

ORDINANCE NO. 2022-_____
CASE NO. ORA22-_____
SUBSURFACE SEWAGE DISPOSAL
SUPERSEDES AND REPLACES EMERGENCY ORDINANCE NO. 2022-574

AN ORDINANCE OF KOOTENAI COUNTY, IDAHO, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, RELATING TO REGULATION OF SUBSURFACE SEWAGE DISPOSAL; PROVIDING A MINIMUM PARCEL SIZE OF FIVE (5.00) ACRES FOR PARCELS LOCATED OVER THE RATHDRUM PRAIRIE AQUIFER IN THE AGRICULTURAL SUBURBAN, RESTRICTED RESIDENTIAL, AND HIGH DENSITY RESIDENTIAL ZONES, PROVIDING FOR PROHIBITED SEWAGE AND WASTE DISPOSAL CONDITIONS, PROVIDING REGULATIONS FOR SUBSURFACE SEWAGE DISPOSAL SYSTEMS OVER THE RATHDRUM PRAIRIE AQUIFER, AND PROVIDING ASSOCIATED DEFINITIONS; PROVIDING THAT THIS ORDINANCE SHALL SUPERSEDE AND REPLACE EMERGENCY ORDINANCE NO. 2022-574, ADOPTED ON MARCH 22, 2022; PROVIDING FOR SEVERABILITY; PROVIDING FOR NON-WAIVER OF ACTIONS REGARDING VIOLATIONS OCCURRING WHILE PRIOR ORDINANCES WERE IN EFFECT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Rathdrum Prairie Aquifer is part of the greater Spokane Valley-Rathdrum Prairie Aquifer which was designated as a sole source aquifer by the U.S. Environmental Protection Agency on Feb. 9, 1978; and

WHEREAS, this designation recognized that the Spokane Valley-Rathdrum Prairie Aquifer is the sole source of drinking water for over 600,000 people in Kootenai County, Idaho and Spokane County, Washington; and

WHEREAS, the Idaho Department of Environmental Quality (DEQ) has also designated the Rathdrum Prairie Aquifer as a sensitive resource aquifer; and

WHEREAS, Panhandle Health District No. 1 (PHD) has adopted administrative rules in accordance with the Idaho Administrative Procedure Act (IDAPA), Title 67, Chapter 52, Idaho Code, for the protection of water quality in the Rathdrum Prairie Aquifer, including rules regulating subsurface sewage disposal; and

WHEREAS, based on the designation of the Rathdrum Prairie Aquifer as a sensitive resource aquifer by DEQ, the County has established an aquifer protection district pursuant to Title 39, Chapter 5, Idaho Code, which provides funding for various aquifer protection and educational activities, including funding for PHD to apply and enforce its aquifer protection rules; and

WHEREAS, Kootenai County and PHD have a mutual interest in ensuring the continuing protections of the health and safety of its residents and desires to enact an ordinance to maintain existing rules pertaining to subsurface sewage disposal and establishing a minimum parcel size of five (5.00) acres for parcels located over the Rathdrum Prairie Aquifer in the Agricultural Suburban, Restricted Residential, and High Density Residential zones; and

WHEREAS, upon a finding that regulatory circumstances constitute an imminent peril to the public health, safety, or welfare necessitating immediate action to adopt and affirm subsurface sewage disposal rules, and PHD's authority to apply and enforce those rules, and to establish a minimum parcel size of five (5.00) acres for parcels located over the Rathdrum Prairie Aquifer in the aforementioned zones, in an effort to continue to protect water quality in the Rathdrum Prairie Aquifer, the Kootenai County Commissioners adopted Emergency Ordinance No. 2022-574 on March 22, 2022; and

WHEREAS, the Kootenai County Commissioners now finds that the public health, safety, and welfare necessitate action to permanently adopt and affirm the provisions of Emergency Ordinance No. 2022-574, with amendments allowing the normal minimum parcel size for parcels located over the Rathdrum Prairie Aquifer in the aforementioned zones which are or will be served by a public entity providing sewage disposal via a municipal or community sewer service;

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

SECTION 1. That Section 8.2.303, Kootenai County Code, shall be, and the same is hereby amended as follows:

8.2.303: PARCEL LOT SIZE AND, DENSITY AND SITE AREA: The minimum parcel lot size in the Agricultural Suburban zone, ~~except in conservation subdivisions,~~ shall be two (2.00) acres, with the following exceptions:

A. Conservation subdivisions, which shall be subject to the standards set forth in section 8.6.602 of this title.

B. The minimum parcel size for parcels which are located over the Rathdrum Prairie Aquifer and are subject to the provisions of section 8.7.302 of this title shall be five (5.00) acres.

SECTION 2. That Section 8.2.403, Kootenai County Code, shall be, and the same is hereby amended as follows:

8.2.403: PARCEL LOT SIZE AND DENSITY SITE AREA: The minimum parcel lot-size in the Restricted Residential Zone shall be 8,250 square feet, with the following exceptions:

A. The maximum density within the boundaries of Area of City Impact of the City of Hayden Lake shall be one (1) single family dwelling per acre.

B. The minimum parcel size for parcels which are located over the Rathdrum Prairie Aquifer and are subject to the provisions of section 8.7.302 of this title shall be five (5.00) acres.

SECTION 3. That Section 8.2.503, Kootenai County Code, shall be, and the same is hereby amended as follows:

8.2.503: PARCEL SIZE AND DENSITY:

A. Except as otherwise provided in this ~~article~~ ~~section~~, the maximum density in the High Density Residential zone shall be one (1) dwelling unit per 3,000 square feet.

B. The minimum parcel size for parcels which are located over the Rathdrum Prairie Aquifer and are subject to the provisions of section 8.7.302 of this title shall be five (5.00) acres.

SECTION 4. That Title 8, Chapter 7, Kootenai County Code, shall be, and the same is hereby amended by the addition of a **NEW ARTICLE**, to be designated as Title 8, Chapter 7, Article 7.3, Kootenai County Code, and to read as follows:

Article 7.3
Subsurface Sewage Disposal

8.7.301: PROHIBITED CONDITIONS:

A. Domestic sewage, septage, sanitary sewage, industrial waste, agricultural waste, sewage effluent, or human excreta is not allowed to remain open to the atmosphere or on the surface of the ground in such a manner so as to be a source of noxious or offensive odors, to be dangerous to health, or to be a public nuisance.

B. Domestic sewage, sanitary sewage, septage, industrial sewage, industrial waste, agricultural waste, sewage effluent, or human excreta is not allowed to endanger any source or supply of drinking water, or cause damage to any public or private property.

C. Raw or untreated sewage, septage, or industrial waste, or agricultural waste is not allowed in any body of water, water course, or any underground water drain, any storm water drain, channel, or other surface water drain.

8.7.302: SEWAGE DISPOSAL ON PARCELS LOCATED OVER THE RATHDRUM PRAIRIE AQUIFER:

A. The provisions of this section shall apply to all subsurface sewage disposal systems installed on any parcel located over the Rathdrum Prairie Aquifer.

B. The Board of County Commissioners and the Board of Health have determined that extensive use of subsurface wastewater disposal on parcels located over the Rathdrum Prairie Aquifer presents a threat to the public health by contamination of the Rathdrum Prairie Aquifer, which has been designated as a sole source aquifer by the U.S. Environmental Protection Agency (EPA) and as a sensitive resource aquifer by the Idaho Department of Environmental Quality (DEQ). Therefore, it is the intent of the Board of County Commissioners to adopt regulations which continue to govern subsurface sewage disposal which shall apply to all parcels located over the Rathdrum Prairie Aquifer.

C. Subsurface Sewage Disposal System Regulations.

1. All installations of subsurface sewage disposal systems must be made in compliance with applicable DEQ and Panhandle Health District No. 1 (PHD) rules.
2. A subsurface sewage disposal system for one (1) dwelling equivalent may be installed in accordance with paragraph (1) of this subsection if the system is on a single parcel of land of five (5.00) acres or larger in surface area and the total loading for that parcel does not exceed one (1) dwelling equivalent per five (5.00) acres, except where one (1) system is replacing another. Every parcel of land created after December 20, 1977, except as otherwise permitted in this section, shall maintain the dwelling equivalent(s) allowed for the original parcel of land existing on that date.
3. No subsurface sewage disposal system may be installed on any parcel of land of less than five (5.00) acres in surface area except under the following conditions:
 - a. A subsurface sewage disposal system for a single dwelling equivalent shall be permitted on parcels of land less than five (5.00) acres in size which were acquired or established prior to December 20, 1977, provided that such parcels comply with all other rules governing individual subsurface sewage disposal systems; or
 - b. Where one (1) subsurface sewage disposal system is replacing another with no increase in sewage loading.
4. On all developments subject to the provisions of subparagraph (a) of paragraph (3) of this subsection, all installations shall be done in coordination with local government planning, and approved by DEQ where applicable.
5. Upon notification by the PHD Health Officer, the owner of any parcel of land utilizing a subsurface sewage disposal system shall disconnect such system from any buildings on that parcel of land and connect the building sewer from the buildings to a collection and treatment system whenever it becomes available for service to that parcel.

D. The provisions of this section shall not apply to any parcel in which sewage disposal is provided by a municipal or community sewer system owned and operated by a duly organized city, sewer district, water and sewer district, or recreational water and sewer district.

8.7.303: AUTHORITY FOR ENFORCEMENT:

- A. The County and PHD shall have the power to apply and enforce the provisions of this article, which shall include those powers expressly set forth in this article and any powers necessarily implied from those provisions.
- B. Nothing in this article shall be construed as requiring any particular application of this article, nor any particular permitting or enforcement action, nor any expenditure of funds.
- C. Nothing in this article shall be construed as limiting the legal remedies that may be sought by the County or PHD for a violation of any provision of this article.

SECTION 5. That the following new definition shall be, and the same is hereby added to Section 8.9.102, Kootenai County Code, as follows:

BOARD OF HEALTH: The Board of Health of Panhandle Health District 1 (PHD).

SECTION 6. That the following new definition shall be, and the same is hereby added to Section 8.9.104, Kootenai County Code, as follows:

DWELLING EQUIVALENT: The total sewage loading from a single family dwelling. When applied to structures or facilities other than housing units, a dwelling equivalent shall be equal to two-hundred and fifty (250) gallons per day or be equal to twenty (20) persons using a non-residential facility on forty (40) hour per week basis, with no wastewater generation except from restrooms.

SECTION 7. That the following new definition shall be, and the same is hereby added to Section 8.9.204, Kootenai County Code, as follows:

HEALTH OFFICER: The Director of PHD, or any agent or employee thereof whose duties include enforcement of any provision of this article.

SECTION 8. That the following definition contained in Section 8.9.402, Kootenai County Code, shall be, and the same is hereby amended as follows:

RATHDRUM PRAIRIE AQUIFER: A groundwater aquifer located beneath the Rathdrum Prairie and the Purcell Trench in portions of northern Kootenai County and southern Bonner County. For purposes of this title, the Rathdrum Prairie Aquifer shall be defined as is that portion of the larger Spokane Valley-Rathdrum Prairie Aquifer, as originally defined by the USGS map depicting the boundaries of the Spokane Valley-Rathdrum Prairie Aquifer identified and designated under the authority of Section 1424(e) of the Safe Drinking Water Act (PL 93-523) at 43 F.R. 5566-67 (Feb. 9, 1978), which is located in Idaho situated in Kootenai County. It has been recognized by the U.S. Environmental Protection Agency as a sole source aquifer under Federal law, and by the Idaho Department of Environmental Quality as a sensitive resource aquifer under Idaho law.

SECTION 9. That the following new definition shall be, and the same is hereby added to Section 8.9.403, Kootenai County Code, as follows:

SEWAGE LOADING: The total liquid volume of sewage produced on any given parcel of land and expressed as gallons per day.

SECTION 10. This Ordinance shall supersede and replace Emergency Ordinance No. 2022-574, adopted on March 22, 2022.

SECTION 11. 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 12. 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 13. This Ordinance shall take effect and be in full force upon its passage, approval, and publication in one (1) issue of the *Coeur d'Alene Press*.

ADOPTED this _____ day of _____, 2022.

**KOOTENAI COUNTY
BOARD OF COMMISSIONERS**

Chris Fillios, Chairman

Leslie Duncan, Commissioner

Bill Brooks, Commissioner

ATTEST:
JIM BRANNON, CLERK

By: _____
Teri Johnston, Deputy Clerk

Publication Date: _____, 2022