

## **Memorandum 13-126 Discontinued Nonconforming Uses**

**Memorandum ID:** 13-126

**Memorandum Status:** Backup

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**TO:** Mayor Wythe and the Homer City Council  
**FROM:** Walt Wrede  
**DATE:** August 26, 2013  
**SUBJECT:** Ordinance 13-37

The August 26, 2013 City Council packet contains Ordinance 13-37 entitled "An Ordinance of the City Council of Homer, Alaska, Amending the Definition of "Discontinued" in Homer City Code 21.61.015, Definitions, to Exclude from the Time for Which a Nonconforming Use May Cease the Time From the Death of its Operator Until the Use is Legally Available to Transfer to a Successor Operator." This ordinance is sponsored by the Mayor and City Manager.

Under the code as it currently is written, a legal non-conforming use may continue so long as the use is not "discontinued" for one year (12 consecutive months). If the use is discontinued for 12 consecutive months, the nonconforming use may not be continued and subsequent uses must comply with the zoning code.

This ordinance proposes to amend the definition of "discontinued" as it is applied to nonconforming uses. The proposed amendment is as follows:

"Discontinued" means that a nonconforming use has ceased, and has not substantially resumed, for a period of 12 consecutive months, regardless of intent; provided that when a nonconforming use ceases because of the death of its operator the time the nonconforming use has ceased shall not include the time from the death until the use is legally available for transfer to a successor operator.

The practical effect of the amendment is that it "stops the clock" when the operator of a nonconforming use dies and the disposition of the property is involved in a legal process, such as probate court, which prevents the successor operator from continuing the nonconforming use. The time that it takes to resolve legal issues involving the death of the operator before a use can legally continue by a successor would be subtracted from the 1 year "discontinued" criteria.

The reason for bringing this forward for Council and Planning Commission discussion is that even though the City Zoning Code is well intentioned, there may sometimes be unintended consequences. This may be one of those cases. It seems to the sponsors that making a legal nonconforming use illegal because an operator died and 12 months passed before a successor operator was legally able to continue the use is not something that was intended when the code was drafted. This seems to warrant further discussion and we think that the public at large would agree.

**RECOMMENDATION:** Introduce Ordinance 13-37 and forward it to the Planning Commission with a request for comments and recommendations.

Related Ordinances **Memorandum - Related Ordinances:** [Ordinance 13-37 Amending Definition of Discontinued in HCC 21 for Nonconforming Use to Cease From the Death of Its Operator](#)

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