

ORDINANCE NO. 597
CASE NO. ORA23-0002
FAMILY DIVISION EXEMPTION

AN ORDINANCE OF KOOTENAI COUNTY, IDAHO, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, RELATING TO LAND USE REGULATION; AMENDING SECTION 8.6.103, KOOTENAI COUNTY CODE TO PROVIDE AN EXEMPTION FROM THE PROVISIONS OF TITLE 8, CHAPTER 6, KOOTENAI COUNTY CODE FOR DIVISIONS OF UNPLATTED LAND MADE FOR THE PURPOSE OF A SINGLE *INTER VIVOS* GIFT OR SALE TO THE LANDOWNER'S SPOUSE, PARENT, CHILD, SIBLING, GRANDPARENT OR GRANDCHILD; PROVIDING FOR SEVERABILITY; PROVIDING FOR NON-WAIVER OF ACTIONS OCCURRING WHILE PRIOR ORDINANCES WERE IN EFFECT; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. That Section 8.6.103, Kootenai County Code, shall be, and the same is hereby amended as follows:

8.6.103: EXEMPT DIVISIONS OF LAND: The following divisions of land shall be exempt from the provisions of this chapter. A parcel of land created under an exemption set forth in this section will be recognized as a separate parcel as of the day the instrument which created the parcel is recorded.

A. Burial Plots. Divisions made for cemeteries or burial plots when used for that purpose.

B. Conveyances to Public Entities or Public Utilities. Divisions resulting from the conveyance of a parcel to a government agency, taxing district, or a public utility regulated by the Idaho Public Utilities Commission. Structures used for the purpose of housing emergency response agencies such as fire stations, police stations or EMS services may contain habitable space. No structures shall contain habitable space if such parcels are to be used for any other purpose.

C. Conveyances to Conservation Organizations. Divisions resulting from the conveyance of land to a conservation organization, providing the land is conveyed as one parcel, and a conservation easement which complies with the requirements of section 8.6.904 of this chapter is recorded on the parcel.

D. Boundary Line Adjustments. Boundary line adjustments which comply with the applicable requirements of this subsection shall be exempt from the provisions of this chapter.

1. Boundary line adjustments to legally created parcels must comply with the following requirements:

a. No additional or non-contiguous parcels are created;

b. The resulting parcels meet the minimum size for the zone and are otherwise in conformance with all applicable provisions of this title; and

c. The adjustment does not result in parcels separated by a public road or a public or improved private right-of-way.

2. A boundary line adjustment may add land from an unplatted parcel to an existing lot or from an existing lot to an unplatted parcel.

3. A parcel that is not eligible for development permits because it does not conform to the applicable provisions of this title, or was created improperly, cannot become eligible for development permits solely as a result of a boundary line adjustment.

4. In order to ensure that no additional parcels of land are inadvertently created, boundary line adjustments should be accomplished by recordation of a deed of conveyance for the property that is to be transferred, and then by recordation of a second deed for the receiving parcel which describes the new, exterior parcel boundaries. A statement should also be included on the deeds of conveyance which indicates that those instruments are being recorded for boundary line adjustment purposes, and that no additional parcels are being created as a result of the adjustment.

E. Large Lot Divisions. Divisions of parcels which are at least forty (40) acres in size, when each resulting parcel is at least twenty (20) acres plus or minus three percent (3%) in size. For purposes of this subsection, acreage may be based on the aliquot parts of the section of land in which the parcel is located. For example, a quarter-quarter section would be deemed to be a forty (40) acre parcel. Boundary line adjustments of parcels divided pursuant to this subsection, or any predecessor thereof, shall be exempt from the provisions of this chapter so long as all such parcels remain at least twenty (20) acres plus or minus three percent (3%) in size.

F. Decedent's Estates. Divisions made pursuant to a will, testamentary trust, testamentary provision of an *inter vivos* trust, or other similar instrument associated with a decedent's estate. The instrument must contain language providing for the division to be made. Such divisions must comply with the following requirements:

1. Each parcel has legal access to a public road;

2. Each parcel meets the minimum size for the zone, and

3. Each parcel is otherwise in conformance with all applicable provisions of this title.

G. Eminent Domain. Divisions resulting from the exercise of eminent domain by an agency of the State of Idaho or by any local agency or taxing district, including any purchase negotiated between the agency and the property owner in lieu of eminent domain proceedings.

H. Parcels Created by Court Order. Parcels of land created by court order other than one associated with a decedent's estate or exercise of eminent domain shall be considered a legally created parcel, but shall not be eligible for development permits until they are validated through approval of a major subdivision, minor subdivision, or minor amendment pursuant to this chapter.

I. Subdivision Exemptions.

1. The Director may grant an exemption from the application of this chapter for any subdivision of an unplatted parcel which the Director determines, pursuant to this subsection, is not within the purposes of this chapter.
2. This subdivision exemption process requires approval of the Director. Subdivision exemptions may be granted only on the basis of the required findings enumerated in paragraph (3) of this subsection.
3. Required Findings. To approve an application for a subdivision exemption, the Director must make the following findings:
 - a. The parcels will not enlarge or expand an existing nonconformity.
 - b. The parcels are not located within a floodway.
 - c. The parcels have legal access to a public road.
 - d. The parcels meet the minimum size prescribed in the underlying zone, or can be combined with a parcel that meets the minimum size prescribed in the underlying zone.
 - e. The proposal is not in conflict with the Comprehensive Plan.
4. The process for approval of a subdivision exemption shall be as set forth in section 8.8.204 of this title, with the exception of subsection (C) thereof. The decision of the Director may be appealed in accordance with chapter 8, article 8.5 of this title.

J. Family Divisions: A division of unplatted land which is made for the purpose of a single *inter vivos* gift or sale to the landowner's spouse, parent, child, sibling, grandparent or grandchild in accordance with the provisions of this subsection.

1. Familial status may be established by blood, marriage, adoption, or court order.
2. Family divisions shall comply with all of the following standards:
 - a. The parcel to be divided has not previously been divided for purposes of a gift or sale pursuant to this subsection by a prior owner. More than one parcel may be created pursuant to the limitations of this subsection. No property owner shall create more than four (4) parcels pursuant to this exemption in the owner's lifetime, whether such parcels were created by the owner as an individual, a co-owner with a spouse, or a trustee of a trust in which the owner retains beneficial ownership.
 - b. The parcel to be divided must be owned by an individual, married couple, or a trust in which an individual or married couple retain beneficial ownership.
 - c. Ownership of the parcel to be divided cannot have changed within the previous three (3) years. The following shall not be considered to be a change of ownership:

- i. The death of a spouse, so long as the surviving spouse continues to own the property.
 - ii. A divorce between owners who were married prior to the divorce, so long as at least one of the former spouses continues to own the property.
 - iii. A transfer of the property into trust where the owners prior to the transfer are the beneficial owners after the transfer, or a transfer of the property out of trust where the beneficial owners prior to the transfer are the owners after the transfer.
 - d. An individual may receive only one (1) parcel created pursuant to this subsection by gift or sale.
 - e. The parcels created pursuant to this subsection shall:
 - i. Be a minimum of five (5.00) gross acres (4.50 acres net) unless the minimum parcel size in the underlying zone is larger than five (5.00) acres, in which case the parcel shall comply with the applicable minimum parcel size,
 - ii. Have legal access to a public road, and
 - iii. Be otherwise in conformance with the provisions of this title.
 - f. The recipient of the parcel shall be at least eighteen (18) years of age at the time of parcel creation and conveyance.
 - g. The parcel to be divided is not subject to any deed restriction or Covenants, Conditions and Restrictions (CCRs) that prohibit further division of the parcel.
3. A Notice of Family Division for each parcel to be created shall be submitted to the Department for review before the division is recorded. The Notice of Family Division shall include the following:
- a. Proof of approval of an approach permit from the highway district with jurisdiction for the existing or new point of access to the adjacent public road. Where the subject property will access onto a private road or common driveway, proof of easements to demonstrate legal access.
 - b. An acknowledgement from Panhandle Health District indicating that a location (on the subject property, or on a nearby property by easement) has been identified and approved that can meet the wastewater disposal requirements for the parcel in question.
 - c. An unrecorded conveyance deed or similar instrument that will be used to execute the proposed division shall be attached to the Notice of Family Division. The conveyance deed or similar instrument shall contain the legal descriptions of each parcel to be created and any other information deemed necessary for approval of the proposed division.

d. A title report prepared within six (6) months of submittal of the Notice of Family Division that contains the legal description, ownership, and any exceptions to title, such as easements or covenants, conditions and restrictions (CC&Rs).

4. The Director or designee shall review the Notice of Family Division and supporting documents for compliance with the provisions of this subsection. The Director or designee shall approve the Notice of Family Division upon a determination that the request complies with the provisions of this subsection. The Notice of Family Division, with the exception of the title report and any originally submitted unrecorded conveyance deed or similar instrument, shall be attached to all deeds to be recorded. The grantor shall provide a copy of the recorded Notice of Family Division to the Department.

5. Parcels created pursuant to this subsection are immediately eligible for a building or development permit as long as they are retained by the grantee. Building and development permits issued to the grantee shall be non-transferrable.

6. Parcels created pursuant to this subsection that are not retained by the grantee for a period of five (5) years from the date of recording of the division shall not be eligible for building or development permits until a period of five (5) years has elapsed from the date of recording of the division. This restriction shall not apply to building or development permits which the Director determines are necessary for life safety or to remedy a nuisance or hazard, as those terms are defined in section 8.8.604 of this title.

SECTION 2. If any section, subsection, sentence, clause, phrase or portion of this chapter is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 3. 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 4. This Ordinance shall take effect and be in full force as of August 1, 2024.

SECTION 5. Notice of adoption of this Ordinance shall be published in one (1) issue of the *Coeur d'Alene Press* as soon as practicable after its adoption.

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ADOPTED this 30th day of July, 2024.

**KOOTENAI COUNTY
BOARD OF COMMISSIONERS**

Leslie Duncan, Chair

Bruce Mattare, Commissioner

Bill Brooks, Commissioner

ATTEST:
JENNIFER LOCKE, CLERK

By: _____
Jennifer Conner, Deputy Clerk

Publication Date: _____, 2024