

## PLANNING MEMO

TO: Planning Commission  
FROM: Erin Reinders, AICP, CPM  
RE: Joe Burnham Appeal of February 26, 2025 Enforcement Notice  
DATE: June 3, 2025

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**SUMMARY:** This memo serves as the City Administration's written response to Mr. Burnham's appeal. It summarizes the issue presented on appeal, provides guidance from the Comprehensive Plan and relevant zoning ordinances, and explains the City's position in defense of its decision.

**BACKGROUND:** In response to complaints received from members of the community, the City investigated the use of the property in question. The property is owned by Kanosak, LLC, of which Mr. Burnham is the only member.

City staff determined the current use is not a permitted use in the Commercial Zoning district and issued an enforcement letter. Staff's determination is now being appealed by Mr. Burnham. 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 for outdoor storage.

Included in your packet is the Record of City Action for this appeal by Mr. Joe Burnham. This record contains:

1. February 26, 2025 enforcement letter from Acting City Manager Grimmer.
2. March 21, 2025 E-mail from Mr. Burnham requesting appeal.
3. E-mail correspondence regarding appeal.
4. Photos of property, dated January 3, 2025.
5. Parcel viewer data.
6. Nome Zoning Map.

The enforcement letter mentioned that if Mr. Burnham sought a conditional use permit, the City might consider the application sufficient cause to delay fines or other enforcement efforts. He has inquired with city staff about such a permit. The City's inclusion of that option was to suggest that applying for a conditional use permit would at least be a recognition of the City's zoning code and an effort to come into compliance. It should be made clear, however, that a conditional use permit would not provide a clear path to compliance in this situation. The only relevant potential conditional use appears to be NCO 18.60.030 (k) which allows for "Private storage, including junk, or small warehouse associated with residential use/home occupations." However, there are no residential uses currently located on this property, which would be necessary for such storage to be conditionally allowed.

The enforcement letter stated that daily fines would be assessed. Mr. Burnham requested that any fines be stayed pending appeal. The City's position is that filing this appeal does not automatically prohibit daily fines from the time of the enforcement letter to the time of a decision on appeal. However, the City will not seek imposition of daily fines during that time period. As a practical matter, it would have been challenging to comply with the City's request due to winter and spring weather conditions.

Fines are an enforcement function within the purview of city administration and are not part of the decision on appeal. The City mentions fines here to ensure that the parties and the Commission do not spend additional and unnecessary time on discussing that issue. Again, 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. The City's ultimate goal is compliance, and it would consider an agreement which allows for milestones and suspension of any fines to motivate timely compliance.

**PLAN GUIDANCE:** The Nome Comprehensive Plan is a tool for guiding the future growth and development of the City of Nome. Sections V and VII of the Comprehensive Plan provides guidance relevant to this situation, which are highlighted below.

**Land Use Plan.** The Land Use Plan is addressed in Section V of the Nome Comprehensive Plan 2020. Of note of the following Land Use Districts Definitions, where only the industrial district focuses on stand alone outdoor storage and not the commercial district.

**Commercial Districts.** The Commercial Districts are intended to provide for a mixture of commercial uses that will strengthen and expand the core community.

**Industrial Districts.** The Industrial Districts are intended to provide a location for a variety of employment opportunities such as manufacturing, warehousing and distributing, indoor and outdoor storage, and a wide range of primarily industrial operations. Locations for the industrial zone require access to major arterial streets and adequate water, sewer, and power.

**Framework for the Future.** Section VII of the Nome Comprehensive Plan 2020 provides a framework for the future and outlines Goals, Objectives and Strategies. One Land Use goal is related to Economic Viability and as an associated Objective related to this situation.

**Land Use Goal.**

**Economic Viability:** A built environment based on standards that sustain long-term economic viability and growth and that promote affordable residential, commercial, and industrial development.

**Objective 24:** Aggressively abate junk vehicles and abandoned structures.

**ZONING CODE ANALYSIS:** Chapter 18 of the Nome Code of Ordinances serves as the Zoning Ordinance for the City of Nome and provides regulatory guidance. Below are the relevant sections of code, particularly as they relate to definitions, the commercial zoning district, nonconforming uses, and the appeals process.

**Definitions.** Though not every use or term is defined in the Zoning Ordinance, the following definitions are listed in NCO 18.20 and are relevant to this situation.

**"Accessory use or building"** means a use or building customarily incidental and subordinate to, and located on the same lot with, the principal building.

**"Outdoor storage"** means the keeping, in an unroofed area, of any goods, material, merchandise, or vehicles for more than twenty-four hours.

**"Junk"** means any worn out, wrecked, scrapped, partially or fully dismantled, discarded, tangible material, combination of materials or items, stored on a lot but not including a commercial operation and not constituting a public safety, nuisance or hazard concern.

**"Nonconforming use"** means a use which was lawfully established in compliance with all applicable ordinances and regulations, but which no longer conforms to all applicable ordinances or regulations because of the application of a subsequent city ordinance or regulation.

**“Warehouse”** means a building used primarily for the storage and distribution of goods, products, materials, supplies, and equipment.

**Commercial District.** The site in question is in the Commercial district. Permitted uses in the commercial district are listed at NCO 18.60.020 and .030, respectively. Three types of storage are permitted, and one type of storage is permitted conditionally:

**18.60.020 Permitted uses and structures.**

The following uses and their accessory uses are permitted in commercial districts:...

- (h) Incidental, small-scale manufacturing, processing, and storage of goods for wholesale or retail sale on the premises....
- (t) Outdoor storage, including junk, as an accessory use to any permitted or conditional use...
- (y) Warehousing and storage...

Mr. Burnham is using the lot to store various vehicles and machinery. There is no other lawful use occurring. There is no evidence of manufacturing or wholesale or retail sales, nor is there a warehouse. This is simply outdoor storage, which is only permitted as an accessory use. To have outdoor storage of this type would require that the storage be “incidental and subordinate to” another permitted or conditional use on the property.

**Nonconforming Use.** Mr. Burnham’s appeal did not mention non-conforming status. However, he has raised “grandfather” rights verbally in conversations with the City. Normally, failure to state such a point in the appeal request would result in abandonment of that argument. Nonetheless, the City addresses the applicability of the code here briefly. Nonconforming uses are addressed in NCO Chapter 18.130. To have nonconforming status under the Nome Code of Ordinances, the landowner must have proven the use was lawfully in existence in 2008.<sup>1</sup> An application must have been submitted by October 2018, and there is no evidence that this occurred.<sup>2</sup>

**Appeals.** This appeal was requested pursuant to 18.160.010 and .020 which allow for an appeal to the commission from the decision of an administrative official. NCO 18.160.020 Appeal application provides: Any aggrieved person of interest may appeal a denial of a building or other development permit, or any order, requirement, decision, interpretation or determination made by an administrative official or the commission charged with the enforcement of this title.

NCO Chapter 18.160 is attached to this memo as Appendix A for the commission’s convenience to provide a reference on the procedure and standards governing an appeal. The City does wish to highlight two important considerations. First, public testimony is permitted.<sup>3</sup> Second, the appellant (Mr. Burnham) has the burden of proof to establish the necessary facts to warrant favorable action of the commission or council.<sup>4</sup>

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<sup>1</sup> NCO § 18.130.010; NCO §18.130.030.

<sup>2</sup> NCO § 18.130; NCO §18.130.040 (specifically (d): Failure to apply by the deadline established in this section shall mean the use or structure does not qualify as a nonconforming use.)

<sup>3</sup> NCO § 18.160.040 (specifically (b): Members of the public shall be allowed to testify.)

<sup>4</sup> NCO § 18.160.040 (specifically (d): The appellant has the burden of proof to establish the necessary facts to warrant favorable action of the commission or council.)

**PROPOSED FINDINGS:**

1. 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.
2. 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).
3. The site is being used for outdoor storage and is zoned Commercial. The outdoor storage is not as an accessory use to any permitted or conditional use, nor is it related to onsite wholesale or retail sale or with a home occupation. This type of outdoor storage is not permitted by right, or as a conditional use in a Commercial District (NCO 18.60.020 and .030).
4. 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.

**CONCLUSION:** The City administration believes the appeal should not be granted and the land use determination should be upheld. If the Planning Commission supports Staff's actions, then we will proceed with our efforts in working with Mr. Burnham to reach a solution. If the parties are unable to reach an agreement, the City will pursue enforcement, including fines, injunctive relief and/or abatement.

Possible solutions include the development of a compliance agreement that includes one of the following as well as an associated timeline:

- a. relocate items to a location where the zoning allows for outdoor storage;
- b. construct a warehouse to store items inside.