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# CHAPTER 21.12: NONCONFORMITIES

## 21.12.010 GENERAL PROVISIONS

### A. Purpose

1. The purpose of this chapter is to regulate continued existence of legal uses, structures, lots, ~~and signs, and use characteristics such as parking and landscaping,~~ established prior to the effective date of this title, or the effective date of future amendments to this title, that no longer conform to the requirements of this title. All such situations are collectively referred to in this chapter as “nonconformities.” It is the intent of this chapter to permit these nonconformities to continue until they are removed or brought into conformance with this title, and to encourage their re-use and movement towards conformity. The acknowledgement and relief granted to existing property, land uses, and structures provided in this chapter are intended to minimize negative economic effects on development that was lawfully established prior to the effective date of this title and any subsequent amendments.
2. This chapter also regulates characteristics of use such as parking and landscaping. Section 21.12.060 addresses the requirements for developments that don't comply with the district-specific standards of chapter 21.04, the use-specific standards of chapter 21.05, or the design and development standards of chapter 21.07 (except for section 21.07.020B., *Stream, Water Body, and Wetland Protection*).

### B. Authority to Continue

1. **Generally**

Any nonconformity that lawfully existed as of the effective date of this 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, 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 21.12.010.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. 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, that development standard or feature shall be deemed conforming.
3. **Conditional Uses and Site Plan Reviews**
  - a. A use existing prior to the effective date of this title that is permitted as a conditional use, administrative site plan review, or major site plan review in the district in which it is located under this title, but which lacks an approved conditional use permit or an approved site plan review, shall not be deemed a nonconforming use, but rather shall be considered to exist as a conditional use or to have an approved site plan. The scope of such a conditional use or approved site plan shall be governed by the provisions of this chapter unless modified by the ~~decision-making body~~ planning and zoning commission in accordance with the appropriate process in chapter 21.03. ~~section 21.03.080, *Conditional Uses*.~~

- 1           b.     A conditional use **or use with an approved site plan**, existing prior to the effective  
2                     date of this title that is permitted in its entirety as a principal use in the district in  
3                     which it is located under this title shall not be deemed a nonconforming use.  
4                     Such use shall be deemed a permitted principal use and the conditional use  
5                     permit **or the approved site plan** shall be null and void.

6   **C.     Determination of Nonconformity Status**

7           In all cases, the burden of establishing the existence of a legal nonconformity shall be solely upon  
8           the owner of the nonconformity, not the municipality. Verification of nonconforming status may be  
9           established through the process set forth in section 21.03.260, *Verification of Nonconforming*  
10           *Status*.

11   **D.     Government Agency Property Acquisitions Nonconformities Created Through Government**  
12           **Action**

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

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

19           ~~Legal nonconformities are not affected by c~~Changes of ownership, tenancy, or management of  
20           property ~~with an existing nonconformity are permitted but such nonconformities shall continue to~~  
21           ~~be subject to the provisions of this chapter.~~

22   **F.     Maintenance and Repair**

- 23           1.     Repairs or maintenance of nonconformities that are required to keep structures or sites in  
24                     a safe condition are permitted, provided that the repair or maintenance does not increase  
25                     the extent of nonconformity. For purposes of this section, "maintenance or repair" shall  
26                     mean:
- 27                     a.     Repairs that are necessary to maintain and to correct any damage or  
28                             deterioration to the structural soundness or interior/**exterior** appearance of a  
29                             building or structure without expanding or altering the building or structure;
- 30                     b.     Repair of uses or structures that are damaged or destroyed by 50% or less of the  
31                             replacement cost of the use or structure at the time of damage;
- 32                     **c.     Replacement, repair, or maintenance of mechanical equipment;**
- 33                     d.     Maintenance of land areas to protect against environmental and health hazards  
34                             and promote the safety of surrounding land uses;
- 35                     e.     Repairs that are required to remedy unsafe conditions that cause a threat to  
36                             public safety; and
- 37                     f.     Repairs and maintenance of nonconforming signs as set forth in section  
38                             21.12.070, *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.

#### G. Replacement Cost

Where the term "replacement cost" is used in this chapter, it shall be determined by the building official pursuant to municipal code title 23.

#### H. Willful Destruction

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

### 21.12.020 SINGLE- AND TWO-FAMILY STRUCTURES AND MOBILE HOMES

#### A. Applicability

In this chapter, only sSections 21.12.010, 21.12.020, and 21.12.050 shall apply to lawfully erected nonconforming single- and two-family structures and mobile homes. The oOther sections of this chapter shall not apply to lawfully erected single- and two-family structures and mobile homes.

#### 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.

#### D. Mobile Homes

1. Lawfully erected nonconforming mobile homes may be repaired or replaced, as long as the nonconformity is not increased.

2. Lawfully erected nonconforming mobile homes on individual lots may be moved within the lot in compliance with setback regulations.

3. Mobile homes in nonconforming manufactured home communities may be repaired or replaced, in compliance with setback regulations.

### 21.12.030 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 21.12.010 and the following limitations, or as provided in C below:

- 1 1. No nonconforming use of land shall be enlarged or increased or extended to occupy a  
2 greater area of land than was occupied at the effective date of adoption or amendment of  
3 the regulations that make the use nonconforming. Any nonconforming use on a lot or  
4 portion thereof may be altered to decrease its nonconformity.
- 5 2. No nonconforming use of land shall be moved in whole or in part to any portion of the lot  
6 or parcel other than that occupied by such use at the effective date of adoption or  
7 amendment of the regulations that make the use nonconforming.
- 8 3. No existing structure devoted to a use not permitted by this title in the district in which it is  
9 located shall be enlarged, extended, ~~or constructed, reconstructed, moved, or structurally~~  
10 ~~altered~~ except in changing the use of the structure to a use permitted in the district in  
11 which it is located. (For example: a self-storage facility that is a nonconforming use in a  
12 district may not construct new storage units.)
- 13 4. Any nonconforming use may be moved or extended throughout any parts of a building  
14 that are reasonably adaptable ~~were manifestly arranged or designed~~ for such use at the  
15 time of adoption or amendment of the applicable regulations, but no such use shall be  
16 extended to occupy any land outside such buildings. If a nonconforming use is moved to  
17 another part of the building, the space vacated shall not be filled with another  
18 nonconforming use. (For example: a warehouse that is a nonconforming use in a district  
19 and occupies half of a building may expand into the other half of the existing building, but  
20 may not begin to store items outside the building.)
- 21 5. No additional structure not conforming to the requirements of this title shall be erected in  
22 connection with the nonconforming use of land or structure.

## 23 B. Change of Use

24 ~~If no structural alterations are made, any nonconforming use may be changed to another~~  
25 ~~nonconforming use provided that the zoning board of examiners and appeals, either by general~~  
26 ~~rule or by making findings in the specific case, shall find that the proposed use is more~~  
27 ~~appropriate to the district than the existing nonconforming use. In permitting such change, the~~  
28 ~~zoning board of examiners and appeals may require appropriate conditions and safeguards.~~

- 29 1. Any nonconforming use may be changed to another nonconforming use if both of the  
30 following criteria are met:
  - 31 a. The director finds that the proposed nonconforming use is more appropriate to  
32 the district than the existing nonconforming use;
  - 33 b. Any characteristics of use that are out of compliance with this title are not  
34 changed to become less compliant with the requirements of this title; and
  - 35 c. No structural alterations are made other than those required by title 23, or minor  
36 interior structural alterations, such as cutting a door into a shear wall.

37 Appeals of the director's decision shall be made to the zoning board of examiners and  
38 appeals in accordance with subsection 21.03.040B.

- 39 2. If a nonconforming use is superseded by a permitted use, ~~the permitted use shall~~  
40 ~~thereafter conform to the use regulations for the district, and the nonconforming use may~~  
41 ~~not thereafter be resumed.~~

1 **C. Damage or Destruction ~~Alteration, Expansion, or Intensification of Nonconforming Use~~**

2 Any person wishing to ~~expand, alter, or intensify a nonconforming use, or wishing to~~ replicate a  
3 nonconforming use that has been damaged or destroyed to an extent of more than 50 percent of  
4 the replacement cost at the time of destruction (~~per subsection F. below~~), shall **apply as stated in**  
5 **C.1. below.** ~~choose one of the two application and approval methods in subsection 2. below.~~

6 **Limits on Expansion, Alteration, or Intensification of Nonconforming Uses**

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

12 b. ~~The lot on which a nonconforming use is situated may not be enlarged through~~  
13 ~~land purchase or replatting for purposes of creating a single larger lot on which a~~  
14 ~~nonconforming use shall be situated.~~

15 **Application and Approval Methods**

16 **1. Administrative Approval**

17 a. An application for administrative approval to ~~increase or~~ rebuild a nonconforming  
18 use shall contain the information specified in the title 21 user's guide, and shall  
19 be submitted to the director.

20 b. Notice of the application shall be published, mailed, and posted in accordance  
21 with section 21.03.020H.

22 c. There shall be a 30 day comment period, starting from the date of notice, before  
23 the director acts on the application as provided in subsection C.1.d. below.

24 d. The director shall review the application and act to approve, approve with  
25 conditions, or deny the application based on the approval criteria of subsection  
26 C.2. below. Findings of the director shall be in writing. The director may impose  
27 limitations or conditions as may be necessary to meet the approval criteria or to  
28 reduce or minimize any potential adverse impact on other property in the area.

29 e. Appeals of the director's decision may be made to the zoning board of examiners  
30 and appeals, pursuant to section 21.03.040B.

31 f. If the application is approved or approved with conditions, the use shall continue  
32 to be a nonconforming use and be subject to the provisions of this chapter.

33 **Conditional Use Approval**

34 g. ~~An application for conditional use approval to increase or rebuild a~~  
35 ~~nonconforming use shall contain the information specified in the title 21 user's~~  
36 ~~guide, and shall be submitted to the director.~~

37 h. ~~The conditional use application shall be processed in accordance with the~~  
38 ~~procedures of section 21.03.070C., except that a community meeting is not~~  
39 ~~required, and the planning and zoning commission shall base their decision on~~  
40 ~~the approval criteria of subsection 3. below. The commission may impose~~  
41 ~~limitations or conditions as may be necessary to meet the approval criteria or to~~  
42 ~~reduce or minimize any potential adverse impact on other property in the area.~~

1 ~~i. If the application is approved or approved with conditions, the use shall continue~~  
2 ~~to be a nonconforming use and be subject to the provisions of this chapter.~~

3 **2. Approval Criteria**

4 a. The nonconforming use ~~is or~~ can be made compatible with uses allowed on  
5 adjacent properties, in terms of site design and operating characteristics (such as  
6 lighting, noise, odor, dust, and other external impacts);

7 b. The nonconforming use will not limit, impair, or impede the normal and orderly  
8 development and improvement of surrounding property for uses permitted on  
9 those properties;

10 c. Adequate Utilities, access roads, drainage, and other necessary facilities **are**  
11 **sufficient to service the use,** ~~have been~~ or will be provided;

12 d. Adequate measures have been or will be taken to provide ingress and egress  
13 that are designed to minimize traffic congestion on the streets; and

14 e. The nonconforming use will not result in the creation of additional  
15 nonconformities, or the need for any variances ~~or minor modifications.~~

16 **D. Abandonment or Cessation of Use**

17 1. A nonconforming use shall be presumed abandoned and its nonconforming rights  
18 extinguished where any one of the following has occurred:

19 a. The owner has indicated, in writing ~~or by public statement,~~ an intent to abandon  
20 the use.

21 b. A conforming or less intensive nonconforming use has replaced the  
22 nonconforming use.

23 c. The building or structure that houses the nonconforming use has been removed.

24 ~~The owner has physically changed the building or structure, or its permanent equipment,~~  
25 ~~in a manner that clearly indicates a change in use or activity to something other than the~~  
26 ~~nonconforming use.~~

27 d. The use has been discontinued, vacant, or inactive for a continuous period of at  
28 least one year.

29 e. ~~Public utility service has been shut off for at least one year.~~

30 2. Once abandoned, the prior legal nonconforming status of the use shall be lost and any  
31 subsequent use of the property shall comply with all applicable provisions of this title,  
32 unless the nonconforming use is reestablished through the process described in E.  
33 below.

34 **E. Overcoming Presumption of Abandonment**

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



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

**F. ~~Damage or Destruction~~**

~~Within one year of the damage or destruction, an administrative approval or a conditional use permit may be requested to replicate a nonconforming use that is damaged or destroyed to an extent of more than 50 percent of the replacement cost at time of destruction. The decision-making body may approve the application upon finding that all of the approval criteria of C.3. above have been met. An administrative or conditional use approval shall expire if start of construction has not begun within one year of the 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 use.~~

**21.12.040 NONCONFORMING STRUCTURES**

**A. Continuation of Nonconforming Structures Generally**

Nonconforming structures may continue, subject to the general provisions of section 21.12.010 and the following limitations:

1. No nonconforming structure may be enlarged or altered in a way that increases its nonconformity. Any structure or portion thereof may be altered to decrease its nonconformity, or may be altered or enlarged if the alteration does not intensify the nonconformity. This subsection shall not be construed to allow the expansion of a nonconforming use of structure, which is governed by section 21.12.030 above.
2. Should a nonconforming structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

**B. Overheight Buildings**

1. If a lawful building erected prior to **[date of passage]** does not comply with the requirements of this title with regard to height, such building shall be deemed conforming with regard to height.
2. Where a lawful structure, existing on **[date of passage]**, is engineered and constructed for enlargement by the addition of one or more stories, such structure may be enlarged

1 within the full plan dimensions of the existing structure by the addition of not more than  
2 two stories.

3 **C. Buildings Exceeding Maximum Setback**

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

7 **D. Damage or Destruction**

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

12 **1. Application and Approval Methods**

13 **a. Administrative Approval**

14 i. An application for administrative approval to rebuild a nonconforming  
15 structure shall contain the information specified in the title 21 user's  
16 guide and shall be submitted to the director.

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

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

22 iv. The director shall review the application and act to approve, approve with  
23 conditions, or deny the application based on the approval criteria of  
24 subsection D.2. below. Findings of the director shall be in writing. The  
25 director may impose limitations or conditions as may be necessary to  
26 meet the approval criteria or to reduce or minimize any potential adverse  
27 impact on other property in the area.

28 v. Appeals of the director's decision may be made to the zoning board of  
29 examiners and appeals, pursuant to section 21.03.040B.

30 vi. If the application is approved or approved with conditions, the structure  
31 shall continue to be a nonconforming structure and be subject to the  
32 provisions of this chapter.

33 **b. Conditional Use Approval**

34 i. An application for conditional use approval shall contain the information  
35 specified in the title 21 user's guide, and shall be submitted to the  
36 director.

37 ii. The conditional use application shall be processed in accordance with  
38 the procedures of section 21.03.080B., except that a community meeting  
39 is not required, and the planning and zoning commission shall base their  
40 decision on the approval criteria of subsection D.2. below. The  
41 commission may impose limitations or conditions as may be necessary

1 to meet the approval criteria or to reduce or minimize any potential  
2 adverse impact on other property in the area.

3 iii. An approved replication conditional use shall expire if start of  
4 construction has not begun within one year of the planning and zoning  
5 commission's approval. For the purposes of this section, "replicate" shall  
6 mean to rebuild to the same dimensions and in the same location as the  
7 damaged or destroyed structure, but this shall not prevent moving  
8 towards conformity.

9 iv. A nonconforming structure that is approved to be rebuilt per this  
10 conditional use process shall henceforth be considered a conditional use  
11 and shall no longer be subject to the provisions of this chapter.

12 **2. Approval Criteria**

13 a. The nonconforming structure is or can be made compatible with uses allowed on  
14 adjacent properties, in terms of site design and operating characteristics (such as  
15 lighting, noise, odor, dust, and other external impacts);

16 b. The nonconforming structure will not limit, impair, or impede the normal and  
17 orderly development and improvement of surrounding property for uses permitted  
18 on those properties;

19 c. The parking, landscaping, and lighting either conform to the requirements of this  
20 title, or are moving towards conformity to the maximum extent feasible;

21 d. Adequate Utilities, access roads, drainage, and other necessary facilities are  
22 sufficient to service the use, have been or will be provided; and

23 e. Adequate measures have been or will be taken to provide ingress and egress  
24 that are designed to minimize traffic congestion on the streets.

25 **E. Mobile Homes**

26 ~~Notwithstanding subsection A. above or section 21.12.020, mobile homes may be repaired or~~  
27 ~~moved within the lot in compliance with setback and yard requirements if the mobile home~~  
28 ~~occupied the lot at the time of the adoption of applicable regulations.~~

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

30 **1. Generally**

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

34 a. An application for the registration of nonconforming encroachment is submitted to  
35 the department; and

36 b. The encroachment is determined not to be a life safety hazard by the director.

37 **2. Procedures for Registration**

38 a. Application for the registration of nonconforming encroachment shall be  
39 submitted to the department, on a form provided by the department. The  
40 application shall require an as-built drawn by a land surveyor registered in the

1 state of Alaska, which shows all structures existing on the lot at the date of  
2 application. The application shall also require information supporting the  
3 assertion that the structure and encroachments were constructed prior to  
4 January 1, 1986. The director may require the petitioner to provide additional  
5 information to support this application.

6 b. Within 30 days of receipt of all requested information, and upon an adequate  
7 showing that the requirements stated in subsection 21.12.040E.1. above are met,  
8 the director shall issue or deny a certificate permitting the continued use and  
9 existence of the encroachment. The director may impose such conditions on the  
10 certificate as he/she may determine are appropriate to protect the general  
11 welfare. The certificate shall note the size and characteristic of the setback  
12 encroachment and the structure. A copy of the required as-built shall be  
13 attached thereto.

14 **3. Operation**

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

17 **4. Appeal**

18 Any aggrieved person may appeal the grant or denial of a certificate to the zoning board  
19 of examiners and appeals.

20 **G. Preexisting Tower and Antennas**

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

28 **21.12.050 NONCONFORMING LOTS OF RECORD**

29 **A. Nonconforming Lots Dwellings Allowed<sup>1</sup>**

30 1. In any residential zoning district ~~in which dwellings are permitted~~, notwithstanding  
31 limitations imposed by other provisions of this title, dwellings and customary accessory  
32 buildings may be erected on any lot, provided the underlying zoning district and  
33 dimensional and design standards, such as setbacks, parking, open space, landscaping,  
34 etc. can be met, that is of record at the effective date of the original adoption or  
35 amendment of applicable regulations, except as restricted in subsection B. below. This  
36 provision shall apply even if the lot fails to meet the requirements for the area or width, or  
37 both, that are applicable in the district. Furthermore, setback and lot coverage  
38 requirements applicable to nonconforming lots of record shall be those of the zone with  
39 the largest lot area requirement within which the lot area would be conforming. A lot that  
40 fails to be conforming in any zone shall maintain a front setback of 20 feet, side setbacks  
41 of five feet, a rear setback of five feet, and maximum lot coverage of 50 percent.

42 2. In any nonresidential zoning districts, notwithstanding limitations imposed by other  
43 provisions of this title, any use allowed in the district by table 21.05-2 may be erected on  
44 any lot (through the appropriate review and approval procedure), provided the underlying  
45 zoning district and dimensional and design standards, such as setbacks, parking, open

1 space, landscaping, etc. can be met, that is of record at the effective date of the original  
2 adoption or amendment of applicable regulations, except as restricted in subsection B.  
3 below. This provision shall apply even if the lot fails to meet the requirements for the  
4 area or width, or both, that are applicable in the district.

5 **B. Undivided Parcels**

- 6 1. If two or more contiguous lots in single ownership, either of which contains less than  
7 5,500 square feet of area ~~the minimum lot area of the zoning district in which it is located,~~  
8 are of record on or after November 27, 1990, and either is nonconforming by virtue of this  
9 title or any amendment thereto, the lands involved shall be considered to be an undivided  
10 parcel for the purpose of this title, and no portion of such parcel shall be sold or used that  
11 does not contain a lot area and lot width equal to or greater than the minimum lot area  
12 and width required in the zoning district it is in. If a lot that results from being combined  
13 through this provision does not meet the dimensional requirements of the zoning district  
14 or of chapter 21.08, the lot shall be considered a legal nonconforming lot at the time of  
15 recordation.
- 16 2. This provision shall not apply to those lots legally created as part of a townhouse  
17 development, a cluster housing development, a zero lot line development, or a planned  
18 unit development.

19 **C. Legalization of Lots Created Prior to September 16, 1975<sup>2</sup>**

- 20 1. Lots existing prior to September 16, 1975 may continue in existence provided the  
21 following requirements are met:
- 22 a. An application for the registration of nonconforming lot is submitted to the  
23 department; and
- 24 b. The lot is determined to be sufficient in size to allow construction of a structure  
25 and comply with associated district-specific, dimensional, and development and  
26 design standards such as setbacks, parking, landscaping, etc.
- 27 2. The application shall be on a form provided by the department, and shall be  
28 accompanied by an as-built drawn by a land surveyor registered in the state of Alaska,  
29 which shows the lot boundaries. The department may require additional information to  
30 support the application.
- 31 3. Within 30 days of receipt of all requested information and upon an adequate showing that  
32 the requirements stated in subsection C.1. above are met, the director shall issue or deny  
33 a certificate for the lot. The director may impose such conditions on the certificate as he  
34 or she determines appropriate to protect the general welfare. A copy of the required as-  
35 built shall be attached to the certificate.
- 36 4. Once registered, the lot shall enjoy all the protections and privileges afforded to a  
37 nonconforming lot under the provisions of this chapter.
- 38 5. Any aggrieved person may appeal the grant or denial of a certificate to the zoning board  
39 of examiners and appeals within 30 days of the director's determination.
- 40 6. Nothing in this section shall preclude relief for nonconforming lots by means of a  
41 variance.

- 1 7. Nothing in this section shall exempt any lots from the provisions of subsection B. above.
- 2 8. The department shall publish the registration of a nonconforming lot including the street  
3 address and legal description of the property in a newspaper of general circulation in the  
4 municipality within seven days of the issuance of the certificate.

5 **21.12.060 NONCONFORMING CHARACTERISTICS OF USE**

6 **A. Developments Are Conforming Nonconforming Characteristics of Use, Lot, or Structure**

- 7 1. Development that was legally established before [date of passage] that does not comply  
8 with the district-specific standards of chapter 21.04, the use-specific standards of chapter  
9 21.05, or the design and development standards of chapter 21.07 (except for section  
10 21.07.020B., *Stream, Water Body, and Wetland Protection*) shall be considered  
11 conforming on [date of passage], and subject to this section. Development that does not  
12 conform to section 21.07.020B., *Stream, Water Body, and Wetland Protection*, shall be  
13 considered nonconforming.
- 14 2. No change shall be made to any development unless the change is in the direction of  
15 conformity to the requirements of this title. ~~Except as provided in this section, if the~~  
16 ~~characteristics of a use, lot, or structure such as off-street parking, off-street loading,~~  
17 ~~lighting, landscaping, or other features regulated by this title in relation to specified uses~~  
18 ~~of land, water areas, structures, or premises are not in accord with the requirements of~~  
19 ~~this title, no change shall be made in such characteristics unless the change is in the~~  
20 ~~direction of conformity to the requirements of this title.~~

21 **B. Parking Out of Compliance**

22 Notwithstanding section C. below, if changes to a use or development increase the minimum  
23 number of required parking spaces, the number of spaces related to the increase shall be  
24 provided. For example, if a use or development that is required to have 30 spaces only has 20  
25 spaces, and changes to the use or development allowed through this title create a total minimum  
26 requirement of 35 spaces, the use or development shall, at a minimum, provide the additional 5  
27 spaces. The addition of more spaces may be negotiated through the process outlined in section  
28 C. below.

29 **C. Bringing Nonconforming Characteristics into Compliance**

- 30 1. **Applicability**  
31 This section 21.12.060 applies to all multi-family, commercial, mixed-use,  
32 public/institutional, and industrial development projects that: ~~Development projects that~~  
33 ~~include any construction or reconstruction of a use or structure that is not solely and~~  
34 ~~entirely interior to the structure, shall conform to the requirements of this section. For the~~  
35 ~~purposes of determining “total project costs” in this section, those project costs do not~~  
36 ~~include the costs for construction or reconstruction that is solely and entirely interior to~~  
37 ~~the structure.~~
- 38 a. Do not comply with the district-specific standards of chapter 21.04, the use-  
39 specific standards of chapter 21.05, or the design and development standards of  
40 chapter 21.07 (except for section 21.07.020B., *Stream, Water Body, and Wetland*  
41 *Protection*);

1 b. Involve a development project costing more than 2.5 percent of the assessed  
2 value of the structure (or, if no structure over 150 square feet exists, the  
3 assessed value of the land); and

4 c. Require a permit through title 21 and/or title 23.

5 2. Standard

6 a. An applicant for a building or land use permit for in a multi-family, commercial,  
7 mixed-use, or industrial development zoning district that meets the applicability  
8 thresholds of section C.1. above involves a development project costing more  
9 than 2.5 percent of the value of the structure, shall be required to spend at least  
10 10 percent of the total project costs on bringing the development towards  
11 compliance with the district-specific standards of chapter 21.04, the use-specific  
12 standards of chapter 21.05, and/or the design and development standards of  
13 chapter 21.07 (hereafter called "characteristics").

14 b. If the applicant can bring the development into full compliance with title 21 for  
15 less than 10 percent of the total project costs, then no additional monies need be  
16 spent. The municipality shall not require more than 10 percent, but the applicant  
17 may choose to spend more.

18 c. If the applicant chooses to spend more than 15 percent, the amount in excess of  
19 15 percent may be credited, as outlined in the user's guide, towards future  
20 improvements under this section. following nonconformities, listed in priority  
21 order, towards compliance with all applicable provisions of this title. The director,  
22 in consultation with the applicant, shall determine the extent to which each of the  
23 listed characteristics shall be addressed, within the expenditure requirements  
24 noted herein.

25 d. The director, in consultation with the applicant, shall determine which  
26 characteristics shall be addressed, within the expenditure requirements noted  
27 herein. The director and the applicant shall consider how to maximize the public  
28 benefit and minimize the economic impact to the property owner. The director  
29 shall not require compliance with a standard that would create non-compliance  
30 with a different standard (i.e., the director shall not require the addition of  
31 landscaping that would cause the development to fall under the minimum  
32 required number of parking spaces). Landscaping;

33 e. The applicant may appeal the director's decision to the [urban design  
34 commission], which shall hold a non-public hearing on the appeal. Lighting;

35 f. For the purposes of this section, "total project costs" shall be determined by the  
36 building official pursuant to municipal code, and shall be exclusive of all costs of  
37 improvements that move the development in the direction of conformity to the  
38 requirements of this title.

39 g. Parking;

40 h. Refuse containers;

41 i. Driveway and parking area surfacing;

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

1 k. ~~Screening of mechanical equipment.~~

2 **3. Insignificant Change**

3 If the director and the applicant concur that 10 percent of project costs is not enough  
4 money to result in a significant change to any characteristic, the applicant shall place the  
5 required 10 percent of project costs as outlined in subsection B.4. below.

6 **4. No Applicable Characteristics**

7 If no characteristics can be brought towards conformity without causing other  
8 characteristics to come out of compliance, or if the only characteristics left to be  
9 addressed are so major as to require relocating the structure, or something of similar  
10 magnitude, then the applicant shall not be required to perform such work. Instead, the  
11 applicant shall place the required 10 percent of project costs in a municipal account  
12 dedicated to public improvements (such as pedestrian or landscaping improvements) in  
13 the census block group (based on the 2000 census) that the development is in, or an  
14 adjacent census block group.

15 **5. Large Commercial Establishment**

16 If the development project is a Large Commercial Establishment, as defined in section  
17 21.07.120, then the applicant shall spend an additional 10 percent of the total project  
18 costs on bringing the structure into compliance with the design standards of section  
19 21.07.120. If the structure already complies with section 21.07.120, then this subsection  
20 C.5. shall not apply.

21 **6. Timing of Work**

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

25 **21.12.070 NONCONFORMING SIGNS<sup>3</sup>**

26 **A. Effective Date**

27 The effective date of this section 21.12.070 is October 1, 2003.

28 **B. Amortization Provisions**

29 **1. ~~Legal Nonconforming~~ Amortization of Permanent Signs**

30 Any ~~lawful~~ permanent ~~freestanding or building~~ sign ~~lawfully~~ built prior to the adoption of  
31 this title that does not comply with the maximum height, maximum area, or the number of  
32 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~~  
33 ~~effective date of this section. The maximum area requirements shall apply to the total~~  
34 ~~area of all signs on the property.~~  
35

36 **2. Amortization of Permanent Signs**

37 Any permanent sign exceeding current size or height requirements by greater than 50  
38 percent must be brought into compliance with this title before May 16, 2016, which is ten  
39 years from the date of adoption of this provision.

40 **3. Amortization of Illuminated Signs**

41 Any illuminated sign that does not meet the requirements of subsection 21.11.090A., with  
42 the exception of subsection 21.11.090A.3.a., shall be altered to comply with the



1 requirements of this title by May 31, 2008. All LED signs shall comply with the luminance  
2 standards of subsection 21.11.090A.3.d. by November 30, 2005.

3 **Amortization of Pole Signs**

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

7 **4. Amortization of Animated Signs**

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

11 **5. Amortization of Converted Signs**

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

17 **6. Amortization of Roof Signs**

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

19 **C. Termination**

20 Except as provided in subsection 21.11.090D., a nonconforming sign shall immediately lose its  
21 legal nonconforming status, and therefore shall be brought into conformance with this title or  
22 removed, when any of the following occur:

- 23 1. The size or shape of the sign is changed.
- 24 2. The location of the sign is changed.
- 25 3. The business is sold and there is a change of use of the premises. A change of use  
26 occurs when the type of use is not within the same use category as the immediate prior  
27 allowable use type, determined by reference to the tables of allowed uses under this title.
- 28 4. The nonconforming sign is accessory to a nonconforming use that has lost its  
29 nonconforming status.
- 30 5. If more than 50 percent of the assessed value of the principal structure on a property is  
31 replaced, repaired, or renovated, the existing sign(s) for the principal structure shall be  
32 removed or brought into compliance with the provisions of this title at the time of  
33 replacement, repair, or renovation.
- 34 6. Change is permitted in the direction of conformity to the requirements of this title. A sign  
35 will lose its legal nonconforming status immediately upon any change which increases  
36 nonconformity. Municipal permit fees are waived for nonconforming signs to be brought  
37 into full conformity, if an estimate by a licensed and bonded contractor with a designated  
38 date of completion of the new conforming sign is provided by May 16, 2008, which is two  
39 years from the date of passage of this provision.

1 **D. Maintenance of Nonconforming Signs**

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

5 **E. Reconstruction of Damaged Sign**

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

13 **F. Historic Signs**

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

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

18 The dates established in this section for a sign to be brought into compliance with the  
19 requirements of these regulations may be appealed to the zoning board of examiners and  
20 appeals by the owner or lessee of the nonconforming sign pursuant to section 21.03.040B.,  
21 *Appeals to Zoning Board of Examiners and Appeals*. In evaluating the extension of time for a  
22 nonconforming use, the zoning board of examiners and appeals shall consider the following  
23 factors to determine whether the owner of the sign has had reasonable amount of time to recoup  
24 his or her investment:

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

36

37

<sup>1</sup> ~~PRD#2 NOTE: Changes to this subsection reflect AO 2005-67(s).~~

<sup>2</sup> ~~PDR#2 NOTE: This addition generally reflects AO 2005-67(s).~~

<sup>3</sup> ~~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.~~