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CHAPTER 21.11: NONCONFORMITIES⁴¹

21.11.010 GENERAL PROVISIONS⁴²

A. Purpose

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

B. Authority to Continue

1. Generally

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

2. Exception Due to Variances or Minor Modifications

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

3. Conditional Uses

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

b. A conditional use existing prior to the effective date of this ~~Title~~title that is permitted in its entirety as a principal use in the district in which

⁴¹ ~~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.)~~

⁴² ~~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 it is located under this ~~Title~~ shall not be deemed a nonconforming
2 use. Such use shall be deemed a permitted principal use and the
3 conditional use permit shall be null and void.

4 ~~4. Nonconforming Characteristics of Use, Lot, or Structure~~

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

12 C. Determination of Nonconformity Status³

13 In all cases, the burden of establishing the existence of a legal nonconformity shall be
14 solely upon the owner of the nonconformity, not the Municipality. Verification of
15 nonconforming status may be established through the process set forth in
16 ~~Section~~ Section 21.11.07003.170, *Verification of Nonconforming Status*.

17 D. Nonconformities Created Through Government Action

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

24 E. Change of Ownership or Tenancy

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

28 F. Damage or Destruction

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

33 G. Maintenance and Minor Repair

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

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

- b. Maintenance of land areas to protect against health and environmental hazards and promote the safety of surrounding land uses;
 - c. Repairs that are required to remedy unsafe conditions that cause a threat to public safety; and
 - d. Repairs and maintenance of nonconforming signs as set forth in Section 21.11.060, Nonconforming Signs.
2. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

21.11.020 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:

- 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 find that the proposed use is more appropriate to the district than the

1 existing nonconforming use. In permitting such change, the Zoning Board of
2 Examiners and Appeals may require appropriate conditions and safeguards.

- 3 2. ~~Any structure or premises, in or on which~~If a nonconforming use is
4 superseded by a permitted use, the permitted use shall thereafter conform to
5 the use regulations for the district, and the nonconforming use may not
6 thereafter be resumed.

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

- 8 1. If a nonconforming use ceases for any reason, except when government
9 action impedes access to the premises, on a lot or any portion of a lot for a
10 period of more than 12 consecutive months, the nonconforming use shall be
11 considered abandoned. Once abandoned, the prior legal nonconforming
12 status of the use shall be lost and reestablishment of the use shall be
13 prohibited. Any subsequent use of the property shall comply with all
14 applicable provisions of this ~~Title~~title.
- 15 2. Where nonconforming use status applies to a structure and premises,
16 removal, or destruction of the structure shall eliminate the nonconforming
17 status of the land. The term “destruction,” for the purpose of this subsection,
18 is defined as damage to an extent of more than 50 percent of the replacement
19 cost at time of destruction.

20 **21.11.030 NONCONFORMING STRUCTURES**

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

22 Nonconforming structures may continue, subject to the general provisions of
23 ~~Section~~section 21.11.010 and the following limitations:

- 24 1. No nonconforming structure may be enlarged or altered in a way that
25 increases its nonconformity, but any structure or portion thereof may be
26 altered to decrease its nonconformity. This subsection shall not be construed
27 to allow the expansion of a nonconforming use of structure.
- 28 2. Should a nonconforming structure be moved for any reason for any distance
29 whatever, it shall thereafter conform to the regulations for the district in which
30 it is located after it is moved.

- 31 ~~3. Any structure in which a nonconforming use is superseded by a permitted use~~
32 ~~shall thereafter conform to the use regulations for the district, and the~~
33 ~~nonconforming use may not thereafter be resumed.~~

34 **B. Mobile Homes**

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

C. **Legalization of Nonconforming Dimensional Yard Setback Encroachments**³⁴

1. **Generally**

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

- a. An application for the registration of nonconforming encroachment is submitted to the ~~Planning~~ Department; and
- b. The encroachment is determined not to be a life safety hazard by the Director.

2. **Procedures for Registration**

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

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

3. **Operation**

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

4. **Appeal**

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

D. **Preexisting Tower and Antennas**⁵

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

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

1 **21.11.040 NONCONFORMING LOTS OF RECORD⁴⁸**

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

3 In any residential district, notwithstanding limitations imposed by other provisions of
4 this ~~Title~~title, a single-family dwelling and customary accessory buildings may be
5 erected on any lot that is of record at the effective date of the original adoption or
6 amendment of applicable regulations. This provision shall apply even if the lot fails to
7 meet the requirements for the area or width, or both, that are applicable in the district.
8 Furthermore, setback and lot coverage requirements applicable to nonconforming lots
9 of record shall be those of the zone with the largest lot area requirement within which
10 the lot ~~area~~ would be conforming. A lot that fails to be conforming in any zone shall
11 maintain a front yard of 20 feet, side yards of five feet, a rear yard of five feet, and
12 maximum lot coverage of 50 percent.

13 **B. Undivided Parcels⁷**

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

21 **21.11.050 NONCONFORMING CHARACTERISTICS OF USE**

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

26 ~~A. Screening of mechanical equipment;~~

27 ~~B. Screening walls or fences (for parking areas or storage areas);~~

28 ~~C. Driveway surfacing;~~

29 **A. Nonconforming Characteristics of Use, Lot, or Structure⁸**

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

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

37 An applicant for a land use permit in a multi-family, commercial, or industrial zoning
38 district that involves a development project costing \$20,000 or more, or 20 percent or
39 more of the value of the property, shall be required to bring the following
40 nonconformities into compliance with all applicable provisions of this title prior to

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

approval of the permit, unless the Director determines in writing that such nonconformities have no significant adverse impact on surrounding properties:

1. Landscaping;

~~D. Parking;~~

2. Lighting;~~and~~

~~E. [RESERVED]~~

3. Parking;

4. Refuse containers ;

5. Driveway surfacing ;

6. Screening walls or fences (for parking areas or storage areas);

7. Screening of mechanical equipment.

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

21.11.060 NONCONFORMING SIGNS⁶⁹

A. Effective Date

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

B. Amortization Provisions

1. Amortization of Permanent Signs

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

2. Amortization of Illuminated Signs

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

3. Amortization of Pole Signs

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

⁶⁹ 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
2 effective 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
6 ~~Title~~ within 180 days from the effective date of this section, ~~which is March~~
7 ~~29, 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~~
12 shall be removed, altered, reconstructed, or reinstalled to be in compliance
13 with this ~~Title~~ within three years from the effective date of this section,
14 ~~which is October 1, 2006.~~

15 **6. Amortization of Roof Signs**

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

18 **C. Termination**

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

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

27 **D. Maintenance of Nonconforming Signs**

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

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

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

34 **F. Reconstruction of Damaged Sign**

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

of the date the Director determines the damage requires replacement or permits repair. In no event may a sign be maintained in an unsafe condition during the 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~~ Section 21.03.210200.B., *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~~

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 ~~established at the time it became nonconforming; and proof that the use has~~
2 ~~not been discontinued or abandoned, except as provided in subsection B.~~
3 ~~below. The Director shall be authorized to require additional information if~~
4 ~~deemed necessary to permit an accurate determination.~~

5 ~~2. Once issued, a Verification of Legal Nonconforming Status shall be recorded~~
6 ~~with the District Recorder's Office clearly identifying the land by parcel~~
7 ~~number and/or a legal description of the property. Such verifications shall run~~
8 ~~with the land, and their status shall not be affected by changes of tenancy,~~
9 ~~ownership, or management.~~

10 ~~3. A Verification of Legal Nonconforming Status shall not be required for~~
11 ~~continued daily operation or maintenance of a nonconforming lot, use,~~
12 ~~structure, or characteristic of use.~~

13 ~~**B. Exceptions**~~

14 ~~Notwithstanding subsection 21.11.070.A. above:~~

15 ~~1. Where the contention for nonconforming use is raised in a court in any action~~
16 ~~brought to enforce this Title before an application for determination has been~~
17 ~~filed under this section, this section shall not be applicable and the court shall~~
18 ~~have jurisdiction to determine the issue.~~

19 ~~Nothing in this section shall be construed to deprive the Director the right to make a~~
20 ~~decision regarding a claimed nonconforming use or status as incident to a valid~~
21 ~~pending application for a land use permit, or to reject an application for decision as~~
22 ~~provided for by Chapter 21.03.~~

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).

³ 2005 NOTE: This procedure has been moved into the general procedures chapter in this 2005 draft.

⁴ NOTE: Carried forward from the current 21.55.040.D. with no major revisions.

⁵ 2005 NOTE: Proposed new section in the 2005 draft.

⁶ NOTE: Carried forward from the current 21.55.020 with no major revisions. The provision has been limited to residential districts.

⁷ 2005 NOTE: Proposed new section in the 2005 draft.

⁸ 2005 NOTE: This is a modified version of section .010 from the prior draft. The suggested threshold in subsection B. is new and proposed for discussion purposes.

⁹ 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.