

Prepared by: Planning
Requested by: Planning Commission
Introduced: February 10, 2003
Public Hearing: February 24 and March 10, 2003
Substituted: March 10, 2003
Public Hearing: March 24, 2003
Amended: March 24, 2003
Adopted: March 24, 2003
Vote: Unanimous

**CITY OF WASILLA
ORDINANCE SERIAL NO. 03-08(SUB)(AM)**

AN ORDINANCE OF THE WASILLA CITY COUNCIL AMENDING 16.24.030, SETBACKS AND HEIGHT, FOR HOUSEKEEPING PURPOSES AND ADOPTING SUBSECTION 16.24.030(D) AMNESTY FOR SETBACK VIOLATIONS.

* **Section 1. Classification.** This ordinance is of a general and permanent nature and shall become part of the city code.

* **Section 2.** Minor housekeeping corrections are made to 16.24.030 in its entirety to clarify interpretation and subsection (D) is added to allow amnesty for setback violations. The entire amended Section is to read as follows:

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. [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.] Where other setback standards are applicable, the most restrictive setback standards apply. The following are the building setback and **height** [ADDITIONAL] standards:

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

1. [A.] 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. [B.] In all residential districts (RR, R1, R2 and RM) the side yard setback is ten (10) feet. The commercial, industrial and public districts the set back is ten feet or no side yard setbacks, as long as all requirements of the State Fire Code or other applicable regulations are met.

3. [C.] 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) under the provisions of a use permit approved by the city planner.

B. [D]. Additional Standards for setbacks are as follows.

1. Unattached residential dwelling units on same lot must be separated by twenty-five (25) feet.

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

[3. 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. [4.] Industrial uses or buildings must be setback a minimum one hundred (100) feet from any residential zoned lot line. Commercial buildings must be setback thirty (30) feet from any residential zoned lot line. Industrial or commercial accessory uses may be located within this setback, provided that all other setback requirements are met.

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[5. 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.]

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

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

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.

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 paragraph 2 of this subsection, that the encroachment meets the following conditions:

a. The encroachment was constructed before March 24, 2003;

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b. As of March 24, 2003, the encroachment conformed to applicable plat notes of record;

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 paragraph 1.d of this subsection.


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3. Upon receiving a complete application under paragraph 2 of this subsection, the city planner shall within five (5) 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 paragraph. 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 paragraph 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 paragraph is subject to appeal to the planning commission as provided in Section 16.08.100. The city planner may elevate a decision under this paragraph to the planning commission under the standards for elevating a use permit decision under Section 16.12.040.

* **Section 5. Effective date.** This ordinance shall take effect upon adoption by the Wasilla City Council.

ADOPTED by the Wasilla City Council on March 24, 2003.



DIANNE M. KELLER, Mayor

ATTEST:



KRISTIE SMITHERS, CMC
City Clerk

[SEAL]

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CITY OF WASILLA
290 E. HERNING AVE.
WASILLA, AK 99654-7091
PHONE: (907) 373-9090
FAX: (907) 373-9092

TO: Wasilla City Council

THRU: Mayor Dianne M. Keller *DMK*

THRU: Don Shiesl, Public Works Director *DS*

FROM: Tim Krug, City Planner *TK*
Jill Carricaburu, Planning Clerk *JC*

DATE: March 7, 2003

SUBJECT: Amendment of 16.24.030, Setbacks & Height by Adding Amnesty Program

SUMMARY:

At the February 24, 2003 City Council meeting several concerns were raised regarding Draft Ordinance Serial Number 03-08. The Council requested that the public hearing be continued to the next Council meeting of March 10, 2003. Several of the concerns raised are addressed below:

- Appeal and fair treatment

Any aggrieved person has the ability to appeal the decision of the city planner as specifically outlined in Section 16.08.100 of the WMC. It would be redundant to repeat that process in this new legislation.

- Date of enactment

The council memorandum dated February 4, 2003 explains that Anchorage chose the date of 1986 for their amnesty plan because that was the year in which stringent site plan requirements were imposed on the developer and/or builder. The Wasilla Planning Commission, (WPC), has held several work sessions on developing more stringent site plan requirements for builders/developers and will be scheduling a joint work session with the Commission in the near future.

The WPC had requested that the 'cut-off' date for eligibility for the amnesty program be the date of adoption of the ordinance, meaning that structures built prior to that date are possibly eligible for amnesty. The WPC earlier had suggested a date of January 1, 2000. Planning staff feels that the more appropriate 'cut-off' date would be January 1, 2000. The date January 1, 2000 would be the preferred date for planning staff to work with.

- Existing plat note or covenant, code, and restriction exceptions

A suggestion was made to add an exception regarding disallowing an amnesty exception when covenants, codes, and restrictions or recorded plat notes are violated. If you wish to add this clause it is provided below in option "B" under "recommended action."

- Notification of adjacent property owners

Some discussion involved the notification of property owners immediately adjacent to the property seeking amnesty. Staff has added this requested requirement in Draft Ordinance 03-08(SUB).

- Fees for Amnesty Application

In accordance with 16.08.060, fees are established by the WPC. A resolution will be going forward to the Planning Commission to include the establishment of a fee for the Amnesty program once the Ordinance has been passed by City Council.

The Municipality of Anchorage charges \$350 for the application for *amnesty* or \$75/hour for determination. Assuming staff will be spending a minimum of ten hours per amnesty request at an average rate of \$50/hour plus materials the cost would be greater than \$500/application. The advantage of this process is a shorter time period in which the applicant may receive a decision.

An amnesty for setback violation is a method in which encroachments may be resolved, if all criteria are met, within a fairly short period of time allowing the property owner to correct violations and pursue sale of property without an encumbrance or clouded title. The procedure allows a method of dispensation when a variance is not an option to the property owner.

In many cases a variance is not an option as a variance is typically requested prior to construction. The fee for a variance is \$500.

FISCAL IMPACT: N/A
Account No.: N/A

RECOMMENDED ACTION:

- A. Approve Ordinance Serial Number 03-08, as presented.
- B. Add a clause under subsection D.1., page 4 of 6, between "...in existence," and, "provided..." to read, "except where code, covenants, and restrictions or recorded plat notes have been violated,..."
- C. Add to subsection "D.1.c." to read, "Applicant shall provide letters of non-objection from all property owners immediately adjacent to subject property."

- D. Item D. 1, shall read, "Existing structures with dimensional encroachments into required yard setback which were constructed prior to January 1, 2000 may continue in existence provided the following requirements are met:" and D.2. shall read, "...encroachments were constructed prior to January 1, 2000..."
- E. Approve WCC Ordinance Serial No. 03-08(SUB) which incorporates the suggested changes identified in items B, C, & D of this memo.

ATTACHMENTS:

Draft Ordinance 03-08
Draft Ordinance 03-08(SUB)



CITY OF WASILLA
290 E. HERNING AVE.
WASILLA, AK 99654-7091
PHONE: (907) 373-9090
FAX: (907) 373-9092

TO: Wasilla City Council
THRU: Mayor Dianne M. Keller *DME*
THRU: Don Shiesl, Public Works Director *DS*
FROM: Tim Krug, City Planner *TK*
Jill Carricaburu, Planning Clerk
DATE: February 4, 2003

SUBJECT: Amendment of 16.24.030, Setbacks & Height by Adding Amnesty Program

SUMMARY:

The Wasilla City Planning Commission has considered a proposed amnesty program for setback violations for four consecutive meetings beginning in November of 2002 and has discussed the proposal at a joint work session with the Council held January 13, 2003.

The WPC has revised the proposal to include an allowable construction date of granted setback violation as being the date on which the Ordinance is adopted by Council.

This amnesty program is similar to a program adopted by the Municipality of Anchorage a couple of years ago. Anchorage decided to use 1986 as the last allowable date of construction to grant amnesty for a setback violation. Anchorage determined that 1986 should be the date, because that was the year in which stringent requirements were placed on the developer to provide site plan drawings and as-built surveys prior to construction. The Municipality of Anchorage staff verbally explained that this program is similar to a variance, however a public hearing process is not required.

The Wasilla Planning Commission, at their meeting of January 28, 2003, moved to forward to Wasilla City Council the attached draft Ordinance incorporating into the Wasilla Municipal Code a provision allowing amnesty for setback.

FISCAL IMPACT: N/A
Account No.: N/A

RECOMMENDED ACTION:

Approval of Ordinance Serial Number 03-08.

ATTACHMENTS:

Draft Ordinance 03-08