

## ORDINANCE NUMBER 930

AN ORDINANCE OF THE CITY OF KETCHUM, IDAHO, AMENDING TITLE 12, STREETS, SIDEWALKS, PUBLIC UTILITY EASEMENTS AND PUBLIC PLACES, OF THE KETCHUM MUNICIPAL CODE, BY ADDING A NEW CHAPTER, CHAPTER 12.36, TO BE KNOWN AS COMMUNITY FORESTRY MANAGEMENT; PROVIDING GOALS; PROVIDING DEFINITIONS; PROVIDING FOR THE ESTABLISHMENT OF A KETCHUM COMMUNITY FORESTRY DEPARTMENT; PROVIDING THE APPLICABILITY, ADMINISTRATION AND ENFORCEMENT OF THIS CHAPTER; PROVIDING FOR PERMITS; PROVIDING REGULATIONS FOR THE GENERAL CARE AND PROTECTION OF PUBLIC TREES; PROVIDING FOR ADJACENT LANDOWNER RESPONSIBILITY; PROVIDING FOR APPEALS AND PENALTIES; PROVIDING FOR SUMMARY PUBLICATION OF THIS ORDINANCE; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND, PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, the Ketchum City Council has determined that it is in the public's best interest to promote and encourage the proper planting, maintenance and removal of public trees, shrubs and other plants within the City of Ketchum; and,

**WHEREAS**, the City Council finds it appropriate and in the best interest of the City to establish a new department to oversee the administration and implementation of this Chapter and to pursue the designation of "Tree City USA" for the City of Ketchum; and,

**WHEREAS**, the City Council has the authority, by law, to supervise and control all public streets and ways and to adopt regulations to preserve and protect the public health, safety and welfare including the planting, removal, care and maintenance of public trees, shrubs and other plants within the City of Ketchum.

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 12 of the Ketchum Municipal Code to be known as Chapter 12.36, titled Community Forestry Management, to read as follows:

### **12.36.010 Community Forestry Management Goals.**

This Chapter is intended to encourage the preservation, expansion, protection, and proper maintenance of the community forest of Ketchum, in part, by pursuing “Tree City USA” designation. Enhancing the beauty of the City, stimulating the planting and growing of desirable trees and shrubs by following guidelines set forth by the International Society of Arboriculture, providing for protection of public safety, and educating the public about the community forest are the primary goals of this Chapter.

### **12.36.020 Definitions.**

For the purpose of this Chapter, the following terms shall have the meanings herein prescribed. Terms not defined shall have their usual and customary meaning unless otherwise indicated by their use and context. Where the word “shall” is used, it is considered mandatory and not merely directory.

*Abutter* shall mean one whose property touches or adjoins along a border or with a projecting part of the property of another.

*American National Standards Institute (ANSI)* includes ANSI A300 standards – industry developed standards of practice for tree care; and ANSI Z133.1 – safety standards for tree care operators.

*Arboriculture* is the science and art of caring for trees, shrubs and other woody plants in landscape settings.

*City Arborist* shall mean the duly appointed City Arborist of the City of Ketchum and is charged with all public tree care management within the City of Ketchum.

*Community Forest* shall mean the sum of all trees and shrubs within the City of Ketchum.

*Hazard Tree* shall mean a public or private tree whose structure and integrity involves three components: 1. A tree has the potential to fail. 2. An environment may contribute to that failure. 3. Failure of said tree would cause a person or object (i.e. the “target”) to be injured or damaged.

*International Society of Arboriculture (ISA)* is a worldwide professional organization dedicated to fostering a greater appreciation for trees and to promoting research, technology, and the professional practice of arboriculture.

**Nuisance** is an activity, which arises from unreasonable, unwarranted, or unlawful use by a person of his own property, which causes obstruction or injury to the property rights of another.

**Person** is any individual, firm, partnership, association, corporation, company, organization, or entity of any kind.

**Private Tree or Vegetation** shall include all trees, shrubs and plants on private property.

**Property Owner** shall mean the person owning such property as shown by the tax assessor's records, City of Ketchum, unless proof to the contrary is available.

**Public Hazard** is a condition of any tree, shrub, or plant or any substantial portion of a tree, shrub, or plant, which constitutes a hazard to life and property or harbors insects or disease, which constitutes a potential threat to other trees, plants, or shrubs within the City.

**Public Property** shall include, but not limited to, all property owned, leased, or occupied by the City of Ketchum or any of its administrative agencies or departments.

**Public Tree or Vegetation** shall include all trees, shrubs and plants on public property, including rights-of-way and landscaping easements dedicated to the City of Ketchum.

**Public Right-of-Way (ROW)** shall mean a legal right of public passage over another person's ground including, but not limited to, public streets, alleys, sidewalks and trails.

**Tree Appeals Board** shall consist of the Planning Director or department representative of his/her designee, the City Administrator, and the Street Superintendent.

**Tree Department** shall be titled Ketchum Community Forestry Department and shall consist of the City Arborist and the Tree Appeals Board.

**Topping or Heading Back** involves cutting limbs back to a stub, bud, or lateral branch not large enough to assume apical dominance.

**12.36.030 Ketchum Community Forestry Department.**

**A. Establishment** – There is hereby established a Ketchum Community Forestry Department.

**B. Duties** – The department shall have the duty and responsibility to oversee the administration and implementation of this Chapter and such other activities as affect the Ketchum Community Forest.

**C. Department Members** – The City Arborist, the Planning Director or department representative of his/her designee, the City Administrator, and the Street Superintendent shall serve the department as members. Maintenance of the Community Forest assets will be an interdepartmental responsibility.

**D. Tree Appeals Board** - The Planning Director or department representative of his/her designee, the City Administrator, and the Street Superintendent shall serve the department as members of the Tree Appeals Board.

**12.36.040 Applicability.**

The terms and provisions of this Chapter shall apply to all trees, shrubs, and plants located on public property, including City-owned rights-of-way and the irrigation and electrical power therein.

**12.36.050 Administration.**

It shall be the duty of the City Arborist to enforce the provisions of this Chapter.

**12.36.060 Enforcement.**

The City Arborist shall have the power to promulgate and enforce rules, regulations and specifications concerning the trimming, spraying, removal, planting, pruning and protection of trees, shrubs, vines, hedges and other plants upon the right-of-way of any street, alley, sidewalk, or other public place in the City. The City Arborist shall approve all Public Tree Permits and public tree removal applications.

**12.36.070 Permits.**

**A.** A Public Tree Permit is required to perform any work (including, but not limited to planting, pruning branches or roots, fertilizing, pest control, or

any chemical application) on any public tree, including those in city Rights-of-Way.

- B. Public Tree Permits shall be acquired from the City Planning Department and shall be approved by the City Arborist.
- C. Public Tree Permits will be issued to persons exhibiting minimum arboricultural qualifications (as determined by the City Arborist), appropriate insurance, and are valid for the calendar year or the balance of the calendar year.
- D. Separate written application shall be required for public tree removal.

**12.36.080 Regulations for the General Care and Protection of Public Trees.**

- A. It shall be unlawful for any person to abuse, poison, destroy or mutilate any public tree. Under no circumstance shall any person cut, carve, transplant, top, or remove any public tree; attach any rope, wire, nails, advertising posters or other contrivance to any such tree; allow any gaseous, liquid, or solid substance which is harmful to trees to come in contact with them; or to set fire to burn when such fire or the heat thereof will injure any portion of the tree.
- B. Work performed on any public tree shall meet standards set forth by the American National Standards Institute (ANSI) and shall not be performed prior to securing a Public Tree Permit. Substandard work performed on public trees, as determined by the City Arborist, may result in the loss of the Public Tree Permit. Any decision of the City Arborist may be appealed to the Tree Appeals Board according to Subsection 12.36.100 (A) Appeals, of this Chapter.
- C. The City of Ketchum has the right to plant, maintain and remove any tree or shrub from the City ROW or other public property. The City of Ketchum may prune or remove any tree, branch, root or other part thereof, which is located within, on, over or under or which encroaches into, on, over or under any public street or other public property as said City may deem necessary, in its sole discretion.
- D. It shall be unlawful, as a normal practice, for any person to top any public tree.

- E.** It shall be unlawful for any person to flush cut any branch on any public tree.
- F.** It shall be unlawful for any person to leave branches and debris resulting from the pruning or removal of trees in the ROW or public property immediately upon completion of such pruning or removal. Exceptions may be allowed by the City Arborist.
- G.** Public trees shall be pruned and maintained by trained City employees who are supervised or directed by the City Arborist, except in such cases where pruning of public trees is undertaken by utilities, professional tree care operators or other persons having secured a Public Tree Permit.
- H.** Pruning of public trees undertaken by utilities, professional tree care operators or other persons shall be done under the supervision or direction of a certified arborist (ISA) or otherwise qualified person, as approved by the City Arborist. Compliance with this standard shall require the certified arborist (or otherwise qualified personnel, as approved by the City Arborist) to first visit the site of the work, to prescribe the pruning to be done and to actively monitor the pruning operation, all of which shall be in conformance with the requirements of this Chapter.
- I.** Any person engaged in the business or occupation of application or removal of holiday lights on public trees shall be required to secure a Public Tree Permit in advance of such activity, and shall be supervised or directed by a certified arborist (ISA) or otherwise qualified person as approved by the City Arborist. Light strands shall be hung in such a manner as to not damage any part of the tree (i.e. loose around the trunk, stem, and/or branches, limited amount of strands as determined and approved by the City Arborist). All holiday light strands on public trees shall be installed no earlier than November 1<sup>st</sup> and removed prior to April 15<sup>th</sup> unless otherwise approved by the City Arborist. Light strands on public trees may be removed by the City, under its sole discretion, for the purposes of routine, demand, or emergency pruning activities.
- J.** Snow and ice removal material shall not be placed within two (2) feet of any public tree trunk and shall never be placed in planting beds.
- K.** No person shall excavate any ditches, tunnels, trenches, or lay any driveway within the radius of ten feet (10') from the dripline of any public tree without first obtaining a Public Tree Permit from the City Arborist.

- L. The City shall have the right to prune any tree or shrub if and when, in the opinion of the City, it interferes with visibility of any traffic control device or intersection, it interferes with snow removal activities, or it interferes with pedestrian or vehicular traffic. Vehicular and sidewalk clearance specifications shall follow those in Subsection 17.64.010 (I) of the Ketchum Municipal Code. A clearance of seven (7) feet above the sidewalk surface shall be maintained. A clearance of twelve (12) feet above the street surface shall be maintained for snow removal purposes. If a tree or shrub is on private property, the City Arborist shall notify the property owner of the pruning necessity and options.
  
- M. It shall be unlawful for any person to remove or destroy any public tree, except upon prior written approval of the City Arborist. Exceptions of written permission by the City Arborist may be made in cases of emergency, where a public tree is severely damaged by storm or other cause, there is an immediate threat to public safety, or where other pruning alternatives are impractical due to utility lines or other obstructions or circumstances, and the City Arborist is unavailable. Prior to any public tree removal, a person shall make a separate written application to the Planning Department and the City Arborist shall review such request and approve, approve with conditions, or deny such application. The City Arborist shall issue a written decision of each application stating the facts and reasons upon which such decision is based. Any decision of the City Arborist may be appealed to the Tree Appeals Board according to Subsection 12.36.100 (A) Appeals, of this Chapter.

**12.36.090 Adjacent Landowner Responsibility.**

Each landowner with private trees on his/her land is hereby responsible to carry out the following duties concerning said trees:

- A. Maintain trees on private lands so they will not endanger the public or become hazardous to public rights-of-way, public utilities or other public property.
  
- B. Control injurious pests by removing debris or trees harboring insects or disease from their private real property or by using other legally approved methods to eradicate tree-borne insects or disease. Such methods shall not cause undue harm to the environment.

- C. The City Arborist is authorized to take such steps he/she may deem necessary to protect the community forest from actions or inaction regarding trees on private lands. Retention or neglect of a tree on private lands which harbors insects or diseases which endangers the health or vitality of the Ketchum Community Forest shall be deemed a violation of this Chapter which shall be subject to the remedies and penalties otherwise set forth herein.

#### **12.36.100 Appeals.**

- A. **Appeals from the City Arborist.** An appeal from any decision of the City Arborist made in the administration or enforcement of this Chapter may be made to the Tree Appeals Board by filing a notice of appeal in writing with the Planning Department. Upon hearing the appeal, the Tree Appeals Board shall consider the record, the decision of the City Arborist and the notice of appeal together with oral presentation by the appellant, the City Arborist and the applicant. The Tree Appeals Board may affirm, reverse or modify, in whole or in part, the decision of the City Arborist. The Planning Department shall transmit a copy of the Tree Appeals Board's decision to the appellant, the applicant and any person who has requested a copy in writing.
- B. **Appeals from the Tree Appeals Board.** An appeal from any decision of the Tree Appeals Board made in the administration or enforcement of this Chapter may be made to the City Council by filing a notice of appeal in writing with the Planning Department. Upon hearing the appeal, the Council shall consider matters that were previously considered by the Tree Appeals Board as evidenced by the record, the decision of the Tree Appeals Board and the notice of appeal together with oral presentation by the appellant, the City Arborist and the appellant. The City Council may affirm, reverse or modify, in whole or in part, the decision of the Tree Appeals Board. The Planning Department shall transmit a copy of the Council's decision to the appellant, the applicant and any person who has requested a copy in writing.
- C. **Time for Filing Appeals.** The written notice of appeal shall be filed before five p.m. of the fifteenth (15<sup>th</sup>) calendar day after the decision of the City Arborist, or the Tree Appeals Board, as applicable, has been rendered. The failure to physically file a notice of appeal with the Planning Department within the time limits prescribed by this Section shall be jurisdictional and shall cause automatic dismissal of such appeal.



- D. Fee for Appeals.** A fee in the amount of \$75.00 (seventy-five dollars) shall be paid upon filing the appeal. In the event the fee is not paid as required, the appeal shall not be considered filed.
- E. Notice of Appeal – Form and Contents.** The notice of appeal shall be in writing and in such form as shall be available from the Planning Department, which shall require to be set forth with specificity all basis for appeal, including the particulars regarding any claimed error or abuse of discretion.

**12.36.110 Penalties.**

- A. Misdemeanor.** Any person who shall violate any provision of this Chapter shall be guilty of a misdemeanor and upon conviction, subject to a fine of not more than \$300.00 (three hundred dollars) or imprisonment for a period not to exceed six months, or both such fine and imprisonment. Each day a violation continues shall be considered a separate offense, punishable as described in this Section.
- B. Civil Enforcement.** Appropriate actions and proceedings may be taken at law or in equity to prevent any violation of the provisions stated in this Chapter to prevent any violation of these regulations to recover damages, to restrain, correct or abate a violation and to prevent illegal occupancy of public property. These remedies shall be in addition to the penalties described above.

**SECTION 2. PUBLICATION OF ORDINANCE BY SUMMARY.**

In lieu of publishing this Ordinance in its entirety, the City of Ketchum shall publish the summary of this Ordinance, attached hereto as Exhibit A, and incorporated herein by reference. The City Council hereby finds that said summary is true and complete and provides adequate notice of the contents of this Ordinance to the public in compliance with law.

**SECTION 3. 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 4. REPEALER CLAUSE.** All City of Ketchum ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.


**SECTION 5. EFFECTIVE DATE.** This Ordinance shall be in full force and effect from and after its passage, approval and publication.

PASSED by the City Council and APPROVED by the Mayor of Ketchum this 20<sup>th</sup> day of October, 2004.

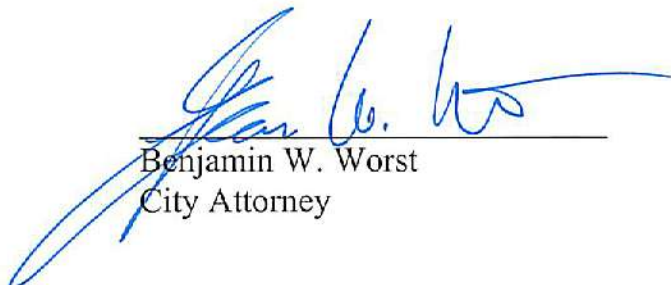
CITY OF KETCHUM, IDAHO

  
EDWARD SIMON, Mayor

ATTEST:

  
Sandra E. Cady, CMC  
Clerk/Treasurer

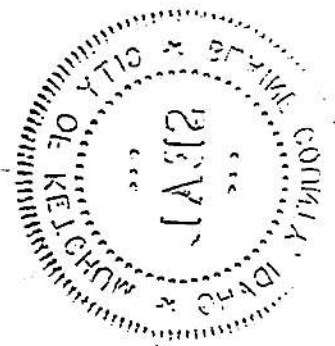
APPROVED AS TO FORM  
AND CONTENT:

  
Benjamin W. Worst  
City Attorney



Publish:

Summary  
Idaho Mountain Express  
October 27, 2004



## EXHIBIT A

### PUBLICATION OF SUMMARY OF ORDINANCE NO. 930 CITY OF KETCHUM, IDAHO

AN ORDINANCE OF THE CITY OF KETCHUM, IDAHO, AMENDING TITLE 12, STREETS, SIDEWALKS, PUBLIC UTILITY EASEMENTS AND PUBLIC PLACES, OF THE KETCHUM MUNICIPAL CODE, BY ADDING A NEW CHAPTER, CHAPTER 12.36, TO BE KNOWN AS COMMUNITY FORESTRY MANAGEMENT; PROVIDING GOALS; PROVIDING DEFINITIONS; PROVIDING FOR THE ESTABLISHMENT OF A KETCHUM COMMUNITY FORESTRY DEPARTMENT; PROVIDING THE APPLICABILITY, ADMINISTRATION AND ENFORCEMENT OF THIS CHAPTER; PROVIDING FOR PERMITS; PROVIDING REGULATIONS FOR THE GENERAL CARE AND PROTECTION OF PUBLIC TREES; PROVIDING FOR ADJACENT LANDOWNER RESPONSIBILITY; PROVIDING FOR APPEALS AND PENALTIES; PROVIDING FOR SUMMARY PUBLICATION OF THIS ORDINANCE; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND, PROVIDING AN EFFECTIVE DATE.

The following is a summary of the principal provisions of Ordinance No. 930 of the City of Ketchum, Idaho, passed and adopted on the 20<sup>th</sup> day of October, 2004, by the Ketchum City Council and the Mayor of Ketchum, Idaho.

**Section 1:** Provides for a new Chapter to be added to Title 12 of the Ketchum Municipal Code to be known as Chapter 12.36, titled "Community Forestry Management".

- 12.36.010: Sets forth the goals of Community Forestry Management.
- 12.36.020: Sets forth the definitions of words used in this Chapter.
- 12.36.030: Establishes the Ketchum Community Forestry Department, its duties, organization and appeals board.
- 12.36.040: Sets forth the applicability of this Chapter.
- 12.36.050: Establishes the administration to enforce this Chapter.
- 12.36.060: Provides for the enforcement of this Chapter.
- 12.36.070: Sets forth when permits are required, where to acquire them, who approves permits and qualifications.
- 12.36.080: Sets forth the regulations for the general care and protection of public trees.
- 12.36.090: Sets forth the responsibility of the adjacent landowner.
- 12.36.100: Provides for an appeal process, the time for filing the appeal, the fee, and the form and content of the notice of appeal.

12.36.110: Sets forth the penalties for any violation of the provisions of this Chapter including misdemeanor charges, fines and imprisonment, including civil enforcement remedies.

**Section 2:** Provides for publication of this Ordinance by summary.

**Section 3:** Provides a Savings and Severability Clause.

**Section 4:** Provides for a Repealer Clause.

**Section 5:** Provides for an effective date of this Ordinance.

This Ordinance was passed by the Ketchum City Council and approved by the Mayor on the 20<sup>th</sup> day of October, 2004, and shall be in full force and effect on the 20<sup>th</sup> day of October, 2004.

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


The Mayor and City Council approved the foregoing Summary for publication pursuant to Idaho Code Section 50-901A on the 20<sup>th</sup> day of October, 2004.


CITY OF KETCHUM, IDAHO



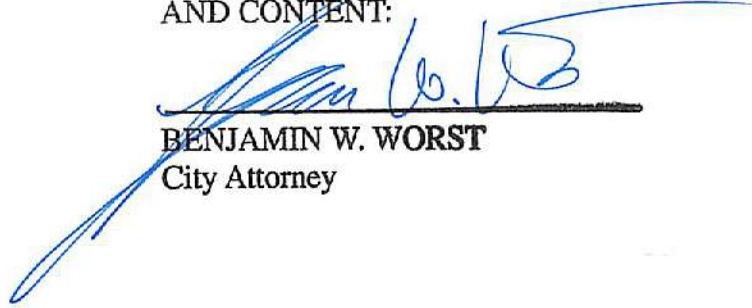
EDWARD SIMON, Mayor

ATTEST:



  
Sandra E. Cady, CMC  
City Treasurer/Clerk

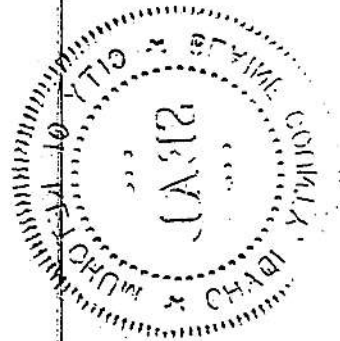
APPROVED AS TO FORM  
AND CONTENT:



BENJAMIN W. WORST  
City Attorney

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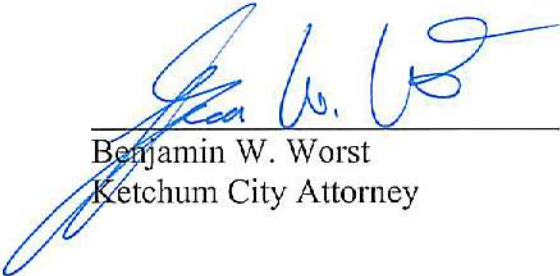
RECEIVED BY THE BOARD OF HEALTH  
CITY OF NEW YORK

WILLIAM W. WOODRUFF  
City Engineer

**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. 930 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 20<sup>th</sup> day of October , 2004.



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Benjamin W. Worst  
Ketchum City Attorney

Publish: Idaho Mountain Express  
Date: October 27, 2004