL AND SPECIAL USES

- Sec. 8-1:** Duties of the Board of Adjustment
- Sec. 8-2:** Appeals of Zoning Administrator Decisions
- Sec. 8-3:** Variances
- Sec. 8-4:** Conditional Uses
- Sec. 8-5:** Appeals to City Council
- Sec. 8-6:** Ability of Use Permits to Assume Variance Functions

Sec. 8-1. Duties of the Board of Adjustment.

The Board of Adjustment shall have the authority to grant, in particular cases and subject to appropriate conditions and safeguards, conditional use permits and variances as authorized by this Zoning Code. The Board of Adjustment shall also have the authority to hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Zoning Administrator in enforcement of this Zoning Code.

Sec. 8-2. Appeals of Zoning Administrator Decisions.

A. Appeals to the Board of Adjustment concerning the interpretation or administration of this Zoning Code by the Zoning Administrator may be made by any applicant, City representative or affected person thereby. Such appeal shall be made within thirty (30) days from the date the appellant first knew of or, with reasonable diligence, could have known of such interpretation or administration of the Zoning Code by the Zoning Administrator. An appeal shall be made by filing with the Zoning Administrator a written notice specifying the grounds thereof. Should the appellant acquire additional information pertinent to the Zoning Administrator's interpretation or administration of the Zoning Code, the appellant shall present the additional

information to the Zoning Administrator for consideration and issuance of a new decision prior to consideration of an appeal by the Board of Adjustment.

B. The Board of Adjustment shall fix a reasonable time for the consideration of the appeal within thirty (30) days of the receipt of notice of appeal by the Zoning Administrator. Consideration of the appeal shall be pursuant to the procedures contained herein. At the consideration on the appeal, the appellant and any affected person may appear in person or by agent or attorney.

1. Grounds upon which an appeal to the Board of Adjustment may be made following a final decision of the Zoning Administrator:

- a. Decision violates statutory or constitutional provisions;
- b. Decision exceeds statutory authority;
- c. Decision was made upon unlawful procedure;
- d. Decision was unsupported by substantial evidence in the records or as a whole; or
- e. Decision was arbitrary, capricious, or an abuse of discretion.

2. Scope of Appeal. The appeal shall be limited to the issues raised in the written notice of appeal, which shall specifically state the allowed grounds upon which the appeal is being made to the Board of Adjustment as provided herein. The appellant must indicate in the appeal whether they are requesting oral argument before the Board of Adjustment.

3. Record. The Zoning Administrator shall provide the Zoning Board of Adjustment all documentation, information, City ordinances, and records considered by the Zoning Administrator in making their final decision. New information that was not considered by the Zoning Administrator shall not be provided to or considered by the Zoning Board of Adjustment.

4. Public Meeting. Upon receipt of the complete Record, City Clerk will notice

the matter for consideration before the Zoning Board of Adjustment as a noticed public meeting.

5. If no oral argument is requested, City Staff will introduce the appeal, and then the Board of Adjustment may ask questions of the Appellant and City Staff and then the Board of Adjustment will conduct its deliberations.

6. If oral argument is requested, the process for the Zoning Board of Adjustment to hear the appeal will proceed as follows:

a. Staff Introduction of Appeal. City staff shall provide an introduction of the facts pertaining to the appeal, the procedure followed by the Zoning Administrator, and answer questions about the content of the established Record.

b. Appellant Argument. Appellant will be allowed to argue the issues presented in the appeal. The time allowed for argument is set by the Chair of the Zoning Board of Adjustment.

c. Applicant, if not the Appellant, is permitted to offer a rebuttal. The time allowed is set by the Chair of the Zoning Board of Adjustment.

d. Appellant will be permitted a rebuttal to the Applicant's rebuttal. The time allowed is set by the Chair of the Zoning Board of Adjustment.

e. At the conclusion of arguments, the Zoning Board of Adjustment will conduct its deliberation.

7. After considering the record, the reasons for the appeal, and oral argument if requested, the Zoning Board of Adjustment shall take one or more of the following actions:

a. Sustain the Decision. Sustain the decision of the Zoning Administrator in whole or in part.

b. Reverse the Decision. Reverse the decision of the Zoning Administrator in whole or in part.

c. Remand the Decision. Remand the matter in whole or in part to the Zoning Administrator with comments and/or instructions for further

consideration. The Zoning Board of Adjustment shall remand an appeal in whole or in part for gathering additional material information, and a decision based upon the original and the additional presented evidence where the appellant shows the Zoning Board of Adjustment, by a preponderance of the evidence, that there is:

i. New material information which was not available or readily discoverable at the time of the final decision, and

ii. It is in the public interest to develop such additional material information on the matter.

C. Stay of Proceedings: The filing of an appeal shall stay all interpretations, proceedings and/or activities and furtherance of the action appealed from, including the issuance of building and/or other permits related to the subject property. A stay may be lifted, in whole or in part, only where the Zoning Administrator files a written affidavit with the City Clerk certifying that a stay would, in the opinion of the Zoning Administrator, not serve the purposes for which relevant Code provisions were intended or would cause endangerment to life and/or property. The Zoning Administrator should lift the stay, in whole or in part, only to the extent necessary to further the intent of relevant Code provisions. Where the Zoning Administrator files such an affidavit, interpretations, proceedings and/or activities shall not be stayed other than by the Board, Commission or Council before whom the matter is pending or by a Court of Record. A request for review of the Zoning Administrator's affidavit regarding the stay shall be heard with the consideration of the related appeal, if requested by an affected person not less than ten (10) days prior to such consideration.

D. The appellant shall submit an appeal fee established from time to time by the Council by resolution.

Exhibit I - Zoning Board of Adjustment June 18, 2024 Meeting Minutes

BOARD of ADJUSTMENT



Joe Bazzoli
Board Chair
BOA@ci.moscow.id.us

Public Hearing
~ Minutes ~

Aimee Hennrich
Staff Liaison
208.883.7095

<http://www.ci.moscow.id.us/354/Board-of-Adjustment>

Tuesday
June 18, 2024

7:00 PM

Council Chambers
206 E Third Street

Bazzoli called the meeting to order at 7:00 PM

MEMBERS PRESENT: Joe Bazzoli, Chair; Marshall Comstock, Ivy Dickinson, Tim Kinkeade, Jerry Schutz, Tim Thomson
MEMBERS ABSENT: Steve Bush
STAFF: Jennifer Fleischman, Aimee Hennrich, Cody Riddle

REGULAR AGENDA

1. Approval of June 11, 2024 Minutes (ACTION ITEM)

Discussed as Agenda Item No. 3.

Schutz moved for approval of the minutes as written, seconded by Comstock. Roll Call Vote; Ayes: Bazzoli, Comstock, Dickinson, Schutz (4) Nays: None. Abstentions: Kinkeade, Thomson (2). Motion carried.

2. Public Comment

Time limit 15 minutes. Members of the Public may speak to the Board regarding matters NOT on the Agenda nor currently pending before the Board of Adjustment. Please state your name and resident city for the record and limit your remarks to three (3) minutes.

Discussed as Agenda Item No. 1.

None.

3. Approval of Written Decision (ACTION ITEM)

Appeal for a Zoning Administrator Determination regarding the proposed use of a building located at 414 South Main Street within the Central Business (CB) Zoning District, per Moscow City Code (MCC) 4-3-4.

Discussed as Agenda Item No. 4.

There was a discussion about the draft Written Decision's reference to Ordinance 2019-07.

Schutz moved to approve the Written Decision for the Appeal of the Zoning Administrator Decision 2024-02, as written. The motion was seconded by Comstock. Roll Call Vote; Ayes: Bazzoli, Comstock, Dickinson, Schutz (4). Nays: None. Abstentions: Kinkeade, Thomson (2). Motion carried.

The Board talked briefly about the Appeal, the Ordinance, and the limitation on information that can be brought before the Board during an appeal procedure.

4. Public Hearing: Conditional Use Permit for 650 N Van Buren St. Permit Application LUP2024-0018 (ACTION ITEM)

A Conditional Use Permit application for the expansion of an existing Public Service Facility located at 650 North Van Buren Street within the Medium Density Residential (R-3) Zoning District per Moscow City Code (MCC) 4-3-4. The existing City Shop Facility is proposed to be expanded to include a new shop building, materials storage shed, and miscellaneous site improvements.

Discussed as Agenda Item No. 2.

Hennrich presented the Conditional Use Permit (CUP) request as described above, and recommended approval with one condition to provide a Type "A" Landscape Buffer adjacent to R-2 zoned properties along the western property line. Hog Creek would not be in conflict with the new building, as it is further south of the original building that is being remodeled. Part of the property will be paved, including a small public parking area. The gas pumps will stay where they are, and no new activities are being proposed with the CUP, including no new activities, new equipment, nor additional staff.

The proposed plans are a conditionally permitted use for the zone. Street and frontage improvements are not required and the proposed approaches are sufficient for the property. The current building is legally nonconforming with the current setbacks, but the proposed plans will not affect that. The proposed landscape buffer would be along the west side of the property. The highest point of the proposed new building would be 32-feet tall, and well within the maximum height for that zone.

The Public Hearing opened at 7:13 PM

Julie Bell, Moscow, was concerned about the quality of Van Buren Street and Morton Street; that portions of the street are not paved well and have gravel shoulders. In particular, she was worried that traffic would increase with the updated offices and repair facilities, and exacerbate the problems already experienced by residents. She mentioned that she has not seen a traffic study for the current use of the City Shop. In addition, Bell talked about the stress on Hog Creek causing overflow and drainage problems as it exits the City property, especially during construction of the new facility. She iterated that she does not object to the project, but has concerns.

Clint Payton, Moscow, talked about the recommended condition for a landscape buffer and how that was not on the plans. Hennrich described what the Type "A" landscape buffer requirements are. Payton neither supported nor was against the proposed CUP, but was worried about a potential increase in property use and traffic, as well as the effect on Hog Creek. Payton does not have a problem with the current level of noise, but has concerns that the noise level will increase with the new building being situated closer to the western property line. He recommended that a sound barrier be installed in addition to the landscape buffer.

Jeri Rainer, Moscow, asked why the property access has been primarily on the south side and only sometimes from the east side.

Cody Riddle (applicant), addressed some of the concerns about the Van Buren Street and Polk Street access with the City plans to minimize heavy equipment traffic on the south side and instead have that be primarily public access and parking for private vehicles. He confirmed that the use of the existing building would mainly be storage and a lot of the current activities would be moved into the new building. The new building will be insulated and more sound dampening than the old building. Stormwater runoff will be mitigated according to City development standards. The east side approach will be shifted slightly north to allow more space for heavy equipment ingress and egress. The landscape buffer would be required to be installed and maintained by the City, if the Board chose to set it as a condition. As with all City projects, an arts installation would be included somewhere in the project, but that has not been finalized yet.

The Public Hearing closed at 7:30 PM

The Public Hearing opened at 7:31 PM

Clint Payton, Moscow, requested if the City could offer free tree vouchers to the neighboring properties in addition to the landscape buffer.

The Public Hearing closed at 7:32 PM

There was a discussion about the tree vouchers and that they might not be used nor any guarantee that the trees would be maintained if provided for private property owners. The Board had a conversation about the east gate moving further to the north. The Board agreed that the City Shop needs more storage and space to work on vehicles out of the weather. They reiterated that the same activities are proposed, and that the plans are not to accommodate new staff or equipment. Staff confirmed that they do not plan to combine maintenance yard operations with Latah County. The Board would like the City to continue to pursue daylighting Hog Creek.

Comstock moved for approval of the CUP to expand the existing City Shop Facilities, with no conditions, and directed Staff to prepare the draft Relevant Criteria and Standards document. The motion was seconded by Schutz.

Comstock amended the motion to add the landscape buffer condition, seconded by Schutz. Roll Call Vote; Ayes: Comstock, Kinkeade, Schutz, Thomson (4). Nays: Bazzoli (1). Abstentions: Dickinson (1). Motion carried.

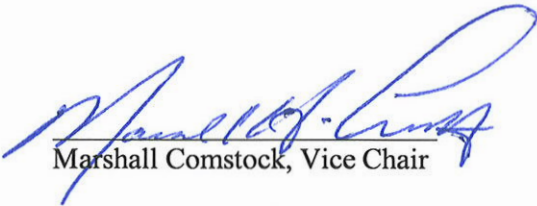
REPORTS

ANNOUNCEMENTS

UPCOMING EVENTS/MEETINGS

The next Board of Adjustment meeting is scheduled for 5:30 PM on June 26, 2024.

The meeting adjourned at 7:50 PM


Marshall Comstock, Vice Chair


Date

**BEFORE THE BOARD OF ADJUSTMENT
OF THE CITY OF MOSCOW, COUNTY OF LATAH,
STATE OF IDAHO**

REASONED STATEMENT OF RELEVANT CRITERIA AND STANDARDS

REASONED STATEMENT OF RELEVANT CRITERIA AND STANDARDS REGARDING A CONDITIONAL USE PERMIT APPLICATION FOR THE EXPANSION OF AN EXISTING PUBLIC SERVICE FACILITY “CITY SHOP” AT 650 N VAN BUREN STREET IN THE CITY OF MOSCOW, IDAHO WITHIN THE MEDIUM DENSITY, RESIDENTIAL (R-3) ZONE, PER MCC 4-3-4.

WHEREAS, the applicant filed an application for a conditional use permit on May 1, 2024; and

WHEREAS, this matter came before the Moscow Board of Adjustment during a duly noticed public hearing on June 18, 2024; and

WHEREAS, during the public hearing and having considered the matter including all testimony presented, the Moscow Zoning Board of Adjustment approved the proposed Conditional Use Permit and instructed Staff to prepare the Reasoned Statement of Relevant Criteria for the Board’s review and approval; and

WHEREAS, having reviewed the application, including all exhibits entered, and having considered the issues presented by the applicant and the opponents:

THE BOARD OF ADJUSTMENT OF THE CITY OF MOSCOW, IDAHO, AFTER DUE DELIBERATION AND CONSIDERATION, HEREBY CONCLUDES:

I. RELEVANT FACTS AND CONCLUSIONS

1. The Board of Adjustment considered the request pursuant City of Moscow Comprehensive Plan, City of Moscow Zoning Ordinance, the Local Land Use Planning Act, and other applicable development regulations.
2. The applicant, the City of Moscow, proposes to expanded the existing City Shop Facility. The proposal includes a new shop building, materials storage shed, and miscellaneous site improvements located at 650 N Van Buren Street.
3. The new fully enclosed single-story shop building is proposed to be approximately 19,000 square feet which will include new repair bays for the City’s fleet, Parks and Facilities Division, and will include office space for each division. The storage shed is proposed to contain dry materials and is approximately 4,000 square feet in size.
4. The subject property is an eight (8) acre area, owned by the City of Moscow. This currently includes the existing City shop, outdoor storage of vehicles and equipment, materials for

landscaping and street maintenance, fuel pumps, as well as one of the City's well houses for water distribution to the surrounding area.

5. The existing shop building will remain, be repaired and resided, and will continue to provide indoor storage space for the Streets and Stormwater Divisions. The activities historically conducted on the site will not change or increase in intensity.
6. The subject property is located within the Medium Density, Residential (R-3) Zoning District, where public service and utility facilities are listed as a conditionally permitted use.
7. Adjacent properties to the east and south are also located within the R-3 Zone. Properties to the north and west are within the Park View Addition Subdivision was platted in 2001 and are located within the Moderate Density, Single Family Residential (R-2) Zone.
8. Use of the property as a Public Service Facility date back to the 1960's. Many Conditional Use Permits and Special Use Permits have been approved over the years, the most recent SUP was approved in 2012.
9. For all uses other than dwellings in residential zoning designation, a type A landscape buffer is required. A Type A buffer is ten feet in width and contains two canopy trees, four understory trees, and six shrubs for every 100 linear feet.
10. The property is accessed by Polk Street to the east and Van Buren Street to the south. Polk Street is identified in the Comprehensive Plan as a collector and Van Buren is identified as a local neighborhood street.
11. Public testimony was heard by three individuals, all neutral to the proposal, but expressed concerns about deteriorating road conditions on Van Buren and noise concerns.

BASED ON THE ABOVE RELEVANT FACTS AND CONCLUSIONS, THE BOARD OF ADJUSTMENT OF THE CITY OF MOSCOW HEREBY FINDS THE FOLLOWING RELEVANT CRITERIA AND STANDARDS:

II. RELEVANT CRITERIA AND STANDARDS

1. **The proposed use is a conditionally permitted use within the Zoning District:** According to Moscow City Code, Public Service Facilities are a permitted within the Medium Density Residential (R-3) Zoning District with a conditional use permit.
2. **The character of the proposed use will be in harmony with the neighborhood and surrounding land uses:** The Board finds that the proposed use will be in harmony with the neighborhood and surrounding land uses. The use of this property as a Public Service Facility date back to the 1960S. The proposal does not introduce a new use, only improve the quality the site and provide additional space where activities can be conducted indoors.

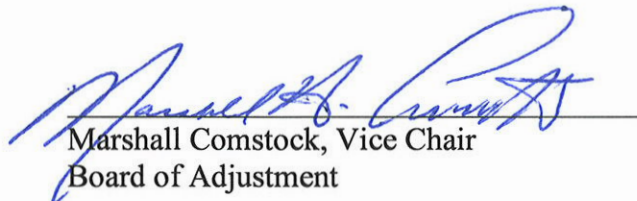
3. **The proposed use, as approved with conditions, will not generate nuisances that would be injurious or detrimental to the adjoining properties or the neighborhood (including, but not limited to, noise, dust, glare, vibrations, odors, and the like):** The Board finds that the proposed new buildings and the repair of the existing building will not negatively impact the adjacent properties or the surrounding area. The buildings will be located significantly lower in elevation than the surrounding properties. Additionally, a Type-A landscape buffer will be installed along the western property line.
4. **The location, design, and size of the proposed use is adequately served by existing streets, public facilities, and services:** The location, design and size will be adequately served by existing streets, public facilities and services. The addition of the two new buildings will not require additional public services that are not already at the site.
5. **The proposed use will not endanger the public health or safety if located where proposed:** The Board finds that the proposed new buildings will not endanger the public health or safety. This will allow City staff to continue to provide critical services to the community.
6. **Proposed use meets all applicable development standards of the Zoning Code:** The Board finds that the proposed use meets all applicable development standards of the City Code.
7. **The proposed use will not be in conflict with the Comprehensive Plan:** The use is consistent with the Comprehensive Plan as it supports the goals and strategies of multiple chapters and does not conflict with other sections of the Plan.

III. DECISION

Based on the above Reasoned Statement of Relevant Criteria, the City of Moscow Board of Adjustment approves the application for the expansion of a Public Service Facility located at 650 N Van Buren Street one condition:

1. The applicant shall install a "Type-A" landscape buffer adjacent to current R-2 Zoned property along the western property line of the subject property.

PASSED BY THE BOARD OF ADJUSTMENT OF THE CITY OF MOSCOW THE 26 DAY
OF June, 2024.


Marshall Comstock, Vice Chair
Board of Adjustment

COMMITTEE / CITY COUNCIL STAFF REPORT

DATE: Tuesday, September 3, 2024



AGENDA ITEM TITLE

Idaho Revolving Loan Fund Supplemental Revenue Bond Ordinance (ACTION ITEM) - Bill Belknap

RESPONSIBLE STAFF

Bill Belknap, City Supervisor

ADDITIONAL PRESENTER(S)

DESCRIPTION

In 2014, the City received judicial confirmation that allowed the City to incur debt without voter approval for three water system improvements that were intended to achieve compliance with specific Idaho Department of Environmental Quality (DEQ) water system requirements related to water production capacity and fire flows as an ordinary and necessary expense. Specifically, the City's water production system is required to have adequate water source redundancy to meet the City's domestic demands after the removal of the City's highest-producing well (Well #9). At that time, the City was unable to meet that requirement. Additionally, during the preparation of the City's 2012 Comprehensive Water System Plan, it was discovered that the City's six water pressure booster stations were primarily sized to accommodate domestic demands only and were incapable of delivering the required fire suppression capacities. The correction of these deficiencies was estimated to cost \$4.3 Million. After receiving approval of the judicial confirmation, the City applied for and received \$4.3M in funding from DEQ's Revolving Loan Fund (RLF) and commenced with the design of the initial phase (Phase 1) of the Subject Improvements which included drilling Well #10 (not including production development) and the construction of three of the six booster stations (Vista, Taylor and White). Upon completion of Phase I of the water system improvements, the initial \$4.3 Million in funding was exhausted.

In 2019, the City applied for and received an additional \$4.3 Million in RFL funding from the DEQ and entered into a loan agreement with DEQ as approved by Council Resolution 2019-22. All the original identified projects are now complete, and the City is ready to convert the construction funding to permanent bond financing. DEQ will be the sole purchaser of the bonds through the State RLF program. The bonds will have a term of 20 years and an interest rate of 2.25%. The City's bond counsel has prepared a supplemental bond ordinance providing for the sale of the bonds for Council approval. This was reviewed by the Administrative Committee on August 26, 2024, and recommended for approval.

REVIEWED BY

PROPOSED ACTIONS

PROPOSED ACTIONS: Approve the Ordinance under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary; or consider the Ordinance on

first reading and that it be read by title; or reject the Ordinance; or take such other action deemed appropriate.

STAFF RECOMMENDATION

Approve the Ordinance under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary.

OTHER RESOURCES

FISCAL IMPACT

PERSONNEL IMPACT

ATTACHMENTS

1. Supplemental Ordinance - City of Moscow (IDEQ) (Water Revenue Bond - 2024)
2. Ordinance 2020-04 Master bond ordinance authorizing issuance and sale of water revenue bond
3. Signed Phase II loan offer and Resolution

**CITY OF MOSCOW
LATAH COUNTY, IDAHO**

SUPPLEMENTAL ORDINANCE NO. 2024-15

A SUPPLEMENTAL ORDINANCE OF THE CITY OF MOSCOW, LATAH COUNTY, IDAHO, AUTHORIZING THE ISSUANCE AND SALE OF THE CITY'S WATER REVENUE BOND, SERIES 2024, IN THE PRINCIPAL AMOUNT OF \$4,300,000 TO PROVIDE FUNDS NECESSARY TO FINANCE IMPROVEMENTS TO THE CITY'S WATER SYSTEM; RATIFYING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT PROVIDING FOR THE SALE OF THE SERIES 2024 BOND TO THE STATE OF IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY; PLEDGING NET REVENUES FOR PAYMENT OF THE SERIES 2024 BOND ON PARITY; FIXING THE FORM AND TERMS OF THE SERIES 2024 BOND; PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO; AND PROVIDING FOR THE EFFECTIVE DATE HEREOF.

Approved: September 3, 2024

TABLE OF CONTENTS

ARTICLE I	2
Section 101. Definitions.....	2
ARTICLE II	3
Section 201. Authority for Supplemental Ordinance.....	3
Section 202. Finding and Purpose	3
Section 203. Authorization of 2024 Bond, Principal Amount, Designation; Confirmation of Net Revenues	3
Section 204. Issue Date.....	4
Section 205. 2024 Bond Details.....	4
Section 206. Optional Redemption	4
Section 207. Sale of 2024 Bond; Approval of 2020 IDEQ Loan Agreement.....	4
Section 208. Execution of 2024 Bond	4
Section 209. Registration of 2024 Bond	5
ARTICLE III.....	5
Section 301. Creation of Accounts and/or Subaccounts under Funds	5
Section 302. Delivery of 2024 Bond.....	5
ARTICLE IV	6
Section 401. Pledge of Net Revenues	6
ARTICLE V	6
Section 501. Tax Certificate	6
Section 502. Effect of Supplemental Ordinance.....	6
Section 503. Ratification.....	6
Section 504. Severability	6
Section 505. Conflict	6
Section 506. Captions	6
Section 507. Savings Clause.....	7
Section 508. Effective Date	7

SUPPLEMENTAL ORDINANCE NO. 2024-15

A SUPPLEMENTAL ORDINANCE OF THE CITY OF MOSCOW, LATAH COUNTY, IDAHO, AUTHORIZING THE ISSUANCE AND SALE OF THE CITY'S WATER REVENUE BOND, SERIES 2024, IN THE PRINCIPAL AMOUNT OF \$4,300,000 TO PROVIDE FUNDS NECESSARY TO FINANCE IMPROVEMENTS TO THE CITY'S WATER SYSTEM; RATIFYING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT PROVIDING FOR THE SALE OF THE SERIES 2024 BOND TO THE STATE OF IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY; PLEDGING NET REVENUES FOR PAYMENT OF THE SERIES 2024 BOND ON PARITY; FIXING THE FORM AND TERMS OF THE SERIES 2024 BOND; PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO; AND PROVIDING FOR THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MOSCOW, LATAH COUNTY, IDAHO, AS FOLLOWS:

WHEREAS, the City of Moscow, Latah County, Idaho (the "**City**") is a body politic and corporate duly organized, operating and existing under and pursuant to the provisions of the Constitution and the laws of the State of Idaho;

WHEREAS, the Council of the City (the "**Council**") is authorized and empowered by the Revenue Bond Act, Idaho Code Sections 50-1027 through 50-1042, inclusive, and the Municipal Bond Law of the State of Idaho, being Idaho Code, Title 57, Chapter 2 (collectively, the "**Act**"), to authorize, issue, sell and deliver revenue bonds to finance the acquisition and construction of certain improvements and additions to the domestic water system of the City (the "**System**");

WHEREAS, on April 29, 2014, the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, Idaho, in Case No. CV-2014-81, issued its Judgment (the "**Judicial Confirmation**") finding, among other things, that the City has the authority to finance certain improvements to the System by entering into a Loan Agreement and related financing documents with the Idaho Department of Environmental Quality (the "**IDEQ**"), and that those certain System improvements are ordinary and necessary expenses pursuant to Article VIII, Section 3 of the Idaho Constitution, and that such bonds are valid and binding obligations of the City;

WHEREAS, on June 16, 2014, the City accepted and entered into a Loan Offer, Acceptance and Agreement for Drinking Water Treatment Design and Construction dated June 12, 2014 with IDEQ wherein the City agreed to issue and sell its revenue note or bond in the principal amount of up to \$4,300,000 to the IDEQ (the "**Purchaser**");

WHEREAS, on April 20, 2020, the Council adopted its Master Bond Ordinance (Water System) No. 2020-04 (the “**Master Ordinance**”) providing for the issuance and sale of revenue bonds to finance or refinance Projects, as defined thereunder, by adoption of Supplemental Ordinances thereto;

WHEREAS, on April 20, 2020, the Council adopted Supplemental Ordinance No. 2020-05 (the “**2020 Supplemental Ordinance**”), authorizing issuance and sale of its 2020 Bond;

WHEREAS, on January 28, 2020, the City accepted and entered into a Loan Offer, Acceptance and Agreement for Drinking Water Treatment Design and Construction dated November 1, 2019 (the “2020 IDEQ Loan Agreement”) with IDEQ wherein the City agreed to issue and sell a second revenue note or bond in the principal amount of up to \$4,300,000 to the IDEQ necessitated by cost overruns on the System improvements;

WHEREAS, the Council has determined to adopt this Supplemental Ordinance No. 2024-15 (this “**2024 Supplemental Ordinance**” and together with the Master Ordinance and the 2020 Supplemental Ordinance, collectively, the “**Bond Ordinance**”) to authorize the issuance and sale of a revenue bond in the principal amount of \$4,300,000, to finance the acquisition and construction of certain improvements to the City’s System, together with costs of issuance of the bond, as more specifically described herein;

WHEREAS, Section 50-1036, Idaho Code, authorizes the negotiated private sale of revenue bonds and pursuant to Section 57-215, Idaho Code, the City’s Notice of Negotiated Private Bond Sale was published on August 24, 2024, in *The Moscow-Pullman Daily News*, a newspaper of general distribution in the City;

WHEREAS, the City desires to authorize the issuance of the City’s 2024 Bond (as defined below) and confirm the sale thereof to the Purchaser;

WHEREAS, the City desires to provide for the details of the 2024 Bond, the payment thereof, and other matters relating thereto.

NOW, THEREFORE, THE MAYOR AND CITY COUNCIL OF THE CITY OF MOSCOW, LATAH COUNTY, IDAHO, FURTHER ORDAIN AS FOLLOWS:

ARTICLE I

Section 101. Definitions. Except as provided in this Section, all defined terms contained in this 2024 Supplemental Ordinance shall have the same meanings as set forth in the Master Ordinance. As used in this 2024 Supplemental Ordinance, in addition to the terms defined in the WHEREAS clauses of this 2024 Supplemental Ordinance or if the context shall otherwise require, the following terms shall have the following meanings:

Payment Date(s) shall mean interest and principal payment dates on September 5 and March 5 of each year, commencing March 5, 2025, until payment of the 2024 Bond upon maturity or prior redemption thereof.

Project means the acquisition and construction of a new well, well house, booster station, and improvements to the transmission system, and payment of the costs of issuance of the 2024 Bond.

Reserve Account Requirement means the amount of equal to one year's debt service on the 2024 Bond, including principal and interest, as required by the 2020 IDEQ Loan Agreement.

2020 Bond means the City's Wastewater Revenue Bond, Series 2020 issued by the City on May 12, 2020, pursuant to the Act, and as authorized pursuant to Ordinance No. 2020-05 adopted by the Council on April 20, 2020, which bond was issued and sold to IDEQ to finance certain improvements to the System, the payment of which is secured by the City's pledge of Net Revenues.

2020 Supplemental Ordinance means Supplemental Ordinance No. 2020-05 adopted by the Council on April 20, 2020, authorizing the issuance of the 2020 Bond, setting forth certain requirements of the terms of sale of the 2020 Bond, and providing for related matters.

2024 Bond means the City's Water Revenue Bond, Series 2024, in the principal amount of \$4,300,000, authorized by this 2024 Supplemental Ordinance pursuant to the Master Ordinance to evidence the loan under the 2020 IDEQ Loan Agreement.

The terms "**hereby**," "**hereof**," "**hereto**," "**herein**," "**hereunder**," and any similar terms as used in this 2024 Supplemental Ordinance refer to this 2024 Supplemental Ordinance.

ARTICLE II

Section 201. Authority for Supplemental Ordinance. This 2024 Supplemental Ordinance is adopted pursuant to the provisions of the Act and the Master Ordinance.

Section 202. Finding and Purpose. The Council hereby finds, determines and declares it advisable and in the interests of the City to issue a revenue bond under the Master Ordinance for the purpose of acquiring and constructing a portion of the Project. In compliance with the Master Ordinance, the 2024 Bond is hereby authorized to be issued and sold to the Purchaser in exchange for the loan under the 2020 IDEQ Loan Agreement to provide funds with which to finance the Project.

Section 203. Authorization of 2024 Bond, Principal Amount, Designation; Confirmation of Net Revenues. In accordance with and subject to the terms, conditions and limitations established by the Act, and contained in the Master Ordinance and this 2024 Supplemental Ordinance, a water revenue bond of the City is hereby authorized to be issued in the aggregate principal amount of \$4,300,000. Such 2024 Bond shall be designated the City's

“Water Revenue Bond, Series 2024.” The 2024 Bond is secured by the pledge of the Net Revenues under Section 7(d) of the Master Ordinance equally and ratably with all Parity Bonds issued under the Master Ordinance, which pledge is hereby confirmed.

Section 204. Issue Date. The 2024 Bond shall be dated as of the date of its delivery.

Section 205. 2024 Bond Details. The 2024 Bond shall be issued in fully registered form only, without coupons, in a single denomination of \$4,300,000 in substantially the form attached as Exhibit A hereto. The 2024 Bond shall bear interest on the unpaid principal balance at the rate of two and twenty-five hundredths percent (2.25%) per annum, calculated on the basis of a 360-day year and twelve 30-day months, from the date of the first draw under the 2020 IDEQ Loan Agreement, or the most recent date to which interest has been paid. Amortized installments of principal and interest thereon shall be payable on the Payment Dates until maturity on September 5, 2044, or prior redemption thereof pursuant to the amortization schedule provided by the Purchaser and attached to the 2024 Bond as Schedule 1. The final installment of principal and interest may be in such greater or lesser amount as is necessary to fully pay the 2024 Bond on the date of maturity thereof or date of redemption prior to maturity.

Section 206. Optional Redemption. The 2024 Bond shall be subject to redemption prior to maturity in whole or in part on any date, at par, in such amount as available in the Bond Fund to pay the same over and above amounts to pay principal and interest due on the next Payment Date for the Series 2024 Bond.

Section 207. Sale of 2024 Bond; Approval of 2020 IDEQ Loan Agreement. The 2024 Bond herein authorized, when executed, shall be issued to the Purchaser or its lawful designee(s), at an aggregate purchase price equal to the par amount of the 2024 Bond, \$4,300,000, pursuant to the terms and conditions set forth in the 2020 IDEQ Loan Agreement. The City hereby acknowledges that prior to the issuance of the 2024 Bond it will have received from the Purchaser the amount of \$4,300,000, representing the aggregate amount of the draws received by the City under the 2020 IDEQ Loan Agreement including capitalized interest.

The sale of the 2024 Bond herein authorized to the Purchaser is hereby ratified and confirmed upon the terms and conditions set forth in the 2020 IDEQ Loan Agreement. The Council hereby determines that the provisions of the 2020 IDEQ Loan Agreement are in compliance with the Act, and the prior execution and delivery of the 2020 IDEQ Loan Agreement by the City is hereby ratified. Authorized officials of the City are, and each of them is, hereby authorized to do or perform all such acts as may be necessary or advisable to comply with the 2020 IDEQ Loan Agreement and to carry the same into effect.

Section 208. Execution of 2024 Bond. The 2024 Bond shall be executed on behalf of the City by the Mayor and Treasurer of the City and attested to by the City Clerk, and the corporate seal of the City shall be impressed or printed thereon, if any. The certificate of the Treasurer of the City attached to the 2024 Bond shall be signed by the Treasurer of the City, with the seal of the City impressed or printed thereon, if any. The said officials and each of them are hereby authorized and instructed to execute the 2024 Bond accordingly.

Section 209. Registration of 2024 Bond. The Treasurer of the City shall act as Bond Registrar with respect to the 2024 Bond and shall keep, or cause to be kept the Bond Register to record the registration and transfer of the 2024 Bond, which shall be open to inspection by the City. The 2024 Bond is not issued as a book-entry-only bond under The Depository Trust Company.

ARTICLE III

Section 301. Creation of Accounts and/or Subaccounts under Funds.

- (a) The following accounts and/or subaccounts under certain funds created and/or ratified under the Master Ordinance are hereby created on the accounting records of the City:
 - (i) 2024 Debt Service Account, a subaccount under the Bond Fund created under the Master Ordinance, to be held by the City for payment of principal and interest of the 2024 Bond;
 - (ii) 2024 Reserve Account, a subaccount under the Reserve Account established under the Bond Fund created under the Master Ordinance, to be held by the City for deposit of the Reserve Account Requirement, as required by the 2020 IDEQ Loan Agreement.
- (b) There shall be deposited into the 2024 Debt Service Account funds as the City shall designate as irrevocably available to pay principal and interest on the 2024 Bond. The City shall make disbursements from the 2024 Debt Service Account in accordance with Section 401 below and pursuant to the 2020 IDEQ Loan Agreement.
- (c) There shall be deposited into the 2024 Reserve Account the amount to satisfy the Reserve Account Requirement pursuant to the 2020 IDEQ Loan Agreement, to be funded by the City in ten (10) equal annual installments, the first installment to be deposited on the first principal Payment Date under the 2024 Bond. Once fully funded and for so long as the 2024 Bond remains outstanding, the City covenants to maintain the amount in the 2024 Reserve Account in the amount of the Reserve Account Requirement, except for withdrawals authorized therefrom pursuant to the provisions of the Master Ordinance.

Section 302. Delivery of 2024 Bond. As provided in the Master Ordinance and upon compliance with the provisions of the 2020 IDEQ Loan Agreement, the Treasurer/Finance Director or other authorized official of the City is hereby instructed to make delivery of the 2024 Bond to the Purchaser.

ARTICLE IV

Section 401. Pledge of Net Revenues. The City covenants and agrees that to pay the principal of and interest on the 2024 Bond falling due to and including September 5, 2044, the City shall appropriate from the Revenue Fund such amounts sufficient, together with funds then on deposit in the 2024 Debt Service Account, to satisfy the principal and interest installments on the 2024 Bond.

The Net Revenues of the City are hereby pledged for the prompt payment of the principal and interest installments on the 2024 Bond on the Payment Dates thereof on parity with outstanding Parity Bonds, pursuant to the amortization schedule provided by the Purchaser, which is attached as Schedule 1 to the 2024 Bond.

ARTICLE V

Section 501. Tax Certificate. Upon issuance of the 2024 Bond, a Tax Certificate, in form acceptable to the City's bond counsel, with such insertions and changes therein as shall be approved by the Mayor or Treasurer/Finance Director of the City or such other appropriate officials of the City, is hereby authorized and approved. Such approval of said officials of the City shall be conclusively established by their execution of the Tax Certificate in its final form.

Section 502. Effect of Supplemental Ordinance. To the extent that this 2024 Supplemental Ordinance amends or supplements the Bond Ordinance, the Bond Ordinance shall be treated as so amended or supplemented.

Section 503. Ratification. All proceedings, resolutions, ordinances, and actions of the Council, the City, and their officers, agents and employees taken in connection with the authorization, sale and issuance of the 2024 Bond are hereby in all respects ratified, confirmed and approved.

Section 504. Severability. It is hereby declared that all parts of this 2024 Supplemental Ordinance are severable, and if any section, paragraph, clause or provision of this 2024 Supplemental Ordinance shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect the remaining sections, paragraphs, clauses or provisions of this 2024 Supplemental Ordinance.

Section 505. Conflict. All resolutions, orders and regulations or parts thereof heretofore adopted or passed which are in conflict with any of the provisions of this 2024 Supplemental Ordinance are, to the extent of such conflict, hereby repealed.

Section 506. Captions. The table of contents and captions or headings herein are for convenience of reference only and in no way define, limit or describe the scope or intent of any provisions or sections of this 2024 Supplemental Ordinance.

Section 507. Savings Clause. Except as amended by this 2024 Supplemental Ordinance, the Bond Ordinance shall remain in full force and effect.

Section 508. Effective Date. This 2024 Supplemental Ordinance shall take effect from and after its passage and publication of the summary substantially in the form attached hereto as Exhibit B, in the manner as required by law.

ADOPTED by the City Council of the City of Moscow, Latah County, Idaho, at a regular meeting thereof held this 3rd day of September, 2024.

CITY OF MOSCOW, LATAH COUNTY,
IDAHO

Mayor

ATTEST:

City Clerk

**EXHIBIT A
FORM OF BOND**

UNITED STATES OF AMERICA

No. R-1

\$4,300,000.00

STATE OF IDAHO
CITY OF MOSCOW, LATAH COUNTY

WATER REVENUE BOND, SERIES 2024

<u>INTEREST RATE:</u>	<u>MATURITY DATE:</u>	<u>DATED DATE:</u>	<u>CUSIP</u>
2.25%	09/05/2044	09/05/2024	NO: N/A

REGISTERED OWNER: STATE OF IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY, BOISE, IDAHO

PRINCIPAL AMOUNT: **FOUR MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS**

The City of Moscow, Latah County, Idaho, a body politic and corporate organized and existing under and by virtue of the laws of the State of Idaho (herein called the “City”) hereby acknowledges itself to owe and for value received promises to pay, but only from the sources and as hereinafter provided, to the Registered Owner identified above, or registered assigns, the above Principal Amount pursuant to the State of Idaho Department of Environmental Quality Loan Offer, Acceptance and Agreement for Drinking Water Treatment Design and Construction executed by the Idaho Department of Environmental Quality (the “IDEQ”) on November 1, 2019, and accepted by the City on January 28, 2020 (the “2020 IDEQ Loan Agreement”), plus interest accruing on the outstanding principal at the above Interest Rate per annum on the basis of a 360-day year and twelve 30-day months. Payments of principal and accrued interest hereon are payable pursuant to Schedule 1 attached hereto, payable semiannually on September 5 and March 5 of each year, commencing March 5, 2025, based on the outstanding principal under this Water Revenue Bond, Series 2024 (this “Bond”), amortized over twenty (20), with the final payment of the outstanding principal and accrued interest thereon due and payable on the Maturity Date above.

The principal and interest payments on this Bond shall be payable in lawful money of the United States of America, to the Registered Owner hereof, at the address of such Registered Owner shown on the registration books of the City. Any Registered Owner of this Bond subsequent to its original Registered Owner is hereby placed on notice of all payments of principal and interest on this Bond prior to its transfer and all subsequent Registered Owners hereof hereby acknowledge that they have ascertained the actual unpaid amount of this Bond as

of the date of transfer to them and hereby release the City from all obligations as to all principal and interest paid by the City prior to such date.

The Bond is subject to redemption at par, in whole or in part, on any date prior to the stated Maturity Date, upon thirty (30) days advance written notice to the Registered Owner.

This Bond is issued for the purpose of financing a portion of the Cost of Acquisition of certain improvements (the “Project”) to the City’s domestic water system (the “System”), pursuant to the Revenue Bond Act of the State of Idaho, being Sections 50-1027 to 50-1042, inclusive, Idaho Code, and the Municipal Bond Law of the State of Idaho, being Idaho Code, Title 57, Chapter 2, and as authorized by the judicial confirmation of the Project, and pursuant to the City’s Master Bond Ordinance (Water System) No. 2020-04 adopted April 20, 2020 (the “Master Ordinance”), as supplemented by the City’s Supplemental Ordinance No. 2020-05 adopted April 20, 2020 (the “2020 Supplemental Ordinance”) and the City’s Supplemental Ordinance No. 2024-15 adopted September 3, 2024 (the “2024 Supplemental Ordinance,” and together with the 2020 Supplemental Ordinance and the Master Ordinance, the “Bond Ordinance”). *Capitalized terms used but not otherwise defined herein shall have the meanings as set forth in the Bond Ordinance and the 2024 Supplemental Ordinance.*

The Treasurer of the City is acting as the Bond Registrar, authenticating agent and paying agent for this Bond (the “Bond Registrar”).

This Bond is payable solely from the special fund of the City defined as the “Bond Fund” under the Bond Ordinance, and the 2024 Debt Service Account created thereunder. The City has irrevocably obligated and bound itself to pay into the Bond Fund out of the Revenue of the System or from such other moneys as may be provided therefor certain amounts necessary to pay and secure the payment of the principal and interest on this Bond on parity with all bonds issued under the Bond Ordinance payable from the Revenue of the System (the “Parity Bonds”). This Bond is not a general obligation of the City. The City hereby covenants and agrees with the owner of this Bond that it will keep and perform all the covenants of this Bond and of the Bond Ordinance to be by it kept and performed, and reference is hereby made to the Bond Ordinance for a complete statement of such covenants.

The City does hereby pledge and bind itself to set aside from the Revenue Fund out of the Net Revenues of the System and to pay into the 2024 Debt Service Account and 2024 Reserve Account under the Bond Fund the amount of Net Revenues required by the Bond Ordinance and 2020 IDEQ Loan Agreement to be paid into and maintained in such fund and accounts, all within the times provided by the Bond Ordinance and the 2020 IDEQ Loan Agreement. To the extent more particularly provided by the Bond Ordinance, the amounts so pledged to be paid from the Revenue Fund out of the Net Revenues of the System into the Bond Fund shall be a lien and prior first charge thereon, equal in rank to the lien and charge of Parity Bonds, and the amounts required to pay and secure the payment of Additional Bonds (as defined in the Bond Ordinance) of the City hereafter issued on a parity of lien with the Parity Bonds, including this Bond, and superior to all other liens and charges of any kind or nature, except the Operation and Maintenance Expenses of the System.

The pledge of Net Revenues of the System and other obligations of the City under the Bond Ordinance may be discharged at or prior to the maturity or redemption of this Bond upon the making of provision for the payment thereof on the terms and conditions set forth in the Bond Ordinance.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Ordinance until the Certificate of Authentication hereon shall have been manually signed by the Bond Registrar.

It is hereby certified that all acts, conditions, and things required by the Constitution and statutes of the State of Idaho to exist, to have happened, been done, and performed precedent to and in the issuance of this Bond have happened, been done, and performed.

IN WITNESS WHEREOF, the City of Moscow, Latah County, Idaho, has caused this Bond to be signed with the facsimile or manual signatures of the Mayor and the City Treasurer, and to be attested by the facsimile or manual signature of the City Clerk, all as of this 5th day of September, 2024.

CITY OF MOSCOW, LATAH COUNTY,
IDAHO

By: _____
Mayor

By: _____
City Treasurer

ATTEST:

Clerk

CERTIFICATE OF AUTHENTICATION

Date of Authentication: September 5, 2024

This Bond is the Water Revenue Bond, Series 2024, of the City of Moscow, Latah County, Idaho, in the principal amount of \$4,300,000, dated September 5, 2024, as described in the within-mentioned Bond Ordinance.

_____,
Registrar

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Name of Transferee: _____

Address: _____

Tax Identification No.: _____

the within Bond and hereby irrevocably constitutes and appoints _____
_____ of _____
to transfer said bond on the books kept for registration thereof with full power of substitution in
the premises.

Dated: _____

Registered Owner

NOTE: The signature on this Assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

SIGNATURE GUARANTEED:

NOTICE: Signature(s) must be guaranteed by an "eligible guarantor institution" that is a member of or a participant in a "signature guarantee program" (e.g., the Securities Transfer Agents Medallion Program, the Stock Exchange Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program).

CERTIFICATE OF THE TREASURER OF THE
CITY OF MOSCOW, LATAH COUNTY, IDAHO

STATE OF IDAHO)
) ss.
County of Latah)

I, the undersigned, the duly constituted, legally qualified and acting Treasurer of the City of Moscow, Latah County, Idaho, hereby certify that the within Bond has been registered and recorded in my office pursuant to the provisions of chapter 9, Title 57, Idaho Code, and all acts amendatory thereof and supplementary thereto.

WITNESS my hand this 5th day of September, 2024.

Treasurer

Schedule 1 - Debt Service Schedule

**City of Moscow, Latah County, Idaho
Water Revenue Bond, Series 2024**

LOAN NUMBER: MOSCOW14 NAME: CITY OF MOSCOW LOAN #DW1406F
PMT FREQ: 2 YEAR: Y
ORIG-LOAN-DATE: 09-05-24
NEXT-PMT-DATE: 03-05-25
PMT-TYPE: B
CUR-BALANCE: 4,300,000.00
INTR RATE: 2.2500
NO OF PMTS: 40
PMT AMOUNT: 134,099.70

NO.	PMT-DATE	DAYS	AMOUNT	INTEREST	PRINCIPAL	BALANCE
001	03-05-25	181	134,099.70	47,977.40	86,122.30	4,213,877.70
002	09-05-25	184	134,099.70	47,795.76	86,303.94	4,127,573.76
		365	268,199.40	95,773.16	172,426.24	
003	03-05-26	181	134,099.70	46,053.55	88,046.15	4,039,527.61
004	09-05-26	184	134,099.70	45,818.20	88,281.50	3,951,246.11
		365	268,199.40	91,871.75	176,327.65	
005	03-05-27	181	134,099.70	44,086.16	90,013.54	3,861,232.57
006	09-05-27	184	134,099.70	43,795.90	90,303.80	3,770,928.77
		365	268,199.40	87,882.06	180,317.34	
007	03-05-28	182	134,099.70	42,306.72	91,792.98	3,679,135.79
008	09-05-28	184	134,099.70	41,730.47	92,369.23	3,586,766.56
		366	268,199.40	84,037.19	184,162.21	
009	03-05-29	181	134,099.70	40,019.47	94,080.23	3,492,686.33
010	09-05-29	184	134,099.70	39,615.68	94,484.02	3,398,202.31
		365	268,199.40	79,635.15	188,564.25	
011	03-05-30	181	134,099.70	37,915.56	96,184.14	3,302,018.17
012	09-05-30	184	134,099.70	37,453.03	96,646.67	3,205,371.50
		365	268,199.40	75,368.59	192,830.81	
013	03-05-31	181	134,099.70	35,764.04	98,335.66	3,107,035.84
014	09-05-31	184	134,099.70	35,241.45	98,858.25	3,008,177.59
		365	268,199.40	71,005.49	197,193.91	
015	03-05-32	182	134,099.70	33,749.28	100,350.42	2,907,827.17
016	09-05-32	184	134,099.70	32,981.93	101,117.77	2,806,709.40
		366	268,199.40	66,731.21	201,468.19	
017	03-05-33	181	134,099.70	31,315.96	102,783.74	2,703,925.66
018	09-05-33	184	134,099.70	30,669.18	103,430.52	2,600,495.14

NO.	PMT-DATE	DAYS	AMOUNT	INTEREST	PRINCIPAL	BALANCE
=====						
		365	268,199.40	61,985.14	206,214.26	
019	03-05-34	181	134,099.70	29,015.11	105,084.59	2,495,410.55
020	09-05-34	184	134,099.70	28,304.11	105,795.59	2,389,614.96
		365	268,199.40	57,319.22	210,880.18	
021	03-05-35	181	134,099.70	26,662.21	107,437.49	2,282,177.47
022	09-05-35	184	134,099.70	25,885.52	108,214.18	2,173,963.29
		365	268,199.40	52,547.73	215,651.67	
023	03-05-36	182	134,099.70	24,390.08	109,709.62	2,064,253.67
024	09-05-36	184	134,099.70	23,413.73	110,685.97	1,953,567.70
		366	268,199.40	47,803.81	220,395.59	
025	03-05-37	181	134,099.70	21,797.00	112,302.70	1,841,265.00
026	09-05-37	184	134,099.70	20,884.49	113,215.21	1,728,049.79
		365	268,199.40	42,681.49	225,517.91	
027	03-05-38	181	134,099.70	19,280.77	114,818.93	1,613,230.86
028	09-05-38	184	134,099.70	18,298.02	115,801.68	1,497,429.18
		365	268,199.40	37,578.79	230,620.61	
029	03-05-39	181	134,099.70	16,707.62	117,392.08	1,380,037.10
030	09-05-39	184	134,099.70	15,653.02	118,446.68	1,261,590.42
		365	268,199.40	32,360.64	235,838.76	
031	03-05-40	182	134,099.70	14,154.01	119,945.69	1,141,644.73
032	09-05-40	184	134,099.70	12,949.07	121,150.63	1,020,494.10
		366	268,199.40	27,103.08	241,096.32	
033	03-05-41	181	134,099.70	11,386.20	122,713.50	897,780.60
034	09-05-41	184	134,099.70	10,183.05	123,916.65	773,863.95
		365	268,199.40	21,569.25	246,630.15	
035	03-05-42	181	134,099.70	8,634.41	125,465.29	648,398.66
036	09-05-42	184	134,099.70	7,354.44	126,745.26	521,653.40
		365	268,199.40	15,988.85	252,210.55	
037	03-05-43	181	134,099.70	5,820.37	128,279.33	393,374.07
038	09-05-43	184	134,099.70	4,461.83	129,637.87	263,736.20
		365	268,199.40	10,282.20	257,917.20	
039	03-05-44	182	134,099.70	2,958.90	131,140.80	132,595.40
040	09-05-44	184	134,099.36	1,503.96	132,595.40	

NO.	PMT-DATE	DAYS	AMOUNT	INTEREST	PRINCIPAL	BALANCE
		366	268,199.06	4,462.86	263,736.20	
		7305	5,363,987.66	1,063,987.66	4,300,000.00	

State of Idaho DEQ Loan Ledger Report thru 9/5/2024

DW1406F - CITY OF MOSCOW
 Loan Inception Date: 1/28/2020
 Original Loan Amount: \$4,300,000.00

Current Balance: \$4,085,000.00
 Maturity Date:
 Loan Status: DISB

Transaction Date	Transaction Type	Description/ Warrant #	Disbursement Amount	Principal Forgiveness	Grant Amount	Day Count	Percent Rate	Accrued Interest	Payment Amount	Principal Change	Interest Paid	Ending Balance
9/8/2023	Disb # 1	260118074	4,085,000.00	0.00	0.00	0	2.25	0.00	0.00	4,085,000.00	0.00	4,085,000.00
Total Disbursed/Accrued/Paid			4,085,000.00	0.00	0.00			0.00	0.00	4,085,000.00	0.00	
Accrued from 9/8/2023 - 9/5/2024						363	2.25	91,408.87				
Total Accrual through 9/5/2024								91,408.87				

EXHIBIT B
CITY OF MOSCOW
LATAH COUNTY, IDAHO

Summary of Supplemental Ordinance No. 2024-15, passed September 3, 2024

A SUPPLEMENTAL ORDINANCE OF THE CITY OF MOSCOW, LATAH COUNTY, IDAHO, AUTHORIZING THE ISSUANCE AND SALE OF THE CITY’S WATER REVENUE BOND, SERIES 2024, IN THE PRINCIPAL AMOUNT OF \$4,300,000 TO PROVIDE FUNDS NECESSARY TO FINANCE IMPROVEMENTS TO THE CITY’S WATER SYSTEM; RATIFYING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT PROVIDING FOR THE SALE OF THE SERIES 2024 BOND TO THE STATE OF IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY; PLEDGING NET REVENUES FOR PAYMENT OF THE SERIES 2024 BOND ON PARITY; FIXING THE FORM AND TERMS OF THE SERIES 2024 BOND; PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO; AND PROVIDING FOR THE EFFECTIVE DATE HEREOF.

Section 101 (Definitions) defines certain capitalized terms used in the 2024 Supplemental Ordinance, and incorporates defined terms in the Master Bond Ordinance (Water System) No. 14-0723-1 (the “Master Ordinance”).

Section 201 (Authority for Supplemental Ordinance) provides that the 2024 Supplemental Ordinance is adopted pursuant to the provisions of the Revenue Bond Act, Idaho Code Sections 50-1027 through 50-1042, inclusive, and the Municipal Bond Law of the State of Idaho, being Idaho Code, Title 57, Chapter 2 (collectively, the “Act”), and the Master Ordinance.

Section 202 (Finding and Purpose) provides findings and determinations required to finance certain improvements to the Water System (the “Project”) of the City of Moscow, Latah County, Idaho (the “City”) with proceeds of the issuance and sale of the City’s Water Revenue Bond, Series 2024 (the “2024 Bond”) pursuant to the Master Ordinance and 2020 IDEQ Loan Agreement with the Idaho Department of Environmental Quality.

Section 203 (Authorization of 2024 Bond, Principal Amount, Designation; Confirmation of Net Revenues) authorizes the 2024 Bond in the principal amount of \$4,300,000; provides the designation of the 2024 Bond, and security of payment thereof from Net Revenues.

Section 204 (Issue Date) provides that the issue date shall be the date of delivery of the 2024 Bond.

Section 205 (2024 Bond Details) provides that the 2024 Bond shall be issued in a single denomination and shall bear interest and be payable pursuant to the 2020 IDEQ Loan Agreement and form of the 2024 Bond as set forth in Exhibit A to the 2024 Supplemental Ordinance.

Section 206 (Optional Redemption) provides that the 2024 Bond is subject to redemption prior to maturity in whole or in part at par on any date.

Section 207 (Sale of 2024 Bond, Approval of 2020 IDEQ Loan Agreement) provides for issuance and sale of the 2024 Bond to the Purchaser pursuant to the 2020 IDEQ Loan Agreement.

Section 208 (Execution of 2024 Bond) provides for the manner of execution of the 2024 Bond.

Section 209 (Registration of 2024 Bond) provides that the Treasurer of the City shall act as Bond Registrar for the 2024 Bond.

Section 301 (Creation of Accounts and/or Subaccounts under Funds) creates the following: 2024 Debt Service Account under the Bond Fund for payment of debt service on the 2024 Bond; 2024 Reserve Account under the Bond Fund to secure payment of the 2024 Bond.

Section 302 (Delivery of 2024 Bond) authorizes delivery of the 2024 Bond to the Purchaser pursuant to the 2020 IDEQ Loan Agreement in exchange for prior draws received by the City together with capitalized interest aggregating \$4,300,000, the principal amount of the 2024 Bond.

Section 401 (Pledge of Net Revenues) provides for pledge of Net Revenues of the City to pay debt service on the 2024 Bond on parity with outstanding Parity Bonds under the Master Ordinance.

Section 501 (Tax Certificate) authorizes a Tax Certificate acceptable to the City's bond counsel to be executed by City officials.

Section 502 (Effect of Supplemental Ordinance) provides that the Bond Ordinance is amended and supplemented as provided by the 2024 Supplemental Ordinance.

Section 503 (Ratification) ratifies, confirms and approves all proceedings, resolutions, and ordinances in connection with the sale and issuance of the 2024 Bond.

Section 504 (Severability) provides that other covenants and agreements in the 2024 Supplemental Ordinance are not affected if one is made invalid.

Section 505 (Conflict) repeals all resolutions, orders and regulations or parts thereof conflicting with the 2024 Supplemental Ordinance.

Section 506 (Captions) provides that table of contents and captions and headings are for convenience only.

Section 507 (Savings Clause) provides that except as amended by the 2024 Supplemental Ordinance, the Bond Ordinance shall remain in full force and effect.

Section 508 (Effective Date) provides that the 2024 Supplemental Ordinance shall take effect from and after its passage and publication of this summary as required by law.

Exhibit A: Sets forth the form of the 2024 Bond.

Exhibit B: Sets forth this summary for publication.

The full text of Supplemental Ordinance No. 2024-15 is available at the office of the City Clerk of the City of Moscow, Idaho, and will be provided to any citizen upon personal request during normal business hours.

Approved this 3rd day of September, 2024.

CITY OF MOSCOW, LATAH COUNTY,
IDAHO

Mayor

ATTEST:

City Clerk

CERTIFICATION OF COUNSEL

I, the undersigned, attorney for the City of Moscow, Idaho, hereby certify that I have read the attached Summary of Supplemental Ordinance No. 2024-15 of the City, and that the same is true and complete and provides adequate notice to the public of the contents of said ordinance.

Dated as of this ____ day of September, 2024.

By: _____
City Attorney

CERTIFICATE OF THE CLERK

I DO HEREBY CERTIFY that I am the duly chosen, qualified and acting Clerk of the City of Moscow, Latah County, Idaho (the “City”), and keeper of the records of the City Council (the “City Council”); and

I HEREBY CERTIFY:

1. That the attached Supplemental Ordinance is a true and correct copy of Supplemental Ordinance No. 2024-15 of the City (the “2024 Supplemental Ordinance”), as finally passed at a regular meeting of the City Council held on the 3rd day of September, 2024, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a quorum was present throughout the meeting and a legally sufficient number of members of the City Council voted in the proper manner for the passage of the 2024 Supplemental Ordinance; that all other requirements and proceedings incident to the proper passage of the 2024 Supplemental Ordinance have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd of September, 2024.

Clerk

**CITY OF MOSCOW
LATAH COUNTY, IDAHO**

**MASTER BOND ORDINANCE NO. 2020-04
(WATER SYSTEM)**

AN ORDINANCE OF THE CITY OF MOSCOW, LATAH COUNTY, IDAHO, AUTHORIZING THE ISSUANCE AND SALE OF WATER REVENUE BONDS FROM TIME TO TIME TO PROVIDE FUNDS NECESSARY TO FINANCE OR REFINANCE IMPROVEMENTS TO THE CITY'S WATER SYSTEM; FIXING THE FORM, COVENANTS AND CERTAIN TERMS OF THE BONDS TO BE ISSUED; PROVIDING FOR THE REGISTRATION AND AUTHENTICATION OF BONDS; PLEDGING REVENUES FOR PAYMENT OF DEBT SERVICE ON BONDS ISSUED HEREUNDER; PROVIDING FOR CERTAIN FEDERAL TAX COVENANTS WITH RESPECT TO THE BONDS; DESIGNATING CERTAIN FUNDS AND ACCOUNTS OF THE CITY; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

Approved: April 20, 2020

TABLE OF CONTENTS

Section 1.	Definitions	2
Section 2.	Authorization of Bonds.....	9
Section 3.	Registration, Exchange and Payments.....	9
Section 4.	Redemption and Purchase.....	12
Section 5.	Establishment of Accounts and Funds.....	14
Section 6.	Revenue Fund; Priority of Application of Revenue	14
Section 7.	Bond Fund	15
Section 8.	Project Fund.....	17
Section 9.	Rebate Fund; Rebate Requirement	17
Section 10.	Authorization for Projects.....	18
Section 11.	Specific Covenants	18
Section 12.	Tax Covenants	19
Section 13.	Issuance of Additional Bonds.....	21
Section 14.	Form of Bonds	23
Section 15.	Execution of Bonds.....	27
Section 16.	Defeasance.....	27
Section 17.	Lost or Destroyed Bonds	28
Section 18.	Events of Default	28
Section 19.	Application of Funds and Moneys in Event of Default.....	29
Section 20.	Amendments	30
Section 21.	Severability	31
Section 22.	Effective Date	33

MASTER BOND ORDINANCE NO. 2020-04 (WATER SYSTEM)

AN ORDINANCE OF THE CITY OF MOSCOW, LATAH COUNTY, IDAHO, AUTHORIZING THE ISSUANCE AND SALE OF WATER REVENUE BONDS FROM TIME TO TIME TO PROVIDE FUNDS NECESSARY TO FINANCE OR REFINANCE IMPROVEMENTS TO THE CITY'S WATER SYSTEM; FIXING THE FORM, COVENANTS AND CERTAIN TERMS OF THE BONDS TO BE ISSUED; PROVIDING FOR THE REGISTRATION AND AUTHENTICATION OF BONDS; PLEDGING REVENUES FOR PAYMENT OF DEBT SERVICE ON BONDS ISSUED HEREUNDER; PROVIDING FOR CERTAIN FEDERAL TAX COVENANTS WITH RESPECT TO THE BONDS; DESIGNATING CERTAIN FUNDS AND ACCOUNTS OF THE CITY; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MOSCOW, LATAH COUNTY, IDAHO, AS FOLLOWS:

WHEREAS, the City of Moscow, Latah County, Idaho (the "**City**") is a body politic and corporate duly organized, operating and existing under and pursuant to the provisions of the Constitution and the laws of the State of Idaho;

WHEREAS, the Council of the City, as the same shall be duly and regularly constituted from time to time (the "**City Council**" or "**Council**"), is authorized and empowered by the Revenue Bond Act, Idaho Code Sections 50-1027 through 50-1042, inclusive, and the Municipal Bond Law of the State of Idaho, being Title 57, Chapter 2, Idaho Code (collectively, the "**Act**"), to authorize, issue, sell and deliver revenue bonds to finance the acquisition and construction of improvements and additions to the City's domestic water system (the "**System**");

WHEREAS, on April 29, 2014, the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, Idaho, in Case No. CV-2014-81, issued its Judgment (the "**Judicial Confirmation**") finding, among other things, that the City has the authority to finance certain improvements to the System by entering into a loan agreement and related financing documents with the Idaho Department of Environmental Quality (the "**IDEQ**"), and that those certain System improvements are ordinary and necessary expenses pursuant to Article VIII, Section 3 of the Idaho Constitution, and that such bonds are valid and binding obligations of the City;

WHEREAS, on June 16, 2014, the City accepted and entered into a Loan Offer, Acceptance and Agreement for Drinking Water Treatment Design and Construction dated June 12, 2014 (the "**IDEQ Loan Agreement**") with the IDEQ, wherein the IDEQ agreed to finance certain improvements to the City's System, with repayment of the loan to be paid from revenues of the System;

WHEREAS, the City desires to issue to IDEQ a revenue bond pursuant to the terms of a Supplemental Ordinance (the “**2020 Bond**”) to evidence the loan amount under the IDEQ Loan Agreement, which will be allocated to the expenditures authorized by the Judicial Confirmation;

WHEREAS, it is hereby found to be in the best interests of the City that the City adopt this ordinance (hereinafter, this “**Master Ordinance**”) to provide the terms and provisions by which the City shall authorize the issuance and sale of revenue bonds pursuant to Supplemental Ordinances hereunder including i) the 2020 Bond ii) revenue bonds evidencing the remaining authority under the Judicial Confirmation, and iii) revenue bonds to finance or refinance improvements to the System pursuant to the Act, judicial confirmation or election pursuant to Article VIII, Section 3, of the Idaho Constitution;

NOW, THEREFORE, THE MAYOR AND COUNCIL OF THE CITY OF MOSCOW, LATAH COUNTY, IDAHO, FURTHER ORDAIN AS FOLLOWS:

Section 1. Definitions. In addition to the defined terms in the WHEREAS clauses hereto, the following definitions shall apply to capitalized terms used in this Master Ordinance, unless a different meaning clearly appears from the context:

Acquisition includes the opening, laying out, establishment, purchase, construction, securing, installation, reconstruction, lease, gift, or grant from the federal government, the State of Idaho, or any public body therein or any person, the condemnation, transfer, option to purchase, other contract, or other acquirement, or any combination thereof.

Additional Bonds mean any Bonds or obligations issued from time to time subsequent to the issuance of the 2020 Bond pursuant to Supplemental Ordinances hereto.

Additional Bonds Requirement means Net Revenues equal to or greater than:

- (a) 125% of Maximum Annual Debt Service for all Parity Bonds; and
- (b) 100% of Maximum Annual Debt Service for all subordinate lien evidences of indebtedness secured by Revenue of the System.

Annual Debt Service means the amount required in a Fiscal Year for the payment of the principal of and interest on Parity Bonds, except interest capitalized from the proceeds of Parity Bonds.

Average Annual Debt Service means the average amount of Annual Debt Service which will become due on any Parity Bonds for the period from the date of such calculation until the final maturity date of the Parity Bonds then Outstanding.

Beneficial Owner or Owner means any person that has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

Bond Fund means the “City of Moscow Water Revenue Bond Fund” created hereunder consisting of the Debt Service Account and the Reserve Account, and subaccounts thereunder, for the purpose of paying the principal of and interest due on Bonds, as applicable.

Bond Purchase Contract means a contract between the City and a Purchaser in the form presented to the City on the date of sale of Bonds authorized under a Supplemental Ordinance.

Bond Register means the registration records maintained by the Bond Registrar setting forth the names and addresses of Registered Owners of the Bonds, in compliance with Section 149 of the Code.

Bond Registrar means the person or qualified entity appointed by the City pursuant to Section 3 hereof for the purposes of registering and authenticating the Bonds, maintaining the Bond Register, effecting transfer of ownership of the Bonds, and paying interest on and principal of the Bonds.

Bonds mean any Bonds, including the 2020 Bond, or Additional Bonds authorized to be issued pursuant to Supplemental Ordinances hereto with or without a parity pledge on Net Revenues.

Bond Year means each one-year period that ends on the date selected by the City. The first and last Bond Years may be shorter periods. If no day is selected by the City before the earlier of the final maturity date of the Bonds or the date that is five years after the date of issuance of the Bonds, Bond Years shall end on each anniversary of the date of issue and on the final maturity date of the Bonds.

City Clerk or **Clerk** means the de facto or de jure City Clerk of the City, or other officer of the City who is the custodian of the records of the proceedings of the City, or his/her successor in function, if any.

Code means the Internal Revenue Code of 1986, as amended, together with corresponding and applicable regulations and revenue rulings issued with respect thereto by the Treasury Department or the Internal Revenue Service of the United States.

Commission means the Securities and Exchange Commission.

Cost of Acquisition or any phrase of similar import, shall mean all or any part designated by the City of the costs of a Project, or interest therein, which costs, at the option of the City, may include all or any part of the incidental costs pertaining to the Acquisition of the Project, including, without limitations:

(1) Preliminary expenses advanced by the City from funds available for the use therefor, or advanced by the federal government, or from any other source, with approval of the City, or any combination thereof;

(2) The costs of making surveys, audits, preliminary plans, other plans, specifications, estimates of costs and other preliminaries;

(3) The costs of appraising, printing, estimates, advice, services of engineers, architects, financial consultants, attorneys at law, clerical help, or other agents of employees;

(4) The costs of contingencies;

(5) The costs of any discount on Bonds and of any of the costs of issuance of Bonds;

(6) The costs of funding and short-term financing, revenue warrants, bond anticipation notes, or other temporary loans appertaining to the Project, and of the incidental expenses incurred in connection with such loans;

(7) The acquisition costs of any properties, rights, easements, or other interest in properties, or any licenses, privileges, agreements and franchises; and

(8) All other expenses necessary or desirable and appertaining to a Project, as estimated or otherwise ascertained by the City.

Debt Service Account means the City of Moscow "Revenue Bond Debt Service Account," hereby established as an account of the Bond Fund, out of which the principal of and interest on any Bonds authorized hereunder shall be paid.

Designated Representative means the Mayor, Treasurer, Clerk, Finance Director or any City employee designated as such by the Mayor, Treasurer, Clerk or Finance Director.

DTC means The Depository Trust Company of New York, as depository for the Bonds, or any successor or substitute depository for Bonds, as applicable.

Electronic Means means telecopy, facsimile transmissions, e-mail transmissions or other similar electronic means of communication providing evidence of transmission.

Engineer means an independent licensed professional engineer (or firm of licensed professional engineers) selected by the City and experienced and skilled in the design, construction and operation of water systems of comparable size and character to the System.

Fiscal Year means the year commencing October 1 and ending the following September 30.

Fitch means Fitch, Inc., organized and existing under the laws of the State of Delaware, its successors and their assigns, and, if such organization shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, Fitch shall be deemed to refer to any other nationally recognized securities rating agency (other than S&P or Moody's) designated by the City.

Information Reporting Agreement shall mean, with respect to certain Bonds authorized hereunder, the form of continuing disclosure undertaking by the City dated the date of issuance and delivery of the respective Bonds, as originally executed and as may be amended from time to time in accordance with the terms hereof, if required by Rule 15c2-12.

Letter of Representations means a Blanket Issuer Letter of Representations from the City to DTC authorized by the City for filing with DTC, when applicable.

Maximum Annual Debt Service means, at the time of calculation, the maximum amount of Annual Debt Service that will be payable in the current Fiscal Year or any future Fiscal Year on all Parity Bonds.

Mayor means the Mayor of the City, or any presiding officer or titular head of the City, or his/her successor in functions, if any.

Moody's means Moody's Investors Service, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, Moody's shall be deemed to refer to any other nationally recognized securities rating agency (other than S&P and Fitch) designated by the City.

Net Proceeds, when used with reference to Bonds, means the face amount of the Bonds, plus accrued interest and original issue premium, if any, and less original issue discount and proceeds deposited into a Reserve Account, if any.

Net Revenues means, for any period, the Revenue of the System after the deduction of Operation and Maintenance Expenses.

Operation and Maintenance Expenses means all reasonable expenses incurred by the City, paid or accrued, of operating, maintaining, and repairing the System or of levying, collecting and otherwise administering the Revenue of the System for the payment of the Bonds, but shall not include any payment for debt service or deposits into a Reserve Account, depreciation or taxes levied or imposed by the City of payments to the City in lieu of taxes, or capital additions or capital replacements to the System, and the term includes (except as limited by contract or otherwise limited by law) without limiting the generality of the foregoing:

(1) Engineering, auditing, reporting, legal and other overhead expenses of the various City departments directly relating and reasonably allocable to the administration of the System;

(2) Fidelity bond and property and liability insurance premiums appertaining to the System, or a reasonably allocable share of a premium of any blanket bond or policy pertaining thereto;

(3) Payments to pension, retirement, health, and hospitalization funds and other insurance related to the operation of the System;

(4) Any taxes, assessments, excise taxes or other charges which may be lawfully imposed on the City, the System, revenues therefrom, or any privilege in connection with their operation;

(5) The reasonable charges of the fiscal or paying agent, Bond Registrar, commercial bank, trust bank or other depository bank appertaining to Bonds or appertaining to a Project, if any;

(6) Contractual services, professional services, salaries, other administrative expenses, the cost of materials, supplies, repairs and labor, appertaining to the issuance of Bonds and to the System; and

(7) All other administrative, general and commercial expenses.

Ordinance means this Master Ordinance and, when applicable, this Master Ordinance together with Supplemental Ordinance(s) hereto.

Outstanding, as of any particular date, means all Bonds issued hereunder which have been issued, executed, authenticated and delivered by the City, except (i) Bonds cancelled because of payment or redemption prior to their stated dates of maturity, and (ii) any Bonds (or portion thereof) for the payment or redemption of which there has been separately set aside and held funds for the payment thereof.

Parity Bonds means the 2020 Bond and Additional Bonds authorized under Supplemental Ordinances, each having an equal priority lien on the Net Revenues.

Permitted Investments means such investments as shall be legal investment for funds under Section 50-1013, Idaho Code, as then in effect.

Private Person means any natural person engaged in a trade or business or any trust, estate, partnership, association, company or corporation.

Project means the undertaking or undertakings of acquiring and/or constructing improvements to the System after obtaining authority to incur debt in accordance with the laws of the State of Idaho, as specifically described in the respective Supplemental Ordinance.

Project Fund means the fund created pursuant to Section 8 hereunder or under any Supplemental Ordinance, and any subaccount thereunder into which shall be deposited Net Proceeds of Bonds to finance a Project and costs of issuance thereof.

Purchaser means an underwriter or direct purchaser of Bonds, as authorized under Supplemental Ordinance(s).

Qualified Insurance means any municipal bond insurance policy or surety bond issued by any insurance company licensed to conduct an insurance business in any state of the United States (or by a service corporation acting on behalf of one or more such insurance companies) which insurance company or companies, as of the time of issuance of such policy or surety bond, are currently rated in one of the two highest Rating Categories by the Rating Agency.

Qualified Letter of Credit means any letter of credit issued by a financial institution for the account of the City, which institution maintains an office, agency or branch in the United States and as of the time of issuance of such letter of credit is currently rated in one of the two highest Rating Categories by the Rating Agency.

Rate Covenant means Net Revenues in each Fiscal Year at least equal to 125% of the amounts required in such Fiscal Year to be paid as scheduled debt service (principal and interest) on all Parity Bonds.

Rating Agency means Moody's, S&P or Fitch.

Rating Category means the generic rating categories of the Rating Agency, without regard to any refinement or gradation of such rating category by a numerical modifier or otherwise.

Rebate Fund means the fund by that name established under Section 9 hereto.

Record Date, unless otherwise provided in a Supplemental Ordinance, means (a) in the case of each interest payment date, the close of business on the fifteenth day preceding the interest payment date; and, if not a business day of the Bond Registrar, the next preceding day that is a Business Day of the Bond Registrar, and (b) in the case of redemption, if applicable, such record date as shall be specified by the Bond Registrar in the notice of redemption, provided that such record date shall be not less than fifteen (15) calendar days before the mailing of such notice of redemption.

Registered Owner or **Registered Owners** mean the person or persons whose names and addresses shall appear on the Bond Register maintained by the Bond Registrar in accordance with the terms of this Master Ordinance, as the owner or owners of a specific Bond or Bonds. For so long as Bonds are held in book-entry form, DTC shall be deemed to be the sole Registered Owner thereof.

Reserve Account(s) means the City of Moscow "Debt Service Reserve Account," hereby established as an account of the Bond Fund, including any and all subaccounts thereunder created upon issuance of Bonds under and as required by Supplemental Ordinances.

Reserve Account Requirement means, the amount required to be deposited by the City into a subaccount under the Reserve Account upon issuance of Bonds authorized hereunder, if required by the respective Supplemental Ordinance.

Revenue Fund means the fund designated the "City of Moscow Water Revenue Fund" into which all of the Revenue of the System is deposited.

Revenue of the System or **Revenue** means all earnings, revenue and moneys received by the City from or on account of the operation of the System, including income from investments of money in the Bond Fund or from any other investment thereof, except the income from investments irrevocably pledged to the payment of any other revenue obligations of the City pursuant to a plan of retirement or refunding. The term Revenue of the System shall include any federal or state reimbursements of Operation and Maintenance Expenses to the extent such expenses are included as Operation and Maintenance Expenses.

Rule 15c2-12 means Rule 15c2-12, as amended, promulgated by the SEC under the Securities and Exchange Act of 1934, as the same may be amended from time to time.

S&P means Standard & Poor's, a Division of The McGraw Hill Companies, its successors and their assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, S&P shall be deemed to refer to any other nationally recognized securities rating agency (other than Moody's and Fitch) designated by the City.

SEC means the Securities and Exchange Commission.

Supplemental Ordinance means ordinances adopted by the City Council supplementing this Master Ordinance to authorize the issuance of Bonds under this Ordinance.

System means the domestic water system of the City, including the assets, real and personal, tangible and intangible, and as it may later be added to, extended and improved, and shall include reservoirs, storage facilities, water mains, conduits, aqueducts, pipelines, pumping stations, filtration plants, and all appurtenances and machinery necessary or useful for obtaining, storing, treating, purifying or transporting water for domestic uses or purposes or other income producing property from the operation of or in connection with which revenues for the payment of Bonds authorized hereunder will be derived, and the lands appertaining thereto, including, without limitation, any Project(s) to be acquired with the proceeds of Bonds issued hereunder.

Tax Certificate means any agreement or certificate of the City which the City may execute in order to establish and assure the tax-exempt status of interest received on Bonds.

Treasurer means the duly appointed Treasurer of the City, or his/her successor in function, if any.

Rules of Interpretation. In this Master Ordinance, unless the context otherwise requires:

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Master Ordinance, refer to this Master Ordinance as a whole and not to any particular article, section, or subdivision;

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa;

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons;

(d) Any headings preceding the text of any sections of this Master Ordinance, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Master Ordinance, nor shall they affect its meaning, construction or effect; and

(e) All references herein to “articles,” “sections” and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof.

Section 2. Authorization of Bonds. In accordance with and subject to the terms, condition and limitations of the Revenue Bond Act or other statutes authorizing Bonds to be issued hereunder, the City is authorized to issue Bonds pursuant to the terms and provisions hereof as supplemented by the terms and provisions of Supplemental Ordinance(s) to provide for the specific terms and provisions thereof, including, but not limited to, the designation of each series of Bonds, the dated date of original issuance and delivery thereof, the registration provisions thereof, the denominations, maturity, payment and redemption provisions thereof, and requirements, if any, for a Reserve Account to secure payment of debt service on the Bonds. Bonds shall be special obligations only of the Bond Fund and shall be payable and secured as provided herein. The Bonds do not constitute an indebtedness or general obligation of the City within the meaning of the constitutional provisions and limitations of the State of Idaho.

Section 3. Registration, Exchange and Payments.

(a) *Registrar and Register.* Upon issuance of Bonds hereunder, if required, the City will appoint a registrar, authenticating agent, paying agent and transfer agent (collectively, the "Bond Registrar"). The Bond Registrar shall keep, or cause to be kept, at its principal corporate trust office, as applicable, sufficient records for the registration and transfer of Bonds (the "Bond Register"), which shall be open to inspection by the City. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of such Bonds and this Ordinance and to carry out all of the Bond Registrar's powers and duties under this Ordinance. The Bond Registrar shall be responsible for its representations contained in the Certificate of Authentication on the Bonds. The Mayor or Treasurer is hereby authorized to negotiate the terms of a registrar agreement with the Bond Registrar, if required, providing for compensation and other terms mutually acceptable to the City and the Bond Registrar regarding the performance of its duties under this Ordinance. The term "Bond Registrar" shall include, as applicable, any appointed successor, business successor or successors thereto, any company into which the Bond Registrar may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party, provided such company shall be a bank or trust company organized under the laws of any state of the United States of America or a national banking association and shall be authorized by law to perform all the duties imposed upon it by this Ordinance, shall be the successor to the Bond Registrar without the execution or filing of any paper or the performance of any further act.

(b) *Registered Ownership.* The City and the Bond Registrar may deem and treat the Registered Owner of each Bond on the Record Date as the absolute owner for all purposes, and neither the City nor the Bond Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described herein, but such registration may be transferred as herein provided. All such payments made as described herein, shall be valid and shall satisfy the liability of the City upon such Bond to the extent of the amount or amounts so paid.

(c) *DTC Acceptance/Letter of Representations.* If required by the respective Supplemental Ordinance, Bonds may be held in fully immobilized form by DTC acting as depository. In the written acceptance of the Bond Registrar, the Bond Registrar shall agree to take all action necessary for all representations of the City in the Letter of Representations with respect to the Bond Registrar to be complied with at all times. The City's Letter of Representations is for

the purpose of effectuating the book-entry-only system and shall not be deemed to amend, supersede or supplement the terms of this Ordinance, which terms are intended to be complete without reference to the Letter of Representations.

In the event of any conflict between the terms of the Letter of Representations and the terms of this Ordinance, the terms of this Ordinance shall control. DTC may exercise the rights of a Registered Owner hereunder only in accordance with the terms hereof applicable to the exercise of such rights.

(d) Neither the City nor the Bond Registrar will have any responsibility or obligation to DTC participants or the persons for whom they act as nominees with respect to book-entry Bonds for the accuracy of any records maintained by DTC or any DTC participant, the payment by DTC or any DTC participant of any amount in respect of the principal of or interest on Bonds, any notice that is permitted or required to be given to Registered Owners under this Ordinance (except such notices as shall be required to be given by the City to the Bond Registrar or to DTC), the selection by DTC or any DTC participant of any person to receive payment in the event of a partial redemption of the Bonds, or any consent given or other action taken by DTC as the Registered Owner. For so long as any Bonds are held in fully immobilized book-entry form hereunder, DTC or its successor depository shall be deemed to be the Registered Owner for all purposes, and all references in this Ordinance to the Registered Owners shall mean DTC or its nominee and shall not mean the owners of any beneficial interest in any Bonds.

(e) *Use of Depository.*

(1) Under the book-entry-only system, Bonds shall be registered initially in the name of "CEDE & Co.," as nominee of DTC, with one Bond maturing on each of the maturity dates for each series of Bonds in a denomination corresponding to the total principal therein designated to mature on such date. Registered ownership of such immobilized Bonds, or any portions thereof, may not thereafter be transferred except (a) to any successor of DTC or its nominee, provided that any such successor shall be qualified under any applicable laws to provide the service proposed to be provided by it; (b) to any substitute depository appointed by the Designated Representative pursuant to subsection (2) below or such substitute depository's successor; or (c) to any person as provided in subsection (4) below.

(2) Upon the resignation of DTC or its successor (or any substitute depository or its successor) from its functions as depository or a determination by the Designated Representative to discontinue the system of book entry transfers through DTC or its successor (or any substitute depository or its successor), the Designated Representative may hereafter appoint a substitute depository. Any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it.

(3) In the case of any transfer pursuant to clause (a) or (b) of subsection (1) above, the Bond Registrar shall, upon receipt of all Outstanding Parity Bonds issued hereunder, together with a written request on behalf of the Designated Representative, issue a single new Bond for each maturity then outstanding, registered in the name of such successor or such substitute depository, or their nominees, as the case may be, all as specified in such written request of the Designated Representative.

(4) In the event that (a) DTC or its successor (or substitute depository or its successor) resigns from its functions as depository, and no substitute depository can be obtained, or (b) the Designated Representative determines that it is in the best interest of the Beneficial Owners of the Bonds that such Owners be able to obtain such Bonds in the form of Bond certificates, the ownership of such Bonds may then be transferred to any person or entity as herein provided, and shall no longer be held in fully immobilized form. The Designated Representative shall deliver a written request to the Bond Registrar, together with a supply of definitive Bonds, to issue Bonds as herein provided in any authorized denomination. Upon receipt by the Bond Registrar of all then Outstanding Bonds issued hereunder, together with a written request on behalf of the Designated Representative to the Bond Registrar, new Bonds shall be issued in the appropriate denominations and registered in the names of such persons as are requested in such written request.

(f) *Registration of Transfer of Ownership or Exchange; Change in Denominations.* The transfer of any Bond may be registered and Bonds may be exchanged, but no transfer of any such Bond shall be valid unless such Bond is surrendered to the Bond Registrar with the assignment form appearing on such Bond duly executed by the Registered Owner or such Registered Owner's duly authorized agent in a manner satisfactory to the Bond Registrar. Upon such surrender, the Bond Registrar shall cancel the surrendered Bond and shall authenticate and deliver, without charge to the Registered Owner or transferee therefor, a new Bond (or Bonds at the option of the new Registered Owner) of the same date, maturity, and interest rate and for the same aggregate principal amount in any authorized denomination, naming as Registered Owner the person or persons listed as the assignee on the assignment form appearing on the surrendered Bond, in exchange for such surrendered and cancelled Bond. Any Bond may be surrendered to the Bond Registrar and exchanged, without charge, for an equal aggregate principal amount of the Bonds of the same date, maturity, and interest rate, in any authorized denomination. The Bond Registrar shall not be obligated to register the transfer or to exchange any Bond during the 15 days preceding the date any such Bond is to be redeemed.

(g) *Registrar's Ownership of Bonds.* The Bond Registrar may become the Registered Owner of any Bond, if applicable, with the same rights it would have if it were not the Bond Registrar, and to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as member of, or in any other capacity with respect to, any committee formed to protect the rights of the Registered Owners of the Bonds.

(h) *Place and Medium of Payment.* The principal of and interest on the Bonds shall be payable in lawful money of the United States of America. Interest on the Bonds shall be calculated pursuant to the provisions of the respective Supplemental Ordinance authorizing Bonds. For so long as all Bonds are in fully immobilized form, such payments of principal and interest thereon shall be made as provided in the operational arrangements of DTC as referred to in the Letter of Representations.

In the event that the Bonds are no longer in fully immobilized form, or are initially issued outside of the DTC book-entry system, interest on the Bonds shall be paid by check or draft mailed to the Registered Owners of the Bonds at the addresses for such Registered Owners appearing on the Bond Register on the Record Date. Principal of the Bonds shall be payable upon presentation

and surrender of such Bonds by the Registered Owners at the principal office of the Bond Registrar.

Section 4. Redemption and Purchase.

(a) *Redemption.* Bonds will be subject to optional and/or mandatory redemption prior to maturity pursuant to the terms and provisions of the respective Supplemental Ordinance(s) authorizing Bonds.

(b) *Purchase of Bonds.* The City reserves the right to use at any time any Revenue of the System available after providing for payments required by Section 6(b) of this Ordinance, or other available funds, to purchase any of the Bonds offered to the City at any price deemed reasonable by the Designated Representative.

(c) *Selection of Bonds for Redemption.* As long as Bonds are held in book-entry only form, the selection of Bonds to be redeemed shall be made in accordance with the operational arrangements in effect at DTC. If the Bonds are not held in uncertificated form, the selection of such Bonds to be redeemed shall be made as provided in this subsection (c). If the City redeems at any one time fewer than all of the Bonds having the same maturity date, the particular Bonds or portions of Bonds of such maturity to be redeemed shall be selected by lot (or in such other manner determined by the Bond Registrar) in increments of \$5,000. In the case of a Bond of a denomination greater than \$5,000, the City and the Bond Registrar shall treat each Bond as representing such number of separate Bonds each of the denomination of \$5,000 as is obtained by dividing the actual principal amount of such Bond by \$5,000. If Bonds are called for optional redemption, portions of the principal amount of such Bonds, in installments of \$5,000 or any integral multiple of \$5,000, may be redeemed. If less than all of the principal amount of any Bond is redeemed, upon surrender of such Bond at the principal office of the Bond Registrar, there shall be issued to the Registered Owner, without charge therefor, for the then unredeemed balance of the principal amount thereof, a new Bond or Bonds, at the option of the Registered Owner, of like maturity and interest rate in any denomination authorized by this Ordinance.

(d) Notice of Redemption.

(1) Official Notice. Unless waived by any owner of Bonds to be redeemed, official notice of any such redemption (which notice may be conditional) shall be given by the Bond Registrar on behalf of the City by Electronic Means or by mailing a copy of an official redemption notice by first class mail at least 30 days and not more than 60 days prior to the date fixed for redemption to the Registered Owner of the Bond or Bonds to be redeemed at the address shown on the Bond Register or at such other address as is furnished in writing by such Registered Owner to the Bond Registrar. All official notices of redemption shall be dated and shall state:

(A) the redemption date;

(B) the redemption price;

(C) if fewer than all Outstanding Bonds authorized and issued hereunder are to be redeemed, the identification by maturity (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed;

(D) that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date; and

(E) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the principal office of the Bond Registrar.

On or prior to any redemption date, the City shall deposit with the Bond Registrar an amount of money sufficient to pay the redemption price of all the Bonds or portions of Bonds which are to be redeemed on that date, unless the redemption notice specified a conditional redemption and the condition was not fulfilled.

(2) Effect of Notice. Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Bond Registrar at the redemption price. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. Upon surrender for any partial redemption of any Bond, there shall be prepared for the Registered Owner a new Bond or Bonds of the same maturity in the amount of the unpaid principal. All Bonds which have been redeemed shall be canceled and destroyed by the Bond Registrar and shall not be reissued. The City will not provide notices of redemption to Beneficial Owners of any Bond, and notice to DTC in accordance with this Section shall constitute sufficient notice.

(3) Additional Notice. In addition to the foregoing notice, further notice shall be given by the Bond Registrar as set out below, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as above prescribed. Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (A) the CUSIP numbers of all Bonds being redeemed; (B) the date of issue of the Bonds as originally issued; (C) the rate of interest borne by each Bond being redeemed; (D) the maturity date of each Bond being redeemed; and (E) any other descriptive information needed to identify accurately the Bonds being redeemed. Each further notice of redemption shall be sent at least thirty (30) days before the redemption date by registered or certified mail, overnight delivery service or Electronic Means to the Electronic Municipal Market Access System ("EMMA") of the Municipal Securities Rule Making Board as provided for by the Securities and Exchange Commission and located at www.emma.msrb.org, or to such other depository designated by the Securities and Exchange Commission.

(4) CUSIP Numbers. Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number, if any, identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

(5) Amendment of Notice Provisions. The foregoing notice provisions of this Section, including but not limited to the information to be included in redemption notices and the

persons designated to receive notices, may be amended, by additions, deletions and changes in order to maintain compliance with duly promulgated regulations and recommendations regarding notices of redemption of municipal securities.

Section 5. Establishment of Accounts and Funds. The following accounts and funds on the accounting records of the City are hereby ratified, if previously created, or created with respect to Bonds issued hereunder:

- (a) Bond Fund, held by the City, consisting of the Debt Service Account and any and all Reserve Accounts;
- (b) Revenue Fund, held by the City;
- (c) Project Fund, and any subaccounts thereunder, held by the City; and
- (d) Rebate Fund, held by the City.

Section 6. Revenue Fund; Priority of Application of Revenue.

(a) *Revenue Fund.* The City maintains the Revenue Fund as a separate enterprise fund of the City. All Revenue of the System is deposited in the Revenue Fund. Notwithstanding the foregoing, the City may maintain such separate funds and accounts in such names and under such additional designations as shall be required to comply with standard accounting practices.

(b) *Priority of Application of Revenue of the System.* The Revenue Fund shall be held separate and apart from all other funds and accounts of the City, and the Revenue of the System deposited in such Revenue Fund shall be used only for the following purposes and in the following order of priority:

First, to pay the Operation and Maintenance Expenses of the System;

Second, to pay the interest on any Parity Bonds, including reimbursements to the issuer of a Qualified Letter of Credit or Qualified Insurance if a Qualified Letter of Credit or Qualified Insurance secures the payment of interest on Parity Bonds and the Supplemental Ordinance authorizing such Parity Bonds provides for such reimbursement;

Third, to pay the principal of any Parity Bonds, including reimbursements to the issuer of a Qualified Letter of Credit or Qualified Insurance if a Qualified Letter of Credit or Qualified Insurance secures the payment of principal of Parity Bonds and the Supplemental Ordinance authorizing such Parity Bonds provides for such reimbursement;

Fourth, to make all payments required to be made into any Reserve Account created to secure payment of debt service on any series of Parity Bonds, including reimbursements to the issuer of a Qualified Letter of Credit or Qualified Insurance if a Qualified Letter of Credit or Qualified Insurance has been issued to fund the Reserve Account Requirement for any series of Parity Bonds and the Supplemental Ordinance authorizing such Parity Bonds provides for such reimbursement;

Fifth, to make all payments required to be made into any revenue bond redemption fund or revenue warrant redemption fund and debt service fund or reserve account created to pay and secure the payment of the principal of and interest on government loans and any other revenue bonds or revenue warrants of the City having a lien upon the Revenue of the System junior and inferior to the lien thereon for the payment of the principal of and interest on Parity Bonds; and

Sixth, to retire by redemption or purchase any Outstanding Parity Bonds or revenue warrants of the City payable out of the Revenue of the System, to make necessary additions, betterments, improvements and repairs to or extensions and replacements of the System, or for any other lawful City purposes.

The City may transfer any money from any funds or accounts of the System legally available therefor, except bond redemption funds, refunding escrow funds or defeasance funds, to meet the required payments to be made into the Bond Fund.

Section 7. Bond Fund. There is hereby created a fund known as the “City of Moscow Water Revenue Bond Fund” (the “Bond Fund”) solely for the purpose of paying the principal of, premium, if any, and interest on the Parity Bonds. The Bond Fund shall consist of the following accounts: (1) the Debt Service Account, and any and all subaccounts established thereunder pursuant to Supplemental Ordinances, and (2) the Reserve Account, including any and all subaccounts thereunder established thereunder pursuant to Supplemental Ordinances.

Said accounts are more particularly described as follows:

(a) Debt Service Account. As long as any Parity Bonds remain Outstanding, the City hereby irrevocably obligates and binds itself to set aside and pay from the Revenue Fund into the Debt Service Account those amounts necessary, together with such other funds as are on hand and available in the Debt Service Account, to pay the interest or principal and interest next coming due on such Bonds. Such payments from the Revenue Fund to the Debt Service Account shall be made in a fixed amount without regard to any fixed proportion following the closing and delivery of Bonds on or before each date on which an installment of interest or principal and interest falls due on Parity Bonds and/or a Parity Bond is subject to mandatory redemption and in an amount equal to the installment of interest or principal and interest or the redemption amount.

(b) Reserve Account(s). If provided in a Supplemental Ordinance authorizing an issue of Bonds, the City shall maintain a Reserve Account as required by the Supplemental Ordinance for the purpose of securing the payment of the principal of and interest on such issue of Bonds. The City will covenant and agree in such Supplemental Ordinance to fund the Reserve Account upon issuance of the Bonds in the amount of the Reserve Account Requirement as provided therein, or to provide for funding of the Reserve Account over time, and after funding the Reserve Account Requirement, to maintain at all times an amount in the Reserve Account, as applicable, equal to the Reserve Account Requirement as provided therein, except for withdrawals authorized therefrom, for so long as such Bonds remain Outstanding. Any Reserve Account created and held pursuant to a Supplemental Ordinance shall only secure Bonds issued thereunder.

Alternatively, a Reserve Account Requirement for any issue of Bonds may be maintained, in whole or in part, by a Qualified Letter of Credit or Qualified Insurance, as provided in the

respective Supplemental Ordinance. The amount payable from the Qualified Insurance or the Qualified Letter of Credit shall be credited against the amounts otherwise required to be accumulated and maintained in a Reserve Account. In computing the amount on hand in the Reserve Account, Qualified Insurance and/or a Qualified Letter of Credit shall be valued at the face amount thereof, and all other obligations purchased as an investment of moneys therein shall be valued at cost.

The Supplemental Resolution for each series of Bonds will set out the terms and provisions for withdrawals from the Reserve Account, if required, in the event of insufficient amounts in the Debt Service Account to pay the principal of, premium if any, interest on, and mandatory sinking fund installments, as applicable, on any Bonds secured by such Reserve Account then Outstanding, and the provisions for any surplus in the Reserve Account, if applicable.

In the event there shall be a deficiency in the Debt Service Account to meet maturing installments of either principal, interest, or sinking fund installments on the Bonds payable out of such account and secured by a Reserve Account, such deficiency shall be made up from such Reserve Account(s), as applicable, by the withdrawal of moneys therefrom. Any deficiency created in a Reserve Account by reason of any such withdrawal shall then be made up out of Revenue of the System (after making necessary provision for the payments required to be made by subparagraphs First through Third of Section 6(b)) by approximately equal additional monthly payments so that by twelve (12) months from the date of such withdrawal there will have been paid into the applicable Reserve Account an amount which, with money already on deposit therein, will equal the Reserve Account Requirement, as applicable.

The value of money and obligations credited to any and all Reserve Accounts, as applicable, shall be determined by the City annually as of September 30 and on the closing date of any Parity Bonds. If the valuation shall be less than the amount required to be maintained therein, the deficiency (due to said valuation and not to a withdrawal) shall be made up from the Revenue Fund by paying into the applicable Reserve Account one-sixth (1/6) of the deficiency on or before the 20th day of each of the next six (6) succeeding months.

(c) *Sufficiency of Revenues.* The City Council hereby states and certifies that in setting aside and providing for said payments into the various accounts within the Bond Fund of the amounts necessary for the payment of the principal, interest, and sinking fund installments on said Bonds, as applicable, the City Council has taken into consideration and has due regard for Operation and Maintenance Expenses, and the City Council will set aside into said accounts within the Bond Fund moneys sufficient and necessary to retire said Bonds (including principal, interest, and sinking fund installments) and any prior or subsequent bonds issued on a parity therewith, after paying all Operation and Maintenance Expenses.

(d) *Pledge of Net Revenues; Priority of Lien of Payments into Accounts within the Bond Fund.* The Net Revenues to be paid into the various accounts within the Bond Fund from the Revenue of the System are hereby pledged to pay the respective Parity Bonds secured thereby, and City hereby grants a lien and prior first charge thereon, equal in rank to the lien and charge of all Parity Bonds.

(e) *Application and Investment of Moneys in Accounts within the Bond Fund.* Moneys in the various accounts within the Bond Fund may be invested in Permitted Investments. Investments of funds in the accounts within the Bond Fund shall mature prior to the date on which such moneys shall be needed for required interest, principal, or sinking fund installments. Investments of funds in any Reserve Account shall be retained in the respective Reserve Account and used to pay debt service on the Bonds secured by such Reserve Account in the event there is a deficiency in the Debt Service Account established for payment of such Bonds within the Bond Fund. All interest earned and income derived by virtue of such investments shall remain in the respective Debt Service Account under the Bond Fund and used to meet the required deposits into such account. Subject to the other provisions of this subparagraph, moneys in the Debt Service Account(s) and Reserve Account(s), as applicable, may be combined for the purpose of purchasing investments, but the records of the City shall show to which account the respective portions of any such combined investment are credited.

Section 8. Project Fund. The City hereby creates a fund known as the “City of Moscow Water System Project Fund” (the “Project Fund”) under which subaccounts shall be created pursuant to Supplemental Ordinance(s) for a Project and into which shall be deposited all of the proceeds of the sale of the respective Bonds authorized hereunder and pursuant to Supplemental Ordinance(s), to be used for the payment of the Cost of Acquisition of a Project, including costs of issuance of the respective issue of Bonds. Any interest earnings on moneys invested from a subaccount under the Project Fund shall be deposited into said Project Fund subaccount. The City’s share of any liquidated damages or other moneys paid by defaulting contractors or their sureties will be deposited into the respective Project Fund subaccount to assure the completion of a Project.

When the construction of a Project has been completed and all costs related thereto have been paid in full, any balance remaining in the respective Project Fund subaccount will be deposited into the Debt Service Account under the Bond Fund created for payment of the Bonds financing such Project.

Section 9. Rebate Fund; Rebate Requirement.

There is hereby established a Rebate Fund into which shall be deposited, from time to time, all excess earnings on funds and accounts held by the City hereunder to the extent required by any Tax Certificate of the City and said amounts shall be held in trust for the payment of arbitrage rebate in accordance with Section 148 of the Code and the Tax Certificate. All earnings on the Rebate Fund shall remain within said fund and shall be used for no other purpose unless the City provides the Bond Registrar with an opinion of nationally recognized bond counsel that another use will not cause interest on the respective Bonds to cease to qualify for exclusion from federal income taxation under the Code.

The Bond Registrar may rely conclusively upon and shall be fully protected from all liability in relying upon the City’s determinations, calculations, certifications and written directions required by this Section and the Bond Registrar shall have no responsibility to monitor and independently make any calculations or determination or to review the City’s determinations, calculations, certifications and written directions required by this Section.

Section 10. Authorization for Projects. The City Council hereby authorizes and directs that upon determination that it is necessary to preserve the public health, safety and welfare that certain components of the City's existing System be repaired, replaced and/or improved, that Project(s) may be financed by the issuance of Bonds upon adoption of Supplemental Ordinance(s) pursuant to and upon compliance with Section 13 hereunder.

Each such Supplemental Ordinance authorizing Bonds to finance a Project shall include:

- (1) the description of the Project to be acquired, constructed and installed;
- (2) that the City, its staff and agents shall undertake the Project in accordance with maps, plans and specifications prepared by the City's Engineer, which shall be on file in the City Clerk's office, and which may be revised prior to or in the course of actual construction, provided such changes are found necessary and desirable by the City Council and that such changes do not substantially affect or alter the plans or costs of the Project; and
- (3) the total estimated Cost of Acquisition of the Project to be financed by the Bonds.

Section 11. Specific Covenants. For the protection and security of the Parity Bonds, the City hereby covenants and agrees to and with the Registered Owners of Parity Bonds that the City will perform the following covenants:

(a) *Rate Covenant.* The City has established, may from time to time revise, and shall maintain and shall collect from the users of the System, rates and charges for furnishing the services and the facilities of the System to such users thereof. Said rates and charges are, and shall continue to be, uniform as to all persons or properties which are of the same class. The City shall establish, maintain and collect such rates and charges for service of its System for so long as any Parity Bonds are Outstanding sufficient to maintain the Rate Covenant.

(b) *Acquire Projects.* The City shall commence the Acquisition, construction and completion of any Project financed by proceeds of Bonds, and continue the same with all practical dispatch and in a sound and economical manner.

(c) *Operate System.* The City shall operate the System in an efficient and economical manner and prescribe, revise, and collect such charges in connection therewith so that the services, facilities, and properties of the System may be furnished at the lowest possible cost consistent with sound economy and prudent management.

(d) *Good Repair.* The City shall operate, maintain, preserve, and keep the System and every part hereof in good repair, working order, and condition.

(e) *Preserve Security.* The City shall preserve and protect the security of the Parity Bonds and the rights of the Registered Owners thereof.

(f) *Collect Revenues.* The City shall collect and hold in trust the Revenue of the System and other funds pledged to the payment of the Parity Bonds and apply such Revenue of the System or other funds only as provided in this Ordinance and all Supplemental Ordinances.

(g) *Service Bonds.* The City shall pay and cause to be paid punctually the principal of and interest on Parity Bonds on the date or dates, at the place or places, and in the manner that such sums are due in accordance with this Ordinance and all Supplemental Ordinances.

(h) *Pay Claims.* The City shall pay and discharge any and all lawful claims for labor, materials, and supplies which, if unpaid, might by law become a lien or charge upon the Revenue of the System, or any part of said Revenue of the System, or any funds in the hands of the Treasurer, prior or superior to the lien of Parity Bonds or which might impair the security of Parity Bonds to the end that the priority and security of Parity Bonds shall be fully preserved and protected.

(i) *Encumbrances.* The City shall not encumber, sell, lease, or dispose of the System or any part thereof, nor enter into any lease or agreement which would impair or impede the operation of the System or any part thereof necessary to secure adequate Revenue for the payment of the principal of and interest on Parity Bonds, nor which would otherwise impair or impede the rights of the Registered Owners of Parity Bonds with respect to such Revenue or the operation of the System without provisions for the retirement of Parity Bonds then Outstanding from the proceeds thereof.

(j) *Insurance.* The City shall procure and keep in force insurance upon all buildings and structures of the System and the machinery and equipment therein, which are usually insured by entities operating like property, in good and responsible insurance companies. The amount of the insurance shall be such as may be required to adequately protect the City and the Registered Owners of any Parity Bonds from loss due to any casualty, and in the event of any such loss, the proceeds shall be used to repair or restore the System or for the payment of Parity Bonds.

(k) *Fidelity Bonds.* The City shall procure suitable fidelity bonds covering all of its officers and other employees charged with the operation of the System and the collection and disbursement of Revenue of the System.

(l) *Engineers.* The City shall employ consulting engineers of acknowledged reputation, skill, and experience in the improvement and operation of the System for any unusual or extraordinary items of maintenance, repair, extensions, or betterments as shall be required from time to time. All reports, estimates, and recommendations of such consulting engineers shall be filed with the Clerk and furnished to the Registered Owners of any Parity Bonds upon request.

(m) *Accounts.* The City shall keep proper and separate accounts and records in which complete and separate entries shall be made of all transactions relating to the System, and it will furnish complete operating and income statements upon request.

(n) *Delinquencies.* The City shall not furnish water service to any customer whatsoever free of charge and it shall, not later than sixty (60) days after the end of each calendar year, take such legal action as may be reasonable to enforce collection of all collectible delinquent accounts.

Section 12. Tax Covenants.

(a) *General.* The City covenants with the owners of Bonds that, notwithstanding any other provision of this Ordinance or any other instrument, it will take no action which would adversely affect the tax exempt status of Bonds issued hereunder under Sections 103 or 148 of the

Code pertaining to the exclusion of interest on the Bonds from gross income for federal income tax purposes. The foregoing covenant shall extend throughout the term of the Bonds. The City will execute a Tax Certificate dated the date of issuance and closing of Bonds hereunder with respect to such federal tax matters.

(b) *Arbitrage Covenant; Covenant to Maintain Tax Exemption.*

(1) The Mayor and Finance Director of the City and other appropriate officials of the City each are hereby authorized and directed to execute from time to time such Tax Certificates as shall be necessary to establish that the Bonds are not "arbitrage bonds" within the meaning of Section 148 of the Code and the regulations promulgated or proposed thereunder, as the same presently exist or may from time to time hereafter be amended, supplemented or revised, and to establish that interest on the Bonds is not and will not become includable in gross income under the Code and applicable regulations. The City covenants and certifies to and for the benefit of the bondholders that no use will be made of the proceeds of the issue and sale of the Bonds, or any funds or accounts of the City which may be deemed to be proceeds of the Bonds, pursuant to Section 148 of the Code and applicable regulations (proposed or promulgated,) which use, if it had been reasonably expected on the date of issuance of the Bonds, would have caused the Bonds to be classified as "arbitrage bonds" within the meaning of Section 148 of the Code. Pursuant to this covenant, the City obligates itself to comply throughout the term of the Bonds with the requirements of Section 148 of the Code and the regulations proposed or promulgated thereunder.

(2) The City further covenants and agrees to and for the benefit of the bondholders that the City (i) will not take any action that would cause interest on the Bonds to be or to become ineligible for the exclusion from gross income of the bondholders as provided in Section 103 of the Code, (ii) will not omit to take or cause to be taken, in timely manner, any action which would cause interest on the Bonds to be or to become ineligible for the exclusion from gross income of the bondholders as provided in Section 103 of the Code, and (iii) without limiting the generality of the foregoing, (a) will not take any action which would cause the Bonds, or any Bond, to be a "private activity bond" within the meaning of Section 141 of the Code or to fail to meet any applicable requirement of Section 149 of the Code and (b) will not omit to take or cause to be taken, in timely manner, an action which would cause the Bonds, or any Bond, to be a "private activity bond" or to fail to meet any applicable requirement of Section 149 of the Code. The Mayor and the Finance Director of the City, or such other appropriate officials of the City each are hereby authorized and directed to execute from time to time such Tax Certificate as shall be necessary to establish that the Bonds are not and will not become "private activity bonds," that all applicable requirements of Section 149 of the Code are and will be met, and that the covenant of the City contained in this Section 12(b)(2) will be complied with.

(3) The City covenants and certifies to and for the benefit of the bondholders that: (i) the City will at all times comply with the provisions of any Tax Certificate; (ii) the City will at all times comply with the rebate requirements contained in Section 148(f) of the Code, to the extent applicable; and (iii) no bonds or other evidences of indebtedness of the City have been or will be issued, sold or delivered within a period beginning 15 days prior to the sale of a series of Bonds and ending 15 days following the date of delivery of and payment for such Bonds.

The City hereby covenants to adopt, make, execute and enter into (and to take such actions, if any, as may be necessary to enable it to do so) any resolution or Tax Certificate necessary to comply with any changes in law or regulations in order to preserve the exclusion of interest on Bonds from gross income of the bondholders thereof for purposes of the federal income tax to the extent that it may lawfully do so. The City further covenants to (a) impose such limitations on the investment or use of moneys or investment related to Bonds, (b) make such payments to the United States Treasury, (c) maintain such records, (d) perform such calculations and (e) perform such other acts as may be necessary to preserve the exclusion of interest on Bonds from gross income of the bondholders thereof for purposes of the federal income tax and which it lawfully may do.

Pursuant to these covenants, the City obligates itself to comply with the requirements of Section 103 of the Code and the regulations proposed or promulgated thereunder throughout the term of the issue of any Bonds issued hereunder.

(c) *Modification of Tax Covenants.* The covenants of this Section are specified solely to assure the continued exemption from regular income taxation of the interest on Bonds. To that end, the provisions of this Section may be modified or eliminated without any requirement for formal amendment thereof upon receipt of an opinion of the City's bond counsel that such modification or elimination will not adversely affect the tax exemption of interest on any Bonds.

Section 13. Issuance of Additional Bonds.

(a) *Limitations Upon Issuance of Parity Obligations.* As long as any Bonds issued hereunder are Outstanding, the City hereby covenants and agrees that it will not issue any Bonds except that the City hereby reserves the right to issue Additional Bonds constituting a charge and lien upon the Net Revenues of the System equal to the lien thereon of any Bonds issued hereunder but not prior nor superior thereto. Except as provided in this subsection (a), the City shall not issue any series of Additional Bonds or incur any additional indebtedness with a parity lien or charge on Net Revenues (i.e., on a parity of lien with Parity Bonds at the time Outstanding) unless:

(1) After utilization of the remaining authority under the Judicial Confirmation, prior to authorizing Additional Bonds to finance a Project under Idaho Code Sections 50-1027 through 50-1042, inclusive, as may be amended from time to time, the City obtains approval of the electorate of the City or a judicial confirmation pursuant to Title 7 Chapter 13 of the Idaho Code that the Additional Bonds are enforceable obligations of the City as required by the Revenue Bond Act, or obtains authority in accordance with the laws of the State of Idaho;

(2) The City is not, and has not been, in default as to any payments required by the provisions of this Master Ordinance or any Supplemental Ordinance for a period of not less than twelve (12) months immediately preceding the issuance of such Additional Bonds;

(3) The Supplemental Ordinances authorizing the issuance of the 2020 Bond and Additional Bonds shall include the covenants provided in Section 7(b) hereof and provide that the Reserve Account Requirement, if applicable, shall be funded no later than as permitted under such Supplemental Ordinances;

(4) As evidenced by a written certification filed with the City by the City Treasurer/Finance Director, City Engineer, an independent engineer, or certified public

accountant, the Net Revenues of the System for a period of twelve (12) consecutive months out of the twenty-four (24) months immediately preceding the issuance of such Additional Bonds shall have been sufficient to meet the Additional Bonds Requirement, commencing with the first full Fiscal Year following the date on which any portion of interest on the series of Additional Bonds then being issued no longer will be paid from the proceeds of such series of Additional Bonds.

In calculating the Net Revenues of the System, the City may take into consideration changes in Net Revenues estimated to occur under one or more of the following conditions for each year after such delivery for so long as the Parity Bonds and any Additional Bonds shall be Outstanding:

(A) Any increase or decrease in Net Revenues which would result from any change in rates or charges adopted prior to the issuance of the Additional Bonds;

(B) Any increase or decrease in Net Revenues estimated to result from any additions, betterments, and improvements to and extensions of any facilities of the System which (i) became fully operational during such twelve (12) month period; (ii) were under construction at the time of the issuance of the Additional Bonds; or (iii) will be constructed from the proceeds of the Additional Bonds proposed to be issued; and/or

(C) The additional Net Revenues which would have been received if any customers added to the System prior to the date of the Additional Bonds, but subsequent to the beginning of such twelve (12) month period, were customers for the entire period.

The written certification described in this Section 13(a)(4) shall not be required as a condition to the issuance of Additional Bonds:

(A) if the Additional Bonds being issued are for the purpose of refunding Outstanding Parity Bonds issued hereunder; or

(B) if the Additional Bonds are being issued to pay costs of completion of construction of facilities of the System for which Additional Bonds have been issued previously and the principal amount of such Additional Bonds being issued for completion purposes does not exceed an amount equal to an aggregate of 15% of the principal amount of Additional Bonds theretofore issued for such facilities and reasonably allocable to the facilities to be completed as shown in a written certificate of the City Engineer, which certificate shall also state that the nature and purpose of such facilities have not materially changed.

(b) *Subordinate Lien Obligations.* Nothing herein contained shall prevent the City from issuing revenue bonds or other obligations which are a charge upon the Revenue of the System junior or inferior to the payments required by this Ordinance to be made out of such Revenue to pay and secure the payment of any Parity Bonds authorized hereunder.

(c) *Refunding Obligations.* Nothing herein contained shall prevent the City from issuing revenue bonds to refund maturing Parity Bonds for the payment of which moneys are not otherwise available.

Section 14. Form of Bonds. Bonds hereunder shall be in substantially the following form as may be revised to reflect the specific terms and provisions of each series of Bonds, and as required if not registered under the book-entry-only system of DTC:

[Form of Bonds]

UNITED STATES OF AMERICA

No. _____

\$ _____

STATE OF IDAHO
CITY OF MOSCOW, LATAH COUNTY

WATER REVENUE BOND, [SERIES _____]

INTEREST
RATE:

MATURITY
DATE:

DATED
DATE:

CUSIP
NO: _____

REGISTERED OWNER: [CEDE & CO.]

PRINCIPAL AMOUNT: _____ DOLLARS

The City of Moscow, Latah County, Idaho, a body politic and corporate organized and existing under and by virtue of the laws of the State of Idaho (herein called the "City") hereby acknowledges itself to owe and for value received promises to pay, but only from the sources and as hereinafter provided, to the Registered Owner identified above, or registered assigns, on the Maturity Date identified above, the Principal Amount indicated above and to pay interest thereon from the Dated Date hereof, or the most recent date to which interest has been paid or duly provided for, at the Interest Rate set forth above, payable on [____], and semiannually thereafter on the ____ days of each _____ and _____ until such principal sum is paid or payment has been duly provided for.

Both principal of and interest on this bond are payable in lawful money of the United States of America to the Registered Owner of record as of the close of business on the fifteenth day preceding an interest payment date, and if not a business day of the Bond Registrar (hereinafter defined), the next preceding day that is a business day for the Bond Registrar. Interest and principal shall be paid as provided in the Blanket Issuer Letter of Representations (the "Letter of Representations") by the City to The Depository Trust Company ("DTC"). _____ is acting as the Bond Registrar, authenticating agent and paying agent for the bonds of this issue (the "Bond Registrar"). Capitalized terms used in this bond that are not specifically defined have the meanings given such terms in the Bond Ordinance No. 2020-____ (Water System) of the City, as may be supplemented by Supplemental Ordinances (collectively, the "Ordinance"). Reference is made to the Ordinance and any and all modifications and amendments thereto for a description of the nature and extent of the security for the bonds of this

issue, the funds or revenues pledged, and the terms and conditions upon which such bonds are issued.

This bond is one of an authorized issue of bonds of the City of like date and tenor, except as to number, amount, rate of interest and date of maturity in the aggregate principal amount of [\$_____]. This issue of bonds is authorized by the Ordinance to finance certain improvements to the City's Water System (the "System") [or for the purposes of refunding Outstanding Water Revenue bonds of the City].

This bond and the bonds of this issue are payable solely from the special fund of the City defined as the "Bond Fund" under the Ordinance. The City has irrevocably obligated and bound itself to pay into the Bond Fund out of the Revenue of the System or from such other moneys as may be provided therefor certain amounts necessary to pay and secure the payment of the principal and interest on such bonds. The bonds of this issue are not general obligations of the City.

The bonds of this issue are issued under and in accordance with the provisions of the Constitution and applicable statutes of the State of Idaho, including Sections 50-1027 through 57-1042, inclusive, Idaho Code, chapters 2, and 9, Title 57, Idaho Code, and duly adopted ordinances of the City. The City hereby covenants and agrees with the owner of this bond that it will keep and perform all the covenants of this bond and of the Ordinance to be by it kept and performed, and reference is hereby made to the Ordinance for a complete statement of such covenants.

The City does hereby pledge and bind itself to set aside from the Revenue Fund Net Revenues of the System and to deposit into the Bond Fund and the Reserve Account thereunder, if applicable, such amounts as required by the Ordinance to be paid into and maintained in such fund and account, all within the times provided by the Ordinance. To the extent more particularly provided by the Ordinance, this bond shall have a lien and prior first charge on said Net Revenues equal in rank to the lien and charge of the amounts required to pay and secure the payment of Additional Bonds of the City hereafter issued on a parity of lien with this bond and superior to all other liens and charges of any kind or nature.

The pledge of Net Revenues of the System and other obligations of the City under the Ordinance may be discharged at or prior to the maturity or redemption of the bonds of this issue upon the making of provision for the payment thereof on the terms and conditions set forth in the Ordinance.

[The bonds maturing on or before _____, are not subject to call or redemption prior to their stated dates of maturity. The bonds maturing on or after _____, in whole or in part are subject to optional call for redemption on any date on and after _____, at the option of the City.]

[If not previously redeemed as described above, the bonds maturing on _____, will be called for mandatory redemption at the price of par on the following dates and in the following principal amounts:

Redemption Date

Amount

*Final Maturity]

The bonds of this issue are initially issued in the form of a separate single certificated fully registered Bond for each maturity, and registered in the name of Cede & Co., as nominee of DTC.

Unless this bond is presented by an authorized representative of DTC to the District or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the Registered Owner hereof, Cede & Co., has an interest herein.

This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Ordinance until the Certificate of Authentication hereon shall have been manually signed by the Bond Registrar.

It is hereby certified that all acts, conditions, and things required by the Constitution and statutes of the State of Idaho to exist, to have happened, been done, and performed precedent to and in the issuance of this bond have happened, been done, and performed.

IN WITNESS WHEREOF, the City of Moscow, Latah County, Idaho, has caused this bond to be signed with the facsimile or manual signatures of the Mayor and the City Treasurer, to be attested by the facsimile or manual signature of the City Clerk, all as of this [____ day of _____, 20__].

CITY OF MOSCOW, LATAH COUNTY,
IDAHO

By: [FACSIMILE OR MANUAL]
Mayor

By: [FACSIMILE OR MANUAL]
City Treasurer

ATTEST:

[FACSIMILE OR MANUAL]
Clerk

CERTIFICATE OF AUTHENTICATION

Date of Authentication: _____

This bond is one of the bonds described in the within-mentioned Ordinance and is one of the Water Revenue Bonds, Series [____], of the City of Moscow, Latah County, Idaho, dated [____].

Registrar

By: _____
Title: _____

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Name of Transferee: _____

Address: _____

Tax Identification No.: _____

the within Bond and hereby irrevocably constitutes and appoints _____
_____ of _____
to transfer said bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____

Registered Owner

NOTE: The signature on this Assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

SIGNATURE GUARANTEED:

NOTICE: Signature(s) must be guaranteed by an "eligible guarantor institution" that is a member of or a participant in a "signature guarantee program" (e.g., the Securities Transfer Agents Medallion Program, the Stock Exchange Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program).

CERTIFICATE OF THE TREASURER OF THE CITY OF MOSCOW

STATE OF IDAHO)
) ss.
County of Latah)

I, the undersigned, the duly constituted, legally qualified and acting Treasurer of the City of Moscow, Latah County, Idaho, hereby certify that the within Bond has been registered and recorded in my office pursuant to the provisions of chapter 9, Title 57, Idaho Code, and all acts amendatory thereof and supplementary thereto.

WITNESS my hand this [_____] day of _____, 20__].

[FACSIMILE OR MANUAL]

Treasurer

[End of Form of Bonds]

Section 15. Execution of Bonds. The Bonds shall be executed on behalf of the City with the manual or facsimile signatures of the Mayor and Treasurer of the City, with both signatures attested by the manual or facsimile signature of the Clerk.

Only such Bonds as shall bear thereon a Certificate of Authentication in the form hereinbefore recited, manually executed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this Ordinance. Such Certificate of Authentication shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated, and delivered hereunder and are entitled to the benefits of this Ordinance.

In case either of the officers who shall have executed the Bonds shall cease to be an officer or officers of the City before the Bonds so signed shall have been authenticated or delivered by the Bond Registrar, or issued by the City, such Bonds shall be valid nevertheless and may be issued by the City with the same effect as though the persons who had executed such Bonds had not ceased to be such officers.

Section 16. Defeasance. In the event that money and/or "governmental obligations" (as now or hereinafter defined in chapter 57-504 of the Idaho Code) maturing at such time or times and bearing interest to be earned thereon in amounts sufficient to redeem and retire any Bonds payable out of the Bond Fund in accordance with their terms are irrevocably set aside in a special account to effect such redemption and retirement, then no further payments need be made into the Bond Fund for the payment of the principal of and interest on such Bonds and the owner of such Bonds shall cease to be entitled to any lien, benefit or security of this Ordinance except the right to receive the funds so set aside and pledged, and such Bonds shall be deemed not to be

Outstanding hereunder. The City will cause the Bond Registrar to provide notice of defeasance of Bonds to Registered Owners of Bonds being defeased and to each party entitled to receive notice under this Ordinance.

Section 17. Lost or Destroyed Bonds. In case any Bonds shall be lost, stolen or destroyed, the Bond Registrar may authenticate and deliver a new Bond or Bonds of like amount, date and tenor to the owner thereof upon the owner's paying the expenses and charges of the Bond Registrar and the City in connection therewith and upon his filing with the Bond Registrar and the City evidence satisfactory to both that such Bond or Bonds were actually lost, stolen or destroyed and of his ownership thereof, and upon furnishing the City and the Bond Registrar with indemnity satisfactory to both.

Section 18. Events of Default. Each of the following events is hereby declared to be an "event of default" under this Ordinance:

(a) *Non-payment of Principal, Premium or Reserve Deposit.* Payment of the principal of Parity Bonds, or any required Reserve Account deposit, is not made when the same becomes due and payable;

(b) *Non-payment of Interest.* Payment of any installment of interest on Parity Bonds is not made when the same becomes due and payable.

(c) *Incapable to Perform.* The City for any reason is, or is rendered to be, incapable of fulfilling its obligations hereunder.

(d) *Non-Performance of Duties.* The City shall have failed to carry out and to perform all acts and things lawfully required to be carried out or to be performed by it under any contract relating to the Revenues, to the System, or to all or any combination thereof, or otherwise, including, without limitation, this Ordinance, and such failure shall continue for sixty (60) days after receipt of notice from the Registered Owners of at least a majority in principal amount of Parity Bonds, then Outstanding.

(e) *Failure to Reconstruct.* The City discontinues or unreasonably delays or fails to carry out with reasonable dispatch the reconstruction of any revenue-producing part of the System which is destroyed or damaged and is not promptly repaired or replaced (whether such failure to repair is due to impracticability of such repair or replacement, is due to a lack of monies therefor, or for other reasons).

(f) *Appointment of Receiver.* An order or decree is entered by a court of competent jurisdiction, with the consent or acquiescence of the City appointing a receiver or receivers for the System or for the Revenues and any other monies subject to the lien to secure the payment of Parity Bonds, or both such System and such monies, or if any order or decree having been entered without the consent or acquiescence of the City, is not vacated or discharged or stayed on appeal within sixty (60) days after entry.

(g) *Default of any Provisions.* The City makes any default in the due and punctual performance of any other of the representations, covenants, conditions, agreements and other provisions contained in the Bonds authorized or referred to in this Ordinance on its part to be

performed, and if such default continues for sixty (60) days after written notice, specifying such default and requiring the same to be remedied, is given to the City by the Registered Owners of at least a majority in principal amount of the Parity Bonds then Outstanding.

Section 19. Application of Funds and Moneys in Event of Default. The City covenants that if an Event of Default shall happen and shall not have been remedied, the City, upon demand of the Registered Owners of at least a majority of the principal amount of the Parity Bonds then Outstanding, shall pay over or cause to be paid over to the Bond Registrar, in trust for the Registered Owners (i) forthwith, all moneys, securities and funds then held by the City in any fund under this Ordinance, and (ii) all Revenue of the System as promptly as practicable after receipt thereof.

During the continuance of an Event of Default, the Bond Registrar shall apply all moneys, securities, funds and Revenue of the System received by the Bond Registrar pursuant to any right given or action taken under the provisions of this Ordinance and any Supplemental Ordinances as follows and in the following order:

(a) *Compensation and Expenses of Bond Registrar.* To the payment of the reasonable and proper compensation, charges, expenses and liabilities of the Bond Registrar;

(b) *Operating Costs.* To the payment of the amounts required for reasonable and necessary Operation and Maintenance Expenses as necessary, in the judgment of the Bond Registrar, to prevent deterioration of the System or loss of Revenue therefrom. For this purpose, the books or records and accounts of the City relating to the System shall at all times be subject to the inspection of the Bond Registrar and its representatives and agents during the continuance of such Event of Default;

(c) *Principal or Redemption Price and Interest.* To the payment of the interest and principal or redemption price then due on Parity Bonds as follows:

(1) Unless the principal of all of the Parity Bonds shall have become or have been declared due and payable:

(A) *First:* To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, together with accrued and unpaid interest of the Parity Bonds therefor called for redemption, and if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; and

(B) *Second:* To the payment of the persons entitled thereto of the unpaid principal or redemption price of the Parity Bonds which shall have become due, whether at maturity or by call for redemption, in the order of their due dates, and, if the amount available shall not be sufficient to pay in full all the Parity Bonds due on any date, then to the payment thereof ratably, according to the amounts of principal or redemption due on such date, to the persons entitled thereto, without any discrimination or preference.

(2) If the principal of all of the Parity Bonds shall have become or have been declared due and payable, to the payment of the principal and interest then due and unpaid upon the Parity Bonds without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Parity Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Parity Bonds.

(3) If and whenever all overdue installments of interest on the Parity Bonds, together with the reasonably and proper charges, expenses and liabilities of the Bond Registrar, and all other sums payable by the City under this Ordinance, including the principal and redemption price of and accrued unpaid interest on the Parity Bonds then payable by declaration or otherwise, shall either be paid by the Bond Registrar for the account of the City, or provision satisfactory to the Bond Registrar shall be made for such payment, and all Events of Default under the Ordinance shall be made good or secured to the satisfaction of the Bond Registrar or provision deemed by the Bond Registrar to be adequate shall be made therefor, the City and the Bond Registrar shall be restored, respectively, to their former positions and rights under the Ordinance. No such restoration of the City and the Bond Registrar in their former positions and rights shall extend to or affect any subsequent Events of Default under the Ordinance or impair any right consequent thereon.

Section 20. Amendments.

(a) The City from time to time and at any time may pass an ordinance or ordinances supplemental hereto, which ordinance or ordinances thereafter shall become a part of this Ordinance, for any one or more or all of the following purposes:

(1) To add to the covenants and agreements of the City in this Ordinance, other covenants and agreements thereafter to be observed, which shall not adversely affect the interests of the Registered Owners of the Outstanding Bonds issued hereunder, or to surrender any right or power herein reserved.

(2) To make such provisions for the purpose of curing any ambiguities or of curing, correcting or supplementing any defective provision contained in this Ordinance, or any Supplemental Ordinance authorizing Additional Bonds in regard to matters or questions arising under such ordinances as the City Council may deem necessary or desirable and not inconsistent with such ordinances and which shall not adversely affect, in any material respect, the interest of the Registered Owners of the Outstanding Bonds.

Any such Supplemental Ordinance may be adopted without the consent of the owners of any Bonds at any time Outstanding, notwithstanding any of the provisions of subsection (b) of this Section.

(b) With the consent of the owners of not less than sixty-five percent (65%) in aggregate principal amount of the Bonds at the time Outstanding, the City Council may pass an ordinance or ordinances supplemental hereto for the purpose of adding any provisions to or

changing in any manner or eliminating any of the provisions of this Ordinance or of any Supplemental Ordinance; provided, however, that no such Supplemental Ordinance shall:

(1) Extend the fixed maturity of any Bonds, or reduce the rate of interest thereon, or extend the time of payment of interest from their due date, or reduce the amount of the principal thereof, or reduce any premium payable on the redemption thereof, without the consent of the Registered Owner of each Bond so affected; or

(2) Reduce the aforesaid percentage of Bond owners required to approve any such Supplemental Ordinance, without the consent of the owners of all of the Bonds then Outstanding.

It shall not be necessary for the consent of Bond owners under this subsection (b) to approve the particular form of any proposed Supplemental Ordinance, but it shall be sufficient if such consent shall approve the substance thereof.

(c) Upon the adoption of any Supplemental Ordinance pursuant to the provisions of this Section, this Ordinance shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations of the City under this Ordinance and all owners of Bonds Outstanding hereunder shall thereafter be determined, exercised and enforced thereunder, subject in all respects to such modifications and amendments, and all terms and conditions of any such Supplemental Ordinance shall be deemed to be part of the terms and conditions of this Ordinance for any and all purposes.

(d) Bonds executed and delivered after the execution of any Supplemental Ordinance passed pursuant to the provisions of this Section may have a notation as to any matter provided for in such Supplemental Ordinance, and if such Supplemental Ordinance shall so provide, new Bonds so modified as to conform, in the opinion of the City Council, to any modification of this Ordinance contained in any such Supplemental Ordinance, may be prepared and delivered without cost to the owners of any affected Bonds then Outstanding, upon surrender for cancellation of such Bonds in equal aggregate principal amounts.

(e) *Exclusion of Bonds Owned by City.* Bonds owned or held by or for the account of the City shall not be deemed Outstanding for the purpose of any vote or consent or other action or any calculation of Outstanding Bonds in this Ordinance provided for, and shall not be entitled to vote or consent or take any other action in this Ordinance provided for.

(f) *Bonds Held by Securities Repositories.* For so long as the Bonds are held in book entry only form, communications with the owners shall be made with the securities depository who is the "Registered Owner" of the Bonds and communications with (and obtaining consents from) Beneficial Owners shall be made in accordance with the operational procedures of the securities depository that is the "Registered Owner" of the Bonds.

Section 21. Severability. If any one or more of the covenants or agreements provided in this Ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants

and agreements of this Ordinance and shall in no way affect the validity of the other provisions of this Ordinance or of the Bonds.

[The remainder of this page has been left blank intentionally.]

Section 22. Effective Date. This Ordinance shall take effect from and after its passage and publication of the summary hereof substantially in the form attached hereto as Exhibit A, in the manner as required by law.

ADOPTED by the City Council of the City of Moscow, Latah County, Idaho, at a regular meeting thereof held this 20th day of April, 2020.

CITY OF MOSCOW, LATAH COUNTY,
IDAHO



Mayor

ATTEST:



City Clerk



CERTIFICATE OF THE CLERK

I DO HEREBY CERTIFY that I am the duly chosen, qualified and acting Clerk of the City of Moscow, Latah County, Idaho (the "City"), and keeper of the records of the City Council (the "City Council"); and

I HEREBY CERTIFY:

1. That the attached ordinance is a true and correct copy of Bond Ordinance No. 2020-04 (Water System) of the City (the "Ordinance"), as finally passed at a regular meeting of the City Council held on the 20th day of April, 2020, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a quorum was present throughout the meeting and a legally sufficient number of members of the City Council voted in the proper manner for the passage of the Ordinance; that all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th of April, 2020.

Clerk

EXHIBIT A

CITY OF MOSCOW LATAH COUNTY, IDAHO

Summary of Master Bond Ordinance No. 2020-04 (Water System), passed April 20, 2020

AN ORDINANCE OF THE CITY OF MOSCOW, LATAH COUNTY, IDAHO, AUTHORIZING THE ISSUANCE AND SALE OF WATER REVENUE BONDS FROM TIME TO TIME TO PROVIDE FUNDS NECESSARY TO FINANCE OR REFINANCE IMPROVEMENTS TO THE CITY'S WATER SYSTEM; FIXING THE FORM, COVENANTS AND CERTAIN TERMS OF THE BONDS TO BE ISSUED; PROVIDING FOR THE REGISTRATION AND AUTHENTICATION OF BONDS; PLEDGING REVENUES FOR PAYMENT OF DEBT SERVICE ON BONDS ISSUED HEREUNDER; PROVIDING FOR CERTAIN FEDERAL TAX COVENANTS WITH RESPECT TO THE BONDS; DESIGNATING CERTAIN FUNDS AND ACCOUNTS OF THE CITY; AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO..

Section 1 (Definitions) defines certain capitalized terms used in the Ordinance.

Section 2 (Authorization of Bonds) authorizes issuance by the City of water revenue bonds pursuant to Supplemental Ordinances.

Section 3 (Registration, Exchange and Payments) adopts a system of registration and exchange for the Bonds and describes the arrangements for paying principal of and interest on Bonds.

Section 4 (Redemption and Purchase) provides that the details regarding redemption of Bonds prior to their scheduled maturity shall be provided in the respective Supplemental Ordinance, and provides details regarding purchase of Bonds.

Section 5 (Establishment of Accounts and Funds) ratifies or creates the following funds: the Bond Fund, consisting of the Debt Service Account and Reserve Account(s), as applicable, the Revenue Fund, the Project Fund and subaccounts thereunder and the Rebate Fund.

Section 6 (Revenue Fund; Priority of Application of Revenue) provides for the allocation of Revenues to pay expenses and debt service on Bonds.

Section 7 (Bond Fund) provides for the deposit of Net Revenues into a debt service fund under the Bond Fund and the maintenance of reserves.

Section 8 (Project Fund) provides for deposit therein of proceeds of Bonds issued to finance the Cost of Acquisition of a Project, including costs of issuance thereof.

Section 9 (Rebate Fund; Rebate Requirement) provides for deposit of excess earnings on funds under the Ordinance as required by the City's Tax Certificate, which funds are to be held in trust for payment of arbitrage rebate in accordance with Section 148 of the Code.

Section 10 (Authorization for Projects) provides that Project(s) may be financed by issuance of Bonds under Supplemental Ordinances upon determination by the City that it is necessary to preserve the public health, safety and welfare that certain components of the City's Water System be repaired, replaced and/or improved.

Section 11 (Specific Covenants) includes operating covenants for the benefit of bondholders.

Section 12 (Tax Covenants) includes covenants to comply with federal tax requirements.

Section 13 (Issuance of Additional Bonds) provides the terms under which the City may issue Additional Bonds.

Section 14 (Form of Bonds) describes the substantial form of Bonds.

Section 15 (Execution of Bonds) authorizes procedures for execution and authentication of the Bonds.

Section 16 (Defeasance) provides conditions under which Bonds may be defeased.

Section 17 (Lost or Destroyed Bonds) makes provision in case Bonds are lost, stolen or destroyed.

Section 18 (Events of Default) describes the events declared to be "events of default" under the Ordinance.

Section 19 (Application of Funds and Moneys in Event of Default) provides for remedies in the event that a default occurs.

Section 20 (Amendments) provides the terms and conditions pursuant to which the Ordinance may be amended or revised.

Section 21 (Severability) provides that other covenants and agreements in the Ordinance are not affected if one is made invalid.

Section 22 (Effective Date) provides that the Ordinance shall take effect from and after its passage and publication of this summary as required by law.

Exhibit A: Sets forth this summary for publication.

The full text of Master Bond Ordinance No. 2020-04 (Water System) is available at the office of the City Clerk of the City of Moscow, Latah County, Idaho, and will be provided to any citizen upon personal request during normal business hours.

Approved this 20th day of April, 2020.

CITY OF MOSCOW, LATAH COUNTY,
IDAHO

Mayor

ATTEST:

City Clerk

CERTIFICATION OF COUNSEL

I, the undersigned, the attorney for the City of Moscow, Latah County, Idaho, hereby certify that I have read the attached Summary of Master Bond Ordinance No. 2020-04 (Water System) of the City, and that the same is true and complete and provides adequate notice to the public of the contents of said ordinance.

Dated as of this ____ day of April, 2020.

City Attorney



Heart of the Arts

Bill Lambert
Mayor

Brandy Sullivan
Council President

Art Bettge
Council Vice-President

Sandra Kelly
Council Member

Maureen Laflin
Council Member

Gina Taruscio
Council Member

Anne Zabala
Council Member

Gary J. Riedner
City Supervisor

City of Moscow, City Hall
c/o Gary J. Riedner, City Supervisor
206 East 3rd Street
P.O. Box 9203
Moscow ID 83843
Phone (208) 883-7000
Fax (208) 883-7018

Website: www.ci.moscow.id.us
Hearing Impaired (208) 883-7019



January 28, 2020

Charlie Parkins
State of Idaho
Department of Environmental Quality
1410 North Hilton
Boise ID 83706

Dear Mr. Parkins,

Please find enclosed the executed loan offer for Offer of Drinking Water Loan No.: DW1406F. I have also enclosed a copy of Resolution 2019-22 the Moscow City Council passed for the approval and acceptance of the loan offer.

If you need additional information or have any questions, please contact Bill Belknap, Deputy City Supervisor at 208-883-7011 or bbelknap@ci.moscow.id.us.

Thank you,

Laurie M. Hopkins
City Clerk

Enclosures

c: Bill Belknap, Deputy City Supervisor
Gary J. Riedner, City Supervisor



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706 • (208) 373-0502
www.deq.idaho.gov

Governor Brad Little
Director John H. Tippetts

October 30, 2019

CERTIFIED MAIL NO.: 7000 0520 0016 4833 2667
RETURN RECEIPT REQUESTED

The Honorable Bill Lambert
Mayor of Moscow
PO Box 9203
Moscow, Idaho 83843

RE: Offer of Drinking Water Loan No.: DW1406F

Dear Mayor Lambert:

I am pleased to inform you that your application for a loan in the amount of \$4,300,000 from the Drinking Water State Revolving Fund has been accepted. The loan offer is enclosed. Please note that the enclosures include Davis Bacon wage guidance and provisions in Attachments B and C.

Attached is a set of drinking water system classification forms for your use in determining the future classification of your system. The updated system classification information is important and should be shared with your responsible charge operator and substitute responsible charge operator. Drinking water system upgrades make it likely that the system classification will change or increase and that the associated responsible charge operator and substitute responsible charge operator licenses will also require upgrade. Should you have any questions regarding system classification, please contact Justin Walker at (208) 799-4892.

Once this offer has been accepted by the City, please complete the project schedule (Attachment A) and sign the offer on page 11. A copy of the signed offer should be kept in the City's files. The loan offer and Attachment A shall be returned to Charlie Parkins in this office at the address listed above, on or before 60 days from the date of this loan offer. Please pay close attention to the Special Conditions on page 6 of the loan offer.

If you have any questions regarding this loan offer, please contact Charlie Parkins at (208) 373-0577 or Justin Walker in our Lewiston Regional Office at (208) 799-4892.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jerri Henry".

For JH

Jerri Henry
Drinking Water Protection and Finance Division Administrator

City of Moscow – Offer of Drinking Water Loan No.: DW1406FT
The Honorable Bill Lambert
October 30, 2019
Page 2

JH:CP:tg

Enclosures: Loan offer, Attachments A & B, System Classification Information

File: 2019ALN1511, Transmittal; 2019ALN1510, Loan Offer

c: Justin Walker, DEQ Lewiston Regional Office
MaryAnna Peavey, DEQ State Office
Jerri Henry, DEQ State Office
Bill Hart, DEQ State Office

**STATE OF IDAHO
DEPARTMENT OF ENVIRONMENTAL QUALITY
LOAN OFFER, ACCEPTANCE AND AGREEMENT
FOR DRINKING WATER TREATMENT
DESIGN AND CONSTRUCTION**

SECTION I. INTRODUCTION

The State of Idaho (State) is authorized by Title 39, Chapter 36 (Act), Idaho Code, to make loans from the Drinking Water Treatment Facility Loan Account (Account) to assist municipalities in the construction of drinking water treatment facilities. The Idaho Board of Environmental Quality, through the Department of Environmental Quality (Department), is authorized to administer the Act. The Department has determined that the City of Moscow (Borrower) has established eligibility for a loan under the terms of the Act and IDAPA 58.01.20, the Idaho Rules for Administration of Drinking Water Loan Program (the Rules).

The Borrower is a public entity with the authority to finance public improvements. The Borrower also has the authority to operate and maintain the public drinking water system located in the City of Moscow and taking all necessary actions to ensure that the public drinking water system meets all applicable laws. The Department hereby offers a loan to the Borrower according to the terms and conditions contained in this document and the Rules.

SECTION II. DESCRIPTION OF PROJECT

This loan agreement is for design and construction of the following project:

- | | | |
|----|-------------------------------|---|
| A. | Loan Project Number: | DW 1406F |
| B. | Name and Address of Borrower: | City of Moscow
PO Box 9203
Moscow, Idaho 83843 |
| C. | Project Description: | This loan is for phase 2 of the design, development and construction of well, transmission mains, replacement of existing booster pumps stations and water lines. |
| D. | Terms: | \$4,300,000 at 2.25% (interest of 1.25% and loan fee of 1.00%) to be repaid in biannual installments over 20 years. |

E. Estimated Project Budget:

1.	Transmission & Distribution	\$1,591,000
2.	Source Development	\$2,279,000
3.	Engineering	\$430,000
	Total	<u>\$4,300,000</u>

SECTION III. GENERAL CONDITIONS

This offer may only be accepted by signature by an authorized representative of the Applicant. Upon acceptance by the Applicant, this offer shall become a loan agreement (Agreement) and the Applicant shall become a Borrower. By accepting this offer, the Borrower agrees to all terms and conditions set forth in this document and the Rules:

The Borrower agrees:

- A. To not transfer, assign or pledge any beneficial interest in this Agreement to any other person or entity without the prior written consent of the Director of the Department of Environmental Quality (Director). To not enter into sale, lease or transfer of any of the property related to the Agreement. To not make any additional material encumbrances to the project without the prior written consent of the Director. To not incur any liabilities that would materially affect the funds pledged to repay this loan without the prior written consent of the Director. To not delegate legal responsibility for complying with the terms, conditions, and obligations of this Agreement without the prior written consent of the Director. Notwithstanding any other provision of this paragraph, the Borrower may sell or otherwise dispose of any of the works, plant, properties and facilities of the project or any real or personal property comprising a part of the same which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the project, or no longer necessary, material or useful in such operation, without the prior written consent of the Director.
- B. To enter into such contractual arrangements with third parties as it deems advisable to assist it in meeting its responsibilities under this Agreement.
- C. To fulfill all declarations, assurances, representations and statements in the application and all other documents, amendments and communications filed with the Department, by the Borrower, in support of the request for this loan. The application is attached hereto and incorporated by reference herein.
- D. To comply with applicable State and Federal employment requirements including, but not limited to, Equal Employment Opportunity and Civil Rights requirements.

- E. To make efforts to award subagreements to Disadvantaged Business Enterprises (DBE) which includes Minority and Women-owned businesses (MBE/WBE).
- a. The separate fair share goals for MBE and for WBE will be in bid solicitations and documentation of efforts to obtain MBE/WBE participation will be required of any contractor who fails to attain the goals; and,
 - b. Annual reports of MBE/WBE utilization will be prepared on forms supplied by the Department; and,
 - c. Include the following language in all procurement contracts *"The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies."*
- F. To provide the Department with documentation evidencing ownership of, and/or the right of access or easements for real property on which the project is proposed to be constructed. Clear title or legal right to access all real property necessary for the successful operation of the facilities shall be guaranteed by the Borrower for the useful life of the project, prior to commencement of construction. Land acquisitions shall only be reimbursed by DEQ if obtained from a willing seller.
- G. That if prior to completion of this Agreement the project is damaged or destroyed, there will be no reduction in the amounts payable by the Borrower to the Department.
- H. Subject to the Borrower's ordinance governing prior parity indebtedness of the water system, that in the event there is any default in the payment of either the principal amount, loan fee or the interest due under this Agreement, or any breach by the Borrower of any of the terms or conditions of this Agreement, the entire principal amount and whatever interest and fees are due to the date of payment may be declared due and immediately payable. The amount of such default shall bear the same interest and fee rate as applies to the principal of this loan from the date of default until the date of payment by the Borrower. All costs incurred by the Department due to such default, including court costs and attorney's fees, shall be repaid by the Borrower to the Department.
- I. That at any time, any waiver by the Department, of the rights or duties under this Agreement shall not be deemed a waiver of any subsequent or additional rights or duties under this Agreement.
- J. That the use by the Department of any remedy specified in this Agreement for its enforcement is not exclusive and shall not deprive the Department of the right to seek any other appropriate legal or equitable remedy.
- K. That this Agreement is binding upon the Borrower and the Department, and any person, office or entity succeeding the Borrower or the Department.

- L. To comply with all applicable federal, state and local laws.
- M. In the event any term of this Agreement is held to be invalid or unenforceable by a court, the remaining terms of this Agreement will remain in force.
- N. The total loan funds disbursed per this Agreement are considered federal financial assistance per the Single Audit Act of 1984, as amended by the Single Audit Act Amendments of 1996 (SAA), 31 U.S.C. §§7501-7507. (2000). If Borrower expends more than \$750,000 of any federal funds in a fiscal year, Borrower shall conduct an audit in accordance with the SAA. In such case, Borrower shall provide the Department a copy of the SAA audit within nine (9) months of the end of the audit period per the SAA. Borrower recognizes that it is responsible for determining if the \$750,000 threshold is reached and if a SAA audit is required. Additionally, Borrower shall inform the Department, in writing, of findings or recommendations pertaining to the State Revolving Fund contained in any SAA audits conducted by Borrower.
- O. Comply with all federal requirements applicable to the Agreement (including those imposed by the 2014 Appropriations Act (Public Law 113-76, Section 436) and related SRF Policy Guidelines) which includes requirements that all of the iron and steel products used in the Project are to be produced in the United States ("American Iron and Steel Requirement") unless (i) the Borrower has requested and obtained a waiver from Department pertaining to the Project or (ii) Department has otherwise advised the Borrower in writing that the American Iron and Steel Requirement is not applicable to the Project.

Comply with all record keeping and reporting requirements under the Safe Drinking Water Act (Section 1452, Title XIV of the Public Health Service Act), including any reports required by a Federal agency or Department such as information on costs and project progress.

The Borrower understands that (i) each contract and subcontract related to the project is subject to audit by appropriate federal and/or state entities and (ii) failure to comply with the Safe Drinking Water Act and this Agreement may be a default hereunder that results in a repayment of the loan in advance of the maturity of the Bonds and/or other remedial actions.

- P. As per Executive Order 12549, 2 CFR 180 and 2 CFR 1532 the loan recipient agrees to not enter into covered transactions with any contractors or subcontractors that have been suspended or debarred, and to include a similar term or condition in all lower tier covered contracts and transactions.

SECTION IV. PROJECT MANAGEMENT

The Borrower agrees to:

- A. Require the prime engineering firm(s) and their principals retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's

professional liability insurance shall be at least one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all services rendered for all phases of the project, whether or not those services are state funded, until the certification of project performance is accepted by the Department.

- B. Comply with the Public Works Contractors License Act and the Public Contracts Bond Act, Title 54, Chapter 19, Idaho Code, including requiring the prime construction contractor retained for construction to carry performance and payment bonds equal to one hundred percent (100%) of the contract price. The bond will be released when the constructed facility is accepted by the Borrower.
- C. Assure that contracts related to the project, which provide for arbitration allow appeal of any resulting arbitration decision to a district court or allow the arbitration to be non-binding on both parties if either party desires not to use arbitration as a method of dispute settlement.
- D. Jointly with an engineering consultant provide assurances that the physical and operational integrity of the works, when constructed, will achieve the level of treatment provided for in the design specifications.
- E. Provide for the accumulation of funds through charges made for services or otherwise, for the purposes of establishing a fund dedicated solely to (i) the repayment of principal, interest and loan fee on this loan, (ii) funding a reserve fund, (iii) capital replacement and (iv) future improvement, betterment, and extension of such works occasioned by increased usage on the facility.
- F. Provide a plan and program for an equitable user charge system, as permitted by law, for payment of operation and maintenance of constructed facilities. The user charge system shall be approved by the Department and enacted by the Borrower prior to receiving final payment. Make available on an equitable basis the services of the project to the residents and commercial and industrial establishments of the area it was designed to serve.
- G. Develop and adopt a water system protection ordinance approved by the Department prior to receiving final payment of loan funds.
- H. Provide to the Department for approval, an operation and maintenance manual for the project. The manual shall be approved by the Department prior to receiving final payment of loan funds.
- I. Provide adequate staffing and qualified operation and maintenance personnel as specified in the operation and maintenance manual approved by the Department.
- J. Assure that the operator in responsible charge of the facility has a level of competency commensurate with the nature of the facility. He or she must be licensed as a Drinking Water Operator in a class equal to or greater than that of the facility.

- K. Assure that distribution and treatment facility personnel shall participate in operator training programs designed to assure competence in the operation and maintenance of the facility.
- L. Commence satisfactory operation and maintenance of the drinking water treatment facility on completion of the project in accordance with applicable provisions, rules of the Department and any other applicable law, rule or regulation and not discontinue operation or dispose of the facility without the written approval of the Department.
- M. Review and update the user charge system, as permitted by law, at least biennially during the life of this Agreement to assure that all costs including debt retirement, operation and maintenance are offset by sufficient revenues.
- N. Maintain project accounts in accordance with generally accepted accounting principles.
- O. All laborers and mechanics employed by the prime construction contractor and subcontractors in the project using State Revolving Fund (SRF) loans shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality in accordance with the labor standards, including prevailing wage rates and instructions for reporting, as established by the United States Department of Labor (subchapter IV of Chapter 31 of title 40, United States Code). Borrower agrees that all procurement contracts must include as a term and condition that contractors and subcontractors must obtain wage determinations from the Department of Labor and comply with Department of Labor guidance and regulations implementing wage rate requirements applicable to SRF funds. Wage determinations shall be finalized prior to final bid submissions. Specific requirements related to Davis Bacon compliance are included in Chapter 6, Form A, of the DWSRF Loan Handbook, located at <http://www.deq.idaho.gov/media/60183096/6-a-dw-0819.pdf> (*current as of 10/17/2019*).

SECTION V. SPECIAL CONDITIONS

- A. The Borrower shall complete the attached project schedule and submit to the Department for approval on or before 60 days from the date of this loan offer. No funds shall be disbursed per this Agreement until a project schedule has been approved by the Department. The Department approved project schedule shall be attached to this Agreement as Attachment A and incorporated by reference as if fully set forth herein. The Borrower shall complete the project in accordance with the approved project schedule.
- B. All amendments to the project schedule must be approved by the project engineer in the Department's Lewiston Regional Office, prior to becoming effective.
- C. Prior to final loan distribution, the City shall have established a written customer service policy and an operating emergency plan (supported by board adoption).
- D. If your community receives \$750,000 or more in Federal monies, in any single fiscal year, during the period under which you are receiving loan disbursements, than you must submit a

Single Audit Act audit report to DEQ (for each and every year the threshold is met).

- E. A technical memorandum shall be developed and submitted during the detailed design phase for each Green Project Reserve (GPR) component identified in the Letter of Interest. The memorandum shall fully detail the GPR justification according to the current EPA guidance for determining project eligibility and comparable to the examples provided on the Department's website. Please review the following URLs for guidance (*current as of 10/17/2019*):<http://www.deq.idaho.gov/water-quality/grants-loans/green-project-reserve.aspx>
- F. Prior to loan closure the Borrower will implement all the management and technology based sustainability efforts per their letter of interest.
- G. Manage direct and indirect environmental impacts from the project that are specified in the environmental review.

SECTION VI. SECURITY REQUIREMENTS

The Borrower agrees:

- A. This loan will be evidenced and secured by a promissory note or bond in the amount of not exceeding \$4,300,000 (four million, three hundred thousand dollars). The promissory note or bond will be issued upon project completion and incorporated by reference into this Agreement.
- B. There will be a reserve fund equal to one year's payment of principal, fees and interest on the loan established. The Borrower has ten years to establish the reserve, setting aside 10% (ten percent) of one year's payment into the reserve fund each year.

SECTION VII. LOAN DISBURSEMENTS

The Borrower agrees:

- A. This loan shall be used solely to aid in the financing of the Borrower's project described in Section II.
- B. Requests for actual disbursement of loan funds will be made by the Borrower using forms provided by the Department. Upon approval of the disbursement request by the Department loans funds shall be released to the Borrower.
- C. The costs set forth in Section II have been determined by the Department to be eligible costs for funding. Some of the costs however, have been estimated, and the actual costs may differ from such estimated costs. A project review by the Department will determine final eligible costs for the project.
- D. If the actual eligible cost of the project is determined by the Department to be lower than

the estimated eligible cost, the loan amount will be reduced accordingly.

- E. An increase in the loan amount as a result of an increase in eligible project costs shall be considered, provided funds are available. Documentation supporting the need for an increase must be submitted to the Department for approval prior to incurring any costs above the eligible cost ceiling.
- F. Payment of the final five percent (5%) of this loan shall be withheld until the following requirements are met:
 - 1. The Borrower's engineer certifies (a) that the project has been constructed according to plans and specifications previously approved by the Department, (b) an operations manual has been completed and (c) that the project is fully operational; and
 - 2. The Department has inspected the project and verifies the engineer's certification.
- G. Payment of the final ten percent (10%) of this loan shall be withheld until the following requirements are met:
 - 1. The Special Conditions in Section V have been met; and
 - 2. A responsible charge operator (RCO) has been designated who is licensed at or above the classification level of the system. At such times as the RCO is not available, a substitute RCO shall be designated to replace the RCO, who is licensed at or above the classification level of the system.
- H. This offer is subject to the existence of the offered sum of money in the Account at the time of payment. Should the offered sum of money not be available in the Account at the time of payment, the Department hereby agrees to pay the Borrower the offered sum of money on the basis of the Borrower's priority position immediately upon the accrual of said sum in the Account.

SECTION VIII. REPAYMENT TERMS AND SCHEDULE

The Borrower agrees:

- A. This loan shall be repaid in the manner set forth in the promissory note or bond which shall be attached to this Agreement and incorporated by reference. The payment terms of the promissory note or bond shall be consistent with this Agreement.
- B. To pay biannual payments of principal, fees and interest and to fully amortize this loan not later than twenty (20) years from project completion. Interest will begin accruing with the first disbursement of funds. At the time of closing, accrued interest will be either paid to the Department or incorporated into the final loan amount if the approved amount

has not been exceeded.

- C. At the time of closing, the Department may elect to impose a loan fee (not to exceed 1%) pursuant to the Rules. If a loan fee is imposed, the loan interest rate will be reduced by the amount of the loan fee. The loan fee will be assessed against the final loan balance, which shall include the entire principal balance and may include capitalized interest. Any loan fee shall be due and payable concurrently with scheduled loan principal and interest repayments over the repayment period.
- D. This Agreement shall remain in full force and effect until all loan proceeds, including principal, interest and loan fee, have been paid in full or the Agreement is otherwise suspended or terminated by the Department.

SECTION IX. SUSPENSION OR TERMINATION OF LOAN AGREEMENT

- A. The Director may suspend or terminate this Agreement prior to final disbursement for failure of the loan recipient or its agents, including engineering firm(s), contractor(s), or subcontractor(s) to perform. This Agreement may be suspended or terminated for good cause including, but not limited to, the following:
 - 1. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, receipt of stolen property or any form of tortious conduct; or
 - 2. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years imprisonment or any crime involving or affecting the project; or
 - 3. Violation(s) of any term of this Agreement; or
 - 4. Any willful or serious failure to perform within the scope of the project, plan of operation and project schedule, terms of engineering subagreements, or contracts for construction; or
 - 5. Utilizing a contractor or subcontractor who has been suspended or debarred by order of any federal or state agency from working on public work projects funded by that agency.
- B. The Director will notify the Borrower in writing and by certified mail of the intent to suspend or terminate this Agreement. The notice of intent shall state:
 - 1. Specific acts or omissions which form the basis for suspension or termination; and
 - 2. Availability of a contested case hearing before the Board of Environmental Quality conducted as provided for in the Rules of Administrative Procedure

Before the Board of Environmental Quality, IDAPA 58.01.23.

- C. If the Borrower does not initiate a contested case hearing before the Board by filing a petition within the time period specified by the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23., the Department may thereafter terminate or suspend the Agreement by written notice to the Borrower. If the Borrower initiates a contested case, the termination or suspension shall be determined by the Board.
- D. The Borrower shall perform no work under the Agreement after receiving a notice of intent to suspend or terminate until all administrative proceedings and appeals therefrom are final or the Department reinstates the Agreement as provided herein.
- E. Upon written request by the Borrower with evidence that the cause(s) for suspension no longer exists, the Director may, if funds are available, reinstate the Agreement. If a suspended Agreement is not reinstated, the loan will be amortized and a repayment schedule prepared in accordance with the provisions of this Agreement.
- F. No terminated loan shall be reinstated. Terminated loans will be amortized and a repayment schedule prepared in accordance with the provisions of this Agreement. If the loan is terminated prior to final disbursement, the Borrower shall immediately pay back to the Department all disbursed funds and accrued interest.

SECTION X. ACCESS AND INDEMNIFICATION

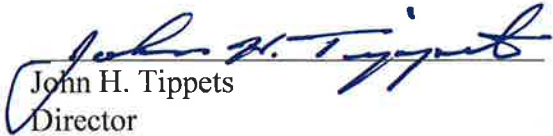
The Borrower agrees to:

- A. Provide the Director, or his/her authorized agents, and the U.S. Environmental Protection Agency, access to all files, records, accountings and books relating to the management and accountability of this loan.
- B. Indemnify and hold harmless the State of Idaho, its agents and its employees from any and all claims, actions, damages, liabilities and expenses directly or indirectly connected to the Borrower or its agents, employees, contractors, or assignees actions related to the location, design, construction, operation, maintenance, repair, failure or deactivation of the project or any part of the project.

SECTION XI. OFFER

The offer set forth herein must be accepted, if at all, on or before 60 days from the date of this loan offer. An acceptance must be accompanied by a resolution of the Applicant's governing body authorizing the signator to sign on the Applicant's behalf for the purpose of this agreement.

Dated ^{Nov.} ~~October~~ 1, 2019.


John H. Tippet
Director
Department of Environmental Quality

SECTION XII. ACCEPTANCE

The City of Moscow, by and through its undersigned representative(s), accepts the foregoing offer and agrees to discharge all obligations and to comply with all terms and conditions contained herein.


Signature of Representative

Bill Lambert, Mayor
Name and Title of Representative - type or print

01/28/2020
Date

LOAN AGREEMENT BETWEEN THE STATE OF IDAHO
DEPARTMENT OF ENVIRONMENTAL QUALITY AND
CITY OF MOSCOW
LOAN PROJECT NUMBER: DW1406F
PROJECT SCHEDULE

Pursuant to Section V, Special Conditions of the loan agreement (Agreement) between the State of Idaho, Department of Environmental Quality (Department) and the City of Moscow (Borrower), Loan Project Number: DW1406F, the Borrower agrees to complete the project, which is for design, development and construction of a well, transmission mains, replacement of existing booster pumps stations and water lines, in accordance with the following schedule:

Number of Months from Loan Acceptance	Task
Feb 2020	Boosters & Conveyance
<u>Complete</u>	10% Design Review
<u>3</u>	50% Design Review
<u>6</u>	90% Design Review
<u>Complete</u>	User Charge System Approved
<u>Complete</u>	Water System Protection Ordinance Approved
<u>8</u>	Final Plans, Specifications and Bidding Documents
<u>10</u>	Bid Summary
<u>11</u>	Award Construction Contract
<u>14</u>	Project Management Conference
<u>24</u>	Plan of Operation Amendment
<u>21</u>	Draft Operation & Maintenance (O&M) Manual
<u>24</u>	Staffing Plan
<u>21</u>	Construction Completion
<u>Complete</u>	User Charge or Tax Assessment System Enacted
<u>Complete</u>	Water Protection Ordinance Enacted
<u>23</u>	Final O&M Manual
<u>23</u>	Updated Drinking Water System Classification Worksheets
<u>23</u>	Verify Appropriate Operator Licensure
<u>24</u>	Final Inspection
<u>24</u>	Initiate Operation
<u>25</u>	Final Payment

Project schedule approved by:

Bill Lambert
Signature of Borrower Representative

Bill Lambert
Printed Name of Borrower Representative

11/04/2019
Date of Approval Signed 01/28/2020

Signature of Department Representative

Printed Name of Department Representative

Date of Approval

LOAN AGREEMENT BETWEEN THE STATE OF IDAHO
DEPARTMENT OF ENVIRONMENTAL QUALITY AND
CITY OF MOSCOW
LOAN PROJECT NUMBER: DW1406F
PROJECT SCHEDULE

Pursuant to Section V, Special Conditions of the loan agreement (Agreement) between the State of Idaho, Department of Environmental Quality (Department) and the City of Moscow (Borrower), Loan Project Number: DW1406F, the Borrower agrees to complete the project, which is for design, development and construction of a well, transmission mains, replacement of existing booster pumps stations and water lines, in accordance with the following schedule:

Number of Months from Loan Acceptance Feb 2020	Task Well 10 Development
<u>Complete</u>	10% Design Review
<u>Complete</u>	50% Design Review
<u>Complete</u>	90% Design Review
<u>Complete</u>	User Charge System Approved
<u>Complete</u>	Water System Protection Ordinance Approved
<u>1</u>	Final Plans, Specifications and Bidding Documents
<u>2</u>	Bid Summary
<u>3</u>	Award Construction Contract
<u>4</u>	Project Management Conference
<u>13</u>	Plan of Operation Amendment
<u>10</u>	Draft Operation & Maintenance (O&M) Manual
<u>13</u>	Staffing Plan
<u>10</u>	Construction Completion
<u>Complete</u>	User Charge or Tax Assessment System Enacted
<u>Complete</u>	Water Protection Ordinance Enacted
<u>12</u>	Final O&M Manual
<u>13</u>	Updated Drinking Water System Classification Worksheets
<u>13</u>	Verify Appropriate Operator Licensure
<u>13</u>	Final Inspection
<u>13</u>	Initiate Operation
<u>14</u>	Final Payment

Project schedule approved by:

Bill Lambert

Signature of Borrower Representative

Bill Lambert

Printed Name of Borrower Representative

11/04/2020

Date of Approval Signed 01/28/2020

Signature of Department Representative

Printed Name of Department Representative

Date of Approval

Attachment B

Wage Rate Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6)

Preamble

With respect to the Clean Water and Safe Drinking Water State Revolving Funds, EPA provides capitalization grants to each State which in turn provides subgrants or loans to eligible entities within the State. Typically, the subrecipients are municipal or other local governmental entities that manage the funds. For these types of recipients, the provisions set forth under Roman Numeral I, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section 3(ii)(A), below and for compliance as described in Section I-5.

Occasionally, the subrecipient may be a private for profit or not for profit entity. For these types of recipients, the provisions set forth in Roman Numeral II, below, shall apply. Although EPA and the State remain responsible for ensuring subrecipients' compliance with the wage rate requirements set forth herein, those subrecipients shall have the primary responsibility to maintain payroll records as described in Section II-3(ii)(A), below and for compliance as described in Section II-5.

Requirements Under The Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6) For Subrecipients That Are Governmental Entities:

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the FY 2013 Continuing Resolution with respect to State recipients and subrecipients that are governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact Idaho DEQ's Tim Wendland at tim.wendland@deq.idaho.gov or at 208-373-0439. The recipient or subrecipient may also obtain additional guidance from U.S. Department of Labor's (DOL) web site at <http://www.dol.gov/whd/>

1. Applicability of the DB prevailing wage requirements.

Under the FY 2013 Continuing Resolution, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

Attachment B

- (i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.
 - (ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
- (b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.
- (c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
- (d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

- (a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2013 Continuing Resolution, the following clauses:

Attachment B

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the DB Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the DB poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the DOL's web site, www.dol.gov.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, DOL, Washington, DC 20210 and to the EPA DB

Attachment B

Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the DB Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the DOL, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to DB prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each

Attachment B

such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the DB Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the DB Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at

<http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the OL for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5(a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5(a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

Attachment B

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the

Attachment B

Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the DB and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

Attachment B

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the DOL set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the DOL, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the DB Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the DB Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the DOL, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held

Attachment B

by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) If there is a reasonable doubt that any contractor is not fully complying with DB prevailing wages, the subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicated that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall

Attachment B

verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the DOL or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/contacts/whd/america2.htm>.

Attachment C

Davis Bacon Compliance Requirements for Borrowers

Compliance with this Attachment to the Loan Offer will be monitored as part of the DEQ Project Officer's disbursement approval process, and during interim and final inspections.

1. Request Additional "Trade" Classifications and Wage Rates

If the work classification(s) needed does not appear on a federal wage decision, borrowers will need to request an additional classification and wage rate. It is recommended the process be started early during the preconstruction conference. The borrower and prime contractor for the project should identify the classification needed and recommend a wage rate through the Department of Environmental Quality (DEQ).

Requests can be approved if:

- The work that will be performed by the requested classification is not already performed by another classification that is already on the wage decision. (In other words, if there already is an Electrician classification and wage rate on the wage decision, another Electrician classification and rate cannot be requested.)
- The proposed wage rate, including bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- If the contractor and laborers and mechanics to be employed in the classification (if known), and the borrower agree on the classification and wage rate (including fringe where appropriate).

Requests must be made in writing through the borrower, including a completed Conformance Request SF 1444 Form. The request should identify the work classification that is missing and recommend a wage rate for the classification. Also include any pertinent documents that may be helpful (if requesting paying the state prevailing wage rate, include the state wage decision). Send the packet to DEQ for review and submission to the U.S. Department of Labor (DOL) for approval. DOL's response will be forwarded to the borrower.

If the request is denied, the borrower will be notified what classification and rate should be used. Requesting additional classification does not hold up the payroll process. It may however result in correcting underpayments if DOL is not in agreement with the request.

2. Conduct Payroll Reviews

The Federal Copeland Act requires that workers be paid at least once a week, and without any deductions or rebates except permissible deductions such as payroll taxes, deductions the worker authorizes in writing, or those provided by court order. The Act also requires contractors to maintain payroll records and submit weekly certified payroll and statement of compliance to the borrower certifying wages paid and deductions made. The appropriate wage rates are those determined pursuant to the federal Davis-Bacon related acts by the Federal Department of Labor. Further, if the rate is not shown in the Davis-Bacon related acts, an additional classification must be obtained from the U.S. Department of Labor through DEQ.

- Borrowers must also review payrolls to determine if workers on the construction project have received appropriate rates of overtime compensation. The Contract Work Hours and Safety Act requires that laborers and mechanics receive overtime compensation at a rate of not less than one and one-half times their regular hourly wage after they have worked 40 hours in one week on DWSRF funded projects.

Weekly payroll records must be reviewed by the borrower for the following:

- Payrolls were submitted on time
- Forms were filled out completely including on the initial payroll, the name, identifying number, address, and job classification for each employee.
- All self-employed owners, who have no employees, are designated as an employee and are reported on the certified payroll of the General contractor (or subcontractor if hired by them). Fill out the form the same as for employees and enter "self-employed" and contracting license number where the payroll asks for deductions.
- If the owner of the company has employees and performs work on the project covered by Davis-Bacon wage decisions, the owner is listed as an employee on the certified payroll he submits for his employees. Fill out the form the same as for employees and enter "self-employed, owner or owner/operator".
- The wages and fringes listed on the certified payroll for each job classification agree with those identified on the statement of intent to pay prevailing wages.
- The payrolls include all the classifications being utilized even if not listed on the statement of intent to pay prevailing wages.
- Payrolls only include permissible deductions.
- When fringe benefits are being paid into a benefit plan, block 4(a) on the back of the certified payroll form must be checked.
- Apprentices or trainees listed on the certified payroll are working under approved apprenticeship and training agreements. Copies of those certifications should be included with payrolls.
- The payroll form is signed.

3. Conduct On-Site Reviews

The borrower, or its representative, must provide for visits to the construction site to determine that:

- Wage determinations are posted at the job site.
- Employees are working within the proper job classification.

4. Conduct Employee Interviews

If there is reason to suspect contractor noncompliance: The borrower or its representative (not the prime contractor, or subcontractors) must conduct employee interviews with at least one employee in each trade to determine the following:

- Employees are being paid the amounts/rates stated on the payrolls
- Employees are being properly compensated for overtime hours

- Employees are receiving their full wages and fringe benefits and are not being subjected to coercion or kickback tactics by the contractor or subcontractors.
- Contractors and subcontractors are using and paying apprentices and trainees appropriately.

5. Submit First Week Labor Standards (21 Day Labor Packet)

For each prime and subcontractor performing work on-site during the first week of construction, the borrower must provide a copy of the following documents to the DEQ regional office in charge of day-to-day project oversight, within 21 days after the contractors start construction on the project.

- Certified Payroll for the first week pay period
- Employee interview forms for the first week (if there is a reasonable doubt that any contractor is not fully complying with DB prevailing wages)

The purpose for submitting the above information to DEQ is to assure that any underpayments are detected early and appropriate corrections made early while easy to implement. **The first week labor standards (21 day) packet must be provided to DEQ and any underpayments resolved before DEQ will pay the construction reimbursement request. If underpayments are discovered, DEQ will notify the borrower to work with the prime contractor to have restitution made and a corrected certified payroll submitted to DEQ for approval.**

6. Resolve Overtime Violations

If the prime contractor or subcontractors do not compensate a worker appropriately for overtime, the borrower needs to notify DEQ and work with the prime contractor to resolve the overtime violations.

- If the violation is less than \$10 per worker, the violation does not have to be reported.
- If the violation is \$10 or more per worker, the prime contractor must make payment or assure payments are made by subcontractors and submit a corrected certified payroll and a copy of the check to the worker, and send it to the borrower. Any time the violation is \$10 to \$999, the borrower must notify DEQ in writing. If the violation is \$1,000 or more, the borrower must submit a Labor Standards Enforcement Report to DEQ who will coordinate the violation with the Department of Labor or EPA (contact DEQ for assistance in filing this report).

7. Resolve Other Underpayments

If a mathematical error, misclassifications, or other error that results in the underpayment of wage or fringe benefits occurs, the prime contractor or subcontractor must make restitution and submit a corrected certified payroll and a copy of the check showing the underpayment made to the worker, to the borrower.

8. Conduct Technical Inspections

During construction, the borrower is responsible for monitoring contractor/subcontractor progress and compliance with technical requirements of the project. Typically, this monitoring process is the responsibility of the consulting project engineer; however, the borrower may wish to designate someone locally with oversight responsibility. The purpose of the technical

monitoring process is to ensure that the project is constructed as planned, within budget and estimated timeframes, and within specified quality and quantity standards.

9. Maintain Project Records

The borrower is required to maintain project records that document all financial, monitoring and inspection transactions, and progress reviews that occur during the life of the project. Borrowers must maintain copies of weekly certified payrolls and any corrected certified payrolls, copies of correspondence and resolution of overtime violations, and copies of employee interviews in the project files for the life of the loan as defined by the contract.

RESOLUTION NO. 2019 – 22

A RESOLUTION OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR APPROVAL AND ACCEPTANCE OF A LOAN OFFER FROM IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY FOR FINANCING OF CAPITAL IMPROVEMENTS TO THE CITY'S DOMESTIC WATER SYSTEM (PHASE II); PROVIDING THIS RESOLUTION TO BE EFFECTIVE UPON ITS PASSAGE AND APPROVAL.

WHEREAS, the City of Moscow, Latah County, Idaho ("City"), pursuant to Idaho Code § 50-301, is a body corporate and politic duly organized, operating and existing under and pursuant to the provisions of the Constitution and the laws of the State of Idaho; and

WHEREAS, the City Council is authorized and empowered by the Revenue Bond Act, Idaho Code Sections 50-1027 through 50-1042, inclusive, and the Municipal Bond Law of the State of Idaho, being Idaho Code Title 57, Chapter 2, to authorize, issue, sell and deliver revenue bonds to finance the acquisition and construction of improvements and additions to the domestic water system operated by City and serving the residents of the City (the "System"); and

WHEREAS, on April 29, 2014, the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, in Case No. CV-2014-81, issued its Judgment (the "Judicial Confirmation") ordering and decreeing, among other things, that City has the authority to issue revenue bonds, without a public vote, to finance improvements to City's System including the reconstruction of six (6) water booster stations, the drilling and development of a new domestic well, and construction of limited piping systems associated with the booster stations and well to rectify existing fire flow and water production deficiencies within the City's domestic water system (the "Project"); and

WHEREAS, City received from the State of Idaho Department of Environmental Quality ("DEQ") that certain Loan Offer, Acceptance and Agreement for Drinking Water Treatment Design and Construction (the "Loan Offer") dated June 12th, 2014, providing for a loan from DEQ to City in the principal amount of up to four million three hundred thousand dollars (\$4,300,000), the proceeds of which are to be used by City to finance costs of the Project; and

WHEREAS, on June 16, 2014, City accepted the Loan Offer and authorized the Mayor to execute the Loan Offer, and deliver the same to DEQ together with all required documentation as itemized in the Loan Offer; and

WHEREAS, City commenced construction of the Project, and having completed a portion of the Project, has determined that additional funding is necessary to complete the Project; and

WHEREAS, DEQ has determined that additional funding capacity is available to provide City with an additional four million three hundred thousand dollars (\$4,300,000) of funding to allow the completion of the Project; and

WHEREAS, City's bond counsel has reviewed the matter and has concluded that the additional expenses are in accordance with the Judicial Confirmation and are thus "ordinary and necessary" expenses to complete the Project; and

WHEREAS, City received from DEQ that certain Loan Offer, Acceptance and Agreement for Drinking Water Treatment Design and Construction (the "Phase II Loan Offer") dated October 30, 2019 and attached hereto as Exhibit "A" providing for a second loan from DEQ to City in the principal amount of up to four million three hundred thousand dollars (\$4,300,000), the proceeds of which are to be used by City to finance the remaining costs associated with the Project; and

WHEREAS, City desires to authorize City's officials to take all action necessary or reasonably required to effectuate the Phase II Loan Offer provisions, including, as authorized by the Judicial Confirmation, to approve the substantial form of the bond to be issued to DEQ to evidence the loan in the principal amount up to four million three hundred thousand dollars (\$4,300,000) (the "Revenue Bond") in the form attached hereto as Exhibit "B".

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Moscow as follows:

Section 1. Approval of Loan Offer. The form, terms and provisions of the Loan Offer to be entered into, accepted, approved and/or acknowledged, as applicable, by City be, and they are hereby approved and authorized, and the Mayor is hereby authorized to execute and deliver the Loan Offer.

Section 2. Approval of Form of Revenue Bond. The Revenue Bond in substantially the form attached hereto as Exhibit "B" is hereby approved, together with such changes as required at the time City issues the Revenue Bond as shall be consistent with the Loan Offer.

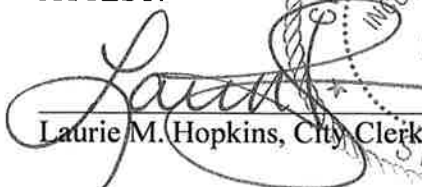
Section 3. Delivery of Documents to DEQ. The officials of City are authorized to deliver to DEQ the executed Loan Offer, together with a copy of this Resolution and form of Revenue Bond, together with all other required documentation required by the Loan Offer.

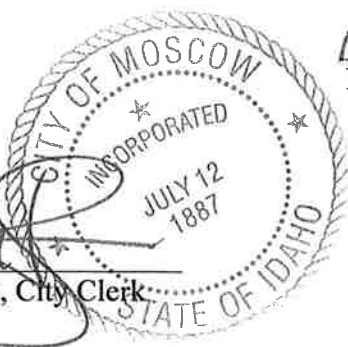
Section 4. Necessary Actions. The Mayor and other officers and agents of City shall take all actions necessary or reasonably required by the Loan Offer to effectuate its provisions, and, upon completion of the Project, shall take all action necessary or desirable to authorize the issuance of the Revenue Bond to DEQ substantially in the form hereby approved.

That this Resolution shall become effective as of the 4th day of November 2019.

PASSED BY CITY COUNCIL AND APPROVED BY THE MAYOR of the City of Moscow, Idaho, this 4th day of November, 2019.

ATTEST:


Laurie M. Hopkins, City Clerk




Bill Lambert, Mayor

COMMITTEE / CITY COUNCIL STAFF REPORT

DATE: Tuesday, September 3, 2024



AGENDA ITEM TITLE

City Supervisor Title Amendment Ordinances (ACTION ITEM) - Bill Belknap

RESPONSIBLE STAFF

Bill Belknap, City Supervisor

ADDITIONAL PRESENTER(S)

DESCRIPTION

The City of Moscow established the position of Administrative Assistant for the City of Moscow in 1959 through Ordinance 1001, passed on April 6th, 1959. The position as described in 1959, included keeping an inventory of all City property, acting as the City's purchasing agent, preparing the annual budget, serving as public relations officer, attending City Council meetings, overseeing all department operations, and long-range planning for the City, all under the supervision of the Mayor. At the Council meeting of May 14, 1959, Clair Inghram was appointed as the first person to occupy the newly created position, but the title that was utilized at the time of the appointment, as reflected in the meeting minutes was City Supervisor. Over the years the City amended Chapter 4 of Title 2 to formally change the title to City Supervisor in code. The title of City Supervisor is not commonly used in the public administration profession and there are no other similar positions within the State of Idaho. Pullman Washington was one of the few cities that retained the title of City Supervisor until a few years ago when they changed the title of City Supervisor to City Administrator, which is the common title utilized throughout Idaho and the nation. Staff is proposing to retain all duties and responsibilities, but to change the title of the position to City Administrator. This recommendation was reviewed and approved by the Mayor and Council President and Vice President, and staff have prepared an ordinance to first amend Title 2, Chapter 4, and a second Ordinance to change all other City code references of City Supervisor to City Administrator. This was reviewed by the Administrative Committee on August 26, 2024, and recommended for approval.

REVIEWED BY

Legal Department

PROPOSED ACTIONS

PROPOSED ACTIONS:

1. Approve the Ordinance amending Title 2, Chapters 5 and 14, under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary; or consider the Ordinance on first reading and that it be read by title; or reject the Ordinance; or take such other action deemed appropriate.
2. If the prior Ordinance is approved, recommend approval of the Ordinance amending all City Code references to City Supervisor and Deputy City Supervisor under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary; or consider the Ordinance on first reading and that it be read by title; or reject the Ordinance; or take such other action deemed appropriate.

STAFF RECOMMENDATION

1. Approve of the Ordinance amending Title 2, Chapters 5 and 14, under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary; and
2. If the prior Ordinance is approved, approve the Ordinance amending all City Code references to City Supervisor and Deputy City Supervisor under suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary.

OTHER RESOURCES

FISCAL IMPACT

PERSONNEL IMPACT

ATTACHMENTS

1. Ordinance 2024 - Amend T2 CH 4 14_final
2. Ordinance 2024 - Amend Code References to City Administrator
3. Ordinance 1959-1001 Administrative Assistant Office of

ORDINANCE NO. 2024-__

AN ORDINANCE OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE AMENDMENT OF MOSCOW CITY CODE TITLE 2, CHAPTER 4, AND TITLE 2, CHAPTER 14; PROVIDING FOR THE CHANGE OF TITLE FROM CITY SUPERVISOR TO CITY ADMINISTRATOR AND PROVIDING FOR THE AMENDMENT OF THE TITLE, DUTIES, AND RESPONSIBILITIES OF THE OFFICE OF DEPUTY CITY SUPERVISOR; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE BE DEEMED SEVERABLE; AND PROVIDING FOR THIS ORDINANCE TO BE IN FULL FORCE AND EFFECT FROM THE DATE OF ITS PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the City has recognized that the title of City Supervisor is no longer widely utilized in local government administration and desires to change the title of the office of City Supervisor to City Administrator while retaining the same duties, powers, and responsibilities; and

WHEREAS, the change in title to City Administrator necessitates a subsequent change of title to the office of Deputy City Supervisor; and

WHEREAS, the City desires to modify the duties, powers, responsibilities, and title of the office of Deputy City Supervisor to provide for the current and future needs of the City;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MOSCOW AS FOLLOWS:

SECTION 1: All matters stated above are found to be true and correct and are incorporated herein by reference as if copied in their entirety and shall be adopted with the following sections of this Ordinance.

SECTION 2: That Title 2, Chapter 4 of the Moscow City Code be, and the same is hereby amended to read as follows:

CITY ~~SUPERVISOR~~ADMINISTRATOR

- Sec. 4-1: Office Established, Appointment and Removal, Scope of Authority
- Sec. 4-2: Duties, Powers and Responsibilities
- Sec. 4-3: Classified Position
- Sec. 4-4: Combination of Position

Sec. 4-1. Office Established, Appointment and Removal, Scope of Authority.

There is hereby established the office of City ~~Supervisor~~Administrator, which office shall be filled by the appointment of the Mayor, subject to confirmation by a majority of the Council. The City ~~Supervisor~~Administrator shall be subject to removal by the Mayor with consent of the Council or by unanimous vote of the Council. The City ~~Supervisor~~Administrator shall be the administrative assistant, executive and liaison officer for the City, under the direction and authority of the Mayor.

Sec. 4-2. Duties, Powers and Responsibilities.

The City ~~Supervisor~~Administrator shall have the following specific duties, powers and responsibilities, in addition to others provided in this Chapter or otherwise:

- A. Under the direction and authority of the Mayor, the City ~~Supervisor~~Administrator shall supervise, administer and coordinate the activities and functions of the various City officers and departments in carrying out the requirements of City ordinances and the policies of the Council.
- B. ~~The City Supervisor~~Administrator shall rRegularly report to the Mayor concerning the status of all assignments, duties, projects and functions of the various City offices, departments, boards and commissions.
- C. ~~The City Supervisor~~Administrator shall eCause to be prepared and submitted to the City ~~Supervisor~~Administrator by each department, division or service of the City government, itemized annual estimates of expenditures required by any of them and submit a report thereof to the Mayor, with the recommendation of the City ~~Supervisor~~Administrator, prior to the passage of the annual appropriation ordinance.
- D. ~~The City Supervisor~~Administrator shall sSupervise all purchases and expenditures by the various City offices, departments, commissions and boards, for the purpose of keeping the same within the limitations of the annual budget of the City.
- E. ~~The City Supervisor~~Administrator shall sServe as the chief public information officer of the City.
- F. ~~The City Supervisor~~Administrator shall aAttend all meetings of the Council with the duty of reporting any matter concerning City affairs under his or her supervision.
- G. ~~The City Supervisor~~Administrator shall aAssist the Mayor generally in conducting the City's business in all matters, and perform such other duties and assume such other responsibilities as the Council through the Mayor may direct or as by ordinances and resolutions of the Council may be required.

Sec. 4-3. Classified Position.

The position of City ~~Supervisor~~Administrator shall be a classified position at a grade level determined by the Mayor and Council. All rules and regulations and fringe benefits set forth in the City of Moscow Personnel Policies, as amended by the Council from time to time, shall apply to this position.

(Ord. 84-17, 8/20/84)

Sec. 4-4. Combination of Position.

The office of City ~~Supervisor~~Administrator may be combined with any other appointive position in the City; provided, that where combined, the compensation shall be fixed by the Council for the combined office and shall not necessarily be the total of the compensation fixed for each office individually.

SECTION 3: That Title 2, Chapter 14 of the Moscow City Code be, and the same is hereby amended to read as follows:

DEPUTY CITY ~~SUPERVISOR~~ADMINISTRATOR

- Sec. 14-1: Office Established, Appointment and Removal, Scope of Authority
Sec. 14-2: Duties, Powers and Responsibilities
Sec. 14-3: Classified Position
Sec. 14-4: Combination of Positions

Sec. 14-1. Office Established, Appointment and Removal, Scope of Authority.

There is hereby established the office of Deputy City ~~Supervisor~~Administrator, which office shall be filled by the appointment of the Mayor, subject to confirmation by a majority of the Council. The Deputy City ~~Supervisor~~Administrator shall hold office ~~for the duration of his or her appointment or~~ until such time as he or she may be removed by the Mayor, or as provided by law. The Deputy City ~~Supervisor~~Administrator shall work under the direction of the City ~~Supervisor~~Administrator. The Mayor may appoint up to three (3) Deputy City ~~Supervisor~~Administrators. The Duties, Powers and Responsibilities detailed below may be combined or reassigned among the Deputy City ~~Supervisor~~Administrators at the discretion of the City ~~Supervisor~~Administrator.
(Ord. 2021-09, 07/19/2021)

Sec. 14-2. Duties, Powers and Responsibilities.

The Deputy City ~~Supervisor~~Administrator(s) shall have the ~~following~~ specific duties, powers, and responsibilities ~~to oversee specific operational units and/or departments of the City government as specified upon appointment by the Mayor and confirmation by the Council, or as, in addition to others provided in this Chapter or otherwise assigned by the City Supervisor.~~

~~A. A Deputy City Supervisor may be appointed to supervise, administer and coordinate the activities and functions of the Community Planning and Design Group. This Group may include the Building Safety Department, Planning Department, Engineering Department, Grants Manager, and such other departments assigned by the City Supervisor.~~

~~B. A Deputy City Supervisor may be appointed to supervise, administer and coordinate the activities and functions of the Culture and Recreation Group. This Group may include the Arts Department, Community Events Department, Parks and Facilities Department, Recreation Department, Human Resources Department, and such other departments assigned by the City Supervisor.~~

~~C. A Deputy City Supervisor may be appointed to supervise, administer and coordinate the activities and functions of the Public Works and Services Group. This Group may include the Water Department, Water Reclamation and Reuse Department, Street and Stormwater Department, Environmental Services Department, Sanitation Department, Fleet Department, and such other departments assigned by the City Supervisor.~~

~~D. Any Deputy City Supervisor~~Administrator may be assigned by the City ~~Supervisor~~Administrator to serve as ~~temporary Acting City Supervisor~~Administrator on occasions when the City ~~Supervisor~~Administrator is unavailable.

~~E. The Deputy City Supervisor~~Administrator(s) shall regularly report to the City ~~Supervisor~~Administrator concerning the status of all assignments, duties, projects, and functions of the various City offices, departments, boards, and commissions under their supervision.
(Ord. 2021-09, 07/19/2021)

Sec. 14-3. Classified Position.

The position of Deputy City ~~Supervisor~~Administrator shall be a classified position at a grade level determined by the City ~~Supervisor~~Administrator. All rules and regulations and fringe benefits set forth in the City of Moscow Personnel Policies, as amended by the Council from time to time, shall apply to this position.
(Ord. 2021-09, 07/19/2021)

Sec. 14-4. Combination of Positions.

The office of Deputy City ~~Supervisor~~Administrator may be combined with any other appointive position in the City; provided, that where combined, the compensation shall be fixed by the City ~~Supervisor~~Administrator for the combined office and shall not necessarily be the total of the compensation fixed for each office individually.
(Ord. 2021-09, 07/19/2021)

SECTION 4: SEVERABILITY. Provisions of this Ordinance shall be deemed severable and the invalidity of any provision of this Ordinance shall not affect the validity of the remaining provisions. The remaining sections of Title 2 shall be in full force and effect.

SECTION 5: EFFECTIVE DATE. After its passage and adoption, a summary of this Ordinance, under the provisions of the Idaho Code, shall be published once in the official newspaper of the City of Moscow. This Ordinance shall be in full force and effect from and after the date of its passage, approval and publication according to law.

SECTION 6: Any Ordinances, Resolutions, Policies and Contracts that include references, duties and responsibilities of the “City Supervisor” and “Deputy City Supervisor(s)” shall be deemed to be the same person as “City Administrator” and “Deputy City Administrator(s)” respectively and shall be unchanged and not modified by this Amendment and remain in full force and effect.

PASSED on Motion by the Following Vote:

	Aye	Nay	Abstain	Absent
Hailey Lewis	_____	_____	_____	_____
Drew Davis	_____	_____	_____	_____
Sandra Kelly	_____	_____	_____	_____
Gina Taruscio	_____	_____	_____	_____
Julia Parker	_____	_____	_____	_____
Bryce Blankenship	_____	_____	_____	_____

ADOPTED by the City Council of the City of Moscow, Idaho and **APPROVED** by the Mayor of the City of Moscow, this ____ day of _____, 2024.

Arthur D. Bettge, Mayor

CERTIFICATION and ATTESTATION. I hereby certify that the above is a true copy of an Ordinance passed at a regular meeting of the City Council, City of Moscow, held on _____, 2024.

Laurie M. Hopkins, City Clerk

ORDINANCE NO. 2024-__

AN ORDINANCE OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE AMENDMENT OF MOSCOW CITY CODE TO CHANGE ALL REFERENCES OF CITY SUPERVISOR TO CITY ADMINISTRATOR AND DEPUTY CITY SUPERVISOR TO DEPUTY CITY ADMINISTRATOR; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE BE DEEMED SEVERABLE; AND PROVIDING FOR THIS ORDINANCE TO BE IN FULL FORCE AND EFFECT FROM THE DATE OF ITS PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

WHEREAS, Council approved Ordinance 2024- , changing the title of City Supervisor to City Administrator and Deputy City Supervisor to Deputy City Administrator; and

WHEREAS, the titles City Supervisor and Deputy City Supervisor are cited in various sections throughout the Moscow City Code; and

WHEREAS, Council desires the Moscow City Code to be consistent and wishes to change all references of City Supervisor to City Administrator and Deputy City Supervisor to Deputy City Administrator;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MOSCOW AS FOLLOWS:

SECTION 1: All matters stated above are found to be true and correct and are incorporated herein by reference as if copied in their entirety and shall be adopted with the following sections of this Ordinance.

SECTION 2: That Title 1, Chapter 11, Section 11-11 of the Moscow City Code be, and the same is hereby amended to read as follows:

...

Sec. 11-11. Appeal.

Any person shall be entitled to appeal an isolation order or quarantine order, or to request a modification of any provision of such order by filing a written appeal with the City Clerk. Such appeal, unless a different appeal process is designated by the emergency order or by Resolution of the City Council, shall be heard by City Council at their next scheduled meeting, or, if no meeting is scheduled during the term of the isolation order or quarantine order, the City Council may schedule an emergency meeting to hear the appeal. The decision by the City Council shall be final. If the City Council is unable to schedule an emergency meeting where a quorum will be present, and the appellant requests expedited review, then the City ~~AdministratorSupervisor~~ or designee may review such appeal and issue a written decision. The City ~~AdministratorSupervisor~~'s or designee's decision may be appealed by filling a written appeal with the City Clerk. The Mayor and Council President will review the written appeal and determine whether the City ~~AdministratorSupervisor~~'s or designee's decision should be upheld or reversed. The decision of the Mayor and Council President shall be final.

(added Ord. 2020-03, 03/20/2020; 2021-02, 01/19/2021)

...

SECTION 3: That Title 2, Chapter 3, Section 3-1 of the Moscow City Code be, and the same is hereby amended to read as follows:

...

Sec. 3-1. Appointment by Mayor.

The Mayor, with the approval of the Council, shall appoint a Clerk, Attorney, Chief of Police, Chief of the Fire Department, Treasurer, City ~~Administrator~~^{Supervisor}, Deputy City ~~Administrator~~^{Supervisor}(s) and such other officers as may be deemed advisable for the efficient operation of the City.

Ref. Idaho Code § 50-204

(Ord. 2009-04, 02/02/2009; 2021-09, 07/19/2021)

...

SECTION 4: That Title 5, Chapter 3, Sections 3-23 A. and 3-34 of the Moscow City Code be, and the same is hereby amended to read as follows:

...

Sec. 3-23. Discharge of Certain Waters, Wastes, etc., Possessing Characteristics Likely to Cause Harm.

A. No person shall discharge or cause to be discharged into a sewer any of the following described substances, materials, waters or wastes if it appears likely in the opinion of the Designated City Official or technical expertise at ~~his or her~~^{their} disposal that such wastes can harm either the sewers, sewage treatment process, or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. The City ~~Administrator~~^{Supervisor} shall be responsible for choosing the Designated City Official.

...

Sec. 3-34. Rules and Regulations.

The City ~~Administrator~~^{Supervisor} or designee is hereby authorized to adopt rules and regulations to carry out and enforce the provisions of this Chapter.

(Ord. 2009-04, 02/02/2009; 2021-09, 07/19/2021)

...

SECTION 5: That Title 5, Chapter 7, Section 7-4 E. of the Moscow City Code be, and the same is hereby amended to read as follows:

...

Sec. 7-4. Immediate Repair.

...

E. Should the property owner fail to pay said bill in full within thirty (30) days of receipt thereof, a fourteen percent (14%) per annum finance charge shall be assessed to said bill at the annual percentage rate, during the period the bill remains unpaid. The City ~~Administrator~~^{Supervisor} is hereby authorized to approve a payment contract not to exceed six (6) months in duration and requiring the fourteen percent (14%) per annum finance charge. Should the property owner fail to enter into and fulfill a payment contract, said costs (including financing charges estimated to the tax payment date) shall be forwarded to the County Treasurer and

Assessor for inclusion with property taxes for the property in question pursuant to State law. Said assessment shall constitute a lien on said property.

(Ord. 85 07, 7/1/85)

...

SECTION 6: That Title 5, Chapter 16, Section 16-10 B. of the Moscow City Code be, and the same is hereby amended to read as follows:

...

Sec. 16-10. Appeals.

...

B. At the appeal hearing before the Council, the applicant or person appealing shall be entitled to appear in person and offer evidence pertinent to the denial, suspension or revocation or may appear through legal counsel. The Clerk, a Designated City Official, and/or legal counsel for the City shall likewise be entitled to appear at the hearing and offer evidence in support of the denial, order of suspension or revocation. The City ~~Administrator~~Supervisor shall be responsible for choosing the Designated City Official.

...

SECTION 7: That Title 5, Chapter 19, Sections 19-3 A. and F. and Section 19-6 of the Moscow City Code be, and the same is hereby amended to read as follows:

...

Sec. 19-3. Definitions.

...

A. *Administrator or Stormwater Administrator.* ~~The person serving under the direction of the Deputy City Supervisor designated by the City and who is charged with supervising and overseeing the City's Stormwater Division, the Stormwater Control System, and the City's system of stormwater user fees.~~

...

F. Stormwater Review Board. A group of people chosen by the ~~Deputy City Supervisor~~ Mayor to review appeals of the Stormwater Administrator's user fee determination.

...

Sec. 19-6. Stormwater Division Administration.

~~A. Stormwater Division Administration. The Stormwater Division shall be administered under the direction of a Deputy City Supervisor. The Stormwater Division will be administered in a manner similar to the City's existing Public Utilities.~~

~~BA. Stormwater Administrator. The City shall designate a Stormwater Administrator who shall be responsible for the supervision, administration, and operation of the Stormwater Division, Stormwater Control System, and Stormwater User Fees. The Stormwater Division, Stormwater Control System, and City system of stormwater user fees shall be under the supervision of the Stormwater Administrator who shall serve in such capacity under the direction of the Deputy City Supervisor who is charged with supervising and overseeing the City's Stormwater Division.~~

~~CB. Annual Reports.~~ In order for the City Council to exercise its authority under I.C. § 50 1031, the Stormwater Division shall provide the Council with an annual report of the activities

funded by stormwater user fees during the preceding year and a projection of the upcoming year's expenditures.

...

SECTION 8: That Title 7, Chapter 9, Section 9-3 A. of the Moscow City Code be, and the same is hereby amended to read as follows:

...

Sec. 9-3. Cross-Connections.

A. The City shall have the authority to establish requirements more stringent than the Idaho Department of Environmental Quality (IDEQ) Rules, Idaho Administrative Procedure Act (IDAPA) Section 58.01.08, "Idaho Rules for Public Drinking Water Systems", if it is deemed that conditions so mandate. The control or elimination of cross-connections shall be in accordance with this Chapter together with the latest editions of the Pacific Northwest Section of the American Water Works Association "Cross Connection Control Manual Accepted Procedure and Practice" and the Foundation for Cross-Connection Control and Hydraulic Research "Manual of Cross-Connection Control". The City ~~Administrator~~^{Supervisor} or designee shall adopt rules and regulations as necessary to carry out the provisions of this Chapter.

...

SECTION 9: That Title 9, Chapter 9, Section 9-2 J. of the Moscow City Code be, and the same is hereby amended to read as follows:

...

Sec. 9-2. Definitions.

...

J. *Director.* City ~~Administrator~~^{Supervisor}.

...

SECTION 10: That Title 10, Chapter 5, Sections 5-14 E.3. and E.5 of the Moscow City Code be, and the same is hereby amended to read as follows:

...

Sec. 5-14. Wild or Vicious Animals.

...

E. 3. The owner of the animal shall then have two (2) days (excluding weekends and holidays) to file a written appeal of the decision with the Chief of Police. The appeal shall be heard by the City ~~Administrator~~^{Supervisor} or such official or hearing officer as the City ~~Administrator~~^{Supervisor} may designate to conduct a hearing on the matter within five (5) days (excluding weekends and holidays) of the appeal.

...

E. 5. The written decision of the City ~~Administrator~~^{Supervisor} or the City ~~Administrator~~^{Supervisor}'s designee on appeal shall be final (unless stayed by court action), and shall be implemented unless the decision is appealed to the local district court within two (2) days (excluding weekends and holidays).

...

SECTION 11: That Title 10, Chapter 16, Sections 16-6 B.1., C.1., and C.3. of the Moscow City Code be, and the same is hereby amended to read as follows:

...

Sec. 16-6. Removal of Graffiti by Property Owner or City.

...

B. Right of City to Remove.

1. Use of Public Funds. Whenever the City becomes aware or is notified and determines that graffiti is located on publicly or privately owned property viewable from a public or place open to the public, the City shall be authorized to use graffiti or other public funds for the removal of the graffiti, or for the painting or repairing of the graffiti, but shall not authorize or undertake to provide for the painting or repair of any more extensive an area than that where the graffiti is located, unless the City ~~Administrator~~Supervisor or designee determines, in writing, that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, or unless the property owner or responsible party agrees to pay for the costs of repainting or repairing the more extensive area.

...

C. Abatement and Cost Recovery Proceedings.

1. Notice of Due Process Hearing. The City ~~Administrator~~Supervisor or designee, serving as the Hearing Officer, shall provide the property owner of record and the party responsible for the maintenance of the property, if a person different than the owner, not less than forty-eight (48) hours notice of the City's intent to hold a due process hearing at which the property owner or responsible party shall be entitled to present evidence and argue that the property does not constitute a public nuisance. If the owner of record cannot be found after a diligent search, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in the Official Newspaper.

...

C.3. Eradication Effort. Not sooner than the time specified in the order of the Hearing Officer, the City ~~Administrator~~Supervisor or designee shall implement the eradication order and shall provide an accounting to the owner and the responsible party of the costs thereof.

...

SECTION 12: That Title 10, Chapter 17, Section 17-12 of the Moscow City Code be, and the same is hereby amended to read as follows:

...

Sec. 17-12. Notice of Permit to Others.

Upon the issuance of a parade or public assembly permit, the Clerk will send a copy thereof to the following:

- A. Mayor;
- B. City ~~Administrator~~Supervisor;
- C. Police Chief
- D. Fire Chief;
- E. City Engineer
- F. Parks and Recreation Manager; and
- F. City Attorney.

(Ord. 2005-05, 01/18/2005; 2021-09, 07/19/2021)

...

SECTION 13: SEVERABILITY. Provisions of this Ordinance shall be deemed severable and the invalidity of any provision of this Ordinance shall not affect the validity of the remaining provisions. The remaining chapters and sections of Title 1, Title 2, Title 5, Title 7, Title 9 and Title 10 shall be in full force and effect.

SECTION 14: EFFECTIVE DATE. After its passage and adoption, a summary of this Ordinance, under the provisions of the Idaho Code, shall be published once in the official newspaper of the City of Moscow. This Ordinance shall be in full force and effect from and after the date of its passage, approval and publication according to law.

PASSED on Motion by the Following Vote:

	Aye	Nay	Abstain	Absent
Hailey Lewis	_____	_____	_____	_____
Drew Davis	_____	_____	_____	_____
Sandra Kelly	_____	_____	_____	_____
Gina Taruscio	_____	_____	_____	_____
Julia Parker	_____	_____	_____	_____
Bryce Blankenship	_____	_____	_____	_____

ADOPTED by the City Council of the City of Moscow, Idaho and **APPROVED** by the Mayor of the City of Moscow, this ____ day of _____, 2024.

Arthur D. Bettge, Mayor

CERTIFICATION and ATTESTATION. I hereby certify that the above is a true copy of an Ordinance passed at a regular meeting of the City Council, City of Moscow, held on _____, 2024.

Laurie M. Hopkins, City Clerk

AN ORDINANCE OF THE CITY OF MOSCOW, IDAHO TO AID THE EFFICIENT OPERATION OF CITY GOVERNMENT BY CREATING THE OFFICE OF ADMINISTRATIVE ASSISTANT FOR SAID CITY; PROVIDING FOR THE APPOINTMENT AND REMOVAL OF SUCH OFFICER, DEFINING HIS DUTIES; PROVIDING FOR A SEVERANCE AND SAVINGS CLAUSE; AND PROVIDING FOR THE PASSAGE AND EFFECTIVE DATE OF THIS ORDINANCE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MOSCOW, IDAHO:

SECTION 1: In order to aid the efficient operation of the City Government, there is hereby created the office of Administrative Assistant for the City of Moscow, Idaho; such officer may be appointed by the Mayor by and with the consent of the Council. He may be removed at the pleasure of the Mayor and by and with the consent of the City Council. His duties are as herein set forth:

A. He shall make and keep up to date an inventory of all property, real and personal, owned by the City. He shall act as purchasing agent for the purchase of all supplies, goods, wares and merchandise, equipment and material which may be required for the various departments, divisions, or services of said city, subject to the approval of the Mayor and Council.

B. Cause to be prepared and submitted to him by each department, division or service of the city government, itemized annual estimates of expenditures required by any of them and submit a report thereof to the Mayor and Finance Committee, with his recommendation, prior to the passage of the annual appropriation ordinance.

C. To serve as public relations officer of the City government, to endeavor to adjust all complaints filed against any employee, department, division or service thereof, and cooperate with all community organizations whose aim and purpose is to advance the best interest of the city and its people.

D. To attend all meetings of the City Council with the duty of reporting any matter concerning city affairs under his supervision or direction.

E. To analyze the functions, duties and activities of the various departments, divisions and services of the city government and of all employees thereof and to make his recommendations to the Mayor. To carry out the Mayor's recommendations in coordinating the administrative functions and operations of the various departments.

F. To procure facts and submit long range improvements to the City Engineer, Planning Commission, the Mayor and Council.

G. That all of the above duties shall be under the supervision and direction of the Mayor in carrying out the orders of the Mayor, but that he shall in no way impede the functions of or replace any officer, department or board whose duties are prescribed by state statute.

H. That he shall carry out such other duties and functions as prescribed by the Mayor and City Council.

SECTION 2: The Administrative Assistant shall act as the agent of the Mayor in the discharge of his duties of superintending and control of all of the officers and affairs of the City, as provided by a statute, and that he shall have no power to exercise any policy-making or legislative functions whatsoever nor commit or bind the Mayor or City Council or any member thereof to any action, plan or program requiring official action by the Mayor and Council.

SECTION 3: If any section, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses or phrases of this ordinance, or the ordinance as an entirety, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of such section, sentence, clause or phrase.

SECTION 4: This ordinance shall be in full force and effect after its enactment as provided by law.

PASSED AND APPROVED this 6th day of April, 1959.



Mayor

ATTEST:



City Clerk

1st. reading - March 24, 1959
2nd. reading & passed - April 6, 1959
Published - April 11, 1959