

CHAPTER 12 – NONCONFORMITIES

GENERAL OVERVIEW

- Concern that changes in code will have impact on current landowners.
- Not fair to require fees for verification of nonconforming status for nonconformities generated by changes in Title 21.
- Waive fees for two year period.
- A nonconforming use should not be automatically be deemed abandoned based on inactivity. Adverse market conditions could impact the owner. Owner should have the right to show attempts to continue the nonconforming use.

PZC'S PROPOSED AMENDMENTS TO CHAPTER 12: NONCONFORMITIES

Number	Section	Amendment	Comments
1	21.12.010 C.	Change the citation to "21.03.250."	Technical clarification
2	21.12.010 C.	Add the following at the end of the paragraph: "The municipality shall waive all fees for a period of two years after the effective date of Title 21 for verification of nonconforming status for nonconformities generated by the changes in Title 21 adopted [insert date]."	To help minimize the impact of the changes in Title 21 fees should be waived for some period of time.
3	21.12.010 G.	Delete and re-letter remaining paragraphs.	
4	21.12.030 D 1 d	Amend to provide as follows: "The use has been discontinued, has been vacant, or has been inactive for a continuous period of at least one year, unless the owner can demonstrate that the owner has been making efforts to continue the use but has been affected by adverse market conditions."	A nonconforming use should not automatically be deemed abandoned based on inactivity. The owner should be allowed to show that the owner has been attempting to continue the use.
5	21.12.040 A 3	Amend to add a new subsection: "Tenant improvements or renovations within an existing structure shall not be considered an enlargement or an alteration as described in subsection 1, above."	Provides clarifications as to renovations within an existing structure
6	21.12.040 D.	Amend to provide as follows: "A person wishing to replicate a nonconforming structure that has been damaged or destroyed to an extent of more than 50 percent of the replacement cost at the time of destruction shall be able to replicate the structure according to either of the two methods in subsection D.1 below."	Provides clarification

7	21.12.060 A.1	Delete the last sentence in the paragraph.	
8	21.12.060 C 2 e.	Amend to provide as follows: The applicant may appeal the director's decision to the Zoning Board of Examiners and Appeals [URBAN DESIGN COMMISSION}	Provides consistency with Chapter 2
9	21.12.060 C 2 f.	Amend to add at the end of subsection as follows: "The portion of the total project costs that are related to increases in conformity shall be credited toward the percentages required in subsections C 2 a and C 5."	
10	21.12.060 C 7.	Amend to add a new subsection as follows: "Existing Buildings. Existing buildings which are constructed over a lot line on abutting lots shall be deemed to be existing on a commercial tract. Such development and associated structures may be enlarged so long as they comply with other applicable provisions of this code."	
11	21.12.060 C.1.b	Change "2.5 percent" to "15 percent."	This section relates to the applicability of 21.12.060 and currently provides that the section is applicable to certain projects that "involve a development project costing more than 2.5% of the assessed value of the structure . . ." The concern was that the 2.5% was too low of

			a percentage which could trigger the applicability of this section. Discussion related to increasing the 2.5% to 10% or to 25%. No consensus was reached on this issue. Staff is to come back with a proposed percentage based on other thresholds in other ordinances such as the large box ordinance.

EXCEPT FOR THE CHANGES PROPOSED HEREIN, THE PLANNING AND ZONING COMMISSION RECOMMENDS APPROVAL OF THE PROVISIONALLY ADOPTED CHAPTER 12 WITH THE 2011 ADMINISTRATION PROPOSED AMENDMENTS AND THE 2010 PZC PROPOSED AMENDMENTS. ATTACHED HERETO IS A REDLINED/BLUELINED VERSION OF CHAPTER 12 WHICH REFLECTS THE ADMINISTRATION AMENDMENTS IN RED INK AND THE PZC'S AMENDMENTS IN BLUE INK.

Section	Amendment	Purpose/Origin/Notes
R29†	<p>21.12.010G. <i>Add new subsection G. and re-letter remaining subsections.</i></p> <p>G. Additions and New Construction <u>In those situations where an addition to an existing structure, or a new structure on an existing lot, is permitted despite the existence of a nonconformity or being out of compliance with the required characteristics of use, the addition/new construction shall comply with all requirements of this title. The director may allow an exception to any maximum setback requirements when such requirement is shown to be impractical.</u></p>	<p>Approved by PZC in 2010</p> <p>DON'T ACCEPT SEE AMENDMENT 3</p>
105.	<p>21.13.060D.2 .a.*</p>	<p>a. Serve notice of the complaint upon the violator(s) named, <u>and the property owner if different from the violator(s)</u>, in person or by certified mail; or</p> <p>If a code violator is not the owner of a property, the property owners should be notified of the violation.</p>
106.1	<p>21.14.020B. <i>Amend subsection B. as follows:</i></p> <p>B. Purpose Statements <u>Statements of purpose or intent in this title are provided to guide interpretation and understanding of the legislative intent behind the substantive regulations of this title. Purpose and intent statements are not substantive requirements, but rather provide a context whereby the provisions of this title are understood.</u></p> <p>C. Headings, Text, and Illustrations, [AND TEXT]</p> <p>1. Headings and Text In the event of a conflict or inconsistency between the text of this <u>title [CHAPTER]</u> and any heading, caption, figure, illustration, table, or map, the text shall control.</p> <p>2. Illustrations <u>Unless otherwise indicated, illustrations in this title are provided for purposes of describing, clarifying, or providing examples. Such illustrations are not to scale and do not replace, limit, or expand the meaning of the text.</u></p> <p><i>Re-letter remaining sections. Delete subsection 21.14.020N.</i></p>	<p>To clarify that the purpose/intent statements are not meant to be regulatory.</p> <p>To better organize the concepts.</p> <p>To clarify the relationship of illustrations to the code text.</p>
106.2	<p>21.14.020I.</p> <p>I. Mandatory and Permissive Terms The word “shall” is mandatory in nature, establishing an obligation or duty to comply with the particular provision. <u>The words “may” and “should” are permissive, indicating compliance is optional.</u></p>	<p>For clarity.</p>
106.3	<p>21.14.030 <i>Add new section 21.14.030 as follows and renumber remaining section:</i></p>	<p>The Assembly Title 21 Committee</p>

* = Some of the proposed amendments #1 – 106 have been available for public review since May 2010. These are marked with an asterisk*.
 † = Amendments numbered R1 through R29 were already recommended for approval by PZC through two cases in the first quarter of 2010.

CHAPTER 21.12: NONCONFORMITIES

21.12.010 GENERAL PROVISIONS

A. Purpose

1. The purpose of this chapter is to regulate continued existence of legal uses, structures, lots, and signs established prior to the effective date of this title, or the effective date of future amendments to this title, that no longer conform to the requirements of this title. All such situations are collectively referred to in this chapter as “nonconformities.” It is the intent of this chapter to permit these nonconformities to continue until they are removed or brought into conformance with this title, and to encourage their re-use and movement towards conformity. The acknowledgement and relief granted to existing property, land uses, and structures provided in this chapter are intended to minimize negative economic effects on development that was lawfully established prior to the effective date of this title and any subsequent amendments.
2. This chapter also regulates characteristics of use such as parking and landscaping. Section 21.12.060 addresses the requirements for developments that don’t comply with the district-specific standards of chapter 21.04, the use-specific standards of chapter 21.05, or the design and development standards of chapter 21.07 (except for section 21.07.020B., *Stream, Water Body, and Wetland Protection*).

B. Authority to Continue

1. Generally

Any nonconformity that lawfully existed as of the effective date of this title and that remains nonconforming, and any nonconformity that is created as a result of any subsequent rezoning, amendment to the text of this title, or by the acquisition of property for a public purpose, may be continued or maintained as a nonconformity only in accordance with the terms of this chapter, unless such nonconformity falls within the exception set forth in subsection 21.12.010B.2.

2. Exception Due to Variances or Minor Modifications

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

3. Conditional Uses and Site Plan Reviews

- a. A use that lawfully existed as of the effective date of this title that is allowed by conditional use or through an administrative or major site plan review in the district in which it is located under this title, but which lacks a conditional use approval or an approved site plan review, shall not be deemed a nonconforming use, but rather shall be considered to exist as a conditional use or to have an approved site plan. Associated nonconforming structures or lots and characteristics of use that are out of compliance with this title shall be governed by the provisions of this chapter, and if applicable, shall be modified under the provisions of this chapter. Other modifications shall be in accordance with the appropriate modification processes in chapter 21.03.
- b. A conditional use or use with an approved site plan, existing prior to the effective date of this title that is permitted in its entirety as a principal use in the district in which it is located under this title shall not be deemed a nonconforming use. Such use shall be deemed a permitted principal use and the conditional use permit or the approved site plan shall be null and void.

1 **C. Determination of Nonconformity Status**

2 In all cases, the burden of establishing the existence of a legal nonconformity shall be solely upon
3 the owner of the nonconformity, not the municipality. Verification of nonconforming status may be
4 established through the process set forth in section ~~24.03.260~~ 21.03.250, *Verification of*
5 *Nonconforming Status*. The municipality shall waive all fees for a period of two years after the
6 effective date of Title 21 for verification of nonconforming status for nonconformities generated by
7 the changes in Title 21 adopted [insert date].

8 **D. Government Agency Property Acquisitions**

9 If a structure, use of land, use of structure, or characteristic of use does not comply with the
10 requirements of this title solely as a result of an acquisition of land by a government agency for a
11 public purpose, then such structure, use of land, use of structure, or characteristic of use on land
12 not acquired by the government shall be deemed conforming. At the time of such acquisition, the
13 municipality shall provide documentation of conformity to the affect property owner(s).

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

15 Legal nonconformities are not affected by changes of ownership, tenancy, or management of
16 property.

17 **F. Maintenance and Repair**

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

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

25 b. Repair of uses or structures that are damaged or destroyed by 50 percent [%] or
26 less of the replacement cost of the use or structure at the time of damage;

27 c. Replacement, repair, or maintenance of mechanical and electrical equipment;

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

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

32 f. Repairs and maintenance of nonconforming signs as set forth in section
33 21.12.070, *Nonconforming Signs*.

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

37 ~~**G. Additions and New Construction**~~

38 ~~In those situations where an addition to an existing structure, or a new structure on an existing lot,~~
39 ~~is permitted despite the existence of a nonconformity or being out of compliance with the required~~
40 ~~characteristics of use, the addition/new construction shall comply with all requirements of this title.~~
41 ~~The director may allow an exception to any maximum setback requirements when such~~
42 ~~requirement is shown to be impractical.~~

43 **G. Replacement Cost**

1 Where the term "replacement cost" is used in this chapter, it shall be determined by the building
2 official pursuant to municipal code.

3 **H. Willful Destruction**

4 In the event of arson or other willful destruction, any rights to reinstate, replicate, rebuild, or
5 otherwise reestablish the nonconforming use or structure, as allowed in this chapter, shall be
6 prohibited if such casualty is traceable to the owner or his or her agent. Such instances shall
7 result in loss of the nonconforming status.

8 **21.12.020 SINGLE- AND TWO-FAMILY STRUCTURES AND MOBILE HOMES**

9 **A. Applicability**

10 In this chapter, only sections 21.12.010, 21.12.020, and 21.12.050 shall apply to lawfully erected
11 nonconforming single- and two-family structures and mobile homes. The other sections of this
12 chapter shall not apply to lawfully erected single- and two-family structures and mobile homes.

13 **B. Expansions and Enlargements**

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

16 **C. Damage or Destruction**

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

21 **D. Mobile Homes**

- 22 1. Lawfully erected nonconforming mobile homes may be repaired or replaced, as long as
23 the nonconformity is not increased.
- 24 2. Lawfully erected nonconforming mobile homes on individual lots may be moved within
25 the lot in compliance with setback regulations.
- 26 3. Mobile homes in nonconforming manufactured home communities may be repaired or
27 replaced, in compliance with setback regulations.

28 **21.12.030 NONCONFORMING USES OF LAND OR STRUCTURES**

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

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

- 32 1. No nonconforming use of land shall be enlarged or increased or extended to occupy a
33 greater area of land than was occupied at the effective date of adoption or amendment of
34 the regulations that make the use nonconforming. Any nonconforming use on a lot or
35 portion thereof may be altered to decrease its nonconformity.
- 36 2. No nonconforming use of land shall be moved in whole or in part to any portion of the lot
37 or parcel other than that occupied by such use at the effective date of adoption or
38 amendment of the regulations that make the use nonconforming.
- 39 3. No existing structure devoted to a use not permitted by this title in the district in which it is
40 located shall be enlarged, extended, or constructed except in changing the use of the
41 structure to a use permitted in the district in which it is located. (For example: a self-
42 storage facility that is a nonconforming use in a district may not construct new storage
43 units.)

- 1 4. Any nonconforming use may be moved or extended throughout any parts of a building
2 that are reasonably adaptable for such use at the time of adoption or amendment of the
3 applicable regulations, but no such use shall be extended to occupy any land outside
4 such buildings. If a nonconforming use is moved to another part of the building, the
5 space vacated shall not be filled with another nonconforming use. (For example: a
6 warehouse that is a nonconforming use in a district and occupies half of a building may
7 expand into the other half of the existing building, but may not begin to store items
8 outside the building.)
- 9 5. No additional structure not conforming to the requirements of this title shall be erected in
10 connection with the nonconforming use of land or structure.

11 **B. Change of Use**

- 12 1. Any nonconforming use may be changed to another nonconforming use if all of the
13 following criteria are met:
- 14 a. The director finds that the proposed nonconforming use is more appropriate to
15 the district than the existing nonconforming use;
- 16 b. Any characteristics of use that are out of compliance with this title are not
17 changed to become less compliant with the requirements of this title; and
- 18 c. No structural alterations are made other than those required by title 23, or minor
19 interior structural alterations, such as cutting a door into a shear wall.
- 20 Appeals of the director's decision shall be made to the zoning board of examiners and
21 appeals in accordance with subsection 21.03.040B.
- 22 2. If a nonconforming use is superseded by a permitted use, the nonconforming use may
23 not thereafter be resumed.

24 **C. Damage or Destruction**

25 Any person wishing to replicate a nonconforming use that has been damaged or destroyed to an
26 extent of more than 50 percent of the replacement cost at the time of destruction shall apply as
27 stated in C.1. below.

28 1. **Administrative Approval**

- 29 a. An application for administrative approval to rebuild a nonconforming use shall
30 contain the information specified in the title 21 user's guide, and shall be
31 submitted to the director.
- 32 b. Notice of the application shall be published, mailed, and posted in accordance
33 with section 21.03.020H.
- 34 c. There shall be a 30 day comment period, starting from the date of notice, before
35 the director acts on the application as provided in subsection C.1.d. below.
- 36 d. The director shall review the application and act to approve, approve with
37 conditions, or deny the application based on the approval criteria of subsection
38 C.2. below. Findings of the director shall be in writing. The director may impose
39 limitations or conditions as may be necessary to meet the approval criteria or to
40 reduce or minimize any potential adverse impact on other property in the area.
- 41 e. Appeals of the director's decision may be made to the zoning board of examiners
42 and appeals, pursuant to section 21.03.040B.

- 1 f. If the application is approved or approved with conditions, the use shall continue
2 to be a nonconforming use and be subject to the provisions of this chapter.
- 3 **2. Approval Criteria**
- 4 a. The nonconforming use is or shall be made compatible with uses allowed on
5 adjacent properties, in terms of site design and operating characteristics (such as
6 lighting, noise, odor, dust, and other external impacts);
- 7 b. The nonconforming use will not limit, impair, or impede the normal and orderly
8 development and improvement of surrounding property for uses permitted on
9 those properties;
- 10 c. Utilities, access roads, drainage, and other necessary facilities are sufficient to
11 service the use, or will be provided;
- 12 d. Adequate measures have been or will be taken to provide ingress and egress
13 that are designed to minimize traffic congestion on the streets; and
- 14 e. The nonconforming use will not result in the creation of additional
15 nonconformities or the need for any variances.

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

- 17 1. A nonconforming use shall be presumed abandoned and its nonconforming rights
18 extinguished where any one of the following has occurred:
- 19 a. The owner has indicated, in writing, an intent to abandon the use.
- 20 b. A conforming use, or a less intensive nonconforming use approved by the zoning
21 board, has replaced the nonconforming use.
- 22 c. The building or structure that houses the nonconforming use has been removed.
- 23 d. The use has been discontinued, *has been* vacant, or *has been* inactive for a
24 continuous period of at least one year, *unless the owner can demonstrate that*
25 *the owner has been making efforts to continue the use but has been affected by*
26 *adverse market conditions.*
- 27 2. Once abandoned, the prior legal nonconforming status of the use shall be lost and any
28 subsequent use of the property shall comply with all applicable provisions of this title,
29 unless the nonconforming use is reestablished through the process described in E.
30 below.

31 **E. Overcoming Presumption of Abandonment**

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

- 35 1. The owner has been maintaining the land and structure in accordance with all applicable
36 regulations, including applicable building and fire codes;
- 37 2. The owner has been maintaining or pursuing all applicable permits and licenses;
- 38 3. The owner has filed all applicable tax documents; and
- 39 4. The owner has been engaged in activities that would affirmatively prove there was no
40 intent to abandon, such as actively and continuously marketing the land or structure for
41 sale or lease.

1 **21.12.040 NONCONFORMING STRUCTURES**

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

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

- 5 1. No nonconforming structure may be enlarged or altered in a way that increases its
6 nonconformity, except as allowed pursuant to B.2. below. Any structure or portion
7 thereof may be altered to decrease its nonconformity, or may be altered or enlarged if the
8 alteration does not intensify the nonconformity. This subsection shall not be construed to
9 allow the expansion of a nonconforming use of structure, which is governed by section
10 21.12.030 above.
- 11 2. Should a nonconforming structure be moved for any reason for any distance whatever, it
12 shall thereafter conform to the regulations for the district in which it is located after it is
13 moved.
- 14 3. *Tenant improvements or renovations within an existing structure shall not be considered*
15 *an enlargement or an alteration as described in subsection 1, above.*

16 **B. Overheight Buildings**

- 17 1. If a lawful building erected prior to **effective date** [DATE OF PASSAGE], does not
18 comply with the requirements of this title with regard to height, such building shall be
19 deemed conforming with regard to height.
- 20 2. Where a lawful building, existing on **effective date** [DATE OF PASSAGE], is engineered
21 and constructed for enlargement by the addition of one or more stories, such structure
22 may be enlarged within the full plan dimensions of the existing structure by the addition of
23 not more than two stories. This provision shall apply to buildings that conform to the
24 height limitations as well as to overheight buildings.

25 **C. Buildings Exceeding Maximum Setback**

26 If a lawful building erected prior to **effective date** [DATE OF PASSAGE] does not comply with
27 the requirements of this title with regard to maximum structure setbacks, such building shall be
28 deemed conforming with regard to setbacks.

29 **D. Damage or Destruction**

30 A person wishing to replicate a nonconforming structure that has been damaged or destroyed to
31 an extent of more than 50 percent of the replacement cost at the time of destruction, shall ~~choose~~
32 *one of the two application and approval* **be able to replicate the structure according to either of**
33 **the two** methods in subsection D.1. below. The application shall be made within one year of the
34 damage or destruction. The director, with the concurrence of the building official, may approve
35 an extension upon written request showing good cause.

36 **1. Application and Approval Methods**

37 **a. Administrative Approval**

- 38 i. An application for administrative approval to rebuild a nonconforming
39 structure shall contain the information specified in the title 21 user's
40 guide and shall be submitted to the director.
- 41 ii. Notice of the application shall be published, mailed, and posted in
42 accordance with section 21.03.020H.
- 43 iii. There shall be a 30 day comment period, starting from the date of notice,
44 before the director acts on the application as provided in subsection a.iv.
45 below.

E. Legalization of Nonconforming Dimensional Setback Encroachments

1. Generally

Structures that encroach into required setbacks and were built before January 1, 1986, may continue in existence provided the following requirements are met:

a. An application for the registration of nonconforming encroachment is submitted to the department; and

b. The encroachment is determined not to be a life safety hazard by the director.

2. Procedures for Registration

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

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

3. Operation

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

4. Appeal

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

21.12.050 NONCONFORMING LOTS OF RECORD

A. Nonconforming Lots

1. Residential Districts

a. Except as restricted in subsection B. below, in any residential zoning district except the R-3, R-4, and R-4A, notwithstanding limitations imposed by other provisions of this title one single-family detached dwelling and customary accessory buildings may be erected on lots that fail to meet the requirements for minimum area and/or width, provided all of the following conditions are met:

i. Any district-specific standards, use-specific standards, and dimensional and design standards such as setbacks, parking, landscaping, etc. are met; and

ii. The lot is of record as of the effective date of the original adoption or amendment of applicable regulations.

b. Except as restricted in subsection B. below, in the R-3 zoning district, notwithstanding limitations imposed by other provisions of this title, one two-family dwelling and customary accessory buildings may be erected on lots that

1 fail to meet the requirements for minimum area and/or width, provided all of the
2 following conditions are met:

3 i. Any district-specific standards, use-specific standards, and dimensional
4 and design standards such as setbacks, parking, landscaping, etc. are
5 met; and

6 ii. The lot is of record as of the effective date of the original adoption or
7 amendment of applicable regulations.

8 c. Except as restricted in subsection B. below, in the R-4 and R-4A zoning districts,
9 notwithstanding limitations imposed by other provisions of this title, one
10 multifamily structure containing not more than three dwelling units, and
11 customary accessory buildings may be erected on lots that fail to meet the
12 requirements for minimum area and/or width, provided all of the following
13 conditions are met:

14 i. Any district-specific standards, use-specific standards, and dimensional
15 and design standards such as setbacks, parking, landscaping, etc. are
16 met; and

17 ii. The lot is of record as of the effective date of the original adoption or
18 amendment of applicable regulations.

19 **2. Nonresidential Districts**

20 Except as restricted in subsection B. below in any nonresidential zoning district,
21 notwithstanding limitations imposed by other provisions of this title, any use allowed in
22 the district by table 21.05-2 may be erected on lots that fail to meet the requirements for
23 minimum area and/or width, provided all of the following conditions are met:

24 a. The review and approval process indicated in table 21.05-2 is applied;

25 b. The use does not have a minimum lot size greater than the minimum lot size
26 required by the underlying zoning district;

27 c. Any district-specific standards, use-specific standards, and dimensional and
28 design standards, such as setbacks, parking, open space, landscaping, etc. are
29 met; and

30 d. The lot is of record at the effective date of the original adoption or amendment of
31 applicable regulations.

32 **B. Undivided Parcels**

33 1. If two or more contiguous lots in single ownership, either of which contains less than
34 5,500 square feet of area are of record on or after November 27, 1990, and either is
35 nonconforming by virtue of this title or any amendment thereto, the lands involved shall
36 be considered to be an undivided parcel for the purpose of this title, and no portion of
37 such parcel shall be sold or used that does not contain a lot area and lot width equal to or
38 greater than the minimum lot area and width required in the zoning district it is in. If a lot
39 that results from being combined through this provision does not meet the dimensional
40 requirements of the zoning district or of chapter 21.08, the lot shall be considered a legal
41 nonconforming lot at the time of recordation.

42 2. This provision shall not apply to those lots legally created as part of a townhouse
43 development, a cluster housing development, a zero lot line development, or a planned
44 unit development.

1 **C. Legalization of Lots Created Prior to September 16, 1975**

- 2 1. Lots existing prior to September 16, 1975, that do not meet the district requirements for
3 minimum area and/or width, and that were not created in accordance with the regulations
4 of the federal, state, or municipal government, may continue in existence provided the
5 following requirements are met:
- 6 a. An application for the registration of nonconforming lot is submitted to the
7 department; and
- 8 b. The lot is determined to be sufficient in size to allow construction of a structure
9 and comply with associated district-specific, dimensional, and development and
10 design standards such as setbacks, parking, landscaping, etc.
- 11 2. The application shall be on a form provided by the department, and shall be
12 accompanied by an as-built drawn by a land surveyor registered in the state of Alaska,
13 which shows the lot boundaries. The department may require additional information to
14 support the application.
- 15 3. Within 30 days of receipt of all requested information and upon an adequate showing that
16 the requirements stated in subsection C.1. above are met, the director shall issue or deny
17 a certificate for the lot. The director may impose such conditions on the certificate as he
18 or she determines appropriate to protect the general welfare. A copy of the required as-
19 built shall be attached to the certificate.
- 20 4. Once registered, the lot shall enjoy all the protections and privileges afforded to a
21 nonconforming lot under the provisions of this chapter.
- 22 5. Any aggrieved person may appeal the grant or denial of a certificate to the zoning board
23 of examiners and appeals within 30 days of the director's determination.
- 24 6. Nothing in this section shall preclude relief for nonconforming lots by means of a
25 variance.
- 26 7. Nothing in this section shall exempt any lots from the provisions of subsection B. above.
- 27 8. The department shall publish the registration of a nonconforming lot including the street
28 address and legal description of the property in a newspaper of general circulation in the
29 municipality within seven days of the issuance of the certificate.

30 **21.12.060 CHARACTERISTICS OF USE**

31 **A. Developments Are Conforming**

- 32 1. Development that was legally established before **effective date** [DATE OF PASSAGE]
33 that does not comply with the district-specific standards of chapter 21.04, the use-specific
34 standards of chapter 21.05, or the design and development standards of chapter 21.07
35 (except for section 21.07.020B., *Stream, Water Body, and Wetland Protection*) shall be
36 considered conforming on **effective date** [DATE OF PASSAGE], and subject to this
37 section. ~~Development that does not conform to section 21.07.020B., *Stream, Water*~~
38 ~~*Body, and Wetland Protection, shall be considered nonconforming.*~~
- 39 2. No change shall be made to any development unless the change is in the direction of
40 conformity to the requirements of this title.

41 **B. Parking Out of Compliance**

42 Notwithstanding section C. below, if changes to a use or development increase the minimum
43 number of required parking spaces, the number of spaces related to the increase shall be
44 provided. For example, if a use or development that is required to have 30 spaces only has 20

1 spaces, and changes to the use or development allowed through this title create a total minimum
2 requirement of 35 spaces, the use or development shall, at a minimum, provide the additional 5
3 spaces. The addition of more spaces may be negotiated through the process outlined in section
4 C. below.

5 **C. Bringing Characteristics into Compliance**

6 **1. Applicability**

7 This section 21.12.060 applies to all multi-family, commercial, mixed-use,
8 public/institutional, and industrial development projects that:

- 9 **a.** Do not comply with the district-specific standards of chapter 21.04, the use-
10 specific standards of chapter 21.05, or the design and development standards of
11 chapter 21.07 (except for section 21.07.020B., *Stream, Water Body, and Wetland*
12 *Protection*);
- 13 **b.** Involve a development project costing more than ~~2-5~~ 15 percent of the assessed
14 value of the structure (or, if no structure over 150 square feet exists, the
15 assessed value of the land); and
- 16 **c.** Require a permit through title 21 and/or title 23.

17 **2. Standard**

- 18 **a.** An applicant for a building or land use permit for a multi-family, commercial,
19 mixed-use, or industrial development that meets the applicability thresholds of
20 section C.1. above, shall be required to spend 10 percent of the total project
21 costs on bringing the development towards compliance with the district-specific
22 standards of chapter 21.04, the use-specific standards of chapter 21.05, and/or
23 the design and development standards of chapter 21.07 (hereafter called
24 “characteristics”).
- 25 **b.** If the applicant can bring the development into full compliance with title 21 for
26 less than 10 percent of the total project costs, then no additional monies need be
27 spent. The municipality shall not require more than 10 percent, but the applicant
28 may choose to spend more.
- 29 **c.** If the applicant chooses to spend more than 15 percent, the amount in excess of
30 15 percent may be credited, as outlined in the user’s guide, towards future
31 improvements under this section.
- 32 **d.** The director, in consultation with the applicant, shall determine which
33 characteristics shall be addressed, within the expenditure requirements noted
34 herein. The director and the applicant shall consider how to maximize the public
35 benefit and minimize the economic impact to the property owner. The director
36 shall not require compliance with a standard that would create non-compliance
37 with a different standard (i.e., the director shall not require the addition of
38 landscaping that would cause the development to fall under the minimum
39 required number of parking spaces).
- 40 **e.** The applicant may appeal the director’s decision to the [Zoning Board of](#)
41 [Examiners and Appeals \[URBAN DESIGN COMMISSION\]](#), which shall hold a
42 non-public hearing on the appeal.
- 43 **f.** For the purposes of this section, “total project costs” shall be determined by the
44 building official pursuant to municipal code, and shall be exclusive of all costs of
45 improvements that move the development in the direction of conformity to the
46 requirements of this title. [The portion of the total project costs that are related to](#)

1 increases in conformity shall be credited toward the percentages required in
2 subsections C.2.a. and C.5.

3 **3. Insignificant Change**

4 If the director and the applicant concur that 10 percent of project costs is not enough
5 money to result in a significant change to any characteristic, the applicant shall place the
6 required 10 percent of project costs as outlined in subsection C[B].4. below.

7 **4. No Applicable Characteristics**

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

16 **5. Large Commercial Establishment**

17 If the development project is a Large Commercial Establishment, as defined in section
18 21.07.120, then the applicant shall spend an additional 10 percent of the total project
19 costs on bringing the structure into compliance with the design standards of section
20 21.07.120. If the structure already complies with section 21.07.120, then this subsection
21 C.5. shall not apply.

22 **6. Timing of Work**

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

26 **7. Existing Buildings**

27 Existing Buildings which are constructed over a lot line on abutting lots shall be deemed
28 to be existing on a commercial tract. Such development and associated structures may
29 be enlarged so long as they comply with other applicable provisions of this code.
30

31 **21.12.070 NONCONFORMING SIGNS**

32 **A. Effective Date**

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

34 **B. Amortization Provisions**

35 **1. Legal Nonconforming Permanent Signs**

36 Any permanent freestanding or building sign lawfully built prior to the adoption of this title
37 that does not comply with the maximum height, maximum area, or the number of signs
38 permitted as set forth in this title shall be considered a legal nonconforming sign.

39 **2. Amortization of Permanent Signs**

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

43 **3. Amortization of Illuminated Signs**

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

1 **4. Amortization of Animated Signs**

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

5 **C. Termination**

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

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

28 **D. Maintenance of Nonconforming Signs**

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

32 **E. Reconstruction of Damaged Sign**

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

40 **F. Historic Signs**

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

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

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

- 9 1. The value of the sign at the time of construction and the length of time the sign has been
10 in place;
- 11 2. The life expectancy of the original investment in the sign and its salvage value, if any;
- 12 3. The amount of depreciation and/or amortization of the sign already claimed for tax or
13 accounting purposes;
- 14 4. The length of the current tenant lease or expected occupancy compared to the date the
15 sign is to be brought into compliance;
- 16 5. The extent to which the sign is not in compliance with the requirements of this chapter;
17 and
- 18 6. The degree to which the board determines that the sign is consistent with the purposes of
19 this chapter.

20
21