



City of Ketchum

January 18, 2022

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to hold Public Hearing and Third Reading of Short-Term Rental Ordinance #1230

Recommendation and Summary

Staff is recommending the Council review and hold the third reading of Ordinance #1230 which will create a new standalone business license; regulations and fee for short-term property owners.

"I move to approve the third reading of Ordinance #1230, by title only."

The reasons for the recommendation are as follows:

- Staff completed minor revisions to the ordinance based on the feedback during the first reading which is outlined below.
- The ordinance will enable better compliance with Local Option Tax collection.
- The regulatory framework will allow for improved data collection regarding the number of units in town and associated yearly utilization.

Introduction and History

Staff completed the following minor revisions based on feedback from the previous meeting:

- Definitions changed to reflect ability of Owner or Renter to be the Permittee.
- 5.09.030(I) added to indicate no STR in LI and limited in Avalanche Zone (can only rent if structure designed to avalanche standards – same as in that portion of Code).
- 5.09.040 re-organized for readability and to avoid “mashed together” factor of initial draft.
- 5.09.040(B): Inspections by discretion so have flexibility to do so when needed, but not required (so as not to overburden staff).
- 5.09.040(C): Updated and revised to allow details to be in Fire Safety Plan regulations – more flexibility over time than having all spelled out in ordinance.
- 5.09.040(F): Added “Fire Safety Plan” requirement and that such Plan must be posted on site after approval.
- 5.09.040(G): High Occupancy STR provision simplified and pulled within overall section (instead of separate).
- 5.09.050: Revised to reflect enforcement flexibility and to simplify.

During the November 18th City Council meeting, city staff provided an overview of the draft ordinance for short-term rental ordinance based upon state law and examples from the cities of McCall and Sandpoint.

In 2017, the Idaho Legislature adopted legislation that sets forth limitations on the ability of counties and cities to regulate STRs. Most particularly, this legislation, now Idaho Code §67-6539, prevents a city from prohibiting STRs.

Idaho Code §67-6539

67-6539. LIMITATIONS ON REGULATION OF SHORT-TERM RENTALS AND VACATION RENTALS. (1) Neither a county nor a city may enact or enforce any ordinance that has the express or practical effect of prohibiting short-term rentals or vacation rentals in the county or city. A county or city may 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. A short-term rental or vacation rental shall be classified as a residential land use for zoning purposes subject to all zoning requirements applicable thereto. (2) Neither a county nor a city can regulate the operation of a short-term rental marketplace.

IC 67-6539 makes clear that the City cannot outright prohibit STRs within city limits. Less defined is what amount of regulation would be proscribed as constituting a “practical effect of prohibiting” STRs. To date, there has not been further legislation or judicial analysis clarifying where the boundaries might be drawn on such regulation.

Additionally, IC 67-6539 makes clear that STRs are to be generally treated as a residential land use for zoning purposes. This means that STRs cannot be regulated by limiting them only to areas of non-residential zoning (one of the more popular approaches in the early days of STRs).

As the Council reviews options for potential STR regulations, the key finding that should be considered is how the regulations are “necessary to safeguard the public health, safety and general welfare ...” including how to “protect the integrity of residential neighborhoods.” IC 67-6539.

Two Idaho cities that have been at the forefront of STR regulations after the adoption of IC 67-6539 are the City of McCall and the City of Sandpoint. Both cities have generally adopted a permit/license process as the procedural mechanism for STR regulations.

City of Sandpoint Key Provisions:

- STR permit required, tied to LOT to ensure collection of LOT
- Definition of STR that explicitly states that temporary shelters (such as RVs, tents) are to be used as an STR
- In residential zones, two-night minimum stay and only one STR per parcel
- Maximum of 35 non-owner occupied STRs across all residential zones within the City, with exceptions for STRs approved within PUDs or multi-unit developments meeting certain standards (primarily tied to proximity to tourism areas)
- Permits only valid for one year and tied to specific property owner (not tied to property itself)
- Inspection required for permit to verify certain health/safety standards
- Local representative/contact required
- Infraction-based enforcement policy

City of McCall Key Provisions:

- Permit/business license required, tied to LOT permit to ensure collection of LOT
- Conditional use permit approach for any STR with occupancy of 20+ guests. CUP addresses factors such as parking, access, noise, neighborhood impacts, and health and safety
- Room occupancy limits on all STRs

- Noise and health/safety requirements, including posting of such on premises
- Identification and provision of contact information for a property manager

Sustainability Impact

No direct impact.

Financial Impact

Staff has recommended a fee structure to properly recapture administrative costs associated with the program.

Attachments

1. Ordinance #1230

**CITY OF KETCHUM
ORDINANCE 1230**

AN ORDINANCE OF THE CITY OF KETCHUM, BLAINE COUNTY, IDAHO, ADDING A NEW CHAPTER 9 OF TITLE 5 OF KETCHUM MUNICIPAL CODE ENTITLED SHORT-TERM RENTAL PERMITS; PROVIDING A PURPOSE; DEFINING KEY TERMS; ESTABLISHING PERMIT REQUIREMENTS TO OPERATE A SHORT-TERM RENTAL; CREATING STANDARDS TO OBTAIN A SHORT-TERM RENTAL PERMIT; PROVIDING FOR VIOLATIONS, 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 Required
- 5.09.040: Permit Standards
- 5.09.050: 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, resident, or agent who is readily available to respond to guest and neighborhood or City questions or concerns.

RESIDENT: The person or entity that holds legal and/or equitable title (Owner) or lease rights (Renter) to the private property.

RESIDENT-OCCUPIED: Where the Resident 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 resident-occupied status for the purposes of this chapter. A lease with a minimum term of six months, or affidavit of such lease, signed by Owner and Renter is considered proof of Resident-Occupied status with a renter under this definition.

SALE/TRANSFER: Any change of Resident, 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 Resident-occupied residential home that is offered for a fee and for thirty (30) days or less.¹

5.09.30 : Permit Required.

- A. 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 first obtaining and maintaining a Short-Term Rental (STR) Permit.
- B. 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.
- C. Permit Term: A 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 one-year term or upon a sale/transfer of the property.
- D. 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 Resident; and a change in Resident, such as by sale/transfer, shall require a new permit. If the proposed Permittee is a Renter, then consent of the Owner must be provided.
- E. Compliance Responsibility: A Permittee may act through an agent or property manager, but the Permittee shall remain responsible for compliance with these provisions.
- F. Occupancy Tax: STRs must comply with the requirements of Ketchum Municipal Code 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 ninety (90) days 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.

¹ IC 63-1803(4).

- I. STRs are not permitted in Light Industrial (LI) zones. STRs are limited and restricted in the same manner as any other rental in the Avalanche Zone District per Ketchum Municipal Code 17.92.010.

5.09.40 : Permit Standards.

- A. Declaration of Compliance. At the time of application for a new or renewal Short-Term Rental permit, the applicant shall submit an affidavit affirming compliance with City standards along with completing a City provided self-inspection checklist.
- B. Inspection. The City may require an inspection to verify compliance with standards upon application, upon complaint of non-compliance, or in relation to other permit enforcement action.
- C. Minimum Standards. The minimum standards required for all Short-Term Rental dwelling units, are set forth below. These standards are intended to protect that the use of a dwelling unit as a STR does not generally have greater impacts than would be created by long term occupancy of the dwelling unit. The City retains the ability to add to requirements as necessary, as will be stated on the permit application, to provide for the health, safety, and general welfare of the community and for STR guests.
 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 City.
 2. Smoke Alarms. Single or multiple-station smoke alarms shall be installed and maintained in accordance with manufacturers specification and an approved Fire Safety Plan.
 3. Carbon Monoxide Detectors: A CO detector is required on each floor if there is a garage, solid fuel appliance, or gas appliance, and as otherwise required in an approved Fire Safety Plan.
 4. Fire Extinguishers: One 2A:10BC type fire extinguisher shall be equipped per floor, and as otherwise required in an approved Fire Safety Plan. 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 to be accessible to occupants at all times.
 5. Parking. Improved surface areas on the site shall be the minimum necessary to provide adequate parking for the occupancy.
 6. 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 created.
 7. Noise. Loud music, outdoor activities or any other source of noise that can be heard beyond the perimeter of the STR premises shall not be generated during the hours of 10:00 p.m. to 8:00 a.m. the following day.
 8. 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.

- D. Local Representative. Each STR shall designate and list a local representative who resides within twenty (20) vehicular miles of the city limits.
1. The local representative must be able to be responsive in a timely manner to City attempts to contact and address concerns. If the City is not able to contact the local representative in a timely manner more than twice during the term of the permit, this shall be considered a violation of this chapter.
 2. The permit holder may change the designated local representative by filing an application amendment with the City. Failure to notify the City of a change in local representative will constitute a violation of this chapter.
 3. As a condition of permit, the City may require that property owners and/or residents within two hundred feet (200') of the dwelling 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.
- E. Permit Posting. The STR Permit shall be posted within the dwelling unit adjacent to the front door. At a minimum, the permit will contain the following information:
1. The name of the local representative and a telephone number where the representative may be reached;
 2. The name of the Permittee and a telephone number where the Permittee may be reached;
 3. The telephone number and website address of the City of Ketchum;
 4. The maximum number of occupants permitted to stay in the dwelling unit;
 5. The solid waste and recycling collection day;
 6. City snowplowing and parking regulations.
- F. Fire Safety Plan. An applicant must submit a Fire Safety Plan, which must be reviewed and approved by the Fire Department as part of the Permit. The Fire Safety Plan must be posted on site with the Permit.
- G. High Occupancy STR Permit. A STR permit with a proposed occupancy of 20 or more guests shall require a conditional use permit that complies 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. A High Occupancy STR permit shall have additional on-site permit posting requirements to further notify guests of the applicable conditions of approval that may be imposed in the conditional use permit process.

5.09.50 : Violations and Enforcement:

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 Permittee or local representative has failed to comply with the standards and/or requirements 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.
 - d. These penalties are within the enforcement discretion of the City and may be relaxed or heightened depending upon specific circumstances.
- 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 under the same process as an administrative appeal under Ketchum Municipal Code 17.144.
- E. Application for Permit After Revocation: A Permittee who has had a STR Permit revoked shall not be permitted to apply for a subsequent STR Permit for the same dwelling unit for a period of one year 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 or communication promoting the availability of a STR property in violation of this Code is prima facie evidence of a violation and may be grounds for further enforcement.

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 as of April 1, 2022, 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:

Tara Fenwick, City Clerk