

# DRAFT

BOUNDARY COUNTY, IDAHO ORDINANCE NO. 2024 - \_\_\_\_\_

**BOUNDARY COUNTY PLANNING & ZONING FILE #23-0180  
AMENDMENT TO  
BOUNDARY COUNTY ZONING AND SUBDIVISION ORDINANCE 2019-1  
REGARDING CODE ENFORCEMENT**

AN ORDINANCE OF BOUNDARY COUNTY, IDAHO, AMENDING THE BOUNDARY COUNTY ZONING AND SUBDIVISION ORDINANCE 2019-1 (ALSO KNOWN AS 9B18LOV2), TO REPEAL SECTION 4, “ENFORCEMENT,” IN ITS ENTIRETY AND TO ADOPT A NEW SECTION 4 “ENFORCEMENT,” PROVIDING FOR PROCEDURES, PENALTIES, AND CIVIL REMEDIES FOR THE ENFORCEMENT OF LAND USE CODES WITHIN UNINCORPORATED BOUNDARY COUNTY; AND TO PROVIDE SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Constitution of the State of Idaho, Article XII, Section 2, the Idaho Local Land Use Planning Act, Title 67, Chapter 65, and Title 31, Chapter 7 provide authority for the Boundary County Board of Commissioners to adopt ordinances establishing land use standards, procedures, and uses; and

WHEREAS, the Idaho Local Land Use Planning Act, Title 67, Chapter 65, sets forth the procedures for the adoption and amendment of land use codes; and

WHEREAS, Idaho Code §67-6511 and Boundary County land use codes provide the procedures and authority for the county to amend its land use regulations; and

WHEREAS, Section 67-6527 of the Local Land Use Planning Act authorizes each governing board to adopt ordinances for the enforcement of its land use codes, to include misdemeanor penalties, authority to institute civil actions, ability to seek temporary or permanent injunctions or restraining orders, or to seek other relief as the courts deem appropriate; and

WHEREAS, Boundary County Planning and Zoning Commission considered the amendment at a public hearing on January 25, 2024, pursuant to Idaho Code §65-6509; and recommended approval of the amendment; and

WHEREAS, the Boundary County Board of Commissioners held a duly noticed public hearing on March 11, 2024, at which time interested persons had the right to be heard per Idaho Code §65-6509, and at which time they considered the Planning and Zoning Commission recommendation to approve the proposed amendment; and

WHEREAS, pursuant to Idaho Code §67-6511 and 67-6509, the proposed amendment to the land use regulations was evaluated to determine the extent and nature of the amendment request with particular consideration given to the effects of delivery of and provisions for public services; and

WHEREAS, as required by Idaho Code §67-6511, the governing board has analyzed the proposed changes to the land use regulations to ensure that they are not in conflict with the policies of the adopted comprehensive plan; and

NOW THEREFORE, Be it ordained by the Board of County Commissioners of Boundary County, Idaho that the following ordinance is hereby adopted, as follows:

### **Section 1. Adoption of Ordinance:**

**Boundary County Zoning and Subdivision Ordinance No. 2019-1 (also known as 9B18LOV2), Section 4, titled “Enforcement,” is hereby repealed in its entirety and a new Section 4, “Enforcement,” is hereby adopted to read as follows:**

### **4. ENFORCEMENT**

- 4.1. Violations.** Violations of the Boundary County Land Use Ordinance, also known as the Boundary County Zoning and Subdivision Land Use Ordinance, and generally referred to as “the ordinance” or “the land use ordinance” are hereby declared unlawful and are subject to the procedures, penalties, remedies, and abatement actions established by this section and the provisions of law established by the State of Idaho. Any person, entity, agent, contractor, or tenant who commits or participates in the violation shall also be subject to the penalties and remedies set forth in this section.
- 4.2. Violations Defined:** Any action or inaction that is not in accord with the Boundary County Zoning and Subdivision Land Use Ordinance constitutes a violation of the land use code.
- 4.3. Penalties:** A violation of any provisions of the land use ordinance is hereby declared to be a misdemeanor that is punishable by imprisonment in a county jail not exceeding six (6) months, or by a fine not exceeding one thousand dollars (\$1,000), or by both, as provided by Idaho Code.
- 4.4. Previous violations:** Any violation that occurred under previous enforcement regulations and that remains a violation under the current land use ordinance shall continue to be considered a violation until resolved and is subject to the remedies and penalties herein. The adoption, repeal, or amendment of any section of the County land use code shall not affect the prosecution or abatement actions for the violation of such ordinance committed prior to the effective date of such code or be construed as a waiver of any violation claim or penalties.
- 4.5. Separate Offense:** Each day that a violation continues to exist shall constitute a separate offense.
- 4.6. Remedies:** Nothing contained within this section shall prevent the Board of County Commissioners or any other public official or private citizen from taking lawful actions as provided by Idaho Code or the land use ordinance to prevent or remedy any violation

of this ordinance. County remedies to abate the violation or obtain compliance shall include:

- 4.6.1. Stop work:** The county administrator or designee shall have the authority, with the concurrence of the county attorney, to issue a stop work order requesting that any ongoing violation cease. The order shall be in the form of a letter or placement of notice upon the subject land or structure. The order shall identify the violation, the sections of code in violation, and the actions to be taken to remove the stop work order. All activities related to the violation shall cease upon notice of the stop work order and shall not resume without written County approval. The county administrator is authorized to allow the weatherization of a structure while the permitting process is underway to prevent damage to the structure, however this allowance shall not be construed as a waiver of any claim by the County that a violation exists. Violation of a stop work order shall constitute a misdemeanor.
  - 4.6.2. Injunction:** The County has the authority to seek from the courts a temporary or permanent injunction enjoining the use, activity, or items that do not conform to the land use ordinance.
  - 4.6.3. Civil actions:** The Board of County Commissioners may commence civil actions to restrain, abate, terminate, or remove any violations of the ordinance.
  - 4.6.4. Recovery of costs:** The County may impose fees to recover the costs for abatement of violations, including court costs, professional services, materials, and any other costs associated with the investigation and abatement of the violation. Payment of such fees does not relieve anyone from compliance with the land use codes or full compliance with the terms set forth by the County or courts for abatement of the violation.
  - 4.6.5. Withheld permits:** No permits shall be issued or approvals granted for the use, division, rezoning, or other land use activities until the subject land is in conformity with the land use codes, unless such permit is required to resolve the violation.
  - 4.6.6. Prosecutor action:** The prosecuting attorney is authorized to enforce this ordinance.
  - 4.6.7. Notice to title:** In addition to any other actions authorized herein, the County may file with the recorder's office a notice to title notifying of a zoning, subdivision, or use violation that has been determined [by the court] to be in violation of County land use codes. After the violation has been resolved, the landowner shall pay a fee to Boundary County for the costs to file and release the notice to title.
- 4.7. Complaints of Violation:** Whenever a violation of the land use codes is alleged to have occurred or is occurring, any person may file a written complaint with the planning department. The complaint shall include the type and evidence of the violation, the location, and ownership information when available. Upon receipt of the complaint, the county may investigate the complaint and proceed as follows:
- 4.7.1. Notice of complaint.** If reasonable evidence of a potential violation is found, the administrator or designee shall send a letter of complaint by regular U.S. mail to the owner of record identifying the alleged violation, the applicable code sections, potential penalties that may be imposed, and the action to be taken to abate the violation. The letter shall provide a deadline of fourteen (14) days to respond in

writing to the notice of complaint by providing evidence that the violation has been abated or proof that no violation exists. The County wishes to encourage voluntary compliance with its land use laws. The administrator may work with the landowner to achieve a reasonable abatement schedule.

**4.7.2.** Notice of violation. If the violation persists after the notice of complaint is sent, the administrator shall send a certified letter, return receipt requested, to the property owner identifying the violation and consequences as noted in the notice of complaint. In addition, the letter shall state that the failure to abate the violation within fourteen (14) days of the notice will result in the matter being forwarded to the county prosecutor for further action. The administrator shall have the authority to accept from the property owner a written reasonable schedule and specific deadline for abatement. If the abatement schedule is not met or the violation continues, the county is not prevented from taking any actions provided in this section to obtain compliance.

**4.7.3.** If the violation constitutes an immediate threat to health, safety, or welfare, the administrator may issue a stop work order or the County may take actions as provided in this section, without first issuing a notice of complaint or violation.

**Section 2. Severability:**

The sections of this ordinance are severable. The invalidity of a section shall not affect the validity of the remaining sections.

**Section 3. Effective Date:**

This ordinance shall be in full force and effect upon the passage and publication of the ordinance or ordinance summary in one (1) issue of the official newspaper for Boundary County, in accordance with the Idaho State Code.

This ordinance duly enacted as an ordinance of Boundary County, Idaho on this \_\_\_\_ day of \_\_\_\_\_, 2024, upon the following roll call vote:

**ROLL CALL:**

Commission Chair Bertling \_\_\_\_\_  
Commissioner Cossairt \_\_\_\_\_  
Commissioner Robertson \_\_\_\_\_

**APPROVAL OF ORDINANCE SUMMARY**

Publication of the ordinance by summary in the official newspaper is hereby approved by the Boundary County Commissioners on this \_\_\_\_ day of \_\_\_\_\_, 2024, upon the following roll call vote:

**ROLL CALL:**

Commissioner Bertling \_\_\_\_\_  
Commissioner Cossairt \_\_\_\_\_  
Commissioner Robertson \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Glenda Poston Date \_\_\_\_\_  
Clerk of the Board of County Commissioners

