

## CHAPTER 21.13: NONCONFORMITIES

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<b>21.13.010</b>	<b>GENERAL PROVISIONS</b> .....	<b>2</b>
A.	Purpose .....	2
B.	Authority to Continue.....	2
C.	Determination of Nonconformity Status .....	3
D.	Government Agency Property Acquisitions .....	3
E.	Change of Ownership or Tenancy .....	3
F.	Maintenance and Repair .....	3
G.	Replacement Cost.....	3
H.	Willful Destruction .....	3
<b>21.13.020</b>	<b>SINGLE- AND TWO-FAMILY STRUCTURES AND MOBILE HOMES</b> .....	<b>3</b>
A.	Damage or Destruction .....	3
B.	Mobile Homes .....	4
<b>21.13.030</b>	<b>NONCONFORMING USES OF LAND OR STRUCTURES</b> .....	<b>4</b>
A.	Limitations on Continuation of Nonconforming Uses of Land or Structures .....	4
B.	Commercial Uses in Industrial Districts .....	4
C.	Change of Use .....	5
D.	Damage or Destruction .....	5
E.	Abandonment or Cessation of Use .....	6
F.	Overcoming Presumption of Abandonment.....	6
<b>21.13.040</b>	<b>NONCONFORMING STRUCTURES</b> .....	<b>7</b>
A.	Continuation of Nonconforming Structures Generally .....	7
B.	Overheight Buildings .....	7
C.	Buildings Exceeding Maximum Setback .....	7
D.	Damage or Destruction .....	7
E.	Legalization of Nonconforming Dimensional Setback Encroachments .....	9
<b>21.13.045</b>	<b>NONCONFORMING ENCROACHMENTS INTO WATERCOURSE, WATER BODY, AND WETLAND SETBACKS</b> .....	<b>9</b>
A.	Continuation of Nonconforming Structures and Uses Within Required Stream Setbacks .	9
B.	Continuation of Nonconforming Structures and Uses Within Required Major Drainageway, Water Body, and Wetland Setbacks .....	10
C.	Variance Requests.....	10
<b>21.13.050</b>	<b>NONCONFORMING LOTS OF RECORD</b> .....	<b>10</b>
A.	Nonconforming Lots .....	10
B.	Undivided Parcels .....	11
C.	Legalization of Lots Created Prior to September 16, 1975.....	11
<b>21.13.060</b>	<b>CHARACTERISTICS OF USE</b> .....	<b>12</b>
A.	Developments Are Conforming .....	12
B.	Parking Out of Compliance .....	13
C.	Bringing Characteristics into Compliance .....	13
<b>21.13.070</b>	<b>NONCONFORMING SIGNS</b> .....	<b>14</b>
A.	Effective Date .....	14
B.	Amortization Provisions .....	14
C.	Termination .....	15
D.	Maintenance of Nonconforming Signs .....	15
E.	Reconstruction of Damaged Sign .....	15
F.	Historic Signs .....	15
G.	Extension of Time to Comply .....	16

## CHAPTER 21.13: NONCONFORMITIES

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### 21.13.010 GENERAL PROVISIONS

#### A. Purpose

1. The purpose of this chapter is to regulate continued existence of legal uses, structures, lots, and signs established prior to the effective date of this title, or the effective date of future amendments to this title, that no longer conform to the requirements of this title. All such situations are collectively referred to in this chapter as “nonconformities.” It is the intent of this chapter to permit these nonconformities to continue until they are removed or brought into conformance with this title, and to encourage their re-use and movement towards conformity. The acknowledgement and relief granted to existing property, land uses, and structures provided in this chapter are intended to minimize negative economic effects on development that was lawfully established prior to the effective date of this title and any subsequent amendments.
2. This chapter also regulates characteristics of use such as parking and landscaping. Section 21.13.060 addresses the requirements for developments that don’t comply with the district-specific standards of chapters 21.04, 21.09, and 21.10; the use-specific standards of chapters 21.05, 21.09, and 21.10; or the design and development standards of chapter 21.07, except for section 21.07.020B., *Stream, Water Body, and Wetland Protection*. The nonconforming standards for this section are contained in 21.13.045., Nonconforming Encroachments in Watercourse, Water Body, and Wetland Setbacks.

#### B. Authority to Continue

##### 1. Generally

Any nonconformity that lawfully existed as of the effective date of this title and that remains nonconforming, and any nonconformity that is created as a result of any subsequent rezoning, amendment to the text of this title, or by the acquisition of property for a public purpose, may be continued or maintained as a nonconformity only in accordance with the terms of this chapter, unless such nonconformity falls within the exception set forth in subsection 21.13.010B.2.

##### 2. Exception Due to Variances or Minor Modifications

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

##### 3. Conditional Uses and Site Plan Reviews

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

b. A conditional use or use with an approved site plan, existing prior to the effective date of this title that is permitted in its entirety as a principal use in the district in

which it is located under this title shall not be deemed a nonconforming use. Such use shall be deemed a permitted principal use and the conditional use permit or the approved site plan shall be null and void.

**C. Determination of Nonconformity Status**

In all cases, the burden of establishing the existence of a legal nonconformity shall be solely upon the owner of the nonconformity, not the municipality. Verification of nonconforming status may be established through the process set forth in section 21.03.250, *Verification of Nonconforming Status*. The municipality shall waive all fees for a period of two years after January 1, 2014, for verification of nonconforming status for nonconformities generated by the changes in this version of title 21.

**D. Government Agency Property Acquisitions**

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

**E. Change of Ownership or Tenancy**

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

**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 21.13.070. Subsections 21.13.030D. and 21.13.040D. govern the replacement of damaged or destroyed nonconforming uses and structures.
2. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

**G. Replacement Cost**

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

**H. Willful Destruction**

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

(AO 2012-124(S), 2-26-13; AO 2018-67(S-1), 10-9-18; AO 2019-11, 2-12-19)

**21.13.020 SINGLE- AND TWO-FAMILY STRUCTURES AND MOBILE HOMES**

**A. Damage or Destruction**

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

**B. Mobile Homes**

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

(AO 2012-124(S), 2-26-13)

**21.13.030 NONCONFORMING USES OF LAND OR STRUCTURES**

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

Nonconforming uses of land or structures may continue, subject to the general provisions of section 21.13.010 and the following limitations, or as provided in subsections B. and D. below:

1. No nonconforming use of land shall be enlarged or increased or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of the regulations that make the use nonconforming. Any nonconforming use on a lot or portion thereof may be altered to decrease its nonconformity.
2. No nonconforming use of land shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of the regulations that make the use nonconforming.
3. No existing structure devoted to a use not permitted by this title in the district in which it is located shall be enlarged, extended, or constructed except in changing the use of the structure to a use permitted in the district in which it is located. (For example: a self-storage facility that is a nonconforming use in a district may not construct new storage units.)
4. Any nonconforming use may be moved or extended throughout any parts of a building that are reasonably adaptable for such use at the time of adoption or amendment of the applicable regulations, but no such use shall be extended to occupy any land outside such buildings. If a nonconforming use is moved to another part of the building, the space vacated shall not be filled with another nonconforming use. (For example: a warehouse that is a nonconforming use in a district and occupies half of a building may expand into the other half of the existing building, but may not begin to store items outside the building.)
5. No additional structure not conforming to the requirements of this title shall be erected in connection with the nonconforming use of land or structure.

**B. Commercial Uses in Industrial Districts**

The municipality recognizes that some existing commercial establishments may become nonconforming in the I-1 and I-2 districts as a result of the adoption of the Title 21 Rewrite Project (2002-2012). The intent of this section is to allow continued investment and moderate expansion of such establishments in their existing location for a period of 20 years following the effective date of the rewrite project.

1. This subsection 21.13.030B. applies to existing commercial or community uses in the I-1 and I-2 districts that are made nonconforming and cannot achieve improvements or expansions as a result of amendments to the land use regulations on January 1, 2014. Where in conflict with other provisions of this section 21.13.030, this subsection B. shall apply.

2. The gross floor area of the use or land area of the use on the site (for non-structural uses) may be expanded by up to 20 percent during a 20-year period ending on January 1, 2034, through construction or placement of a structure, addition to an existing structure, or increase in land area used.
3. The nonconforming use of land may be enlarged or increased or extended to occupy a greater area of the site, only as necessary to provide for required parking and other improvements associated with the permitted expansion of gross floor area.

**C. Change of Use**

1. Any nonconforming use may be changed to another nonconforming use if all of the following criteria are met:
  - a. The director finds that the proposed nonconforming use is more appropriate to the district than the existing nonconforming use;
  - b. Any characteristics of use that are out of compliance with this title are not changed to become less compliant with the requirements of this title; and
  - c. No structural alterations are made other than those required by title 23, or minor interior structural alterations, such as cutting a door into a shear wall.

Appeals of the director's decision shall be made to the zoning board of examiners and appeals in accordance with subsection 21.03.050B.
2. If a nonconforming use is superseded by a permitted use, the nonconforming use may not thereafter be resumed.

**D. Damage or Destruction**

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

**1. Administrative Approval**

- a. An application for administrative approval to rebuild a nonconforming use shall be submitted to the director on a form provided by the department and shall contain the information specified on the application form.
- b. Notice of the application shall be published, mailed, and posted in accordance with section 21.03.020H.
- c. There shall be a 30-day comment period, starting from the date of notice, before the director acts on the application as provided in subsection D.1.d. below.
- d. The director shall review the application and act to approve, approve with conditions, or deny the application based on the approval criteria of subsection D.2. below. Findings of the director shall be in writing. The director may impose limitations or conditions as may be necessary to meet the approval criteria or to reduce or minimize any potential adverse impact on other property in the area.
- e. Appeals of the director's decision may be made to the zoning board of examiners and appeals, pursuant to section 21.03.050B.
- f. If the application is approved or approved with conditions, the use shall continue to be a nonconforming use and be subject to the provisions of this chapter.

**2. Approval Criteria**

- a. The nonconforming use is or shall be made compatible with uses allowed on adjacent properties, in terms of site design and operating characteristics (such as lighting, noise, odor, dust, and other external impacts);
- b. The nonconforming use will not limit, impair, or impede the normal and orderly development and improvement of surrounding property for uses permitted on those properties;
- c. Utilities, access roads, drainage, and other necessary facilities are sufficient to service the use, or will be provided;
- d. Adequate measures have been or will be taken to provide ingress and egress that are designed to minimize traffic congestion on the streets; and
- e. The nonconforming use will not result in the creation of additional nonconformities or the need for any variances.

**E. Abandonment or Cessation of Use**

1. A nonconforming use shall be presumed abandoned and its nonconforming rights extinguished where any one of the following has occurred:
  - a. The owner has indicated, in writing, an intent to abandon the use.
  - b. A conforming use, or a less intensive nonconforming use approved by the zoning board, has replaced the nonconforming use.
  - c. The building or structure that houses the nonconforming use has been removed.
  - d. The use has been discontinued, has been vacant, or has been inactive for a continuous period of at least one year, unless the owner can demonstrate that the owner has been making substantial efforts to continue the use.
2. Once abandoned, the prior legal nonconforming status of the use shall be lost and any subsequent use of the property shall comply with all applicable provisions of this title, unless the nonconforming use is reestablished through the process described in F. below.

**F. Overcoming Presumption of Abandonment**

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

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

(AO 2012-124(S), 2-26-13; AO 2021-89(S), 2-15-22)

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**21.13.040 NONCONFORMING STRUCTURES**

**A. Continuation of Nonconforming Structures Generally**

Nonconforming structures may continue, subject to the general provisions of section 21.13.010 and the following limitations:

1. No nonconforming structure may be enlarged or altered in a way that increases its nonconformity, except as allowed pursuant to B.2. below. Any structure or portion thereof may be altered to decrease its nonconformity, or may be altered or enlarged if the alteration does not intensify the nonconformity. This subsection shall not be construed to allow the expansion of a nonconforming use of structure, which is governed by section 21.13.030 above.
2. Should a nonconforming structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.
3. Tenant improvements or renovations within an existing structure shall not be considered an enlargement or an alteration as described in subsection A.1. above.

**B. Overheight Buildings**

The municipality recognizes that some existing buildings may become nonconforming as a result of the adoption of the Title 21 Rewrite Project (2002-2012). It also recognizes that other existing buildings that conform but were engineered for future additional stories may not be able to be increased in height as planned. The intent of this section is to allow continued investment, upgrades, and expansion of existing buildings affected by changes to height limits in the title 21 rewrite. This section applies to existing buildings that may become nonconforming as to height or that cannot achieve planned and engineered future increased height as a result of amendments to the land use regulations on or after January 1, 2014.

1. If a lawful building erected prior to January 1, 2014, does not comply with the requirements of this title with regard to height, such building shall be deemed conforming with regard to height.
2. Where a lawful building, existing on January 1, 2014, is engineered and constructed for enlargement by the addition of one or more stories, such structure may be enlarged within the full plan dimensions of the existing structure by the addition of not more than two stories. This provision shall apply to buildings that conform to the height limitations as well as to overheight buildings.
3. This subsection 21.13.040B. does not apply in the DT districts, which were not subject to the Title 21 Rewrite project.

**C. Buildings Exceeding Maximum Setback**

If a lawful building erected prior to January 1, 2014, does not comply with the requirements of this title with regard to maximum structure setbacks, such building shall be deemed conforming with regard to setbacks.

**D. Damage or Destruction**

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

1. **Application and Approval Methods**
  - a. ***Administrative Approval***
    - i. An application for administrative approval to rebuild a nonconforming structure shall be submitted to the director on a form provided by the department and shall contain the information specified on the application form.
    - ii. Notice of the application shall be published, mailed, and posted in accordance with section 21.03.020H.
    - iii. There shall be a 30 day comment period, starting from the date of notice, before the director acts on the application as provided in subsection a.iv. below.
    - iv. The director shall review the application and act to approve, approve with conditions, or deny the application based on the approval criteria of subsection D.2. below. Findings of the director shall be in writing. The director may impose limitations or conditions as may be necessary to meet the approval criteria or to reduce or minimize any potential adverse impact on other property in the area.
    - v. Appeals of the director's decision may be made to the zoning board of examiners and appeals, pursuant to section 21.03.050B.
    - vi. If the application is approved or approved with conditions, the structure shall continue to be a nonconforming structure and be subject to the provisions of this chapter.
  - b. ***Conditional Use Approval***
    - i. An application for conditional use approval shall contain the information specified in section 21.03.080C.4. and shall be submitted to the director.
    - ii. The conditional use application shall be processed in accordance with the procedures of section 21.03.080C., except that a community meeting is not required, and the planning and zoning commission shall base their decision on the approval criteria of subsection D.2. below. The commission may impose limitations or conditions as may be necessary to meet the approval criteria or to reduce or minimize any potential adverse impact on other property in the area.
    - iii. An approved replication conditional use shall expire if start of construction has not begun within one year of the planning and zoning commission's approval. The director may approve an extension of up to one year upon written request showing cause. For the purposes of this section, "replicate" shall mean to rebuild to the same dimensions and in the same location as the damaged or destroyed structure, but this shall not prevent moving towards conformity.
    - iv. A nonconforming structure that is approved to be rebuilt per this conditional use process shall henceforth be considered a conditional use and shall no longer be subject to the provisions of this chapter.
2. **Approval Criteria**
  - a. The nonconforming structure is or can be made compatible with uses allowed on adjacent properties, in terms of site design and operating characteristics (such as lighting, noise, odor, dust, and other external impacts);



- b. The nonconforming structure will not limit, impair, or impede the normal and orderly development and improvement of surrounding property for uses permitted on those properties;
- c. The parking, landscaping, and lighting either conform to the requirements of this title, or are moving towards conformity to the maximum extent feasible;
- d. Utilities, access roads, drainage, and other necessary facilities are sufficient to service the use, or will be provided; and
- e. Adequate measures have been or will be taken to provide ingress and egress that are designed to minimize traffic congestion on the streets.

## E. Legalization of Nonconforming Dimensional Setback Encroachments

### 1. Generally

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

- a. An application for the registration of nonconforming encroachment is submitted to the department; and
- b. The encroachment is determined not to be a life safety hazard by the director.

### 2. Procedures for Registration

- a. Application for the registration of nonconforming encroachment shall be submitted to the department, on a form provided by the department. The application shall require an as-built drawn by a land surveyor registered in the state of Alaska, which shows all structures existing on the lot at the date of application. The application shall also require information supporting the assertion that the structure and encroachments were constructed prior to January 1, 1986. The director may require the petitioner to provide additional information to support this application.
- b. Within 30 days of receipt of all requested information, and upon an adequate showing that the requirements stated in subsection 21.13.040E.1. above are met, the director shall issue or deny a certificate permitting the continued use and existence of the encroachment. The director may impose such conditions on the certificate as he/she may determine are appropriate to protect the general welfare. The certificate shall note the size and characteristic of the setback encroachment and the structure. A copy of the required as-built shall be attached thereto.

### 3. Operation

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

### 4. Appeal

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

(AO 2012-124(S), 2-26-13; AO 2020-93, 10-1-20; AO 2021-89(S), 2-15-22)

## 21.13.045 NONCONFORMING ENCROACHMENTS INTO WATERCOURSE, WATER BODY, AND WETLAND SETBACKS

### A. Continuation of Nonconforming Structures and Uses Within Required Stream Setbacks

For the purposes of this code chapter, legally established means legally constructed, permitted, part of an approved conditional use, or part of an approved master plan. Structures and uses

located within the streamside zone and the riparian edge zone that were legally established on or before October 9, 2018 are permitted to remain subject to the following:

**1. Streamside Zone**

- a. Structures, including portions of structures that are located within the streamside zone and are damaged, removed, or destroyed, may be reconstructed within the streamside zone as long as the structure is reconstructed with the same dimensions (or less) and in the same location as the previous structure, or moved to a more conforming location. Reconstruction may require approval of municipal, state, or federal agencies.
- b. If a structure or portion of a structure located within the streamside zone is damaged, removed, or destroyed, and reconstruction is not begun within five years, then the structure loses nonconforming rights and may only be reconstructed in a conforming location.
- c. Once a garden, lawn, or similar use has been removed, the use may not be replaced with another garden, lawn or similar use.

**2. Riparian Edge Zone**

- a. Structures, including portions of structures, that are located within the riparian edge zone and are damaged, removed, or destroyed, may be reconstructed within the riparian edge zone as long as the structure is reconstructed with the same dimensions (or less) and in the same location as the previous structure, or moved to a more conforming location. Reconstruction may require approval of municipal, state, or federal agencies.
- b. If a structure or portion of a structure located within the riparian edge zone is damaged, removed, or destroyed, and reconstruction is not begun within five years, then the structure loses nonconforming rights and may only be reconstructed in a conforming location.

**B. Continuation of Nonconforming Structures and Uses Within Required Major Drainageway, Water Body, and Wetland Setbacks**

Structures and uses located within a major drainageway setback, a water body setback or a wetland setback that were legally established on or before October 9, 2018 are permitted to remain subject to section 21.13.040 (structures) or section 21.13.030 (uses).

**C. Variance Requests**

Anyone wishing to construct, reconstruct, or expand a structure within the riparian edge zone that is not in compliance with subsection A.2. above may request a variance from the Zoning Board of Examiners and Appeals. The application fee for such variance requests shall be waived for a period of five years, beginning October 9, 2018.

(AO 2018-67(S-1), 10-9-18)

**21.13.050 NONCONFORMING LOTS OF RECORD**

**A. Nonconforming Lots**

**1. Setbacks**

Setback and lot coverage requirements applicable to nonconforming lots of record shall be those of the zoning district with the largest lot area requirement within which the lot would be conforming. A lot which fails to be conforming in any zoning district shall maintain a

front setback of 20 feet, side setbacks of five feet, a rear setback of five feet, and a maximum lot coverage of 50 percent.

**2. Residential Districts**

- a. Except as restricted in subsection B. below, in any residential zoning district, notwithstanding limitations imposed by other provisions of this title, dwellings and customary accessory buildings may be erected on lots that fail to meet the requirements for minimum area and/or width, provided all of the following conditions are met:
- i. Any district-specific standards, use-specific standards, and dimensional and design standards such as setbacks, parking, landscaping, etc. are met; and
  - ii. The lot is of record as of the effective date of the original adoption or amendment of applicable regulations.

**3. Nonresidential Districts**

Except as restricted in subsection B. below in any nonresidential zoning district, notwithstanding limitations imposed by other provisions of this title, any use allowed in the district by table 21.05-1 may be erected on lots that fail to meet the requirements for minimum area and/or width, provided all of the following conditions are met:

- a. The review and approval process indicated in table 21.05-1 is applied;
- b. The use does not have a minimum lot size greater than the minimum lot size required by the underlying zoning district;
- c. Any district-specific standards, use-specific standards, and dimensional and design standards, such as setbacks, parking, open space, landscaping, etc. are met; and
- d. The lot is of record at the effective date of the original adoption or amendment of applicable regulations.

**B. Undivided Parcels**

- 1. If two or more abutting lots in single ownership, either of which contains less than 5,500 square feet of area are of record on or after November 27, 1990, and either is nonconforming by virtue of this title or any amendment thereto, the lands involved shall be considered to be an undivided parcel for the purpose of this title, and no portion of such parcel shall be sold or used that does not contain a lot area and lot width equal to or greater than the minimum lot area and width required in the zoning district it is in. If a lot that results from being combined through this provision does not meet the dimensional requirements of the zoning district or of chapter 21.08, the lot shall be considered a legal nonconforming lot at the time of recordation.
- 2. This provision shall not apply to those lots legally created as part of a townhouse development, a cluster housing development, a zero lot line development, or a planned unit development.

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

- 1. Lots existing prior to September 16, 1975, that do not meet the district requirements for minimum area and/or width, and that were not created in accordance with the regulations

of the federal, state, or municipal government, may continue in existence provided the following requirements are met:

- a. An application for the registration of nonconforming lot is submitted to the department; and
  - b. The lot is determined to be sufficient in size to allow construction of a structure and comply with associated district-specific, dimensional, and development and design standards such as setbacks, parking, landscaping, etc.
2. The application shall be on a form provided by the department, and shall be accompanied by an as-built drawn by a land surveyor registered in the state of Alaska, which shows the lot boundaries. The department may require additional information to support the application. The director shall cause notice of the application, including the street address and legal description of the property, to be published on the municipal public notice web page of the municipal website within seven days of the request.
  3. Within 30 days of receipt of all requested information and upon an adequate showing that the requirements stated in subsection C.1. above are met, the director shall issue or deny a certificate for the lot. The director may impose such conditions on the certificate as he or she determines appropriate to protect the general welfare. A copy of the required as-built shall be attached to the certificate.
  4. Once registered, the lot shall enjoy all the protections and privileges afforded to a nonconforming lot under the provisions of this chapter.
  5. Any aggrieved person may appeal the grant or denial of a certificate to the zoning board of examiners and appeals within 30 days of the director's determination.
  6. Nothing in this section shall preclude relief for nonconforming lots by means of a variance.
  7. Nothing in this section shall exempt any lots from the provisions of subsection B. above.

(AO 2012-124(S), 2-26-13; AO 2013-117, 12-3-13)

## **21.13.060 CHARACTERISTICS OF USE**

### **A. Developments Are Conforming**

1. Development that was legally established before January 1, 2014 (except as provided in subsection 2. below) that does not comply with the district-specific standards of chapters 21.04, 21.09, 21.10, and 21.11; the use-specific standards of chapters 21.05, 21.09, 21.10, and 21.11; or the design and development standards of chapter 21.07 (except for subsection 21.07.020B., *Stream, Water Body, and Wetland Protection*) shall be considered conforming on January 1, 2014, and subject to this section. The standards for development that do not conform to subsection 21.07.020B., *Stream, Water Body, and Wetland Protection*, are contained in 21.13.045., *Nonconforming Encroachments into Watercourse, Water Body, and Wetland Setbacks*.
2. For development in the DT districts, the threshold date that is applicable to the provisions in subsection 1. Above is May 28, 2020 instead of January 1, 2014.
3. No change shall be made to any development unless the change is in the direction of conformity to the requirements of this title.

**B. Parking Out of Compliance**

**1. Accessible Parking Spaces**

Nonconforming rights shall not be established for required accessible (ADA) parking in 21.07.090J. Developments shall provide the total number of accessible parking spaces required.

**2. Bicycle Parking Spaces**

Notwithstanding section C. below, if changes to a use or development increase the minimum number of required bicycle parking spaces, the number of bicycle spaces related to the increase shall be provided. For example, if a use or development that is required to have 10 bicycle spaces has only 5 spaces, and changes to the use or development allowed through this title create a total minimum requirement of 15 spaces, the use or development shall, at a minimum, provide the additional 5 spaces. The addition of more spaces may be negotiated through the process outlined in section C. below.

**C. Bringing Characteristics into Compliance**

**1. Applicability**

This section 21.13.060 applies to all multifamily, commercial, mixed-use, community use, commercial marijuana and industrial development projects that:

- a. Do not comply with the district-specific standards of chapter 21.04, the use-specific standards of chapter 21.05, the design and development standards of chapter 21.07 (except for subsection 21.07.020B., *Stream, Water Body, and Wetland Protection*), or any standards of chapter 21.11;
- b. Involve a development project costing more than 10 percent of the assessed value of the structure (or, if no structure over 150 square feet exists, the assessed value of the land); and
- c. Require a permit through title 21 and/or title 23.

**2. Standard**

- a. An applicant for a building or land use permit for a multifamily, commercial, mixed-use, community use, or industrial development that meets the applicability thresholds of section C.1. above, shall be required to spend 10 percent of the total project costs on bringing the development towards compliance with the district-specific standards of chapter 21.04, the use-specific standards of chapter 21.05, and/or the design and development standards of chapter 21.07 (hereafter called "characteristics").
- b. If the applicant can bring the development into full compliance with title 21 for less than 10 percent of the total project costs, then no additional monies need be spent. The municipality shall not require more than 10 percent, but the applicant may choose to spend more.
- c. If the applicant chooses to spend more than 15 percent, the amount in excess of 15 percent may be credited towards future improvements under this section.
- d. The director, in consultation with the applicant, shall determine which characteristics shall be addressed, within the expenditure requirements noted herein. The director and the applicant shall consider how to maximize the public benefit and minimize the economic impact to the property owner. The director shall not require compliance with a standard that would create non-compliance with a different standard (i.e., the director shall not require the addition of landscaping that would cause the development to fall under the minimum required number of parking spaces).

- e. The applicant may appeal the director's decision to the urban design commission, which shall hold a non-public hearing on the appeal.
- 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 improvements are less than 50 percent of the replacement value of the structure. The portion of the total project costs that are related to increases in conformity shall be credited toward the percentages required in subsections C.2.a. and C.5.

**3. No Applicable Characteristics**

If the director, in consultation with the applicant determines no characteristics can be brought towards conformity without causing other characteristics to come out of compliance, or if the only characteristics left to be addressed are so major as to require relocating the structure, or something of similar magnitude, then the applicant shall not be required to perform such work.

**4. Large Commercial Establishment**

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

**5. Timing of Work**

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

(AO 2012-124(S), 2-26-13; AO 2013-117, 12-3-13; AO 2015-82, 7-28-15; AO 2017-55, 04-11-17; AO 2018-67(S-1), 10-9-2018; AO 2019-11, 2-12-19; AO 2020-38, 4-28-20; AO 2021-89(S), 2-15-22; AO 2024-15, 2-27-24, AO 2024-24, 4-23-24)

**21.13.070 NONCONFORMING SIGNS**

**A. Effective Date**

The effective date of this section 21.13.070 is October 1, 2003.

**B. Amortization Provisions**

**1. Legal Nonconforming Permanent Signs**

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

**2. Amortization of Permanent Signs**

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

**3. Amortization of Illuminated Signs**

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

**4. Amortization of Animated Signs**

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

**C. Termination**

Except as provided in subsection 21.12.090D., a nonconforming sign shall immediately lose its legal nonconforming status, and therefore shall be brought into conformance with this title or removed, when any of the following occur:

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

**D. Maintenance of Nonconforming Signs**

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

**E. Reconstruction of Damaged Sign**

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

**F. Historic Signs**

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

**G. Extension of Time to Comply**

The dates established in this section for a sign to be brought into compliance with the requirements of these regulations may be appealed to the zoning board of examiners and appeals by the owner or lessee of the nonconforming sign pursuant to section 21.03.050B., *Appeals to Zoning Board of Examiners and Appeals*. In evaluating the extension of time for a nonconforming use, the zoning board of examiners and appeals shall consider the following factors to determine whether the owner of the sign has had reasonable amount of time to recoup his or her investment:

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

(AO 2012-124(S), 2-26-13; AO 2013-117, 12-3-13; AO 2020-38, 5-28-20)