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1 **CHAPTER 21.11: NONCONFORMITIES¹**

2 **21.11.010 GENERAL PROVISIONS²**

3 **A. Purpose**

4 The purpose of this chapter is to regulate and limit the development and continued
5 existence of legal uses, structures, lots, signs, and use characteristics such as parking
6 and landscaping, established prior to the effective date of this Title, or the effective
7 date of future amendments to this Title, that no longer conform to the requirements of
8 this Title. All such situations are collectively referred to in this chapter as
9 “nonconformities.” While nonconformities may continue, the provisions of this chapter
10 are designed to curtail substantial investment in nonconformities to bring about their
11 eventual elimination in order to preserve the integrity of this Title and the character of
12 the Municipality.

13 **B. Authority to Continue**

14 **1. Generally**

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

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

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

28 **3. Conditional Uses**

29 **a.** A use existing prior to the effective date of this Title that is permitted
30 as a conditional use in the district in which it is located under this
31 Title, but which lacks an approved conditional use permit, shall not be
32 deemed a nonconforming use, but rather shall be considered to exist
33 as a conditional use. The scope of such a conditional use shall be
34 governed by the provisions of this chapter unless modified by the
35 Planning and Zoning Commission in accordance with Section
36 21.03.070, *Conditional Uses*.

37 **b.** A conditional use existing prior to the effective date of this Title that is
38 permitted in its entirety as a principal use in the district in which it is
39 located under this Title shall not be deemed a nonconforming use.

¹ NOTE: This chapter consolidates all provisions on nonconforming uses, structures, lots, and signs. The general intent is to continue the City’s existing policies toward nonconforming uses, structures, lots, and signs, which are set forth in Chapter 21.55 of the current code. We have tightened the language throughout the chapter (e.g., the new purpose statement is more succinct than the current 21.55.010, *Intent*.)

² NOTE: The purpose of this section is to eliminate repetition and reduce the length of the chapter by consolidating the provisions that apply to all types of nonconformities (e.g., authority to continue).

1 Such use shall be deemed a permitted principal use and the
2 conditional use permit shall be null and void.

3 **4. Nonconforming Characteristics of Use, Lot, or Structure**

4 If the characteristics of a use, lot, or structure such as off-street parking, off-
5 street loading, lighting, landscaping, or other features regulated by this Title in
6 relation to specified uses of land, water areas, structures, or premises are not
7 in accord with the requirements of this Title, no change shall be made in such
8 characteristics that increase the amount of nonconformity with such
9 requirements. Change shall be permitted in the direction of conformity to the
10 requirements of this Title.

11 **C. Determination of Nonconformity Status**

12 In all cases, the burden of establishing the existence of a legal nonconformity shall be
13 solely upon the owner of the nonconformity, not the Municipality. Verification of
14 nonconforming status may be established through the process set forth in Section
15 21.11.070, *Verification of Nonconforming Status*.

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

17 If a structure, use of land, use of structure, or characteristic of use does not comply
18 with the requirements of this Title solely as a result of an acquisition of land or other
19 action by a government agency for a public purpose, then such structure, use of land,
20 use of structure, or characteristic of use on land not acquired by the government shall
21 be deemed conforming. For purposes of this section the word "land" means fee
22 simple interest in real estate.

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

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

27 **F. Damage or Destruction**

28 If a nonconformity is damaged or destroyed by any means to an extent greater than
29 50 percent of its replacement cost at the time of damage or destruction, then such
30 nonconformity shall not be re-established unless it is made to conform to the
31 requirements of this Title.

32 **G. Maintenance and Minor Repair**

33 Minor repairs or maintenance of nonconformities that are required to keep structures
34 or sites in a safe condition are permitted, provided that the minor repair or
35 maintenance does not increase the extent of nonconformity. For purposes of this
36 section, "maintenance or minor repair" shall mean:

- 37 1. Repairs that are necessary to maintain and to correct any damage or
38 deterioration to the structural soundness or interior appearance of a building
39 or structure without expanding or altering the building or structure;

- 1 2. Maintenance of land areas to protect against health and environmental
2 hazards and promote the safety of surrounding land uses;

- 3 3. Repairs that are required to remedy unsafe conditions that cause a threat to
4 public safety; and

- 5 4. Repairs and maintenance of nonconforming signs as set forth in Section
6 21.11.060, *Nonconforming Signs*.

7 **21.11.020 NONCONFORMING USES OF LAND OR STRUCTURES**

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

9 Nonconforming uses of land or structures may continue, subject to the general
10 provisions of Section 21.11.010 and the following limitations:

- 11 1. No nonconforming use of land shall be enlarged or increased or extended to
12 occupy a greater area of land than was occupied at the effective date of
13 adoption or amendment of the regulations that make the use nonconforming.
14 Any nonconforming use on a lot or portion thereof may be altered to decrease
15 its nonconformity.

- 16 2. No nonconforming use of land shall be moved in whole or in part to any
17 portion of the lot or parcel other than that occupied by such use at the
18 effective date of adoption or amendment of the regulations that make the use
19 nonconforming.

- 20 3. No existing structure devoted to a use not permitted by this Title in the district
21 in which it is located shall be enlarged, extended, constructed, reconstructed,
22 moved, or structurally altered except in changing the use of the structure to a
23 use permitted in the district in which it is located.

- 24 4. Any nonconforming use may be extended throughout any parts of a building
25 that were manifestly arranged or designed for such use at the time of
26 adoption or amendment of the applicable regulations, but no such use shall
27 be extended to occupy any land outside such buildings.

- 28 5. No additional structure not conforming to the requirements of this Title shall
29 be erected in connection with the nonconforming use of land or structure.

30 **B. Change of Use**

- 31 1. If no structural alterations are made, any nonconforming use may be changed to
32 another nonconforming use provided that the Zoning Board of Examiners and
33 Appeals, either by general rule or by making findings in the specific case, shall
34 find that the proposed use is more appropriate to the district than the existing
35 nonconforming use. In permitting such change, the Zoning Board of Examiners
36 and Appeals may require appropriate conditions and safeguards.

- 37 2. Any structure or premises, in or on which a nonconforming use is superseded by
38 a permitted use, shall thereafter conform to the use regulations for the district,
39 and the nonconforming use may not thereafter be resumed.

1 **C. Abandonment or Cessation of Use**

2 1. If a nonconforming use ceases for any reason, except when government
3 action impedes access to the premises, on a lot or any portion of a lot for a
4 period of more than 12 consecutive months, the nonconforming use shall be
5 considered abandoned. Once abandoned, the prior legal nonconforming
6 status of the use shall be lost and reestablishment of the use shall be
7 prohibited. Any subsequent use of the property shall comply with all
8 applicable provisions of this Title.

9 2. Where nonconforming use status applies to a structure and premises,
10 removal, or destruction of the structure shall eliminate the nonconforming
11 status of the land. The term “destruction,” for the purpose of this subsection,
12 is defined as damage to an extent of more than 50 percent of the replacement
13 cost at time of destruction.

14 **21.11.030 NONCONFORMING STRUCTURES**

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

16 Nonconforming structures may continue, subject to the general provisions of Section
17 21.11.010 and the following limitations:

18 1. No nonconforming structure may be enlarged or altered in a way that
19 increases its nonconformity, but any structure or portion thereof may be
20 altered to decrease its nonconformity. This subsection shall not be construed
21 to allow the expansion of a nonconforming use of structure.

22 2. Should a nonconforming structure be moved for any reason for any distance
23 whatever, it shall thereafter conform to the regulations for the district in which
24 it is located after it is moved.

25 3. Any structure in which a nonconforming use is superseded by a permitted use
26 shall thereafter conform to the use regulations for the district, and the
27 nonconforming use may not thereafter be resumed.

28 **B. Mobile Homes**

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

32 **C. Legalization of Nonconforming Dimensional Yard Setback Encroachments³**

33 1. **Generally**
34 Existing structures with dimensional encroachments into required yards that
35 were constructed prior to January 1, 1986, may continue in existence
36 provided the following requirements are met:

37 a. An application for the registration of nonconforming encroachment is
38 submitted to the Planning Department; and

³ NOTE: Carried forward from the current 21.55.040.D. with no major revisions.

1 b. The encroachment is determined not to be a life safety hazard by the
2 Director.

3 **2. Procedures for Registration**

4 a. Application for the registration of nonconforming encroachment shall
5 be submitted to the Planning Department, on a form provided by the
6 Department. The application shall require an as-built drawn by a land
7 surveyor registered in the State of Alaska, which shows all structures
8 on the lot at the date of application. The application shall also require
9 information supporting the assertion that the structure and
10 encroachments were constructed prior to January 1, 1986. The
11 Director may require the petitioner to provide additional information to
12 support this application.

13 b. Within 30 days of receipt of all requested information, and upon an
14 adequate showing that the requirements stated in subsection
15 21.11.030.C.2.a. above are met, the Director shall issue or deny a
16 certificate permitting the continued use and existence of the
17 encroachment. The Director may impose such conditions on the
18 certificate as he/she may determine are appropriate to protect the
19 general welfare. The certificate shall note the size and characteristic
20 of the yard encroachment and the structure. A copy of the required
21 as-built shall be attached thereto.

22 **3. Operation**

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

26 **4. Appeal**

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

29 **21.11.040 NONCONFORMING LOTS OF RECORD⁴**

30 **A. One Single-Family Dwelling Allowed**

31 In any residential district, notwithstanding limitations imposed by other provisions of
32 this Title, a single-family dwelling and customary accessory buildings may be erected
33 on any lot that is of record at the effective date of the original adoption or amendment
34 of applicable regulations. This provision shall apply even if the lot fails to meet the
35 requirements for the area or width, or both, that are applicable in the district.
36 Furthermore, setback and lot coverage requirements applicable to nonconforming lots
37 of record shall be those of the zone with the largest lot area requirement within which
38 the lot would be conforming. A lot that fails to be conforming in any zone shall
39 maintain a front yard of 20 feet, side yards of five feet, a rear yard of five feet, and
40 maximum lot coverage of 50 percent.

⁴ NOTE: Carried forward from the current 21.55.020 with no major revisions. The provision has been limited to residential districts.

1 **21.11.050 NONCONFORMING CHARACTERISTICS OF USE**

2 An applicant for a land use permit in a multi-family, commercial, or industrial zoning district
3 shall be required to address the following nonconformities under this section prior to approval
4 of the permit, unless the Director determines in writing that such nonconformities have no
5 significant adverse impact on surrounding properties:

- 6 **A.** Screening of mechanical equipment;
- 7 **B.** Screening walls or fences (for parking areas or storage areas);
- 8 **C.** Driveway surfacing;
- 9 **D.** Landscaping;
- 10 **E.** Parking;
- 11 **F.** Lighting; and
- 12 **G.** [RESERVED]

13 These nonconforming characteristics of use shall be brought into compliance with all
14 applicable provisions of this Title prior to the issuance of the land use permit or shall be
15 included in the work to be accomplished under the permit.

16 **21.11.060 NONCONFORMING SIGNS⁵**

17 **A. Effective Date**

18 The effective date of this Section 21.11.060 is October 1, 2003.

19 **B. Amortization Provisions**

20 **1. Amortization of Permanent Signs**

21 Any lawful permanent sign built prior to the adoption of this Title that does not
22 comply with the maximum height, maximum area, or the number of signs
23 permitted as set forth in this Title shall be removed or altered to comply with
24 the requirements of this Title within ten years from the effective date of this
25 section, which is October 1, 2013. The maximum area requirements shall
26 apply to the total area of all signs on the property.

27 **2. Amortization of Illuminated Signs**

28 Any illuminated sign that does not meet the requirements of subsection
29 21.10.090.A. shall be altered to comply with the requirements of this Title
30 within three years from the effective date of this section, which is October 1,
31 2006.

32 **3. Amortization of Pole Signs**

33 Any sign where the structural steel supports are visible and that does not
34 meet the requirements of 21.10.060.C.2. or 21.10.070.C.3., shall be altered to

⁵ 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.

1 comply with the requirements of this Title within three years from the effective
2 date of this section, which is October 1, 2006.

3 **4. Amortization of Animated Signs**

4 Any sign that contains non-complying animation, changeable copy, or flashing
5 or moving parts shall be altered to comply with the requirements of this Title
6 within 180 days from the effective date of this section, which is March 29,
7 2004.

8 **5. Amortization of Converted Signs**

9 Any non-conforming sign that was originally portable or temporary, was
10 subsequently affixed to the ground or a building, and does not comply with the
11 height, area, or the number of signs permitted requirements of this Title shall
12 be removed, altered, reconstructed, or reinstalled to be in compliance with
13 this Title within three years from the effective date of this section, which is
14 October 1, 2006.

15 **C. Termination**

16 A nonconforming sign shall immediately lose its legal nonconforming status, and
17 therefore shall be brought into conformance with this Title or removed, when any of
18 the following occur:

- 19 1. The size or shape of the sign is changed.
- 20 2. The sign structure is altered. Alteration does not include repairs and/or
21 maintenance.
- 22 3. The nonconforming sign is accessory to a nonconforming use that has lost its
23 nonconforming status.

24 **D. Maintenance of Nonconforming Signs**

25 Nonconforming signs shall continue to be maintained in safe condition pursuant to the
26 building regulations of the Municipality until such sign is required to be removed as set
27 forth in this section.

28 **E. Alteration, Relocation or Replacement of Nonconforming Signs**

29 A nonconforming sign shall not be structurally altered, relocated, or replaced unless it
30 is brought into compliance with the provisions of this section.

31 **F. Reconstruction of Damaged Sign**

32 If a sign and/or its support are damaged to the extent where the repair costs exceed
33 50 percent of the replacement cost of the sign, the sign shall be removed or brought
34 into compliance. If the repair costs do not exceed 50 percent of the replacement cost
35 of the sign, the Director may authorize the sign to be repaired, provided all repair work
36 is completed within 90 days, subject to the Director extending the time for good cause,
37 of the date the Director determines the damage requires replacement or permits
38 repair. In no event may a sign be maintained in an unsafe condition during the
39 process of this determination or the period necessary for repairs.

G. Historic Signs

The Urban Design Commission may grant exceptions to these standards whenever a sign or property has been designated a historic sign pursuant to the guidelines and criteria established and adopted by the Urban Design Commission.

H. Extension of Time to Comply

The dates established in this section for a sign to be brought into compliance with the requirements of these regulations may be appealed to the Zoning Board of Examiners and Appeals by the owner or lessee of the nonconforming sign pursuant to Section 21.03.210, *Appeals to Zoning Board of Examiners and Appeals*. In evaluating the extension of time for a nonconforming use, the Zoning Board of Examiners and Appeals shall consider the following factors to determine whether the owner of the sign has had reasonable amount of time to recoup his investment:

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

21.11.070 VERIFICATION OF NONCONFORMING STATUS⁶

A. Process

Owners of lots, uses, structures, or characteristics of use that do not conform to the requirements of this Title may request a Verification of Legal Nonconforming Status by filing an application with the Director in accordance with this section. Owners of signs that do not conform to the requirements of this Title shall comply with Section 21.11.060, *Nonconforming Signs*.

1. The application shall be accompanied by documentation that establishes the approximate date that the use, structure, or characteristic of use was established; proof that the use, structure, or characteristic of use was lawfully established at the time it became nonconforming; and proof that the use has not been discontinued or abandoned, except as provided in subsection B.

⁶ NOTE: This new section is proposed to be located as the new Section 21.03.180. It is placed here temporarily for review purposes, since it directly relates to the nonconformity provisions.

- 1 below. The Director shall be authorized to require additional information if
2 deemed necessary to permit an accurate determination.
- 3 2. Once issued, a Verification of Legal Nonconforming Status shall be recorded
4 with the District Recorder's Office clearly identifying the land by parcel
5 number and/or a legal description of the property. Such verifications shall run
6 with the land, and their status shall not be affected by changes of tenancy,
7 ownership, or management.
- 8 3. A Verification of Legal Nonconforming Status shall not be required for
9 continued daily operation or maintenance of a nonconforming lot, use,
10 structure, or characteristic of use.

11 **B. Exceptions**

12 Notwithstanding subsection 21.11.070.A. above:

- 13 1. Where the contention for nonconforming use is raised in a court in any action
14 brought to enforce this Title before an application for determination has been
15 filed under this section, this section shall not be applicable and the court shall
16 have jurisdiction to determine the issue.
- 17 2. Nothing in this section shall be construed to deprive the Director the right to
18 make a decision regarding a claimed nonconforming use or status as incident
19 to a valid pending application for a land use permit, or to reject an application
20 for decision as provided for by Chapter 21.03.