MUNICIPALITY OF ANCHORAGE
OFFICE OF ASSEMBLY COUNSEL

To: Anchorage Assembly Members
From: Legislative Counsel
Date: June 5, 2024
Subject: AO 2024-45: RESPONSES TO QUESTIONS

EXECUTIVE SUMMARY

AO 2024-45 was introduced at the April 23, 2024 Regular Assembly Meeting. On May 3, the Assembly held a worksession where a draft (S) version was presented for discussion. On May 7, the Assembly postponed action on the AO 2024-45(S) to allow for the submission of the (S) for the May 21 Regular Meeting Agenda. At the same meeting, the Administration submitted AIM 68-2024, a memorandum titled, "Planning Department's Initial Review of AO 2024-45." On June 4, 2024, the Department of Law sent a confidential opinion regarding AO 2024-45(S) to the Assembly Counsel, all Assembly Members, the Chief of Staff, and the Director of the Planning Department. In summary of questions posed by constituents, the sponsors posed the following questions to the Assembly Counsel's Office, summarized below and answered in detail starting page 2:

1. **Does AO 2024-45(S) shorten or alter the established timeline for proposed amendments to the comprehensive plan, official zoning map, or the text of Title 21 as it already exists in code?**

No. The established timelines for amending comprehensive plan, official zoning map, and the text of Title 21 are not substantially changed by the proposed ordinance, nor does the ordinance propose any significant shortcuts to these procedural timelines.

2. **Does AO 2024-45(S) alter the established notice requirements for proposed amendments to the comprehensive plan, official zoning map, or the text of Title 21 as it already exists in code?**

Yes. AO 2024-45(S) allows for proposed amendments to the zoning map initiated by the Director, the Planning and Zoning Commission or the Assembly, to be consolidated with a concurrently proposed amendment to Comprehensive Plan or text of Title 21 into one ordinance and processed under the procedures governing Comprehensive Plan Amendments or Title 21 amendments as appropriate.

3. **Does the memorandum, "Planning Department's Initial Review of AO 2024-45", submitted into the record as AIM 68-2024, identify any legal issue in AO 2024-45 that remains unresolved by AO 2024-45(S)?**

No. Most, though not all, of the concerns raised by AIM 68-2024 did not rise to the level of identifying a potential legal defect in AO 2024-45. To the extent, that the AIM did identify potential defects in AO 2024-45, they have been addressed by the submission of AO 2024-45(S).

LEGAL ANALYSIS

Question 1. Does AO 2024-45(S) shorten or alter the established timeline for proposed amendments to the comprehensive plan, official zoning map, or the text of Title 21 as it already exists in code?

No. The established timelines for amending comprehensive plan, official zoning map, and the text of Title 21 are not substantially changed by the proposed ordinance, nor does the ordinance propose any significant shortcuts to these procedural timelines. The ordinance proposes changes primarily impacting three procedures spelled out in subsections 21.03.070C, 21.03.160D and 21.03210B. As illustrated below, all three procedures follow roughly the same timeline and process:

> (1) the Planning Department receives a proposed change, reviews it and distributes to other government agency reviewers as deemed necessary, and makes a recommendation to the Planning and Zoning Commission;
> (2) the Planning and Zoning Commission holds a public hearing, providing a minimum of 21 days' notice before holding a public hearing and taking action;
> (3) the Commission forwards its report with recommendations to the Assembly; and
> (4) finally the Assembly holds a public hearing and takes action upon the proposed ordinance as it would any other AO.

Currently, the Planning Department interprets the 21 day notice requirement to apply to both the public hearings before the planning and zoning commission and the public hearing before the Assembly when it takes action on an ordinance implementing the proposed change to the text of Title 21, the Comprehensive Plan or the Official Zoning Map. Given that the language of AMC 21.03.020H simply refers to the notice required prior to a "public hearing or community meeting", the Department's reading that this would require the same notice for all public hearings, to include those before Assembly, is reasonable. [1] Assuming, then, for the sake of argument, that Department's current reading is the proper interpretation required by code, practically speaking, AO 2024-45(S) does not significantly truncate, alter, or engineer any workarounds for these established timelines. Though it does propose certain changes to established practices.

[1] There is also a reasonable argument that such a requirement would not apply to the public hearing before the Assembly, given that the text of Title 21 deals almost exclusively with the procedural requirements of the actions by the Department, its Director, or the various boards and commissions. Given, that the Assembly's systems and the procedures are generally governed by Title 2 of the Municipal Code as well as Articles IV and X of the Charter, it is arguably unreasonable to read the fairly broad language of AMC 21.03.020H as imposing additional procedural requirements upon the Assembly, without it explicitly saying as much. While the language of AMC 21.02.090B does state that "[t]he land use review and approval procedures specified in Chapter 21.03, Review and Approval Procedures, supplement the assembly's procedures under Title 2. ", however, its use of the term "supplement" seems somewhat inadequate to address conflicting language in code; *see* AMC 2.30.110, Special Notice: Rezoning.

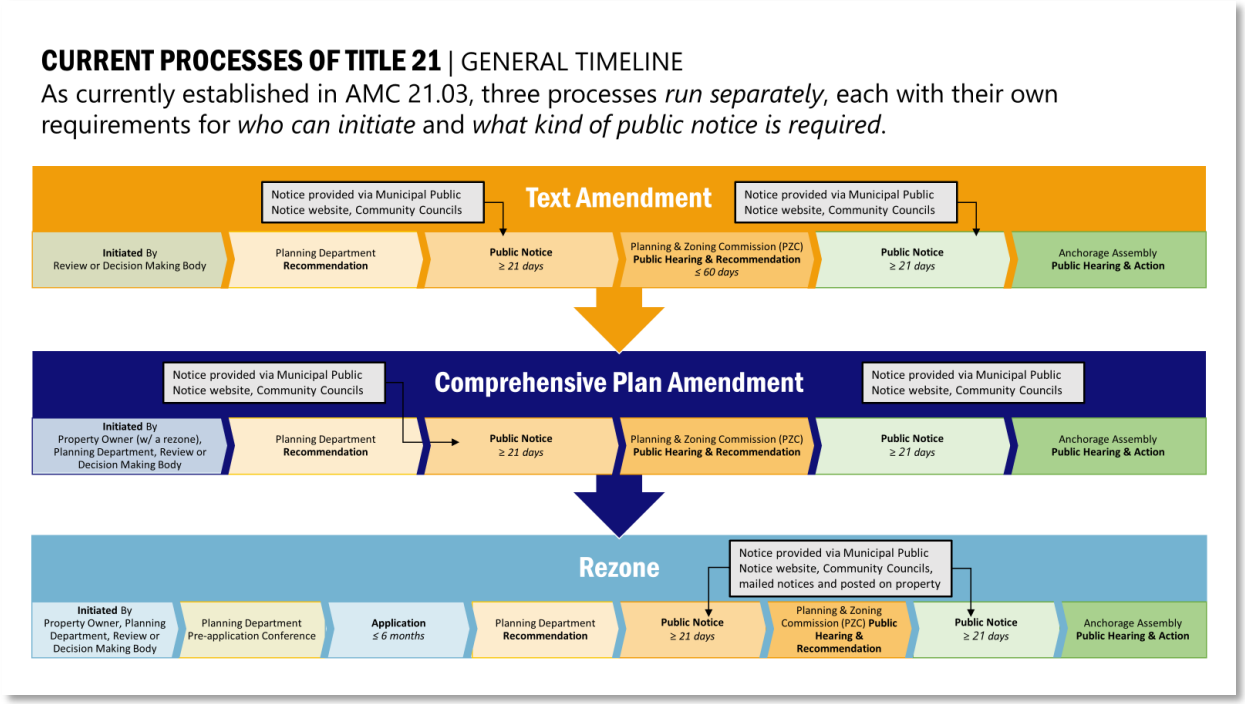

FIGURE 1: CURRENT PROCESSES OF TITLE 21, GENERAL TIMELINE OF PROCESSING

Specifically, for text amendments to Title 21 only, the public notice prior to a public hearing before the Assembly is amended to explicitly mirror the notice required for any other ordinance that amends the Municipal Code that is required by Charter.[2] While this may seem a significant change, the standard practice of the Assembly is generally to introduce a proposed ordinance at one regular meeting and to hold the public hearing at the next regular meeting, two weeks later. As such, the proposed change amounts to a practical difference of seven days. Further, the public notice for a hearing before the Planning and Zoning Commission on text amendments to Title 21 is unchanged, only the public notice requirement when text amendments are next transmitted to the Assembly for a public hearing is the only period ostensibly shortened.

Beyond this minor change, the proposed ordinance does create a new timeline where one did not exist previously. Generally, the temporal requirements of Title 21 provide minimums for providing notice, but no maximums for deliberations. As such, with the few exceptions, the potential timeline of a request Comprehensive Plan Amendment, or Title 21 text Amendment essentially range from four months to infinity. Specifically, under section 21.03.210D, the party initiating a text amendment to Title 21, for example, the Assembly, must submit its proposed ordinance for the

[2] §10.01(b).

Planning Department to review and preparation of a report for the Planning and Zoning Commission. Currently, there is no deadline in Code for the Department to conduct this analysis.

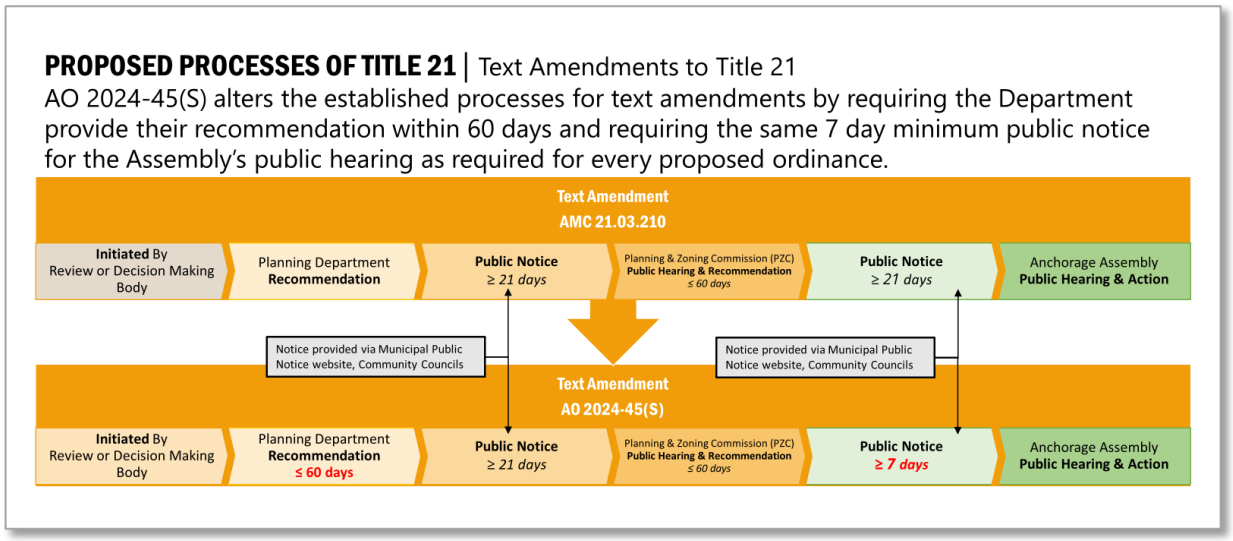

FIGURE 2: PROPOSED TEXT AMENDMENT PROCESS UNDER AO 2024-45(S)

AO 2024-45(S) proposes a clear process whereby Planning shall provide initial feedback on the proposed ordinance within 7 days to the proponent, and then shall provide its final report within 60 days of initial receipt.[3] This 60 day time limit mirrors the amount of time currently provided to the Planning and Zoning Commission to provide it recommendation to Assembly[4] and, as such, should constitute a reasonable amount of time for the Department to provide its report. Further, even at its absolute swiftest, this proposed process would nonetheless require roughly 5 months to complete.

Question 2. Does AO 2024-45(S) alter the established notice requirements for proposed amendments to the comprehensive plan, official zoning map, or the text of Title 21 as it already exists in code?

Yes. AO 2024-45(S) allows for proposed amendments to the zoning map initiated by the Director, the Planning and Zoning Commission or the Assembly, to be consolidated with a concurrently proposed amendment to Comprehensive Plan or text of Title 21 into one ordinance and processed under the procedures governing Comprehensive Plan Amendments or Title 21 amendments as appropriate.

[3] *See* AO 2024-45(S), section 5.

[4] *See* AMC 21.03.210B.6.

Currently, the Code states that "[w]here possible without creating an undue administrative burden on the municipality's decision-making bodies and staff, this title intends to accommodate the simultaneous processing of applications for different permits and approvals that may be required ***for the same development project*** in order to expedite the overall review process."[5] This language appears to apply to any and all processes within Title 21, but in context, this title fails to contemplate policy-based, legislative amendments initiated by the Assembly or the Planning and Zoning Commission that are broader legislation and not for one particular entitlement or development project.

In its discussion of the concurrent processing of actions, Chapter 21.03 primarily focuses on the concurrent processing amendments to the Comprehensive Plan and the Official Zoning Map.[6] This is instructive, because under the current Code, a private landowner can only initiate a Comprehensive Plan Amendment as part of a separately submitted request for a rezone. While the Code does not explicitly forbid the concurrent processing of amendments to both Comprehensive Plan and Zoning Map when initiated by the Municipality itself, it seems apparent by its limited discussion and repeated use of the of the term "applicant" or "application" that these processes were designed around requests by individual, or groups of, landowners. As such, the Code is currently interpreted to require two ordinances, two reports, two case numbers, two sets of notice, and two hearings all before arriving at the Assembly for decision. In practice, this can be quite laborious as the rezone process outlined in AMC 21.30.160 requires notice of the public hearing by the Planning and Zoning Commission be conducted by way of the Municipality's website, notification to the Community Council, direct mail to affected property owners, and posted notice at each and every affected property,[7] whereas the notice required for an amendment to the Comprehensive Plan only requires notice posted to the website and mailed to community councils.[8] These requirements, while thorough, appear ideally suited for small scale rezonings, initiated by private landowners. Further, the Code does not explicitly contemplate the deficiency as currently only the Assembly or a review or decision-making body may initiate a text amendment to the Title. AO 2024-45(S) seeks to address this perceived gap in Code by creating

[5] AMC 21.03.020K.1.

[6] *See* AMC 21.03.070C.3. and 21.03.160C. Chapter 21.03 also contains a substantial description of the procedures for processing the concurrent amendments to the zoning map pursuant to an application for a Small Area Implementation Plan under section 21.03.115. However, as these requests can only be initiated by landowners, this fact only reinforces the perception that in drafting Title 21, the authors only considered processing rezonings concurrent to requests from private landowners for specific development projects.

[7] *See* AMC 21.03.020H. Note that mailed notice is required for all owners of property in the subject area for the change, *and* all owners and residents/occupants of property within 500 feet of the outer boundary of the subject area or 50 of the nearest parcels, whichever is greater. Posted notice is required on the property of the subject area visible from each developed right-of-way adjacent to the property. This becomes an enormous difference in notice costs when it is for a single development project area compared to a change to a zoning district throughout the Anchorage Bowl.

[8] *See id.*

an explicit process for the consideration of concurrent amendments to the zoning map for both concurrent processing of amendments to both the text of Title 21 and the Zoning Map, a telling

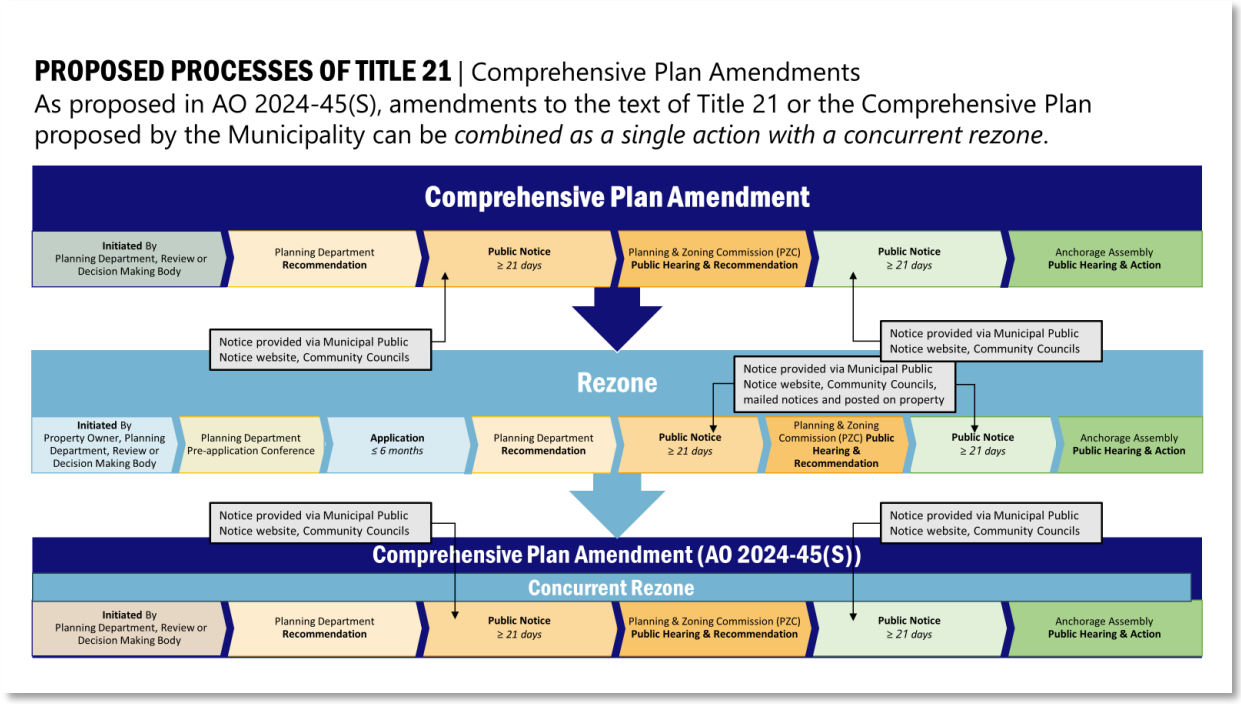

FIGURE 3: CURRENT PROCESS FOR COMPREHENSIVE PLAN AMENDMENTS

proposed amendments to the Comprehensive Plan and the text of Title 21, when initiated by the Municipality for policy changes, as opposed to applications by a landowner for a development. This process creates a clear procedure while gaining efficiency by allowing for two actions to be consolidated into one ordinance. Further the changes clarify that only these deliberative agencies of the Municipal government will have the option to access this procedure, at the initiator's discretion.

However, AIM 68-2024, the Planning Department's memorandum, takes issue with the streamlined procedures as proposed. The Department's insistence that a Comprehensive Plan amendment and a rezone must be broken into separate ordinances lacks legal foundation. While this office concurs that a proposed rezone must conform to the Comprehensive Plan amendment, this requirement does not preclude their simultaneous amendment.[9] The past practice of the Municipality may well have been to consider amending the comprehensive plan as Agenda Item 1 prior to amending the official zoning map as Agenda Item 2, but the Department's insistence that considering identical amendments combined into one ordinance would somehow render them legally void lacks support in caselaw. The mere fact that a zoning map amendment may be

[9] *See* AIM 68-2024 para 5)a)ii).

legally valid when approved one minute after the approval of its complimentary amendment to the Comprehensive Plan, does not render it legally invalid should it go into effect in the same instant.[10]

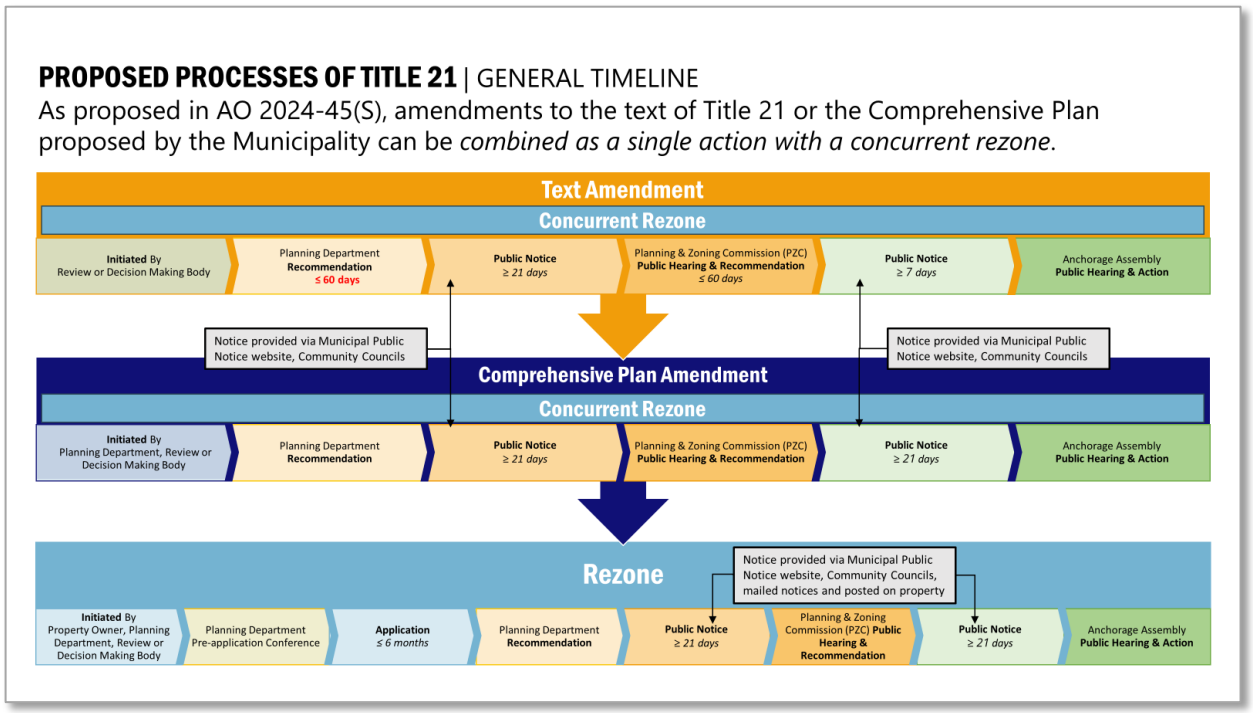

FIGURE 4 GENERAL PROCESSES OF TITLE 21, PROPOSED UNDER AO 2024-245(S)

Further, the AIM's practical argument—putting forth that one proposed amendment may be approved, while another may not—appears to be premised upon the assumption that an ordinance is a rigid, monolithic, legal device, incapable of change and subject only to an up or down vote.[11] This assumption is erroneous. The Department, Commission, and Assembly are all fully capable of recommending, proposing, drafting, and approving appropriate amendments to a single ordinance with multiple sections to ensure its legal viability. This is the very work these bodies are charged to do. Additionally, the Department's example [12] of a proposed amendment to the Comprehensive Plan being approved, while the proposed rezone being disapproved simply does not present a rational argument against these items from being considered in the same ordinance. In point of fact, it gains the precisely desired efficiency because it allows the Department to produce a single report, for example, recommending the approval of Section 1 of

[10] Even if valid, the Department's argument that 21.03.160C requires the implementation of the Comprehensive Plan amendment first, the text of an ordinance can address this issue by delaying implementation of particular sections.

[11] *See id.*

[12] *See* AIM 2024-68, para 4)a)ii).

the proposed ordinance (proposing an amendment to the comprehensive plan) and delete Section 2 (proposing a change to the Zoning Map).

Question 3. Does the memorandum, Planning Department's Initial Review of AO 2024-45, submitted into the record as AIM 68-2024, identify any legal issue in AO 2024-45 that remains unresolved by AO 2024-45(S)?

No. Most, though not all, of the concerns raised by AIM 68-2024 did not rise to the level of identifying a potential legal defect in AO 2024-45. To the extent that the AIM did identify potential defects in the original, these have been addressed by the submission of AO 2024-45(S) for the Addendum on May 9th.[13] Of the few outstanding issues not resolved by the S, the vast remainder simply do not merit discussion here. That said, the memorandum does assert that one aspect of AO 2024-45. which is still included in the (S) version, violates provisions of current Code in Title 21, and we turn to address this now.

The memorandum insists that the Assembly may not waive review by the Planning and Zoning Commission, citing, with emphasis added, the blanket prohibition of AMC 21.02.090, which states that "the assembly shall not take final action on the matter until it has received and taken notice of the review comments and recommendations of the board or commission." This language, however, appears to be an odd holdover from the old Title 21,[14] and conflicts, on its face, with the carve-outs provided elsewhere in Chapter 21.03.[15] Nonetheless, the Department's recent assertion represents a marked departure from what had been a consistent understanding by both branches of this government: the ability to waive Planning and Zoning Review lies inherently within the Assembly's authority as the legislative branch. The elaborate process for amending the text of Title 21 now found in AMC 21.03.210 did not exist prior to the 2014 Title 21 rewrite, and appears to be the product of Clarion Associates, an independent consulting firm hired to rewrite Title 21, but which did not see this project through to completion. In its initial report assessing the Code, Clarion recommended, *inter alia*, the following:

> Create a process for amending the text of Title 21. The current amendment provisions cover only rezonings, making it difficult to make periodic adjustments

[13]AO 2024-48(S) addresses one of the most significant concerns discussed in AIM 68-2024 by restoring the concurrent amendment language and removing the proposed "conforming amendment" process. Additionally, the (S) provides a clearer process for the Department providing informal feedback to the sponsors of potential amendments to the text of Title 21.

[14] *See* AMC 21.10.010B. (Old Code) This language requiring PZC review prior to Assembly action existed in rather cloistered provisions iterating the Commission's powers and duties, and it was also waived by the Assembly periodically even without provisions about waiver that now are in AMC 21.03.210 after the rewrite. That said, the Administration's practice of requesting the Assembly waive the procedural requirements of Title 21 pre-dates the rewrite. *See e.g.* AO 2007-149, and AO 2005-148.

[15] *See AMC 21.03.210*B.5.c allowing the director to bypass the Commission for technical amendments to the code; See also AMC 21.03.210B.7 allowing the assembly to take action in the event the Commission fails to provide its recommendation in a timely manner. Both of these provisions of code conflict with, and arguably supersede, the plain language of 21.02.090.

> to outdated or unsuccessful areas of Title 21. A new process is necessary that allows amendments to any section of Title 21. The process must specify that amending Title 21 is different than other Municipal Code amendments; for example, Title 21 amendments will require more involved notice procedures than the 14-day notice minimum required for other Code amendments. Title 21 amendments would require review and recommendation by the Planning and Zoning Commission, and decision by the Assembly. A public hearing would be required.[16]

This interpretation strikes this office as specious. There is nothing in Clarion's report to support its assertion that every amendment to Title 21 should, or legally could, require a more elaborate process than required for any other portion of code. Further this assertion lacks any apparent foundation in state statute, caselaw, Constitution or Charter.

Explicit procedures for text amendments to land use codes are not *per se* uncommon in municipal law. Generally, jurisdictions recognize that a rezoning can be accomplished through two methods: either through amendment to the official zoning map or through text amendment to the Land Use Code. The former is commonly understood to govern the procedures for individual applicants to change the designation of defined quantities of land, and the latter governing procedures of the government to make broad changes that apply to the entirety of a jurisdiction.[17] Under such a scheme, this office can see a rational argument for referral of a proposed text amendment to Planning Department for review and the Planning and Zoning Commission for a public hearing. However, the Planning Department does not advance such an argument. Instead, it appears to contend that *any* adjustment to the test of chapter 21.04 constitutes a rezone, and that *any* amendment to *any* text *anywhere* in Title 21 constitutes an amendment under section 21.03.210.

While amendments to Title 21 may well entail significant repercussions to the rights of property owners within Anchorage, the same may also be said of amendments to Title 12 - Taxation. Similarly proposed amendments to Title 8 – Penal Code may result in significant impact to the liberty rights of Anchorage residents. Yet neither of these provisions of code purport to require any additional procedural protections. Frankly, this office is aware of no other provision of code that attempts to require a separate public hearing by an independent body prior to the Assembly passing an amendment to the text of a particular title.[18] While there do exist, admittedly,

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[16] Title 21 Diagnostic, Clarion associates, at 27

[17] *See* DAVID L. CALLIES ET AL., LAND USE CASES AND MATERIALS 161 (8th ed. 2021); *See also* § 5:6. Amendments generally, LAND USE PLANNING AND DEVELOPMENT REGULATION LAW § 5:6 (3d ed.); *See also* § 13:14. Planning commission and zoning commission; zoning map and text amendments, OH. PLAN. & ZONING L. § 13:14 (2024 ed.); *See also* § 4.17. Amendments to ordinance (text amendments), 17 WASH. PRAC., REAL ESTATE § 4.17 (2d ed.); *See generally* 101A C.J.S. ZONING AND LAND PLANNING § 68.

[18] At least two provisions require review prior to Assembly action, but not a public hearing by the board, commission, or committee: AMC 3.30.018 requires the Personnel Rules Committee to review and provide input on any changes to Chapter 3.30 of the Code, Personnel Rules; and AMC 4.60.090F. requires referral to the Anchorage Parks and Recreation Service Area Commission "[b]efore the assembly acts on acquisitions, amendments to the park and recreation plans, the park and recreation capital improvement program,

provisions of code governing the legislative procedures of the Assembly, such as AMC chapter 2.30, these requirements generally well grounded in some provision of the Municipal Charter or state law.[19] The elaborate procedural mechanisms ostensibly required by AMC 21.03.210, simply do not enjoy a similar legal foundation.

Further, this argument strikes this office as contrary to the Assembly's inherent legislative power and violative of the Municipal Charter. "In modifying or amending statutes, the legislature may act in any manner not inconsistent with some provision of the constitution limiting the legislative power in that respect."[20]. As a Home Rule Municipality, the Assembly's authority to legislate is only restricted by US Constitution, Alaska Constitution, State Law, and the Charter. While the Charter does require both the adoption of a Comprehensive Plan and the establishment of a Planning Commission, it requires the Assembly ordain both,[21] in addition to any zoning or land use measure.[22] The assertion that these organs and instruments can somehow impose greater procedural requirements on the Assembly to perform its most fundamental function violates the bedrock principle that "[a] municipal legislative body ordinarily cannot restrict the power of its successors to amend ordinances".[23] As such, the Department's insistence that an ordinance passed by the 2014 Assembly could somehow legally "require" any department's, committee's, or commission's action before the Assembly amends any provision of code, represents an impermissible infringement upon the Assembly's legislative power as vested in the Charter. This legal principle was even quoted by the Planning Department in 2008 while responding to criticism regarding the language of the approval criteria in AMC 21.03.070 proposed during the Title 21 rewrite process:

proposed development of park, recreation or open space facilities, the budget, funding for the capital improvement plan, or ordinances relating to the park and recreation program, and contributions to private recreation organizations and activities, contract or management services…"

[19] *See e.g.* AMC 2.30.030B which requires 24 notice for a special meeting of the Assembly may appear, at first blush, to be arbitrary, but nonetheless finds firm legal foundation in both Open Meetings Act's requirement that public body's provide "reasonable public notice" of all meetings required to be open, as well as the Charter's mandate to the Assembly to "determine its own rules… including provisions for reasonable notice to the public and all assembly members of regular and special meetings." AS 44.62.310(e) and Charter § 4.04, respectively

[20] 82 C.J.S. Statutes § 271.

[21] *See* §§ 12.01 and 12.02.

[22] *See* § 10.02.

[23] Power to amend, 6 McQuillin Mun. Corp. § 21:2 (3d ed.)

> "The purpose of the approval criteria is to provide a rational basis for making a decision. In the end however, the plans are approved by the Assembly, and the code cannot limit the Assembly's legislative powers and authority."[24]

Amending the Code is an inherently legislative, as opposed to an administrative, action. As such, the due process required is the same as any other act of legislation, regardless of the procedural requirements the Code may lay out.[25] In essence, the Planning Department, the Planning and Zoning Commission, and the Comprehensive plan itself derive what authority they may have from the Assembly's legislative authority, and nothing in Charter implies they can create, or were intended to be, any limitation upon that legislative authority.

Finally, the Planning Department's objection contradicts its own historical practice. As stated above, the whole Municipal Government appears to have been in accord, until quite recently, that waiver of Planning and Zoning Commission review is an inherent capability of the Assembly.[26] As a matter of simple logic this practice makes a great deal of sense, in that the Commission is required to evaluate text amendments in light of three criteria:

1. The proposed amendment will promote the public health, safety, and general welfare;
2. The proposed amendment is consistent with the comprehensive plan and the stated purposes of this title; and
3. The proposed amendment is necessary or desirable because of changing conditions, new planning concepts, or other social or economic conditions.[27]

When a proposed amendment plainly fails to touch on any of these criteria, submission to the Planning and Zoning Commission would waste both time and effort of an already overburdened municipal resource. Yet, as stated, at length by AIM 68-2024, the Planning Department appears to now advocate that in *any* textual amendment to Title 21 "the procedures of AMC 21.03.210 such

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[24] Memorandum from Tom Nelson, Planning Director, to Planning and Zoning Commissioners on Case #2007-153; Issue Response for Chapter 21.03 of Title 21 Rewrite (2008) at 16, available at https://www.muni.org/Departments/OCPD/Planning/Projects/Documents/Chap3-PZC-IR.pdf. It is worth pointing out that AIM 68-2024 now apparently insists that these required criteria remain in place for text amendments to Title 21 under AMC 21.03.210C, in an apparent reversal of its position in 2008. *See* AIM 68-2024, para 6)c).

[25] *See Onyx v. Board of Commissioners*, 838 F.3d 1039 holding that a board of commissioner's failure to give notice or to hold public hearings before adopting regulations and maps, even if board did not follow state-required enactment procedures did not constitute a due-process violation.

[26] *See* AO 2015-45, AO 2015-57 AO 2015-28, As Amended, AO 2016-025, AO 2016-34(S), As Amended, AO 2016-35, AO 2016-144(S), AO 2017-55, AO 2019-67, As Amended, AO 2020-58, AO 2023-24, and AO 2023 118.

[27] AMC 21.03.210C. *See also* AMC 21.03.210B.6.a. requiring the Commission to "make recommendation to the assembly to approve or deny the text amendment based on the approval criteria of subsection C."

as notice, departmental review, and PZC review must be followed." This argument simply ignores precedent.

Under the provisions of 21.03.210, the only mechanism for waiving Commission review occurs when the Director determines that "technical amendment to Title 21 is needed to address conflicting provisions, inconsistencies, or unintended consequences associated with the Title 21 Rewrite Project (2002-2012)."[28] Examples of these technical amendments are easily identifiable as they make an explicit finding that they are technical amendment and cite specifically to subsection B.5.c. [29]. However, the overwhelming majority of ordinances which waived Commission review do not constitute technical amendments under subsection B.4.c and, instead, simply waived the review because the Assembly or, more tellingly, the Administration, determined the subject matter of the ordinance did not require it, despite there being no explicit provision in the Code for such an exception.[30] As several such ordinances were prepared by the Administration and were reviewed by the Department of Law, this sudden and unexpected demand for strict adherence to the terms of 21.03.210B represents a pronounced change in position, as the Administration has infrequently, yet consistently, requested the Assembly make identical waivers on its behalf.

Ultimately this office is struck by the fact that the Department feels empowered to raise this particular objection to the proposed ordinance in the first place. Under the plain language of the code, the department is to "review each proposed text amendment in light of the approval criteria of subsection C."[31] discussed above. While the criteria of subsection C do require evaluation in light of the Comprehensive Plan, nowhere does it grant the Department authority to identify and opine on what it perceives to be a legal deficiency or purports to constitute a due process violation. Such objections appear to be both beyond the authority and subject matter expertise of the Planning Department, and better suited to the Department of Law. Yet, as of the writing of this memorandum, Department of Law has cloaked its opinions under the mantle of confidentially, placing this office in the unenviable position of responding an argument which lacks clear standing, and unable to publicly refute the argument which does.

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[28] AMC 21.03.210B.5.c. Although it is worthwhile to note that even this exception would be ostensibly prohibited by the Planning Department's strict reading of AMC 21.02.090, discussed *supra*.

[29] AO 2016-054. Prior to the Assembly's passage of AO 2016-136 AMC 21.03.210B.5.d governed cosmetic amendments to the text of Title 21.

[30] *See* AO 2016-025 finding that "PZC has thoroughly considered [an earlier AO], the fee provision is not a material change, and time is of the essence" provided sufficient basis for a waiver; *see also* AO 2019-067, As Amended. (which was prepared by the same author as AIM 68-2024); *see also* AO 2023-118 which based its waiver on the fact that "the Planning and Zoning Commission…has no involvement with the commercial marijuana review process." The Code makes no provision for such waivers. *See also* AO 2017-55 (prepared by Office of Economic and Community Development and Reviewed by the Department of Law); *See also* AO 2017-68 (prepared by the Office of Economic and Community Development

[31] AMC 21.03.210B.3.

Suffice it to say, this office maintains its position that it is inherent to the legislative powers of the Anchorage Assembly to amend any title of municipal code, including Title 21, regardless of past practices or the Planning Department's current reading of the Code. AO 2024-45(S) is fully within the Assembly's legislative authority. The proposed ordinance does not circumvent any Charter or other competent legal authority that could otherwise bind its legislative power and clarifies how it will access Title 21 changes in certain circumstances where current Code is not clear.

CONCLUSION

None of the unresolved criticisms of AO 2024-45(S) presented to this office rise to the level of a legal deficiency. Recent efforts by Assembly members to amend aspects of Title 21 have demonstrated that its drafters of the current Title 21 have effectively, though inadvertently, relegated the Assembly to an approval authority for proposed changes to the title as opposed to the initiator of them. AO 2024-45(S) remedies this apparent gap in the Code, by establishing clearer on-ramps into the already established procedures by which the Assembly can initiate, broad policy-based decisions to amend the text of Title 21 or the Comprehensive Plan. Further, of the three processes for amending Title 21 considered by this ordinance, none of them currently require by code a period of more than approximately six months to implement proposed amendments. AO 2024-45(S) leaves these timelines largely unchanged. While there is evidence some members of the public have grown accustomed to longer more elaborate timelines, and several iterations of review for the same draft legislation, there is no legal foundation supporting this expectation. While this office takes no position on whether longer times than those required by code are appropriate or desirable, it fails to see any valid argument to adhere to any timeline beyond those prescribed by code. It is ultimately the Assembly's responsibility and authority to make policy judgments and author code as it deems appropriate, and any attempt to abrogate or delegate that power, by any agent or agency of the municipality, strikes this office as wholly inappropriate.