

IN THE MATTER OF

**AN APPEAL BY JOE BURNHAM TO THE NOME PLANNING COMMISSION
REGARDING CITY OF NOME ZONING ENFORCEMENT ORDER:**

Appellant: Joe Burnham/Kanosak LLC
Appellant's Representative: Joe Burnham

Appellee: City of Nome
Appellee's Representative: Erin Reinders

Having sat to hear an appeal pursuant to Sections 18.16.040 and 18.16.050 of the Nome Code of Ordinances and held a properly noticed public hearing on the above-referenced appeal on June 3, 2025, having considered all the evidence in the record and all of the arguments made at the appeal hearing, and having voted to deny the appeal and affirm the decision of the Acting City Manager of the City of Nome, the Nome Planning Commission adopts the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. The property at issue is known as Parcel ID 190.1.040, also known as Tract A of Bench #2 Placer Claim, US Mineral Survey #691, according to Plat #81-1.
2. The property is owned by Kanosoak, LLC. The sole member of Kanosoak, LLC is Joe Burnham.
3. The property is in the Commercial District, governed by Chapter 18.60 of the Nome Code of Ordinances.
4. The intent of the commercial district is to provide for a mixture of commercial uses that will strengthen and expand the core community. NCO §18.60.010.
5. Outdoor storage is only permitted as an accessory use to a permitted use in the Commercial District. NCO 18.60.020 (t).
6. At all times relevant to this appeal, Mr. Burnham used the property for outdoor storage of vehicles, vessels, implements, and other matter such as building trusses, as seen in the photographs submitted in the City's Record of City Action for June 3, 2025 Appeal.
7. Mr. Burnham is not using the property for a permitted use under NCO 18.60.020.
8. Mr. Burnham is not using the property for a conditional use allowed under NCO 18.60.030. Mr. Burnham has not applied for a conditional use permit; potential conditional uses are not relevant to this appeal.

9. On or about February 26, 2025, Acting City Manager Dan Grimmer sent a letter demanding that Mr. Burnham cease violating the code by storing the vehicles and other materials on the property in violation the Nome Code of Ordinances. The letter also suggested a compliance plan and imposed fines on an escalating basis if the property was not brought into compliance.
10. Due, at least in part, to Mr. Burnham being out of the country, the letter was not received until approximately March 19. Mr. Burnham timely appealed.
11. The parties agreed to a hearing on June 3 to allow Mr. Burnham to return to Nome and to appear in person.

CONCLUSIONS OF LAW

1. The following items, in addition to those presented by the parties at the appeal hearing, are considered part of the record of this proceeding:
 - a) February 26, 2025 enforcement letter from Acting City Manager Grimmer.
 - b) March 21, 2025 E-mail from Mr. Burnham requesting appeal.
 - c) E-mail correspondence regarding appeal.
 - d) Photos of property, dated January 3, 2025.
 - e) Parcel viewer data.
 - f) Nome Zoning Map.
 - g) June 3 Memo from Erin Reinders, AICP, CPM.
2. The Commission has not considered evidence or comments related to a fill permit for the property. The appeal before the Commission is not related in any way to permits for the placement of fill.
3. The sole issue for the commission to decide is whether the city erred in its interpretation of NCO 18.60.020 (t) as it applies to Mr. Burnham's use of his lot.
4. The Nome Comprehensive Plan associates stand-alone outdoor storage with Industrial Districts, and not Commercial Districts (Section V) and supports the abatement processes (Section VII).
5. The site is being used for outdoor storage and is zoned Commercial. The outdoor storage is not an accessory use to any permitted or conditional use, nor is it related to onsite wholesale or retail sale or with a residential use or home occupation. Therefore, this type of outdoor storage is not permitted in a Commercial District (NCO 18.60.020 and .030).
6. Mr. Burnham made reference to the previous existence of a storage pad as well as outdoor storage on site. To have a valid nonconforming use would require compliance with NCO 18.130.040. There is no evidence that this process was followed. Therefore, this use is not considered a nonconforming use. Furthermore, the possibility exists that the storage was accessory to a permitted or conditional use previously.

7. Mr. Burnham and other witnesses argued there is value to storage of machinery, tools and parts in Nome due to its remote location, the difficulty of importing goods, and the history of industry and ingenuity in the area. There is validity to these points, but such storage must be done in conformance with the law. Outdoor storage could occur in areas appropriately zoned, or out of city limits where the Nome Code of Ordinances does not apply. Alternatively, storage could be indoors, such as in a warehouse where permitted by code.
8. Mr. Burnham highlighted that portion of the City enforcement letter which stated, “You do not have a city business license for any of the permitted uses in this zoning district and it does not appear the property is being used for any of the uses permitted under NCO 18.60.020.” The Commission does not find having a city business license or sales tax license is dispositive of whether the zoning code is being followed. The City’s letter appears to use a business license only as a potential indicator of a lawful use. Neither a city nor a state business license would cure or permit a violation of the zoning code; the ultimate question is whether the *use* is allowed under NCO 18.60.020.
9. Mr. Burnham testified regarding potential future uses of the property, which would be compliant with the code. One such use requires, according to Mr. Burnham, permission or a permit from the FAA. The Commission is hopeful the property is put to lawful use and becomes compliant with the code. Presently, the use of the property is contrary to law.
10. The Commission has considered the appeal criteria in NCO 18.160.050.

The appeal was primarily focused on subsections (a), (e) and (f), which most specifically focus on whether the Acting City Manager erred in his interpretation of the code in the February enforcement letter or whether there were any facts which, if known, would dictate a different outcome. As detailed in these findings and conclusions, the Commission agrees with the City’s interpretation of the zoning code and has accordingly denied the appeal. As to subsection (e), there were no facts presented at the hearing which change the analysis.

Subsection (b) relates to consideration of past interpretation or application of the code. There was argument regarding the application and implementation of the nonconforming use ordinance, which has been previously discussed. There was no material evidence or testimony provided regarding application or interpretation of NCO 18.60.020.

The City’s goals and objectives were considered through consideration of the comprehensive plan, cited in the Reinders memo.

Wherefore, having set forth findings of fact and conclusions of law, the Planning and Zoning Commission denies Mr. Burnham’s appeal. The Commission AFFIRMS the determination of the Acting City Manager as stated in the February 26 enforcement letter, in which it was determined that Mr. Burnham’s use of the property is in violation of NCO 18.60.020 and subject to fines or other enforcement action.

This decision can be appealed to the City Council. *See* NCO 18.160.040 (g). Per 18.160.020 (a) an appeal must be filed ten days from the date of this order.

Duly adopted this 8th day of July, 2025.

Ken Hughes
Planning Commission Chair