



## City of Ketchum

### CITY COUNCIL MEETING AGENDA MEMO

Meeting Date:	April 21, 2025	Staff Member/Dept:	Abby Rivin, Senior Planner Planning & Building Department
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Agenda Item:	<b>Recommendation to approve 140 West 2<sup>nd</sup> FAR Exceedance Agreement 25963.</b>
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#### Recommended Motion:

"I move to authorize the Mayor to FAR Exceedance Agreement 25963 with 140 West 2 <sup>nd</sup> Street LLC."
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#### Reasons for Recommendation:

- The Planning and Zoning Commission approved the 140 West 2<sup>nd</sup> Design Review Application File No. P24-092 on April 8, 2025. The applicant is proposing to develop a new 9,363-gross-square-foot mixed-use building located at 140 W 2nd Street in the Mixed-Use Subdistrict of the Community Core ("CC-2 Zone"). The project includes an art gallery and showroom space on the ground level, two multi-family dwelling units on the second floor, and a residential penthouse on the third floor.
- The project is proposing to take advantage of the Floor Area Ratio (FAR) bonus in exchange for community housing. The total FAR for the mixed-use development is 1.89, and the project exceeds the 1.0 FAR permitted by-right in the CC-2 Zone by 4,417 square feet.
- Pursuant to Ketchum Municipal Code §17.124.040.040.B2, community housing contributions for FAR exceedances may be satisfied through an in-lieu fee payment. The applicant proposes to mitigate the additional floor area by making a community housing in-lieu fee payment of \$450,600.

#### Policy Analysis and Background (non-consent items only):

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#### Sustainability Impact:

None OR state impact here: None
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#### Financial Impact:

None OR Adequate funds exist in account:	None
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#### Attachments:

140 West 2 <sup>nd</sup> FAR Exceedance Agreement 25963
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**FAR EXCEEDANCE  
AGREEMENT #25963**

**Parties:**

City of Ketchum	"City"	P.O. Box 2315, 191 W 5 <sup>th</sup> Street, Ketchum, Idaho 83340
140 West 2 <sup>nd</sup> Street LLC	"Owner"	PO Box 9000, Ketchum, Idaho, 83340

This FAR Exceedance Agreement ("Agreement") is made between the City of Ketchum, a municipal corporation of the state of Idaho, and 140 West 2<sup>nd</sup> Street LLC, a limited liability corporation, the owner of the development project.

**RECITALS**

- A. Pursuant to the City's authority under the Idaho Local Land Use Planning Act, the Ketchum Municipal Code ("K.M.C.") Chapter 17.124 provides for certain development standards, including maximum floor area ratio (FAR) standards under K.M.C. 17.124.040 - Floor Area Ratios and Community Housing. These standards are intended to protect the public interest, health, general welfare, and provision of public services. The City has provided options for development proposals to potentially exceed the allowable FAR in exchange for mitigation of the impacts of such larger development, particularly as focused on affordable community and workforce housing. K.M.C. 17.124.040(B).
- B. Litigation was brought challenging the constitutionality and legality of the City's FAR standards in relation to the inclusionary housing incentive under K.M.C. 17.124.040 that was voluntarily dismissed.
- C. The City has adopted Resolution 17-006 which provides for the Parties to proceed with the FAR standards and options under K.M.C. 17.124.040, so long as the Parties voluntarily opt into a FAR Exceedance Agreement, making clear they are voluntarily opting by contract into use of such FAR standards and mitigation measures and are waiving any claims or demands related to any legal challenge to K.M.C. 17.124.040.

THEREFORE, in consideration of the mutual agreement herein contained and subject to the terms and conditions stated, it is hereby understood and agreed by the Parties as follows:

1. **Attestation of Owner.** Owner, by this Agreement, attests that the City has disclosed potential litigation challenging K.M.C. 17.124. Owner desires to voluntarily proceed on the development proposal, including proposal of exceedance of FAR standards and accompanying mitigation measures, using the approach and standards as set forth in K.M.C. 17.124.

2. **Waiver and Release of Claims.** Owner, by this Agreement, waives and releases any claims, demands, challenges, claims for reimbursement or refund, and/or damages now or in the future deriving from or relying on the outcome of future litigation substantially challenging the validity of K.M.C. 17.124 and its standards. It is Owner's intent to accept and proceed with such standards as outlined in K.M.C. 17.124 for Owner's development plan for purposes of allowable FAR and Owner voluntarily and knowingly accepts the mitigation measures as proposed.
3. **FAR Exceedance Consideration.** In consideration for Owner's attestation and waiver, the City agrees to consider their exceedance proposal and will currently consider and evaluate Owner's proposed FAR exceedance and accompanying mitigation measures within the framework and standards of K.M.C. 17.124.040, attached hereto as Exhibit A and made a part of this Agreement.
4. **Maximum FAR and Mitigation.** The Parties hereby agree to an allowable maximum floor area ratio and accompanying mitigation measures as set forth in Exhibit B, attached hereto and made a part of this Agreement.
5. **Withdrawal.** Owner may withdraw from this Agreement upon thirty days notice to City provided that Owner has not commenced building and has received no benefit from a maximum FAR exceedance. Withdrawal shall cause an immediate reversion to the permitted gross FAR as set forth in Exhibit A: K.M.C. 17.124.040(A) at the time of this Agreement.
6. **Amendments.** This Agreement may not be amended, modified, altered or changed in any respect whatsoever, except by further agreement in writing duly executed by the parties.
7. **No Assignment.** Owner shall not sell, assign, or transfer all or any portion of its interest in this Agreement at any time without consent of the City.
8. **Binding Effect.** This Agreement shall be binding upon the heirs, estates, personal representatives, successors, and assigns of the parties.
9. **Attorney Fees and Costs.** In the event any action is brought to enforce this Agreement, the prevailing party is entitled to an award of reasonable attorney fees and costs.
10. **Notices.** Any notice under this Agreement shall be in writing and shall be treated as duly delivered if the same is personally delivered or deposited in the United States mail, certified, return receipt requested, postage prepaid, and properly addressed to the contacts as specified at the beginning of this Agreement.

11. **Partial Invalidity.** Whenever possible, each provision of this Agreement shall be interpreted in such a way as to be effective and valid under applicable law. If a provision of this Agreement is prohibited by or invalid under applicable law, it shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
12. **Waiver:** The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referenced in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.
13. **Execution and Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original agreement, but all of which shall be considered one instrument.

DATED THIS \_\_\_\_ DAY OF APRIL 2025.

Owner

City of Ketchum, Idaho

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Bill Griffin  
Managing Member  
140 West 2<sup>nd</sup> Street LLC

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Neil Bradshaw, Mayor

Attest:

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Trent Donat, City Clerk

STATE OF IDAHO,                    )  
  ) ss.  
County of Blaine.                    )

On this \_\_\_\_ day of \_\_\_\_\_, 2025, before me, the undersigned Notary Public in and for said State, personally appeared Bill Griffin, known to me to be a managing member of 140 West 2<sup>nd</sup> Street LLC, and the person who executed the foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
Commission expires \_\_\_\_\_

## 17.124.040: FLOOR AREA RATIOS AND COMMUNITY HOUSING:

A. General Requirements: All new buildings and alterations to existing buildings in the GR-H, T, T-3000, T-4000 and CC zoning districts, unless otherwise specified in this title, shall be subject to the maximum floor area ratio (FAR) described below. Hotels that meet the definition of "hotel" found in [chapter 17.08](#) of this title may exceed the floor area listed in the table below subject to section [17.124.050](#) of this chapter.

Districts	Permitted Gross FAR	Inclusionary Housing Incentive
GR-H	0.5	1.4
T	0.5	1.6
T-3000	0.5	1.6
T-4000	0.5	1.6
CC	1.0	2.25

### B. Inclusionary Housing Incentive:

1. The purpose of this section is to encourage new development to include a reasonable supply of affordable and resident occupied workforce housing for sale or rent, to help meet the demand and needs for housing of the community's employees. Land within the zoning districts specified in the table above may be built to the listed permitted FAR. As an incentive to build community housing units, floor area may be increased up to the maximum FAR listed in said table with inclusionary housing incentive.
2. An increased FAR may be permitted subject to design review approval, and provided, that all of the following conditions are met:
  - a. A minimum of twenty percent (20%) of the total increase in gross floor area above the greater of the permitted FAR is deed restricted in perpetuity as community housing unit(s). Of this gross square footage, a fifteen percent (15%) reduction will be allowed as a standard discount from gross square footage to net livable square footage for community housing units.
  - b. After calculating net livable square footage, an allowance can be made for projects with demonstrated groundwater issues as documented by a registered engineer. Upon determination by the city that groundwater on the subject property precludes underground parking, a credit of three hundred fifty (350) square feet per required parking space shall be subtracted from the net livable square footage prior to the calculation for the twenty percent (20%) deed restricted community housing. Parking space credit shall be rounded to the nearest whole number, and shall not be calculated as fractions.
  - c. Community housing requirements may be paid via a fee in lieu of housing. The community housing units times the fee equals the amount due to the city. The fee in lieu shall be recommended by the governing housing authority on an annual basis and adopted by the city council. For fractions of units, the developer has the option of providing a full housing unit

rather than paying the fee in lieu or working with the city or other nonprofit entity to construct the balance of the community housing unit with additional funds.

- d. All community housing units, either for sale or rent, shall be administered by the governing housing authority, unless otherwise determined by the city council. The governing housing authority shall recommend the types and locations of all proposed community housing units for approval by the city.
  - e. The community housing units shall be targeted for Blaine County housing authority income category 4 (100 percent or less of area median income). The applicant may seek the recommendation of the governing housing authority in the determination of an alternative category with corresponding adjustment in the amount of community housing required. Said recommendation, if mutually agreed upon by the applicant and the commission, may be used in place of category 4. This allowance shall be based on need for the category type. The definition of who may qualify to purchase affordable housing shall be maintained in the guidelines of the governing housing authority as adopted by the city council.
  - f. The city's primary goal is to see the development of and encourage the construction of community housing units, but realizes that other options will also move the city closer to its goal of housing the workforce. With this in mind, the following options for fulfillment of the community housing incentive are available to the applicant outright. These include, but are not limited to:
    - (1) Housing constructed by the applicant on or off site, within the city of Ketchum;
    - (2) Payment of an in lieu fee; or
    - (3) Acquisition of existing housing stock that meets with the governing housing authority's requirements and approval.
  - g. In addition to those outright options noted in this section, the city council may consider alternative proposals by the applicant to fulfill the community housing incentive. The city council has full discretionary power to determine said request. Options for fulfillment of the community housing incentive include, but are not limited to:
    - (1) Land conveyance to the city;
    - (2) Existing housing unit buy down or mortgage buy down; or
    - (3) Other proposals and options as approved by the city council.
3. In the CC district, the maximum floor area incentive applies to buildings up to three (3) stories in height. Buildings above three (3) stories may exceed the 2.25 FAR maximum only in accordance with the pertinent code provisions allowing for a fourth floor (for example, hotels, PUDs and 100 percent community housing project, etc.). For hotel uses, community housing calculations apply to all those portions of the hotel development except the hotel units, which are addressed pursuant to employee housing of this chapter. (Ord. 1135, 2015)

**EXHIBIT B  
EXCEEDANCE AGREEMENT COMPLIANCE**

**PROJECT:** 140 West 2nd

**APPLICATION:** Design Review Application File No. P24-092

**OWNER:** 140 West 2nd Street LLC

**REPRESENTATIVE:** Michael Doty Associates, Architects

**LOCATION:** 140 W 2nd Street (Ketchum Townsite: Block 59: Amended Lot 1A)

**ZONING:** Mixed-Use Subdistrict of the Community Core (CC-2 Zone)

**BACKGROUND:**

1. The applicant is proposing to develop a new 9,363-gross-square-foot mixed-use building located at 140 W 2nd Street (the “subject property”) in the Mixed-Use Subdistrict of the Community Core (“CC-2 Zone”). The project includes an art gallery and showroom space on the ground level, two multi-family dwelling units on the second floor, and a residential penthouse on the third floor. Four off-street parking spaces are provided on site and accessed off the block 59 alleyway.
2. The subject property is an existing nonconforming lot with a substandard width and size. The lot is 45 feet wide and has a total area of 4,946 square feet.
3. The mixed-use building has a proposed Floor Area Ratio (FAR) of 1.89 (9,363 gross sf/4,946 sf subject property area).
4. The City of Ketchum Planning and Zoning Commission (the “Commission”) reviewed and approved the 140 West 2<sup>nd</sup> Design Review Application during their meeting on March 25, 2025. The Commission adopted the Findings of Fact, Conclusions of Law, and Decision for the 140 West 2<sup>nd</sup> Design Review on April 8, 2025.
5. Pursuant to Condition of Approval No. 2 of Design Review Application File No. P24-092, a FAR Exceedance Agreement between the applicant and the City to memorialize the community housing contribution shall be signed and recorded prior to issuance of a building permit for the project.



## EXCEEDANCE ANALYSIS

*An increased FAR may be permitted subject to design review approval, and provided, that all conditions in Ketchum Municipal Code §17.124.040.B.2 are met.*

### Permitted FAR in Community Core Subdistrict 2 (CC-2)

Permitted FAR: 1.0

Permitted FAR with Community Housing: 2.25

### 140 West 2<sup>nd</sup>: Proposed FAR

Proposed Gross Floor Area: 9,363 square feet

Subject Property Area: 4,946 square feet

Proposed FAR: 1.89 (9,363 sf gross floor area/4,946 sf subject property area)

Increase Above Permitted FAR: 4,417 square feet

20% of Increase: 883 square feet

Net Livable (15% Reduction): 751 square feet community housing required

Total Proposed On-Site Community Housing Contribution: 0 feet

Proposed Community Housing In-Lieu Fee: \$450,600 (751 sq ft x \$600/sq ft):

## COMMUNITY HOUSING CONTRIBUTION CONDITIONS

The following conditions apply to the community housing contribution for the 140 West 2<sup>nd</sup> development:

1. The development shall provide a community housing in-lieu fee payment in the amount of \$450,600. Fee payment is due at time of building permit application.
2. If the total gross square footage of the project changes through the course of building permit application, a revised fee in-lieu may be calculated using the methodology outlined above and approved by the Administrator. Substantial increases or decreases in square footage may require an amendment to this agreement at the discretion of the Administrator.