

**Lisa Enourato**

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**From:** Marnee <mvvw62@gmail.com>  
**Sent:** Saturday, April 16, 2022 2:02 PM  
**To:** Participate  
**Subject:** Sign me up!

Sell the Bluebird property as the value is high and the location ideal. There is lots of investment \$\$ out there as proven but the influx of new residents and the purchases of property in town. Put low income housing in Hailey or beyond. We have excellent public transportation.

Save the character of Ketchum.

Sincerely, Marnee Wirth

[mvvw62@gmail.com](mailto:mvvw62@gmail.com)

## Lisa Enourato

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**From:** James Hungelmann <jim.hungelmann@gmail.com>  
**Sent:** Sunday, April 17, 2022 8:21 PM  
**To:** Neil Bradshaw; Amanda Breen; Courtney Hamilton; jimslanetz@hotmail.com; Michael David; Participate  
**Cc:** Neil Morrow; Matthew Mead; tcarter@ketchumidhao.org; bmoczygemba@ketchumidhao.org; scpowexplorer@gamil.com; Participate; Matthew A. Johnson  
**Subject:** Public comment/ Ketchum City Council meeting April 18 2022 (Item 21)

Date April 17, 2022

To Ketchum Mayor Bradshaw and City Councilors

Re Public Comment to Ketchum City Council Meeting April 18, 2022

### Agenda Item 21 -

### OBJECTION TO PROPOSED ORDINANCE #1234

Dear Mayor Bradshaw and Councilors:

**I hereby object to the adoption of this ordinance on an emergency basis as proposed, for the reason that the workforce housing and related problems referenced in the proposed Ordinance's Recitals do not amount to "IMMINENT PERIL to the public health, safety, or welfare" as required by enabling statute Idaho Code Section 67-6523 for adoption of any type of emergency ordinance in Idaho.**

To consider zoning matters on an emergency ordinance basis as proposed is inappropriate and unprecedented. The referenced problems have been going on for many years. The council's frustration that it has not found solutions despite considering options over such a long time does not give the tyrant the right to dictate that now this is "Imminent peril" that allows the council to bypass normal procedures for ordinance enactment that protect the public from attempted abusive end-run by government.

Nowhere is Imminent Peril defined in Idaho Code, but "imminent danger" is used in the context of protection of vulnerable adults: "Imminent danger is when death or severe bodily injury could reasonably be expected to occur without intervention." Idaho Code Section 39-5302(5).

The Idaho Code specifies that "[t]he language of a statute should be given its plain, usual and ordinary meaning." Idaho Code Section 73-113 (1).

Cambridge Dictionary defines Imminent Peril as a situation in which something very bad is likely to happen, for example that you might be so badly hurt that you are unlikely to survive, and cites as an example: *Under California law, a person may use deadly force in self-defense if they believe they are in imminent peril of death or serious injury.*

Wikipedia defines Imminent Peril as follows:

Imminent peril, or imminent danger, is an American legal concept where Imminent peril is *certain danger, immediate, and impending; menacingly close at hand, and threatening*. In many states in the USA, a mere necessity for quick action does not constitute an emergency within the doctrine of imminent peril, where the situation

calling for the action is one which should reasonably have been anticipated and which the person whose action is called for should have been prepared to meet; the doctrine of imminent peril does not excuse one who has brought about the peril by their own negligence.

This Council's perceived affordable housing crisis and related issues do not represent a condition even close to any such grave and imminent threat. Moreover, as a matter of law, when an entity has been responsible for creating the conditions which it deems to be "Imminent Peril", it cannot avail itself of emergency ordinance. This council's efforts addressing the referenced housing problems have to date been an abysmal failure.

Further, this Council has an exceptionally shameful track record of flagrant and illegal bootstrapping and manipulation of law connected with assertion of "emergency conditions", in order to further objectives which it seeks to dictate in a tyrannical fashion without full public transparency and due process of law. Ketchum experienced this most notably and most despicably, in this Council's many lockdown/ "health security" orders connected with what can fairly only be characterized as covidScam, the worst of which was Mandated Masking which effectuated the choking out and poisoning of the public continuously from 2020 to early this year, in the process inflicting immense and irreparable mental, physical and spiritual damage to so many. Many today maintain that the real emergency facing the Ketchum public, one that reasonably be deemed to constitute imminent peril especially for our most vulnerable and least able to protect themselves from illegal government deprivations, is the fact that those members of the Council responsible for implementing illegal emergency measures like masking have not yet resigned or been bounced from office, and the investigation of and accountability for crimes and mounting casualties of covidScam is still outstanding. **The first step in addressing this true state of emergency is for this Council to withdraw consideration of Ordinance #1234 on an emergency basis.**

Under Idaho law, all projects approved under such illegally adopted ordinance become legally flawed and subject to challenge and nullification by citizen lawsuit, something that is inevitable here that can and should be avoided by this Council proceeding in a responsible and orderly, "non-emergency" manner in full compliance with law. If there is one topic in Ketchum that demands full public participation in a fully transparent and orderly process, it is affordable housing.

Lastly, I ask the Council to provide the Ketchum public with any written legal advice it has received that might support proposed emergency Ordinance #1234.

Thank you,

Jim Hungelmann

Ketchum

## Lisa Enourato

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**From:** Amanda Breen  
**Sent:** Monday, April 18, 2022 9:57 AM  
**To:** Lisa Enourato; Tara Fenwick  
**Subject:** Fw: Concerns with proposed Ordinance 1234

Public comment.

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**From:** bob@sunvalleyrealtors.org <bob@sunvalleyrealtors.org>  
**Sent:** Sunday, April 17, 2022 5:04 PM  
**To:** Amanda Breen <ABreen@ketchumidaho.org>; Courtney Hamilton <CHamilton@ketchumidaho.org>; Jim Slanetz <jslanetz@ketchumidaho.org>; Michael David <mdavid@ketchumidaho.org>  
**Subject:** Concerns with proposed Ordinance 1234

Ketchum City Council:

Please consider the following concerns in your deliberations of proposed emergency ordinance 1234, and note that there are several other aspects of the proposed ordinance (design flexibility, financial feasibility especially in construction costs versus achievable rents for commercial space, etc.) that are worthy of additional discussion with the public that are not included herein. We encourage you to take a non-emergency, more measured and reasonable approach to deliberating zoning code changes with impacts as great as those that are proposed by draft ordinance 1234; one that is more respectful of the public process and its right to participate in evaluating the likely outcomes, especially given that the proposed ordinance goals appear to do nothing to address the community need for additional workforce and affordable housing supply.

### **EXECUTIVE SUMMARY:**

Each of these seven main concerns are expanded upon below to provide additional context:

1. The issues that the proposed ordinance attempts to address DO NOT comprise an EMERGENCY threatening the health, safety and welfare of Ketchum residents, as legally required to use emergency procedures. The public deserves three readings given the huge potential impact of the ordinance.
  2. By staff's own admission, affordable and workforce housing needs ARE NOT addressed by this ordinance (see the March 29<sup>th</sup> KPZ staff report linked below for this quote: *"The draft ordinance is solely focused on maintaining and increasing the housing stock within Ketchum, regardless of income level or affordability."*). We should insist on legislation that addresses the key needs of the community.
  3. The proposed ordinance's new design review criteria code language requires projects to conform to current and future non-code "policy statements" and is therefore an end run around the objective standards requirement of the zoning code, and ignores the design guidelines debate.
  4. The outcomes of Ordinance 1234 will increase stress on labor and housing resources.
  5. An analysis of the proposed ordinance's likely outcomes is required BEFORE it is enacted to reduce the chance of unintended consequences (ex. a de facto moratorium, failure of the housing LOT vote, etc.)
  6. Additional standards for lot consolidation are required but not defined in the ordinance
  7. The potential for another unneeded emergency ordinance to have a negative impact on the LOT vote must be considered.
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1. **The issues that the proposed ordinance attempts to address DO NOT comprise an EMERGENCY threatening the health, safety and welfare of Ketchum residents, as legally required to use emergency procedures.**

- a. If there is an emergency now it is an emergency related to the under supply of workforce and affordable housing, both of which will be addressed by i) **Ketchum’s Housing Action Plan**, and ii) the **LOT use and rate increase** voters will be asked to approve on May 17<sup>th</sup>. The proposed ordinance does not address these matters, and therefore should not follow emergency ordinance procedures. The Chairperson of the Ketchum Planning & Zoning Commission stated his agreement with this point **in voting to NOT recommend ordinance 1234 to the City Council**. Transparent governance and public process requires that this ordinance be fully vetted by the City Council over three readings. Sections 11 and 12 should therefore be eliminated from proposed ordinance 1234, should you choose to have it proceed at all.

**2. Affordable and workforce housing needs ARE NOT addressed by this ordinance.**

The following quote is taken from the March 29, 2022, KPZ staff report (page 2, 1<sup>st</sup> and 2<sup>nd</sup> sentences, 2<sup>nd</sup> last paragraph). Staff did not include the March 29<sup>th</sup> staff report in your packet for this meeting; it is linked [here](#) so that you can review this statement for yourself):

- a. **“It is important to note that the goals above [of this ordinance] do not reference workforce housing or community housing specifically. The draft ordinance is solely focused on maintaining and increasing the housing stock within Ketchum, regardless of income level or affordability.”**
  - i. By its own admission staff states that the proposed ordinance addresses the quantity of all housing at all price points, with no emphasis on whether such housing is affordable, suits the workforce, or requires locally employed workers to reside in it. We should demand legislation that addresses the pressing needs that we have, not that requires change without providing any discernable benefit to those pressing needs, especially when no meaningful proof or analysis has been provided that the proposed legislation is even feasible from a development perspective.
  - ii. Multiple public comments have been made stating that requiring more units for the sake of having more units will increase overall project and housing costs (more bathrooms and kitchens required). There are simply not enough workforce participants requiring, for example, a \$1.5 million, 1,000 square foot condominium residence that will likely be the type of property that results if this ordinance proceeds, to validate these wholesale changes, given the risks associated with proceeding before an understanding of the potential outcomes is in place.
  - iii. This ordinance would likely result in a new style of second home owner who seeks a lower price point second home, and will not result in any increase in long term rentals or in attainable workforce or affordable housing.

**3. The proposed new design review code language contained in the emergency ordinance appears to be an end run around the objective standards requirement of the zoning code and the design guidelines debate.**

Section 9 of the draft ordinance would add language that would convert documents that are presently deemed guidelines without any legally binding impact, to new design review criteria to which new developments must conform before the Planning & Zoning Commission can approve design review.

Presently, KMC Section 17.96.050 (A) begins with the following statement before listing the criteria to which a project must conform: ***“Criteria: The Commission shall determine the following before approval is given for design review:”***

The proposed emergency ordinance adds new criteria are as follows:

**From proposed ordinance 1234 Section 9 (a): “a. The design and uses conform with the goals, policies, and objectives of the comprehensive plan;”**. Comprehensive plans have existed in Ketchum for decades without their provisions being specifically referenced in the zoning code because they are specifically not made up of objective standards as is required for the code, but rather of high level aspirations for our community. The entitlement process already includes discussion of project compliance with the comprehensive plan but has never required projects to “conform” with its provisions. What, regarding additional regulation, is implied by the proposed additional language? Despite best intentions, comprehensive plans are never updated on the schedule that their writers anticipate (the “current” plan is 8 years old with no update in sight), making their provisions doubly unsuitable as specific code provisions, as the proposed language would attempt to ensure.

**From proposed ordinance 1234 Section 9 (b): “b. The design and uses conform with the goals and objectives of applicable adopted Planning and Zoning Commission policy statements.”** The KPZ adopted a policy statement on April 12<sup>th</sup> that was presented by staff as a non-binding set of guidelines meant to list the “expectations” of the KPZ for new projects. Clarification was requested by the public and the Commission with regard to the intent for these guidelines to which staff confirmed that they are not meant to be considered as requirements for development; it was on this basis that the KPZ approved the policy. Now, however, staff seeks to include the provisions of this policy (*and any other subsequently approved policies*) in the zoning code by reference, **requiring** that projects conform to them **“before approval is given for design review”**. Not only is it inappropriate for the zoning code to be encumbered by non-objective requirements, but such significant zoning code changes/requirements/expectations need much more thorough public and City Council vetting (the Council has not even seen these “guidelines” until now) on each occurrence, before being embodied by reference into the zoning code.

Furthermore, while not as broad as the originally presented Design Guidelines for the CC Zone that were pulled from the historic preservation ordinance at the request of the KPZ and KCC, the policy statement provided in your packet does include many design oriented provisions. What has happened to the desire of the KPZ and City Council to include the local design community in developing these guidelines? Is embedding this policy statement by reference into the zoning code an attempt to eliminate participation by our local design professionals in the process of determining good design characteristics for Ketchum, and instead replace those with staff’s design beliefs?

4. **The outcomes of Ordinance 1234 will increase stress on Labor and Housing Resources:** Requiring more units at prices not obtainable by the workforce will result in more new residents in Ketchum as the increased number of units than might otherwise have been developed are absorbed by second home owners. More residents result in added stress on already stressed components of our economy, such as:
  - a. Staffing for restaurant, retail and other businesses to meet increased demand from more residents
  - b. Providing housing that is affordable for the extra staff required to meet the increased demand
  - c. Controlling overcrowding at recreation sites (trailheads, etc.) due to increased population
5. **Analysis of Proposed Ordinance Outcomes is Required BEFORE it is enacted:**
  - a. Ketchum employs consultants for many purposes (historic preservation, design guidelines, parking, housing action plan). The magnitude of change proposed by this ordinance requires detailed architectural and financial feasibility testing in order to ensure that the likely outcomes actually meet community needs, and do not exacerbate present labor and workforce housing issues, or result in a de facto development moratorium.
  - b. While some aspects of the proposal (retail parking exemptions, no net loss of residential units) are well considered, the minimum residential density and lot consolidation provisions require additional professional evaluation. To ensure desired outcomes are achieved, we should insist on completion of such work before proceeding.

- c. There is no real risk associated with taking the time to properly evaluate this ordinance. If one or two developments proceed under existing zoning code rules while the appropriate study is done, they will provide affordable housing as part of those projects. Moving ahead before we fully understand the potential impact of the proposed ordinance could result in no improvement whatsoever in the workforce or affordable housing supply, and potentially no development at all, with the resultant negative effects on jobs, zero increase in the housing fund that will now be depleted due to Bluebird cost increases, and no increase in the tax base.
6. **Additional Standards for Lot Consolidation not Defined:**
    - a. Section 5 (A) of the proposed ordinance states that for several zoning districts lot consolidation will be “permitted subject to additional standards” yet such additional standards are not defined or listed elsewhere in the ordinance.
    - b. The public needs the opportunity to review and comment on the proposed additional standards BEFORE this ordinance can be approved.
    - c. Under what procedure will such additional standards be vetted if in the future, and by what level of government must they be approved (KCC, KPZ, staff; under emergency procedures or not)?
  7. **Negative LOT Impact:** Finally, if a de facto moratorium does result because the provisions of this ordinance prove to be financially infeasible, why would any voter vote to approve the housing LOT provisions? If nothing will be built, why vote to approve an additional tax to fund building that will not happen?

Thank you for considering our comments.

Bob Crosby  
Government Affairs Director  
Sun Valley Board of REALTORS  
208-721-8353