

Planning Department Response and Action to Public Comments Received on Public Review Draft #1 of Title 21 Rewrite  
Chapter 21.01

Section	Page/Line Number	Commenter	Comment	Department Response	Department Action
21.01.030	6-15	Anchorage Citizens Coalition	Add goals that underpin Anchorage 2020's vision to link land use and transportation decisions: K. Encouraging land and transportation development patterns that promote public health and safety, especially through safe walking and transit alternatives that reduce reliance on the automobile. L. Promoting compact land development in targeted locations that will build Anchorage's urban form "up, not out".	It is appropriate for the title 21 purposes to include statements concerning the relationship between land use and transportation. However, proposed item "L" is not a purpose of title 21; the land use code facilitates development, but it is the comprehensive plan that sets the policy of promoting compact land development and building "up, not out".	Item K, slightly modified, was added.
21.01.040B	7-8	DOT/PF	The application of governmental units exceeds the application of private landowner or big box developers. Non governmental owners are only encouraged to meet the provisions of this title. This application is in violation of AS 35.30.20. Text should be modified to equally apply the requirements to public and private entities.	Subsection A states that the title applies to ALL development, unless an exemption is provided by the terms of the title. Subsection B is there to clarify that other governmental units are ALSO subject to these provisions, unless exempted by other laws. The provisions apply equally to public and private entities.	
21.01.040B	7-8	UAA	State agencies have mandates from the legislature to use public funds to build specific facilities. Many of the provisions in the draft rewrite of title 21 amount to unfunded mandates without increasing functionality of public-funded facilities. Within the UA statewide system, discretionary building construction (such as the Public Policy Building) could shift to other campuses if title 21 adds substantially to the cost of developing in Anchorage. Suggested alternatives: 1) modify title 21 to make compliance a goal, but not mandatory for publicly funded facilities; 2) UAA may need to increase use of the AS 35.30.030 waiver; 3) revise state law to exempt public facilities from municipal planning and zoning ordinances.	State and Federal government facilities make up part of the fabric of the municipality, and thus the citizens of the municipality have an interest in these facilities along with private development, as expressed through the community-developed comprehensive plans adopted by the municipality. Title 21 is one of the ways that the comprehensive plans are implemented.  The Department and UAA have discussed using the Institutional Master Planning process to allow the University to develop its own design standards.	
21.01.050C.1	8-3	Home Builders Assoc.	Due to relocation of waterways, by either natural or human efforts, riparian rights may be difficult to establish. Suggest this be reworded to remove or discourage use of waterways as zoning boundaries.		"Waterway" removed from subsection 1.
21.01.050C.5	8-19	Home Builders Assoc.	Add wording indicating that split zoned lots are not encouraged and are, therefore, incompatible with the intent of comprehensive plan.		The department agrees, but inadvertently did not add language in the rezoning section of 21.03 to prohibit split-lot zoning. We will add the language in the next draft.

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21.01.050C.6	8-22	Home Builders Assoc.	Note #5—If a structure, or use of structure or land is found to be incompatible due to Municipal action or error then a certificate of nonconforming rights should be issued by the Department upon discovery. If the structure, or use of land or structure were due to the actions of the applicant/owner (to file or follow through on an application for rezoning) then the applicant/owner should be responsible for obtaining the certificate of nonconforming rights or subsequent rezoning.	Any error of the type described in C.6. would be the fault of the municipality.	
21.01.060	8-28	Carol Jensen	Instead of creating conflicts with other ordinances, write title 21 to be compatible with all other ordinances. Eliminate all conflicts and keep the original ordinances intact and empowered. Paragraph C contradicts itself. It states more restrictive standards in the new title 21 will govern, but the next sentence says “Nothing in this title shall modify or repeal any private covenant or deed restriction, but such covenants shall not excuse failure to comply with this title”. Grandfather rights, especially regarding existing covenants, easements, and agreements need to be maintained and unchallenged.	Ideally there should be no conflicts between municipal ordinances. This provision recognizes the possibility of human error.  Private covenants and deed restrictions are contracts between private entities, and are not enforced by the municipality. This statement clarifies that municipal law takes precedence over private contracts.	
21.01.060A	8-29	DOT/PF	This section stipulates the most restrictive provisions for land use will prevail whether they are municipal, state, or federal. Projects developed with federal aid highway funds have their own set of restrictions. These changes could cause the state and municipality to lose federal funding. Text needs to acknowledge the 1986 agreement ADOT&PF and MOA have regarding project development and identify other opportunities to coordinate MOA reviews with the project development steps publicly funded projects must already follow.	Please give us an example of how a provision of local law could cause the loss of federal funding.	
21.01.060A	8-29	Ted Stevens Anchorage International Airport	Our previous comment was that state DOT projects, including those at the airport, adhere to federal standards. This section was not changed from the original Module 1, chapter 1 language. The MOA needs to acknowledge that the funding source for a project, if federally funded, governs the design standard.	Please give us examples of how local design standards conflict with the parameters of federal funding.	
21.01.060B	8-37	Rabbit Creek Community Council	Title 21 shall govern when provisions of T-21 are more or less restrictive than 2020! Disagree. 2020 should govern. Needs to be re-written.	Anchorage 2020 and the other comprehensive plan elements are policy documents that lay out the vision for the municipality. Title 21 is an implementation tool that is much more specific. Ideally, there should be no conflicts between the comprehensive plan(s) and title 21, but if there are, the more specific document must govern.	

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21.01.060B	8-37	Home Builders Assoc.	<p>This section needs to reflect the Comprehensive Plan as the controlling document. In <i>Lazy Mountain Land Club v. Matanuska-Susitna Borough Board of Adjustment and Appeal</i>, 904 P 2d 373, the Supreme Court of Alaska stated that "Adoption of a comprehensive plan must precede enactment of zoning regulations". In their conclusion the court held: "We conclude that the language of AS 29.40.040 requiring that zoning regulations be enacted "in accordance with" or "in order to implement" the comprehensive plan, requires the Borough's zoning regulations must be consistent with a validly enacted plan."</p> <p>The parent document should never be usurped by any subsequent document. In <i>South Anchorage Coalition, Inc. v. Coffey</i>, 862 P.2d 168, 174, the court stated that "many of the evils in zoning practice can be ameliorated by judicial insistence upon the zoning board's compliance with the statutory requirement that any changes in the zoning ordinance be made "in accordance with a comprehensive plan."</p> <p>There is little value given to the public process when others can, in a relatively short period of time and with minimal public interest or notice, in effect rewrite any portion of the Comprehensive Plan to suit their needs or desires. <i>American Law of Zoning</i> 5.02, at 263 (2nd 3d. 1976) states: "The notion that zoning regulations should be imposed only in accordance with a comprehensive plan is founded on the basic premise that zoning is a means rather than an end. The legitimate function of a zoning regulation is to implement a plan for the future development of the community."</p>	Ideally, there should be no conflicts between title 21 and the comprehensive plan.	Language is added in chapter 21.03 that requires any rezoning that doesn't adhere to the comprehensive plan to be accompanied by a comprehensive plan amendment, in order to keep the comprehensive plan consistent with zoning.
21.01.070B	9-14	Rabbit Creek Community Council	A negative judgment should invalidate all similar cases. City should not be able to keep enforcing provisions that have been struck down by the courts. But civil law would rule in this case anyway.	Striking down the application of a provision is not the same thing as striking down the provision itself, unless specifically included in that judgment.	
21.01.080B	9-34	Rabbit Creek Community Council; Mid-Hillside Community Council; Home Builders Assoc.	The table does not list the Hillside Wastewater Management Plan.	An oversight.	The Hillside Wastewater Management Plan has been added to the table of Comprehensive Plan Elements.
21.01.080B	9-34	Home Builders Assoc.	Table does not reflect the "Tudor Road Public Lands and Institutions Plan" of April 1986 (AR 86-162).	This plan is the third plan listed in the Anchorage Bowl section (and the last element listed on page 9).	

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21.01.080B	10	Home Builders Assoc.	“Chugiak-Eagle River Long Range Transportation Plan”, AO 2003-128, September 2003, was omitted.	It was included as an earlier version, the 1996 version.	The table has been modified to show the original adoption date and all subsequent amendments/revisions.
21.01.080B	10	Home Builders Assoc.	“2001 Anchorage Bowl Long-Range Transportation Plan” has been omitted. The “Areawide Trails Plan” has been moved to be under Transportation.	It was included as an earlier version, the 1997 version.	The table has been modified to show the original adoption date and all subsequent amendments/revisions.
21.01.080B	10	Home Builders Assoc.	The “Rabbit Creek Greenbelt Plan” has been omitted.	This plan is the next to last plan listed in the table, on page 10.	
21.01.080B	10	DOT/PF, TSAIA	Table cites an old LRTP; change to 2003 LRTP.		The table has been modified to show the 2005 LRTP.
21.01.090D.1.a	12-7	Rabbit Creek Community Council	Is 6 months too long of a time frame? Does it allow developers to not comply with any new codes within those 6 months? If so, there needs to be a middle ground because often developers file a poorly designed plat application in order to avoid anticipated code changes. Review footnote #10. Does this mean there is automatic approval if the MOA does not deal with the application within 6 months? If so, this should not be allowed. MOA should not accept plats that cannot be dealt with in a timely manner.	This section applies to those applications that were submitted but not acted upon before the adoption of the new code. Nothing in this draft states what happens if staff fails to meet the deadline. It is likely that there will be a significant number of applications filed in the weeks/months before the adoption of the new code and thus the Department recommends extending this time period.	The time period is increased to 12 months.
21.01.090D.1.a	12-7	Home Builders Assoc.	Suggest a period of 18 months. This is the time frame for most actions by boards and commissions.		The time period is increased to 12 months.
21.01.090D.1.b	12-16	Anchorage School District	If a master plan has been approved prior to effective date of new T21, do new provisions affect individual phases designed after effective date? For example, high schools have multi-phase, multi-year projects. Most have approved master plans going back to 1999 or 2000.	If a master plan has been approved under the current title, even if the approval is for work that has not yet begun, the approval is still valid.	
21.01.090D.2.b	12-35	Associated General Contractors	Since site development is limited to the months in which the ground is thawed, an inequity is created whenever a stipulated timeframe is not in annual increments. For example, with an 18 month time limit, a project approved in April would have two full “thawed ground” seasons in which to begin work but one approved in November would only have one full such season available. Suggest the limit be set at three years for the reasons stated in AGC’s 9-3-03 letter.		The time period is increased to 24 months.