

ORDINANCE 2011 - 11

AN ORDINANCE OF CITY OF KUNA, IDAHO, AMENDING TITLE 5, "ZONING REGULATIONS" OF CHAPTER 8, "NONCONFORMING USES" AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, staff has had ongoing discussions with the Kuna City Council about keeping the City's zoning regulations current and useful; and

WHEREAS, this text amendment is in agreement with the spirit and intent of Kuna's recently updated comprehensive land use plan [Plan]; and

WHEREAS, it is deemed to be in the best interest of the city of Kuna to amend its Chapter 8 Title 5 zoning code, which had its last major update in 2000; and

WHEREAS, this zoning amendment is pursued in accordance with KCC 5-13, "ZONING AMENDMENTS"; and

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF KUNA, IDAHO that:

Ordinance Section 1. Title 5 Chapter 8 entitled, "NONCONFORMING USES" is amended as follows:

**CHAPTER 8
NONCONFORMING USES**

SECTIONS

- 5-8-1: Intent
- 5-8-2: Incompatibility of Nonconforming uses
- 5-8-3: Avoidance of Undue Hardship
- 5-8-4: Single Nonconforming Lots of Record
- 5-8-5: Nonconforming Lots of Record in Combination
- 5-8-6: Nonconforming Uses of Structures or of Structures and Land in Combination
- 5-8-7: Continuance of Nonconforming Uses
- 5-8-8: Uses under Special Use Provisions

5-8-1: INTENT

It is the intent of this title to permit these nonconforming uses to continue until they are removed, but not to encourage their survival. It is further the intent of this title that nonconforming uses shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

(Ord. 230, 12-7-1977)

5-8-2: INCOMPATIBILITY OF NONCONFORMING USES

Nonconforming uses are declared by this title to be incompatible with permitted uses in the districts in which such use is located. A nonconforming use shall not be extended or enlarged after the effective date hereof by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be generally prohibited in the district in which such use is located.

(Ord. 230, 12-7-1977)

5-8-3: **AVOIDANCE OF UNDUE HARDSHIP**

To avoid undue hardship, nothing in this title shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this title and upon which actual building construction has been diligently carried on.

(Ord. 230, 12-7-1977)

5-8-4: **SINGLE NONCONFORMING LOTS OF RECORD**

A single-family dwelling, along with its accessory building(s), may be constructed on a single lot of record in a zoning district where a single-family use is permitted even though the lot fails to meet the zoning district's area or width requirements; and provided; the yard dimensions and other requirements conform to zoning district regulations. Additionally, the single nonconforming lot of record must not adjoin other lots in the same ownership where the property ownership contiguity creates a continuous street frontage alignment. *(See KCC 5-3-4-6:A)*

(Ord. 230, 12-7-1977)

5-8-5: **NONCONFORMING LOTS OF RECORD IN COMBINATION**

If all or part of two (2) or more lots or a combination of whole lot(s) and portions of lots without buildings in a single ownership with continuous street frontage do not meet the zoning district requirements established for lot width and area, the lands involved shall be considered an undivided parcel for the purposes of this title. In this circumstance, no portion of the undivided parcel shall be used in a manner which diminishes compliance with the zoning district's lot width and area requirements nor shall the undivided parcel be further divided to create a lot with a width or area below the zoning district requirements. *(See 5-3-4-6:B)*

(Ord. 230, 12-7-1977)

5-8-6: **NONCONFORMING USES OF STRUCTURES OR OF STRUCTURES AND LAND IN COMBINATION**

If a lawful use involving individual structures, or of a structure and land in combination, exists at the effective date hereof that would not be allowed in the district under the terms of this title, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. No existing structure devoted to a use not permitted by this title in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
- B. No nonconforming use shall be extended to occupy any additional land area.
- C. If no structural alterations are made, any nonconforming use of a structure or structure and land may, upon the issuance of a special use permit by the Planning and Zoning Commission, be changed to another nonconforming use; provided, that the commission shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the commission may require appropriate conditions and safeguards in accord with other provisions of this title.
- D. If a nonconforming use or structure is replaced by a conforming use or structure, the nonconformity status is lost and cannot be resurrected at a later date; rather, the land and its uses shall remain compliant with zoning district regulations. *(See KCC 5-3-4-6:C)*
- E. When a nonconforming use of a structure, or structure and land in combination, is discontinued or abandoned for more than one year (except when government action impedes access to the premises), the structure or

structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

(Ord. 230, 12-7-1977)

5-8-7: CONTINUANCE OF NONCONFORMING USES

A. Nonconforming uses permitted; Alteration restrictions (Residential use only):

1. Any use which lawful existed in any building or on any lot at the time the first zoning regulations became effective with which such use did not conform in every respect may be continued, except as otherwise provided in this subsection.
2. *Residential alteration restrictions as applied to valuation or building expansion:* If a nonconforming building is altered or repaired more than 50 percent of its current assessed value, or the nonconforming building and its uses expanded or enlarged, it shall be made conforming in keeping with the standards of the zoning district it is located. (See KCC 5-3-4-6:D)
3. Repairs and alterations which do not enlarge or increase the size of a nonconforming building, structure or improvement may be made to any such building, structure or improvement; provided, that the aggregate value of separate repairs or alterations shall not exceed 50 percent of its assessed value as of the date such building became a nonconforming building. No repairs, alterations or reconstruction may be made to any nonconforming building which has been damaged by fire, flood, wind, earthquake or other calamity to the extent of more than 50 percent of its assessed value at the time of such damage, unless every portion of such building is made to conform with all provisions of the uniform building code for new buildings; provided, however, that where such damage is less than 50 percent of the assessed value of the building, repairs, alterations or reconstruction may be made thereto not to exceed a total cost of 50 percent of the assessed value of the building at the time of such damage. This subsection applies only to ownership of a nonconforming building as of the effective date of this title.
4. *Residential alteration restrictions as applied to property damage:* Any nonconforming owner occupied single-family dwelling, which is damaged by fire, flood, wind, earthquake or similar type of perils by an amount exceeding 50 percent of its current assessed value may be rebuilt, provided the building footprint is not expanded. (See KCC 5-3-4-6:E) Every portion of the new or refurbished building shall conform to all provisions of the uniform building code.

- B. Repairs and maintenance:** Ordinary repairs may be made to a nonconforming structure, or to a portion of a structure containing a nonconforming use, to include: replacement of nonbearing walls, fixtures, wiring, plumbing, roofing or other improvements of this nature, provided the repair does not expand the building footprint or increase its uses. (See KCC 5-3-4-6:F) Nothing in this subsection shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety upon order of such official.

(Ord. 539, 2-14-2000)

5-8-8: USES UNDER SPECIAL USE PROVISIONS

Any use which is permitted as a special use in a district under the terms of this title shall not be deemed a nonconforming use in such district, but shall, without further action, be considered a conforming use.

(Ord. 230, 12-7-1977)

Ordinance Section 2. Higher Standard. Should this chapter contain language that suggests different standards of application or competing assessments; the more restrictive language shall be relied upon for interpretive purpose.

Ordinance Section 3. Severability. If some provision of the law or certain application of these provisions are found to be unconstitutional. The remaining provisions, or the remaining applications of these provisions, will, nonetheless, continue in force as law.

Ordinance Section 4. Full Force and Effect. This Ordinance shall be in full force and effective from and after its passage, approval and publication as required by law.

CITY OF KUNA
ADOPTED this 20th day of December, 2011

CITY COUNCIL OF THE CITY OF KUNA
Ada County, Idaho

J. SCOTT DOWDY, MAYOR
CITY OF KUNA

ATTEST:

BRENDA BINGHAM, CITY CLERK
CITY OF KUNA