



CITY OF WASILLA

290 E. HERNING AVE.

WASILLA, ALASKA 99654-7091

PHONE: (907) 373-9050

FAX: (907) 373-9085

COUNCIL MEMORANDUM NO. 97-04

From: Duane Dvorak, City Planner 

Through: Sarah H. Palin, Mayor

Date: January 8, 1997

Subject: Background information regarding the draft ordinance to adopt building codes.

Past Administration directed staff to prepare an ordinance for the adoption of building codes during the summer and fall of 1996. The intent of this effort was to require private building inspection of all new and remodeled residential developments, from single-family residential through four-plex. In consultation Mat-Su Homebuilders Association members, staff drafted an ordinance for submission to the Council. The draft was completed just prior to the municipal election and was submitted to the City Attorney for review and comments.

After review, in early October, the City Attorney expressed many concerns about the draft and recommended that the draft not be forwarded to the Council. Because of recent changes in the Administration and City Council brought about by the election, the Attorney recommended that this issue be held by staff until the new Council had an opportunity to settle into its responsibilities. It was agreed that the issue should be brought forward after the new year (Jan. 1, 1997) for discussion of all options available so that the Council could be fully informed of the relative merits of the City's options regarding the Uniform Building Code.

In order to comply with Section 1.20.080 (Codes of Technical Regulations) of the Wasilla Municipal Code, Council is required to make available five copies of the set of building code manuals for public inspection fifteen days before adoption of any codes. Currently, we have a partial set of manuals in the Planning Office for your review. The library also has the manuals. The purchase price of five additional manuals is \$1,103.80. It makes sense to wait until you are sure you want to adopt the codes before we order five more copies. CW 1.20.080 is set forth below in its entirety:

1.20.080 Codes of Technical Regulations. The Council may adopt any standard published code of technical regulations in a single ordinance which shall be governed, except as otherwise provided in this section, by the procedure and requirements prescribed for ordinances generally. **Upon introduction of the ordinance, the Council promptly shall cause at least five copies to be made available for public inspection for a period of fifteen days before adoption and shall cause to be published, by means indicated in Section 1.20.020(C), and together with the notice of hearing, a notice setting out the purpose of the ordinance and the time and place at which it is available for public inspection.** No other publication is necessary before adoption, unless, after the hearing, the

ordinance is amended as to its substance. If it is so amended, and also in the event of any later amendment before adoption, the amended sections shall be made available for inspection and notice published as earlier provided, and the ordinance as amended shall be subjected to hearing and to all other procedure as though newly introduced. Neither the ordinance nor any of its amendments need be distributed to the public or read in full at the hearings thereon. Publication after adoption shall be by notice declaring such adoption as published. The adopted code shall be sold to the public in such form and at such reasonable price as the Council may direct. (Ord. W8~2 §4 1980) **emphasis added**

The section on technical codes clearly indicates that the Council shall make available five copies of proposed technical codes and manuals upon introduction of an ordinance and be available for public review at least 15 days prior to adoption. The draft ordinance that was prepared by staff assumes the manuals to be available, because of the speculative acquisition of building code manuals by the past Administration. Should Council wish to proceed with the introduction of an ordinance to establish a building inspection program, the Council should concurrently direct the Clerks office or Administration to order the manuals. Because of the cost to making the codes available, staff does not recommend ordering the manuals unless a majority of the Council clearly supports the adoption of a residential building inspection program.

LAW OFFICE
OF
RICHARD DEUSER

75 CHECK ST. - #206
WASILLA, ALASKA 99654

CENTURY PLAZA BUILDING
PHONE (907) 376-9484
FAX (907) 373-0404

MEMORANDUM

CLERKS OFFICE

JAN - 2 1997

RECEIVED

To : City Council
From : Richard Deuser, General Counsel
Date : January 2, 1997
Re : Building Code Ordinance

The subject of building codes has come before the City Council in the historical past. More recently, the Homebuilder's Association has presented the issue in the time frame prior to the most recent elections. The Planning Office was asked to prepare a draft building code ordinance. It has been my advice that a specific ordinance proposal is premature without first discussing some policy questions. If direction is received from Council on some fundamental policy choices, then a more appropriate draft of an ordinance can be prepared. Consider the following comments grouped by topic.

Liability Issues - Insurance

A fundamental decision is whether the City would perform inspections through the services of a City employee or whether there would be a system of privately employed inspectors. If we utilize privately employed inspectors, the issue will come up as to whether the City will review and approve either credentials and/or performance. That is, even if the system utilizes private inspectors, perhaps the City would only outline the requirements of the inspectors, as opposed to actively reviewing the credentials or performance of the inspectors. There is less liability exposure through the use of a City employee because of statutory immunity. Due to the demand on the City budget, the idea of a City employee may not be politically or fiscally preferred.

Whichever approach is selected, insurance matters can then be considered.

Code Adoption/Update

If the City adopts codes the technical questions of which codes to adopt and how to describe those codes is probably left to someone with more technical knowledge of the codes than I. However, there needs to be thought on 'if' and 'how' the adopted codes will be updated. There needs to be some system of either automatic adoption of revisions as they occur (by state or national organization action) or a conscious system of annual evaluation by the City of whether revised codes should be incorporated by specific ordinance amendment.

Scope of Application

Some thought should be given as to whether the code/inspection system will apply to remodeling, additions, and/or repairs and, if so, how to define these construction activities so as to distinguish mere maintenance or minor repairs.

Should all construction of a certain size, dimension or purpose be subject to the "codes" ? Should all construction, defined by a certain size, dimension or purpose also be subject to **inspection**? That is, if the idea is focused on family residential structures built to accommodate four residences or less, is there need to also look at small construction of buildings even if those buildings are not to be used for residential purposes. (E.g., small offices?)

Is there any good reason to exempt public (Federal, State or Local) construction from the inspection system (how does the city inspector inspect him/herself) ?

Costs and Fees

Consideration needs to be devoted to the costs of an inspection system. Will the City expect the system to be user-funded by inspection fees? If private inspectors are used will they be regulated by the City as to how much they can charge? If private inspectors are used will the City charge the inspectors for any City fees for report review, credential evaluation, or certificate issuance? Will insurance costs of the City be identified as to the premiums or portion of premiums related to the program and will the program be expected to pay those premiums or will they simply be absorbed as a general cost to the City?

Conflict of Interest

Is there any concern, in a small town such as Wasilla, that the same persons doing inspection will also be the persons hired to supply materials or do substantive construction work on the same project. If so, will that be perceived as too "cozy." Should the inspector of a project be prohibited from working that project as a supplier or contractor ? What if the inspector only bid the job but did not get it? Should that disqualify the inspector ?

Consistency With Existing Code

The existing City Code (especially the personnel and development code) should be reviewed for consistency and integration with both the code adoption and inspection provisions. Some of the existing permit steps undoubtedly overlap with the code/inspection concept.

Dispute Resolution

The idea of a simple and expeditious procedure for resolving arguments over an inspection decision is essential, particularly for construction projects where timing is critical to cost effective performance. "Due Process" considerations may require some basic procedural rights for the owner or contractor who disagrees with an inspection decision. Designing a simple but constitutionally valid system will require some thought. If the inspector is a City employee some ideas can be adopted from the existing City sales tax dispute resolution procedure. If the inspectors are private it may require more inventive drafting. For example, is a board of adjustment desirable and, if so, should their duties be limited to the larger topics of the codes to be adopted and their updates or should that board also get into the "day to day" issues of resolving disputes about the quality of inspections.

Conclusion

There are really four options available :

- 1) Do nothing - leave the status quo.
- 2) Require new construction (four-plex or smaller?) to be inspected for designated codes by an ICBO credentialed inspector. The ordinance would then require that the new construction be issued a certificate of occupancy by the Planning Department only upon presentation of a form certifying that the inspector approves compliance with the designated building codes. Under this option the City doesn't get involved in who the inspectors are or the actual inspection process.
- 3) Same as option #2 but the City maintains and reviews a list of qualified ICBO inspectors to assure some uniformity of quality in the inspections.
- 4) Same as option #2 but the City hires and pays the inspector(s) to exert a higher degree of control over the quality and consistency of the inspections and to gain the advantage of statutory immunity granted by State law (which may become a problem under option #3 under some circumstances).

Before time intensive drafting is attempted, policy direction from the Council will assist the ordinance-writing process. Other issues may come up based on the questions listed above. Council should either deliberate these issues at a Council meeting or consider a work session if desired. Evaluation of the options will be made much easier if the Homebuilder's Association offers commentary as to what their purposes are and which of the approaches most closely accommodates those purposes.


Richard Deuser