ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2019-37

An Ordinance Amending the Land Use Code Related to Nonconforming Development.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

Section 2. Amendment of Section. CBJ 49.25.300 Determining uses, is amended to read:

49.25.300 Determining uses.

(a) (1) Listed uses. There is adopted the table of permissible uses, table 49.25.300. The uses permitted in a zoning area shall be determined through the table of permissible uses by locating the intersection of a horizontal, or use axis and a vertical, or zone axis. The conditions and procedures applicable to the use in the zone thus located shall be as indicated thereat by the digits "1," "2," or "3" as more fully set out in this section and by letters of the alphabet as more fully set out by footnotes in the table. The absence of a digit at the intersection of use and zone axes means that the identified use is not permitted in the identified zone.

(2) Unlisted uses. The permissibility of a use not listed shall be determined pursuant to section 49.20.320.

(3) Uses listed more than once. Where a use might be classified under more than one category, the more specific shall control. If equally specific, the more restrictive shall control.

(4) Accessory uses. Uses constituting an incidental or insubstantial part of a permissible use and commonly associated with the permissible use may be allowed as an accessory use.

(5) Nonconforming uses. Nonconforming uses, including nonconforming residential densities, are subject to chapter 49.30.

...
Section 3. Amendment of Section. CBJ 49.25.430 Yard setbacks, is amended to read:

49.25.430 Yard setbacks.

... (M) Additional stories. The commission, through the conditional use permit process, may allow the addition of a second or third story atop or below an existing enclosed structure which projects into a required yard setback if the structure is either nonconforming or if a variance was previously granted for the structure. The commission may deny such request if it finds that the structure, with the addition, would result in excessive blockage of views, excessive restriction of light and air, or other deleterious impacts.

... (5) Replacement and reconstruction of nonconforming structures. The replacement and reconstruction of nonconforming structures in residential districts shall be governed by chapter 49.30.

Section 4. Amendment of Section. CBJ 49.25.510 Special density considerations, is amended to read:

49.25.510 Special density considerations.

... (f) Reserved.

... Section 5. Amendment of Chapter. Chapter 49.30 Nonconforming Development is repealed and replaced to read:

Chapter 49.30

NONCONFORMING SITUATIONS

ARTICLE I. GENERAL

49.30.110 Purpose.

The purpose of this chapter is to create processes and standards to review nonconforming situations.
49.30.120 Applicability.

(a) This chapter applies to the following nonconforming situations:

(1) Nonconforming uses (49.30.230);

(2) Nonconforming residential densities (49.30.240);

(3) Nonconforming structures (49.30.250);

(4) Nonconforming lots (49.30.260); and

(5) Nonconforming parking (49.30.270).

(b) A property with more than one nonconforming situation is governed by each type of nonconforming situation.

(c) This chapter does not apply to nonconforming signage, which is addressed in chapter 49.45.

ARTICLE 2. STANDARDS

49.30.210 Nonconforming situations in general.

(a) Continuation of nonconforming situations. Except as otherwise provided in this title, situations made nonconforming by this title may remain.

(b) Change of nonconforming situation to comply with this title. Any nonconforming situation may be changed to comply with this title. Once a nonconforming situation becomes conforming, the nonconforming rights under this chapter are relinquished with respect to that nonconforming situation, and the nonconforming situation must not be re-established.

(c) Ownership. Change in property ownership does not alter the legal status of any nonconforming situation.

(d) Routine maintenance and repair. Nothing in this chapter prohibits normal maintenance or routine repairs, which includes but is not limited to, roofing repair or replacement, window replacement, and other similar minor structural repairs.

49.30.215 Accidental damage or destruction.

(a) Building official determination. The building official shall determine the extent and cause(s) of damage and/or destruction under this chapter, pursuant to CBJ Title 19.

(b) Continuation of nonconforming rights. Except as provided in this section, the cost to replace a nonconforming structure or a structure containing a nonconforming use that is damaged
accidentally less than or equal to 75 percent of the assessed building value, exclusive of foundation(s), maintains the nonconforming rights.

(c) Loss of nonconforming rights. Except as provided in this section, a nonconforming structure or a structure containing a nonconforming use is deemed destroyed when damaged accidentally and the cost to replace the structure is more than 75 percent of the assessed building value, exclusive of foundation(s). A structure that is deemed destroyed loses all nonconforming rights.

(d) Exceptions.

1. Residential use in non-industrial districts. In non-industrial districts, a nonconforming situation containing exclusively residential use that was damaged or destroyed accidentally, or by any means beyond the control of the owner or the authorized agent of the owner, may be reconstructed regardless of the cost of replacement of the structure subject to the following:

   (A) The nonconforming situation is or has been certified pursuant to section 49.30.310 prior to any work that requires a building permit;

   (B) Written notice of intent to reconstruct is provided to the department within 365 days of the date the damage or destruction occurred;

   (C) The total number of dwelling units established by the certification of nonconforming status is not increased;

   (D) A temporary certificate of occupancy for the structure has been obtained within three years of issuance of the building permit; and

   (E) Upon a written request demonstrating good cause, the director may approve one 18-month extension for the reconstruction or for obtaining the temporary certificate of occupancy.

2. Residential use in industrial districts. On property in industrial or waterfront industrial districts, if a structure containing a nonconforming residential use was damaged or destroyed accidentally, or by any means beyond the control of the owner or the authorized agent of the owner, the following applies:

   (A) Nonconforming residential use is maintained and the structure may be rebuilt within three years if all of the following are met:

   (i) Nonconforming residential use is or has been certified pursuant to the procedures set forth in section 49.30.310;

   (ii) The cost to replace the structure is less than 75 percent of the assessed building value, exclusive of foundation(s);
(iii) Written notice of intent to reconstruct is provided to the department within 365 days of the date the accidental damage or destruction occurred as determined by the building official;

(iv) The reconstruction complies with applicable zoning district dimensional, development, and design standards, including but not limited to: setbacks, parking, and landscaping that apply to new development.

(B) If a temporary certificate of occupancy for the structure has not been obtained within three years of issuance of a building permit, the nonconforming residential use rights are relinquished.

(C) Upon a written request demonstrating good cause, the director may approve one 18-month extension for the reconstruction or for obtaining the temporary certificate of occupancy.

(e) Reconstruction footprint. Reconstruction allowed pursuant to this section may be in the existing footprint except for encroachments into rights-of-way or adjacent property.

49.30.220 Abandonment of a nonconforming situation.

(a) The abandonment of a nonconforming situation relinquishes all nonconforming rights associated with that situation. The existence of an abandoned nonconforming situation becomes a noncompliant situation and subjects the property to enforcement actions consistent with this title.

(b) A nonconforming situation is abandoned if any of the following events occur:

1. The owner indicates in writing that the nonconforming situation is being permanently discontinued;

2. The nonconforming situation is damaged, destroyed, removed or demolished intentionally by the owner or intentionally by an authorized agent of the owner;

3. The nonconforming structure is moved;

4. The owner takes action consistent with an intent to abandon the nonconforming situation;

5. The structure(s) associated with the nonconforming situation has been vacant for 365 consecutive days;

6. Except for a structure with a nonconforming residential density, the nonconforming use has ceased and not substantially resumed for 365 consecutive days; or
A structure with a nonconforming residential density has been unoccupied for 1095 consecutive days.

c Determination of abandonment shall be made by the director and supported by written findings. An abandonment determination may be reconsidered within 20 days of the date of the determination. No appeal of an abandonment determination may be made unless reconsideration is first sought.

49.30.225 Reconsideration of abandonment determination.

(a) A director's determination of abandonment under 49.30.220 may be reconsidered if information submitted establishes all of the following:

(1) The owner has been maintaining the land and structure(s) in accordance with applicable building, fire, and other codes and regulations;

(2) The owner has been maintaining or pursuing applicable permits and licenses; and

(3) The owner has filed applicable tax documents.

(b) Other factors that may be considered include whether:

(1) The applicant has been engaged in activities that are consistent with or would affirmatively prove there was no intent to abandon, such as actively and continuously marketing the land, business, or structure for sale or lease; and

(2) The applicant has applied for a nonconforming certificate in accordance with section 49.30.310.

(c) The burden of proof for overcoming a determination of abandonment is on the applicant.

49.30.230 Nonconforming uses.

(a) Expansion of nonconforming use. A nonconforming use within a structure may not be expanded to other structures or to other land beyond the original structure. A nonconforming use of land may not be increased or extended.

(b) Modifications to nonconforming use. Modifications to a nonconforming use are permissible and do not constitute a change or expansion of the nonconforming use provided the modification does not impose a significant or new impact that is out of harmony with the neighborhood, as determined by the director.

49.30.240 Nonconforming residential densities.

(a) Applicable zoning districts. This section applies only to nonconforming residential density situations on property located in zoning districts other than industrial and waterfront industrial.
(b)  *Modification of existing dwelling units.* A structure containing nonconforming residential density may be modified subject to the following:

1. The nonconforming residential density is certified pursuant to the procedures provided in section 49.30.310 prior to commencing any modification that requires a building permit; and

2. Applicable dimensional standards and parking requirements are met unless otherwise provided in this title.

### 49.30.250 Nonconforming structure.

(a) Except as otherwise provided in this chapter, a nonconforming structure may be enlarged, altered, or reconstructed as long as the enlargement, alteration, or reconstruction does not increase or aggravate the nonconforming situation and complies with other dimensional and parking standards of this title. (See Figure 1)

![Figure 1 (plan view)](image)

(b) Certification of nonconforming status pursuant to section 49.30.310 must be obtained prior to any enlargement, alteration, or reconstruction of a nonconforming structure.

(c) Renovations within an existing structure shall not be considered an enlargement, alteration, or reconstruction for purposes of this section.

(d) Projections allowed in yard setbacks under CBJ 49.25.430(4) shall not be considered to increase or aggravate a nonconforming situation.
(e) This subsection shall not be interpreted to allow the expansion of a nonconforming use or nonconforming residential density, which are governed by sections 49.30.230 and 49.30.240.

49.30.260 Nonconforming lots.

(a) A property owner of a nonconforming lot has the same development rights as a property owner of a conforming lot, provided the owner first obtains nonconforming certification pursuant to section 49.30.310.

(b) An undeveloped nonconforming lot that adjoins one or more lots under common ownership and each lot has frontage on a right-of-way, the undeveloped lot(s) may each be developed with a single-family dwelling or as otherwise provided in this title.

49.30.270 Nonconforming parking.

(a) A nonconforming parking situation may be reconstructed if:

(1) The number of parking spaces does not decrease;

(2) The type of parking spaces remain the same or become more conforming; and

(3) The government entity that controls the right-of-way determines the reconstruction does not endanger public health, safety, or welfare.

(b) When a nonconforming parking situation is changed to become more compliant with 49.40, the provided off-street parking may not be removed. This section does not preclude the applicant’s right to obtain a parking waiver or variance in accordance with this title.

ARTICLE 3. REVIEWS

49.30.310 Nonconforming certification review by the director.

(a) Purpose. The purpose of nonconforming certification review is to determine whether nonconforming status under this chapter exists, and whether nonconforming certification is justified.

(b) When to seek certification of nonconforming status. An owner may apply for a nonconforming certificate at any time, but an owner must apply for a nonconforming certificate prior to seeking nonconforming situation review.

(c) Nonconforming certification review prior to issuance of permit. Prior to the issuance of a permit for development related to a nonconforming situation, a nonconforming certification must be obtained pursuant to this section.

(d) Certification. Upon finding the applicant’s information establishes all of the following, the director must issue the nonconforming certificate:
(1) When there is a nonconforming situation; and

(2) The nonconforming situation has not been abandoned.

(e) Application. An application for nonconforming certification shall be submitted to the department on forms approved by the director with relevant information establishing the factors set out in subsection (d). The application should identify and include each nonconforming situation known to exist on the subject property.

(f) Relevant information. The following information may be relevant for the director’s review:

(1) Building, land use, or development permits;

(2) Zoning codes or maps;

(3) Recorded plats;

(4) Dated photographs;

(5) Insurance records and maps that identify use or development, e.g. Sanborn Maps;

(6) Utility bills;

(7) Property tax records;

(8) Business licenses;

(9) Telephone listings;

(10) Advertisements in dated publications; or

(11) Leases.

(g) Decision. The director shall review the applicant’s information and issue a written decision that includes separate certification findings on each nonconforming situation included in the application.

(h) Burden of proof. The burden of proof is on the applicant.

(i) Fee. An application for a nonconforming certification shall include a fee as established by chapter 49.85.
(j) **Failure of a situation to qualify for nonconforming certification.** If a situation does not qualify for or is denied nonconforming certification, it is noncompliant and the property is subject to enforcement actions consistent with this title.

**Section 6. Amendment of Section.** CBJ 49.40.210 Minimum space and dimensional standards for parking and off-street loading, is amended to read:

...  

(d) **Exceptions.**

...  

(4) **Replacement and reconstruction of certain nonconforming structures.** Off-street parking requirements for the replacement and reconstruction of certain nonconforming structures in residential districts shall be governed by chapter 49.30.

...

**Section 7. Amendment of Section.** CBJ 49.80.120 Definitions, is amended to read:

**49.80.120 Definitions.**

**Nonconforming situation** means a nonconforming use, a nonconforming residential density, a nonconforming structure, a nonconforming lot, and nonconforming parking, whether existing alone or in any combination.

**Nonconforming lot** means a lot, or lot fractions, that

(1) Was allowed or not prohibited by law when established; and  

(2) Due to the subsequent adoption or amendment of a zoning ordinance, the lot(s) fails to conform to this title.

**Nonconforming parking** means dimensional standards and types of off-street parking and loading that were not in effect when the development was established, and due to the subsequent adoption or amendment of a zoning ordinance, are now required under this title.

**Nonconforming residential density** means

(1) Residential development of a density that was allowed or not prohibited by law when constructed; and  

(2) Due to the subsequent adoption or amendment of a zoning ordinance, is of a greater density than allowed under this title.
Nonconforming structure means a structure that

(1) Was allowed or not prohibited by law when constructed; and

(2) Due to the subsequent adoption or amendment of a zoning ordinance, fails to conform to this title.

Nonconforming use means a use that

(1) Was allowed or not prohibited by law when established; and

(2) Due to the subsequent adoption or amendment of a zoning ordinance fails to conform to this title.

Section 8. Amendment of Section. CBJ 49.85.100 Generally, is amended to read:

49.85.100 Generally.

... (20) Certification of nonconforming status, $150.00; fee is waived if applied for in conjunction with a development permit.

Section 9. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this 16th day of March, 2020.

Beth A. Weldon, Mayor

Attest:

Elizabeth J. McEwen, Municipal Clerk