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1 **CHAPTER 21.11: NONCONFORMITIES**

2 **21.11.010 GENERAL PROVISIONS**

3 **A. Purpose**

4 The purpose of this chapter is to regulate continued existence of legal uses, structures,
5 lots, signs, and use characteristics such as parking and landscaping, established prior to
6 the effective date of this title, or the effective date of future amendments to this title, that
7 no longer conform to the requirements of this title. All such situations are collectively
8 referred to in this chapter as “nonconformities.” It is the intent of this chapter to permit
9 these nonconformities to continue until they are removed or brought into conformance
10 with this title, and to encourage their re-use and movement towards conformity.

11 **B. Authority to Continue**

12 **1. Generally**

13 Any nonconformity that lawfully existed as of the effective date of this title and
14 that remains nonconforming, and any nonconformity that is created as a result of
15 any subsequent rezoning, amendment to the text of this title, or by the acquisition
16 of property for a public purpose, may be continued or maintained as a
17 nonconformity only in accordance with the terms of this chapter, unless such
18 nonconformity falls within the exception set forth in subsection 21.11.010.B.2.

19 **2. Exception Due to Variances or Minor Modifications**

20 This chapter shall not apply to any development standard or feature that is the
21 subject of a variance or minor modification granted under this title. Where a
22 variance or minor modification has been granted that results in a development
23 standard or feature that does not otherwise conform to the requirements of this
24 title, that development standard or feature shall be deemed conforming.

25 **3. Conditional Uses**

26 **a.** A use existing prior to the effective date of this title that is permitted as a
27 conditional use in the district in which it is located under this title, but
28 which lacks an approved conditional use permit, shall not be deemed a
29 nonconforming use, but rather shall be considered to exist as a
30 conditional use. The scope of such a conditional use shall be governed
31 by the provisions of this chapter unless modified by the Planning and
32 Zoning Commission in accordance with section 21.03.070, *Conditional*
33 *Uses*.

34 **b.** A conditional use existing prior to the effective date of this title that is
35 permitted in its entirety as a principal use in the district in which it is
36 located under this title shall not be deemed a nonconforming use. Such
37 use shall be deemed a permitted principal use and the conditional use
38 permit shall be null and void.

39 **C. Determination of Nonconformity Status**

40 In all cases, the burden of establishing the existence of a legal nonconformity shall be
41 solely upon the owner of the nonconformity, not the Municipality. Verification of
42 nonconforming status may be established through the process set forth in section
43 21.03.170, *Verification of Nonconforming Status*.

1 **D. Nonconformities Created Through Government Action**

2 If a structure, use of land, use of structure, or characteristic of use does not comply with
3 the requirements of this title solely as a result of an acquisition of land or other action by
4 a government agency for a public purpose, then such structure, use of land, use of
5 structure, or characteristic of use on land not acquired by the government shall be
6 deemed conforming. For purposes of this section the word "land" means fee simple
7 interest in real estate.

8 **E. Change of Ownership or Tenancy**

9 Changes of ownership, tenancy, or management of property with an existing
10 nonconformity are permitted but such nonconformities shall continue to be subject to the
11 provisions of this chapter.

12 **F. Maintenance and Repair**

13 1. Repairs or maintenance of nonconformities that are required to keep structures
14 or sites in a safe condition are permitted, provided that the repair or maintenance
15 does not increase the extent of nonconformity. For purposes of this section,
16 “maintenance or repair” shall mean:

17 a. Repairs that are necessary to maintain and to correct any damage or
18 deterioration to the structural soundness or interior appearance of a
19 building or structure without expanding or altering the building or
20 structure;

21 b. Repair of uses or structures that are damaged or destroyed by 50% or
22 less of the replacement cost of the use or structure at the time of
23 damage.

24 c. Maintenance of land areas to protect against health and environmental
25 hazards and promote the safety of surrounding land uses;

26 d. Repairs that are required to remedy unsafe conditions that cause a
27 threat to public safety; and

28 e. Repairs and maintenance of nonconforming signs as set forth in section
29 21.11.060, *Nonconforming Signs*.

30 2. Nothing in this chapter shall be deemed to prevent the strengthening or restoring
31 to a safe condition of any building or part thereof declared to be unsafe by any
32 official charged with protecting the public safety, upon order of such official.

33 **G. Replacement Cost**

34 Where the term “replacement cost” is used in this chapter, it shall be determined by the
35 building official pursuant to title 23.

36 **H. Willful Destruction**

37 In the event of arson or other willful destruction, any rights to reinstate, replicate, rebuild,
38 or otherwise reestablish the nonconforming use or structure, as allowed in this chapter,
39 shall be prohibited if such casualty is traceable to the owner or his or her agent. Such
40 instances shall result in forfeiture of the nonconforming status.

21.11.020 SINGLE- AND TWO-FAMILY STRUCTURES

A. Applicability

Sections 21.11.010, 21.11.020, and 21.11.050 shall apply to lawfully erected nonconforming single- and two-family structures. Other sections of this chapter shall not apply to lawfully erected single- and two-family structures.

B. Expansions and Enlargements

Any lawfully erected nonconforming single- or two-family structure may be expanded or enlarged, as long as the nonconformity is not increased.

C. Damage or Destruction

Any lawfully erected nonconforming single- or two-family structure that is damaged or destroyed may be rebuilt in the same location and to the same dimensions so that the nonconformity of the damaged or destroyed structure is not increased, but the structure may be rebuilt in a manner that moves towards conformity.

21.11.030 NONCONFORMING USES OF LAND OR STRUCTURES

A. Limitations on Continuation of Nonconforming Uses of Land or Structures

Nonconforming uses of land or structures may continue, subject to the general provisions of section 21.11.010 and the following limitations, or as provided in C below:

1. No nonconforming use of land shall be enlarged or increased or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of the regulations that make the use nonconforming. Any nonconforming use on a lot or portion thereof may be altered to decrease its nonconformity.
2. No nonconforming use of land shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of the regulations that make the use nonconforming.
3. 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.
4. Any nonconforming use may be extended throughout any parts of a building that were manifestly arranged or designed for such use at the time of adoption or amendment of the applicable regulations, but no such use shall be extended to occupy any land outside such buildings.
5. No additional structure not conforming to the requirements of this title shall be erected in connection with the nonconforming use of land or structure.

B. Change of Use

1. If no structural alterations are made, any nonconforming use may be changed to another nonconforming use provided that the zoning board of examiners and appeals, either by general rule or by making findings in the specific case, shall

1 find that the proposed use is more appropriate to the district than the existing
 2 nonconforming use. In permitting such change, the zoning board of examiners
 3 and appeals may require appropriate conditions and safeguards.

- 4 2. If a nonconforming use is superseded by a permitted use, the permitted use shall
 5 thereafter conform to the use regulations for the district, and the nonconforming
 6 use may not thereafter be resumed.

7 **C. Alteration, Expansion, or Intensification of Nonconforming Use**

8 Any person wishing to expand, alter, or intensify a nonconforming use, or wishing to
 9 replicate a nonconforming use that has been damaged or destroyed to an extent of more
 10 than 50 percent of the replacement cost at the time of destruction (per subsection F.
 11 below), shall choose one of the two application and approval methods in subsection 2.
 12 below.

13 **1. Limits on Expansion, Alteration, or Intensification of Nonconforming Uses**

14 a. The use may not be enlarged by more than 25% in a non-residential
 15 district, or by more than 15% in a residential district, when compared to
 16 the floor area or site area coverage of the nonconforming use at the time
 17 it became nonconforming. The use or structure may not be enlarged
 18 beyond the limitations of maximum lot coverage in the district.

19 b. The lot on which a nonconforming use is situated may not be enlarged
 20 through land purchase or replatting for purposes of creating a single
 21 larger lot on which a nonconforming use shall be situated.

22 **2. Application and Approval Methods**

23 a. **Administrative Approval**

24 i. An application for administrative approval to increase or rebuild a
 25 nonconforming use shall contain the information specified in the
 26 title 21 user's guide, and shall be submitted to the director.

27 ii. Notice of the application shall be published, mailed, and posted
 28 in accordance with section 21.03.020H.

29 iii. There shall be a 30 day comment period, starting from the date
 30 of notice, before the director acts on the application as provided
 31 in subsection a.iv. below.

32 iv. The director shall review the application and act to approve,
 33 approve with conditions, or deny the application based on the
 34 approval criteria of subsection C.3. below. Findings of the
 35 director shall be in writing. The director may impose limitations
 36 or conditions as may be necessary to meet the approval criteria
 37 or to reduce or minimize any potential adverse impact on other
 38 property in the area.

39 v. Appeals of the director's decision may be made to the zoning
 40 board of examiners and appeals, pursuant to section
 41 21.03.200B.

- 1 vi. If the application is approved or approved with conditions, the
2 use shall continue to be a nonconforming use and be subject to
3 the provisions of this chapter.
- 4 b. **Conditional Use Approval**
- 5 i. An application for conditional use approval to increase or rebuild
6 a nonconforming use shall contain the information specified in
7 the title 21 user's guide, and shall be submitted to the director.
- 8 ii. The conditional use application shall be processed in
9 accordance with the procedures of section 21.03.070C., except
10 that a community meeting is not required, and the planning and
11 zoning commission shall base their decision on the approval
12 criteria of subsection 3. below. The commission may impose
13 limitations or conditions as may be necessary to meet the
14 approval criteria or to reduce or minimize any potential adverse
15 impact on other property in the area.
- 16 iii. If the application is approved or approved with conditions, the
17 use shall continue to be a nonconforming use and be subject to
18 the provisions of this chapter.
- 19 3. **Approval Criteria**
- 20 a. The nonconforming use is or can be made compatible with uses allowed
21 on adjacent properties, in terms of site design and operating
22 characteristics (such as lighting, noise, odor, dust, and other external
23 impacts);
- 24 b. The nonconforming use will not limit, impair, or impede the normal and
25 orderly development and improvement of surrounding property for uses
26 permitted on those properties;
- 27 c. Adequate utilities, access roads, drainage, and other necessary facilities
28 have been or will be provided;
- 29 d. Adequate measures have been or will be taken to provide ingress and
30 egress that are designed to minimize traffic congestion on the streets;
31 and
- 32 e. The nonconforming use will not result in the creation of additional
33 nonconformities, or the need for any variances or minor modifications.
- 34 D. **Abandonment or Cessation of Use**
- 35 1. A nonconforming use shall be presumed abandoned and its nonconforming
36 rights extinguished where any one of the following has occurred:
- 37 a. The owner has indicated, in writing or by public statement, an intent to
38 abandon the use.
- 39 b. A conforming or less intensive nonconforming use has replaced the
40 nonconforming use.

- 1 c. The building or structure that houses the nonconforming use has been
2 removed.
- 3 d. The owner has physically changed the building or structure, or its
4 permanent equipment, in a manner that clearly indicates a change in use
5 or activity to something other than the nonconforming use.
- 6 e. The use has been discontinued, vacant, or inactive for a continuous
7 period of at least one year.
- 8 f. Public utility service has been shut off for at least one year.
- 9 2. Once abandoned, the prior legal nonconforming status of the use shall be lost
10 and any subsequent use of the property shall comply with all applicable
11 provisions of this title, unless the nonconforming use is reestablished through the
12 process described in E. below.

13 E. **Overcoming Presumption of Abandonment**

14 A presumption of abandonment based on evidence of abandonment, as provided in D.
15 above, may be rebutted upon a showing of all of the following, to the satisfaction of the
16 zoning board of examiners and appeals, that the owner:

- 17 1. Has been maintaining the land and structure in accordance with all applicable
18 regulations, including applicable building and fire codes, and did not intend to
19 discontinue the use;
- 20 2. Has been maintaining all applicable permits and licenses;
- 21 3. Has filed all applicable tax documents; and
- 22 4. In addition, the owner of the nonconforming use shall be required to
23 demonstrate, to the satisfaction of the zoning board of examiners and appeals,
24 that during the period of inactivity or discontinuance, the owner:
- 25 a. Has been actively and continuously marketing the land or structure for
26 sale or lease; or
- 27 b. Has been engaged in other activities that would affirmatively prove there
28 was no intent to abandon.

29 F. **Damage or Destruction**

30 Within one year of the damage or destruction, an administrative approval or a conditional
31 use permit may be requested to replicate a nonconforming use that is damaged or
32 destroyed to an extent of more than 50 percent of the replacement cost at time of
33 destruction. The decision-making body may approve the application upon finding that all
34 of the approval criteria of C.3. above have been met. An administrative or conditional
35 use approval shall expire if start of construction has not begun within one year of the
36 approval. For the purposes of this section, "replicate" shall mean to rebuild to the same
37 dimensions and in the same location as the damaged or destroyed use.

1 **21.11.040 NONCONFORMING STRUCTURES**

2 **A. Continuation of Nonconforming Structures Generally**

3 Nonconforming structures may continue, subject to the general provisions of section
4 21.11.010 and the following limitations:

- 5 1. No nonconforming structure may be enlarged or altered in a way that increases
6 its nonconformity. Any structure or portion thereof may be altered to decrease its
7 nonconformity, or may be altered or enlarged if the alteration does not intensify
8 the nonconformity. This subsection shall not be construed to allow the expansion
9 of a nonconforming use of structure, which is governed by section 21.11.030
10 above.
- 11 2. Should a nonconforming structure be moved for any reason for any distance
12 whatever, it shall thereafter conform to the regulations for the district in which it is
13 located after it is moved.

14 **B. Overheight Buildings**

- 15 1. If a lawful building erected prior to [date of passage] does not comply with the
16 requirements of this title with regard to height, such building shall be deemed
17 conforming with regard to height.
- 18 2. Where a lawful structure, existing on [date of passage], is engineered and
19 constructed for enlargement by the addition of one or more stories, such
20 structure may be enlarged within the full plan dimensions of the existing structure
21 by the addition of not more than two stories.

22 **C. Buildings Exceeding Maximum Setback**

23 If a lawful building erected prior to [date of passage] does not comply with the
24 requirements of this title with regard to maximum structure setbacks, such building shall
25 be deemed conforming with regard to setbacks.

26 **D. Damage or Destruction**

27 A person wishing to replicate a nonconforming structure that has been damaged or
28 destroyed to an extent of more than 50 percent of the replacement cost at the time of
29 destruction, shall choose one of the two application and approval methods in subsection
30 D.1. below. The application must be made within one year of the damage or destruction.

31 **1. Application and Approval Methods**

32 **a. Administrative Approval**

- 33 i. An application for administrative approval to rebuild a
34 nonconforming structure shall contain the information specified in
35 the title 21 user's guide and shall be submitted to the director.
- 36 ii. Notice of the application shall be published, mailed, and posted
37 in accordance with section 21.03.020H.
- 38 iii. There shall be a 30 day comment period, starting from the date
39 of notice, before the director acts on the application as provided
40 in subsection a.iv. below.

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- iv. The director shall review the application and act to approve, approve with conditions, or deny the application based on the approval criteria of subsection D.2. below. Findings of the director shall be in writing. The director may impose limitations or conditions as may be necessary to meet the approval criteria or to reduce or minimize any potential adverse impact on other property in the area.
 - v. Appeals of the director's decision may be made to the zoning board of examiners and appeals, pursuant to section 21.03.200B.
 - vi. If the application is approved or approved with conditions, the structure shall continue to be a nonconforming structure and be subject to the provisions of this chapter.
- b. Conditional Use Approval**
- i. An application for conditional use approval shall contain the information specified in the title 21 user's guide, and shall be submitted to the director.
 - ii. The conditional use application shall be processed in accordance with the procedures of section 21.03.070C., except that a community meeting is not required, and the planning and zoning commission shall base their decision on the approval criteria of subsection D.2. below. The commission may impose limitations or conditions as may be necessary to meet the approval criteria or to reduce or minimize any potential adverse impact on other property in the area.
 - iii. An approved replication conditional use shall expire if start of construction has not begun within one year of the planning and zoning commission's approval. For the purposes of this section, "replicate" shall mean to rebuild to the same dimensions and in the same location as the damaged or destroyed structure, but this shall not prevent moving towards conformity.
 - iv. A nonconforming structure that is approved to be rebuilt per this conditional use process shall henceforth be considered a conditional use and shall no longer be subject to the provisions of this chapter.
- 2. Approval Criteria**
- a. The nonconforming structure is or can be made compatible with uses allowed on adjacent properties, in terms of site design and operating characteristics (such as lighting, noise, odor, dust, and other external impacts);
 - b. The nonconforming structure will not limit, impair, or impede the normal and orderly development and improvement of surrounding property for uses permitted on those properties;

- 1 c. The parking, landscaping, and lighting either conform to the
2 requirements of this title, or are moving towards conformity to the
3 maximum extent feasible;
- 4 d. Adequate utilities, access roads, drainage, and other necessary facilities
5 have been or will be provided; and
- 6 e. Adequate measures have been or will be taken to provide ingress and
7 egress that are designed to minimize traffic congestion on the streets.

8 **E. Mobile Homes**

9 Notwithstanding subsection A. above or section 21.11.020, mobile homes may be
10 repaired or moved within the lot in compliance with setback and yard requirements if the
11 mobile home occupied the lot at the time of the adoption of applicable regulations.

12 **F. Legalization of Nonconforming Dimensional Setback Encroachments**

13 **1. Generally**

14 Existing structures with dimensional encroachments into required setbacks that
15 were constructed prior to January 1, 1986, may continue in existence provided
16 the following requirements are met:

- 17 a. An application for the registration of nonconforming encroachment is
18 submitted to the department; and
- 19 b. The encroachment is determined not to be a life safety hazard by the
20 director.

21 **2. Procedures for Registration**

22 a. Application for the registration of nonconforming encroachment shall be
23 submitted to the department, on a form provided by the department. The
24 application shall require an as-built drawn by a land surveyor registered
25 in the State of Alaska, which shows all structures on the lot at the date of
26 application. The application shall also require information supporting the
27 assertion that the structure and encroachments were constructed prior to
28 January 1, 1986. The director may require the petitioner to provide
29 additional information to support this application.

30 b. Within 30 days of receipt of all requested information, and upon an
31 adequate showing that the requirements stated in subsection
32 21.11.030C.2.a. above are met, the director shall issue or deny a
33 certificate permitting the continued use and existence of the
34 encroachment. The director may impose such conditions on the
35 certificate as he/she may determine are appropriate to protect the
36 general welfare. The certificate shall note the size and characteristic of
37 the setback encroachment and the structure. A copy of the required as-
38 built shall be attached thereto.

39 **3. Operation**

40 Once registered, the encroachment shall enjoy all the protections and privileges
41 afforded to a nonconforming structure under the provisions of this chapter.

1 **4. Appeal**

2 Any aggrieved person may appeal the grant or denial of a certificate to the
3 Zoning Board of Examiners and Appeals.

4 **G. Preexisting Tower and Antennas**

5 Except for abandoned towers and/or antennas, preexisting tower structures shall be
6 allowed to continue their usage as they presently exist, or may be replaced with a new
7 tower structure or antenna of like construction and height. Building permits to rebuild the
8 facility shall be obtained within 180 days from the date the facility is damaged or
9 destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be
10 deemed abandoned. New construction other than routine maintenance on a preexisting
11 tower structure shall comply with the requirements of this title.

12 **21.11.050 NONCONFORMING LOTS OF RECORD**

13 **A. Dwellings Allowed¹**

14 In any zoning district in which dwellings are permitted, notwithstanding limitations
15 imposed by other provisions of this title, dwellings and customary accessory buildings
16 may be erected on any lot, provided the underlying zoning district and dimensional and
17 design standards, such as setbacks, parking, open space, landscaping, etc. can be met,
18 that is of record at the effective date of the original adoption or amendment of applicable
19 regulations, except as restricted in subsection B. below. This provision shall apply even if
20 the lot fails to meet the requirements for the area or width, or both, that are applicable in
21 the district. Furthermore, setback and lot coverage requirements applicable to
22 nonconforming lots of record shall be those of the zone with the largest lot area
23 requirement within which the lot area would be conforming. A lot that fails to be
24 conforming in any zone shall maintain a front setback of 20 feet, side setbacks of five
25 feet, a rear setback of five feet, and maximum lot coverage of 50 percent.

26 **B. Undivided Parcels**

27 If two or more contiguous lots in single ownership, either of which contains less than the
28 minimum lot area of the zoning district in which it is located, are of record on or after
29 November 27, 1990, and either is nonconforming by virtue of this title or any amendment
30 thereto, the lands involved shall be considered to be an undivided parcel for the purpose
31 of this title, and no portion of such parcel shall be sold or used that does not contain a lot
32 area and lot width equal to or greater than the minimum lot area and width required in the
33 zoning district it is in.

34 This provision shall not apply to those lots legally created as part of a townhouse
35 development, a cluster housing development, a zero lot line development, or a planned
36 unit development,

37 **C. Legalization of Lots Created Prior to September 16, 1975²**

38 1. Lots existing prior to September 16, 1975 may continue in existence provided the
39 following requirements are met:

40 a. An application for the registration of nonconforming lot is submitted to the
41 department; and

42 b. The lot is determined to be sufficient in size to allow construction of a
43 structure and comply with associated district-specific, dimensional, and

- 1 development and design standards such as setbacks, parking,
2 landscaping, etc.
- 3 2. The application shall be on a form provided by the department, and shall be
4 accompanied by an as-built drawn by a land surveyor registered in the state of
5 Alaska, which shows the lot boundaries. The department may require additional
6 information to support the application.
- 7 3. Within 30 days of receipt of all requested information and upon an adequate
8 showing that the requirements stated in subsection 1. above are met, the director
9 shall issue or deny a certificate for the lot. The director may impose such
10 conditions on the certificate as he or she determines appropriate to protect the
11 general welfare. A copy of the required as-built shall be attached to the
12 certificate.
- 13 4. Once registered, the lot shall enjoy all the protections and privileges afforded to a
14 nonconforming lot under the provisions of this chapter.
- 15 5. Any aggrieved person may appeal the grant or denial of a certificate to the
16 zoning board of examiners and appeals within 30 days of the director's
17 determination.
- 18 6. Nothing in this section shall preclude relief for nonconforming lots by means of a
19 variance.
- 20 7. Nothing in this section shall exempt any lots from the provisions of subsection B.
21 above.
- 22 8. The department shall publish the registration of a nonconforming lot including the
23 street address and legal description of the property in a newspaper of general
24 circulation in the municipality within seven days of the issuance of the certificate.

25 **21.11.060 NONCONFORMING CHARACTERISTICS OF USE**

26 **A. Nonconforming Characteristics of Use, Lot, or Structure**

27 Except as provided in this section, if the characteristics of a use, lot, or structure such as
28 off-street parking, off-street loading, lighting, landscaping, or other features regulated by
29 this title in relation to specified uses of land, water areas, structures, or premises are not
30 in accord with the requirements of this title, no change shall be made in such
31 characteristics unless the change is in the direction of conformity to the requirements of
32 this title.

33 **B. Bringing Nonconforming Characteristics into Compliance**

34 **1. Applicability**

35 Development projects that include any construction or reconstruction of a use or
36 structure that is not solely and entirely interior to the structure, shall conform to
37 the requirements of this section. For the purposes of determining "total project
38 costs" in this section, those project costs do not include the costs for construction
39 or reconstruction that is solely and entirely interior to the structure.

1 **2. Standard**

2 An applicant for a building or land use permit in a multi-family, commercial,
3 mixed-use, or industrial zoning district that involves a development project
4 costing more than 2.5 percent of the value of the structure, shall be required to
5 spend at least 10 percent of the total project costs on bringing the following
6 nonconformities, listed in priority order, towards compliance with all applicable
7 provisions of this title. The director, in consultation with the applicant, shall
8 determine the extent to which each of the listed characteristics shall be
9 addressed, within the expenditure requirements noted herein.

10 **a.** Landscaping;

11 **b.** Lighting;

12 **c.** Parking;

13 **d.** Refuse containers;

14 **e.** Driveway and parking area surfacing;

15 **f.** Screening walls or fences (for parking areas or storage areas);

16 **g.** Screening of mechanical equipment.

17 **3.** If the development project is a Large Commercial Establishment, as defined in
18 section 21.07.120, then the applicant shall spend an additional 10 percent of the
19 total project costs on bringing the structure into compliance with the design
20 standards of section 21.07.120. If the structure already complies with section
21 21.07.120, then this subsection 2. shall not apply.

22 **4.** The nonconforming characteristics of use shall be brought towards compliance
23 with all applicable provisions of this title prior to the issuance of the building or
24 land use permit or shall be included in the work to be accomplished under the
25 permit.

26 **21.11.070 NONCONFORMING SIGNS³**

27 **A. Effective Date**

28 The effective date of this section 21.11.070 is October 1, 2003.

29 **B. Amortization Provisions**

30 **1. Amortization of Permanent Signs**

31 Any lawful permanent sign built prior to the adoption of this title that does not
32 comply with the maximum height, maximum area, or the number of signs
33 permitted as set forth in this title shall be removed or altered to comply with the
34 requirements of this title within ten years from the effective date of this section.
35 The maximum area requirements shall apply to the total area of all signs on the
36 property.

37 **2. Amortization of Illuminated Signs**

38 Any illuminated sign that does not meet the requirements of subsection
39 21.10.090A., with the exception of subsection 21.10.090A.3.a., shall be altered

1 to comply with the requirements of this title by May 31, 2008. All LED signs shall
2 comply with the luminance standards of subsection 21.10.090A.3.d. by
3 November 30, 2005.

4 **3. Amortization of Pole Signs**

5 Any sign where the structural steel supports are visible and that does not meet
6 the requirements of 21.10.060C.2. or 21.10.070C.2., shall be altered to comply
7 with the requirements of this title within ten years from the effective date of this
8 section.

9 **4. Amortization of Animated Signs**

10 Any sign that contains non-complying animation, changeable copy, or flashing or
11 moving parts shall be altered to comply with the requirements of this title within
12 180 days from the effective date of this section.

13 **5. Amortization of Converted Signs**

14 Any non-conforming sign that was originally portable or temporary, was
15 subsequently affixed to the ground or a building, and does not comply with the
16 height, area, or the number of signs permitted requirements of this title shall be
17 removed, altered, reconstructed, or reinstalled to be in compliance with this title
18 within three years from the effective date of this section.

19 **6. Amortization of Roof Signs**

20 Any roof sign shall be removed within ten years from the effective date of this
21 section.

22 **C. Termination**

23 Except as provided in subsection 21.10.090D, a nonconforming sign shall immediately
24 lose its legal nonconforming status, and therefore shall be brought into conformance with
25 this title or removed, when any of the following occur:

- 26 1. The size or shape of the sign is changed.
- 27 2. The location of the sign is changed.
- 28 3. The nonconforming sign is accessory to a nonconforming use that has lost its
29 nonconforming status.

30 **D. Maintenance of Nonconforming Signs**

31 Nonconforming signs shall continue to be maintained in safe condition pursuant to the
32 building regulations of the municipality until such sign is required to be removed as set
33 forth in this section.

34 **E. Reconstruction of Damaged Sign**

35 If a sign and/or its support are damaged to the extent where the repair costs exceed 50
36 percent of the replacement cost of the sign, the sign shall be removed or brought into
37 compliance. If the repair costs do not exceed 50 percent of the replacement cost of the
38 sign, the director may authorize the sign to be repaired, provided all repair work is
39 completed within 90 days, subject to the director extending the time for good cause, of
40 the date the director determines the damage requires replacement or permits repair. In

1 no event may a sign be maintained in an unsafe condition during the process of this
2 determination or the period necessary for repairs.

3 **F. Historic Signs**

4 The urban design commission may grant exceptions to these standards whenever a sign
5 or property has been designated a historic sign pursuant to the guidelines and criteria
6 established and adopted by the urban design commission.

7 **G. Extension of Time to Comply**

8 The dates established in this section for a sign to be brought into compliance with the
9 requirements of these regulations may be appealed to the zoning board of examiners and
10 appeals by the owner or lessee of the nonconforming sign pursuant to section
11 21.03.200.B., *Appeals to Zoning Board of Examiners and Appeals*. In evaluating the
12 extension of time for a nonconforming use, the zoning board of examiners and appeals
13 shall consider the following factors to determine whether the owner of the sign has had
14 reasonable amount of time to recoup his or her investment:

- 15 1. The value of the sign at the time of construction and the length of time the sign
16 has been in place;
- 17 2. The life expectancy of the original investment in the sign and its salvage value, if
18 any;
- 19 3. The amount of depreciation and/or amortization of the sign already claimed for
20 tax or accounting purposes;
- 21 4. The length of the current tenant lease or expected occupancy compared to the
22 date the sign is to be brought into compliance;
- 23 5. The extent to which the sign is not in compliance with the requirements of this
24 chapter; and
- 25 6. The degree to which the board determines that the sign is consistent with the
26 purposes of this chapter.

27

28

¹ PRD#2: Changes to this subsection reflect AO 2005-67(s).

² PDR#2 NOTE: This addition generally reflects AO 2005-67(s).

³ NOTE: This section is carried forward with no changes from the *Proposed Sign Standards for the Municipality of Anchorage* document adopted by the Assembly on August 19, 2003. We have corrected a few misspellings, emphasized the effective date (which will be different than for the rest of the title), consolidated the amortization provisions, and made some minor changes to terminology for clarification.