Exhibit N
of
PZC Case 2011-104 Issue Response

Issue-Response Memoranda - Compilation

Note: The memoranda in this exhibit were provided as a series to the Commission between April 19 and June 19, 2012. They are resubmitted as a compilation for easier reference.

The memoranda provide the Department's responses and recommendations for issues raised by the public about the provisionally adopted Title 21 and the Administration's proposed amendments. The public raised these issues at the Commission's public hearings in March 2012 and in written comments received.

Issue-Response Memoranda

PZC Case 2011-104

Provisionally Adopted Title 21 Rewrite
Chapters 1, 2, 3, 4, 5, 6, 7, 8, 12, 13, draft Chapter 14, and Proposed Amendments

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

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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Table of Contents:

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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): (1) DSR (2) 35% Design (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 (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 (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 (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.]

Municipality of Anchorage

Community Development Department
Planning Division

MEMORANDUM

Date: May 4, 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 Chapter 8

Following is the second installment of 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 public hearings.

This memorandum covers issues and comments pertaining to chapter 8, Subdivision Standards, of the provisionally adopted draft title 21. A previous memorandum dated April 19 covered chapters 1-3. Subsequent memoranda will cover remaining chapters. All memoranda and exhibits are posted on the title 21 rewrite web page as they are completed.

The issue-responses 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 Exhibit D, which the Commission received with the April 19 issue-response memorandum:

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

Any substantive recommended amendments to Chapter 8 must also be reviewed by the Platting Board. AMC 21.10.020 (A) (4) regarding the powers and duties of the Platting Board states:

> "Review and make recommendations to the assembly regarding, all proposed amendments to chapters 21.75 through 21.87 and all proposed regulations to implement, interpret or make specific chapters 21.75 through 21.87. The assembly shall not adopt such an amendment or regulation until it has been reviewed by the platting board."

Please also note that section 21.08.060, Subdivision Agreements, was adopted by the Assembly on December 11, 2006 and is currently in effect. Any substantive recommended amendments to this section would require re-advertisement and a new public hearing by the Planning and Zoning Commission, since the public hearings held in March 2012 were only on the provisionally adopted chapters.

Table of Contents:

Chapter 21.08, Subdivision Standards

A. Deleting Urban Standards for Dedicated Public Streets, Sidewalks, and Walkways

► Sections 21.08.030F, 21.08.040A, and 21.080.040C of Provisionally Adopted Title 21

Issue: Shall Anchorage continue its existing dedication requirements or should the dedications section allow private streets, exempt all cul de sacs from any walkway dedication, and replace walkway standards of title 21 with a discretionary, case-by-case review decision process?

Public comment: Most future subdivision development will occur not in urban areas but rather in non-urban parts of Hillside and in Chugiak-Eagle River. However, unfortunately the draft code requires subdivision development standards that reflect Anchorage Bowl urban style residential development. Therefore, amend the dedications section to allow private streets, require no sidewalks in any cul-de-sac, and allow the platting authority to determine when and where walkways need to be incorporated in a subdivision. (Dan Coffey page 213 in Exhibit D)

Response: The Department disagrees. First, the subdivisions chapter makes a distinction between Class A (more urban) and Class B (more rural) street and walkway improvements. For example, see table 21.08-2 in section 21.08.040B (page 422) of the provisionally adopted Title 21.

Second, despite the claims by the commenter, most future housing development and subdivisions will in fact continue to occur in the more urbanized areas. Within Chugiak-Eagle River, the majority of future housing capacity lies within the urbanizing portions of Eagle River, the Powder Reserve, and the Eklutna 770 tract. Eklutna, Inc. has indicated its intent to develop its lands in these areas efficiently, at urban densities, in a phased development that expands with urban infrastructure and services.

The dedications provisions are longstanding in existing title 21 and should continue to apply in the Anchorage Bowl. Subdivision capacity still exists in the urbanized parts of Anchorage. The Bowl will continue to see new short plats and subdivisions as it enters its second century of development. These new infill subdivisions and redevelopments should be consistent with the surrounding urban context.

All public streets need to be dedicated and constructed to Municipal standards. Private streets should not be permitted in the development of new subdivisions. Standardization of the public transportation system is essential for a growing metropolitan city such as Anchorage.

Private streets are not maintained by the Municipality. Frequently homebuyers do not realize the Municipality will not maintain the private roads in their subdivision. This is borne out by the number of calls received from homeowners asking why the Municipality is not plowing snow and providing maintenance for deteriorating roads along their private roads.

Public streets constructed to municipal standards provides for uniformity in the snow plowing and maintenance operations. The snow plowing and road maintenance is not uniform along streets within Limited Road Service Areas (LRSA). LRSAs range in size and not all LRSAs have sufficient membership to provide the funds for adequate snow removal and road maintenance.

Dedication and construction of roads to municipal standards is also a public life safety issue. Substandard roads can delay response time in the event of an emergency. In responding to an emergency, it is essential that roads are constructed to a grade and standard that can support emergency response equipment and to ensure that the equipment can reach the location of the emergency. It has occurred that a fire truck has been bogged down to its axels in mud attempting to reach the location of the emergency.

In the past, subdivisions were recorded with no requirement to improve subdivision roads. Many of these roads, especially in the Hillside area remain unimproved to this day. The result is that there are many substandard roads and major drainage problems on the Hillside. Roads are iced over making winter driving treacherous. Ice dams impede the flow of drainage and results in drainage being re-routed onto private property which can adversely impact on-site septic systems.

It is unclear why Mr. Coffey is focusing on cul-de-sacs in this section. The dedications section does not address or determine what are the walkway requirements for different kinds of streets. His proposal would roll back even current standards for urban areas. The issue of walkways in cul-de-sacs will be addressed in the issue-response for Chapter 21.07. Likewise, Mr. Coffey's proposal to allow the platting authority to determine when and where walkways need to be incorporated into a subdivision would roll back current title 21, render the pedestrian facility requirements in chapter 7 pointless, and conflict with the Comprehensive Plan. It would also thwart a primary objective of the title 21 rewrite to provide clear and consistent standards for the development community: "Please tell me what the rules are."

Recommendation: No changes; forward the provisionally adopted dedications section. Continue to address pedestrian facility standards for streets and cul-de-sacs in chapter 7 section 21.07.060.

B. Deleting Vehicular Right-of-way Dedications for Accessing Chugach State Park, Community Use Areas, and Natural Resource Use Areas

► Section 21.08.040D.1., page 418 of Provisionally Adopted Title 21

Issue: Should dedication of a vehicular right-of-way be required for public access to trails and access points identified in an adopted plan, or should the public compensate for the dedication?

Public comment: Requiring a road versus just a trail dedication puts a more substantial burden on homeowners who live in the subdivision where the vehicular right-of-way is required. It diminishes their property value and creates traffic and public parking issues. The public not the private property owners should pay the price for such access, otherwise it is a taking of property without compensation. (Dan Coffey page 214 of Exhibit D)

Response: Dedication of street (and trails) rights-of-way for a public purpose is a standard, lawful, and appropriate type of subdivision requirement. Street dedications commonly implement public priorities and needs established in the Comprehensive Plan including its various plan elements. Overall connectivity is a major theme of Anchorage 2020. Subdivision regulations achieve public benefit objectives such as a well-connected city street network for pedestrian access, more distributed traffic flow, or faster emergency service responses. Either case could be argued to increase vehicle traffic into a neighborhood, or potentially affect property value (arguable either way – but not proven). How from the standpoint of takings law is a required dedication of a road right-of-way to a designated park access area different from other required kinds of street right-of-way connections? The city has an obligation to support the public's interest to maintain or enhance public access to its parks and trails.

The purpose of the local subdivision regulations is typical in that it establishes that, "The subdivision should provide safe, efficient, and convenient movement to points of destination or collection." If subdivision regulations cannot require dedication of public streets, how do they achieve their basic purpose? Public access is implemented in part via dedications in subdivision regulations.

Vehicular access to parks or major trailheads designated in a city's adopted comprehensive plan must occur at the time of subdivision, especially of large properties. Otherwise, subdivision will create a lotting pattern that for all practical purposes makes it impossible to make way for vehicular access later. It would effectively thwart the comprehensive plan. The history in Anchorage has been that it is difficult obtain funds to retrofit access points to parks or trailheads after new subdivisions are constructed.

Recommendation: No changes; forward the provisionally adopted section regarding dedicated vehicular access to park access points such as in Chugach State Park designated by adopted plan.

C. Warranties for Subdivision Agreements

► Section 21.08.060H, page 436 of Provisionally Adopted Title 21

Issue: Shall deficiencies in public infrastructure found by MOA inspectors only after the initial inspection be the sole cause for delaying commencement of the warranty?

Public comment: Once a public infrastructure is completed, inspected, and any deficiencies corrected, the project goes on warranty. But there appears to be practice by the MOA of repeatedly finding deficiencies and delaying the commencement of the warranty. Delaying commencement of the warranty allows for continued inspection fees and leaves maintenance costs to the developer. Amend this section so that the warranty period begins after correction of deficiencies noted in the initial inspection. Deficiencies found after initial inspection should not be cause for delaying commencement of the warranty. New language is proposed. (Dan Coffey pages 215-217 of Exhibit D)

Response: Section 21.08.060, Subdivision Agreements, was adopted by the Assembly in 2006, implemented (effective) June 12, 2007, and is currently in effect.[1] Any substantive amendments to this section that the Planning and Zoning Commission would recommend would require re-advertisement and a new public hearing by the Planning and Zoning Commission, since the public hearings held in March 2012 were only on the provisionally adopted chapters.

Also, AO 2012-7(S) is currently before the Assembly for action on July 10, 2012 which provides for changes to the enacted Section 21.08.060H. Some of the changes in AO 2012-7(S) address some of the concerns raised in the public comment, others address other public concerns.

Department staff evaluation finds no objection to Mr. Coffey's proposed clarifications in subsections 1 and 2 and substantive amendments to subsection 3. The changes to subsection 3 would establish that the warranty period begins after correction of deficiencies identified in the initial inspection.

The commenter's new subsection 4, which establishes that new deficiencies found in subsequent inspections after the initial inspection shall not delay the start of the warranty period, is also acceptable, with an important exception. An exception must be made in the case of new deficiencies resulting from the subdivider's activities correcting a deficiency identified in the initial inspection. The warranty period should not begin until such a deficiency is corrected.

AO 2012-7(S) recommends further changes to section 21.08.060. If the Planning and Zoning Commission does recommend amendments to the section addressing the public comments by Mr.

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[1] AMC: "**Editor's note: AMC Section 21.08.060 is effective June 12, 2007 and published below, but the cross-references to other sections are modified pending the conclusion of the Title 21 rewrite of the remainder of Chapter 21.08.*

The remainder of Chapter 21.08 is effective at a future unspecified date when the Assembly adopts and repeals other chapters at the conclusion of the rewrite of Title 21 as stated in AO 2006-172, §§ 3 and 5, 4-10-2007. The chapter will be published when it becomes effective." (Ref: AO 2007-82 / AM 370-2007)

Coffey, then those should be proposed in a composite with the changes already reviewed by the Platting Board and now before Assembly in AO 2012-7(S).

Recommendation: If it is the decision of the Planning and Zoning Commission to recommend changes to Section 21.08.060H. for a public hearing, then the Department offers the following language for consideration, to address the public concerns as well as other public concerns being addressed in AO 2012-7(S),. It is a composite of all suggested changes to the section currently in effect.

H. Release of Guarantee of Improvements

1. Inspection will be made by the municipality prior to acceptance of the improvements for warranty. The municipality shall have 14 days to complete the inspection and provide a list of deficiencies, except that the building official[MUNICIPAL ENGINEER] may extend the 14 day period for unusual circumstances such as extreme weather. The 14 day period shall begin on the day the municipality receives written notice from the subdivider that the subdivider's own[HIS OR HER] comprehensive inspection has confirmed that construction of all required improvements is complete, all applicable subdivision agreement requirements are fulfilled, and the project is ready for municipal inspection.

2. After the initial municipal inspected provided for in subsection H.1. has been completed, and[WHEN] all listed deficiencies noted in the initial municipal inspection and provided in writing to the subdivider have been corrected, the subdivider shall notify the municipality in writing and the municipality shall perform a final inspection of the listed deficiencies within 7 days of receiving the notification, except that the municipal engineer may extent the 7 day period for unusual circumstances such as extreme weather.

3. If the final inspection reveals uncorrected listed deficiencies identified in the initial inspection that were provided to the subdivider in writing prior to the final inspection, this procedure shall be repeated until all deficiencies noted in the initial inspection have been corrected. The warranty period shall begin after all the deficiencies in the initial inspection have been corrected.

4. Excepting any new deficiency or deficiencies resulting from the subdivider's activities correcting the deficiency or deficiencies identified above, any new deficiencies that were not discovered and identified in writing and delivered to the subdivider during the initial inspection, but are found in the final or any continuing inspection shall be noted and corrected by the subdivider during the warranty period. However, these deficiencies shall not delay the commencement of the warranty period.

5. In addition to correcting deficiencies in the work, and prior to being placed on warranty, the subdivider shall also submit:

   a. A complete record of engineer's daily inspection reports
   b. Copies of test results
   c. Reproducible mylar record drawings of the facilities constructed
   d. Acceptance letters from electric and telephone utilities that all lots have service available

e. As applicable, acceptance letters from gas, water, and wastewater utilities that all lots have service available
f. Certificate of Monumentation
g. Certificate of Compliance that all suppliers and subcontractors have been paid
h. Payment in full for municipal billings associated with the subdivision agreement
i. A deposit as required by AMC 24.20.040.D to cover administrative and inspection costs during the warranty period

6. When all deficiencies in the work have been corrected and all items listed in paragraph 3. have been submitted, reviewed, and accepted, the project shall be eligible to be placed on warranty.

7[5]. The municipality shall release the obligation for performance guarantees upon the acceptance of the improvements for warranty, together with the posting of adequate security for warranty.

8[6]. The municipality may refuse to release the obligation for any particular public improvement if the subdivider or contractor is in present or imminent default in whole or in part on the completion of any public improvement or warranty covered by the subdivision agreement.

Municipality of Anchorage

Community Development Department
Planning Division

MEMORANDUM

Date: May 11, 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 Chapter 4

This memorandum provides responses and recommendations as to issues raised by the public about the provisionally adopted **Chapter 21.04, Zoning Districts**. These issues were raised at the March 12 and 19, 2012 public hearings and in written public comments on Case 2011-104.

Previous memoranda dated April 19 and May 4 covered title 21 chapters 1-3 and 8. Subsequent memoranda will cover remaining chapters and issues. All memoranda and exhibits are being posted on the title 21 rewrite project web page as they are completed. The URL is below.

Some of the comments regarding the zoning districts have been previously reviewed and addressed by the Department and the Administration. The responses to such issues in this memorandum refer to the relevant pages of the following Exhibits:

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; and

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 (already provided to PZC on April 19).

These were provided with the April 19 issue-response memorandum and are available at http://www.muni.org/Departments/OCPD/Planning/Projects/t21/Pages/Title21Rewrite.aspx .

The issue-responses in this memorandum also reference the following:

- Provisionally Adopted Title 21 with Technical Edits, dated 12-12-2011
- Consolidated Table of Proposed Amendments, dated 3-12-2012
- The applicable public comments in **Exhibit D**, Comments Received for PZC Case 2011-104, (which was provided along with Exhibits A – C on April 19)

Economic Impacts Analysis and Anchorage Bowl Land Use Plan Map

Some of the issues pertaining to chapters 4 – 7 and 12 relate to potential economic impacts of the provisionally adopted title 21. Commissioners have requested economic impact analysis documents to support its deliberations on matters related to zoning districts and allowed uses.

PZC has also discussed the conceptually approved draft Anchorage Bowl Land Use Plan Map, which is a technical reference to help evaluate where in general the new districts may apply. Commissioners have requested documentation of an implementation strategy for new districts.

The exhibits below respond to these issues and supplement this memo. **Most of the information below was already provided or presented in some form to PZC.** The material below is primarily an update, elaboration, and/or re-submittal of previous information, to use for reference from the issue-response memos.

Exhibit D-1 Comment Received for PZC Case 2011-104
(which due to an error was left out of Exhibit D provided to PZC on April 19)

Exhibit E. Title 21 Economic Impact Analysis - Overview Update (Forthcoming in week of 5/14. This will update previous information, with background materials.)

Exhibit E-1. Title 21 Economic Impact Analysis Executive Summary and Addendum (2008)

Exhibit E-2. Title 21 Economic Impact Analysis Draft Report (2008)

Exhibit E-3. Municipal Assessor opinion: "Possible Property Value Impacts of Mixed-use Districts" (Letter dated May 9, 2012)

Exhibit F. Anchorage Bowl Land Use Plan Map – with updated overview memorandum (Forthcoming in week of 5/14. This will be an update of previous information.)

Exhibit G. Anchorage Commercial Land Assessment (2012)

Exhibit H. Anchorage Housing Market Analysis (2011)

Exhibit I. Anchorage Industrial Land Assessment (2009)

Exhibit J. Municipal Department of Law opinion: "Title 21 – Down Zoning and Takings Analysis – Overview of Alaska Jurisprudence" (Dept. of Law Matter No. 05-0117, May 27, 2005)

Exhibit K. Comparison of Director Review and Approval Authority

Chapter 21.04 Issue-Response Table of Contents:

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4-1. Deleting the R-2F Residential District

► Section 21.04.020F., Page 107 of Provisionally Adopted Title 21

Issue: Is the provisionally adopted new R-2F district necessary—what value does it add?

Public comments: Everything that can be built in the proposed R-2F district can be built in the existing R-2D and R-2M districts. R-2D already allows one- and two-dwelling structures, and R-2M allows three- and four-unit structures. Delete R-2F as it is unnecessary. (Dan Coffey)

All existing districts should remain and no new districts created. (Don Dwiggins)

Response: The Department disagrees with the proposed deletion of the R-2F residential district. This district came as a result of public comments, was included in two rounds of public review drafts, and lastly was provisionally adopted by the Assembly.

The commenter made this proposal last year to the Administration, claiming R-2F is mixed-use, when in fact R-2F is a residential district that allows low-density multifamily in small buildings up to four dwellings in size. Page 25 of **Exhibit A** documents the Department's August 2011 policy review of this issue for the Mayor. **Exhibit B** documents the Administration's decision to move forward with the provisionally adopted R-2F District.

The reprised proposal to delete R-2F starts out by again associating R-2F with the wrong districts ("Residential Mixed-use"), however its primary argument now is that R-2F falls in between the existing R-2D and R-2M in terms of density and allowed uses, so it must be redundant. But with such reasoning, why even have an R-2M district? Everything allowed in the R-2M, from a house up to an 8-plex, can be built between its neighbors, the R-2D and R-3. For that matter, everything can be built using just two zones, R-1 and R-4. Would that simplify title 21?

Anchorage has a progression of residential districts that, for the most part, incrementally steps up building bulk and housing density from one zone to the next. This provides for development compatible with each neighborhood, thereby implementing the Comprehensive Plan.

However, currently, allowed density jumps from a two-family dwelling in the R-2D zone to an eight-dwelling structure allowed in the R-2M. Residents in some R-2M zoned neighborhoods, where the predominant housing is single- and two-dwellings with some 3- and 4- plexes scattered in, raised concerns that their neighborhoods could redevelop with significantly larger buildings and higher densities, inconsistent with the area. MOA agreed there should be a district to allow certain outlying multifamily areas to continue to have more than a duplex but to avoid 8-plexes. The R-2F provides that incremental step that is missing today.

Furthermore, this provides a less controversial rezoning option for achieving multi-dwelling housing opportunities at 8-12 dwellings per acre near designated transit and employment, and a transition between lower and higher density uses.

Recommendation: Forward the provisionally adopted R-2F for adoption.

4-2. R-3 Multi-family District – Allowing Single-family Houses Anywhere

- ► Sections 21.04.020H., 21.05.010E (Table of Allowed Uses), and 21.06.020A (Table of Dimensional Standards) of the Provisionally Adopted Title 21
- ► Proposed Amendments 21, 31, and 49 in Consolidated Table

Issue: Should single-family be permitted or prohibited in the R-3 Multifamily District?

Public comments: We should be restrained in allowing SF homes in R-3 zones. The challenge posed for Anchorage's future is that of providing more dwellings than current zoning would accommodate. Multifamily lands need to be preserved. Instead of allowing single-family homes in R-3, some R-3 areas should be allowed to rezone to lower intensity use where indicated in an adopted land use plan. (Anchorage Citizens Coalition)

Beware of amendments allowing single-family homes in R-3. Preserve multifamily land to meet housing needs, and follow the Comprehensive Plan. (Adopt Title 21 Coalition; Joan Diamond)

Allowing single-family homes in R-3 districts would make sense in certain areas of the city. But it would not make sense to grant the whole city this flexibility given the projected future need/demand for R-3 housing in Anchorage. (Airport Heights Community Council)

Either allow SF to be built in the R-3 district, or, at a minimum allow it in some R-3 districts as supported by staff. Beware of this second solution. The revitalization of Mt. View and other older districts is dependent upon continued replacement of older and dilapidated 4- and 6-plexes, but existing multiplexes cannot be replaced with the same densities. (Dan Coffey)

There are a variety of project examples Outside have a mixture of single-family and multifamily homes in one development site. The provisionally adopted code would not allow either that or small-lot (cottage) homes. It rules out design alternatives that can achieve our objectives. This should be reconsidered. (Tim Potter March 19 testimony)

Response: Continuing to allow single-family houses in R-3 zoned areas conflicts with the Comprehensive Plan and perpetuates the inability to meet Anchorage's forecasted housing needs. However, compact housing projects with 15 or more dwellings per acre incorporating small-lot single-family housing or a mix of housing types could be appropriate, as provided below.

First, there is simply not enough land zoned for multifamily housing in Anchorage. Vacant land capacity in multifamily zoning districts is less than half the forecasted demand for townhouse and multifamily dwellings[1]. Given today's low vacancy rate for rental housing in Anchorage, efficient use of multifamily zones is essential to meet future housing need.

[1] Source of housing capacity estimates in this issue-response is Exhibit H: Anchorage Housing Market Analysis.

While there is also a shortage of land for single family housing, much of that can be accommodated in Chugiak-Eagle River and elsewhere. In contrast, most of the multifamily housing demand will need to be accommodated in the Bowl, where the anticipated market demand and urban infrastructure are located.

Therefore, more efficient use of multifamily zoned lands in the Bowl for compact housing is essential and the best hope to alleviate the housing shortage. For example, capacity in the R-3 district vacant lands could be increased from the estimated 2,700 additional units to more than 4,000 units IF future developed densities in R-3 were to increase from its historical average of 18 DUA (e.g., 3 units on a 7,000 sf lot) to 28 DUA. While that would be a reach, at the very least R-3 density should not decrease. The Comprehensive Plan recommends multifamily properties develop at a minimum density, and directs that, "Implementation will require amendment of multifamily zoning district regulations to eliminate low-density housing."

The provisionally adopted title 21 with the Mayor's proposed amendments takes a small step towards meeting this policy, by removing the low-density single-family housing option from much of the R-3 medium density multifamily district. It still allows two-family and townhouse dwellings in all of R-3. Also, existing single-family homes are protected because the title 21 rewrite exempts houses from most nonconformity provisions, allowing them to continue to exist in the R-3 in perpetuity.

The Mayor's proposed amendments allow single-family attached and detached dwellings in areas of R-3 that are designated for lower density in the city's future Land Use Plan Map. This provides for areas like Mountain View and eastern Fairview. The Mayor proposed no further changes, to avoid underutilizing R-3 where it is designated for medium density housing.

Several public comments on this case indicate there is interest in allowing innovative forms of compact, efficient single-family housing, such "small-lot" housing (also referred to as cottage housing) or projects containing a mix of housing types. Small-lot housing on individual lots small enough to yield at least 15 DUA would be an efficient use of R-3 lands. In fact, the Comprehensive Plan supports "Small-Lot Housing" as an efficient use of multifamily residential lands. However, to be consistent with the R-3 district intent (and housing need), this housing form would need to yield at least three dwelling units on a typical 7,000 sf lot (i.e., more than 15 DUA). Short of this, re-introducing single-family houses in the R-3 District will conflict with the Comprehensive Plan, and further exasperate options in addressing the housing shortage.

Recommendation: Forward the provisionally adopted title 21 with the Mayor's amendments as to single-family in the R-3 District. Add an exception to allow single-family homes in compact developments that yield a minimum net density of 15 DUA (dwelling units per acre), thereby achieving the intent of the R-3 district and the Comprehensive Plan.

(Note: The chapter 6 issue-response memorandum elaborates on the small-lot housing strategy.)

4-3. Deleting the R-4A District and Commercializing the R-4

► Sections 21.04.020I. and 21.05.010J. of Provisionally Adopted Title 21

Issue: Is the provisionally adopted new R-4A district necessary, or, alternatively, should commercial mixed-use be allowed in the existing R-4?

Public comments: Delete the new R-4A zone as it is unnecessary. Instead, impose all or some of the provisionally adopted standards from the R-4A district in the existing R-4 zone. Existing zones allow for the same level of development as R-4A, and the R-4 district can be modified to accommodate commercial mixed-use without having to go through a rezoning. (Dan Coffey)

All existing districts should remain and no new districts created. (Don Dwiggins)

Response: The Department disagrees with the proposed deletion of the R-4A district and insertion of R-4A district standards allowing half-commercial development into the existing R-4.

The commenter made this proposal last year to delete the R-4A residential mixed-use district and insert dramatically more commercial use into the existing R-4 residential multifamily district. The Administration reviewed and rejected this proposal, and Exhibit B documents the Mayor's decision to move forward with the provisionally adopted R-4 and R-4A districts.

Page 28 of **Exhibit A** provides a full analysis of why Anchorage needs to retain the existing R-4 multifamily residential district for primarily residential use. Important reasons to avoid changing the R-4 into a mixed-use district allowing half-commercial projects include:

- It would conflict with the Comprehensive Plan on multiple counts.
- It would enable converting dwellings and residentially zoned property to commercial use throughout the R-4 district.
- It would diminish new housing availability by allowing competing non-residential uses on already scarce residential lands.
- It would worsen imbalances between employment in Downtown and Midtown and the supply of housing nearby, because the majority of R-4 is found in these areas.
- It would introduce substantial commercial uses and traffic encroaching into existing residential neighborhoods.

The supply of R-4 zoned land is limited and inadequate to meet anticipated housing needs (see **Map 1** on page 29 of Exhibit A). Anchorage needs to reserve its only high density residential zoning district primarily for housing, without commercial encroachment, and leave most of the existing R-4 zoned areas intact near Downtown and Midtown.

Meanwhile, R-4A is very different from R-4—in character, purpose, and intended location. **Exhibit A** (p. 29) provides a full description and policy review of the R-4A district, specifically:

- It is a higher-intensity district that allows up to half of a development to be a commercial (non-residential) use, allowing up to six times more commercial space on a site than existing R-4, up to one-third more bulk, and an exponentially wider range commercial retail use types.
- It helps Anchorage augment the existing residential land supply in the Comprehensive Plan's "redevelopment/mixed-use" policy areas near Midtown and Downtown employment centers, by encouraging mixed-use residential projects in:
  (a) underutilized commercial areas zoned RO or B-3, and
  (b) on certain large sites currently zoned residential (e.g., R-2M, R-3).
- It incentivizes redevelopment of underutilized sites into urban housing, by allowing commercial uses providing greater returns on the same site, improving financial feasibility.
- It preserves some housing capacity by requiring residential, unlike mixed-use or B-3 zones

The commenter's proposal to graft R-4A standards into R-4 fails to meet his own objective to allow mixed-use without rezonings. Most of the sites ideally suited to benefit from the new R-4A standards are located in zoning districts other than R-4—such as the R-2M, R-3, and RO. R-4A arose in part from discussions with property owners of underutilized sites in these zones.

Rezonings will occur as property owners review the advantages of the new district for their development needs. Additionally, the implementation strategy is for MOA to facilitate and incentivize zonings to R-4A where consistent with the Comprehensive Plan, such as through rezoning fee waivers, administrative assistance, and expedited reviews.

Gaining entitlement to R-4A district status will then allow the property owner to obtain administrative review and approval of innovative mixed-use residential projects, not possible in any existing title 21 zone (See "**Country Lane**" example project on pages 29-30 of **Exhibit A**).

Recommendation: Implement the provisionally adopted R-4A residential mixed-use district as a new zoning option for property owners to choose at appropriate locations.

Keep the existing R-4 district intact as a residential district. Use it efficiently for multifamily housing opportunities, and avoid commercializing it by inserting more commercial use.

4-4. Retaining the D-2, D-3, B-1B, and B-4 Districts

Issue: Which existing districts if any should be retired and/or replaced, and which to retain?

Public comment: To the extent possible, retain all existing zoning districts, rather than deleting and replacing them with new ones. The new mixed-use districts would require a significant number of rezonings throughout the municipality. This would be very disruptive to business and to existing developments in Anchorage. (Dan Coffey)

All existing districts should remain and no new districts created. (Don Dwiggins)

Response: The department disagrees with this proposal to reverse the progress to update the zoning ordinance. The title 21 rewrite does retain most of the existing zoning districts in the Bowl, including the R-1 and B-3 districts. The title 21 rewrite creates new zoning districts for the choice of property owners, but does not require rezonings from the retained districts.

The rewrite retires four antiquated and rarely used districts: the D-2, D-3, B-4, and B-1B. The Department sponsored rezoning of 13 properties affected by the retirement of these four districts will be done at no cost to the property owners. The impacts by district are as follows:

1. The D-3 residential district is not in use. Its development standards are nearly identical to the R-3 district, except allowing more institutional-type uses and a few other non-residential uses. The D-3 was intended to be applied to substantial tracts of undeveloped land planned for eventual residential use. There are no such tracts of land left in the Anchorage Bowl.

2. The D-2 residential district has similarly redundant relationship to the R-2M district, and is found on only three lots. Two of the lots are Penland Mobile Home Park and the third is an abutting vacant lot fronting on DeBarr Road. The proposed districts for these properties are R-2M and R-3. This change will not affect the status of the mobile home park conditional use.

3. The B-4 is a "rural business district" and is found only on the Totem Theaters and adjacent McDonalds lot along Muldoon Road. The area is no longer rural and should be included in the sponsored rezone to any one of a number of appropriate commercial or mixed-use districts.

4. There are only eight (8) lots zoned B-1B, out of more than 67,000 lots in Anchorage. Its restrictive development regulations coupled with a lack of standards necessary to foster walkable, cohesive neighborhood centers render B-1B neither favorable as a rezoning option for property owners nor able implement the neighborhood centers called for in the Comprehensive Plan. As a result, it has not been a part of *any* of the five public review draft rounds of the title 21 rewrite.

The provisionally adopted districts including the Neighborhood Mixed-use District sufficiently address the community's current needs and objectives. As one of the three mixed-use districts, the NMU District creates a mixed-use center that facilitates more efficient use of land, more activities that can coexist in close proximity, and stronger interconnections. In comparison to the B-1B, it:

- Provides more flexible provisions for lot dimensions, landscaping, and parking;
- Enables more compact, intensive reuse, infill, or redevelopment of properties;
- Allows a third commercial story (allows building heights up to 45 - 50 feet);
- Incentivizes mixed-use projects (mixed-use is optional not mandatory); and
- Incorporates height transitions and buffering for surrounding neighborhood protection and compatibility (and public acceptance for infill).

To facilitate the retirement of these four zoning districts, the Department has contacted the property owners to initiate a rezoning of the 13 properties to appropriate districts more advantageous to the development needs of the property owners as well as the relationship of the

property to the surrounding neighborhood. The Department initially sent notices to the property owners, has spoken with those who have responded with questions, and will follow up with each individual owner as title 21 moves toward final adoption and implementation.

Recommendation: Carry through with the retiring the D-2, D-3, B-4, and B-1B districts. Facilitate rezonings of the 13 properties to more advantageous districts for the development needs of the individual properties, at no cost to the property owners.

4-5. Deleting the Mixed-use Districts

- ► Section 21.04.050A, B, and C, Page 116 (lines 42 – 45) through page 119 (lines 1 – 36) of Provisionally Adopted Title 21
- ► Proposed Amendment #24 in Consolidated Table

Issue: Should Anchorage adopt the new mixed-use districts?

Public comment: The commenter proposes to delete all of the new mixed-use zoning districts from the provisionally adopted Title 21. The commenter claims that new districts would require substantial rezonings which would be disruptive to business and new development. The commenter contends that the provisionally adopted code would allow mixed-use projects only if property owners rezone to mixed-use. Finally, the commenter also states that "staff has proposed" the mixed-use districts, which implies that these districts are not a community product nor have they progressed very far in community approvals. (Dan Coffey, pages 152-155)

Response: The three mixed-use districts are essential zoning districts to facilitate the development of regional, town, and neighborhood centers as identified in the *Anchorage 2020 – Anchorage Bowl Comprehensive Plan*. These districts have been at the center of the new zoning ordinance since its first draft in 2004, and have evolved through extensive discussion by a wide range of stakeholders over the subsequent drafts of the code rewrite. The mixed-use districts implement mixed-use centers at three different geographic scales in these Comprehensive Plan policy areas. These range from "major employment centers" that are the most intensely developed areas of the Municipality with the highest concentrations of office employment, down to the neighborhood scale focal points for community retail and services.

Three mixed-use zones differentiate the mixed-use centers by scale and function just as Anchorage's residential zones today differentiate the residential neighborhoods, allowing a scale and function appropriate to each part of town. The general location of the mixed-use centers compared to current zoning is shown on **Map 2, page 33-34 of Exhibit A**.

The mixed-use districts will help create cohesive centers which accommodate a variety of uses (e.g., commercial, institutional, parks, and residential) within a compact, defined area that is characterized by more efficient use of land, stronger connections between uses, and an enhanced pedestrian-oriented environment. It achieves this, in part, by applying standards such as the following on a district-wide basis:

- Locating buildings and their primary entrances closer to the street and sidewalks;
- Locating parking lots to the side or behind buildings rather than between the front of the building and the street;
- Providing incentives to encourage enhanced pedestrian connections, residential development, and other features of benefit to the public; and
- Reduced minimum parking requirements.

Mixed-use districts allow most of the same land uses that are also permitted in the B-3 general commercial district, minus some highly auto-dependent land uses that do not fit into a compact pedestrian-oriented commercial area. For example, self-storage facilities and aircraft, marine and vessel sales aren't allowed in the mixed-use zones but are permitted in the B-3 zoning district.

One common misunderstanding about mixed-use districts is that they would require residential and commercial uses on the same lot or the same building. Although this type of development is encouraged in the mixed-use districts through incentives to the property owner, this is not required in these districts. The term "mixed-use" is really referring to a mix of complementary uses located within a compact and walkable district. This district-wide form cannot be achieved in the B-3, as explained in issue-response 4-6 below.

Also, despite some claims, property owners that choose to remain zoned B-3 will continue to be allowed to develop mixed-use projects without having to rezone, although rezoning to a mixed-use district would be an advantageous choice for compact site plans and help build a mixed-use center.

Despite some claims, the evidence indicates changes in zoning to mixed-use districts will have a neutral impact on property values—ie., no loss in value—as compared to current B-3 zoning. **Exhibit E-1** summarizes the land valuation comparison of the Title 21 Economic Impact Analysis. The full analysis is in **Exhibit E-2** (pp 8-34). The Municipal Assessor corroborates with these findings in **Exhibit E-3**, anticipating little effect on price or value from the zoning changes.

Another misconception about the mixed-use districts is that there would be extensive mandatory rezonings to convert existing zones, particularly B-3, to the new mixed-use zones. However, it would be highly unlikely for the Municipality to initiate an areawide rezoning for areas generally identified as mixed-use centers in the Comprehensive Plan, without more specific direction through a district or neighborhood plan.

The preferred zoning implementation strategy, brought forward by the Administration and Department on page 6 of Exhibit B, is once the mixed-use zoning districts are in the zoning code, property owners could evaluate if a mixed-use district would be beneficial to his or her property

and pursue that option. Rezonings will occur as property owners review the advantages of the new district for their development needs.

Additionally, the implementation strategy is for MOA to facilitate and incentivize zonings to mixed-use where consistent with the Comprehensive Plan, such as through rezoning fee waivers, administrative assistance, and expedited reviews of rezoning fees). These eliminate cost barriers against property owners to rezone. The Municipality could also explore ways to further facilitate rezonings to implement an area-specific district or neighborhood plan.

For Midtown, the Administration has brought forward proposed amendments such that Midtown property owners will have the option of remaining with existing B-3 zoning or may choose to rezone to the RMU (Regional Mixed-use) District.

However, the Mayor rejected the commenter's proposal to delete the mixed use districts. The current zones no longer meet Anchorage's needs as it moves into growth by infill/redevelopment: more efficient use of land, wise use of the urban infrastructure, strong pedestrian connections, and district function and scale appropriate to each part of town. The commenter's proposal would be a major step backwards and effectively cut ties that the provisionally adopted Title 21 has with implementing the policies of the Comprehensive Plan for future growth.

For additional discussion about the need to retain the mixed-use districts within the provisionally adopted Title 21, reference **Exhibit A, pages 31-34**.

Recommendation: Forward the three mixed-use districts for adoption. The Department and Administration have recommended the following amendments and clarifications:

- Delete the MT-1 and MT-2 Midtown district placeholders.
- Implement the provisionally adopted NMU, CMU, and RMU mixed-use districts as a new zoning option for property owners to choose to do when it meets their development needs, and facilitate rezonings to mixed-use through fee waivers, administrative assistance, and expedited review procedures, thereby eliminating barriers to rezoning for property owners.
- Amend the provisionally adopted B-3 district to reaffirm that B-3 is intended to stay and remain available to commercial property owners, including in central Midtown.
- Amend the RMU district to clarify it will be available as an option for Midtown B-3 property owners who want to rezone to a mixed-use district.

4-6. Applying Mixed-use District Development Standards in the B-3 District

Issue: Can mixed-use standards be applied to existing zoning districts, such as the B-3 district, rather than create new mixed-use zoning districts, to implement the mixed-use concept?

Public comment: A commenter proposes that rather than create new zoning districts, existing zones can be revised to allow mixed-use development. Many of the new standards set out in the proposed new mixed-use zoning districts could be required for mixed-use projects in existing zones. This methodology results in mixed-use development being something that a property owner can choose to do without needing to rezone. It also allows mixed-use development when the city is ready for it, not when the code mandates that it occur. (Dan Coffey, pages 152-155)

Response: The commenter's proposal reflects a misunderstanding of what mixed-use districts implement. Mixed-use is not a site specific goal. The main focus is not for individual properties to achieve mixed-use (e.g., residential/commercial). Mixed-use projects are not mandated, and most individual developments within mixed-use centers are not likely to be mixed-use projects.

The purpose of mixed-use districts is to create a cohesive district that accommodates a variety of uses compatibly within a defined geographic area. Mixed-use district standards apply to all uses in order to facilitate compact site development regardless of use type; allow more uses to coexist in close proximity; and, require convenient pedestrian connections to allow walking and transit to be more practical. The district's physical urban form, not mixed-use buildings, promotes its character and function.

The illustration below (from Anchorage 2020) shows the concept for a mixed-use center. Not one individual building in the illustration is shown as mixed-use. However, the sum of the whole creates a cohesive district in which a variety of compatible uses interact with one another.

Mixed-use Center Concept (Comprehensive Plan)

The success of both the mixed-use center and its individual component developments in the illustration does however depend on a consistent set of development regulations—the same standards that apply to all uses. For example, most of the buildings and active uses are set closer to streets and sidewalks. Parking lots are located beside or behind each building.

The commenter's proposed grafting of the mixed-use district development standards onto individual mixed-use projects in the B-3 district would fail to implement or achieve mixed-use centers. It would result in a patchwork development pattern where mixed-use projects might occur rather than a cohesive district. Mixed use standards work best when applied uniformly to a zoning district or to a discrete area of development.

The commenter's proposal would also create disincentives for potential mixed-use projects in the current B-3 district. More development standards would be applied to only mixed-use projects than for adjacent single-use projects which utilize B-3 district standards.

The commenter's proposal would also be administratively difficult to implement since a B-3 zoning district, for example, would have two possible sets of development standards. Many sites are developed or improved, or buildings are constructed, "on spec" rather than with a specific tenant or use in hand. In addition, some buildings could include "flex space", which is constructed to accommodate either residential or commercial, depending on changes in the market.

Recommendation: The Department recommends keeping the three mixed-use districts in the provisionally-adopted Title 21 as an essential tool in implementing the comprehensive plan.

4-7. Eliminating the Option for Enhanced Sidewalks in Mixed-use Districts

- ► Section 21.04.050G.5., Page 121, Line 13 of Provisionally Adopted Title 21
- ► Proposed Amendment R10 in Consolidated Table

Issue: Shall mixed-use development standards require six foot wide sidewalks and suburban style arterial landscaping, or, alternatively, shall the standards instead offer and incentivize an option for main street style enhanced sidewalk environments for the property owner to choose?

Public comment: Proposed Amendment R10 expands the draft code regulations substantially, and should be rejected. In the provisionally adopted draft code, the sidewalk width is set at six feet in the mixed-use developments. In the Proposed Amendment, the width is set at 12 feet and divided into three zones, which is like zoning sidewalks. (Dan Coffey, page 274 of Exhibit D)

Response: The department disagrees with the public comment. It misunderstands and mischaracterizes Amendment R10.

In fact, Amendment R10 replaces a rigid requirement for a wider sidewalk (six feet) in mixed-use areas with an option that is incentivized for the property owner to choose to do. Proposed Amendment R10 actually saves space (increasing development potential), and provides the

owner some mutual benefits with the public from the enhanced sidewalk "main street" environment it creates.

Amendment R10 effectively reduces the minimum required sidewalk width in mixed-use districts from six feet down to five feet. It does so by deleting the six foot requirement so that the minimum width defaults back down to the five feet that applies in the rest of the code.

The Amendment further creates a new option for the property owner. The developer may (ie., choose to) provide an enhanced sidewalk with "main street" style amenities in lieu of required site perimeter landscaping. The option combines the regular sidewalk (five feet) with required site perimeter landscaping (typically eight feet) to create an enhanced main street style sidewalk environment (twelve feet total).

Furthermore, subject to approval of the municipal engineer the enhanced sidewalk may be placed wholly or in part within a right-of-way. In other words, the area of the ROW that is used for landscaping and walkways may be counted toward the enhanced sidewalk environment.

The dimensions and required streetscape features of the alternative sidewalk environment adapt traditional downtown main street sidewalk design principles to Anchorage's suburban arterials. These sidewalk elements are common to commercial main streets, downtowns, and mixed-use places around the country. Parts of 4th and 5th Avenues in Downtown Anchorage are familiar examples and a local precedent. Like other main streets, these Downtown Anchorage sidewalks provide a relatively wide pedestrian movement zone (middle), flanked by a "furniture" zone and a "storefront" zone. The furniture zone buffers the pedestrian from moving vehicle traffic in the street, and provides a place to locate objects such as street trees, utility boxes, light poles, street signs, and other landscaping. The storefront zone of the sidewalk, also referred to as a "building interface zone", provides a paved space along the margins of the building that buffers pedestrians from doors swinging open. It also provides window shopping space and space to stop along the street-facing façade of the building along the street.

Amendment R10 increases the flexibility of zoning code to allow developments to create a "main street" style commercial sidewalk environment, with street trees and extra sidewalk width, in lieu of suburban style arterial landscaping buffers. This is more consistent with the intended street character of the mixed-use districts. While not required, it would be available as a choice, subject to administrative review by municipal engineers.

Recommendation: Forward Amendment R10 for adoption.

4-8. Transition (T or TR) District and Airport Zoning

- ► Section 21.04.050A., Page 122, Line 13 of Provisionally Adopted Title 21
- ► Proposed Amendment 30 in Consolidated Table

Issue: Until such time as when an Airport-specific zoning district is finalized, how shall the Municipality address airport zoning in the interim? Should the existing title 21 Transition (T) district provisions be added back as the "TR" district, or, alternatively, should the Airport temporarily remain under current title 21 land use regulations including the existing T district?

Public comments: Ted Stevens Anchorage International Airport (TSAIA) states that Proposed Amendment 30 adding back the existing Title 21 Transition district provisions would be problematic. It would mislead the public and divert attention from completing a long-term Airport District. Both TSAIA and MOA recognized early on during the title 21 rewrite process that the existing title 21 zones do not appropriately address TSAIA's unique situation. TSAIA and MOA have invested lots of time and resources to begin developing an Airport District (AD) to reflect TSAIA's unique characteristics, which include FAA grant assurance requirements and impositions about land use. Completion of the AD is the long term solution to this issue, and it is necessary to press on with finalizing a new AD district. If title 21 rewrite is adopted before an AD can be completed, then TSAIA lands should be temporarily excluded from the rewrite and remain under the terms of the existing title 21 until such time as an AD is incorporated into the new title 21. The title 21 rewrite placeholder for the AD district (page 122 of the provisionally adopted title 21) should also include explanatory intent language indicating TSAIA's unique situation, and the mutual intent to complete the AD district. (SOA Ted Stevens Anchorage International Airport)

Turnagain Community Council supports deleting the AD district from the rewrite, and opposes the language in Proposed Amendment 30 for a TR district. Provide the public with a redline comparison between the proposed TR language and the existing T district, and the rationale for any differences. Re-insert current title 21 T district language in 21.40.240.D.3 and 21.40.240.E.1. regarding conditional uses. (Turnagain Community Council)

Dan Coffey states there is no need for local zoning regulations on lands in TSAIA boundaries, that TSAIA has a master plan that is subject to public review. He asserts that staff wants to regulate TSAIA, but has not been able to reach any agreements with TSAIA on this, and that MOA proposals were probably beyond MOA authority to regulate a state airport. (Dan Coffey)

Response: Currently TSAIA is covered by three different zoning districts within its borders: PLI (public lands and institutions), I-1 (light industrial), and T (transition).

Through the rewrite project, MOA was working to assist the airports by creating a single zoning district tailored for airport management and development, instead of the patchwork of unrelated districts that creates different rules in different places for the same use. MOA and TSAIA disengaged from the airport district rewrite process in the past few years to focus on preparation of the West Anchorage District Plan (WADP). Both parties intend to return to discussions on how

the airport should be zoned and what regulations should apply, but that will occur at a later date beyond the immediate review schedule for the overall title 21 rewrite.

The bottom line is that when the title 21 rewrite is adopted, there will not yet be an airport district in place. Therefore, the existing districts at the airport need to be maintained in code. The MOA needs to either complete the proposed Airport district as part of the title 21 rewrite, or maintain the current T district that exists on airport lands until such time as an Airport district is implemented.

Removing local zoning altogether, as suggested by Mr. Coffey, would be against the interests and responsibilities of the home rule Municipality, and would conflict with the Comprehensive Plan. As a basic matter, all parts of the Municipality are zoned, including areas managed and master-planned by State or Federal entities, such as Chugach State Park, JBER, BLM lands, the Anchorage Coastal Wildlife Refuge, UAA, and State airports. Zoning also gives public notice as to land status, and a process for changing the land use designation, were that to occur. In addition, having a district at the Airport allows the local community to address compatibility between non-operational areas of an entity and the surrounding parts of the community. The MOA has a history of legal opinions stating MOA regulatory controls over Airport land. Although TSAIA has a master plan that is subject to public comment, TSAIA is not obligated to obtain formal MOA approvals or change their master plan. The WADP is predicated on future adoption of an airport zoning district. To simply disregard one would be contrary to the Comprehensive Plan and the specific policies in the forthcoming WADP.

Amendment 30 was originally proposed because the existing zoning district must remain in code until there are appropriate districts to replace all existing Transition (T) zones. It altered the existing T district with changes in language and formatting to fit into the rewrite, and renamed the district "TR" in keeping with the rewrite two-letter abbreviation system. However, public comments reject the TR district language as confusing and misleading about the intent. Both TSAIA and the adjacent Turnagain neighborhood prefer keeping the existing T zone language, at least until there is agreement on how the airport should be zoned and what regulations should apply.

A temporary resolution would be to apply what may be referred to as the "donut hole" strategy, whereby the area within the TSAIA boundaries would be excluded from the Title 21 rewrite, and would remain under the existing Title 21 code until such time as a new Airport District is incorporated into the new Title 21. Title 21 rewrite project is already using this strategy for Downtown Anchorage, whereby MOA will adopt the title 21 rewrite for most of the Anchorage Bowl, however continue to apply pre-existing title 21 land use regulations in the central business district until completion of regulations tailored to Downtown, based on the Downtown Comprehensive Plan (2007). The same could be done for the Airport until completion of appropriate airport zoning pursuant to the WADP.

Recommendation: Do not forward Amendment 30, but rather temporarily exclude the area within the TSAIA property boundaries from the Title 21 rewrite. The title 21 adopting ordinance would state that TSAIA lands (in addition to Downtown) remain under the pre-existing Title 21 code until such time as a new Airport District is incorporated into the new Title 21.

Municipality of Anchorage

Community Development Department
Planning Division

MEMORANDUM

Date: June 4, 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 5 and 6

This memorandum provides responses and recommendations as to issues raised by the public about the provisionally adopted **Chapters 21.05 and 21.06,** addressing Use Regulations and Dimensional Standards. These issues were raised at the March 12 and 19, 2012 public hearings and in written public comments on Case 2011-104.

Previous memoranda covered title 21 chapters 1-4 and 8. Subsequent memoranda will cover remaining chapters and issues. All memoranda and exhibits are being posted on the title 21 rewrite project web page as they are completed. The URL is below.

Some of the comments regarding the use regulations and dimensional standards have been previously reviewed and addressed by the Department and the Administration. The responses to such issues in this memorandum refer to the relevant pages of the following Exhibits:

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; and

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.

The issue-responses in this memorandum also reference the following:

- Provisionally Adopted Title 21 with Technical Edits, dated 12-12-2011
- Consolidated Table of Proposed Amendments, dated 3-12-2012
- The applicable public comments in **Exhibit D**, Comments Received for PZC Case 2011-104 (references to public comments use the page number(s) the comment appears in Exhibit D)
- **Exhibits E – I**, which cover: economic impacts analyses, the Anchorage Bowl land use plan map, and recent land supply studies for residential, commercial, and industrial use categories.

Exhibits A through K were provided with previous issue-response memoranda and are available at http://www.muni.org/Departments/OCPD/Planning/Projects/t21/Pages/Title21Rewrite.aspx .

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Chapter 5 Issues

5-1. Rearranging and Merging Use Types / Replacing the Use Table

► **Section 21.05.010 (Table 21.05-2, Table of Allowed Uses)**

Issue: Should the provisionally adopted use categories and use table be substantially changed?

Public comments: The commenter proposes a new table of allowed land uses, to replace the provisionally adopted use table. It would reduce the number of use categories by half, and change which kinds of uses would be allowed in each zoning district. He implies that the number of uses in the title 21 rewrite is substantially greater than in current code; appears to take issue with having all of the use types specifically defined; and contends that the rewrite "substantially changes the way in which 'uses' and 'changes in use' are regulated" and that it is not clear about what happens if there is a change of use. (Dan Coffey, pages 158-167)

Response: The Department does not agree with the proposed changes, or the comment's portrayal of the current or provisionally adopted use categories.

The provisionally adopted title 21 streamlines, organizes, and clarifies the use types. It achieves one of the community's primary objectives for the rewrite—to provide clearer, more consistent use regulations and reviews, in response to complaints about the current code. Here are the facts:

- The current code has approximately 350 different uses. These uses are not organized in any way and only about 35 of them are defined. They are listed in various places: some are among the general terms and definitions in the glossary; others are in the parking requirements; and many more are listed in each zoning district under "permitted", "accessory", "conditional", and "prohibited". They are redundant (for example, there is "photographic services", "photography studios", "photography studios, art studios", and "photography, dance, music and art studios and supplies") and have to be relisted under each district in which they are allowed. Current code is frequently unclear about which land use regulations should apply to a proposed establishment, so land use determinations (researching which use regulations should apply to a proposed business) consume a lot of administrative and applicant time.

- The provisionally adopted code has 156 uses, and defines each use. Similar uses have been combined into one use (for example, "attorney offices", "attorneys and legal services", "business and professional offices and services", "employment agencies", engineering, surveying, and architectural services", "headquarters/administrative offices of charitable and similar quasi-public organizations of a noncommercial nature", "insurance offices", "insurance services", "office uses", "private employment agencies, placement services, and temporary personnel services", "real estate offices", "real estate services and appraisers", "stock and bond brokerage services", "travel agencies and ticket brokers", and the like have been combined into one use: "Office, business or professional"). Each use type has a definition, and the same set of defined use types is used consistently throughout the new title 21.

- The title 21 rewrite groups various kinds of establishments together into a Use Type because they have similar impacts on their neighbors and require similar development standards, while defining uses separately where substantially different land use-specific regulations apply. For example, the minimum parking requirements in section 21.07.090 match the provisionally adopted use types. By contrast, the commenter's proposed changes would combine uses that have greatly different parking needs. This would disrupt the one-to-one correlation between the defined uses and important use-specific standards. It would put administrative staff and applicants back into the situation of not have a consistent set of use definitions to guide which parking requirement might to apply when somebody needs a permit. One reviewer may see a proposed establishment as home furnishings retail, while another may see it as a furniture store which has significantly different parking requirements. There has been agreement that where the land use regulations differ significantly between activities, uses should be defined separately. This reduces subjectivity and yields more consistent, timely reviews.
- The rewrite has five general use classes: Residential, Public/Institutional, Commercial, Industrial, and Accessory. Each of these classes has differing numbers of Use Categories, which exist only to group types of uses together to make them easier to find. Within the use categories, the use types are listed alphabetically. This layering of categories actually helps keep code short because some provisions in the code apply to all use types in a category. For example, the private open space section exempts all uses the transportation facility, vehicles and equipment, warehouse and storage, and waste and salvage use categories, among others.
- Despite the commenter's claims, the title 21 rewrite carries forward current practice of how proposed uses are reviewed. It regulates "changes of use" (changes in occupancy from one use type to another) in the same way as under current code. Municipal land use permit reviewers today receive most every kind of proposed building or occupancy permit. They determine what (if any) title 21 review process may be needed in each case. Any proposal that changes which title 21 standards would apply (e.g., different parking requirements) is processed as a change of use. The problem with current code is that it does not set transparent ground rules for what constitutes a "change of use" for a development review. This leads to inconsistent interpretations and processes. The rewrite depends on the same "change of use" trigger as today, but it clarifies the review procedures, what constitutes a "change of use", and the use types—so that administration will be easier and more transparent. If a use determination does become necessary, the applicant can appeal staff's decision to ZBEA.

After eight years of development, the provisionally adopted code consolidates various uses into a reasonable and defined list. The Department, the public, the development community, the Planning and Zoning Commission, the Title 21 Assembly committee, and the full Assembly have all reviewed the use types and organizational structure over many years, and all seemed satisfied with the provisionally adopted draft. Issues that have arisen over those years have been addressed.

Various people can have differing opinions on what the organizational structure should be. However, the use types and organizational structure have remained relatively consistent through the five drafts over the years since draft #1. To change the system now, without compelling reasons, impacts provisions throughout the chapters and invites unforeseen future complications. With such a brief review time, the ramifications of such significant changes are unknown.

The commenter's proposed use table would also require changes to the use definitions and use-specific standards, and would change what uses are allowed in which districts. The Department, along with the public, the Planning and Zoning Commission, and the Title 21 Assembly Committee, reviewed the use tables very carefully to make sure that appropriate uses are allowed in appropriate districts, with the specific intention of limiting the number of nonconforming uses created. The commenter's changes do not appear to be carefully thought through. Several problematic examples include:

- Deleting the use "Incinerator and thermal desorption unit" from the PLI district. Hospitals are the most common facilities to have incinerators, and most of our city's hospitals are located in the PLI district. They would be made nonconforming.
- Combining uses such that "vehicle repair" would now be considered "general retail". The use "general retail" is intended to be a bookstore, a drug store, a clothing store, and the like. Vehicle repair shops have nothing in common with book stores. They have different parking requirements and different development standards, and are not always appropriate to be located in the same district.

Recommendation: Do not support the commenter's proposed new table or a reorganization of use types. Forward the provisionally adopted use classifications and table of allowed uses.

5-2. Unlimited Commercial Uses in the I-1 Industrial District

► **Section 21.05.010 (Table 21.05-2, Table of Allowed Uses)**

► **Proposed Amendments 28, R11, 32, 37, 39, and 40 in Consolidated Table**

Issue: Should there be no limitation on commercial uses allowed in the I-1 District?

Public comments: One commenter recommended removing all limits on business uses in the I-1 district (Dwiggins, page 87) and a proposed revised table 21.05-2 is provided which shows many commercial uses allowed in the I-1 zoning district (Coffey, pages 162-163).

However, comments received from four community councils, Anchorage Citizen's Coalition, and a number of citizens oppose the amendments proposed by the Administration to allow a wide range of commercial uses in the I-1 zoning district (Rogers Park Community Council, Rabbit Creek Community Council, Mid-Hillside Community Council, Airport Heights Community Council, Anchorage Citizens Coalition, Slatter, Eurich, Diamond). Reasons for public opposition include:

- Policies #21 and #26 of *Anchorage 2020* which call for preservation of industrial reserves and which direct new commercial development to Major Employment Centers, Redevelopment/Mixed-Use Areas, town centers, and neighborhood commercial centers.

- Allowing certain commercial uses such as offices and grocery stores to locate in industrial zones results in further sprawl, traffic congestion ad vehicle conflicts, and incompatibilities with neighboring properties.
- The provisionally adopted title 21 already allows a limited number of commercial uses to occur within the I-1 district that support or are compatible with industrial uses.
- Reexamination of the uses allowed in the I-1 district and potentially increasing the number of commercial uses in the I-1 zone should wait until evaluation of the Anchorage Commercial Land Assessment and the adoption of the Anchorage Bowl Land use Plan Map.

Response: The provisionally adopted Title 21 allows more than twenty commercial use types in the I-1 district. Chapter 21.05-2 Table of Allowed Uses identifies these uses as either permitted or allowed by conditional use. Last year a consultant recommended to the Administration that a wide range of commercial and other non-industrial uses should be allowed in the I-1 and I-2 districts as in the current Title 21. The Department disagreed with the consultant regarding more commercial uses in the industrial zones due to Comprehensive Plan (Anchorage 2020) policies and designation of industrial reserves. For example, Policy #26 of Anchorage 2020 states: "Key industrial lands, such as the Industrial Reserves designated on the Land Use Policy Map, shall be preserved for industrial purposes." The Department also indicated that commercial uses were already allowed in the I-1 district of the provisionally adopted Title 21 and that the allowed commercial uses support and/or are compatible with industrial uses such as office industrial parks, single commodity bulk retail sales, and building supply and services. Many existing industrial zoned areas could be appropriately eligible to rezonings to commercial or mixed-use districts. For further discussion of this issue and a map, reference Exhibit A, item #24, pages 40-41.

The Administration considered this issue and has proposed (through Amendments #28, R11, and #32) to amend I-1 to allow all commercial uses that are allowed in the provisionally adopted B-3 district, with two exceptions. Grocery and General Retail stores greater than 20,000 sq. ft., which would be classified as large commercial establishments, were left out of the list of commercial uses for the I-1 zoning district, since these two uses tend to create commercial centers (Refer to Exhibit B, item #24).

Recently, the Municipality received the final report for the Anchorage Commercial Land Assessment (Exhibit G). This report evaluated the buildable land supply for the Anchorage Bowl and Chugiak-Eagle River, projected the potential twenty year demand for commercial land for commercial uses (retail, office/institutional, and lodging), and estimated commercial land needs for each subdistrict of the study area. Given this analysis, the report's overall findings indicate that given the amount of land zoned for commercial use, site size considerations, assuming a continuation of historic development densities and a baseline growth projection, several subdistricts in the Anchorage Bowl will have an estimated shortage of commercial capacity over the next twenty years. Undersupply is most pronounced in the Midtown Area, but also significant in the Dimond area. The study further indicates that over one-half of the study area's commercial capacity is accounted for by land zoned for industrial uses, which is particularly the case in the Dimond area.

The commercial study recommends that consideration be given to some commercial use allowance for I-1 zoned land to meet the projected commercial demand. While an industrial lands study completed in 2009 had found a significant deficit in available industrial land supply (see Exhibit I), the commercial study recommends refinement of the industrial land study to match more recent, published projections of the Anchorage economy, and to more specifically address the character, infrastructure, and locational needs of future industrial development.

Completion of the Commercial Land Assessment responds in part to comments received from citizens, organizations, and community councils which oppose an expansion of commercial uses in the I-1 zoning district. These comments generally recommended waiting until the Commercial Land Assessment was completed and the Anchorage Bowl Land Use Plan Map is adopted before consideration is given to expanding uses in the industrial zones. The Land Use Plan Map project, expected to follow adoption of the Title 21 Rewrite, will re-designate certain industrially zoned lands for commercial development while retaining key industrial lands for future industrial use.

Recommendation: The Department supports the Administration's proposal to amend the provisionally adopted title 21 industrial zoning to allow more commercial uses in the I-1 zoning district, while remaining in conformance with the Comprehensive Plan, as follows:

- Amend I-1 to allow the additional commercial uses and accessory retail sales already proposed in the draft amendments of PZC in 2010 (as documented in Amendment R11).
- Amend I-1 to allow all commercial uses in the provisionally adopted B-3 general commercial district to be allowed in the I-1 district with two exceptions: Grocery and General Retail uses that are large commercial establishments (more than 20,000 sq. ft.).
- Move forward with the provisionally adopted I-2 industrial district (Issue 5-3 below).

5-3. Unlimited Commercial Uses in the 1-2 Heavy Industrial District

► **Section 21.05.010 (Table 21.05-2, Table of Allowed Uses)**

Issue: Should there be unlimited commercial uses in the I-2 heavy industrial district?

Public comment: One commenter has indicated that if the uses on industrially zoned land are limited, there is a significant risk that the limitation will be determined to be a "taking" under Alaska's condemnation law and that the MOA would be responsible for compensation to the property owners. The comment further recommends allowing all of the current uses in the existing Title 21 code as applied to the I-2 zone to continue. This commenter also provided a revised Table 21.05-2 which shows an extensive number of commercial and non-industrial uses to occur in the I-2 zoning district (Coffey, page 156, and pages 162-163). Another commenter recommends eliminating limits on business uses in I-2 (Dwiggins).

However, as documented in issue 5-2 above, comments received from four community councils, Anchorage Citizen's Coalition, and a number of citizens opposed the amendments proposed for public review by the Administration to allow a wide range of commercial uses in even the I-1 zoning district. For example, Rabbit Creek Community Council opposes more commercial development in industrial zones. It states the impacts of commercial uses in industrial zones is not conducive for economical management of the city, nor does it comply with Anchorage 2020's policy #26 for preservation of industrial lands. Retail sprawl impedes development of efficient transportation infrastructure. Re-examine allowable uses after completion of the Anchorage Commercial Land Study.

Cook Inlet Region, Inc. (CIRI) provided comments that it owns a parcel of land on the northwestern corner of Minnesota Drive and C Street which is currently zoned I-2. CIRI has invested millions of dollars in planning, civil engineering, traffic studies, major sewer line design and permitting, wetlands permitting, as well as placing a massive surcharged fill over the entire site. The provisionally adopted title 21 will effectively strip all of the higher valued commercial uses from the I-2 zoning district, leaving this highly visible corner as strictly "heavy industrial". This will damage CIRI financially and will impact discussions with interested commercial users. CIRI recommends that the MOA either: 1) Retain the I-2 zoning as it is currently and consider appropriate areawide zoning after the Land Use Plan Map has been adopted; or 2) Consider an overlay district for appropriate properties along the C Street extension that would retain the ability of having commercial and industrial uses.

Response: The provisionally adopted Title 21 allows more than ten commercial uses in the I-2 district, as either permitted by-right or allowed by conditional use. Last year the Mayor's consultant recommended that a wide range of commercial and other non-industrial uses should be allowed in the I-1 and I-2 districts as in the current Title 21. The Department disagreed with the consultant regarding more commercial uses in the industrial zones due to Anchorage 2020 policies and the Plan's designation of industrial reserves. For example, Policy #26 of Anchorage 2020 states: "Key industrial lands, such as the Industrial Reserves designated on the Land Use Policy Map, shall be preserved for industrial purposes." For further discussion of this issue and a map, reference Exhibit A, item #24, pages 40-41. The Department also disagreed with the consultant regarding a potential takings issue (refer to Exhibit J – May 27, 2005 Department of Law opinion).

The Administration considered the issue of commercial uses for both the I-1 and I-2 zoning districts and has proposed to move forward with the provisionally adopted I-2 industrial district without additional non-industrial uses. This is so that Anchorage retains at least one industrial reserve zone consistent with the Comprehensive Plan. Further, the Administration has stated that the issue of allowing additional non-industrial uses within the I-2 zoning district can be reexamined upon completion of the Anchorage Commercial Land Study and adoption of the Anchorage Bowl Land Use Plan Map (Refer to Exhibit B, item #24).

Recently, the Municipality received the final report for the Anchorage Commercial Land Study (Exhibit G). As discussed in issue 5-2 above, that study forecasts an estimated shortage of commercial land capacity over the next twenty years. Undersupply is most pronounced in the

Midtown Area, but also significant in the Dimond area. The study further indicates that over one-half of the study area's commercial capacity is accounted for by land zoned for industrial uses, which is particularly the case in the Dimond area.

The commercial study recommends that some commercial use allowance should be considered for the I-1 zoning district to meet the projected commercial demand. However, the study also discusses as part of its policy implications section that allowing some commercial uses in I-1 and prohibiting commercial development on I-2 properties would preserve an increased level of industrial land, while also providing for a considerable level of commercial capacity.

Another land study, the Anchorage Industrial Land Assessment (Exhibit I), completed in 2009, reported the importance of economic driver (basic) industries to Anchorage's economy, the vulnerability of industrially zoned lands to commercial development, and a deficit of developable industrial land relative to Anchorage's projected future needs. The industrial land study has been criticized, and the Commercial Land Study recommends it be refined to match more recent, published projections of the Anchorage economy, and to more specifically address the character, infrastructure, and locational needs of future industrial development. However, the industrial land study does provide a basic indication that some level of protection for appropriately located industrial zoning districts from unlimited large scale commercial is justified. Information unavailable in 2009 has also indicated that the supply of industrially zoned land not encumbered for commercial retail use is less than the industrial land study estimated. Until the reevaluation of that analysis can be completed, it would be inconsistent with the findings of both studies, as well as conflict with the Comprehensive Plan, to eliminate the I-2 as the only zoning district available to protect the remaining industrial land base.

The Planning & Zoning Commission's conceptually approved Anchorage Bowl Land Use Plan Map identifies certain industrial lands for future rezoning to commercial districts. Some of these areas are already developed with commercial uses while others are in prime locations for future commercial development. Once Title 21 is adopted, refinement and completion of the Anchorage Bowl Land Use Plan Map by the Planning & Zoning Commission, Municipal Assembly, and the general public is anticipated. This review will result in a well thought out and technically based approach to re-designating certain industrially-zoned lands for commercial development while retaining key industrial lands for future industrial use and expansion as called for in Anchorage 2020.

Recommendation: The Department supports the Administration's proposal to move forward with the provisionally adopted I-2 industrial district without an allowance of additional non-industrial uses, so that Anchorage retains at least one industrial reserve zone consistent with the Comprehensive Plan. Further, the Administration has stated that the issue of allowing additional non-industrial uses within the I-2 zoning district can be reexamined upon completion of the Anchorage Commercial Land Study and adoption of the Anchorage Bowl Land Use Plan Map.

Industrially zoned properties that have already been approved for commercial development, or are at prime locations for future commercial development, will be reviewed as part of the revisions to the Anchorage Land Use Plan Map, which is anticipated to be ready for review by the Planning and Zoning Commission within one year from adoption of the Title 21 rewrite.

5-4. Use Standards for Assisted Living, Adult and Child Care, and Hospitals

► **Sections 21.05.030B., and 21.05.040A. – F. of Provisionally Adopted Title 21**

Public comment: Use-specific standards should be eliminated or at least reworked: vegetated open space consisting of 25 percent of the property must be left un-touched in some uses; parking is not allowed in setbacks (which is another 'taking' of land); snow storage should not be required. (Don Dwiggins, page 88)

Response: The use-specific standards to require vegetated open space, snow storage areas, and parking setbacks are generally carried forward from current title 21. They were adopted by the Assembly in 2005 to resolve specific issues with child care, assisted living, and health facility type uses. For example, Child Care Centers and Adult Care Facilities with Nine or More Persons, must provide 15 percent of the lot as vegetated area, set back parking areas behind buffer landscaping strip where abutting residential properties, and provide a snow storage area equal to at least 15 percent of the total paved surface area on the site. Several of these standards also apply to Nursing Facilities and Hospital/Health Care Facilities. (See current sections 21.45.310 and 21.45.380). These standards were developed through an extensive, use-specific public process that was separate from the title 21 rewrite.

The comment does not provide a rationale for removing these standards now. The direction from the community throughout this project has been that the title 21 rewrite, already extensive in scope, should avoid revisiting recently adopted amendments to title 21 (e.g., amendments from after 2002), as a general rule. If substantive modifications become necessary, those recent issues can be re-opened and worked out in a separate process from the rewrite.

Recommendation: Forward these use-specific standards with the provisionally adopted title 21.

5-5. Government and Civic Buildings – Definition and Standards

► **Page 172, Lines 7-34 of Provisionally Adopted Title 21**

Public comment: The commenter indicates that the current Title 21 lacks clarity regarding the location of government buildings and offices, and states that policy language in Anchorage 2020 regarding government buildings being located downtown is less clear than a corresponding policy in the previous1982 Anchorage Bowl Comprehensive Development Plan. The commenter proposes language to replace Section 21.05.040C.4 of the provisionally adopted code which would loosen the requirements for locating major government offices in the downtown central business district or locating satellite government offices in centers identified in the Anchorage 2020 comprehensive plan. (Coffey, pages 160, 171-176)

Response: The three successive Anchorage Bowl Comprehensive Plans since 1976 have all stressed the importance of locating government offices downtown. The 1982 plan stated that

"the Municipality shall locate all major office functions within the downtown and shall encourage both State and Federal agencies to locate within this area, as appropriate to their functions." Policy #19 of Anchorage 2020, adopted in 2001, states: "locate municipal, state, and federal administrative offices in the Central Business District." Policy #18 of Anchorage 2020 states: "Strengthen the Central Business District's role as the regional center for commerce, services, finance, arts and culture, government offices, and medium- to high-density residential development."

It the Anchorage 2020 – Anchorage Bowl Comprehensive Plan, the strategies for implementing Policies #18 and #19 include the update to the Central Business District Plan. This was achieved with the 2007 Anchorage Downtown Comprehensive Plan, which recognizes the need for Downtown to build upon its strength as a hub of government offices and includes among its primary goals to attract government and private offices to Downtown. Another key Anchorage 2020 strategy is the Land Use Regulation Amendment which is intended to revise specific provisions of Title 21 to implement the stated policy, which in this case involves the locating of municipal, state, and federal administrative offices in the Central Business District.

To implement the Comprehensive Plan, the provisionally adopted title 21 provisions include two primary sections affecting the location of government administrative offices. The first is the public facility site selection process (21.03.140) which affects new or leased public buildings greater than 50,000 square feet of gross floor area and civic facilities designed for more than 1,500 spectators (note that the threshold for public facility site selection in the current title 21 is 4,000 square feet). The Planning and Zoning Commission reviews proposed public facilities using a set of site selection criteria which includes one which states: "major municipal, state, and federal administrative offices shall locate in the Central Business District. Satellite government offices and other civic functions are encouraged to locate in regional and town centers if practicable". The Commission's review is final unless, within 20 days of the date of service, any party of interest requests an assembly hearing in a letter sent to the director.

The second provision in the title 21 rewrite regarding government offices is in the use-specific standards for government administration and civic buildings in 21.05.040C.4. These standards indicate that construction of buildings (or additions to existing buildings) of 7,000 to 25,000 square feet requires an administrative site plan review; and construction of facilities over 25,000 square feet is subject to a major site plan review. In addition, the section indicates that the priority location for major federal, state, and municipal administrative offices and civic buildings is in the central business district. Satellite government offices and civic functions are intended to be located in other regional centers, mixed-use centers, or town centers designated in the comprehensive plan. If facilities are proposed at locations other than the centers designated in the comprehensive plan, the approval is contingent on the Planning and Zoning Commission's findings, using the site selection criteria of 21.03.140, that comprehensive plan designated centers would not be feasible or would not serve the public interest.

The intent of these regulations is to carry out the policies of the Comprehensive Plan regarding the location of government administrative offices and civic buildings. These provisions are not anticipated to hamper efforts to locate certain types of government offices outside of designated centers if the Commission finds the public interest is best served at those locations.

Recommendation: The Department recommends moving forward with the provisionally adopted language regarding the locations of government offices and other civic facilities. The provisions in 21.03.140 give the Planning and Zoning Commission clear criteria to use in evaluating and deciding on sites for proposed government administrative offices and civic buildings through the public facility site selection process. In addition, the use-specific standards in 21.05.040C.4 give the Commission to ability to review other proposed government administrative and civic buildings which are not subject to the public facility site selection process to determine if the proposed locations will serve the public interest.

5-6. Elementary and Middle Schools – Outdoor Play Area

► Section 21.05.040E.3.b.iv, Page 175, (Lines 29-43) and Page 176 (Lines 1-3) of Provisionally Adopted Title 21

Public comment: The Anchorage School District (ASD) comments that its charter schools would be forced to relocate if they were required to provide two square feet of outdoor play space for every square foot of classroom space. It states that other cities have developed similar urban schools with magnet programs that thrive on proximity to downtown assets and play space is provided at nearby facilities such as the YMCA. ASD recommends that responsibility for outdoor play space for elementary and middle schools should be relegated to those responsible for educating students under approval of the State of Alaska Department of Education, and that section 21.05.040.E.3.iv. should be deleted (Anchorage School District, page 286).

Response: Minimum requirements for outdoor play areas have been a part of the draft code since its early draft iterations. Public review and hearing drafts required all schools to abide by the Anchorage School District site development and design criteria for its public school sites. The current draft minimum requirement for outdoor play areas has been in the draft code since chapter 21.05 was provisionally adopted by the Municipal Assembly in 2008.

Similar to other site standards in the title 21 rewrite, the minimum requirement for outdoor play space for public and private schools would not be imposed retroactively on existing schools but would apply only to proposed new schools. Existing charter schools would not be forced to relocate upon adoption of the new title 21 standards. Furthermore, the Municipality can adopt standards which may be stricter than State standards, if, in this case, the Municipality places a high priority on outdoor activity, space, and exercise for children.

A provisionally adopted draft provision allows for use of parks within a quarter mile from schools to satisfy the outdoor play space requirement, although the provisions don't allow crossing an arterial street. This draft provision could be modified to allow for crossing arterial streets if such streets have signalized crosswalks that are supervised by adults during recreation periods and the schools are located in the downtown central business district.

Recommendation: The Department recommends keeping the requirement for outdoor play space as written in the provisionally adopted draft. However, the Department would support an amendment to allow the ¼ mile walking distance to include crossing arterial streets in the downtown central business district if a signalized pedestrian crossing and adult supervision are provided.

The following amended wording (underlined) could be considered for 21.05.040E.3.b.iv(2):

> "The school and park are not separated by a street of arterial classification or greater on the Official Streets and Highways Plan, except that in the Downtown area, as defined by the Anchorage Downtown Comprehensive Plan (2007) but excluding the area north of 2nd Avenue, the school and park may be separated by a street classified as an arterial if a signalized pedestrian crosswalk and adult crossing guard supervision are provided."

5-7. Fitness and Recreational Sports Centers in the I-1 District

- ► **Section 21.05.010F. (Table 21.05-2, Table of Allowed Uses)**
- ► **Proposed Amendments R11 and 32 in Consolidated Table**

Public comment: The "fitness and recreational sports center" commercial use type was overlooked in proposed amendment 32, which recommended all commercial uses to be allowed in the B-3 district to also be allowed in the I-1 district. Therefore, add this use type to the list of added uses to be changed to a "P" in the I-1 District in Table 21.05-2, Table of Allowed Uses (Bob Mintz – Carr Gottstein Properties, page 109).

Response: Amendment 32 was limited to adding B-3 commercial uses that other proposed amendments had not already previously provided for in some way in the I-1 District. Previously proposed amendment #R11 (from PZC in 2010, and which appears on page 22 of the consolidated table of proposed amendments) proposes that fitness and recreational sports centers be changed from prohibited to "C" (a conditional use) in the I-1 District.

Amendment R11 was proposed in 2010 partly because a review of the provisionally adopted table of allowed uses had identified several opportunities to increase the draft code's flexibility while staying within the policy framework of the Comprehensive Plan for preserving industrial lands for compatible uses. Warehouse and office space in the I-1 is sometimes used for a variety of instructional services, such as arts, music, and dance lesson studios, or has been converted into instructional gymnasiums or rock climbing gyms. These uses are not uncommon in I-1 districts. Most provide another market for leasable industrial space without threatening to convert the industrial area into a retail center or inject an incompatible volume of traffic.

On the other hand, a larger scale amusement or health club establishment could be incompatible with retaining the industrial land pattern or introduce intensive customer/user oriented traffic that is both incompatible with industrial users and takes away from stronger focus of major commercial

activity in Anchorage's commercial and mixed-use centers. A full sized "Alaska Club" type establishment could have a similar impact as large grocery or general retailers that the Administration's proposed amendments have sought to limit in the I-1. The recommendation by Amendment R11, to allow amusement, instructional, and fitness uses through a conditional use review rather than permitting them by-right would be appropriate in such cases.

However, smaller establishments such as the commenter's example, "Southside Fitness", could fit into a mixed industrial-commercial or warehouse environment. In the latter case, a "P" permitted designation in the I-1, as suggested by the commenter, would be more consistent with the Administration's proposed amendment 32 which allows other commercial uses into I-1 by-right.

The Anchorage Commercial Land Study (Exhibit G) recommends that some commercial use allowance should be considered for the I-1 zoning district to meet the projected commercial demand. The Anchorage Industrial Land Assessment (Exhibit I), while recommended for refinement by the commercial study, does provide a basic indication that some level of protection for appropriately located industrial zoning districts from unlimited large scale commercial is justified. Information unavailable in 2009 has also indicated that the supply of industrially zoned land not encumbered for commercial retail use is less than the industrial land study estimated.

Recommendation: The Department recommends realigning amendment R11 to be consistent with the Mayor's proposed amendment 32 which allows B-3 commercial uses up to a certain size by-right in the I-1 while protecting it from the largest most intensive commercial uses that tend to create or anchor commercial centers. Specifically:

- Modify Amendment R11 for the I-1 District, to permit by right ("P"): instructional services, amusement establishments, fitness and recreational sports centers by-right, where these establishments have a maximum floor area of up to 20,000 square feet.
- Besides the above modification, forward amendment R11 unchanged, such that in the I-1 District if the uses above are large commercial establishments (above 20,000 square feet), they are subject to a conditional use ("C") review for compatibility with the industrial area.

5-8. Pharmacies as a Health Service or General Retail Use

► **Sections 21.05.040F.1.a. and 21.05.050H.6.b.i. of Provisionally Adopted Title 21**

► **<u>Proposed Amendments 40 and 106.30</u> in Consolidated Table**

Public comment: Make corrections to improve the consistency in the treatment of pharmacies by the use definitions and use-specific standards, as follows. Modify the definition of "Health services" in section 21.05.040F.1.a. by substituting the word "pharmacies" for "dispensaries". Secondly, modify the use-specific standards for "General retail" in Section 21.05.050H.6.b.i. to delete the language "such as a pharmacy" which inaccurately identifies pharmacies as an example of a "General retail" use (Bob Mintz – Carr Gottstein Properties, pages 107 and 110).

Response: These are minor wording corrections that would make the provisionally adopted title 21 clearer and more consistent in how it categorizes medical dispensary-type pharmacies.

Proposed amendment 106.30, as requested by the Assembly Title 21 Committee in 2010 and supported by the Department, defines "pharmacy" , as it is used in the land use regulations, as being limited to only medical dispensaries: "An establishment offering **only** [emphasis added] to prepare, preserve, compound, and dispense prescribed and non-prescribed medication and drugs, medical supplies, and health care items". This clarifies that title 21 will not regulate a Walgreens type retail store which offers a variety of items (including toys for example) as a "Health service" "pharmacy", but rather as "General retail".

Instead, the provisionally adopted title 21 categorizes a pharmacy as being under the "Health services" use type. The "Health services" use type includes a variety of outpatient care, personal service, medical laboratory related medical establishments. Zoning districts such as the PLI and RO allow a "Health service" use such medical dispensary-type pharmacies, but prohibit "General retail".

However, the provisionally adopted "Health services" use definition on line 24 of page 177 lists "dispensaries" rather than "pharmacies" in its list of example establishments. Use of the word "Pharmacy" here would be more appropriate, since it is contemporary and more familiar, and is consistent with the rest of the rewrite. For example, "Pharmacy" is listed as an allowed accessory activity under the definition of "Hospital/Health care facility" use type.

Also, the use-specific standard for "General retail" identifies "pharmacy" as an example of a general retail use. This appears to be leftover language from an early draft of the code, which defined and categorized this use type differently. The commenter's correction is helpful.

Recommendation: The Department supports modifying the definition of "Health services" in section 21.05.040F.1.a. by substituting the word "pharmacies" for "dispensaries", and modifying the use-specific standards for "General retail" in Section 21.05.050H.6.b.i. to delete the phrase ",such as a pharmacy,", both modifications suggested by the public comment.

5-9. Financial Institutions' Computer Support Centers in the I-1 District

- ► **Section 21.05.050F.2.b. (Page 200) and Section 21.05.060A.1. (Page 207) of Provisionally Adopted Title 21**
- ► **<u>Proposed Amendment 37</u> in Consolidated Table**

Public comment: Computer support centers for the use of financial institutions should be permitted in the I-1 district without limitation to size, by adding a subsection 21.05.050F.2.b.iv to read as follows: "Notwithstanding the previous limitations on financial institutions, computer support centers for the use of financial institutions are permitted in the I-1 district without limitations to size." (Bob Mintz - Carr Gottstein Properties, pages 106 and 109)

Response: If the comment is referring to what is defined in the provisionally-adopted code as a "Data Processing Facility" (Section 21.05.060A.1 on page 207), computer support facilities serving financial institutions (and other uses as well) would already be permitted by right in the I-1 district and a conditional use in the I-2 district. The provisionally-adopted code definition for "Data Processing Facility" is an establishment where electronic data is processed by employees, including, without limitation, data entry, storage, conversion, or analysis; and subscription and credit card transaction processing.

Recommendation: Unless additional information would indicate computer support centers being significantly different than "Data processing facilities", the Department recommends no further changes to the provisionally adopted draft beyond proposed amendment #37.

5-10. Office Use Limitations in the I-1 and I-2 Industrial Districts

- **Section 21.05.050F.3, Pages 200-201 of Provisionally Adopted Title 21**
- **Proposed Amendments R14 and 38 in Consolidated Table**

Public comment: A commenter recommends rejecting proposed amendments R11 and 38, and states that: these amendments are another limitation on land use in the I-1 and I-2 districts; they attempt to eliminate office uses in the I-2 district; property owners of buildings taller than 45 feet cannot have an office in the building; an office use must directly serve the function of an industrial or public/institutional use permitted in the industrial district, and if the building is greater than 5,000 square feet the office space is restricted to 25 percent of the gross floor area of the site. (Dan Coffey, pages 275-6)

A different commenter instead recommends the following modifications to amendment 38 regarding office uses in the I-1 and I-2 districts:

1. Add the following italicized wording to subsection 21.05.050F.3.b.ii(B):

   "The proposed office use shall directly serve the function of an industrial or public/institutional use permitted in the district *unless the proposed office use is included within a BIP-PUD.*"

2. Add the following italicized wording to the proposed underlined wording in subsection 21.05.050F.3.b.ii(C):

   "The office use shall comprise no more than 25 percent of the gross floor area on the site when the gross floor area is over 5,000 square feet, unless a greater percentage is [APPROVED BY THE DIRECTOR]*authorized by the approving authority or the use is included within a BIP-PUD.*"

(Bob Mintz - Carr Gottstein Properties, pages 106 and 109)

Response: Proposed amendment 38 modifies amendment R14 addressing the impacts of commercial office buildings in industrial districts. The amendment limits the size and non-industrial use of office buildings in the industrial districts, in order to:

- Encourage high intensity office employment growth to concentrate in the city's commercial districts and designated centers, rather than in outlying industrial zones.
- Prevent using up the city's remaining industrial land base for commercial offices that may be unrelated to and incompatible with industrial uses and functions.
- Make the maximum height for office buildings in the I-1 the same as to be allowed in the B-3 district, to repair an inconsistency in the draft code that would have allowed taller commercial office buildings in the I-1 than in the B-3 or mixed-use districts (except for in Midtown).

Despite the first commenter's claims, amendment #38 is actually intended to allow for office use in the I-2 District, subject to limitations. The provisionally adopted title 21 without amendment #38 would not permit any office. This proposed amendment results from comments from Chugach Electric utility during the review of its proposed headquarters offices to be co-located with the new power generation plant currently under construction.

However, continuing to allow unlimited commercial office use in industrial zones would perpetuate the disconnect that now exists between the Comprehensive Plan land use policies for the appropriate location of commercial and industrial growth and current Title 21 regulations for industrial zoning districts. The Anchorage 2020 – Anchorage Bowl Comprehensive Plan calls for concentrating future higher density growth in office employment in the major employment centers and other designated commercial and mixed-use centers, separating incompatible uses, and protecting designated industrial reserves from conversion to commercial use.

For this reason, amendment 38 proposed that offices uses shall be limited to directly serving the function of an industrial or public/institutional use permitted in the district. For example, the headquarters office of a warehouse and distribution establishment could be located in the industrial districts. Furthermore, it limits the maximum percentage of the total gross floor area of a site which may be office to 25 percent (PZC had previously recommended allowing up to one-third).

A review of the proposed amendment suggests that relaxing its percent floor area limitation and clarifying that the limitation is intended to apply only cases where the office portion exceeds 5,000 square feet would improve its practicality for some industrial uses while remaining consistent with the objectives. In addition, providing for an exception for BIP-PUDs, as proposed by a commenter, is consistent with the objectives and proposed changes in the chapter 3 issue-response memorandum for business industrial parks.

The 45 foot height limit for offices is recommended because the provisionally adopted I-1 district has a higher height limit than most commercial districts outside of Midtown to accommodate taller industrial structures. Its taller height limit was not intended to allow higher intensity commercial office employment.

The proposed 45 foot height limit is not anticipated to have an economic impact. Existing structures are exempt from the new height limits. Most future office development outside of Midtown is anticipated to continue Anchorage's existing development pattern of one-, two-, and three-story low rise office buildings. The market for medium and high rise office development is anticipated to continue to concentrate in the several major employment centers such as in Downtown and Midtown.

Recommendation: Forward proposed amendment 38 (replacing the latter half of amendment R14) for adoption, with the following modifications:

- Amend proposed subsection 21.05.050F.3.b.ii(B) as follows: "The proposed office use shall directly serve the function of an industrial or public/institutional use permitted in the district unless the proposed office use is included within a BIP-PUD."
- Amend proposed subsection 21.05.050F.3.b.ii(C) as follows: "The office use shall comprise no more than 50[25] percent of the gross floor area on the site when the gross floor area is over 10,000[5,000] square feet, unless a greater percentage is approved by the decision making body or the proposed use is included within a BIP-PUD[APPROVED BY THE DIRECTOR]."

5-11. Restaurant Use – Inclusion of Micro-brewery in Definition

► **Section 21.05.050E.3, Page 200, Lines 5-8 of Provisionally Adopted Title 21**

Public comment: A commenter recommends modifying the provisionally adopted "Restaurant" use definition to allow restaurants (and not just bars) to have brew-pubs, suggesting language similar to the definition for "Bar", which "may also manufacture malt beverages" as a brewpub. (Bob Mintz – Carr Gottstein Properties, pages 106-107)

Response: The provisionally adopted title 21 already allows restaurants to have brew-pubs. It permits the combination of restaurant-brewpub in any zoning district that permits both restaurants and bars.

Under current and provisionally adopted use regulations, a business establishment may actually be comprised of several kinds of use types defined in title 21. For example, in Exhibit E, economic cost comparison test site #3, indicates that both current title 21 and provisionally adopted title 21 treat New Sagaya's City Market as combination of two principal uses: restaurant and grocery. The two uses in the development may have different use-specific standards but are reviewed simultaneously and seamlessly in the land use permit review for the establishment. Likewise, a restaurant that includes a brewpub will simply be treated as a combination of two separate use types by the land use permit reviewer: "Restaurant" and "Bar".

Title 21 categorizes unlike land uses separately—even uses that are periodically put together into one business establishment—because their differing impacts on surrounding areas are such that the community has decided to apply different use-specific regulations to them. For example, both

current and provisionally adopted title 21 allow restaurants in some zoning districts where they do not permit bars and brewpubs, because of the differing impacts on their surroundings. Therefore, while the B-1A neighborhood commercial district, the RO residential-office district, and the R-4 multifamily district will permit a café (e.g., Fire Island Bakery on its B-1A zoned parcel in the middle of South Addition neighborhood), these zones would not permit by-right a bar or brewpub.

Recommendation: No change to the provisionally adopted title 21 as it already achieves the commenter's purpose to allow for the restaurant-brewpub combination in districts such as the B-3, I-1, and Mixed-use districts which allow both uses.

5-12. Building Material, Furniture Store, and General Retail Store Overlap

- ► **Section 21.05.050H., Pages 202-203 of Provisionally Adopted Title 21**
- ► **<u>Proposed Amendments 39 and 40</u> in Consolidated Table**

Public comment: A commenter recommends clarifications to the use type definitions to eliminate overlaps between big box type "Building material stores" and "Furniture and home appliance stores", and "General retail" stores selling home furnishings, floor coverings, paint, etc. Specifically, proposed amendments 39 and 40 the consolidated table should be modified to:

- Delete "floor covering" from the definition of "Building materials store", and
- Retain the words "home furnishings" and add "paint" as another example after home furnishings in the definition of "General retail store".

(Bob Mintz – Carr Gottstein Properties, pages 106 and 110)

Response: The provisionally adopted title 21 combines most every kind of retail establishment into a single use type: "General retail". This reduces the number of uses that were previously listed separately under the current title 21 (e.g., "hardware stores", "bookstores, stationery stores, and newsstands", or "drugstores".), where they have similar land use impacts and therefore identical land use regulations.

However, a few kinds of retail sales uses are defined as a separate use type, because different use regulations apply. The provisionally adopted "Building materials store" use type is one of these. It is exemplified by a "Lowes" kind of store that sells lumber and other primary building materials (e.g., cement), taking on a land-intensive, industrial box type nature. The title 21 rewrite applies a significantly lower parking requirement to these stores, and is more lenient toward allowing these large stores into the I-1 and I-2 districts than, say, a full sized grocery or general retail store.

For similar reasons, amendment 39 proposes to also differentiate the "Furniture and home appliance store" from the "General retail" definition. As with "Building materials store", the retail sales of furniture, mattresses, carpets, flooring, and home appliances demands far less parking and takes on a more industrial character than most retail sales. By contrast, current title 21 applies the

same parking requirement to the Bailey's furniture store at the corner of International and C Street as it does to most any toy, clothing, flower, or bookstore in town. The title 21 rewrite provides more opportunity to substantially reduce parking and land area requirements. It also applies some kind of limits most other kinds of retail in one or both industrial districts, so it differentiates furniture and flooring stores to allow them without opening industrial lands to unlimited retail.

The commenter has identified and proposes to correct several overlaps in the definitions between "Building materials store", "Furniture and appliance store", and "General retail". These are constructive, helpful, refinements to language that should improve the consistency and clarity of regulations for both administrative review staff and applicants.

Recommendation: The Department supports modifying the definition of "Building materials store" in section 21.05.050H.2.a. by deleting the word "floor covering", and modifying the definition of "General retail" proposed amendment 40 for Section 21.05.050H.6.a. to retain the words "home furnishings" and after these words add the word "paint" with a comma, both modifications suggested by the commenter.

5-13. Renaming "Liquor Store" to "Beer, Wine, or Liquor Store"

► **Section 21.05.060H.8, and Table 21.05-2 of Provisionally Adopted Title 21**

Public comment: Change the name of the use type "Liquor store" to "Beer, Wine or Liquor Store". (Bob Mintz – Carr Gottstein Properties, page 107)

Response: This proposed change appears to be a non-substantive clarification. The name of the use would more clearly indicate that the use is not limited to sales of hard liquor or distilled spirits but rather includes sales of other kinds of alcoholic beverages such as wine and malt beverages. That aligns with the use's definition, which includes all "alcoholic beverages".

According to the American Planning Association (APA), "Liquor store" appears to be a commonly used term in zoning ordinances to describe stores that sell liquor, wine, and beer, without limitation to one kind of alcohol or another. Anchorage's provisionally adopted term and definition uses this common practice. However, APA also documents that at least several jurisdictions limit the definition of "liquor store" to stores that only sell hard liquor, package liquor, and distilled spirits. The commenter would clarify that Anchorage's use type is the former, more expansive definition.

Recommendation: No objection to changing the name of the use type "Liquor store" to "Beer, Wine, or Liquor Store" in section 21.05.060H.8, Table 21.05-2, and wherever else it appears.

5-14. Government Services – Definition and Use-specific Standards

► **Section 21.05.060A.4, Page 208, Lines 3-8 of Provisionally Adopted Title 21**

Public comment: Add and modify wording to the use definition and use-specific standards for "Government service" as follows:

- Delete the word "yards" from the end of the use definition, so that it reads, "A facility housing government shops, maintenance, and repair centers, and equipment storage [YARDS]."
- Insert an additional use-specific standard which reads, "Supporting administrative offices shall utilize no more than 50% of the total area on site."

(Bob Mintz – Carr Gottstein Properties, page 107)

Response: The proposed wording change to the use definition reflects that government equipment storage may come in another form besides an outdoor storage yard (e.g., an enclosed structure.

In the use-specific standards, if the commenter's proposed additional language is intended to clarify that a substantial amount of office space can be allowed within a Government service establishment, a more appropriate (and less complicated) way to achieve the commenter's objectives would be to instead modify the use definition to allow for accessory offices.

Or the commenter's proposed additional language may be intended to allow "Government service" uses a greater percentage of floor area being office than what is proposed to be allowed for other uses in the I-1 and I-2 districts. Proposed amendment R14, which is modified by proposed amendment 38, would allow accessory offices to allowed industrial uses in the I-1 and I-2 districts subject to a generally applicable limitation that the office use comprise no more than 25 percent of the gross floor area on the site when the gross floor area is over 5,000 square feet, unless a greater percentage is approved by the director. However, the commenter does not provide a rational for why government service uses should be an exception to the generally applicable standard that would apply, for example, to non-governmental shops, maintenance and repair centers falling under the "General industrial service" use type.

Recommendation: The Department has no objection to the proposed wording change to delete the word "yards" from the end of the "Government service" use definition, and also suggests changing the last "and" in the sentence to "and/or" or equivalent language, to further improve the flexibility of the language.

Unless additional information would indicate there is a functional use characteristic in the "Government service" use type distinguishing it from the "General industrial service" use type, the Department recommends no changes to the use-specific standards for "Government service". Generally applicable limitations on accessory offices that apply to other industrial uses should apply. However, there is no objection to adding a sentence to the use definition which states that accessory activities may include offices, such as is stated in the "General industrial service" use type definition.

5-15. Accessory Dwelling Units (ADUs)

- **Section 21.05.070D.1.b.iii., Pages 234 and 236, of Provisionally Adopted Title 21**
- **Proposed Amendments 45 and 46 in Consolidated Table**

Issue: Should ADUs be permitted in the R-1 and R-1A Districts?

Public comments: Accessory dwelling units are encouraged by Anchorage 2020 for offering a way to provide more low cost housing. Allowing ADUs in R-1 zoning districts is a big issue that Anchorage debated and rejected in recent years. This should be put on hold until after the rewrite is adopted, and then reconsidered on its own. (Anchorage Citizens Coalition, page 22)

Allowing an ADU in R-1 and R-1A districts contradicts an existing title 21 section enacted in the very recent past. It would eliminate single-family lots in Anchorage, increasing density in the wrong places, reducing property values, and dismantling single-family neighborhoods (Dan Coffey, page 276).

The Girdwood Valley Service Area Board of Supervisors state that Amendment #46 (i.e., ADUs to be 60 feet back from all front lot lines and 10 feet back from the principal dwelling) would make accessory dwelling units above garages very difficult and creates additional driveway and snow removal issues. It is inconsistent with existing development patterns of accessory dwelling units above garages and should not be applied to Girdwood zoning districts. (Girdwood Valley Service Area Board of Supervisors, page 63)

Response: Amendment 45 proposes that Accessory Dwelling Units (ADUs) be permitted in the R-1, R-1A, and (subject to limitations related to amendment #21) the R-3 districts. It is a carry-forward of a proposed amendment that has been available for public review since May 2010, with respect to the R-1 and R-1A districts. That amendment is expanded to include the R-3 district, reflecting the Mayor's direction to allow single-family homes in certain parts of the R-3 district.

The provision for ADUs is one component of the housing strategy for the Anchorage Bowl. Accessory units are separate self-contained dwelling units that are subordinate in size, location, tenure, and appearance to a single-family residence. The physical scale and placement of the accessory units is carefully regulated to maintain single-family neighborhood character and avoid negative impacts on neighboring properties.

Accessory units do not require development of new land, do not require as much construction or cost as much to build as conventional rental units. These units often rent for less-than-average market levels, and benefit from greater on-site management by the homeowner. In addition to providing opportunities for affordable and workforce housing, accessory units can provide homeowners with income, security, and companionship. Changing demographics in the Anchorage community also point toward multi-generational households, and some empty nest couples may want or need to move into an ADU on their children's property.

Development standards are extremely important for avoiding or minimizing effects on existing neighborhoods. Regulations for ADUs may need to assure that accessory units do not increase the

intensity of activity or have an effect on a single-family neighborhood beyond that which would already be allowed under the regulations for single-family development. Regulations already in title 21 include for example:

- Maximum unit square footage, building bulk, and overall building height.
- Side entrance location.
- Maximum number of occupants.
- Off-street parking spaces.

Some communities also have a dispersion provision that applies to existing neighborhoods, so accessory units do not become too concentrated in an area. Limits or exclusion of accessory units can also be done by geographic area. Dispersion or limitation provisions in single-family districts may be an appropriate addition to the title 21 regulations if ADUs were to be allowed in R-1 and R-1A districts. Dispersion provisions would not be restrictive relative to the track record for development of ADUs since 2003. According to municipal land use review records, there were 73 recorded ADU affidavits between September 2003 and 2010, which is less than 10 ADUs per year.

Recently, the Municipality received the final report for the Anchorage Housing Market Analysis (Exhibit H). This report evaluated the buildable land supply for the Anchorage Bowl and Chugiak-Eagle River, and projected the potential twenty year demand for land for residential uses. In consideration of many factors, the study estimates an undersupply of residential land capacity, and offers a detailed analysis of the housing demand challenges facing the Anchorage Bowl and Chugiak-Eagle River. It suggests that the Municipality's next steps are to first complete work on the title 21 rewrite and then to consider and implement some further policy options named in the report. Some policy options will create more community or developer resistance, and policy makers and Municipal staff will need to prioritize housing policies to be adopted based on the outcomes they are most concerned about, as part of a strategic planning process.

Like a small-lot housing ordinance and other housing strategies suggested in the housing study, evaluation of greater allowance for ADUs would be an involved project and require substantial participation by agencies, developers, the design community, local officials, and the general public. Given the housing study's recommendation to develop a strategic policy approach to addressing housing issues after completion of the title 21 rewrite, the public comments received, and the other issues to resolve now, this issue seems well beyond the scope of the title 21 rewrite.

Recommendation: Postpone consideration of allowing ADUs in R-1 and R-1A Districts until after the title 21 rewrite, by modifying proposed amendment 45 to refer to only the R-3 District. Forward proposed amendment 46 except that the current provision should continue to apply in Girdwood. Postpone further reconsideration of ADUs

If the Planning and Zoning Commission decides to forward an amendment allowing ADUs in the R-1 and R-1A districts, the Department recommends consideration of a dispersion provision to avoid concentrations of ADUs. A geographic limitation to only within policy areas of the Comprehensive Plan that prioritize housing opportunity, such as near Downtown, Midtown, mixed-use centers, and transit supportive development corridors, may also be appropriate.

5-16. Screening of Intermodal Shipping Containers (Connex Units)

► **Section 21.05.070D.12.b.i., Page 243, Line 17 of Provisionally Adopted Title 21**

Public comment: The Anchorage School District (ASD) commented regarding the provisionally adopted requirements for screening connexes. ASD has a number of permanent connex units, primarily at its middle and high schools. These serve two purposes: 1) emergency preparedness, and 2) site-based exterior storage, such as for athletics and for career and technology education curriculum materials storage. ASD has the following concerns:

1) The cost of screening or cladding of all existing ASD connexes could be as much as $1 million.

2) Treating all units the same, including those not readily visible to the public. ASD asks if screening the connexes from view from abutting streets, similar to dumpster screening provisions, should be applied rather than requiring full screening or cladding of all connexes.

3) Where screening of connexes is not an option, the District questions the reasonableness of requiring cladding or siding that is similar to the primary structure. ASD recommends that application of recessive paint, or paint that matches the building color scheme would appear to better achieve the intent.

4) Screening on all four sides would make the units immobile and impede access. The size of the access end is minor compared to the overall bulk. Recessive paint treatment would preserve their mobility and ease of access.

5) Some connexes are located near athletic fields and are seasonal in nature, and because these units are mobile, they are relocated when not in use. Fixed landscaping, therefore, would be a concern.

ASD indicated that it supports the concept of recessive finishes because it meets the intent of suppressing objectionable visual impact at a reasonable cost.

(Anchorage School District, pages 286-288)

Response: The use-specific standards for connex units require that they either be screened on all four sides with "structures, landscaping, and/or fences at least as high as the unit, or alternatively, shall be sided and roofed with materials substantially similar to the siding of the primary structure". The intent of these draft requirements is to screen permanently located connexes from view or, alternately, if the connexes aren't screened, to make them appear more like storage buildings than transport containers. To do the latter effectively is to use some type of siding material, to have a roof, and use materials and/or colors which match those of the primary building.

The Department agrees with the ASD that the screening of connexes should focus primarily on views from off the site, particularly abutting public streets, similar to dumpster screening. Also, screening of a connex should occur where it is visible from an adjacent residential property.

The Department also agrees that requirements for cladding or siding similar to the primary structure may not be feasible in some cases. Connex units that are used on a seasonal basis could fall under Section 21.05.080, Temporary Uses and Structures.

Recommendation: In addressing the ASD comments, the Department proposes the following amendments to 21.05.070D.12.b.i:

i. Except in the industrial, commercial, and airport districts, connex units shall be screened on sides facing abutting public streets and residential properties [ON ALL SIDES] by structures, landscaping, and/or fences at least as high as the unit, or alternatively, shall be sided and roofed using[WITH] materials and colors which are similar to materials and/or colors [SUBSTANTIALLY SIMILAR TO THE SIDING]of the primary structure. If the connex unit is placed and used for seasonal purposes subject to the provisions of section 21.05.080, temporary uses and structures, it may instead be painted with recessive paint or paint that matches the color scheme of the principal building.

Chapter 6 Issues

6-1. Small Lot Housing

- **Table 21.06-1: Table of Dimensional Standards, Provisionally Adopted Title 21**
- **Proposed Amendment 49 in Consolidated Table**

Issue: Should title 21 provide for small lot housing, and if so should a small lot housing provision be prepared now as a part of the title 21 rewrite?

Public Comment: CIHA supports inclusion of a cottage (small lot) housing provision to allow single-family houses to be developed on smaller lots. Including a cottage provision would promote the development of green space and affordable homeownership opportunities without sacrificing the density of residential development that MOA hopes to achieve. CIHA encourages MOA to develop a cottage housing ordinance, and offers to initiate a draft. (Cook Inlet Housing Authority)

Response: Established in the Anchorage 2020 Comprehensive Plan, the small-lot housing strategy has as its objective to modify the subdivision and zoning regulations to promote efficient use of residential land, conserve sensitive environmental areas, and include development standards to protect neighborhood quality. The Comprehensive Plan places mandatory guidance as to what a small-lot housing ordinance would address in policies 11, 12, 14, 16, and 57.

The Anchorage Housing Market Analysis (Exhibit H) concludes with a policy suggestion for allowing small-lot single-family housing lots less than 6,000 square feet, where appropriate and with design standards. Currently the MOA does not allow small fee-simple detached residential lots outside of PUDs, cluster (conservation) subdivisions, or Planned Community (PC) District developments. The MOA could get more small-lot residential development by allowing small-lot housing with a smaller minimum lot size and adjusting other regulations specifically for this new form of housing. It would provide a new alternative to conventional multifamily or condominium development while achieving similar densities.

The Department has continued to support the concept and urge completion of the title 21 rewrite in order to turn to small-lot and other plan implementation strategies not included in the title 21 rewrite. Adding a small lot housing ordinance as a part of the rewrite was never anticipated. It did not fit into the scope of the title 21 rewrite, which has already taken years longer than anticipated in part because of it is so extensive. A small-lot housing ordinance will be an involved project in its own right, and require substantial participation by public agencies, developers, the design community, local officials, and the general public. The amount of collaboration and input in addressing subdivision, utility, and traffic engineering issues, as well as public participation opportunities to address developer and neighborhood concerns, makes it prohibitive to insert a cottage housing provision into the very end of the title 21 rewrite review process.

The Department concurs that small-lot housing could potentially achieve the same number of housing units as traditional multifamily and condo development allowed in the R-2M and R-3 districts. Small lot subdivisions in the R-3 would need to have smaller lots than in R-2M, so as to yield at least three new small lots per typical 7,000 square foot subdivided lot, in order to avoid subdividing R-3 properties in a way that permanently underutilizes its land base conflicting with other housing policies in the Housing Market Study and the Comprehensive Plan. In the R-2M, the lotting pattern would be more consistent if minimum lot size and structure size were more in keeping with the lower densities in that district.

It would not be possible for small lot housing to yield the number of units per lot needed in the R-4 high density multifamily district in order to meet Anchorage's housing need, so it would be inherent underutilization of the R-4. Likewise, at the other end of the spectrum, it could be inappropriate in R-1 and R-1A areas with an established lower density lot pattern, except as part of a transit supportive corridor or other special overlay district.

Recommendation: The Department supports a small-lot housing ordinance in title 21, to be developed in a collaborative public process separate from the title 21 rewrite project. There is no objection to insertion of placeholder rows into Table 21.06-1 dimensional standards for the R-2A, R-2D, R-2F, R-2M, and R-3 districts, for a near future small lot provision.

6-2. Deleting Height Limits in All Commercial / Mixed-use Districts

- ► **Section 21.06.020, Tables of Dimensional Standards**
- ► **<u>Proposed Amendment 49</u> in Consolidated Table**

Issue: Should the building setback, height, and lot coverage requirements remain as in current title 21 or should the requirements in the provisionally adopted title 21 go forward?

Public comment: The commenter states that the draft code requires more land for both residential and commercial development, because of the proposed dimensional requirements such as height limitations in the B-3 district where none now exist. He contends that the additional dimensional constraints in Chapter 21.06 are contrary to the policies of the Anchorage 2020 Comprehensive Plan that call for more efficient use of Anchorage's remaining vacant and underdeveloped land. The commenter recommends that all setback, height and lot coverage requirements in all residential and commercial/industrial districts should remain the same as in the current Title 21. (Coffey, pages 178 and page 276). Another commenter recommends eliminating the mixed-use district tables and new height restrictions (Dwiggins, page 89).

Public comments from three community councils, four private citizens, and the Anchorage Citizens Coalition oppose Amendment #50 which would allow unlimited maximum building heights in the B-3 District for the Midtown area (Issue 6-7 responds to shadowing concerns). Another community council supported greater building height flexibility in Midtown.

Response: The Department disagrees with comments recommending the allowance of unlimited building heights in all commercial districts, such as the B-3 district. The only area the Department supports unlimited building heights (as an interim measure) is in the Midtown major employment center commercial area.

The Comprehensive Plan identifies specific areas of the Anchorage Bowl to provide for growing future concentrations of employment and a supporting mix of residential, commercial, and civic uses. It calls for the highest intensity development to occur in and around the major employment centers of Downtown and Midtown to support a more efficient transportation system.

Limiting the number of employment centers to Downtown and Midtown, as well as the U-Med District, focuses and encourages medium- to high-density office and residential development in well-defined, compact, successful city centers. This focused development pattern will also capitalize on higher returns on infrastructure investments that are already in place to support existing and new development in these centers.

Over the past 20 years, because of the widespread use of the B-3 District, non residential development has been scattered throughout the Anchorage Bowl, resulting in more travel in single-occupancy vehicles to get to work, shop and access services that are located in various locations.

Continuing to allow unlimited building heights in outlying B-3 areas outside of the major employment centers undermines the implementation of mixed-use districts in the centers. The smaller scale mixed-use districts, particularly the CMU and NMU contain building height and bulk limits applicable to commercial areas outside of Downtown and Midtown. This ensures that future development is compatible in scale and function with the nearby residential neighborhoods. To keep the B-3 zoning with no height limits in place will continue the disjointed development pattern that exists today and increase the potential for incompatibility in the outlying areas.

The Administration proposed an amendment to the provisionally adopted Title 21 to allow for tall buildings in the Midtown major employment center, while retaining provisionally adopted building heights elsewhere in outlying commercial and industrial areas of the Bowl. Specifically:

- Allow unlimited building heights in Midtown, until such time as a Midtown Plan is adopted that evaluates appropriate building heights, by exempting buildings from the height limits of the B-3 and RMU districts in the Midtown *Major Employment Center and Redevelopment / Mixed-use Area* designated in the Comprehensive Plan, as bounded by the Seward Highway, Tudor Road, Arctic Boulevard, and Fireweed Lane.

- Make the RMU district available as a mixed-use zoning option in Midtown, and waive rezoning fees and provide assistance for property owners that elect to rezone to RMU.

- Retain the provisionally adopted height limits for the B-3 (outside of Midtown), RO, and I-1 districts.

Recommendation: Support the Administration's proposed amendment to the provisionally adopted Title 21, which retains the provisionally adopted height limits (outside of Midtown).

6-3. Reverting to Existing Title 21 Setbacks and Dimensional Requirements

► Section 21.06.020, Tables of Dimensional Standards

Issue: Should all setback, height, and lot coverage requirements remain as in current title 21 or should changes from current code in provisionally adopted title 21 go forward?

Public comment: The commenter states that the draft code requires more land for both residential and commercial development. On this basis he contends that additional dimensional constraints in Chapter 21.06 are contrary to the policies of the Anchorage 2020 Comprehensive Plan that call for efficient use of remaining vacant and underdeveloped land. He recommends that all setback, height and lot coverage requirements in all residential and commercial/industrial districts should remain the same as in the current Title 21. (Coffey, page 178). Another commenter agrees, and argues for combining the dimensional tables (Dwiggins, page 89).

Response: The purpose of the title 21 rewrite project is to update a 40 year old zoning ordinance, last rewritten in the 1960s, and to implement the updated Comprehensive Plan. Title 21 is an implementation tool of the comprehensive plan. It went through a nine year, iterative public review process and the changes from current code are those that reflected community agreement, adopted by the Assembly, for needed change in order to update the land use regulations and implement the comprehensive plan.

The Department takes exception to the way in which this issue is being presented, and arguments based on claims not founded on fact. Despite claims of greater land area requirements, evidence from extensive updated cost comparison tests (developed in partnership with consultants and with substantial input from the local development community) conclude that, in fact, overall land area requirements for site development would generally fall or remain the same. Exhibit E reports that, in testing of representative commercial office, medical office, industrial, multifamily, and retail sites, land area requirements fell in 11 of 13 sites tested, an average 7.5 percent reduction in required land area over 13 tests.

With regard to height limits, every recent economic market analysis—including the Commercial Land Study (Exhibit G), the Housing Market Analysis (Exhibit H), the EIA report (Exhibits E and E-1), and the municipal Assessor's outlook (Exhibit E-3)—corroborates that, for the predominant kinds of development anticipated in Anchorage in the coming decades, the same size or larger sized buildings would be enabled under the title 21 rewrite. The Administration's amendments have clarified and tempered the provisionally adopted regulations, by providing for high rise buildings in Midtown. Anchorage's market does not favor high rise buildings south of Midtown, next to low rise outlying neighborhoods. Most development in Anchorage will continue to be more limited by market forces and parking needs than by zoning regulations.

The commenter claims that the provisionally adopted 21.06 dimensional tables reduce allowable lot coverage and increases setbacks. But in fact all districts in the rewrite have either the same or increased allowable lot coverage. For example, lot coverage in the B-3 is still 50 percent, and commercial property owners may elect to rezone to mixed-use where maximum lot coverage is

eliminated altogether. Setbacks are generally staying the same or are decreasing (e.g., in B-1A). Residential zones are basically the same as current code, although the use type categories are different. For example, the rewrite will allow townhouses on narrower lots than under current title 21. Should we take that away, and perhaps reconsider as part of a small-lot ordinance?

There are several exceptions, where a setback or a required landscape buffer is greater under the rewrite, where abutting districts allow incompatible use or development scale and current code provides inadequate transitions. For such cases the commenter uses a selective interpretation of the Comprehensive Plan to claim that any new title 21 provision that raises the minimum bar, such as requiring a walkway connection, or a wider vegetated buffer, is contrary to the plan's policies for more efficient use of Anchorage's land base. In fact, the Comprehensive Plan calls for a balanced approach which emphasizes, for example, improving pedestrian connections and providing increased neighborhood protection as part of a strategy to grow through compatible infill/redevelopment.

After eight years of development, the provisionally adopted code provides a carefully balanced and calibrated set of dimensional standards. The Department, the public, the development community, the Planning and Zoning Commission, the Title 21 Assembly committee, and the full Assembly have all reviewed the dimensional standards and their organizational structure over many years. Issues that arose were resolved in successive public review iterations.

The proposal for a sweeping reversion of the chapter 21.06 dimensional tables at this late time back to existing code is not carefully thought through. Its rationale has no basis in evidence, nor is the proposal tied to the actual specific setbacks and other dimensional standards for the uses and districts that appear in the tables. If there is not a specific documented concern, there is no basis for returning to existing code. To change the system now would impact provisions throughout the chapters and impede implementation of the Comprehensive Plan.

Recommendation: Forward the provisionally adopted dimensional standards, with the proposed amendments brought forward at the request of the Administration, for adoption.

6-4. Deleting Maximum Setbacks in Mixed-use Districts

► **Section 21.06.020 (Table 21.06-3, Page 261), and 21.06.030C.5. (Pages 265-268)**

Issue: Should maximum setbacks be deleted in Mixed-use Districts?

The commenter states that the draft code requires more land for both residential and commercial development. He contends that this results from proposed requirements such as maximum setbacks that were established in the commercial districts. He states that the additional dimensional constraints in Chapter 21.06 are contrary to the policy of the Anchorage 2020 Comprehensive Plan that calls for more efficient use of Anchorage's remaining vacant and underdeveloped land. The commenter recommends that all setback, height and lot coverage requirements in all residential and commercial/industrial districts should remain the same as in

the current Title 21. (Coffey, page 178). Another commenter recommended eliminating maximum setbacks (Dwiggins, page 89).

Response: The Anchorage Bowl Comprehensive Plan calls for mixed-use development at three different scales of compact urban centers, Major Employment Centers, Town Centers, and Neighborhood Commercial Centers. These centers are to have a mix of uses, i.e., commercial, institutional, parks/open space, and residential uses located in close proximity to each other and developed to promote walking between uses and greater use of transit in addition to being accessible to the automobile.

It achieves this, in part, by applying standards such as:

- Locating buildings and their primary entrances closer to the street and sidewalks;
- Locating parking lots to the side or behind buildings rather than between the front of the building and the street;
- Providing floor area ratio incentives to encourage residential development and other features of benefit to the public;
- Limiting height limits to 45 feet (NMU) or 60 feet (CMU, RMU) outside of Midtown; and
- Reduced minimum parking requirements.

Setting the building closer to the street to improve pedestrian access and the walking environment between uses is anticipated to contribute to decreased land area requirements for development. Studies have found that this pattern of development on the district scale, which makes walking between destinations safer, more pleasant and practical, can contribute to lower automobile usage by 5 to 15 percent or more. This translates into fewer needed parking spaces. This is the state of the practice in helping cities to develop existing lands more efficiently and avoid further road congestion. There are plenty of examples in Anchorage of the building fronting near the abutting collector or arterial streets—it works here already.

The commenter's recommendation to eliminate maximum setbacks in the mixed-use districts would remove a key component supporting the pedestrian environment that is necessary for a compact mixed-use center. In other words, having no maximum setbacks would likely result in commercial development found in auto-dependent commercial areas (such as the B-3 district), with large building setbacks and a parking lot located between the building and the street. This latter type of development does not support the mixed-use centers called for in the Anchorage 2020 – Anchorage Bowl Comprehensive Plan.

Recommendation: Retain the maximum building setbacks for the mixed-use districts as set forth in the provisionally adopted Title 21.

6-5. Maximum Height in PLI District

- **Section 21.06.020, Table 21.06-4, Page 263 of Provisionally Adopted Title 21**
- **<u>Proposed Amendment 52</u> in Consolidated Table**

Issue: What is the appropriate maximum height of buildings in the PLI District?

The Anchorage Citizens Coalition does not support the proposed amendment #52 which would serve to change the maximum height for the PLI district from the standard in the provisionally adopted code. The Coalition states that the proposed amendment is opposed to the comprehensive plan's goal of protecting neighborhood character; that the proposed 75 foot height is very high (6 stories); and that a better requirement would be to allow the height limit of the surrounding district unless approved by conditional use or through a master plan. (Anchorage Citizens Coalition, page 22)

Response: Amendment #52 proposes a 75 foot maximum height limit for the PLI district, both to be consistent with other districts, and to protect neighboring development. If left unchanged as in the provisionally adopted draft, the PLI district would be one of three districts with no maximum height limit (the others being the I-2 heavy industrial district and AF antenna farm district). This amendment also allows greater height if approved by conditional use or through an institutional master plan. However, the height transition provisions of 21.06.030D.7 would still apply to buildings in the PLI district that are within 200 feet of a residential district even though Amendment #52 removes the reference to these provisions in Table 21.06-4. The provisionally adopted height transition provides better protection in Anchorage's setting than the graduated PLI setbacks in the current title 21.

The commenter's proposal for matching the maximum height standards of an abutting district would be fairly strict if the abutting district were a single family residential district such as R-1 (maximum height of 30 feet). The proposed 75-foot maximum height limit for PLI (amendment #52) along with the height transitions provisions is an improvement from current title 21 provisions for maximum height and building setbacks in the PLI district, and will provide adequate setbacks to protect neighborhood character.

Recommendation: The Department recommends going forward with the PLI district provisions and Amendment #52.

6-6. Deletion of Neighborhood Protection Height Transitions

- ► **Section 21.06.030D.8., Page 272 of Provisionally Adopted Title 21**
- ► **<u>Proposed Amendment 54</u> in Consolidated Table**

Issue: Should there be height transitions to improve the compatibility between taller building development sites and adjacent low rise residential districts?

Public comment: Reject any proposed changes that diminish neighborhood protection height transitions (Rogers Park Community Council; Adopt Title 21 Coalition)

The height transitions provision would require developments to be stepped back within 200 feet of a residential property. If the purpose is just to provide sunlight on adjacent property, impose this "stepped back" requirement only where the commercial development is directly south and adjacent to the residential lot. Or just eliminate the height transition (Coffey, pages 178-9). Eliminate height transitions (Dwiggins, page 89).

Response: The Mayor's consultant made a similar proposal last year to eliminate the height transitions. After reviewing the issue, the Mayor supported the provisionally adopted height transition with a proposed amendment (#54) to increase applicant discretion for how to meet it. Pages 44-47 of Exhibit A provide a policy discussion of this issue with illustrated examples, and pages 9-10 of Exhibit B document the Mayor's direction.

The provisionally adopted height transition is a buffer that improves the compatibility of higher intensity development with adjacent lower density residential neighborhoods, in terms of where building bulk is placed on a lot. It protects property values on both sides of the fence.

The commenter mischaracterizes the height transition in multiple ways. In fact, it addresses building bulk, ambient daylighting, and privacy and visual buffering, just as much as it does sunlight access. These multiple objectives make it important regardless if the property is to the north, south, east, or west. As the **illustrated example tests** on pages 46-47 of **Exhibit A** demonstrate:

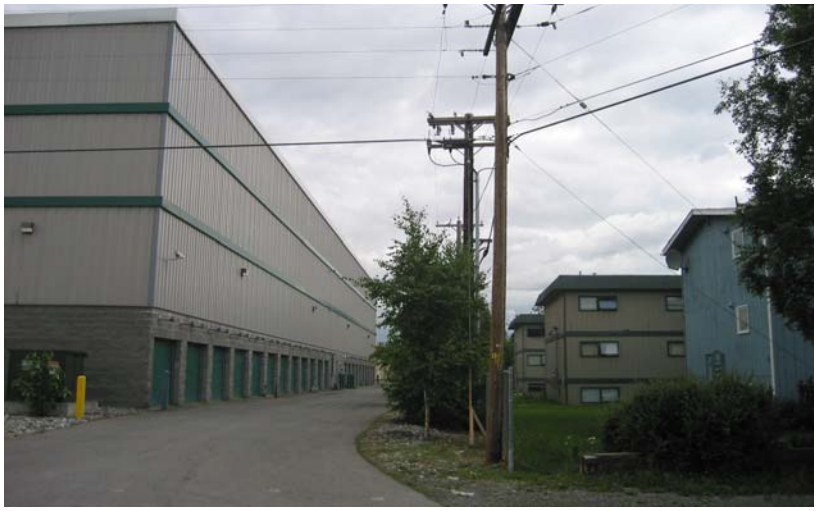
- It maintains (avoids reduction of) the development potential of the commercial lots;
- Despite some claims, it does not affect the height or size of buildings, or require "step backs" in their shape;
- Instead, its main function is to find the appropriate placement of taller buildings on the lot, with respect to the adjacent residential neighborhoods;
- Even shallow commercial lots backing up to residential districts have ample room for more building height or to shift the building placement further away from the residential property; and
- It protects property values and full enjoyment of adjacent residential properties.

Furthermore, Proposed Amendment 54 at the request of the Mayor clarifies different methods to comply and gives the applicant greater discretion for achieving an appropriate height transition.

By contrast, the second commenter's proposed amendments would thwart the protection objectives, reverse years of analysis and public process, and yet offer no practical improvement in development potential for the commercial lot. And it is commons sense that to be consistently effective in protecting residences, the height transition must apply to all tall structures within a certain distance of the residential lot (e.g.., 200 feet), and not arbitrarily based on whatever happens to be configuration of lot lines (e.g., "adjacent" lot lines), or if it is to the east, west, south, or any direction.

Provisions that replace existing height-setback bulk transitions in current title 21, such as in the PLI District where it meets a residential property (discussed in issue 6-5 above), depend on having the height transition be applicable generally and not just if the PLI property is to the south of the residential property. Otherwise, it would be a rollback from even current code protections.

Neighborhood protection transitions become more important as infill and redevelopment occur next to existing residential neighborhoods (example ministorage below). Aside from visual dominance, a structure of much greater bulk and height has impacts to nearby smaller residences by invading privacy and a lack of visual buffering. Alaska's northern climate, tall buildings also impact wind, microclimatic, and ambient day-lighting impacts, in addition to shading. For a variety of reasons, a tall building to the east, west, or even north has negative impacts.



As Anchorage grows through higher density build out and redevelopment of existing urban areas, height transition will help ensure that the greater bulk is sensitively placed on the lot, and give neighborhoods some assurance that these higher densities can be compatible in closer urban environments.

Recommendation: Forward the provisionally adopted section with the Mayor's amendments.

6-7. Protection of Sunlight Access from Midtown High Rise Shadowing

► **Sections 21.06.030D.8. and 21.07.130C. of Provisionally Adopted Title 21**

► **Proposed Amendments 50 and 51 in Consolidated Table**

Issue: Should title 21 ensure minimum solar access protection for residential neighborhoods?

Public comments: The height transitions section provides some protection to neighborhoods. However, it will not protect homes from shadow effects of tall buildings if Midtown's B-3 height limitations are eliminated. Denali Tower North (on Denali Street) is one example of a high rise that blocks sunlight access to a significant number of homes three blocks away. More protection from tall building shadowing is needed than the height transition provides. To maintain Anchorage's quality of life, sunlight access must be preserved. Midtown's established residential zones, including the neighborhoods north of Fireweed, need sunlight protection from new commercial development that would darken yards and homes. A specific amendment adding a solar access protection for residentially zoned lots, from 9 a.m. to 3 p.m. daily between March 21 and October 21, is suggested. (Anchorage Citizens Coalition, page 23)

Reject the deletion of height restrictions in B-3 zones in Midtown unless there are strong protections for residential sunlight. (Hillside East, Mid Hillside, Rabbit Creek, and Rogers Park Community Councils)

Allowing tall buildings to cast shadows on homes picks winners and losers and the losers are the homeowners. (Adopt Title 21 Coalition)

Robyn Lauster, Marilyn Houser, and North Star Community Council representative Gordon Glaser testified their concerns with unlimited building height in Midtown, and the shadowing effects of tall buildings; Marc Butler testified that zoning regulations are needed to protect private property rights, and high rises in Midtown should not be able to block winter light for residential property owners north of Fireweed. (March 19 hearing)

The zoning ordnance should protect sunlight access during the winter, when it is needed most, to make Anchorage a more livable winter city. Applying a no-shadow rule to only spring, summer, and fall months misses the point. In the winter months the sun is low on the southern horizon causing tall buildings to cast very large shadows. The lack of sunlight in the winter is known to cause health problems. In the early 1970s my home one block north of E. Fireweed on sunny winter days had sunshine through the large south facing windows, bringing warmth, comfort, and raising my spirits during the long winter. The first Denali Tower did not cause us any problem as it was far enough away and not so tall. But the second Denali Tower casts our home in shadow during the winter months. In summer the sun is higher in the sky so there is no shadow. By deliberately developing zoning rules that do not prevent the blocking of sunlight to residential areas, it affects public health and well-being. Zoning rules can and should provide for well designed transitions that allow planning for tall buildings, medium sized buildings, and lower buildings which do not cut off sunlight to residential areas. (Roxy McDonagh)

Response: The Anchorage 2020 – Anchorage Bowl Comprehensive Plan designates Midtown as a Major Employment Center and a focus area for the highest concentrations of future office employment. It has been the intent of the title 21 rewrite project to limit high density office development to Midtown and Downtown, to encourage successful, focused city centers. The title 21 rewrite included placeholders for MT-1 and MT-2 districts in anticipation of completion of the draft Midtown District Plan. That draft plan recommended that a Midtown Core area (designated to become MT-1) be allowed high rise buildings up to 14 stories in height, and that other parts of commercial Midtown (MT-2) be designated for mid-rise development. However, that draft plan has been on hold for several years and is not anticipated to be completed before the title 21 rewrite is implemented. Therefore, until such time as a Midtown Plan and its zoning districts are adopted to guide building height limits in Midtown, proposed amendments 50 and 51 would remove provisionally adopted restrictions on building height for B-3 properties in the Midtown major employment center area. Regional Mixed-use (RMU) District is proposed to be modified in proposed amendments 24, 25, and 51 to be available as a mixed-use zoning option for Midtown commercial property owners, also with unlimited height in Midtown.

To deal with the shadowing and microclimate effects of the high rises, each public review draft of the title 21 rewrite through the public hearing draft also included a provision to address shadow impacts of tall buildings. Draft section 21.07.130C, Tall Buildings, provided a minimum performance standard to ensure solar access for neighborhoods in the spring, summer, and fall. Research and observation indicated that it would not be practical to protect sunlight access in the middle of winter at 61 degrees north latitude within an urban area.

During the provisional adoption process in 2007-2010, the Department, Planning and Zoning Commission, Assembly Title 21 Committee, and members of the public deliberated on and revised the tall buildings section. The Assembly Committee reviewed several draft iterations. The last they reviewed was on September 9, 2010 and is provided as Exhibit L as background.

Based on Department staff notes, the Assembly Committee on raised comments about the sunlight access criteria in the September 9, 2010 draft, and requested that the Department return with a revised draft and additional information such as potential impacts to commercial lots.

The Assembly Title 21 Committee adjourned indefinitely later in the fall of 2010 before returning to its review of the section. Page 409 of the provisionally adopted title 21 has a placeholder for Section 21.07.130C., Tall Buildings, until such time as sunlight access standards for high rise buildings are completed.

The proposed amendments to allow unlimited building heights in Midtown may result in prioritizing the completion of the Tall Buildings section, which was under development for this purpose.

Recommendation: To address the public concerns that unlimited building heights are inappropriate without sunlight access protections for adjacent neighborhoods, the Department does not object to moving forward with refining and completing Section 21.07.130C, in consideration of the specific suggestions raised by the public, and the concerns in 2010 by the Assembly Title 21 Committee.

Municipality of Anchorage

Community Development Department
Planning Division

MEMORANDUM

Date: June 15, 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 Chapter 7

This memorandum provides responses and recommendations as to issues raised by the public about the provisionally adopted **Chapter 21.07, Development and Design Standards**. These issues were raised at the March 12 and 19, 2012 public hearings and in written public comments on Case 2011-104.

This memorandum covers most sections of 21.07, however not the landscaping section or the residential or commercial building design standards sections toward the end of the chapter. A follow up memorandum will discuss these and several remaining issues from other chapters.

Some of the comments regarding the development standards have been previously reviewed and addressed by the Department and the Administration. The responses to such issues in this memorandum refer to the relevant pages of the following Exhibits:

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; and

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.

The issue-responses in this memorandum also reference the following:

- Provisionally Adopted Title 21 with Technical Edits, dated 12-12-2011, and Consolidated Table of Proposed Amendments, dated 3-12-2012
- The applicable public comments are in **Exhibit D**, Comments Received for PZC Case 2011-104. References to public comments in this memorandum use the page number(s) the comment appears in Exhibit D. There is also a public comment separately in Exhibit D-1.
- **Exhibit E,** which updates Economic Impact Analysis (EIA) cost comparison tests.

All exhibits including A through M are available at http://www.muni.org/Departments/OCPD/Planning/Projects/t21/Pages/Title21Rewrite.aspx .

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Chapter 21.07 Issue-Response

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7-1. Expanding the Applicability of Alternative Equivalent Compliance

► Section 21.07.010D. of Provisionally Adopted Title 21

Issue: Should the alternative equivalent compliance provision be amended to expand how many site plan elements it may apply to?

Public comment: Alternative processes are essential to ensure design flexibility and accommodate unique sites. The Alternative Equivalent Compliance (AEC) provision provides needed flexibility. It should be expanded to cover more than building design standards. It should cover site development standards such as sidewalks and private open space. For example, Loussac Place provides a sidewalk on one side of the street, but adds pathways through the center and along the sides of the development for additional pedestrian and bike access. We would argue that this meets the intent of the code and should be an allowed alternative (Cook Inlet Housing Authority, page 306).

Response: The Alternative Equivalent Compliance provision, which is essentially a kind of administrative discretionary design review, was developed specifically in response to the building design standards new to title 21. The AEC provision supplements the new building design standards in sections 21.07.120, 21.07.130, and 21.07.140A., by ensuring flexibility in architectural design. It was an important objective of the rewrite project to avoid the inadvertent prohibition of beautiful, creative, and functional architecture as it introduced the concept of building design standards for building orientation and massing. The AEC provides significantly greater administrative flexibility that does not exist in current title 21.

While there have been periodic proposals over the years to expand the AEC provision beyond its building design purpose, the community decision as reflected in the provisionally adopted title 21 is to avoid over-extending AEC to the detriment of other objectives of the rewrite to streamline administrative review procedures and costs; and to ensure for the community clear and predictable minimum standards for site development. If AEC is too broadly applied, it takes away from the predictability of regulation that is sought by the development community.

This new procedure has the potential to be time-consuming to administer per each code provision it covers, relative to nondiscretionary standards that prevail in the rest of the site development standards. At least initially, it is prudent to limit the pilot program for use of AEC to its intended scope. Successful title 21 implementation depends on retaining objective by-right regulations which are custom made to match the streamlined municipal review resources. Making AEC generally applicable to all development standards would open the Director and his/her review designees to a much broader potential array of AEC requests, each demanding a negotiation and discretionary review. It would also be difficult to keep track of approved alternative site designs.

Secondly, in a way AEC is a kind of discretionary design review. However, communities with successful design reviews have strong design guidelines that document some kind of community consensus on desirable development qualities. AEC would not have this guidance. So, for example, the commenter may argue that an alternative site plan feature meets the intent of the sidewalks requirement, however, agreement is debatable. Others may argue it is fundamental

that a complete street in an urban environment features walkways on both sides. A walkway elsewhere on the site may or may not make up for the loss of the complete street function. There is no accepted guidance as to whether this does meet the community need.

Broad, general application of AEC has the potential to undermine the integrity of the minimum development standards in the land use regulations. The administrative staff is given the authority—and the pressure by applicants—to waive any site development standard in return for other features for which there are no design guidelines or performance standards to meet community expectations and policies. If there is need for flexibility in a particular standard or section, it has been more in character with the rewrite to address that need in that section. Menus, alternatives, non-discretionary reductions and incentives have been used, for example, and could be considered.

Recommendation: Forward the provisionally adopted title 21 retaining the focus of Alternative Equivalent Compliance on the new building design standards, and the integrity of minimum development standards for existing required site features such as open space, walkways, and landscaping, at least for the initial implementation program for the title 21 rewrite.

7-2. Retaining Stream Protection Setbacks

- ► Sections 21.07.020B.4 and B.6., pages 284-7 of the Provisionally Adopted Title 21
- ► Proposed Amendments 57, 58, and 59 in Consolidated Table

Issue: Should the provisionally adopted stream protection setbacks be retained or, alternatively, be reduced back to current title 21. What development should be permitted in the setback?

Public comments (by agencies): MOA Watershed & Natural Resources Advisory Commission recommends that the MOA retain the provisionally adopted new setback distance of 50 feet. The Commission understands that the provisionally adopted title 21 resulted from extensive public dialogue, professional and technical expertise, and deliberations by municipal boards, commissions, and Assembly. The Commission supports the August 2011 staff findings [Exhibit A, pages 48-50] for retaining the provisionally adopted 50 foot setback distance, which reflects a public dialogue and understanding that the benefits of this expansion outweigh the negatives, and that private property and nonconformity concerns have been adequately evaluated and addressed (MOA Watershed & Natural Resources Advisory Commission, page 60).

ADF&G supports the provisionally adopted 50-foot setback. The benefits of riparian habitat are well-documented: Setbacks provide stream bank stability and in-stream erosion control; filters pollutants; controls sedimentation; maintains water quality and fish and wildlife habitat; and provides urban storm water runoff control and treatment, and flood and icing control. However, to function properly, buffers must have effective vegetation cover, sufficient width, and continuity along the stream. Vegetative cover filters sediment and pollutants, provides input to the base of the aquatic food web; reduces the rate of erosion, and provides shade to moderate

habitat temperatures and prevent algae blooms. Reduced shade increases water temperatures, which damages salmon health and affects the population. Literature sources conclude that buffers less than 16 to 30 feet wide provide little protection of aquatic resources, and that buffers to protect wetlands and streams should be a minimum of 50 to 100 feet in width. The proposed amendment to retain the 25-foot setback is contradictory to the Campbell Creek Watershed Management Plan (MOA 2007) and the Hillside District Plan (MOA 2010). Most of Little Campbell Creek's watershed contains highly impacted impervious surfaces, which are found nationally to be detrimental for channel stability and biodiversity. Faster peak flows have increased with periods of urban growth in the Municipality, and sedimentation following rain events has had a documented effect on salmon mortality (Alaska Department of Fish and Game).

ADF&G also opposes reducing the existing 100 foot buffer in R-10 residential alpine/slope district to a 50 foot buffer. Streams located in this district are first-order headwater streams. Both the physical environment and the flora and fauna of the aquatic system are largely determined by conditions on the surrounding land in first-order streams. Protection of the riparian zone with stable, vegetated buffers helps insure the integrity of the stream and its banks, and provides a long-term supply of woody debris for desirable habitat features. Steep slopes increase the stormwater runoff rate from development. Less vegetation has less time to slow and trap sediment before entering a stream. Land clearing activity is more likely to result in sheet erosion, rill erosion, and mass wasting. Because of these factors, wider buffers are needed on steep slopes that characterize the R-10 alpine areas. (Alaska Department of Fish and Game)

ADF&G also opposes proposed amendment 59 which would allow on-site snow storage within a 50-foot stream setback buffer. Plowed snow contains solid waste, sand, deicing salt, oil, grease, metals, antifreeze, and animal waste. Disposal close to a stream will limit any dilution or retention of pollutants, especially for high concentrations of salt (chlorides) released in the early phases of snowmelt. The Alaska Department of Environment Conservation (ADEC) recommends a minimum 50 foot wide vegetated buffer zone from streams, and states this distance could be decreased if adequate stormwater catchment methods are used to control pollutants. ADEC classified snow-entrained debris as solid waste storage, which would be a violation of AS 16.05.871 if placed below the OHW of a specified water body. Because of these concerns, ADF&G recommends no snow storage within 50 feet of a stream (Alaska Department of Fish and Game).

Public comments (by organizations): ACC recommends MOA to retain the provisionally adopted 50 foot stream setbacks. The support for stream protection in Anchorage's adopted plans is clear. Anchorage Bowl Comprehensive Plan (Anchorage 2020) policies 66, 67, 68, and 70 call for maintaining fish and wildlife habitats, riparian corridors, and the ecological and drainage functions of Anchorage's aquatic resources. The Hillside District Plan states that minimum setbacks for watercourses shall be fifty feet. If title 21 rewrite reduces setbacks to 25 feet, the Hillside District Plan must first be amended (Anchorage Citizens Coalition, page 25).

The Anchorage Waterways Council supports the 50-foot setback. AWC stated that setback areas, or riparian zones, provide a variety of important protective and ecological functions for streams and lakes. Per MOA staff discussion [in Exhibit A] the current 25-foot setback was a result of compromise and political pressure in the mid-1980's, and was not based on scientific or

practical findings. Also, provisionally adopted subsection 21.07.020B.6.a may not be necessary because these items are already addressed in permitting through the COE, ADF&G, USFWS, the MOA SWPPP requirements, and MOA flood hazard and other programs. Lastly, AWC supports proposed amendment 59 deletion of provisionally adopted subsection 21.07.020B.6.b.ii.(D) which would allow new permitted uses that could be problematic. Fences and patios could preclude natural vegetation in the full 50-foot setback which would interfere with the functions of such riparian areas. Lawns are the biggest problem because of fertilizers and pesticides (Anchorage Waterways Council, page 56).

Cook Inletkeeper requests the MOA to adopt salmon habitat protection requiring at least 50-foot setbacks on all anadromous fish streams under its jurisdiction. Salmon contribute more than a billion dollars and countless jobs yearly to local economies in Southcentral Alaska. Wild salmon are an important food source, economic generator and an integral part of Alaska's unique social and cultural fabric. Significant warming trends in salmon streams in Southcentral are known to make salmon more susceptible to pollution, predation and disease. Riparian habitat shades streams, holds back sediment, and provides a food base for salmon. Polling in 2011 found 82 percent of Alaskans believe it is as important to protect riparian araeas around salmon streams as it is to protect the stream itself. The Kenai Pensinsula Borough recently conducted a review of the importance of riparian habitat to salmon sustainability, and in response, enacted ordinance 2011-12 requiring stream setbacks of at least 50 feet on all salmon streams in the Kenai Borough (Cook Inletkeeper, page 58).

The Area G Home and Landowners Organization (HALO) recommends maintaining the provisionally adopted 50-foot stream setback, to conform with the Hillside District Plan. In its goals and implementation steps, the plan frequently cites the importance of streams and specifically states that setbacks shall be 50-feet, implemented through title 21. The plan also documents extensive public support for protecting the natural environment, and specifically calls out existing regulations as inadequate to address drainage problems on Hillside (HALO, pages 4-5).

Three Hillside Anchorage Community Councils recommend retaining the 50-foot setbacks and other stream protection language of the provisionally adopted title 21, for reasons summarized as follows: The Hillside District Plan's policies for fifty-foot setbacks must be adhered to. This policy includes grandfather rights for existing development. Fifty-foot setbacks are a fiscal measure that protects all taxpayers by limiting the severity and frequency of stream damage to infrastructure, property erosion, flooding, and glaciation. Lowering the provisionally adopted stream protection setbacks would be a major step backwards for the protection of our natural resource. The issue has been researched thoroughly, showing the 25-foot setback is inadequate to maintain stream quality. They suggest following the guidance of the Hillside District Plan, which is a part of the Comprehensive Plan, to provide 50-foot setbacks. (Mid Hillside and Hillside East Community Councils, Rabbit Creek Community Council).

Three other Anchorage Bowl community councils also commented. Airport Heights supports the preservation of the 50 foot stream setback in the provisionally adopted title 21. This will ensure less flooding events and the protection of natural habitat. Rogers Park opposes the proposed decrease of stream setbacks to 25 feet from the provisionally adopted 50-feet, and 100-

feet in R-10. Turnagain states that Anchorage's water resources provide aesthetics, recreational opportunities, wildlife habitat, and ecological functions, and that protection of water body setbacks is important to water quality and the wellbeing of our aquatic ecosystem.

Outside of the Bowl, the Girdwood Board of Supervisors (GBOS) recommends keeping the stream setbacks at their existing dimensions (25 feet), to allow development consistent with existing uses and development patterns. Increasing the setback to 50 feet may make several lots in Girdwood unbuildable (GBOS, page 63).

Protect Title 21 Coalition stated they oppose the Mayor's proposal to decrease stream setbacks to 25-feet from the provisionally adopted title 21. After considerable research, discussion, review and compromise, the provisionally adopted 50-foot setback is lower than the minimum recommended in scientific literature. Stream setbacks average 100 feet nationwide. In Alaska, Soldotna, Mat-Su Borough, Juneau, and Homer have setbacks ranging from 50 to 100 feet. Anchorage's existing setback came about because of political compromises and what was deemed acceptable in the 1980s, not from scientific or practical findings. The economic benefits of streamside protection are well documented. Setbacks reduce flooding, erosion, and sedimentation, and protect property, infrastructure, and habitat (Protect Title 21 Coalition, page 46; Diamond, pages 281-2).

Nathan Bosch, an APU natural resources major, testified on March 19 that a 50 foot buffer is a bare minimum. Stream setbacks are a significant part of flood control. Trees within stream buffers reduce flooding and water velocity, and also provide services to fish populations. He also supports public access to healthy streams for their family recreation value.

Several individual commenters supported a 25-foot setback. One stated that, although it is critical that our natural resources be protected, the provisionally adopted 50-foot stream setback would have made hundreds of properties nonconforming (Coffey, page 181). Another observed that a 50-foot setback would double the amount of setback area on a lot, and existing lots have been designed considering the 25 foot setback, not 50 (Dreyer, Exhibit D-1). Another commented that stream setbacks should be no greater than 25-feet with a reduction to 15-feet for small streams less than four feet across (Vaughn, page 78).

Response: This response which continues on the following pages consists of:

1. A brief history of the stream setbacks and the recent proposed changes by the Administration;

2. A consideration of key points made by the public comments about the proposed changes;

3. Research as to possible impacts of a 50-foot setback on existing lots and development;

4. A review of economic impacts of smaller setbacks on MOA and property owners; and

5. A discussion of ways to implement 50-foot stream protection buffering in context of the established lotting pattern and avoiding economic impacts on individual properties.

The response concludes with recommendations advisory to the public and policymakers.

1. Brief History and Review

After considerable research, discussion, public review and compromise, the provisionally adopted title 21 would increase the stream protection setback from 25- to 50-feet. A 50-foot setback would be lower than what is recommended in scientific literature, best management practices, and used in other cities—both nationally and in Alaska, and it was accompanied by some increased leniency toward nonconformities. It was a compromise in attempt to:
a) implement Comprehensive Plan goals and policies for adequate stream protection and
b) address existing and nonconforming lots and structures and other impacts on property.

Last year a consultant recommended to the Administration to lower the provisionally adopted stream protection setback from 50-feet back to 25-feet, and increase the number of allowed uses, i.e., trails and lawns, closer to the streams (to within 10 feet). The Department disagreed with the consultant's proposals, and recommended that stream setbacks be increased from 25-feet to 50-feet (and reduced from 100-feet to 50-feet in the R-10 district) as provisionally adopted. The Department presented findings including:

- Wider stream buffers with healthy vegetation are essential for flood and erosion control, water quality and treatment, maintaining stream stability, and fish/wildlife habitat.
- Stream protection has economic benefits including higher property values, better quality of life rankings and recreational opportunity, lower flood insurance rates, as well as economic benefits from fishing and tourism.
- Most Anchorage area streams are listed as impaired waterbodies by the State, because the existing stream setback is inadequate to protect from urban land uses and pollutants.
- Impacts associated with inadequate stream setbacks are cumulative, more widespread, and would increase costs over time for the MOA, it taxpayers, and property owners, from flooding, erosion, water pollution and turbidity, unstable channels, utility and infrastructure maintenance and re-locates, compromised habitat.
- Policies of the Comprehensive Plan call for riparian corridor protection.

For the Department's discussion of this issue, a set of maps, and a setbacks comparison illustration, reference **Exhibit A** (item #28, pages 48-50).

The Administration considered the issue and raised concerns regarding impacts to existing properties in context of Anchorage's established lotting patterns. It has proposed (through amendments 57, 58, and 59) to retain current title 21 stream setback regulations, except to reduce stream setbacks from 100 feet to 50 feet in the R-10 residential alpine/slope district, until concerns regarding nonconformities and setback widths can be addressed in a separate stream setbacks amendment. The Administration's amendments also continue current title 21 regulations regarding what is allowed in the stream setbacks, rather than allowing such uses as lawns to be closer to streams. (Refer to **Exhibit B**, item #24, page 10)

2. Some Points Made by 2012 Public Comments

The Administration directed that its proposals be submitted for public comment at PZC. Through the public review process at PZC, the public brought additional arguments and information to the discussion, and demonstrated a relatively high level of public interest and concern. Following are considerations regarding some key points made in favor of wider setbacks:

- Comprehensive Plan elements throughout the Municipality set a high community value of natural resources and call for protection of stream buffers, water quality, and fish and wildlife habitat. The Anchorage Bowl Comprehensive Plan (Anchorage 2020) in policies 66, 67, and 68 calls for protection of stream corridors and fish and wildlife habitats as natural open spaces. Anchorage 2020 in policy 70 states, "The ecological and drainage functions of Anchorage's aquatic resources shall be protected and, where appropriate, restored." Anchorage 2020 implementation strategies include "Waterbody Setbacks": "Revisions to the Land Use Regulations (Title 21) and the creation of incentives for landowners are the most likely sources for expanding the setback program." The Hillside District Plan (2010) specifically directs that minimum setbacks for watercourses shall be increased to fifty feet on each side of streams, and anticipates a near-term timeframe for implementation. Commenters remind MOA of its obligation to honor the public process and to implement.

- More scientific information supports the value of stream protection and increasing the setbacks. The comments documented research findings of impacts occurring locally in Anchorage and Southcentral watersheds, compounding previous research and national literature available to planners and policymakers. These include significant warming trends, sedimentation, peak water flows, and damage to salmon runs. There is already State listing of Anchorage streams as being impaired. Most of Little Campbell Creek's watershed contains highly impacted impervious surfaces that are found nationally to be detrimental to channel stability and biodiversity. Faster peak flows have increased with periods of urban growth in the Municipality, and sedimentation following rain events has had a documented effect on salmon mortality. These comments add to the evidence that falling back to a 25-foot stream buffer would impede and contradict implementation of the Comprehensive Plan, and lead to further economic costs community-wide and degradation of natural resources and local character.

- There is a raised level of public awareness and concern for this issue. Some are focused on Anchorage's Hillside. Other comments are citywide in nature or from other parts of town. Statewide polling results that four out of five Alaskans believe it is as important to protect riparian areas around salmon streams as it is to protect the stream itself.

- There is additional information regarding prevailing stream protection values and practices in Alaska. Kenai Peninsula Borough recently conducted a review of the importance of riparian habitat to salmon sustainability and enacted ordinance 2011-12 requiring stream setbacks of at least 50-feet on all salmon streams in the Kenai Borough. The Alaska Department of Environment Conservation recommends a minimum 50-foot wide vegetated buffer zone from streams in general.

- There are reasons to reconsider reducing the existing 100 foot buffer in R-10 residential alpine/slope district to a 50-foot buffer: Streams located in this district are first-order headwater streams where conditions on the surrounding alpine slope areas will largely determine physical environment and the flora and fauna of the aquatic system downstream. Steep slopes such as in R-10 increase the runoff rate of development giving vegetation less time to slow and trap sediment. Wider buffers are needed on steep slopes that characterize the R-10 alpine areas.

- Lastly, there are state agency concerns regarding the part of amendment 59 which would allow on-site snow storage within a 50-foot stream setback buffer. Plowed snow contains solid waste, sand, deicing salt, oil, grease, metals, antifreeze, and animal waste. Disposal close to a stream will limit any dilution or retention of pollutants, especially for high concentrations of salt (chlorides) released in the early phases of snowmelt.

3. Impacts of a 50-foot Stream Setback on Existing Properties and Development

On the other hand, public comments in support of going back to a 25-foot setback raised concerns about impacts on existing lots, including nonconformities and reducing development potential of individual lots that would be subject to a larger protection area. Many if not most urban lots along stream corridors in Anchorage were platted and structures built assuming a setback of 25-feet or less. Previous investment expectations could be impeded.

Researching the potential impacts of a 50-foot stream setback, the Department found that approximately 1,922[1] urban residential properties in the Anchorage Bowl would be affected—some portion of the lot is within 50 feet of a stream. Approximately 334 commercial or industrial zoned lots would also contain some portion of the setback area. Out of a total of 67,756 properties in the Bowl, approximately 3,383, or five percent, contain all or a portion of the 50-foot setback:

Table 1: Lots within **50 feet** of a stream, Anchorage Bowl (2011)

Generalized Zoning	Number of Lots	% of total lots in Anchorage Bowl
Commercial	177	0.26
Industrial	157	0.23
Park/Open Space	260	0.38
Urban Residential	1,922	2.84
Rural Residential	857	1.26
Other (PC and T)	10	0.01
Total	3,383	4.99

Today, approximately 1,453 urban residential properties and 226 commercial/industrial parcels are affected by the existing 25-foot stream setback in current title 21 (Table 2). Out of 67,756

[1] Approximately 12 lots are split-zoned and counted as two lots, which slightly inflates the numbers in each table.

total parcels in the Bowl, approximately 2,691, or four percent, contain all or a portion of the 25-foot setback. When compared, the 50-foot setback increases the number of properties affected by a stream setback by 692 lots, or **one (1) percent** of total lots in the Anchorage Bowl.

Table 2: Lots within **25 feet** of a stream, Anchorage Bowl (2011)

Generalized Zoning	Number of Lots	% of total lots in Anchorage Bowl
Commercial	116	0.17
Industrial	110	0.16
Park/Open Space	243	0.36
Urban Residential	1,453	2.14
Rural Residential	759	1.12
Other (PC and T)	10	0.01
Total	2,691	3.97

Area-specific impacts were also researched:

- Hillside impacts: Further researching the effects of the provisionally adopted 50-foot stream setback in the Hillside District Plan (HDP) area, the Department found that, out of a total of 8,535 residential properties, approximately 106 have an existing home or accessory structure that is located within 50 feet of a stream. However, 21 of these 106 properties already have structures within the existing 25 foot setback. So the provisionally adopted 50-foot setback would make 85 residential properties nonconforming in the HDP area that were not already out of conformance with current title 21.

- Impacts on PLI and parklands: Research by aerial imagery indicates that lots in the PLI District and parcels in dedicated parks are much less likely to be impacted by a 50-foot stream setback. These areas are characterized by large, relatively undeveloped parcels with a low density of structures and impervious surfaces. Many are also extensive public lands, rather than private investments on limited property areas. Public lands could set a positive example by adhering to the recommended setbacks, with relatively little impact if any on public finance or previously laid development plans by institutions occupying extensive tracts of land.

Exhibit M provides a series of digital imagery maps illustrating the provisionally adopted 50-ft setback. Anchorage Bowl area streams that are visualized include: Little Campbell, Chester, Fish, Ship, and Rabbit Creeks. NOTE: Stream segments in culverts are not subject to the stream setback, but these segments are not distinguished on the maps.

4. Economic Impacts of Smaller Setbacks on Taxpayers and Property Owners:

- The Municipality has already incurred high costs (estimated in the millions of dollars) to rectify flooding and erosion issues associated with insufficient setbacks. Recent examples include: winter flooding on Chester Creek from icing; Little Campbell Creek culverts requiring regular thawing; and Furrow Creek flooding during winter icing events.

- In order to rectify eroding stream banks, the Municipality provides staff and matching grant funds for stream bank re-vegetation projects primarily in the Anchorage Bowl. Matching funds are also provided for stream rehabilitation projects aimed at repairing broken and aging culverts, which provide adequate flow capacity and fish passage.

- The Risk Management Department regularly fields inquiries regarding damage from flooding. It has had to settle on only a few claims in the past 15-20 years, where infrastructure failed to convey flood flows. The MOA should remain diligent with this issue to reduce potential costs.

- The Street Maintenance Department deals with many incidents of flooding each year due primarily to frozen or blocked culverts. Increased development of impervious surfaces within the upper reaches of stream watersheds sends more stormwater runoff downstream, exacerbating an already taxed storm drain system. Many segments of our urban streams and tributaries are contained within culverts; Fish Creek is a prime example. Without natural vegetation buffers and stream banks elsewhere in the watershed to absorb and hold the runoff, these storm drain systems are easily overburdened. Street Maintenance must respond to incidents of blocked culverts and maintain an aggressive maintenance program to address this issue, at a cost of $400,000 annually to the Municipality in terms of personnel time and equipment.

- Relocating infrastructure due to eroding and shifting stream banks incurs costs to the MOA. Trail, infrastructure and utility relocates have been required regularly to accommodate shifting stream banks.

- Impacts to property owners and property values from flooding, erosion, water pollution and turbidity, unstable channels, utility and infrastructure maintenance and re-locates, and compromised or lower value vegetated stream buffers and habitat. Also, economic losses to visitor, fishing, and outdoor recreation sectors locally, and potential dampening effects on local competitive advantages that help attract investment, businesses, and residents.

5. Ways to Implement a 50-foot Setback Avoiding Impacts on Individual Properties:

In summary, an additional one (1) percent of all parcels in the Anchorage Bowl would be influenced by increasing from a 25- to 50-foot stream setback. A total of five (5) percent of all parcels would contain a 50-foot stream setback, including an increased stream protection setback area over the area encumbered by current title 21. In the Hillside District Plan area, the provisionally adopted 50-foot setback would make an estimated 85 residential properties nonconforming that were not already nonconforming before.

Each of the approximately five percent of properties in the Bowl subject to the 50-foot setback would have an increased stream setback protection area relative to the developable portion of the lot. The extent of the impact on use and development potential would vary lot by lot.

By providing flexibility with the provisionally adopted nonconforming provisions to the affected lots, and additional amendments such as discussed below, impacts to individual lots could be minimized and the overall benefits to stream health could outweigh remaining burdens to a proportionately few property owners. If the existing lots can be addressed, then the benefits of increased stream setbacks to the community as a whole lead to the conclusion that increasing the stream setbacks from 25- to 50-feet would be the best policy for Anchorage.

Following are ways to implement a 50-foot setback avoiding impacts on individual properties:

- Gradual Compliance: Over time the goal of a wider setback can be achieved with minimal burden to individual parcels. Existing uses have 'grandfather rights', and the 50-ft setback is applied primarily to vacant and redevelopment properties.

  As proposed in the provisionally adopted Chapter 21.12, *Nonconformities*, lawfully erected single-family, two-family, and mobile home structures would be exempt from being considered nonconforming for encroaching in a stream setback. This means that such structures could expand as long as they don't increase the encroachment, and could rebuild in the same location and to the same dimensions if completely destroyed. This benefits structures that are nonconforming under the current code: if such a structure were completely destroyed today, any new structure would have to be constructed outside of the current 25-foot stream setback. Adjustments could be proposed to this section that would allow such structures to expand into the stream setbacks by a certain amount; in order to increase the flexibility for lawfully erected single-family, two-family, and mobile home structures.

  For other types of structures (multi-family, commercial, industrial, institutional), the nonconforming structures regulations (21.12.040) would apply. Maintenance and repair of such structures without triggering any nonconforming provisions are expanded from current code (per upcoming Issue-Response memorandum regarding Chapter 12, Nonconformities). Only if the structure was damaged or destroyed to an extent of more than 50 percent of the replacement cost would the property owner need to consider moving out of the stream setback. In the provisionally-adopted code, there are also two methods (administrative and conditional use) to apply for replicating the damaged/destroyed structure in its original location. Adjustments could be proposed that would address allowing such structures to expand in the setback by a limited amount.

  The nonconforming provisions of the provisionally adopted code have been significantly relaxed in order to accommodate situations such as those that would be created by increasing the stream setback.

- Greenbelt Acquisition: Acquire greenbelt when economically feasible, using grants and other mechanism not taxing to municipal resources. Recent examples: the Municipality had the chance to purchase a stream easement on an I-1 zoned property, and in another case a parcel highly subject to flooding was offered to the administration for purchase. In both

cases, no action was taken due to the fact that the Municipality has no formal mechanism for setback acquisition. Until a formal procedure can be outlined, there are other mechanisms that can be used such as the pending HLB Mitigation Bank, private donors, local land trust organizations, and grant funding, as potential avenues to greenbelt acquisition.

- Buffer Education and Enforcement: Utilize municipal GIS capabilities to map stream buffers and provide the information on-line to the public. Maps can be made available in various forms to inform not only the public but, municipal employees. Goals are to increase awareness of the setback and to encourage stewardship among adjacent parcel owners. Enforcement generally reflects ignorance of the setback rather than contempt; thus, an educational campaign would reduce the need for enforcement.

- Flexible Zoning Provisions: A variety of approaches are used nationwide to implement stream setbacks to ensure that property owners can achieve maximum economic use of their parcel while protecting stream values: *Buffer averaging* (allowing small encroachments while providing larger buffers to achieve an average setback), *density compensation* (increasing density over allowable zoning limits on the portion of property outside of the setback), and *cluster development* (site development concentrated outside of setbacks and other environmentally sensitive lands). Elaboration on several zoning provisions follows.

- Reasonable Use Exceptions. Local authorities may grant relief from code requirements where compliance leaves no reasonable use of the property. In addition to exceptions that assure that a restricted property retains some reasonable economic use, some communities have gone beyond this legal standard. These communities are incorporating other exemptions and provisions to assure that codes are not unduly burdensome and that property owners are treated fairly.

  Many communities have anticipated a number of specific situations under which strict application of new environment regulations may create difficulties for existing property owners. Code can exempt some uses and activities from critical areas regulation, and specify conditions under which these activities may be conducted. Many communities have provisions that allow minor alterations within critical areas provided that the values and functions of the critical areas are protected.

- Continuation and Expansion of Nonconformities. Allows retention of nonconforming structures and to permit continued investment, upgrades, and expansion to existing buildings and sites made nonconforming solely as a result of the adoption of a new protection setback.

- Flexible Buffer (Setback) Widths. Because of variations in slopes, soils, vegetative cover, mitigation measures or other conditions, buffers (setbacks) may sometimes be reduced without compromising their functions. Variations in buffer widths may also be possible. These provisions address buffer modifications, including averaging of buffer widths, and reduction of standard buffer widths when buffer functions are maintained and certain criteria are met. Options to reduce or average setback widths can also be offered in exchange for other measures that maintain or improve buffer functions (e.g., removal of impervious surfaces or installation of biofiltration/infiltration mechanisms).

- Density Compensation. Increase density over allowable zoning limits on the portion of property outside of the setback. For example, *Onsite Density Transfer* provisions allow density to be transferred from a constrained portion of a site to an unconstrained area on the same site. Such density transfers achieve protection of critical areas while permitting the property owner to retain some or all development rights. These provisions generally include some criteria to assure that density in receiving area doesn't exceed what that area can accommodate. Some jurisdictions use a sliding scale that specifies how much density may be transferred, based on the percentage of the site that is constrained.

Recommendation: As documented in Exhibit A, the Department recommended forwarding the provisionally adopted 50-foot stream protection setback. However, upon reviewing the issue and concerns about nonconformities and other impacts to existing lots, the Administration has proposed (through amendments 57, 58, and 59) to retain current title 21 stream setback regulations, except to reduce stream setbacks from 100 feet to 50 feet in the R-10 residential alpine/slope district, until concerns regarding nonconformities and setback widths can be addressed in a separate stream setbacks amendment. The Administration's amendments also continue current title 21 regulations regarding what is allowed in the stream setbacks, rather than allowing such uses as lawns to be closer to streams.

New information from the 2012 public comments and additional research findings discussed in this issue-response document the following realities:

- Simply falling back to current regulations would conflict with the Comprehensive Plan;
- There is a raised level of public concern and support for vegetated stream protection buffers;
- The stream setback should be increased if Anchorage is to maintain viable streams, wildlife habitat, flood control, and other values as the city continues to grow;
- There are demonstrated economic benefits of protecting streams, and negative impacts of not doing so; and
- There would be impacts of wider setback on individual properties unless further amendments to the provisionally adopted title 21 are provided.

The Department recognizes that this is a significant public policy issue, the 50-foot distance is technically the more appropriate stream protection setback, and there is need for continued discussion and resolution of these issues. The challenge boils down to nonconformities and other impacts on existing individual urban lots. Additional forms of relief for individual properties is prerequisite to a wider setback, but developing the forms of relief appropriate for Anchorage will require more expertise and resources than are available in the title 21 rewrite process.

Therefore, the Department supports forwarding the Mayor's recommended amendments, and development of a stream protection setbacks ordinance for title 21 in a collaborative public process separate from the title 21 rewrite project.

7-3. Reduction of Required Private Open Space

- ► Section 21.07.030. of Provisionally Adopted Title 21
- ► Proposed Amendments R21, R22, R23, R24, and 61 in Consolidated Table

Issue: Should the provisionally adopted private open space requirements be retained or reduced? What standards for open space should apply to each district or development type?

Public comments: Anchorage Citizens Coalition recommends to not reduce the provisionally adopted provision for private open space. Private open spaces complement the community's need for public open space and parks and serve similar purposes, maintaining quality of life, improved quality of new development, sunlight penetration, scenic views, space for recreation and relaxation, and public health. However, the draft provisions to ensure that homes and businesses have adjacent or nearby open space has been whittled away over the years of the title 21 rewrite process. Figures are provided showing how the successive draft rounds of the rewrite diminished the proposed requirement. Now the latest round of amendments whittle it even further. They propose a cap on the total square feet of open space a business development must provide, and would allow residential common open space to be apportioned and used exclusively by individual dwellings, thus eliminating shared places to play. Private common open space is a basic building block in a city that is growing more dense and beginning to provide urban amenities that allow people to relax and recreate outdoors near their homes. But the standard is being squeezed down damaging the quality of life for people who will live in these new, more dense residential developments. The Comprehensive Plan in policy 12 calls for new higher density residential development to be accompanied by adequate public or private open space (Anchorage Citizens Coalition, pages 25-27).

Rogers Park, Mid Hillside, Hillside East, and Turnagain Community Councils; Adopt Title 21 Coalition; Joan Diamond; Johanna Eurich each recommend rejecting the proposal to reduce private open space requirements. Airport Heights Community Council also supports the private open space requirements in the provisionally adopted title 21, and states that reducing these requirements would go against the concerns expressed by community participants during the rewrite process regarding the lack of quality open space in multifamily residential developments.

The provisionally adopted private open space requirement is different for townhomes versus multifamily. Furthermore, the code requires that townhomes reserve open space for the exclusive use of each dwelling unit. The private open space requirements should be consistent across building styles. Requiring townhouse style rental units raises operational complexity and cost, and is unnecessary in a rental environment. Allow the townhouse developer / owner to determine what type of open space—e.g., common spaces versus individual spaces exclusive to each unit—is best suited for the type of development (Cook Inlet Housing Authority, page 305).

Cook Inlet Housing Authority also comments that the development standards for required open space should be more flexible to meet unique site characteristics and project design. Specifically, interior space should not be limited to 25 percent, nor should it only count if the

interior space has a certain amount of windows. Additionally, wetlands and drainage areas, while not appropriate for active use, can serve as quality open space within a development site.

Limit any requirements for private open space to development in the R-3, R-4, and RO Districts, and evaluate the appropriate amounts to require there. The market and the big box ordinance both address commercial development without MOA imposing arbitrary requirements. A new replacement section entitled "usable open space" is proposed (Coffey, pages 181-182, 188-191).

Eliminate private open space in commercial development. Requiring private open space of commercial development even when the market may not want it is a taking of land, adds cost, and decreases density (Don Dwiggins, page 91).

Response: After years considerable research, discussion, public review and compromise at the Assembly Title 21 Committee, the provisionally adopted private open space section established minimum ground rules for the quality of usable outdoor spaces while avoiding substantially increasing the residential area requirement over current title 21. The Department and PZC in 2010 recommended minor adjustments and clarifications (proposed amendments R21 – R24), and the Department has proposed to cap the maximum non-residential area requirement (proposed amendment 61).

Last year the Mayor's consultant proposed significantly reducing and eliminating the private open space requirements and counting indoor rooms for half of the required open space area, among other changes. The Department disagreed and provided a policy discussion of this issue in Exhibit A, pages 51-52. The Administration considered the issue, and has supported moving forward with the provisionally adopted private open space section, with the Department's proposed minor adjustments (mentioned in the paragraph above).

A major objective of the rewrite and a concern expressed by community participants during the process was to address a lack of quality open space in some multifamily residential developments. The provisionally adopted section replaces the current title 21 "usable yard" regulations with a "private open space" requirement that focuses on improvements in quality and usability.

As Table 3 below indicates, the provisionally adopted title 21 is not a substantial increase in the amount of area required, and it allows reductions in the amount of area required by incentivizing higher quality spaces. The provisionally adopted code also explicitly allows rooftops, balconies, and atriums to count as well.

Table 3. Comparison of Current Usable Yard and Provisionally Adopted Private Open Space Area Requirements (square feet)

Zoning District	Current Title 21	Provisionally Adopted Title 21	
		without reductions	with 25% reduction
R-2M	400	480	360
R-3	400	400	300
R-4	100	120[2]	90
RO / B-3 (residential)	100	120	90

One of the commenters is revisiting the consultant's proposal from last year to eliminate the residential private open space requirement in the R-2M and B-3 districts, and reduce it to significantly less than current standard in the R-3 district. Reducing these provisionally adopted standards would reverse the course of the rewrite project, move the community backward from current code minimum standards, and conflict with the policies of the Comprehensive Plan.

Residential buildings constructed in these districts have easily complied with these area requirements for decades, and the provisionally adopted requirements are not a significant departure, except that they require more forethought as to placement and usability on the part of the designer.

The Cook Inlet Housing Authority commented that it is problematic for the R-4, R-4A and non-residential districts to have a different open space area requirement for townhouse style structures versus multifamily buildings, and to require that the townhouses must reserve the open space for the exclusive use of each dwelling unit. After reviewing the issue the Department agrees with the commenter that the private open space requirements in all districts should be consistent across these building styles. Some development projects actually mix the two building styles, or produce a hybrid of the two styles where it is difficult visually or functionally to tell the two apart. A consistent requirement will be simpler for designers and reviewers, and allow the designer of the townhouse-style structure the same flexibility given to the designer of the multifamily building to decide what portion of the required private open space be common space shared among units versus individual spaces exclusive to each unit.

However, one commenters' proposed reduction of the minimum size of common open spaces to a 10' space would undermine usability and attractiveness of the common space shared among multifamily dwellings. Site visit examples can drive home the reality that this dimension isn't sufficient (and less desirable to potential urban residents) for an outdoor space for even a single dwelling unit, much less for multiple units.

[2] Staff has proposed 120 square feet in a technical amendment, from the provisionally adopted 125 feet.

Two commenters proposed allowing more (e.g., up to half) of the private open space to be indoors in a room. The room could be 10'x10' and/or not necessarily visually connected to outdoor spaces. Such a change would undermine the objectives of the open space requirement for outdoor space and green common areas for recreation and relaxation. A small room in a building does not achieve the strong community objective of the rewrite project to provide for outdoor usable open spaces around the buildings. The provisionally adopted atrium standard already increases flexibility over current code while ensuring strong visual outdoor connections and daylight access.

Similarly, wetlands and drainage areas do not meet the objective to provide a usable space for outdoor recreation and enjoyment. The amount of open space required by the provisionally adopted section is small because it does not anticipate the inclusion of unusable slopes, wetlands, and other spaces that cover much land area however do not, for example, offer the minimum quality of usable play space expected within the small amount of area required by title 21.

These proposed changes are unnecessary and counterproductive if their objective is to improve economic impacts. Site testing by the Title 21 Economic Impact Analysis (Exhibit E) indicates that private open space is a minor fraction of the direct costs and land area requirements related to complying with title 21 site development standards—under both the current and provisionally adopted code. With all requirements of title 21 factored in, the overall costs and land area requirements of multifamily residential development is less under the provisionally adopted code than current code.

Furthermore, the Municipality has also recently received the results of the Anchorage Housing Market Analysis (Exhibit H), which corroborates on the high value of private open space in residential projects. It included a case study research of eleven selected compact housing examples in order to support a dialogue about housing preferences related to compact housing, and found that

> Incorporating common space, such as green spaces or areas for socializing, was an important factor to the success of the developments. Where possible, developers incorprorated green space into the developments, including using roof-top gardens or play areas. In other common spaces, outdoor amenities (e.g., fire pits, picnic tables, or fountains provided attractive areas for socializing. (Exhibit H Appendix A, page A-6)

The analysis' summary of lessons learned from the case studies states that the design of the development is crucial to project success, and this includes the design of common spaces. Creating a sense of place and making the development fit with its surroundings—including incorporating existing natural areas into the development—can make the development more attractive to potential residents and more acceptable to the surrounding neighborhood (Exhibit H, Appendix A, pages A-5 and A-6).

Good development practices also reflect a local awareness of the utility of non-residential pedestrian space in commercial districts. They help achieve Comprehensive Plan policies to facilitate a transition toward higher urban density. The non-residential open space requirement for commercial uses is intended to improve the pedestrian environment, improve the function and quality of public entrance areas, and provide employees and customers with outdoor public space.

The non-residential standard is not difficult to meet, as documented in the test case scenarios in Exhibit E. The standard is exemplified by the outdoor patio seating at Sagaya City Market, pictured below. This and the other existing commercial developments tested using the Economic Impact Analysis (EIA) cost comparison model were shown in Exhibit E to meet or nearly meet the provisionally adopted private open space requirement, even though they were not even trying or aware of the draft standard. For example, the MGM Medical Office entrance plaza was shown to exceed the provisionally adopted private open space requirement.

City Market's seating area and MGM Medical Office's entry plaza both comply

The EIA tests also demonstrated that private open space would not be a significant share of the costs or land area requirements related to title 21 compliance. The bar graphs in Exhibit E show that little of the development cost or land area of MGM Medical Office test site, for example, would be due to private open space. That development already provided the space anyhow. These plaza spaces depicted in the photographs above improve the pedestrian environment to facilitate a transition toward more efficient use of land in higher density commercial centers and districts.

Recommendation: Forward the provisionally adopted private open space section, with the proposed amendments R21-24 and 61 from the Administration, except to make the following additional change to make the townhouse private open space standards requirements consistent with those of multifamily structures, as suggested by a commenter:

21.07.030B. Applicability and Open Space Requirement

…

1. R-4 and R-4A districts: [FOR A MULTIFAMILY USE WITH TOWNHOUSE-STYLE CONSTRUCTION, 225 SQUARE FEET OF PRIVATE OPEN SPACE PER DWELLING UNIT, TO BE PROVIDED FOR THE EXCLUSIVE USE OF EACH DWELLING UNIT PER C.2. BELOW; FOR NON-TOWNHOUSE-STYLE MULTIFAMILY USES,] 120 [125] square feet of private open space per dwelling unit, and at least half of the private open space shall be shared in common among the units. Group living uses and nonresidential development shall provide an area equal to five percent of the gross floor area for open space.

…

Secondly, delete the part of proposed amendment #61 which had added new language to the end of subsection 21.07.030B.4.b.

7-4. Public Open Space: Requiring Set-asides or Impact Fees

Issue: Should the title 21 rewrite require residential development to pay an impact fee for its anticipated additional demand for public open spaces, or directly set aside public open space?

Public comment: In the Comprehensive Plan approval process, the public expressed the importance of natural resource protection and Anchorage's open spaces. As the city grows through infill and redevelopment, more open space will be needed to maintain our quality of life, including recreational opportunities, sunlight access, scenic views, and quality of development. Developers benefit from public infrastructure, however they are not paying their fair share of the costs. Municipal taxpayers shoulder the costs when new construction increases demand on this infrastructure. Most cities require developers to pay impact fees when new construction creates demands that increase capital costs. The first public review draft of title 21 rewrite included a requirement for public open space set-asides or a fee-in-lieu for public open space acquisition. During the years of the title 21 rewrite impact fees fell by the wayside and were replaced with requirements to provide public or private open space. With every draft, the requirement diminished. Anchorage Citizens Coalition seeks to ensure that developments pay their fair share of costly impacts on Anchorage's infrastructure, in part by either providing a modest amount of private open space or pay an impact fee in lieu of that open space. In that way, local government will have sufficient resources to provide additional open space as the community becomes more dense. Comprehensive Plan policy 77 states that new development should be required to pay a portion of public infrastructure that it needs, and identifies impact fees as an implementation strategy. Recommended amendment language is suggested from the June 2004 Module 3 public review draft of title 21 rewrite (Anchorage Citizens Coalition, pages 34-35).

Response: The draft requirement for a public open space set-aside was eliminated during the early years of the public process. There are a number of concerns with a public open space set-aside requirement, which include:

- Some areas of the city are well-served by parks, and others are not. A blanket requirement for a park with every subdivision might not adequately discriminate between well-served and under-served areas.

- Many subdivisions are small. Requiring a public park from each subdivision could result in a proliferation of very small parks, which may not be the best situation for the community—sometimes a larger park may be more appropriate.

- Funding is inadequate to maintain the parks that already exist. Before a multitude of new parks are created, the mechanism for maintenance funding should be identified.

- The Municipality has recently received the findings of the Housing Market Analysis (Exhibit H), which documents that financial feasibility and affordability of housing has become more difficult. Requiring a public open space set aside with each subdivision means the developer increases the cost of the lots/homes to recoup the cost of the undevelopable park land, impacting the affordability of homes. Requiring a public open space set aside could

undermine the feasibility of townhouse projects on the margin, and exacerbate the documented gap in financial feasibility for stacked multifamily housing.

- Exhibits H also documents a residential land supply deficit in the Anchorage Bowl. The amount and placement of parks should be carefully balanced with plans to accommodate future population growth, and be consistent with efficient use of strategically located lots.

A system of impact fees would be more efficient than project-by-project public open space set-asides, and could address most of the concerns above. Given the costs of providing housing in Anchorage, the impact fee would need to be calibrated to avoid unintentionally discouraging housing types that are most difficult to finance without incentives and assistance. The production of townhouses and stacked multifamily housing are examples.

According to the American Planning Association, a system of impact fees should also be built atop a strong capital facilities improvement plan, and linked to the planned improvements.

The Housing Market Analysis (Exhibit H, pages 51-52) finds that Anchorage's incomplete system of infrastructure is a barrier to developing compact urban housing, and suggests consideration of "system development charges", a form of impact fee, as a policy option. SDCs can provide a stable revenue stream to fund infrastructure development that can support efficient residential development.

Recommendation: The Department recognizes that this is a significant public policy issue, and supports continued discussion and resolution of these issues separate from the Title 21 rewrite process. The Department supports the Housing Market Analysis' suggestion for future exploration of system development charges, and recognizes the need for the concept of impact fees (a strategy of Anchorage 2020) but developing such a system will require more expertise and resources than are available for the title 21 rewrite process.

7-5. Street Connectivity and Sidewalks

► Section 21.07.060D.3. of Provisionally Adopted Title 21

► Proposed Amendments 62.1, 62.2, 62.3 and 63 in Consolidated Table

Issue: Should the "street connectivity index" be replaced by a simpler street connectivity standard, and should cul-de-sacs be exempted from required sidewalks?

Public comments: Proposed amendments to replace the "connectivity index" are acceptable if they do not diminish the ability to walk and shorten driving trips. However, proposed amendment 63 to eliminate sidewalks on cul-de-sac bulbs contradicts the clear direction of the Anchorage 2020 Comprehensive Plan, because in practical terms it would create discontinuous sidewalks in cases where there is an intended connection between cul-de-sacs. Anchorage 2020 in policies 37, 38, 54, 55 provides strong guidance for improving streets to accommodate

pedestrians, ensure safe pedestrian movement and neighborhood connectivity, and provide pedestrian connections within and between residential subdivisions in new plats. Anchorage 2020 includes the "Street Connectivity Standards" implementation strategy, the objective of which is to amend the municipal subdivision standards to ensure a continuous network of streets and pathways (Anchorage Citizens Coalition, pages 27-28).

Reject the proposal to decrease sidewalks on cul-de-sacs (Mid Hillside and Hillside East Community Councils, page 11). Retain the section's provision for pedestrian connectivity when a cul-de-sac is created. Pedestrian connectivity reduces traffic congestion and promotes personal health, both of which are municipal goals. Support proposed amendment 63 with the following revision: "…sidewalks are not required around cul-de-sac bulbs except for cul-de-sacs which have a pedestrian connection leading between lots to an adjoining path or road, in which case the sidewalk must be installed around a portion of the cul-de-sac to provide a continuous pathway. (Rabbit Creek Community Council, page 9).

Multiple commenters support the provisionally adopted connectivity index, including Airport Heights, Rogers Park and Turnagain Community Councils; the Adopt Title 21 Coalition; and individuals (Diamond; Eurich). They reject the proposal to delete the street connectivity index for various reasons: it is needed for easier walking and biking; it can be approved as provisionally adopted now and supplemented with a clearly written alternative later; connectivity encourages more walking, better health, and a greater sense of community; the connectivity index provides flexibility, adequate administrative relief, adequate vehicle routes in and out of neighborhoods, and it seems simple enough to use.

Dan Coffey comments that the connectivity index is not easy to comply with or comprehend, nor a familiar concept to the MOA traffic department (Coffey, page 183). Don Dwiggins comments that street connectivity is a convoluted concept that usurps the developer's control of the design. The only consideration should be the ability of public safety vehicles having more than one access, and the existing review process already allows for this. Why implement a through-block connection requirement and then state that it may be waived in the review process? (Dwiggins, pages 91-92).

Response: Last year a consultant recommended to the Administration to delete the street connectivity index, and proposed a series of revisions which would reduce the number and location of sidewalks and walkways. The Department disagreed with the consultant's proposals, and provided reasons for supporting the provisionally adopted title 21 (**Exhibit A**, pages 53-54).

The Administration considered this issue and has proposed to delete the connectivity index requirement and create a simpler standard in its place to provide for vehicular and pedestrian connectivity. The Administration otherwise supported retaining the provisionally adopted sidewalk and walkway provisions, except to propose that sidewalks not be required on the bulb portion of cul-de-sacs. (**Exhibit B**, items #30 and #32, page 11).

These changes, as implemented by the Department in proposed amendment 62, are intended to replace the connectivity requirements with simpler vehicular and pedestrian connectivity standards, while essentially leaving the substantive objectives of the provisionally adopted title 21

essentially intact. Amendment 63 would establish that a sidewalk not be required around the bulb of a cul-de-sac. Rabbit Creek Community Council points out that in some cases even the bulb forms part of a pedestrian trail connection between nearby streets. Proposed amendment 63 is suggested because the bulb usually has little traffic, and any sidewalk around its perimeter would the longer way around and be frequently interrupted by driveways.

Recommendation: Although the connectivity index arguably provided a flexible means of implementing the Comprehensive Plan, the Department supports the Administration's proposed amendments, as providing for connectivity in a simpler form and retaining the integrity of the provisionally adopted title 21.

7-6. Neighborhood Protection Standards

Issue: Should the neighborhood protection review apply only to properties directly abutting residential lots, and should the provisionally adopted examples of issues to address be retained?

Public comment: Requiring an adjacent commercial use within 300 feet of any residential use to meet any one of the 11 conditions of this section could amount to a substantial reduction in the value of the commercial property. This could amount to a taking. The MOA has never required an adjacent property to be limited in this fashion. Recommend applying this section only to commercial property that is directly abutting the residential property, and deleting subsection 21.07.070C. which contains the 11 conditions of approval. (Coffey, page 184).

Response: The Neighborhood Protection section applies only to reviews that are discretionary already. These include conditional uses, variances, and site plan reviews. These are discretionary processes by which applicants gain a waiver or entitlement not allowed by-right. Their approval criteria are already more generalized, open-ended, and discretionary than the Neighborhood Protection section. Therefore, despite the commenter's claim, these procedures in both current and provisionally adopted title 21 can already result in case-by-case conditions of approval as or more demanding than anything in this new section.

Neighborhood Protection helps to focus and clarify the kinds of issues of concern to address in these reviews to implement the neighborhood protection policies of the Comprehensive Plan. This reduces neighbor to neighbor conflicts and protects the lasting value of existing neighborhoods and properties. The provisionally adopted title 21 also provides a more standardized, formalized, and well-documented pre-application meeting for the review procedures. Between the stronger review process and the list of site compatibility issues to be considered, applicants will learn of community expectations and agency concerns earlier in the review process, in a more consistent manner than historical experience.

Discretionary processes reflect that every project site is different, so the issues involved will vary. Given the earlier heads-up in the review process regarding site issues to be aware of, the professional design team on a proposed project should be able to address site specific concerns and issues.

To limit applicability to only nonresidential uses abutting or adjacent to a residential use would be inadequate. A new commercial or industrial development could have noise or lighting impacts (for example) that affect residential development at least 300 feet away. To be consistently effective in protecting residential areas, the provisions must apply to all non-residential developments within a certain distance of the residential lots (e.g., 200 or 300 feet), and not arbitrarily based on whatever happens to be the configuration of lot lines (e.g., adjacent). The comment's proposal is doubly inadequate because "abutting" does not even cover the effects of a commercial development right across a street, dedicated walkway, or alley.

Recommendation: Do not support the proposed changes, forward the provisionally adopted section.

7-7. Deletion of Dumpster Screening Amortization

- ► Section 21.07.080G, Pages 339 – 341 of Provisionally Adopted Title 21
- ► Proposed Amendment #70 of Consolidated Table of Proposed Amendments

Issue: Should the provisionally adopted title 21 dumpster screening section and extended amortization schedule be revised?

Public comments: One community council recommends rejecting the proposed amendment (#70) that would increase the amortization period for complying with the new dumpster provisions from five to seven years (Turnagain Community Council, page 55).

The Anchorage School District (ASD) commented that it has about 57 school facilities that will require screening dumpster enclosures; many of those, visible from abutting streets, will require gates. While the increase in amortization period from 5 to 7 years is helpful, the screening will cost $750,000 in current dollars. Since ASD regularly undertakes site improvement projects, it would prefer to combine dumpster screening with those projects. In the meantime, ASD intends to work with dumpster vendors to move units to least visually objectionable locations while not impeding the vendors' access and operations (ASD, page 288).

A commenter states that refuse screening will not be allowed in the front yard setback (21.07.080G.2.d). Refuse collection is done with vehicles where the driver does not leave the vehicle. As such, the truck must be capable of removing and re-setting the dumpster without leaving the truck. If the refuse container is located away from the front, it may cause the loss of parking to provide the maneuvering space needed. This will kill small lot development (Dwiggins, page 96).

Another commenter recommends all existing dumpsters should be "grandfathered" rather than having to be screened within seven years, and dumpster screening only required for new developments. He states that while some commercial and residential developments can accommodate dumpster screening on existing sites, many (most) cannot, and the draft amortization and variance requirements are bureaucratic, arbitrary and costly. While dumpsters

are not particularly attractive, screening as an aesthetic consideration should probably not drive the MOA's requirements. The commenter also provides an Exhibit Q which is a possible replacement of subsections 21.07.080G.1 and 2. The alternate provisions of Exhibit Q primarily remove the requirement for screening dumpsters on existing properties, including the amortization schedule. Its removal of the amortization schedule also includes removing an 18-month timeframe that had been provided as a grace period for removing dumpsters from single-family, two-family, townhouse, and tri-plex dwellings. (Coffey, page 186, and his Exhibit Q – pages 201-202)

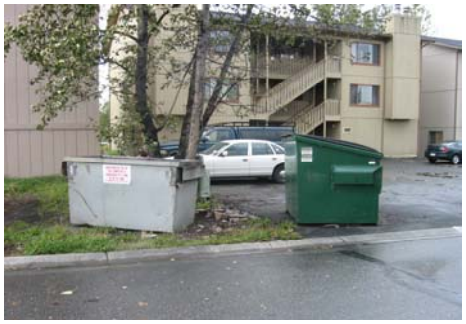
Response: The eight year public process for the title 21 rewrite identified dumpster screening as an important issue early on and citizen testimony throughout that period has been supportive of more attractive streets and neighborhoods, including the screening of dumpsters. Currently, many dumpsters are located partially or completely within public street rights-of-way. Other sites have an unscreened dumpster in full view on the edge of the site. In either case, unscreened dumpsters lining a street contribute to an unattractive city for residents and visitors. The amortization provisions are intended to phase in standards which will move the dumpsters out of the public street rights-of-way and take measures to screen the dumpsters from view along these streets. Although the alternate section provided by a commenter would still require dumpster screening in new developments, older developed areas would be able to keep unscreened dumpsters indefinitely.

The provisionally adopted draft provides a means to address the screening of existing dumpsters by establishing an administrative variance process. This process allows owners of existing sites with dimensional constraints to apply for a variance to locate the dumpster and its screening structure within a required landscaping bed and/or within several parking spaces.

The Administration reviewed this issue and supported retaining the amortization provisions in general, with a proposed amendment (#70) that adds two years to the amortization timeline to allow more time for property owners to deal with screening requirements and the costs that will be involved.

If the amortization provisions were deleted, the most likely way that existing dumpsters will be screened is by waiting for years and decades for older properties to be redeveloped, at which time they would need to come into compliance with dumpster screening standards. By not dealing with the issue of existing dumpsters, roadways lined with dumpsters could remain in Anchorage for decades to come.

Recommendation: The Department recommends retaining the dumpster screening provisions of the provisionally adopted draft and forwarding the Administration's proposed amendment #70 which extends the amortization period from five to seven years.



The above images are of Anchorage streetscapes lined with dumpsters. If amortization provisions are deleted from the code, dumpster-lined streetscapes could potentially remain for decades.

7-8. Off-site Parking and Shared Parking in a Commercial District

► Sections 21.07.090F16. and 21. 07.090H.10. of Provisionally Adopted Title 21

Issues: Should Title 21 allow the separation of an establishment and its required parking spaces by an arterial street? Secondly, should title 21 more specifically address the dimensions of on-street parking spaces, including back-in diagonal parking?

Public comment: The Spenard Chamber of Commerce (comments, page 67) states that its mission is to cultivate Spenard's status as Anchorage's vibrant shopping, dining, and entertainment district in a safe and fun environment. The shopping environment on north Spenard Road is largely dependent on the condition of the roadway and sidewalks. There is local support for two locations for shared parking and the use of back-in diagonal parking. The provisionally adopted title 21 does not address back-in diagonal parking and does not allow shared parking where it is across a minor arterial road (ie., Spenard Road). Therefore,

- Add to section 21.07.090F.16.f (page 360) to allow shared parking across a minor arterial where there is a clear and safe pedestrian crossing as presented in 21.07.090.F.16.e.; and
- Add to a presentation on the design of back-in diagonal parking with recognition of the decreased or eliminated need for a parking aisle.

Response: The provisionally adopted title 21 allows shared parking or off-site parking facilities to count toward the parking requirements. Shared parking is shared by several establishments that do not need the spaces during the same peak parking times. Off-site parking is where an establishment simply locates its own required parking on a separate lot nearby. The shared parking facilities provision (21.07.090F.16.) carries forward current title 21 language that prohibits separation of a use and its shared parking facility used to meet the parking requirements by a higher classification street than a collector. By contrast, the off-site parking language (21.07.090F.17.) comes from the title 21 rewrite process and leaves the traffic engineer with the power to approve separation by a collector, minor arterial, or arterial. It would be more consistent and flexible to update the shared parking language to be consistent with the off-site parking section. The amendment could also provide more guidance that approval be based at least in part on pedestrian safety and access. Another consideration is granting flexibility where an area-specific or institutional master plan, such as is possible in the U-MED District, calls for sharing of parking facilities across a street.

The dimensions of a back-in diagonal parking space would be the same as established for angled parking in provisionally adopted section 21.07.090H.10. This section includes a table of parking space dimensions, diagrams that clarify the elements in the table, and supplementary standards regarding overhang allowances, obstructions, and clearance in subsections a. through i. The bottom illustration on page 371 addresses angled parking spaces. Although the diagram shows a front-in scenario, the parking space elements that it depicts, relative to the required dimensions of those elements in Table 21.07-9, are equally applicable back-in diagonal parking. The addition of a note could clarify this.

Reduction of the "aisle width" dimensions specifically for back-in diagonal parking would not be appropriate or consistent. Parking spaces in a parking facility will need the aisle width regardless of its angle or configuration. However, if it is on-street parking, then the roadway's moving traffic lane completely replaces the parking aisle, and street lane widths apply instead.

Recommendation: Amend the shared parking and off-site parking facility provisions to improve consistency, flexibility, and clarity as to separation by a street. Amend the dimensions for parking spaces and aisles to address on-street and back-in diagonal parking. Language:

21.07.090F.16. Shared Parking

…

f. ***Separation by Streets***

Separation of a use and its shared parking facility by a local street is allowed. Shared parking spaces shall not be separated from the use served by a collector or greater class right-of-way, unless approved by the traffic engineer in consideration of the ease and safety of pedestrian access, and/or a municipally approved specific plan for the area.[SEPARATION BY A COLLECTOR STREET SHALL BE SUBJECT TO APPROVAL BY THE TRAFFIC ENGINEER. SEPARATION BY A STREET DESIGNATED IN THE *OFFICIAL STREETS AND HIGHWAYS PLAN* AS A HIGHER CLASSIFICATION STREET THAN A COLLECTOR IS PROHIBITED.]

21.07.090F.17. Off-Site Parking

…

b. ***Location***

The maximum distance between off-site parking spaces and the use(s) served shall be the same as provided in subsection 21.07.090F.16.d. for sharing parking spaces (measured along the shortest legal pedestrian route). Separation of a use and its off-site parking spaces by a street shall be subject to subsection 21.07.090F.16.f.[OFF-SITE PARKING SPACES SHALL NOT BE SEPARATED FROM THE USE SERVED BY A COLLECTOR OR GREATER CLASS RIGHT-OF-WAY, UNLESS APPROVED BY THE TRAFFIC ENGINEER.]

21.07.090H.10. Dimensions of Parking Spaces and Aisles

…

c. ***Parking Angle***

Parking angles between zero and 45 degrees and between 75 and 90 degrees are not permitted, except as approved by the traffic engineer. Angles between 45 and 75 degrees are permitted. The dimensions for such angles shall be calculated by the applicant using a method prescribed by the traffic engineer. The angle parking spaces diagram above, including the elements of a parking space that it depicts relative to the required parking space dimensions in Table 21.07-9, are equally applicable to either front-in or back-in angle parking spaces.

d. ***Parking Aisle Width***

Where the parking angle differs across a one-way parking aisle, the greater required parking aisle width shall be provided. In the case of on-street parking, the parking aisle width is replaced by the street's travel lane and municipal street standards for street lane widths apply.

7-9. Exterior Lighting Standards

► Section 21.07.100, Page 380 of Provisionally Adopted Title 21

Public comments: A commenter stated that new "lighting zones" are required. He stated further that this has not actually been written but stems from the 'Dark Sky' mentality whose requirements are unattainable: a) No lighting of facades, apparently (No lights visible from the sky.) No Chrysler or Empire State Buildings here! b) No light trespassing! This means you cannot see light from another property. c) Must turn lights off after 10:00 PM. That's safe! (Dwiggins, page 101)

Response: A draft exterior lighting section had been included in the Title 21 rewrite public hearing draft in 2007. The draft section had been prepared through the assistance of a nationally known lighting consulting firm, Clanton and Associates, and a committee from the local chapter of the Illuminating Engineering Society (IES) (Northern Lights Chapter). The draft section was reviewed by the Planning and Zoning Commission and then forwarded to the Assembly Title 21 Committee for review. In 2009, the draft exterior lighting section was withdrawn and a placeholder reserve section (21.07.100) provided for it in the provisionally adopted Title 21. The reasons for withdrawing the section were based on recommendations from committee members of the IES Northern Lights Chapter to wait for an approved model lighting ordinance from the national IES and also to conduct additional site lighting tests.

In 2011, the national IES approved a model lighting ordinance and the Planning Division hired a private consultant to conduct several site lighting tests. The Division is now waiting for funding to conduct additional site lighting tests and to meet with the IES Northern Lights Chapter to discuss revisions to the draft Title 21 exterior lighting section. Once further testing results are obtained and a revised draft section is prepared which receives support from the IES Northern Lights Chapter, the Planning Division will forward this draft and an accompanying draft lighting zone map to the Planning and Zoning Commission for review and recommendations as a separate ordinance from the title 21 rewrite project. A public hearing process will be conducted as part of the Commission's review.

Recommendation: The Department recommends retaining the reserve section placeholder for the exterior lighting section in the provisionally adopted Title 21. Once the overall Title 21 rewrite is adopted, the Department recommends moving forward with a revised exterior lighting section subject to additional site lighting tests being completed and work sessions being held with the IES Northern Lights Chapter.

Municipality of Anchorage

Community Development Department
Planning Division

MEMORANDUM

Date: June 19, 2012

To: Planning and Zoning Commission

From: Jerry T. Weaver, Jr., Director

Subject: Case 2011-104 – Proposed Amendments to Provisionally Adopted Title 21: Follow-up / Unfinished Issue-Response Items

This memorandum provides follow up responses and recommendations as to several remaining issues raised by the public about the provisionally adopted title 21 and proposed amendments. Issues were raised by the public at the March 12 and 19, 2012 public hearings and in written public comments. An item in this memo also provides information requested by the Commission.

This memorandum covers most of the remaining items raised by the public for this case. It does not cover the residential and commercial building design standards sections in chapter 7.

The issue-responses in this memorandum also reference the following:

- Provisionally Adopted Title 21 with Technical Edits, dated 12-12-2011;
- Consolidated Table of Proposed Amendments, dated 3-12-2012;
- The applicable public comments in **Exhibit D**, Comments Received for PZC Case 2011-104. References to public comments in this memorandum use the page number(s) on which the comment appears in Exhibit D.

All Exhibits A through M to the issue-response memoranda are available at http://www.muni.org/Departments/OCPD/Planning/Projects/t21/Pages/Title21Rewrite.aspx .

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Follow-up / Unfinished Issue-Response Items

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1. Off-site Improvements Associated with Land Use Permits

- ► Section 21.03.100E., Page 50 of Provisionally Adopted Title 21
- ► Proposed Amendment 10 in Consolidated Table

Issue: How can the code language more clearly specify the relationship and connection of required dedications and improvements to the proposed development? Should there be limitations or constraints on required off-site improvements?

Public Comment: This is a follow-up to the Planning and Zoning Commission discussion of this issue at its April 23, 2012 worksession, and to issue-response #10 in the Department's Issue-Response Memorandum for Chapters 1-3 which was provided to the Commission on April 19.

Commissioners were considering whether the MOA should have an open-ended ability to require off-site improvements that have a rational nexus connection with the external impacts related to a development, or, if there should be a specific limit in dollars, or another limit on how much it can impose as a proportion of the project's value.

Commissioners requested that staff should work on proposing language that specifies the relationship and connection of the dedications and improvements to the proposed development. Additionally, they requested research as to increasing the specificity as to when this section can be applied and parameters for appropriately requiring dedications or improvements.

Response: An explanation of the provisionally adopted section and proposed amendment 10, including its purpose, basis, and scope of applicability, is discussed on pages 21-22 of the April 19 Issue-Response Memorandum. The issue-response recommendation by the Department was to explore further clarification of the rational nexus connection between the project's impacts and the required improvements.

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 10 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 evident that the wording of proposed amendment 10 remains 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 state and national legal standards. Following is the two part legal test applied nationally for determining whether or not exactions are in compliance with the Federal Constitution:

1. There must be a rational nexus, or essential nexus, connection between an exaction and a legitimate public purpose; and

2. There must be "rough proportionality" between the exaction and the impact of the development project.

Given this legal test, the objectives of this section of the code, and the Administration's intent for its proposed amendment 10, the extent of off-site public infrastructure improvements necessitated by a proposed project should form the best rational basis for what improvements ("rational nexus") and how much ("rough proportionality") to require. The extent of off-site impacts do not necessarily co-relate to the overall size or value of a development project or its property value. Some facility costs or property values are high compared to external impacts. External impacts vary based on each situation.

Therefore, a limitation on required off-site improvements based on the value of the proposed facility or its property value would not meet the rational test – it could be arbitrary, unfair, and ineffective relative to achieving the objectives of the section. It could also be illegal. A development with greater impacts on capital infrastructure needs serving the development could in some cases be required to provide fewer improvements than a more expensive facility that has fewer impacts. Higher value projects would in general benefit while smaller projects would pay a higher exaction relative to the value of the proposed development and its property.

According to the APA Legislative Guidebook, exactions for off-site improvements work as a proper internalizer of externalities (i.e., costs that would otherwise be borne by the Municipality and its taxpayers) only if the exaction is proportional to the public expense it is supposed to cover. If the exaction is significantly lower than the cost to the public, then it is less effective in internalizing the infrastructure cost. A development with a net negative impact—more cost to the community than a benefit—would occur. On the other hand, an exaction that is significantly higher than the cost to the public could have the deleterious effect of discouraging appropriate development. Therefore, the language of the section should tie the amount of the exaction to the off-site impacts and avoid limits based on non-factors.

Recommendation: Clarify proposed amendment #10 from the consolidated table of proposed amendments, by adding language using the two-part test established by the legal system, and providing a purpose statement. Newly additional language appears in bright yellow highlights.

E. Improvements Associated with Land Use Permits

1. Purpose

The purpose of this section is to determine what off-site public infrastructure improvements are reasonably necessary to serve a development, determine the portion of the demand for off-site public infrastructure improvements which is created by a development, and to provide for dedications or improvements which are directly proportional to the development's demand for the public infrastructure improvements.

2.[1.] **Improvements Required**

The issuance of a land use permit under this section for the construction of a residential, commercial, or industrial structure on a lot, shall be subject to the permit applicant providing the easements, dedications, and improvements required for a subdivision in the same improvement area under chapter 21.08, *Subdivision Standards*. In applying the

provisions of chapter 21.08, *Subdivision Standards,* under this section, the term "lot" shall be substituted for the term "subdivision," the term "permit applicant" shall be substituted for the term "subdivider," and the term "building official [MUNICIPAL ENGINEER]" shall be substituted for the term "platting authority."

3.[2.] **Exceptions**
The requirements in subsection E.1. above shall not apply to a land use permit to the extent that:

a. All construction associated with a single dwelling unit is located on a single lot, tract, or parcel, regardless of zoning district;

b. The traffic engineer determines that a street dedication or improvement is not required for traffic circulation;

c. A dedication or improvement has been provided to the applicable standard of [IN] chapter 21.08, *Subdivision Standards*;

d. A dedication or improvement will be provided under a subdivision agreement that has been entered into under section 21.08.060, *Subdivision Agreements*, or under an established assessment district;

e. The municipality has already appropriated funds to construct an improvement; or

f. The permit is for repairs, maintenance, emergencies, electrical, mechanical, or plumbing.

4.[3.] **Standards for Requiring Dedications and Improvements**
Where chapter 21.08, *Subdivision Standards,* grants discretion to determine whether a dedication or improvement will be required, or to determine the design standards for a dedication or improvement, the building official [MUNICIPAL ENGINEER] shall determine the requirement or standard that applies to a land use permit under this section by applying the following standards:

a. The dedication or improvement shall be reasonably related to and directly correlated to the [ANTICIPATED IMPACT ON PUBLIC FACILITIES AND ADJACENT AREAS THAT WILL RESULT FROM THE USE AND] occupancy of the structure that is the subject of the building or land use permit. The required dedication or improvement shall bear a rational nexus to the public facility improvement needs created by the development. The extent of a requirement shall be no greater than what is proportional to the impact of the development. Any required public use easement shall be removed when calculating density or lot coverage per the applicable zoning district. The building official [MUNICIPAL ENGINEER] may require the permit applicant to provide information or analyses to determine impacts as set out in the comprehensive plan's policies for transportation, transportation design and maintenance, and water resources on public facilities and adjacent areas, including without limitation the following:
…

…Forward the remainder of proposed amendment 10 as proposed by the Administration.

2. Exempting Interior Remodeling, Renovation, and Repair from Site Plan Review

► Section 21.03.180B.1. and 21.03.180C.1., of Provisionally Adopted Title 21

Issue: Does title 21 need to clarify that projects that are solely interior remodeling, renovation, and repair are exempt from review processes such as site plan review?

Public Comment: Re-institute the current code's approach of not adding a surcharge to the cost of interior work to pay for compliance with the new code, in part by adding the following wording to subsections 21.03.180B.1. and 21.03.180C.1. of the site plan review procedure:

> "This section shall not apply to the interior remodeling, renovation, or repair to interior portions of structures that are subject to site plan review under this title except those interior areas that are proposed for meeting any design requirements of Chapter 21.07."

This proposed language works together with another proposed amendment by the commenter which is covered below under issue 4 (Carr Gottstein Properties, pages 105 and 107).

Response: The commenter's suggested amendment reflects current practice to exempt interior work from becoming subject to site plan reviews and conditional uses. The Department has no objection to the amendment and believes it could also be applied to conditional use procedure as there may be similarities in the situation.

Recommendation: Amend Site Plan Review subsections 21.03.180B.1. and 21.03.180C.1., adding a new subsection "a." in each, which reads as follows:

> **a.** This section shall not apply to the interior remodeling, renovation, or repair to interior portions of structures that are subject to site plan review under this title except those interior areas that affect conformity to development and design requirements of this title.

Also amend the Conditional Use section in 21.03.080., adding a new subsection "B" as follows, and renumber subsequent subsections:

> **B. Applicability**
>
> Land uses requiring conditional use review are identified in section 21.05.010, *Tables of Allowed Uses*, section 21.05.070C., *Tables of Allowed Accessory Uses*, and subsection 21.09.050A., *Table of Allowed Uses (Girdwood).*
>
> **a.** This section shall not apply to the interior remodeling, renovation, or repair to interior portions of structures that are subject to conditional use review under this title except those interior areas that affect conformity to the approval criteria for the conditional use review or the development and design requirements of this title.

3. Maintenance and Repair of Nonconforming Premises

► Section 21.12.010F.1., Page 50 of Provisionally Adopted Title 21

Issue: What repairs and maintenance should be allowed under the grandfathering protections?

Public Comment: The new code allows five specific categories of maintenance and repair on an existing nonconformity only if the work is "required to keep structures or sites in a safe condition". Limiting the allowed purpose to only safety related maintenance and repair does not allow routine maintenance such as roof coatings. The existing code allows "ordinary repairs". The change will cause owners of existing developed real estate to suffer adverse economic impacts. Add a new subsection "a." with language from current title 21 that allows "ordinary maintenance or repairs". Language is suggested. (Carr Gottstein Properties, pages 104 and 108).

Response: The intent of the section is in fact to allow for ordinary maintenance and repair to keep the premises in a state of good repair. Subsections a. through f. significantly expand the definition of "maintenance and repair" from current title 21 to include a greater scope of allowed work. The one year time limit has been removed and the 10 percent limit has been increased to 50 percent. Also, the allowed activities for example include repairs necessary to maintain and correct deterioration to the structural soundness or appearance of a building.

If the concern were only to avoid a literal, narrow reading of the reference to "a safe condition" in subsection 1 for the allowed purpose for maintenance and repairs, then a wording clarification there would suffice. However, the problem of a literal, narrow reading may also extend to the specific listing of six categories of what maintenance and repair may include. A specific list of what is "in" creates more likelihood the authors may unintentionally leave "out" an appropriate activity. For example, a new roof coating does not seem to fall under subsections a. through f.

A review of several contemporary ordinances and advisory literature suggests a simpler definition of allowable maintenance for keeping the structure and site in a state of good repair.

Recommendation: Amend subsection 21.12.010F.1. as follows:

F. Maintenance and Repair

1. Ordinary maintenance and repair of nonconformities shall be permitted, and a nonconforming use, structure, lot, or site may be occupied, operated, and maintained in a state of good repair and in a safe condition, provided that no nonconformity is increased. Repair and maintenance of nonconforming signs is set forth in section 21.12.070.[REPAIRS OR MAINTENANCE OF NONCONFORMITIES THAT ARE REQUIRED TO KEEP STRUCTURES OR SITES IN A SAFE CONDITION ARE PERMITTED, PROVIDED THAT THE REPAIR OR MAINTENANCE DOES NOT INCREASE THE EXTENT OF NONCONFORMITY. FOR PURPOSES OF THIS SECTION, "MAINTENANCE OR REPAIR" SHALL MEAN:]

…Delete all subsections a. through f.

4. Excluding Interior Renovations / Repairs from the Requirements to Bring Nonconforming Characteristics Towards Conformity in a Manner Proportionate to the Extent (Cost) of a Proposed Development

► Section 21.12.060C.2., Pages 568-69 of Provisionally Adopted Title 21

Issue: Shall improvements that are interior to a building be subject to the requirement to invest an amount equal to 10 percent of the cost of improvements toward bringing nonconforming site characteristics towards conformity?

Public Comment: The new code establishes a surcharge on improvements to a site with non-conforming characteristics of use. It is similar to the surcharge that current code applies only to large retail establishments. For large retail establishments, the current code levies its surcharge on the cost of exterior improvements only. But the new code levies the surcharge as a proportion to all improvements, interior and exterior, because it does not specifically exempt the interior improvements. This makes the new code far more economically onerous. Add language to reinstate the current code's approach of not adding to the cost of interior work to pay for bringing non-conforming characteristics of use up to compliance with the new code. (Carr Gottstein Properties, pages 105 and 108).

Response: Substantial interior renovations, the value of which may be in the range of 25-50 percent of the replacement value of the improvements on the lot, often coincide with a reuse of an existing structure. For example, a former Pay 'N' Save store on C Street between Benson and Northern Lights was gutted and completely renovated to a new chain store, Barnes & Noble, in the 1990s. In this case, there was substantial investment in the property amounting to the scale of reuse and redevelopment. The corporation selected to make few if any improvements to outside, except some improvement to the front façade and façade walkway. As a result, there was little improvement in landscaping, parking circulation, pedestrian access, or exterior lighting. Where the interior renovation becomes such that it amounts to completely replacing or reusing the building, it should be considered a rationale for expecting investment in the site bringing it up toward conformity.

However, the Department has no objection to the commenter's suggestion that typical interior renovations such as tenant improvements in an office building or retail mall be exempted from the Requirements to bring nonconforming characteristics towards conformity in a manner proportionate to the extent (cost) of a proposed development.

Recommendation: Amend subsection 21.12.060C.2.a. as follows:

f. For the purposes of this section, "total project costs" shall be determined by the building official pursuant to municipal code, and shall be exclusive of all costs of improvements that move the development in the direction of conformity to the requirements of this title. The costs of remodeling, renovation or repair that are interior to a structure not subject to site plan review shall also be excluded where the value of those interior improvements are less than 50 percent of the replacement value of the structure.

5. Landscaping Section

- ► Section 21.07.080, Pages 324 – 339 of Provisionally Adopted Title 21
- ► Amendments #65.1 – 65.5, #66 - 69 of the Consolidated Table

Issue: Should the provisionally adopted title 21 landscaping section (21.07.080) be replaced by an alternate section?

Public comments: One community council, the Anchorage Citizens Coalition, and two citizens provided comments which generally oppose the Administration's proposed amendments to the provisionally adopted title 21 landscaping section (21.07.080). These comments generally state:

- Recommend against language that would decrease landscaping standards when the Mayor's proposal to rewrite that section is implemented.
- The provisionally adopted landscaping section is the result of hundreds of hours of citizens' time, staff research and review, and response to comments received from the public, including the American Society of Landscape Architects, and review and changes to the section made by the Urban Design Commission, Planning & Zoning Commission, and the Municipal Assembly.
- Building design standards were decreased over the years in exchange for increased landscaping. The balance of the compromises will be destroyed if both landscaping and design standards are reduced.
- A new landscape ordinance is a key Comprehensive Plan strategy to improve our city.

(Rogers Park Community Council – page 7, Anchorage Citizens Coalition – page 28, Johanna Eurich – page 50, Joan Diamond – page 283)

The Anchorage Citizens Coalition and the Turnagain Community Council are opposed to reducing the requirements for parking lot interior landscaping (in proposed Amendment #65.4). The ACC states that the proposed changes almost cut in half the amount of interior landscaping required. This is clearly against the goals of the comprehensive plan. The cost of the landscaping is far outweighed by the new code's decrease in required parking. That is part of the balance that has been found over the years of the rewrite. To now cut in half the minimal landscaping throws off that careful balance. The TCC states that it opposes reducing the requirements for parking lot interior landscaping. This city is filled with large, unattractive, sea-of-asphalt parking areas; stronger requirements are severely needed.

(Anchorage Citizens Coalition – page 29; and Turnagain Community Council – page 55)

One commenter indicates that the landscaping requirements in the provisionally adopted code have increased significantly from current title 21. He recommends that the standards should be

reverted to the current code levels. He provides a listing of items in the provisionally adopted landscaping section which he thinks will take more land and cost significantly more.

(Dwiggins, pages 92-95)

The Cook Inlet Housing Authority commented that the requirement for a two year warranty bond on landscaping should be removed. They noted that it adds cost and the MOA currently has the means to enforce the zoning code as it is. Such a bond on a recent Loussac project could cost an additional $10,000. They also ask why the MOA is requiring private developers to obtain a bond when the MOA at times does not enforce its own landscaping responsibilities. This is a double standard that simply adds cost to a development.

Cook Inlet also commented on parking lot landscaping standards and asked why a multi-family use in a multi-family zoning district would have to provide a 15-foot wide buffer landscaping on the edge of its parking lot when an adjacent single family home owner could redevelop his site and not have to meet a buffer landscaping standard.

(Cook Inlet Housing Authority, pages 307 and 309)

The Anchorage School District provided a comment which indicated that its issue regarding buffer landscaping on the perimeter of school sites has been resolved, essentially since the buffer landscaping standard would apply to new schools and existing schools not in compliance with this requirement would be grandfathered. However, the District indicated that issues of concern regarding isolation of schools from serving as centers of community, safety, security, and reduced availability of site usage for tight urban sites will need to be addressed by both design professionals and municipal code authorities.

(Anchorage School District, page 285)

Several commenters provided alternate landscaping sections to replace the provisionally adopted landscaping section (including the Administration's amendments). The first commenter (Coffey) indicated that a major problem with the new proposed code is that it presents an entirely new methodology for determining how much landscaping is required in a specific circumstance. He indicated that the "landscaping units" calculations used in the provisionally adopted draft are very bureaucratic, which makes it confusing and costly. He recommends adoption of an alternate landscaping section in his "Exhibit P" which was developed by a licensed, practicing landscape architect. The alternate landscaping section does not use a "landscape units" system.

(Coffey, pages 184-186, pages 193-200)

The second commenter (Schoenthal) indicated in his comments the following issues with the provisionally adopted landscaping section:

- unnecessary text and complexity;
- assumptions about a greater level of expertise or personnel within the Municipality to implement the changes;

- legally binding requirements of title 21 should be kept in the Title and not in the Title 21 User's Guide;
- surety requirements should be less than 100% of the value of the landscape plants, and items such as topsoil that don't have to be replaced should be excluded; and,
- the change in buffer landscaping requirements for industrial zoned property has a significant cost (e.g., 15 foot wide bed from a 10-foot wide landscaping bed in the current code).

He also provided an alternate landscaping section which is an updated version of the section provided in the Coffey comments.

(Schoenthal, pages 316-327)

Response: The landscaping section in the title 21 rewrite was developed based on a strategy in the *Anchorage 2020 – Anchorage Bowl Comprehensive Plan* to revise the landscape ordinance to implement various land use and design policies in the Plan. The strategy calls for a revised ordinance to provide the following: a clear definition of landscaping requirements, maintenance requirements, incentives for retaining existing vegetation, wider planting beds, incentives for using native species, tips for avoiding wildlife conflicts, and flexible requirements.

The provisionally adopted landscaping section (21.07.080) is the result of hundreds of hours of public citizens' time spent reviewing and commenting on the section, staff research and review of drafts with a committee of landscape architects, response to comments received from the public, including comments from the American Society of Landscape Architects (Alaska Chapter), and review and changes to the section made by the Urban Design Commission, Planning & Zoning Commission, and the Municipal Assembly.

In the summer of 2011, a consultant to the Mayor recommended deleting most of the provisionally adopted landscaping section and replacing it with landscaping standards which were similar to standards in the current Title 21. Some standards proposed by the consultant were actually a step backwards from the current landscaping standards, e.g., proposed deletion of screening landscaping standards. The Department recommended to the Administration to not accept the consultant's recommendations, but to retain the provisionally adopted landscaping standards and forward for adoption.

In the fall of 2011, the Administration directed the Planning Division to hold several meetings with the landscape architects who advised the consultant in the proposed rewrite of the landscaping section and to then review and recommend possible revisions to the provisionally adopted section. Division staff held several meetings with landscape architects and also conducted several site tests using the provisionally adopted standards. Based on these efforts, staff prepared proposed amendments to the provisionally adopted title 21 which were included in the package of amendments submitted to the public for review in January 2012 as part of the Planning and Zoning Commission public hearing process.

In April 2012, Planning Division staff met with a committee of the American Society of Landscape Architects (ASLA), Alaska Chapter. It was at this meeting that Planning Division staff learned that the ASLA Chapter did not support the landscape units system in the provisionally adopted draft but would be in favor of a system more similar to the current code. The committee indicated that they would draft a proposed alternate landscaping ordinance which will draw elements from both the provisionally adopted landscaping section and the draft produced by Terry Schoenthal, who had developed an alternate landscaping section and testified to the Planning and Zoning Commission in March 2012. As of the date of this issue/response narrative, the ASLA committee has not submitted an alternate draft landscaping section to the Planning Division.

The latest Schoenthal draft landscaping section, which is one of the documents being used by the ASLA committee to draft an alternate landscaping section, contains elements that begin to address items listed for a landscape ordinance in the Anchorage 2020 implementation strategy. These include: additional credit and incentives to keep existing trees on a site, and a surety requirement (maintenance) which varies based on the size of a site. However, this draft section could also result in potential setbacks to the provisionally adopted code and in some cases the current code, such as:

- Allows other design professionals to prepare a landscape plan. Amendment #65.1 to the provisionally adopted code requires a landscape architect to prepare these plans – this was recommended by ASLA.
- Screening landscaping is deleted as a standard except along freeways. For residential properties abutting certain industrial uses, the perimeter landscaping standard would be less than current title 21.
- Visual enhancement landscaping is similar to current code except that certain improvements could receive credit which offset the required number of trees or shrubs. In that sense, the visual enhancement landscaping standard in terms of trees and shrubs could potentially be less than current code.

These types of issues will be further vetted by the ASLA committee and reflected in the draft landscaping section that will be prepared by that organization.

Recommendation: Given the wide range of comments on this particular section, the proposals to significantly change it, and the forthcoming alternate draft from the ASLA Alaska Chapter, the Department recommends that the provisionally adopted landscaping section and its proposed amendments should be forwarded to the Assembly. Once the alternate draft landscaping section is received from the ASLA Alaska Chapter, the Planning Division will review it as a proposed amendment to the provisionally adopted section. This will include:

1) a review to what extent the alternate draft meets the criteria of the comprehensive plan strategy;
2) a review to what extent the alternate draft would improve standards in the current code, and,

3) a comparison of standards in the proposed alternate section against standards in the provisionally adopted landscaping section.

This analysis would be included in the staff report which transmits the alternate draft as a proposed amendment to the provisionally adopted landscaping section. The public could have the opportunity to review and comment on the proposed new landscaping section as a new case before the Planning and Zoning Commission.