

ORDINANCE NUMBER 861

AN ORDINANCE OF THE CITY OF KETCHUM AMENDING CHAPTER 17.64 OF THE KETCHUM CITY CODE BY AMENDING SUBSECTION 17.64.010(H)(a) TO CLARIFY THE AFFORDABLE HOUSING BONUS; ADDITION OF A NEW SUBSECTION 17.64.010(H)(2)(b) CREATING A BONUS FOR THE TRANSFER OF DEVELOPMENT RIGHTS IN THE COMMUNITY CORE ZONE; ADDITION OF A NEW SUBSECTION 17.64.010(H)(2)(c) CREATING A BONUS FOR THE CREATION OF HOTELS IN THE COMMUNITY CORE ZONE; AMENDING SECTION 17.08.020, DEFINITION OF HOTEL; AMENDING TITLE 17 OF THE KETCHUM CITY CODE BY ADDING A NEW CHAPTER, CHAPTER 17.142 AND A NEW SECTION 17.142.010, CREATING TRANSFERABLE DEVELOPMENT RIGHTS; PROVIDING DEFINITIONS; ESTABLISHING SENDING AREAS WITHIN THE COMMUNITY CORE ZONING DISTRICT; ESTABLISHING RECEIVING AREAS WITHIN THE COMMUNITY CORE ZONING DISTRICT; PROVIDING A TIME LIMIT TO EXERCISE DEVELOPMENT RIGHTS; PROVIDING A PROCEDURE FOR THE TRANSFER OF DEVELOPMENT RIGHTS; PROVIDING THAT TRANSFERABLE DEVELOPMENT RIGHTS ARE AN INTEREST IN REAL PROPERTY; PROVIDING FOR RESTRICTION ON THE DEVELOPMENT OF THE SENDING AREA IN PERPETUITY OR UNTIL EXTENQUISHED BY THE CITY; PROVIDING FOR AN EASEMENT TO THE CITY RESTRICTING THE USE OF THE SENDING AREA; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council found that Comprehensive Plan options were being precluded by the measurable increase in large, bulky buildings in the Community Core, and that citizen concerns identified since April 1997 through the Comprehensive Plan process were being precluded by the ongoing approval of tall, bulky buildings in the Community Core.

WHEREAS, the City hired a Consultant, Winter & Associates, on June 13, 2000 to assist in preparations of a revised Community Core Chapter, which includes bulk regulations and Design Review Standards. Five public workshops were summarized by the Consultant as follows:

"The most frequently-raised issue is that of the mass and scale of new buildings. This is influenced by a combination of factors, including the basic height, width and depth of a structure, as well as the manner in which it is articulated into subordinate masses and refined with details and variations in materials. These factors were graphically illustrated in a series of massing studies that were evaluated in the last workshop. Individual participants recorded their reactions on a response form. In reviewing the individual response sheets for the massing scenarios, these themes emerged:

1. In general, workshop respondents preferred development scenarios of two stories or less.

2. They also preferred projects with a gross floor area ratio of 1.4 or less.
3. They found "acceptable" buildings of 1.75 or less.
4. While structures that were three stories in height were generally found "unacceptable", some respondents noted that they could be "acceptable" only if the added mass was for affordable housing. This reflects a willingness to consider trade-offs of mass and scale impacts when other community objectives are clearly met."

WHEREAS, the City has determined that a maximum F.A.R. of 1.4 can be accommodated in the Community Core Zoning District, and that transferring said floor area can also be accommodated within said District;

WHEREAS, after six (6) public hearings on proposed amendments to the Community Core Zoning District, the Ketchum City Council adopted Ordinance 849, setting the maximum floor area ratio (F.A.R.) of 1.4 for buildings in the Community Core and eliminating the provision for discretionary bonus of up to 2.0 F.A.R. for buildings that provided underground parking or a urban housing units;

WHEREAS, after nine (9) public hearings on proposed amendments to the Community Core Zoning District, the Ketchum City Council adopted Ordinance 853, allowing a bonus of up to 1.75 F.A.R. for buildings that provide community housing;

WHEREAS, a clarification to said bonus for community housing outlined in Ordinance Number 853 is deemed necessary;

WHEREAS, limiting Floor Area Ratio was determined to fulfill a goal of the City's in the preservation of the scale of Ketchum, preserving light, air and open space.

WHEREAS, after seven (7) public hearings on proposed amendments to the Community Core Zoning District to establish a density bonus for hotel uses, the Ketchum City Council determined that a bonus up to 1.75 F.A.R. is appropriate; and,

WHEREAS, Idaho Code Section 67-6515A authorizes the City to enact an Ordinance creating development rights and to establish procedures authorizing a landowner to voluntarily transfer said development rights;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO:

SECTION 1. AMENDMENT. That Chapter 17.64, Subsection 17.64.010(H)(2)(a) - Community Core District, Community Bonus Incentives, be amended, altered and changed by deleting the words lined out and adding thereto the words underlined hereinbelow, as follows:

2. Floor Area Ratio (F.A.R.) Community Benefit Bonus Incentives:

a. Community Housing Unit Increase

An increased F.A.R. for Community Housing Unit(s) may be permitted up to a maximum of 1.75, and only subject to design review approval, and provided that all of the following conditions are met:

1. Forty (40) percent of the requested gross floor area increase is restricted in perpetuity as Community Housing Unit(s), pursuant to the definition in Chapter 17.08.
2. Income categories for resale of owner occupied units shall be determined by the Council, with a recommendation by the Ketchum Housing Commission. Income categories shall be determined prior to final City approval of said project.
3. Community Housing Unit(s) may be provided off-site but within Ketchum City limits at a ratio of 1.5 times the amount of square footage that would have been provided on-site. The Community Housing Unit(s) should be in conformance with the ~~1999~~ Ketchum Community Housing Guidelines.
4. In lieu funds may be accepted for a portion of the off-site mitigation, but in no case shall there be less than the number of units that would have been required. The amount of funds required for in-lieu payments shall be established annually by the Council, with a recommendation from the Ketchum Housing Commission.
5. For projects in full compliance with 1 through 4 above: if the proposal does not use all of the floor area permitted under this bonus incentive (maximum F.A.R. of 1.75), the remaining floor area may be transferred pursuant to Subsection 17.64.010(H)(2)b and Chapter 17.142.010, Transferable Development Rights.

SECTION 2. AMENDMENT. That Chapter 17.64, Subsection 17.64.010(H)(2) - Community Core District, Community Bonus Incentives, be, and the same is hereby amended by the addition of a new subsection, to be known and designated as Subsection 17.64.010(H)(2)(b), Ketchum City Code, and to read as follows:

b. Transferable Development Rights

A portion of the "by-right" development potential (floor area up to a maximum Floor Area Ratio of 1.4) or a portion of the Community Housing Unit bonus (17.64.010.(H)(2)(a)) of any property within the Community Core may be transferred to a designated Receiving Area within the Community Core, subject to the regulations herein and Chapter 17.142.010, Transfer of Development Rights. Transferred development rights are transferred on a lot-by-lot basis. Development rights may be transferred under the following conditions:

1. Lots or buildings with a F.A.R of less than 1.4:
 - a. For buildings with a F.A.R. of less than 1.4, the balance, or a portion, of the potential "by-right" buildable floor area (up to 1.4 F.A.R.) may be transferred. Said building or site is the Sending Area. Buildings or sites receiving additional floor area are the Receiving Area. A portion of F.A.R. may be retained on the Sending Area site for additions and remodels.
 - b. The Sending Area must be deed restricted in perpetuity. Details for the deed restrictions are further outlined in Chapter 17.142.
 - c. Receiving Areas cannot exceed a maximum F.A.R. of 1.75.

2. Lots or buildings providing Community Housing Unit(s):
 - a. The floor area remaining from a lot or building which meets the requirements of Subsection 17.64.010(H)(2)(a) may be transferred pursuant to b.1(b) and b.2(c) above.
 - b. Floor area eligible for transfer is calculated as square footage, based on the size of the Sending Area, up to a maximum FAR of 1.75.
 - c. Forty (40) percent of the transferred floor area must be restricted in perpetuity as Community Housing Unit(s). All other regulations of Section 17.64.010(H)(2)(a) will apply.

SECTION 3. AMENDMENT. That Chapter 17.64, Subsection 17.64.010(H)(2) - Community Core District, Community Bonus Incentives, be, and the same is hereby amended by the addition of a new subsection, to be known and designated as Subsection 17.64.010(H)(2)(c), Ketchum City Code, and to read as follows:

NEW SUBSECTION: SUBSECTION 17.64.010(H)(2)(c):

c. Hotel Uses/Conditional Use

A bonus up to a F.A.R. of 1.75 may be permitted for a lot or parcel containing a hotel which meets the definition in Chapter 17.08, and only subject to design review approval. Said lot or parcel may contain other permitted uses up to the maximum F.A.R. of 1.75.

A hotel may request modification or waiver(s) from the provisions of this Chapter pursuant to Chapter 16.08, Planned Unit Developments. Said waiver(s) will be permitted only at the discretion of the Council, pursuant to Chapter 16.08. However, no waivers shall be granted for maximum floor area, nor to the minimum number of hotel rooms required per the definition of hotel. Proposals are subject to the regulations of this Chapter, Chapter 16.08, and to the following conditions:

1. The hotel must meet the definition outlined in Chapter 17.08.
2. The hotel use must be guaranteed through a Development Agreement acceptable to the City. Said hotel use may only be modified pursuant to the Development Agreement, and only if the building can be brought in to compliance with all applicable regulations, including maximum floor area.

SECTION 4. AMENDMENT. That Chapter 17.08, Section 17.08.020 Definitions, City of Ketchum Zoning Code Title 17, is hereby amended, altered and changed by adding the words underlined and deleting the words crossed through hereinbelow, as follows:

"Hotel" means a building designed and used for ~~short term~~ overnight occupancy by the general public on a short term basis for a fee. Hotels shall provide a minimum of one hotel room per 800 square feet of land area, including ~~or time share occupancy which.~~ more than six guest rooms, adequate on-site food and beverage service with kitchen facilities, common reservation and cleaning services, combined utilities, on-site management and reception services, access to all sleeping rooms through an inside lobby supervised by a person in charge no less than eighteen (18) hours per day, and where appropriate, adequate on-site recreational facilities. A hotel room may not be divided into interval or time share

ownership. A hotel room which includes cooking facilities shall not be considered a dwelling for the purposes of density, area and bulk regulations of this title and other land use regulations.

SECTION 5. NEW CHAPTER. That a new Chapter be added to Title 17 of the Ketchum City Code to be known as Chapter 17.142, titled Transfer of Development Rights, and that a new section, to be known and designated as Section 17.142.010, Ketchum City Code, to read as follows:

SECTION 17.142.010. TRANSFER OF DEVELOPMENT RIGHTS.

A. Definitions

1. **Development Rights.** The Floor Area Ratio (F.A.R.) permitted "by right", or by transferable bonus only where specified, to a lot of land in the applicable Zoning District of the City of Ketchum. Said F.A.R. is to be translated in to square footage, based on the size of the lot of land.
2. **Receiving Area.** One (1) or more lot or parcel of land, to which development rights generated from one (1) or more Sending Areas may be transferred and in which increased square footage (up to the maximum established by the Zoning District in which the Receiving Area is located) is permitted to occur by reason of such transfer.
3. **Sending Area.** One (1) or more lot or parcel of land from which development rights may be transferred from for use in one (1) or more Receiving Areas.
4. **Transfer of Development Rights.** The process by which development rights are transferred from one (1) lot or parcel of land in any Sending Area to another lot or parcel of land in one (1) or more Receiving Areas.

B. Transferable Development Rights

Development rights may be transferred only as permitted in the applicable Zoning District.

C. Requirements for Transfer of Development Rights

1. No transfer of development rights may occur without the written consent of all lien holders and other parties with an interest of record in the property from which development rights are proposed to be transferred. Transfers of development rights without such consent shall be void.
2. Every owner of a Sending Area shall execute an Easement Transferring Development Rights to the City of Ketchum in substantially the same form as set out in Exhibit A, attached hereto and incorporated herein by reference.

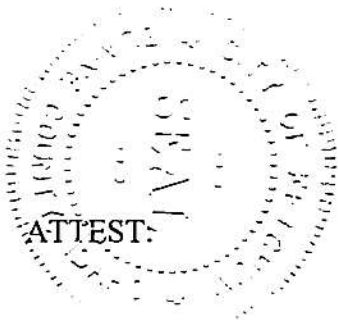
3. Once a transfer of development rights has been exercised, it shall constitute a restriction on the development of the property in perpetuity, unless the City elects to extinguish such restriction pursuant to the provisions of this Chapter.
4. The exercise of development rights shall be in accordance with Idaho Code 67, 6515A as the same may be amended from time to time.

SECTION 6. 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 7. REPEALER CLAUSE. All City of Ketchum ordinances or resolutions or parts thereof which are in conflict herewith are hereby repealed.

SECTION 8. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage, approval and publication.

PASSED by the Ketchum City Council and APPROVED by the Mayor of Ketchum on this 20th day of February, 2001.




Guy P. Coles, Mayor


Sandra E. Cady, City Clerk

Publish: February 28, 2001
Idaho Mountain Express

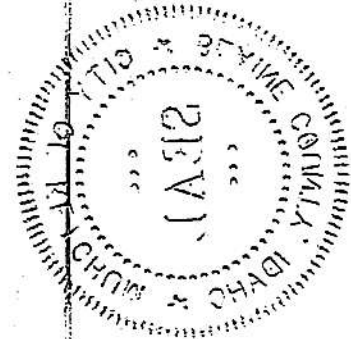


Exhibit A

EASEMENT TRANSFERRING DEVELOPMENT RIGHTS

THIS TRANSFER OF DEVELOPMENT RIGHTS (TDR) EASEMENT, made this ___ day of _____, 20___, by and between _____, hereinafter "Grantor" and the City of Ketchum, an Idaho municipal corporation, hereinafter "Grantee."

RECITALS

1. Section 17.142.010 of the Ketchum City Code defines "Development Right" as: "The process by which development rights are transferred from one (1) lot or parcel of land in any Sending Area to another lot or parcel of land in one (1) or more Receiving Areas," and sets forth the requirements for the transfer of development rights.
2. Grantor is the owner in fee simple of _____, commonly referred to as _____, located in the Ketchum Community Core Zone, Ketchum, Idaho. The property is now improved with a building with a Floor Area Ratio (F.A.R.) of _____.
3. Section 17.64.010(H)(2)(b) of the Ketchum City Code creates a density bonus available to owners of property with a F.A.R. of less than 1.4, located in the Community Core Zone (a Sending Area property) to transfer density up to a maximum F.A.R. of 1.4. Said density is to be transferred in square footage, calculated by the size of the Sending Area property. Said square footage may be transferred to a Receiving Area property in the Community Core Zone, so long as the Receiving Area does not exceed the maximum F.A.R. of 1.75. Such a conveyance must contain an easement restricting future addition of square footage on the Sending Area property such that the sum of the square footage retained on the Sending Area and the square footage transferred to the Receiving Area does not exceed a F.A.R. of 1.4, calculated for the Sending Area.
4. Section 17.64.010(H)(2)(a) of the Ketchum City Code creates a ~~density~~ bonus available to owners of property to develop Community Housing Units, with a F.A.R. of less than 1.4, located in the Community Core Zone. ~~to transfer density up to a maximum F.A.R. of 1.4.~~ Said properties are allowed a floor area bonus up to a maximum of 1.75. If the proposal does not use all of the floor area permitted, the remaining floor area may be transferred per the requirements of Chapter 17.64.010(H)(2)(b) (a Sending Area property). Said density is to be transferred in square footage, calculated by the size of the Sending Area property. Said square footage may be transferred to a Receiving Area property in the Community Core Zone, so long as the Receiving Area does not exceed the maximum F.A.R. of 1.75. Such a conveyance must contain an easement restricting future addition of square footage on the Sending Area property such that the sum of the square footage retained on the

Sending Area and the square footage transferred to the Receiving Area does not exceed a F.A.R. of 1.75, calculated for the Sending Area.

5. Grantor represents that he is the owner in fee simple of the property as of the date of execution of this easement.
6. A current title report for the property, identified as Exhibit "A," is attached hereto and made a part hereof.

NOW THEREFORE, to permit the transfer of Development Rights and in consideration of the covenants, terms, conditions, and restrictions hereafter set forth and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor does grant and convey to Grantee, its successors, and assigns, forever and in perpetuity, an interest and Easement of the nature and character and to the extent hereinafter set forth, in respect to all that property situate in Ketchum, Idaho, described as:

[Description of Sending Parcel]

The terms, conditions, and restrictions of this Easement are as follows:

1. This Easement shall be perpetual. It is an easement in gross, and as such, is inheritable and assignable and runs with the land as an incorporeal interest in the property enforceable with respect to the property by the Grantee, and its successors and assigns, against the Grantor and his heirs, successors, and assigns.
2. The restrictions imposed by this Development Rights Easement shall operate independently of the restrictions imposed by the zoning of the property.
3. The property contains _____ square feet. The property contains ____ previous Development Rights Easements. The Grantor is retaining _____ square feet on said property for future additions, remodels or new construction. As a result of this Easement, the Parties intend that Grantor may convey development rights in the amount of square feet. From this date forward, no more than _____ square feet (_____ F.A.R.) may be developed or may be constructed on the property. This may not be interpreted to permit additional development inconsistent with the zoning of the property or to prevent the reconstruction of existing building which complied with the terms of this Easement in the event such building may be destroyed or damaged.
4. Grantee, its successors and assigns, may, with reasonable notice, enter the property from time to time, for the sole purpose of inspection and enforcement of the terms, conditions, and restrictions of this Easement.
5. Nothing herein may be construed to convey to the public a right of access or use of the property, and the Grantor, his heirs, successors, and assigns, retain exclusive right to such access and use, subject only to the provisions of the Easement.
6. The parties agree that monetary damages would not be an adequate remedy for breach of any of the terms, conditions, and restrictions herein contained and,

therefore, in the event that the Grantor, his heirs, successors, and assigns, violate or breach any of such terms, conditions, and restrictions, herein contained, the Grantee, its successors and assigns, may institute a suit to enjoin by *ex parte*, preliminary, and/or permanent injunction such violation and to require the restoration of the property to its prior conditions. The Grantor, its successors and assigns, by any prior failure to act, does not waive or forfeit the right to take action as may be necessary to ensure compliance with the terms, conditions, and purposes of this Easement.

IN WITNESS WHEREOF, the Grantor and Grantee have hereunto set their hands and seals on the day and year above written.

[Signature Blocks and Notary Blocks for Grantor and City]

[Release of Lender if Applicable]