

Ordinance No. 470-2011

**ORDINANCE AMENDING PORTIONS OF KITSAP COUNTY CODE TITLE 17  
(ZONING) RELATING TO NONCONFORMING USES, STRUCTURES OR USE OF  
STRUCTURES**

**BE IT ORDAINED:**

**Section 1. General Findings.** The Kitsap County Board of Commissioners makes the following findings:

1. On May 7, 1998, the Kitsap County Board of Commissioners (Board) adopted the 1998 Kitsap County Comprehensive Plan, satisfying requirements set forth in the Growth Management Act (GMA), Ch. 36.70A RCW.
2. On December 11, 2006, the Board adopted, through Ordinance 370-2006, its Ten-Year Comprehensive Plan Update. The Comprehensive Plan has been subsequently amended through 2010.
3. GMA requires counties to review and if needed revise their Comprehensive Plans and, specific to this ordinance, implementing development regulations to ensure compliance therewith.
4. The Kitsap County Code (KCC) Chapter 21.04 provides guidance on the process and procedures for amending Kitsap County's development code, treating code amendment as a Type IV application.
5. In August 2009, the Department of Community Development began an analysis of Chapter 17.460 'Nonconforming Uses and Structures'.
6. KCC Chapter 17.460 'Nonconforming Uses and Structures' amendment process included presentations to stakeholders, interested parties, and Kitsap County Planning Commission work study, public hearing, deliberation and recommendation.
7. Nonconforming code amendments included review and commentary from the Rural Stakeholder group in August and September of 2010.
8. On October 7, 2010, Kitsap County sent a "60-day notice" of proposed amendments to KCC Chapter 17.460 'Nonconforming Uses and Structures' to the Washington State Department of Commerce as required by RCW 36.70A.106.
9. On December 1, 2010, the Kitsap County State Environmental Policy Act (SEPA) official issued a Determination of Non-Significance pursuant to WAC 197-11-340.
10. On December 10, 2010 the DCD Advisory Group held a meeting to provide comments to the draft nonconforming code amendments.

11. Throughout the public process, the primary issue that was raised concerned the time frames for eliminating nonconforming uses and structures. Public comments were generally that, given the economic climate, the timeframes should be extended. There were also issues raised regarding the clarity of current code provisions.
12. On January 18, 2011, following timely and effective public notice, the Kitsap County Planning Commission held a work-study, public hearing, deliberation and recommendation on the proposed amendments and voted to approve the proposed amendments with minor changes.
13. On February 1, 2011, following timely and effective public notice, the Kitsap County Planning Commission adopted Findings of Fact and Recommendations on the proposed amendments that were approved on January 18, 2011.
14. The opportunities provided for citizen participation used in the preparation of draft code and amendments are consistent with the requirements of the GMA and the State Environmental Policy Act.
15. The proposed amendments to KCC Title 17 'Zoning' promote the public interest and welfare of the citizens of Kitsap County and are consistent with the following:
  - a) Growth Management Act (GMA), Ch. 36.70A RCW;
  - b) State Environmental Policy Act (SEPA), Ch. 43.21C RCW, and SEPA Rules, Ch. 197-11 WAC;
  - c) Kitsap County-wide Planning Polices;
  - d) Kitsap County Code Title 17 (Zoning);
  - e) RCW 36.70A.106 regarding "60-day" notice; and
  - f) SEPA Determination of Non-Significance (DNS).

**Section 2. Revision to Definition.** KCC 17.110.510, last amended by Ordinance 367-2006, is amended as follows:

**17.110.510 Nonconforming use, ~~or nonconforming structure or~~  
nonconforming use of structure.**

"Nonconforming use, ~~or nonconforming structure or nonconforming use of structure~~" means, respectively, a use of land, a or-structure or use of a structure which was lawfully established or built and which has been lawfully continued but which does not conform to the regulations established by this title or amendments thereto.

**Section 3. Revisions to Nonconformities Code.** KCC 17.460, last amended by Ordinance 281-2002, is amended as follows:

**Chapter 17.460**

**NONCONFORMING USES, AND STRUCTURES AND USE OF STRUCTURES**

**Sections:**

17.460.010 Purpose.

17.460.015 Extensions.

17.460.020 Nonconforming uses of land.

17.460.030 Application for change of nonconforming uses of land.

17.460.0430 Nonconforming structures.

17.460.0540 Nonconforming uses of structures.

**17.460.010 Purpose.**

Within the zoning districts established by this title or any amendment later adopted, there may exist uses of land and/or structures that were lawful before the effective date of the applicable regulations, but which would be restricted, regulated or prohibited under the terms of this title or future amendment. Except as specifically allowed by this chapter, this chapter is intended to permit these nonconformities to continue until they are removed or discontinued but not to encourage their perpetuation. Unless specifically stated elsewhere in this title, a use lawfully occupying a structure or site on the effective date of this title or of amendments thereto which does not conform to the use regulations for the zone in which it is located, is deemed to be a nonconforming use and may be continued, subject to the regulations hereinafter.

**17.460.015 Extensions.**

As to timeframes noted in this chapter, the Director may extend timeframes on a case-by-case basis where such timeframes cannot be met. If the Director extends the schedule and/or imposes deadlines other than are set forth in this chapter, he must make the following findings: (1) the reason for the required change is due to circumstances beyond the control of the applicant; (2) the change is the minimum necessary required to meet the conditions of this chapter; and (3) the change in time does not exceed the original timeframe or deadline by more than twelve (12) months. The decision of the Director shall be considered a Type II decision and may be appealed to the Hearing Examiner.

**17.460.020 Nonconforming uses of land.**

Where a lawful use of land exists that is not allowed under current regulations, but was allowed when the use was initially established, that use may be continued so long as it remains otherwise lawful, and shall be deemed a nonconforming use.

- A. Unless specifically stated elsewhere in this title, if a nonconforming use not involving a structure has been changed to a conforming use, or if the nonconforming use ceases for a period of twenty-four (24) months or more, said

use shall be considered abandoned, and said premises shall thereafter be used only for uses permitted under the provisions in the zone in which it is located.

- B. A nonconforming use not involving a structure, or one involving a structure (other than a sign) having an assessed value of less than two hundred dollars, shall be discontinued within two years from the date of passage of this title.
- C. A use which is nonconforming with respect to provisions for screening shall provide screening within five years from the date of passage of this title.
- C. If an existing nonconforming use or portion thereof, not housed or enclosed within a structure, occupies a portion of a lot or parcel of land on the effective date hereof, the area of such use may not be expanded, nor shall the use or any part thereof, be moved to any other portion of the property not historically used or occupied theretofore regularly and actually occupied for such use; provided, that this shall not apply where such increase in area is for the purpose of increasing an off-street parking or loading facility to the area specified in this title for used by the activity carried on in the property; and provided further that this provision shall not be construed as permitting unenclosed commercial activities where otherwise prohibited by this title.

#### **17.460.030 Application for change of nonconforming uses of land.**

A. The director may grant an application for a change of use to another nonconforming use if, on the basis of the application and the evidence submitted, the director makes the following findings:

1. That the proposed use is classified in a more restrictive category than existing or preexisting uses by the zone regulations of this title. The classifications of a nonconforming use shall be determined on the basis of the zone in which it is first permitted, provided that a conditional use shall be a more restrictive category than a permitted use in the same category.
2. That the proposed use will not more adversely affect the character of the zone in which it is proposed to be located than the existing or preexisting use.
3. That the change of use will not result in the enlargement of the space occupied by a nonconforming use, except as allowed by Section 17.460.020.C. ~~Except that, a nonconforming use of a building may be extended throughout those parts of a building which were designed or arranged to such use prior to the date when such use of the building became nonconforming, provided that no structural alteration, except those required by the law, are made.~~

The decision of the director shall be considered a Type II decision and may be appealed to the hearing examiner.

~~B. Unless specifically stated elsewhere in this title, if a nonconforming use not involving a structure has been changed to a conforming use, or if the nonconforming use ceases for a period of six months or more, said use shall be considered abandoned, and said premises shall thereafter be used only for uses permitted under the provisions in the zone in which it is located.~~

~~C. A nonconforming use not involving a structure, or one involving a structure (other than a sign) having an assessed value of less than two hundred dollars, shall be discontinued within two years from the date of passage of this title.~~

~~D. A use which is nonconforming with respect to provisions for screening shall provide screening within five years from the date of passage of this title.~~

~~E. If an existing nonconforming use or portion thereof, not housed or enclosed within a structure, occupies a portion of a lot or parcel of land on the effective date hereof, the area of such use may not be expanded, nor shall the use or any part thereof, be moved to any other portion of the property not theretofore regularly and actually occupied for such use; provided, that this shall not apply where such increase in area is for the purpose of increasing an off-street parking or loading facility to the area specified in this title for the activity carried on in the property; and provided further that this shall not be construed as permitting unenclosed commercial activities where otherwise prohibited by this title.~~

#### **17.460.0340 Nonconforming structures.**

When, before the effective date of the adoption or amendment of the applicable regulation, a lawful structure existed that would not be permitted by the regulations thereafter imposed by this title, or amendments thereof, the structure may be continued so long as it remains otherwise lawful, and shall be deemed a nonconforming structure.

A. A structure nonconforming to the dimensional standards of this title may not be altered or enlarged in any manner unless such alteration or enlargement would bring the structure into conformity with the requirements of the zone in which it is located; provided structural change may be permitted when required to make the structure safe for occupancy or use, provided structural enlargements may be allowed in conformity with the setback requirements of the zone in which it is located, and provided structural enlargements may be allowed if they would not further violate setback requirements, and provided further, that a nonconforming mobile home may be replaced notwithstanding the setback and density provisions of this title, so long as the structure does not further encroach upon any required yard.

~~B. A nonconforming structure may be maintained with ordinary care. If a nonconforming structure is destroyed by any cause, it shall be allowed to be reconstructed as a nonconforming structure up to the same size (total square footage of structure, square foot of footprint of the building and height) and appearance; provided, however, the Director has the discretion to allow a different appearance if he finds that it would be more compatible with the zone in which it is located. A complete application for such reconstruction must be filed with the department within a one-year period from the date the structure was destroyed.~~

C. A mobile home and/or single-family residence located on a legal nonconforming lot may be replaced if destroyed.

D. Notwithstanding the foregoing provisions, if a nonconforming structure presents a public health, safety or welfare hazard, it may not be considered a legal nonconforming structure.

#### **17.460.0450 Nonconforming uses of structures.**

When, before the effective date of the adoption or amendment of the applicable regulation, a lawful use of a structure existed that would not be permitted by the regulations thereafter imposed by this title, or amendments thereof, the use of the structure may be continued so long as it remains otherwise lawful, and shall be deemed a nonconforming use of structure.

A. Continuation of Nonconforming Use. Any nonconforming use of a structure which was lawfully established and which has been lawfully, actively and continually maintained, may be continued subject to the limitations of this section. In all proceedings other than criminal, the owner, occupant or user shall have the burden to show that the use or structure was lawfully established.

B. Change of Nonconforming Use. A nonconforming use may be changed to another nonconforming use so long as no structural alterations are needed to the structure in which the use is located, and provided the new use is a reduction in the nonconformity and intensity of the existing nonconforming use. Such determination shall be made by the director as a Type II decision and may be appealed to the hearing examiner.; ~~provided any such change of use shall be to a use of equal or greater conformity to those permitted in the zone.~~

C. ~~No~~-Expansion of Nonconforming Use. A nonconforming use shall not be enlarged or expanded; provided, the structure containing the nonconforming use may be structurally altered to adapt to new technologies or equipment. A nonconforming use of a structure may be extended throughout those parts of a structure which were designed or arranged to such use prior to the date when such use of the structure became nonconforming, provided that no structural alteration, except those required by the law, are made.

~~D. Expansion of Nonconforming Structures. A structure which is nonconforming by reason of substandard lot dimensions, setback requirements, lot area or a building height in excess of that which is permitted by this title but which does not contain non-conforming uses, may be enlarged or expanded so long as the enlargement or expansion conforms to the requirements of this title; provided, a structure may be expanded to the building line but it may never be expanded to encroach upon a street or be within five feet of a property line other than a street property line.~~

DE. Destruction of Nonconforming Use of Structure. If any nonconforming use of structure is destroyed by any cause, it shall be allowed to be reinstated as a non-conforming use in the same a similar size and appearance, within a period of one year from the date the nonconforming use or structure was destroyed. reconstructed as a nonconforming structure up to the same size (total square footage of structure, square foot of footprint of the building and height) and appearance; provided, however, the Director has the discretion to allow a different appearance if he finds that it would be more compatible with the zone in which it is located. A complete application for such reconstruction must be filed with the department within a one-year period from the date the structure was destroyed.

EF. Discontinuance of Nonconforming Use of Structures. Any nonconforming use of structure for which the use or occupancy is discontinued for a period of

