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1 **CHAPTER 21.11: NONCONFORMITIES¹**

2 **21.11.010 GENERAL PROVISIONS²**

3 **A. Purpose**

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

13 **B. Authority to Continue**

14 **1. Generally**

15 Any nonconformity that lawfully existed as of the effective date of this title and
16 that remains nonconforming, and any nonconformity that is created as a result
17 of any subsequent rezoning, amendment to the text of this title, or by the
18 acquisition of property for a public purpose, may be continued or maintained
19 as a nonconformity only in accordance with the terms of this chapter, unless
20 such nonconformity falls within the exception set forth in subsection
21 21.11.010.B.2.

22 **2. Exception Due to Variances or Minor Modifications**

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

28 **3. Conditional Uses**

29 **a.** A use existing prior to the effective date of this title that is permitted
30 as a conditional use in the district in which it is located under this title,
31 but which lacks an approved conditional use permit, shall not be
32 deemed a nonconforming use, but rather shall be considered to exist
33 as a conditional use. The scope of such a conditional use shall be
34 governed by the provisions of this chapter unless modified by the
35 Planning and Zoning Commission in accordance with section
36 21.03.070, *Conditional Uses*.

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

1 **C. Determination of Nonconformity Status³**

2 In all cases, the burden of establishing the existence of a legal nonconformity shall be
3 solely upon the owner of the nonconformity, not the Municipality. Verification of
4 nonconforming status may be established through the process set forth in section
5 21.03.170, *Verification of Nonconforming Status*.

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

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

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

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

17 **F. Damage or Destruction**

18 If a nonconformity is damaged or destroyed by any means to an extent greater than
19 50 percent of its replacement cost at the time of damage or destruction, then such
20 nonconformity shall not be re-established unless it is made to conform to the
21 requirements of this title.

22 **G. Maintenance and Minor Repair**

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

27 a. Repairs that are necessary to maintain and to correct any damage or
28 deterioration to the structural soundness or interior appearance of a
29 building or structure without expanding or altering the building or
30 structure;

31 b. Maintenance of land areas to protect against health and
32 environmental hazards and promote the safety of surrounding land
33 uses;

34 c. Repairs that are required to remedy unsafe conditions that cause a
35 threat to public safety; and

36 d. Repairs and maintenance of nonconforming signs as set forth in
37 section 21.11.060, *Nonconforming Signs*.

38 2. Nothing in this chapter shall be deemed to prevent the strengthening or
39 restoring to a safe condition of any building or part thereof declared to be

1 unsafe by any official charged with protecting the public safety, upon order of
2 such official.

3 **21.11.020 NONCONFORMING USES OF LAND OR STRUCTURES**

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

5 Nonconforming uses of land or structures may continue, subject to the general
6 provisions of section 21.11.010 and the following limitations:

7 1. No nonconforming use of land shall be enlarged or increased or extended to
8 occupy a greater area of land than was occupied at the effective date of
9 adoption or amendment of the regulations that make the use nonconforming.
10 Any nonconforming use on a lot or portion thereof may be altered to decrease
11 its nonconformity.

12 2. No nonconforming use of land shall be moved in whole or in part to any
13 portion of the lot or parcel other than that occupied by such use at the
14 effective date of adoption or amendment of the regulations that make the use
15 nonconforming.

16 3. No existing structure devoted to a use not permitted by this title in the district
17 in which it is located shall be enlarged, extended, constructed, reconstructed,
18 moved, or structurally altered except in changing the use of the structure to a
19 use permitted in the district in which it is located.

20 4. Any nonconforming use may be extended throughout any parts of a building
21 that were manifestly arranged or designed for such use at the time of
22 adoption or amendment of the applicable regulations, but no such use shall
23 be extended to occupy any land outside such buildings.

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

26 **B. Change of Use**

27 1. If no structural alterations are made, any nonconforming use may be changed
28 to another nonconforming use provided that the Zoning Board of Examiners
29 and Appeals, either by general rule or by making findings in the specific case,
30 shall find that the proposed use is more appropriate to the district than the
31 existing nonconforming use. In permitting such change, the Zoning Board of
32 Examiners and Appeals may require appropriate conditions and safeguards.

33 2. If a nonconforming use is superseded by a permitted use, the permitted use
34 shall thereafter conform to the use regulations for the district, and the
35 nonconforming use may not thereafter be resumed.

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

37 1. If a nonconforming use ceases for any reason, except when government
38 action impedes access to the premises, on a lot or any portion of a lot for a
39 period of more than 12 consecutive months, the nonconforming use shall be
40 considered abandoned. Once abandoned, the prior legal nonconforming
41 status of the use shall be lost and reestablishment of the use shall be

1 prohibited. Any subsequent use of the property shall comply with all
2 applicable provisions of this title.

3 2. Where nonconforming use status applies to a structure and premises,
4 removal or destruction of the structure shall eliminate the nonconforming
5 status of the land. The term "destruction," for the purpose of this subsection,
6 is defined as damage to an extent of more than 50 percent of the replacement
7 cost at time of destruction.

8 **21.11.030 NONCONFORMING STRUCTURES**

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

10 Nonconforming structures may continue, subject to the general provisions of section
11 21.11.010 and the following limitations:

12 1. No nonconforming structure may be enlarged or altered in a way that
13 increases its nonconformity, but any structure or portion thereof may be
14 altered to decrease its nonconformity. This subsection shall not be construed
15 to allow the expansion of a nonconforming use of structure.

16 2. Should a nonconforming structure be moved for any reason for any distance
17 whatever, it shall thereafter conform to the regulations for the district in which
18 it is located after it is moved.

19 **B. Mobile Homes**

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

23 **C. Legalization of Nonconforming Dimensional Yard Setback Encroachments⁴**

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

28 a. An application for the registration of nonconforming encroachment is
29 submitted to the Department; and

30 b. The encroachment is determined not to be a life safety hazard by the
31 Director.

32 2. **Procedures for Registration**

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

1 b. Within 30 days of receipt of all requested information, and upon an
2 adequate showing that the requirements stated in subsection
3 21.11.030.C.2.a. above are met, the Director shall issue or deny a
4 certificate permitting the continued use and existence of the
5 encroachment. The Director may impose such conditions on the
6 certificate as he/she may determine are appropriate to protect the
7 general welfare. The certificate shall note the size and characteristic
8 of the yard encroachment and the structure. A copy of the required
9 as-built shall be attached thereto.

10 **3. Operation**

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

14 **4. Appeal**

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

17 **D. Preexisting Tower and Antennas⁵**

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

25 **21.11.040 NONCONFORMING LOTS OF RECORD⁶**

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

27 In any residential district, notwithstanding limitations imposed by other provisions of
28 this title, a single-family dwelling and customary accessory buildings may be erected
29 on any lot that is of record at the effective date of the original adoption or amendment
30 of applicable regulations. This provision shall apply even if the lot fails to meet the
31 requirements for the area or width, or both, that are applicable in the district.
32 Furthermore, setback and lot coverage requirements applicable to nonconforming lots
33 of record shall be those of the zone with the largest lot area requirement within which
34 the lot area would be conforming. A lot that fails to be conforming in any zone shall
35 maintain a front yard of 20 feet, side yards of five feet, a rear yard of five feet, and
36 maximum lot coverage of 50 percent.

37 **B. Undivided Parcels⁷**

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

21.11.050 NONCONFORMING CHARACTERISTICS OF USE

A. Nonconforming Characteristics of Use, Lot, or Structure⁸

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

B. Bringing Nonconforming Characteristics into Compliance

An applicant for a land use permit in a multi-family, commercial, or industrial zoning district that involves a development project costing \$20,000 or more, or 20 percent or more of the value of the property, shall be required to bring the following nonconformities into compliance with all applicable provisions of this title prior to approval of the permit, unless the Director determines in writing that such nonconformities have no significant adverse impact on surrounding properties:

- 1. Landscaping;
- 2. Lighting;
- 3. Parking;
- 4. Refuse containers ;
- 5. Driveway surfacing ;
- 6. Screening walls or fences (for parking areas or storage areas);
- 7. Screening of mechanical equipment.

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

21.11.060 NONCONFORMING SIGNS⁹

A. Effective Date

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

B. Amortization Provisions

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

- 1 **2. Amortization of Illuminated Signs**
2 Any illuminated sign that does not meet the requirements of subsection
3 21.10.090.A. shall be altered to comply with the requirements of this title
4 within three years from the effective date of this section.
- 5 **3. Amortization of Pole Signs**
6 Any sign where the structural steel supports are visible and that does not
7 meet the requirements of 21.10.060C.2. or 21.10.070C.3., shall be altered to
8 comply with the requirements of this title within three years from the effective
9 date of this section.
- 10 **4. Amortization of Animated Signs**
11 Any sign that contains non-complying animation, changeable copy, or flashing
12 or moving parts shall be altered to comply with the requirements of this title
13 within 180 days from the effective date of this section.
- 14 **5. Amortization of Converted Signs**
15 Any non-conforming sign that was originally portable or temporary, was
16 subsequently affixed to the ground or a building, and does not comply with the
17 height, area, or the number of signs permitted requirements of this title shall
18 be removed, altered, reconstructed, or reinstalled to be in compliance with
19 this title within three years from the effective date of this section.
- 20 **6. Amortization of Roof Signs**
21 Any roof sign shall be removed within ten years from the effective date of this
22 section.
- 23 **C. Termination**
24 A nonconforming sign shall immediately lose its legal nonconforming status, and
25 therefore shall be brought into conformance with this title or removed, when any of the
26 following occur:
- 27 1. The size or shape of the sign is changed.
- 28 2. The sign structure is altered. Alteration does not include repairs and/or
29 maintenance.
- 30 3. The nonconforming sign is accessory to a nonconforming use that has lost its
31 nonconforming status.
- 32 **D. Maintenance of Nonconforming Signs**
33 Nonconforming signs shall continue to be maintained in safe condition pursuant to the
34 building regulations of the Municipality until such sign is required to be removed as set
35 forth in this section.
- 36 **E. Alteration, Relocation or Replacement of Nonconforming Signs**
37 A nonconforming sign shall not be structurally altered, relocated, or replaced unless it
38 is brought into compliance with the provisions of this section.

1 **F. Reconstruction of Damaged Sign**

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

10 **G. Historic Signs**

11 The Urban Design Commission may grant exceptions to these standards whenever a
12 sign or property has been designated a historic sign pursuant to the guidelines and
13 criteria established and adopted by the Urban Design Commission.

14 **H. Extension of Time to Comply**

15 The dates established in this section for a sign to be brought into compliance with the
16 requirements of these regulations may be appealed to the Zoning Board of Examiners
17 and Appeals by the owner or lessee of the nonconforming sign pursuant to section
18 21.03.200.B., *Appeals to Zoning Board of Examiners and Appeals*. In evaluating the
19 extension of time for a nonconforming use, the Zoning Board of Examiners and
20 Appeals shall consider the following factors to determine whether the owner of the
21 sign has had reasonable amount of time to recoup his investment:

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

¹ NOTE: This chapter consolidates all provisions on nonconforming uses, structures, lots, and signs. The general intent is to continue the City's existing policies toward nonconforming uses, structures, lots, and signs, which are set forth in chapter 21.55 of the current code. We have tightened the language throughout the chapter (e.g., the new purpose statement is more succinct than the current 21.55.010, *Intent*.)

² NOTE: The purpose of this section is to eliminate repetition and reduce the length of the chapter by consolidating the provisions that apply to all types of nonconformities (e.g., authority to continue).

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

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

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

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

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

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

⁹ NOTE: This section is carried forward with no changes from the *Proposed Sign Standards for the Municipality of Anchorage* document adopted by the Assembly on August 19, 2003. We have corrected a few misspellings, emphasized the effective date (which will be different than for the rest of the title), consolidated the amortization provisions, and made some minor changes to terminology for clarification.