

Municipality of Anchorage

MEMORANDUM

DATE: March 17, 2008
TO: Planning and Zoning Commissioners
FROM: Tom Nelson, Director
SUBJECT: Case #2007-153; Issue Response for **Chapter 21.03** of Title 21 Rewrite

1. **Issue:** 21.03.020B.2.a., *Required for New Applications*

Add:

vii. Projects where the property contains slopes steeper than 30 percent.

viii. Projects located within Seismic-Induced Hazard Zones 4 and/or 5.

Commentary - It would be prudent that projects on any property with slopes steeper than 30 percent have a pre-application conference (e.g. with Development Services/Building Safety) to review the requirements in Chapter 7 as they pertain to development and Title 23. In addition, it would be prudent that developers planning and/or applying for a permit/authorization under Title 21 (i.e. before the Title 23 permits) have a pre-application conference (e.g. with Development Services/Building Safety) when the project is located with the high seismic hazard zones.

Staff Response: Title 21 controls the pre-application conference with Planning Department staff, not with Building Safety/Development Services staff. Subdivision applications, including those on steep slopes, are already required to have a pre-application conference. On-lot development on slopes of 30-50 percent require an administrative site plan review. All administrative site plan reviews must be treated consistently, and they don't have required pre-application conferences. An applicant may always request a pre-application conference regardless if one is not required.

Staff Recommendation: No changes recommended.

2. **Issue:** 21.03.020B.2.b., *Exception for Some Changes to Already-Approved Applications*

Exempting development for pre-application conferences for increases less than 25% of the approved sq footage or number of units is not an appropriate measure by which to save time for staff and the public. The public is not served well by such exemptions because there is no limit on the number of times this exemption can occur and the original size of the developments is not factored into the exemption. 25% increases for large developments can result in impacts not envisioned in the original CUs, or site plans. If this exemption is kept,

reduce the 25% limit to 10% and factor in size of the developments as part of the condition for exemption. Also limit the number of times this exemption can occur.

Staff Response: This section does not waive oversight of changes to an already approved application—it only waives the required pre-application conference. The amendment to the already approved application will still go through the process outlined in the relevant section, and the applicant can still request a pre-application if he or she desires one. Staff agrees that only one such change to an already approved conditional use, major site plan, or subdivision should be allowed to waive a pre-application conference.

Staff Recommendation: Page 6, lines 2-4, amend to read “Pre-application conferences are not required for the first change[S] to already-approved conditional use approvals [PERMITS], major site plans, and subdivision plans if the following conditions are met. Subsequent changes to these approvals requires a pre-application conference.[:]”

3. **Issue:** 21.03.020D., *Application Contents, Submittal Schedule, and Fees*
Can the Municipality reject an application if a developer has outstanding fees/fines (no matter which department)?

Staff Response: This issue was raised during the review and deliberations on chapter 8, to determine whether the municipality could refuse to enter into a subdivision agreement with a subdivider who had defaulted on a previous subdivision, or had outstanding fees/fines. It was decided that this was too heavy of a hammer, considering that a developer could be contesting the fees or fines. This provision would also cause a logistical burden on municipal staff, as fines are usually assessed through the Development Services Department or the Project Management and Engineering Department, but applications are submitted to the Planning Department. To add to the tracking burden it is the common practice of developers to create different “shell” companies for each development project, which would prevent the municipality from tying a new development proposal to a previous project with outstanding fees/fines.

Staff Recommendation: No changes recommended.

4. **Issue:** 21.03.020D.3., *Processing Fees*
Currently fees are partially refundable—why change to nonrefundable?

Staff Response: Staff does not object to removing the “non-refundable” language.

Staff Recommendation: Page 8, line 3, amend to read, “Fees are not subject to waivers [AND ARE NON-REFUNDABLE].”

5. **Issue:** 21.03.020G., *Community Meetings*
ANC understands the sentiment behind some of the new pre-application review and community meeting procedures contained in proposed Chapter 3. However, ANC is concerned about their relevance for most state and private tenant projects on the Airport, and

about the potentially significant delay and cost that they may add for relatively little real public benefit. Tremendous growth and development at the ANC have made it a significant contributor to the local economy. ANC would like to avoid any unnecessary procedures that may stall development, potentially sending investment elsewhere.

Staff Response: Community meetings are required for rezones, subdivisions, conditional uses, major site plan reviews, and public facility site selections. The Anchorage International Airport is unlikely to initiate a rezone on their property, particularly after the Airport District is implemented. The AIA does not subdivide their property through a municipal process. Thus the types of applications that require community meetings and may affect the airport are conditional uses, major site plan reviews, and public facility site selections.

Staff disagrees that a community meeting will create a “significant delay and cost.” The meeting is required to be held before the application is submitted to the department, so it won’t hold up actual processing of the application. The costs are limited to the fulfillment of the notice requirements and potentially renting a meeting space.

One of the rights guaranteed in the municipal charter’s bill of rights is “The right to a locally directed, ongoing planning process that is based upon the community’s goals, objectives and policies for the future.” Informing and involving the public in major projects is important.

Staff Recommendation: No changes recommended.

6. Issue: 21.03.020G., *Community Meetings*

This should be required to be the community council meeting if such meeting is available.

Staff Response: Staff does not support requiring the community meeting to be a community council meeting. Not all councils meet regularly, most development projects are not council-wide issues, community councils are included as reviewing agencies during approval process, and the developer is free to use the community council as the community meeting venue if he/she desires.

The statement “if such meeting is available” leaves too much room for interpretation and arguments (disagreements over whether a council meeting is available). However, staff does not object to encouraging the use of the community council meeting for the community meeting, but as a voluntary provision, it would be more appropriate to state in the user’s guide.

Staff Recommendation: No changes recommended.

7. Issue: 21.03.020G.2.a., *Types of Applications*

Community meetings should be required for all site plans, not just major ones. Minor site plans, such as churches, can have huge impact to neighborhoods due to their size and traffic, etc depending upon the adjacent zoning and infrastructure.

Staff Response: One of the major purposes of the code rewrite is to find the appropriate balance for what type/intensity of project should go through a public review process, and what

should have an administrative review. Currently, there are few design standards in the code and many projects go through a public review, which is unpredictable both for the developer and for the public. With more design standards to address concerns that are commonly raised with new development, there is more predictability of the outcome of the development, alleviating the need for public review. To address this commenter's concern, the issue should not be whether or not to add a community meeting to an administrative site plan review, but rather are the standards appropriate for those uses that require an administrative review, and/or are the uses that require an administrative review the appropriate ones.

Staff has received many comments about large nonresidential development (such as churches) in residential districts, and is working on standards to address this type of situation. Staff does not agree that adding a community meeting to an administrative approval process is the best solution to the problem.

Staff Recommendation: No changes recommended in this section.

8. Issue: 21.03.020G.2.b., *Waiver*

Waiving a community meeting should not remove other notification requirements. Public involvement should be encouraged for all development and waivers should not be granted lightly.

Staff Response: Waiving a community meeting does not remove any notification requirements. Whether or not a community meeting is required or not required or waived, the notice requirements of section 21.03.020H. still apply.

Staff Recommendation: No changes recommended.

9. Issue: 21.03.020G.2.b., *Waiver*

The community should be included when deciding whether to grant a waiver. It should not just be up to the director to grant waivers because only the neighbors have the detailed knowledge to determine whether a development will have significant impacts. Taking the public out of this decision is a backwards step for community involvement.

Staff Response: Any Planning director will have experience judging the impacts of proposed development. The waiver can only be granted if the director judges that a project will not have significant impacts on five different areas, which is a pretty high bar. In reality, waivers are likely to be rare.

Additionally, the logistics of involving "the community" in whether or not to grant a waiver are difficult. Who would get to speak for "the community"? Would it be some sort of vote taken? Considering the historic response rate the department gets to mailed notices (usually very small), it doesn't seem likely than any response would actually be representative of "the community."

Staff Recommendation: No changes recommended.

10. Issue: 21.03.020G.2.b., *Waiver*

The director should have to justify the waiver of a community meeting.

Can the community challenge the waiver?

Staff Response: Staff agrees that a waiver should be justified.

There is no provision for the community to challenge the waiver, but as all of the types of applications have public hearings before a board or commission, community members will be able to register their objections before the decision-making body.

Staff Recommendation: Page 9, line 23, amend to read, “The waiver shall be justified in writing, provided along with...”

11. Issue: 21.03.020G.4., *Notice of Community Meeting*

Add in the requirement to notify effected community councils.

Staff Response: The applicant must provide written (mailed) notice of a community meeting in accordance with the written (mailed) notice requirements of section H. In section H.3. that describes written notice, H.3.c. requires notice to the affected community council(s).

Staff Recommendation: No changes recommended.

12. Issue: 21.03.020G.5.b., *Attendance at Community Meeting*

This section does not state that regularly scheduled community council meetings should be the preference for conducting the required community meetings. Council meetings would be easier for the applicant to use and would likely allow for greater public input than holding a separate meeting. Add: “Where a regularly scheduled Community Council meeting meets the timing and location requirements, that is the preferred venue for the community meeting.”

Add in that it is preferable to have community meetings as part of the local community council(s) meetings. Use the regularly scheduled council meeting format for community meetings to get the most public input with the least inconvenience to the public.

Insert a new lead sentence under 5 b: Community meetings shall be part of the local Community Council meetings unless the Community Council schedule has lapses over 60 days or cannot reasonably provide the length of presentation time that the developer needs.

Reason: the incorporation of the developer’s meeting into the community council format serves as an important convenience to the affected community, increases publicity, increases likelihood of attendance by knowledgeable members of the community, and puts the project in perspective with other community issues. Also helps to strengthen the Council system.

Staff Response: See Issue #6.

Staff Recommendation: See Issue #6.

13. Issue: 21.03.020G.6., *Summary of Community Meeting*

Include the requirement for the applicant to send a meeting summary to the affected community council(s) to aid them in their response to the meeting and their case comments, in general. This would allow boards & commissions to independently assess applicants' statements regarding the public response to information they presented at the required meetings. Sometimes there is disagreement as to the public's opinion.

These requirements do not include the need to have the community council review the meeting summary for accuracy. Normally these community meetings will be held in conjunction with council meetings and the council should have a copy of the summary to review and comment on. Developers' representatives have misrepresented the public's views on various developments or parts thereof at P/Z meetings after the hearings have been closed. Questioning by the Commissioners does not allow the public to rebut what the developers say during their deliberations; therefore at least the community meeting summary should be reviewed by the councils for their views on neighborhood concerns.

Staff Response: Meeting summaries are required to be included in the case packet, which is available to the public approximately a week before the public hearing. Staff notes that a week ahead of time is not a large amount of time. The department will be working on their system of posting case information on the website—in the future it may be possible to post the meeting summary soon after it is received by the department.

Staff Recommendation: No changes recommended.

14. Issue: 21.03.020H., *Notice*

MOA public notices are notoriously poor in supplying needed information and the signs are way too small. All the information on the signs should be readable 10 ft away. Suggest a minimum sign size of 18 x32." Even though hearings may not be held on short plats, some site plans, master planning and development master planning cases, etc., the public should be notified with public notices of some sort such as "Public Input Requested" because these types of cases can impact neighborhoods and not everyone reads the newspaper notices.

Staff Response: The dimensional details of notice signs should not be in the code. They should be included in the user's guide, so that needed adjustments can be made administratively, rather than by ordinance.

See also Issue #16.

Staff Recommendation: No changes recommended.

15. Issue: 21.03.020H., *Notice*

Notice to community councils is required when written (mailed) notice is required, but the councils should be notified even when written notice isn't required. For example, councils should receive notice of substantive comp plan amendments, and T21 text amendments.

Should email notice be codified?

Staff Response: Staff agrees that community councils should be notified for Substantive Comprehensive Plan Amendments, Neighborhood or District Plans, and Text Amendments to Title 21, at the least. In current practice, this is done. The department is considering the most appropriate way to codify this practice.

Also, all three types of notice should be given for Area Master Plans and Development Master Plans (from chapter 21.09).

Staff Recommendation: Page 11, Table 21.03-1: Summary of Notice Requirements, add a row for Master Plan, Area, Section 21.09.030E., check marks in all three columns, and a row for Master Plan, Development, Section 21.09.030F., check marks in all three columns.

16. Issue: 21.03.020H.1., *Content of Notices*

Public notices should provide information about the public hearing—whether it is a rezone, etc. The current notices do not give adequate data. Why is the requirement for posting of notice not required for Site Plan Review, Administrative, Abbreviated Plats, Area Master Planning, and Development Master Planning? Even an abbreviated plat can have a major impact to the area if it contains a design for significant road connections or neglects to include key pedestrian/trail connections.

Staff Response: There is no way to provide the relevant information on a posted notice to people driving by in their car, which is the most common way the signs are viewed. The signs are not intended to be a distraction to drivers. The distinctive blue sign is an indication that something is proposed to happen on the property. There is a phone number listed on the sign for more information, and for those who can't get that number (if they are driving by), they can call the Planning Department.

There is a premise that this code, the current code, and most codes in most communities starts with: that there is a spectrum of development projects with the “low” end being projects that need no specialized or public review, and the “high” end being projects that need a full blown government and public review to determine even whether or not they should happen. At the “low” end would be a single-family home on a lot zoned for such uses. At the “high” end would be something with amazing community impacts, like an airport. Nobody would disagree with those developments at the far ends of the spectrum. It is the middle of the spectrum where opinions vary on what sort of review should be required. The department has proposed four different levels of review. Two require only staff review with no public input, and two require public hearings. Staff considers the range of review processes to be adequate and appropriate.

Staff Recommendation: No changes recommended.

17. Issue: 21.03.020H.5., *Posted Notice*

Add a provision about “indelible ink”? or about legibility?

Staff Response: The writing on the signs is done with permanent marker. It is possible/likely that the illegible signs are old signs left up from hearings long past. The

rewrite has a new requirement to remove signs within 30 days of the close of the applicable public hearing.

Staff Recommendation: No changes recommended.

18. Issue: 21.03.020I., *Departmental Report*

Councils need the Departmental Reports as far in advance as possible in order to prepare their response for the hearing. Change “approximately” to “minimum of” one week before the hearing.

Staff Response: Planning department staff members do their best to finalize the departmental report in a timely manner, but there are many factors that can prevent a report being finished a week before the hearing.

Staff Recommendation: No changes recommended.

19. Issue: 21.03.020L., *Postponements*

The proposed section appears to codify what was an informal practice of some of the bodies. The proposed section is different than the current rule of procedure of three of the bodies. See AMCR 21.10.305, 21.11.305, and 21.12.350. The new section creates in the applicant a right of postponement if too few members are present (21.03.020L.1.) and a discretionary right for other reasons (21.03.020L.2.). No right of postponement is afforded to other persons interested in the matter.

I have personally observed the informal current practice of granting postponements to applicants manipulated by the applicant to frustrate opposition presentations by neighborhood groups and others.

There is no reason to presume that a requested entitlement is in the public interest. It is therefore irrational to grant rights to the applicant for the entitlement which are not afforded to those opposing it. Further, allowing the applicant to control the timing of the public hearing on it gives the proponent greater influence over the substantive outcome by inconveniencing and wearing down the opposition. To expect the public to follow an application through long agendas of multiple meetings is unreasonable.

Under the United States and Alaska Constitutions, all persons are entitled to fair and just treatment in legislative investigations, equal opportunity to be heard, and access to public forums without regard to their views. Proposed AMC 21.03.020L. appears to violate these provisions by favoring the applicant with opportunities for postponement that are not available to others.

Given the informal practice of the present bodies, I support addressing this issue in the ordinance and not leaving the matter to rules of procedure. One possible solution is to minimize the need for postponements by making the affirmative vote of a quorum present at the meeting sufficient for approval. This is the common practice of many organizations. At a minimum the postponement at the request of the applicant for this reason should be limited to one time only.

Staff Response: The section states the processes by which an applicant may request a postponement of his or her case. A member of the public may request a postponement as part of their public testimony. In both cases, the board or commission may decide to grant, or not grant, a postponement request.

While staff notes it is possible that applicants have used postponements to frustrate their opposition, they have no ability to take away the opposition's right to be heard. They can change the date of the hearing, but they can't take away their access to the public forum.

That said, staff has tightened the rules. The informal practice has been to allow the applicant to postpone whenever the board or commission did not have every member present. The new rules give a "free" postponement only if there is only a quorum present. Otherwise, the applicant may request postponement, and the board/commission may grant it, but the applicant must pay a fee.

Staff does not support making an affirmative vote of a quorum to be sufficient for approval. For a nine member body, a quorum is five persons, and that would allow potentially major decisions to be made by three people. Given all the perspectives and specialties that are attempted to be represented on each board or commission, it would not be right to have decisions made by one third of the body.

Staff Recommendation: No changes recommended.

20. Issue: 21.03.020L., *Postponements*

Why should the applicant pay for a second or third postponement if there is a short board, which is out of the control of the applicant? Should the fee be waived the first three times (instead of just the first time)? Who pays for re-noticing?

Staff Response: The fact that board decisions don't have to be unanimous is an indication that the potential for absences is built into the system. The staff and the board members have prepared for the case and interested members of the public have shown up. The board, by law, is capable of deciding on the case. When postponements occur, the public is inconvenienced, and the workload of the board piles up in other meetings. The quorum requirements (usually five of nine) are the standard and the applicant should expect to work within the standard.

The municipality pays for re-noticing.

Staff Recommendation: No changes recommended.

21. Issue: 21.03.020N., *Decision*

Include the pertinent language of Title 4 here so the public does not have to go elsewhere for the information. It is an unnecessary added burden to have to do so. Many other sections have similar, limited, wording that refers the reader elsewhere. Please revise all.

Staff Response: When code language is repeated in different locations, the potential for error is greater that the code may be revised in one place but not in the other place(s). This leads to

inconsistencies and confusion. Referencing code provisions in other areas of Title 21 or in other municipal titles is customary and efficient. All 31 titles of municipal code are available online (through municode.com), at the library, and in various municipal offices, including at the Planning Department.

Staff Recommendation: No changes recommended.

22. Issue: 21.03.020N., *Decision*

There is no text for this section and it is referred to Title 4. Need to know how this important matter is being dealt with.

Staff Response: The same staff working on the T21 rewrite is working on the T4 amendments. Basically, those elements that were in this section in previous drafts are being moved to Title 4. When it is ready, the ordinance will be available for public review and comment.

Staff Recommendation: No changes recommended.

23. Issue: 21.03.040A.2., *Applicability*

12 time limit consistently violated—remove limit on number of permits and add language about not circumventing the special permit process through catering/special event permits; and add review by Police Chief

Staff Response: Staff notes that facilities such as the Anchorage Senior Center, the Selkregg Chalet at Russian Jack, the Bayshore Clubhouse, or the Kincaid Park Chalet would consistently violate this section as they are often rented out more than 12 times in a year for special events that include alcohol. These situations are not a problem and should not be violations. Staff proposes some language to directly address the real problem, which is establishments using subsequent special event licenses to avoid getting a permanent license.

Staff Recommendation: Page 16, lines 3-6, amend to read, “Notwithstanding A.1. above, catering and special event permits issued by the state Alcoholic Beverage Control Board [, AND HELD NO MORE THAN 12 TIMES IN A CALENDAR YEAR AT THE SAME PHYSICAL LOCATION] are exempt from these approval requirements, but shall meet AMC title 10 requirements and the following:

a. When multiple permits are issued for the same location, the permits shall be for discreet events, and shall not be used to avoid the special land use permit process; and

b. The catering and special event permit shall be reviewed by the chief of police in order to address any recurring problems at the site that have involved the police.”

24. Issue: 21.03.040C.7., *Expiration*

Add a new section c. about abandonment for one year.

Staff Response: Staff agrees that adding a section on abandonment of the permit would be a positive change.

Staff Recommendation: Page 17, line 36, amend to add a new section b. as follows, and make the existing b. into c.: “The use holding the permit has been discontinued, vacant, or inactive for a continuous period of at least one year; or”

25. Issue: 21.03.050A.4., *Perfection of Appeal; Notice of Appeal; Appeal Fee*

This proposal continues existing practice of requiring a notice of appeal to be filed with the municipal clerk within 20 days of the final decision. This is a reasonable requirement and time period. However, present regulations of the PZC require in addition that a request for written findings together with a notice of intent to file an appeal be filed with the “secretary of the commission” (defined to be the director of planning). This notice must be filed within 7 days of the oral findings at the commission hearing. This requirement is a trap for the unwary and probably unlawful as it contradicts present AMC 21.30.030. It is an unlawful attempt by the lower body to state the terms by which an appeal may be taken from its decision. The apparent purpose of the regulation is to avoid staff time developing detailed written findings in cases in which there is no controversy. If this is deemed significant, then proposed section 21.03.050A.4. should be revised. (suggested language included in comment but not added here)

Staff Response: Staff has revised the appeal process in the rewrite to remove the 7 day “intent to appeal” requirement.

Staff Recommendation: No changes recommended.

26. Issue: 21.03.050A.4.b., *Perfection of Appeal; Notice of Appeal; Appeal Fee*

Contents of Notice of Appeal: Presently, the form of the notice of appeal requires a “written statement of the cause and reason for granting the appeal.” This requirement serves no purpose as the real substance of the appeal and the framing of issues is accomplished by the briefing. All that is necessary in the notice of appeal is a specification of the case in which the appeal is taken.

Staff Response: Including this information is important so that the clerk can judge whether the issues are allegations of new evidence or changed circumstances, which don’t go to the board of adjustment.

Staff Recommendation: No changes recommended.

27. Issue: 21.03.050A.6.-9., *Appeal Record, Written Arguments, Appeal Packet; Notice of Hearing, Conduct of Hearing*

Subsections 6, 7, 8, and 9 are procedural matters and should be left to the discretion of the Board and addressed by regulations of the Board. Many of these requirements date from the time when the Assembly was the Board of Adjustment and reflect the needs and time

pressures of the Assembly. In particular, the Board or the Municipal Clerk should have discretion to grant extensions of time (for matters other than the notice of appeal) under standards to be developed by them. Such extensions can avoid serious hardships which ordinance mandated timelines can cause. As an advocate, I do welcome the proposed change to allow oral argument before the Board.

Staff Response: Staff is reviewing these issues with the Law Department.

Staff Recommendation: HOLD

28. Issue: 21.03.050A.7.c., *Reply Brief*

Waiting for the appellant to pick up the appellee's brief from the clerk's office can extend the process for a long time. Instead of having it picked up, it should be mailed.

Staff Response: Staff has no objection to this change. Staff proposes changing the time limit from 10 days to 15 days to allow for a mailing period.

Staff Recommendation: Page 21, lines 3-4, amend to read, "The appellant's reply brief is due no later than 15 [10] days after the date the clerk's office sends notice, by certified mail, [SERVICE OF NOTICE] that the appellee briefs have been filed."

29. Issue: 21.03.050A.9.a., *Conduct of Hearing*

Presently, the Board is required to deliberate in a public meeting. The proposed rewrite would continue this requirement. I believe this requirement also dates from the days when the Assembly was the Board of Adjustment. It was a sensible requirement for a potentially politically motivated Assembly to conduct its deliberations in public. But it makes little sense for a separately constituted board to do so. In my limited observation, it results in an overly formal process that slows down what is the critical task, the preparation of the written decision. It is the written decision which will be the focus of any remand or judicial review proceedings. Most appellate courts deliberate in private following oral argument. I think this is an appropriate model for the Board.

Staff Response: Staff is reviewing these issues with the Law Department.

Staff Recommendation: HOLD

30. Issue: 21.03.050A.10.d., *Scope of Review*

This section follows present AMC 21.30.090D. in allowing the Board to substitute its judgment on questions of fact. I believe this provision was added by AO 88-29 at the urging of then Assemblyman John Wood. The reason advanced, as I recall, was that the Municipal Assembly, as an elected body, was a broader or perhaps better representative of the public and should, in narrow circumstances, be allowed to overrule lower bodies on factual issues. The procedural limitation was the requirement of a super majority of two-thirds of the members. This was a significant limitation since it required 8 of 11 members of the assembly to allow substitution. Neither the original reason for the provision nor its procedural limitation makes

any sense for the separately constituted board. The Board, being a much smaller body than the bodies whose decisions it reviews, is not likely to be more representative or more in tune with community values than the lower bodies. And with only three members constituting the board, the super majority of two-thirds is the same as a simple majority, two members. Thus, the provision becomes simply an opportunity for a “second bite of the apple” with no gain in the perceived or real accuracy and fairness of the outcome.

Staff Response: Staff agrees with the comment.

Staff Recommendation: Page 21, lines 39-40, amend to read, “The board of adjustment shall [, UNLESS IT SUBSTITUTES ITS INDEPENDENT JUDGMENT PURSUANT TO SUBSECTION D. BELOW,] defer to the judgment of...”

Page 22, lines 3-9, delete section 10.d.

31. Issue: 21.03.050A.12.a., *Remand*

This section follows current code in stating how remand is to be directed to the lower body. Although I don’t necessarily disagree with the existing and proposed language, I don’t think the PZC and the Board of Adjustment read it the same way. First, the Board has a stated preference for remanding matters and leaving to the discretion of the Commission as to whether further hearings are appropriate. The Commission, on the other hand, appears to have a policy of not conducting a new hearing unless specifically directed to do so by the Board. The existing and proposed language seems to favor the Commission’s view but perhaps further clarification is warranted.

Second, the commission generally does not reopen the entire matter on remand, but only addresses specific issues on which its decision has been reversed. This would seem to make remand little more than a scrivener’s exercise and simply delays the final decision. Again, I am uncertain how to address this difference in proposed code language but believe it should be prior to adoption of this section. It is critical that what should be accomplished on remand is clear particularly given the delay which it introduces to the process and to obtaining judicial review of the final municipal action.

Staff Response: Staff has proposed clarifying language below.

Staff Recommendation: Page 22, lines 40-42, amend to read, “If the board of adjustment remands a case to the lower administrative body, the board [A DECISION REMANDING A CASE] shall describe any issue upon which further evidence shall [SHOULD] be taken, and shall set forth any further directions the board deems appropriate for the guidance of the lower administrative body.”

32. Issue: 21.03.050B.3.a., *Time Limit for Filing; Notice of Appeal; Appeal Fee*

What is “written notification”?

Staff Response: There has been confusion in the past over the point that the appeal period begins. Through the Title 21 rewrite and proposed amendments to Title 4, staff is attempting to clarify this issue. The intent is that the appeal period starts on the “date of service,” which

is the date that the planning department mails the signed resolution or summary of action to the applicant. Several amendments are proposed below to clarify this, and “date of service” will be defined in chapter 14.

In addition to these changes, staff is proposing additional changes to clarify who gets notified of an appeal and how to become an appellee.

Staff Recommendation:

- Page 18-19, lines 26-37 and 1-2, amend to read:

“3. Notification of Decision and Appeal Filing

a. When the appellant is not the applicant, the director shall notify the applicant of the appeal.

b. Persons who wish to be notified of a decision by a land use board or commission and of any appeal filed on that decision, shall submit a form provided by the department to the director at any time before the end of the appeal period. The director shall cause the signed resolution or summary of action to be mailed to such persons on the date of service, and also notification of any appeals filed on that decision.

4. Appellees Before Board

a. An appellee brief may be filed as provided in [SECTION] subsection A.8[7]. by:

i. The party in whose favor the lower administrative body’s decision was rendered.

ii. Any municipal agency.

iii. Any party of interest for the application, as defined in chapter 21.14.

b. Persons who wish to become an appellee shall file a notice of intent to file a brief with the municipal clerk’s office on a form prescribed by the municipal clerk, within 10 days after the end of the appeal period. The municipal clerk shall notify such persons of the date the record is available and of the date the appellant’s brief is filed.

[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.]”

(Renumber remaining sections in 21.03.050A.)

- Page 19, lines 4-8, amend to read, “An appeal to the board of adjustment must be perfected by a party of interest for the application no later than 20 days from the date of service of the decision being appealed [DATE THE WRITTEN FINDINGS OF FACT AND DECISION OF THE ADMINISTRATIVE BODY FROM WHICH THE APPEAL IS TAKEN IS APPROVED, ON THE RECORD, AND BECOMES A FINAL APPEALABLE DECISION, IS MAILED OR OTHERWISE DISTRIBUTED OR DELIVERED TO THE APPLICANT].”
- Page 19, lines 25-26, amend to read, “...no later than 20 days after the date of service of the decision of the lower administrative body[‘S INITIAL DECISION BECOMES FINAL].”
- Page 19, lines 27-29, amend to read, “...any motion filed more than 20 days after the date of service of the decision of the lower administrative body[‘S INITIAL DECISION BECOMES FINAL], without hearing or reconsideration by the lower administrative body.”
- Page 24, lines 8-9, amend to read, “...must be filed no later than 20 days after the date of service [WRITTEN NOTIFICATION] of the decision.”
- Define “appeal period” in chapter 21.14. as 20 days after the date of service.

33. Issue: 21.03.060B., *Applicability*

This needs clarification. What if the CO is granted for something that is not allowed in the district but may have been granted or is getting a CU? Does this open the door for others to become legal with uses that normally would not be allowed?

Staff Response: A certificate of zoning compliance (known as a certificate of occupancy inside the building safety service area) will not be granted for a use that is not allowed in the zoning district, or for a use that does not have the appropriate approvals. In fact, a land use permit (known as a building permit inside the building safety service area) can not be lawfully issued for a use that is not allowed in the zoning district or that does not have the appropriate approvals. This certificate does not and cannot legalize a use that is otherwise illegal. Any permits issued in error will be subsequently revoked.

Staff Recommendation: No changes recommended.

34. Issue: 21.03.060D., *Standards*

Revise to state that in some situations (large lot single family?), an as-built is sufficient and an inspection is not needed.

Staff Response: An on-site inspection to verify that the development meets the zoning code prevents future problems. Without such an inspection, many times a code violation is only discovered when the owner is in the process of selling a home, and then they must scramble to

correct the violation or apply for a variance. Special limitations on zoning districts and other special situations make a zoning inspection necessary in most cases.

Staff Recommendation: No changes recommended.

35. Issue: 21.03.070C.2., *Approval Criteria*

These criteria are very loose and allow amendments for nearly any circumstance that an administration may want. Item iii is particularly generic and could override years of public input with little requirement for solid justification. Strengthen this whole section and in particular, strengthen or remove 21.03.070C.2.a.iii.

Staff Response: Staff also heard comments that these criteria are too tight and will lead to frivolous lawsuits.

The current code has no criteria for amending the comprehensive plan or adopting a new element of the plan. The various elements of the comprehensive plan cover a wide range of topics and thus the approval criteria must be broad enough to apply to all the topics and plan elements. The purpose of the approval criteria is to provide a rational basis for making a decision. In the end however, the plans are approved by the Assembly, and the code cannot limit the Assembly's legislative powers and authority.

Staff Recommendation: No changes recommended.

36. Issue: 21.03.070C.2., *Approval Criteria*

There is a concern that having approval criteria for comp plan amendments will open the door to frivolous lawsuits. Section should be deleted or language should be relaxed about "only if the amendment meets the following approval criteria"—delete "only" or add something like "in the opinion of the Assembly."

Staff Response: As noted in Issue #35, the purpose of the approval criteria is to provide a rational basis for making a decision. Some amendments are proposed to clarify that the decision-making body is exercising its judgment.

Staff Recommendation: Page 27, line 44, amend to read, "...the assembly may approve an amendment [ONLY] if, in the judgment [OPINION] of the commission or assembly, the amendment meets the following..."

37. Issue: 21.03.070C.2., *Approval Criteria*

Add language at the end of this subsection: "The proposed amendment shall be accompanied by an analysis of the impacts of the amendment on these measures of public welfare and on the overall goals of the Comp Plan."

Staff Response: The staff analysis (departmental report) will address how the amendment meets (or doesn't meet) the approval criteria.

Staff Recommendation: No changes recommended.

38. Issue: 21.03.070C.2.c., *Approval Criteria*

This section can be interpreted many ways and is very loose. One could easily say (without the requirement to supply scientific proof) that public health would be improved by putting sewers over all of the MOA without the requirement to prove anything. Revise this section to ensure any statement is supported by science, or delete this item.

Staff Response: This criterion requires that the proposed amendment be examined from different perspectives, and that it is evaluated as enhancing or furthering the public good standard.

Staff Recommendation: No changes recommended.

39. Issue: 21.03.080C.2, *Approval Criteria*

Request that the word “substantially” be inserted to read: “the following criteria have been substantially met:” Conditional uses are unique applications of judgment for the benefit of the community. The Planning and Zoning Commission deserves as much latitude as possible to render as fair a decision as possible.

Staff Response: The consistent application of these criteria will ensure fair decisions. Applying only some criteria in each situation, or only partially meeting different criteria will lead to unequal decisions.

Staff Recommendation: Page 30, lines 29-30, amend to read, “...conditional use approval [PERMIT] application [ONLY UPON FINDING THAT] if, in the judgment of the commission, all of the following criteria have been met:”

40. Issue: 21.03.080C.4., *Approval Criteria*

Since this section deals with dimensional qualities suggest that it be combined with C7.

Staff Response: Staff does not object to combining these two criteria.

Staff Recommendation: Pages 30 and 31, combine C.4. and C.7. to read, “The site size, dimensions, shape, location, and topography are adequate for the needs of the proposed use and any mitigation needed to address potential impacts.” and renumber remaining criteria.

41. Issue: 21.03.080C.9., *Approval Criteria*

Same request as C.4, that requirements 9 and 10 be combined, since these both speak to infrastructure.

Staff Response: One of the changes between Public Review Draft #2 and the Public Hearing Draft was to pull the issue of transportation out of #10 and more fully address it in a separate criterion, because transportation and traffic are often some of the biggest issues to arise in a conditional use application. Staff supports keeping #9 and #10 separate.

Staff Recommendation: No changes recommended.

42. Issue: 21.03.080C.10., *Approval Criteria*

The condition that the CU must be located with respect to existing or planned water . . . wastewater (facilities) does not allow for those sections of town that have and will continue to have on-site utilities. This appears to have been written for urban areas although a septic tank and leach field and well could meet these requirements. Clarify and revise. The requirement for “storm water disposal.” might serve rural areas better if worded something like “storm and groundwater control.” Revise.

Also, the MOA Charter allows for areas to be outside of service areas until voted in. This section appears to neglect the Charter on this point.

Staff Response: The phrases “water supply” and “wastewater disposal” do not indicate public services. Water can be supplied by public water lines from a municipal utility, or it can be supplied by an on-site well. Wastewater can be disposed of through a sewer system, or through an on-site septic system. The terms do not imply off-site service. Thus, if the proposed use is outside of the water/wastewater utility service area, it would plan to provide onsite water and wastewater disposal, and that would meet this criterion with respect to those issues.

Staff Recommendation: No changes recommended.

43. Issue: 21.03.080C.10., *Approval Criteria*

Re-include the requirement for the CU to be located with respect to transportation facilities. CU’s may have large impacts to the transportation system of the area and if the necessary facilities are not there, nor are being planned for in a reasonable time, the CU could have a negative effect on the community. Transportation needs are in the same category as other facilities like utilities, fire and safety. Transportation is a subcomponent of the 2020 Plan and should not be stricken from CU criteria for approval.

Staff Response: “Transportation facilities” were deleted from C.10. because transportation issues were addressed in a new criterion: C.9.

Staff Recommendation: No changes recommended.

44. Issue: 21.03.080E.3., *Platting for Conditional Uses*

Why has condition ‘3’ for a CU been removed—public dedication of street ROW, etc? Wouldn’t it serve the public better in the long run and reduce problems if streets were dedicated.

Staff Response: Staff does not object to returning the language.

Staff Recommendation: Page 31, after line 35, add a new E.3. to read, “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.”

45. Issue: 21.03.080F., *Conditional Use for a Residential Planned Unit Development*

This section does not protect the goal of neighborhood character as stated many times in the comp plan. Nor does it adhere to the goal of growing out from core centers in an efficient manner. In particular is the justification for allowing more density than would normally be allowed. This could create impacts on infrastructure that might not be upgraded accordingly or might not be possible to upgrade due to other circumstances (including transit and ER services). Another condition giving consideration for mixing of densities and housing types within a neighborhood is a mistaken interpretation of the comp plan. While the comp plan calls for a variety of housing types, it never states this should occur within neighborhoods. To do so would not protect existing neighborhood character. People buy into neighborhoods with the expectation they will retain certain qualities. This section would especially effect areas designated to remain lower density. Revise to state CUs for PUD are not meant to apply to lower density areas of single family neighborhoods with limited or no public utilities and poor infrastructure. Even with the minimum 5 acre requirement for PUDs in R-6 to R-9 districts, the main point of protection of neighborhoods would not be met, nor solve the problems of lack of supporting infrastructure.

The options in this section deviate significantly from the intent of the comp plan and allows the PZC to determine density. It must be changed to reverse that drift. This section would vastly change the character of an area without consideration for the zoning that people originally bought into. Table 21.03-2 allows for doubling the density of R6 and R7 while other options allow for greater height. Most egregious is section 3.c which allows the applicant an open ended invitation to propose changes to lot size, coverage and setbacks as well as 3.b. which allows any commercial use that is allowed in R-4 districts. Title 21 should support the neighborhood protection goals of the comp plan and designated zoning. This section allows developers to override zoning regulations and the comp plan. It does not follow the intent of Title 21 whose purpose is to implement the comp plan—rather these sections reverse that purpose. Eliminate these loopholes that do not comply with the comp plan's intent and goals/policies.

There is no discussion about the impacts to adjacent infrastructure nor mechanisms to pay for improvements—if such improvements were even possible. Some areas of town are too challenged with steep, wet slopes to even consider upgrading. The location of these zones often include viewshed locations, which must be protected according to other 2020 policies. This section needs to be revised for R6-9 districts in SE Anchorage so that neighborhood character is not compromised.

Staff Response: The Planned Unit Development option has existed in current code for at least 30 years. The purpose of the residential PUD is to allow the developer some creative flexibility, give him or her the ability to build a mix of housing types and uses if desired, consolidate open space, and have a public process through which the planned development is determined. One of the approval criteria, in addition to the regular conditional use approval criteria, is that the PUD shall maintain population densities and lot coverage that are consistent with available public services and the comprehensive plan. (Page 32, lines 11-12) Many PUDs were approved and built in the 1970s, and they continue to be attractive and popular places to live today. The use of the PUD method has declined since then with the popularity of the site condo, which does not require a public process or approval by the

Planning and Zoning Commission. The upfront provision of the full design, along with the public process and the Commission oversight combines to create an opportunity for attractive and well-thought-out residential developments through this process.

The Planning Department does not interpret comprehensive plan policy #16 as calling for a variety of lot sizes and housing types in every neighborhood.

Staff Recommendation: No changes recommended.

46. Issue: 21.03.080F.1.a., *Intent and Approval*

Suggest deleting this requirement as ‘b’ through ‘e’ say pretty much the same thing. Also the words creative and imaginative are too subjective to enforce.

Staff Response: Staff disagrees that the issues of open space, recreation areas, and natural features are covered in ‘b’ through ‘e’. The Planning and Zoning Commission will use these existing criteria to approve or not approve an application, but the criteria will also assist a developer to understand what is expected of a PUD, and to give him or her a sense of what he or she should be emphasizing to the Commission.

Staff Recommendation: No changes recommended.

47. Issue: 21.03.080F.1.e. + 2.a + 2.b + 2.c.iii, *Intent and Approval and Minimum Standards*

This section appears to give some protection for density and lot coverage but it also is in conflict with other allowances for CUs for PUDs including Table 21.03.-2 that allows density increases exceeding the growth goals of the comp plan. Add “. . . consistent with the underlying zoning district, . . .” See comment on F.3 below.

Under Open Space, specify if this is public or private open space. In R-6 to R-9 it should be public open space to create connections that people are asking for.

Under buffering, why is there a lower level of screening (L3) required for a boundary that might be non-residential? It should provide the maximum level of screening.

Staff Response: One of the purposes of this development option is to offer the developer the incentive of greater density in order to get more open space and other site amenities. Thus, densities greater than the underlying zoning district may be approved through the conditional use process.

The open space required in the PUD section is private open space, but that does not preclude the designation of a public trail easement through the open space in order to create trail connections.

As for the landscaping, staff carried forward the requirements of the current code, but agrees that the levels should be switched, as proposed below.

Staff Recommendation: Page 33, lines 1-6, amend to read,

“...combined within a single structure, nonresidential uses shall be separated from dwelling units by L3[4] buffer [SCREENING] landscaping.

...

iii. Level 4[3] screening [BUFFER] landscaping shall be planted along each boundary of the PUD adjacent to a nonresidential district...”

- 48. Issue:** 21.03.080F.2.a., *Minimum Site Area*
Increase minimum for large lot districts to 7 or 10 acres.

Staff Response:

Staff Recommendation: Page 32, lines 22-24, amend to read, “...If any portion of a proposed PUD is located within the R-1, R-1A, R-2A, R-2D, R-5, or [R-6,] R-7[, R-8, OR R-9] zoning districts, the minimum site area shall be 5.0 acres. If any portion of a proposed PUD is located within the R-6, R-8, or R-9 zoning districts, the minimum site area shall be 10 acres.”

- 49. Issue:** 21.03.080F.2.b., *Open Space*
What is “usable open space”? Do ii. and iii. conflict?

Staff Response: “Usable” open space is a term carried forward from current code in error. See Issue #50 which addresses the conflict between b.ii. and b.iii.

Staff Recommendation: Page 32, line 26, amend to read, “...shall be reserved as [USABLE] open space which...”

Line 28, amend to read, “At least one-half of such [USABLE] open space shall be contiguous;”

- 50. Issue:** 21.03.080F.2.b.ii., *Open Space*
Change minimum size of any fragment of the open space in both the A and B districts: “2,000 square feet or 50 percent of the minimum lot size of the district, which ever is greater, and no less than 30 feet in its smallest dimension in the A (urban) district; and 10,000 square feet or 50 percent of the minimum lot size of the district, whichever is greater; and no less than 100 feet in its smallest dimension in the B (rural) district .” Add intent language for the open space if necessary.

The issue of very small and thus low-value fragments of open space also arose in Chapter 8 under Conservation Subdivision Standards. The provision of a 2,000 foot open space is insignificant in a zone of R6, R7 or larger lots. Such a small parcel will not be noticeable, or will have only modest visual impact similar to landscaping rather than the larger benefits that open space is associated with such as viewshed, solar access, privacy, wildlife habitat, recreation.

Staff Response: As similar proposals were adopted as part of the conservation subdivision regulations in chapter 8, staff does not object to differing standards for large lot districts for PUDs.

Staff Recommendation: Page 32, lines 29-30, amend to read, “ii. In class A districts, n[N]o portion of the required open space shall be less than 2,000 square feet in area or less than 30 feet in its smallest dimension, except for individual yards, balconies, or decks pursuant to b.iv. and b.v. below;

iii. In class B districts, no portion of the required open space shall be less than half of the minimum lot size of the underlying district in area, or less than 100 feet in its smallest dimension, except for individual yard, balconies, or decks pursuant to b.iv. and b.v. below;”

Renumber remaining sections.

51. Issue: 21.03.080F.3.a., *Density*

The R-4 density allowed through a PUD is too high.

Staff Response: Current density in the R-4 is basically unlimited, as there is no height limit. The proposed code places a 45 foot height limit in the R-4, which could be raised to 55 feet through the PUD process. In 30 years, no one has attempted such density as allowed in the PUD process in the R-4, and the new height restriction makes that density unlikely to be achieved. Staff will revisit this issue and propose a lower maximum density.

Staff Recommendation: HOLD

52. Issue: 21.03.100, *Land Use Permits*

Separate Land Use Permits and Building Permits into two sections.

Staff Response: There is no advantage to separating land use permits and building permits into two sections, because for zoning purposes, they are the same. The zoning regulations apply throughout the municipality, regardless of the Building Safety Service Area.

Staff Recommendation: No changes recommended.

53. Issue: 21.03.100B.1. d. + e., *In the Municipality*

A lot of re-contouring can be done with 50 cubic yds. On sloped parcels this can result in significant changes to drainage. Reduce this requirement to something less, like 20-30 cu yds or figure out a way to ensure that no fill or excavation is done on sloped areas or those that may have drainage challenges. Many people landscape with up to 50 cu yds and this should not impede them from doing so IF re-contouring and drainage issues are not involved.

The city is increasingly built-up; and lots and setbacks have been reduced in this code revision; and therefore, the short-term impacts from excavation and hauling as well as long-term changes to terrain on views, privacy, slope stability, etc. affect adjoining properties more than in previous years.

Staff Response: Regardless of the threshold for a permit for filling or excavating, property owners must still comply with the drainage regulations and may not cause adverse impacts on surrounding properties. The increase in amount of fill allowed before a permit is required is

to be consistent and in sync with the building code. The department considers these thresholds to be the appropriate level of oversight.

Staff Recommendation: No changes recommended.

54. Issue: 21.03.100B.1.a., *In the Municipality*

Replace 120 square feet with 200 square feet or up to 10 percent of the existing square footage, whichever is less. If there is no structural concern that kicks in at 120 sf, why regulate the smallest structural additions that do not change the scale of the original structure? 200 feet seems like roughly the size of a single bedroom and bathroom on a residence. If the concern is that an accredited plumber or electrician be involved on any plumbing or wiring, shouldn't those requirements be specified, rather than use project square footage to trigger a permit?

Staff Response: The 120 square foot threshold for a structure is a requirement of the building code.

Staff Recommendation: No changes recommended.

55. Issue: 21.03.100B.1.g., *In the Municipality*

The EPA standard has been reduced from two acres to one. Change this to reflect consistency. Ensure that there is a way to check for potential drainage problems before permitting ground disturbance because in SE Anchorage ground water issues are poorly understood and drainage issues are huge.

Staff Response: The EPA requirement has changed and this threshold should be reduced to comply with the EPA requirement.

Staff Recommendation: Page 37, line 3, amend to read, "Clearing more than one [TWO] contiguous acre[S]."

56. Issue: 21.03.100B.1.g., *In the Municipality*

There should also be a mechanism to ensure that no springs or high ground water will be encountered during clearing to avoid situations encountered on Goldenvue Dr across from the middle school. Even with a land permit, which the contractor did not have, it may not have been apparent that there was a huge drainage problem waiting to happen. If the area to be cleared is within known drainage problem areas such as on slopes or suspected to be, further limitations or study should be required before granting a permit. How can it be assured that the permitting office and employees check for potential problems before issuing permits? They never physically go to the area, or ask neighbors or the local council.

Staff Response: There is a provision in the drainage section of chapter 7 to stop site work immediately upon encountering underground or unexpected groundwater. Municipal wetland maps are checked during application review (wetland maps were updated a few years ago).

There is also a new policy in place in the permitting process requiring municipal verification of all streams before a plat application can be submitted.

Staff Recommendation: No changes recommended.

57. Issue: 21.03.100C.2.d., *Approval Procedure*

“No work shall be considered to have commenced for the purposes of this paragraph until an inspection has been made and recorded.” How will this be enforced outside the BSSA? What is the departmental expectation about an inspection?

Staff Response: Staff proposes the following amendment to make this paragraph more clear. The phrase “start of construction” is defined in chapter 14.

Staff Recommendation: Page 37, lines 22-29, amend to read, “A land use permit shall become null and void unless the work approved by the permit is commenced (see “start of construction” in chapter 21.14) within 12 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 start of construction [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.”

58. Issue: 21.03.100E.1. through 9., *Improvements Associated with Land Use Permits*

This section was “updated” in 2003. Since that time it has evolved into a takings clause which the Municipality has been using to force public projects on to private development. Individual building permits have been held up for months to force property owners to commit to installing stormdrains, road improvements or signing away their rights to vote their conscience on future public works development. There are proposed changes before the Anchorage Assembly in AO 2007-25(S), the AHBA request that those changes be reflected here.

Staff Response: If the Assembly passes AO 2007-25(S), then staff will reflect those changes in the rewrite. Since AO 2007-25(S), was postponed indefinitely on 1-8-08 further Assembly action is unlikely.

Staff Recommendation: No changes recommended.

59. Issue: 21.03.100E.3., *Standards for Requiring Dedications and Improvements*

Cost is not the only consideration for deciding the need for an improvement. There are long-term impacts that should be factored in, such as down stream drainage impacts, future trail connectivity, trail head parking area, etc. It is not clear why a required public land use easement would be removed when calculating density or lot coverage.

Do not neglect impacts to easements/ROW; do not simply base the reason for requiring the improvement (or not) based on a reasonable cost, because some improvements become cost effective when the long term affects are considered—such as drainage impacts, long term vision for trail connectivity, or requiring setting aside a neighborhood trail head parking area which in the long term would help reduce congestion on the roads.

Staff Response: The intent of this section is to require site condo projects to be consistent with and developed to the same standards as conventional subdivisions. The drainage requirements of Title 21 apply to these types of developments.

As public land use easements are not available for development, they are not counted for the purposes of calculating density—this actually keeps the density lower than if those non-developable lands were included in the calculations.

Staff Recommendation: No changes recommended.

- 60. Issue:** 21.03.100E.3., *Standards for Requiring Dedications and Improvements*
Add a section requiring future developers to reimburse a developer who must oversize to accommodate future growth.

Staff Response: Staff is still researching workable language on this issue.

Staff Recommendation: HOLD

- 61. Issue:** 21.03.100E.3.a., *Standards for Requiring Dedications and Improvements*
This section ties the dedication or improvement to the anticipated impact on public facilities and adjacent areas from the structure that is the subject of the permit. What if the structure is very small and doesn't have a direct impact but impedes an intended dedication or improvement: e.g. a house or stable in an intended easement or in a future ROW expansion area that has been identified but not funded?

Staff Response: The section does not apply to a single dwelling unit on a single lot. If an easement exists, development will be restricted in that easement. If an easement does not exist, the municipal manager can choose to require the dedication of the easement but may choose not require construction of the public amenity. This section provides the flexibility for the municipal engineer to respond to a variety of types and intensities of development.

Staff Recommendation: No changes recommended.

- 62. Issue:** 21.03.100E.3.a.iii., *Standards for Requiring Dedications and Improvements*
This section currently calls for a financial impact statement but is unclear. What is meant by financial impacts of "continuity of improvements"? The financial impacts may be difficult to assess in some of the listed categories, such as pedestrian safety and access; so the impact analysis should be cover financial costs for all the listed topics, as well as , any additional time and convenience impacts, health, and aesthetic impacts that are not easily measured by monetary costs.

Staff Response: Staff is working with the Project Management and Engineering Department to address this comment.

Staff Recommendation: HOLD

63. Issue: 21.03.100E.6., *Oversizing*

There is no funding source to reimburse applicants outside of ARDSA

Staff Response: Outside ARDSA the developer will not be reimbursed and must factor in the cost of oversizing in his/her development expenses.

Staff Recommendation: No changes recommended.

64. Issue: 21.03.100E.7., *Fee in Lieu*

Should this really be an option? Why would they only pay 75% of the costs (per section 8)?

Staff Response: Staff is working with the Project Management and Engineering Department to address this comment.

Staff Recommendation: HOLD

65. Issue: 21.03.110, *Master Planning, Institutional*

Based on comments and meetings with UAA, staff recommends the amendments below.

Staff Response: See recommendations.

Staff Recommendation:

- Page 41, lines 37-38, amend to read, “Consider [PROTECT THE INTEGRITY OF ADJACENT NEIGHBORHOODS BY ADDRESSING] the impacts of institutional development on adjacent neighborhoods [AREAS].”
- Page 42, lines 1-2, amend to read, “...following a contextually aesthetic [UNIFORM AND COHESIVE] design theme.”
- Page 43, line 15, amend to read, “Commercial spaces, not including concessionaire space that is intended to serve the institutional community [AND/OR USES OVER 1,000 SQUARE FEET].”
- Page 43, lines 28-35, amend to read, “The institutional master plan shall include the elements listed below. These elements may set different standards than those found in title 21. [CHAPTER 21.05, USE REGULATIONS; CHAPTER 21.06, DIMENSIONAL STANDARDS AND MEASUREMENTS; AND CHAPTER 21.07, DEVELOPMENT AND DESIGN STANDARDS.] The plan shall list the specific sections of title 21 for which different standards are to be established by the master plan, and provide rationale for any different standards proposed. Where different standards are approved in the institutional master plan, those standards shall be applied instead of the corresponding standards in title 21.”

- Page 44, line 38, amend to read, “...general location and approximate scale of anticipated development...”
- Page 45, after line 44, add new section D.9. to read, “9. Approval of Final Institutional Master Plan
 - a. The approval of an institutional master plan expires 12 months after the date of approval by the assembly unless, before the approval expires, the applicant files the final institutional master plan, including any modifications or conditions required by the assembly, with the director.
 - b. The director shall certify the final institutional master plan within 60 days of filing by the applicant, or if the plan is not in compliance with the assembly’s approval, the director shall issue a detailed list of reasons and recommended amendments to the final institutional master plan to achieve compliance.
 - c. Until the approval of an institutional master plan by the assembly and the filing by the applicant of a final institutional master plan accepting the modifications or conditions required by the assembly, the affected institution shall continue to be governed solely by the provisions of title 21 other than this chapter.”

66. Issue: 21.03.110A .4., *Purpose*

Change to “Protect the natural environment.” If you only protect sensitive portions of the environment, this is a judgment call that isn’t defensible.

Staff Response: The intent of the language is not about how the institution develops its facilities, but rather is for institutions to identify those areas of their property that will be set aside as natural areas, such as water bodies, wetlands, and steep slopes, which are the most sensitive natural areas.

Staff Recommendation: No changes recommended.

67. Issue: 21.03.110A., *Purpose*

Add “airports, railroads, and municipal lands” to the “such as” list in line 20.

Staff Response: As this is a voluntary process, the list gives some examples of those institutions that might benefit from developing an Institutional Master Plan. The municipality could create such a master plan for some of its lands. The airport has its own master planning process tied into FAA regulations, and the railroad has chosen to create a PC district to direct development in their depot/headquarters area. These institutions may choose to develop an Institutional Master Plan in the future, but seeing as they’ve chosen other planning routes, it seems unnecessary to add them to the list of examples.

Staff Recommendation: No changes recommended.

68. Issue: 21.03.110C.2.f.v., *Site and Building Design Standards*

Why has the requirement to consider adverse design impacts to historic structures been removed? In section E add wording to #5 "...historic structures, surrounding neighborhood character..."

Staff Response: Staff does not object to including "historic structures" in the list of site design issues to be addressed.

Staff Recommendation: Page 44, line 25, add as new (D) "Historic structures;" and re-letter remaining items.

69. Issue: 21.03.110E., *Approval Criteria*

Add to the approval criteria list of plans "and district plans." Consistency with the comp plan and its sub plans is important. Criteria #1 seems to say it supersedes the comp and sub plans. If so, change this to reflect that the comp plan is the defining document

Staff Response: As the comprehensive plan includes all adopted neighborhood or district plans, specifically calling out "neighborhood or district plans" is unnecessary and redundant.

Staff Recommendation: Page 46, lines 2-4, amend to read, "...consistent with the comprehensive plan[, COMPATIBLE WITH ANY ADOPTED NEIGHBORHOOD PLANS FOR ADJACENT AREAS,] and will achieve the following:"

70. Issue: 21.03.110F., *Compliance with Institutional Master Plan*

Clarify this section because it appears to avoid the public process. Neither is it clear if add-on projects can avoid public process. It may be appropriate to add sanctions if a key part of the project is not completed. i.e. if affordable housing is part of the plan, but never built.

We have seen this used on the current convention center construction and more than once other projects have been 'added' to the exempt list by loophole phrases in the contract, even though they haven't even been exempt by Assembly action. This has resulted in overriding other master plans without a process. Public process should never be compromised.

Staff Response: The intent of this process is that if, through a public process, a master plan is approved that places a certain use at a certain location, then when the time comes to construct that use, it isn't necessary for it to go through another approval process. The public process has been satisfied and the second approval process is redundant. This is the benefit that entices an institution to go through a master planning process.

Staff Recommendation: No changes recommended.

71. Issue: 21.03.120B.1., *Minor Modifications to General Development and Zoning District Standards*

It is unclear what is meant that minor modifications may be approved up to 5% of the general development and zoning standards. What constitutes 5%--costs of the development? If 5% is determined by costs, then large projects could be granted modifications that amount to

significant changes. If 5% refers to distances, then for small setbacks, 5% could end up being significant. Explain the 5% rule and examine for significant changes that may slip through this crack.

Staff Response: The text states that the modification may be up to 5% of certain standards—there is no mention of costs. There are situations when strict adherence to a numerical standard may cause a problem, while a minor deviation could solve the problem, and applying for a variance would be unnecessary cost and time. The minor modification process allows the director or other decision-making body to administratively approve small changes to certain standards, if the approval criteria are met. This process slightly expands the current “administrative variance” procedure, and is intended to bring a bit of flexibility to the design standards.

Staff Recommendation: No changes recommended.

72. Issue: 21.03.120B.1., *Minor Modifications to General Development and Zoning District Standards*

Does this section limit a board or commission from making a deviation from a standard that is larger than 5%? How does this affect the Platting Board’s application of chapter 21.08? Is it appropriate to have a numerical limit? Or just leave it to the discretion of the decision-maker?

Staff Response: The Platting Board has the authority to modify standards through chapter 8 and should not be included in this section. For the other commissions, this section is the only section that gives them any authority to relax standards, and they are limited to 5% of the standards listed. The only other way to relax a standard is through the variance process.

It is important to have a numerical limit in order to provide predictability to the applicant and the public, and to maintain relatively equal treatment of projects.

Staff Recommendation: Page 47, lines 27-28, amend to read, “...the planning and zoning commission, [THE PLATTING BOARD,] or the urban design commission.”

Page 47, lines 34-35, amend to read, “...the planning and zoning commission, [THE PLATTING BOARD, AND] or the urban design commission may approve...”

Page 48, lines 1-2, delete B.1.c. and re-letter remaining sections.

Page 48, lines 26-29, delete “Platting Board” twice.

73. Issue: 21.03.120B.1.b., *Minor Modifications to General Development and Zoning District Standards*

Why are natural resource standards not allowed to be modified by this process?

Staff Response: Scientific research shows that stream setbacks twice as wide as those proposed in the Title 21 rewrite are necessary to protect water quality and the health of the stream. There is no reason to reduce these setbacks any further.

It should be clarified that the natural resource protection standards being referenced are the setback standards of 21.07.020B., and do not include the steep slope standards of 21.07.020C., to which the minor modification section is applicable.

Staff Recommendation: Page 47, line 42, amend to read, "...21.07.020B.;"

74. Issue: 21.03.120C.1.a., *Limitation on Minor Modifications*

Why is an applicant limited to requesting the application of this procedure only once during the review process? Why not limit it to once on the same issue?

Staff Response: Every time the applicant submits new or changed information, the review process, which consists of distributing the application to different agencies for their comments, takes longer and is more complicated. If changes to the application are continually being submitted (or requested), the staff member who is in charge of the case is unable to finish the review and write the case. Yet many applicants get very angry when the department delays a hearing on their case because there hasn't been enough time to review new information. This provision is important for information management for the planners and those in other departments who review applications. Also community councils and interested neighbors need stability in the application in order for them to provide relevant comments or testimony.

A clarifying amendment is proposed.

Staff Recommendation: Page 48, lines 21-22, amend to read, "In no instance may an applicant use the minor modification process to obtain approval for adjustments to more than three standards applicable to the same development."

75. Issue: 21.03.120C.5., *Appeals*

Who hears the appeal should be based on who is the decision-making body. Can there be appeals from an assembly decision?

Staff Response: The appeal body for the minor modification should be the same as the appeal body for the type of approval process of the development in question.

Staff Recommendation: Page 48, lines 36-37, amend to read, "Denial of a minor modification [APPLICATION] may be appealed to the same body as an appeal of the underlying approval process. For instance, denial of a minor modification in a conditional use application may be appealed to the board of adjustment, as the board of adjustment hears appeals of conditional use approvals [ZONING BOARD OF EXAMINERS AND APPEALS IN ACCORDANCE WITH SUBSECTION 21.03.050B]. Denial of a minor modification associated with a permitted use may be appealed to the zoning board of examiners and appeals."

Page 23, line 25, amend to read, "Denial of a minor modification under section 21.03.120 when the director is the decision-making body."

76. Issue: 21.03.130, *Neighborhood or District Plans*

Add a new section for an Appeal Process. Failure to have an appeal process is inequitable, because private projects which may cost less in time, money and public involvement than these neighborhood plans are allowed an appeal process. These projects may be citizen-led with no financial write-off if they founder; and citizen organizations should have procedures equal to business investors.

Staff Response: As with any comprehensive plan decision made by the Assembly, the avenue of appeal is to Superior Court.

Staff Recommendation: No changes recommended.

77. Issue: 21.03.130A.1., *Purpose*

It is good that the purpose statement lists that these plans shall be guided by elements of the comp plan. However, add under “The goal of a district plan . . .” that the comp plan also is to protect neighborhood character and identity. This is a critical component of the comp plan and the focus of neighborhood (sub)plans.

Staff Response: Staff does not object to the proposed language.

Staff Recommendation: Page 49, lines 23-25, amend to read, “The goal of a neighborhood or district plan is to protect and promote positive elements of neighborhood or district character and identity, while promoting [PROMOTE] the orderly growth, improvement, and future development of the neighborhood, community, or municipality.”

78. Issue: 21.03.130A.2.a., *Authority*

The inclusion of the planning department and other government entities in this section implies that plans developed by the planning department shall follow this process. However, the adoption of new plans is also covered under substantive amendments to the comprehensive plan.

Staff Response: It is unclear whether planning department plans, such as the Hillside District Plan or the Midtown District Plan, are required to follow the steps required in this section (which is current code). One of the missions and functions of the planning department is to develop plans for the municipality, and the professional department staff determine the timeline and schedule for each planning project on a case by case basis. This ordinance was intended to provide policy and issue guidance and a process framework for community groups that wished to develop a plan for their neighborhood or district. Thus the intent was not to place parameters on municipal planning projects, but rather provide structure and direction to community groups. Staff proposes an amendment to clarify this.

Staff Recommendation: Page 49, after line 35, add to 2.a., “Plans sponsored by the municipality, including the mayor, the assembly, the planning and zoning commission, and various departments, are not subject to this section, but rather shall follow the process of section 21.03.070C., Comprehensive Plan Amendments, Substantive.”

79. Issue: 21.03.130A.3., *Policy Guidance*

What is the point of allowing neighborhood plans to be developed if the Assembly/MOA entity can override potentially important features of an on-going plan by voting on a competing plan or action. There should be consideration for the group involved and the process; there should be coordination between same if some action may impact the not-yet-completed plan.

Staff Response: It seems the commenter is misinterpreting the section. There is nothing in the section about “competing plans.” This section states that the plan serves as the policy to guide actions by municipal agencies. However, other plans may be created for the same area that address different subjects.

Staff Recommendation: No changes recommended.

80. Issue: 21.03.130C.1. , *Department Review and Determination*

A 90 day review is far longer than that permitted for some major developments. The whole Neighborhood Plan process could take well over a year if the maximum time for each step was taken. Reduce the overall time period for approval of neighborhood plans because this section is out of line for approval with other time frames in Title 21.

The limitation placed in ‘b’ for permission to proceed, only with departmental approval, is discriminatory in that many questionable projects that come before Planning are offered advice, but are not told they cannot proceed. Reword the section to allow an entity/group to proceed with their plans upon being given guidance and advice.

Staff Response: A development on private property and a neighborhood or district plan are very different things. A development proposal requesting an entitlement (such as a conditional use) must meet the submittal requirements of Title 21, but if it does, the department does not have the authority to reject it out of hand. The department can note problem issues where the development is deficient or doesn’t meet the code requirements, and the department can recommend against granting the entitlement, but the decision-making body has the final say.

A neighborhood or district plan will become an adopted element of the comprehensive plan, and as such, will set the policy for whole areas encompassing many different properties. The Assembly, the Planning Commission, and the municipality are granted planning powers through the charter and from the state, as a unified municipality. Thus the municipality can set standards for planning. The checks and balances in the Neighborhood and District Plan section exist to ensure that plans contain a certain minimum amount of information and are a certain level of quality, and also to prevent a minority element of the community from imposing their will upon the larger neighborhood/district: thus the length of time for the whole process, and the planning department oversight.

However, staff has reviewed the timeline for a neighborhood or district plan and recommends the changes suggested below.

Staff Recommendation:

- Page 50, line 38, amend to read, “Within 45 [90] days of the submittal of a plan...”

- Page 53, line 4, amend to read, "...within 21 [30] days of its determination..."
- Page 53, line 25, amend to read, "[AT THE CONCLUSION OF THE 120 DAY REVIEW PERIOD, T]The commission shall schedule..."

81. Issue: 21.03.130C.1.b., *Department Review and Determination*

The requirement that "content" conform to department critique at this early stage seems vague and could result in foreclosure of new ideas, not just the intended conformity to an outline or format.

Replace the word content with scope or completeness of content

Delete the sentence "Only in such an event may the sponsor be permitted to continue with the plan." That deletion enables the sponsor to move forward with benefit of advice even if sponsor's approach may be a degree or two off-target. Staff doesn't kill a bad development application, just try to reshape it; and the same policy should apply here.

Add language similar to 21.03.020 B 5 Informal Review at pre-application stage: the review comments of the department are not binding upon the applicant or the municipality but are intended to serve as a guide to the sponsor in developing the neighborhood or district plan and to advise the sponsor in advance of the formal review of any issues which will be presented to the decision-making bodies.

Staff Response: As stated above in Issue #80, the standards for form and content in this section are proposed to ensure that plans created by community groups contain a certain minimum amount of information and are a certain level of quality. However staff does not object to deleting the suggested sentence. With or without this statement, staff will not be able to process a plan that does not meet the standards of the code.

Staff Recommendation: Page 51, lines 4-5, amend to read, "...may correct such deficiencies. [THE SPONSOR MAY INDICATE ITS WILLINGNESS TO MAKE SUCH CHANGES, ADDITIONS, OR DELETIONS. ONLY IN SUCH EVEN MAY THE SPONSOR BE PERMITTED TO CONTINUE WITH THE PLAN.]"

82. Issue: 21.03.130C.2., *Coordination of Plan Review*

If neighborhood or district plans can be placed on hold while other planning efforts are taking place—which could result in significant impacts to a neighborhood in the meantime—then define what an "appropriate timetable is" and place a maximum delay of not more than one year. Holding back a neighborhood plan for a building season or two could amount to penalizing a neighborhood plan and negate its very purpose. If 'coordination' of planning efforts is necessary, then it makes more sense to allow the neighborhood plans to be developed concurrently.

Why should MOA planning efforts be allowed to place a neighborhood plan on hold because in the end the neighborhood plan will supercede all but the comp plan; therefore its long term goals should not be overridden during its planning process by other actions that may negatively impact it.

Staff Response: It is reasonable for a legislative body to delay action on a proposal when a related proposal is being developed and may be up for consideration in the near future. This is particularly true in the planning arena, as it is the venue for coordinating strategies for the future. The municipality is aware of practical considerations of various planning efforts and the fact that some efforts can extend beyond one year.

Staff Recommendation: No changes recommended.

83. Issue: 21.03.130D.1.b., *Form and Content*

This is an important point to keep—that neighborhood plans shall enhance or implement . . . the comp plan. Such statements should be included throughout Title 21 more often to highlight this fact.

Staff Response: Almost every approval criteria for every process includes a requirement to “conform to the comprehensive plan.”

Staff Recommendation: No changes recommended.

84. Issue: 21.03.130D.2., *Sound Planning Policy*

In this section, maybe in 2.d., require neighborhood plans to be in accordance or compatible with district plans.

Staff Response: Not all neighborhood plans will be in an area where a district plan has been adopted. If there is an adopted district plan, it will be an element of the comprehensive plan, and the neighborhood plan will need to be consistent with it, so the proposed addition is unnecessary.

Staff Recommendation: No changes recommended.

85. Issue: 21.03.130E.2.a., *Public, Agency, and Community Council Review*

120 days to review a neighborhood plan is excessive and stalls the process so that people lose interest and continuity. Councils are rarely given 45 days to review projects, and while neighborhood plans should have a greater impact than anything else, 120 days is a long time and could easily be reduced to 90 days. That time frame would even accommodate councils who do not meet in the summer. Reduce this time frame for review.

Staff Response: A neighborhood or district plan will become an adopted element of the comprehensive plan, and as such, will set the policy for whole areas encompassing many different properties. It is important that agencies and the public have sufficient time to carefully review the proposed plan. See Issue #80 for proposed amendments to shorten the plan approval process.

Staff Recommendation: No changes recommended.

86. Issue: 21.03.130E.3., *Department Review*

Neighborhood and District Plans are to implement the comprehensive plan as stated in this section; they supercede Title 21 code, so it is 1) inaccurate to include the statement that the dept will review the plan for consistency with other adopted plans, and 2) it is inappropriate to include the last statement that indicates the department can essentially neglect the decisions of a neighborhood plan because these plans are meant to supercede all but the comp plan. Revise this section to reflect that neighborhood plans supercede all others except the comp plan.

Staff Response: Neighborhood/District Plans do not supersede Title 21 nor other higher level plans such as the Wetland Plans or the Official Streets and Highways Plan. These plans are elements of the comprehensive plan, and Title 21 is one of the implementation tools of the comprehensive plan. Some plans may have implementation strategies that call for amending Title 21 (for instance suggesting the creation of an overlay district), but a separate process to amend Title 21 would then need to happen.

As a proposed element of the comprehensive plan, any neighborhood/district plan proposal must be consistent with already-adopted goals and policies.

Staff Recommendation: No changes recommended.

87. Issue: 21.03.130E.3., *Department Review*

How will the department incorporate the public comments if they are reviewing the document at the same time the public is.

Staff Response: The department will be able to review public comments and coordinate recommended amendments during the public notice period before the planning and zoning commission hearing.

Staff Recommendation: No changes recommended.

88. Issue: 21.03.130F.3., *Planning and Zoning Commission Action*

The comp plan is the only plan that supercedes a neighborhood plan, therefore P/Z should not review a neighborhood plan in light of other adopted plans, but rather the reverse should hold.

Staff Response: A neighborhood/district plan is one of many elements of the comprehensive plan (see chapter 1 of the Title 21 rewrite or section 21.05 of the current code). Plans under consideration for adoption need to be consistent with plans that are already adopted and effective municipal policy.

Staff Recommendation: No changes recommended.

89. Issue: 21.03.130G., *Assembly Adoption*

This section should include the requirement that the Assembly adhere to the same requirements as P/Z in section F and that is to include a statement of findings in their action.

Staff Response: Traditionally various Assemblymembers speak on the record giving reasons for their actions, but findings are not required for a legislative action (as opposed to a regulatory action).

Staff Recommendation: No changes recommended.

90. **Issue:** 21.03.140, *Public Facility Site Selection*
Amend to reflect recent ordinance (2007-124 S) about school site selection.

Staff Response: See below.

Staff Recommendation:

- Page 54, line 31, amend to read, “Unless exempted by subsection B.3[2]. below,…”
- Page 55, line 6, add new section B.2.: “Notwithstanding B.3. below, the planning and zoning commission shall review and make recommendations, and the assembly shall decide the selection of a site for a school facility.”
- Page 55, line 6, renumber existing B.2. to become B.3.
- Page 55, lines 14-15, delete subsection 2.b. (new 3.b.) and renumber remaining.
- Page 55, lines 29-32, amend to read, “1. The department shall review each proposed site selection application in light of the approval criteria set forth in subsection I.[H.] below, and distribute the application to other reviewers as deemed necessary.
- 2. Based on the results of those reviews, the department shall provide a report to the planning and zoning commission.
- 3. For school site selections, the department shall also provide the report to the Anchorage school board for its review and recommendation.”
- Page 56, lines 2-4, amend to read, “1. The commission shall hold a public hearing on any site selection that is subject to review under this section.
- 2. For school site selections, the school board and the commission may meet in a joint public hearing; however, the school board and the commission shall separately consider and make recommendations to the assembly. Both recommendations shall then be forwarded as a package to the assembly for approval.
- 3. For all other site selections, [AT THE CLOSE OF THE HEARING,] the commission shall decide on the proposed site based on the approval criteria of subsection H. below.”
- Page 56, add new section H., “Assembly Action,” to read, “For school site selections, upon receipt of the recommendations from the commission and the Anchorage school board, the assembly shall hold a public hearing and take one of the following actions:
- 1. Approve a specific recommended site;
- 2. Reject some or all recommended sites; or
- 3. Remand the evaluated and recommended sites to the commission and the school board for further investigation, review, and evaluation.”

Page 56, renumber current “H. Approval Criteria” to “I. Approval Criteria,” and amend “I. Appeal” as proposed in Issue #98.

91. Issue: 21.03.140B.1., *Applicability*
Add a new criteria to 21.03.140 B 1:

Any facility that seeks an exception to the intent of the 2020 Comp Plan or the Downtown Plan to concentrate government services in the Downtown.

Staff Response: In Issue #92, staff proposes lowering the threshold for public facility site selection from 100,000 square feet to 75,000 square feet. The intent is to capture major government facilities, and locating them downtown (when appropriate) is one of the approval criteria. Some government services are not appropriate downtown or should be spread throughout the municipality (e.g., parks, fire stations).

Staff Recommendation: Page 55, line 3, add “Fire stations:” to become B.1.c. and re-letter remaining subsections.

92. Issue: 21.03.140B.1.a., *Applicability*

Make a distinction between new construction and leasing of existing space.

Revise to include P&Z approval when there would be high impacts, rather than base P&Z role only on square footage.

...a total of 100,000 square feet, or 20,000 square feet if the site or use involve high traffic impacts or volumes. The P&Z commission has a important role in implementing the overall land use and infrastructure patterns.

Is 100,000 sf too big (too high of a threshold)? The words “on the site” make it unclear whether multiple stories of a building would count toward the total square footage.

Staff Response: At issue is the location of the public facility, whether it is a situation of new construction or of leased space, so the ownership and/or current existence of the building is immaterial. The site selection process is intended for the siting of major public facilities, no matter what type of building they occupy.

The current threshold of 4,000 square feet is far too low, but perhaps a jump to 100,000 is too high. The intent is to capture those government facilities that are large enough to be a major draw to the public or create a major impact on the surroundings. Staff proposes lowering the threshold to 75,000 square feet.

Staff agrees that the words “on the site” create confusion. See proposed amendment below.

Staff Recommendation: Page 54, lines 35-37, amend to read, “Any newly constructed building or buildings and any existing building acquired by purchase or lease, in which government operations or activities occupy more than a total of 75,000 [100,000] square feet of gross floor area [ON THE SITE];”

93. Issue: 21.03.140B.1.b., *Applicability*

Change from 20 to 5 acres. Same reasons as above.

Staff Response: Staff disagrees that this reduction is appropriate.

Staff Recommendation: No changes recommended.

94. Issue: 21.03.140B.2.b. , *Applicability*

Does AMC 25.25 allow P&Z timely review and recommendation, at the site search and alternatives stage, on school site selections? If not, then delete item 2b so that P&Z has an analysis role on school site selection. Schools have a major impact on surrounding land uses and infrastructure, and they are intended (under our adopted Parks Plan) to serve an increasing role as community centers and recreation sites for the public. Analysis of these elements should not be delegated solely to the School Board because their interest is skewed toward specific goals and constraints of the Anchorage School District.

Staff Response: Actually, the Assembly recently passed an ordinance repealing the school site selection process in Title 25 and adding schools to the public facility site selection process, so this section will be revised to reflect that. See Issue #90.

Staff Recommendation: See Issue #90.

95. Issue: 21.03.140H. and 21.03.160E., *Approval Criteria (for Public Facility Site Selection and Rezoning)*

Please be aware that complaints regarding noise may be filed if development or rezoning is not compatible with both current and projected land uses and current and projected surrounding land uses.

Staff Response: So noted.

Staff Recommendation: No changes recommended.

96. Issue: 21.03.140H.8., *Approval Criteria*

Since 9/11 this requirement may not be a wise one to congregate all government offices downtown. This also adds to traffic problems and too often the requirement to add adequate transportation infrastructure--mainly transit, is not adhered to.

Staff Response: The events of 9/11 have added the issue of security to the many issues that planners and government officials must deal with. The goal of a downtown that is a regional center for commerce, services, finance, arts and culture, government offices, and residential development (Anchorage 2020 policy #18) remains a valid and worthy goal.

Downtown is the area of town with the most convenient access to transit—another reason it remains a logical choice for government offices.

Staff Recommendation: No changes recommended.

97. Issue: 21.03.140I., *Appeal*

Clarify why the Assembly can hear an appeal of the selection of a public facility site when they do not hear other land use issues. There should be consistency.

Staff Response: Public facility site selection involves allocation of fiscal resources, which is the purview of the Assembly, so it was logical that the Assembly hear appeals on this issue. However, staff is proposing a change in Issue #98.

Staff Recommendation: See Issue #98.

98. Issue: 21.03.140I., *Appeal*

If an “appeal” is to the Assembly, they must abide by ex parte contact rules, which are inappropriate. Call it something else—maybe model it on the rezoning protest section.

Staff Response: Staff has proposed language to create a method to object and call for an Assembly hearing rather than an appeal provision.

Staff Recommendation: Page 56, lines 23-24, amend to read, “J. Request for Assembly Hearing [APPEAL]”

1. The planning and zoning commission decision is final unless, within 20 days of the date of service, any party of interest requests an assembly hearing in a letter sent to the director.

2. The assembly may hold a public hearing on the case at their discretion.”

99. Issue: 21.03.160, *Rezoning*s

The point of the latest comprehensive plan and its sub plans is, in part, to reduce time and cost for rezones. These proposed changes appear to make the process easier which defeats the intent to provide a stable development environment where the regulations can be relied upon for consistency and for protection of neighborhood character. How did Clarion advise dealing with rezones, CUs, etc? Their recommendations on these sections should be reviewed and considered.

Staff Response: Staff is unsure why the commenter believes the proposed process is “easier” than the current process. The process is actually the same. The approval criteria have been revised, with the criteria of the proposed code adding more specificity. Clarion proposed some changes to the approval criteria, a number of which have been carried through to the public hearing draft.

Staff Recommendation: No changes recommended.

100. Issue: 21.03.160D.10., *Waiting Period for Reconsideration*

Waiting period for reconsideration should be 2 years, not 1 year. Denials are rarely granted by P&Z, and usually induce a major effort by staff and the affected public. Chances of subsequent approval may wrongly be affected by staff and public burnout. The actual reasons for subsequent approval should be change in market or surrounding conditions, which are not

likely to change significantly in 1 year. Two years strikes a fair balance between public interest and private interest.

Staff Response: The rewrite already extends the waiting period. In the current code, the PZC may not hear the case for one year, but the application may be submitted and processed before a full year has passed since the denial. The rewrite states that an application may not be submitted until a year has passed. As the routine processing of the application will take several months, the likely waiting period will be closer to 18 months.

Staff Recommendation: No changes recommended.

- 101. Issue:** 21.03.160D.7. & 8., *Planning and Zoning commission Action and Assembly Action*
Provide consistency between P/Z and Assembly requirements to base a decision on public input. The Assembly instructions includes this point, the P/Z does not. Always stress the value of public input.

Staff Response: Staff has no objection to making the language consistent.

Staff Recommendation: Page 59, lines 10-13, amend to read, “...at the close of the hearing, taking into account the recommendations of the department and public input, and based upon the approval criteria of subsection E. below, shall recommend approval, approval with special limitation or other modifications, or denial. The commission shall [BASE ITS RECOMMENDATION ON THE APPROVAL CRITERIA IN SUBSECTION E. BELOW, AND SHALL] include written findings based on each of the approval criteria.”

- 102. Issue:** 21.03.160E., *Approval Criteria*

This section has been greatly weakened in the direction of easier re-zoning. Add this intent language: Zoning is not effective if it is too- easily or frequently changed: zoning is intended to provide a degree of certainty that is important for long-term investment and neighborhood cohesion and stability. Case-by-case rezoning is allowed if it can address a demonstrated change in supply and demand for a land use without changing the intended pattern of densities, land uses, infrastructure and neighborhood character established in adopted plans, or without causing significant impacts. (There is a similar level of explanation of intent for Conditional Uses.)

Staff should highlight for the public and P&Z key elements from existing code on rezoning (21.020.060) that are eliminated in this proposed revision. Staff is also requested to comment objectively on the ease of rezoning in Anchorage compared to other cities.

Staff Response: The procedure for rezoning remains essentially the same between the current code and the rewrite. In the rewrite, the applicant is required to have a pre-application conference with staff, and to hold a community meeting. These are not required in current code.

In current code, there are five “standards for approval.” In the rewrite, there are ten approval criteria. The ten criteria cover the issues addressed in the current code’s five criteria.

Staff does not support adding the proposed language, because a zoning change, by its very nature, will change the density and land uses allowed in the subject area.

Since the rezoning process is essentially the same as current, staff did not dedicate any resources to compare the ease of rezoning in various cities.

Staff Recommendation: No changes recommended.

103. Issue: 21.03.160E., *Approval Criteria*

Restore the language from existing code “may be approved only in the best interest of the public” Amend the proposed sentence to read “The rezoning may be approved only in the best interest of the public, including the public health, safety, and general welfare.” It is too vague to have the existing standard of “promote the public health, safety and general welfare,” because any applicant can demonstrate some narrow benefits to some sector of the public.

One re-zone often encourages and sets precedent for another; and the potential domino-effect of transition of the neighborhood must be in the public interest and meet the Comp Plan intent for the area and the use. The approval process is currently weak in cumulative impacts: first-to-apply projects are found to have below-threshold impacts and last-to-apply projects bear disproportionate burdens for infrastructure retro-fitting and environmental mitigation.

This section does not uphold the intent of the comp plan to reduce rezones and maintain consistency for developers and neighborhoods. One rezone can set the stage for subsequent rezones thus producing cumulative impacts that are not addressed here or elsewhere in code. Revise the whole section to tighten up instances where rezones may be allowed.

Staff Response: Staff does not object to adding the suggested language.

Staff Recommendation: Page 60, line 27, amend to read, “The rezoning shall be in the best interest of the public and shall promote[S] the public health, safety, and general welfare.”

104. Issue: 21.03.160E.9., *Approval Criteria*

Restore the existing wording of 21.20.120 that requires the applicant to demonstrate an insufficient supply of available land in that zoning category relative to the demand for that type of zoning.

Reason: re-zoning should meet a public interest not just an individual applicant’s interest in a certain type of development. The current wording looks only at supply, not whether there is a supply/demand imbalance. We’ve had conceptual projects presented to support a re-zone, with no evidence of demand: and once the rezoning is obtained, these projects evanesce.

Staff Response: Item 9 requires the applicant to demonstrate the need for the rezoning. If there is insufficient supply of land in the desired zoning district, then there is a need for more land to be zoned for that district.

Staff Recommendation: No changes recommended.

105. Issue: 21.03.160F., *Flexibility of Interpretation*

This section is very loose and essentially allows rezones and comp plan amendments with little regard for the intent of the overall comp plan, even though item 3 tries to say there shall not be cumulative encroachment. The reality of using the comp plan map for determination of when a rezone is near a boundary that allows the proposed designation is faulty, because the plan map is not of sufficient detail to allow those determinations. For example, when the comp plan land use policy map (p. 50) was developed in 1999, the Urban/Rural Boundary design was changed many times in an effort to keep agencies/commissions from using it as a determining factor for where public services should be placed. Even with the disclaimer in the legend that said the boundary could only be determined through the Hillside District Plan process, boards/commissions/Assembly still used that gross line on the map to rationalize their decisions. Allowing flexible interpretation via the plan map, which is of insufficient scale for the job, is tantamount to placing no limits on rezoning. This section must be severely tightened up or removed.

Staff Response: “Comprehensive Plan Map” in the Title 21 Rewrite refers to the land use plan map of the Comprehensive Plan. This definition of “Comprehensive Plan Map” is available in public hearing draft Title 21, Chapter 14. The purpose of a land use plan map is to designate the future location and density for land use and development. In most communities the land use plan map serves as a geographic policy basis for zoning. For most of the Anchorage Bowl, the draft Anchorage Bowl Land Use Plan Map will (after further public review and adoption) provide this geographic guide for land use decisions, including zoning amendments. It is designed to provide more specific policy geographic guidance throughout the Bowl than does the “land use policy map” that the commentator refers to above.

Certain areas of town that are in a Neighborhood or District Plan, such as Downtown, Fairview, Midtown and Hillside, will have an area-specific land use plan map that provides even more customized guidance for growth in its area. Once a Neighborhood or District Plan is adopted as an element of the Comprehensive Plan, its land use plan map becomes the “Comprehensive Plan Map” for its area. For example, the Hillside District Plan’s land use plan map will be the “Comprehensive Plan Map” for Hillside.

Therefore, most proposed rezonings will be clearly within a one or another of the color-shaded land use classifications on the land use plan map for the area. The “Comprehensive Plan Map” will be geographically explicit enough, and subsection 21.03.160F.2.a (lines 29-30 on page 61) will apply in most rezone cases.

However, land use plan maps in the Municipality are not as geographically explicit as a zoning map. Zoning boundaries are specific to the property line level. Land use plan maps traditionally serve as more generalized policy guidance, and often do not reach the specificity of individual property lines. It follows that there can be parcel-specific rezoning proposals on or near the boundaries of two land use plan map classifications, where it is uncertain which classification the proposed rezoning falls in. It is important that the Title 21 Rewrite provides the procedure and criteria for addressing these situations. Subsection 21.03.160F.2.b (page

61, lines 31-34) ensures that, where the land use plan map boundaries are unclear, the rezoning decision must take into account the policies and intent of the Comprehensive Plan.

Staff Recommendation: No changes recommended.

106. Issue: 21.03.160H.3.b.ii., *Effect of Approval*

Clarify that a time limit for an overlay will not expire when the overlay has been created as part of a neighborhood/district plan. Only if the neighborhood/district plan is re-written can an overlay be changed. The Assembly should not be given license to undo something that is a product of a neighborhood's creation.

Staff Response: The overlay district will only be given a time limit if the Assembly finds that the objectives will be met within a certain period of time. For instance, if an overlay district is put in place to require some sort of amortization over five years, then in five years the issue would be corrected and the overlay would no longer be necessary.

Staff Recommendation: No changes recommended.

107. Issue: 21.03.160I., *Rezoning to Planned Community Development District (PCD)*

A Planned Community Development (PCD) is difficult to understand especially when the In-Lieu standards allowed have a long list that refers the reader to other sections and chapters. Complete language or other guides are needed here. In general, this section appears to grant higher densities than would be allowed even though the comp plan and available infrastructure may not support it. It also appears to allow PCDs to be exempt from some Title 21 regulations. In 21.03.160I.1 change "in order to meet the unique needs of the development," to "to allow the development to achieve comprehensive plan goals in a unique way."

Staff Response: Were the code to duplicate the language of the referenced sections in section I.4.b., all of chapters 5 and 6 and most of chapter 7 would be repeated, and the whole code would be much longer. Also, when code language is repeated in different locations, the potential for error is greater that the code may be revised in one place but not in the other place(s). This leads to inconsistencies and confusion. Cross references are necessary to link various sections of code together.

The rezoning approval criteria apply to a rezone to a PCD district, and those criteria discuss infrastructure requirements.

Staff does not object to a change similar to that proposed in the last sentence.

Staff Recommendation: Page 64, line 13, amend to read, "...in order to allow the development to achieve the goals of the comprehensive plan and title 21 in a unique way [MEET THE UNIQUE NEEDS OF THE DEVELOPMENT]."

- 108. Issue:** 21.03.160I., *Rezoning to Planned Community Development District (PCD)*
This section is far too complex to understand without a comparison chart and without detailing the points listed in the proposed section such as .160.4.I.4.b. In general PUDs appear to be a huge loophole for rezoning in areas that would not normally be allowed to have higher densities due to lack of infrastructure and in areas with limits on density determined in the comp plan. The proposed language would allow PUD requirements to supercede those of Title 21 (03.160.I.6). This could result in conflicts with the intent of the comp plan and thus result—over time—shifting the goals and policies of the comp plan away from the protection of neighborhoods and their desire to maintain their character. See comments above under 21.03.080.F. Revise this section so that the comp plan goals and policies always supercede a PUD rezoning or CU.

Staff Response: Complying with and conforming to the comprehensive plan and the purposes of this title is one of the approval criteria for rezones, which a rezone to a PCD would have to meet. If an area lacks the infrastructure to support the development proposal, then the proposal would be rejected. Nothing in the PCD district negates the Title 15 requirements for 40,000 square feet per unit for on-site wastewater disposal.

Staff Recommendation: No changes recommended.

- 109. Issue:** 21.03.160I.3., *Minimum Area Requirements*
Where did the 30 acre threshold come from? Is this the correct threshold?

Staff Response: The current code threshold is 40 acres. The development community requested a lower threshold. Staff does not recommend reducing the threshold to less than 30 acres, as this will lead to too many problems of application. The development area needs to be substantial to warrant a separate and distinct zoning scheme.

Staff Recommendation: No changes recommended.

- 110. Issue:** 21.03.180, *Site Plan Review*
Clarify if installation of new, or upgrades to synthetic of existing, athletic fields at costs greater than \$1 million require Administrative Site Plan Review or Major Site Plan Review?

Staff Response: It would depend on where the fields are located. If they are part of a school site and are approved as part of the major site plan review for a school, then they would need no further review. If a school site plan was approved without fields, and later on the School District plans to add fields, that would require an amendment to an approved site plan. Most amendments go through the original approval process—for a school that would be a major site plan review.

Staff Recommendation: No changes recommended.

111. Issue: 21.03.180, *Site Plan Review*

Can all site condos go through a site plan review? Can the municipality required homeowner's associations with sufficient dues to maintain infrastructure, so the municipality doesn't have to step in later to pay to fix inadequate infrastructure?

Staff Response: The difficulty with requiring all site condos to go through a site plan review is how to define a "site condo." As a use type, they fall under "dwelling, multifamily," because there are multiple dwelling units on one lot. As a building type, they can be single-family, two-family, or more, but how many units need to be in each building before the project is considered to be multiple multifamily buildings on a lot, like the Alpine Apartments? The concept of multiple units in multiple buildings on a lot, or of multiple single-family homes on one lot is not a bad concept—it has been executed poorly in many places in Anchorage. Thus staff considers the appropriate response to be to apply design standards, rather than to create a relatively arbitrary cut-off between a "site condo" and a multifamily condo or apartment development.

Staff is working with the Law Department to answer the second question.

Staff Recommendation: HOLD

112. Issue: 21.03.180C.2.f., *Urban Design Commission Action*

Include the requirement that decisions shall be based on public input (and other criteria) in order to be consistent with similar statement in other sections.

Staff Response: No objection.

Staff Recommendation: Page 69, lines 20-21, amend to read, "The urban design commission shall hold a public hearing on the proposed application and, taking into account the recommendations of the department and public input, shall act to approve, approve with conditions..."

113. Issue: 21.03.180D.1., *General*

Is the 24 month expiration of approval consistent with other procedures?

Staff Response: A conditional use permit expires if the use is abandoned for 12 months. A land use permit expires after 12 months if no work has commenced in that time period. "Long" plats are valid from between 24 and 60 months, as set by the platting board. Abbreviated plat approvals expire after 24 months. Vacation approvals expire after 24 months. A variance becomes null and void if it is not exercised within 12 months of being granted.

The approval period varies with the type of application and development.

Staff Recommendation: No changes recommended.

114. Issue: 21.03.180E., *Approval Criteria*

This proposed revision is a MAJOR change from existing code. The staff should clearly publicize the change in scope for all site plan reviews, and make a case to the public and the Commission as to how this does or does not serve the public interest. Please print the previous language of 21.50.200 along with the new for ease of contrast. Unless I've overlooked some section, it appears to me that the revised version has totally dropped the current standards for general site plan review (21.50.200), which require the proposed site plan "not to have a permanent negative impact on those items listed in this subsection substantially greater than that from permitted development" (e.g. circulation and safety; the demand for public services; environmental pollution; maintenance of compatible land use patterns).

The staff should also prepare a chart to compare new standards for specific high-profile types of site plans. Otherwise, how can the public, during this review, understand if the numerous approval criteria for site plans for specific uses, such as churches, drive in banks, etc. were retained in the new draft since the Design and Development Standards are no longer organized by particular uses.

The current proposed Approval Criteria are vague to the point of laissez faire?

There is no clear standard in the language proposed in E4: mitigate or offset those impacts to the maximum extent feasible. Mitigate or offset to the maximum extent feasible is FAR, FAR WEAKER than the current intent to AVOID SIGNIFICANT PERMANENT NEGATIVE IMPACTS greater than that from permitted development. Mitigate or offset actions as "feasible" takes the developer's willingness as the guiding force and could result in token actions. This DOES NOT APPEAR TO SUPPORT THE PUBLIC INTEREST OR TO REQUIRE COMPLIANCE WITH COMP PLAN PRINCIPALS such as overall land use patterns and compatibility policies.

Requested revisions:

Reinstate the language of current 21.50.200 requiring the proposed site plan "not to have a permanent negative impact on those items listed in this subsection substantially greater than that from permitted development" with a specific listing of impacts to avoid.

Include language that the site plan review shall include conditions to apportion the public costs from offsite public infrastructure and services induced by the site plan

Clarify how the word "reasonably" would be defined. Past instances, instances from other jurisdictions, and technical information and professional opinion should be considered evidence of reasonably anticipated impacts.

Staff Response: The biggest changes regarding site plan review between the current code and the rewrite are that site plan reviews are now clearly divided between "administrative" (director makes decision without public hearing) and "major" (public hearing before the urban design commission) and the process is clearly placed in the hierarchy of review procedures between "by-right" or "permitted" uses, meaning no planning department review is necessary, and conditional uses, where the appropriateness of the use at its proposed location is determined by the planning commission. Site plan reviews, either administrative or major, are applied when the use type is appropriate for the zoning district, but a more thorough review of the site design is important for code compliance.

The use tables in chapter 5 are quite clear as to which uses require site plan reviews. In fact, the current code is not nearly as clear about when a site plan review is required. In order to determine the standards for those uses, a person would look to see if there are any use-specific standards listed under the use in chapter 5, and any district-specific standards listed under the applicable district in chapter 4. Then a person would apply the appropriate design and development standards from chapter 7. If, through the site plan review process, the decision-making body concludes that compliance with the applicable standards of title 21 do not mitigate or offset adverse impacts of the use, then the decision-making body may impose additional conditions on the use to address those impacts. The decision-making body will use its judgment to determine what is reasonable and feasible.

The standard in current code requiring that a proposed site plan not “have a permanent negative impact on those items listed in this subsection substantially greater than that from permitted development” is a circular standard. For example, apply this standard to a church in the R-6 district (which requires an administrative site plan review): a church is a permitted development in that district, so the church can’t have permanent negative impacts greater than those from churches. The result is a non-standard. Staff does not recommend retaining this confusing standard.

Staff Recommendation: No changes recommended.

115. 21.03.190B.1., *Applicability*

If a trail is part of a subdivision (platting) action, does it need to go through this review? In general, the applicability of this section is confusing. “Reconstruction” needs to be defined. The applicability of streets and that of trails should be separated into two different sentences.

Staff Response: Staff is working with the Project Management and Engineering Department to clarify the applicability of this section.

Staff Recommendation: HOLD

116. Issue: 21.03.190B.2.b., *Review*

Add Trails Plan, Bike Plan, and Pedestrian Plan as review documents. It isn’t enough to say “equivalent document” when outlining street and trail project reviews.

Staff Response: The “equivalent document” phrase is in section 2.a. where the commission is directed to review the applicant’s submittal. The submittal for a street project usually comes in the form of a Design Study Report, but not always. Thus, the direction is for the commission to review the Design Study Report (the application) or whatever equivalent document is submitted if it isn’t a Design Study Report. In section 2.b., the direction to review the project for compliance with the comprehensive plan and its elements covers the Trails Plan, Bike Plan, and Pedestrian Plan, as they are all elements of the comprehensive plan.

Staff Recommendation: No changes recommended.

117. Issue: 21.03.190C.2.a. & b., *Review and Action*

Public hearings should be required, not optional, given how difficult it is to get non-motorized facilities included in projects.

Staff Response: The commissions should have the discretion to hold or not hold a public hearing, because some projects are so minor as to not warrant a hearing.

Staff Recommendation: No changes recommended.

118. Issue: 21.03.200C.8.a.v.(B). & (C)., *Procedure When Final Plat Corresponds to Preliminary Plat as Approved*

A subdivision that is not served by public utilities would not have a system that would be compatible with public systems. What is the point of this requirement? The only reason to have AWWU involved in approving any plans would be if the area is in AWWU's certificated area and only if there are public utilities. Change to: Allow AWWU involvement in its certificated area, only."

There are other departments within the MOA that review non-public utilities, so why make another costly layer of oversight? Revise to eliminate unnecessary involvement by MOA for subdivisions with non-public utilities.

Staff Response: This subsection 8.a.v. (carried forward from current code) applies to subdivisions with community water and/or sewer systems. Thus the individual buildings in the subdivision will connect, through an underground pipe system, to the community well or community sewer system. This statement says that the Development Services Department MAY require that the underground pipe system be compatible with the public system and constructed to their specifications. This has the potential to save money, time, and headaches in the future if the subdivision ever decides or needs to hook up to the public system. In actuality, community systems are rarely used.

Staff Recommendation: No changes recommended.

119. Issue: 21.03.210B.2., *Application Submittal*

The Assembly does not submit a form when they propose an amendment to Title 21. They write an ordinance and send it to the Clerk. Change this to reflect how the process works.

Staff Response: Staff is proposing an amendment to address this issue.

Staff Recommendation: Page 85, lines 6-9, amend to read, "Petitions for text amendment shall be filed with the director in ordinance form or in a form established in the title 21 user's guide."

120. Issue: 21.03.210B.5.b. & C., *Joint Public Hearing and Approval Criteria*

Developers and residents need consistency, so requiring Title 21 amendments two times a year may not be necessary. Change 'shall' to "may occur no more than twice a year." It is a good idea to require the joint hearing for a number of reasons, the most important being that

only seriously flawed sections might be offered for amendments rather than for specious reasons.

The Approval Criteria contain generic wording (promote public health, safety and general welfare) that can be used to justify anything that an Assembly or Administration wishes to change—repeatedly. Given the proposed text, it could be used to eliminate all on-site utilities in the name of health, without consideration that public sewers dump untreated sewage into Cook Inlet. This language must be strengthened to avoid changes that may be made for political reasons and without scientific basis.

(Another view) Limiting amending Title 21 to twice a year is a bad idea.

Staff Response: The intent was not to require text amendments twice a year—staff proposes a clarifying amendment.

Limiting amendments to two times per year will provide stability and predicatibility to the public, the development community, and to municipal staff. From a standpoint of information administration, it is very difficult to know the current code today, as paper versions are only printed once a year, and the on-line version is updated every few months. As of 2/21/08, the on-line version includes all ordinances passed up to June 30, 2007. If amendments to the code are passed monthly, it is very difficult to know what the rules are. There is an exception for matters of health and safety. And staff proposes an amendment to exempt the first two years after the rewrite becomes effective, as there will likely be “fix-up” amendments needed.

The approval criteria provide guidance to the Commission and the Assembly, but the code cannot constrain the legislative powers and authority of the Assembly.

Staff Recommendation: Page 85, line 42, amend to read, “Starting on [two years after the effective date], text amendments shall be considered no more than two times per year...”

121. Issue: 21.03.210D., *Successive Applications*

Waiting a year to re-introduce a failed amendment may be problematic. What if the make-up of the Assembly changes in that time?

Staff Response: There is an outlet provided—if 2/3 of the Assembly agree to take up the amendment again, than the Assembly can consider it again in less than a year.

Staff Recommendation: No changes recommended.

122. Issue: 21.03.230, *Vacation Of Public and Private Interest In Lands*

It is unclear what criteria will be used in determining the vacation request. Currently it is required that the petitioner answer four questions relating to the need for the vacation. I do not see those criteria listed. It occurs all too often that vacations are granted without regard to potential future use for pedestrian or trail access—even if the area does not abut other ROW or easements. It is too difficult to buy back public easements once they are vacated. Insert strong criteria for granting of vacations and comment that these should be granted infrequently.

Insert language that the standard for evaluating the value of public interest in land should be the public interest for future generations. Insert language that . that segments of easements where public access is beneficial, although currently discontinuous, have public value and shall be retained. Insert language to the effect that: easements with difficult physical conditions shall not be assumed to have zero public value because future techniques may overcome the current development limitations of these easements.

Staff Response: Current code section 21.15.130 *Approval of Vacations*, consists of essentially the same language as the proposed code. Staff is not aware of the “four questions” referenced in the comment, although there is municipal policy on vacations, which will be carried forward in the user’s guide. The only significant change from current code is the approval period, which is increased from 18 months in the current code, to 24 months in the proposed code. There is no set number of criteria in the current code. The petitioner must prove to the platting authority that the area to be vacated has no value to the municipality. Staff does not object to clarifying that the platting authority must consider both current and future value.

Staff Recommendation: Page 88, line 37, amend to read, “...platting authority shall deem the area being vacated to be of current and/or future value to the municipality...”

123. Issue: 21.03.240, *VariANCES*

Clarify the changes that this section is proposing. It is not clear what is being offered. Will variances be easier to get? What are the criteria the decision-making bodies will use to grant variances? These should be listed. In the past, a variance(?) was specifically disallowed for a self-imposed condition. That point should be included here. Revise.

Staff Response: The Assembly recently passed an ordinance that changed the approval criteria for variances. This language mostly reflects those changes—a few additional amendments (shown below) are needed.

Criterion 1.c. states that a self-imposed hardship is not a valid reason.

The process for obtaining a variance is essentially the same.

Staff Recommendation: Page 92, lines 24-25, amend to read, “...upon the property owner, and would [STRICT INTERPRETATION OF THE PROVISIONS OF THE ZONING ORDINANCE] deprive the applicant...”

Lines 31-32, amend to read, “The variance, if granted, will not adversely affect the use of adjacent property as permitted under this code [HAS NO ADVERSE AFFECT ON THE USE OF ADJACENT OR NEARBY PROPERTY];”

Lines 34-35, amend to read, “...and [GRANTING THE VARIANCE] does not permit a use not otherwise permitted...”

124. Issue: 21.03.240, *Variances*

ANC has previously indicated the critical importance of allocating to the ANC the authority to grant variances from Title 21 standards on the ANC. Because variances are typically sought in the context of other reviews, it will be necessary to consider carefully the variance procedure under proposed 21.03.240, and to find ways to allow for ANC's review and decision on variances in conjunction with municipal approval procedures.

Staff Response: The Municipality will not delegate its planning and zoning powers to other entities.

Staff Recommendation: No changes recommended.

125. Issue: 21.03.240J.5.c., *Standards*

Requires all accommodations for assisted living to meet the requirements of AMC title 23. Title 23 is not enforced in the Land Use areas. State statute is mandatory; however, local amendments under Title 23 are not. Reference should be made here concerning Land Use areas.

Staff Response: These regulations on adult care, carried forward from current code, were passed in 2006. It is department policy not to make changes to recently adopted ordinances, as the department has made its recommendation to the Assembly, and the Assembly has considered the matter and decided their course of action.

Staff Recommendation: No changes recommended.

Technical Edits

- 1. Issue:** Conditional Uses
Throughout the chapter, change all "conditional use permit" to "conditional use approval."
- 2. Issue:** 21.03.020G.2.a., *Types of Applications*
Page 9, Add "Institutional Master Plan" to those types of applications that require a community meeting.
- 3. Issue:** 21.03.020G., *Community Meetings*
Pages 7 and 9, As community meetings are required to happen before applications are submitted, this section should come before the "Authority to File Applications" section. Move "Community Meetings" to be section C. and re-letter the remaining sections.
- 4. Issue:** 21.03.040, *Alcohol—Special Land Use Permit*
Page 15, Amend to reflect recently passed ordinance.

5. **Issue:** 21.03.080, *Conditional Uses*
Page 31, line 40, change “that” to “than.”
6. **Issue:** 21.03.080F.2.b.iv., *Open Space*
Page 32, line 35, change “deckes” to “decks.”
7. **Issue:** 21.03.080F.3.b., *Uses*
Page 34, line 6 , change “even” to “event.”
8. **Issue:** 21.03.120B.1., *Minor Modifications to General Development and Zoning District Standards*
Page 47, line 34, change “and the urban design commission” to “or the urban design commission.”
9. **Issue:** 21.03.140B.1.b., *Applicability*
Page 55, line 2, amend the cross reference from “21.03.200” to “21.03.190.”
10. **Issue:** 21.03.140B.2.d., *Applicability*
Page 55, line 18, amend to read, “Any facility site selection for [UNDER] which over...” for readability.
11. **Issue:** 21.03.160B.3., *Minimum Area Requirements*
Page 57, line 34, change “NC” to “B-1A.”
12. **Issue:** 21.03.160D.8., *Assembly Action*
Page 59, line 26, change “director” to “department.”
13. **Issue:** 21.03.200G.9.c., *Approval Criteria*
Page 84, line 30, amend the cross reference from “21.03.210C.9.” to “21.03.200C.9.”
14. **Issue:** 21.03.240B.1., *Decision-Making Bodies Authorized to Consider Variance Requests*
Page 90, line 33, change “platting board” to “platting authority.”