

# WHITE PETERSON

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November 9, 2023

To: Planning and Zoning Commissioners  
City of Ketchum  
Delivered via meeting packet

From: Matthew Johnson, City Attorney

Re: Administrative Appeal Process – Sawtooth Serenade Design Review

### Background:

This is an administrative appeal to the P&Z Commission of a determination by the Planning Director. The appeal was filed by the Applicant, Scott and Julie Lynch & Yah Bernier and Elizabeth McCaw, & Distrustful Ernest Revocable Trust, represented by Jim Laski of Lawson Laski Clark.

The matter generally concerns the design review process, in particular the interplay between the preliminary design review and the full/final design review as relate to timing and applicability of City ordinances, in particular Ordinance 1234. The details of these issues are presented in the memoranda presented by Mr. Laski for the Applicant and Director Landers for the Planning Department.

### Procedural Status:

This is an administrative appeal of decisions or determinations of the Planning Director, as is provided for in Ketchum Municipal Code §17.144.010. This matter was scheduled by the City Attorney, along with approving deadlines for submission of memorandum, by agreement of the parties involved and approval of the Commission. All three memoranda have been timely submitted and are provided for the Commission's review.

From a process perspective, the Commission can focus its review primarily on those memoranda and their arguments. The Council is reviewing these arguments and addressing interpretation questions in a quasi-judicial role. The remainder of any accompanying documents are the Record, which may include application documents, minutes, staff reports, etc., and are available primarily as resources or for purposes of reference within arguments to evaluate the factual background.

This is an administrative appeal hearing. Oral arguments will be presented by the involved parties only: Mr. Laski for Appellant/Applicant and Director Landers for the Planning Department. The presenting parties and supporting staff will be available for questions. This is not a public hearing and there is no public comment as part of the process. Comments or input to Commissioners outside the appeal hearing are discouraged, and if any is received should be disclosed by that Commissioner at the start of the hearing.

During the hearing, the Commission, at its discretion, is welcome to ask questions of staff or the parties as may be helpful to deliberation. It is encouraged to handle most questions for a party during their portion of the hearing. The order of presentation will be Appellant/Applicant, Director/Respondent, and then an Appellant rebuttal if desired. Any further presentation or answers to questions will be at the discretion of the Commission.

**Standard of Review:**

Since the Commission does not hear administrative appeals frequently, a common question when they do arise is as to the applicable standard of review. Standard of review is a legal term guiding the discretion (or not) of the review and decision with respect to use of the Record and in particular in whether or not to consider new additional information.

In this situation, it is important for the Council to understand the standard of review as defined in KMC §17.144.010(C):

*Authority of Commission.* Upon hearing the appeal, the Commission shall consider the record, the order, requirement, decision or determination of the administrator and the notice of appeal, together with oral presentation and written legal arguments by the appellant and the administrator. The Commission shall not consider any new facts or evidence at this point. The Commission may affirm, reverse or modify, in whole or in part, the order, requirement, decision or determination of the administrator.

While arguments, per the memoranda of the parties, are considered, there should not be new factual information considered or weighed that was not part of the Record below.

**Decision Options:**

As indicated in the last sentences of KMC §17.144.010(C) – see above – upon review and deliberation, the Commission may decide from the following on the underlying Director decisions: affirm, reverse, modify in whole or in part, and/or remand the application back to the Director with direction.

Per KMC §17.144.010(D), the Commission must issue a written decision within 30 days of this hearing. Typically, the Commission will indicate a decision, or at least direction, for legal counsel to prepare a full draft written decision for final approval and decision at a future meeting within that 30-day time period.

I will be present for the hearing and available to assist in the proceedings as is helpful.



City of Ketchum

## **Sawtooth Serenade Administrative Appeal**

### Attachments List

- A. Administrative Determination
- B. Appeal Application and Appeal Brief
- C. Administrator Response to Appeal Brief
- D. Appellant Response to Administrator Response
- E. Ordinance 1234



City of Ketchum

# Attachment A: Administrative Determination



**CITY OF KETCHUM | PLANNING & BUILDING**

Morgan Landers, AICP | Director  
direct: 208.727.5085 | office: 208.726.7801  
mlanders@ketchumidaho.org

P.O. Box 2315, 191 5th Street West, Ketchum, ID 83340  
ketchumidaho.org

Thielsen Architects  
Attn: Robert Connor  
720 Market Street, Suite C  
Kirkland, WA 98033  
*[via email]*

August 24, 2023

Planning Administrator Determination: Applicability of Section 3 of Interim Ordinance 1234 to the Sawtooth Serenade development located at 260 N 1<sup>st</sup> Ave.

Dear Mr. Connor-

The City of Ketchum received a Final Design Review application for the Sawtooth Serenade development located at 260 N 1<sup>st</sup> Ave, Ketchum, ID 83340, on August 7, 2023. Upon receipt, I notified the applicant via email that the application had not been received within the required 180 calendar day requirement for Final Design Review applications outlined in Section 3 of Interim Ordinance 1234. That email also outlined that the application could be processed as a new pre-application, if that was the desire of the applicant. Following that email, I received a response requesting further consideration of the determination. Per your request, I have further reviewed Interim Ordinance 1234, other applicable code provisions in the Ketchum Municipal Code, and consulted with the city attorney.

Based on my further review, I find that Section 3 of the interim ordinance does apply to the Sawtooth Serenade development as justified by the following:

1. Preapplication Design Review and Final Design Review applications are separate and distinct applications, each with their own application form, submittal requirements, fees, and processes. Section 1 of the interim ordinance states that the ordinance applies to “to any Building Permit, Pre-Application Design Review, Design Review, Subdivision, or Condition Use Permit application deemed complete for vesting purposes after the effective date of this Ordinance filed pursuant to Title 16 – Subdivision Regulations and Title 17 – Zoning Regulations”. The ordinance clearly delineates between Pre-Application Design Review and Design Review as two separate applications. Although the preapplication was deemed complete prior to the effective date, the Final Design Review application has not been deemed complete as of the date of this letter which is after the effective date of the interim ordinance.

2. Initial drafts of the interim ordinance did not provide any grace period to preapplications as Preapplication Design Review does not provide for any vesting of development rights. Pursuant to KMC section 17.96.010.C.2, the purpose of the preapplication is to exchange ideas and give direction to the applicant on the “design concept”. The preapplication design review step is not designed to vest any specific rights or design. There is no vote of approval, approval with conditions, or denial and no Findings of Fact and Conclusions of Law are issued. Based on feedback from the development community at the time of review and adoption of the interim ordinance, the City Council acknowledged that there are investments made during the preapplication process and in the interim those developments should be provided a grace period provided they continue to timely move through the process. This led to the addition of a 180-day grace period as described below.
  
3. Section 3 of the interim ordinance states “Design Review or 17.104 – Mountain Overlay Zoning District that have conducted a preapplication design review meeting with the Commission, as required or voluntary, must file a complete Design Review Permit application and pay all required fees within 180 calendar days of the last review meeting on the preapplication with the Commission, otherwise the preapplication review will become null and void”. The purpose of Section 3 of the interim ordinance was to provide a reasonable grace period for developments that began the multiple steps of the development approval process prior to adoption of the interim ordinance and to avoid a barrage of applications being submitted to the city prior to the effective date. This grace period was set by the interim ordinance and, upon expiration of the grace period, subject applications became “null and void.” The Planning Department was not delegated any authority to extend or waive the grace period. The 180-calendar deadline has been applied to all applications with preapplications deemed complete prior to the effective date of the interim ordinance, including two others in addition to the Sawtooth Serenade development. Had the Final Design Review application been submitted within that grace period timeframe, staff would accept and process the application accordingly with Section 3 of the interim ordinance. It was not.

Thank you for your time and attention to this matter. As noted in my email dated August 8, 2023, the city can process this as a new application, starting with a new pre-application. This letter constitutes a final Administrator Determination with respect to this submission. This Determination may be administratively appealed under Ketchum Municipal Code 17.144. Please be advised, if desired, an appeal of this Determination must be filed within 15 days pursuant to KMC 17.144.030.

Please advise as to how you would like to proceed. You can reach me at [mlanders@ketchumidaho.org](mailto:mlanders@ketchumidaho.org) or at 208-727-5085.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Morgan Landers', with a long horizontal flourish extending to the right.

Morgan Landers, AICP  
Director of Planning and Building

CC: Matthew Johnson, City Attorney  
Jim Laski, Lawson Laski Clark, PLLC



City of Ketchum

# Appeal Attachment B: Appeal Application and Appeal Brief





**City of Ketchum  
Planning & Building**

OFFICIAL USE ONLY	
File Number:	P22-056A
Date:	9/7/23 4:23pm
By:	SMC/ollum
Fee Paid:	\$2175
Approved Date:	
Denied Date:	
By:	

**Notice of Appeal**

Submit completed application and documentation to [planningandzoning@ketchumidaho.org](mailto:planningandzoning@ketchumidaho.org) Or hand deliver to Ketchum City Hall, 191 5<sup>th</sup> St. W. Ketchum, ID If you have questions, please contact the Planning and Building Department at (208) 726-7801. To view the Development Standards, visit the City website at: [www.ketchumidaho.org](http://www.ketchumidaho.org) and click on Municipal Code. You will be contacted and invoiced once your application package is complete.

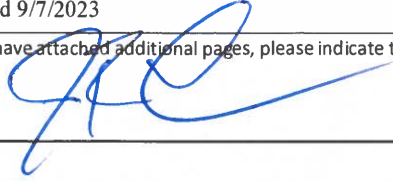
**Note:** The Appellant shall submit an amount to cover the cost of giving notice, as applicable in the Fee Schedule, and provide a transcript within two (2) days after the Planning and Building Department provides the Appellant with an estimate for the expense of the same. In the event the fee is not paid as required, the appeal shall not be considered filed.

OFFICIAL USE ONLY	
Date Appeal Received: 9/7/23	Date Notice Published:
Appeal Fee:	Transcript Fee:
Date Paid:	Date Paid:
Date Appellant Notified of Estimated Transcript Costs and Notice:	Mailing Fee:
Date of Appeal Hearing:	Date Paid:
Action(s) Taken/Findings:	
APPELLANT	
Name of Appellant: Scott and Julie Lynch & Yahn Bernier and Elizabeth McCaw & Distrustful Ernest Revocable Trust	Phone Number: 425-828-0333
Address: Lynch – 409 5 <sup>th</sup> Ave W, Kirkland, WA 98033 Bernier – 321 82 <sup>nd</sup> Ave NE, Medina, WA 98039	Fax Number or Email: <a href="mailto:scott@lynchclan.com">scott@lynchclan.com</a> and <a href="mailto:yahnbernier@valvesoftware.com">yahnbernier@valvesoftware.com</a>
REPRESENTATIVE	
Name of Representative: Thielsen Architects – Dave Theilsen. Rep. for appeal James R. Laski.	Thielsen Phone Number: 425-828-0333 Laski Phone Number: 208-725-0055
Thielsen Address: 720 Market Street, Suite C, Kirkland, WA 98033 Laski Address: 675 Sun Valley Rd A, Ketchum, ID 83340	Fax Number or Email: <a href="mailto:dave@thielsen.com">dave@thielsen.com</a> ; <a href="mailto:jrl@lawsonlaski.com">jrl@lawsonlaski.com</a>
APPLICATION	
Application Being Appealed: Denial of Applicants' Design Review Application	
Explain How You Are an Affected Party: Owners of the Project and their Representatives	
Date of Decision or Date Findings of Fact Were Adopted: Planning Administrator Determination made August 24, 2023.	
SUBMITTAL INFORMATION	
This Appeal is Based on The Following Factors (set forth all basis for appeal including the particulars regarding any claimed error or abuse of discretion):	
1. Applicant's Project Vested Prior to the Adoption of Ordinance 1234; therefore Ordinance 1234 Does Not Apply	
2. The City has Confirmed Several Times on the Record that Ordinance 1234 Did Not Apply to the Project	
3. City is Estopped from Changing its Position re Vesting	
4. Even if Ordinance 1234 Did Apply, the 17-Day Delay in Meeting the Deadline Should Be Excused as It Was Caused in Part by Delays in Receiving Responses From the City and Its Agents	

See Additional Attached Letter Dated 9/7/2023

If you have attached additional pages, please indicate the number of pages attached 21

Signature of Appellant or Representative



Date

9-7-2023

JAMES R. LASKI  
MEMBER

JRL@LAWSONLASKI.COM



City of Ketchum  
Planning & Zoning Commission  
c/o Morgan Landers, Planning Director  
191 5th Street West,  
Ketchum, ID 83340

**By Hand Delivery and Email: [MLanders@ketchumidaho.org](mailto:MLanders@ketchumidaho.org)**

September 7, 2023

Re: Appeal of Administrative Determination  
Sawtooth Serenade Project  
Our File No.: 12690-001

Ladies and Gentlemen:

We represent Scott and Julie Lynch, Yahn Bernier and Beth McCaw, and Distrustful Ernest Revocable Trust ("Applicants") with respect to the Design Review Application for the Sawtooth Serenade development located at 260 N First Avenue, in Ketchum, Idaho. This letter will serve as to supplement the Notice of Appeal filed on behalf of the Applicants with respect to the Planning Administrator Determination made August 24, 2023 ("Determination Letter") regarding the applicability of Interim Ordinance 1234 (in particular Section 3) to the Sawtooth Serenade Development ("Project").

As you are aware, the Project vested prior to the adoption of Ordinance 1234 and thus, Ordinance does not apply to the Project. However, the Planning Administrator determined that Ordinance 1234 does apply to the Project and that the Applicants' Design Review Application, submitted on behalf of the Applicants on August 7, 2023, was not timely filed. This determination came after Applicant's Preapplication Design Review was "deemed complete" and not within the purview of the interim ordinance on October 17, 2022. The determination concludes that the required step of preapplication design review does not vest any specific rights and that requires preapplication design review is a wholly separate and unrelated application for design review in Ketchum's permitting scheme. As such, she concluded that Applicants' Design Review application would not be considered by the City as it was not submitted to the City with 180

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calendar days of the last Preapplication Design Review meeting of the Commission, which she calculated to be Friday July 21, 2023.<sup>1</sup>

Applicant appeals the Administrative Determination on the grounds that it:

- violates the law regarding vesting of applications;
- is contrary to the express provisions of Ordinance 1234;
- is contrary to the prior written and stated actions of the City;
- is made based on unlawful procedure
- is arbitrary and capricious and an abuse of discretion; and
- is in excess of the authority of the Administrator.

The basis for the foregoing are set forth below.

### **A. Legal Standards**

Pursuant to Title 17 of City of Ketchum Zoning Code (hereinafter referred to as the “Ordinance”), the authority of the Commission in this hearing on appeal is to consider the determination of the Administrator and the notice of appeal as well as the oral and written legal arguments of the Appellant and the Administrator. The Commission may then affirm, reverse or modify, in whole or in part, the decision of the Administrator. See Ketchum Code § 17.144.010.

In considering this appeal, it should be noted that the enabling legislation for the Commission, and Ketchum’s Zoning Ordinance itself, is the Local Land Use Planning Act, I.C. § 67-6501 et seq. (“LLUPA”). The first listed purpose of the LLUPA is to “protect property rights while making accommodation for other necessary types of development . . . .” I.C. § 67-6502(a) (emphasis added). Among the statutory duties of the Commission is to insure that “land use policies, restrictions, conditions and fees do not violate private property rights, adversely impact property values, or create unnecessary technical limitations on the use of property . . . .” I.C. § 67-6508(a).

### **B. Applicant’s Project Vested Prior to the Adoption of Ordinance 1234; therefore Ordinance 1234 Does Not Apply**

In its Determination Letter, the City contends that Ordinance 1234 applies to the current Application because “Preapplication Design Review and Final Design Review applications are separate and distinct applications, each with their own application form, submittal requirements, fees and processes.” However, the Design Review Chapter of the Zoning Code *requires* Preapplication Design Review on any lot or lots totaling 11,000 square feet or more. Code §17.96.10.C.1. Accordingly, for the Sawtooth Serenade Project, Preapplication Design Review was the first required step to achieving Design Review Approval and a subsequent Building Permit. While each of these steps

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<sup>1</sup> The Administrator’s determination was first emailed to the Development team on August 8, 2023. Following communication with the City Attorney, Matthew Johnson, it was agreed a more formal determination would be prepared, ultimately resulting in the August 24, 2023 determination letter which is the subject of this Appeal.

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require separate applications<sup>2</sup> and fees, they are all a continuation of the same permitting process for the Project. As such, if Ordinance 1234 does not apply to one stage, it does not apply to any stage of the permitting process.

Idaho law is clear that a land use applicants rights are “measured under the law in effect at the time of the application.” *Citizens Against Linscott/Interstate Asphalt Plant v. Bonner County*, 168 Idaho 705, 717(2021) quoting *S. Fork Coal. v. Bd. of Comm'rs of Bonneville Cnty.*, 117 Idaho 857, 861, 792 P.2d 882, 886 (1990) (citations omitted); see also *Taylor v. Canyon Cnty. Bd. of Comm'rs*, 147 Idaho 424, 436, 210 P.3d 532, 544 (2009).

The policy undergirding this rule is “to prevent local authorities from delaying or withholding action on an application in order to change or enact a law to defeat the application.” *Taylor*, 147 Idaho at 436, 210 P.3d at 544 (citation omitted). Thus, the rule is an outgrowth of the well-established principle that legislation does not ordinarily have retroactive effect. See *Cooper v. Bd. of Cnty. Comm'rs of Ada Cnty.*, 101 Idaho 407, 412, 614 P.2d 947, 952 (1980); see also *Ben Lomond, Inc. v. City of Idaho Falls*, 92 Idaho 595, 601, 448 P.2d 209, 215 (1968) (reasoning that the rule to apply the ordinance in effect at the time of the application is “in accord with the general rule that legislation generally acts prospectively only”). *Id.*

Despite the fact of a separate application form, for a project like Sawtooth Serenade, Preapplication Design Review is a required, necessary part of the Design Review Approval Process, and as such, vests the Application. Indeed, the submittal requirements for Preapplication Design Review are identical to those of Design Review. Code §17.96.10.C.3. Acknowledging that the permitting process consists of a continuum of applications, the Administrator, in her presentation to the Commission on January 24, 2023, advised your Commission that “***this project does not come under the purview of the interim ordinance because it was deemed substantially complete prior to the effective date.***” (Transcript of January 24, 2023 Commission Meeting at 2:31:11 – 22). Because Ordinance 1234 did not apply Applicant's Preapplication Design Review Application, it does not apply to the entire Design Review process, as they are both required steps in the same permit application process.

Notwithstanding the foregoing, and despite acknowledging on the record that the Project does not come under the purview of Ordinance 1234, in point 2 of the Determination Letter, the Administrator argues that “the preapplication design review step is not designed to vest any specific right or design.” (Determination Letter at ¶2). This is purportedly because there is no vote for approval made by the Commission. While this may make some sense for an applicant who chooses to proceed with voluntary preapplication design review, it is not only illogical, but contrary to the law where

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<sup>2</sup> It should be noted that the Preapplication Design Review application form and the Design Review application form are identical. For this Project, the City staff hand wrote “pre-app” on the printed Design Review application to make the distinction.

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Preapplication Design Review is a required and necessary step in the Design Review Approval Process. Further, as the minutes for the January 24, 2023 Commission meeting show, the Commission did take action on the Application by voting to recommend that the Application proceed to Design Review.

In the Determination Letter, the Administrator characterizes the newly adopted 180 period to file a Design Review Application set forth in Section 3 of Ordinance 1234 as a “grace period”, apparently applicable to previously recommended (but apparently not vested) Preapplication Design Review Applications (§3 of the Determination Letter).

But, to the extent the 180 day “grace period” described in Section 3 of Ordinance 1234 applied to a Preapplication Design Review Application, it follows that the Preapplication Design Review Application did actually “vest” specific rights, at least for 180 days under the Interim Ordinance. Thus, the Administrator’s argument supporting the application of Ordinance 1234 actually supports the conclusion, consistent with the City’s prior statements, that the Project was vested under the law in effect prior to the Interim Ordinance.

Further, there is absolutely nothing in Section 3 of Ordinance 1234 that specifies or even implies that the 180-day period was meant to be a “grace period” applicable to “developments”<sup>3</sup> deemed complete prior to the adoption of the Ordinance. Rather, the only logical (and legal) interpretation of Section 3 of the Interim Ordinance is that a development that (i) is deemed complete for vesting purposes after the effective date of Ordinance 123, and (ii) is required to (or chooses to) go through the preapplication design review process must then submit their design review application within 180 days of the last Commission review meeting.

With respect to the present Project, the Project’s (or development’s) application was deemed complete prior to the effective date of Ordinance 1234. Accordingly, as a matter of law, the 180-day time limit for filing a Design Review Application following Preapplication Design Review does not apply.

**C. The City has Confirmed Several Times on the Record that Ordinance 1234 Did Not Apply to the Project**

As this Commission is well aware, Applicants tracked the adoption of Interim Ordinance 1234 as well as the Planning Department’s confirmation of the “completeness” of their Preapplication Design Review application in advance of the City’s adoption of the Interim Ordinance. It is fair to say that the vesting provisions of the new ordinance were drafted with this Project in mind.

Section 1 of Ordinance 1234 expressly states: “The following interim regulations and standards apply to any Pre-Application Design Review . . . deemed complete for vesting purposes after the effective date of this Ordinance . . .”. Ordinance 1234 § 1.

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<sup>3</sup> “Developments” is the term used in Section 3 of Ordinance 1234.

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Applicant's Preapplication Design Review was "deemed complete" on October 17, 2022, prior to the effective date of Ordinance 1234.

At this time, the application has been deemed complete and will be scheduled for the next available hearing.

(See Completeness Review Letter attached as Exhibit 1).

The issue of substantial completion and vesting was also confirmed through email correspondence between City Attorney Matt Johnson and me in the days leading up to the adoption of Ordinance 1234:

Jim –

I checked in with Morgan. She said she's currently reviewing all the resubmitted items this week and will be issuing a completeness letter based on that submittal.

For the Council meeting next Monday there will be a clearer revised version of the interim ordinance that clarifies the distinction that was discussed at the last meeting in response to your comments. That revision will make clear vesting is based on an application being "substantially complete."

So I believe in combination those two items will address your request.

Matt

Matthew A. Johnson  
WHITE PETERSON GIGRAY & NICHOLS, P.A.  
Canyon Park at the Idaho Center  
5700 E. Franklin Rd., Ste. #200  
Nampa, ID 83687-7901  
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**From:** Jim Laski <[jrl@lawsonlaski.com](mailto:jrl@lawsonlaski.com)>  
**Sent:** Tuesday, October 11, 2022 9:42 AM  
**To:** Matthew A. Johnson <[mjohnson@WHITEPETERSON.com](mailto:mjohnson@WHITEPETERSON.com)>  
**Subject:** RE: Ketchum Ordinance 1234

Hi Matt – would it be possible to get conformation that my client's application ( at 260 N 1<sup>st</sup> Ave) is substantially complete and will be reviewed under the presently existing ordinance, rather than the proposed new ordinance 1234? I written statement to that effect would be much appreciated.

Thank you

Jim

LAWSON LASKI CLARK

**JAMES R. LASKI**

Lawson Laski Clark, PLLC  
675 Sun Valley Road, Suite A  
PO Box 3310  
Ketchum, ID 83340  
208-725-0055 Phone  
208-725-0076 Fax

(See email correspondence attached as Exhibit 2).



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Even more clear and succinctly, the Staff Report for the Preapplication Design Review Meeting held January 24, 2023, issued on or about January 19, 2023, states that this application is not subject to Interim Ordinance 1234:

The application is not subject to Interim Ordinance 1234 as the application was deemed complete prior to the effective date of the ordinance.

(Staff Report for January 24, 2023 Meeting at Pg. 2, attached as Exhibit 3).

Finally, and to the point that required Preapplication Design Review vests the entire Design Review Application Process, 2 hours and 31 minutes into the Preapplication Design Review Meeting of January 24, 2023, Planning Administrator Morgan Landers states:

“ . . . Staff also provided a review of the project’s compliance with interim ordinance 1234. ***This Project does not come under the purview of the interim ordinance because it was deemed substantially complete prior to the effective date . . .***”

(Transcript of January 24, 2023 Commission Meeting at 2:31:11 – 22).

Quite simply, if Ordinance 1234 does not apply to this Project, then the 180-day provision in Section 3 of the Ordinance also does not apply.

Based on the forgoing, it is abundantly clear that the Project (or Development) was vested under the Zoning Code in effect on October 17, 2022 (prior to the adoption of Ordinance 1234). Under the Design Review provisions in effect at the time Applicant’s Preapplication Design Review was deemed complete, there was no time limitation for the filing of a Design Review Application following the Commission’s recommendation to advance the Project to Design Review.

#### **D. City is Estopped From Changing Its Position re Vesting**

As outlined above, the Determination Letter is clearly at odds with the position taken by the City earlier in the Design Review Application Process with respect to the vesting of the Project to the detriment of the Applicants, which is contrary to law on the grounds of promissory estoppel.

“Quasi-estoppel prevents a party from changing its legal position and, as a result, gaining an unconscionable advantage or imposing an unconscionable disadvantage over another.” *Hollingsworth v. Thompson*, 168 Idaho 13, 22–23, 478 P.3d 312, 321–22 (2020); *Garner v. Bartschi*, 139 Idaho 430, 437, 80 P.3d 1031, 1038 (2003). “Unlike equitable estoppel, quasi-estoppel does not require an undiscoverable falsehood, and it requires neither misrepresentation by one party nor reliance by the other.” *Hollingsworth*, 168 Idaho at 23, 478 P.3d at 322. Quasi-estoppel applies when:

- (1) the offending party took a different position than his or her original position and
- (2) either (a) the offending party gained an advantage or caused a



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disadvantage to the other party; (b) the other party was induced to change positions; or (c) it would be unconscionable to permit the offending party to maintain an inconsistent position from one he or she has already derived a benefit or acquiesced in.

*Id.* (quoting *Trumble v. Farm Bureau Mut. Ins. Co. of Idaho*, 166 Idaho 132, 136, 456 P.3d 201, 215 (2019)).

The facts here are in line with *Hollingsworth*, where the Court found quasi-estoppel applied when a hospital changed its position by holding itself out as a private corporation in its business filings with the Idaho Secretary of State, but then later claimed it was a governmental entity when sued. The public filings led the plaintiffs to believe the hospital was a private corporation, causing them to disregard the ITCA notice deadline to the benefit of the hospital. 168 Idaho at 23, 478 P.3d at 322. Likewise, in the present situation, the City cannot now change its position regarding vesting to preclude Applicant from proceeding under the under the prior Code provisions.

**E. Even if Ordinance 1234 Did Apply, the 17-Day Delay in Meeting the Deadline Should Be Excused as It Was Caused in Part by Delays in Receiving Responses From the City and Its Agents**

It should be noted that policy behind project vesting in Idaho is designed specifically to prevent the types of action on display from staff in the processing of this application.

The policy undergirding this rule is “to prevent local authorities from delaying or withholding action on an application in order to change or enact a law to defeat the application.” *Taylor, Supra*.

With respect to the present Project, in which Design Review was submitted 197 days following the Commission’s recommendation to proceed to Design Review. It doesn’t take a conspiracy theorist to be skeptical as to the unexplained delays in scheduling meetings with staff due to staff unavailability, three weeks in April and May (April 24 to May 17) and in receiving required responses from City’s contractors – four weeks with Michael Decker re street lighting and seven weeks with Clear Creek Disposal (June 16 to August 2) re garbage pickup location, despite diligent efforts by the Applicant team.

Given that Applicant’s submittal was less than three weeks after the alleged “180-day grace period,” the fourteen weeks of delays experienced by Applicant’s development team raise legitimate concerns of abuse of process should the City not reconsider its position on the applicability of Ordinance 1234.

**Conclusion**

Based on the foregoing, it is clear the Administrative Determination violates Idaho law regarding the vesting of land use permits, is contrary the express provisions

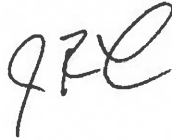
September 7, 2023

of Ordinance 1234 and the prior written and stated actions of the City with respect to this Project. Combined with the foregoing, the unexplained delays create an unlawful procedure in the processing of Permit Application. As such the Administrator's action in making the determination is arbitrary and capricious and a clear abuse of discretion – designed to stop the Project. As such, we respectfully urge the Commission to reverse the Administrative Determination and proceed with Design Review.

Thank you for your consideration.

Sincerely,

LAWSON LASKI CLARK, PLLC

A handwritten signature in black ink, appearing to read 'JRL', is positioned below the typed name.

James R. Laski

Cc: clients

Matthew A. Johnson, Esq. (by email: [mjohnson@whitepeterson.com](mailto:mjohnson@whitepeterson.com))



City of Ketchum  
Planning & Building

October 17, 2022

Thielsen Architects  
Attn: Dave Thielsen - Architect

Galena Engineering  
Attn: Matt Smithman – Civil Engineer

[Sent via email]

Re: 260 N 1<sup>st</sup> Ave – Preapplication Design Review - Completeness Review

Dear Mr. Thielsen and Mr. Smithman,

The City of Ketchum Planning and Building Department received your resubmittal of the preapplication Design Review application on October 10, 2022. The resubmittal was in response to comments issued by city staff on September 16, 2022. At this time, the application has been deemed complete and will be scheduled for the next available hearing. Please see below for comment resolution documentation and additional comments from the city's water department.

### Planning Department

#### General Zoning Comments

1. *Comment:* Based on the slope of the lot, it is correct to apply the term “basement” to the project and remove that square footage from the building. However, staff will need to verify that the methodology used for establishing what area falls under the definition of “basement” is correct.
  - a. *Required Action:* Please provide a diagram in schematic or plan and section views showing how the invisible plane was delineated and what square footage is included in the “basement” definition and what constitutes the 954.16 SF of gross floor area remaining.
  - b. ***Staff Response: Comment resolved. Staff reviewed the overlap of the “Basement” definition with the “Underground Parking” definition and have determined that the calculation conducted by the applicant is correct.***
2. *Comment:* The Gross Floor Area (GFA) and Net Floor Area (NFA) calculations on Sheet A1.1 don't appear to match the net and gross SF outlined on Sheets A1.2-A1.4. For the ground level, the gross floor area on Sheet A 1.1 and A1.2 indicate a net floor area of 5,680 SF, however it is unclear what that square footage includes. Also, for Sheets A1.3 and A1.4, the GFA outlined is consistent with Sheet A1.1 but it is unclear what constitutes the NFA for these levels and what has been removed since the stair tower and elevator have already been removed.
  - a. *Required Action:* Please provide Floor Area diagrams for each floor that outlines what is included in the GFA and what is not. The best way to show this is by using shading or coloring to color code each area. In the diagrams, please also include square footages.
  - b. ***Staff Response: Comment Resolved.***
3. *Comment:* Sheet A1.1 shows GFA of the building, however, specific square footage of each unit and each space on the ground floor is necessary to verify parking requirements for all uses.
  - a. *Required Action:* Please revised Sheet A1.1 to include a summary of square footages by use that outlines each residential unit, parking, storage, The Commons, and the Commons Court and Event Space
  - b. ***Staff Response: Comment Resolved.***



4. *Comment:* The cover letter submitted as part of the project outlines that the intent of the ground floor Commons and Commons Court and Event Center is to be a “gathering place....which would be used for fundraising and philanthropic events”. The letter does not address the use of the space when those events are not happening. Staff presumes this space would be for the benefit of the residents, family and guests but not the public, however, this is a deduction based on the cover letter and clarification is necessary. Staff is also unclear whether the fundraising and event space is only the Commons Court and Event Space, or if it includes the Commons as well. Additionally, Sheet A1.1 outlines under “Required Parking” that the space is classified as “Food Service”. Staff does not believe the proposed use meets the definition of food service, but rather an “Assembly, place of”. The floor plans do not show a location within the space where food is being prepared. This is a key element of a “Food Service” use. The definitions of referenced uses are noted below:

**Food service:** An establishment where food and drink are prepared, served and consumed on site with associated outdoor dining, or distributed to customers through take out, delivery or catering. Typical uses include, but are not limited to restaurants, cafes, delis, catering services and brewpubs that do not distribute beer produced for off-site consumption.

**Assembly, place of:** The use of land for a meeting place where persons gather together for purposes of attending civic, social, religious functions, recreational events or entertainment performances on a regular or recurring basis including, but not limited to, religious institutions, banquet facilities, funeral homes, theaters, conference centers, stadiums, or indoor or outdoor recreational facilities, but excludes a "cultural facility" as defined by this chapter. A gathering of less than 25 persons shall not be considered a place of assembly provided the gathering is accessory and incidental to the principal use.

Assembly uses require the approval of a Conditional Use Permit in the CC-2 zone district to ensure any impacts from events held in the space are mitigated through certain conditions.

- a. *Required Action:* Please provide an expanded narrative as to the function of the ground floor space and justification for its classification as Food Service. Please provide clarity on the function of the space when not being used for events. Please also provide clarity on what portion of the space will be used for events. Once additional information is provided, staff will make a determination on the use proposed.

b. *Staff Response: Comment Resolved.*

5. *Comment:* It generally appears that the project is in conformance with setback requirements, however, the methodology used appears that there may be area where square footage is calculated toward both facades’ setback square footage, which is not the correct methodology. In general, square footage should be counted toward one side other the other using reasonable extensions of the building façade to delineate space. Please see the attached example from another project for reference. The front façade along 1<sup>st</sup> Ave had a portion of the building on the south end significantly set back from the street. In this instance, the main edge of the building façade was carried to the property line to delineated what was included in the setback square footage (area in black). As you can see, the two setback calculations do not overlap (black and red areas).

- a. *Required Action:* Please revise Sheets A1.2-1.4 delineate the square footage calculation with independent calculations for each façade. Staff has provided an attached draft of how the calculations should be delineated for the ground floor.

b. *Staff Response: Comment Resolved.*

6. *Comment:* Sheet A7 outlines the proposed building height at the front and the rear of the building and the guardrail that extends above the 42-foot height maximum. Although the code reference in Note 10 is correct in relation to height, the city categorizes “perimeter walls that enclose roof top decks that exceed the maximum building height limit as a “fixed amenity” that must be set back 10 feet from the building façade per KMC 17.12.040. Built-in hot tubs are also considered “fixed amenities” that must be set back. It is unclear from Sheet A6 what the setback is to the hot tub from the building façade at that location.

- a. *Required Action:* Please revise the plans to reflect the required setback for all roof top decks. Please also revise Sheet A6 to provide a dimension from the building façade to the hot tub location.
  - b. ***Staff Response: Comment Resolved.***
- 7. *Comment:* The 3-foot setback along the alley shows wood fencing to screen the transformer and condensers, electric meters/CT panel, and raised landscape bed. The 3-foot setback is intended to be a clear zone to assist in snow management operations in the winter, therefore these items need to be relocated from within the 3 feet setback along the alley.
  - a. *Required Action:* Please revise the site plans to reflect revisions as noted above to avoid future unintended damage of property due to snow management operations. Please also provide a letter from Idaho Power approving the location of the transformer with associated clearances and proposed electric meters.
  - b. ***Staff Response: Comment Resolved.***
- 8. *Comment:* Depending on final use determination for the ground floor space, the dumpster and one recycling bin will not likely be adequate for the proposed use when special events occur. Once a use determination is made for the ground floor space, a letter of approval of the garbage service based on the use will be required from Clear Creek Disposal.
  - a. *Required Action:* This comment is for information only; no action is required at this time. Upon use determination, please provide a letter from Clear Creek Disposal approving the garbage configuration.
  - b. ***Staff Response: Comment Resolved.***
- 9. *Comment:* Sheet A2 shows the dimensions of the parking garage area including dimensions of the parking spaces and width of the drive aisle, however, the dimensions of the 5 spaces on the Sun Valley Rd side of the parking area are noted to not meet minimum requirements and the drive aisle width does not appear to meet the 24-foot minimum between the stair and bump out where the “Trolley” area is noted. Drive aisle between stairwell and trolley/bump out area needs to also be 24 feet. Compact spaces are only permitted with certain types of uses and only when the total number of required spaces is 10 or more. If parking is proposed, it must meet the minimum dimensional standards.
  - a. *Required Action:* Please revise the ground floor layout to demonstrate that all parking spaces meet the minimum dimensional standards and that the drive aisle width of 24 feet can be met for the full length of the drive aisle.
  - b. ***Staff Response: Comment Resolved.***
- 10. *Comment:* Construction Management Plans (CMP) are no longer required at the time of design review. Staff has not reviewed the submitted CMP. Comments on the CMP are provided at the time of building permit application for a project.
  - a. ***Required Action: No action required at this time, this comment is for information only.***
- 11. *Comment:* Sheets EL5-8 show the foot candles at the property boundary, however, the sheets do not show foot candles outside the property line. Staff is concerned that there may be light trespass across the property boundary into the public right-of-way as there are numerous locations along the perimeter that have medium to high foot candle measures. For instance, foot candles measuring 1.0 and 2.8 adjacent to the north property boundary and alley measurements of 9.1 and 8.8. There may be no light trespass across the property boundary per KMC 17.132.030 stating “All existing and/or new exterior lighting shall not cause light trespass and shall protect adjacent properties from glare and excessive lighting.” Figure 1 in the KMC only refers to light emitting from inside buildings, not exterior lighting.
  - a. *Required Action:* Please revise the photometric study to include foot candle measurements just outside the property boundary for verification there is no light trespass. Please note that all exterior lighting including planter, tree, and water feature lights should be included in the calculations.
  - b. ***Staff Response: Comment Resolved.***
- 12. *Comment:* Per KMC 17.132.030.F “Uplighting. Uplighting is prohibited in all zoning districts, except as where permitted in this chapter.” Staff does not believe that the “Lip of Planter” lighting or the water

feature lighting fully complies with the limitation on uplighting. As outlined in KMC 17.132.030.H.2 “All exterior lighting fixtures shall be full cutoff fixtures with the light source fully shielded, except as exempted in this chapter.” As such, light fixtures must be fully shielded as to not cast light up or sideways, always casting light down as illustrated in Figure 2. For instance, the “Under Cap Lighting” is compliant as it is fully shielded based on the image.

- a. *Required Action:* Please revised the lighting proposed to comply with the dark sky compliant requirements and fixture guidelines.
  - b. *Staff Response: Comment Resolved.***
13. *Comment:* Stair tower lighting that must remain consistently illuminated 24 hours per day due to building code requirements must be mitigated with glazing or other treatments to windows that limit the amount of light emitting from the building overnight.
- a. *Required Action:* Please provide clarity on whether any glazing is proposed for the central stair tower and whether consistent light will emit from this feature in all hours of the evening.
  - b. *Staff Response: Comment Resolved.***
14. *Comment:* The street light illumination levels and placement of lights may not be in the correct location based on current discussions with the City Engineer and Planning departments.
- a. *Required Action:* As this is a preapplication design review. No further action on street light location is required at this time, however, final street light location will be determined at the time of final design review if the project moves forward.
  - b. *Staff Response: Comment Resolved.***

#### Design Review Comments

The following comments are provided for consideration by the applicant. Revisions to the plans are not required, but recommended, unless otherwise noted. If revisions are not made, the following comments will be provided to the Planning and Zoning Commission for their consideration and feedback.

1. *Comment:* Per KMC 17.96.060.B.2 and 3, “2. For nonresidential portions of buildings, front building facades and facades fronting a pedestrian walkway shall be designed with ground floor storefront windows and doors with clear transparent glass. Landscaping planters shall be incorporated into facades fronting pedestrian walkways.” and “3. For nonresidential portions of buildings, front facades shall be designed to not obscure views into windows.” These two standards serve to demonstrate the importance of creating an active and interesting pedestrian environment. Landscaping is encouraged, but not if it obscures views into windows. Staff has concerns that the ground floor façade of the building along Sun Valley Rd and the portion of N 1<sup>st</sup> Ave closest to Sun Valley Rd do not meet the intent of this standard as the architectural design of the project does not engage with pedestrians and serves more to privatize the space for residents and guests that create an environment that is active and interesting for pedestrians. More specifically, the landscape planter boxes that wrap the corner where the outdoor area is are 3-feet in height and the proposed plantings in the landscape boxes are shrubs and hedge like species that can grow quite tall over time. Additionally, the façade facing Sun Valley Rd has minimal storefront characteristics with transparent glass. Staff understands that the interior program of the building is driving the façade configurations, however, the proposed façade on the Sun Valley Rd side of the project does not meet the city’s design review objectives. Sun Valley Rd is one of our more heavily traveled corridors by pedestrians. This intersection is the location of two new projects in recent years that intensely serve to engage pedestrians with the Maude’s retail and coffee shop on one corner and a new office building on another that has well-articulated store front facades on both street frontages. The Commission will be keenly focused on continuing the design success of the other projects as this is such an important intersection within the downtown.
- a. *Required Action:* Staff recommends the applicant consider revising the landscape planter and plantings proposed around the outdoor gathering area to create a more engaging, less privatize program for the outdoor space. Additionally, staff recommends the applicant evaluate ways to integrate additional transparency onto the Sun Valley Rd side of the project. Staff recommends an evaluation of bringing the ground floor uses around to the Sun Valley Rd side of the building.

- b. **Staff Response: No further action at this time, staff will highlight the comment to the Planning and Zoning Commission for discussion.**
2. **Comment:** Per KMC 17.96.060.B.1 “Facades facing a street or alley or located more than five feet from an interior side property line shall be designed with both solid surfaces and window openings to avoid the creation of blank walls and employ similar architectural elements, materials, and colors as the front facade.” The Commission has paid special attention to interior walls that are exposed due to adjacent buildings that are of smaller scale than the proposed project. This is especially important when adjacent buildings are one-story structures adjacent to a three-story structure. Although staff believes the setback nature of the project mitigates some of these concerns, staff does have concern about the lack of material variation on the east elevation shown on Sheet A8. Include the outline of the adjacent buildings on the elevations for context
- a. **Required Action:** As part of the resubmittal materials, please revise the elevation on Sheet A8 to show the outlined of the adjacent building for reference. Staff recommends the applicant consider some material variations to break up the east elevation portions of the building that are exposed.
- b. **Staff Response: No further action at this time, staff will highlight the comment to the Planning and Zoning Commission for discussion.**

As a follow-up to the completeness letter issued on September 16, 2022, staff received confirmation from the water department reviewed the proposed plans and provides the following comments:

- A fire line and two separate services off the fire line will be required. The services must be engineered for sizing.
- The project is also required to abandon the existing service in the alley behind the Durance training building.

No action is required at this time, these comments are for informational purposes.

Please do not hesitate to email or call should you have any questions.

Sincerely,



Morgan Landers, AICP  
Senior Planner  
City of Ketchum Department of Planning and Building

## Felicia M. Bauer

---

**From:** Matthew A. Johnson <mjohnson@WHITEPETERSON.com>  
**Sent:** Tuesday, October 11, 2022 11:07 AM  
**To:** Jim Laski  
**Subject:** RE: Ketchum Ordinance 1234

Jim –  
I checked in with Morgan. She said she's currently reviewing all the resubmitted items this week and will be issuing a completeness letter based on that submittal.

For the Council meeting next Monday there will be a clearer revised version of the interim ordinance that clarifies the distinction that was discussed at the last meeting in response to your comments. That revision will make clear vesting is based on an application being "substantially complete."

So I believe in combination those two items will address your request.

Matt

Matthew A. Johnson  
WHITE PETERSON GIGRAY & NICHOLS, P.A.  
Canyon Park at the Idaho Center  
5700 E. Franklin Rd., Ste. #200  
Nampa, ID 83687-7901  
208.466.9272 (tel)  
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**From:** Jim Laski <jrl@lawsonlaski.com>  
**Sent:** Tuesday, October 11, 2022 9:42 AM  
**To:** Matthew A. Johnson <mjohnson@WHITEPETERSON.com>  
**Subject:** RE: Ketchum Ordinance 1234

Hi Matt – would it be possible to get conformation that my client's application ( at 260 N 1<sup>st</sup> Ave) is substantially complete and will be reviewed under the presently existing ordinance, rather than the proposed new ordinance 1234? I written statement to that effect would be much appreciated.

Thank you

Jim



### JAMES R. LASKI

Lawson Laski Clark, PLLC  
675 Sun Valley Road, Suite A  
PO Box 3310  
Ketchum, ID 83340





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**From:** Matthew A. Johnson <[mjohnson@WHITEPETERSON.com](mailto:mjohnson@WHITEPETERSON.com)>

**Sent:** Monday, October 03, 2022 11:06 AM

**To:** Jim Laski <[jrl@lawsonlaski.com](mailto:jrl@lawsonlaski.com)>

**Subject:** RE: Ketchum Ordinance 1234

Jim –

We will be tweaking the applicability language; I'm still working on the specifics. With respect to your clients' project specifically, the practical effect is that your preliminary design review application (which it sounds like is substantially completed) would be vested under the current ordinance – not the interim.

Matt

Matthew A. Johnson  
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**From:** Jim Laski <[jrl@lawsonlaski.com](mailto:jrl@lawsonlaski.com)>

**Sent:** Saturday, October 1, 2022 6:42 AM

**To:** Matthew A. Johnson <[mjohnson@WHITEPETERSON.com](mailto:mjohnson@WHITEPETERSON.com)>

**Subject:** RE: Ketchum Ordinance 1234

Hi Matt –

I was hoping I might get some feedback regarding your thoughts on the proposed language relating to the applicability of the new ordinance on pending applications before Monday's meeting as we discussed. Please let me know where you stand so I can prepare my comments for city council.

Thanks

Jim



**JAMES R. LASKI**

Lawson Laski Clark, PLLC  
675 Sun Valley Road, Suite A  
PO Box 3310  
Ketchum, ID 83340  
208-725-0055 Phone  
208-725-0076 Fax

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**From:** Jim Laski  
**Sent:** Monday, September 26, 2022 2:32 PM  
**To:** Matthew A. Johnson <[mjohnson@WHITEPETERSON.com](mailto:mjohnson@WHITEPETERSON.com)>  
**Subject:** RE: Ketchum Ordinance 1234

Matt: Here are some cases citing the law re vesting in Idaho – it seems pretty clear to me. If you have something different, please let me know.  
Thank for your time today.  
Jim



**JAMES R. LASKI**

Lawson Laski Clark, PLLC  
675 Sun Valley Road, Suite A  
PO Box 3310  
Ketchum, ID 83340  
208-725-0055 Phone  
208-725-0076 Fax

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**From:** Matthew A. Johnson <[mjohnson@WHITEPETERSON.com](mailto:mjohnson@WHITEPETERSON.com)>  
**Sent:** Thursday, September 22, 2022 2:29 PM  
**To:** Jim Laski <[jrl@lawsonlaski.com](mailto:jrl@lawsonlaski.com)>  
**Subject:** RE: Ketchum Ordinance 1234

Works for me.

Matthew A. Johnson  
WHITE PETERSON GIGRAY & NICHOLS, P.A.  
Canyon Park at the Idaho Center  
5700 E. Franklin Rd., Ste. #200  
Nampa, ID 83687-7901  
208.466.9272 (tel)  
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**From:** Jim Laski <[jrl@lawsonlaski.com](mailto:jrl@lawsonlaski.com)>  
**Sent:** Thursday, September 22, 2022 12:15 PM  
**To:** Matthew A. Johnson <[mjohnson@WHITEPETERSON.com](mailto:mjohnson@WHITEPETERSON.com)>  
**Subject:** RE: Ketchum Ordinance 1234

How about 2:00 Monday?



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**From:** Matthew A. Johnson <[mjohnson@WHITEPETERSON.com](mailto:mjohnson@WHITEPETERSON.com)>  
**Sent:** Thursday, September 22, 2022 10:44 AM  
**To:** Jim Laski <[jrl@lawsonlaski.com](mailto:jrl@lawsonlaski.com)>  
**Subject:** RE: Ketchum Ordinance 1234

Jim –  
I'm pretty booked the rest of this week, but fairly flexible on Monday anytime between 9 and 11:30, or 2-4. If there's a time that works in there for you on Monday let me know and we can connect.

Matt

Matthew A. Johnson  
WHITE PETERSON GIGRAY & NICHOLS, P.A.  
Canyon Park at the Idaho Center  
5700 E. Franklin Rd., Ste. #200  
Nampa, ID 83687-7901  
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[mjohnson@whitepeterson.com](mailto:mjohnson@whitepeterson.com)

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**From:** Jim Laski <[jrl@lawsonlaski.com](mailto:jrl@lawsonlaski.com)>  
**Sent:** Thursday, September 22, 2022 10:37 AM  
**To:** Matthew A. Johnson <[mjohnson@WHITEPETERSON.com](mailto:mjohnson@WHITEPETERSON.com)>  
**Subject:** Ketchum Ordinance 1234

Hi Matt –

Any chance you might have a few minutes to discuss the proposed new ordinance and specifically with respect to the language relating to its applicability to already submitted applications? Let me know

Jim



**JAMES R. LASKI**

Lawson Laski Clark, PLLC  
675 Sun Valley Road, Suite A  
PO Box 3310  
Ketchum, ID 83340  
208-725-0055 Phone  
208-725-0076 Fax

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City of Ketchum

**ATTACHMENT D:**  
**Interim Ordinance 1234**  
**Analysis**





City of Ketchum  
Planning & Building

**SAWTOOTH SERENADE – 260 N 1<sup>ST</sup> AVE**

**CONFORMANCE WITH INTERIM ORDINANCE 1234**

Interim Ordinance 1234 was approved by the Ketchum City Council on October 17, 2022 and published in the paper on October 19, 2022 (the effective date). The preapplication design review application for "Sawtooth Serenade" was received and deemed complete prior to the effective date of the ordinance and therefore the ordinance does not apply to this application. However, as this is an interim ordinance, staff is providing the analysis below for information only so the Commission can see how the ordinance would apply to projects within the Community Core. This information is not to be used in evaluating the proposed development.

- **Minimum Residential Densities (Section 4) - NOT MET** - The application would be subject to the minimum density requirements as the development exceeds the base permitted FAR of 1.0:
  - The proposed development has a gross floor area of 23,942 SF and does not include any commercial space, therefore it is considered to be 100% residential.
  - The total lot area of the subject property is 16,507 SF which equates to three Ketchum townsite lots of 5,500 SF each. Based on the interim ordinance and the lot size, the project would be required to provide a minimum of 21 residential units. The proposed project has two residential units. Here is the equation for calculating minimum density:
    - $(16,507 \text{ SF} / 5500 \text{ SF}) = 3.00 \times 7 = 21$
    - 7 is the number of residential units required per 5500 SF for 100% residential developments
- **Consolidation of Lots (Section 5) - N/A** - The applicant is not requesting a consolidation of lots as the lots have already been consolidated. These standards would not apply.
- **No Net Loss of Units (Section 6) – N/A** - The subject property is currently vacant, therefore there is no net loss of units with the proposed development.
- **Parking for Retail (Section 7) – POTENTIALLY** - No retail is proposed for the project. However, the interim ordinance would require ground floor commercial facing the street, for this property, which could benefit from the parking exemption.
- **Parking for Office (Section 8) – POTENTIALLY** - No office is proposed for the project. However, the interim ordinance would require ground floor commercial facing the street, for this property, which could benefit from the parking exemption.
- **Ground floor Commercial Facing the Street (Section 10) – NOT MET** - The interim ordinance would require commercial uses on the ground floor of the project facing the street. The proposed project includes ground floor parking, storage, and recreation space only for the residential units which is classified as "recreation facility, residential" per the district use matrix in KMC 17.12.020. The residential recreation facility is

permitted in the CC as an accessory use to the residential uses and are not considered a commercial use. The current development would not meet this requirement.

- **Development Standards within the CC-2 (Section 11):**
  - **% of gross floor area for commercial (Section 11.a) – NOT MET** - No commercial is proposed for the project, however, the project would be required to comply with this requirement under the interim ordinance as Section 10 requires ground floor commercial facing the street. The current project would not meet this requirement.
  - **Community Housing in basement (Section 11.B) – N/A** - the proposed development does not propose on-site community housing, therefore this standard is not applicable.
  - **Size of residential units (Section 11.C) – NOT MET** - The proposed development includes two residential units that both exceed the 3,000 square foot maximum. One unit is 8,454 net square feet and the other is 8,819 net square feet. The proposed development does not meet this requirement.
  - **Parking Maximums (Section 11.D) – NOT MET** - The proposed development would require 4 parking spaces and 5 parking spaces are being proposed. The development would not meet this criterion as it is providing one additional parking space than what is required.
- **Comprehensive Plan Conformance (Section 13) – NOT MET**
  - Staff provided feedback in the staff report as to the proposed uses and placement of those uses within the project. Staff believes that if the proposed project met the design review criteria and the requirements of the interim ordinance, many of the goals and objectives of the comprehensive plan would be met.



City of Ketchum

# Appeal Attachment C: Administrator Response to Appeal Brief





## CITY OF KETCHUM

### Planning & Building

office: 208.726.7801

planningandbuilding@ketchumidaho.org

P.O. Box 2315, 191 5th Street West, Ketchum, ID 83340

ketchumidaho.org

## MEMORANDUM

**To:** City of Ketchum Planning and Zoning Commission  
**From:** Morgan Landers, AICP – Director of Planning and Building  
**Date:** November 3, 2023  
**Re:** Administrator Reply Brief for the Sawtooth Serenade Appeal of Administrative Determination

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This memorandum serves as the reply brief to the Appeal of Administrative Determination letter received by Mr. Jim Laski, of Lawson, Laski, Clark, on September 7, 2023. As noted in Mr. Laski's letter, an Administrative Determination was made as to whether a Final Design Review application could be filed and processed with the city based on the ordinance in effect at the time of the application. Below is a response to Mr. Laski's letter for consideration by the Planning and Zoning Commission during your review of the appeal.

### **Vesting and Application Types**

As noted in the determination letter to the Applicant, dated August 24, 2023, staff outlined that pre-applications are separate applications with separate fees and separate processes as outlined in the Ketchum Municipal Code. As such, staff reviews each application separately upon submittal of all required application materials. Applicant's Letter of Appeal from their counsel Jim Laski, dated September 7, 2023, outlines that the determination violates the project's vesting under the various legal cases referenced in the letter and notes that applications should be reviewed under the ordinances "in effect at the time of the application". City staff have done just that. At the time of the review of the pre-application, the application was reviewed under the ordinances and regulations in effect at the time the pre-application was deemed complete. City staff reviewed the pre-application for conformance with the regulations in effect at the time, and as Mr. Laski notes, reiterated multiple times to the fact that the interim ordinance was not applicable to the pre-application.

The action in question, and what is being appealed, is the determination of the Final Design Review, not the pre-application. As stated above, the pre-application was accepted and processed according to the ordinance in effect at the time. The preapplication process concluded with the January 24, 2023, meeting of the Commission. Upon receipt of the final design review application in September 2023, staff reviewed the application according to the processes and ordinances in effect at the time of the final design review application (not pre-application), which was Interim Ordinance 1234.

Section 3 of Interim Ordinance 1234 states that developments that have conducted a voluntary or required pre-application "must file a complete Design Review Permit application and pay all

required fees within 180 calendar days of the last review meeting on the preapplication with the Commission, otherwise the preapplication review will become null and void". Because the application was not submitted within the 180 calendar days, the preapplication became null and void and any allegation of vesting provided with the preapplication under Section 1 of the Interim Ordinance was dissolved.

Mr. Laski represents that the preapplication and final design review applications are a linked application process for one development and therefore both applications should be vested. Section 1 of Interim Ordinance 1234 specifically references each permit and application type separately, not "developments", therefore vesting of a pre-application is only upheld when the processes and timeframes outlined in the ordinance is followed. As noted above, the application was not filed within the required timeframe and therefore the pre-application is null and void and a new pre-application is required. Staff provided the option to the applicant to move forward with a new pre-application, which they declined.

### **Consistent Treatment of Applicants**

If the applicant had submitted the final design review application in the required timeframe, the two applications would have been treated as timely in succession under the previous ordinance. Mr. Laski states that the actions of staff were arbitrary and capricious. Staff treated the Sawtooth Serenade project the same way as two other development projects moving through the process at similar timeframes. The Perry Building development and 4<sup>th</sup> and Main development both had pre-applications, that were required and deemed complete prior to the effective date of the interim ordinance. Applicant representatives from both developments reached out to city staff for clarification of Section 3 of the interim ordinance. Staff communicated to the applicants that Section 3 did apply to their developments and that they would need to submit within the 180 calendar days to avoid being subject to the development standards of the interim ordinance. Both projects submitted within the required timeframes to retain their vesting under the 180-day grace period.

### **Delays Caused by City**

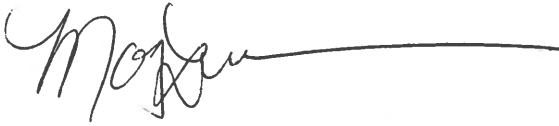
Finally, Mr. Laski's letter makes the accusation that explicit actions of the city delayed the applicant's ability to submit the application within 180 calendar days. The letter outlines delays from staff, Michael Decker, and Clear Creek Disposal. It should be noted that of the three-week delay from city staff, staff were on vacation for one full week of the stated timeframe. The applicants requested a meeting with the Director of Planning and Building, of which a two-week response time for requests is common due to workload and capacity. Michael Decker and Clear Creek Disposal staff are not employees or contractors of the City of Ketchum and city staff have no control or management over these entities and their response times. Also, city staff does not control the point at which applicants decide to provide information to and request feedback from those entities, which could have been done sooner than it was based on Mr. Laski's letter and the level of design of the project at pre-application.

## Conclusion

Based on the information provided above, staff believes that we upheld the vesting of applications provided by the ordinances in effect at the time of applications, processed the pre-application thoroughly and fairly according to the law, and based the determination of the Final Design Review application within the bounds of the procedures as written in law. Staff prides themselves on treating all applicants and applications fairly and consistently to avoid accusations of arbitrary and capricious actions and have demonstrated how we have done that in this case. As the Director of Planning and Building, I serve as the Administrator of Title 17 of the Ketchum Municipal Code and have acted well within the authority of the role by providing options to the applicant for consideration to move the application through the required process.

Thank you for your time and consideration of this matter.

Regards,

A handwritten signature in black ink, appearing to read 'Morgan Landers', followed by a long horizontal line extending to the right.

Morgan Landers, AICP  
Director of Planning and Building



City of Ketchum

# Attachment D: Appellant Response to Administrator Response

November 9, 2023

City of Ketchum  
Planning & Zoning Commission  
c/o Morgan Landers, Planning Director  
191 5th Street West,  
Ketchum, ID 83340

**By Email:** *MLanders@ketchumidaho.org*

Re: Appeal of Administrative Determination  
Sawtooth Serenade Project  
Applicants Response Memorandum  
Our File No.: 12690-001

Ladies and Gentlemen:

On behalf of Scott and Julie Lynch, and Yahn Bernier and Beth McCaw and Distrustful Ernest Revocable Trust (“Applicants”), this letter will serve as a Response to the Planning Director’s Reply Brief in accordance with the Scheduling Notice issued by the City Attorney on November 3, 2023.

In her brief, the Planning Director does not contest that the Applicant’s Pre-Application Design Review Application vested under the City Code in effect prior to Ordinance 1234. She does contend, however, that the language of Ordinance 1234, which did not apply to the Mandatory Pre-Application Design Review, does apply to the next step in the Design Review process, under Ketchum City Code 17.96.010, the Design Review Application, but includes a 180-day “grace period” which would maintain the Pre-Application Design Review vesting status for 180 days under Section 3 of Ordinance 1234.

However, Section 3 is not written as a “grace period” for preapplications submitted prior to the ordinance, but rather as a provision to keep the Design Review Application Process under 17.96.010 moving forward for Preapplication Design Review Applications processed AFTER Ordinance 1234 was adopted. As stated clearly in our September 7, 2023 appeal letter, Ordinance 1234 cannot both apply in part and not apply in part to the same Project or Development. In other words, either ordinance 1234 applies in whole, or it does not apply at all, and under Idaho law and as the City has stated on numerous occasions, it does not apply.

A review of the revisions to Section 1 of proposed draft Ordinance 1234 regarding vesting, all of which came after public comment, is illustrative. The first draft of the Ordinance, reviewed by P&Z on August 16, 2022, stated the following:

Pre-application Design Review Applications deemed complete prior to the effective date of this ordinance, *that do not have a subsequent Design Review application deemed complete*, are subject to the provisions contain [sic] herein.

Following public comment and citation to legal authority, the P&Z Commission recommended changing Section 1 to have vesting upon receipt of the completed Pre-application Design Review application as it would likely only impact a single project.

Despite P&Z's recommendation, staff revised sentences highlighted above in Section 1 to the following:

Pre-application Design Review and Mountain Overlay Preapplication Design Review applications *that have been reviewed by the Planning and Zoning Commission at one review meeting* prior to the effective date of this ordinance are not subject to the provisions contained herein.

In discussing this revision with the City Council at its initial hearing on draft Ordinance 1234 on September 19, 2022, Ms. Landers interrupted the Mayor to state the following:

***And pardon me for interruption council members, but just to clarify Mayor Bradshaw, we are kind of trying to split the baby a little bit with what the Planning Commission recommended and what we initially proposed to the Planning Commission. And so the initial ordinance took a much harder line that said basically if you have a pre-application, that doesn't count at all and it [sic] really only final design review count. So what we're proposing here is that if you have a pre-application that's in process and you've had your preapplication review with the commission meaning that they've given substantial feedback. You've gotten your guidance. You've had that informal review that would be the Milestone by which you get grandfathered and the new ordinance would not apply to you. (City Council meeting Transcript, September 19, 2022 at 1:21:24 – 1:22:09)***

Following public objection the requirement of a P&Z meeting prior to vesting and citation to Idaho law confirming a project is vested when an application is substantially complete, at the next City Council meeting, held on October 3, 2022, City Attorney

Matthew Johnson recommended removing the clause “that have been reviewed by the Planning and Zoning Commission at one review meeting “ and replacing that with “*deemed complete for vesting purposes*.” (City Council Meeting Transcript, October 3, 2022 at 1:46:31 - 1:48:12; 1:54:54 – 1:55:30). This is the language ultimately incorporated into Ordinance 1234.

None of the discussion at City Council regarding the vesting of a project prior to Ordinance 1234 related at all to nor even referenced the 180-day provision in Section 3. There was never any discussion or suggestion that, somehow, Section 3 of Ordinance 1234 was meant to apply only to applications for Pre-application Design Review that had been deemed complete prior to the adoption of Ordinance 1234. If the 180-day period in Section 3 was meant to limit vesting on applications for Projects that vested prior to the adoption of the Ordinance, one would think it would have been discussed at the Council level as the language regarding vesting was addressed at length.

This makes sense because under chapter 17.96 of the Ketchum Ordinance related to Design Review, Subsection C, Preapplication Design Review, is a necessary, required step in the Design Review Process for specific types of Developments or Projects. As a necessary step, it triggers the vesting for the Project, as city staff has repeatedly stated on the record in both the process of adopting Ordinance 1234 and in the Pre-application Design Review process as noted in our letter of September 7, 2023.

Quite simply, either Ordinance 1234 applies or it doesn't apply to the Sawtooth Serenade Project. The City previously stated that it did NOT apply and proceeded with Pre-application Design Review, the initial stage of the Design Review Process, under the prior ordinances. It cannot now argue that Pre-application Design Review was not part of the Design Review process required for this Project. This position is even more surprising given the recent decision in *Bracken v. City of Ketchum*, Docket No. 48721 September 15, 2023, wherein the Idaho Supreme Court, citing the same law cited in our September 7 letter, concluded that the developer's rights vested under the ordinance in effect at the time it first filed an application, which the City refused to accept, and that Bracken's “rights could not be taken away by Ketchum's enactment of a new ordinance [thereafter] ...” Bracken at 12. The Court then, citing *Ben Lomond, Inc. v. City of Idaho Falls*, 92 Idaho 595, 602 (1968), pointed out the City of Ketchum's “bad faith conduct” stating:

[T]o hold for the City in the present case would mean that a city, merely by withholding action on an application for a permit, could change or enact a zoning law to defeat the application. It could, in substance, give immediate effect to a future or proposed zoning ordinance before that ordinance was enacted by proper procedure.

The City planning staff's actions with respect to the present Project seem eerily similar.

As a final matter, the Director questions the delays pointed out in our September 17, 2023 letter in receiving responses from city contractors, including Clear Creek

November 9, 2023

Disposal (the city's garbage franchisee) and The MH Companies (the city's sole street lighting consultant) which impacted the timing of submitting a completed application. To make sure the record is complete, attached as Exhibit A to this letter is a Timeline of Delays experienced by Thielsen Architects in working through the necessary steps to bring this Project from Pre-application Design Review to Design Review. Each of these communications can be confirmed by email.

Based on the foregoing, and the facts and arguments set forth in our letter of September 7, 2023, we respectfully urge the Commission to honor the City's word, stand by the written record before you regarding the vesting of the Sawtooth Serenade Project, reverse the Administrative Determination and proceed with Design Review.

Thank you for your consideration.

Sincerely,

LAWSON LASKI CLARK, PLLC



James R. Laski

Cc: Matthew A. Johnson, Esq. (by email: [mjohnson@whitepeterson.com](mailto:mjohnson@whitepeterson.com))  
clients



# **EXHIBIT A**

## Timeline of Delays - Sawtooth Serenade

### **1<sup>st</sup> Collaborative design Meeting with Morgan Landers, Director of Planning and Building**

2/11/23 Dave Thielsen (DT) of Thielsen Architects emails Morgan Landers (ML) asking for collaborative design meeting.

2/14/23 DT emails ML again asking for collaborative design meeting.

2/14/23 ML responds that she is booked for the rest of the week.

2/22/23 First collaborative design meeting between ML and TA.

*Total of eleven (11) days from meeting request to the 1<sup>st</sup> meeting.*

### **2<sup>nd</sup> Collaborative design Meeting with Morgan Landers, Director of Planning and Building**

4/26/23 Robert Connor (RC) of Thielsen Architects emails ML requesting a second collaborative design meeting and receives an autoreply from ML that she is out of the office until 5/1/23.

5/1/23 RC emails ML for second collaborative design meeting.

5/1/23 DT emails ML asking for collaborative design meeting to be the week of the 8<sup>th</sup>.

5/8/23 RC emails ML asking again to schedule a collaborative design meeting.

5/8/23 ML responds that this week is full for her. Proposes the following week.

5/9/23 DT emails ML proposing meeting times.

5/9/23 ML responds that proposed times do not work for her.

5/9/23 DT emails ML proposing other times.

5/10/23 DT emails ML again attempting to secure meeting time.

5/11/23 ML responds that 5/17/23 will work.

5/17/23 Second collaborative design meeting between ML and TA.

*Total of seventeen (17) days from meeting request after ML's return from vacation to the 2<sup>nd</sup> meeting.*

### **The MH Companies**

5/25/23 RC emails architectural drawings and the previous street lighting plan to the previous contact at The MH Companies. RC receives notice that the previous contact has left the company and that the message has been forwarded to a new contact who will respond shortly.

## **Sawtooth Serenade**

### **Timeline of Delays**

**Page 2 of 3**

5/31/23 RC calls The MH Companies and learns that the new contact is Mike Decker (MD). RC brings MD up to speed on the project.

5/31/23 RC emails drawings and the previous street lighting plan to MD.

6/9/23 RC emails MD to check status. MD can't access any of their previous work on the project and does not have good information on what Ketchum's requirements are for the project. MD tells RC he will contact the City of Ketchum to get more information.

6/14/23 MD emails RC an update. MD is still working on the project but promises something very soon.

6/20/23 MD emails RC an update. MD is still working on the project and hopes to have something soon.

6/21/23 MD emails RC a drawing, but MD has moved the streetlight from in front of the exit door into a required street tree.

6/22/23 RC and MD exchange emails and MD revises the drawing. MD moves the streetlight back in front of the exit door. RC responds asking it to be moved away from the door. MD moves the streetlight back into the street tree. RC responds that it is back in the street tree and needs to move further west to be out of the street tree and not in front of the door. MD provides a drawing with the streetlighting in a workable location.

24 total emails, plus phone calls, required to get small adjustments to the location of two streetlights. *Total of twenty-eight (28) days to receive requested minor adjustment from City required vendor.*

### **Trash Collection/Clear Creek Disposal**

6/16/23 Jeff Loomis (JL) of Galena-Benchmark emails Mike Goitiandia (MG) to review trash collection access.

6/21/23 Email from JL to Thielsen Architects (TA) stating JL is still waiting to hear back from MG on a question he asked him regarding trash collection in alley.

6/23/23 JL calls MG.

6/23/23 RC emails MG asking that he return JL's call.

6/27/23 RC calls and leaves a voicemail for MG.

6/28/23 RC calls and leaves a voicemail for MG.

6/29/23 RC emails MG drawings for his review.

6/30/23 JL and MG speak on the phone.

**Sawtooth Serenade**

**Timeline of Delays**

**Page 3 of 3**

7/3/23 DT emails MG.

7/6/23 DT calls MG.

7/11/23-7/17/23 TA revises drawings based on civil design work which JL reviewed with MG.

7/17/23 RC emails MG asking for memo.

7/18/23 MG emails response to RC, JL, and DT.

7/18/23 RC replies to MG with revised drawings based MG's email

7/25/23 RC calls and leaves a voicemail for MG asking for a response.

7/25/23 RC emails MG asking for a response.

7/26/23 RC and MG speak on the phone.

7/26/23 RC emails MG revised drawings based on phone conversation.

7/31/23 RC emails MG asking for a response.

8/1/23 RC emails MG asking for a response.

8/1/23 RC asks Jim Laski to contact MG to get things moving.

8/2/23 MG sends approval memo to City of Ketchum and project team.

8/7/23 Final design Review Application is transmitted to City of Ketchum.

*Total of forty-seven (47) days to receive feedback and approval from City required vendor.*



City of Ketchum

# Attachment D: Interim Ordinance 1234

## ORDINANCE 1234

**AN INTERIM ORDINANCE OF THE CITY OF KETCHUM, BLAINE COUNTY, IDAHO, TO IMPLEMENT REVISED DEVELOPMENT STANDARDS THAT REQUIRE MINIMUM RESIDENTIAL DENSITIES IN CERTAIN ZONE DISTRICTS FOR CERTAIN PROJECTS; REGULATE THE CONSOLIDATION OF LOTS IN CERTAIN ZONE DISTRICTS; PROHIBIT THE REDUCTION OF DWELLING UNITS IN CONJUNCTION WITH DEVELOPMENT PROJECTS; CLARIFY PARKING REQUIREMENTS FOR RETAIL AND OFFICE USES IN THE CC AND T ZONE DISTRICTS; AMEND THE USES PERMITTED IN THE CC-2 AND A PORTION OF THE T ZONE DISTRICT; ADD REQUIREMENTS FOR DEVELOPMENTS WITHIN CERTAIN ZONE DISTRICTS RELATED TO SQUARE FOOTAGE OF USES, LOCATION OF USES, AND PARKING; AND ADD DESIGN REVIEW CRITERIA FOR DEVELOPMENTS IN CERTAIN ZONE DISTRICTS; PROVIDING FOR PUBLICATION BY SUMMARY; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING FOR AN EFFECTIVE DATE AND A SUNSET DATE.**

**WHEREAS**, Idaho Code Section 67-6524 authorizes local jurisdictions to enact interim ordinances, effective up to one (1) year, during the pendency of preparation and adoption of a permanent ordinance; and

**WHEREAS**, the State of Idaho and the Idaho Housing and Finance Association has stated that access to workforce housing has become a statewide challenge impacting urban, rural, and resort communities, resulting in a proposal for a state-led gap financing program for development of workforce housing; and

**WHEREAS**, the 2014 Ketchum Comprehensive Plan identifies ten core values vital to the City's ability to achieve its vision including 1) A Strong and Diverse Economy, 2) Vibrant Downtown, and 4) A Variety of Housing Options; and

**WHEREAS**, the City of Ketchum (the "City") is experiencing a significant population increase and a severe shortage of housing for the local workforce at all income levels which is threatening the livelihood and straining the resources of the City, its citizens, and its businesses; and

**WHEREAS**, businesses in Ketchum have been forced to reduce operating hours in the past two years due to lack of workforce; and

**WHEREAS**, the City's average annual population growth rate is approximately 1%, however, the population of the City increased 25% from 2019 to 2020; and

**WHEREAS**, the City collects housing specific data and is developing a Housing Action Plan to address the immediate need for more housing in the City; and

**WHEREAS**, the City lost 475 long-term rental and ownership housing units from 2000 to 2019; and

**WHEREAS**, in addition to the 475 housing units lost, the Housing Action Plan Summary and Findings identify the need to build, convert, or stabilize between 65 and 100 housing units annually in the City to ensure adequate housing for the City's workforce and support the dynamic demands of a resort community economy; and

**WHEREAS**, from 1990 to 2009, approximately 290 units were constructed for an average of 15 units per year. From 2010 to 2020, only 92 units were constructed for an average of 9 units per year, a significant decrease from previous years; and

**WHEREAS**, the City is experiencing an increase in the redevelopment of property as more than half of the City's housing stock was built before 1980 and there are a limited number of vacant properties within city limits; and

**WHEREAS**, development permitted under the current zoning regulations result in low-density residential development in areas where the 2014 Ketchum Comprehensive Plan envisions medium to high density residential and vibrant mixed-use development; and

**WHEREAS**, staff presented options for addressing housing issues to the Planning and Zoning Commission at a special meeting on February 15, 2022. At that meeting, the Planning and Zoning Commission directed staff to prepare a draft emergency ordinance reflecting proposed changes for review; and

**WHEREAS**, the Planning and Zoning Commission met on March 8, 2022, and March 29, 2022, to discuss the draft emergency ordinance and obtain public input related to the proposed changes and recommended on March 29, 2022, the emergency ordinance be adopted by City Council; and

**WHEREAS**, the City Council met on April 18, 2022, to review the draft emergency ordinance and recommendation from the Planning and Zoning Commission. At said meeting, the City Council declined to approve the emergency ordinance as presented and directed staff to conduct additional community engagement and prepare an interim ordinance reflecting additional feedback from the community; and

**WHEREAS**, the City conducted a community workshop to gather additional feedback on the proposed changes June 28, 2022, attended by members of the City Council, Planning and Zoning Commission, and the public. Said workshop was followed by a community survey requesting feedback on the same topic; and

**WHEREAS**, the Planning and Zoning Commission held a public hearing on August 16, 2022 to review this interim ordinance, as prepared by staff, reflecting significant feedback from the community; and

**WHEREAS**, the Planning and Zoning Commission recommended approval of this interim ordinance at a special meeting on August 16, 2022; and

**WHEREAS**, the City Council held a public hearing on September 19, 2022 to review the interim ordinance, information from staff, and recommendations from the Planning and Zoning Commission; and

**WHEREAS**, The City Council held three readings of the interim ordinance on September 19, 2022, October 3, 2022, and October 17, 2022, resulting in approval of this interim ordinance; and

**WHEREAS**, the Planning and Zoning Commission hearings and City Council hearings were duly noticed per the requirements of Idaho Code Section 67-6509; and

**WHEREAS**, the provisions of this ordinance are temporary in nature and shall expire three hundred and sixty five (365) days after the adoption of this interim ordinance; and

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

**Section 1.** The following interim regulations and standards apply to any Building Permit, Pre-Application Design Review, Design Review, Subdivision, or Conditional Use Permit application deemed complete for vesting purposes after the effective date of this Ordinance filed pursuant to Title 16 - Subdivision Regulations and Title 17 - Zoning Regulations. Wherever any provision in Title 16 or Title 17 or any other ordinance, rule or regulation of any kind contain standards covering the same subject matter, the standards of this Ordinance shall apply.

**Section 2.** All zoning districts referenced in this ordinance are pursuant to Ketchum Municipal Code (the "KMC") Chapter 17.18 – *Zoning Districts* and abbreviated as referenced. All terms in this ordinance are defined in Section 17.08.020 – *Terms Defined* and 16.04.020-*Definitions* of the KMC with the addition of the following:

- A. Consolidation – the action or process of combining more than one lot or unit into a single lot or unit.
- B. Residential Density – the number of dwelling units per square feet of lot area.

**Section 3.** Developments subject to Design Review approval pursuant to KMC 17.96 – *Design Review* or 17.104 – *Mountain Overlay Zoning District* that have conducted a preapplication design review meeting with the Commission, as required or voluntary, must file a complete Design Review Permit application and pay all required fees within 180 calendar days of the last review meeting on the preapplication with the Commission, otherwise the preapplication review will become null and void.

**Section 4.** There shall now be minimum residential densities for new development projects or expansions of existing buildings that exceed a total floor area ratio (FAR) of 1.0 within Subdistrict 1 and Subdistrict 2 of the CC zone district and 0.5 FAR in the T, T-3000, T-4000, and GR-H zone districts as follows:



Zone District	Minimum Residential Density Required (units/SF)			
CC Subdistricts 1 and 2	100% Residential Development 7 / 5,500			
	Mixed Use Development			
	≤ 30% Commercial  4 / 5,500	31-60% Commercial  3 / 5,500	61-80% Commercial  2 / 5,500	≥ 80% Commercial  No Minimum except when residential units are provided, there shall be a minimum of 2 units
T	100% Residential Development 7 / 10,000			
	Mixed Use Development			
	≤ 30% Commercial  4 / 10,000	31-60% Commercial  3 / 10,000	61-80% Commercial  2 / 10,000	≥ 80% Commercial  No Minimum except when residential units are provided, there shall be a minimum of 2 units
T-3000	4 / 10,000			
T-4000	8 / 10,000			
GR-H	8 / 10,000			

- A. For purposes of calculating commercial area for minimum residential densities, commercial square footage shall include all permitted and conditionally permitted uses identified in KMC Section 17.12.020 – *District Use Matrix* under the categories of “Commercial” or “Public and Institutional”.
- B. Percent commercial shall be calculated by dividing the total commercial square footage by the Gross Floor Area for the project.
- C. Total commercial square footage shall be calculated using the total area of commercial uses on all floors in a building or portion of a building measured from the interior walls, excluding:
  - a. Common areas
  - b. Mechanical and maintenance equipment rooms
  - c. Parking areas and/or garages
  - d. Public areas

D. Minimum densities identified in Section 4 may be adjusted subject to the review and approval of a Conditional Use Permit by the Planning and Zoning Commission.

**Section 5.** There shall now be standards for the consolidation of lots. Additionally, there shall be a specific application type, process, and additional standards for the review and approval of the consolidation of lots as follows:

A. Consolidation of lots within the City shall be permitted in certain zone districts as follows:

<b>Zone District</b>	<b>Consolidation of Lots</b>
CC - Subdistricts 1 and 2	Permitted subject to additional standards
T	Permitted subject to additional standards
T-3000	Permitted subject to additional standards
T-4000	Permitted subject to additional standards
GR-H	Permitted subject to additional standards
GR-L	Permitted subject to waiver
LR, LR-1, and LR-2	Permitted subject to waiver
STO-1, STO-4, and STO-H	Permitted subject to waiver
LI, LI-2, and LI-3	Permitted subject to additional standards
RU and AF	Permitted subject to additional standards

*\*Additional Standards are outlined in Subsection F. The waiver process is as outlined in KMC Section 16.04.130.*

- B. The definition of “Readjustment of Lot Lines” in KMC Section 16.04.020 - *Definitions*, also known as Lot Line Shifts, shall no longer include the “removal of lot lines”.
- C. Consolidation of lots may only be considered pursuant to the requirements and standards of KMC Section 16.04.030 – *Procedure for Subdivision Approval*.
- D. All preliminary plat applications for consolidation of lots shall only be considered when submitted concurrently with a building permit application or land use development application as applicable.
- E. The final plat for consolidation of lots shall not be signed by the City Clerk and recorded until the proposed development has received one or both of the following as applicable:
  - 1. A certificate of occupancy issued by the City of Ketchum; and
  - 2. Completion of all design review elements as approved by the Planning and Zoning Administrator.
- F. In addition to KMC Section 16.04.040, all preliminary plat applications for consolidation of lots shall comply with the following criteria:
  - 1. The preliminary plat application is in conformance with all applicable building permit and land use development approvals.
  - 2. The preliminary plat application is in conformance with all applicable Zoning Regulations contained within Title 17 – Zoning Regulations.

3. The preliminary plat application is found to be in general conformance with the comprehensive plan in effect at the time the application was deemed complete.

**Section 6.** No demolition permit shall be issued pursuant to Chapter 15.16 of the KMC that results in the net loss in the total number of residential units currently existing on a property as of the effective date of this ordinance. The following standards apply to all properties within the City:

- A. Development of property, in any zone district, may not result in the net loss of dwelling units.
- B. Total number of dwelling units shall be calculated including all listed or defined dwelling unit uses and terms in the KMC such as, but not limited to, “dwelling, one family”, “dwelling, multi-family”, “dwelling unit, accessory”, and “work/live unit”.
- C. No demolition permit shall be issued for any structure until a building permit application for a replacement project on the property and required fees have been accepted by the City and deemed complete.
- D. Reduction in number of residential units may be permitted subject to the review and approval of a Conditional Use Permit by the Planning and Zoning Commission prior to submittal of a demolition permit application.
- E. In the event of imminent and substantial danger to the health or safety of the public due to neglect or condemnation of the building as determined by the building official or his/her designee, a building may be demolished prior to redevelopment pursuant to the requirements of KMC Section 15.16.030. Prior to demolition of the structure(s), a development agreement shall be entered into between the owner of the property and the City of Ketchum stipulating the total number of units required at the time of development of the property. Said development agreement shall be recorded against the property with the office of the Blaine County, Idaho, Clerk and Recorder.

**Section 7.** There shall be no parking required for individual retail spaces of 5,500 square feet or less within the Community Core (CC) and Tourist (T) zoning districts.

**Section 8.** There shall be no parking required for the first 5,500 square feet of office space of a project within the Community Core and Tourist zone districts.

**Section 9.** New developments on properties within the Tourist zone district that include frontage along River Street from S Leadville Ave to S 2<sup>nd</sup> Ave, as shown in Exhibit A, shall be subject to the uses permitted and conditionally permitted and associated footnotes for the Community Core – Mixed Use subdistrict (CC-2) as outlined in KMC 17.12.020 – District Use Matrix.

**Section 10.** Properties within the Community Core – Mixed Use subdistrict (CC-2), as shown on Exhibit B, shall be subject to the following:

- A. Ground floor residential with street frontage is not permitted.

**Section 11.** Developments within the CC Subdistrict 1 and 2, T (Leadville to 2<sup>nd</sup> Ave fronting River Street) not exempt from Design Review are subject to the following standards:

- A. For mixed-use developments, a minimum of 55% of the gross floor area, as defined in KMC 17.08.020, of the ground floor must be commercial use(s).
- B. Community housing units are not permitted within basements.
- C. Individual residential dwelling units cannot exceed a total square footage of 3,000 square feet. Total square footage shall be calculated as the total area of residential space within a single residential unit measured from the interior walls. For residential units with multiple floors, staircases and elevators shall be included in the calculation on the first level of the residential unit only.
- D. Developments shall not provide a total number of parking spaces above the minimum parking requirements per KMC 17.125.040 – *Off Street Parking and Loading Calculations*, unless the additional parking spaces are designated for public parking use only or for deed restricted community housing units.

**Section 12.** Requirements outlined in Sections 10 and 11 of this ordinance may be adjusted subject to the review and approval of a Conditional Use Permit by the Planning and Zoning Commission.

**Section 13.** All development subject to Design Review pursuant to KMC Section 17.96.010, shall meet the following additional criteria:

- A. The design and uses of the development generally conform with the goals, policies, and objectives of the comprehensive plan.

**Section 14.** This ordinance shall be in full force and effect from and after its passage and approval and shall remain in effect for a period not to exceed three hundred and sixty-five (365) days from its effective date, pursuant to Idaho Code Section 67-6524.

**Section 15. 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 16. REPEALER CLAUSE:** All City of Ketchum Ordinances or resolutions or parts thereof which are in conflict herewith are hereby repealed.

**Section 17. PUBLICATION:** This Ordinance, or a summary thereof in compliance with Section 50-901A, Idaho Code, substantially in the form annexed hereto as Exhibit "C" shall be published once in the official newspaper of the City, and shall take effect immediately upon its passage, approval, and publication.

**Section 18. EFFECTIVE DATE:** This Ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

PASSED BY THE CITY COUNCIL and APPROVED by the MAYOR OF KETCHUM IDAHO,  
on this 17<sup>th</sup> day of Oct. 2022.

APPROVED:



\_\_\_\_\_  
Neil Bradshaw, Mayor

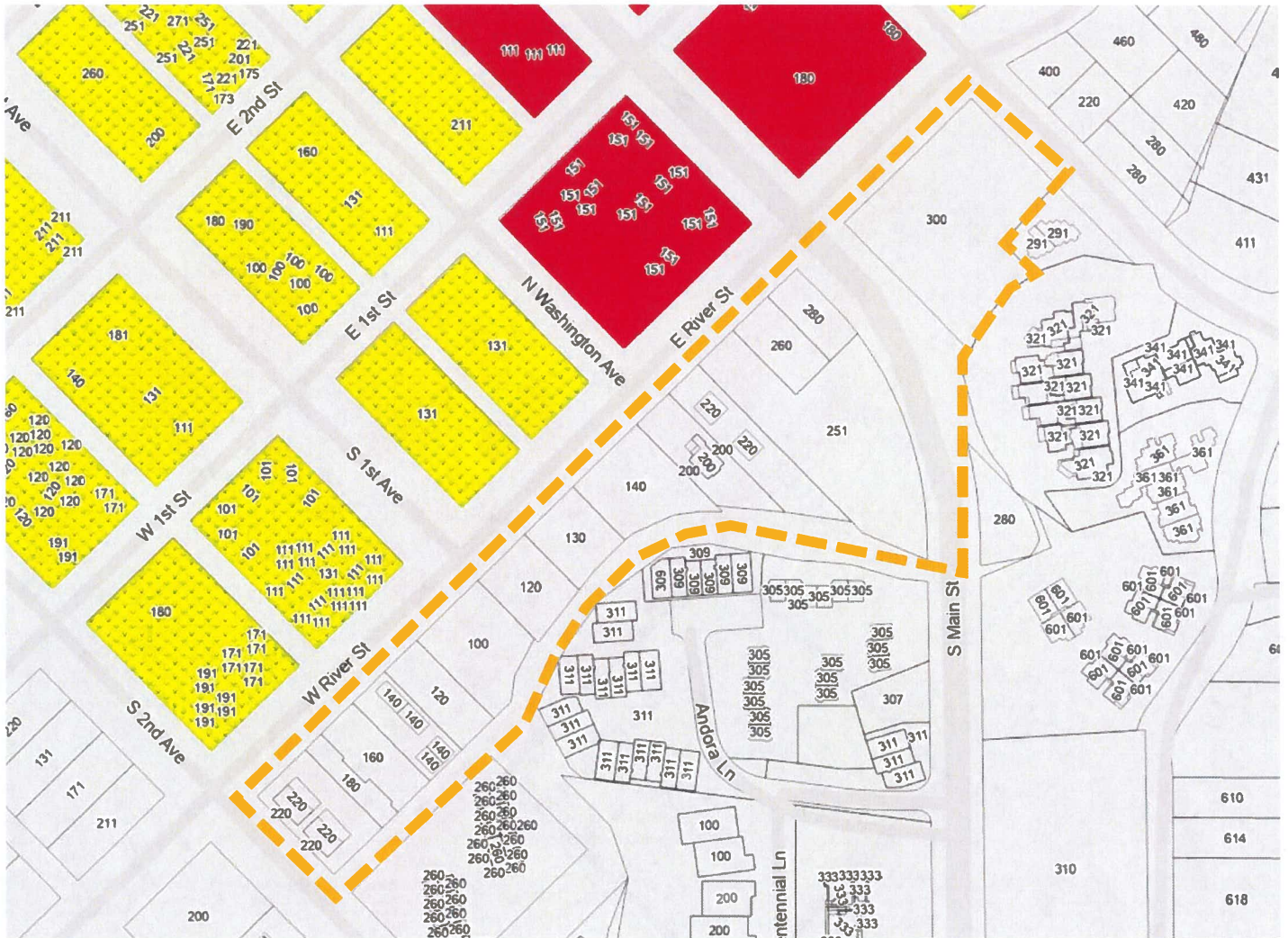
ATTEST:



\_\_\_\_\_  
Lisa Enourato, Interim City Clerk

# Interim Ordinance 1234

## Exhibit A



### Community Core Subdistricts



1-Retail Core



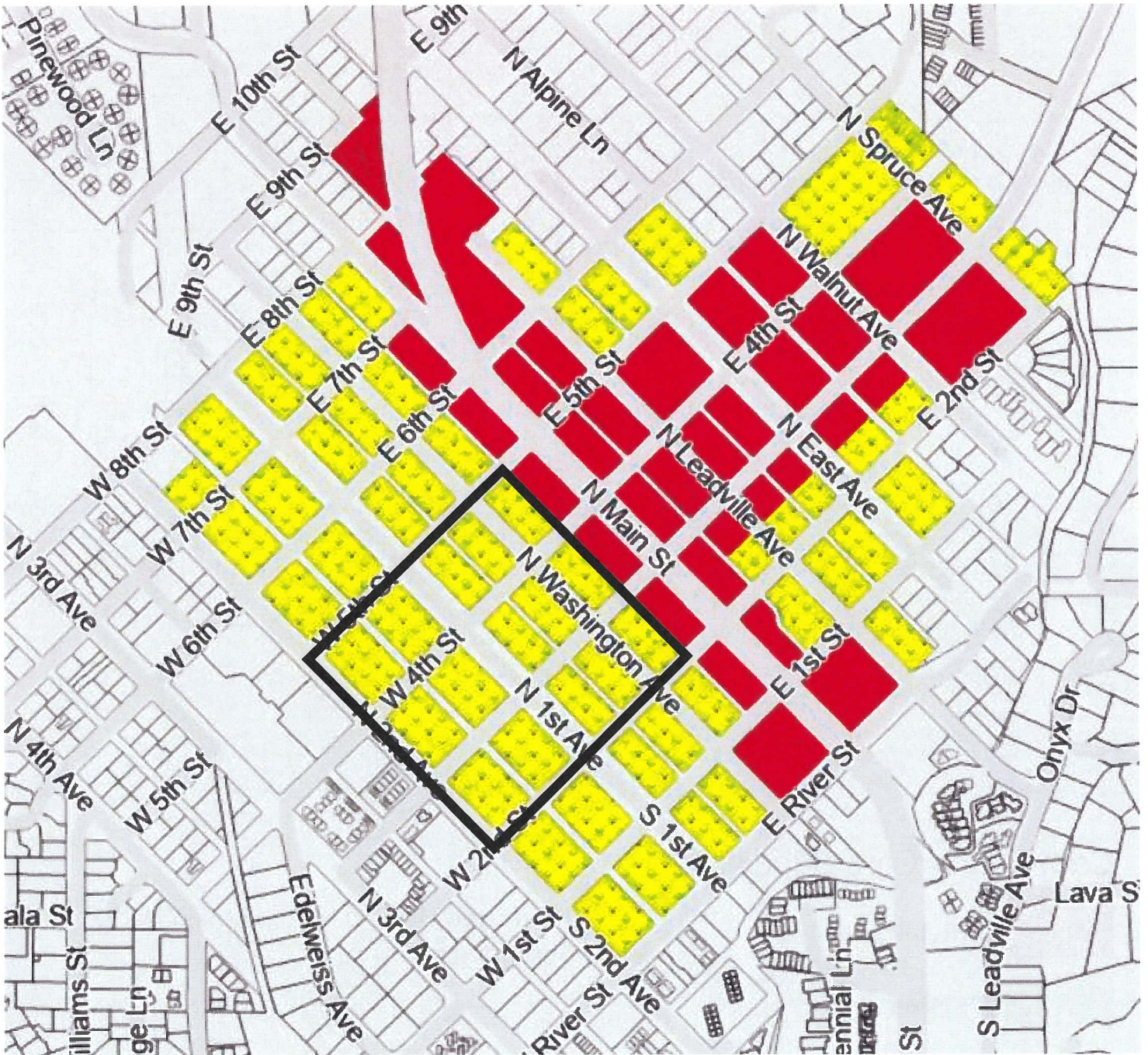
Permitted Uses to Match Mixed Use Subdistrict



2- Mixed Use



Interim Ordinance 1234  
Exhibit B



Community Core Subdistricts

-  1-Retail Core
-  2- Mixed Use
-  Ground Floor Residential with Street Frontage not permitted

## EXHIBIT C: PUBLICATION SUMMARY

### ORDINANCE 1234

AN INTERIM ORDINANCE OF THE CITY OF KETCHUM, BLAINE COUNTY, IDAHO, TO IMPLEMENT REVISED DEVELOPMENT STANDARDS THAT REQUIRE MINIMUM RESIDENTIAL DENSITIES IN CERTAIN ZONE DISTRICTS FOR CERTAIN PROJECTS; REGULATE THE CONSOLIDATION OF LOTS IN CERTAIN ZONE DISTRICTS; PROHIBIT THE REDUCTION OF DWELLING UNITS IN CONJUNCTION WITH DEVELOPMENT PROJECTS; CLARIFY PARKING REQUIREMENTS FOR RETAIL AND OFFICE USES IN THE CC AND T ZONE DISTRICTS; AMEND THE USES PERMITTED IN THE CC-2 AND A PORTION OF THE T ZONE DISTRICT; ADD REQUIREMENTS FOR DEVELOPMENTS WITHIN CERTAIN ZONE DISTRICTS RELATED TO SQUARE FOOTAGE OF USES, LOCATION OF USES, AND PARKING; AND ADD DESIGN REVIEW CRITERIA FOR DEVELOPMENTS IN CERTAIN ZONE DISTRICTS; PROVIDING FOR PUBLICATION BY SUMMARY; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING FOR AN EFFECTIVE DATE AND A SUNSET DATE.

A summary of the principal provisions of Ordinance No. 1234 of the City of Ketchum, Blaine County, Idaho, adopted on October 17, 2022, is as follows:

- SECTION 1.** Applicability of the ordinance.
- SECTION 2.** Reference to terms defined and added.
- SECTION 3.** Requirements for submittal of final Design Review applications following preapplication meetings with Planning and Zoning Commission.
- SECTION 4.** Minimum residential densities for certain zone districts as outlined and method for calculation of minimum residential density requirements.
- SECTION 5.** Standards for consolidation of lots within the City of Ketchum.
- SECTION 6.** Restrictions for the reduction in number of residential units from redevelopment of property.
- SECTION 7.** Parking exemption for retail uses.
- SECTION 8.** Parking exemption for office uses.
- SECTION 9.** Permitted and conditionally permitted uses for certain properties along River Street in the Tourist Zone District.



- SECTION 10.** Restrictions on ground floor residential on certain properties within the Community Core.
- SECTION 11.** Development requirements in certain zone districts for square feet of commercial use(s), size of residential units, location of community housing units, parameters for exceeding minimum parking requirements.
- SECTION 12.** Allowance for a conditional use permit to waive requirements of Sections 10 and 11 of the ordinance.
- SECTION 13.** Revision to Design Review criteria to add requirement of general comprehensive plan conformance.
- SECTION 14.** Term of the ordinance.
- SECTION 15.** Provides a savings and severability clause.
- SECTION 16.** Provides a repealer clause.
- SECTION 17.** Provides for publication of this Ordinance by Summary.
- SECTION 18.** Establishes an effective date.

The full text of this Ordinance is available at the City Clerk's Office, Ketchum City Hall, 191 5<sup>th</sup> Street West, Ketchum, Idaho 83340 and will be provided to any citizen upon personal request during normal office hours.

ATTEST:

  
\_\_\_\_\_  
Lisa Enourato, Interim City Clerk

APPROVED:

  
\_\_\_\_\_  
Neil Bradshaw, Mayor