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# CHAPTER 21.12: NONCONFORMITIES

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## 21.12.010 GENERAL PROVISIONS

### A. Purpose

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

### B. Authority to Continue

#### 1. Generally

Any nonconformity that lawfully existed as of the effective date of this title and that remains nonconforming, and any nonconformity that is created as a result of any subsequent rezoning, amendment to the text of this title, or by the acquisition of property for a public purpose, may be continued or maintained as a nonconformity only in accordance with the terms of this chapter, unless such nonconformity falls within the exception set forth in subsection 21.12.010.B.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 existing prior to the effective date of this title that is permitted as a conditional use, administrative site plan review, or major site plan review in the district in which it is located under this title, but which lacks an approved conditional use permit 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. The scope of such a conditional use or approved site plan shall be governed by the provisions of this chapter unless modified by the decision-making body in accordance with the appropriate process 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

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

4 **C. Determination of Nonconformity Status**

5 In all cases, the burden of establishing the existence of a legal nonconformity shall be solely upon  
6 the owner of the nonconformity, not the municipality. Verification of nonconforming status may be  
7 established through the process set forth in section 21.03.260, *Verification of Nonconforming*  
8 *Status*.

9 **D. Government Agency Property Acquisitions**

10 If a structure, use of land, use of structure, or characteristic of use does not comply with the  
11 requirements of this title solely as a result of an acquisition of land by a government agency for a  
12 public purpose, then such structure, use of land, use of structure, or characteristic of use on land  
13 not acquired by the government shall be deemed conforming.

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

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

17 **F. Maintenance and Repair**

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

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

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

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

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

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

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

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

**1 G. Replacement Cost**

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

**4 H. Willful Destruction**

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

**9 21.12.020 SINGLE- AND TWO-FAMILY STRUCTURES AND MOBILE HOMES****10 A. Applicability**

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

**14 B. Expansions and Enlargements**

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

**17 C. Damage or Destruction**

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

**22 D. Mobile Homes**

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

**29 21.12.030 NONCONFORMING USES OF LAND OR STRUCTURES****30 A. Limitations on Continuation of Nonconforming Uses of Land or Structures**

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

- 33 1. No nonconforming use of land shall be enlarged or increased or extended to occupy a  
34 greater area of land than was occupied at the effective date of adoption or amendment of  
35 the regulations that make the use nonconforming. Any nonconforming use on a lot or  
36 portion thereof may be altered to decrease its nonconformity.

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

## 19    **B.     Change of Use**

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

## 32    **C.     Damage or Destruction**

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

### 36          1.       **Administrative Approval**

- 37                  a.       An application for administrative approval to rebuild a nonconforming use shall  
38                   contain the information specified in the title 21 user's guide, and shall be  
39                   submitted to the director.

- 1           **b.**     Notice of the application shall be published, mailed, and posted in accordance  
2           with section 21.03.020H.
- 3           **c.**     There shall be a 30 day comment period, starting from the date of notice, before  
4           the director acts on the application as provided in subsection C.1.d. below.
- 5           **d.**     The director shall review the application and act to approve, approve with  
6           conditions, or deny the application based on the approval criteria of subsection  
7           C.2. below. Findings of the director shall be in writing. The director may impose  
8           limitations or conditions as may be necessary to meet the approval criteria or to  
9           reduce or minimize any potential adverse impact on other property in the area.
- 10          **e.**     Appeals of the director's decision may be made to the zoning board of examiners  
11          and appeals, pursuant to section 21.03.040B.
- 12          **f.**     If the application is approved or approved with conditions, the use shall continue  
13          to be a nonconforming use and be subject to the provisions of this chapter.
- 14          **2.     Approval Criteria**
- 15          **a.**     The nonconforming use can be made compatible with uses allowed on adjacent  
16          properties, in terms of site design and operating characteristics (such as lighting,  
17          noise, odor, dust, and other external impacts);
- 18          **b.**     The nonconforming use will not limit, impair, or impede the normal and orderly  
19          development and improvement of surrounding property for uses permitted on  
20          those properties;
- 21          **c.**     Utilities, access roads, drainage, and other necessary facilities are sufficient to  
22          service the use, or will be provided;
- 23          **d.**     Adequate measures have been or will be taken to provide ingress and egress  
24          that are designed to minimize traffic congestion on the streets; and
- 25          **e.**     The nonconforming use will not result in the creation of additional  
26          nonconformities or the need for any variances.
- 27          **D.     Abandonment or Cessation of Use**
- 28          **1.**     A nonconforming use shall be presumed abandoned and its nonconforming rights  
29          extinguished where any one of the following has occurred:
- 30          **a.**     The owner has indicated, in writing, an intent to abandon the use.
- 31          **b.**     A conforming or less intensive nonconforming use has replaced the  
32          nonconforming use.
- 33          **c.**     The building or structure that houses the nonconforming use has been removed.
- 34          **d.**     The use has been discontinued, vacant, or inactive for a continuous period of at  
35          least one year.
- 36          **2.**     Once abandoned, the prior legal nonconforming status of the use shall be lost and any  
37          subsequent use of the property shall comply with all applicable provisions of this title,

1 unless the nonconforming use is reestablished through the process described in E.  
2 below.

3 **E. Overcoming Presumption of Abandonment**

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

- 7 1. The owner has been maintaining the land and structure in accordance with all applicable  
8 regulations, including applicable building and fire codes;
- 9 2. The owner has been maintaining or pursuing all applicable permits and licenses;
- 10 3. The owner has filed all applicable tax documents; and
- 11 4. The owner:
  - 12 a. Has been actively and continuously marketing the land or structure for sale or  
13 lease; or
  - 14 b. Has been engaged in other activities that would affirmatively prove there was no  
15 intent to abandon.

16 **21.12.040 NONCONFORMING STRUCTURES**

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

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

- 20 1. No nonconforming structure may be enlarged or altered in a way that increases its  
21 nonconformity. Any structure or portion thereof may be altered to decrease its  
22 nonconformity, or may be altered or enlarged if the alteration does not intensify the  
23 nonconformity. This subsection shall not be construed to allow the expansion of a  
24 nonconforming use of structure, which is governed by section 21.12.030 above.
- 25 2. Should a nonconforming structure be moved for any reason for any distance whatever, it  
26 shall thereafter conform to the regulations for the district in which it is located after it is  
27 moved.

28 **B. Overheight Buildings**

- 29 1. If a lawful building erected prior to [date of passage] does not comply with the  
30 requirements of this title with regard to height, such building shall be deemed conforming  
31 with regard to height.
- 32 2. Where a lawful structure, existing on [date of passage], is engineered and constructed for  
33 enlargement by the addition of one or more stories, such structure may be enlarged  
34 within the full plan dimensions of the existing structure by the addition of not more than  
35 two stories.

1 **C. Buildings Exceeding Maximum Setback**

2 If a lawful building erected prior to [date of passage] does not comply with the requirements of  
3 this title with regard to maximum structure setbacks, such building shall be deemed conforming  
4 with regard to setbacks.

5 **D. Damage or Destruction**

6 A person wishing to replicate a nonconforming structure that has been damaged or destroyed to  
7 an extent of more than 50 percent of the replacement cost at the time of destruction, shall choose  
8 one of the two application and approval methods in subsection D.1. below. The application shall  
9 be made within one year of the damage or destruction.

10 **1. Application and Approval Methods**

11 **a. Administrative Approval**

12 i. An application for administrative approval to rebuild a nonconforming  
13 structure shall contain the information specified in the title 21 user's  
14 guide and shall be submitted to the director.

15 ii. Notice of the application shall be published, mailed, and posted in  
16 accordance with section 21.03.020H.

17 iii. There shall be a 30 day comment period, starting from the date of notice,  
18 before the director acts on the application as provided in subsection a.iv.  
19 below.

20 iv. The director shall review the application and act to approve, approve with  
21 conditions, or deny the application based on the approval criteria of  
22 subsection D.2. below. Findings of the director shall be in writing. The  
23 director may impose limitations or conditions as may be necessary to  
24 meet the approval criteria or to reduce or minimize any potential adverse  
25 impact on other property in the area.

26 v. Appeals of the director's decision may be made to the zoning board of  
27 examiners and appeals, pursuant to section 21.03.040B.

28 vi. If the application is approved or approved with conditions, the structure  
29 shall continue to be a nonconforming structure and be subject to the  
30 provisions of this chapter.

31 **b. Conditional Use Approval**

32 i. An application for conditional use approval shall contain the information  
33 specified in the title 21 user's guide, and shall be submitted to the  
34 director.

35 ii. The conditional use application shall be processed in accordance with  
36 the procedures of section 21.03.080B., except that a community meeting  
37 is not required, and the planning and zoning commission shall base their  
38 decision on the approval criteria of subsection D.2. below. The  
39 commission may impose limitations or conditions as may be necessary  
40 to meet the approval criteria or to reduce or minimize any potential  
41 adverse impact on other property in the area.



- 1                   iii.     An approved replication conditional use shall expire if start of  
2                   construction has not begun within one year of the planning and zoning  
3                   commission's approval. For the purposes of this section, "replicate" shall  
4                   mean to rebuild to the same dimensions and in the same location as the  
5                   damaged or destroyed structure, but this shall not prevent moving  
6                   towards conformity.
- 7                   iv.     A nonconforming structure that is approved to be rebuilt per this  
8                   conditional use process shall henceforth be considered a conditional use  
9                   and shall no longer be subject to the provisions of this chapter.

10           **2.     Approval Criteria**

- 11           a.     The nonconforming structure is or can be made compatible with uses allowed on  
12           adjacent properties, in terms of site design and operating characteristics (such as  
13           lighting, noise, odor, dust, and other external impacts);
- 14           b.     The nonconforming structure will not limit, impair, or impede the normal and  
15           orderly development and improvement of surrounding property for uses permitted  
16           on those properties;
- 17           c.     The parking, landscaping, and lighting either conform to the requirements of this  
18           title, or are moving towards conformity to the maximum extent feasible;
- 19           d.     Utilities, access roads, drainage, and other necessary facilities are sufficient to  
20           service the use, or will be provided; and
- 21           e.     Adequate measures have been or will be taken to provide ingress and egress  
22           that are designed to minimize traffic congestion on the streets.

23   **E.     Legalization of Nonconforming Dimensional Setback Encroachments**

24           **1.     Generally**

25           Existing structures with dimensional encroachments into required setbacks that were  
26           constructed prior to January 1, 1986, may continue in existence provided the following  
27           requirements are met:

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

31           **2.     Procedures for Registration**

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

40           b.     Within 30 days of receipt of all requested information, and upon an adequate  
41           showing that the requirements stated in subsection 21.12.040E.1. above are met,  
42           the director shall issue or deny a certificate permitting the continued use and

1 existence of the encroachment. The director may impose such conditions on the  
2 certificate as he/she may determine are appropriate to protect the general  
3 welfare. The certificate shall note the size and characteristic of the setback  
4 encroachment and the structure. A copy of the required as-built shall be  
5 attached thereto.

6 **3. Operation**  
7 Once registered, the encroachment shall enjoy all the protections and privileges afforded  
8 to a nonconforming structure under the provisions of this chapter.

9 **4. Appeal**  
10 Any aggrieved person may appeal the grant or denial of a certificate to the zoning board  
11 of examiners and appeals.

12 **F. Preexisting Tower and Antennas**

13 Except for abandoned towers and/or antennas, preexisting tower structures shall be allowed to  
14 continue their usage as they presently exist, or may be replaced with a new tower structure or  
15 antenna of like construction and height. Building permits to rebuild the facility shall be obtained  
16 within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or if  
17 said permit expires, the tower or antenna shall be deemed abandoned. New construction other  
18 than routine maintenance on a preexisting tower structure shall comply with the requirements of  
19 this title.

20 **21.12.050 NONCONFORMING LOTS OF RECORD**

21 **A. Nonconforming Lots**

22 **1.** In any residential zoning district, notwithstanding limitations imposed by other provisions  
23 of this title, dwellings and customary accessory buildings may be erected on any lot,  
24 provided the underlying zoning district and dimensional and design standards, such as  
25 setbacks, parking, open space, landscaping, etc. can be met, that is of record at the  
26 effective date of the original adoption or amendment of applicable regulations, except as  
27 restricted in subsection B. below. This provision shall apply even if the lot fails to meet  
28 the requirements for the area or width, or both, that are applicable in the district.  
29 Furthermore, setback and lot coverage requirements applicable to nonconforming lots of  
30 record shall be those of the zone with the largest lot area requirement within which the lot  
31 area would be conforming. A lot that fails to be conforming in any zone shall maintain a  
32 front setback of 20 feet, side setbacks of five feet, a rear setback of five feet, and  
33 maximum lot coverage of 50 percent.

34 **2.** In any nonresidential zoning districts, notwithstanding limitations imposed by other  
35 provisions of this title, any use allowed in the district by table 21.05-2 may be erected on  
36 any lot (through the appropriate review and approval procedure), provided the underlying  
37 zoning district and dimensional and design standards, such as setbacks, parking, open  
38 space, landscaping, etc. can be met, that is of record at the effective date of the original  
39 adoption or amendment of applicable regulations, except as restricted in subsection B.  
40 below. This provision shall apply even if the lot fails to meet the requirements for the  
41 area or width, or both, that are applicable in the district.

42 **B. Undivided Parcels**

43 **1.** If two or more contiguous lots in single ownership, either of which contains less than  
44 5,500 square feet of area are of record on or after November 27, 1990, and either is

1 nonconforming by virtue of this title or any amendment thereto, the lands involved shall  
2 be considered to be an undivided parcel for the purpose of this title, and no portion of  
3 such parcel shall be sold or used that does not contain a lot area and lot width equal to or  
4 greater than the minimum lot area and width required in the zoning district it is in. If a lot  
5 that results from being combined through this provision does not meet the dimensional  
6 requirements of the zoning district or of chapter 21.08, the lot shall be considered a legal  
7 nonconforming lot at the time of recordation.

- 8 2. This provision shall not apply to those lots legally created as part of a townhouse  
9 development, a cluster housing development, a zero lot line development, or a planned  
10 unit development.

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

- 12 1. Lots existing prior to September 16, 1975 may continue in existence provided the  
13 following requirements are met:

- 14 a. An application for the registration of nonconforming lot is submitted to the  
15 department; and  
16 b. The lot is determined to be sufficient in size to allow construction of a structure  
17 and comply with associated district-specific, dimensional, and development and  
18 design standards such as setbacks, parking, landscaping, etc.

- 19 2. The application shall be on a form provided by the department, and shall be  
20 accompanied by an as-built drawn by a land surveyor registered in the state of Alaska,  
21 which shows the lot boundaries. The department may require additional information to  
22 support the application.

- 23 3. Within 30 days of receipt of all requested information and upon an adequate showing that  
24 the requirements stated in subsection C.1. above are met, the director shall issue or deny  
25 a certificate for the lot. The director may impose such conditions on the certificate as he  
26 or she determines appropriate to protect the general welfare. A copy of the required as-  
27 built shall be attached to the certificate.

- 28 4. Once registered, the lot shall enjoy all the protections and privileges afforded to a  
29 nonconforming lot under the provisions of this chapter.

- 30 5. Any aggrieved person may appeal the grant or denial of a certificate to the zoning board  
31 of examiners and appeals within 30 days of the director's determination.

- 32 6. Nothing in this section shall preclude relief for nonconforming lots by means of a  
33 variance.

- 34 7. Nothing in this section shall exempt any lots from the provisions of subsection B. above.

- 35 8. The department shall publish the registration of a nonconforming lot including the street  
36 address and legal description of the property in a newspaper of general circulation in the  
37 municipality within seven days of the issuance of the certificate.

1 **21.12.060 CHARACTERISTICS OF USE**

2 **A. Developments Are Conforming**

- 3 1. Development that was legally established before [date of passage] that does not comply  
4 with the district-specific standards of chapter 21.04, the use-specific standards of chapter  
5 21.05, or the design and development standards of chapter 21.07 (except for section  
6 21.07.020B., *Stream, Water Body, and Wetland Protection*) shall be considered  
7 conforming on [date of passage], and subject to this section. Development that does not  
8 conform to section 21.07.020B., *Stream, Water Body, and Wetland Protection*, shall be  
9 considered nonconforming.
- 10 2. No change shall be made to any development unless the change is in the direction of  
11 conformity to the requirements of this title.

12 **B. Parking Out of Compliance**

13 Notwithstanding section C. below, if changes to a use or development increase the minimum  
14 number of required parking spaces, the number of spaces related to the increase shall be  
15 provided. For example, if a use or development that is required to have 30 spaces only has 20  
16 spaces, and changes to the use or development allowed through this title create a total minimum  
17 requirement of 35 spaces, the use or development shall, at a minimum, provide the additional 5  
18 spaces. The addition of more spaces may be negotiated through the process outlined in section  
19 C. below.

20 **C. Bringing Characteristics into Compliance**

21 1. **Applicability**

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

- 24 a. Do not comply with the district-specific standards of chapter 21.04, the use-  
25 specific standards of chapter 21.05, or the design and development standards of  
26 chapter 21.07 (except for section 21.07.020B., *Stream, Water Body, and Wetland*  
27 *Protection*);
- 28 b. Involve a development project costing more than 2.5 percent of the assessed  
29 value of the structure (or, if no structure over 150 square feet exists, the  
30 assessed value of the land); and
- 31 c. Require a permit through title 21 and/or title 23.

32 2. **Standard**

- 33 a. An applicant for a building or land use permit for a multi-family, commercial,  
34 mixed-use, or industrial development that meets the applicability thresholds of  
35 section C.1. above, shall be required to spend 10 percent of the total project  
36 costs on bringing the development towards compliance with the district-specific  
37 standards of chapter 21.04, the use-specific standards of chapter 21.05, and/or  
38 the design and development standards of chapter 21.07 (hereafter called  
39 "characteristics").
- 40 b. If the applicant can bring the development into full compliance with title 21 for  
41 less than 10 percent of the total project costs, then no additional monies need be

- 1 spent. The municipality shall not require more than 10 percent, but the applicant  
2 may choose to spend more.
- 3 c. If the applicant chooses to spend more than 15 percent, the amount in excess of  
4 15 percent may be credited, as outlined in the user's guide, towards future  
5 improvements under this section.
- 6 d. The director, in consultation with the applicant, shall determine which  
7 characteristics shall be addressed, within the expenditure requirements noted  
8 herein. The director and the applicant shall consider how to maximize the public  
9 benefit and minimize the economic impact to the property owner. The director  
10 shall not require compliance with a standard that would create non-compliance  
11 with a different standard (i.e., the director shall not require the addition of  
12 landscaping that would cause the development to fall under the minimum  
13 required number of parking spaces).
- 14 e. The applicant may appeal the director's decision to the [urban design  
15 commission], which shall hold a non-public hearing on the appeal.
- 16 f. For the purposes of this section, "total project costs" shall be determined by the  
17 building official pursuant to municipal code, and shall be exclusive of all costs of  
18 improvements that move the development in the direction of conformity to the  
19 requirements of this title.
- 20 **3. Insignificant Change**  
21 If the director and the applicant concur that 10 percent of project costs is not enough  
22 money to result in a significant change to any characteristic, the applicant shall place the  
23 required 10 percent of project costs as outlined in subsection B.4. below.
- 24 **4. No Applicable Characteristics**  
25 If no characteristics can be brought towards conformity without causing other  
26 characteristics to come out of compliance, or if the only characteristics left to be  
27 addressed are so major as to require relocating the structure, or something of similar  
28 magnitude, then the applicant shall not be required to perform such work. Instead, the  
29 applicant shall place the required 10 percent of project costs in a municipal account  
30 dedicated to public improvements (such as pedestrian or landscaping improvements) in  
31 the census block group (based on the 2000 census) that the development is in, or an  
32 adjacent census block group.
- 33 **5. Large Commercial Establishment**  
34 If the development project is a Large Commercial Establishment, as defined in section  
35 21.07.120, then the applicant shall spend an additional 10 percent of the total project  
36 costs on bringing the structure into compliance with the design standards of section  
37 21.07.120. If the structure already complies with section 21.07.120, then this subsection  
38 C.5. shall not apply.
- 39 **6. Timing of Work**  
40 The characteristics of use shall be brought towards compliance with all applicable  
41 provisions of this title prior to the issuance of the building or land use permit or shall be  
42 included in the work to be accomplished under the permit.

**21.12.070 NONCONFORMING SIGNS**

**A. Effective Date**

The effective date of this section 21.12.070 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, 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 21.11.090D., 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

1 into full conformity, if an estimate by a licensed and bonded contractor with a designated  
2 date of completion of the new conforming sign is provided by May 16, 2008, which is two  
3 years from the date of passage of this provision.

4 **D. Maintenance of Nonconforming Signs**

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

8 **E. Reconstruction of Damaged Sign**

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

16 **F. Historic Signs**

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

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

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

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