

History note: Ordinance no. 609 originated in the Planning and Zoning Commission as a text amendment – the ordinance was not approved by the Commission. The City administration has requested the City Council to consider the Commission's decision.

Introduced by: City Manager Healy  
 Date: December 23, 2003  
 Public hearing: January 13, 2004  
 Action: Amended and postponed to a time definite of January 27, 2004  
 Date: January 27, 2004  
 Action: Adopted  
 Vote: Unanimous

## CITY OF PALMER, ALASKA

### ORDINANCE NO. 609

AN ORDINANCE REPEALING PMC 17.08.315 (DEFINITION OF NONCONFORMING BUILDINGS), ADOPTING PMC 17.08.316 (DEFINITION OF NONCONFORMING USE), AND AMENDING PMC CHAPTER 17.68 (NONCONFORMING USES AND STRUCTURES), OF PMC TITLE 17 (ZONING)

THE CITY OF PALMER, ALASKA, ORDAINS:

Section 1. Classification. This ordinance shall be of a permanent nature and shall become a part of the City of Palmer Code of Ordinances.

Section 2. Severability. If any provisions of this ordinance, or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. PMC 17.08.315 is hereby repealed.

Section 4. PMC 17.08.316 is adopted to read as follows (new language is underlined and deleted language is stricken out):

**17.08.316 Nonconforming use.**

“Nonconforming use” means a use of land or structure, which was lawfully existing immediately before the provisions of this title or its amendments became applicable to such land or structure, but which use did not conform to the provisions of this title or its amendments when these provisions became applicable to such use or structure and which use has continued to be used without cessation, discontinuance, or abandonment for the periods set out in chapter 17.68.

Section 5. PMC Chapter 17.68 is amended to read as follows (new language is underlined and deleted language is stricken out):

## Chapter 17.68

### NONCONFORMING USES AND STRUCTURES

Sections:

- 17.68.010 Intent.
- 17.68.020 Extension and enlargement.
- 17.68.030 Nonconforming lots of record.
- 17.68.040 Nonconforming uses of land.
- 17.68.050 Nonconforming structures.
- 17.68.060 Nonconforming uses of structures and premises in combination.
- 17.68.070 Nonconforming parking, loading, or other characteristics of use.
- 17.68.080 Repairs and maintenance.
- 17.68.090 Curative application.

#### **17.68.010 Intent.**

- A. Within the districts established by this title and amendments that may later be adopted, there exist incompatible lots, structures, uses of land and structures and characteristics of use which were lawful before ~~January 17, 1978~~ the provisions of this title or its amendments became applicable to such land, structure or use, but which would be prohibited, regulated or restricted under the terms of this title or future amendments.
- B. It is the intent of this title to permit these nonconformities to continue until they are removed, but not to unreasonably encourage their survival. It is further the intent of this title that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

#### **17.68.020 Extension and enlargement.**

- A. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land shall not be extended or enlarged after January 17, 1978 the provisions of this title or its amendments became applicable to such land, structure or use. ~~by~~ Among other things, the attachment on a building or premises of additional signs intended to be seen from off the premises; or by the addition of other uses constitutes such an extension or enlargement.
- B. To avoid undue hardship, nothing in this title shall be deemed to require a change in the plans, construction or designated use of any building on which actual construction was lawfully begun ~~prior to January 17, 1978~~ before the provisions of this title or its amendments became applicable to such building and upon which actual building construction has been diligently carried on. "Actual construction" is defined to include the placing of construction materials in permanent position and fastened in a permanent manner. ~~Except that~~ In addition, where demolition or removal of an existing building has been substantially begun ~~preparatory to~~ in preparation of rebuilding, such demolition or removal shall be deemed to be actual construction; provided, that work shall be diligently carried on until completion of the building involved. In no event shall the time of such construction exceed a period of one year except for a demonstrated cause approved in writing by the commission.

**17.68.030 Nonconforming lots of record.**

- A. In any district in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this title, a single-family dwelling and customary accessory buildings may be erected on any single lot of record as of January 17, 1978, or as of the date of annexation for land annexed to the city after that date. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and other requirements not involving area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located.
- B. If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record as of January 17, 1978, or as of the date of annexation for land annexed to the city after that date, and if all or part of the lots do not meet the requirements for lot width and area as established by this zoning code, the lands involved shall be considered to be an undivided parcel for the purposes of this zoning code and no portion of said parcel shall be used which does not meet lot width, and area requirements established by this zoning code, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this zoning code.

**17.68.040 Nonconforming uses of land.**

Where, as of ~~January 17, 1978~~ the date the provisions of this title or its amendments became applicable to such use, a lawful use of land exists that is made no longer permissible under the terms of this title as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

- A. No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied as of ~~January 17, 1978~~ the date the provisions of this title or its amendments became applicable to such use, unless such use is changed to a use permitted in the district in which such use is located;
- B. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use as of ~~January 17, 1978~~ the date the provisions of this title or its amendments became applicable to such use;
- C. If any such nonconforming use of land ceases for any reason for a period of more than ~~sixty~~ 180 consecutive days any subsequent use of such land shall conform to the regulations specified by this title for the district in which such land is located;
- D. No additional structure which does not conform to the requirements of this title shall be erected in connection with such nonconforming use of land.

**17.68.050 Nonconforming structures.**

Where a lawful structure existed as of ~~January 17, 1978~~ the date the provisions of this title or its amendments became applicable to such structure ~~which structure could not be built under the terms of this title or its amendments~~ by reason of restrictions on area, lot coverage, height, setback, yards or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. No such structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity;
- B. Should such structure be destroyed by any means to an extent of more than sixty percent of its assessed value at time of destruction, it shall not be reconstructed except

in conformity with the provisions of this title;

- ~~C. Should such a structure be destroyed by any means to an extent less than sixty percent and more than fifty-five percent of its assessed value, it may be restored only upon application for variance to the commission;~~
- C. Subsection B hereof notwithstanding, if a single-family dwelling in a residential district is damaged by any involuntary change, including fire, flood, or earthquake, so that the cost of renewal of the damaged parts exceeds 60 percent of the assessed value of the entire building, then such building may be replaced or reconstructed to the same footprint on the original location, subject to the following:
1. the owner duly applies to the building department to replace or reconstruct the building within one year of the involuntary change;
  2. no part of the structure may encroach into public rights-of-way or adjacent property;
  3. the intended use of the building is the same as, or less intensive than, the prior use and is a permissible use in the district;
  4. a professional engineer, duly licensed as such by the State of Alaska, certifies to the city that the foundation of the building is structurally reusable as is and the building official does not object to the certification; or a professional engineer, duly licensed as such by the State of Alaska, certifies to the city that the foundation of the building is structurally reusable subject to economic repairs and the engineer provides plans and specifications for the reconstruction, and the building official does not object to the certification, the plans and specifications, or the subsequent reconstruction;
  5. projections beyond the footprint including architectural features, roof eaves, foundation footings, porches, decks, terraces, patios, unenclosed stairways, and fire escapes, and attached structures, may also be replaced or reconstructed as they existed on the original building, so long as they do not encroach into public rights-of-way or adjacent property;
  6. the owner provides the building official with an as-built survey by a land surveyor, duly licensed as such the State of Alaska, of the footprint and location of the original building and projections beyond the footprint;
  7. the building may be replaced or reconstructed under this subsection with no fewer than the number of off-street parking spaces as were provided for the original building, provided that if it is feasible to eliminate any non-compliance with the off-street parking requirements, such non-compliance must be eliminated to the extent feasible; and
  8. the building as reconstructed will not pose any significant risk to health or safety as may be determined by the building official and the fire chief.

Nothing in this subsection constitutes an approval or waiver of an encroachment of the building or its footprint or projections beyond the footprint into a public right-of-way or adjacent property. Nothing in this subsection waives any other applicable laws or regulations including without limitation this title or the building code.

- D. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

**17.68.060 Nonconforming uses of structures and premises in combination.**

If a lawful use involving individual structures, or of structure and premises in combination, existed as of January 17, 1978 the date the provisions of this title or its amendments became applicable to such use or structure, that would not be allowed in the district under the terms of this title, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. No existing structure devoted to a use not permitted by this title in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;
- B. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this chapter, but no such use shall be extended to occupy any land outside such buildings;
- C. Any structure, or structure and premises in combination, in or on which a nonconforming use is superseded by a permitted use shall thereafter conform to the regulations for the district in which such structure is located and the nonconforming use may not thereafter be resumed;
- D. When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for ~~six~~ twelve consecutive months ~~or for eighteen months during any three-year period~~, except when government action impedes access to the premises, the structure, or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the districts in which it is located;
- E. Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land unless the land itself is in a nonconforming use. "Destruction," for the purpose of this subsection, means damage to an extent of more than sixty percent of the assessed value of the structure at the time of destruction.

**17.68.070 Nonconforming parking, loading, or other characteristics of use.**

If the characteristics of a use, such as off-street parking, off-street loading or other matters required by this title in relation to specified uses of land, structures, or premises, are not in accord with the requirements of this title, no change shall be made in such characteristics of use which increase nonconformity with such requirements. Change will be permitted in the direction of conformity to the requirements of this title.

**17.68.080 Repairs and maintenance.**

On any building devoted in whole or in part to any nonconforming use, work may be done in any period of twelve consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing, to an extent not exceeding twenty percent of the current assessed value of the building; provided that the cubic volume of the building as of January 17, 1978 the date the provisions of this title or its amendments became applicable to such land, structure or use, shall not be increased.

**17.68.090 Curative application.**

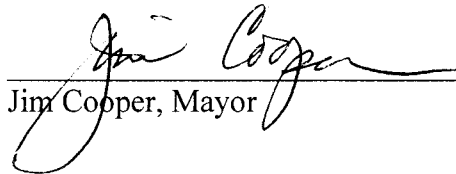
- A. The city recognizes that between January 17, 1978, and January 27, 2004 (the

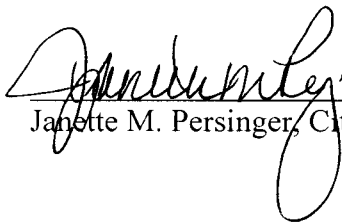
effective date of this ordinance), the city annexed areas into the city and the city also increased zoning restrictions on some parcels inside the city. As such, Title 17 (Zoning) or certain increased restrictions therein may have become applicable to those structures, uses of land and structures and characteristics of use after January 17, 1978, but Chapter 17.68 (Nonconforming Uses and Structures) may not have been expressly available for them. Technically, these structures, uses of land and structures and characteristics of use may not have been considered legal under Title 17. The purpose of this section is to cure such oversight and to apply non-conforming use status to those above-described structures, uses of land and structures and characteristics of use, provided that the status otherwise applies to them.

B. This chapter shall apply to those structures, uses of land and structures and characteristics of use described in subsection A above so that they are considered nonconforming, provided that they were lawful at the time Title 17 or the increased restrictions first applied to them and provided further that they have otherwise continued to meet the requirements of this chapter.

Section 6. Effective Date. This ordinance shall become effective immediately upon its adoption.

Adopted by the City Council of the City of Palmer, Alaska, this 27<sup>th</sup> day of January, 2004.

  
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Jim Cooper, Mayor

  
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Janette M. Persinger, City Clerk