Chapter 1 – Private Property Rights

Purpose:

The Gem Community fully respects the rights of its citizens and their property, and is strongly against the abuse, negligence, or devaluing of private property by others. By encouraging property maintenance, preventing and mitigating incompatible land use, and ensuring local, state, and federal code compliance, residents should feel their private property rights are respected and secure.

To ensure all-American citizens have an equal opportunity to enjoy the benefits of private property ownership and to insure that the policies and actions of the government agencies within the Gem Community promotes and do not violate private property rights, adversely affect property values in a negative way, or commit acts of unlawful taking of private property.

Idaho Code Regarding Property Rights:

The 5th Amendment of the United States Constitution as well as Article 1 section 14 of the Idaho Constitution ensure that private property, whether it be land or intangible property rights, shall not be taken by the government absent just compensation. The Idaho State Legislature has also enacted statutory provisions requiring state and local governments to ensure that planning and zoning land use policies do not result in a taking of private property without just compensation.

Property Rights Goal:

All policies and decisions made by the Gem Community directed by this comprehensive plan shall and will protect fundamental private property rights and ensure that the Gem Community land use policies, restrictions, conditions and fees do not violate private property rights.

Objectives:

- To follow the private property rights legislation at the state and federal levels.
- To use the Idaho Regulatory Takings Act Guidelines checklist as established by the Attorney general to ensure that all actions concerning private property are within the confines of the law. See Appendix 1-1.
- To review all Land Use decisions, policies, procedures, and ordinance with respect to private property rights. See Chapter 12.
- The Comprehensive Plan and implementing ordinances should make great efforts to achieve stable and consistent policies regarding development densities and requirements.
- The protection and preservation of private property rights are to be a strong consideration in the development of land use policies and implementation standards and regulations as required by law.
• To recognize that property owners have responsibility in that ownership and should not negatively impact the value of property around them.

• Support existing, lawful, and safe uses of private property, and consider their precedence if there is a conflict.

• Ensure that Gem Community Land Use actions, decisions, and regulations do not prevent a private property owner from taking advantage of a fundamental property right.

• Ensure that the Gem Community authorities do not impose a substantial and significant limitation on the use of the property.

• To protect existing, lawful, and safe uses of private property, and consider their precedence if there is a conflict.

• To recognize acknowledge when it becomes required for local agencies to enter private property for the purpose of enforcing established codes.

• To ensure Make certain that Land Use regulations are not confiscatory. Zoning or other local regulations shall not be used as an indirect means of acquiring private property for public purpose, except as required under state law.

Desired Outcomes:

Private property rights encompass not only the right to develop, invest, achieve, and profit from property, but also the right to hold and enjoy property. As the population increases and a greater number of people live and move to the Gem Community, the opportunities for land use conflicts become greater.

It is imperative all citizens and agencies of the Gem Community respect the rights of the individual citizens with regards to private property rights, and exercise taking actions only when a clear and necessary action is required for public health, environmental impacts, or public safety (Section 7-701A, Idaho Code).
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Appendix 1-1

Attorney General’s Idaho Regulatory Takings Act Guidelines

   Agencies or local government staff must use the following questions in reviewing the potential impact of a regulatory or administrative action on specific property.

1. Does the Regulation or Action Result in a Permanent or Temporary Physical Occupation of Private Property?
2. Does the Regulation or Action Require a Property Owner to Dedicate a Portion of Property or to Grant an Easement?
3. Does the Regulation Deprive the Owner of All Economically Viable Uses of the Property?
4. Does the Regulation Have a Significant Impact on the Landowner’s Economic Interest?
5. Does the Regulation Deny a Fundamental Attribute of Ownership?
6. (a) Does the Regulation Serve the Same Purpose that Would be Served by Directly Prohibiting the Use or Action; and (b) Does the Condition Imposed Substantially Advance that Purpose?