

## TABLE OF CONTENTS

<b>CHAPTER 21.03: REVIEW AND APPROVAL PROCEDURES .....</b>	<b>1</b>
<b>21.03.010 Purpose and Structure of this Chapter.....</b>	<b>1</b>
<b>21.03.020 Common Procedures.....</b>	<b>1</b>
A. Applicability.....	1
B. Pre-Application Conferences.....	1
C. Authority to File Applications .....	3
D. Application Contents, Submission Schedule, and Fees.....	4
E. Verification of Application Completeness.....	4
F. Community Meetings.....	5
G. Notice.....	7
H. Concurrent Processing .....	10
I. Public Hearings .....	11
J. Findings of Fact.....	11
K. Conditions of Approval .....	11
L. Effect of Inaction on Applications .....	12
M. Lapse of Approval.....	12
<b>21.03.030 Comprehensive Plan Amendments.....</b>	<b>12</b>
A. Levels of Review .....	12
B. Procedure for Substantive Amendments.....	14
C. Procedure for Cosmetic Amendments .....	16
<b>21.03.040 Amendments to Text of Title 21.....</b>	<b>17</b>
A. Purpose and Scope .....	17
B. Procedure .....	17
C. Approval Criteria.....	19
D. Successive Applications .....	19
<b>21.03.050 Rezoning (Map Amendments) .....</b>	<b>20</b>
A. Purpose and Scope .....	20
B. Minimum Area Requirements .....	20
C. Procedure .....	20
D. Special Limitations.....	23
E. Approval Criteria.....	24
<b>21.03.060 Subdivisions and Plats.....</b>	<b>25</b>
A. Purpose .....	25
B. Applicability.....	25
C. Review and Approval of Subdivision Plans .....	27
D. Abbreviated Plat Procedure .....	33
E. Right-of-Way Acquisition Plat.....	36
<b>21.03.070 Conditional Uses.....</b>	<b>37</b>
A. Purpose .....	37
B. Relationship to Site Plan Requirements.....	37
C. Conditional Uses in Nonconforming Structures or Lots .....	37
D. Procedure .....	38
E. Approval Criteria.....	39
F. Changes to Terms and Conditions of Approval .....	39
G. Platting for Site Plans and Conditional Uses.....	39
H. Abandonment of Conditional Use.....	40
<b>21.03.080 Site Plan Review.....</b>	<b>40</b>
A. Purpose .....	40
B. Administrative Site Plan Review.....	40
C. Major Site Plan Review .....	41
D. Expiration.....	42
E. Approval Criteria.....	42

<b>21.03.090</b>	<b>Public Facility Site Selection and Site Review</b> .....	<b>42</b>
	A. Applicability.....	42
	B. Public Facility Site Selection .....	43
	C. Public Facility Site Plan and Project Landscaping Review .....	44
<b>21.03.100</b>	<b>Special Flood Hazard Permits</b> .....	<b>46</b>
	A. Generally .....	46
	B. Application .....	46
	C. Evaluation; Additional Information.....	47
	D. Criteria for Issuance .....	47
	E. Time for Acting on Application.....	48
	F. Notice on Subdivision Plats .....	48
	G. Appeals.....	48
<b>21.03.110</b>	<b>Land Use Permits</b> .....	<b>48</b>
	A. Purpose .....	48
	B. Applicability.....	49
	C. Procedures .....	49
	D. Approval Criteria.....	51
	E. Improvements Associated with Land Use Permits.....	51
<b>21.03.120</b>	<b>Certificates of Zoning Compliance</b> .....	<b>54</b>
	A. Purpose .....	54
	B. Applicability.....	54
	C. Procedures .....	55
	D. Effect of Certificate of Zoning Compliance.....	55
<b>21.03.130</b>	<b>Sign Permits</b> .....	<b>55</b>
<b>21.03.140</b>	<b>Temporary Uses</b> .....	<b>56</b>
	A. Temporary Use Permit Required.....	56
	B. Filing and Contents of Application.....	56
	C. Filing Deadline.....	56
	D. Duration of Permit.....	56
<b>21.03.150</b>	<b>Record of Survey Maps</b> .....	<b>56</b>
	A. Purpose and Authorization .....	56
	B. Use of Record of Survey Maps .....	57
	C. Required Submittals .....	57
	D. Monuments.....	57
	E. Approval.....	57
	F. Appeals.....	57
<b>21.03.160</b>	<b>Vacation of Plats and Rights-of-Way</b> .....	<b>57</b>
	A. Authority.....	57
	B. Required Submittals .....	58
	C. Action by Platting Board .....	58
	D. Title to Vacated Area .....	59
<b>21.03.170</b>	<b>Street Name Alterations</b> .....	<b>60</b>
	A. Generally .....	60
	B. Petition for Alteration .....	60
	C. Notice to Abutting Property Owners; Action by Mayor .....	60
	D. Protests.....	61
<b>21.03.180</b>	<b>Certification of Nonconforming Use</b> .....	<b>61</b>
<b>21.03.190</b>	<b>Minor Modifications</b> .....	<b>61</b>
	A. Purpose and Scope .....	61
	B. Applicability.....	62
	C. Procedure .....	62
	D. Approval Criteria.....	63
<b>21.03.200</b>	<b>Variances</b> .....	<b>63</b>
	A. Purpose and Scope .....	63

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	B. Provisions from Which Variances Are Allowed .....	65
	C. Pre-Application Conference .....	65
	D. Application .....	65
	E. Decision-Making Bodies Authorized to Consider Variance Requests .....	65
	F. Action by the Review Body .....	65
	G. Approval Criteria .....	66
	H. Lapse of Approval.....	67
	I. Appeals.....	67
<b>21.03.210</b>	<b>Appeals .....</b>	<b>67</b>
	A. Appeals to Board of Adjustment.....	67
	B. Appeals to Zoning Board of Examiners and Appeals.....	73
	C. Judicial Appeals.....	74
<b>21.03.220</b>	<b>Hardship Relief Petitions .....</b>	<b>75</b>
	A. Economic Hardship/Takings Relief .....	75
	B. Appointment of Hearing Officer .....	78
	C. Review and Consideration of the Recommended Relief by Assembly .....	81
	D. Time Limits/Transferral of Incentives .....	81

## CHAPTER 21.03: REVIEW AND APPROVAL PROCEDURES

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### 21.03.010 PURPOSE AND STRUCTURE OF THIS CHAPTER

This chapter describes the procedures for review and approval of all applications for development activity in the Municipality of Anchorage. Common procedures, which are applicable to all or most types of development applications, are set forth in Section 21.03.020. Subsequent sections set forth additional provisions that are unique to each type of application, including timetables, staff and review board assignments, review standards, and other information.

### 21.03.020 COMMON PROCEDURES

#### A. Applicability

The common procedures of this Section 21.03.020 shall apply to all applications for development activity under this Title unless otherwise stated.

#### B. Pre-Application Conferences

##### 1. Purpose

The purpose of a pre-application conference is to familiarize the applicant and the municipal staff with the applicable provisions of this Title that are required to permit the proposed development.

##### 2. Applicability

###### a. *Required for New Applications*

A pre-application conference generally is required prior to submittal of the following types of applications:

- i. Rezoning (Map Amendments) (see Section 21.03.050);
- ii. Conditional Uses (see Section 21.03.070);
- iii. Subdivisions and Plats (see Section 21.03.060);
- iv. Major Site Plan Review (see Section 21.03.080C);
- v. Public Facility Site Selection (including schools) (see Section 21.03.090);
- vi. Projects involving Class A or B wetlands (see Section ---);  
and
- vii. Variances (see Section 21.03.200).

No application for these types of approvals shall be accepted until after the pre-application conference is completed and the applicant receives written notification of the conclusions. This review should take place prior to any substantial investment, such as land acquisition for a proposed development, site and engineering design, or the preparation of other data.

###### b. *Exception for Some Changes to Already-Approved Applications*

Pre-application conferences are not required for changes to already-approved conditional use permits and subdivision plans if the following conditions are met:

- i. For non-residential development, the proposed increase in building square footage is less than 50 percent of the existing building square footage.
- ii. For residential development, the proposed increase in the number of units or lots is not more than 50 percent of the existing number of units or lots.

**c. *Optional for All Applications***

A pre-application conference is optional prior to submission of any other application under this Title not listed in paragraph a. above.

**3. Initiation of Pre-Application Conference**

The potential applicant shall request a pre-application conference, in the manner prescribed in the Title 21 User's Guide, with the Director.<sup>1</sup> Prior to the pre-application conference, the applicant shall provide to the Director a description of the character, location, and magnitude of the proposed development and any other supporting documents such as maps, drawings, models, and the type of development permit sought. It is the applicant's responsibility to provide sufficiently detailed plans and descriptions of the proposal to enable staff to make the informal recommendations discussed below.

**4. Pre-Application Conference Content**

The Director shall schedule a pre-application conference after receipt of a proper request. At the conference, the applicant, the Director or designee, and any other persons the Director deems appropriate to attend shall discuss the proposed development. Based upon the information provided by the applicant and the provisions of this Title, the parties should discuss in general the proposed development and the applicable requirements and standards of this Title.

**5. Report of Pre-Application Conference<sup>2</sup>**

Within ten days after the date of the pre-application review, the Director shall notify the applicant in writing of the staff's informal recommendation regarding the desired development activity with respect to the following items:

- a. Applicability of Municipality policies, plans, and requirements as they apply to the proposed development.

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<sup>1</sup> NOTE: The term "Director" is used throughout this draft to denote the Planning Director or designee. This will be clearly defined in the code. We recommend keeping this term generic to prevent any future changes (in delegation) from requiring a text amendment to this Title.

<sup>2</sup> NOTE: Drafting a written summary of the recommendations that come out of the pre-application conference would be the best way to establish a paper trail for the application, and would provide a good tool for staff to later use to track compliance with staff recommendations. However, staff resources in Anchorage may not be sufficient to fully implement the text as written. An alternative approach would be to redraft the list of topics in this section as "items to be discussed," rather than as items that must be reported on, and not require a formal written report. The disadvantage of this approach would be increased difficulty in tracking the impacts of the meeting on later stages of the project, especially if there is staff turnover.

- b. Appropriateness of the development with respect to the policies set forth in the comprehensive plan and the regulations in this Title.
- c. Need, if any, to prepare a subdivision plat.
- d. Any site plan considerations or requirements.
- e. Any concerns or requirements related to the anticipated impact upon public rights-of-way and public improvements, and appropriate requirements to mitigate those impacts, including but not limited to traffic impact assessments.
- f. Any concerns related to land use, landscaping concepts, and overall project design.
- g. Possible alternatives or modifications related to the proposed application.
- h. Procedures that will need to be completed to review and approve the proposed change.

**6. Informal Recommendations Not Binding**

The informal recommendations of the Director are not binding upon the applicant or the Municipality, but are intended to serve as a guide to the applicant in making the application and advising the applicant in advance of the formal application of any issues which will or may subsequently be presented to the appropriate decision-making body.

**7. Application Required Within Six Months**

After a pre-application conference has been completed, an application must be completed within six months. If an application is not filed within six months, a new pre-application conference shall be required prior to filing an application.

**C. Authority to File Applications**

- 1. Unless otherwise specified in this Title, applications for review and approval may be initiated by:
  - a. The owner of the property that is the subject of the application;
  - b. The owner's authorized agent; or
  - c. Any review or decision-making body.
- 2. When an authorized agent files an application under this Title on behalf of a property owner, the agent shall provide the Municipality with written documentation that the owner of the property has authorized the filing of the application.
- 3. When a review or decision-making body initiates action under this Title, it does so without prejudice toward the outcome.

**D. Application Contents, Submission Schedule, and Fees**

**1. Form of Application**

Applications required under this Chapter shall be submitted in a form and in such number as required by the Director.

**2. Processing Fees**

Applications shall be accompanied by the fee amount that is listed in the User's Guide.

**3. Title 21 User's Guide**

The Mayor shall compile the requirements for application contents, forms, fees, and the submission and review schedule (including recommended time frames for review) in a User's Guide, which shall be made available to the public. The Mayor may amend and update the User's Guide from time to time, upon recommendation of the Director.

**4. Waivers**

The Director may waive certain submittal requirements in order to reduce the burden on the applicant and to tailor the requirements to the information necessary to review a particular application. The Director may waive such requirement where he or she finds that the projected size, complexity, anticipated impacts, or other factors associated with the proposed development clearly, in his or her opinion, support such waiver.

**E. Verification of Application Completeness<sup>3</sup>**

1. The Director shall only initiate the review and processing of an application if such application is complete. The Director shall make a determination of application completeness within 15 days of application filing.<sup>4</sup> If the application is determined to be complete, the application shall then be processed according to this Title. If an application is determined to be incomplete, the Director shall provide notice to the applicant along with an explanation of the application's deficiencies. No further processing of an incomplete application shall occur until the deficiencies are corrected in a future re-submittal. If the applicant receives no notice within 15 days, the application shall be considered complete and processed according to this Title.

2. An application will be considered complete if it is submitted in the required form, includes all mandatory information, including all supporting materials specified in the Title 21 User's Guide, and is accompanied by the applicable fee. A pre-application conference shall have been held, if required, pursuant to Section 21.03.020.B, *Pre-Application Conferences*.

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<sup>3</sup> NOTE: The Diagnosis and Outline talked about the need to establish clear threshold criteria for Traffic Impact Assessments in the code. Those criteria will be relevant in this section, since projects that require TIAs will not be considered complete unless such assessments are submitted. However, we recommend that the criteria themselves be included in 21.07, *Development and Design Standards*. We will work with staff to develop a clear set of the threshold criteria that are being applied.

<sup>4</sup> NOTE: We strongly urge the inclusion of a time limit on application completeness decisions, to ensure that applications don't get bogged down too early in the process.

3. Any supplemental technical reports and special studies that are submitted following the original application must be received at least thirty days prior to a public hearing. The Municipality may postpone and reschedule a public hearing or approval deadline if such reports and studies are submitted in less than thirty days prior to a public hearing. Written notice of receipt of such additional materials shall be provided to all parties that received written notice of the original application. Copies of such additional materials shall be delivered to all reviewers who received the original application packet.
4. As a consequence for any false or misleading information submitted or supplied by an applicant on an application, that application will be deemed incomplete.

**F. Community Meetings<sup>5</sup>**

**1. Purpose**

The purpose of a community meeting shall be to provide an informal opportunity to inform the affected community and community council(s) of the details of a proposed development and application, how the developer intends to meet the standards contained in this Title, and to receive public comment and encourage dialogue at an early time in the review process.

**2. Applicability<sup>6</sup>**

A community meeting shall be required in conjunction with the submittal of any of the following applications, unless the Director determines that a neighborhood meeting is not necessary because of the nature of the proposal and its potential impacts

- a. Rezoning;
- b. Subdivisions (not including abbreviated plats);
- c. Conditional Uses (over certain size threshold, and/or adjacent to existing residential development?);
- d. Public Facility Site Selection (including schools); and
- e. Major Site Plan Review.

**3. Determination**

The Director shall make a determination of the applicability of this Section to a development proposal at the pre-application conference, and a tentative schedule for completion of the community meeting shall be negotiated with the applicant at the pre-application conference. For applications for which pre-application conferences are not mandatory, the Director shall make a

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<sup>5</sup> NOTE: As discussed in the Diagnosis and Outline, this is a suggested new mechanism to encourage or require developers to meet with affected property owners prior to developing large new projects. The draft is intended to take advantage of the existing set of community councils.

<sup>6</sup> NOTE: If this provision is considered too strict, an alternative would be to make all community meetings optional. Also, as discussed, the choice to go through an optional community meeting could be used to provide some type of incentive to a developer. We recommend continuing consideration of this throughout the drafting process – it will not be clear whether this might be an appropriate incentive for higher development standards, for example, until after there is a draft of the development standards chapter.



determination of applicability of this Section at the same time that the application is reviewed for completeness pursuant to Section 21.03.020E. above.

**4. Criteria**

A community meeting shall be required if the Director determines that a proposed development or subdivision may have significant community impacts, including without limitation impacts related to traffic; provision of public services such as safety, schools, or parks; compatibility of building design or scale; or operational compatibility such as hours of operation, noise, litter, or glare.

**5. Timing and Number of Community Meetings**

a. When required, there shall be at least one community meeting that shall be held after the pre-application conference but before submittal of a formal application to the Director, unless the latter requirement is waived by the Director.

b. When an application already has been submitted at the time that the Director determines that a community meeting is required, there shall be at least one community meeting held prior to any administrative action on the application, a minimum of --- [14?] days prior to the first public hearing on the application.

c. The Director may also require that additional pre-application or post-application community meetings take place based on consideration of the proposed development's mix of uses, density, complexity, potential for impacts, or the need for off-site public improvements created by the development.

**6. Notice of Community Meeting**

The applicant shall give written notice of the community meeting to the affected community council at least --- [21?] days prior to the community meeting, pursuant to the general notice provisions of Section 21.03.020.G below.

**7. Attendance at Community Meeting**

If a community meeting is required, the applicant or applicant's representative shall attend the community meeting. The applicant shall be responsible for scheduling the community meeting, coordinating the community meeting, and for retaining an independent facilitator if needed. The Director may choose to have a staff member attend the meeting; if so, that shall be indicated at the pre-application meeting. If a staff member is directed to attend, the applicant shall be responsible for scheduling the meeting at a time when the staff member can attend and for submitting the additional fee required for staff attendance at the meeting.<sup>7</sup> All community meetings shall be convened at a place in the vicinity of the proposed development.

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<sup>7</sup> NOTE: We heard many comments suggesting that a staff member should be present at the community meeting, not only to provide a neutral third-party account of the meeting, but also to provide information as the exact legal requirements to which the proposed development will be subject.

**8. Summary of Community Meeting**

The applicant shall prepare a written summary of the community meeting(s), which shall be submitted to the Director no later than seven days after the date of the meeting. As applicable, the written summary shall be included in the Director/staff report provided to the decision-making body at the time of the first public hearing to consider the application. At a minimum, the written summary shall include the following information:

- a. Dates and locations of all meetings where citizens were invited to discuss the applicant's proposals;
- b. Content, dates mailed, and number of mailings, including letters, meeting notices, and any other written material;
- c. The number of people that participated in the meetings;
- d. A summary of concerns, issues, and problems expressed during the meetings, including:
  - i. The substance of the concerns, issues, and problems;
  - ii. How the applicant has addressed or intends to address concerns, issues, and problems expressed at the meetings; and
  - iii. Concerns, issues, and problems the applicant is unwilling or unable to address and why.

**G. Notice<sup>8</sup>**

**1. Content of Notices**

Notice of all public hearings required under this Chapter shall, unless otherwise specified in this Title: (1) identify the date, time, and place of the public hearing, (2) if applicable, describe the property involved in the application by street address or by legal description and nearest cross street; (3) describe the nature, scope, and purpose of the proposed action; (4) indicate that interested parties may appear at the hearing and speak on the matter; and (5) indicate where additional information on the matter may be obtained.

**2. Summary of Notice Requirements<sup>9</sup>**

The following Table 21.03-1 summarizes the notice requirements of the procedures set forth in this Chapter.

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<sup>8</sup> NOTE: This section essentially reorganizes the current Section 21.15.005, Notice, into new categories. "Constructive notice" is a recommended new section.

<sup>9</sup> NOTE: We will need to continually update this table throughout the drafting process.

TABLE 21.03-1: NOTICE REQUIREMENTS				
Type of Application or Procedure	Section	Notice Required		
		Mailed	Published	Posted
Amendments to the Comprehensive Plan, Substantive	21.03.030.B	✓	✓	✓
Amendments to the Comprehensive Plan, Cosmetic	21.03.030.C	-	-	-
Amendments to Text of Title 21	21.03.040	-	✓ ?	-
Rezoning (Map Amendments)	21.03.050	✓	✓	✓
Subdivisions (with existing physical access)	21.03.060	✓	✓	✓
Subdivisions (without existing physical access)	21.03.060	✓	✓	-
Abbreviated Plats	21.03.060.D	-	✓	-
Conditional Uses	21.03.070	✓	✓	✓
Site Plan Review	21.03.080	-	-	-
Public Facility Site Selection and Site Review	21.03.090	-	✓ ?	-
Special Flood Hazard Permits	21.03.100	-	-	-
Land Use Permits	21.03.110	-	-	-
Certificates of Zoning Compliance	21.03.120	-	-	-
Sign Permits	21.03.130	-	-	-
Temporary Uses	21.03.140	-	-	-
Record of Survey Maps	21.03.150	-	-	-
Vacation of Plats and Rights-of-Way	21.03.160	-	-	-
Street Name Alterations	21.03.170	✓	✓	-
Certification of Nonconforming Use	21.03.180	-	-	-
Minor Modifications	21.03.190	-	-	-
Variances	21.03.200	✓	✓	✓
Appeals to Board of Adjustment	21.03.210.A	✓	✓	-
Appeals to Zoning BOE	21.03.210.B	✓	✓	-

**3. Published Notice**

When subsection—2. above requires that notice be published, the Director shall cause a notice to be published in a newspaper having general circulation of at least --- (20,000 persons?) in the area.<sup>10</sup> The notice shall be published at least 21 days before the scheduled hearing date. In computing such period, the day of publication shall not be counted, but the day of the hearing shall be counted.

**4. Written Notice**

When subsection 2. above requires that written notice be provided, the Director shall deposit such notice into first class mail at least 21 days prior to the scheduled date of the hearing. In computing such period, the day of mailing shall not be counted, but the day of the hearing shall be counted. Written notice shall be provided to the following persons or groups.

**a. Property Owners**

All persons listed on the records of the municipal assessor as owners of land subject to the application or as owners of: the parcels within 500 feet of the outer boundary of the land subject to the application, or the 50 parcels nearest to the outer boundary of the land subject to the application, whichever is the greater number of parcels, at the mailing addresses of such persons in the records of the municipal assessor.

**b. Community Councils**

Any officially recognized community council whose boundaries includes land described in paragraph a. of this subsection, and any additional such council whose boundaries lie within 1,000 feet of any part of the subject property.<sup>11</sup> Furthermore, the Planning Department shall provide notice to additional community councils in the following instances:<sup>12</sup>

- i. Each recognized community council within the Municipality shall receive written notice where the subject parcel is one of the following regional public lands or facilities: a public airport; a designated regional or urban park; or a public school or public university with areawide attendance.
- ii. If the subject parcel is a branch public facility that serves a specific delineated area, such as a public school or fire station, then any community council whose boundaries lie within the delineated district of service of a branch public facility shall receive written notice.

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<sup>10</sup> NOTE: We heard comments that the requirement for “general circulation” needs to be tightened, since the current publications are being done in a publication with little visibility.

<sup>11</sup> NOTE: This is a suggested expansion of the current provision, which keeps the community council notification boundary the same as for individual landowners. The Assembly is expected to take action in July on proposed community council redistricting ordinance AO 2003-75, which includes a similar measure.

<sup>12</sup> The Assembly is anticipated to take action on the proposed community council redistricting ordinance AO 2003-75 in July 2003. The ordinance includes provisions for notifying additional community councils in the following three instances.

- iii. Any community council whose boundaries lie beyond the minimum notification distance shall receive notice regarding proposals of potentially major scope or controversy that, in the opinion of the director, are likely to have a significant impact on the residents of the community council beyond the minimum notification distance.

**c. Additional Persons**

Such additional persons or geographic areas as the Director may designate.<sup>13</sup>

**5. Posted Notice**

When subsection 2. above requires that notice be posted, the applicant shall cause a notice to be posted on the property for at least 21 days before the scheduled hearing date. In computing such period, the day of posting shall not be counted, but the day of the hearing shall be counted. If no part of the subject property is visible from the public right-of-way, the notice shall be posted along the nearest street in the public right-of-way. Posted notices shall include all the content specified in paragraph 1. above except for the legal description. Before the public hearing, the applicant shall submit to the Department an affidavit, signed by the person who did the posting or the person who caused the posting to be done, that notice was posted as required by this subsection.

**6. Constructive Notice**

a. Minor defects in any notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements. Minor defects in notice may include, but are not limited to, errors in a legal description or typographical or grammatical errors that do not impede communication of the notice to affected parties. Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a hearing shall be strictly construed. If questions arise at the hearing regarding the adequacy of notice, the decision-making body shall direct Town staff to make a formal finding as to whether there was substantial compliance with the notice requirements of this Title, and such finding shall be made available to the decision-making body prior to final action on the request.

b. When the records of the Municipality document the publication, mailing, and posting of notices as required by this Section, it shall be presumed that notice of a public hearing was given as required by this Section.

**H. Concurrent Processing**

Where possible without creating an undue administrative burden on the Municipality's decision-making bodies and staff, this Title intends to accommodate the simultaneous

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<sup>13</sup> NOTE: We heard suggestions that the Director should have the authority to broaden the notice area on a case-by-case basis. This provision, from the existing code, appears to allow just such case-by-case decisions. Is this not sufficient?

processing of applications for different permits and approvals that may be required for the same development project in order to expedite the overall review process. Review and decision-making bodies considering applications submitted simultaneously shall render separate reports, recommendations, and decisions on each application based on the specific standards applicable to each approval.

1. Examples of concurrent filing and processing of applications include, but are not limited to:
  - a. A site plan along with a conditional use;
  - b. A subdivision plan along with a site plan or variance or vacation;
  - c. A variance along with a conditional use or site plan.
2. Some forms of approval depend on the applicant having previously received another form of approval, or require the applicant to take particular action within some time period following the approval in order to avoid having the approval lapse. Therefore, even though this Title intends to accommodate simultaneous processing, applicants should note that each of the permits and approvals set forth in this Title has its own timing and review sequence.
3. The expected time frame and approval process for a consolidated application shall follow the longest time frame and approval process required from among the joined application types.

**I. Public Hearings**

[RESERVED]<sup>14</sup>

**J. Findings of Fact<sup>15</sup>**

Unless otherwise specified, every decision made under this Chapter shall be based upon findings of fact, and every finding of fact shall be supported in the record of the proceedings. The approval criteria required to exist on any matter upon which a board is required to act under this Chapter are limitations on the power of the Board to act. A mere finding or recitation of the approval criteria unaccompanied by findings of specific facts shall not be deemed findings of fact and shall not be deemed compliance with this Title.

**K. Conditions of Approval<sup>16</sup>**

Some procedures set forth in this Title authorize the decision-making body to impose such conditions upon the premises benefited by the approval as may be necessary to

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<sup>14</sup> NOTE: We have removed all the public hearing procedures from the Resolutions into a separate new file. There are many inconsistencies among the hearing procedures used by the different bodies. We will be submitting to staff shortly a summary table outlining these inconsistencies. Once we do so, we'll need to work with staff to determine (1) whether a consolidated set of procedures should be developed for all bodies, and (2) whether the procedures (in current form or consolidated) should be put into Title 21 here, or rather there should just be a cross-reference here to an external document, like the User's Guide.

<sup>15</sup> NOTE: This is a strong new provision. If the Municipality is uncomfortable applying it across the Board to all types of provisions, then an alternative approach could be to apply it just to rezonings. One of the benefits of this provision, if it is strictly followed and enforced, should be more written documentation for rezonings, or perhaps fewer rezonings.

<sup>16</sup> NOTE: Additional research necessary to determine if there is any Alaska statutes or case law to be reflected in this section.

reduce or minimize any potential adverse impact upon other property in the area, or to carry out the general purpose and intent of the comprehensive plan and this Title. In such cases, any conditions attached to approvals shall be directly related to the impacts of the proposed use or development and shall be roughly proportional in both extent and amount to the anticipated impacts of the proposed use or development. No conditions of approval, except for those attached to variance approvals, shall be less restrictive than the requirements of this Title or applicable Special Limitations zoning.

**L. Effect of Inaction on Applications<sup>17</sup>**

When a review or decision-making body fails to take action on an application within the time required (which varies by type of application), such inaction shall be deemed a denial of the application, unless the decision-making body agrees to an extension of the time frame.

**M. Lapse of Approval**

The lapse of approval time frames established by the procedures of this Title may be extended only when all of the following conditions exist:

1. The provisions of this Title must expressly allow the extension;
2. An extension request must be filed prior to the applicable lapse-of-approval deadline;
3. The extension request must be in writing and include justification; and
4. Unless otherwise noted, authority to grant extensions of time shall rest with the decision-making body that granted the original approval (the one being extended).

**21.03.030 COMPREHENSIVE PLAN AMENDMENTS<sup>18</sup>**

**A. Levels of Review**

The comprehensive plan should be reviewed and reassessed regularly in order to evaluate its effectiveness and adequacy in guiding growth of the Municipality and to determine whether or not the Plan continues to meet the long-term planning needs of the Municipality. Because this review need not necessarily result in the complete revision of the plan, several levels of review are contemplated in this Section.

**1. Comprehensive Plan Revision**

The plan shall be reviewed and comprehensively revised at least once every 20 years, preferably following the decennial census.

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<sup>17</sup> NOTE: Our strong recommendation is that inaction on a decision means denial. However, we understand that this would reverse a longstanding policy in Anchorage that inaction means approval. Further discussion needed with the Municipal Attorney's office and elected officials.

<sup>18</sup> NOTE: The current Title 21 contains only limited references to how the Comprehensive Plan should be updated or modified – primarily in 21.05.040, "Procedure for modification." This recommended new section contains more complete procedures for both substantive and non-substantive, "cosmetic" amendments. Many jurisdictions in which we have worked have found it useful to distinguish between the two.

- a. The Director shall initiate this review, assisted as necessary by the directors of other departments. As part of this review, the Director shall provide the Planning and Zoning Commission with an overall assessment of the adequacy and effectiveness of the existing Plan, including identification of new issues not adequately addressed by the Plan, issues which require further study and investigation, and suggested improvements. The Planning and Zoning Commission shall consider the staff assessment and shall recommend amendments or issues that the Commission feels should be pursued or investigated. The Commission shall then forward their recommendations, along with the staff report, to the Assembly for consideration.
- b. The Assembly shall consider the recommendations of the Planning and Zoning Commission and the staff report and shall determine whether issues exist that merit further investigation or an amendment to the plan. The Director shall then initiate the investigation of any issues or amendments as requested by the Assembly. Any amendments shall be initiated in accordance with the provisions of subsections B. and C. below.

**2. Plan Reevaluation**

A reevaluation of the major trends and policies of the comprehensive plan shall occur ten years from the time of its initial adoption. If major deviations from those trends anticipated in the initial plan are not identified, a complete revision of the plan is not required. If major deviations are noted in this reevaluation, a revision of the plan is warranted and shall follow the process identified in paragraph 1. above.

**3. Plan Review**

The plan should be reviewed once every five years, or at the time of an area-wide rezoning, in order to make it consistent with economic and demographic trends, recent and proposed land use decisions, and adopted studies and plans. Necessary revisions shall follow the processes identified in paragraphs B. and C. below.

**4. Other Plan Amendments**

In addition to the regularly scheduled amendments described in paragraphs 1. through 3. above, the comprehensive plan may be amended at any time to reflect changing circumstances, in accordance with the procedures set forth in subsection B. below.



**B. Procedure for Substantive Amendments**

**1. Procedure**

**a. Initiation**

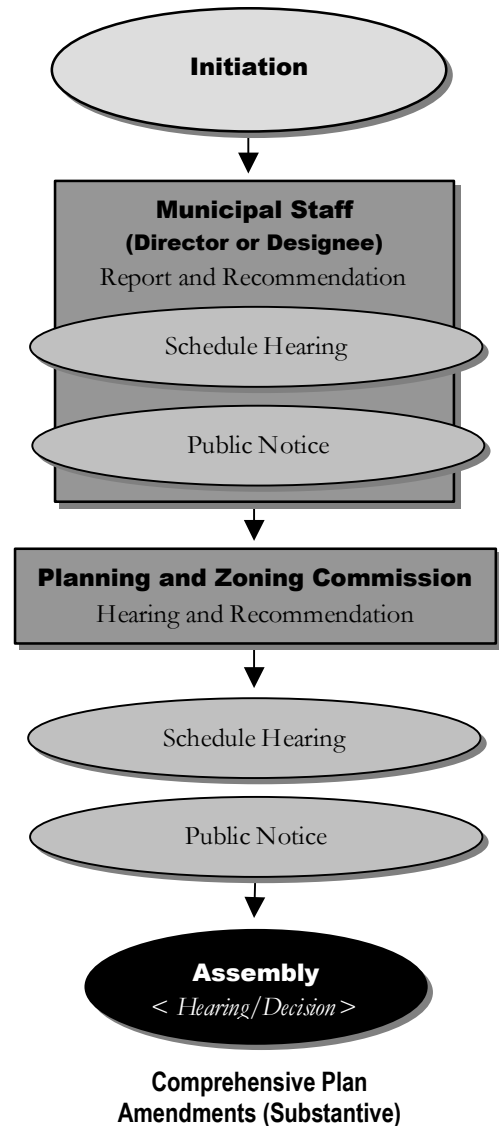
i. The Director of any municipal department may propose a substantive amendment at any time.

ii. Any review or decision-making body may request that the Planning Director investigate and evaluate a specific substantive amendment proposal. The Director shall submit, within a reasonable time, a report and recommendation to the Assembly regarding whether or not the proposed substantive amendment should be reviewed by the Assembly and the Planning and Zoning Commission. Upon receiving the report and recommendation of the Director, the Assembly will, by majority vote, determine whether or not to proceed and review the proposed amendment.

iii. A proposal for a substantive amendment may be submitted concurrently with a rezoning request that conflicts with the comprehensive plan, under subsection 3. below.

**b. Public Hearings and Public Notice**

Two public hearings shall be held on each proposed substantive amendment, the first before the Planning and Zoning Commission and the second before the Assembly. Notice of the hearings shall be provided and the hearings shall be conducted in accordance with the general provisions of Sections 21.03.020.G and 21.03.020.I.



**c. First Public Hearing: Staff Report to Planning and Zoning Commission**

The Director shall review each proposed substantive amendment in light of the standards of review set forth in paragraph 2. and distribute the application, as deemed necessary, to other reviewers. Based on the results of those reviews, the Director shall provide a report to the Planning and Zoning Commission at the first public hearing on the proposed substantive amendment. This report shall include a discussion of all plans and policies that have been adopted by the Municipality and are relevant to the proposed amendment.

**d. Second Public Hearing: Staff Recommendation to Assembly**

i. Within 90 days following the Commission's action, the Assembly shall hold a second public hearing on the proposed amendment. The Director shall provide the staff's recommendation regarding whether to approve or deny the rezoning at this second public hearing.

ii. Within 90 days of the second (or last) public hearing, the Assembly shall, based on the standards of review set forth in paragraph 2.:

(A) Approve the amendment by ordinance, either as submitted or with modifications suggested by staff, the Planning and Zoning Commission, or the Assembly;

(B) Reject the proposed amendment; or

(C) Refer the proposed amendment back to the Planning and Zoning Commission or to a committee of the Assembly for further consideration.

**2. Standards of Review**

Proposals to amend the comprehensive plan shall be evaluated based upon whether the amendment is necessary in order to address conditions including, but not limited to, the following:

a. A change in projections or assumptions from those on which the comprehensive plan is based;

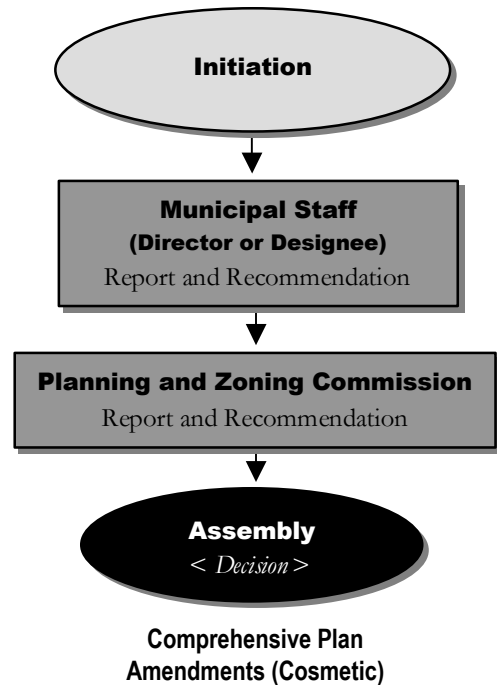
b. Identification of new issues, needs, or opportunities that are not adequately addressed in the comprehensive plan;

c. A change in the policies, objectives, principles, or standards governing the physical development of the Municipality or any other geographic areas addressed by the comprehensive plan; or

d. Identification of errors or omissions in the comprehensive plan.

**3. Simultaneous Review of a Rezoning and a Related Substantive Amendment**

The Assembly may direct, on their own motion, that a specific substantive amendment proposal be considered by the Planning and Zoning Commission according to the same schedule as a related request for the rezoning of a particular tract or parcel affected by the substantive amendment. In such a case, the Planning and Zoning Commission shall submit its report and recommendation regarding the substantive plan amendment to the Assembly at the same time they submit their report and recommendation regarding the rezoning case. The schedule for the review of the rezoning, as set forth in Section 21.03.050, *Rezoning*s, shall prevail over the schedule in this Section. The Assembly and Planning and Zoning Commission shall consider the plan amendment proposal and the rezoning request separately, and shall act separately on the two items.



**C. Procedure for Cosmetic Amendments<sup>19</sup>**

**1. Initiation**

Any review or decision-making body, or Director of any municipal department, may, at any time on their own motion, request that the Director of the Planning, Community Development, and Public Works Department investigate and evaluate a specific cosmetic amendment proposal.

**2. Review by Planning and Zoning Commission and Assembly**

Upon receiving a request for a cosmetic amendment, the Director shall then prepare a report and recommendation, which will be forwarded with the proposed amendment to the Planning and Zoning Commission for consideration. The Planning and Zoning Commission shall submit, within a reasonable time, a report and recommendation to the Assembly regarding whether or not the proposed amendment should be adopted as submitted, adopted with modifications, or rejected. The Assembly will then consider the reports and recommendations of the Planning and Zoning Commission and the Director at a regularly scheduled Assembly meeting, and will take action to either: (1) approve or deny the amendment, (2) approve the amendment

<sup>19</sup> NOTE: This definition of "cosmetic amendment" will be included in the Definitions chapter: "A cosmetic amendment to the Comprehensive Plan is an amendment that affects the appearance, style, wording, or presentation of the Plan, but that does not alter its meaning, interpretation, or recommendations. Examples of cosmetic amendments include, but are not limited to: revising map or document style, format, or layout to enhance clarity; revising map or text content to accurately reflect additions to Town facilities or revisions to adjoining jurisdictions' adopted plans; adding explanatory text or labels; and correcting spelling or grammar."

with modifications, or (3) refer the matter back to the Planning and Zoning Commission for further consideration. No public hearing or public notification is required.

#### **21.03.040 AMENDMENTS TO TEXT OF TITLE 21<sup>20</sup>**

##### **A. Purpose and Scope**

The Assembly may amend the text of this Title in accordance with the procedures set forth in this Section. The purpose of text amendments is not to relieve particular hardships, nor to confer special privileges or rights on any person, but only to make adjustments to text that are necessary in light of changed conditions or changes in public policy, or that are necessary to advance the general welfare of the Municipality.

##### **B. Procedure**

###### **1. Initiation of Amendments and Filing of Applications**

A petition for amendment to the text of this Title may be initiated by any review or decision-making body, any owner of a legal or equitable interest in land located in the Municipality, or any resident of the Municipality. Petitions for text amendment shall be filed with the Director in a form established by the Director in the Title 21 User's Guide.

###### **2. Director Review, Report, and Recommendation**

The Director shall review each proposed text amendment in light of the approval criteria of subsection C. below and distribute the application to other reviewers as deemed necessary. Based on the results of those reviews, the Director shall provide a report and recommendation to the Planning and Zoning Commission.

###### **3. Public Hearing<sup>21</sup>**

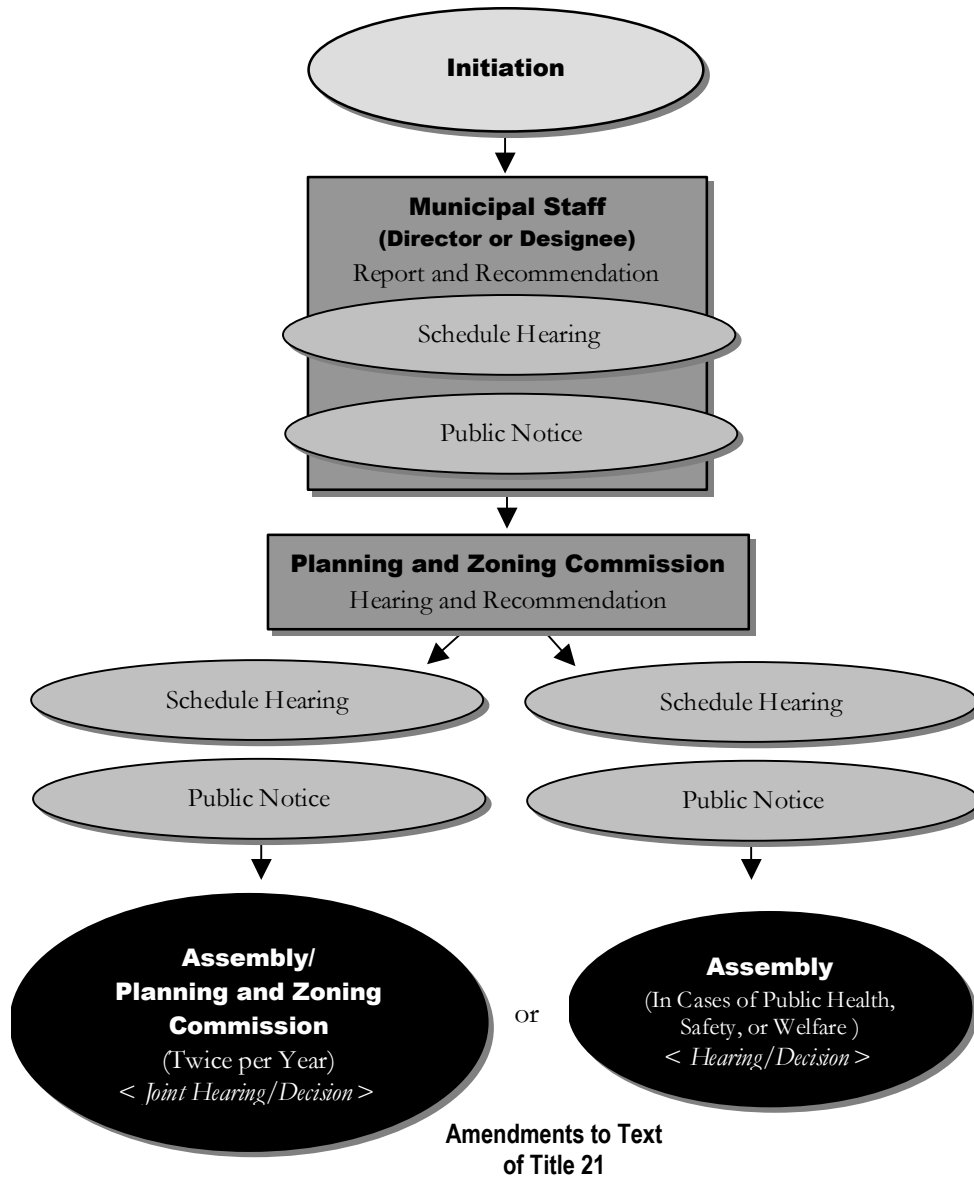
a. The Assembly shall hold at least one public hearing on each Title 21 text amendment application. Written and published notice of public hearings on text amendments shall be provided pursuant to the general notice provisions of Section 21.03.020.G.

b. Text amendments shall be considered two times per year at a joint public hearing of the Planning and Zoning Commission and the Assembly. However, where the Assembly determines by a majority vote that the public health, safety, or welfare necessitates, text amendments may be considered at any regularly scheduled meeting of the Assembly, provided that the Assembly holds a public hearing on the proposed amendment and the Planning and Zoning Commission provides a written report and recommendation on the proposed amendment.

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<sup>20</sup> NOTE: This is a new procedure. The current Title 21 contains little information on how to amend the text of the ordinance.

<sup>21</sup> NOTE: In the interest of streamlining code administration and reducing the overall number of public hearings, this section proposes that all text amendments be consolidated and heard twice per year, at a joint hearing of the P&Z and the Assembly. Alternatives would include allowing the bodies to hear text amendment proposals at any time, and/or to have separate hearings by each body (or perhaps just one hearing with the Assembly only).



**4. Planning and Zoning Commission Review and Recommendation**

- a. As soon as possible after the public hearing, but no later than 60 days, the Planning and Zoning Commission shall make a recommendation to the Assembly to approve or disapprove the text amendment based on the approval criteria of subsection C. below.
- b. If the Commission recommends approval of the amendment, the Director shall draft an ordinance effectuating the recommendation and shall submit the ordinance to the Assembly.
- c. If no recommendation is made within 60 days, then the Planning and Zoning Commission may request an extension of time from the Assembly. If no recommendation is made and no extension is granted, then the Assembly may act on the proposed amendment without a recommendation from the Planning and Zoning Commission.

**5. Assembly Action**

After reviewing the reports and recommendations of the Director and the Planning and Zoning Commission, the Assembly shall vote to approve, approve with amendments, or deny the proposed amendment, based on the approval criteria of subsection C. below. The Assembly also may refer the proposed amendment back to the Planning and Zoning Commission or to a committee of the Assembly for further consideration. Title 21 text amendments shall be approved in the form of ordinances.

**C. Approval Criteria**

Recommendations and decisions on text amendments shall be based on consideration of all the following criteria:

1. Whether the proposed amendment corrects an error or meets the challenge of some changing condition, trend, or fact;
2. Whether the proposed amendment is consistent with the comprehensive plan and the stated purposes of this Title;
3. Whether the proposed amendment will protect the health, safety, and general welfare of the public, and
4. Whether the proposed amendment will result in significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation.

**D. Successive Applications**

Following denial of a text amendment request, no new application for the same or substantially the same amendment shall be accepted within one year of the date of denial. The waiting period required by this Section may be waived in an individual case, for good cause shown, by the affirmative vote of three-fourths of the members of the Assembly.

**21.03.050 REZONINGS (MAP AMENDMENTS)<sup>22</sup>**

**A. Purpose and Scope**

The boundaries of any zone district in the Municipality may be changed, or the zone classification of any parcel of land may be changed, pursuant to this Section. The purpose is not to relieve particular hardships, nor to confer special privileges or rights on any person, but only to make adjustments to the official zoning map that are necessary in light of changed conditions or changes in public policy, or that are necessary to advance the general welfare of the Municipality. Rezoning shall not be used as a way to legitimize nonconforming uses or structures, and should not be used when a conditional use, variance, or minor modification could be used to achieve the same result. Rezoning shall precede Corps of Engineers permit applications.

**B. Minimum Area Requirements<sup>23</sup>**

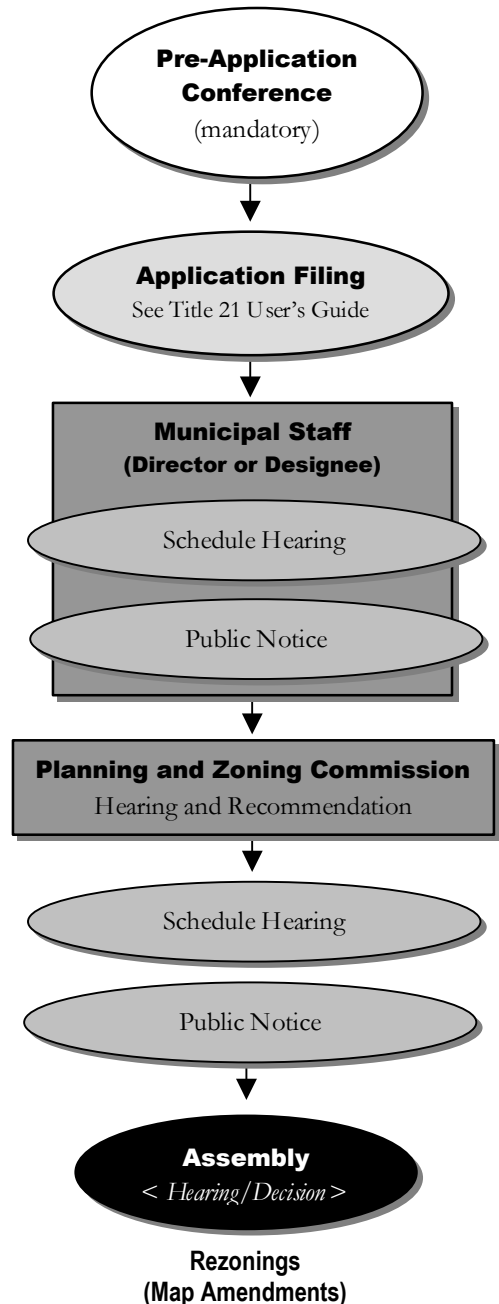
A zoning map amendment shall only be considered for properties of 1.75 acres (76,230 square feet) or more, except for:

1. An amendment extending the boundaries of an existing use district; or
2. An amendment initiated by the municipal administration to place municipally owned land in a PLI use district.<sup>24</sup>

**C. Procedure**

**1. Initiation**

- a. A zoning map amendment may be initiated by the Assembly,



<sup>22</sup> NOTE: This section heavily revises the current rezoning procedure (found in the current Chapter 21.20). Key revisions include: a new purpose statement, clarification of the process, requirement for written findings in Commission recommendations, suggested new approval criteria, and an overall streamlining of the language. Other specific changes are noted below.

<sup>23</sup> NOTE: The Outline talks about a new section of “eligibility criteria” to discourage the high number of rezonings. However, this draft proposes tightening the rezoning process in a slightly different way, through better approval criteria (see subsection (F)) and also through a new requirement of written findings for Commission recommendations.

<sup>24</sup> NOTE: The existing Title 21 also contains an exception here for properties that are going to be rezoned to neighborhood commercial businesses – they can be rezoned if they are less than 1.75 acres, so long as a site plan is submitted. We have removed that provision in this first draft since the neighborhood business district is not being carried forward. However, it might be appropriate to waive the minimum area requirement for rezonings to some other new districts being considered, such as the neighborhood activity centers, so long as a site plan is prepared. This issue should be discussed once the new districts chapter is drafted.

the Planning and Zoning Commission, or by the Director of any municipal department.

- b. In addition, any person may initiate a zoning map amendment by submitting a petition favoring the amendment signed by the owners of at least 51 percent of the property within the area to be rezoned. For the purposes of this subsection, an owner of property subject to the Horizontal Property Regimes Act owns a percentage of the appurtenant common areas equal to the percentage for that property stated in the recorded declaration committing the property to the Horizontal Property Regimes Act.<sup>25</sup>
- c. A rezoning application shall expire one year after submittal unless a public hearing on the application has been held by the Assembly on or before that date; provided, however, that the Director or designee may extend the application for six months if the reason for the delay was due to circumstances beyond the control of the applicant.

**2. Pre-Application Conference**

Before filing an application, a private-party applicant shall request a pre-application conference with the Director. See Section 21.03.020.B.

**3. Submission Requirements**

- a. Applicants for a zoning map amendment shall submit the materials specified in the Title 21 User's Guide. Additional materials may be required for certain types of amendments, such as amendments with special limitations or amendments to the planned community district.
- b. The Planning and Zoning Commission or the Director may require the submission of such other information as may be necessary to permit the informed exercise of judgment under the standards for the review of a rezoning application, as set out in subsection E. below. Such information shall be related to the scale and location of the rezoning application and may include, without limitation, traffic, soil, hydraulic, visual, aesthetic, water, and sewage analyses.

**4. Public Hearings**

Published, written, and posted notice of public hearings on map amendments shall be provided in accordance with Section 21.03.020.G. In addition, the notice shall list the protest provisions set forth in subsection 7. below. Where the amendment has been initiated by someone other than the property owner or his or her designated agent, the Director also shall mail a notice to all owners of the property to be reclassified, as shown in the current municipal assessor's records.

**5. Review and Recommendation by Planning and Zoning Commission**

- a. The Planning and Zoning Commission shall hold a public hearing on the proposed amendment and, at the close of the hearing, recommend that the Assembly approve the amendment as submitted, approve the amendment with special limitations or other

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<sup>25</sup> NOTE: Staff: Is this statutory reference (A.S. 34.07) still current?



modifications, or disapprove the amendment, based on the approval criteria of subsection E. below.

- b. In its review, the Commission's recommendations shall include its written findings on each of the following points:
  - i. The application is or is not in conformance with the comprehensive plan and this Title; and
  - ii. The application is or is not consistent with adopted and generally accepted standards of development in the Municipality; and
  - iii. The application is or is not substantially consistent with the goals, objectives, design guidelines, policies, and any other ordinance, law, or requirement of the Municipality.
- c. If the Planning and Zoning Commission recommends that the Assembly approve an amendment as submitted or with modifications, within 90 days of the Commission's action the Director shall forward the recommendation to the Assembly with an ordinance to amend the official zoning map in accordance with the recommendation.
- d. If the Planning and Zoning Commission recommends that the Assembly disapprove a zoning map amendment, that action is final unless, within 20 days of the Commission's action, the applicant files a written statement with the municipal clerk requesting that an ordinance amending the zoning map in accordance with the application be submitted to the Assembly.

**6. Action by Assembly**

The Assembly shall hold a public hearing on the proposed amendment and, at the close of the hearing, based upon the recommendations of the Director and Planning and Zoning Commission, the Assembly shall, within 90 days:

- a. Approve the zoning map amendment by ordinance;
- b. Approve the zoning map amendment by ordinance with special conditions (see subsection D.);
- c. Deny the amendment; or
- d. Refer the proposed rezoning back to the Planning and Zoning Commission or to a committee of the Assembly for further consideration.

**7. Protests**

Any owner of property subject to a proposed rezoning may protest the rezoning by filing a written protest with the Director pursuant to this Section.

- a. The protest shall object to the zoning map amendment, contain a legal description of the property on behalf of which the protest is

made, and be signed by the owners of at least one-third of the property, excluding rights-of-way, of:

- i. The land to which the amendment applies; or
  - ii. The land within 300 feet of the outer boundary of the land to which the amendment applies;
  - iii. Excluding land owned by the Municipality, except where the Municipality joins in the protest.
- b. To be valid, the protest must be received by the municipal clerk after notice of a public hearing before the Assembly on a zoning map amendment and at least one business day before the time set for the Assembly public hearing on the amendment.
- c. Assembly approval of a zoning map amendment subject to a valid protest under this Section shall require an affirmative vote of eight Assembly members.

**8. Waiting Period for Reconsideration**

Following denial of a zoning map amendment request, no new application for the same or substantially the same amendment shall be accepted within one year of the date of denial, unless denial is made without prejudice.

**9. Form of Amending Ordinance**

An ordinance amending the zoning map shall contain the following:

- a. The name of each use district which the ordinance applies;
- b. The legal description of the land within each use district applied by the ordinance; and
- c. All special limitations to each use district applied by the ordinance.

**D. Special Limitations<sup>26</sup>**

Subject to this subsection D., a zoning map amendment may include special limitations that restrict structures, or the use of land or structures, to a greater degree than otherwise provided for a use district applied by the amendment.

**1. Purposes**

A zoning map amendment may include special limitations for one or more of the following purposes:

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<sup>26</sup> NOTE: As discussed in the Diagnosis and Outline, the special limitations are the source of some administrative headaches in Anchorage, since a proliferation of special conditions on individual properties makes enforcement quite difficult. Nevertheless, special limitations clearly are part of the administrative culture in the city, and the feedback we got suggests that it may not yet be time to abolish them. We carry them forward in this draft for discussion purposes. We hope, however, that once the new districts and standards are drafted, special limitations will become less necessary and they perhaps can be eliminated in a future draft (or in a year or so following adoption of the new code).

- a. To prohibit structures, or uses of land or structures, that would adversely affect the surrounding neighborhood or conflict with the comprehensive plan; or
- b. To conform the zoning map amendment to the comprehensive plan, or to further the goals and policies of the comprehensive plan; or
- c. To conform development under the zoning map amendment to existing patterns of development in the surrounding neighborhood; or
- d. To mitigate the adverse effects of development under the zoning map amendment on the surrounding neighborhood and on public facilities and services.

**2. Types of Limitations**

A special limitation shall do one or more of the following:

- a. Limit residential density; or prohibit structures, or uses of land or structures, otherwise permitted in a use district;
- b. Require compliance with design standards for structures and other site features;
- c. Require compliance with a site plan approved under this Title;
- d. Require the construction and installation of improvements, including public improvements; or
- e. Impose time limits for taking subsequent development actions.

**3. Effect of Approval**

- a. A use district subject to special limitations shall be identified on the zoning map by the suffix "SL," and the number of the ordinance applying the special limitations shall be printed on the zoning map.
- b. Where a special limitation in a zoning map amendment conflicts with any less restrictive provision of this Title, the special limitation governs.

**E. Approval Criteria**

Recommendations and decisions on zoning map amendments shall be based on consideration of all of the following criteria:

- 1. Whether the proposed amendment corrects an error or meets the challenge of some changing condition, trend, or fact;
- 2. Whether the proposed amendment is consistent with the comprehensive plan and the purposes of this Title stated in Section 21.01.030;
- 3. Whether the proposed amendment will protect the health, safety, or general welfare of the public;

4. Whether the Municipality and other service providers will be able to provide sufficient public safety, educational, recreational, transportation, and utility facilities and services to the subject property, while maintaining sufficient levels of service to existing development;
5. Whether the proposed amendment is likely to have significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation;
6. Whether the proposed amendment will have significant adverse impacts on other property in the vicinity of the subject tract;
7. The suitability of the subject property for the existing zoning classification and proposed zoning classification;
8. The need for the proposed use at the proposed location;
9. Whether the proposed amendment will ensure that future uses on the subject tract will be compatible in scale with uses on other properties in the vicinity of the subject tract; and
10. The supply of land in the economically relevant area that is in the use district to be applied by the amendment or in similar use districts, in relation to the demand for that land;

#### **21.03.060 SUBDIVISIONS AND PLATS<sup>27</sup>**

##### **A. Purpose**

The purpose of the subdivision review process is to ensure compliance with the subdivision standards and requirements set forth in Chapter 21.08, *Subdivision Standards*, while encouraging quality development in Anchorage consistent with the goals, policies, and objectives found in the comprehensive plan.

##### **B. Applicability**

###### **1. General**

The procedures of this Section, and the standards and requirements set forth in Chapter 21.08, *Subdivision Standards*, shall apply to all subdivisions or resubdivisions that result in the portioning, dividing, combining, or altering of any lot, parcel, or tract of land, including subdivisions or resubdivisions created by an exercise of the power of eminent domain by an agency of the state or Municipality.

###### **2. Subdivision Approval is Prerequisite to Other Approvals**

- a. No building permit or certificate of occupancy may be issued for any building, structure, or improvement located within a subdivision, and no plat for a subdivision may be recorded with the State of Alaska, until a plan for the subdivision has been approved, all required

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<sup>27</sup> NOTE: This section generally is carried forward from the existing Title 21. We heard few comments about problems with these provisions. Minor changes include: a new purpose statement; incorporation of the applicability provisions from 21.75.020; incorporation of the approval criteria from 21.75.010; and removal of submittal requirements for placement in the User's Guide.

dedications of land have been made, and all required improvements have been installed in accordance with the procedures and requirements of this section.

- b. The Municipality shall not accept or maintain any street, and shall not extend or connect any street lighting, water service, or sanitary sewer service to any subdivision of land, until and unless a plat for the subdivision has been approved and recorded in accordance with the requirements set forth in this section.

**3. Restriction on Sale or Transfer of Subdivided Land Without Approved Plat**

Any person who transfers or sells any land located within the Municipality by reference to a plat that has not been approved by the Municipality and recorded by the State of Alaska shall be guilty of a violation of this Title. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties. The Municipality also may enjoin such transfer or sale by filing an action for an injunction.

**4. Existing Lots of Record**

No provision of Chapter 21.08, *Subdivision Standards*, applies to any lot in a subdivision legally created and filed of record before the effective date of this Title, unless the lot is further subdivided or resubdivided.

**5. Discretionary Exemptions**

- a. The Platting Authority may exempt from a land survey and from the requirements of Chapter 21.08, *Subdivision Standards*, those subdivisions that result in parcels of at least 40 acres in area, neither requiring the dedication of streets and easements nor creating areas without physical or legal access. There shall be no exemption from the requirement to submit and record a plat.

- b. The Platting Authority may exempt a subdivision from the requirements of Chapter 21.08, *Subdivision Standards*, when it finds, after a public hearing, that:

- i. Each parcel in the subdivision will have adequate physical and legal public access to a public highway or street;
- ii. Each parcel in the subdivision is five acres in size or larger and that the land is divided into four or fewer parcels;
- iii. The subdivision is not made for the purpose of, or in connection with, a present or projected subdivision development; and
- iv. No dedication of a street, alley, thoroughfare, or other public area is involved or required.<sup>28</sup>

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<sup>28</sup> NOTE: Clarion and the staff recommend deleting the existing shaded text, or amending it following further discussions. Staff notes the following problems raised by this type of discretionary exemption from the subdivision standards: "Exempting plats from

The waiver shall be in the form of a resolution of the Platting Board and shall be filed with the district recorder.

**C. Review and Approval of Subdivision Plans**

**1. Pre-Application Conference**

A pre-application conference is required prior to submission of a new subdivision application or most modifications to already-approved subdivision plans. See Section 21.03.020.B.

**2. Submission of Preliminary Plat**

**a.** Unless waived by the Platting Board, a preliminary plat shall include all land under contiguous ownership unless separate legal descriptions exist as a matter of record. If only a portion of the land is intended for immediate development, the remaining portion shall be given a tract number and shall be part of the preliminary and final plat. Requirements for surveying this remaining tract may be waived at the discretion of the Platting Board.

**b.** In submitting a preliminary plat application, applicants shall submit the materials specified in the Title 21 User's Guide to the Department of Community Planning and Development, by the deadlines established in the User's Guide.<sup>29</sup>



subdivision regulations precludes the ability to gain trail easements required under adopted plans, and does not provide for submitting required soil and water tests for on-site well and septic. Lots of this size may not necessarily be further subdivided in the low density zoning districts such as R-9 and R-10. These zoning districts generally abut Chugach State Park and trail access to the Park is becoming a significant issue recently and will continue to be one. The Municipality may never have the opportunity to gain right-of-way dedication in the future. In dealing with parcels this size, it is sometimes difficult to assess if a subdivision that fronts onto a public street will land lock adjacent property. This is particularly true in Eagle River and on the Anchorage Hillside where traffic circulation systems are incomplete and discontinuous."

<sup>29</sup> NOTE: A lengthy list of submittal requirements has been removed here, for placement in the User's Guide. Regarding the submission deadline, staff notes that: deadlines are "established every year by the Planning Dept. We have cut-off dates for

- c. For subdivision plats that have A or B wetlands, the applicant shall have initiated Corps of Engineers wetland permitting prior to submitting the preliminary plat.
3. **Action on Preliminary Plat**
- a. ***Approval or Disapproval by Platting Board***  
Subject to paragraph b. of this Section, the Platting Board shall, based on the approval criteria of subsection C.5. below, take action on the preliminary plat within 90 days<sup>30</sup> after the submission date, or shall return the plat to the applicant for modification or correction. The reasons for disapproval of a plat shall be stated upon the records of the Platting Board.
- b. ***Referral to Other Agency***  
If the Platting Board finds that:
- i. It cannot determine whether a preliminary plat conforms to the approval criteria of subsection C.5. below, because a specific controlling land use, public facility, or other public policy issue has not been resolved; and
- ii. An official board, commission or legislative body of the Municipality or another government has been identified as being responsible for resolving that issue;
- Upon an affirmative vote of six members, the Platting Board may refer the issue to the responsible official, board, commission or legislative body and postpone action on the plat for a period not exceeding 90 days or to its next regular meeting after the responsible official, board, commission or legislative body responds to the referral, whichever occurs first.
- c. ***Public Hearing***  
The Platting Board shall hold a public hearing before action on the following types of subdivision applications:
- i. Approval of a preliminary plat, except an application under Section 21.03.060.D. (abbreviated plat procedure);
- ii. Approval of a final plat that differs from the preliminary plat (see Section 21.03.060.C.4.b.);
- iii. Modification or deletion of a condition of plat approval;
- iv. Granting of an exemption under subsection B.5., *Discretionary Exemptions*, above;

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applications going before the Platting Board which involve public notification and advertising which is currently a minimum of 50 days according to the process we follow now. We have a weekly cut-off day for abbreviated plats which is a minimum of 35 days prior to the Platting Authority's decision date."

<sup>30</sup> NOTE: This is an existing provision. Under state law, Anchorage must provide a platting procedure, but it does not need to match the 60-day state requirement that applies to second class boroughs. We recommend that the Municipality continue to keep a definite time limit on the review of preliminary plats to ensure fairness and a relatively swift decision.

- v. Granting of a variance from the provisions of Chapter 21.08, *Subdivision Standards*;
  - vi. Removal of or modification(s) to plat notes; and
  - vii. Vacation of dedicated right-of-way; BLM and section line easements; or platted landscape, drainage, slope, or protective well radii easements.
- d. **Approval Period; Time Extensions**
- i. Notwithstanding any subsequent change in the subdivision regulations, zoning regulations, and zoning districts, the approval of the preliminary plat shall be effective:
    - (A) For at least 18 months and up to 60 months from the date of approval when it pertains to a development of no less than ten acres and includes a phasing plan and based upon the Platting Board's evaluation of the size, complexity, and phasing elements of the development.
    - (B) For 18 months from the date of approval when it pertains to a development of less than ten acres.
  - ii. The preliminary plat shall become null and void after the 18-month approval period unless an extension of time is granted by the Platting Board. A request for a time extension must be made in writing by the subdivider. The extension request must be received by the Director prior to the expiration of the preliminary plat to be eligible for consideration by the Platting Board.
  - iii. Such a time extension shall be granted only if the Board finds that current conditions are substantially the same as those that existed when the preliminary plat was originally approved. The Director shall conduct the reevaluation for every extension request that does not raise the total time of extension for a particular plat beyond 18 months and present his findings to the Board. Every extension request that raises the total time of extension for a particular plat beyond 18 months shall be evaluated in the same manner as an original plat application, including payment of the applicable fee.
  - iv. Only two time extensions may be approved for a preliminary plat approved by the Platting Board. The second extension shall require a noticed public hearing.<sup>31</sup>
  - v. Preliminary plats being finalized in portions or phases shall not be construed to automatically extend the original approval period. Such an extension may only be granted by the

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<sup>31</sup> NOTE: This is a new paragraph drafted at staff's request.



Platting Board in accordance with the procedures set out in this subsection.<sup>32</sup>

e. **Appeals**

All decisions as to approval or disapproval of a preliminary plat by the Platting Board shall be final unless appealed to the Board of Adjustment.

f. **Resubmittal Following Denial**

No new application for the same or substantially the same preliminary plat shall be accepted by the Platting Board within one year of denial of the original application. The waiting period required by this Section may be waived in an individual case, based upon new evidence or changed circumstances, by the affirmative vote of a majority of the Platting Board.

4. **Final Plat**

a. **Procedure When Final Plat Corresponds to Preliminary Plat as Approved**

i. A hearing on the final plat shall not be required when such plat essentially conforms to the preliminary plat approved by the Platting Board. The final plat shall, in addition, meet all conditions imposed by the Board in approving the preliminary plat.

ii. The final plat map shall constitute only that portion of the approved preliminary plat that is proposed to be recorded and developed at the time. If only a portion of the approved preliminary plat is proposed for final plat approval, such portions shall conform to all requirements of this Section and Chapter 21.08, *Subdivision Standards*.

iii. The following procedure shall be followed for the final plat:<sup>33</sup>

(A) The final plat shall be submitted to the Planning Department for examination as to compliance with all terms of the preliminary plat as approved by the Platting Authority. If all conditions have been met, a statement to that effect, appearing on the final plat, shall be signed by the Platting Authority or his representative. The final plat shall not be signed until the documents described in paragraph iv. below have been received.

(B) Upon acceptance of the final plat, the Planning Department shall forward the final plat to the Project Management and Engineering Department for final checking and inspection before final approval is given. If requested, a subdivision survey shall be

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<sup>32</sup> NOTE: This existing text has been modified for clarity. The current text refers to “the original 18-month approval period,” yet in practice phased approvals usually receive 60 month approvals.

<sup>33</sup> NOTE: This section has been rewritten by staff to reflect current procedures.

submitted to the Project Management and Engineering Department with a complete set of field and computation notes showing the original or reestablished corners of the plat and of lots within the plat. Traverse sheets and work sheets showing the closure within the allowable limits of error of the exterior boundaries of each irregular block and lot of the subdivision may also be required. Final approval by the Project Management and Engineering Department shall be indicated by a statement appearing on the plat.

- iv. Final approval by the Platting Board shall be dependent upon receipt of the following material:
  - (A) A statement from the Department of Development Services stating that all conditions imposed by the Department on the preliminary plat and approved by the Platting Board have been met. This approval by the Department of Development Services shall not affect any subsequent requirements relating to sewage disposal and water supply as they apply to any lots within the plat.
  - (B) A certificate from the tax collecting official or a note on the face of the plat stating that all municipal real property taxes levied against the property are paid in full, or, if approval is sought between January 1 and the tax due date, that there is on deposit with the chief fiscal officer an amount sufficient to pay estimated real property tax for the current year.
  - (C) A certificate to plat showing the legal and equitable owners, including mortgagees, contract purchasers and fee owners, of the land to be platted, plus all grants, reservations, covenants, deed restrictions and easements of record which may condition the use of the property.
- v. If the subdivision is to be served by a community water or sewer system, the Department of Development Services may require the subdivider to provide the following before the Platting Board finally approves the plat:
  - (A) Any approvals or certificates required by the state Departments of Environmental Conservation and Natural Resources.
  - (B) An agreement under the standards and procedures set out in Section --- [x-ref subdivision agreements section] to ensure that the system installed will be compatible with existing public water and sewer systems.

- (C) Approval of the plans, specifications, and installation and operating procedures for the system by the municipal water and wastewater utility pursuant to Chapter 21.08, *Subdivision Standards*, and regulations promulgated thereunder.
  - (D) Final plats affecting land neither supplied, nor under subdivision agreement to be supplied, both with public water and public sewer, shall be submitted to the Department of Development Services for a determination that all lots and proposed water and wastewater facilities conform to Chapter 15.65 at the time of determination.
- b. ***Procedure When Final Plat Differs from Preliminary Plat***
- i. The subdivider shall submit to the Director all information required under the Title 21 User's Guide for the preliminary plat. Such application shall be submitted at least 60 days prior to the regular Platting Board meeting at which he or she desires to have his or her plat placed on the agenda.
  - ii. The Platting Board shall take action on the final plat within 90 days after all required materials have been submitted to be heard, or shall return the plat to the applicant for modification or correction. The reasons for disapproval of a plat shall be stated upon the records of the Platting Board.
  - iii. If approved by the Platting Board, subsections a., c., and d. of this Section shall then be followed in their entirety.
  - iv. All decisions as to approval or disapproval of a final plat by the Platting Board as submitted under this Section shall be final unless appealed to the Board of Adjustment.
- c. ***Requirements for Final Plat***  
The final plat shall be prepared to the technical specifications, and shall be accompanied by appropriate supporting materials, as specified in the Title 21 User's Guide.
- d. ***Subdivision Agreements and Cost Estimates***  
All final plats requiring public improvements, except those requiring monumentation only, shall be accompanied by a subdivision agreement between the subdivider and the Municipality and an engineer's estimate of the cost of all required public improvements. Requirements for such an agreement are further described in **Section ---**.
- e. ***Notes, Restrictions, and Covenants***  
The Platting Board may place such conditions upon granting of final plat approval as are necessary to preserve the public welfare in accordance with the subdivision regulations. See Section 21.03.020.K. When such a condition of approval entails a restriction upon the use of all or part of the property being subdivided, a note

specifying such restrictions shall be placed on the face of the plat. Such note shall constitute a restrictive covenant in favor of the Municipality and the public and shall run with the land, enforceable against all subsequent owners. Any such restrictive covenant may be enforced against the subdivider or any subsequent owner by the Municipality or by any specifically affected member of the public.

**5. Approval Criteria**

The Platting Board may approve a preliminary or final plat only if it finds that the plat:

- a. Conforms to Chapter 21.08, *Subdivision Standards*, and any regulations adopted pursuant to that Chapter;
- b. Promotes the public health, safety and welfare;
- c. Mitigates the effects of incompatibilities between the land uses or residential densities in the subdivision and the land uses and residential densities in the surrounding neighborhood, including but not limited to visual, noise, traffic and environmental effects;
- d. Provides for the proper arrangement of streets in relation to existing or proposed streets;
- e. Provides for adequate and convenient open space;
- f. Provides for the efficient movement of vehicular and pedestrian traffic;
- g. Ensures adequate and properly placed utilities;
- h. Provides access for firefighting apparatus;
- i. Provides recreation, light and air and avoids congestion;
- j. Facilitates the orderly and efficient layout and use of the land; and
- k. Furthers the goals and policies of the comprehensive plan and conforms to the comprehensive plan in the manner required by Section 21.01.090, *Comprehensive Plan*.

**D. Abbreviated Plat Procedure**

**1. Authorization**

The preliminary plats described in paragraph 2. of this Section are subject to approval under the abbreviated plat procedure in this Section instead of the procedure in subsection C. above; provided that preliminary plats described in paragraphs 2.a and 2.b of this Section are not subject to approval under this Section where the applicant for preliminary plat approval is an agency of the municipal, state, or federal governments.

**2. Eligible Preliminary Plats**

Eligible preliminary plats are as follows:

- a. A movement or elimination of lot lines that does not:
    - i. Result in an increase in the permitted density of residential units within the area being subdivided or resubdivided.
    - ii. Allow a change in the permitted use to which the lot or tract may be devoted under existing zoning.
    - iii. Deny adequate access to and from all lots or tracts created by the subdivision or those adjacent to it.
  - b. The subdivision of a single tract, parcel or lot into no more than three tracts or eight lots, provided that the subdivision does not:
    - i. Allow a change in the permitted use to which the lot or tract may be devoted under existing zoning.
    - ii. Deny adequate access to and from all lots or tracts created by the subdivision or those adjacent to it.
    - iii. Divide a tract, parcel or lot:
      - (A) Created within the previous 12 months pursuant to the approval of a preliminary plat under this Section; or
      - (B) Contiguous to and having any of the same owners as a preliminary plat approved within the previous 48 months.
  - c. Vacations and relocations under **Section 21.15.130**. *[x-ref not updated]*
  - d. Subdivision of a cemetery into burial plots.
  - e. A plat required by Section **21.15.030** for the final approval of a conditional use or site plan. *[x-ref not updated]*
  - f. A plat depicting the creation of two townhouse lots.
3. **Submission Requirements**  
All of the submission requirements for preliminary plats that are listed in the Title 21 User's Guide shall be required, except that the Director shall establish submission requirements by regulation under Chapter 3.40 for plats depicting the vacation and any associated relocation of a public utility easement.
4. **Public Notice**  
Before acting on a preliminary plat application under this Section, the Director shall publish notice pursuant to Section 21.03.020.G.
5. **Action on Plat**
  - a. ***Platting Board***

Except as provided in Section 21.15.030.I for conditional uses and site plans and subsection 21.15.130.C, for vacation or relocation of certain dedicated public areas, the Platting Board under this Section is the Platting Authority. The Director may refer any application to the Platting Board that the officer deems may need further or more extensive analysis and public comment concerning access into adjacent property.

**b. Variances**

When acting as the Platting Authority under this Section, the Director may not grant variances from the provisions of Chapter 21.08, *Subdivision Standards*. When acting as the Platting Board under Section 21.15.030.I, the Board hearing an application for conditional use or site plan approval may grant variances to the provisions of Chapter 21.08, *Subdivision Standards*, in accordance with Section 21.15.010.

**c. Duration of Preliminary Approval**

Preliminary plat approval expires after 18 months; provided that the Board hearing an application for conditional use or site plan approval may extend the expiration of preliminary plat approval under Section 21.15.030.I in conjunction with extending the time for implementing the conditional use or site plan.

**d. Appeals**

Decisions of the Platting Board under this Section are final unless appealed within 15 days:

- i. To the Board hearing the application for conditional use or site plan approval, where the Director is the Platting Authority under Section 21.15.030.I. [x-ref not updated]
- ii. To the Board of Adjustment under Section ---, where the Board hearing an application for conditional use or site plan approval is the Platting Board under Section 21.15.030.I. [x-ref not updated]
- iii. To the Platting Board in all other cases.

An appeal under subsection b. or c. of this subsection shall be treated as an original application for preliminary plat approval under this Section.

**e. Approval of Final Plat**

A final plat submitted pursuant to the approval of a preliminary plat under this Section is subject to approval in accordance with subsection C.4 above, provided that the municipal surveyor may waive a field survey for a final plat that merely eliminates interior lot lines.

**E. Right-of-Way Acquisition Plat**

**1. Generally**

A plat for a subdivision created by a government agency's acquisition of a street or trail right-of-way is subject to approval under this Section and is not subject to any other approval procedure for plats under this Title.

**2. Submission Requirements**

A right-of-way acquisition plat shall contain the information specified in the Title 21 User's Guide and shall be submitted to the Director.

**3. Applicability of Requirements**

A right-of-way acquisition plat shall conform to the submission requirements of subsection 2. of this Section and to the other provisions of this Title, provided that:

- a. A right-of-way acquisition plat is not subject to any of the other submission requirements for plats under this Title.
- b. A right-of-way acquisition plat is not subject to Section --- [*x-ref to subdivision improvement standards in Chapter 21.08*].
- c. Survey requirements for a right-of-way acquisition plat shall be established by agreement between the municipal surveyor and the government agency applying for plat approval, or, if there is no such agreement, by the provisions of this Title.

**4. Action**

**a. *Platting Board***

The Director shall act as the Platting Authority unless the government agency applying for plat approval requests a public hearing before the Platting Board.

**b. *Duration of Approval***

The preliminary approval of the right-of-way acquisition plat shall be for a period of 18 months; provided, however, that the Director may grant an extension of time for filing the final plat upon a finding that it is in the public interest to do so.

**c. *Appeals***

All decisions of the Director under this Section shall be final unless appealed to the Platting Board within 15 days. An appeal under this subsection shall be treated as an original subdivision application.

**5. Requirements for Final Plat**

Requirements for final right-of-way acquisition plats shall be established by agreement between the Director and the government agency applying for plat approval, or, if there is no such agreement, by the provisions of this Title.

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## 21.03.070 CONDITIONAL USES<sup>34</sup>

### A. Purpose

The conditional use permit review and approval procedure provides a discretionary approval process for uses with unique or widely varying operating characteristics or unusual site development features. The procedure encourages public review and evaluation of a use's operating characteristics and site development features and is intended to ensure that proposed conditional uses will not have a significant adverse impact on surrounding uses or on the community-at-large.

### B. Relationship to Site Plan Requirements

#### 1. Coordination with Review of Site Plans

If a site plan is necessary for the proposed conditional use pursuant to Section 21.03.070, then the review and approval of both the site plan and the conditional use shall be coordinated. The two applications shall be filed together and review of each application shall proceed simultaneously. However, the Planning and Zoning Commission shall render separate decisions on each application, recognizing that the applications are distinct and are subject to different standards for approval.<sup>35</sup>

#### 2. Lapse and Expiration of Conditional Use Approval

If a site plan is necessary for the proposed conditional use pursuant to Section 21.03.070, the approval of the conditional use shall be conditioned on the subsequent approval of the site plan. Accordingly, the approval of any conditional use shall lapse, and become null and void, upon the expiration of the approved site plan (see Section 21.03.080D.), unless otherwise restricted by the Municipality. If a conditional use does not require a site plan, or is not tied to a site plan, then the conditional use does not lapse unless it is subject to a specified time limit as a condition of approval.

### C. Conditional Uses in Nonconforming Structures or Lots

If a proposed conditional use involves one or more structures or lots that do not conform to the regulations of the district in which the conditional use is to be located, then, unless the applicant has previously obtained the necessary variances from the appropriate decision-making body, the application for conditional use approval shall be accompanied by an application for alterations of a nonconforming structure or lot (See Chapter 21.10, *Nonconformities*). This application shall be processed concurrently with the conditional use application by the Planning and Zoning Commission and in accordance with Chapter 21.10. However, approval of alteration of a nonconforming structure and/or lot request shall be a prerequisite to approval of the conditional use. The notices required for the nonconformity alteration application shall be combined with the notices required for the conditional use application.

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<sup>34</sup> NOTE: This is a substantially new procedure for the Municipality's consideration. It is simpler than the current procedure, and we have not carried forward the somewhat confusing concept versus final plan provisions in the current Title 21. We also have separated out the site plan review provisions as a separate procedure.

<sup>35</sup> NOTE: For discussion purposes, this draft presupposes that the P&Z Commission will make decisions on site plans that are attached to conditional uses, as opposed to other site plans, that are approved by the Director.



**D. Procedure**

1. **Pre-Application Conference**  
 Before filing an application, the applicant shall request a pre-application conference with the Director. See Section 21.03.020.B.
2. **Community Meeting**  
 A community meeting may be required according to the provisions of Section 21.03.020.F.
3. **Application**  
 A conditional use permit application shall contain the information specified in the Title 21 User's Guide and shall be submitted to the Director. If site plan review is required under Section 21.03.080, then the applicant shall file a site plan review application for simultaneous review with the conditional use permit application.
4. **Public Hearing Notice**  
 Notice of public hearings shall be published, mailed, and posted in accordance with Section 21.03.020.G.
5. **Director's Review and Report**  
 The Director shall review each proposed conditional use permit application in light of the approval criteria of subsection E. below and, as deemed necessary, distribute the application to other reviewers. Based on the results of those reviews, the Director shall provide a report to the Planning and Zoning Commission.
6. **Planning and Zoning Commission's Review, Hearing, and Decision**  
 The Planning and Zoning Commission shall hold a public hearing on the proposed application and, within --- days from the date of receipt of the complete application, act to approve, approve with conditions, or deny the proposed conditional use permit, based on the approval criteria of subsection E. below.



**E. Approval Criteria**

A conditional use permit application may be approved only if the Planning and Zoning Commission finds that all of the following criteria have been met:

1. The proposed use is consistent with the comprehensive plan and all applicable provisions of this Title and applicable state and federal regulations;
2. The proposed use is consistent with the purpose and intent of the zoning district in which it is located;
3. The proposed use is consistent with any applicable use-specific standards set forth in Section ---;
4. The proposed is compatible with adjacent uses in terms of scale, site design, operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts);
5. Any significant adverse impacts anticipated to result from the use will be mitigated or offset to the maximum extent practicable; and
6. The proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

**F. Changes to Terms and Conditions of Approval**

Any changes to the terms and conditions of approval of the conditional use that cannot be made using the minor modification process (see Section 21.03.190) shall require separate review and approval by the Planning and Zoning Commission. Any application for approval of such changes shall be filed, processed, reviewed, and approved or denied in the manner set forth in this Section for the original application. This Section shall not apply, however, to modifications to the approved site plan for the conditional use, which are governed by Section ---.

**G. Platting for Site Plans and Conditional Uses<sup>36</sup>**

1. If development under a final approval under this Section will create a subdivision or requires the vacation of a dedicated public area, the final approval is not effective until a final plat for the subdivision or vacation is approved and recorded in accordance with this Title. A preliminary plat required under this subsection is subject to approval as required by this Title.
2. Unless the authority granting final approval directs in the final approval that it shall act as the platting authority, the Director is the Platting Authority for site plans under this subsection.
3. The Platting Authority under this subsection may require that any street right-of-way, walkway, utility easement, or other public area designated under the final approval be dedicated to the public.

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<sup>36</sup> NOTE: This section carried forward from the existing 21.15.030. At staff's suggestion, and for discussion purposes, the Platting Authority has been changed to the Director (as opposed to the Platting Board) to improve the efficiency of the process.

**H. Abandonment of Conditional Use<sup>37</sup>**

1. Except for conditional use permits granted by the Assembly under Section 21.50.160, pertaining to uses involving the sale of alcoholic beverages, an otherwise lawful conditional use permit shall expire if:
  - a. For any reason the conditional use is abandoned in its entirety for a period of one year or longer; or
  - b. The property owner notifies the Planning and Zoning Commission of the abandonment of the conditional use permit. A conditional use shall not be abandoned under this subsection if the result of the abandonment is the creation of a nonconforming land use.
2. A conditional use granted by the Assembly under Section 21.50.160, pertaining to uses involving the sale of alcoholic beverages, shall expire 60 days after the removal of the license to sell alcoholic beverages from the premises, unless there is an application on file with the alcoholic beverage control board to transfer or install a new license on the premises.

**21.03.080 SITE PLAN REVIEW**

**A. Purpose**

The purpose of the site plan review process is to ensure compliance with the development and design standards and provisions of this Title, and to encourage quality development in the Municipality reflective of the goals, policies, and objectives of the Comprehensive Plan. For land uses requiring a site plan review, such uses may be established in the Municipality, and building or land use permits may be issued, only after a site plan showing the proposed development has been approved in accordance with the procedures and requirements of this Section.

**B. Administrative Site Plan Review**

1. **Applicability<sup>38</sup>**  
Land uses in the Municipality requiring administrative site plan review are noted in Table [cite use table in Chapter 21.05].
2. **Procedure**
  - a. **Submission and Review of Application**  
An administrative site plan review application shall contain the information specified in the Title 21 User's Guide and shall be submitted to the Director.
  - b. **Action by Director**  
The Director shall review each proposed site plan application in light of the approval criteria of Section E. below, and as deemed necessary, distribute the application to other reviewers. Based on the results of those reviews, the Director shall take final action on the site

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<sup>37</sup> NOTE: This section carried forward from the existing 21.15.030.

<sup>38</sup> NOTE: Rather than basing applicability on the use table, as is done in the draft text above, an alternative approach would be to list applicability here based on project type (e.g., any multi-family development, any non-residential development, etc.).

plan application and approve, approve with conditions, or deny the application. The Director's review and decision, including referral to other agencies and bodies, shall be completed within 30 days of receipt of a complete application.

**C. Major Site Plan Review<sup>39</sup>**

**1. Applicability<sup>40</sup>**

Land uses in the Municipality requiring major site plan review are noted in Table [cite use table in Chapter 21.05].

**2. Procedure**

**a. Pre-Application Conference**

Before filing an application, the applicant shall request a pre-application conference with the Director. See Section 21.03.020.B.

**b. Community Meeting**

A community meeting may be required according to the provisions of Section 21.03.020.F.

**c. Application**

A major site plan review application shall contain the information specified in the Title 21 User's Guide and shall be submitted to the Director.

**d. Public Hearing Notice**

Notice of public hearings shall be published, mailed, and posted in accordance with Section 21.03.020.G.

**e. Director's Review and Report**

The Director shall review each proposed major site plan application in light of the approval criteria of subsection E. below and, as deemed necessary, distribute the application to other reviewers. Based on the results of those reviews, the Director shall provide a report to the Urban Design Commission.

**f. Urban Design Commission's Review, Hearing, and Decision**

The Urban Design Commission shall hold a public hearing on the proposed application and, within --- days from the date of receipt of the complete application, act to approve, approve with conditions, or deny the proposed major site plan, based on the approval criteria of subsection E. below.

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<sup>39</sup> NOTE: This new section is intended to implement a recommendation from Anchorage 2020, which establishes the "Major Project Site Plan Review" strategy: "Title 21 will be revised to require public hearing site plan review, including exterior building design, approval for major commercial, institutional, and industrial developments, as those terms will be defined in the ordinance revision." The strategy is designated in the Plan as "essential" to implement Policy 43: "Plans for major commercial, institutional, and industrial developments, including large retail establishments, are subject to site plan review."

<sup>40</sup> NOTE: Rather than basing applicability on the use table, as is done in the draft text above, an alternative approach would be to list applicability here based on project type (e.g., any multi-family development, any non-residential development, etc.).

**D. Expiration**

**1. General**

A site plan approval shall automatically expire at the end of 12 months after the date of its issuance if a building or land use permit for at least one building in the development proposed in the site plan is not approved. A change in ownership of the property does not affect this time frame.

**2. Extension**

Upon written application submitted at least 30 days prior to the expiration of the permit period by the applicant and upon a showing of good cause, the Director may grant one extension not to exceed six months. The approval shall be deemed extended until the Director has acted upon the request for extension. Failure to submit an application for an extension within the time limits established by this Section shall render the site plan void.

**E. Approval Criteria**

An administrative or major site plan review application shall be approved only upon a finding that the site plan meets all of the following criteria:

1. The site plan is consistent with the Comprehensive Plan;
2. The site plan is consistent with any previously approved subdivision plat, planned development master plan, or any other precedent plan or land use approval
3. The site plan complies with all applicable development and design standards set forth in this Title, including but not limited to the provisions in Chapter 21.04, *Zoning Districts*, Chapter 21.05, *Use Regulations*, Chapter 21.06, *Dimensional Standards and Measurements*, and Chapter 21.07, *Development and Design Standards*.<sup>41</sup>
4. Any significant adverse impacts reasonably anticipated to result from the use will be mitigated or offset to the maximum extent practicable.
5. The development proposed in the site plan and its general location is compatible with the character of surrounding land uses.

**21.03.090 PUBLIC FACILITY SITE SELECTION AND SITE REVIEW**

**A. Applicability<sup>42</sup>**

The procedures and standards of this section shall apply to any of the following facilities that are owned, or leased for no more than ten years including all options to extend or renew, by a government agency not exempt by law from municipal land use regulation:

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<sup>41</sup> NOTE: For now, this draft proposes that compliance with the Title 21 design requirements be determined as part of site plan review, and that there not be a separate design review process. This decision will need to be reevaluated and discussed as part of Module 3, which will include the suggested new design standards.

<sup>42</sup> NOTE: This section is based on the definition of "public facility" is taken from Planning Case 03-040, which redefines and delegates public facility site plan and public facility review to the UDC.

1. Any newly constructed building or buildings in which government operations or activities occupy more than a total of 4,000 square feet on the site, and any existing building acquired by purchase or lease in which government operations or activities occupy more than 15,000 square feet;
2. Any use of land over five acres in area;
3. Any trail alignment not part of a road construction project; and
4. Any public snow disposal site.

**B. Public Facility Site Selection<sup>43</sup>**

1. **Authority of Planning and Zoning Commission**  
The Planning and Zoning Commission shall review and decide the selection of a site for a public facility subject to this section, except where the location of the site is:
  - a. Designated on a municipal plan adopted by the Assembly;
  - b. Determined by a dedication to the Municipality on a final plat approved and recorded in accordance with this Title; or
  - c. Subject to approval of a conditional use under this Title.
2. **Required Information**  
The agency proposing a site selection shall submit to the Commission all information necessary to its review under this Section. This information shall include, but need not be limited to, an evaluation of alternative sites, or an explanation why no alternative sites were considered.
3. **Public Hearing**  
The Commission shall hold a public hearing on any site selection that is subject to review under this Section. Notice of the public hearing shall be given in the manner prescribed for a public hearing on a conditional use application.
4. **Review Required**  
The Commission shall review and decide acquisition of a site, including acquisition by lease, before:
  - a. A public facility may be authorized; or
  - b. Publicly owned land is designated as the site for a public facility.
5. **Approval Criteria<sup>44</sup>**  
The Commission shall review the proposed site for consistency with the goals, policies, and land use designations of the comprehensive plan and other municipal plans adopted by the Assembly, conformity to the

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<sup>43</sup> NOTE: This section has been updated to incorporate the proposed amendment to 21.15.015 (P&Z case 2003-040).

<sup>44</sup> NOTE: This new list of criteria is based on language from Anchorage 2020, including policy 79 and related language on page 104.

requirements of this Title, and the effects of the proposal on the area surrounding the site. The following specific criteria shall be considered:

- a. Whether the site will allow development that is compatible with current and projected land uses;
- b. Whether the site is large enough to accommodate future additions or another planned public facility;
- c. Whether the site is located near a transit route, if applicable;
- d. Whether there are existing or planned walkways connecting the site to transit stops and surrounding residential areas, where applicable;
- e. The environmental suitability of the site;
- f. Whether adequate utility infrastructure is available to the site; and
- g. The financial feasibility of the site selection, including continual operations and maintenance impacts.

**6. Exemptions**

This Section shall not apply to any facility site selection:

- a. Reviewed by the Commission or approved by the Assembly before the effective date of Assembly adoption of this Title.
- b. Under which there have been substantial expenditures for design or construction before the effective date of Assembly adoption of this Title.

**C. Public Facility Site Plan and Project Landscaping Review<sup>45</sup>**

**1. Authority of Urban Design Commission**

- a. The Urban Design Commission shall decide upon the site design, exterior building improvements, and project landscaping for a public facility subject to this section, except where the site is subject to approval of a conditional use permit under this Title.
- b. No building permit or land use permit shall be issued for a public facility project costing more than \$500,000 until the Commission has made its decision under this Section.
- c. Public facility site plans and project landscaping costing up to \$500,000 shall be submitted to the Director for administrative review. The Director has the discretion to refer the proposed project to the Commission for review.

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<sup>45</sup> NOTE: This section based on current 21.15.025, "Public facility project landscaping review." This section has been updated to incorporate the proposed amendment to 21.15.015 (P&Z case 2003-040).

**2. Required Information**

The agency proposing a public facility site plan and project landscaping shall submit to the Commission all information in accordance with this Section C. necessary to its review under this Section. Submittals for conceptual review shall be submitted at 35% completion. Submittals for approval shall be submitted at 65% completion. The agency shall also demonstrate compliance and compatibility with the existing comprehensive plan and all other municipal plans adopted by the Assembly.

**3. Public Hearing**

The Commission may, in its discretion, hold a public hearing on any public facility site plan and project landscaping reviewed under this Section. Notice of the public hearing shall be given in the manner prescribed for a public hearing on a conditional use application.

**4. Action Required**

Before the final commitment to the design of a public facility may be made, the Commission shall have approved the site plan. The Commission is authorized to take the following actions upon site plan submittal:

- a. Approving a site plan as submitted;
- b. Approving a site plan with conditions; or
- c. Denying a site plan.

The Commission may delay taking action on a public facility site plan or exterior building improvements only if the Commission finds the submittal is incomplete or the Commission is advised by the Director that a matter before the Planning and Zoning Commission or the Assembly will have a material impact on the public facility site plan or exterior building improvements.

**5. Standards**

**a. Site Plan**

The Commission shall review a proposed public facility site plan or exterior building improvements for consistency with the goals, policies, and land use designations of the Comprehensive Plan and all other municipal plans adopted by the Assembly, conformity to the requirements of this Title, and the effects of the proposal on the area surrounding the site.

**b. Landscaping**

The Commission shall consider the following criteria in reviewing public facility landscaping under this Section:

- i. The estimated cost of the landscape improvements is equitable and proportional to project public visibility and budget;
- ii. The ability of the selected plant materials to thrive in the hardiness zone of the site location;
- iii. Planning and design criteria, including:



- (A) The external impacts generated by the public facility project on adjacent areas. The site plan and landscape elements of the public facility project should complement, maintain, or improve the landscape quality of adjacent neighborhoods and areas.
  - (B) The degree to which the building, site plan, and landscape elements contribute to on-site use of the public facility project, including elements of northern city design. The design elements of the public facility project should enhance safe, efficient, and comfortable public use.
  - (C) The visual attractiveness of the landscaping and its enhancement of the architecture of the public facility project, including the integration of internal and exterior architectural themes.
- iv. Compliance and compatibility with the Comprehensive Plan and all other municipal plans adopted by the Assembly.
  - v. Compliance with the 1% (one percent) for Art program.
6. **Conformance with Recommendations of Commission**  
No agency may proceed with implementation of a public facility site plan, implementation of exterior building improvements, or implementation of revisions to approved site or landscaping plans and exterior building elevations that do not conform to the Commission's actions under this Section.
7. **Appeals**  
Any action of the Commission on public facility site plans and project landscaping may be appealed to the Planning and Zoning Commission. The Planning and Zoning Commission shall conduct a *de novo* hearing following the procedures set forth in this Section.
8. **Delegation of Authority**  
The Commission may promulgate regulations under Chapter 3.40 that delegate all or part of its authority under this Section to the Director.

### 21.03.100 SPECIAL FLOOD HAZARD PERMITS

#### A. Generally

Any use, structure, or activity listed in the floodplain regulations as requiring a special flood hazard permit is prohibited until the issuance of such permit. Applications for special flood hazard permits may be made to the official administering the floodplain regulations on forms furnished by the Municipality.

#### B. Application

Any application for a special flood hazard permit must contain the following material:

1. The elevation in relation to mean sea level of the lowest floor, including basement, of all structures;
2. The elevation in relation to mean sea level to which any structure has been floodproofed;
3. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential<sup>46</sup> structure meet the floodproofing criteria in **Section 21.60.065.A**; and
4. A description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

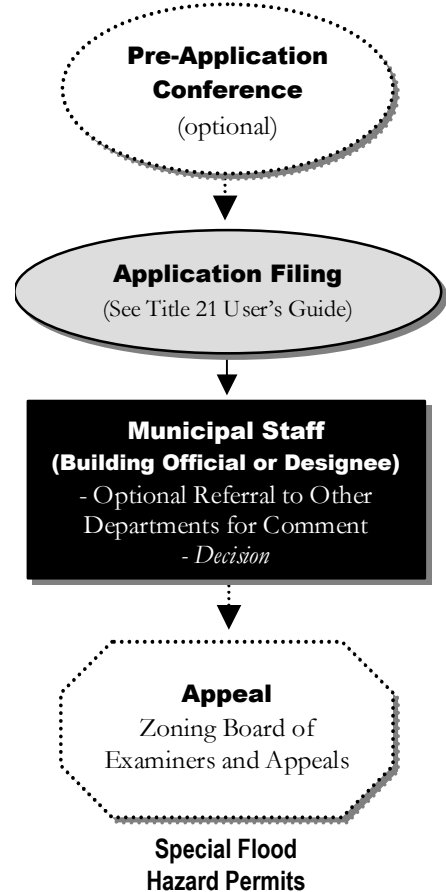
**C. Evaluation; Additional Information**

Upon receipt of an application for a special flood hazard permit, the Building Official shall transmit copies of the application, together with pertinent information, to interested and affected departments and agencies within the Municipality, requesting technical assistance in evaluating the proposed application. The official shall require more detailed information from the applicant where special circumstances necessitate. Such additional information may include:

1. A valley cross section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross sectional areas to be occupied by the proposed development, and high water information.
2. Specification of proposed construction and materials, floodproofing, filling, dredging, grading, channel improvement, water supply, and sanitary facilities.
3. A profile showing the slope of the bottom of the channel or flow line of the stream.
4. A report of soil types and conditions.

**D. Criteria for Issuance**

Permits shall be issued if the application and supporting material demonstrate that:



<sup>46</sup> NOTE: We recommend that this list of submittal requirements be removed and placed in the User's Guide. Before that is done, however, we again point out (as was indicated in the Diagnosis) that this provision requires certification of floodproofing for non-residential structures only, not residential. Is this intentional? We recommend that the provision be broadened to include residential structures, as well.

1. The proposed use or structure poses a minimal increase in probable flood height or velocities caused by encroachment.
2. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions will not be impaired by flooding.
3. The susceptibility of the proposed facility and its contents to flood damage is minimal.
4. There will be adequate access to the property in times of flood for ordinary and emergency vehicles.
5. The proposed use, structure, or activity is in conformance with all applicable land use regulations.
6. All necessary floodproofing will be provided.

**E. Time for Acting on Application**

The official shall act on an application in the manner described in this Section within 30 days from receiving the application, except that, where additional information is required, the official shall act within 30 days of the receipt of such additional requested information.

**F. Notice on Subdivision Plats**

Where any portion of a subdivision is situated within a flood hazard district, a note shall be placed on the plat that reads as follows: "Portions of this subdivision are situated within the flood hazard district as it exists on the date hereof. The boundaries of the flood hazard district may be altered from time to time in accordance with the provisions of **Section 21.60.020**. All construction activities and any land use within the flood hazard district shall conform to the requirements of **Chapter 21.60.**" *[x-refs not updated]*

**G. Appeals**

An appeal from a decision of an administrative official regarding a flood hazard permit shall be brought in accordance with Section 21.03.210B.

**21.03.110 LAND USE PERMITS<sup>47</sup>**

**A. Purpose**

[RESERVED]<sup>48</sup>

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<sup>47</sup> NOTE: This suggested new procedure is broader than the land use permit authorized under the current Title 21. It responds to staff's request that we draft a provision that codifies and broadens current practice, without adding a new permit or review. This suggested new process requires all uses in all areas of Title 21 jurisdiction to go through a check to ensure code compliance, and projects in the Building Safety Services Area also have a full Title 23 check.

<sup>48</sup> NOTE: To be drafted following further discussions.

**B. Applicability**

**1. Inside Building Safety Service Area**

Inside the Building Safety Service Area:

- a. A land use permit shall be required for the erection, construction, establishment, moving, alteration, enlargement, repair, placement, or conversion of any building or structure in any district established under this Title. A land use permit shall be issued only for work that conforms to the requirements and standards of Title 23 and this Title, and the terms and conditions of any other permits, approvals, or variances granted under Title 23 or this Title. A building permit may only be obtained as part of the land use permit process.
- b. The issuance of a land use permit may also be subject to the improvement requirements referenced in subsection E. below.

**2. Outside Building Safety Service Area**

Outside the Building Safety Service Area, a land use permit shall be required prior to:

- a. Construction or placement of a building whose floor area is 100 square feet or greater;
- b. Excavation of more than 300 cubic feet on any lot or tract;
- c. Filling or grading more than 900 cubic feet on any lot or tract; or
- d. Changing the principal use of a building.

**C. Procedures**

**1. Application Filing**

Applications for land use permits shall be submitted to the Building Official in the Development Services Department, on the form included in the Title 21 User's Guide.<sup>49</sup>

**2. Approval Procedure**

- a. The Building Official shall review each application for a land use permit and shall forward those applications for projects within the Building Safety Services Area to the Planning Director.
- b. The Building Official shall determine whether the application complies with all requirements of Title 23. The Planning Director shall determine whether the application complies with all requirements of Title 21, and shall inform the Building Official of his or her determination.

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<sup>49</sup> NOTE: As an alternative, the applications could go to the Planning Director, who could forward just the ones in the BSSA to the Building Official. That would be a big change in the existing land use permit process, however.

- c. The Building Official shall issue a land use permit upon finding that the application and the proposed work complies with the approval criteria of subsection D. below.
  - d. A land use permit shall become null and void unless the work approved by the permit is commenced within six months after the date of issuance. No work shall be considered to have commenced for the purposes of this paragraph until an inspection has been made and recorded. If after commencement the work is discontinued for a period of 12 months, the permit therefore shall immediately expire. No work authorized by any permit that has expired shall thereafter be performed until a permit has been reinstated, or until a new permit has been secured.
  - e. Any permit issued in conflict with this Title or Title 23 shall be null and void.
- 3. Changes to Approved Permits**
- a. After a land use permit has been issued, no substantial changes or deviations from the terms of the permit or the application and accompanying plans and specifications shall be made without the specific written approval of such changes or deviations by the Department.
  - b. An amendment to a land use permit that requires payment of an additional fee, either because of an increase in the size of the buildings, a change in the scope of work, or an increase in the estimated cost of the proposed work, shall not be approved until the applicant has paid the additional fees and the amendment has been properly reviewed and approved for conformance with the building code.
- 4. Revocation of Land Use Permit**
- The Department may revoke and require the return of any land use permit by notifying the permit holder in writing, stating the reason for such revocation. The Department shall revoke land use permits for any of the following reasons:
- a. Any material departure from the approved application, plans, or specifications;
  - b. Refusal or failure to comply with the requirements of this Title or any other applicable state or local laws;
  - c. False statements or misrepresentations made in securing such permit.
- 5. Appeals**
- Appeals of land use permit decisions or revocations relating to Title 21 compliance shall be made to the Zoning Board of Examiners and Appeals. Appeals of land use permit decisions or revocations relating to Title 23 compliance shall be made to the Building Board of Examiners and Appeals.

**D. Approval Criteria**

**1. Within the Building Safety Services Area**

Within the Building Safety Services Area, no land use permit shall be issued unless the Building Official determines that all required approvals have been granted, and the plans comply with all applicable provisions of the Anchorage Municipal Code, including Title 23 and this Title.

**2. Outside the Building Safety Services Area**

Outside the Building Safety Services Area, no land use permit shall be issued unless the Building Official determines that the proposed development complies with all applicable provisions of this Title.

**E. Improvements Associated with Land Use Permits<sup>50</sup>**

**1. Improvements Required**

The issuance of a land use permit under this Section for the construction of a commercial or industrial structure on a lot, or for a residential structure on a lot, shall be subject to the permit applicant providing the dedications and improvements required for a subdivision in the same improvement area under Chapter 21.08, *Subdivision Standards*. In applying the provisions of Chapter 21.08, *Subdivision Standards*, under this Section, the term “lot” shall be substituted for the term “subdivision,” the term “permit applicant” shall be substituted for the term “subdivider,” and the term “Municipal Engineer” shall be substituted for the term “platting authority.”<sup>51</sup>

**2. Exceptions**

The requirements in paragraph 1. shall not apply to a land use permit to the extent that:

- a. The permit has been approved by the Municipality prior to [insert effective date];
- b. The Traffic Engineer determines that a street dedication or improvement is not required for traffic circulation;
- c. A dedication or improvement has been provided to the applicable standard in Chapter 21.80, *Subdivision Standards*;
- d. A dedication or improvement will be provided under a subdivision agreement that has been entered into under [Section ---], or under an established assessment district;<sup>52</sup>
- e. The Municipality has already appropriated funds to construct an improvement.

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<sup>50</sup> NOTE: This section incorporates language from draft ordinance PZ 2002-110: an ordinance to address the inadequacy of development standards for site condominiums, specifically roads. A better location for this material may be the introduction to the new subdivision chapter, 21-8. We've placed it here for now, for discussion purposes, since the draft ordinance places the material near the land use permit provisions in the current Title 21.

<sup>51</sup> NOTE: Terminology and section references should be checked and updated following drafting of 21-8.

<sup>52</sup> NOTE: No conjunctive (“and”) or disjunctive (“or”) included here in the proposed ordinance. Should one be added?

**3. Standards for Requiring Dedications and Improvements**

Where Chapter 21.80 grants discretion to determine whether a dedication or improvement will be required, or to determine the design standards for a dedication or improvement, the Municipal Engineer shall determine the requirement or standard that applies to a land use permit under this Section by applying the following standards:

- a. The dedication or improvement shall be reasonably related to the anticipated impact on public facilities and adjacent areas that will result from the use and occupancy of the structure that is the subject of the building or land use permit. The Municipal Engineer may require the permit applicant to provide information or analyses to determine impacts on public facilities and adjacent areas, including without limitation the following:
  - i. A traffic impact analysis, or similar information. The Traffic Engineer<sup>53</sup> may require a traffic impact analysis if the same would be required<sup>54</sup> for approval of a subdivision, conditional use, or site plan for similar development under this title.
  - ii. A drainage study, or similar information. A drainage study may be required if the same would be required for approval of a subdivision, conditional use, or site plan for similar development under this title.
  - iii. An estimate of the financial and social costs of impacts on public facilities and adjacent areas without the required improvements, including without limitation visual continuity of improvements, maintenance costs of public facilities, parking, drainage, noise and dust control, pedestrian and vehicle safety and access, and emergency vehicle access and response time.
  - iv. Information concerning the consistency of the impacts of the proposed development with the comprehensive plan.
- b. The estimated cost of constructing the improvement shall be reasonable when compared to the estimated cost of the proposed development under the land use permit. The determination of reasonableness shall be based on cost estimates for the improvement and the proposed development that the permit applicant or applicant's agent submits under penalty of perjury.<sup>55</sup> If the Municipal Engineer determines that the estimated cost to the applicant to complete all the improvements required by this Section is unreasonable in relation to the estimated cost of the proposed development, the Municipal Engineer may reduce or eliminate

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<sup>53</sup> NOTE: The Traffic Engineer is actually in a different department (Traffic) than the Municipal Engineer (Project Management and Engineering). This provision therefore appears to conflict with the Municipal Engineer's authority to some extent.

<sup>54</sup> NOTE: Do any of these processes *require* a TIA for particular types of development?

<sup>55</sup> NOTE: Could this be stated more clearly as a requirement to submit the information in the form of an affidavit?

required improvements as necessary to make the relationship between such costs reasonable.

- c. The Municipal Engineer shall consider the potential development of all adjacent parcels, lots, or tracts under common ownership, in addition to the lot, parcel, or tract that is the subject of the permit application, and the impacts associated therewith, in applying the standards in this subsection.
- d. The Municipal Engineer may approve adjustments to the improvement requirements under this Section to the extent that compliance with the standards would result in an adverse impact on natural features such as wetlands, steep slopes, or existing mature vegetation; existing development; or public safety.

**4. Phasing of Installation**

Except as provided in this Section, all required improvements shall be constructed and accepted by the Municipality before any certificate of zoning compliance is issued for the permitted construction. If the Municipal Engineer determines that it is not reasonable to require compliance with the preceding sentence, no permit may be issued until the applicant enters into an agreement for construction of the required improvements, with performance guarantees,<sup>56</sup> in the form required for subdivision improvements under [chapter 21.87].

**5. Warranty**

All improvements required under this Section shall be subject to the warranty and guarantee of warranty requirements provided for subdivision improvements in [chapter 21.87].

**6. Oversizing**

If an improvement exceeding the requirements of this Section is requested by the Municipality and is necessary for the adequate and efficient development of surrounding areas, the Municipality may require the applicant to install or accommodate oversizing. In such event the Municipality shall reimburse the applicant for the cost of the oversizing at least as soon as budgeted funds are available after completion and acceptance of the improvements. This subsection shall not be a limitation on the Municipality's ability to require a utility to oversize its facilities or a limitation on the manner in which the Municipality may pay its proportionate share of the costs of oversizing.

**7. Fee in Lieu**

A fee in lieu of the required improvements may be accepted if the Municipal Engineer determines:

- a. That the improvements or construction activities associated therewith would create a potential undue safety hazard to motorists or pedestrians; or

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<sup>56</sup> NOTE: Should "guarantees" be substituted for "guaranties"? The latter implies a formal legal instrument involving some sort of monetary interest.



- b. Due to the nature of existing development on adjacent properties it is unlikely that improvements would be extended in the foreseeable future and the improvements associated with the development under review do not, by themselves, provide a sufficient improvement to safety or capacity or a sufficient benefit to the property to be developed under the building or land use permit to warrant construction.

**8. Fee Amount**

The amount of the fee in lieu shall be the lesser of seventy-five percent of the cost of the improvements as estimated by an engineer registered as a professional engineer in Alaska or as provided in a fee schedule adopted by regulation by the Municipal Engineer, which fee schedule may be adjusted by regulation annually to account for increases in construction costs in the Anchorage area. In the event the applicant or successor in interest later elects or is required to install improvements for which the fee was paid, the fee shall be refunded (without interest), so long as the claim for refund is filed within two years from the date of initial payment.

**9. Appeals**

A permit applicant may appeal a decision of the Municipal Engineer concerning required improvements under this Section to the Platting Board<sup>57</sup> by filing a written notice of appeal with the secretary of the platting board not later than 10 days after receipt of written notice of the decision. The appeal shall be placed on the agenda of the next regularly scheduled platting board meeting that occurs not less than 20 days after the filing of the appeal. The platting board shall hear the appeal de novo.

**21.03.120 CERTIFICATES OF ZONING COMPLIANCE<sup>58</sup>**

**A. Purpose**

A certificate of zoning compliance shall be required prior to the completion of any development in the Municipality, to ensure that the development complies with all applicable standards of this Title.

**B. Applicability**

1. Within the Building Safety Services Area, a certificate of zoning compliance shall be required prior to the occupancy of any building, structure, or land, except that temporary uses and structures approved in accordance with Section 21.03.040 shall be exempt from certificate of zoning compliance requirements.
2. Outside the Building Safety Services Area, a certificate of zoning compliance shall be required prior to ---.

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<sup>57</sup> NOTE: Leaving final appeal authority with the Platting Board, as opposed to the Assembly, was questioned by a community council representative during the Planning and Zoning Commission hearing on the ordinance setting forth the language in this section. Additional feedback is requested regarding the assignment of decision-making authority to the Municipal Engineer and the Platting Board.

<sup>58</sup> NOTE: This new procedure is intended as a final check on zoning compliance for all development in the Municipality. Within the Anchorage bowl, the procedure will be combined with the current certificate of occupancy process. Further discussion needed regarding how the process will work outside the BSSA.

**C. Procedures**

**1. Application Filing and Review Procedure**

- a. An application for a certificate of zoning compliance shall be filed with the Planning Department. Within 10 days after the application is determined complete, the Director shall review the application and determine whether to approve, approve with modifications, or deny the application based on compliance with the standards set forth in subsection 2. below.
- b. If the Director denies the application, the applicant shall have 30 days to submit a corrected application without paying a separate application fee. If a corrected application is not resubmitted within 30 days, the application shall be considered withdrawn and a new application shall be required for future re-submittals.
- c. The Director may issue a conditional certificate of zoning compliance, which shall be valid only for the period of time stated in the certificate, for a specified portion or portions of a building that may safely be occupied prior to final completion of the entire building and/or site. Conditions that are attached to the conditional certificate of zoning compliance must be completed prior to the expiration of the certificate. When such conditions have not been completed prior to the expiration date of the conditional certificate, the certificate of occupancy shall immediately expire. Upon receipt of a written application to the Director stating satisfactory reasons for the failure to complete work within the given time period, the Director may renew the certificate for a specified period of time, not to exceed 90 days.

**2. Standards**

The Department shall issue a certificate of zoning compliance when, after examination of the building, structure, landscaping and/or other improvements or changes to the property, the Department finds that the building complies with the applicable provisions of this Title and other applicable ordinances and construction codes of the Municipality. This review shall include, but is not limited to: off-street parking, landscaping, and other development standards listed in Chapter 21.07, *Development and Design Standards*.

**D. Effect of Certificate of Zoning Compliance**

Issuance of a certificate of zoning compliance shall mean that the use is in compliance with all applicable requirements of this Title.

**21.03.130 SIGN PERMITS<sup>59</sup>**

[RESERVED]

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<sup>59</sup> NOTE: To be incorporated from the new Sign Ordinance. Staff: Our latest draft is the January 2003 ordinance; is there a more recent version?

**21.03.140 TEMPORARY USES**

**A. Temporary Use Permit Required<sup>60</sup>**

No use that is classified as a temporary use in the zoning district in which it is to be located shall be placed or established on the property without first receiving a temporary use permit.

**B. Filing and Contents of Application**

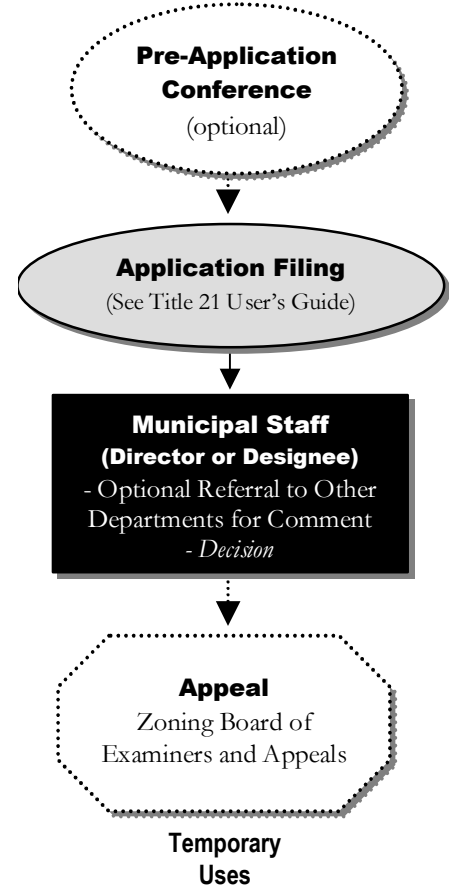
An application for a temporary use permit shall be filed with the Department of Planning, Development, and Public Works on a form prescribed by the Director. Each application for a temporary use permit shall contain the information required on the application form, including written documentation that the applicant has notified adjoining property owners and the Police and Fire Departments of the proposed temporary use or structure. In addition, the application shall be accompanied by a sketch plan showing the boundaries of the property, the use of adjacent properties, the location of the temporary use or structure on the property, and other information sufficient to show that the temporary use or structure complies with the standards set forth in Section --- of this Title.

**C. Filing Deadline**

All applications for temporary use permits shall be filed at least two weeks prior to the date the temporary use will commence, or at least four weeks prior to the date the temporary use will commence if public safety support is requested from the Municipality. The Director may waive this filing deadline requirement in an individual case, for good cause shown.

**D. Duration of Permit**

A temporary use permit shall be valid only for the time period stated on the permit, unless otherwise authorized in this Title.



**21.03.150 RECORD OF SURVEY MAPS<sup>61</sup>**

**A. Purpose and Authorization**

The purpose of this Section is to provide for the approval of record of survey maps to be filed with the district recorder for the state. Record of survey maps shall be reviewed and approved in accordance with this Section.

<sup>60</sup> NOTE: Staff: Is any temporary structure permit required under the Alaska State Building Code? If so, we might want to include a requirement that no tents, trailers, or other temporary structures until they obtain such a permit, if applicable.

<sup>61</sup> NOTE: As noted in the Annotated Outline, this section carries forward the current Section 21.15.127.

**B. Use of Record of Survey Maps**

1. A record of survey map is a map depicting the exterior boundaries of a legally created lot, parcel, or tract, and includes a correction to a record of survey map.
2. A record of survey map shall not be used to depict the boundaries of a lot, parcel, or tract, which lot, parcel, or tract was created or subdivided contrary to law. A record of survey map shall not subdivide property or recombine lots into acreage, and any record of survey map purporting to do so shall be null and void.

**C. Required Submittals**

An applicant for approval of a record of survey map shall submit the materials specified in the Title 21 User's Guide.

**D. Monuments**

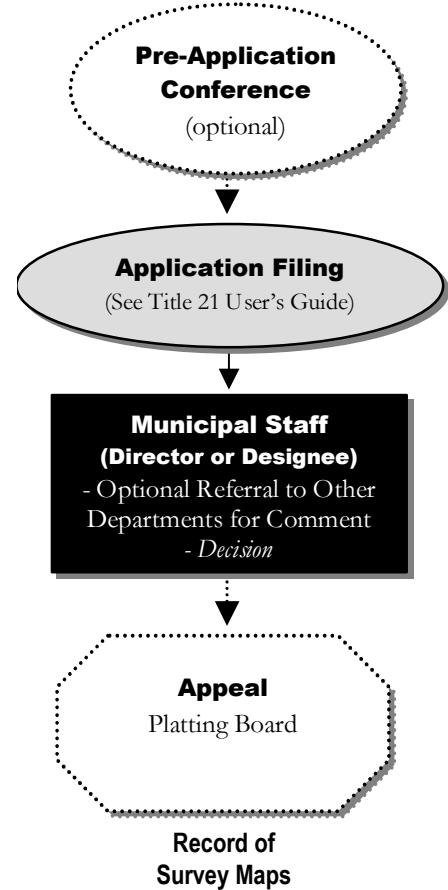
Monuments set for the survey shall conform to the standards of the Public Works Department.

**E. Approval**

A record of survey map is subject to approval by the municipal surveyor, who shall approve a record of survey map if it conforms to this Section.

**F. Appeals**

All decisions of the municipal surveyor under this Section shall be final unless appealed to the Platting Board within 15 days.

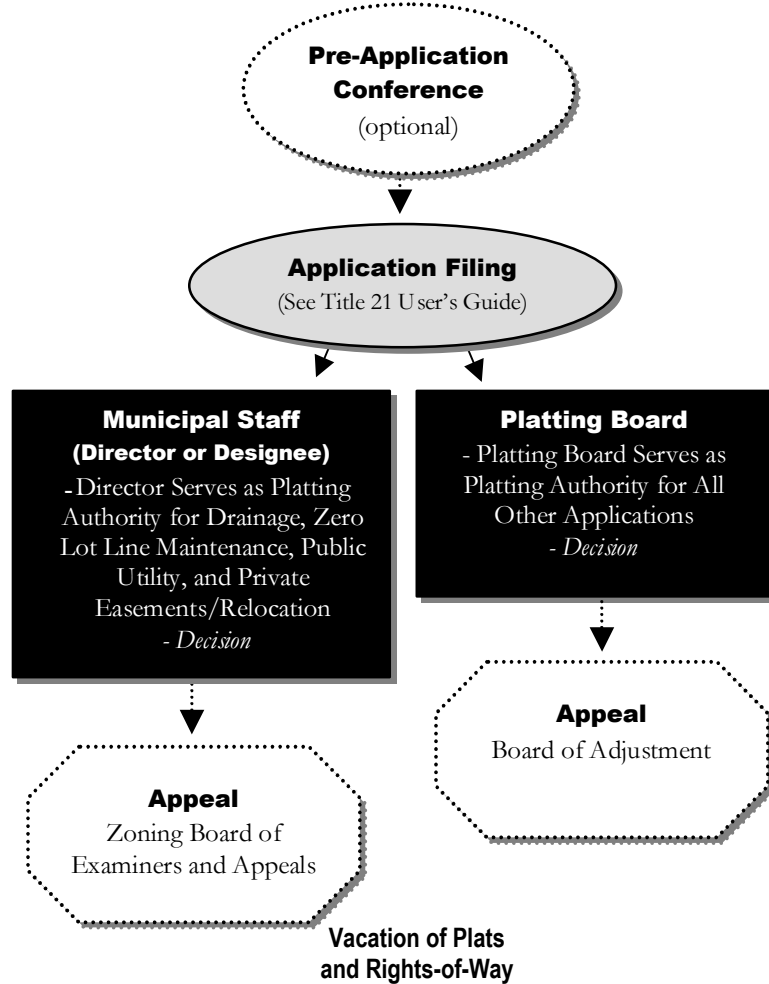


**21.03.160 VACATION OF PLATS AND RIGHTS-OF-WAY<sup>62</sup>**

**A. Authority**

<sup>62</sup> NOTE: As noted in the Annotated Outline, this section carries forward the existing Section 21.15.130.

The Platting Board shall consider the merits of each vacation request, and in all cases the Platting Board shall deem the area being vacated to be of value to the Municipality unless proven otherwise. The burden of proof shall lie entirely with the petitioner. The presumption contained herein does not apply to vacations of private easements where the beneficiaries have provided written concurrence.



**B. Required Submittals**

Applicants for vacation requests shall submit the materials specified in the Title 21 User's Guide.

**C. Action by Platting Board**

1. The Director is the platting authority for applications to vacate the following platted interests:
  - a. Drainage easements granted under Section 21.85.140.
  - b. Zero lot line maintenance easements.
  - c. Public utility easements.
  - d. Private easements, but only upon the written concurrence of the beneficiaries.
  - e. Relocation of any of the above-described interests.
2. The Platting Board is the platting authority for all other applications to vacate a dedicated public area. The Platting Board shall take action on the vacation

application within 60 days after the submission date. The reasons for the approval of the vacation shall be stated upon the record of the Platting Board.

3. The Planning Department shall refer to the Assembly the action of the Platting Board on an application to vacate a public area, with an ordinance authorizing the conveyance of the area proposed to be vacated, when:
  - a. Within 15 days of the Platting Board 's action a government agency or a person aggrieved by the action files with the Department of Community Planning and Development a written request that the matter be forwarded to the Assembly; or
  - b. The area proposed to be vacated is not a street right-of-way or an easement.
  - c. The action of the Platting Board on an application to vacate a public area is final, unless referred to the Assembly under this subsection.
4. The approval of a vacation by the Platting Board expires 18 months after the date of approval. A vacation is not effective unless, before its approval expires, a conveyance of the vacated interest is approved in accordance with law and a final plat depicting the vacation is approved and filed in accordance with this Title. A street right-of-way or easement whose vacation is finally approved by the Platting Board under subsection C.2 of this Section is a right-of-way or easement without substantial value to the Municipality and is conveyed upon the filing of a final plat depicting the vacation.

**D. Title to Vacated Area**

1. The title to the street or other public right-of-way vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that, if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street that lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the Municipality.
2. If the Municipality acquired the street or other public area vacated for legal consideration before the final act of vacation, the fair market value of the street or public area shall be deposited with the Municipality. Title transferred under this subsection shall be warranted by the Municipality in the same manner as it was received.
3. The provisions of paragraph D.1 of this Section notwithstanding, the Platting Board may determine that all or a portion of the area vacated should be devoted to another public purpose and, if so, title to the area vacated and held for another public purpose does not vest as provided in paragraph D.1 but remains in the Municipality.

**21.03.170 STREET NAME ALTERATIONS<sup>63</sup>**

**A. Generally**

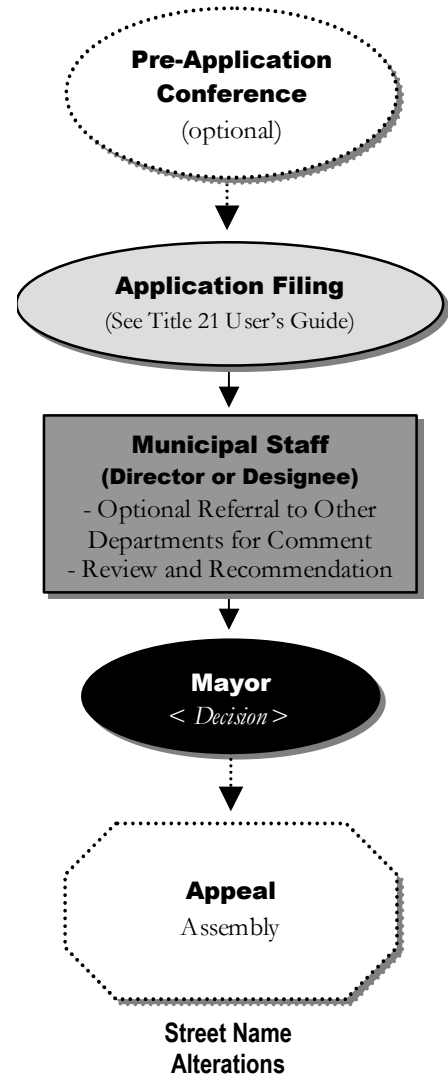
A street name alteration may be proposed by a government agency or by petition. The proposal or petition shall be submitted to the Office of Planning, Development, and Public Works. The Department of Public Works shall reject any street name alteration that does not conform to the standards of **Section 21.80.260** and any regulations adopted pursuant to that Section.

**B. Petition for Alteration**

1. A petition for street name alteration shall include:
  - a. The existing street name;
  - b. The proposed street name;
  - c. The signatures of 51 percent of the owners of property fronting the street, and the legal description of the property fronting on the street owned by each petitioner; and
  - d. A map showing the location of the subject street.
2. The Department of Public Works shall determine whether a petition conforms to paragraph 1. of this subsection. For the purposes of this Section, the person listed on the current municipal property tax rolls as the owner of a lot or parcel shall be presumed to be the present owner of the lot or parcel.

**C. Notice to Abutting Property Owners; Action by Mayor**

1. The Department of Public Works shall mail to all owners of property fronting on a subject street notice of the proposed street name change not less than 14 days before it is submitted to the Mayor. The notice shall state the present and proposed street names and shall direct that any comments on the alteration be submitted in writing to the Director of Public Works.



<sup>63</sup> NOTE: This section carries forward the current Section 21.15.133, with no major substantive changes. We have made a few minor wording changes to eliminate some "legalese" in the existing text.

2. The Director of Public Works shall submit the street name alteration to the Mayor with a recommendation that the Mayor approve or disapprove the alteration and the reasons for the recommendation.
3. If the Mayor approves the alteration, he shall issue an executive order directing that the alteration be made. The executive order shall become effective 30 days after its issuance but shall be suspended by a protest filed with the municipal clerk within that 30-day period pursuant to subsection D. of this Section. The municipal clerk shall mail notice of the issuance of the executive order to all owners of property fronting on the subject street. The notice shall describe the procedure for protesting the executive order under subsection D. of this Section. The municipal clerk shall notify the person who submitted a petition or proposal for street name alteration of the Mayor's disapproval of the street name alteration.
4. The Mayor's disapproval of a street name alteration may be appealed to the Assembly within 30 days.

**D. Protests**

Upon the timely filing of a petition signed by 33 percent of the owners of property fronting on the subject street, protesting the issuance of an executive order under subsection C. of this Section, the municipal clerk shall schedule a public hearing on the matter before the Assembly. The question before the Assembly shall be whether to ratify the executive order. The executive order shall become effective upon the passage of a resolution of ratification. If a resolution of ratification fails to pass, the executive order shall be void.

**21.03.180 CERTIFICATION OF NONCONFORMING USE<sup>64</sup>**

[RESERVED]

**21.03.190 MINOR MODIFICATIONS<sup>65</sup>**

**A. Purpose and Scope**

This Section sets out the required review and approval procedures for "minor modifications," which are minor deviations from otherwise applicable standards that may be approved by the Director, the Assembly, the Planning and Zoning Commission, or the Platting Board. Minor modifications are to be used when the small size of the modification requested, and the unlikelihood of any adverse effects on nearby properties or the neighborhood, make it unnecessary to complete a formal variance process.

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<sup>64</sup> NOTE: To be drafted along with Chapter 21-9, *Nonconformities*.

<sup>65</sup> NOTE: This is a recommended replacement to the current "21.15.012: Procedure for obtaining administrative variance for minor dimensional errors." The new section is intended to be more flexible and easier to administer – the complexity of the current approach makes it appear unlikely to be used often.



**B. Applicability**

**1. Minor Modifications to General Development and Zoning District Standards<sup>66</sup>**

As part of the review and approval of any procedure set forth in this Chapter, the Director, the Assembly, the Planning and Zoning Commission, or the Platting Board may approve minor modifications of up to a maximum of [10] percent from the following general development and zoning district standards provided that the approval criteria of subsection D. below are met.

- a. Minimum lot area requirements (Section ---)
- b. Yard requirements (Section ---);
- c. General development standards set forth in Chapter 21.07, *Development and Design Standards*;
- d. Subdivision design and improvement standards set forth in Chapter 21.08, *Subdivision Standards*.

**2. Exceptions to Authority to Grant Minor Modifications**

In no circumstance shall any decision-making body approve a minor modification that results in:

- a. An increase in overall project density;
- b. A change in permitted uses or mix of uses;
- c. An increase in building height;
- d. A deviation from the use-specific standards, set forth in **Section ---**; or
- e. A change in conditions attached to the approval of any subdivision plan (Section 21.03.060), site plan (Section 21.03.080), or conditional use permit (Section 21.03.070).

**C. Procedure**

**1. Minor Modifications Approved by Director**

The Director may initiate or approve a minor modification allowed under this Section at any time prior to submittal of the staff report on an application to another decision-making body, if a report is required, or prior to final decision, if no report is required.

**2. Minor Modifications Approved by Assembly, Planning and Zoning Commission, or Platting Board**

The Assembly, Planning and Zoning Commission, or Platting Board may initiate or approve a minor modification allowed under this Section at any time before it takes action on a development application.

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<sup>66</sup> NOTE: Some communities also allow minor modifications to approved development plans (e.g., minor changes to building footprints on site plans). Is Anchorage interested in such provisions?

**3. Noted on Pending Application**

Staff shall specify any approved minor modifications and the justifications for such modifications on the pending development application for which the modifications were sought.

**D. Approval Criteria<sup>67</sup>**

The decision-making body may approve the minor modification only if it finds that the modification meets all of the criteria below:

1. The requested modification is consistent with the comprehensive plan and the stated purpose of this Title;
2. The requested modification meets all other applicable building and safety codes;
3. The requested modification does not encroach into a recorded easement;
4. The requested modification will have no significant adverse impact on the health, safety, or general welfare of surrounding property owners or the general public, or such impacts will be substantially mitigated; and
5. The requested modification is necessary to either: (a) compensate for some practical difficulty or some unusual aspect of the site of the proposed development not shared by landowners in general; or (b) accommodate an alternative or innovative design practice that achieves to the same or better degree the objective of the existing design standard to be modified. In determining if "practical difficulty" exists, the factors set forth in Section 21.03.200G., *Approval Criteria (for Variances)* shall be considered.

**21.03.200 VARIANCES<sup>68</sup>**

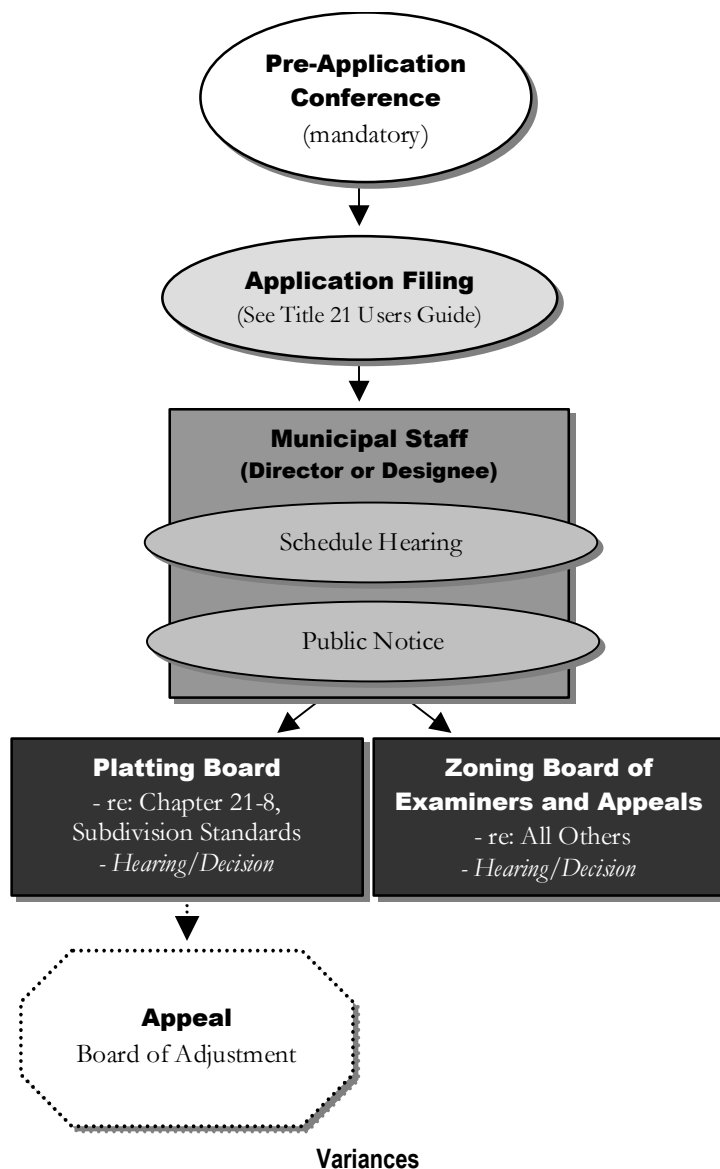
**A. Purpose and Scope**

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<sup>67</sup> NOTE: Note that the "Findings of Fact" requirement in Section 21.03.020J. requires the Director to adopt written findings for each of these criteria when approving a minor modification.

<sup>68</sup> NOTE: This section is based generally on the current Section 21.15.010. The purpose statement is new. The procedures section has been lengthened to clarify the process.

The variance process is intended to provide limited relief from the requirements of this Title in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this Title. It is not intended that variances be granted merely to remove inconveniences or financial burdens that the requirements of this Title may impose on property owners in general. Rather, it is intended to provide relief where the requirements of this Title render the land difficult or impossible to use because of some unique physical attribute of the property itself or some other factor unique to the property for which the variance is requested. State and/or federal laws or requirements may not be varied by the Municipality.



**B. Provisions from Which Variances Are Allowed<sup>69</sup>**

Only the following standards of this Title are eligible for a variance, and only if the minor modification procedures in Section 21.03.190 are unable to address the hardship:

1. The lot width, yard, height, building coverage, or structure spacing standards set forth in Chapter 21.06, *Dimensional Standards and Measurements*;
2. Any of the off-street parking and loading standards set forth in Section ---;
3. Any of the subdivision standards or requirements set forth in Chapter 21.08, *Subdivision Standards*; and
4. [OTHER?]

**C. Pre-Application Conference<sup>70</sup>**

Before filing a variance application, the applicant shall request a pre-application conference with the Director. See Section 21.03.020B.

**D. Application**

An application for a variance shall be submitted to the Director on a form contained in the Title 21 User's Guide. A request for variance may be initiated only by the property owner or his authorized representative. The application must state with particularity the relief sought and must specify the facts or circumstances that are alleged to show that the application meets the approval criteria of subsection G. Once the application is complete, the Director shall schedule the application for consideration at a public hearing, and shall transmit to the appropriate review body all applications and other records pertaining to the variance prior to the hearing.

**E. Decision-Making Bodies Authorized to Consider Variance Requests<sup>71</sup>**

1. The Platting Board shall be authorized to review and consider requests for variances under this Section to standards for requirements set forth in Chapter 21.08, *Subdivision Standards*.
2. The Zoning Board of Examiners and Appeals shall be authorized to review all other variance requests allowed under this Section.

**F. Action by the Review Body**

1. Upon receiving the application materials from the Director, the review body shall hold a public hearing on the proposed variance. Written, published, and

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<sup>69</sup> NOTE: This is a new section proposed for the Municipality's consideration. The current Title 21 allows variances from any provision in the code. Some communities, however, find it useful to limit the types of standards from which variances are allowed. This helps clarify, for example, that use variances are prohibited. If this provision is retained, input is needed as to what types of standards should be listed.

<sup>70</sup> NOTE: This is a suggested new requirement. At the conference, staff can explain the Minor Modification provision and determine if it could be used instead of a full variance.

<sup>71</sup> NOTE: This is a new section intended to clarify who grants variances. Is it correct?

posted notice of the hearing shall be provided pursuant to Section 21.03.020.G.

2. In considering the application, the review body shall review the application materials, the approval criteria of subsection G., and all testimony and evidence received at the public hearing.
3. After conducting the public hearing, the review body may: deny the application; conduct an additional public hearing on the application; or grant the requested variance. Any approval or denial of the request shall be by resolution, accompanied by written findings of fact that the variance meets or does not meet each of the criteria set forth in subsection G., stating the reasons for such findings. A concurring vote of a majority of the fully constituted membership of the Board shall be required to grant a variance.
4. Under no circumstances shall the review body grant a variance to allow a use not permitted, or a use expressly or by implication prohibited under the terms of this Title for the zone district containing the property for which the variance is sought.
5. Under no circumstances shall the review body grant a variance from any written conditions attached by another decision-making to the approval of a conditional use permit (Section 21.03.070) or subdivision plat (Section 21.03.060 or site plan (Section 21.03.080).

#### **G. Approval Criteria**

##### **1. General Approval Criteria<sup>72</sup>**

Except for variances to airport height regulations, which are governed by paragraph 2. below, the review body may approve a variance only if it finds that all of the criteria below have been met:

- a. Special circumstances or conditions exist (e.g., narrowness, exceptional topographic conditions, or the shape of the property) that are not common to other areas or buildings that are similarly situated and practical difficulty may result from strict compliance with this Title's standards, provided that the requested variance will not have the effect of nullifying or impairing the intent and purposes of either the specific standards, this Title, or the comprehensive plan. In determining "practical difficulty," the Zoning Board of Examiners and Appeals shall consider the following factors:
  - i. Whether there can be any beneficial use of the property without the variance;
  - ii. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

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<sup>72</sup> NOTE: These are suggested new criteria, based loosely on the existing criteria. We do not see a need to carry forward separate approval criteria for variances to subdivision standards, as is done in the current Title 21 – please advise if that distinction should be maintained, however.

- iii. Whether the variance would adversely affect the delivery of public services such as water and sewer;
  - iv. Whether the applicant purchased the property with knowledge of the requirement; and
  - v. Whether the applicant's predicament can be mitigated through some method other than a variance.
- b. No variance shall be granted if the conditions or circumstances affecting the applicant's property are of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situations.
  - c. If authorized, the variance shall represent the least deviation from the regulations that will afford relief.

**2. Variances to Airport Height Standards**

With respect to variances from the airport height zoning regulations set forth at **Section ---**, the standards of subsection G.1 shall not apply; instead, the Federal Aviation Administration shall have completed an airspace determination that concludes that the proposed variance would not create a hazard.

**H. Lapse of Approval**

Any variance granted shall become null and void:

- 1. If the variance is not exercised within one year of the date it is granted, or
- 2. If any building, structure, or characteristic of use permitted by variance is moved or altered so as to enlarge the variance or discontinue it.

**I. Appeals**

An appeal from a decision of the Platting Board shall be brought in accordance with Sections 21.30.210A. An appeal from a decision of the Zoning Board of Examiners and Appeals shall be brought in accordance with Section 21.30.010C.

**21.03.210 APPEALS<sup>73</sup>**

**A. Appeals to Board of Adjustment**

**1. Jurisdiction of Board<sup>74</sup>**

The Board of Adjustment shall decide appeals:

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<sup>73</sup> NOTE: This section carries forward material from the current Chapter 21.30, so some appeals (subdivision, conditional uses) go to the Board of Adjustment, while appeals of staff decisions go to the Zoning Board of Examiners and Appeals. As noted below, the biggest issue with this section will be whether to retain the current broad language allowing anyone to appeal any decision. Also, we would like feedback on whether the amount of detail in the Board of Adjustment provisions is necessary.

<sup>74</sup> NOTE: This section will need to be monitored and updated as necessary, if new appellate authority is given to the Board of Adjustment as part of discussions on other sections of this chapter.

- a. From decisions regarding the approval or disapproval of a plat or a variance from the provisions of Chapters 21.08, *Subdivision Standards*.
  - b. From decisions regarding the approval or disapproval of applications for approval of conditional uses (Section 21.03.070).
2. **Initiation of Appeal**<sup>75</sup>  
Decisions may be appealed to the Board of Adjustment by:
- a. The applicant for a site plan, conditional use, or subdivision.
  - b. Any governmental agency or unit.
  - c. Any person adversely affected by the action.<sup>76</sup>
3. **Appellees Before Board**
- a. If a decision is appealed to the Board of Adjustment as provided in subsection 2., an appellee brief may be filed as provided in Section subsection 7. by:
    - i. The party in whose favor the lower administrative body's decision was rendered.
    - ii. Any municipal agency.
    - iii. Any person who would be adversely affected if the decision of the lower administrative body were reversed by the Board.
  - b. Appellees who wish to be notified by the municipal clerk's office of the date the record is available and of the date the appellant's brief is filed must file a notice of intent to file a brief with the municipal clerk's office on a form prescribed by the municipal clerk within 20 days after the decision of the lower administrative body from which the appeal is taken. An applicant for a site plan, conditional use, or subdivision, who is not the appellant, must file a notice of intent to file a brief with the municipal clerk's office within seven days of receipt of the appellant's notice of appeal to become an appellee.
4. **Perfection of Appeal; Notice of Appeal; Appeal Fee**
- a. An appeal to the Board of Adjustment must be perfected no later than 15 days after the decision of the administrative body from which the appeal is taken, unless a written request is made within seven days

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<sup>75</sup> NOTE: We have removed the provision authorizing the Planning and Zoning Commission to act as the Board of Adjustment on decisions of the hearing officer. We did this because the hearing officer provision contemplated in the current code does not actually exist – there is no Title 21 hearing officer. The only hearing officer is authorized under Title 14, and deals with enforcement – he does not function in the way described in the current Title 21.

<sup>76</sup> NOTE: The right to appeal is a major policy issue that requires further discussion. As noted in the Diagnosis, some people criticize the broad nature of Anchorage's current appeals process. They allege that the current language allowing anyone who is "adversely affected" to appeal a decision is commonly used as a tactic to delay a project. An alternative approach would be to restrict the right to appeal to only "parties in interest," who typically are defined as the applicant or the property owner or holder of an easement in the subject property. Participants in hearings on the project might also be possible parties in interest. Staff has indicated that they are open to discussions on tightening this provision.

after the administrative body acts on an application for the body to adopt written findings and conclusions on the application. A written decision under this subsection is the decision of the Board for purposes of computing the time for appealing the decision. The appeal is perfected by the filing of a notice of appeal, appeal fee, and cost bond in accordance with this Section.

- b. The notice of appeal must be filed with the municipal clerk on a form prescribed by the Municipality and must contain detailed and specific allegations of error. If the appellant is not the applicant for a site plan, conditional use or subdivision, the appellant shall, within three days after filing the notice of appeal, serve a copy of the notice of appeal on the applicant by certified mail to the applicant's last known address. Proof the notice was served shall be provided to the municipal clerk.
- c. The appellant shall pay an appeal fee as provided in a fee schedule to be approved by the Assembly. In addition, the appellant shall file a cost bond equal to the estimated cost of preparation of the record. Following completion of the record, the actual cost thereof shall be paid by the appellant. All costs and fees shall be returned to the appellant if the decision of the lower body is reversed in whole or in part.

**5. New Evidence or Changed Circumstances**

Appeals alleging new evidence or changed circumstances shall not be heard by the Board of Adjustment but shall be remanded by the municipal clerk to the lower administrative body, which shall determine whether to rehear the matter.

**6. Appeal Record<sup>77</sup>**

- a. Upon timely perfection of an appeal to the Board of Adjustment, the municipal clerk shall prepare an appeal record. The record shall contain:
  - i. A verbatim transcript of the proceedings before the administrative body from which the appeal has been taken.
  - ii. Copies of all documentary evidence, memoranda and exhibits, correspondence and other written material submitted to the administrative body prior to the decision from which the appeal is taken.
  - iii. A copy of the written decision of the administrative body, including its findings and conclusions.
- b. The appellant shall arrange for the preparation of the transcript of the Board hearing by a court reporter or the current board and commission recording secretary and shall pay the cost of such

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<sup>77</sup> NOTE: The Board of Adjustment appeals procedures are much more detailed than those for the ZBEA in the next section. We have not made any changes yet, but we do see some merit in making the level of detail in the sections more equivalent. Please advise if this is desirable or if the text should stay as is.



preparation. The appellant shall file the transcript with the municipal clerk. If the appellant fails to file the transcript within 30 days of the filing of the notice of appeal, the appeal shall be automatically denied.

- c. Upon completion of the record, the municipal clerk shall notify the appellant by certified mail of the cost of its preparation. If the appellant fails to pay the costs within seven days of receiving the notice, the appeal shall be automatically denied. Upon timely payment of costs, the municipal clerk shall, by certified mail, serve a copy of the record on the appellant. The municipal clerk shall also notify by certified mail the appellees who have filed a notice of intent to file a brief that the record is available for pickup. Upon request, the municipal clerk shall provide a copy of the record to an appellee or the public. A copying cost for the record will be charged as set out in AMCR 3.90.002. The appellee shall also be charged any mailing costs, including the cost of mailing the notice of record availability.

## 7. **Written Arguments**

### a. ***Brief of Appellant***

The appellant to the Board of Adjustment may file a written brief of points and authorities in support of those allegations of error specified in the notice of appeal with the municipal clerk's office not later than 15 days after service of the appeal record. The municipal clerk shall deliver a copy of the appellant's brief to the municipal staff assigned responsibility for the appeal. The municipal clerk shall also notify by certified mail those appellees who have filed a notice of intent to file a brief that the appellant's brief is available for pickup. Upon request, the municipal clerk shall provide a copy of the appellant's brief to appellees, who shall be charged copying costs as provided in AMCR 3.90.002 and any mailing costs applicable.

### b. ***Brief of Appellee***

The municipal staff shall prepare and submit to the municipal clerk a written reply to the notice of appeal and any brief in support thereof no later than 30 days after service of the appeal record. An appellee who has filed a notice of intent to file a brief may also file with the municipal clerk's office a written reply to the notice of points on appeal and any brief in support thereof no later than 30 days after the service of the appeal record. The municipal clerk shall notify the appellant by certified mail that appellee briefs have been filed.

### c. ***Reply Brief***

An appellant may file a written reply brief to appellee briefs submitted pursuant to subsection b. of this Section. The appellant's reply brief is due no later than ten days after service of notice that the appellee briefs have been filed.

### d. ***Form of Briefs***

All briefs shall be prepared to specifications set forth in the Title 21 User's Guide. The municipal clerk shall not accept a brief unless it is in the form prescribed by the User's Guide. If a brief is not filed within the time prescribed by the User's Guide, the municipal clerk shall notify the Board of Adjustment that the brief was filed late. The Board

shall determine whether to accept a late brief and whether to allow additional time for any qualified opposing party to file reply or rebuttal briefs if allowed.

**8. Appeal Packet; Notice of Hearing**

Following the time set for the receipt of written argument from the appellant, the appellee, and the municipal staff under this part, the municipal clerk shall prepare and distribute to the members of the Board of Adjustment an appeal packet containing only the notice of appeal, the appeal record and any briefs filed in accordance with subsection 7. above. Following distribution of the packets, a date shall be set for consideration of the appeal. Notice of consideration on the appeal shall be published in a newspaper of general circulation and shall be served by mail on the appellant and those appellees who have submitted briefs. Appeal packets shall be made available to the public upon demand with costs payable by the public as provided in AMCR 3.90.002.

**9. Conduct of Hearing**

- a. The meeting at which the Board of Adjustment deliberates and decides an appeal shall be open to the public and a record of the hearing shall be made.
- b. The Board of Adjustment shall not hear argument nor take additional testimony or other evidence. The Board of Adjustment may consider only the material contained in the appeal packet.<sup>78</sup>

**10. Scope of Review**

- a. The Board of Adjustment shall hear an appeal solely on the basis of the record established before the lower administrative body, the notice of appeal, the appellant's argument, and the reply to that argument.
- b. The Board of Adjustment may exercise its independent judgment on legal issues raised by the appellant. The term "legal issues," as used in this Section, means those matters that relate to the interpretation or construction of ordinances or other provisions of law.
- c. The Board of Adjustment shall, unless it substitutes its independent judgment pursuant to subsection d. of this Section, defer to the judgment of the lower administrative body regarding disputed issues or findings of fact. Findings of fact adopted expressly or by necessary implication by the lower administrative body may be considered as true if they are supported in the record by substantial evidence. The term "substantial evidence," for the purpose of this Section, means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. If the record affords a substantial basis of fact from which the fact in issue may be

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<sup>78</sup> NOTE: The staff notes that, now that there is a new Board of Adjustment, this may be a good time to change the hearing procedure and allow persons that filed a brief to make an oral argument to the Board. As staff notes, "the Board of Adjustment will no longer be the Assembly. The new Board of Adjustment can devote more time to the hearing than the Assembly could." Further discussion needed. Is there general support for this idea?

reasonably inferred, it shall be considered that the fact is supported by substantial evidence.

- d. Notwithstanding the provisions of subsection c. of this Section, the Board of Adjustment may, by an affirmative vote of two-thirds of the fully constituted board, substitute its independent judgment for that of the lower administrative body on any disputed issues or findings of fact. Such judgment must be supported on the record by substantial evidence. For the purpose of this subsection, the fully constituted Board of Adjustment shall not include those members who do not participate in the appeal in accordance with the provisions of subsection --- of this Section.

**11. Decision**

- a. The Board of Adjustment may affirm or reverse the decision of the lower administrative body in whole or in part. It shall decide an appeal on the basis of the record on appeal and the briefs of the parties to the appeal, in accordance with the standards of Section ---. A majority vote of the fully constituted board is required to reverse or modify the decision appealed from. For the purpose of this Section, the fully constituted board shall not include those members who do not participate in the proceedings in accordance with Section subsection --- of this Section. A decision reversing or modifying the decision appealed from shall be in a form which finally disposes of the case on appeal except where the case is remanded in accordance with subsection 12.a of this Section.
- b. Every decision of the Board of Adjustment to affirm or reverse the decision of the lower administrative body pursuant to subsection a. of this Section shall be based upon findings and conclusions adopted by the Board. Such findings must be reasonably specific so as to provide the community, and, where appropriate, reviewing authorities, a clear and precise understanding of the reason for the Board's decision. The Board may seek the assistance of the municipal staff in the preparation of findings.

**12. Remedies**

- a. Where the Board of Adjustment reverses or modifies a decision of the lower administrative body in whole or in part, its decision shall finally dispose of the matter on appeal, except that the case shall be remanded to the lower body where the Board of Adjustment determines either that:
  - i. There is insufficient evidence in the record on an issue material to the decision of the case; or
  - ii. There has been a substantial procedural error that requires further public hearing.

A decision remanding a case shall describe any issue upon which further evidence should be taken, and shall set forth any further directions the Board deems appropriate for the guidance of the lower administrative body.

- b. The lower administrative body shall act on the case upon remand in accordance with the decision of the Board of Adjustment in the minimum time allowed by the circumstances. Cases on remand following a decision of the Board shall take precedence over all other matters on the agenda of the lower administrative body. Cases remanded in accordance with subsection 5. of this Section are not entitled to such preference.

**B. Appeals to Zoning Board of Examiners and Appeals**

**1. Jurisdiction of Board<sup>79</sup>**

The Zoning Board of Examiners and Appeals shall hear appeals from decisions of the municipal staff regarding:

- i. Enforcement orders issued under Chapter 21.10, *Enforcement*.
- ii. Denial of an application for a flood hazard permit under Section 21.03.100.
- iii. Denial of an application for a building or land use permit when such denial is based on the requirements of this Title.<sup>80</sup>
- iv. Denial of an application for a sign permit when such denial is based on the requirements of this Title.
- v. Denial of an application for a mobile home park permit when such denial is based on the requirements of this Title.
- vi. Denial of a minor modification under Section 21.03.190.
- vii. Denial of or imposition of conditions on a certificate under Section 21.55.040. [*x-ref to existing section on certificate of nonconforming encroachment*]
- viii. Interpretation of zoning district boundaries under 21.01.050.C, *Interpretation of District Boundaries*.

**2. Initiation of Appeal**

Appeals to the Zoning Board of Examiners and Appeals may be brought by any person adversely affected by the action.

**3. Time Limit for Filing; Notice of Appeal; Appeal Fee**

- a. An appeal to the Zoning Board of Examiners and Appeals must be filed no later than 30 days after notification of the decision being appealed.

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<sup>79</sup> NOTE: NOTE: This section will need to be monitored and updated as necessary, if new appellate authority is given to the ZBEA as part of discussions on other sections of this chapter.

<sup>80</sup> NOTE: Removed here the reference to existing 21.40.240, Transition District, which authorizes Assembly, not ZBEA, to hear appeals of permits in the Transition District.

- b. Notice of appeal must be filed with the municipal clerk on a form prescribed by the Municipality and must contain detailed and specific allegations of error.
- c. The appellant shall pay an appeal fee as set by the Assembly, which shall accompany the filing of the notice of appeal. All fees shall be returned to the appellant if the decision of the administrative official is reversed in whole, and one-half of the fee shall be returned if the decision is reversed in part.

**4. Scope of Review**

The Zoning Board of Examiners and Appeals shall conduct a full evidentiary hearing on an appeal and make its decision on the basis of this Title, the evidence, and the argument presented.

**5. Hearing**

- a. A public appeal hearing shall be held within 60 days of the filing of a proper notice of appeal.
- b. Notice of the appeal hearing shall be published in a newspaper of general circulation at least 14 days prior to the hearing, and, in addition, the appellant shall be sent a notice by mail at least 14 days prior to the hearing.
- c. The Zoning Board of Examiners and Appeals may prescribe rules of procedure for additional notification in cases where a decision of the Board would have a substantial effect on the surrounding neighborhood.

**6. Decision**

- a. The Zoning Board of Examiners and Appeals may affirm or reverse the decision of the administrative official in whole or in part. It shall require a majority of the fully constituted board to disturb the decision appealed from. For the purpose of this Section, the fully constituted board shall not include those members who disqualify themselves in accordance with subsection --- of this Section.
- b. Every decision of the Zoning Board of Examiners and Appeals to affirm or reverse an action of the administrative official shall be based on findings and conclusions adopted by the Board. Such findings must be reasonably specific so as to provide the community and, where appropriate, reviewing authorities, with a clear and precise understanding of the reasons for the Board's decision

**C. Judicial Appeals**

**1. Judicial Review Authorized**

In accordance with Appellate Rule 601 et seq., of the Alaska Rules of Court, a municipal officer, a taxpayer, or a person jointly or severally aggrieved may appeal to the superior court:

- a. A decision of the Board of Adjustment on an appeal from a decision regarding the approval or disapproval of an application for concept or final approval of a conditional use.
- b. A decision of the Board of Adjustment on an appeal from the Platting Board regarding an application for a subdivision.
- c. A decision of the Zoning Board of Examiners and Appeals on applications for a variance.
- d. A decision of the Zoning Board of Examiners and Appeals denying any application for a permit on grounds of noncompliance with provisions of this Title.
- e. A decision of the Zoning Board of Examiners and Appeals pertaining to an enforcement order issued under Chapter 21.10, *Enforcement*.

**2. Scope of Judicial Review**

An appeal to the superior court shall be heard solely on the record established before the municipal bodies. In the case of appeals from the Board of Adjustment, the record shall include the proceedings before the Planning and Zoning Commission, the Platting Board, or the hearing officer. The findings of the Planning and Zoning Commission, the Platting Board, the hearing officer, the Zoning Board of Examiners and Appeals, and the Board of Adjustment shall not be reversed if, in the light of the whole record, they are supported by substantial evidence.

**21.03.220 HARDSHIP RELIEF PETITIONS<sup>81</sup>**

**A. Economic Hardship/Takings Relief**

Any applicant for development, after a final decision on their development application is rendered through any process set forth in this Chapter, may file a Hardship Relief Petition with the Director seeking relief from any regulations in this Title on the basis that the denial of the application has created a substantial economic hardship, depriving the applicant of all reasonable use of their property.<sup>82</sup>

**1. Affected Property Interest**

The Hardship Relief Petition shall provide information sufficient for the Director and the Municipal Attorney to determine that the petitioner possesses a protectable interest in property under the Alaska Constitution and the Fifth Amendment to the United States Constitution.

**2. Economic Hardship Taking Standard**

For purposes of this resolution, a substantial economic hardship shall be defined as a denial of all reasonable economic use of the property. Upon a

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<sup>81</sup> NOTE: This section was called "Beneficial Use Determinations" in the Annotated Outline, and was originally proposed to go at the end of the Common Procedures section. However, given the section's length and the fact that it actually is a stand-alone procedure, we now recommend placing it here at the end of the procedures chapter.

<sup>82</sup> NOTE: As noted in the Outline, the intent of the section is to provide a method to resolve potential property rights claims. It outlines a process by which potential takings claims can be adjudicated at the local level, before the issue is taken to court. The section is intended to reduce potential litigation between private landowners and the Municipality, and it offers landowners a forum for review of claims without the need to hire a lawyer.

finding that the denial of the application has resulted in a denial of all reasonable economic use of the property, the Municipality may provide the petitioner with relief from applicable regulations.

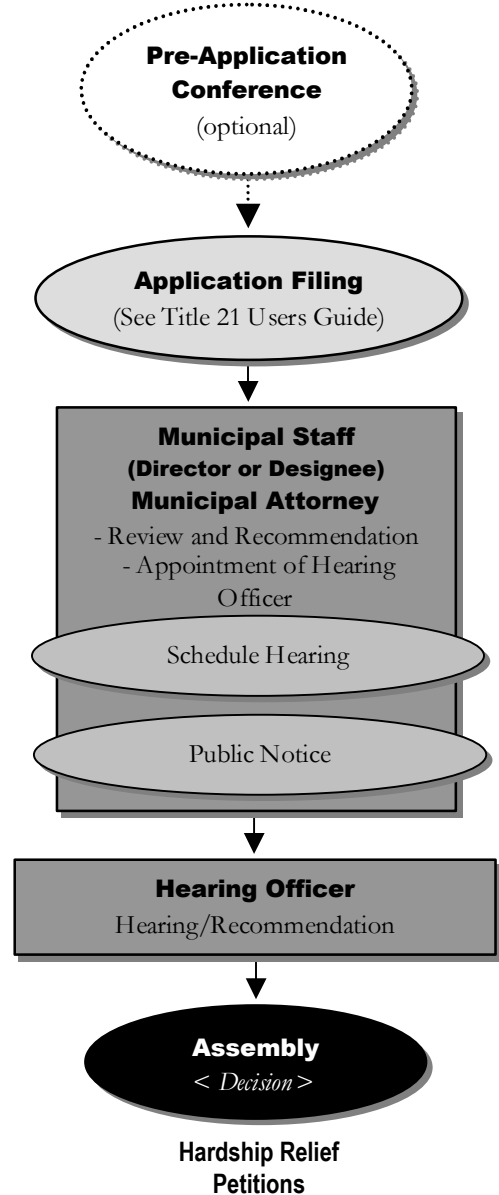
**3. Time for Filing Notice of Petition and Petition**

No later than 15 calendar days from final action by the decision-making body on any development application, the applicant shall file a notice of petition in writing with the Director. Within 25 days of filing of a notice of petition, the applicant shall file a Hardship Relief Petition with the Director.

**4. Information to be Submitted with Hardship Relief Petition<sup>83</sup>**

The Hardship Relief Petition shall be submitted on a form prepared by the Department of Planning, Development, and Public Works, and shall be accompanied at a minimum by the following information:

- a. Name of the petitioner;
- b. Name and business address of current owner of the property, form of ownership, whether sole proprietorship, for-profit or not-for-profit corporation, partnership, joint venture or other, and if owned by a corporation, partnership, or joint venture, name and address of all principal shareholders or partners;
- c. Price paid and other terms of sale of the property, the date of purchase, and the name of the party from whom purchased, including the relationship, if any, between the petitioner and the party from whom the property was acquired;



<sup>83</sup> NOTE: These submission requirements are critical to the entire review process. The aim is to ensure that the Municipality has detailed information and hard facts upon which to assess a preliminary takings claim, rather than relying on the unsubstantiated claim of a property owner or developer of severe economic deprivation.

- d. Nature of the protectable interest claimed to be affected, such as, but not limited to, fee simple ownership, leasehold interest;
- e. Terms (including sale price) of any previous purchase or sale of a full or partial interest in the property by the current owner, applicant, or developer prior to the date of application;
- f. All appraisals of the property prepared for any purpose, including financing, offering for sale, or ad valorem taxation, within the three years prior to the date of application;
- g. The assessed value of and ad valorem taxes on the property for the previous three years;
- h. All information concerning current mortgages or other loans secured by the property, including name of the mortgagee or lender, current interest rate, remaining loan balance and term of the loan and other significant provisions, including but not limited to, right of purchasers to assume the loan;
- i. All listings of the property for sale or rent, price asked and offers received, if any, during the period of ownership or interest in the property;
- j. All studies commissioned by the petitioner or agents of the petitioner within the previous three years concerning feasibility of development or utilization of the property;
- k. For income-producing property, itemized income and expense statements from the property for the previous three years;
- l. Evidence and documentation of improvements, investments, or expenditures for professional and other services related to the property made during the past three years; and
- m. Information from a title policy or other source showing all recorded liens or encumbrances affecting the property.

The Director may request additional information reasonably necessary, in his opinion, to arrive at a conclusion concerning whether there has been a denial of all reasonable economic use constituting a substantial economic hardship.

**5. Failure to Submit Information**

In the event that any of the information required to be submitted by the petitioner is not reasonably available, the petitioner shall file with the petition a statement of the information that cannot be obtained and shall describe the reasons why such information is unavailable.

**6. Preliminary Determination of Substantial Economic Hardship**

Prior to any review by a Hearing Officer appointed pursuant to subsection B. below, and based on an analysis of documents and information submitted by the applicant, the Director and Municipal Attorney shall make a determination whether the applicant has made a prima facie case that the subject property



has been subject to a denial of all reasonable economic use that amounts to a substantial economic hardship.

- a. If a determination is made that a prima facie case has not been established, then the Director and Municipal Attorney shall deny the petition. Such determination shall be made within 30 days of the filing of a Hardship Relief Petition and submission of all information required by the Director necessary to make such determination. Any appeal of such decision shall be made to [superior court].
- b. If a determination is made that the petitioner has established a prima facie case that the subject property has been subject to a denial of all reasonable economic use that amounts to a substantial economic hardship, the Director shall recommend to the Assembly that a Hearing Officer be appointed pursuant to Section B. below.

**B. Appointment of Hearing Officer<sup>84</sup>**

Within 30 days following a preliminary determination of substantial economic hardship and upon a favorable resolution by the Assembly, the Director shall appoint a Hearing Officer to review information submitted by the petitioner, to hold a hearing to determine whether there is an affected property interest, and whether a substantial economic hardship has been created as a result of a final action on the application.

**1. Qualifications of the Hearing Officer**

Every appointed Hearing Officer shall have demonstrated experience in development, real estate finance, real estate analysis, real estate consulting, real estate appraisal, planning, real estate, or zoning law, or in other real estate-related disciplines sufficient to allow an understanding, analysis, and application of the economic hardship standard contained in this resolution. Prior to appointment, the Hearing Officer shall submit a statement of no potential or actual conflict of interest.

**2. Hearing Officer Compensation/Hearing Costs**

The Hearing Officer shall be compensated at his normal rate for professional services of a similar nature plus all travel and incidental expenses including staff support as necessary. The petitioner shall be responsible for paying all costs associated with the Hearing Officer and conduct of the hearing. The petitioner shall deposit in advance with the Municipality a fee to cover the cost of the economic hardship hearing as estimated by the Director and shall make periodic payments at the direction of the Director to replenish the hearing fee fund if the initial fee is exhausted. If the Hearing Officer shall determine and render a final decision that the petitioner has presented evidence sufficient to demonstrate a substantial economic hardship, he may apportion up to one-half the cost of the hearing to the Municipality.

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<sup>84</sup> NOTE: This section provides for reviews of the Director's/county attorney's preliminary decision by an independent Hearing Officer. The Hearing Officer would hold an administrative/quasi-judicial hearing to determine in a more formal setting if the applicant is being subjected to a substantial economic hardship amounting to a taking. In this way, the applicant is given an opportunity to present its case before a tribunal that has not been involved in the development review process, avoiding any claim that the deciding authority is biased. The Anchorage Hearing Officer authorized in Title 14 of the Municipal Code could theoretically serve in this capacity. If that is done, then this subsection (B) could be simplified by simply cross-referencing the Title 14 Hearing Officer.

- 3. Notice and Scheduling of Hearings**  
Notice and scheduling of hearings shall be carried out in accord with Section 21.03.020.G.
- 4. Testimony at Hearings**  
The Hearing Officer shall allow an opportunity during the hearing for the appellant and the public to offer either written or oral testimony regarding the proposal under consideration.
- 5. Application of the Economic Hardship Taking Standard**  
In applying the economic hardship standard in paragraph A.2 above, the Hearing Officer shall consider, among other items, the following information or evidence.

  - a. Any estimates from contractors, appraisers, architects, real estate analysts, qualified developers, or other competent and qualified real estate professionals concerning the feasibility, or lack of feasibility, of construction or development on the property as of the date of the application, and in the reasonably near future;
  - b. Any evidence or testimony of the market value of the property both under the uses allowed by the existing regulations and any proposed use; and
  - c. Any evidence or testimony concerning the value or benefit to the petitioner from the availability of opportunities to transfer density or cluster development on other remaining contiguous property owned by the petitioner eligible for such transfer.
- 6. Burden of Proof**  
The petitioner shall have the burden of proving by a preponderance of the evidence that the denial of the application creates a substantial economic hardship under the standard provided in paragraph A.2.
- 7. Findings of the Hearing Officer**  
The Hearing Officer shall, on the basis of the evidence and testimony presented, make the following specific findings. Such findings shall be included as part of its report and recommendations to the Assembly, as set forth below:

  - a. Whether the petitioner has complied with the requirements for presenting the information to be submitted with a hardship relief petition;
  - b. Whether the petitioner has a protectable interest in property;
  - c. The market value of the property considering the existing regulations;
  - d. The market value of the property under the proposed use;
  - e. Whether there exists a feasible alternative use that could provide a reasonable economic use of the property;

- f. The market value of, or benefit accruing from opportunities to transfer density or cluster development on other remaining contiguous property owned by the petitioner eligible for such transfer as provided herein;
  - g. Whether it was feasible to undertake construction on or development of the property as of the date of the application, or in the reasonably near future thereafter;
  - h. Whether, in the opinion of the Hearing Officer, the denial of the application would create a substantial economic hardship as defined in paragraph A.2.
- 8. Decision and Recommendations of the Hearing Officer**
- a. The Hearing Officer, based upon the evidence and testimony presented, shall render a decision as to the merits of the Hardship Relief Petition.
  - b. If the Hearing Officer finds that the denial of the application would create a substantial economic hardship, he shall make recommendations to the Assembly regarding additional relief to provide an appropriate increase in market value or other benefit or return to the petitioner sufficient to offset the substantial economic hardship. The types of incentives that the Hearing Officer may consider include, but are not limited to, the following:
    - i. A rezoning of the property to a more appropriate classification, issuance of a variance, approval of a site plan, or other appropriate land-use regulatory action that will enable the petitioner to realize a reasonable economic return on the property;
    - ii. An opportunity to transfer density or cluster development on other property;
    - iii. A waiver of permit fees;
    - iv. Development finance assistance;
    - v. Approval of development on some portion of the property; and
    - vi. Acquisition of all or a portion of the property at market value.
  - c. The report and recommendation shall be submitted to the Assembly and mailed to the petitioner within 30 days following conclusion of the hardship hearing.
  - d. The decision of the Hearing Officer shall not become final until the Assembly shall have acted on the recommendations within 120 days of the close of the economic hardship hearing. Provided, however, that the Assembly may extend this period upon a finding that, due to

the size and complexity of the development or proposal and similar factors, that additional review time is necessary.<sup>85</sup>

**C. Review and Consideration of the Recommended Relief by Assembly**

The Assembly shall review the report and recommendations of the Hearing Officer and approve or disapprove the relief suggested therein or additional relief as deemed appropriate within 120 days following receipt of the Hearing Officer's report, unless a finding is made that more time is warranted under paragraph B.8.d above. The Assembly may hold a public hearing, but only new testimony and evidence shall be presented at any public hearing held pursuant to this Section. The Assembly may adopt any legally available incentive or measure reasonably necessary to offset any substantial economic hardship as defined in paragraph A.2 and may condition such incentives upon approval of specific development plans.

**D. Time Limits/Transferral of Incentives**

Any incentives adopted by the Assembly pursuant to this Section may run with the land and may be transferred and utilized by successive owners of the property or parties in interest, but in no case shall the incentives be valid after the expiration date of the development approval as provided in this Title.

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<sup>85</sup> NOTE: The intent of leaving the decision of the Hearing Officer open until the Assembly acts is to prevent the applicant from claiming that a final decision has been rendered and all avenues of relief have been exhausted, thus allowing an immediate court challenge.