

**ORDINANCE NUMBER 1062**

AN ORDINANCE OF THE CITY OF KETCHUM, IDAHO, AMENDING TITLE 17, CHAPTER 17.64, SECTION 17.96.030, DESIGN REVIEW DISTRICT, BY MODIFYING THE TIME PERIOD FOR DESIGN REVIEW EXTENSION(S); PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING A CODIFICATION CLAUSE; PROVIDING FOR PUBLICATION BY SUMMARY; PROVIDING A REPEALER CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the City has initiated this text amendment due to the number of commercial and residential properties that have received design review approval but have not yet applied for building permit(s); and,

**WHEREAS**, based on current economic conditions, many projects need additional time to obtain financing in order to apply for a building permit and commence construction

**WHEREAS**, research has been conducted regarding the time limitations in other resort cities for similar types of permits; and,

**WHEREAS**, the Planning and Zoning Commission considered the application for a text amendment and made a recommendation to the City Council on November 17, 2009; and,

**WHEREAS**, the City Council held a public hearing on this matter on December 16, 2009; and,

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

**SECTION 1.** Amends Section Chapter 17.96.130, Design Review District pertaining to Design Review extensions, by adding thereto the underlined language herein below, to wit:

**17.96.130 Terms of Approval.**

- A. The term of design review approval shall be twelve (12) months from the date that findings of fact, conclusions of law and decision are adopted by the Commission or upon appeal, the date the approval is granted by the Council subject to changes in zoning regulations. Application must be made for a building permit with the Ketchum Building Department during the twelve (12) month term. Once a building permit has been issued, the design review approval shall be valid for the duration of the building permit. Unless an extension is granted as set forth below, failure to file a complete building permit application for a project in accordance with these provisions shall cause said approval to be null and void. The provisions of this section shall apply to those approvals obtained on or after January 1, 2008. If a project approved on or after January, 2008 has previously sought and obtained an extension pursuant to 17.96.130(B) on or before the enactment of this section, the project may seek an additional extension in accordance with the provisions of 17.96.130(B). (Ord. 831 § 17 [part], 1999; Ord. 701 § 1 [part], 1997; Ord. 208 § 17 [part], 1974)

B. For design review approvals pertaining to "civic" buildings, the head of the planning department and the chair of the planning and zoning commission may, upon written request by the holder, grant a maximum of two ~~one~~ 12-month extensions to an unexpired design review approval. For design review approvals pertaining to all other buildings, ~~the city the head of the planning department and the chair of the planning and zoning commission~~ may, upon written request by the holder, grant a maximum of two (2) twelve (12) ~~one~~ 6-month extensions to an unexpired design review approval. The first twelve-month extension shall be reviewed by the head of the planning department and the chair of the planning and zoning commission. The second twelve-month extension shall be reviewed by upon receipt of the written request for extension, the head of the planning department and the chair of the planning and zoning commission. Whether or not ~~shall determine if~~ an extension is warranted shall be based on the following considerations:

1. Whether there have been significant amendments to the city's Comprehensive Plan, Downtown Master Plan or ordinances which will apply to the subject design review approval; or
2. Whether significant land use changes have occurred in the project vicinity which would adversely impact the project or be adversely impacted by the project; or
3. Whether hazardous situations have developed or have been discovered in the project area; or
4. Whether community facilities and services required for the project are now inadequate.

If any of the foregoing considerations are found to exist with regard to the project for which an extension is sought, an extension will not be granted and the ~~city head of the planning department and the chair of the planning and zoning commission~~ shall issue this decision in writing; otherwise the ~~city shall head of the planning department and the chair of the planning and zoning commission~~ shall administratively approve such an extension. No extensions shall be granted for an expired design review approval.

C. This section shall be deemed effective as of December , 2009, July 1, 2007, and shall apply to all design review approvals granted by the city since January, 2008. this effective date. (Ord. 1035 § 1, 2008)

**SECTION 2. 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.

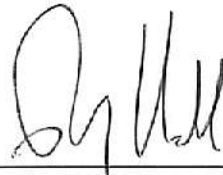
**SECTION 3. CODIFICATION CLAUSE.** The City Clerk is instructed to immediately forward this ordinance to the codifier of the official municipal code for proper revision of the code.

**SECTION 4. PUBLICATION.** This Ordinance, or a summary thereof in compliance with Section 50-901A, Idaho Code, substantially in the form attached hereto as Exhibit "A," shall be published once in the official newspaper of the City, and shall take effect immediately upon its passage, approval, and publication.

**SECTION 5. REPEALER CLAUSE.** All City of Ketchum code sections, ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

**SECTION 6. EFFECTIVE DATE.** This Ordinance shall be in full force and effect from and after its passage, approval and publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO, and approved by the Mayor this 16th day of December, 2009.



Randy Hall, Mayor

ATTEST:



Sandra E. Cady, CMC  
City-Treasurer/Clerk





EXHIBIT A

PUBLICATION OF SUMMARY OF ORDINANCE NO. 1062  
CITY OF KETCHUM, IDAHO

AN ORDINANCE OF THE CITY OF KETCHUM, IDAHO, AMENDING TITLE 17, CHAPTER 17.64, SECTION 17.96.030, DESIGN REVIEW DISTRICT, BY MODIFYING THE TIME PERIOD FOR DESIGN REVIEW EXTENSION(S); PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING A CODIFICATION CLAUSE; PROVIDING FOR PUBLICATION BY SUMMARY; PROVIDING A REPEALER CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

A summary of the principal provisions of Ordinance No. 1062 of the City of Ketchum, Blaine County, Idaho, adopted on December 16, 2009, is as follows:

**Section 1. 17.96.130 Terms of Approval.**

- A. The term of design review approval shall be twelve (12) months from the date that findings of fact, conclusions of law and decision are adopted by the Commission or upon appeal, the date the approval is granted by the Council subject to changes in zoning regulations. Application must be made for a building permit with the Ketchum Building Department during the twelve (12) month term. Once a building permit has been issued, the design review approval shall be valid for the duration of the building permit. Unless an extension is granted as set forth below, failure to file a complete building permit application for a project in accordance with these provisions shall cause said approval to be null and void. The provisions of this section shall apply to those approvals obtained on or after January 1, 2008. If a project approved on or after January, 2008 has previously sought and obtained an extension pursuant to 17.96.130(B) on or before the enactment of this section, the project may seek an additional extension in accordance with the provisions of 17.96.130(B). (Ord. 831 § 17 [part], 1999; Ord. 701 § 1 [part], 1997; Ord. 208 § 17 [part], 1974)
- B. For design review approvals pertaining to "civic" buildings, the head of the planning department and the chair of the planning and zoning commission may, upon written request by the holder, grant a maximum of two one 12-month extensions to an unexpired design review approval. For design review approvals pertaining to all other buildings, ~~the city head of the planning department and the chair of the planning and zoning commission may,~~ upon written request by the holder, grant a maximum of two twelve (12) one 6-month extensions to an unexpired design review approval. The first twelve-month extension shall be reviewed by the head of the planning department and the chair of the planning and zoning commission. The second twelve-month extension shall be reviewed by upon receipt of the written request for extension, the head of the planning department and the chair of the planning and zoning commission. Whether or not ~~shall determine if~~ an extension is warranted shall be based on the following considerations:
1. Whether there have been significant amendments to the city's Comprehensive Plan, Downtown Master Plan or ordinances which will apply to the subject design review approval; or
  2. Whether significant land use changes have occurred in the project vicinity which would adversely impact the project or be adversely impacted by the project; or

3. Whether hazardous situations have developed or have been discovered in the project area;  
or

4. Whether community facilities and services required for the project are now inadequate.

If any of the foregoing considerations are found to exist with regard to the project for which an extension is sought, an extension will not be granted and the head of the planning department and the ~~city chair of the planning and zoning commission~~ shall issue this decision in writing; otherwise the ~~city head of the planning department and the chair of the planning and zoning commission~~ shall administratively approve such an extension. No extensions shall be granted for an expired design review approval.

C. This section shall be deemed effective as of December , 2009, ~~July 1, 2007~~, and shall apply to all design review approvals granted by the city since January, 2008. ~~this effective date.~~ (Ord. 1035 § 1, 2008)

Section 2: Provides a savings and severability clause.

Section 3: Provides a codification clause.

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

Section 5: Provides a repealer clause.

Section 6: Establishes the effective date of December 23, 2009.

The full text of this Ordinance is available at the City Clerk's Office, Ketchum City Hall, 480 East Avenue North, Ketchum, Idaho 83340 and will be provided to any citizen upon personal request during normal office hours.

CITY OF KETCHUM, IDAHO



Randy Hall, Mayor

ATTEST:



Sandra E. Cady, CMC  
City Treasurer/Clerk

Publish: Idaho Mountain Express,

Date: December 23, 2009

**LAWSON LASKI CLARK & POGUE, PLLC**  
ATTORNEYS AT LAW

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October 23, 2009

**VIA FACSIMILE**

Ms. Lisa Horowitz  
Community & Economic  
Development Director  
City Of Ketchum  
Post Office Box 2312  
Ketchum, Idaho 83340

**Gallery 260**

Dear Lisa:

Please consider this a formal request on behalf of 260 First, LLC, for an amendment of Ordinance §17.96.130(A).

As stated in William Justen's letter to you on October 19, 2009, we would like to encourage you and the City to consider extending the Design Review approval duration for projects that are currently stalled and waiting for the financial markets return to real estate development.

In the current market banks have still not returned to construction lending, and projects, which we believe offer significant assets to the community, have been stayed pending necessary financing. As noted in Mr. Justen's recent letter, many cities have extended entitlements by several years. The City of Seattle recently increased the validity of their Master Use Permit to 6 years.

In view of the foregoing, my client is hopeful the City will be willing to amend §17.96.130(A) to provide a two-year, rather than one-year, period in which to seek a building permit from the time of project approval.

We propose that §17.96.130(A) be amended as follows:

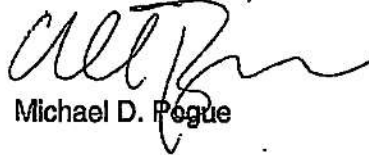
Ms. Lisa Horowitz  
October 23, 2009  
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The term of design review approval shall be ~~twelve (12)~~ twenty-four (24) months from the date that findings of fact, conclusions of law and decision are adopted by the commission or upon appeal, the date the approval is granted by the council subject to changes in zoning regulations. Application must be made for a building permit with the Ketchum building department during the ~~twelve (12)~~ twenty-four (24) month term. Once a building permit has been issued, the design review approval shall be valid for the duration of the building permit. Unless an extension is granted as set forth below, failure to file a complete building permit application for a project in accordance with these provisions shall cause said approval to be null and void. The provisions of this section shall apply to those approvals obtained on or after May 1, 2008. If a project approved on or after May 1, 2008 has previously sought and obtained an extension pursuant to 17.96.130(B) on or before the enactment of this section, the project may seek an additional extension in accordance with the provisions of 17.96.130(B).<sup>1</sup>

Thank you in advance for your anticipated cooperation in processing this request. Please call me if you have any questions or would like to discuss this further.

Sincerely,

LAWSON & LASKI, PLLC



Michael D. Pogue

cc: Client

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<sup>1</sup> Proposed added text is underlined, and proposed deleted text is struck-through.



THE JUSTEN  
Company LLC

October 19, 2009

Lisa Horowitz  
Director of Community and Economic Development  
City of Ketchum  
PO Box 2315  
Ketchum, ID 83340

Re: Gallery 260 Design Review Approval Extension

Dear Lisa:

It was a pleasure meeting you during the River Run development presentation on September 24th. I am encouraged to see The Sun Valley Company's continued commitment to improving the Wood River Valley and the open mindedness and cooperation by the City of Ketchum. With partners like The Sun Valley Company and a willingness to support smart growth, Ketchum will certainly have a bright future.

I am writing you today for another reason that I briefly spoke to about during our walk. I would like to encourage you and the City to consider extending the Design Review approval duration for projects that are currently stalled and waiting for the financial markets return to real estate development.

After two years of working through the code modification and Planning and Zoning process for our Gallery 260 mixed use project (located at 220, 260 and 280 First Avenue North), we received Design Review approval on June 23, 2008. We applied for the building permit and were prepared to start construction in the fall of 2008. In September of 2008, the subprime mortgage crisis struck and collapsed the credit markets leaving our project and many others without construction financing. Now, a year later, banks have still not returned to construction lending, and developers are hanging on and carrying the burden of the significant investment required to get through the P & Z approval process to one day be able to build.

We appreciate the 6-month extension that was approved earlier this year (Ketchum Ordinance 1035), however in this extraordinary economy more time is needed. Many cities' have extended entitlements by several years. The City of Seattle recently increased the validity of their Master Use Permit to 6 years.

With the 6-month extension, our Design Review approval now expires on December 23, 2009. We request an extension of at least one additional year.

Your attention to this matter would be much appreciated. Please don't hesitate to contact me at (206) 718-2764.

Sincerely,



William J. Justen

Cc: Stefanie Leif  
Randy Hall

512 Second Ave., Suite 200, Seattle, WA 98104  
Telephone 206.624.8870 Facsimile 206.624.8919