

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 437

BY LOCAL GOVERNMENT COMMITTEE

AN ACT

1 RELATING TO LOCAL LAND USE PLANNING; AMENDING SECTION 67-6508, IDAHO CODE,  
2 TO REVISE PROVISIONS RELATING TO THE COMMUNITY DESIGN COMPONENT FOR  
3 COMPREHENSIVE PLANS AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING  
4 SECTION 67-6511, IDAHO CODE, TO PROHIBIT REQUIRED ADHERENCE TO SPE-  
5 CIFIC EXTERIOR DESIGN AESTHETICS OR BEAUTIFICATION THAT EXCEED PUBLIC  
6 SAFETY REQUIREMENTS FOR COMMERCIAL OR INDUSTRIAL CONSTRUCTION USES, TO  
7 RESTRICT APPLICABILITY OF THE LIMITATION, TO PROVIDE THAT ORDINANCES  
8 MAY ESTABLISH CERTAIN STANDARDS FOR STRUCTURES WITHIN DESIGNATED HIS-  
9 TORICAL DISTRICTS AND TO PROVIDE THAT DESIGN STANDARDS SHALL BE CLEAR,  
10 ASCERTAINABLE AND NOT BASED UPON SUBJECTIVE CONSIDERATIONS.  
11

12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. That Section 67-6508, Idaho Code, be, and the same is hereby  
14 amended to read as follows:

15 67-6508. PLANNING DUTIES. It shall be the duty of the planning or plan-  
16 ning and zoning commission to conduct a comprehensive planning process de-  
17 signed to prepare, implement, and review and update a comprehensive plan,  
18 hereafter referred to as the plan. The plan shall include all land within the  
19 jurisdiction of the governing board. The plan shall consider previous and  
20 existing conditions, trends, compatibility of land uses, desirable goals  
21 and objectives, or desirable future situations for each planning component.  
22 The plan with maps, charts, and reports shall be based on the following com-  
23 ponents as they may apply to land use regulations and actions unless the plan  
24 specifies reasons why a particular component is unneeded.

25 (a) Property Rights -- An analysis of provisions which may be necessary  
26 to ensure that land use policies, restrictions, conditions and fees do not  
27 violate private property rights, adversely impact property values or cre-  
28 ate unnecessary technical limitations on the use of property and analysis as  
29 prescribed under the declarations of purpose in chapter 80, title 67, Idaho  
30 Code.

31 (b) Population -- A population analysis of past, present, and future  
32 trends in population including such characteristics as total population,  
33 age, sex, and income.

34 (c) School Facilities and Transportation -- An analysis of public  
35 school capacity and transportation considerations associated with future  
36 development.

37 (d) Economic Development -- An analysis of the economic base of the area  
38 including employment, industries, economies, jobs, and income levels.

39 (e) Land Use -- An analysis of natural land types, existing land covers  
40 and uses, and the intrinsic suitability of lands for uses such as agricul-  
41 ture, forestry, mineral exploration and extraction, preservation, recre-

1 ation, housing, commerce, industry, and public facilities. A map shall be  
2 prepared indicating suitable projected land uses for the jurisdiction.

3 (f) Natural Resources -- An analysis of the uses of rivers and other wa-  
4 ters, forests, range, soils, harbors, fisheries, wildlife, minerals, ther-  
5 mal waters, beaches, watersheds, and shorelines.

6 (g) Hazardous Areas -- An analysis of known hazards as may result from  
7 susceptibility to surface ruptures from faulting, ground shaking, ground  
8 failure, landslides or mudslides; avalanche hazards resulting from de-  
9 velopment in the known or probable path of snowslides and avalanches, and  
10 floodplain hazards.

11 (h) Public Services, Facilities, and Utilities -- An analysis showing  
12 general plans for sewage, drainage, power plant sites, utility transmission  
13 corridors, water supply, fire stations and fire fighting equipment, health  
14 and welfare facilities, libraries, solid waste disposal sites, schools,  
15 public safety facilities and related services. The plan may also show loca-  
16 tions of civic centers and public buildings.

17 (i) Transportation -- An analysis, prepared in coordination with  
18 the local jurisdiction(s) having authority over the public highways and  
19 streets, showing the general locations and widths of a system of major traf-  
20 fic thoroughfares and other traffic ways, and of streets and the recommended  
21 treatment thereof. This component may also make recommendations on build-  
22 ing line setbacks, control of access, street naming and numbering, and a  
23 proposed system of public or other transit lines and related facilities  
24 including rights-of-way, terminals, future corridors, viaducts and grade  
25 separations. The component may also include port, harbor, aviation, and  
26 other related transportation facilities.

27 (j) Recreation -- An analysis showing a system of recreation areas, in-  
28 cluding parks, parkways, trailways, river bank greenbelts, beaches, play-  
29 grounds, and other recreation areas and programs.

30 (k) Special Areas or Sites -- An analysis of areas, sites, or struc-  
31 tures of historical, archeological, architectural, ecological, wildlife,  
32 or scenic significance.

33 (l) Housing -- An analysis of housing conditions and needs; plans for  
34 improvement of housing standards; and plans for the provision of safe, sani-  
35 tary, and adequate housing, including the provision for low-cost conven-  
36 tional housing, the siting of manufactured housing and mobile homes in sub-  
37 divisions and parks and on individual lots which are sufficient to maintain  
38 a competitive market for each of those housing types and to address the needs  
39 of the community.

40 (m) Community Design -- An analysis of needs ~~for governing to govern~~  
41 landscaping, ~~building design~~ drainage, tree planting, signs, and suggested  
42 ~~patterns and voluntary~~ standards for community design, ~~development,~~ and  
43 beautification if needed in the community.

44 (n) Agriculture -- An analysis of the agricultural base of the area in-  
45 cluding agricultural lands, farming activities, farming-related businesses  
46 and the role of agriculture and agricultural uses in the community.

47 (o) Implementation -- An analysis to determine actions, programs, bud-  
48 gets, ordinances, or other methods including scheduling of public expendi-  
49 tures to provide for the timely execution of the various components of the  
50 plan.

1 (p) National Interest Electric Transmission Corridors -- After noti-  
2 fication by the public utilities commission concerning the likelihood of  
3 a federally designated national interest electric transmission corridor,  
4 prepare an analysis showing the existing location and possible routing  
5 of high-voltage transmission lines, including national interest electric  
6 transmission corridors based upon the United States department of energy's  
7 most recent national electric transmission congestion study pursuant to  
8 sections 368 and 1221 of the energy policy act of 2005. "High-voltage trans-  
9 mission lines" means lines with a capacity of one hundred fifteen thousand  
10 (115,000) volts or more supported by structures of forty (40) feet or more in  
11 height.

12 Nothing herein shall preclude the consideration of additional planning  
13 components or subject matter.

14 SECTION 2. That Section 67-6511, Idaho Code, be, and the same is hereby  
15 amended to read as follows:

16 67-6511. ZONING ORDINANCE. (1) Each governing board shall, by ordi-  
17 nance adopted, amended, or repealed in accordance with the notice and hear-  
18 ing procedures provided under section 67-6509, Idaho Code, establish within  
19 its jurisdiction one (1) or more zones or zoning districts where appropri-  
20 ate. The zoning districts shall be in accordance with the policies set forth  
21 in the adopted comprehensive plan.

22 (a) Within a zoning district, the governing board shall where appro-  
23 priate establish standards to regulate and restrict the height, number  
24 of stories, size, construction, reconstruction, alteration, repair or  
25 use of buildings and structures; percentage of lot occupancy, size of  
26 courts, yards, and open spaces; density of population; and the location  
27 and use of buildings and structures. All standards shall be uniform for  
28 each class or kind of buildings throughout each district, but the stan-  
29 dards in one (1) district may differ from those in another district. No  
30 zoning regulation shall mandate, nor any construction permit condition  
31 require, adherence to specific exterior design aesthetics or beautifi-  
32 cation that exceed public safety requirements for commercial or indus-  
33 trial construction uses. This limitation shall not extend to signage,  
34 lighting, landscaping or screening requirements or special use permit  
35 conditions for special use permits, such as for cell towers, or buffer-  
36 ing or screening industrial or other incompatible uses. An ordinance  
37 may establish exterior design or construction standards for structures  
38 within a designated historical district. All design standards shall be  
39 clear, ascertainable and not based upon subjective considerations like  
40 beauty.

41 (b) Within an overlay zoning district, the governing board shall es-  
42 tablish clear and objective standards for the overlay zoning district  
43 while ensuring that application of such standards does not constitute a  
44 regulatory taking pursuant to Idaho or federal law.

45 (2) Ordinances establishing zoning districts shall be amended as fol-  
46 lows:

47 (a) Requests for an amendment to the zoning ordinance shall be submit-  
48 ted to the zoning or planning and zoning commission which shall evalu-  
49 ate the request to determine the extent and nature of the amendment re-

1 requested. Particular consideration shall be given to the effects of any  
2 proposed zone change upon the delivery of services by any political sub-  
3 division providing public services, including school districts, within  
4 the planning jurisdiction. An amendment of a zoning ordinance appli-  
5 cable to an owner's lands or approval of conditional rezoning or denial  
6 of a request for rezoning may be subject to the regulatory taking analy-  
7 sis provided for by section 67-8003, Idaho Code, consistent with the re-  
8 quirements established thereby.

9 (b) After considering the comprehensive plan and other evidence gath-  
10 ered through the public hearing process, the zoning or planning and  
11 zoning commission may recommend and the governing board may adopt or  
12 reject an ordinance amendment pursuant to the notice and hearing pro-  
13 cedures provided in section 67-6509, Idaho Code, provided that in the  
14 case of a zoning district boundary change, and notwithstanding juris-  
15 dictional boundaries, additional notice shall be provided by mail to  
16 property owners or purchasers of record within the land being consid-  
17 ered, and within three hundred (300) feet of the external boundaries  
18 of the land being considered, and any additional area that may be im-  
19 pacted by the proposed change as determined by the commission. Notice  
20 shall also be posted on the premises not less than one (1) week prior  
21 to the hearing. When notice is required to two hundred (200) or more  
22 property owners or purchasers of record, alternate forms of procedures  
23 which would provide adequate notice may be provided by local ordinance  
24 in lieu of posted or mailed notice. In the absence of a locally adopted  
25 alternative notice procedure, sufficient notice shall be deemed to have  
26 been provided if the city or county provides notice through a display  
27 advertisement at least four (4) inches by two (2) columns in size in  
28 the official newspaper of the city or county at least fifteen (15) days  
29 prior to the hearing date, in addition to site posting on all external  
30 boundaries of the site. Any property owner entitled to specific notice  
31 pursuant to the provisions of this subsection shall have a right to par-  
32 ticipate in public hearings before a planning commission, planning and  
33 zoning commission or governing board subject to applicable procedures.

34 (c) The governing board shall analyze proposed changes to zoning or-  
35 dinances to ensure that they are not in conflict with the policies of  
36 the adopted comprehensive plan. If the request is found by the govern-  
37 ing board to be in conflict with the adopted plan, or would result in  
38 demonstrable adverse impacts upon the delivery of services by any po-  
39 litical subdivision providing public services, including school dis-  
40 tricts, within the planning jurisdiction, the governing board may re-  
41 quire the request to be submitted to the planning or planning and zoning  
42 commission or, in absence of a commission, the governing board may con-  
43 sider an amendment to the comprehensive plan pursuant to the notice and  
44 hearing procedures provided in section 67-6509, Idaho Code. After the  
45 plan has been amended, the zoning ordinance may then be considered for  
46 amendment pursuant to paragraph (b) of this subsection.

47 (d) If a governing board adopts a zoning classification pursuant to a  
48 request by a property owner based upon a valid, existing comprehensive  
49 plan and zoning ordinance, the governing board shall not subsequently  
50 reverse its action or otherwise change the zoning classification of

1 said property without the consent in writing of the current property  
2 owner for a period of four (4) years from the date the governing board  
3 adopted said individual property owner's request for a zoning clas-  
4 sification change. If the governing body does reverse its action or  
5 otherwise change the zoning classification of said property during the  
6 above four (4) year period without the current property owner's consent  
7 in writing, the current property owner shall have standing in a court of  
8 competent jurisdiction to enforce the provisions of this section.