**ORDINANCE NO. 1037**

AN ORDINANCE OF THE CITY OF KETCHUM, IDAHO, AMENDING TITLE 8, CHAPTER 8.08, KETCHUM MUNICIPAL CODE, "NUISANCES", SECTIONS 8.08.010, 8.08.030, 8.08.050 "NUISANCES GENERALLY", BY ADDING NEW LANGUAGE DEFINING "NOISE" AND CLARIFING THE DEFINITIONS OF "PREMISES", "STREET" AND "VEHICLE" AND BY DEFINING CONSTRUCTION WITHOUT A BUILDING PERMIT AND CONSTRUCTION ACTIVITY STANDARDS PLAN AS A NUISSANCE; AMENDING TITLE 9, CHAPTER 9.08, KETCHUM MUNICIPAL CODE "OFFENSES AGAINST PUBLIC PEACE AND DECENCY", SECTION 9.08.040 "LOUD OR UNECESSARY NOISES", BY AMENDING THE HOURS DURING WHICH INDIVIDUALS MAY ENGAGE IN CONSTRUCTION, AND BY ADDING OBJECTIVE CRITERIA TO MEASURE AND RESTRICT NOISE LEVELS; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE, PROVIDING A REPEALER CLAUSE; PROVIDING FOR PUBLICATION BY SUMMARY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the volume and intensity of construction has increased dramatically in the City over the past several years; and

WHEREAS, as a result of such increased construction activity, the City has received numerous complaints that the quality of life in the City has been substantially degraded due to the noise, traffic, litter, debris, visual impacts, impacts on parking and other impacts of construction amounting to a substantial threat to the public health, safety and welfare; and

WHEREAS, the City formed a Construction Mitigation Committee to review such threat to the public health, safety and welfare and to make recommendations to minimize it; and

WHEREAS, the Construction Mitigation Committee has determined that certain additions and deletions need to be made to the above-mentioned sections of the Ketchum Municipal Code to reduce the negative impacts of construction, including without limitation, listing construction without a building permit and approved construction mitigation plan among the enumerated nuisances; and

WHEREAS, the Construction Mitigation Committee has determined that it is necessary to objectively define and limit allowable noise levels in each zone within the City; and

WHEREAS, it has been determined that special community event permit standards need to be changed to differentiate public events from private events.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and the City Council of the City of Ketchum, Idaho:

SECTION 1. FINDINGS. The Mayor and City Council of the City of Ketchum Idaho hereby find as follows:

1. Incorporation of Recitals. The Recitals set forth above are hereby incorporated in this Ordinance by reference.

2. Valid Exercise of Police Powers. The Mayor and City Council of the City of Ketchum Idaho hereby find that the noise, traffic congestion, debris, dust, negative impacts on parking, vibrations and visually aesthetic impacts on the residents of the City of Ketchum due to construction constitute a threat to the public health, safety and welfare and further that the regulations set forth in this Ordinance are reasonable and necessary means to regulate and control such threats.

SECTION 2. That Sections **8.08.010 "Definitions", 8.08.030 "Violations", and 8.08.050 "Nuisances enumerated"** of the Ketchum Municipal Code are hereby amended, altered, and changed by adding thereto the underlined language herein below and by deleting there from the language stricken through, to wit:

**8.08.010 Definitions.**

"Noise" means any sound that has an adverse effect on the psychological or physiological well being of persons, thus constituting a present danger to the economic or aesthetic well-being of the community or a threat to the community's health, safety or welfare.

"Person responsible for the public nuisance" means the property owner and any person who causes and/or permits a public nuisance to occur or remain upon property in the city, and includes but is not limited to the owner(s), lessor(s), tenant(s), or other person(s) entitled to control, use and/or occupy property where a public nuisance occurs.

"Premises" means ~~a plot of ground~~ real property including the improvements thereon, if any, whether occupied or not.

"Street" or "highway" means the entire width between the boundary lines of every way ~~publicly~~ maintained when any part is open to the use of the public for purposes of vehicular travel.

"Vehicle" means a machine propelled and/or towed or hauled by power other than human power designed to travel along the ground by use of wheels, treads, runner or slides and transport persons or property or pull machinery, and includes, without limitation, automobiles, trucks, trailers, motorcycles, tractors, ~~buggy, and~~ wagons, boats, campers, snowmobiles and recreational vehicles.

**8.08.030 Violations.**

No person shall maintain or commit a nuisance ~~or~~ willfully ~~omit~~ or willfully fail or refuse to ~~to~~ perform any legal duty relating to the removal or abatement of a nuisance.

**8.08.050 Nuisances enumerated.**

A. Specific acts, omissions, places, conditions and things, such as the erecting, maintaining, using, placing, depositing, causing, allowing, leaving or permitting to be or remain in or upon any private lot, building, structure or premises, or in or upon any public right-of-way, street, avenue, alley, park, parkway, or other public or private place in the city of any one or more of the following places, conditions, things or acts, to the prejudice, danger, or annoyance of others, are declared to be public nuisances:

4. All places used or maintained as junkyards or dumping grounds, or for the wrecking, dissembling, repair or rebuilding of automobiles, trucks, tractors, or machinery of any kind, or for the storing or leaving of worn out, wrecked or abandoned automobiles, trucks, tractors or machinery of any kind or of any of the parts, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which places are kept or maintained so as to essentially interfere with the comfortable enjoyment of life or property by others; provided that, nothing contained in this subsection shall be deemed to prohibit any automobile wrecking yard or other junkyard, or storage area for machinery or equipment where the same are permitted by the city zoning regulations or where the same are being used by contractors or builders or by other persons during the construction of a project at the site; ~~and nothing contained in this subsection shall be deemed to prohibit the dissembling, repair or rebuilding or the storage of any parts on any farm or ranch where such dissembling, repair, rebuilding or storage are customary and incidental to such farming or ranching activities~~;

5. Dismantled, abandoned, junked, discarded, inoperable or destroyed household goods~~,~~; equipment, motor vehicles or miscellaneous property that is discarded, parked, maintained or stored upon property for a period of time exceeding seven (7) days; provided that, nothing contained in this subsection shall be deemed to apply to any property or premises where household goods~~,~~; equipment, motor vehicles, machinery or miscellaneous property is housed within an enclosed building or to any property or premises lawfully operated as a business where the same is a part of such business enterprises and necessary to the operation of such business on such property or premises;

6. Debris, ~~T~~trash, litter, rags, accumulations of empty barrels or miscellaneous property, boxes, crates, mattresses, bedding, lumber not neatly piled, scrap iron, tin and other metal, or anything which constitutes a nuisance as defined in Section 8.08.020~~whatsoever in which insects may breed or multiply or which provides harborage for rodents or which may create a fire hazard or a danger to children or animals~~;

9. To leave or permit to remain outside of any dwelling, building, or other structure, or within any unoccupied or abandoned building, dwelling, or other structure, under the control of any person, and in a place accessible to ~~children~~ the public, any abandoned unattended or discarded ice box, freezer, refrigerator or other container which has an airtight door or lid, snaplock or other locking device which may not be released from the inside, without first removing such door or lid, snaplock or other locking device from such ice box, freezer, refrigerator or container.

13. To engage in construction without a required building permit or to fail to meet the requirements of any applicable construction activity standards plan.

14. To engage in excavation or the demolition, erection, construction or repair of buildings or other structures at any time other than between the hours of seven-thirty a.m. and seven p.m. on weekdays and Saturdays or at any time on Sundays or on the following days: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, the

weekend of Labor Day (Saturday, Sunday and Monday), Thanksgiving Day, Christmas Eve and Christmas Day if such activities are either visible or audible from adjacent public or private property. This rule shall not apply in cases of urgent necessity in the interest of public health and safety. Additionally, the Ketchum Building Official may waive or modify this rule for good cause shown and pursuant to an approved construction activities standards plan.

15. Any loud and unnecessary noises, as enumerated in Section 9.08.040 of the Ketchum Municipal Code.

~~13~~16. Any other use of property which is specifically declared by resolution of the city council to be a nuisance, after compliance with the notice and hearing requirements of Section 8.08.060.

SECTION 3. That Section **9.08.040 "Loud and Unnecessary Noises"** of the Ketchum Municipal Code 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:

**9.08.040 Loud and Unnecessary Noises.**

C. The following noises and acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this section, but such enumeration shall not be deemed to be exclusive:

5. Construction or Repairing of Buildings. Any noise generated by construction, excavation or demolition activities or by repairing of buildings or other structures shall be a loud and unnecessary noise unless such noise is both created during the times allowed for construction set forth in Ketchum Municipal Code Section 8.08.050.A.14 and does not exceed the noise levels set forth in Ketchum Municipal Code Section 9.08.040.C.8. This rule shall not apply in cases of urgent necessity in the interest of public health and safety. Additionally, the Ketchum Building Official may waive or modify this rule for good cause shown and pursuant to an approved noise suppression plan. ~~The erection (including excavating) of new buildings, and demolition, and major alteration or repair of any existing building other than between the hours of seven thirty a.m. and seven p.m. on weekdays, and between the hours of nine a.m. and six p.m. on Saturdays, except in case of urgent necessity in the interest of public health and safety. It is allowable for backhoes to operate between the hours of nine a.m. and six p.m. on Saturdays. "Major alteration or repair: is defined as having a value in excess of two thousand dollars ($2,000.00)~~

6. ~~Pile Drivers,~~ Hammers, Concrete Saws, Etc. Any noise generated by the use or operation of any pneumatic hammer, concrete saw or other appliance, blasting device or other explosive shall be a loud and unnecessary noise unless such noise is both created during the times allowed for construction set forth in Ketchum Municipal Code Section 8.08.050.A.14 and does not exceed the noise levels set forth in Ketchum Municipal Code Section 9.08.040.C.8. This rule shall not apply in cases of urgent necessity in the interest of public health and safety. Additionally, the Ketchum Building Official may waive or modify this rule for good cause shown and pursuant to an approved noise suppression plan. ~~The operation of any pile driver, steam shovel, pneumatic hammer, derrick, ram or electric hoist or other appliance, blasting devices or other explosives, the use of which is attended by loud or unusual noise, other than~~

~~between the hours of nine a.m. and six p.m. Monday though Friday except in case of urgent necessity in the interest of public health and safety.~~

7. Special Community Events ~~Permits. Upon a written request which shall be made to the mayor at least five days prior to the date of such event, thereafter, the mayor may issue a special community event permit as provided in this subsection. Such request shall state the entity requesting such permit, the location, time and date of such event, and the nature of the event for which the permit is sought. The event must be one of special interest and benefit to the community and it must be conducted in a manner to reasonably minimize the noise created given the nature of the event. The mayor may impose reasonable conditions on the event. All permits shall be issued by the mayor in writing. Parades and other special community events sponsored by the city shall be deemed to have received such permit without a request therefor.~~ Any noise generated by Special Events or other events to which the public is invited which fails to meet the following conditions:

(a) The maximum decibel level measured at the perimeter of the event does not exceed100 decibels; and

(b) Amplified noise shall be created only between the hours of nine a.m. and eleven p.m.; and

(c) Neighbors within two hundred fifty (250) feet of the site of the proposed sound source are notified. Such notification must be in writing and be done seven (7) days prior to the starting time of the event; and

(d) The arrangement of loud speakers or the sound instruments must be such that it minimizes the disturbance to others resulting from the position or orientation of the speakers or from atmospherically or geographically caused dispersal of sound beyond the property lines; and

(e) All reasonable measures are taken to baffle or reduce noise impacts on the neighbors; and

(f) Event organizers agree to cooperate with the Police Department in addressing noise complaints from neighbors, which may include the termination of the event.

(g) Organizers of special events governed by the City of Ketchum may request a waiver from noise restrictions to the City Council.

(1) The waiver request shall include reasons why the waiver should be granted, how the public good will outweigh impacts on neighbors and other factors supporting the request.

(2) If approved, the waiver shall contain all conditions upon which said waiver has been granted, including, but not limited to, the effective date(s), time(s) of day, location, sound pressure level, or equipment limitation. The City of Ketchum may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding neighborhood.

8. Noises in excess of the following levels as measured at the property line in the following zones within the city during the following times unless permitted pursuant to an approved noise suppression plan or special community event permit:

| Zone | Nighttime 10:00 p.m. to 7:30 a.m. | Daytime 7:30 a.m. to 7:00 pm | Evening 7:00 p.m. to 10:00 p.m. |
|---|---|---|---|
| | | | |
| LR, LR-1, LR-2, GR-L, GR-H, T, T-3000, T-4000, | 50 dBA | 90 dBA | 55 dBA |
| MH, STO-.4, STO-1, STO-H,RU, AF, FP, A, ADU, AHO | | 90 dBA | |
| CC | 60 dBA | 90 dBA | 65 dBA |
| LI-1, LI-2, LI-3 | 70 dBA | 90 dBA | 75 dBA |

D. Noise suppression plans.

1. If this title or any other portion of the Ketchum Municipal Code allows or requires a noise suppression plan, such plan shall be approved pursuant to the following process and contain the following information:

(a) Noise suppression plans shall be submitted to and approved by the Ketchum Building Official.

(b) Noise suppression plans shall include, without limitation:

(1) Contact information;

(2) Dates of activity;

(3) Hours of activity;

(4) Location of activity;

(5) Any equipment constraints that prevent common noise reduction measures;

(6) Description of how sound blocking or reducing measures will be used;

(7) Layout map of the locations of baffles and other sound blocking or reducing measures with relation to the source; and

(8) Any additional information or conditions required by the Ketchum Building Official.

(c) Submittal must be timely for adequate review.

(d) Approval may be granted upon sufficient showing of the following:

(1) That the activity, operation or noise source will be of temporary duration and cannot be done in a manner that would comply with other noise restrictions contained in the Ketchum Municipal Code, and

(2) That no reasonable alternative is available to the applicant.

(e) The Ketchum Building Official may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon the community or the surrounding neighborhood.

SECTION 4. SAVINGS AND SEVERABILITY CLAUSE. It is hereby declared to be the legislative intent that the provisions and parts of this Ordinance shall be severable. If any paragraph, part, section, subsection, sentence clause, or phrase of this Ordinance is for any reason held to be invalid for any reason by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 5. CODIFICATION CLAUSE. The City Clerk is instructed to immediately forward this ordinance to the codifier of the official municipal code for proper revision of the code.

SECTION 6. REPEALER CLAUSE. All City of Ketchum ordinances or resolutions or parts thereof which are in conflict herewith are hereby repealed.

SECTION 7. PUBLICATION. This Ordinance, or a summary thereof in compliance with Section 50-901A, Idaho Code, substantially in the form annexed hereto as Exhibit "A," shall be published once in the official newspaper of the City, and shall take effect immediately upon its passage, approval, and publication.

SECTION 8. EFFECTIVE DATE. This Ordinance shall be in full force and effect upon the date of its publication as provided by law which is May 14, 2008.

PASSED BY THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO and APPROVED by the Mayor this 5th of May, 2008.

CITY OF KETCHUM, IDAHO

Randy Hall,
Mayor

ATTEST:

Sandra E. Cady, CMC
City Treasurer/Clerk

APPROVED AS TO FORM
AND CONTENT:

By: _____
Benjamin W. Worst,
City Attorney

CITY OF KETCHUM SEAL BLAINE COUNTY, IDAHO

EXHIBIT A

**PUBLICATION OF SUMMARY OF ORDINANCE NO. 1037**
**CITY OF KETCHUM, IDAHO**

AN ORDINANCE OF THE CITY OF KETCHUM, IDAHO, AMENDING TITLE 8, CHAPTER 8.08, KETCHUM MUNICIPAL CODE, "NUISANCES", SECTIONS 8.08.010, 8.08.030, 8.08.050 "NUISANCES GENERALLY", BY ADDING NEW LANGUAGE DEFINING "NOISE" AND CLARIFING THE DEFINITIONS OF "PREMISES", "STREET" AND "VEHICLE" , BY DEFINING CONSTRUCTION WITHOUT A BUILDING PERMIT AND CONSTRUCTION ACTIVITY STANDARDS PLAN AS A NUISANCE; AMENDING TITLE 9, CHAPTER 9.08, KETCHUM MUNICIPAL CODE "OFFENSES AGAINST PUBLIC PEACE AND DECENCY", SECTION 9.08.040 "LOUD OR UNECESSARY NOISES", BY AMENDING THE HOURS DURING WHICH INDIVIDUALS MAY ENGAGE IN CONSTRUCTION, AND BY ADDING OBJECTIVE CRITERIA TO MEASURE AND RESTRICT NOISE LEVELS; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE, PROVIDING A REPEALER CLAUSE; PROVIDING FOR PUBLICATION BY SUMMARY; AND PROVIDING FOR AN EFFECTIVE DATE.

A summary of the principal provisions of Ordinance No. 1037 of the City of Ketchum, Blaine County, Idaho, adopted on May 5, 2008, is as follows:

**Section 1:** Incorporates the recitals in the ordinance and finds that the ordinance is a valid exercise of police powers based upon a need to protect the public health safety and welfare.

**Section 2:** Amends Sections 8.08.010 "Definitions", 8.08.030 "Violations", and 8.08.050 "Nuisances enumerated" of the Ketchum Municipal Code by adding a definition of "noise" and editing definitions for "Person responsible for the public nuisance", "Premises", "Street", and "vehicle" for clarification, by expanding violations to include willfully failing or refusing to perform a legal duty to remove or abate a nuisance and amending Nuisances Enumerated to include building without a building permit, failing to meet the requirements of an approved construction mitigation plan, construction activities on certain holidays and at any time other than between the hours of seven-thirty a.m. and seven p.m. on weekdays and Saturdays and loud and unnecessary noises and deleting certain unnecessary language.

**Section 3:** Amends Section 9.08.040 "Loud and Unnecessary Noises" of the Ketchum Municipal Code by adding a table listing the maximum decibel level allowed in each zone within the City, amending times in which the construction or repairing of buildings is allowed, adding limitations on the noise generated by the constructing or repairing of buildings as measured at the property line, adding a prohibition against the operation of loud tools, equipment and explosives on certain days and at certain times adds the requirement of a noise suppression plan if construction tools exceed the allowed decibel level, and amending special community event permit requirements to include noise limitations and noise abatement requirements.

**Section 4:** Provides a savings and severability clause.

**Section 5:** Provides a codification clause.

**Section 6:** Provides a repealer clause.

**Section 7:** Provides for publication of a summary of the Ordinance.

**Section 8:** Establishes the effective date of May 14, 2008.

The full text of this Ordinance is available at the City Clerk's Office, Ketchum City Hall, 480 East Avenue North, Ketchum, Idaho 83340 and will be provided to any citizen upon personal request during normal office hours.

CITY OF KETCHUM, IDAHO

Randy Hall, Mayor

ATTEST:

Sandra E. Cady, CMC
City Treasurer/Clerk

## STATEMENT OF LEGAL ADVISOR

I, the undersigned attorney at law, duly licensed in the State of Idaho and serving as City Attorney to the City of Ketchum, Idaho, hereby certify that I have read the attached Summary of Ordinance No. 1037 of the City of Ketchum and that the same is true and complete and provides adequate notice to the public of the contents of said Ordinance.

Dated this 5th day of May, 2008.

Benjamin W. Worst,
Ketchum City Attorney

Publish: Idaho Mountain Express
Date: May 14, 2008