

# WHITE PETERSON

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To: Mayor and City Councilmembers  
City of Ketchum  
Delivered electronically

Re: Short-Term Rentals Draft Ordinance – Legal Analysis and Recommendations

### Background:

The City Council has expressed interest in pursuing potential regulations related to short-term rentals within the City, while remaining within the boundaries set forth in Idaho Code §67-6539. Regulations put in place within the cities of Sandpoint and McCall have been identified as potential models. Based on this interest, the city attorney in consultation with staff has prepared an initial draft ordinance for City Council review and direction.

The attached draft includes certain notes of particular interest and considerations for specific issues and policy options.

### Draft Ordinance – Legal Considerations:

Idaho Code §67-6539 prevents a city from prohibiting short-term rentals within the city. It does allow though for “such reasonable regulations as it deems necessary to safeguard the public health, safety and general welfare in order to protect the integrity of residential neighborhoods in which short-term rentals or vacation rentals operate.” Since this statute is fairly new, there is not much guidance or caselaw regarding where the line may be drawn between permissible “reasonable regulation” and “prohibition.”

- **Permit Approach – Estimated Low Risk**

The draft ordinance mirrors the ordinances of Sandpoint and McCall in generally adopting a regulatory approach via the use of a permitting process. A short-term rental permit is required in a similar manner to a business license. The conditions for obtaining a permit are put in place as connected generally to occupant and neighborhood health and safety concerns. For example, reasonably requiring things like smoke detectors, adequate access and parking, and a designated contact person.

To date, these permit approaches have not been substantially challenged. If the permit conditions and standards are reasonably tied health and safety concerns, then this regulatory approach seems likely to be defensible.

- **Numerical Limits – Estimated Moderate Risk**

The draft ordinance includes a section mirrored from the ordinance of Sandpoint, which section sets a numerical limit on the number of STR permits available in the

residential zones.

In my opinion, such a limit is at moderate risk of a successful legal challenge. First, such a limit could be portrayed as arbitrary and capricious. For this reason, if a limit is to be imposed it should be carefully considered with a well-documented record as to the justifications for the number. Second, once the limit threshold is reached then such an approach looks similar to a “prohibition” on further STRs – bringing into question where the line is drawn on reasonable regulation under IC 67-6539.

- High Occupancy STRs – Estimated Low Risk

The draft ordinance includes a section mirrored from McCall (and unique to McCall). This provision provides some additional permit standards tied to higher occupancy STRs. From a legal perspective, it seems reasonable that a rationale can clearly be drawn that STRs that can house larger amounts of people present additional challenges warranting further reasonable regulation – though there should be clear documentation of why the threshold number is chosen. Council direction is requested about whether this is a concern for the City of Ketchum necessitating high occupancy specific regulations.

- Justifications for Regulation – Varying Risk

Council direction is requested regarding the main purposes and justifications for STR regulations and permit standards. For instance, one public purpose would be to protect the health and safety of STR occupants. A similar purpose would be to protect the health, safety, and integrity of residential neighborhoods. Those purposes are likely easily linked, defensible, and within the realm contemplated by IC 67-6539.

An additional purpose that has been tossed out has been related to impacts on provision of affordable housing. If this is intended to be a stated purpose, then it is recommended that clear information evidencing this causal link is included in the record.

#### General Recommendations:

This draft ordinance is based on preliminary direction from the Council on concerns and on the models to examine. Staff hereby request further direction from Council on the concepts included in this draft ordinance, whether such are appropriate to the City of Ketchum’s situation and purposes, and on any additional thoughts or ideas that may have arisen outside these models from Sandpoint and McCall. For these reasons, it may be most appropriate to treat this initial presentation of the draft ordinance as a workshop, or at least just as a first reading, since substantial revisions and re-structuring based upon direction are anticipated.

The Council may also wish to consider whether to hold a public hearing on this ordinance. A public hearing is not legally required as this approach is a regulatory permit (similar to a business license) and not a change to the land use code. However, land uses are tangentially related, plus there is likely to be significant public interest in this topic so a formal public hearing may be desirable even if not perhaps technically required.

**CITY OF KETCHUM  
ORDINANCE \_\_\_\_**

AN ORDINANCE OF THE CITY OF KETCHUM, BLAINE COUNTY, IDAHO, CREATING AND ADDING A NEW CHAPTER 9 OF TITLE 5 OF KETCHUM MUNICIPAL CODE ENTITLED SHORT-TERM RENTAL PERMITS; PROVIDING A PURPOSE; DEFINING KEY TERMS; ESTABLISHING REQUIREMENTS FOR OWNERS AND OPERATORS; CREATING STANDARDS TO OBTAIN A SHORT-TERM RENTAL PERMIT; REGULATING HIGH OCCUPANCY SHORT-TERM RENTALS; PROVIDING FOR VIOLATIONS, INFRACTIONS, PENALTIES, AND ENFORCEMENT; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

**Recitals:**

- A. The City is authorized to exercise its powers to “maintain the peace, good environment and welfare.” Idaho Code §§50-301 and 50-302(a).
- B. The City is authorized to “implement such reasonable regulations as it deems necessary to safeguard the public health, safety and general welfare in order to protect the integrity of residential neighborhoods in which short-term rentals or vacation rentals operate.” Idaho Code §67-6539.
- C. The significant growth of short-term rentals within the City has created a need for reasonable regulations so as to protect the health, safety, and welfare of short-term rental guests, as well as neighboring property and the public.
- D. A permitting system provides a reasonable regulatory approach to seek to balance the operation of short-term rentals with the health, safety, and welfare impacts upon guests, neighbors, and the public.

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

**SECTION 1:** That a new Chapter 5.09 of Title 5 of the Ketchum City Code is created to read as follows:

Chapter 5.09  
SHORT-TERM RENTAL PERMITS

- 5.09.010: Purpose
- 5.09.020: Definitions
- 5.09.030: Permit Requirements
- 5.09.040: Standards
- 5.09.050: High Occupancy Standards
- 5.09.060: Violations and Enforcement

**5.09.010: Purpose:** Short-term rentals provide additional tourism opportunities and economic impacts, but also increased impacts on guests, neighbors, and the public. The purpose of this chapter is to provide the City with reasonable regulatory procedures to protect the health, safety

and welfare of short-term rental guests, neighboring residents, and the public. These regulations are further intended to protect the integrity of neighborhoods in which short-term rentals operate.

**5.09.020: Definitions:**

LOCAL REPRESENTATIVE: An area property manager, owner, or agent of the owner, who is readily available to respond to guest and neighborhood or City questions or concerns.

OWNER: The person or entity that holds legal and/or equitable title to the private property.

OWNER-OCCUPIED: Where the owner of a dwelling unit resides on the parcel for a minimum of six (6) months out of a calendar year. Homeowner-occupied tax-exempt status may be considered to be proof of homeowner occupied status for the purposes of this chapter.

SALE/TRANSFER: Any change of Owner, whether for consideration or not, during the term of the permit.

SHORT-TERM RENTAL (STR): Any individually or collectively owned single-family house or dwelling unit or any unit or group of units in a condominium, cooperative or timeshare, or owner-occupied residential home that is offered for a fee and for thirty (30) days or less.<sup>1</sup>

**5.09.030: Permit Requirements.**

- A. Compliance Responsibility: An Owner may act through an agent or property manager, but the Owner shall remain responsible for compliance with these provisions.
- B. Permit Required: No person shall operate or manage, or offer or negotiate to use, lease or rent a dwelling unit for short-term rental occupancy within the City without obtaining and maintaining a Short-Term Rental (STR) Permit.
- C. Permit Application: The City shall prepare and make available an application form for a STR Permit reflecting appropriate information, standards compliance, and fee as may be established in the City's fee schedule.
- D. Permit Term: An STR Permit shall be valid for a period of one year from issuance and may be annually renewed. A permit shall expire upon end of its term or upon a sale/transfer of the property.
- E. Permit Applicability: A permit shall be applicable to the designated dwelling unit to be used as a STR. The permit shall be issued to and in the name of the Owner; and a change in Owner, such as by sale/transfer, shall require a new permit.
- F. Occupancy Tax: STRs must comply with the requirements of Chapter 3.12.030, Imposition and Rate of Certain Nonproperty Sales Taxes.
- G. Existing STRs: Short-term rentals in existence prior to the effective date of this ordinance shall be provided a grace period of one-year from the effective date in which to obtain a permit according to the standards of this chapter.
- H. Residential Zones: Within residential zones, short-term rentals shall have a minimum two (2) night stay and shall be limited to one short-term rental per parcel.
- I. Non-Owner-Occupied Short-Term Rentals: The sum total of all non-owner-occupied short-term rentals within the entirety of all residential zones shall not exceed thirty-five (35) units, except as provided below:
  - 1. Where the short-term rental unit is included in a multi-unit development with the following standards:
    - a. Such development must include not less than ten (10) units.

**Commented [MAJ1]:** 35 was the number used by the City of Sandpoint. If Ketchum desires to impose a limit, then justification for the calculation of such number should be on record. It may also be advisable to make this limitation a percentage of some category rather than just a flat number.

<sup>1</sup> IC 63-1803(4).

b. Such development must be within one thousand five hundred feet (1,500') of the downtown core defined as being within the boundaries of \_\_\_\_\_. Developments located farther than one thousand five hundred feet (1,500') from the downtown core that meet standards in this section may only be allowed non-owner-occupied short-term rentals at a ratio of one per ten (10) units.

2. Where approved for greater short-term rental density as part of an approved planned unit development. Existing approved planned unit developments must be formally amended to be eligible for this greater density.

**Commented [MAJ2]:** Another City of Sandpoint concept that may not be as relevant or necessary for Ketchum, but is included as illustrative of a policy option.

#### 5.09.040: Standards:

1. Issuance: The issuance of a short-term rental permit shall be subject to the following requirements:

- a. Inspection:

- i. At the time of application for a new short-term rental permit, the dwelling unit may be subject to inspection by the building official or their designee. Prior to the issuance of the short-term rental permit, the owner of the dwelling unit shall make all necessary alterations to the dwelling required by the building official pursuant to the requirements of this chapter.
- ii. For renewals, applicants shall be required to submit an affidavit affirming compliance with the standards set forth in this chapter by completing a City provided self-inspection checklist.
- iii. Any inspections required under this chapter may be conducted by a private inspector certified by the International Code Council at the owner's expense.

**Commented [RG3]:** Does Ketchum want to inspect every STR application? When this ordinance goes into effect and owners are bringing their existing STRs into compliance during the grace period, this could bog down the city staff. If there is an influx of investment property buyers it could cause a similar drain on the City staff. McCall requires that applicants sign an affidavit stating that the health and safety features required are within the STR. Having an affidavit requirement may streamline the application process and take the inspection burden off of the City staff.

**Commented [RG4]:** Leaving the decision up to the City staff on whether or not to inspect creates the possibility for an allegation of discriminatory application of this law claiming that applicants of a certain protected classes properties are disproportionately inspected more often than those not in a protected class.

1. Windows: Bedroom windows shall be operable to allow for emergency egress in accordance with the most recent building and fire codes as adopted and amended by the State of Idaho.
2. Smoke Alarms: Single or multiple-station smoke alarms shall be installed and maintained in accordance with manufacturers specification:
  - a. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.
  - b. In each room used for sleeping purposes.
  - c. In each story within a dwelling unit, including basements but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.
3. CO Detectors: A CO detector is required on each floor if: there is a garage, solid fuel appliance or gas appliance.

**Commented [MAJ5]:** Worth consideration of how best to handle inspections (if even desired). An alternative may be to establish a STR standards policy by resolution, rather than listing in City Code.

4. Fire Extinguishers: The short-term rental shall be equipped with one 2A:10BC type extinguisher per floor. Fire extinguisher(s) shall be mounted in visible locations with the tops of the fire extinguishers mounted between three feet (3') and five feet (5') above the floor, and shall be accessible to occupants at all times.
5. Local Representative:
  - a. Each short-term rental shall list a local representative who permanently resides within twenty (20) vehicular miles of the Ketchum city limits.
  - b. If the City is not able to contact the local representative in a timely manner more than twice during the term of the annual permit, this shall be considered a violation of this chapter.
  - c. The designated local representative may be changed by the permit holder from time to time throughout the term of the permit. However, to change the local representative, the permit holder must file a revised permit application that includes the name, address and telephone number of the new local representative. Failure to notify the City of a change in the local representative constitutes a violation of this chapter.
  - d. For non-owner-occupied short-term rentals within the residential zones that do not meet the standards of subsection 5.09.030 E1 of this chapter, property owners and/or residents within two hundred feet (200') of the dwelling shall be provided with the name and telephone number of the owner or the local representative. The permit holder shall provide documentation to the City of this notification and list of the owners and/or residents contacted.
6. Permit Posting: The short-term rental permit shall be posted within the dwelling adjacent to the front door. At a minimum, the permit will contain the following information:
  - a. The name of the local representative and a telephone number where the representative may be reached;
  - b. The name and a telephone number where the property owner can be reached;
  - c. The telephone number and website address of the City of Ketchum;
  - d. The maximum number of occupants permitted to stay in the dwelling;
  - e. The solid waste and recycling collection day; and
  - f. The Ketchum snowplowing regulations.
2. Inactivity: License issuance and continued validity for non-owner-occupied short-term rentals shall be contingent upon the owner's good faith effort to actively engage in the rental of the property. Failure to provide documentation of rental activity for a

**Commented [RG6]:** The elements that will be contained in the Permit that the applicant receives may be a better administrative decision rather than codified requirements that the City has to meet. However, this is good information for STR occupants to have posted in the STR.

minimum of twelve (12) nights during a twelve (12) month period, pro-rated quarterly, prior to the short-term rental permit renewal deadline shall constitute an immediate forfeiture of the license

- i. A signed declaration affirming that the property will be managed to adhere to the following requirements:
  1. Parking: all parking for the unit is contained on the site and not more than one (1) parking space per bedroom is provided. All trailers shall be parked on a surfaced area, if space is provided, and shall not park on the right-of way.
  2. Occupancy: Short-term rentals shall contain no more than four (4) people per bedroom. Total maximum occupancy of the short-term rental shall be based on the number of bedrooms times four (4).
  3. Noise: Quiet hours from 10 pm to 8 am the following day are enforced.
  4. Trash Service: Bear proof solid waste collection facilities shall be available on the site and adequate for the occupancy of the short-term dwelling unit.

#### **5.09.050: High Occupancy Standards:**

- A. A permit for a short-term rental with occupancy of 20 or more guests shall comply with the general standards and findings for approval of a conditional use permit as set forth in Title 17 and the standards for all short-term rentals set forth in this Chapter.
- B. The use of the dwelling unit as a short-term rental shall not have greater impacts than would be created by long term occupancy of the dwelling unit including the following:
  1. Access: The access and ingress to the site shall maintain safe conditions for pedestrians and vehicles and shall be adequately sized and designed so that access to other properties is not impacted or unsafe conditions on public streets are created.
  2. Parking: Improved surface areas on the site shall be the minimum necessary to provide adequate parking for the occupancy.
  3. Noise: Loud music, outdoor activities or any other source of noise that can be heard beyond the perimeter of the short-term rental premises shall not be generated during the hours of 10:00 p.m. to 8:00 a.m. the following day.
  4. Health and Safety: The building is designed to accommodate the occupancy expected. Smoke, propane gas and carbon monoxide detectors shall be installed and maintained.
  5. Exterior Changes: No exterior changes shall be made to the structures or site conditions that would eliminate its appearance or use as a dwelling unit for long term residency.
  6. Use Restrictions: A copy of the use restrictions (occupancy, number and location of parking spaces, restrictions on RV parking, solid waste collection, quiet hours and noise restrictions, outdoor activity restrictions) as imposed through the conditional use permit, and the name and phone number of local representative and property owner shall be posted within the short-term rental dwelling unit for user reference.

**Commented [RG7]:** Policy question: Does the City of Ketchum want to have an additional policy for STRs with the ability to house 20 or more guests?

- C. Neighborhood Impacts: a communication strategy with neighbors within 300' of the short-term rental regarding any complaints shall include:
  - 1. The contact information of the property representative to serve as initial contact if there are questions or complaints regarding the operation of the short-term rental, and
  - 2. A copy of the conditions of approval.
- D. Application Requirements: In addition to the STR Permit application, the following submittals are required prior to the noticing of a public hearing before the Ketchum Area Planning and Zoning Commission:
  - 1. A basic site plan that indicates the location of on-site parking;
  - 2. An operations plan;
  - 3. A communication strategy;
  - 4. A stormwater management plan, if there are changes to the site; and
  - 5. A declaration identifying the date and location of the neighborhood meeting and a roster of the persons attending.

**5.09.060: Violation; Infraction; Penalty:**

The following conduct shall constitute a violation for which the penalties and sanctions specified in this section may be imposed:

- A. Violations:
  - a. The occupants of the dwelling have created noise, disturbances, or nuisances, in violation of City Code.
  - b. Violations of law pertaining to the consumption of alcohol or the use of illegal drugs.
  - c. The owner has failed to comply with the standards of this chapter.
- B. Penalties:
  - a. For the first two (2) violations within a twelve (12) month period, the sanction shall be a warning notice.
  - b. For the third violation within a twelve (12) month period, the sanction shall be a revocation of the permit.
  - c. Additional penalties as may be provided for by the specific violation in other sections of City Code shall remain applicable.
- C. Written Notice: The City shall provide the permit holder with a written notice of any violation of this section that has occurred. If applicable, a copy of the warning notice shall be sent to the local representative.
- D. Appeal of Suspension or Revocation: Pursuant to this section, the City shall provide the permit holder with a written notice of the permit suspension or revocation and the reasons. The permit holder may appeal the suspension or revocation to the City Council by filing a letter of appeal to the City Clerk within twenty (20) days after the date of the mailing of the Planning Director's order to suspend or revoke the permit. The Planning Director's suspension or revocation shall be stayed until the appeal has been determined by the City Council. The City Council shall conduct a hearing on the appeal within sixty (60) days of the date of the filing of the letter of appeal. At the appeal, the permit holder may present such evidence as may be relevant. At the conclusion of the hearing, based on the evidence it has received, the Council may uphold, modify, or overturn the decision of the Planning Director to suspend or revoke the permit based on the evidence received.

**Commented [MAJ8]:** Just tie to standard administrative appeal process?



- E. Application For Permit After Revocation: A person who has had a short-term rental permit revoked shall not be permitted to apply for a subsequent short-term rental permit for a period of two (2) years from the date of revocation.
- F. Infraction: Unless otherwise provided, any person who shall commence or continue to operate a short-term rental for which a permit is required without first procuring the permit shall be deemed guilty of an infraction and subject to a fine of one hundred dollars (\$100.00). A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.
- G. Advertisement of Short-Term Rental: An advertisement promoting the availability of short-term rental property in violation of this Code is prima facie evidence of a violation and may be grounds for denial, suspension or revocation of a license. Advertising that offers a property as a residential short-term rental shall constitute prima facie evidence of the operation of a residential short-term rental and the burden of proof shall be on the owner, operator, or lessee of record to establish that the subject property is being used as a legal residential short-term rental or is not in operation. Any communication by a property owner, manager, operator, or lessee to any person where the owner, manager, operator, or lessee offers their home for rent as a residential short-term rental shall constitute prima facie evidence of the operation of a residential short-term rental and the burden of proof shall be on the owner, operator, or lessee of record to establish that the subject property is being used as a legal residential short-term rental or is not in operation. Other evidence of the operation of a residential short-term rental without a valid permit number may include, but is not limited to: guest testimony, rental agreements, advertisements, and receipts or bank statements showing payments to the owner by a guest.

**SECTION 3: REPEALER.** All previous ordinances, resolutions, orders, or parts thereof, that are in conflict herewith are hereby repealed.

**SECTION 4: SAVINGS AND SEVERABILITY.** 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 5: EFFECTIVE DATE.** This ordinance shall be in full force and effect after its passage, approval and publication, according to law.

PASSED BY THE CITY COUNCIL of Ketchum, Idaho this \_\_\_\_ day of \_\_\_\_\_ 2021.

APPROVED BY THE MAYOR of Ketchum, Idaho this \_\_\_\_ day of \_\_\_\_\_ 2021.

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

**ATTEST:**

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Tara Fenwick, City Clerk