

ORDINANCE NO. 1005

AN ORDINANCE OF THE CITY OF KETCHUM, IDAHO, AMENDING THE KETCHUM MUNICIPAL CODE, TITLE 17, CHAPTER 17.64 COMMUNITY CORE DISTRICT ESTABLISHING REQUIREMENTS FOR TRANSFER OF DEVELOPMENT RIGHTS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A CODIFYING CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Policy 3.5 of the City of Ketchum 2001 Comprehensive Plan states: Encourage efficient and orderly development, allowing both public services and amenities to keep pace; and

WHEREAS, Goal 1 of the City of Ketchum 2001 Comprehensive Plan, Chapter 4.1, General Land Use Policies, states: To strategically plan for present and future land use needs thereby establishing a well thought out pattern of development, including but not limited to the following:

- Encourage land uses in harmony with existing natural resources
- Prohibit detrimental alteration of existing topography and terrain
- Protect natural land features and wildlife habitat
- Prohibit alteration of hilltops, rock outcrops, knolls, ridges, river banks, marshes and river channels through development standards and other regulations
- Ensure new development fits in with Ketchum's small mountain town character
- Establish land use policies that ensure orderly development relative to public services and facilities
- Consider incentives and/or land use regulations that promote energy efficiency and reduce over consumption of resources
- Concentrate densities within the existing community to most efficiently provide services and commercial necessities; and

WHEREAS, Goal 2 of the City of Ketchum 2001 Comprehensive Plan, Chapter 4.1, General Land Use Policies, states: Actively strive for high quality design, architecture and buildings that "fit" with the neighborhood in terms of bulk, scale and style; ensure all elements of the "built" environment such as signage, lighting, accessory features and landscaping meet quality design standards; and, strive for a "built" environment that respects Ketchum's uniqueness as a small mountain resort town; and

WHEREAS, Policy 4.1.3 the City of Ketchum 2001 Comprehensive Plan states: Reassess building heights in all zones to determine whether or not the current standards are having a negative impact on Ketchum's small mountain town character; and

WHEREAS, Goal 1 of the City of Ketchum 2001 Comprehensive Plan, Chapter 4.5 Downtown Planning Area: Ketchum's Community Core, states: Make the Community Core a place that fosters the friendly atmosphere integral to our community, which:

- Reflects its "small mountain town character" through the design and scale of the buildings, mature trees, vistas and open spaces

- Supports local businesses and civic activities
- Focuses on pedestrian safety and travel, while allowing cars to circulate but not dominate
- Addresses a long term solution to increasing demands for parking
- Incorporates regular capital spending to implement the goals and policies for the Community Core; and

WHEREAS, Goal 3 of the City of Ketchum 2001 Comprehensive Plan, Part 8, Open Space, Recreation and Heritage, states: To retain and highlight the history and areas of special interest within the community; and

WHEREAS, Goal 4 of the City of Ketchum 2001 Comprehensive Plan, Part 8, Open Space, Recreation and Heritage, states: To preserve sites or buildings with historical value to the community; and

WHEREAS, Policy 8.22 of the City of Ketchum 2001 Comprehensive Plan states: Develop incentives to protect those sites and buildings that are of historic significance to the community; and

WHEREAS, Goal 1 of the City of Ketchum 2001 Comprehensive Plan, Part 11, Property Rights, states: Protect private property rights when balancing development impacts on adjoining private properties and the general community; and

WHEREAS, the Ketchum City Council initiated a community-based Downtown planning process in October 2005 to begin defining appropriate strategies to accomplish the policy directions of the Comprehensive Plan related to the Community Core; and

WHEREAS, the Ketchum City Council adopted the Framework of the Downtown Master Plan in February 2006 and adopted the Downtown Master Plan in September 2006; and

WHEREAS, the Framework of the Downtown Master Plan and the Downtown Master Plan establish a new approach to regulating development in the downtown and included a framework for Transfer of Development Rights; and

WHEREAS, purpose of the Community Core District is to promote a compact and cohesive center of commerce and culture, to promote an attractive and safe pedestrian environment; and

WHEREAS, new regulations in Title 17, Chapter 17.64, Community Core District that place primary emphasis on the form and design of buildings and less emphasis on the use of property and density/intensity of the use were adopted by Ordinance 994; and

WHEREAS, a section for Transfer of Development Rights was reserved in Title 17, Chapter 17.64, Community Core District, and

WHEREAS, the City of Ketchum has determined that the Transfer of Development Rights section of Title 17, Chapter 17.64, Community Core District are consistent with achieving the previously cited goals; and

WHEREAS, the Planning and Zoning Commission for the City of Ketchum has recommended the Transfer of Development Rights section of Title 17, Chapter 17.64, Community Core District based upon its analysis of collected data, its public work sessions and public hearing, as well as suggestions from property owners; and

WHEREAS, the City Council has reviewed the Planning and Zoning Commission recommendation and made modifications based on their own analysis, and public input at Council workshop sessions and public hearings; and

WHEREAS, the Mayor and City Council for the City of Ketchum hereby adopts the above findings so as to further the Purpose and Intent of the Zoning District regulations in the City, consistent with the *Comprehensive Plan*.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Ketchum, Idaho, Chapter 17.64, Title 17 of the Ketchum Municipal Code, COMMUNITY CORE DISTRICT, is hereby amended as follows:

SECTION 1. That Section Chapter 17.64, Title 17 of the Ketchum Municipal Code, COMMUNITY CORE DISTRICT, is hereby amended, altered, and changed by adding thereto the underlined language herein below and by deleting there from the language stricken through, to wit:

I. Transfer of Development Rights (TDR)

1. The purpose of this Section is to encourage the preservation of significant buildings or clusters of significant buildings representing local history, heritage and traditional scale and architecture.
2. The TDR program is administered through the severance of transferable development rights from eligible properties, herein referred to as Sending Sites. Development rights may then be conveyed and or affixed to eligible properties herein referred to as Receiving Sites. Development rights may only be severed and affixed within the city limits of the City of Ketchum, as hereinafter indicated.
3. The TDR program permits property owners within designated Sending Sites to sever and convey, as a separate development right, undeveloped floor area to be affixed to and developed on a designated Receiving Site.
4. The program is voluntary and the value of development rights is set by the marketplace.

5. Sending Site Regulations. This Section shall apply to properties eligible to sever development rights, herein referred to as Sending Sites
- a. Sending Sites, specified in Figure 1, are intended to include sites on which buildings exist that individually or collectively represent Ketchum history, heritage and traditional scale and/or architecture.
 - i. Phase II sending areas, specified in Figure 1, may become sending areas twelve (12) months after adoption of this ordinance provided a property owner requests designation and the City Council approves requested designation and provided that all applicable legal requirements can be satisfied including, without limitation, a market analysis pursuant to Idaho Code Section 67-6515A.
 - b. Criteria for Sending Site Designation. A property shall include one or more Heritage Sites to be designated as a Sending Site-
 - c. Criteria for Heritage Site Designation. A property shall meet at least one of the following criteria to be designated as a Heritage Site:
 - i. Representative of traditional Ketchum residential and commercial architecture, scale proportion and site orientation including but not limited to, being built before 1956; significant periods include, but are not limited to 1880s, 1920s, 1930s; traditional architectural features include, but are not limited to gabled roofs, overhanging eaves, log or brick construction, one to two story, chalet style.
 - ii. Representative of Ketchum's community traditions and/or heritage, including but not limited to, mining, railroad, ranching, timber, farming, sheep herding or skiing.
 - iii. Associated with significant events and/or people of the past, including but not limited to, being a residence or business of an early Ketchum family or resident (1880's to 1940's).
 - iv. Listed on or eligible for the National or State Register of Historic Places.
 - d. In exchange for preservation of a designated Heritage Site in perpetuity, owners of properties located within a designated Sending Site may convey all, or a portion, of the development rights associated with that property as follows:
 - i. The amount of square footage of development rights that can be severed from a designated Sending Site shall be calculated by multiplying the lot area by a floor area ratio of 2.00. Except the amount of square footage of development right that can be established from a designated

- Sending Site proven to be listed on or eligible for the National Register of Historic Places may be calculated by a floor area ratio of 2.25
- ii. The maximum lot area per heritage site which may be used for such calculation shall be the lesser of the actual square footage of such lot or the original platted town site lot size of 5,500 or 8,250 square feet, regardless of the current legal description or current square footage of the lot on which the heritage site is located.
 - iii. If an owner conveys only a portion of their development rights, any proposed changes or additions to the building designated as a heritage site shall meet the design regulations for Historic Buildings (section 17.64.020.4.D). Additions shall be limited to the lesser of ten (10) percent of the existing building square footage or five-hundred (500) square feet, provided the owner has retained or purchased enough development rights for the addition. The square footage of the addition shall be subtracted from the balance of development rights available for severance and conveyance.
- e. Any addition or alteration to a building designated as, or eligible to be designated as, a heritage site that conflicts with the design regulations for Historic Buildings may cause the site to lose its designation, or eligibility, as a Heritage Site.
- f. Sites not designated as Heritage Sites nor designated as Sending Sites may apply to the City for designation provided the City Council approves the requested designation and provided that all applicable legal requirements can be satisfied including, without limitation, a market analysis pursuant to Idaho Code Section 67-6515A.
- g. Owners of properties approved as a public park or open space and designated as a Sending Site may sever all development rights associated with that property in exchange for preservation of the park or open space in perpetuity.
- i. The amount of square footage of development rights that can be severed from a designated Sending Site for the preservation of a public park or open space in perpetuity shall be calculated by multiplying the square footage of the lot by a floor area ratio of 2.00.
 - ii. The maximum lot area per public park or open space which may be used for such calculation shall be the lesser of the actual square footage of such lot or the original platted town site lot size of 5,500 or 8,250 square feet, regardless

of the current legal description or current square footage of the lot on which the heritage site is located.

- h. Properties approved as a public park or open space not designated as a Sending Site may apply to the City for designation if the Criteria for Heritage Site Designation can be met and provided that all applicable legal requirements can be satisfied including, without limitation, a market analysis pursuant to Idaho Code Section 67-6515A.
- i. Development rights shall not be severed from vacant lots.

7. Procedure for Severing and Conveying Development Rights.

- a. Eligible property owners desiring to sever development rights from their property shall first file an application with the Ketchum Planning Department on a form acceptable to the Ketchum Planning Director. In addition to any other information reasonably required by the Ketchum Planning Department, such application shall include, without limitation, the following:
 - i. A TDR Conservation Easement in favor of the City of Ketchum in a form approved by resolution of the Ketchum City Council preserving in perpetuity any structure on the sending site in a condition as good or better than the condition of such structure on the date of execution of such easement. Without limitation, such easement shall set forth the purpose of the easement identifying the transferable development rights to be severed, denoted by amount of square footage, and establish the City's rights and the owner's obligations, including without limitation, reasonable rights to inspect the property, to compel specific performance and to enjoin activities inconsistent with the purpose of the easement and reasonable rights to maintain, repair and reconstruct the property in the event of damage or destruction. Such TDR Conservation Easement shall specifically describe the property, shall be executed by all lien holders and other parties with an interest of record in any of the affected property and shall be recorded with the Blaine County Recorder.
 - ii. A site plan demonstrating the foot print of all structures on the sending site, photographs of each elevation of such structures, a brief architectural description and history of such structures, and a statement regarding the gross square footage of such structures.
 - iii. Proof of ownership of the sending site.

- iv. Once a TDR conservation easement is established the square footage may no longer be utilized for development on the Sending Site.
 - v. The Sending Site property owner shall have no authority over the manner in which the development right is used by subsequent owners of said development right other than to determine whether such right shall revert to the seller if not exercised within an agreed upon time frame pursuant to Idaho Code Section 67-6515A(5).
- b. Application Review and Decision. The Planning Director shall review the application and make a determination of compliance with the following criteria:
- i. The subject property is a designated sending site as shown in Figure 1.
 - ii. The Sending Site has permitted development rights.
 - iii. The establishment of a TDR conservation easement shall not create a non-conforming use or structure. In cases of an existing nonconformity, the action shall not increase the specific nonconformity.
 - iv. The proposed deed restriction permanently restricts the development of the Sending Site property to the total floor area allowed by zoning minus the amount of square feet of floor area per the TDR conservation easement.
 - v. Any development application to develop floor area, beyond that remaining legally connected to the property after severing of development rights, shall be considered null and void.
- c. Closing. Upon determination of compliance on the mutually agreed upon closing date:
- i. The property owner shall execute and deliver to the City of Ketchum, the above-referenced TDR Conservation Easement which shall be promptly recorded.
 - ii. Upon receipt of proof of such TDR Conservation Easement, the Mayor of the City of Ketchum, or designee, shall execute and deliver to the property owner an Order Severing Development Rights which shall be promptly recorded.
 - iii. The City Clerk shall keep a record of all severed development rights identifying such rights, the property from which they were severed and the ownership of such rights from the time they are initially severed through all transfers, sales, conveyances and assignment of such rights until such rights are affixed to an approved receiving site through the process set forth herein.

d. Upon recording of both the TDR Conservation Easement and the Order Severing Development Rights, such property rights constitute an interest in real property and may be sold, assigned, transferred, or conveyed. Once severed from the sending site, such development rights may only be sold, assigned, transferred or conveyed with a TDR Quitclaim Deed and a Notice of Change in TDR Ownership pursuant to a form adopted by resolution of the Ketchum City Council. Such TDR Quitclaim Deed shall specifically describe the property, shall be executed by all lien holders and other parties with an interest of record in any of the affected property and shall be recorded with the Blaine County Recorder.

8. Receiving Site Regulations.

a. Receiving Sites shall include properties in the City of Ketchum where additional building height has been determined by the City Council to be advantageous to the City for its strategic community development purposes and acceptable in terms of mass, scale and community character.

b. Criteria for Receiving Site Designation. The Community Core Zoning District is a designated receiving area. A property within the Community Core Zoning District may be designated as a receiving site provided all of the following criteria are met:

i. Is not a designated Sending Site or a designated Phase II Sending Site.

ii. Is not located in subdistrict D, traditional neighborhood, and

iii. Is not located adjacent to Main Street, between Second Street and Fourth Street.

c. Affixing development rights through the process set forth herein allows the construction of a specified amount of floor area square footage on a fourth floor on a designated Receiving Site. Each façade of said fourth floor shall be setback a minimum of fifty-five (55) feet measured from the centerline of the adjacent right-of-way and shall conform to the development specifications and design regulations of Chapter 17.64.010 and 17.64.020. A fourth floor may only be constructed on a designated Receiving Site and only through the transfer of development rights, except as provided for hotels.

d. The market for development rights is unrestricted and the City shall not prescribe nor guarantee the monetary value of a development rights.

9. Procedure for Affixing Development Rights

a. Eligible property owners desiring to affix development rights to their property shall first file an application with the Ketchum Planning Department on a form acceptable to the Ketchum Planning Director. In addition to any other information reasonably required by the Ketchum Planning Department, such application shall include, without limitation, the following:

a. Designation. The subject property shall be designated as a Receiving Site by the City Council.

b. Proof of ownership of both the receiving property and the transferred development rights.

i. The legal description of the property to which the development rights are affixed;

ii. The square footage increase from the allowable floor area (not an absolute total floor area), according to the applicable regulations of the Receiving Site at the time of building permit application;

c. The Receiving Site shall remain subject to amendments to the allowable floor area and eligible for certain floor area incentives and/or exemptions as may be authorized by this Title, as may be amended from time to time; and

d. Upon approval of such application by the Ketchum Planning Director, the Mayor of the City of Ketchum, or designee, shall execute and deliver to the property owner an Order Affixing Development Rights which shall be promptly recorded. The square footage increase in development rights is permanently affixed to the receiving site and may be reused only on the receiving site in the event such receiving site is redeveloped.

10. If two (2) or more original platted town site lots have been combined into a single parcel with an area greater than the original platted town site lot size of 5,500 or 8,250 square feet, and a portion(s) of the single parcel contains a designated Heritage Site(s) and other portions of the single parcel meet the receiving site criteria, then these portions of the single parcel shall not be designated separately.

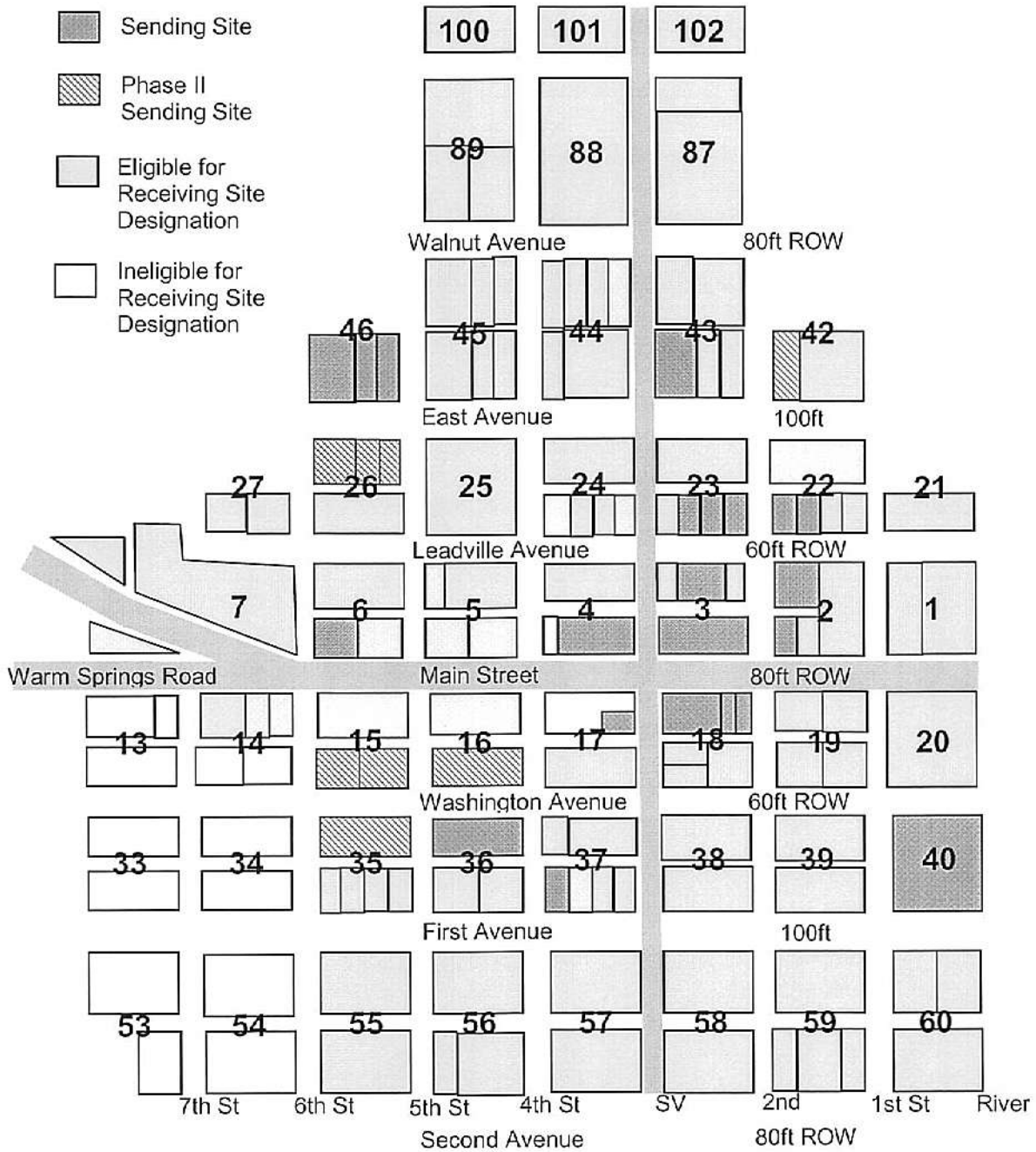
a. Such a parcel may be subdivided to create separate conforming lots. The resulting lot(s) which meet the receiving site or sending site criteria may be eligible for designation as a receiving site or sending site.

11. Designated zones for five story hotels. As provided in 17.64.010.H.1, a five story hotel may be built in areas designated by the City Council.

a. Criteria for five story hotel site designation. A property shall meet all of the following criteria to be designated as a five story hotel site:

- i. Is located in sub-district A, retail core
 - ii. Is highly visible to visitors
 - iii. Is convenient to walk to retail center
 - iv. Is near central plaza, Main Street and Sun Valley Road
 - v. Contributes to the retail vibrancy
 - vi. Is not located on Main Street between River Street and Sixth Street.
 - vii. Has a minimum lot area of thirty-three thousand (33,000) square feet.
- b. Each façade of a fifth floor shall be setback a minimum of fifty-five (55) feet measured from the centerline of the adjacent right-of-way and shall conform to the development specifications and design regulations of Chapter 17.64.010 and 17.64.020.
12. Application Materials. A completed application form for designation, severing, conveying, or affixing of development rights along with the required technical information and plans, as published by the Planning Director, and appropriate fees shall constitute a complete application for review and decision and shall be filed by the applicant with the Ketchum Planning Department.
13. Semi Annual Review. A report shall be prepared by staff on a semi-annual basis to review and assess the TDR program and make recommended adjustments.

Figure 1: Map and Legal Descriptions of TDR Sending Sites



*Map not to scale - for visual reference only - depiction of lots may not correspond with actual legal description – see list of properties by address, legal description and designation

Legal Descriptions of Sending Sites

| Address | Block | Lot |
|---|--------------|--|
| 380 Second St. E, 171 and 171 1/2 Leadville Ave | 2 | 8 and 7 |
| 160 N. Main Street | 2 | Lewis Bank Condos |
| 231 1/2 Leadville Ave. N. | 3 | 6 |
| 271 Leadville Ave. N. | 3 | 7 |
| 220 N. Main St. | 3 | N 42.5 ft of Lot 2, all of 3 & 4 |
| 280 N Main St. | 3 | N 42.5 ft of Lot 2, all of 3 & 4 |
| 240 N Main St. | 3 | N 42.5 ft of Lot 2, all of 3 & 4 |
| 260 N Main St. | 3 | N 42.5 ft of Lot 2, all of 3 & 4 |
| 200 N Main St. | 3 | Lot 1, S 12.5 ft of Lot 2 |
| 300 N. Main St. | 4 | 1 |
| 320 N Main St. | 4 | S 25 ft of Lot 2 |
| 340 N Main St. | 4 | N 30 ft of Lot 2, All of Lot 3, S 20 ft of Lot 4 |
| 6th Street and Main | 6 | Lot 6, E 1/2 of Lot 4, FR W 1/2 of Lot 4 |
| 271 Sun Valley Rd. | 17 | SW 23'x30' of Lot 4 |
| 211 N. Main St. | 18 | S 27'4" of Lot 4 |
| 231 N. Main St. | 18 | N 27'7.5" of Lot 4 |
| 251 N. Main Street | 18 | S 54' of Lot 3 |
| 271 N. Main Street | 18 | Lot 2 and N 1' of Lot 3 |
| 291 N. Main Street | 18 | 1 |
| 180 Leadville Ave. | 22 | 4 |
| 140 Leadville Ave. North | 22 | 3 |
| 200 Leadville Ave. | 23 | 1 |
| 240 Leadville Ave. N. | 23 | 2 |
| 260 Leadville Ave. | 23 | 3 |
| 491 Washington Ave. | 36 | 1 |
| 471 Washington Ave. | 36 | 2 |
| 171 4th Street East | 36 | 4 |
| 431 Washington Ave. | 36 | 3 |
| 380 1st Ave. | 37 | 5 |
| 171 River St E, 131 River St E, 180 First St E, 100 First St E | 40 | 1, 2, 3, 4, 5, 6, 7, and 8 |
| 280 East Ave. | 43 | 3 and 4 |
| 531 Fifth St. E. | 46 | 1 |
| 560 East Ave. | 46 | 3 |
| 520 East Ave. | 46 | 2 |
| 520 E 2nd St. | 42 | E 75' x 55' of Lot 4 |

PHASE II Sending Sites

| Address | Block | Lot |
|----------------------|--------------|------------------------|
| 591 N East Ave | 26 | Lot 8 & N 1/2 of Lot 7 |
| 531 N East Ave | 26 | Lot 6 & S 1/2 of Lot 7 |
| 511 N East Ave | 26 | Lot 5 |
| 200 E 6th St | 15 | Lot 5 |
| 560 N Washington Ave | 15 | Lot 6 |
| 520 N Washington Ave | 15 | Lot 7 |
| 500 N Washington Ave | 15 | Lot 8 |
| 480 N Washington Ave | 16 | Lot 5 |
| 460 N Washington Ave | 16 | Lot 6 |
| 440 N Washington Ave | 16 | Lot 7 |
| 211 E 4th St | 16 | Lot 8 |
| 591 N Washington Ave | 35 | Lot 1 |
| 571 N Washington Ave | 35 | Lot 2 |
| 531 N Washington Ave | 35 | Lot 3 |
| 191 E 5th St | 35 | Lot 4 |

If there are any inconsistencies between the Legal Descriptions of the TDR Sending Sites, Receiving Sites and Fifth Floor Hotel Sites and the Map of the TDR Sending Sites, Receiving Sites and Fifth Floor Hotel Sites, the Legal Descriptions control.

SECTION 2. SAVINGS AND SEVERABILITY. If any section, subsection, paragraph, subparagraph, item, provision, regulation, sentence, clause or phrase is declared by a court to be invalid, such actions shall not affect the validity of this Ordinance as a whole or any part thereof other than the part declared invalid.


SECTION 3. CODIFICATION. The City Clerk is instructed pursuant to Section 1-1-3 of the City of Ketchum Municipal Code to immediately forward this ordinance to the codifier of the official municipal code for proper revision of the code.

SECTION 4. REPEALER CLAUSE. All City of Ketchum Ordinances or parts thereof which are in conflict herewith are hereby repealed.

SECTION 5: EFFECTIVE DATE. This Ordinance shall be in full force and effect upon the date of its publication as provided by law which is February 28, 2007.

PASSED by the City Council and APPROVED by the Mayor this 22nd day of February, 2007.

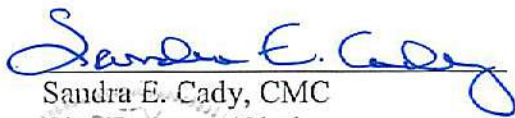
CITY OF KETCHUM, IDAHO



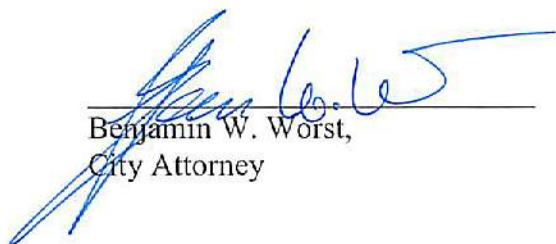
Randy Hall,
Mayor

ATTEST:

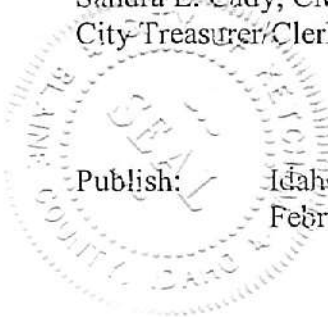
APPROVED AS TO FORM
AND CONTENT:



Sandra E. Cady, CMC
City Treasurer/Clerk



Benjamin W. Worst,
City Attorney


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