

**Mayor**

Clay Koplin

**Council Members**

James Burton

Tim Joyce

Tom Bailer

Robert Beedle

Josh Hallquist

David Allison

James Wiese

**City Manager**

Alan Lanning

**City Clerk**

Susan Bourgeois

**Deputy Clerk**

Tina Hammer

**Student Council**

Corinne Pegau

**City Council Public Hearing  
December 7, 2016 @ 6:45 pm  
Cordova Center Community Rooms A & B  
Agenda**

**A. Call to order**

**B. Roll call**

Mayor Clay Koplin, Council members James Burton, Tim Joyce, Tom Bailer, Robert Beedle, Josh Hallquist, David Allison and James Wiese

**C. Public Hearing**

**1. Ordinance 1148..... (page 1)**

An ordinance of the City Council of the City of Cordova, Alaska, amending Cordova Municipal Code by removing definitions from chapter 18.08, repealing and reenacting chapter 18.52, and amending the title of section 18.80.040 to update and define nonconforming lots, structures, and uses, to allow for the expansion and alteration of nonconforming structures, and to increase the amount of time a nonconforming use can cease to exist before it is considered discontinued

**D. Adjournment**

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# Memorandum

**To:** City Council  
**From:** Planning Staff  
**Date:** 10/12/16  
**Re:** Ordinance 1148

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## **PART I – GENERAL INFORMATION**

Cordova is abundant with nonconforming lots, structures, and uses, all of which require staff to frequently refer to Cordova Municipal Code Chapter 18.52 (Attachment A). Staff have identified several persistent issues with Chapter 18.52:

1. Nonconforming lots, structures, and uses are not clearly separated and defined.
2. “Building” and “use” are used interchangeably in some cases.
3. There are typos that further confuse some of the provisions.
4. The provisions of nonconformities are not clear.
5. The current code does not allow expansion or alteration of nonconforming structures even if the expansion or alteration would not aggravate the nonconforming portion of the structure.

Staff propose repealing and reenacting Chapter 18.52 to address these issues. See Attachment B for the proposed amendments to Cordova Municipal Code.

## **PART II – BACKGROUND**

**8/9/16** – At the Planning Commission Regular Meeting, the commission referred the resolution back to staff so that staff could rewrite a portion of the code that was discussed at the meeting. From the approved minutes:

M/Roemhildt S/Pegau to approve Resolution 16-05.

**Roemhildt** said he was apprehensive about changing code, but he thinks it is a good idea to move forward with development safely. **Baenen** said it seemed like a good idea, but he wanted to hear what the others had to say. **Pegau** said his gut reaction was that you shouldn’t be able to build on a nonconforming lot, but then he remembered that the builder would have to meet all of the other codes. If someone wanted to build on one of the small lots in town and he was a neighbor, he would have to accept that. For the 24 months as the amount of time before a nonconforming use is discontinued he had to do the math for it to make sense.

**Pegau** struggled with Section 18.52.040F with general maintenance; he understands replacement or repair of a structural portion of a building, but not a deck or arctic entry which makes it nonconforming. He also had some confusion with Section 18.52.060, in that he didn’t recognize that there is conforming, nonconforming, and unauthorized. He said that it may be a redundancy, but it would help to add something that made it clearer that if someone did something unauthorized, it would not be considered nonconforming. **McGann** said he was okay with the code as it was presented in the packet.

M/Pegau S/Roemhildt to recess for five minutes.  
With no objection, the meeting was recessed.

McGann called the meeting back to order at 7:30 PM.

M/Pegau S/Roemhildt to amend Section 18.52.040F so that it reads, “nothing in this section shall be construed to prevent general maintenance on a nonconforming structure when there is no evidence that removal of that part of the structure would jeopardize the structural integrity of the structure.”

*Frohnapfel* sees where *Pegau* is going with the amendment and he supports it. *Greenwood* said that she thinks everyone understands where *Pegau* is going, and suggested that staff can rewrite it and bring it back for the next meeting.

M/Pegau S/Frohnapfel to refer back to staff.

*Greenwood* asked if the commission also wanted some changes for 18.52.060. *Pegau* said that it’s confusing because unlawful is never stated. *Frohnapfel* said that by proving something is nonconforming, someone is showing that it’s not unlawful. The way to prove it is a building permit. *Greenwood* said that there are multiple ways people can prove nonconforming; it is going to be a case-by-case basis.

Upon roll call vote, motion to refer passed 5-0.

Yea: McGann, Pegau, Baenen, Roemhildt, Frohnapfel

Absent: Bailer, Kocan

**10/11/16** – At the Planning Commission Regular Meeting, the commission passed Resolution 16-05 (attached). The following is a summary of the agenda item.

M/McGann S/Pegau to approve Resolution 16-05.

*Pegau* said his questions in the past were about maintenance and non-structural elements. In looking at other codes they are not much different than the proposed code. *Bailer* provided copies of the Mat-Su Borough code on nonconforming to the commission. He likes the way it is written and he thinks it explains things better. They wouldn’t have to run it through legal as it had already been done by Mat-Su. *Greenwood* said that the proposed code had also ran through legal.

*Bailer* verified that the code change would allow building on nonconforming lots. He won’t support the resolution because he disagrees with building on lots less than 4,000 square feet. *McGann* said that any future building still has to conform to code. What they are looking at is current nonconforming structures that were legal when they were built. He is okay with that. *Greenwood* said that if you build on a nonconforming lot you would have to meet setbacks.

*Frohnapfel* said that it comes down to enforcement. There are many nonconforming structures in the community. He is missing why they are updating the code. *Greenwood* said that the reason they are updating the code is because they have had multiple building permits from people who own nonconforming houses and want to expand in a way that does not increase the nonconformity. *Stavig* said to remember that the big thing that came up with the commission was the Waterfront Commercial Park District. They wanted to change the zoning requirements, but they chose not to because it would have made all of the legally constructed buildings nonconforming. *Bailer* said that was different because it was legal nonconforming. *Stavig* said that all nonconforming was legal. *Greenwood* said if it is not nonconforming it is illegal.

*Greenwood* said that they hear over and over that housing is an issue and medium-income houses are difficult to find. The nonconforming houses are the types of houses they are seeing. One side of the house might be only three feet from one side lot line, but the other side may have 15 feet and the family wants to add a bedroom. If the house burns down they have to build it back to code. *Pegau* said that the resolution allows for maintenance of nonconforming structures. If there is 50 percent destruction it has to be rebuilt to meet code.

*Bailer* said he thought 90 days that a nonconforming use could be discontinued was too short. *Pegau* said that the proposed code expanded it to two years. *McGann* said the point was that some uses are seasonal and two years allows a seasonal business to miss one season.

Upon voice vote, motion passed 5-1.

Yea: *McGann, Pegau, Baenen, Roemhildt, Frohnapfel*

Nay: *Bailer*

Absent: *Kocan*

### **PART III - ANALYSIS**

The proposed definition for nonconforming lots, structures, and uses is: “a lot, structure, or use authorized by the city through the application of city administrative processes, laws, and/or regulations that existed at the time of authorization but which no longer apply under the current requirements of this title.” It is important to understand that a nonconformity is created legally. If something does not conform to code and was not legally created it is not considered nonconforming.

Staff have had multiple requests from individuals wishing to expand or alter nonconforming residential structures. Many of these structures are located in the core city limits and were built in the early to mid-1900s. A lot of these smaller starter homes are nonconforming because at the time of building there were no setbacks or the setback requirements have changed. Most of the requests come from people wishing to expand or alter their structure in ways that don't increase or aggravate the nonconformity, however the current code prohibits any expansion. While it is important to continue to move towards conformity of current code regulations, our current code is extremely restrictive when it comes to nonconformities and can be detrimental to property values.

The comprehensive plan and the purpose of zoning is to promote and protect property values and investments by the citizens. The existing code addressing nonconforming situations seems to contradict these overarching goals and objectives. To determine if the current city code was similar to other city codes and to find solutions to address the concerns of the current nonconforming code, staff researched multiple city codes in Alaska and across the country. By far, the majority of nonconforming codes allowed nonconforming structures to be expanded or altered if the expansion did not aggravate the nonconformity. The other city codes also separated and clarified the three types of nonconformities to eliminate confusion and to clearly apply provisions to each type of nonconformity.

In developing a new code, the timeframe for a nonconforming use to be considered discontinued was contemplated by staff. The existing code has the timeframe at 90 days and the proposed code has 24 months. Other communities in Alaska have opted for this longer time frame likely due to the seasonality of certain uses and the potential for unforeseen circumstances to occur.

After spending time researching and looking into the issue brought up at the 8/9/16 Planning Commission Regular Meeting, staff determined that the proposed amendment may be better fleshed out in Section 18.52.040 D, the section about damage of the structure.

The changes that were made would allow someone to continually maintain a nonconformity, but make it clearer that if it falls into significant disrepair, it cannot be replaced. Additionally, adding the “nonconforming portion” part gives the city discretion when it comes to determining whether or not the nonconformity is part of the whole structure (e.g. corner of main structure) or something separate (e.g. deck, carport, arctic entry, etc.).

Ultimately, the reasons staff made these changes as opposed to the amendment were:

1. Since the nonconformity was legally constructed, owners should be able to maintain it.
2. It may cause parts of structures to be unmaintained and fall in disrepair.
3. With the above edits, someone couldn't replace more than 50 percent of the nonconformity and say that it was just maintenance as they would be removing it to replace it.

#### **PART IV – STAFF RECOMMENDATION**

Staff recommend council adopt Ordinance 1148.

#### **PART V – SUGGESTED MOTION**

“I move to adopt Ordinance 1148.”

## ATTACHMENT A – EXISTING CODE

### Chapter 18.52 - NONCONFORMING USES

#### 18.52.010 - Conditions for continuation.

Any otherwise lawful use of land, structure, building or premises (including parking areas), existing at the time the ordinance codified in this title became effective, but not conforming to the provisions hereof, may be continued, provided:

- A. That if such nonconforming use is discontinued for a period of over ninety days or is abandoned, the use of such land thereafter shall be subject to the provisions of this title;
- B. That no conforming building or building used for a nonconforming use shall be added to, structurally altered, or enlarged in any manner, except as required by another ordinance of the city or by state law, or in order to bring the building, or its use into full conformity with the provisions of this title or Title 16;
- C. That no conforming use occupying a conforming building or portion thereof, or occupying any land, shall be enlarged or extended into any other portion of such building or land not actually so occupied at the effective date of the ordinance codified in this title;
- D. In cases where a variance is sought from Chapter 18.52, nonconforming single-family buildings shall be exempt from section 18.64.020(A)(2)(a) of this title;
- E. Nothing in this section shall be construed to prevent general maintenance on a nonconforming building or building housing a nonconforming use.

(Ord. 695 § 2, 3, 1992; prior code § 15.213(A)).

#### 18.52.020 - Conditions for occupation or use.

Any building or portion thereof in existence prior to the effective date of this ordinance which is specifically designed or arranged to be lawfully occupied or used in a manner not conforming to the provisions of this title may thereafter be so occupied or used, subject to the limitations set forth above for existing nonconforming uses. The term "in existence" shall include, for the purposes of this section only, any building under actual construction at such date; provided, that such building be completed within one year therefrom.

(Prior code § 15.213(B)).

#### 18.52.030 - Damage or destruction.

- A. Except as provided in Subsection B of this section, no building which has been damaged or partially destroyed to the extent of more than fifty percent of its assessed value shall be repaired, moved or altered except in conformity with the provisions of this title.
- B. The planning commission may grant a conditional use permit for a telecommunication tower to be repaired or replaced without changing its location, provided that the repaired or replaced telecommunication tower meets all of the requirements for a conditional use permit under Section 18.60.015, except the requirements in Section 18.60.015(C)(7) and (9).

(Prior code § 15.213(C)).

(Ord. No. 1070, § 10, 7-21-2010)

18.52.040 - Applicability.

The provisions of this chapter shall apply to uses which become nonconforming by reason of any amendment to the ordinance codified in this title, as of the effective date of such amendment.

(Prior code § 15.213(D)).

18.52.050 - Junkyards—Declared nuisance when.

Regardless of any other provision of this title, any junkyard as defined in this title, which after the adoption of the ordinance codified in this title exists located in any district other than an I district as nonconforming use, is declared to be a public nuisance and shall be abated, removed or changed to a conforming use within two years thereafter.

(Prior code § 15.213(E)).

**CITY OF CORDOVA, ALASKA  
ORDINANCE 1148**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CORDOVA, ALASKA, AMENDING CORDOVA MUNICIPAL CODE BY REMOVING DEFINITIONS FROM CHAPTER 18.08, REPEALING AND REENACTING CHAPTER 18.52, AND AMENDING THE TITLE OF SECTION 18.80.040 TO UPDATE AND DEFINE NONCONFORMING LOTS, STRUCTURES, AND USES, TO ALLOW FOR THE EXPANSION AND ALTERATION OF NONCONFORMING STRUCTURES, AND TO INCREASE THE AMOUNT OF TIME A NONCONFORMING USE CAN CEASE TO EXIST BEFORE IT IS CONSIDERED DISCONTINUED**

**WHEREAS**, the City of Cordova, Alaska (“City”) has determined that Chapter 18.52 entitled Nonconforming Uses” is difficult to interpret as it does not clearly differentiate between the different types of nonconformities; and

**WHEREAS**, Chapter 18.52 does not allow for the expansion of nonconforming buildings even if the expansion does not aggravate the nonconformity; and

**WHEREAS**, the City has determined that the proposed changes to the Cordova Municipal Code are in accordance with the purpose of Title 18 and the Comprehensive Plan.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Cordova, that:

Section 1. Section 18.08.010 of the Cordova Municipal Code entitled “Definitions” is amended by deleting the following definitions:

~~“General maintenance” means the upkeep of property or equipment; to keep in an existing state of repair; preserve from failure or decline.~~

~~“Nonconforming building” means any building or structure or any portion thereof, lawfully existing at the time the ordinance codified in this title became effective, which was designed, erected or structurally altered for a use that does not conform to the use regulations of the zone in which it is located or a building or structure that does not conform to all the height and area regulations of the zone in which it is located.~~

Section 2. Chapter 18.52 of the Cordova Municipal Code entitled “Nonconforming Uses” is repealed and reenacted as follows:

Chapter 18.52 – NONCONFORMITIES

18.52.010 – Purpose.

The purpose of this chapter is to permit nonconforming lots, uses, and structures to protect property owners from undue hardship despite their compliance with past city laws, zoning codes, and regulations while moving towards conformity of lots, uses and structures.

18.52.020 – Definitions.

For the purposes of this chapter the following words or phrases shall be interpreted or defined as set forth in this section, and such interpretations or definitions shall supersede any conflicting interpretations or definitions set forth elsewhere in this title:

“Abandon” means the cessation of use for any length of time, combined with intent to indefinitely cease such use.



“Aggravate” means the physical alteration of structures if such alteration results in a greater invasion in any dimension of setback or height requirements, or a further violation of density, parking, or other requirements of this title.

“Discontinued” means that a nonconforming use has ceased, and has not substantially resumed, for a period of 24 consecutive months, regardless of intent.

“Nonconforming lot, structure, or use” means a lot, structure, or use authorized by the city through the application of city administrative processes, laws, and/or regulations that existed at the time of authorization but which no longer apply under the current requirements of this title.

#### 18.52.030 – Nonconforming lots.

If at any time a nonconforming lot is brought into conformity with this title, the lot shall thereafter conform to all the regulations of the zoning district in which it is located.

A nonconforming lot may be developed in conformity with all other provisions of this title even though such lot fails to meet currently applicable minimum area or width requirements.

#### 18.52.040 – Nonconforming structures.

If at any time a nonconforming structure is brought into conformity with this title, the structure shall thereafter conform to all the regulations of the zoning district in which it is located.

A nonconforming structure may be continued so long as it remains otherwise lawful. The following provisions apply to nonconforming structures:

- A. A nonconforming structure may be enlarged or altered, provided that it does not aggravate the nonconformity, and that no portion of the nonconforming structure extends over any lot line into property not owned by the owner of the nonconforming structure.
- B. A nonconforming structure may be altered to decrease its nonconformity.
- C. If a nonconforming structure is moved for any reason for any distance whatsoever it shall thereafter conform to the code provisions applicable in the zone in which it is located after it is moved.
- D. If a nonconforming structure or nonconforming portion of a structure is damaged, removed, or demolished by any means, including but not limited to acts of nature, acts of persons or animals, or lack of maintenance, to an extent of more than 50 percent of the nonconforming structure or nonconforming portion of a structure as determined by an inspection by the city, it shall not be reconstructed except in conformity with the provisions of Cordova Municipal Code.
- E. A nonconforming residential structure may be enlarged or altered without requiring additional parking, as long as the number of dwelling units in the structure is not increased and none of the existing parking is diminished.
- F. Nothing in this section shall be construed to prevent general maintenance on a nonconforming structure. General maintenance includes the repair or replacement of walls, doors, windows, roof, fixtures, wiring, and plumbing.

#### 18.52.050 – Nonconforming uses.

If at any time a nonconforming use is brought into conformity with this title, the use shall thereafter conform to all the regulations of the zoning district in which it is located.

A nonconforming use may be continued so long as it remains otherwise lawful. The following provisions apply to nonconforming uses:

- A. No nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied as of the date it became nonconforming.
- B. No nonconforming use shall be moved in whole or in part to any other portion of the lot that was not occupied by the nonconforming use as of the date it became nonconforming.
- C. If at any time a nonconforming use is abandoned or discontinued, the use of that lot shall thereafter conform to the code provisions applicable in the zone in which the lot is located, and the nonconforming use shall not thereafter be resumed or allowed to continue.

18.52.060 – Proof of nonconforming lot, structure, or use.

A property owner shall bear the burden of proving that a lot, use, or structure is nonconforming for purposes of this chapter.

Section 3. Section 18.80.040 of the Cordova Municipal Code entitled “Nonconforming building or structure” is amended as follows:

18.80.040 – ~~Nonconforming~~ **Unlawful** building or structure.

Any building or structure set up, erected, built, moved or maintained, or any use of property contrary to the provisions of this title shall be and the same is declared to be unlawful and a violation of this title and the city attorney shall, upon order of the city council, immediately commence action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in the manner provided by law, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such building, structure or use, and restrain and enjoin any person from setting up, erecting, moving, or maintaining any such building or structure, or using any property contrary to the provisions of this title.

Section 4. This ordinance shall be effective thirty (30) days after its passage and publication. This ordinance shall be enacted in accordance with Section 2.13 of the Charter of the City of Cordova, Alaska, and published within ten (10) days after its passage.

1st reading: October 19, 2016  
2nd reading and public hearing: December 7, 2016

**PASSED AND APPROVED THIS 7<sup>th</sup> DAY OF DECEMBER, 2016**

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Clay Koplin, Mayor

ATTEST:

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Susan Bourgeois, CMC, City Clerk

**CITY OF CORDOVA, ALASKA  
PLANNING COMMISSION  
RESOLUTION 16-05**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CORDOVA, ALASKA, RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF CORDOVA, ALASKA TO REMOVE DEFINITIONS FROM CHAPTER 18.08, TO REPEAL AND REENACT CHAPTER 18.52, AND TO AMEND THE TITLE OF SECTION 18.80.040 OF THE CORDOVA MUNICIPAL CODE IN ORDER TO UPDATE AND DEFINE NONCONFORMING LOTS, STRUCTURES, AND USES, TO ALLOW FOR THE EXPANSION AND ALTERATION OF NONCONFORMING STRUCTURES, AND TO INCREASE THE AMOUNT OF TIME A NONCONFORMING USE CAN CEASE BEFORE IT IS CONSIDERED DISCONTINUED**

**WHEREAS**, the Planning Commission has determined that Chapter 18.52 entitled Nonconforming Uses” is difficult to interpret as it does not clearly differentiate between the different types of nonconformities; and

**WHEREAS**, Chapter 18.52 does not allow for the expansion of nonconforming buildings even if the expansion does not aggravate the nonconformity; and

**WHEREAS**, the Planning Commission has determined that the proposed changes to the Cordova Municipal Code are in accordance with the purpose of Title 18; and

**WHEREAS**, the Planning Commission recommend to City Council to accept the proposed amendments.

**NOW, THEREFORE BE IT RESOLVED THAT** the Planning Commission of the City of Cordova, Alaska hereby recommend to the City Council of the City of Cordova, Alaska to remove definitions from Chapter 18.08, to repeal and reenact Chapter 18.52, and to amend the title of Section 18.80.040 of the Cordova Municipal Code in order to update and define nonconforming lots, structures and uses, to allow for the expansion and alteration of nonconforming structures, and to increase the amount of time a nonconforming use can cease before it is considered discontinued.

**PASSED AND APPROVED THIS 11<sup>TH</sup> DAY OF OCTOBER, 2016**



Tom Bailer, Chair

ATTEST:

  
Samantha Greenwood, City Planner

**18.72.080 - Effective date.**

No ordinance of the city council affecting an amendment, supplement, change or classification, repeal of regulations or restrictions, the boundaries of districts or classifications of property shall become effective until after a public hearing in relation thereto at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the time and place of such hearing shall be published in a paper of general circulation in the city. When the proposed amendment covers a change in the boundaries of a district, notice to owners of property shall be given in the manner above prescribed for variances.

*(Prior code § 15.223 (G)).*