

ORDINANCE NO. 487

**EMERGENCY ORDINANCE REGARDING
NONCONFORMITIES, BUILDING PERMIT PROCEDURES,
DISTURBANCE RESTRICTIONS AND ENFORCEMENT**

AN **EMERGENCY** ORDINANCE OF KOOTENAI COUNTY, IDAHO, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, RELATING TO LAND USE REGULATION; REPEALING TITLE 9, CHAPTER 21, KOOTENAI COUNTY CODE, AND ENACTING A NEW TITLE 9, CHAPTER 21, KOOTENAI COUNTY CODE, PERTAINING TO NONCONFORMITIES; AMENDING SECTIONS 9-22-2 AND 9-22-3, KOOTENAI COUNTY CODE, TO PROVIDE FOR WAIVER OR MODIFICATION OF NORMAL BUILDING PERMIT PROCEDURES, AND FOR TEMPORARY WAIVER OF ENFORCEMENT OF VIOLATIONS OF COUNTY LAND USE REGULATIONS WITHOUT WAIVING FUTURE ENFORCEMENT ACTIONS; AMENDING SECTION 7-1-15, KOOTENAI COUNTY CODE, TO PROVIDE FOR TEMPORARY WAIVER OF ENFORCEMENT OF VIOLATIONS OF COUNTY LAND USE REGULATIONS WITHOUT WAIVING FUTURE ENFORCEMENT ACTIONS; AND AMENDING SECTION 11-2-8, KOOTENAI COUNTY CODE, TO ALLOW REMOVAL OF ITEMS CREATED OR DEPOSITED AS A RESULT OF THE WINDSTORM OCCURRING ON OR ABOUT NOVEMBER 17, 2015 AND TO ALLOW THE REPAIR, REPLACEMENT, ALTERATION, AND RELOCATION OF EXISTING SITE IMPROVEMENTS DAMAGED AS A RESULT OF THAT WINDSTORM; ALL IN ORDER TO FACILITATE RECOVERY FROM DAMAGE CAUSED BY THE WINDSTORM WHICH OCCURRED ON OR ABOUT NOVEMBER 17, 2015; PROVIDING FOR SEVERABILITY; PROVIDING FOR NON-WAIVER OF ACTIONS REGARDING VIOLATIONS OCCURRING WHILE PRIOR ORDINANCES WERE IN EFFECT; PROVIDING AN EFFECTIVE DATE; AND PROVIDING A SUNSET DATE.

WHEREAS, on or about November 17, 2015, a powerful windstorm caused large-scale damage throughout Kootenai County; and

WHEREAS, the results of this windstorm are creating an imminent threat to structures, infrastructures, public utilities, and private and public property within Kootenai County, impacting life safety, stream and shoreline erosion, and water quality within the County; and

WHEREAS, government and private entities are being taxed in order to provide necessary services to those areas affected by this windstorm; and

WHEREAS, the Board of County Commissioners has found that a disaster emergency, as defined in Section 46-1002, Idaho Code, was in existence as of November 18, 2015 in Kootenai County via resolution duly enacted; and

WHEREAS, the Board hereby finds that the aforementioned conditions do constitute an imminent peril to the public health, safety, and/or welfare of Kootenai County, and that these conditions do justify the enactment of this Ordinance as an emergency ordinance pursuant to section 67-6523, Idaho Code;

**EMERGENCY ORDINANCE REGARDING NONCONFORMITIES, BUILDING PERMIT
PROCEDURES, DISTURBANCE RESTRICTIONS AND ENFORCEMENT – 1**

C:\Users\njones\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\YDY7UP7R\Emerg Ord -
Windstorm Repairs.docx

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF KOOTENAI COUNTY, IDAHO:

SECTION 1. That Title 9, Chapter 20, Kootenai County Code, be, and the same is hereby repealed.

SECTION 2. That Title 9, Kootenai County Code, be, and the same is hereby amended by the addition thereto of a **NEW CHAPTER**, to be known and designated as Title 9, Chapter 20, Kootenai County Code, and to read as follows:

9-20-1: GENERAL: Within Kootenai County there exist parcels of land, structures and uses which were lawful prior to adoption of this title or under previously adopted ordinances, but which no longer conform to the regulations for the zoning district in which they are located. It is the intent of this title to permit these nonconformities to continue until they are substantially destroyed, removed or brought into conformance with this title, providing the nonconformity is not enlarged or expanded. Nonconformities shall be regulated according to the provisions of this chapter.

9-20-2: NONCONFORMING STRUCTURES:

A. Nonconforming structures shall not be expanded or enlarged in a way that increases the nonconformity. For example, a home that does not meet the rear setback requirement to the property line may not construct a deck or addition to any portion of the house that further encroaches into that setback. An addition may, however, be constructed to the front of the house.

B. A nonconforming structure that is completely demolished, removed, or relocated from the parcel on which it was previously located may be replaced within twelve (12) months of its demolition, removal, or relocation, provided that no portion of any replacement structure shall increase the previously existing nonconformity. Otherwise, any subsequently built structures shall conform to the provision of this title.

C. Ordinary repairs and additions may be performed on a nonconforming structure, including but not limited to repair or replacement of the roof, walls, fixtures, wiring, or plumbing, provided that such work does not increase the nonconformity.

9-20-3: NONCONFORMING USE OF STRUCTURES, LAND, OR STRUCTURES AND LAND IN COMBINATION:

A. The nonconforming use of a structure, land, or structure and land in combination, shall not be expanded beyond that which lawfully existed on the effective date of this title or previously adopted applicable ordinances. Criteria used to determine use and expansion shall include hours of operation, square footage of structures or area used, traffic generated, volume of goods handled, number of dwelling units and the International Building Code classification of uses. A nonconforming use shall not be used as justification for expanding or adding structures or other nonconforming uses.

EMERGENCY ORDINANCE REGARDING NONCONFORMITIES, BUILDING PERMIT PROCEDURES, DISTURBANCE RESTRICTIONS AND ENFORCEMENT – 2

B. Upon written request to, and approval by, the Director, a nonconforming use may be changed to another nonconforming use, providing the new use would result in the same or greater conformity to this title, and providing the previous use is permanently abandoned. Nonconforming uses must progress towards conformity. For example, a nonconforming business that produces noise and emissions could be replaced by another nonconforming business that is quieter and does not produce emissions. If a nonconforming use is replaced with a permitted use, nonconforming uses shall not thereafter be allowed.

C. When any nonconforming use is discontinued for a period of twelve (12) consecutive months, any subsequent use shall conform to this title. Nonconforming uses that are discontinued are also governed by the requirements of section 67-6538, Idaho Code.

D. Ordinary repairs and additions may be performed on a structure housing a nonconforming use, including, without limitation, repair or replacement of the roof, walls, fixtures, wiring or plumbing, provided that such work does not increase the nonconformity.

E. A structure housing a nonconforming use that is completely removed may not be replaced unless the use and structure are in conformance with this title.

9-20-4: NONCONFORMING PARCELS OF LAND:

A. A parcel of land shall not be modified in any manner that results in it becoming a nonconforming parcel, or that expands or enlarges an existing nonconformity, unless the modification resulted from the exercise of eminent domain.

B. Upon written request to, and approval by the Director, a nonconforming parcel may be changed, providing the modification results in the same or greater conformity with this title. Nonconforming parcels must progress toward conformity. For example, the lot line of a lot that does not meet the minimum size could be adjusted to increase the size of the lot, but it could not be adjusted in a manner that would make the lot smaller.

SECTION 3. That Section 9-22-2, Kootenai County Code, be and the same is hereby amended to read as follows:

9-22-2: PERMITS REQUIRED: All permits for construction, alteration, or for occupancy, shall be processed in compliance with the current Kootenai County building code ordinance and subsequent amendments.

A. Building Permit: It shall be unlawful to construct, alter, move, demolish, repair, or use any building or structure within Kootenai County, except in compliance with this title and the Kootenai County building code ordinance. The director may attach specific conditions to any building permit related to planning functions and to ensure compliance with the requirements and intent of this title and the protection of public health and safety.

B. Site Plan Requirements: Each building permit application will be accompanied by an eight and one-half by eleven (8¹/₂ x 11) site plan, drawn to scale, depicting the following information:

EMERGENCY ORDINANCE REGARDING NONCONFORMITIES, BUILDING PERMIT PROCEDURES, DISTURBANCE RESTRICTIONS AND ENFORCEMENT – 3

1. North arrow, scale, date;
2. Lot lines with dimensions and area;
3. Distances to property lines from all structures;
4. Existing and proposed easements, roads and road names;
5. Utility locations (including well and septic);
6. Location and setback from property lines of all existing and proposed structures;
7. Location of driveways and parking areas;
8. Location of lakes, ponds, wetlands, waterways and drainages;
9. Location of any special setback and/or building envelope requirements.

The work authorized by the approved building permit shall comply with the site plan approved by the department. The contractor or property owner shall clearly mark the property corners to facilitate the measurement of setbacks. If site inspection by department personnel reveals that construction on site is not in compliance with the approved site plan, work at the site shall cease until a new site plan is submitted to, and approved by, the department.

C. Certificate Of Occupancy:

1. It shall be unlawful to use or occupy, or permit the use or occupancy of, any building or premises, or both, or part thereof thereafter created, erected, changed, converted, or wholly or partly altered, or enlarged in its use or structure until a certificate of occupancy shall have been issued therefor.
2. The request for a certificate of occupancy will state the proposed use of the building and/or the land, that the use conforms to the requirements of this title, and with any or all conditional provisions that may have been imposed, and shall be accompanied by approval signatures of those agencies having jurisdiction over the use or structure.
3. The department will not issue a certificate of occupancy until all building permit requirements and/or conditions of approval have been met and all necessary agency signatures and approvals are obtained. The department shall have the right to inspect the site prior to approval of the certificate of occupancy.

D. The provisions of this section may be temporarily waived or modified to allow for the repair or replacement of structures damaged as a result of a natural disaster, but only to the extent necessary to remedy damage actually or proximately caused by the natural disaster. Such waiver or modification shall not constitute a waiver or estoppel of the County's ability to enforce any violations of this title, or of any other provision of this code, existing on any parcel.

SECTION 4. That Section 9-22-3, Kootenai County Code, be and the same is hereby amended to read as follows:

9-22-3: ENFORCEMENT:

A. It shall be the duty of the director or duly authorized agents to enforce this title and other county ordinances. The department shall not issue permits unless existing and intended structures, the parcel of land, and uses of the buildings and land, conform in all respects with the provisions of this title and other county ordinances, with the following exceptions:

1. When the purpose of the permit is to correct a violation of this title or other county ordinances.

2. To allow for the repair or replacement of structures damaged as a result of a natural disaster, but only to the extent necessary to remedy damage actually or proximately caused by the natural disaster. This shall not constitute a waiver or estoppel of the County's ability to enforce any violations of this title, or of or of any other provision of this code, existing on any parcel.

SECTION 5. That Section 7-1-15, Kootenai County Code, be and the same is hereby amended to read as follows:

7-1-15: ADMINISTRATION AND ENFORCEMENT:

A. ADMINISTRATIVE AUTHORITY. The Building Official, or his designee, shall be responsible for administering and enforcing the provisions of this chapter, other related provisions of Kootenai County Code, and the codes adopted herein with the exception of the 2012 International Fire Code. The Building Official may establish procedures for permit applications, plan checking, issuance of permits, and field inspections, and may collect fees, as approved by resolution of the Board, for services associated with the administration of building permits.

B. INTERDEPARTMENT AND INTERAGENCY COORDINATION. To ensure effective coordination with other departments, agencies and organizations with jurisdiction, the Building Official may request comment and/or require approval from affected agencies prior to issuance of permits, and prior to final approval and/or issuance of a Certificate of Occupancy. Applications shall meet the following requirements:

1. Demonstrate that the proposal meets the requirements of this chapter, the codes adopted herein, and the requirements of all other applicable provisions of Kootenai County Code. With the application, the Applicant shall provide copies of Orders of Decision approving any associated applications, such as those for variances, conditional use permits, temporary hardship permits, final subdivision plats, planned unit developments, or zone changes.

2. Demonstrate that the proposal has received required permits and approvals from Panhandle Health District and sewer and water districts.

3. Demonstrate that the proposal has received required access, approach, or encroachment permits or approvals from the highway district, Idaho Transportation Department, the Kootenai County Airport, and the fire protection district, as applicable.
4. For mobile or manufactured home setting permits, provide verification from the Appraisal Division of the Kootenai County Assessor's Office that applicable taxes have been paid.
5. For encroachments into surface water or wetlands, demonstrate that the proposal has received required encroachment permits from the Idaho Department of Lands, Idaho Department of Water Resources, or the U.S. Army Corps of Engineers.
6. Demonstrate that the proposal complies with all applicable requirements of the fire protection district with jurisdiction, including, without limitation, the International Fire Code, and has received approval from that fire protection district.

C. CORRECTION OF EXISTING VIOLATIONS. Applications for permits authorized by this chapter will not be processed until all violations of any provision of this code on the subject parcel are corrected, except when the purpose of the permit is to correct such violations. This provision may be temporarily waived to allow for the repair or replacement of structures damaged as a result of a natural disaster, but only to the extent necessary to remedy damage actually or proximately caused by the natural disaster. Such waiver shall not constitute a waiver or estoppel of the County's ability to enforce any violations of this chapter, any codes adopted pursuant to this chapter, or any other provision of this code, existing on any parcel.

D. EFFECTIVE STANDARDS. Permits shall be governed by the laws and regulations in effect at the time a complete permit application is accepted.

E. RIGHT OF ENTRY. The property owner or authorized agent's signature on a permit application shall constitute approval for the Department to enter onto and inspect the property and structures associated with a permit or application.

SECTION 6. That Section 11-2-8, Kootenai County Code, be and the same is hereby amended to read as follows:

11-2-8: DISTURBANCE RESTRICTIONS:

A. Stream Protection Buffers: Prior to, during, and after construction operations, streambeds and streamside vegetation and/or existing physical characteristics shall be protected and maintained in their natural/modified state in order to protect property, maintain water quality and aquatic habitat.

1. Stream Protection Buffer Dimensions:

- a. Class 1 Stream Protection Buffer: The area encompassed by a slope distance of seventy five feet (75') on each side of the ordinary high water mark.
- b. Class 2 Stream Protection Buffer: The area encompassed by a minimum slope distance of thirty feet (30') on each side of the ordinary high water mark.

EMERGENCY ORDINANCE REGARDING NONCONFORMITIES, BUILDING PERMIT PROCEDURES, DISTURBANCE RESTRICTIONS AND ENFORCEMENT – 6

c. Naturally Occurring Drainage Swale Protection Buffer: The area encompassed by a minimum slope distance of five feet (5') on each side of the top of a naturally occurring drainage swale. In no case shall this protection buffer have a total width greater than thirty feet (30').

d. Lots Created Prior To January 1, 1997: For lots legally created prior to January 1, 1997, the width of any stream protection buffer may be reduced to be no greater than forty percent (40%) of the dimension of the lot perpendicular to the stream or water body.

B. Shoreline Protection Buffer:

1. Protection And Maintenance: Prior to, during, and after construction operations, lakeside and riverside vegetation and/or existing physical characteristics shall be protected and maintained in their natural/modified state in order to protect property, maintain water quality and aquatic habitat.

2. Shoreline Protection Buffer Dimensions: For lots with frontage on a recognized lake or the Coeur d'Alene or Spokane Rivers, a shoreline protection buffer shall be maintained at the waterfront. The buffer shall be a minimum of twenty five feet (25') in slope distance from the ordinary high water mark of the water body.

3. Ordinary High Water Marks: For purposes of this chapter, ordinary high water marks shall be considered to be the following elevations according to the North American vertical datum of 1988 (NAVD88):

Coeur d'Alene Lake	2128.7
Fernan Lake	2135.1
Hauser Lake	2190.9
Hayden Lake	2242.9
Pend Oreille Lake	2066.5
Spirit Lake	2446.0
Twin Lakes	2315.8

The ordinary high water marks for all other water bodies shall be determined by on site inspection of evidence of historical water levels.

C. Restrictions Applicable To Stream Protection Buffers And Shoreline Protection Buffers:

1. No mechanical ground disturbance shall be permitted within stream protection buffers or shoreline protection buffers. Only the use of hand tools shall be allowed when necessary to develop or establish a permitted use or activity (except at identified and permitted stream or river crossings). When disturbance is necessary across or inside stream protection buffers or shoreline protection buffers, it shall be done in such a manner as to minimize lake and/or riverbank vegetation and/or channel disturbance. The extent of such disturbance shall be clearly indicated in the proposed and approved plans.

2. When streams or rivers must be crossed, adequate structures to carry water flow shall be installed. Crossings and their approaches shall be at right angles to the channel or otherwise configured to minimize the disturbance within the stream protection buffer or shoreline protection buffer. Construction of hydraulic structures in river channels shall conform to the requirements of the Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code. All temporary crossings shall be removed immediately after use.

3. Shading, wildlife cover, and water filtering effects of vegetation shall be maintained along all stream protection buffers and shoreline protection buffers adjacent to lakes, rivers and streams as outlined in the IFPA and the rules pertaining to the Idaho forest practices act, IDAPA 20.02.01 (IFPA rules).

4. Large organic debris (LOD) shall be maintained along all stream protection buffers (but not shoreline protection buffers) as outlined in the IFPA and the IFPA rules.

5. Existing site improvements or conditions determined to be in a natural/modified state, and which lie within a stream protection buffer or a shoreline protection buffer, may be replaced or altered, provided:

- a. No addition or alteration encroaches farther than the existing improvements; and
- b. The site disturbing activity is minimized to the extent possible; and
- c. All other requirements of this chapter are met.

6. One stairway or walkway (which does not exceed 4 feet in width), stairway landings (which do not exceed 6 feet in width or length), and a tram shall be allowed to encroach within a stream protection buffer or shoreline protection buffer. Such structures shall not be constructed in a manner that is parallel to the shoreline that would create a boardwalk along the waterfront. Where required due to steep slopes, switchback designs that provide access from higher elevations to lower elevations may be permitted.

7. For site disturbing activity not exempted under subsection 11-2-5B11 of this chapter, the administrator may allow work within the stream protection buffer or the shoreline protection buffer during periods of either high or low water/flow, in accordance with all other requirements of this chapter. Prior to authorizing such work, the administrator may consult with the Idaho department of fish and game, or other agency(ies) as appropriate, to determine whether the timing or nature of the project will have an adverse impact on the environment.

8. Development exceptions within a stream protection buffer or shoreline protection buffer:

- a. Exception 1: Mechanical ground disturbance may be permitted for authorized development provided the applicant can adequately demonstrate the necessity of such activity through the submission of a technical report prepared by a design professional. To approve an exception, the administrator must make the following findings:

- (1) Due to unique circumstances, there are no other reasonable alternatives; and

- (2) The report adequately addresses and ensures that there will be no long term negative effects to the site or surrounding area or bodies of water; and
- (3) A site disturbance plan is provided specifically for the reestablishment of the stream protection buffer or the shoreline protection buffer; and
- (4) The reestablishment of the stream protection buffer or the shoreline protection buffer is found to be equal to or an improvement of the buffer or buffer's natural/modified state; and
- (5) The end result will be consistent with the purpose of this chapter.

b. Exception 2: Development/improvements and directly related limited mechanical ground disturbance may be permitted for: 1) maintenance, repair and/or replacement of existing structures or improvements deemed to be in a natural/modified state; or 2) to remedy significant erosion, structural integrity, or bank stabilization problems; provided the applicant can adequately demonstrate the necessity of such development and/or activity through the submission of a technical report prepared by a design professional. To approve an exception, the administrator must make the following findings:

- (1) The findings in subsections C8a(1) through C8a(5) of this section; and
- (2) The improvement/work proposed is the minimum necessary in order to control or remediate the erosion, structural integrity, or bank stabilization problem or complete the necessary maintenance, repair or replacement; and
- (3) The problem which the improvement/work proposed is intended to remedy is not the result of any unpermitted actions of the current or previous property owners occurring on or after January 1, 1997; and
- (4) Jurisdictional agencies have been provided the opportunity to review and comment.

c. Exception 3: On parcels damaged during the windstorm occurring on or about November 17, 2015, mechanical ground disturbances shall be permitted for:

- (1) Removal of structures, trees, tree branches, or debris created or deposited by the windstorm.
- (2) Repair, replacement, alteration, and relocation of existing site improvements, including, without limitation, landscaping, retaining walls, and shoreline protection revetments. A site plan shall be submitted which shows all activities to be performed within the stream or shoreline protection buffer. The site plan shall be approved if it demonstrates that the proposed activities will not create significantly new impervious areas or other significant water quality impacts.

9. The administrator may request a second opinion from a design professional regarding any permitted or proposed work within a stream protection buffer or shoreline protection buffer at any time. The cost of such a second opinion shall be borne by the county.

EMERGENCY ORDINANCE REGARDING NONCONFORMITIES, BUILDING PERMIT PROCEDURES, DISTURBANCE RESTRICTIONS AND ENFORCEMENT – 9

SECTION 7. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance should be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this ordinance which shall remain in full force and effect; and to this end the provisions, of this Ordinance are hereby declared to be severable.

SECTION 8. Neither the adoption of this Ordinance nor the repeal of any ordinance shall, in any manner, affect the prosecution for violation of such ordinance committed prior to the effective date of this Ordinance or be construed as a waiver of any license or penalty due under any such ordinance or in any manner affect the validity of any action heretofore taken by the Kootenai County Board of Commissioners or the validity of any such action to be taken upon matters pending before the Kootenai County Board of Commissioners on the effective date of this Ordinance.

SECTION 9. This Ordinance shall take effect and be in full force retroactive to November 19, 2015.

SECTION 10. This Ordinance shall be null and void, and of no further force or effect, one hundred eighty-two (182) days after the effective date of this Ordinance.

DATED this 20th day of November, 2015.

**KOOTENAI COUNTY
BOARD OF COMMISSIONERS**



Daniel H. Green, Chairman

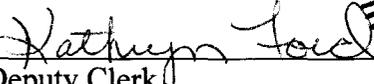


Marc Eberlein, Commissioner

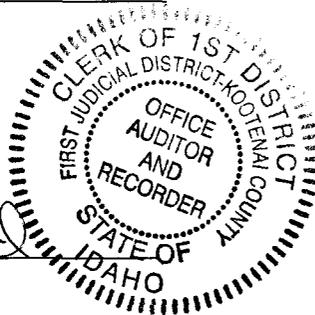


David Stewart, Commissioner

ATTEST:
JIM BRANNON, CLERK

By: 

Deputy Clerk



Date of Publication: NOVEMBER 24, 2015

C: Community Development, Prosecuting Attorney (Civil Division), Ordinance File

**EMERGENCY ORDINANCE REGARDING NONCONFORMITIES, BUILDING PERMIT
PROCEDURES, DISTURBANCE RESTRICTIONS AND ENFORCEMENT – 10**

C:\Users\njones\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\YDY7UP7R\Emerg Ord -
Windstorm Repairs.docx