



## CITY OF WASILLA

290 E. HERNING AVE.

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### COUNCIL MEMORANDUM NO. 97-08

From: Duane Dvorak, City Planner

Through: Sarah H. Palin, Mayor

Date: February 5, 1997

Subject: Information regarding the review of building codes by the Wasilla Planning Commission.

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The Wasilla Planning Commission initiated a review of the Building Code issue in July of 1995. Staff was directed to gather building codes and information from other communities in Alaska to see how other building code options compared with the proposal submitted by the Mat-Su Homebuilder's Association (MSHA). The building code ordinance currently under consideration by the Council is based on the MSHA model.

Staff prepared an update for the Planning Commission in November of 1995, however, the review was abandoned shortly after this report was presented, because the Commission and staff were required to focus on the Wasilla Development Code rewrite as a higher priority at the time. Memoranda and attachments from these earlier meetings are included with this memorandum to show some of the issues were discussed at that time.

The City Attorney has indicated that the Council may wish to consider other alternatives that are available to implement a community wide building inspection program before making a final decision to adopt the current proposal. The Commission was working on this project at one time and it could continue the process that was begun in 1995, should the Council refer this project back to the Planning Commission for further study.

Another alternative that was recently discussed by the Administration would be to refer this issue to a Mayor appointed committee designated to study the issue of building codes in general, in order to evaluate the relative merits of all options available to the community. The preliminary findings of this committee could then be presented to the Planning Commission for review and public hearing, prior to a formal recommendation being forwarded to the Council for further consideration.

Specific committees have been appointed by previous administrations to study technical issues or to provide a greater measure of community input to the legislative process. In this case, the composition of the committee to study building codes could include a representative of the Council, the Planning Commission, the Mat-Su Homebuilders, local building contractors, community members, and staff to provide some clerical support for the meetings that would be required. Staff will continue to work with the Administration to develop a committee structure and list of potential appointees which will be ready for the Council meeting on February 10, should the Council wish to consider this option.



## CITY OF WASILLA


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New Business Item - 8C

### PLANNING COMMISSION MEMORANDUM - 95-26

Date: July 28, 1995

To: Wasilla Planning Commission

From: Duane Dvorak, City Planner 

Re: Building Codes Proposal and Draft Ordinance - Mat-Su Homebuilders Association

#### BACKGROUND

The Mat-Su Homebuilder's Association has been in discussion with the City administration for a number of years now with a proposal for a City authorized inspection program for residential developments. This proposal involves the adoption of certain building and electrical codes by the City that would be applicable to residential development, from single-family homes up to four-plexes.

The attached proposal and draft ordinance were submitted in 1993 or 1994. Although no official action has been taken on this issue, it has been reviewed by staff and discussed with the City Attorney. City concerns with such a program are related to the liability factors, the additional administrative responsibility and public acceptance. Most of these concerns have been discussed in the past and there are no concerns so great that they would preclude the adoption of building codes entirely.

Staff will likely have to make some changes to the draft ordinance to put it in the proper format for the City Clerk's Office. In addition, some language changes may be required from prior review of the City Attorney. At this time, staff would like the Commission to consider generally whether it supports the City getting into the business of building regulation. The Commission will have to make a recommendation to the Council at some point whether to pursue this course, or not. Commission feedback to the staff regarding this proposal would be helpful in assisting staff to revise the ordinance.

**A RESOLUTION OF  
MAT-SU HOMEBUILDERS ASSOCIATION**

**WHEREAS, it being the goal of the Mat-Su Homebuilders Association to foster the safe and sound construction of affordable housing for the citizens of the City of Wasilla,**

**WHEREAS, it being the goal of the Mat-Su Homebuilders Association that the cost of housing be kept as affordable as possible to extend the benefits of home ownership to the greatest number of citizens possible,**

**BE IT THEREFORE RESOLVED, The Mat-Su Homebuilders Association urges and recommends that the City of Wasilla adopt the Uniform Building Code, The Uniform Plumbing Code, The Uniform Mechanical Code, National Electrical Code, Model Energy Code and the State of Alaska Building Energy Efficiency Standards and provide for the enforcement of the same.**

## Mat-Su Homebuilders Association

### Questions & Answers

#### Pertaining to City of Wasilla Code Adoption

What is the Mat-Su Homebuilders Association?

Answer: The local chapter of the National Association of Home Builders, a nation wide professional group of contractors and affiliates that foster affordable, sound, safe and sanitary homes.

Who are the Mat-Su Homebuilders?

Answer: The members of the Mat-Su Homebuilders Association are licensed general and residential contractors and affiliates doing business in the Matanuska Susitna Borough and The City of Wasilla.

Why is the Mat-Su Homebuilders Association interested in the adoption of building codes?

Answer: There are many aspects to this answer. We will try to address them in their priority:

1. There is a public perception that construction in "the Valley" is totally unregulated. This perception, whether true or not, reduces the willingness of the home buying public to consider the valley and the City of Wasilla as a good place to invest. This perception needs to be changed.

2. Recent experience with the real estate recession uncovered many examples of poor and not to code construction. This led to Alaska Housing Finance Corporation (AHFC), for example, spending more than 25 million dollars to rectify. Some of the construction was so bad that AHFC sold some of the properties "AS IS, WHERE IS" with no warranties as to future financing.

3. Building technologies are advancing exponentially. The International Conference of Building Officials (ICBO) are constantly reviewing these technologies. Those that are proven and tested by ICBO are certified to provide safe, sound and sanitary construction standards. Access to this information is provided through the adoption process of the codes.

4. A quote from a recent request for proposal issued by AHFC, "Both urban areas and rural villages of Alaska are strapped with inefficient, degenerating building stock which consumes excessive amounts of energy". The RFP goes on to say, "Excessive fuel consumption depletes personal income reserves, as well as, community funds that might be used for economic development or other projects". The State of Alaska has adopted statutes that require compliance with "Building Energy Efficiency Standards" in order to be financed with state funds. Other secondary lenders such as Fannie Mae, Freddie Mac and FHA are also addressing the home energy problem with specialized loan programs. Code implementation will begin to address these very real problems.

Why would the City of Wasilla want to adopt the "Building Codes"?

Answer: The City of Wasilla is maturing and needs to better control its own destiny. Administration and enforcement of building codes is an effective method to improve the housing stock of the city. The issuance of building permits will allow the city to better track the tax base of the city and will make major efforts to remove the negative perception about the valley.

Who would administer and enforce the codes?

Answer: The Mat-Su Homebuilders Association envisions a system where the City adopts and administers the code. The city would be responsible to appoint a "Building Official" as defined within the Code. And as a Class "A" member of the International Conference of Building Officials, would maintain an Official version of the code manuals.

Enforcement has a further answer. Within the Mat-Su community there are approximately 20 certified independent inspectors. These individuals are certified by the International Conference of Building Officials and AHFC to perform code compliance inspections on single family dwellings and up to and including four-plexes. The city could either contract individually with these individuals or require the permit applicant to contract for inspection services. (Note: AHFC already requires contractors to contract for the services of a certified inspector.)

The Mat-Su Homebuilders Association is willing to provide the City with a list of qualified members willing to serve on an advisory board formed to assist the "Building Official" with code interpretations.

Who would pay for the administration and enforcement of the codes?

The applicant. The city could charge for the permit and the cost of the contract inspector or charge for the permit only when the applicant contracts for the inspector.

What Codes does the City need to adopt?

Answer: The Mat-Su Homebuilders recommends adoption of the following codes:

- 1991 Uniform Building Code
- 1991 Uniform Mechanical Code
- 1991 Uniform Plumbing Code
- 1990 National Electrical Code

as they pertain to the construction of 1-4 family dwellings, and the:

- 1992 Model Energy Code or
- State of Alaska Building Energy Efficiency Std.

Where will these codes apply?

Answer: Only within the city limits of the City of Wasilla and

will apply to 1-4 family dwellings.

When will these codes apply?

Answer: Current predictions are that 1994 will be a banner year in new home construction in the Mat-Su Borough and the City. It would behoove the city to adopt the codes as soon as possible this year.

How should the City administer the Codes?

Answer: Again the Mat-Su Homebuilders recommends the following:

Step One: The city adopts the recommended codes by ordinance.

Step Two: The Mayor appoint a "Building Official" from staff.

Step Three: The City join the International Conference of Building Officials as a class A member and establish a code library.

Step Four: The city expand its driveway permit system to include a building permit system.

Step Five: The City establish administrative procedure to track either contract inspections or applicants contracted inspections.

Step Six: The City establish administrative procedure for the issuance of a Certificate of Occupancy upon certified completion of construction.

What liabilities will the City incur with the adoption of these codes?

Answer: Section 302(f) of the Uniform Building Code discusses liability of the Building Official and the liability of the parent jurisdiction. In summation, the jurisdiction must protect the building official and the jurisdiction itself assumes no liability for damages to persons or property as a result of the enforcement of the codes.

Sample ordinance for the adoption of the  
Uniform Building Code, Uniform Mechanical Code,  
Uniform Plumbing Code and National Electrical Code  
by the City of Wasilla.

Ordinance # \_\_\_\_\_

An Ordinance of the City of Wasilla adopting the 1991 edition of the Uniform Building Code, 1991 Uniform Plumbing Code, 1991 Uniform Mechanical Code, and the 1990 National Electrical Code, Model Energy Code, 1992 Edition, published by the Council of American Building Officials, State of Alaska Building Energy Efficiency Standards, September 1991 Edition, published by the Department of Community & Regional Affairs regulating the erection, construction and occupancy of all new residential buildings including detached single family and up to and including four family dwellings in the City of Wasilla; providing for the issuance of permits and collection of fees therefor; providing for the violation thereof, repealing all

other ordinances and parts of ordinances in conflict therewith.

The Council of the City of Wasilla does ordain as follows:

Section 1. That certain documents, one(1) copy of which is on file and is open for inspection of the public in the office of the City Clerk of the City of Wasilla, being marked and designated as:

Uniform Building Code, 1991 Edition, published by the International Conference of Building Officials including Appendix Chapters 1, 7, 10, 12, 23 Div 1, 2 & 3, 24, 25, 37, 38, 55, 57.

Uniform Plumbing Code, 1991 Edition, published by the International Association of Plumbing and Mechanical Officials

Uniform Mechanical Code, 1991 Edition, published by the International Association of Plumbing and Mechanical Officials



National Electrical Code, 1990 Edition, published by the National  
Fire Protection Association

Model Energy Code, 1992 Edition, published by the Council of  
American Building Officials

State of Alaska Building Energy Efficiency Standards, September  
1991 Edition, published by the Department of Community & Regional  
Affairs,

be and the same are hereby adopted as the code of the City  
of Wasilla for the regulating the erection, construction and  
occupancy of all new residential buildings including single  
family detached dwellings up to and including four family  
dwellings in the City of Wasilla providing issuance of permits  
and collection of fees therefor, and each and all regulations,  
provisions and terms of such Uniform Building Code, 1991 Edition,  
Uniform Plumbing Code, 1991 Edition, Uniform Mechanical Code,  
1991 Edition, National Electrical Code, 1990 Edition published by

the International Conference of Building Officials, Model Energy Code, 1992 Edition, published by the Council of American Building Officials, State of Alaska Building Energy Efficiency Standards, September 1991 Edition, published by the Department of Community & Regional Affairs all of which are on file in the office of the City of Wasilla are hereby referred to, adopted and made part hereof as if fully set out in this ordinance.

Section 2. It shall be unlawful for any person, firm or corporation to erect, construct, occupy any new residential property, single family detached up to and including a four family dwelling, or cause or permit the same to be done in violation of the above adopted codes.

Section 3. That ordinance No. \_\_\_\_\_ of the City of Wasilla entitled \_\_\_\_\_ and all other ordinances or part of ordinances in conflict herewith are hereby repealed.

Section 4. That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not effect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or mores sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 5. That the City Clerk is hereby ordered and directed to cause this ordinance to be published.

Section 6. That this ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect \_\_\_\_\_ 199\_ from and after the date of its final passage and adoption.

MAT-SU HOMEBUILDERS ASSOCIATION  
CODE ADMINISTRATION

Suggested Means & Methods

City shall issue a building permit to the applicant upon submission of one set of approved plans, the name and certification number of the chosen inspector and upon payment of a building permit fee. The City shall require of the applicant to post said permit at the proposed construction site.

City will issue a final certificate of occupancy upon the submission by the permit holder of the following:

A full set of plans with all changes noted;

Certification by an International Conference of Building Officials Certified Combination Dwelling Inspector that he/she has performed the following inspections and certification:

Plans Review

Foundation Inspection

Framing, Plumbing Rough-in, Mechanical Rough-in, Electrical Rough-in Insulation installation, vapor retarder installation

Certification that the construction meets State of Alaska Building Energy Efficiency Standards (BEES)

Final Inspection

City shall upon passage of the ordinance adopting the uniform codes, designate an individual as the "Building Official".

**DRAFT RESOLUTION**

**OF**

**CITY OF WASILLA PLANNING COMMISSION**

**Whereas, fostering safe and sound housing for the citizens of the City of Wasilla is a goal of the planning commission,**

**Whereas, the Mat-Su Home Builders Association has submitted a proposal to the planning commission for the adoption of the Uniform Building Code, the Uniform Plumbing Code, the Uniform Mechanical Code, the National Electrical Code and the State of Alaska Building Energy Efficiency Standards,**

**Whereas, adoption of building codes will foster construction of safer residential properties for the citizens of the City of Wasilla,**

**Be It Therefore Resolved, That the Planning Commission does submit and recommend that the Wasilla City Council Adopt an ordinance adopting the uniform codes.**

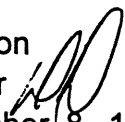


## CITY OF WASILLA

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Public Hearing Item 6-B

### PLANNING COMMISSION MEMORANDUM - 95-31

DATE: November 3, 1995  
TO: Wasilla Planning Commission  
FROM: Duane Dvorak, City Planner   
SUBJECT: Information for the November 8, 1995 Regular Meeting, about the ongoing investigation of building codes and building inspection requirements for some residential developments in the City of Wasilla.

### BACKGROUND

In July of this year, the Commission discussed the issue of building codes and gave staff some direction on how to proceed with this investigation. Building codes and inspections have been considered by the City a number of times in the past, however, no action has been taken to enact such an ordinance. The Mat-Su Valley Homebuilders Association supports the enactment of limited residential building codes and inspection requirements within the City of Wasilla.

Presently, the regulation of new residential construction is being driven by the financial institutions. New residential construction that is financed through the Alaska Housing Finance Corporation (AHFC) is required to undergo building inspections. A copy of AS 18.56.300, which outlines the requirements for AHFC to buy loans is attached for the Commissions review. New construction and additions to existing homes that are paid for out of pocket may not be required to get building inspections unless the property owner arranges it on their own.

Building codes are intended to provide, among other things, a reasonable assurance that structures built in the community are safe for occupancy, that they are adequate collateral for investment, that they are energy efficient and that they are suitably constructed for the use that is intended. Building codes can also be used to regulate other related forms of development such as site preparation and grading.

Staff is reviewing the files to address concerns that have been raised by the administration and the City Attorney in previous discussions. In addition, the Planning Clerk has obtained information from other jurisdictions regarding permit activity and costs associated with building code administration in other communities. A table summarizing this information was compiled by the Planning Clerk and is attached to this memo.

This report is intended to be a progress report on the investigation. Concerns about building code administration have generally focused on liability, cost, enforcement, dispute resolution and whether to set up a private inspection program or create a municipal building inspector position.

## Liability - Update

Staff has contacted the City's insurance broker regarding the issue of liability. Administration of building codes are generally not considered to increase the City's risk in terms of insurance liability. Insurance broker Mike Combs said that, in his opinion, the adoption and enforcement of building codes might reduce the City's risk assessment in the long run.

The City Attorney provided a memo on the issue of building codes and liability in 1993. That memo is attached for Commission review.

## Cost - Update

A review of other building code programs around the state gives an idea of the cost associated with the establishment of a traditional building inspection program, with building inspections carried out by municipal employees.

The cost of initiating and maintaining a program of building inspection by using private inspectors is expected to be minimal. The primary cost for inspections would be subject to negotiation with individual inspectors. The City would charge only a recording or document fee for making the final inspection documents a public record. If the building codes are adopted for a private sector inspection program, then the City would not need to adopt a fee schedule like the one that is included with the Uniform Building Code.

## Enforcement/Dispute Resolution - Update

A building inspection program that is undertaken by private inspectors does not provide for enforcement. The basic premise is that the builder/developer hires the inspector of choice. If that does not happen, who will enforce the codes if someone does not comply with the inspection requirements voluntarily. That responsibility would most likely fall to the City. This could require staff and attorney time, but it is hard to say how often this situation might occur.

The responsibility to identify and investigate builders and developers that are not in compliance with building codes would fall to the designated City Building Official. It is unlikely that this position would be so busy with code enforcement to require a full time position. In the beginning, those responsibilities will most likely be assigned to someone already on staff to the City.

Providing for a Building Official, and a Building Code Board of Appeals will be necessary to ensure a method of resolving any disputes that might arise out of the building inspection program. The designated Building Official should be someone competent to interpret building codes and preferably someone with experience in building and construction. The Board of

Appeal could be the City Council until such time as a standing Committee is required. The Uniform Building Code provides for such a board, however, the ordinance adopting the codes will need to address the details of establishing such a board by the City. The Board would only meet when needed to settle issues raised from the administration of the Building Code.

#### Private vs. Municipal Building Inspection - Update

All the jurisdictions around the state that were surveyed by the Planning Clerk have enacted a municipal inspection program to administer their building codes and inspections. This makes it hard to gain much insight from their experiences that can compare to a private sector inspection program. Most jurisdictions that were surveyed by staff appear to review both residential and commercial developments. As a result, their inspection programs are maintained year around with some seasonal increases in demand.

The building code proposal that staff has been investigating would only apply to single-family through tri-plex residential. It is unlikely that a municipal building inspector could be kept busy by the volume of construction in Wasilla, based only on this category of development. As a compromise to the public/private sector issue, the City could contract for inspection services on an as needed basis, based on the pool of qualified private sector building inspectors available in the Valley. This would lose the perceived advantage of letting each developer select their own inspector, however, it might provide the City a greater measure of control over the inspection process.

As the City continues to grow, and if the desire to regulate multifamily and commercial development becomes a consideration, then the City may want to consider having a municipal building inspection program with inspectors employed by the City. Staff is still investigating this issue.

#### Miscellaneous - Update

Staff met with Bill Bruu recently, a member of the Mat-Su Valley Homebuilders who is also a certified building inspector, to look over a draft ordinance for the adoption of building codes in Wasilla. Mr. Bruu is still reviewing the draft. The State of Alaska is in the process of adopting the 1994 Uniform Building Codes (UBC). This will require substantial changes to the ordinance which was originally written with the 1991 UBC in mind.

Staff has obtained some administrative sections from the UBC for review purposes. An order for the UBC and related codes was canceled last month while the staff investigates enrolling the City as a member of the International Conference of Building Officials (ICBO). According to Mr. Bruu, if the City becomes a member of the ICBO, then it will get a copy of all the Uniform Codes with membership. This may offer a substantial cost savings instead of ordering each code individually at retail cost. This will also allow the City to call on the ICBO for advice on



implementing the codes during the membership period. If the City decides not to adopt the codes, then the membership could be allowed to lapse at renewal time.

Staff has no recommendations to make at this time regarding the adopting of building codes for the City of Wasilla. Staff will continue to investigate this issue with the intent to bring forward a more thorough discussion of the issues in the next month or so.



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OF  
RICHARD DEUSER

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KRENIK BUILDING, PARKS HIGHWAY

M E M O R A N D U M

TO: Mayor John Stein  
FROM: Richard Deuser  
RE: Discussion of Liability Issues Related to  
Building Code Inspection Ordinance  
DATE: December 21, 1993

At the Council meeting of December 13, 1993, the concept of a building code inspection ordinance was discussed. Before making too many policy decisions concerning the structure of such an idea, I thought it would be appropriate to input on liability issues related to adoption of building codes and developing an inspection program.

HISTORICAL PERSPECTIVE

The content of this memorandum will be better understood if a brief history is reviewed.

Before 1977, there was no statutory immunity in the State of Alaska for municipalities who were alleged to have negligently inspected property. If negligence in the inspection were shown, damages could be assessed for personal injury and/or property damage following a faulty inspection. Under that old system, two companion cases arose in 1976. State v. Jennings, 555 P.2d 248, 251 (Alaska 1976), and Adams v. State, 555 P.2d 235, 241 (Alaska 1976), held that municipalities were not immune from liability for negligence in the course of performing safety inspections, and the court refused to adopt the common law concept of government immunity without legislative action.

In response to these cases from the mid-70s, the Alaska Legislature adopted an immunity statute in 1977.

In relevant part, that statute, AS 09.65.070, provides that no one can bring an action against a municipality if the claim is based on alleged failure to inspect property for a violation of any statute, regulation, ordinance, or a hazard to health or safety, or if the claim is based upon a failure by the municipal-

ity to discover a violation in the course of inspecting the property. The immunity, under the statute, extends to protect a municipality if the allegation goes to a claim of failure to abate a violation that was discovered on property that was inspected.

#### APPLICATION OF STATUTE

The Supreme Court has had occasion to confirm the operation and validity of the immunity statute.

Rice v. Bearson, 714 P.2d 1290 (Alaska 1986), involved an action by a farmer against the North Star Borough alleging negligence in failing to prohibit a chicken rancher from selling unhealthy chickens. Applying the immunity statute, the Supreme Court upheld the dismissal of the action.

However, other cases demonstrate that the Alaska Supreme Court is prepared to circumscribe the operation of the immunity statute where facts can distinguish the nature of the claim as being outside the scope of immunity.

For example, Plancich v. State, 693 P.2d 855 (Alaska 1985), arose in the context of a small boat harbor operated by the City of Yakutat. Part of the small boat harbor was designated as a seaplane dock. A Washington pilot arrived in Yakutat and found the seaplane dock totally surrounded by fishing vessels, making it unavailable for use by the airplane. Consequently the plane tied up at a privately-owned dock which was alleged not to be equipped to safely secure a seaplane in bad weather. A storm arose and during the night the seaplane sank. A suit was brought against both the State and the City of Yakutat. The essence of the complaint alleged negligent failure to keep the seaplane dock available to members of the seaplane-operating public.

Although the focus of the Court's analysis relates to another aspect of the immunity statute (the scope of discretionary function immunity) the implications for our current subject are quite simply that the court has shown a willingness to distinguish allegations that can be characterized as outside the scope of the immunity statute. See also City of Kotzebue v. McLean, 702 P.2d 1309 (Alaska 1985), in which the Alaska Supreme Court refused to adopt the related common law doctrine of the "public duty exception."

#### IMPLICATIONS FOR DRAFTING OF AN INSPECTION/CODE ORDINANCE

By its express terms, the ordinance has no application to property and buildings that are owned by or leased by the City of

Wasilla. Consequently, any negligent inspection system or failure to abate violations related to property owned or leased by the City would be subject to all of the normal and ordinary potential for damage claims in the event of proven negligence.

The words of the statute do extend immunity protection to the "agents, officers, or employees" of the City.

In light of the scope of the statutory immunity, and in further light of the case law history reviewed above, it can quickly be foreseen that claims would focus on the process of selecting, approving, training, and reviewing the inspectors, their credentials, and their performance, as opposed to the act of inspection itself. Having focused on these concepts, claims can be expected to assert that they are based upon negligence that is outside the scope of the immunity statute.

Recognizing that the scope of immunity appears to be focused on the act of inspection and the actions or failure to act to abate a known violation, and further realizing that potential claims would focus upon the selection/review process for choosing inspectors, most municipalities have opted for the relatively safe harbor of hiring, as direct employees, their building inspectors. By hiring, as an employee, a municipal inspector, presumably the issues of selection, credential review, supervision, and periodic review of inspection performance can all be performed in a more controlled environment that is less open to error or oversight.

By way of contrast, an inspection system that adopts and approves the work of other non-employee inspectors is more prone to error and oversight in the selection/review process.

#### INSURANCE

If the City utilizes private sector inspectors, careful consideration of appropriate insurance will be necessary.

One alternative is to require the inspector/agents to carry their own errors and omissions liability coverage. Availability of underwriters in Alaska, cost to the inspectors, and termination of coverage while liability potential continues all make this approach difficult or impractical.

The other alternative would be for the City to purchase errors and omissions coverage. However, City of Wasilla errors and omissions insurance coverage would generally apply to its own employees and not to independent agent inspectors. It may be possible to name specific inspector(s) as additional insureds

under the City-owned policy. If private sector inspectors are to be used, the whole topic of appropriate insurance coverage needs to be thoroughly researched.

Even if a single City employee inspector is used, the insurance cost needs to be quantified by inquiry to J.I.A.

#### CONCLUSION

If the City is to seriously consider an ordinance that is focused upon using private sector inspectors whose work will be used by the City in issuing certificates of occupancy, careful deliberation and drafting needs to be done concerning the establishment of a clear agency relationship between the City and the inspectors so as to conform to the statutory language offering immunity to agents of the City. Further, the ordinance is going to have to be carefully drafted so as to clarify and regularize the process by which the City A) reviews inspector credentials, B) selects inspectors authorized to act on behalf of the City, C) periodically confirms the credentials and authority of its inspectors, and D) reviews the performance of the inspectors.

To be clear, these issues would also be present if the City were to function through the services of its own employee. However, presumably the process will be easier to monitor if the City has only a single employee to be concerned with.

Another approach might be to use private sector inspectors, but attempt to scale down the scope of the City's selection/review responsibilities by limiting the number of authorized inspectors. If this approach is taken however, careful thought must be given to the appearance of favoritism as qualified persons seek designation as a City inspector in order to be available to perform the work and be paid for the service.

All approaches will require evaluation of insurance coverage.

There are a number of other considerations that need to be evaluated before adopting building codes. However, those issues are outside the scope of this memorandum which is limited to a discussion of liability/immunity issues.

Sincerely,



Richard Deuser

/mh

(11) take other actions necessary, convenient, or desirable to carry out the powers granted in this subsection.

(b) The corporation shall implement the powers conferred by (a) of this section by adopting regulations under AS 18.56.088. (§ 2 ch 147 SLA 1988; am §§ 96, 97 ch 4 FSSLA 1992)

**Revisor's notes.** — Paragraph (a)(10) of this section gives effect to the amendment made by § 97, ch. 4, FSSLA 1992, effective July 1, 1992. From June 26, 1992 to July 1, 1992, under § 96, ch. 4, FSSLA 1992, paragraph (a)(10) read as set out above, except that neither occurrence of "former" appeared. Due to a manifest error, § 150, ch. 4, FSSLA 1992 did not give § 96, ch. 4, FSSLA 1992 an immediate effective date. The error was corrected under AS 01.05.031.

Former AS 18.56.210 was renumbered as AS 18.56.900 in 1986.

**Cross references.** — For transitional provisions relating to the purchase of certain housing loans of the Department of

Community and Regional Affairs as of June 26, 1992, by the Alaska Housing Finance Corporation, see § 147, ch. 4, FSSLA 1992 in the Temporary and Special Acts; for legislative findings and intent in connection with the enactment of this section, see sec. 1, ch. 147, SLA 1988 in the Temporary and Special Acts.

**Effect of amendments.** — The 1992 amendment, effective July 1, 1992, re-wrote paragraph (a)(10).

**Legislative history reports.** — For legislative letter of intent relating to a legislative oversight committee in connection with AHFC activities under this section, see 1988 Senate Journal 3681.

**Sec. 18.56.220. Duty to advise about corporation's programs.** The corporation shall make a reasonable effort, through seminars, training sessions, and other forms of technical assistance, to assist local governments, regional housing authorities, nonprofit organizations, and other organizations and individuals to understand the corporation's housing programs and the opportunities that exist to obtain financial assistance from the corporation. (§ 98 ch 4 FSSLA 1992)

**Sec. 18.56.300. Construction standards for housing eligible for purchase of loans.** (a) The corporation may not make or purchase a housing loan for residential housing the construction of which begins after June 30, 1992, unless the seller of the mortgage loan complies with the provisions of this section and unless

(1) the unit is in compliance with the construction codes of the municipality, if the unit is located within a municipality that has adopted and enforces construction codes and each of those codes meets or exceeds the comparable standards for similar housing established by the state building code; or

(2) the unit is in compliance with the comparable standards for similar housing established by the state building code

(A) if the unit is located

(i) within a municipality whose construction codes do not meet the standards for similar housing established by the state building code;

(ii) within a municipality that does not enforce construction codes;

or

(iii) outside a municipality: or

(B) as to each specific code within the construction codes of the municipality that has adopted and enforces construction codes if the specific code does not meet or exceed the comparable standard for similar housing established by the state building code.

(b) As a condition of a commitment to purchase or approve a loan under this section for residential housing the construction of which begins after June 30, 1992, the corporation shall require inspection of the unit of residential housing that is the subject of the loan. The inspection must be performed by a municipal building inspector, by a person who is approved or certified to perform residential inspections by the International Conference of Building Officials or the International Association of Electrical Inspectors, or, when the unit of residential housing is located in a rural area, by an architect licensed under AS 08.48, by an engineer licensed under AS 08.48, or by another person approved by the corporation. When the unit of residential housing is located in a rural area, the person who makes the inspection may use methods other than a personal physical inspection to make the inspection if the method is approved by the corporation, and variations from the applicable code may be accepted at the corporation's discretion, if the person authorized to inspect the unit under this subsection satisfies the corporation that the variation does not adversely affect the structural integrity of the unit or the health and safety of the residents. The person who makes the inspection shall determine whether the construction conforms to relevant provisions of the construction codes of the municipality or of the state building code, as applicable, at each of the following stages of construction:

- (1) plan approval;
- (2) completion of footings and foundations;
- (3) completion of electrical installation, plumbing, and framing;
- (4) completion of installation of insulation;
- (5) final approval.

(c) A person may not bring an action for damages based on a duty imposed by (b) of this section to inspect a residential unit unless the action is for damages caused by gross negligence or intentional misconduct.

(d) This section does not apply to a nonconforming housing loan made or purchased by the corporation.

(e) In this section,

- (1) "construction codes" means, with reference to a municipality, the building, mechanical, plumbing, and electrical codes, or any of them that have been adopted and are enforced by the municipality;
- (2) "rural area" means a community with a population of 5,500 or less that is not connected by road or rail to Anchorage or Fairbanks;
- (3) "state building code" means

(A) for building standards, the standards set out in the version of the Uniform Building Code adopted by the Department of Public



Safety under AS 18.70.080, including the provisions of that code applicable to buildings used for residential purposes containing fewer than four dwelling units, notwithstanding the exclusion of those buildings from the Department of Public Safety's jurisdiction made by AS 18.70.080(a)(2);

(B) for mechanical standards, the standards set out in the version of the Uniform Mechanical Code adopted by the Department of Public Safety under AS 18.70.080, including the provisions of that code applicable to buildings used for residential purposes containing fewer than four dwelling units, notwithstanding the exclusion of those buildings from the Department of Public Safety's jurisdiction made by AS 18.70.080(a)(2);

(C) for plumbing standards, the publications identified as the minimum plumbing code under AS 18.60.705; and

(D) for electrical standards, the minimum electrical standards prescribed by AS 18.60.580. (§ 2 ch 85 SLA 1990; am § 1 ch 29 SLA 1991; am §§ 1, 2 ch 52 SLA 1991; am § 99 ch 4 FSSLA 1992; am §§ 1, 2 ch 81 SLA 1994)

**Revisor's notes.** — Paragraph (e)(2) was enacted as (e)(3). Renumbered in 1994, at which time former (e)(2) was renumbered as (e)(3).

**Effect of amendments.** — The first 1991 amendment, effective June 12, 1991, in former subparagraph (e)(2)(C) (now (e)(3)(C)), substituted "the publications identified as the minimum plumbing code" for "the minimum plumbing code adopted by the Department of Labor."

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The 1994 amendment, effective September 4, 1994, rewrote the second sentence

in subsection (b) and added present paragraph (e)(2).

**Editor's notes.** — Section 3, ch. 85, SLA 1990, as amended by § 4, ch. 52, SLA 1991, provides that former AS 18.56.300(e)(2)(A) and (B) (now (e)(3)(A) and (B)) "are intended to assure that, for purposes of determining whether housing the construction of which begins after June 30, 1992, meets the building and mechanical standards under AS 18.56.300(a) and (b), enacted by § 2 of this Act, the standards set out in each of the following fully apply to residences containing fewer than four dwelling units, even though those residences are excepted from regulation by AS 18.70.080(a)(2):

(1) the Uniform Building Code, adopted for the state by 13 AAC 50.020(a);

(2) the Uniform Mechanical Code, adopted for the state, by 13 AAC 50.020(b)."

**Sec. 18.56.390. Definitions for AS 18.56.010 — 18.56.390.** In AS 18.56.010 — 18.56.390, unless the context clearly indicates a different meaning,

(1) "adjustable rate mortgage loan" means a mortgage loan with respect to which the interest rate varies or is expected to vary from time to time by reference to an index or formula or other reference point;

(2) "bond" or "obligation" means a bond, bond anticipation note, or other note of the corporation authorized to be issued by the corpora-



## CITY OF WASILLA

290 E. HERNING AVE.


WASILLA, ALASKA 99654-7091

PHONE: (907) 373-9050

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Public Hearing Item 6-B

### PLANNING COMMISSION MEMORANDUM - 95-31

DATE: November 3, 1995  
TO: Wasilla Planning Commission  
FROM: Duane Dvorak, City Planner   
SUBJECT: Information for the November 8, 1995 Regular Meeting, about the ongoing investigation of building codes and building inspection requirements for some residential developments in the City of Wasilla.

### BACKGROUND

In July of this year, the Commission discussed the issue of building codes and gave staff some direction on how to proceed with this investigation. Building codes and inspections have been considered by the City a number of times in the past, however, no action has been taken to enact such an ordinance. The Mat-Su Valley Homebuilders Association supports the enactment of limited residential building codes and inspection requirements within the City of Wasilla.

Presently, the regulation of new residential construction is being driven by the financial institutions. New residential construction that is financed through the Alaska Housing Finance Corporation (AHFC) is required to undergo building inspections. A copy of AS 18.56.300, which outlines the requirements for AHFC to buy loans is attached for the Commission's review. New construction and additions to existing homes that are paid for out of pocket may not be required to get building inspections unless the property owner arranges it on their own.

Building codes are intended to provide, among other things, a reasonable assurance that structures built in the community are safe for occupancy, that they are adequate collateral for investment, that they are energy efficient and that they are suitably constructed for the use that is intended. Building codes can also be used to regulate other related forms of development such as site preparation and grading.

Staff is reviewing the files to address concerns that have been raised by the administration and the City Attorney in previous discussions. In addition, the Planning Clerk has obtained information from other jurisdictions regarding permit activity and costs associated with building code administration in other communities. A table summarizing this information was compiled by the Planning Clerk and is attached to this memo.

This report is intended to be a progress report on the investigation. Concerns about building code administration have generally focused on liability, cost, enforcement, dispute resolution and whether to set up a private inspection program or create a municipal building inspector position.

## Liability - Update

Staff has contacted the City's insurance broker regarding the issue of liability. Administration of building codes are generally not considered to increase the City's risk in terms of insurance liability. Insurance broker Mike Combs said that, in his opinion, the adoption and enforcement of building codes might reduce the City's risk assessment in the long run.

The City Attorney provided a memo on the issue of building codes and liability in 1993. That memo is attached for Commission review.

## Cost - Update

A review of other building code programs around the state gives an idea of the cost associated with the establishment of a traditional building inspection program, with building inspections carried out by municipal employees.

The cost of initiating and maintaining a program of building inspection by using private inspectors is expected to be minimal. The primary cost for inspections would be subject to negotiation with individual inspectors. The City would charge only a recording or document fee for making the final inspection documents a public record. If the building codes are adopted for a private sector inspection program, then the City would not need to adopt a fee schedule like the one that is included with the Uniform Building Code.

## Enforcement/Dispute Resolution - Update

A building inspection program that is undertaken by private inspectors does not provide for enforcement. The basic premise is that the builder/developer hires the inspector of choice. If that does not happen, who will enforce the codes if someone does not comply with the inspection requirements voluntarily. That responsibility would most likely fall to the City. This could require staff and attorney time, but it is hard to say how often this situation might occur.

The responsibility to identify and investigate builders and developers that are not in compliance with building codes would fall to the designated City Building Official. It is unlikely that this position would be so busy with code enforcement to require a full time position. In the beginning, those responsibilities will most likely be assigned to someone already on staff to the City.

Providing for a Building Official, and a Building Code Board of Appeals will be necessary to ensure a method of resolving any disputes that might arise out of the building inspection program. The designated Building Official should be someone competent to interpret building codes and preferably someone with experience in building and construction. The Board of

Appeal could be the City Council until such time as a standing Committee is required. The Uniform Building Code provides for such a board, however, the ordinance adopting the codes will need to address the details of establishing such a board by the City. The Board would only meet when needed to settle issues raised from the administration of the Building Code.

#### Private vs. Municipal Building Inspection - Update

All the jurisdictions around the state that were surveyed by the Planning Clerk have enacted a municipal inspection program to administer their building codes and inspections. This makes it hard to gain much insight from their experiences that can compare to a private sector inspection program. Most jurisdictions that were surveyed by staff appear to review both residential and commercial developments. As a result, their inspection programs are maintained year around with some seasonal increases in demand.

The building code proposal that staff has been investigating would only apply to single-family through tri-plex residential. It is unlikely that a municipal building inspector could be kept busy by the volume of construction in Wasilla, based only on this category of development. As a compromise to the public/private sector issue, the City could contract for inspection services on an as needed basis, based on the pool of qualified private sector building inspectors available in the Valley. This would lose the perceived advantage of letting each developer select their own inspector, however, it might provide the City a greater measure of control over the inspection process.

As the City continues to grow, and if the desire to regulate multifamily and commercial development becomes a consideration, then the City may want to consider having a municipal building inspection program with inspectors employed by the City. Staff is still investigating this issue.

#### Miscellaneous - Update

Staff met with Bill Bruu recently, a member of the Mat-Su Valley Homebuilders who is also a certified building inspector, to look over a draft ordinance for the adoption of building codes in Wasilla. Mr. Bruu is still reviewing the draft. The State of Alaska is in the process of adopting the 1994 Uniform Building Codes (UBC). This will require substantial changes to the ordinance which was originally written with the 1991 UBC in mind.

Staff has obtained some administrative sections from the UBC for review purposes. An order for the UBC and related codes was canceled last month while the staff investigates enrolling the City as a member of the International Conference of Building Officials (ICBO). According to Mr. Bruu, if the City becomes a member of the ICBO, then it will get a copy of all the Uniform Codes with membership. This may offer a substantial cost savings instead of ordering each code individually at retail cost. This will also allow the City to call on the ICBO for advice on

implementing the codes during the membership period. If the City decides not to adopt the codes, then the membership could be allowed to lapse at renewal time.

Staff has no recommendations to make at this time regarding the adopting of building codes for the City of Wasilla. Staff will continue to investigate this issue with the intent to bring forward a more thorough discussion of the issues in the next month or so.



LAW OFFICE  
OF  
RICHARD DEUSER

MAILING ADDRESS  
165 EAST PARKS HIGHWAY  
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WASILLA, ALASKA 99654

PHONE AND LOCATION:  
PHONE (907) 376-9484  
KRENIK BUILDING, PARKS HIGHWAY

M E M O R A N D U M

TO: Mayor John Stein  
FROM: Richard Deuser  
RE: Discussion of Liability Issues Related to  
Building Code Inspection Ordinance  
DATE: December 21, 1993

At the Council meeting of December 13, 1993, the concept of a building code inspection ordinance was discussed. Before making too many policy decisions concerning the structure of such an idea, I thought it would be appropriate to input on liability issues related to adoption of building codes and developing an inspection program.

HISTORICAL PERSPECTIVE

The content of this memorandum will be better understood if a brief history is reviewed.

Before 1977, there was no statutory immunity in the State of Alaska for municipalities who were alleged to have negligently inspected property. If negligence in the inspection were shown, damages could be assessed for personal injury and/or property damage following a faulty inspection. Under that old system, two companion cases arose in 1976. State v. Jennings, 555 P.2d 248, 251 (Alaska 1976), and Adams v. State, 555 P.2d 235, 241 (Alaska 1976), held that municipalities were not immune from liability for negligence in the course of performing safety inspections, and the court refused to adopt the common law concept of government immunity without legislative action.

In response to these cases from the mid-70s, the Alaska Legislature adopted an immunity statute in 1977.

In relevant part, that statute, AS 09.65.070, provides that no one can bring an action against a municipality if the claim is based on alleged failure to inspect property for a violation of any statute, regulation, ordinance, or a hazard to health or safety, or if the claim is based upon a failure by the municipal-

ity to discover a violation in the course of inspecting the property. The immunity, under the statute, extends to protect a municipality if the allegation goes to a claim of failure to abate a violation that was discovered on property that was inspected.

#### APPLICATION OF STATUTE

The Supreme Court has had occasion to confirm the operation and validity of the immunity statute.

Rice v. Bearson, 714 P.2d 1290 (Alaska 1986), involved an action by a farmer against the North Star Borough alleging negligence in failing to prohibit a chicken rancher from selling unhealthy chickens. Applying the immunity statute, the Supreme Court upheld the dismissal of the action.

However, other cases demonstrate that the Alaska Supreme Court is prepared to circumscribe the operation of the immunity statute where facts can distinguish the nature of the claim as being outside the scope of immunity.

For example, Plancich v. State, 693 P.2d 855 (Alaska 1985), arose in the context of a small boat harbor operated by the City of Yakutat. Part of the small boat harbor was designated as a seaplane dock. A Washington pilot arrived in Yakutat and found the seaplane dock totally surrounded by fishing vessels, making it unavailable for use by the airplane. Consequently the plane tied up at a privately-owned dock which was alleged not to be equipped to safely secure a seaplane in bad weather. A storm arose and during the night the seaplane sank. A suit was brought against both the State and the City of Yakutat. The essence of the complaint alleged negligent failure to keep the seaplane dock available to members of the seaplane-operating public.

Although the focus of the Court's analysis relates to another aspect of the immunity statute (the scope of discretionary function immunity) the implications for our current subject are quite simply that the court has shown a willingness to distinguish allegations that can be characterized as outside the scope of the immunity statute. See also City of Kotzebue v. McLean, 702 P.2d 1309 (Alaska 1985), in which the Alaska Supreme Court refused to adopt the related common law doctrine of the "public duty exception."

#### IMPLICATIONS FOR DRAFTING OF AN INSPECTION/CODE ORDINANCE

By its express terms, the ordinance has no application to property and buildings that are owned by or leased by the City of



Wasilla. Consequently, any negligent inspection system or failure to abate violations related to property owned or leased by the City would be subject to all of the normal and ordinary potential for damage claims in the event of proven negligence.

The words of the statute do extend immunity protection to the "agents, officers, or employees" of the City.

In light of the scope of the statutory immunity, and in further light of the case law history reviewed above, it can quickly be foreseen that claims would focus on the process of selecting, approving, training, and reviewing the inspectors, their credentials, and their performance, as opposed to the act of inspection itself. Having focused on these concepts, claims can be expected to assert that they are based upon negligence that is outside the scope of the immunity statute.

Recognizing that the scope of immunity appears to be focused on the act of inspection and the actions or failure to act to abate a known violation, and further realizing that potential claims would focus upon the selection/review process for choosing inspectors, most municipalities have opted for the relatively safe harbor of hiring, as direct employees, their building inspectors. By hiring, as an employee, a municipal inspector, presumably the issues of selection, credential review, supervision, and periodic review of inspection performance can all be performed in a more controlled environment that is less open to error or oversight.

By way of contrast, an inspection system that adopts and approves the work of other non-employee inspectors is more prone to error and oversight in the selection/review process.

#### INSURANCE

If the City utilizes private sector inspectors, careful consideration of appropriate insurance will be necessary.

One alternative is to require the inspector/agents to carry their own errors and omissions liability coverage. Availability of underwriters in Alaska, cost to the inspectors, and termination of coverage while liability potential continues all make this approach difficult or impractical.

The other alternative would be for the City to purchase errors and omissions coverage. However, City of Wasilla errors and omissions insurance coverage would generally apply to its own employees and not to independent agent inspectors. It may be possible to name specific inspector(s) as additional insureds

under the City-owned policy. If private sector inspectors are to be used, the whole topic of appropriate insurance coverage needs to be thoroughly researched.

Even if a single City employee inspector is used, the insurance cost needs to be quantified by inquiry to J.I.A.

#### CONCLUSION

If the City is to seriously consider an ordinance that is focused upon using private sector inspectors whose work will be used by the City in issuing certificates of occupancy, careful deliberation and drafting needs to be done concerning the establishment of a clear agency relationship between the City and the inspectors so as to conform to the statutory language offering immunity to agents of the City. Further, the ordinance is going to have to be carefully drafted so as to clarify and regularize the process by which the City A) reviews inspector credentials, B) selects inspectors authorized to act on behalf of the City, C) periodically confirms the credentials and authority of its inspectors, and D) reviews the performance of the inspectors.

To be clear, these issues would also be present if the City were to function through the services of its own employee. However, presumably the process will be easier to monitor if the City has only a single employee to be concerned with.

Another approach might be to use private sector inspectors, but attempt to scale down the scope of the City's selection/review responsibilities by limiting the number of authorized inspectors. If this approach is taken however, careful thought must be given to the appearance of favoritism as qualified persons seek designation as a City inspector in order to be available to perform the work and be paid for the service.

All approaches will require evaluation of insurance coverage.

There are a number of other considerations that need to be evaluated before adopting building codes. However, those issues are outside the scope of this memorandum which is limited to a discussion of liability/immunity issues.

Sincerely,



Richard Deuser

/mh

(11) take other actions necessary, convenient, or desirable to carry out the powers granted in this subsection.

(b) The corporation shall implement the powers conferred by (a) of this section by adopting regulations under AS 18.56.088. (§ 2 ch 147 SLA 1988; am §§ 96, 97 ch 4 FSSLA 1992)

**Revisor's notes.** — Paragraph (a)(10) of this section gives effect to the amendment made by § 97, ch. 4, FSSLA 1992, effective July 1, 1992. From June 26, 1992 to July 1, 1992, under § 96, ch. 4, FSSLA 1992, paragraph (a)(10) read as set out above, except that neither occurrence of "former" appeared. Due to a manifest error, § 150, ch. 4, FSSLA 1992 did not give § 96, ch. 4, FSSLA 1992 an immediate effective date. The error was corrected under AS 01.05.031.

Former AS 18.56.210 was renumbered as AS 18.56.900 in 1986.

**Cross references.** — For transitional provisions relating to the purchase of certain housing loans of the Department of

Community and Regional Affairs as of June 26, 1992, by the Alaska Housing Finance Corporation, see § 147, ch. 4, FSSLA 1992 in the Temporary and Special Acts; for legislative findings and intent in connection with the enactment of this section, see sec. 1, ch. 147, SLA 1988 in the Temporary and Special Acts.

**Effect of amendments.** — The 1992 amendment, effective July 1, 1992, re-wrote paragraph (a)(10).

**Legislative history reports.** — For legislative letter of intent relating to a legislative oversight committee in connection with AHFC activities under this section, see 1988 Senate Journal 3681.

**Sec. 18.56.220. Duty to advise about corporation's programs.** The corporation shall make a reasonable effort, through seminars, training sessions, and other forms of technical assistance, to assist local governments, regional housing authorities, nonprofit organizations, and other organizations and individuals to understand the corporation's housing programs and the opportunities that exist to obtain financial assistance from the corporation. (§ 98 ch 4 FSSLA 1992)

**Sec. 18.56.300. Construction standards for housing eligible for purchase of loans.** (a) The corporation may not make or purchase a housing loan for residential housing the construction of which begins after June 30, 1992, unless the seller of the mortgage loan complies with the provisions of this section and unless

(1) the unit is in compliance with the construction codes of the municipality, if the unit is located within a municipality that has adopted and enforces construction codes and each of those codes meets or exceeds the comparable standards for similar housing established by the state building code; or

(2) the unit is in compliance with the comparable standards for similar housing established by the state building code

(A) if the unit is located

(i) within a municipality whose construction codes do not meet the standards for similar housing established by the state building code;

(ii) within a municipality that does not enforce construction codes;

or

(iii) outside a municipality: or

(B) as to each specific code within the construction codes of the municipality that has adopted and enforces construction codes if the specific code does not meet or exceed the comparable standard for similar housing established by the state building code.

(b) As a condition of a commitment to purchase or approve a loan under this section for residential housing the construction of which begins after June 30, 1992, the corporation shall require inspection of the unit of residential housing that is the subject of the loan. The inspection must be performed by a municipal building inspector, by a person who is approved or certified to perform residential inspections by the International Conference of Building Officials or the International Association of Electrical Inspectors, or, when the unit of residential housing is located in a rural area, by an architect licensed under AS 08.48, by an engineer licensed under AS 08.48, or by another person approved by the corporation. When the unit of residential housing is located in a rural area, the person who makes the inspection may use methods other than a personal physical inspection to make the inspection if the method is approved by the corporation, and variations from the applicable code may be accepted at the corporation's discretion, if the person authorized to inspect the unit under this subsection satisfies the corporation that the variation does not adversely affect the structural integrity of the unit or the health and safety of the residents. The person who makes the inspection shall determine whether the construction conforms to relevant provisions of the construction codes of the municipality or of the state building code, as applicable, at each of the following stages of construction:

- (1) plan approval;
- (2) completion of footings and foundations;
- (3) completion of electrical installation, plumbing, and framing;
- (4) completion of installation of insulation;
- (5) final approval.

(c) A person may not bring an action for damages based on a duty imposed by (b) of this section to inspect a residential unit unless the action is for damages caused by gross negligence or intentional misconduct.

(d) This section does not apply to a nonconforming housing loan made or purchased by the corporation.

(e) In this section,

- (1) "construction codes" means, with reference to a municipality, the building, mechanical, plumbing, and electrical codes, or any of them that have been adopted and are enforced by the municipality;
- (2) "rural area" means a community with a population of 5,500 or less that is not connected by road or rail to Anchorage or Fairbanks;
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(1) "adjustable rate mortgage loan" means a mortgage loan with respect to which the interest rate varies or is expected to vary from time to time by reference to an index or formula or other reference point;

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