

ORDINANCE NO. 997

AN ORDINANCE OF THE CITY OF KETCHUM, IDAHO, AMENDING TITLE 17, CHAPTER 17.88, FLOODPLAIN MANAGEMENT OVERLAY ZONING DISTRICT (FP), 17.88.050, ARTICLE 1. FLOOD DAMAGE PREVENTION, GENERAL PROVISIONS, C.

USES PERMITTED AND 17.88.060, ADMINISTRATION, E. CRITERIA FOR EVALUATION OF APPLICATIONS, OF THE KETCHUM MUNICIPAL CODE BY ADDING AN EXCLUSION TO USES PERMITTED AND ADDING CRITERIA FOR EVALUATION OF APPLICATIONS; BY PROVIDING A SEVERABILITY CLAUSE; BY PROVIDING A CODIFYING CLAUSE; BY PROVIDING A REPEALER CLAUSE; BY PROVIDING FOR PUBLICATION BY SUMMARY; AND BY PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council, in 1978, adopted the Floodplain Management Overlay Zoning District (FP) within the City of Ketchum finding that the Big Wood River and its tributaries and floodplains in Ketchum are important to the well being of its citizens as a source of recreation, fish and wildlife habitat, aesthetic beauty, a source of irrigation water as well as other economic and lifestyle values; and

WHEREAS, Section 17.88.020, Purpose, sets forth these principles to promote the public health, safety and general welfare:

- A. To protect human life and health;
- B. To minimize expenditure of public money for costly flood control projects;
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. To minimize prolonged business interruptions;
- E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
- F. To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
- G. To insure that potential buyers are notified that property is in an area of special flood hazard;
- H. To insure that those who occupy the areas of special flood hazard assume the responsibility for their actions;
- I. To allow the river and creeks and their adjacent lands to convey flood waters to minimize property damage;
- J. To regulate uses in the floodplain for the purpose of preserving, protecting, and enhancing the abundance and diversity of fish, wildlife and riparian resources;
- K. To protect, preserve and enhance the waterways and floodplains as a recreation resource;
- L. To provide a formal procedure for stream alteration permit applications;
- M. To restrict or prohibit uses which are injurious to health, safety or property in times of flood, which result in environmental damage, or that cause increased flood heights or velocities; and

- N. To guide development and City review of development in order to establish the most appropriate building envelopes for lots existing and in new subdivisions; and

WHEREAS, the Floodplain Management Overlay Zoning District does not have any standards, regulations or criteria related to the use of herbicides, fertilizers and/or pesticides adjacent to waterways; and

WHEREAS, these hazardous, toxic, synthetic chemicals and other substances are known to contribute to water quality degradation and affect properties and waters adjacent to their use; and

WHEREAS, the current regulations, standards and criteria are in conflict with regards to building construction adjacent to waterways. The regulations allow buildings to be located at the twenty-five (25) foot riparian zone. Construction activities for structures and buildings typically requires a minimum of ten (10) feet of intrusion into the riparian zone by heavy equipment and workers; and

WHEREAS The City's Comprehensive Plan has the following policies that are applicable to the proposed amendments.

Chapter 4.1 General Land Use Policies

Goal 1: To strategically plan for present and future land use needs thereby establishing a well thought out pattern of development. This includes the following:

- encourage land uses in harmony with existing natural resources
- prohibit detrimental alteration of existing topography and terrain
- protect natural land features and wildlife habitat
- prohibit alteration of hilltops, rock outcrops, knolls, ridges, river banks, marshes, and river channels through development standards and other regulations
- ensure new development fits in with Ketchum's small mountain town character
- establish land use policies that ensure orderly development relative to public services and facilities
- consider incentives and/or land use regulations that promote energy efficiency, and reduce over consumption of resources
- concentrate densities within the existing community to most efficiently provide services and commercial necessities

Policy 4.1.1: Protect rivers and floodplains by enforcing and strengthening rules and regulations that apply to these areas.

Part 8: Open Space, Recreation and Heritage

Policy 8.3: Preserve aesthetic and sensitive areas in their natural states through open space zoning, zoning district standards, purchase of land and/or cooperation with public and private entities. Continue to implement and enforce standards outlined in both the Floodplain and Mountain Overlay Districts.

Part 9: Environmental Resources and Hazards

Goal 1: Protect the aesthetic values, wildlife and open space habitat and resources of the natural environment.

Policy 9.3.3: Require better protection and restoration of riparian habitat and improved pedestrian access to the Big Wood River, Warm Springs Creek and Trail Creek.

Policy 9.3.4: Provide standards for the restoration and maintenance of riparian areas for better wildlife habitat, water quality protection and flood protection.

Policy 9.3.5: Offer an incentive to leave riparian corridors that are larger than current requirements in open space use.

Part 11: Property Rights

Goal 1: Protect private property rights when balancing development impacts on adjoining private properties and the general community; and

WHEREAS, the Ketchum City Council finds that certain revisions to Ketchum Municipal Code, Title 17, Chapter 17.88, Floodplain Management Overlay Zoning District (FP), consistent with the above-referenced recitals will promote the health, safety and welfare of the residents of and visitors to the City of Ketchum.

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

SECTION 1. That Chapter 17.88, Section 17.88.040 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:

“Fertilizer” means any substance containing one (or more) recognized plant nutrient which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, and includes limes and gypsum. It does not include unmanipulated animal manure and vegetable organic waste-derived material, or biosolids regulated under 40 C.F.R. Part 503.

“Organic fertilizer” means a non-synthetic fertilizer.

“Pesticide” means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, plant, fungus or virus; (2) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant; and (3) any nitrogen stabilizer. “Pesticide” shall not include any article that is a “new animal drug” within the meaning of section 321(w) of Title 21 of the United States Code, that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 321(x) of Title 21 of the United States Code bearing or containing a new animal drug.

“Restricted-use chemical” means any pesticide, pesticide use, soil sterilant, or fertilizer classified for restricted use by the United States Environmental Protection Agency. Restricted-use pesticides typically may not be applied by anyone not licensed to apply restricted-use pesticides.

“Soil sterilant” means a chemical that temporarily or permanently prevents the growth of all plants and animals.

SECTION 2. That Chapter 17.88, Section 17.88.050 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:

- C. Uses Permitted.** Due to the potential hazard to individuals as well as public health, safety and welfare, uses allowed in the Floodplain Management Overlay Zoning District are those which are permitted, conditional, and accessory as contained in the underlying zoning district; due to the sensitive ecology of the river system and riparian area and the detrimental impacts that uncontrolled use of pesticides and herbicides can create to both the river system and human health; however, due to the extremely hazardous nature of the floodway due to velocity of flood waters carrying debris, potential projectiles and erosion potential, the following provisions apply in addition to all others to the floodway sub-district:
1. Encroachments including fill, new construction, substantial improvements and other development are prohibited unless certification by a registered professional hydraulic engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge; and uses within the floodway shall be restricted to those which are required by public necessity (for example, bridges, water pumps), recreational use (for example, paths), wildlife habitat improvements (for example, vegetation, nesting structures, pool/riffle improvements), and gravel extraction; provided that the use/encroachment meets the approval of the Federal Emergency Management Agency and National Flood Insurance Program and does not jeopardize the City's participation in the National Flood Insurance Program.
 2. If Subsection D.1 of this Section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 17.88.070, Provisions for Flood Hazard Reduction.
 3. No use of restricted-use chemicals or soil sterilants will be allowed within one hundred (100) feet of the mean high water mark on any property within the City limits at any time.
 4. No use of pesticides, herbicides, or fertilizers will be allowed within twenty-five (25) feet of the mean high water mark on any property within the City limits unless approved by the City Arborist.
 5. All applications of herbicides and/or pesticides within one hundred (100) feet of the mean high water mark, but not within twenty-five (25) feet of the mean high water mark, must be done by a licensed applicator and applied at the minimum application rates.
 6. Application times for herbicides and/or pesticides will be limited to two (2) times a year; once in the spring and once in the fall unless otherwise approved by the City Arborist.
 7. The application of dormant oil sprays and insecticidal soap within the riparian zone may be used throughout the growing season as needed.

SECTION 3. That Section 17.88.060 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:

E. Criteria for Evaluation of Applications. The criteria of floodplain development permit applications, Waterways Design Review applications, and stream alteration permit applications shall be as follows:

1. Preservation or restoration of the inherent natural characteristics of the river and creeks and floodplain areas. Development does not alter river channel;
2. Preservation of riparian vegetation and wildlife habitat, if any, along the stream bank and within the required minimum twenty-five (25) foot setback or riparian zone. No construction activities, encroachment or other disturbance into the twenty-five (25) foot riparian zone, except for restoration, shall be allowed at any time;
3. No development other than development by the City of Ketchum or development required for emergency access shall occur within the twenty-five (25) foot riparian zone with the exception of approved stream stabilization work. The Planning and Zoning Commission may approve access to property where no other primary access is available. Private pathways and staircases shall not lead into or through the riparian zone unless deemed necessary by the Planning and Zoning Commission.
4. A landscape pPlan and time frame shall be provided for rehabilitation of to restore any riparian vegetation damaged as a result of the work done within the twenty-five (25) foot riparian zone that is degraded, not natural or which does not promote bank stability;
5. New or replacement planting and vegetation shall include plantings that are low-growing and have dense root systems for the purpose of stabilizing stream banks and repairing damage previously done to riparian vegetation. Examples of such plantings include: red osier dogwood, common choke cherry, service berry, elder berry, river birch, skunk bush sumac, beb's willow, drummond's willow, little wild rose, gooseberry, and honeysuckle;
6. Landscaping and driveway plans to accommodate the function of the floodplain to allow for sheet flooding. Flood water carrying capacity is not diminished by the proposal. Surface drainage is controlled and shall not adversely impact adjacent properties including driveways drained away from paved roadways. Culvert(s) under driveways may be required. Landscaping berms shall be designed to not dam or otherwise obstruct floodwaters or divert same onto roads or other public pathways;
7. Impacts of the development on aquatic life, recreation, or water quality upstream, downstream or across the stream are not adverse;
8. Building setback in excess of minimum required along waterways is encouraged. An additional ten (10) foot building setback is encouraged to provide for yards, decks and patios outside the twenty-five (25) foot riparian zone;
9. The bottom of the lowest floor in the floodplain shall be a minimum of one foot above the I.R.F.;

10. The back fill used around the foundation in the floodplain shall provide a reasonable transition to existing grade, but shall not be used to fill the parcel to any greater extent. Compensatory storage shall be required for any fill placed within the floodplain;
11. Driveways shall comply with effective street standards; access for emergency vehicles has been adequately provided for;
12. Landscaping or revegetation shall conceal cuts and fills required for driveways and other elements of the development;
13. (Stream Alteration.) The proposal is shown to be a permanent solution and creates a stable situation;
14. (Stream Alteration.) No increase to the one hundred (100) year floodplain upstream or downstream has been certified by a registered Idaho engineer;
15. (Stream Alteration.) The recreational use of the stream including access along any and all public pedestrian/fisher's easements and the aesthetic beauty shall not be obstructed or interfered with by the proposed work;
16. Wetlands shall not be diminished;
17. (Stream Alteration.) Fish habitat shall be maintained or improved as a result of the work proposed;
18. (Stream Alteration.) The proposed work shall not be in conflict with the local public interest, including, but not limited to, property values, fish and wildlife habitat, aquatic life, recreation and access to public lands and waters, aesthetic beauty of the stream and water quality;
19. (Stream Alteration.) The work proposed is for the protection of the public health, safety and/or welfare such as public schools, sewage treatment plant, water and sewer distribution lines and bridges providing particularly limited or sole access to areas of habitation. (Ord. 941 § 17.88.060, 2004)

SECTION 4. SAVINGS AND SEVERABILITY. If any section, subsection, paragraph, subparagraph, item, provision, regulation, sentence, clause or phrase is declared by a court to be invalid, such actions shall not affect the validity of this Ordinance as a whole or any part thereof other than the part declared invalid.

SECTION 5. CODIFICATION. The City Clerk is instructed pursuant to Section 1-1-3 of the City of Ketchum Municipal Code to immediately forward this ordinance to the codifier of the official municipal code for proper revision of the code.

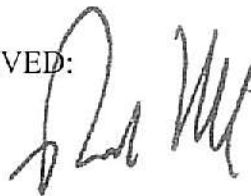
SECTION 6. REPEALER CLAUSE. All City of Ketchum Ordinances or parts thereof which are in conflict herewith are hereby repealed.

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.

PASSED BY THE CITY COUNCIL OF THE CITY OF KETHUM, IDAHO, and approved by the Mayor on this 30th day of October, 2006.

APPROVED:



Randy Hall, Mayor

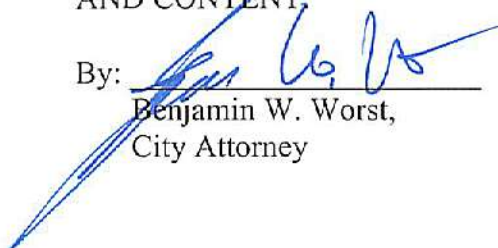
ATTEST:



Sandra E. Cady, CMC
City Treasurer/Clerk

APPROVED AS TO FORM
AND CONTENT:

By:



Benjamin W. Worst,
City Attorney



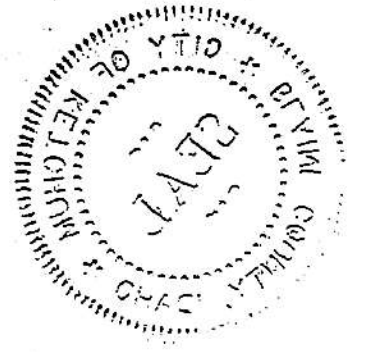


EXHIBIT A

**PUBLICATION OF SUMMARY OF ORDINANCE NO. 997
CITY OF KETCHUM, IDAHO**

AN ORDINANCE OF THE CITY OF KETCHUM, IDAHO, AMENDING TITLE 17, CHAPTER 17.88, FLOODPLAIN MANAGEMENT OVERLAY ZONING DISTRICT (FP), 17.88.050, ARTICLE 1. FLOOD DAMAGE PREVENTION, GENERAL PROVISIONS, C. USES PERMITTED AND 17.88.060, ADMINISTRATION, E. CRITERIA FOR EVALUATION OF APPLICATIONS, OF THE KETCHUM MUNICIPAL CODE BY ADDING AN EXCLUSION TO USES PERMITTED AND ADDING CRITERIA FOR EVALUATION OF APPLICATIONS; BY PROVIDING A SEVERABILITY CLAUSE; BY PROVIDING A CODIFYING CLAUSE; BY PROVIDING A REPEALER CLAUSE; BY PROVIDING FOR PUBLICATION BY SUMMARY; AND BY PROVIDING FOR AN EFFECTIVE DATE.

A summary of the principal provisions of Ordinance No. 997 of the City of Ketchum, Blaine County, Idaho, adopted on October 30, 2006, is as follows:

Section 1: Adds definitions of Fertilizer, Herbicide, Organic Fertilizer and Pesticide to Section 17.88.040, Definitions, Chapter 17.88, Floodplain Management Overlay Zoning District (FP).

Section 2: Prohibits the application of restricted-use chemicals or soil sterilants and establishes regulations for the use of non-restricted chemicals within one hundred (100) feet of the mean high water mark on any property within the City limits.

Section 3: Prohibits construction activities, encroachment or other disturbance into the twenty-five (25) foot riparian zone, except for restoration, at any time; and requires a landscape plan be provided to restore any vegetation within the twenty-five (25) foot riparian zone that is degraded, not natural or which does not promote bank stability.

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.


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:

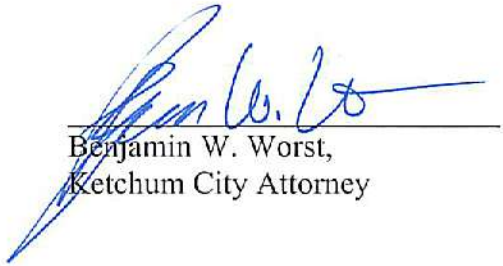


Sandra E. Cady, CMC
City Treasurer/Clerk

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. 997 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 1st day of December, 2006.



Benjamin W. Worst,
Ketchum City Attorney

Publish: Idaho Mountain Express
Date: _____