ORDINANCE NUMBER 974

AN EMERGENCY ORDINANCE OF THE CITY OF KETCHUM, IDAHO, FINDING THAT AN IMMINENT PERIL TO THE PUBLIC HEALTH, SAFETY AND WELFARE EXISTS REQUIRING THE PROHIBITION OF THE INJURY OR REMOVAL OF LIVE PRIVATE TREES WITHIN THE CITY; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION BY SUMMARY; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Ketchum currently has no prohibition against the injury or removal of mature trees on private property in the City; and

WHEREAS, three mature, historic trees located at 131 First Avenue South, Ketchum, Idaho were recently girdled effectively killing such trees in preparation for removal; and

WHEREAS, public trees are already protected pursuant to Ketchum Ordinance No. 930 and Ketchum Municipal Code 12.36.080 making it unlawful for any person to remove or destroy any public tree, except upon written approval of the City Arborist; and

WHEREAS, the Local Land Use Planning Act, Idaho Code §§67-6501 *et. seq.*, authorizes the City of Ketchum to develop standards for greenbelts, planting strips, open spaces and trees; and

WHEREAS, the Ketchum Comprehensive Plan, Chapter 9.1, Policy 9.1.4, states the Plan recognizes the importance of healthy, mature trees to the character of Ketchum and instructs the City to actively preserve mature landscaping, particularly healthy mature trees during development and redevelopment of property and to encourage replanting to replace dying old growth trees, taking view corridors into consideration; and

WHEREAS, the Short Term Action Plan set forth in Policy 9.5.1 of the Ketchum Comprehensive Plan calls for the revision of the Zoning Code restricting the removal of mature trees without equitable replacement including mature trees in the Community Core (CC) Zone; and

WHEREAS, the Tom Hudson Company's Downtown Master Plan Framework was duly adopted by the City and states as a Guiding Principal that downtown development will honor, protect and enhance our connection to the natural world; and

WHEREAS, pursuant to Ketchum Municipal Code, Chapter 12.36.090(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; and

WHEREAS, the City Arborist has deemed that all live private trees greater than fourteen (14) inches diameter at breast height ("DBH") within the City must be prohibited from injury or removal; and

WHEREAS, prohibiting the injury or removal of such trees is necessary to accomplish the above-referenced goals and policies; and

WHEREAS, the City Council finds that imminent peril to the public health, safety and welfare exist requiring the adoption of an ordinance because the current Ketchum Municipal Code does not adequately protect such trees within the City of Ketchum and that grounds exist for the adoption of an emergency ordinance; and

WHEREAS, pursuant to Idaho Code § 67-6523, the City of Ketchum is authorized to adopt an emergency ordinance for a period of not longer than one hundred eighty-two (182) days; and

WHEREAS, the City Council finds that an emergency ordinance is necessary for the protection of the public health, safety and welfare.

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

SECTION 1. FINDING OF IMMINENT PERIL TO THE PUBLIC HEALTH, SAFETY AND WELFARE AND IMPOSITION OF PROHIBITION ON THE INJURY OR REMOVAL OF LIVE PRIVATE TREES: The City Council hereby finds that an imminent peril to the public health, safety and welfare exists and hereby imposes a prohibition on the injury or removal of any live tree located on private property in the City of Ketchum that is greater than fourteen (14) inches diameter at breast height ("DBH") unless the City Arborist determines such tree to be a hazard tree as stated in the Ketchum Municipal Code, Chapter 12.36.020 or determines that such tree is located within the buildable area of a lot (*i.e.,* not within any required yard setback).

SECTION 2. ENFORCEMENT:

a. Criminal Enforcement. Any owner of any tree subject to Section 1 hereinabove or any agent of any such owner, or any other entity or individual, violating any provision of this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars ($300.00) or imprisonment in the county jail for a period not to exceed six (6) months, or both, and shall be ordered to pay restitution to the City of Ketchum for the value of such tree in accordance with the "Replacement Cost Method" set forth in the Guide for Plant Appraisal, 9th Edition, by the Council Of Tree and Landscape Appraisers. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

b. Civil Enforcement. Appropriate actions and proceedings may be taken at law or in equity to prevent any violation of this Ordinance which shall be in addition to the penalties described above. In addition to any of the foregoing remedies, the city attorney, acting on behalf of the city council, may maintain an action for an injunction to restrain any violation of this title. The City Arborist is empowered to cause any property, tree or tract of land to be inspected and examined for compliance with this Ordinance. This title shall not be construed to hold the city

responsible for any damage to persons or property by reason of such inspection or reinspection authorized herein or failure to inspect or reinspect.

SECTION 3. DURATION: This emergency ordinance will terminate at the behest of the City Council or one hundred and eighty-two (182) days from the adoption, whichever occurs first.

SECTION 4. 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 5. 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 6. REPEALER CLAUSE. All City of Ketchum ordinances or resolutions or parts thereof which are in conflict herewith are hereby repealed.

SECTION 7. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its passage and approval.

PASSED BY THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO and APPROVED by the Mayor this 8th of June, 2006.

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

Publish: Idaho Mountain Express
_____, 2006

Post: Ketchum City Hall
The Community Library
Ketchum Post Office
Atkinsons' Market
Iconoclast Bookstore

EXHIBIT A

PUBLICATION OF SUMMARY OF ORDINANCE NO. 974
CITY OF KETCHUM, IDAHO

AN EMERGENCY ORDINANCE OF THE CITY OF KETCHUM, IDAHO, FINDING THAT AN IMMINENT PERIL TO THE PUBLIC HEALTH, SAFETY AND WELFARE EXISTS REQUIRING THE PROHIBITION OF THE INJURY OR REMOVAL OF LIVE PRIVATE TREES WITHIN THE CITY; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION BY SUMMARY; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

A summary of the principal provisions of Ordinance No. 974 of the City of Ketchum, Blaine County, Idaho, adopted on June 8, 2006, is as follows:

Section 1: Finds that an imminent peril to the public health, safety and welfare exists caused by the injury or removal of private trees within the City.

Section 2: States the criminal and civil enforcement for violating any provision of Ordinance No. 974.

Section 3: Establishes the duration of this ordinance to be one hundred and eighty-two (182) days.

Section 4: Provides for publication of a summary of the Ordinance.

Section 5: Provides a savings and severability clause.

Section 6: Provides a repealer clause.

Section 7: Establishes the effective date.

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. 974 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 8th day of June, 2006.

Benjamin W. Worst,
Ketchum City Attorney

Publish: Idaho Mountain Express
Date: _____, 2006

Benjamin W. Worst
CITY OF KETCHUM
Post Office Box 2315
Ketchum, Idaho 83340
Telephone: (208) 726-7801
Facsimile: (208) 726-7845
ISB No. 5639

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IN THE MATTER OF ORDINANCE 974 AND PROCLAMATION OF ORDINANCE 974.	)	**AFFIDAVIT OF POSTING**

*****

STATE OF IDAHO)
) ss.
County of Blaine)

I, Barbi Ross, DEPOSE, SWEAR, AND CERTIFY AS FOLLOWS:

1. I am a resident of Blaine County, State of Idaho.
2. I am over the age of eighteen (18) years.
3. I have personal knowledge of the facts stated herein and am competent to testify thereto if called upon to do so.
4. I posted a true and correct copy of Ordinance 974 and the Proclamation of such Ordinance, a true and correct copy of which are attached hereto as Exhibit A and Exhibit B, in the following locations at the following times:

Location	Time
1. Ketchum City Hall	11:30
2. The Community Library	12:25
3. Ketchum Post Office	12:10
4. Atkinsons' Market	11:40
5. Iconoclast Bookstore	11:45

FURTHER YOUR AFFIANT SAYETH NOT.

Dated this 8th day of June, 2006.

Barbi Ross

Printed Name: Barbi Ross

SUBSCRIBED AND SWORN to before me this 8th day of June, 2006.

MARTA R. THOMPSON NOTARY PUBLIC STATE OF IDAHO

Marta R. Thompson

Notary Public for Idaho

Residing at Ketchum

Commission Expires: 5/21/09

MARTA R. THOMPSON
NOTARY
PUBLIC
STATE