



Date presented to council:

8/11/03

Verified by:

[Signature]

CITY COUNCIL INFORMATION MEMORANDUM

IM No. 03-07

TITLE: Revisor Of Ordinance; WMC 16.24.030, Setbacks and height

COUNCIL MEETING DATE: August 11, 2003

ADMINISTRATION INITIAL: *DMK*

PREPARED BY: J. Newman, Deputy Clerk

Date Prepared: August 6, 2003

FISCAL IMPACT: No

If yes, amount requested: \$ Account No.:

SUMMARY STATEMENT:

The following revisor of ordinance is reported to the Council pursuant to WMC 2.08.090.D.

A revisor of ordinance is necessary to correct a codifying error that was made to WMC 16.24.030, Setbacks and height. This revisor in no way changes the meaning of 16.24.030 as adopted by the Wasilla City Council.

Ordinance Serial No. 02-64 was adopted on October 28, 2002, however it wasn't codified until March 2003 due to several delays with our prior publisher.

Ordinance Serial No. 03-08 (SUB)(AM) was drafted prior to staff receiving the codified version of 02-64 and as a result 03-08 (SUB)(AM) was presented to the council with incorrect section and sub-section numbers, and it did not take into account the language changes made to 16.24.030 upon the adoption of 02-64.

The attached code section is the revised version of WMC 16.24.030, Setbacks and height that correctly combines the language from Ordinance Serial No. 02-64 and Ordinance Serial No. 03-08 (SUB) (AM).

STAFF RECOMMENDATION, IF ANY: N/A – Informational purposes only.

Attachments: see next page

16.24.030 Setbacks and height.

A. Setbacks are measured from the outermost portion of the building to the nearest lot line or building as appropriate. Temporary buildings may be permitted within the side or rear yard area as administrative approval by the city planner. Where other setback standards are applicable, the most restrictive setback standards apply. The following are the building setback and height standards:

1. Front and rear yard setbacks are twenty-five (25) feet from the lot line. In the commercial district the city planner may modify the front and rear setbacks by averaging the existing building line and applying this average setback to the building.

2. For subdivisions recorded with plat notes or recorded conditions, [CODE,] covenants, and restrictions (CCR's) prior to 1986 allowing a lesser setback than twenty-five (25) feet, the rear lot line setback may be reduced to a minimum of ten (10) feet, but no less than the requirements specified in the applicable subdivision CCR's and/or plat notes.

3[2.]In all residential districts, **except RM—residential multi-family district** (RR, R1, **and** R2 [AND RM]) the side yard setback is ten (10) feet. [IN THE COMMERCIAL, INDUSTRIAL AND PUBLIC DISTRICTS THE SETBACK IS TEN (10) FEET OR NO SIDE YARD SETBACKS, AS LONG AS ALL REQUIREMENTS OF THE STATE FIRE CODE OR OTHER APPLICABLE REGULATIONS ARE MET.]

4. In RM—residential multi-family districts the side yard setback is five (5) feet.

5. In commercial, industrial, and public districts, the setback is ten feet or no side yard setbacks, as long as all requirements of the State of Alaska Fire and Life Safety Regulations (13 AAC 50-13 AAC 55) or other applicable regulations are met. Applicable regulations include residential structures of three dwelling units or less be in compliance with nationally recognized building code setback requirements and certified to meet those requirements by a certified combination dwelling inspector, building inspector, plans examiner, or licensed architect.

6[3]. Building height is limited to thirty-five (35) feet above the average finished grade of the lot. Building height in the commercial and industrial districts may exceed thirty-five (35) feet under the provisions of a use permit approved by the city planner.

B. Additional standards for setbacks are as follows:

1. Unattached residential dwelling units on same lot must be separated by twenty ~~(20)~~[-FIVE (25)] feet.

2. The city planner shall designate the front yard for corner lots.

3. Industrial uses or buildings must be set back a minimum one hundred (100) feet from any residential zoned lot line. Commercial buildings must be set back thirty (30) feet from any R-1—single family residential district zoned lot line. Industrial or commercial accessory uses

may be located within this setback; provided, that all other setback requirements are met.

C. Exceptions for setback requirements are as follows:

1. The setbacks may be reduced up to ten (10) percent by the city planner after an investigation and finding that the resulting lesser setback would meet the purpose of the standards.

2. Incidental architectural features such as window sills, cornices and eaves may project not more than three feet into any required setback. This provision does not apply to cantilevered floors or other similar building extensions.

3. No building or footing may be located closer than seventy-five (75) feet from the high-water mark of a water course or body of water; provided, docks, piers, marinas and boathouses may be located closer than seventy-five (75) feet if they are located primarily over water, not used for habitation, and do not contain sanitary facilities. The city may require dedication of a maintenance easement of up to fifteen (15) feet from the high-water mark or bank of a body of water, whichever produces the greatest access. This section does not apply to structures where construction was completed prior to January 1, 1987, if the present owners of the property had no personal knowledge of any violation of the requirements of this section prior to substantial completion of the structures. Furthermore, this section does not apply if a land use permit was issued prior to October 28, 1997. The city planner shall, upon

application by a property owner, determine whether a property qualifies for an exception under this subsection.

D. Treatment of Certain Setback Violations Under Rules for Nonconforming Structures **are as follows:**[.]

1. Any part of a structure that encroaches into a setback required under this title will be treated as a legal, nonconforming structure under Chapter 16.28; provided, that the encroachment is registered with the planning department under this subsection. An encroachment will be registered for this purpose if the city planner finds, in response to an application under subsection (D)(2) of this section, that the encroachment meets the following conditions:

- a. The encroachment was constructed before March 24, 2003;
- b. As of March 24, 2003, the encroachment conformed to applicable plat notes of record; **and**
- c. A certified combination dwelling inspector, building inspector, plans examiner, or licensed architect certifies in writing to the city planner that the encroachment either conforms to the requirements of the State of Alaska Fire and Life Safety Regulations (13 AAC 50-13 AAC 55) or, if the encroachment is part of a residential structure containing less than four dwelling units, the encroachment conforms to nationally recognized building code setback requirements.

2. The record owner of property that contains a nonconforming setback encroachment may apply to the city planner for registration of the encroachment under this subsection. The application shall be on a form

provided by the city planner, and shall be accompanied by the required application fee and the following documentation:

a. An as-built survey of the property that is the subject of the application, prepared and stamped by a land surveyor registered in the state of Alaska, which shows the location and dimensions of all structures on the property at the date of application, and the distances between structures and between the structures and the lot lines of the property;

b. A statement under oath of the owner of the property or another person with the necessary personal knowledge, and supporting documentation, demonstrating that the encroachment as shown on the as-built survey was constructed before March 24, 2003;

c. A copy of each plat note that applies to the property; and

d. The certification described in subsection (D)(1)(c) of this section.

3. Upon receiving a complete application under subsection (D)(2) of this subsection, the city planner shall within five business days mail notice of the application to each record owner of any property that immediately adjoins the property on which the encroachment is located, requesting written comment on the application within ten (10) calendar days of the date of the notice. Within twenty (20) business days after the conclusion of the comment period, the city planner shall issue a written decision whether the encroachment meets the standards for registration under this subsection. The city planner may impose such conditions on the registration as the city planner determines are appropriate to protect the general welfare. A registration under this subsection shall describe the

type and dimensions of the encroachment, and shall include a copy of the as-built survey that was submitted with the application for registration.

4. A decision of the city planner under this subsection is subject to appeal to the planning commission as provided in Section 16.08.100. The city planner may elevate a decision under this subsection to the planning commission under the standards for elevating a use permit decision under Section 16.12.040.