

**CITY OF KETCHUM, IDAHO  
ORDINANCE NUMBER 865**

AN ORDINANCE OF THE CITY OF KETCHUM, IDAHO, AMENDING TITLE 17 OF THE KETCHUM CITY CODE BY ADDING A NEW CHAPTER, CHAPTER 17.154 TO BE KNOWN AS THE "DEVELOPMENT AGREEMENT ZONING ORDINANCE" ESTABLISHING PROVISIONS FOR THE CONDITIONAL ZONING OR REZONING OF PROPERTY; DEFINING TERMS; PROVIDING FOR AN APPLICATION PROCESS; PROVIDING FOR THE CREATION, FORM, RECORDING, MODIFICATION, AND ENFORCEMENT OF DEVELOPMENT AGREEMENTS; PROVIDING FOR PROCEDURES FOR THE REVOCATION OR TERMINATION OF DEVELOPMENT AGREEMENTS AND REVERSION TO PREVIOUS ZONING DISTRICTS; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND, PROVIDING AN EFFECTIVE DATE.

WHEREAS, Idaho Code §67-6511A, provides that governing boards may, by ordinance, require or permit as a condition of rezoning that an owner or developer make a written commitment concerning the use or development of the subject parcel(s);

WHEREAS, the City Council finds it appropriate to utilize development agreements to ensure the implementation of the goals and policies of the Ketchum Comprehensive Plan and other development standards where the rezone request by itself could not;

WHEREAS, the City Council finds that the utilization of development agreements in the zoning or annexation process will assure the protection of the health, safety, and general welfare of the inhabitants of Ketchum;

WHEREAS, zoning development agreements encumber the property to ensure continuous and perpetual compliance regardless of ownership change;

WHEREAS, zoning by development agreements in the annexation or rezoning process allows the City Council to be site specific in development approval;

WHEREAS, the City Council finds that the use of development agreements is in compliance with the Ketchum Comprehensive Plan as it provides a process by which the City can permit innovative uses and site-specific development proposals that serve the community goals including, but not limited to, affordable housing, public service delivery, sensitive area protection, residential neighborhood protection and a vital community core; and,

WHEREAS, the City Council has considered impacts to service providers from the utilization of development agreements in the zoning or annexation process.

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

**SECTION 1. NEW CHAPTER.** That a new Chapter be added to Title 17 of the Ketchum City Code to be known as Chapter 17.154, titled Development Agreement Zoning, to read as follows:

**SECTION 17.154.010. INTENT AND PURPOSE.** Traditional zoning regulates the use of land and structures by assigning each use to one or more districts. However, the functions and characteristics of an increasing number of new kinds of land uses, combined with conclusive experience regarding some of the older, familiar kinds of uses, call for a more flexible and equitable procedure for properly accommodating these uses within the community, while protecting the health, safety and general welfare of the City of Ketchum's residents. Rather than assigning all uses to special individual and limited zoning districts, the City's goals can be met by providing controllable and reasonable flexibility in requirements for certain kinds of uses. This allows practicable latitude for the owner and maintains adequate provisions for the security of the health, safety and general welfare of the community's inhabitants.

In order to accomplish such a dual objective, specified activities or uses must be evaluated for suitability as it relates to proposed conditions of location, design, size, operation, intensity of use, generation of traffic and traffic movements, concentration of population, processes and equipment employed, amount and kind of public facilities and services required, together with other possible impacts. Land and structure uses possessing these particularly unique characteristics are designated as conditionally permissible uses and are permitted through the issuance of a zoning development agreement, with such conditions and safeguards attached as may be deemed necessary for the protection of the public welfare.

Where, in the opinion of the City Council (Council), the Planning and Zoning Commission (Commission), or the Planning and Zoning Administrator (Administrator), approval of a requested zone or rezone by itself cannot satisfy the requirements set forth in the Zoning Code and the Comprehensive Plan, this Ordinance is intended to provide reasonable standards and procedures in order to:

1. Implement the goals and policies of the Ketchum Comprehensive Plan, specifically, but not inclusively, the provision of affordable housing, passive and active open space, transportation improvements, public infrastructure

improvements and sensitive areas (riparian, avalanche, steep slopes and floodplain) protection;

2. Preserve and protect the character of Ketchum;
3. Assure the safety, health, and general welfare of present and future inhabitants of the City of Ketchum;
4. Protect and enhance the natural, cultural, and historic resources of the City from adverse impacts and to integrate new development harmoniously into the City's natural and built environment;
5. Promote the development of an economically sound and stable community;
6. Accommodate other necessary or innovative types of development while balancing and respecting private property rights;
7. Encourage and promote affordable housing;
8. Provide the integration of specific land uses in neighborhoods that are determined compatible, but prohibited by current zoning; and,
9. Improve circulation and reduce traffic congestion and hazards on existing and proposed roadways.

**SECTION 17.154.020. DEFINITIONS.**

**Building Footprint.** As defined in Chapter 17.08.

**Design Review Overlay District.** As defined in Chapter 17.96.

**Development Standards.** Criteria or specifications detailing the design, layout, architectural style, scale, or other measurement/description of development.

**Natural Features.** Significant view corridors, steep embankments, knolls, canyons, streams, watercourses or any other prominent physical features that are located on the property.

**Property Owner.** Is all of the following: property owner(s), co-property owner(s), developer(s), agent(s) of property owner or developer, assignee(s) of property owner(s) or developer(s) and all subsequent property owners or developers of the real property in the development agreement.

**Roadways.** All streets, roads, alleys or other circulation facilities designed for motor vehicles, privately or publicly owned.

**Structures.** As defined in Chapter 17.08.

**Vegetation.** Trees, shrubs and other plant species.

**SECTION 17.154.030.                    APPLICABILITY.**

**A.    Use.** Use of development agreements, as specified in Section 17.154.040.A, in the annexation or rezoning process may be utilized in any zoning district, regardless of lot size subject to the standards provided for in this Ordinance. The proposed use shall meet all setback, height and building coverage requirements of the proposed zone. Any of the discretionary conditions of this Ordinance as applied shall be in addition to the zone's minimum requirements.

**B.    Subsequent Actions.** A development agreement shall not prevent the City in subsequent actions applicable to the property, from applying new standards, regulations, or policies that do not conflict with commitments applicable to the property as set forth within a duly executed agreement.

**C.    Encumbrance.** The property owner(s), co-property owner(s), developer(s), agent(s) of property owner or developer, assignee(s) of property owner(s) or developer(s) and all subsequent property owners or developers of the real property that is encumbered by the development agreement shall comply with all conditions, terms, obligations, and duties contained in said agreement. Failure to comply shall result in termination of the agreement as specified in Section 17.154.070.

**SECTION 17.154.040.                    APPLICATION PROCEDURES.**

**A.    Request for a Development Agreement.** A request to enter into a development agreement for the subject property may be submitted by the applicant or required by the Commission, the Administrator, or the Council at any point during the processing of the rezoning request.

In the event of a determination by the Council that a development agreement should be entered into, the Council shall remand the matter back to the Commission for a public hearing as specified in Section 17.154.040.E. The Council shall, upon remand, direct the Commission on the specific issues to be addressed by the development agreement.

**B.    Filing Requirements.** A request for a development agreement must be determined to be complete by the City prior to processing. The City shall determine a

development agreement request complete when the information described below is included with a complete Zone Change Application:

1. Application. The application form shall include at a minimum:
  - a. Name, address and telephone number of the property owner, any co-applicants as well as any representatives for the property owner and/or co-applicants.
  - b. Original signatures for the property owner and all co-applicants. If the property owner or co-applicant will be represented by another, the original signature authorizing the representative to represent the property owner and/or co-applicant shall also be submitted.
  - c. A complete legal description of the subject property.
  - d. Title Report.
  - e. Application fee.
2. Four copies plus one reduced to at least eleven (11) inches by seventeen (17) inches of the architectural plan of the proposed construction in sufficient detail to show the following:
  - a. Floor plan (not less than one-eighth inch scale).
  - b. All exterior elevations.
  - c. Section through the highest point of the building indicating existing, natural and proposed grade, with dimensions. If the subject property is located in the Community Core (CC) Zone, an analysis of the height invisible plane shall also be submitted.
  - d. Type and color of exterior materials and roofing.
  - e. Location and type of exterior lighting.
  - f. Existing structures and land uses on and adjacent to the subject property.
  - g. Circulation: Adjacent roadways, proposed roadways, ingress and egress from said roadways, parking and pedestrian circulation and access.
  - h. Property lines with dimensions, adjacent land uses, structures and zoning.

- i. Topography at one (1) foot intervals or spot elevations.
  - j. Scale, north arrow, and legend.
  - k. Existing watercourses, utility lines, easements, deed restrictions and other built or natural features restricting the use of the subject property.
  - l. Existing vegetation, labeled as to remain or be removed.
  - m. Conceptual landscape plan that includes plant location, general species type and quantity.
3. A draft development agreement as specified in Section 17.154.040.D.
  4. A written description of the proposed development, including the uses, and how it integrates and complements adjacent land uses.
  5. A written narrative demonstrating compliance with the goals and policies of the Ketchum Comprehensive Plan.
  6. A traffic analysis that includes adjacent roadways, proposed roadways, ingress and egress from said roadways, parking, pedestrian circulation and impacts to non-motorized and transit facilities.
  7. Signed and notarized statement by the applicant indicating that failure to comply with all commitments in the approved development agreement shall be deemed consent to revert the zoning of the property to the pre-existing zone, or in the case of an initial zone at annexation, a zone deemed appropriate by the Council.
  8. Phasing plan and proposed phasing schedule.
  9. Additional information as reasonably required at the discretion of the Administrator, Commission or Council prior to or during the review process.
  10. The materials required in this subsection may be waived by the Administrator after administrative review of the application should no need be found therefore.

**C. Resubmission of Application.** No application for a Development Agreement which has been denied wholly or in part by the Council shall be resubmitted until the expiration of one (1) year or more from the date of such denial, except on grounds of newly discovered evidence or proof of changed conditions which would be sufficient to justify reconsideration as determined by the Council. At the expiration of one (1) year

from the date of the original application, each reapplication shall be accompanied by the required fee.

**D. Attorney Review.** The draft development agreement shall be reviewed by the City Attorney as to form prior to Commission review and shall contain, at a minimum, the following:

1. List of use(s) to be allowed.
2. Permitted square footage and building locations.
3. Identification of development standards that shall be required under the agreement.
4. Identification of locations for permitted uses on approved conceptual plan.
5. Planned implementation of improvements with a construction and completion schedule.
6. A provision that the standards and processes of the Design Review Overlay District shall apply to the development of the property.
7. A provision for the use of a security agreement for project completion if the proposal is developed in phases.
8. A provision that the property owner/developer acknowledges and agrees that failure to comply with the terms of the agreement shall result in a reversion of the zoning of the real property to the zoning existing immediately prior to the agreement, pursuant to the procedure set forth in Idaho Code §67-6511A.
9. A provision specifying that unless modified or terminated by the governing board, pursuant to Section 17.154.070 of this Ordinance, the commitment and all conditions, terms, duties and obligations included in said commitment is binding on the owner of the property, each subsequent property owner and every person(s) acquiring interest in said property.
10. Other conditions attached to the project through the public hearing process.
11. The Administrator may waive items 2, 4 and 5 after administrative review of the application should no need be found therefore.

**E. Public Hearing.** The Commission shall review and make recommendation to the Council regarding the development agreement as part of the public hearing process for an annexation or rezone request pursuant to Idaho Code §67-6509. The Commission shall conduct at least one (1) public hearing, in which interested persons shall have an opportunity to be heard. The Council shall conduct at least one public hearing in addition to the public hearing conducted by the Commission. The public hearings shall be conducted and noticed as described below, but at a minimum shall comply with §67-6509, Idaho Code. The public hearings shall be noticed in the following manner:

1. **Publication.** At least fifteen (15) days prior to the public hearing, notice of the time and place, and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the City. Notice shall also be made available to other newspapers, radio and television stations serving the City for use as public service announcements.
2. **Posting.** Notice shall be posted on the premises not less than one (1) week prior to the public hearing.
3. **Mailing.** Notice shall be mailed to property owners or purchasers of record within the land being considered, and within 300 feet of the external boundaries of the land being considered and to all political subdivisions providing services within the City, including school districts.

When notice is required to two hundred (200) or more property owners or purchasers of record, alternative methods of providing said public notice may be used pursuant to Idaho Code Section 67-6511. Said alternative forms of notice shall be provided at least fifteen (15) days prior to said public hearing and shall contain notice of time and place of the hearing and a summary of the amendment to be discussed. Said forms of alternative notice shall be:

- (a) Posting of said notice of hearing in three (3) conspicuous locations within said City; and,
- (b) Publishing said notice of hearing in the official newspaper of said City; and,
- (c) Making said notice of hearing available to other local newspapers; and,
- (d) Making said notice of hearing available to the local radio stations for a public service announcement with regard thereto.



For proposed amendments to the Zoning District Map, the applicant shall be charged a fee to cover the cost of advertising and processing.

**F. Additional Hearing.** If the Council makes a material change in the recommendation or alternative options contained in the recommendation by the Commission concerning adoption, amendment or repeal of a plan, further notice and hearing shall be provided before the Council adopts, amends or denies the request.

**G. Recordation.** Development agreements shall be recorded in the office of the Blaine County Recorder and shall take effect upon adoption of the Ordinance establishing the zoning map amendment by the Council. A copy of the agreement shall be attached to the Ordinance establishing the rezone.

**SECTION 17.154.050. STANDARDS.**

**A. Applicability.** The standards identified in the subsections below shall apply to all annexations and rezones involving development agreements, unless otherwise waived by the Administrator, Commission or Council.

**B. Comprehensive Plan Compliance.** The proposal is in conformance with and promotes the purposes and goals of the comprehensive plan, zoning code and other applicable ordinances of the City, and not in conflict with the public interest.

1. There will be no significant adverse effect(s) resulting from the proposed zone change and uses(s) authorized upon the public health, safety and general welfare of the neighborhood or the community as a whole.
2. Includes community or employee housing, as defined in Section 16.08.030, for rezones requesting a higher density zone. Payment in-lieu may be accepted for fractions of units as determined by the Council.

**C. City Codes.**

1. Pursuant to Section 17.96.030, all of the design review standards in Chapter 17.96 shall be carefully analyzed and considered for all proposals. This includes detailed analysis of building bulk, undulation and other design elements. The site plan should be sensitive to the architecture and scale of the surrounding neighborhood.
2. A project encompassing three (3) or more acres or otherwise meeting the requirements under Section 16.08.080(1) is required to submit a Planned Unit Development Conditional Use Permit pursuant to Chapter 16.08.

3. The project shall be in conformance with Title 17, Zoning Code; Title 16, Subdivisions; Title 12, Street Standards and all other applicable City ordinances and regulations.

**SECTION 17.154.060. ENFORCEMENT.** Development agreements may be enforced by the City through any means deemed to be appropriate, including, but not limited to, specific enforcement, termination of water service, injunctive relief, monetary damages, criminal penalties and/or termination. Such enforcement options shall not be considered exclusive, but may be combined as deemed appropriate by the City.

**SECTION 17.154.070. MODIFICATION AND TERMINATION.**

**A. Modification of Agreements.** Development agreements may only be modified through the public hearing process identified in Section 17.154.040.E.

**B. Termination of Agreements.**

1. Development agreements may be conditioned to expire after a prescribed time limit authorized by the Council.
2. Development agreements may be amended or terminated by the Council, after a public hearing pursuant to Section 17.154.040.E, for failure to comply with the commitments expressed in the development agreement.
3. Upon termination of a development agreement pursuant to this Section, the property shall revert to the prior zone or in the case of initial zone at annexation, to a zone deemed appropriate by the Council. Development agreements may only be modified through the public hearing process identified in Section 17.154.040.E. All uses that are not compatible with the subsequent zoning designation following termination of the development agreement shall cease. The owner of the property shall apply for a conditional use permit for the property if the use(s) are conditionally allowed within the subsequent zoning district.

**C. Notice.** In the event the City believes that grounds exist for revocation of a permit, the property owner shall be given written notice, by certified mail, of the apparent violation or non-compliance, providing a short and concise statement of the nature and general facts of the violation or non-compliance, and providing the property owner a reasonable period of time not exceeding thirty (30) calendar days to furnish evidence:

1. That corrective action has remedied the violation or non-compliance;

2. That rebuts the alleged violation or non-compliance; and/or,
3. That a Development Agreement application to modify the existing development agreement has been submitted and accepted by the City for processing.

**D. Hearing.** In the event that a property owner fails to provide evidence reasonably satisfactory to the City as provided for in Section 17.154.070.C, the City shall refer the apparent violation or non-compliance to the Council for a public hearing pursuant to Section 17.154.040.E.

1. The Council shall provide the property owner notice and reasonable opportunity to be heard concerning the matter and a public hearing shall be conducted.
2. Within ten (10) calendar days of the completion of the hearing, the Council shall issue a written decision terminating the development agreement or remanding it back to the Commission for the amendment process pursuant to the public hearing process specified within Section 17.154.040.E.


**E. Recordation.** A document recording such termination and zoning reversal shall be recorded in the office of the Blaine County Recorder.

**SECTION 17.154.080. SAVINGS AND SEVERABILITY.** The provisions of this Ordinance are hereby declared to be severable and if any provision of the Ordinance or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this Ordinance.



**SECTION 17.154.090. REPEALER CLAUSE.** All Ordinances and parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

**SECTION 17.154.100. EFFECTIVE DATE.** This Ordinance is necessary for the protection of the public health, safety, and general welfare. The Council orders that this Ordinance be effective immediately upon its passage, approval and publication as provided by law.

PASSED by the City Council and APPROVED by the Mayor this 7th day of  
May, 2001.

  
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Guy P. Coles, Mayor

ATTEST:

  
  
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Sandra E. Cady, City Clerk

Publish: May 16, 2001  
Idaho Mountain Express

