# Municipality of Anchorage

Community Development Department
Planning Division

**MEMORANDUM**

**Date:** April 19, 2012

**To:** Planning and Zoning Commission

**From:** Jerry T. Weaver, Jr., Director

**Subject:** Case 2011-104 – Proposed Amendments to Provisionally Adopted Title 21: Public Comment Issue-Response for Chapters 1–3

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Following are issues and Department responses and recommendations regarding Case 2011-104, the provisionally adopted Title 21 and proposed amendments. These issues were raised at the March 12 and 19, 2012 public hearings and from written public comments received by the Planning Division or submitted to the Planning and Zoning Commission during the above public hearings.

Due to the volume of public comments, this memorandum covers issues and comments pertaining to chapters 1–3 of the provisionally adopted draft Title 21. Subsequent memoranda will cover the remaining chapters.

A number of issues raised in the public comments have been previously reviewed and addressed by the Community Development Department and the Administration. The response to these issues will include a reference to the relevant pages of three attached documents:

**Exhibit A.** August 23, 2011 memorandum from the Department to the Mayor in response to issues raised by a consultant hired by the Mayor to review the provisionally adopted Title 21;

**Exhibit B.** October 19, 2011 memorandum from the Department to the Mayor, which summarizes the Administration's decisions and direction regarding issues raised by the consultant; and

**Exhibit C.** October 2, 2000 Department of Law opinion "Comprehensive Plan – Mandatory Compliance."

The issue-responses in this memorandum reference the Provisionally Adopted Title 21 with Technical Edits dated 12-12-2011 and the Consolidated Table of Proposed Amendments dated 3-12-2012. They also reference the applicable public comments in the following attachment:

**Exhibit D.** Comments Received for PZC Case 2011-104.

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## Chapter 1 Issues

### 1. Section 21.01.060B., Conflict with Comprehensive Plan

- ► **Page 3, Lines 30-36 of Provisionally Adopted Title 21**
- ► **Proposed Amendment R1 in Consolidated Table**

**Issue:** Shall there be a provision in title 21 which establishes that, in cases of conflict, title 21 requirements apply over the general goals and policies of the comprehensive plan?

**Public comment:** Proposed amendment R1 should be rejected. The proposed amendment deletes language in the draft code that makes it clear that the specific development standards in title 21 control land use, and should trump the general provisions of the Comprehensive Plan. (Dan Coffey, Chapter 1, item 3)

**Response:** In its review of title 21 rewrite language addressing the relationship between the comprehensive plan and title 21, the municipal Legal Department has recommended removing the concept of conflict between the comprehensive plan and title 21, as, by law, they cannot conflict. The comprehensive plan governs future development of the municipality and must be implemented.

There is still the possibility of inconsistency between title 21 and the comprehensive plan when elements of the comprehensive plan are amended or adopted that recommend changes to title 21. However, the wide variety of possible plan direction, from the very specific to the very general, makes it impossible to craft an overarching code provision to address this situation. Plan implementation actions that require title 21 changes should be done as soon as possible after plan adoption / amendment.

21.01.060B. is also redundant to the more specific guidance in 21.01.080D. as to title 21 relationship to the comprehensive plan.

Section 21.01.080D. addresses compliance with the comprehensive plan, and applicability of adopted plan policies in land use approval decisions. That section is subject to proposed clarifications discussed in Issue-Response Item 4 - Section 21.01.080D., Implementation - Conformity to Plans, page 8.

**Recommendation:** Delete 21.01.060B. as recommended in proposed amendment R1, and consult further with Legal Department to address compliance of title 21 provisions and land use approval decisions in section 21.01.080D. (Also see Issue-Response Item 4 - Section 21.01.080D., Implementation - Conformity to Plans, page 8.)

## 2. Section 21.01.070B., Severability

► **Page 4, Lines 2-6 of Provisionally Adopted Title 21**

**Issue:** What happens when a court strikes down the application of a provision to a particular situation?

**Public comment:** Section 21.01.070B. should be amended so that if the court invalidates the application of a provision, then that provision shall not be applied to any other use or structure. The comment claims that otherwise the section will allow MOA to ignore court decisions that have invalidated a provision. (Dan Coffey, Chapter 1, item 1)

**Response:** Severability establishes the legal status of the zoning code in the event that a court invalidates part of the code, or the applicability of part of the code to a certain kind of situation. It goes without the zoning code needing to say it that, if a part of the code is invalidated by a court of law then that provision can no longer be required or enforced. Presumably the court judgment would state the MOA can no longer apply that provision to any situation. It is the role of the title 21 Severability section to establish in such cases that other title 21 provisions remain valid. This is the intent of 21.01.070A., which follows the general precedent of AMC 1.05.

However, 21.01.070B. is about the applicability of a provision with which a case is concerned, not the provision itself—i.e., it is for when a court invalidates the application of a provision to a particular kind of situation but does not invalidate the provision itself. Because every case has its own nuances, applicability cannot always be generalized to all situations. If a court invalidates the application of a provision based upon the specific circumstances of the case, then the judgment is binding to that and similar cases. A judgment may not be applicable to the provision applied under different circumstances. For case-specific invalidations of the applicability of a provision to a particular situation, it is the role of severability to establish that the provision can still be applied in other situations.

If 21.01.070B. were changed as proposed by commenter, then valid parts of the code could be struck down simply due to extenuating circumstances of its application to a particular case.

21.01.070 was written by nationally respected land use lawyers, and its language is common practice. However, if the section seems ambiguous it could be reviewed by Legal Department. It is important to avoid 21.01.070 being construed so that even if a court invalidates a provision, the MOA could still apply it. The applicability question in subsection B may be one of degree: what makes one case substantially the same or different from another?

**Recommendation:** Consult with Legal Department to review and revise for clarity of intent and legal consistency, subject to review by PZC.

## 3. Section 21.01.080B., Comprehensive Plan Elements

### ► Page 4, Table 21.01-1 of Provisionally Adopted Title 21

**Issue:** Are all the elements in Table 21.01-1 appropriate to be included in the Comprehensive Plan?

**Public comment:** Some of the documents in Table 21.01-1 are not adopted comprehensive plan elements, and many are outdated. The commenter recommends limiting the elements of the Comprehensive Plan to elements that are adopted, recent, and have wide-ranging application. (Dan Coffey, Chapter 1, item 2)

**Response:** Table 21.01-1 lists all of the adopted Comprehensive Plan elements. As the adoption dates indicate, every element listed in the table is adopted by the Assembly as part of the Comprehensive Plan. The list of elements exists in the current title 21.

There is agreement that some of the adopted elements of the Comprehensive Plan are likely outdated. Repeal of longstanding adopted plan elements that are no longer relevant can be beneficial from the standpoint of clarity and housekeeping. However, the Municipality cannot just repeal adopted plan elements by deleting them from the table. The Assembly must rescind specific plan elements through a separate ordinance(s).

A thorough review of the older elements is warranted before a decision on what to remove is made. It must also have the support of the Administration. This would require a separate planning process to amend the comprehensive plan, with designated staff resources and a public review before PZC and the Assembly. MOA resources are currently occupied by the title 21 rewrite project.

**Recommendation:** Review and repeal of the outdated comprehensive plan elements should occur in a separate action. Subsequent to completion of title 21, the Department should review all plan elements and provide recommendations to the PZC regarding whole elements to repeal.

## 4. Section 21.01.080D., Implementation - Conformity to Plans

- ► **Page 6, Lines 14-16 of Title 21**
- ► **<u>Proposed Amendment R2</u> in Consolidated Table**

**Issue:** How is the Comprehensive Plan to be considered during land use decisions, and what is its standing relative to title 21 regulations?

**Public comment:** Section 21.01.080D (and amendment R2) should be revised, to make it clear that Title 21 is the implementing document of all the elements of the comprehensive plan. As drafted, it would allow staff to go outside of title 21 in land use approvals, using policies in adopted plans as a basis for decisions or recommendations on land use and occupancy permits. Title 21 is intended to be the specific document that implements the entire comprehensive plan, by establishing the specific and detailed requirements of land use. (Dan Coffey, Chapter 1, item 3)

**Response:** Both state law and the municipal charter require comprehensive plans as the basis for land use regulations and decisions. Section 12.01 of the municipal charter states:

> The Assembly by ordinance shall adopt and implement, and from time to time modify, a comprehensive plan setting forth the goals, objectives, and policies governing the future development of the municipality.

Municipal Attorney legal opinion with regard to mandatory compliance of legislative actions with the Comprehensive Plan is available as Exhibit C.

The comprehensive plan cannot be replaced by another document. Title 21 is an implementation tool of the comprehensive plan. It is not possible to put all of the goals, objectives, and policies of the comprehensive plan into title 21. For example, Policy #2 of Anchorage 2020 states that land use plan maps included in the various neighborhood and district plans shall be applied to land use decisions. Another example from Policy #14 of Anchorage 2020 states that no regulatory action under title 21 shall result in a conversion of residentially zoned property into commercial uses unless consistent with an adopted plan. There is no way for title 21 to implement these policies by only looking within itself.

Amendment R2 for 21.01.080D. is intended to clarify the requirement for title 21 to be in compliance with the comprehensive plan. Amendment R2 evolved from the current title 21 section 21.05.070 and its plan-specific implementation sections 21.05.080 through 21.05.150.

The individual sections direct that entitlements such as rezonings, subdivisions, conditional uses, and subdivisions must conform to the adopted comprehensive plans of the various communities.

The comprehensive plan is the appropriate guidance to be followed in discretionary decision making. Discretionary reviews for entitlements such as rezonings, subdivisions, and conditional uses have the approval criteria to be consistent with the comprehensive plan. For such reviews,

the decision-making board or commission uses its discretion as to whether a project meets the comprehensive plan element as well as title 21 standards.

The section does not intend to mean the comprehensive plan applies in specific, non-discretionary development approval decisions. Staff would not, in such non-discretionary title 21 approvals, impose requirements derived from comprehensive plan policies that are not specified in title 21. However, the section and proposed amendment R2 does appear to leave ambiguity as to the standing of comprehensive plan policies in non-discretionary administrative approval decisions, for which only the specific standards of title 21 should apply in the approval decision.

If 21.01.080D is construed by some to mean that every land use permit review must check for compliance with comprehensive plan policies then clarifying the context of application of the comprehensive plan could be helpful, distinguishing intent and application.

However, to amend 21.01.080D. as proposed by the public comment could be in conflict with the law and require the provisions of title 21 to be consistent with title 21 – a self-reference that could remove the comprehensive plan from decision making.

**Recommendation:** Consult with Legal Department to review and revise for clarity and legal consistency, to state to the effect that the comprehensive plan elements identified in Table 01.-1 are to be followed in municipal approvals of rezoning, subdivision plats, conditional uses, and discretionary actions, as well as the provisions of Title 21. However, non-discretionary approvals governing the use and occupancy of land and affected by Title 21 shall be in accordance with and conform to the specific requirements of that title for such land use and occupancy.

## 5. Section 21.01.080D., Conformity to Plans (Where Comprehensive Plan Elements Conflict)

► **Page 6, Line 17 of Provisionally Adopted Title 21**

**Issue:** If there is a conflict between elements of the comprehensive plan, which element should govern—the more general comprehensive plan or the more specific plan?

**Public comment:** Section 21.01.080D. does not provide adequate guidance for cases in which there is conflict between a community's general comprehensive plan (especially the citywide land use plan map) and a more area-specific plan or functional plan element within that community. It would be useful to clearly state that if there is conflict between the comprehensive plan and a plan element, the former governs, unless, in the adoption of the plan element, either the adopting ordinance provides that the component trumps the comprehensive plan, or there is an amendment to the relevant part(s) of the comprehensive plan. (Planning and Zoning Commission member(s))

**Response:** The provisionally adopted language carries forward current title 21 (21.05.030), which states that where adopted plan elements conflict the most recently adopted element governs.

Municipal law provides no basis for thinking of area-specific and functional plans in the Anchorage Bowl as elements of the Anchorage 2020 plan. All adopted plans, including a general plan like Anchorage 2020 and the more area-specific or functional plans such as the Anchorage Coastal Management Plan, are "elements" of the *Comprehensive Plan of the Municipality*. So, the Anchorage Coastal Management Plan is not an "element" of Anchorage 2020, but rather, both plans are elements of the MOA Comprehensive Plan, and where they conflict the most recent adopted element governs.

If a neighborhood plan's land use plan map for an area differs from the more generalized citywide land use plan, there is typically a legitimate planning rationale for the difference. For example, the Anchorage Downtown Comprehensive Plan (adopted 2007) designates some lower-rise residential sub-areas within the Central Business District (CBD), although Anchorage 2020 (adopted 2001) designates downtown in general for high-intensity office use. The Downtown Plan is consistent with Anchorage 2020, but it establishes more tailored, nuanced, and appropriate guidance in specific sub-areas of Downtown.

Title 21 already establishes procedures for ensuring consistency as neighborhood and district plans are being developed.

**Recommendation:** The Department recommendation is to move forward with no change in current / provisionally adopted provisions: the more recent plan governs. However, the Department has no objection to requesting assistance of Legal Department to help evaluate considering examples and precedents, then returning to PZC.

## 6. Section 21.01.090E., Investment-backed Expectations

- ► **Page 8, Lines 11-12 of Provisionally Adopted Title 21**
- ► **<u>Proposed Amendment R4</u> in Consolidated Table**

**Issue:** At what point during a project's development process should the rights to develop property in a particular manner become "fixed" under current law, and cannot be restricted by regulatory provisions subsequently enacted?

**Public comment:** Initially there was an effort to draft language to allow a development to proceed under the existing title 21 after new title 21 was adopted, based on the expenditure of some significant amount of dollars in project design and planning, even if a permit had not been applied for. This proved to be difficult and was eventually dropped from the draft code. To effectuate this concept to some degree, recommend the adoption of an effective date of 1-1-2013, to allow the exemption for applications that have filed and allow a developer to elect to proceed under the new title 21 code once it is adopted by the Assembly. (Dan Coffey, chapter 1, item 4)

Another member of the public stated that an effective date of 1-1-2013 would be too soon. There should be more time between adoption and effective dates because development project planning needs more than six months advance notice. (Tim Potter, verbal testimony on 3-19-12)

**Response:** On the counsel of the Municipality's Legal Department, due to conflicting case law on the subject, and on the American Planning Association's advice, PZC recommended in 2010 there be no provision on investment-backed expectations (proposed amendment R4). As noted in the American Planning Association's Growing Smart Legislative Guidebook: Model Statutes for Planning and the Management of Change, 2002 Edition, "the statutory trend is to adopt a 'bright line' permit vesting rule for its certainty and predictability." The two model code options offered in the guidebook base the "bright line" on a completed application (option 1) or upon significant and ascertainable development (option 2) as defined by the local government.

The provisionally adopted section 21.01.090D. employs option 1 above, the 'bright line' permit vesting rule, using a completed application as the basis for development rights under the previous code, because of its simplicity, clarity, and certainty. The Department supports a period of time of up to eight months between when title 21 rewrite is adopted and it becomes effective. For example, if the Assembly were to adopt in February 2013 the effective date might occur in October or November during the slowest permit season.

The proposal in the public comment may be difficult to administer. If it is suggesting a period in which applicants may select one or another code, it would be complicated and costly to administer. If it suggests making parts of the provisionally adopted rewrite effective before the Assembly even adopts a final version of it, then it is not practical.

**Recommendation:** Use the 'bright line' approach as provisionally adopted, and make the effective date six months after the date of adoption of Title 21. (Note: The effective date does not show up in code; it is inserted into the Assembly adopting ordinance.)

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## Chapter 2 Issues

### 7. Sections 21.02.020 and 21.02.040, Urban Design Commission

► **Page 9, Table 21.02-1; and Page 13, Lines 8-34 of Provisionally Adopted Title 21**

**Issue:** What should be the decision-making and review responsibilities of the Urban Design Commission (UDC) relative to PZC?

**Public comment:** It is inappropriate to transfer so many of the review functions of PZC to UDC. Most of the new duties and responsibilities that the provisionally adopted title 21 transfers to UDC are currently under the purview of the PZC; that over time there have been numerous complaints about UDC; and that the rewrite would have two commissions with overlapping authority which would give staff greater control over the public process. The PZC is required by MOA Charter, the UDC is subject to the sunset provision. (Dan Coffey, Chapter 2, item 1)

Commissioners have further discussed that PZC is able to review design-related projects and can accomplish this in its review workload; and design-related reviews especially for large projects also often deal with land use and transportation impacts, which should come under the purview of PZC.

**Response:** This issue has been subject to years of review, by the PZC, Assembly, and most recently the Administration, and the provisionally adopted title 21 reflects their decisions.

Assessment and discussion of this issue is provided in Exhibit A, page 19. After review of this issue, the Administration position is to move forward with the provisionally adopted title 21 responsibilities for UDC, as documented in Exhibit B, page 2.

Despite the claims by the public comment to PZC, the majority of the review responsibilities of the UDC in the title 21 rewrite are not transferred from PZC but rather are either existing UDC responsibilities or new reviews that do not exist today (list provided in following pages).

There is no overlapping review authority between UDC and PZC. The only type of project requiring reviews by both is the existing multi-step process for street and trail reviews. (See Issue-Response Item 14, Section 21.03.190., Street and Trail Review Process, page 28.)

The UDC has evolved over the past 12 years into an effective and functional commission, and the MOA has not received evidence to back up the claim of numerous complaints about UDC. Furthermore, although UDC along with many other municipal commissions has been under a sunset provision (Assembly renewal every three years) since its inception, this status has not affected its review functions. The UDC has been responsible for review of the following cases in the past several years:

Parks: Delaney Park Veteran's Memorial, Far North Bicentennial Park Trail Improvement Plan, and Beach Lake Park Master Plan.

UAA: Health Sciences Building and New Sports Arena (reviewed initial plans, waiting for new designs for final review).

Roads: Raspberry Road, Tudor Road & Lake Otis Intersection Improvements, and 9th Avenue - L Street to LaTouche Street.

State: Scientific Crime Detection Laboratory (Crime Lab), and Connector between the North and South Terminals at Ted Stevens Anchorage International Airport.

MOA: Performing Arts Center sign variance, South Anchorage High School Ball Fields Improvements, Anchorage Police Department Expansion, Museum Transit Facility, and Anchorage Museum of History and Art.

Many of the UDC's review responsibilities under the title 21 rewrite do not exist today. If these were transferred from UDC to PZC, these would be adding significantly to the PZC existing workload. See table below.

The goals, objectives, and policies of the comprehensive plan reflect the that the external impacts of project design on neighbors is increasing as the Anchorage land development market transitions toward higher density infill-redevelopment in existing neighborhoods. The provisionally adopted title 21 provides more instances of site plan reviews because of the increase in importance of compatibility of new, higher-density projects in existing areas. Because the new title 21 addresses physical aspects of site plans more, in part through site plan reviews, it would not be practical for the PZC workload to assume the duties for site plan reviews.

**Comparison of Planning and Zoning Commission and Urban Design Commission Review Duties and Authority between Current Title 21 and Provisionally Adopted Title 21**

Key to table: D – Decision A-Advise R-Recommendation

| Review type | Current Title 21 | | Provisionally Adopted Title 21 | |
|---|---|---|---|---|
| | UDC | PZC | UDC | PZC |
| Site Plan review for roads of collector or greater (context sensitive solutions plan):<br>(1) DSR<br>(2) 35% Design<br>(3) 65% Design | D(3) | D(1) (2) | D(3) | D(1) (2) |
| Public facility site plan review | D | | | |
| Public facility landscape review | D | | | |
| Highway screening landscape review | D | | | |
| Sign variances | D | | D | |
| Girdwood Area Zoning variances<br>(1) Depending on type of variance, some will go to UDC and some to PZC | D | | D (1) | D (1) |
| Perform duties stated in title 7, relating to art funding requirements for public buildings and facilities | D | | D | |
| Designate historic signs pursuant to subsection 21.12.070F. | D | | D | |

| Review type | Current Title 21 | | Provisionally Adopted Title 21 | |
|---|---|---|---|---|
| | UDC | PZC | UDC | PZC |
| Make recommendations on design standards and guidelines/ordinances affecting urban design and urban design studies. | A | | A | |
| Advise the Mayor regarding urban design issues | A | | A | |
| Comprehensive Plan Amendments, including District and Neighborhood Plans | | R | | R |
| Conditional Use applications | | D | | D |
| Large Retail Establishment | | D | | |
| Rezone applications | | R | | R |
| Functional Plans, ie Watershed Management Plan, Historic Preservation Plan, Airport Master Plans, OHSP | | R | | R |
| AMATS/TIP | | R | | R |
| MOA Annual CIP | | R | | R |
| ASD Annual CIP | | R | | R |
| Title 21 Amendments | | R | | R |
| Public Facility Site Selection<br>(1) Assembly decision on municipal buildings | | R | | D (1) |
| Institutional Master Plans | | | | R |
| Minor modifications | | | D | D |
| Major Site Plan Review for uses already permitted within the zoning district, where review is focused on primarily only on the physical design and layout. | | | D | |
| Preliminary Plats – when a major site plan review creates a subdivision or requires vacation of a dedicated public area | | | D | |
| Preliminary Plats – when a conditional use creates a subdivision or requires vacation of a dedicated public area. | | | | D |
| Variance applications<br>(1) Depending on type of variance, some will go to UDC, some to PZC. | | | D (1) | D (1) |
| Appeals of administrative site plan reviews – 21.03.180B. | | | D | |
| Appeals of the director's decision regarding subsection 21.12.060B., *Bringing Characteristics into Compliance* | | | D | |

PZC has discussed that some design reviews involve transportation and land use issues. These are conditional use approvals. In the rewrite, a conditional use approval is required when a proposed use or density of development may or may not be appropriate in a district, depending on the specific location and the use characteristics.

In contrast, major site plan reviews are a new kind of review process in title 21 devoted to situations where the use and intensity of use is permitted in a district, and only the physical design and layout of the development site plan is in question before the Municipality. The proposed use and general intensity of use, including the amount of traffic generated, are not subject to municipal decision. Design-only oriented reviews are more appropriate to UDC. The UDC consists of design professionals including architects, landscape architects, and engineers who have the experience and training to conduct in-depth project reviews.

Limiting UDC review authority to trail reviews as proposed by the public comment would be the most dramatic change from the current title 21 delegation of review responsibilities. It would render the UDC irrelevant and seems more a set-up to support an MOA decision to sunset UDC in 2013 than a practical improvement in the delegation of review responsibilities.

Moving all major site plan reviews and appeals of site plan review decisions to PZC would be likely to overload PZC with additional case work. This would result in slower approvals for the development community, a likely reduction in the quality of the reviews as the commission members become overloaded with cases, and more difficulty in finding citizens in all the required disciplines willing to serve due to the increased number of meetings and the workload.

**Recommendation:** No change to the provisionally adopted title 21; forward the Administration's recommendations to the Assembly.

## Chapter 3 Issues

### 8. Section 21.03.020C.2., Community Meetings

- ► **Page 20, after Line 5 of Provisionally Adopted Title 21**
- ► **Proposed Amendment 4 in Consolidated Table**

**Issue:** Should title 21 require those land use cases that require a community meeting to be conducted through the community councils and at their scheduled meeting dates and times?

**Public Comments:** The Anchorage Citizens Coalition provided comments in support of amendment #4.

The Mid Hillside Community Council, Rabbit Creek Community Council, and Dan Coffey (Chapter 3, item 1) support an amendment requiring that the developers of applicable projects present at community council meetings, with no waiver of the community council meeting allowed.

Turnagain Community Council supports the requirement that the community meeting be a community council meeting, unless the community council meeting is not scheduled in a timely manner or cannot adequately accommodate a thorough public review and discussion due to lack of time, in which cases a separate community meeting is allowable.

Tim Potter supports using a community council meeting, with the caveat that if the council doesn't meet in the summer and the executive board refuses to call a special meeting, then no community meeting would be required.

**Discussion:** The Administration's Proposed Amendment #4 to the provisionally adopted title 21 would more strongly emphasize the role of community councils as the main option for public input. However, amendment #4 would only encourage (not require) those land use cases that require a community meeting to be conducted through the community councils and at their scheduled meetings dates and times. The Administration's proposed amendment retained for the applicant the option to conduct a separate community meeting, as provided in the provisionally adopted title 21, for the following reasons:

- The community meeting as described in the provisionally adopted title 21 allows the applicant to hold one meeting even when the project relates to multiple community councils rather than attending each applicable community council, which saves time, costs, and effort;
- As many community councils do not meet in the summer, an outright requirement to use community council meetings would place an undue burden on the community council president to respond to a summertime meeting request, arrange for a meeting location, and send notices to the community;

- If the community council president is out of town and does not see an applicant's meeting request, the applicant and public still need an alternative opportunity to have a dialogue regarding the project; and

- The provisionally adopted code also allows the meeting to be a community council meeting if the applicant so desires, which is likely to often be the case in the non-summer months. If the applicant holds a separate community meeting, the community council will still be notified through the public notice process and will be able to comment on the application to the board or commission.

**Recommendation:** Adopt Amendment #4 or adopt an amendment requiring that the developers of applicable projects present at community council meetings, with no waiver of the community council meeting allowed.

## 9. Section 21.03.080F., Conditional Use for a Business Industrial Park PUD

- ► **Page 43, after Line 34 of Provisionally Adopted Title 21**
- ► **<u>Proposed Amendment 8</u> in Consolidated Table**

**Issue:** Should public/institutional uses including churches, fitness centers, day care centers, government agencies be allowed in BIP-PUDs in industrial districts, and what size limitations should be applied to commercial and institutional uses in such BIP-PUDs?

**Public comment:** Proposed amendment 8 providing for Business-Industrial Parks in the I-1 district should be amended to allow for public/institutional uses – including religious assemblies, health services, fitness centers, day care centers, and government offices. These uses often seek to locate in business parks and they fit the objectives of the business park section. One benefit of allowing churches is the efficient use of shared parking with other developments in the BIP. Recommend amendments to allow for these uses in BIP-PUDs, with size restrictions, and the provisionally adopted location requirements for government offices. (Carr-Gottstein Properties, page 105 of Exhibit D)

Another public comment states that proposed amendment 8 accommodating business-industrial parks in I-1 appears appropriate, however, it leaves a risk that a large retail establishment could occupy 35% of the park's floor area to be retail. The maximum size of individual establishments should be restricted to 20,000 square feet, as is proposed for retail in the rest of I-1. (Anchorage Citizens Coalition, page 19 of Exhibit D)

**Response:** Proposed Amendment #8 addressed a public comment from 2010 by accommodating existing business/industrial parks as a conditional use in the B-3 and I-1 districts and preventing nonconformities. It was developed with the owner of a business park and supports continuation of business park mix of commercial and industrial uses in a master planned, integrated campus setting.

Inclusion of outpatient health services, commercial offices, financial service branches, government offices, fitness centers, day care uses, and religious institutions is consistent with the intent of the BIP-PUD, subject to size limitations such as proposed by the public comments to avoid major customer retail or commercial employment centers in industrially zoned areas.

**Recommendation:** Accept the changes to Proposed Amendment 8 that the public comments propose, except avoid size limits on commercial establishments in the B-3 district. In summary:

- Amend to allow the following Public/Institutional Use Types in BIP-PUDs in the I-1 District: Health Services, Instructional Services, Child Care Centers, Religious Assembly, and Government Offices (subject to provisionally adopted location requirements);
- As recommended in the comments, limit the maximum gross floor area of individual tenancies for Business and Professional Offices, Instructional Services, and Health Services to 5,000 square feet. Limit Religious Assemblies and Government Office uses to 15,000 square feet. Limit Retail Sales uses to no more than 20,000 square feet; and

- Clarify that calculation of the total aggregate parking requirement of all uses in the business park includes parking reductions and alternatives which may lower the parking requirement.

## 10. Section 21.03.100E., Improvements Associated with Land Use Permits

- ► **Page 50 of Provisionally Adopted Title 21**
- ► **<u>Proposed Amendment 10</u> in Consolidated Table**

**Issue:** Should the MOA have the ability to require off-site improvements that have a rational nexus connection with the external impacts related to a development, or, alternatively, should MOA be allowed to impose?

**Public comment:** The section should either be deleted in its entirety or amended to limit its scope. Recommend specific wording amendments which would:

- Exempt a two or three family dwelling on a lot; and any lots, tracts, or parcels 50,000 square feet or less in size;
- Replace all subsections (a, b, c, and d) from section 21.03.100E.3. which establish standards for determining when the building official would require dedications and improvements, with new language; and
- Delete section 21.03.100E.5 warranty provisions. (Dan Coffey, Chapter 3, item 2)

**Response:** The Administration and Director considered this section, which was proposed for deletion by Mr. Coffey in 2011. At the Mayor's direction, Proposed Amendment #10 keeps the current law intact while clarifying that there must be a "rational nexus," or direct relationship, between required off-site improvements and the external impacts of a proposed development. (Exhibit B, page 1)

Section 21.03.100E., Improvements Associated with Land Use Permits, carries forward current regulations of 21.15.150 which allows the Municipality to require commensurate public infrastructure improvements when there is no subdivision. Before this section became law in 2003, many development projects were constructed without the provision of the necessary infrastructure to support the developments. The section applies when there is no subdivision to prompt a subdivision agreement which provides for the orderly development of public infrastructure, as well as to paper-platted rights-of-way, and to development projects where the surrounding public right-of-way may have no infrastructure improvements or substandard infrastructure improvements. It allows for the upgrade of infrastructure when a project is of sufficient size to have measurable negative impacts on existing facilities that are not constructed to current municipal standards.

Development of this section of title 21 was carefully considered and vetted. As noted in the Planning and Zoning Commission resolution (PZC Resolution 2002-081), this section facilitates orderly development of the community, ensures that all developments will have the required public infrastructure improvements, is in accordance with the comprehensive plan, and is used as standard practice in other communities. Despite the claim by the commenter, the intended

application of the provision was not limited to site condominium per Anchorage Municipal Code of Regulations Section 21.90, and it has not spread beyond its intended range of land uses.

If the Municipality were to allow sites to be developed without commensurate supporting work to be done for infrastructure, neighbors are impacted and the public interest is not served and taxpayers end up taking on bond interest obligations for roads and drainage projects that are needed when infrastructure becomes worn out prematurely by the traffic and runoff generated by a new development.

The Administration has supported requirements for off-site improvements that are clearly co-related to the external impacts (negative externalities) of a proposed development. Proposed amendment #4 is consistent with prevailing practice in zoning and land use law requiring a "rational nexus" between the anticipated externalities of a proposed project and the levy for public improvements or mitigation levied on the proposed project by the public.

However, it is acknowledged that the wording of the amendment may be somewhat vague as it states that a required improvement shall be reasonably related to "and directly correlated to" the proposed development. "Directly correlated to" may not provide a clear enough standard compared to U.S. and State legal standards. The legal language standard in the U.Ss for when it becomes appropriate to require an off-site improvement is that there be a rational nexus connection between the development's off-site impacts and the need for the improvement.

**Recommendation:** Explore potential further clarification of amendment #10, in consultation with Legal Department, considering amending the phrase "directly correlated to" to "a rational nexus connection with."

## 11. Section 21.03.110C., Institutional Master Plan Requirements

► **Pages 57-58 of Provisionally Adopted Title 21**

**Issue:** Information Required for Institutional Master Plan.

**Public Comment**: The University Master Plan and the Institutional Master Plan should be the same document and that the level of detail required for the Institutional Master Plan is extreme. It isn't clear what incentives there are to comply with the requirements of an Institutional Master Plan. Specifically:

a. Paragraph B (Applicability) – recommends deleting "contiguous" from the minimum acreage requirement and, instead, allow all areas that are under the ownership and control of the university.

b. Section C.2.b. (Submittal Requirements - Mission and Objectives) – questions the intent and need for listing the maximum number of people present on the site for any single event or activity.

c. Section C.2.f. (Submittal Requirements - Development and Design Standards) – recommends using word "guidelines" instead of "standards."

d. Section E. (Approval Criteria) – recommends deleting approval criteria number 3 since the plan doesn't "ensure" anything.

e. Section F.3. (Compliance with Institutional Master Plan) – recommends deleting all of the criteria to be used by the Director if a project is not consistent with the master plan.

f. Section G.1. (Modifications to Approved Institutional Master Plans – Minor Amendments) – recommends deleting any reference to an Assembly determination whether a proposed amendment is major or minor.

g. Section D.9.a. implies the plan is good for a year after approval; the plan should be good for 10 years once it's approved.

h. Overall section doesn't reference treating all the land owned by the institution as if it is one parcel.

(Chris Turletes, representing UAA Facilities, Pages 292-293 of Exhibit D)

**Response:** The provisions for an Institutional Master Plan (21.03.110) were developed by the Planning Department approximately five years ago through working with University of Alaska Anchorage staff. The intent of the Institutional Master Plan process is to enable an institution to develop a master plan which, upon adoption, will serve to expedite Title 21 reviews and approvals of individual projects which are consistent with the plan. Otherwise, without a master plan, each project is subject to site-specific reviews and approvals under Title 21. For example, items such as parking and snow storage could be handled on an overall institution-wide basis

consistent with the adopted master plan, as opposed to application of Title 21 parking and snow storage standards (and possible variance applications) when projects are handled on an individual site basis.

Following are staff response to items a–h on the previous page.

a. The flexibility built into the master plan requirements is clearly intended to apply to a unified area or campus, not to a collection of smaller parcels dispersed throughout the municipality. Staff agrees that the term "contiguous" should be defined for application within this section.

b. The requirement to provide estimates of maximum attendance at an event is used to evaluate the need for parking, transit, street design, and pedestrian connections. Staff proposes that the word "estimated" could be added to the sentence to make this clearer.

c. "Guidelines" is not an appropriate term here since this is where the plan lists specific sections of Title 21 for which different standards are to be established by the master plan.

d. Staff agrees that the word "ensure" could be replaced with another term such as "provide."

e. The wording the commenter is proposing to delete would eliminate a possible approval of a project if it doesn't strictly meet the master plan. The institution would have more flexibility if these provisions were retained.

f. Staff agrees that the description of this process could be made clearer. The Director first makes an administrative determination regarding if an amendment is major or minor. If the director determines the amendment is major, he or she begins the review process as if for a new master plan, as noted in section G.2. Staff also agrees that the Assembly reference could be removed.

g. Section D.9.a. gives the institution a year to determine if it wants to go forward with the institutional master plan after the Assembly has adopted it. If the institution doesn't agree with the final adopted version of the plan (i.e., with changes that may have been initiated and adopted by the Assembly), the process allows the plan adoption action to expire in one year and does not hold the institution to a plan they no longer support. The institution doesn't have to exercise that option and could let the adoption stand, if no changes were made by the Assembly, or if the institution accepts any changes made.

h. The development and design standards in section C.2.f provide flexibility for the institution. The institution can propose standards which treat all land as one parcel, or not, depending on the needs of the institution. The institution can propose standards such as "no setbacks on internal lot lines", which have the effect of treating all land as one parcel from the perspective of setbacks. However, the section doesn't insist on that approach – leaving the option to the institution to create proposals based on its needs.

**Department Recommendation:**

The Department recommends keeping the provisionally adopted language of this section intact except for proposed revisions as follows:

1. Page 53, Part B – Applicability, lines 11-17: Amend this paragraph as follows:

   > An institutional master plan may be submitted and approved, in accordance with the procedures of this section, for any multi-building development site of 25 contiguous acres or more in common ownership in any zoning district or combination of districts. The process provides an alternative to the procedures and development and design standards of this title for institutions seeking to develop large, complex sites with multiple buildings and uses following a contextually aesthetic design theme. <u>For the purposes of this section, the term contiguous acres means an area of lots and/or tracts whose boundaries either touch or are separated only by a street or other right-of-way.</u>

2. Page 53, lines 38-41: Amend the sentence to read: "The statement should describe the number of people being served by the institution on site, the number of people employed on the site, and the <u>estimated</u> maximum number of people present on the site for any single event or activity."

3. Page 57, lines 26-28 (item 3): Amend the sentence to read: "[ENSURES] "<u>Provides</u> that institutional facilities, especially those that are publicly funded, are well designed and constructed, include urban amenities, and are efficient to operate over their life-cycles."

4. Page 58, lines 23-26: Amend this sentence to read: "The director may administratively approve <u>minor</u> amendments to an approved institutional master plan upon written application." [,UNLESS THE ASSEMBLY DETERMINES THE AMENDMENT IS A MAJOR AMENDMENT].

## 12. Section 21.03.160D.1., Rezonings General Procedure – Initiation

► **Page 69, Lines 3-4 of Provisionally Adopted Title 21**

**Issue:** Should the director of any municipal department have the authority to initiate a proposed rezoning, or should that authority be more limited within the Administration?

**Public comment**: The provisionally adopted title 21 allows the director of any municipal department to initiate a rezoning, whereas current title 21 provides that authority to the municipal Administration. It raises a concern that to allow any director to initiate a rezoning is unnecessary and inappropriate, because it may lead to abuse of property owners who could be impacted. (Dan Coffey, chapter 3, item 4)

**Response:** There are legitimate reasons as to why a department involved in land management may initiate a rezoning. The Community Development Department, Parks and Recreation Department, HLB, and ASD are examples of departments that may need to initiate rezonings, or have such rezonings initiated. For example, Parks and Recreation may wish to rezone dedicated parks to PR, and ASD its school sites to PLI. Based on land use plans adopted by the Municipality, the HLB may wish to have lands zoned PLI rezoned to the appropriate residential or commercial use.

Whether the departments initiate, or request the Administration, Assembly, or PZC to initiate, there is no real difference as any director could ask the Administration to introduce a rezoning, and vice versa. Most directors will go through the Administration anyhow, and the Administration for its part initiates rezonings through the Planning Director.

To not allow either the Administration or department directors to initiate a rezoning would be more cumbersome (though not be substantially different) as the Administration or director would have to ask an Assembly member or the PZC to introduce a rezoning.

In all cases, the rezoning must go through the public review process before PZC and Assembly.

Policy Alternatives appear to be as follows:

**A.** No change to provisionally adopted title 21 allowing directors to initiate rezonings.

**B.** Amend back to current title 21 language, which allows the Administration rather than individual department directors to initiate a rezoning.

**C.** Do not allow either the Administration or Departments to initiate rezonings.

**Recommendation:** Alternative A or B above.

## 13. Section 21.03.160E., Rezonings Approval Criteria

► **Page 71, Line 19 of Provisionally Adopted Title 21**

**Public comment summary**: Section 21.03.160E. establishes an approval criteria for rezonings that includes 11 standards. There should be a review of the current and provisionally adopted rezoning approval criteria to determine the appropriateness of the new approval criteria. (Dan Coffey, Chapter 3, item 5)

**Responses:** Commissioner Bruce Phelps in response provided his assessment of the provisionally adopted rezoning criteria, stating that it makes sense to include only those criteria that have been, should be, or are likely to be used in a rezoning case; that they should avoid redundancy and consolidate similar concepts; and remove questionable provisions from current title 21 that have been difficult to interpret. Mr. Phelps recommends retaining provisionally adopted approval criteria 1, 5, 6, and 7; delete 3, 4, 8, 9, and 11; and amend 2 and 10 as follows:

2. The rezoning complies with and conforms to applicable portions of the comprehensive plan, <u>including the land use plan map, the zoning district purpose in the requested zone</u>, and the purposes of this title.

10. (Delete and replace with the following) <u>The proposed rezoning is generally compatible with, in size and scale, with adjacent zoning and development, and particularly those uses related to institutional, recreational, public, and residential uses</u>.

**Response:** The current code lists 2 major standards – "Conformity to Comprehensive Plan" and "Conditions of Approval" which includes 4 factors that must be considered. The 11 standards contained in the title 21 rewrite are commonly used standards used by many jurisdictions when reviewing proposed rezones. The 11 standards seek to provide clarity on what standards must be addressed, whereas the current title 21 standards are somewhat ambiguous and leave room for interpretation.

Policy Alternatives appear to be as follows:

**A.** No change to provisionally adopted title 21 on criteria for rezones.

**B.** Amend back to current title 21 language for criteria for rezones.

**C.** Amend provisionally adopted title 21 as recommended by Commissioner Phelps.

**D.** Amend provisionally adopted title 21 as recommended by Commissioner Phelps with the exception of retaining standard #11, that the rezoning does not result in a split-zoned lot.

**Department Recommendation:** Adopt alternative A or D.

## 14. Section 21.03.190., Street and Trail Review Process

- ► **Page 81, Line 24 of Provisionally Adopted Title 21**
- ► **<u>Proposed Amendment R5</u> (pages 7-13) in Consolidated Table**

**Issue:** Should the review and approval of street or trail design plans require both PZC and UDC to have review and recommendation responsibilities or, alternatively, should all aspects of street project design be reviewed by PZC and trail project design by UDC?

Public comment: Amendment R-5 requires the PZC and UDC to review both these processes. This adds extra time and delays the proposed projects through the review process. A redraft of Amendment #5 was requested by Chair Ossiander, as provided in exhibit H. (Dan Coffey, Chapter 3, item 6)

**Response:** The commenter raised this issue with the Administration last year, and after discussing the issue with the Administration the Mayor recommended no changes to the streets and trails review process. This process is not a "staff proposal" as claimed by the commenter, but rather is current practice, based on municipal agreements and adopted policies, and reviewed by PZC.

See Exhibit A page 25 for a written assessment of this issue as reviewed by the Administration, including an 11x17 diagram of the transportation projects review process which has been agreed upon with the State of Alaska. The Mayor's decision on this issue is documented in Exhibit B, page 4.

**Department Recommendation:** No change to current practice; move forward with amendment R5 reflecting agreed-upon processes.

## 15. Section 21.03.210B.5., Title 21 Text Amendments – Notice and Frequency

- ► **Page 93, after Line 38 of Provisionally Adopted Title 21**
- ► **<u>Proposed Amendment 17</u> in Consolidated Table**

**Issue:** Following code adoption, should there be an expedited process for code amendments by the Assembly?

**Public comment**: The rewrite of 21 is substantial and there will be several provisions that require amending once the law (title 21) is implemented. There should be a relatively prompt process for making corrections to Title 21 by the Assembly during the first two years after the adoption of the revised code. (Dan Coffey, Chapter 3, item 7)

**Response:** The Department agrees that after the rewrite is adopted, minor problems/ inconsistencies/conflicts will crop up that need to be addressed quickly. This issue was reviewed by the Administration and in response to the Administration's direction (Exhibit B, page 4, item #12) the Department proposed an amendment (#17, Consolidated Table of Proposed Amendments) which would add a new subsection "d" to section 21.03.201B.5., which reads as follows:

> If, during the first two years after [effective date], the director determines that an amendment to title 21 is needed to address conflicting provisions, inconsistencies, or unintended consequences associated with the Title 21 Rewrite Project (2002-2012), the director may forward a corrective amendment to the assembly, which may adopt the amendment without planning and zoning commission review. After the first two years, the director may apply this provision twice per year.

At the April 9, 2012 Planning and Zoning Commission work session, there was discussion regarding the Commission's possible role in review of corrective amendments that are being submitted from the director to the Assembly, and possible ways the Commission could expedite its review in this process. The Commission also discussed whether the two-year period for corrective amendments through the expedited approval should be expanded to three years.

**Recommendation:** The Department agrees that the two-year timeframe for corrective amendments may be too restrictive since such amendments will likely be needed beyond that period. The twice-per-year limitation on applying this provision once the code has been in place for two years may also be too restrictive. In addition, the Department agrees that the Planning and Zoning Commission should be notified when corrective amendments are being submitted by the director to the Assembly. The revised amendment #17 language is as follows:

> If [, DURING THE FIRST TWO YEARS AFTER {EFFECTIVE DATE},] the director determines that an amendment to title 21 is needed to address conflicting provisions, inconsistencies, or unintended consequences associated with the Title 21 Rewrite Project

(2002-2012), the director may forward a corrective amendment to the assembly, which may adopt the amendment without planning and zoning commission review. However, the director will notify the commission when the amendments are being submitted to the Assembly. [AFTER THE FIRST TWO YEARS, THE DIRECTOR MAY APPLY THIS PROVISION TWICE PER YEAR.]