

## TABLE OF CONTENTS

1		
2		
3	<b>CHAPTER 21.12: NONCONFORMITIES</b>	<b>2</b>
4	<b>21.12.010 General Provisions</b>	<b>2</b>
5	A. Purpose	2
6	B. Authority to Continue	2
7	C. Determination of Nonconformity Status	2
8	D. Nonconformities Created Through Government Action	3
9	E. Change of Ownership or Tenancy	3
10	F. Maintenance and Repair	3
11	G. Replacement Cost	3
12	H. Willful Destruction	3
13	<b>21.12.020 Single- and Two-Family Structures</b>	<b>4</b>
14	A. Applicability	4
15	B. Expansions and Enlargements	4
16	C. Damage or Destruction	4
17	<b>21.12.030 Nonconforming Uses of Land or Structures</b>	<b>4</b>
18	A. Limitations on Continuation of Nonconforming Uses of Land or Structures	4
19	B. Change of Use	5
20	C. <b>Damage or Destruction</b> Alteration, Expansion, or Intensification of Nonconforming	
21	Use	5
22	D. Abandonment or Cessation of Use	7
23	E. Overcoming Presumption of Abandonment	7
24	F. <del>Damage or Destruction</del>	8
25	<b>21.12.040 Nonconforming Structures</b>	<b>8</b>
26	A. Continuation of Nonconforming Structures Generally	8
27	B. Overheight Buildings	8
28	C. Buildings Exceeding Maximum Setback	8
29	D. Damage or Destruction	8
30	E. Mobile Homes	10
31	F. Legalization of Nonconforming Dimensional Setback Encroachments	10
32	G. Preexisting Tower and Antennas	11
33	<b>21.12.050 Nonconforming Lots of Record</b>	<b>11</b>
34	A. Dwellings Allowed	11
35	B. Undivided Parcels	11
36	C. Legalization of Lots Created Prior to September 16, 1975	11
37	<b>21.12.060 Nonconforming Characteristics of Use</b>	<b>12</b>
38	A. <b>Developments Are Conforming</b> Nonconforming Characteristics of Use, Lot, or	
39	Structure	12
40	B. Bringing Nonconforming Characteristics into Compliance	12
41	<b>21.12.070 Nonconforming Signs</b>	<b>14</b>
42	A. Effective Date	14
43	B. Amortization Provisions	14
44	C. Termination	15
45	D. Maintenance of Nonconforming Signs	15
46	E. Reconstruction of Damaged Sign	16
47	F. Historic Signs	16
48	G. Extension of Time to Comply	16
49		
50		
51		

# CHAPTER 21.12: NONCONFORMITIES

---

## 21.12.010 GENERAL PROVISIONS

### A. Purpose

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.

### 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

a. A use existing prior to the effective date of this title that is permitted as a conditional use in the district in which it is located under this 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 21.03.080, *Conditional Uses*.

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

### C. Determination of Nonconformity Status

In all cases, the burden of establishing the existence of a legal nonconformity shall be solely upon the owner of the nonconformity, not the municipality. Verification of nonconforming status may be

1 established through the process set forth in section 21.03.250, *Verification of Nonconforming*  
2 *Status*.

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

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

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

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

12 **F. Maintenance and Repair**

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

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

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

22 **c. Replacement, repair, or maintenance of mechanical equipment;**

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

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

27 f. Repairs and maintenance of nonconforming signs as set forth in section  
28 21.12.060, *Nonconforming Signs*.

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

32 **G. Replacement Cost**

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

35 **H. Willful Destruction**

36 In the event of arson or other willful destruction, any rights to reinstate, replicate, rebuild, or  
37 otherwise reestablish the nonconforming use or structure, as allowed in this chapter, shall be

1 prohibited if such casualty is traceable to the owner or his or her agent. Such instances shall  
2 result in forfeiture of the nonconforming status.

3 **21.12.020 SINGLE- AND TWO-FAMILY STRUCTURES**

4 **A. Applicability**

5 Sections 21.12.010, 21.12.020, and 21.12.050 shall apply to lawfully erected nonconforming  
6 single- and two-family structures. Other sections of this chapter shall not apply to lawfully erected  
7 single- and two-family structures.

8 **B. Expansions and Enlargements**

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

11 **C. Damage or Destruction**

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

16 **21.12.030 NONCONFORMING USES OF LAND OR STRUCTURES**

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

18 Nonconforming uses of land or structures may continue, subject to the general provisions of  
19 section 21.12.010 and the following limitations, or as provided in C below:

- 20 1. No nonconforming use of land shall be enlarged or increased or extended to occupy a  
21 greater area of land than was occupied at the effective date of adoption or amendment of  
22 the regulations that make the use nonconforming. Any nonconforming use on a lot or  
23 portion thereof may be altered to decrease its nonconformity.
- 24 2. No nonconforming use of land shall be moved in whole or in part to any portion of the lot  
25 or parcel other than that occupied by such use at the effective date of adoption or  
26 amendment of the regulations that make the use nonconforming.
- 27 3. No existing structure devoted to a use not permitted by this title in the district in which it is  
28 located shall be enlarged, extended, ~~or constructed, reconstructed, moved, or structurally~~  
29 ~~altered~~ except in changing the use of the structure to a use permitted in the district in  
30 which it is located. (For example: a self-storage facility that is a nonconforming use in a  
31 district may not construct new storage units.)
- 32 4. Any nonconforming use may be moved or extended throughout any parts of a building  
33 that are reasonably adaptable ~~were manifestly arranged or designed~~ for such use at the  
34 time of adoption or amendment of the applicable regulations, but no such use shall be  
35 extended to occupy any land outside such buildings. If a nonconforming use is moved to  
36 another part of the building, the space vacated shall not be filled with another  
37 nonconforming use. (For example: a warehouse that is a nonconforming use in a district  
38 and occupies half of a building may expand into the other half of the existing building, but  
39 may not begin to store items outside the building.)

- 1 5. No additional structure not conforming to the requirements of this title shall be erected in  
2 connection with the nonconforming use of land or structure.

3 **B. Change of Use**

- 4 1. A change of use occurs when the new use on a site is in a different use category from the  
5 preceding use, as categorized in tables 21.05-1 and 21.05-2. ~~If no structural alterations~~  
6 ~~are made, any nonconforming use may be changed to another nonconforming use~~  
7 ~~provided that the zoning board of examiners and appeals, either by general rule or by~~  
8 ~~making findings in the specific case, shall find that the proposed use is more appropriate~~  
9 ~~to the district than the existing nonconforming use. In permitting such change, the zoning~~  
10 ~~board of examiners and appeals may require appropriate conditions and safeguards.~~

- 11 2. Any nonconforming use may be changed to another nonconforming use if both of the  
12 following criteria are met:

13 a. The director finds that the proposed nonconforming use is more appropriate to  
14 the district than the existing nonconforming use; and

15 b. No structural alterations are made other than those required by title 23, or minor  
16 interior structural alterations, such as cutting a door into a shear wall.

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

- 19 3. If a nonconforming use is superseded by a permitted use, the permitted use shall  
20 thereafter conform to the use regulations for the district, and the nonconforming use may  
21 not thereafter be resumed.

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

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

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

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

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

36 **Application and Approval Methods**

37 1. **Administrative Approval**

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

- 1           **b.**     Notice of the application shall be published, mailed, and posted in accordance  
2           with section 21.03.020H.
- 3           **c.**     There shall be a 30 day comment period, starting from the date of notice, before  
4           the director acts on the application as provided in subsection 1.d. below.
- 5           **d.**     The director shall review the application and act to approve, approve with  
6           conditions, or deny the application based on the approval criteria of subsection  
7           C.2. below. Findings of the director shall be in writing. The director may impose  
8           limitations or conditions as may be necessary to meet the approval criteria or to  
9           reduce or minimize any potential adverse impact on other property in the area.
- 10          **e.**     Appeals of the director's decision may be made to the zoning board of examiners  
11          and appeals, pursuant to section 21.03.040B.
- 12          **f.**     If the application is approved or approved with conditions, the use shall continue  
13          to be a nonconforming use and be subject to the provisions of this chapter.

#### 14           **Conditional Use Approval**

- 15          **g.**     ~~An application for conditional use approval to increase or rebuild a  
16          nonconforming use shall contain the information specified in the title 21 user's  
17          guide, and shall be submitted to the director.~~
- 18          **h.**     ~~The conditional use application shall be processed in accordance with the  
19          procedures of section 21.03.070C., except that a community meeting is not  
20          required, and the planning and zoning commission shall base their decision on  
21          the approval criteria of subsection 3. below. The commission may impose  
22          limitations or conditions as may be necessary to meet the approval criteria or to  
23          reduce or minimize any potential adverse impact on other property in the area.~~
- 24          **i.**     ~~If the application is approved or approved with conditions, the use shall continue  
25          to be a nonconforming use and be subject to the provisions of this chapter.~~

#### 26           **2. Approval Criteria**

- 27          **a.**     The nonconforming use ~~is or~~ can be made compatible with uses allowed on  
28          adjacent properties, in terms of site design and operating characteristics (such as  
29          lighting, noise, odor, dust, and other external impacts);
- 30          **b.**     The nonconforming use will not limit, impair, or impede the normal and orderly  
31          development and improvement of surrounding property for uses permitted on  
32          those properties;
- 33          **c.**     Adequate utilities, access roads, drainage, and other necessary facilities have  
34          been or will be provided;
- 35          **d.**     Adequate measures have been or will be taken to provide ingress and egress  
36          that are designed to minimize traffic congestion on the streets; and
- 37          **e.**     The nonconforming use will not result in the creation of additional  
38          nonconformities, or the need for any variances or minor modifications.

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

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

4 a. The owner has indicated, in writing or by public statement, an intent to abandon  
5 the use.

6 b. A conforming or less intensive nonconforming use has replaced the  
7 nonconforming use.

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

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

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

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

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

19 **E. Overcoming Presumption of Abandonment**

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

23 1. Has been maintaining the land and structure in accordance with all applicable  
24 regulations, including applicable building and fire codes, and did not intend to discontinue  
25 the use;

26 2. Has been maintaining all applicable permits and licenses;

27 3. Has filed all applicable tax documents; and

28 4. In addition, the owner of the nonconforming use shall be required to demonstrate, to the  
29 satisfaction of the zoning board of examiners and appeals, that during the period of  
30 inactivity or discontinuance, the owner:

31 a. Has been actively and continuously marketing the land or structure for sale or  
32 lease; or

33 b. Has been engaged in other activities that would affirmatively prove there was no  
34 intent to abandon.

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

2 ~~Within one year of the damage or destruction, an administrative approval or a conditional use~~  
3 ~~permit may be requested to replicate a nonconforming use that is damaged or destroyed to an~~  
4 ~~extent of more than 50 percent of the replacement cost at time of destruction. The decision-~~  
5 ~~making body may approve the application upon finding that all of the approval criteria of C.3.~~  
6 ~~above have been met. An administrative or conditional use approval shall expire if start of~~  
7 ~~construction has not begun within one year of the approval. For the purposes of this section,~~  
8 ~~“replicate” shall mean to rebuild to the same dimensions and in the same location as the~~  
9 ~~damaged or destroyed use.~~

10 **21.12.040 NONCONFORMING STRUCTURES**

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

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

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

22 **B. Overheight Buildings**

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

30 **C. Buildings Exceeding Maximum Setback**

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

34 **D. Damage or Destruction**

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

- 39 1. **Application and Approval Methods**  
40 a. **Administrative Approval**



- 1 i. An application for administrative approval to rebuild a nonconforming  
2 structure shall contain the information specified in the title 21 user's  
3 guide and shall be submitted to the director.
- 4 ii. Notice of the application shall be published, mailed, and posted in  
5 accordance with section 21.03.020H.
- 6 iii. There shall be a 30 day comment period, starting from the date of notice,  
7 before the director acts on the application as provided in subsection a.iv.  
8 below.
- 9 iv. The director shall review the application and act to approve, approve with  
10 conditions, or deny the application based on the approval criteria of  
11 subsection D.2. below. Findings of the director shall be in writing. The  
12 director may impose limitations or conditions as may be necessary to  
13 meet the approval criteria or to reduce or minimize any potential adverse  
14 impact on other property in the area.
- 15 v. Appeals of the director's decision may be made to the zoning board of  
16 examiners and appeals, pursuant to section 21.03.040B.
- 17 vi. If the application is approved or approved with conditions, the structure  
18 shall continue to be a nonconforming structure and be subject to the  
19 provisions of this chapter.
- 20 b. **Conditional Use Approval**
- 21 i. An application for conditional use approval shall contain the information  
22 specified in the title 21 user's guide, and shall be submitted to the  
23 director.
- 24 ii. The conditional use application shall be processed in accordance with  
25 the procedures of section 21.03.080C., except that a community meeting  
26 is not required, and the planning and zoning commission shall base their  
27 decision on the approval criteria of subsection D.2. below. The  
28 commission may impose limitations or conditions as may be necessary  
29 to meet the approval criteria or to reduce or minimize any potential  
30 adverse impact on other property in the area.
- 31 iii. An approved replication conditional use shall expire if start of  
32 construction has not begun within one year of the planning and zoning  
33 commission's approval. For the purposes of this section, "replicate" shall  
34 mean to rebuild to the same dimensions and in the same location as the  
35 damaged or destroyed structure, but this shall not prevent moving  
36 towards conformity.
- 37 iv. A nonconforming structure that is approved to be rebuilt per this  
38 conditional use process shall henceforth be considered a conditional use  
39 and shall no longer be subject to the provisions of this chapter.
- 40 2. **Approval Criteria**
- 41 a. The nonconforming structure is or can be made compatible with uses allowed on  
42 adjacent properties, in terms of site design and operating characteristics (such as  
43 lighting, noise, odor, dust, and other external impacts);

- 1           **b.**     The nonconforming structure will not limit, impair, or impede the normal and  
2                   orderly development and improvement of surrounding property for uses permitted  
3                   on those properties;
- 4           **c.**     The parking, landscaping, and lighting either conform to the requirements of this  
5                   title, or are moving towards conformity to the maximum extent feasible;
- 6           **d.**     Adequate utilities, access roads, drainage, and other necessary facilities have  
7                   been or will be provided; and
- 8           **e.**     Adequate measures have been or will be taken to provide ingress and egress  
9                   that are designed to minimize traffic congestion on the streets.

10 **E.     Mobile Homes**

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

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

15           **1.     Generally**

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

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

22           **2.     Procedures for Registration**

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

31           **b.**     Within 30 days of receipt of all requested information, and upon an adequate  
32                   showing that the requirements stated in subsection 21.12.040F.1. above are met,  
33                   the director shall issue or deny a certificate permitting the continued use and  
34                   existence of the encroachment. The director may impose such conditions on the  
35                   certificate as he/she may determine are appropriate to protect the general  
36                   welfare. The certificate shall note the size and characteristic of the setback  
37                   encroachment and the structure. A copy of the required as-built shall be  
38                   attached thereto.

39           **3.     Operation**

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

1           **4. Appeal**

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

4           **G. Preexisting Tower and Antennas**

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

12           **21.12.050 NONCONFORMING LOTS OF RECORD**

13          **A. Dwellings Allowed<sup>1</sup>**

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

25          **B. Undivided Parcels**

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

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

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

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

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

39            b.       The lot is determined to be sufficient in size to allow construction of a structure  
40            and comply with associated district-specific, dimensional, and development and  
41            design standards such as setbacks, parking, landscaping, etc.

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

20   **21.12.060   NONCONFORMING CHARACTERISTICS OF USE**

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

22    Development that was legally established before [date of passage] that doesn't comply with the  
23    district-specific standards of chapter 21.04, the use-specific standards of chapter 21.05, or the  
24    design and development standards of chapter 21.07 (except for section 21.07.020B., *Stream,*  
25    *Water Body, and Wetland Protection*) shall be considered conforming on [date of passage], and  
26    subject to this section. No change shall be made to any development unless the change is in the  
27    direction of conformity to the requirements of this title. Except as provided in this section, if the  
28    characteristics of a use, lot, or structure such as off-street parking, off-street loading, lighting,  
29    landscaping, or other features regulated by this title in relation to specified uses of land, water  
30    areas, structures, or premises are not in accord with the requirements of this title, no change shall  
31    be made in such characteristics unless the change is in the direction of conformity to the  
32    requirements of this title.

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

34    1.    **Applicability**

35    This section 21.12.060 applies to all multi-family, commercial, mixed-use,  
36    public/institutional, and industrial development projects that: Development projects that  
37    include any construction or reconstruction of a use or structure that is not solely and  
38    entirely interior to the structure, shall conform to the requirements of this section. For the  
39    purposes of determining "total project costs" in this section, those project costs do not  
40    include the costs for construction or reconstruction that is solely and entirely interior to  
41    the structure.

1 a. Do not comply with the district-specific standards of chapter 21.04, the use-  
2 specific standards of chapter 21.05, or the design and development standards of  
3 chapter 21.07 (except for section 21.07.020B., Stream, Water Body, and Wetland  
4 Protection); and

5 b. Require a permit.

6 For the purposes of this section, "total project costs" shall be determined by the building  
7 official pursuant to title 23, and shall be exclusive of all costs of improvements that move  
8 the development in the direction of conformity to the requirements of this title.

9 **2. Standard**

10 a. An applicant for a building or land use permit for in a multi-family, commercial,  
11 mixed-use, or industrial development zoning district that involves a development  
12 project costing more than 2.5 percent of the assessed value of the structure,  
13 shall be required to spend at least 10 percent (the municipality shall not require  
14 more than 10%, but the applicant may choose to spend more) of the total project  
15 costs on bringing the development towards compliance with the district-specific  
16 standards of chapter 21.04, the use-specific standards of chapter 21.05, and/or  
17 the design and development standards of chapter 21.07 (hereafter called  
18 "characteristics"). If the applicant chooses to spend more than 15%, the amount  
19 in excess of 15% 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 b. 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 c. 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 d. Parking;

36 e. Refuse containers;

37 f. Driveway and parking area surfacing;

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

39 h. Screening of mechanical equipment.

40 **3. Escrow**

41 If the director and the applicant concur that 10% of project costs is not enough money to  
42 result in a significant change to any characteristic, the applicant may put the required  
43 money into an escrow account for not more than five years, in order to combine the

1 money with money required in future projects that trigger this section. If, within five  
2 years, no other projects trigger this section, the original 10% put in escrow shall be  
3 applied towards bringing a characteristic towards conformity, as determined by the  
4 director in consultation with the applicant.

5 **4. No Applicable Characteristics**

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

14 **5. Large Commercial Establishment**

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

20 **6. Timing of Work**

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

24 **21.12.070 NONCONFORMING SIGNS<sup>3</sup>**

25 **A. Effective Date**

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

27 **B. Amortization Provisions**

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

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

35 **2. Amortization of Permanent Signs**

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

39 **3. Amortization of Illuminated Signs**

40 Any illuminated sign that does not meet the requirements of subsection 21.11.090A., with  
41 the exception of subsection 21.11.090A.3.a., shall be altered to comply with the  
42 requirements of this title by May 31, 2008. All LED signs shall comply with the luminance  
43 standards of subsection 21.11.090A.3.d. by November 30, 2005.

1 **Amortization of Pole Signs**

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

5 **4. Amortization of Animated Signs**

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

9 **5. Amortization of Converted Signs**

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

15 **6. Amortization of Roof Signs**

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

17 **C. Termination**

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

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

38 **D. Maintenance of Nonconforming Signs**

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

1 **E. Reconstruction of Damaged Sign**

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

9 **F. Historic Signs**

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

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

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

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

32

33

---

<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.