



## BUILDING OWNERS & MANAGERS ASSOCIATION

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July 31, 2010

Mayor Dan Sullivan  
Mayor's Office  
632 W. 6<sup>th</sup> Avenue, Suite 840  
Anchorage, AK 99501

### **RE: Recommended BOMA Anchorage Title 21 Rewrite Changes**

Buildings Owners & Managers Association (BOMA) of Anchorage

Mayor Sullivan,

For the last several years, the local association of the Building Owners & Managers Association (BOMA Anchorage) has carefully followed the Title 21 rewrite process (Rewrite). Indeed, many of our members (commercial land owners, engineers, architects, real estate managers, investors, and allied professionals) have spent many hours commenting and working with the Planning Department on changes to the Rewrite. Although some changes have been incorporated, there are still many **critical issues** in regards to the remaining language in the Rewrite and accompanied Anchorage Bowl Land Use Plan Map that, if left as is, will adversely affect our community.

The Building Owners & Managers Association of Anchorage (BOMA) is an organization of commercial property owners, managers, leasing agents and allied professionals with an interest in promoting the professional, educational and legislative interests of the commercial property industry in the State of Alaska.

BOMA Anchorage is part of the larger BOMA International that has over 108 local associations (with 10 overseas associations), an International headquarters in Washington, DC, and members that own and/or manage more than 9 billion square feet of commercial property. Locally, the Anchorage association of BOMA represents over **30 million square feet of commercial property** in the Municipality of Anchorage. BOMA Anchorage members are hard working dedicated professionals.

Because the Rewrite will have such a profound effect upon our members, recently, BOMA Anchorage assembled a **select team** of professionals with insightful Title 21 experience in order to perform a chapter-by-chapter review of the Rewrite, identify significant problems, and create recommendations for change.

Each of these professionals works with Title 21 in different capacities. Each has **significant experience** in land use issues and is highly regarded within the Anchorage community.

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These professionals have spent literally **hundreds of hours** reviewing the proposed Title 21 Rewrite and coming up with the following recommendations. These are “real world” practical recommendations that BOMA Anchorage feels should be incorporated into the Rewrite.

BOMA Anchorage has designated and authorized **Don Dwiggin**s (P: 274-1643, E: [don@dondwiggin.com](mailto:don@dondwiggin.com)) and **Shaun Debenham** (P: 562-9330, E: [shaundebenham@alaska.net](mailto:shaundebenham@alaska.net)) to answer any questions pertaining to this document and represent BOMA Anchorage with regards to the Title 21 Rewrite. Both are available to you and the Assembly for discussing Title 21 Rewrite changes.

It is our hope that the Mayor’s office and the Anchorage Assembly will use this document as a **tool** to make final important changes to the Rewrite before it is adopted by the Assembly. We sincerely appreciate your time and efforts with regards to this critically important Rewrite.

Sincerely,

A handwritten signature in blue ink that reads "Ken Bauer". The signature is written in a cursive, flowing style.

**Ken Bauer**  
President  
Building Owners and Managers Association Anchorage

## General Recommendations

The following are important recommendations that do not directly fall into a specific chapter of Title 21.

### Impact Analysis

**Recommendation:** Perform a comprehensive impact analysis of the proposed Title 21 Rewrite that takes into account, at a minimum, chapters 1-8 and 11-14 and includes the following:

1. The increased cost of development:
  - Higher land costs from needing more land to do the equivalent development permitted today.
  - Higher review and permit fees, thus higher cost to consumers.
  - Increased required amenities.
  - Greater regulation and review.
  - More expensive design through more studies, reports, analyses and 'experts'.
  - Cost of litigation, appeals, board reviews, new conditional uses and the like.
  - Redesign and re-submittal.
  - Lost time.
2. The loss of economic opportunity:
  - Due to increased time frames for processing.
  - Decreased use of the land.
  - Being forced to build uses that are not market driven.
3. The true cost to the MOA for:
  - Greater public transit subsidies.
  - More extensive and complicated reviews.
  - Administrative reviews and rulings.
  - Board and commission administration.
  - Salaries of required 'professional' reviewers.
  - Re-assessing every parcel in Anchorage based on the new land use classifications, lost capacity and economic potential.
  - Lost assessed value and tax revenue due to devaluation (condemnation) and decreased capacity of the land.
  - Thousands of appeals on assessments and increased taxes or tax shifting.
  - Re-training the entire planning and zoning department staff.
  - More inspections during construction.
  - More inspections to confirm long-term compliance.
  - More Code enforcement.
  - More legal interpretations.
  - Cost of litigation over 'taking' of land and property rights.
  - MOA, Anchorage School District, MLP, AWWU, buildings which must comply.
  - Lost economic development because development was simply not undertaken or was shifted to the Matanuska Valley.

**Explanation:** The proposed Rewrite of Title 21 will radically change the way property owners are able to develop, use, maintain, repair, renovate, and redevelop their properties and buildings in the Anchorage Bowl. Every chapter proposes far-reaching changes that are vastly different from the way the current Title 21 functions.

Because the proposed changes are so significant, it stands to reason that their affect on property owners will be significant as well. After reviewing of the Rewrite, the BOMA Anchorage Title 21 Committee is concerned that a *comprehensive* impact analysis of the proposed Title 21 Rewrite was not performed.

Currently, we believe that no one fully understands what the implementation of the Rewrite is going to be, or what its true economic cost will be. Although a limited initial draft economic impact analysis was performed, it was significantly lacking in substance and was also outdated.

### Anchorage Bowl Land Use Plan Map

**Recommendation:** The Anchorage Bowl Land Use Plan Map should be updated and reissued so that it reflects the recommended Title 21 Rewrite changes.

**Explanation:** Because of the significant changes to the proposed Title 21 Rewrite that we recommended should be incorporated, the current Anchorage Bowl Land Use Plan Map is out of date and should be updated and reissued.

### Incomplete Sections of Title 21 Rewrite

**Recommendation:** *Before* enacting a Title 21 Rewrite, ensure that *all* sections of the Rewrite are complete.

**Explanation:** There are many sections of the Title 21 Rewrite that have been left blank. In particular, many zoning districts are not yet written. Because of the impact that these unwritten sections will have on the Title 21 Rewrite as a whole, it is imperative that the blank sections present in the Rewrite are completed *before* it is approved.

### Zoning Map

**Recommendation:** *Before* enacting a Title 21 Rewrite, ensure that the proposed Zoning Map has been released.

**Explanation:** The Zoning Map has yet to be released, and per our conversation with the Planning Department will not be released prior to the adoption of the Title 21 Rewrite. Instead, the Planning Department has stated that the zoning map will be released as the district plans are adopted. We respectfully request that your department demand that the zoning map be released before the adoption of the Title 21 Rewrite.

Because the Zoning Map will have a considerable impact on the proposed Title 21 Rewrite, it is important that the Zoning Map is released *before* the Title 21 Rewrite is approved.

## **Title 21 Rewrite Specific Recommended Changes**

Below, the BOMA Anchorage Title 21 Committee gives chapter by chapter recommended changes that should be made.

### Chapter 1: General Provisions

#### **Page 2: 21.01.030 Purpose of this Title**

- Recommendation: Eliminate bullet points "D", "J" and "K".
- Explanation: Item D promotes design guidelines even though design guidelines are not required for public "health, safety, welfare, and economic vitality". Item J promotes government dictation of where development can occur versus private property rights and "free market" development, and Item K is cosmetic desire that does not significantly affect public "health, safety, welfare, and economic vitality."

#### **Page 9: 21.01.090.E Transitional Provisions**

- Recommendation: Do not adopt Rewrite until all sections of the Rewrite are written.
- Explanation: Section E is blank. It is important that all sections of this chapter are present before adopting the entire chapter.

### Chapter 2: Boards, Commissions, and Municipal Administration

#### **Page 5: 21.02.030.A.3.b Planning and Zoning Commission**

- Recommendation: Eliminate bullet point "b".
- Explanation: P&Z should not be developing, reviewing and making recommendations for policies, plans, and ordinances dealing with the economic and social needs of the community. This is not the expertise of the Planning and Zoning Commission (which is for land use issues).

#### **Page 7: 21.02.070 Urban Design Commission**

- Recommendation: Eliminate the Urban Design Commission and combine its duties with the Planning and Zoning Commission.
- Explanation: Having yet another commission adds time and money to the approval process, and in particular the UDC often overreaches with recommendations. Combine the UDC work load to the Planning and Zoning Commission.

#### **Page 7: 21.02.070 Urban Design Commission**

- Recommendation: If the Urban Design Commission can not possibly be eliminated, require that the staff member in charge of the UDC meet certain qualifications and that the UDC commission has a wide range of commissioners.
- Explanation: Many times the UDC has too many architects and not enough engineers, surveyors, etc. Require that the board have a broad spectrum of design professionals from the community.

#### **Page 7: 21.02.070 Urban Design Commission**

- Recommendation: Do not adopt Rewrite until all sections of the Rewrite are written.

- Explanation: This section is blank. It is important that all sections of the chapter are present before adopting a chapter.

### Chapter 3: Review and Approval Procedures

#### **Page 7: 21.03.020.C Community Meetings**

- Recommendation: Delete entire section pertaining to Community Meetings.
- Explanation: This requirement requires applicant to be responsible for all aspects of the meeting (i.e., public notices, facility for meeting, facilitator, summary note, mailers, etc.). The concern is that besides the additional time and costs, this process will likely undermine participation in Community Council membership since it will no longer be necessary to be active in the Community Council to know when proposed projects are coming forward. The Municipal Charter, at unification, created Community Councils as the recognized “grassroots” system with the Municipality of Anchorage, and this new requirement seems to further eliminate a role for the Councils, while piling on costs and time for applicants. It seems that this outreach should be under the auspices of the Federation of Community Councils. Also, a system is already in place that notifies surrounding property owners of issues that concern them, and give them information on their ability to testify and submit comments on the proposed actions of an applicant.

#### **Page 84: 21.03.210.B.5.b Title 21 – Text Amendments / Notice and Frequency of Amendments**

- Recommendation: Delete bullet point “b”.
- Explanation: Because of Title 21’s radical change from the current Title 21, there very well may be needs for changes to occur more frequent than twice per year, even after the initial two year period. Allow Title 21 changes to occur as needed.

#### **In General – Title 21 Glitches**

- Recommendation: Create a simple and timely process to get discovered “glitches” in the new Title 21 Rewrite directly back to the Assembly for clarifications.
- Explanation: It is anticipated that “glitches” will be discovered in the new Title 21 Rewrite. Nowhere is there recognition of this. A simple and timely process must be created to get these “glitches” directly back to the Assembly to make clarifications. Without an “oops” clause procedure, many projects may encounter problems that will jeopardize their success by pushing out approval and permits.

#### **In General – User’s Guide**

- Recommendation: Issue “User’s Guide” before the adoption of the Title 21 Rewrite.
- Explanation: The “User’s Guide” is repeatedly referenced in Chapter 3 yet it has not been issued. In order to adequately analyze Chapter 3 the User’s Guide must be issued before adoption of the Rewrite.

## Chapter 4: Zoning Districts

### **Page 3: 21.04.010.A.2 Zoning Districts Established**

- Recommendation: Eliminate new residential districts: R-2F, R-2D, & R-4A.
- Explanation: Table 21.04-1 establishes three (3) new Residential Districts. The stratification of zoning districts is detrimental to land use in the Anchorage Bowl. It creates micromanaging where the government dictates what land use goes where and dramatically impedes free market forces.

### **Page 3: 21.04.010.A.2 Zoning Districts Established**

- Recommendation: Eliminate new commercial districts: DT-1, DT-2, DT-3, NMU, CMU, RMU, MT-1, and MT-2.
- Explanation: Table 21.04-1 establishes eight (8) new Commercial Districts. The stratification of zoning districts is detrimental to land use in the Anchorage Bowl. It creates micromanaging where the government dictates what land use goes where and dramatically impedes free market forces.

Additionally, all eight new commercial districts are more restrictive than the current B-3 zoning designation. This represents a “down zoning” to all commercial land owners.

### **Page 5: 21.04.020.A.3 General Purpose/Intent**

- Recommendation: Eliminate bullet point “3”.
- Explanation: There are some locations in the Anchorage Bowl that are currently residential but should not necessarily remain so. Bullet “3” would make no exceptions for land conversion away from residential. Only 4% of all land in the Anchorage Bowl is commercial use. There might be a need to increase this in the future to accommodate commercial uses.

### **Page 5: 21.04.020.A.5 General Purpose/Intent**

- Recommendation: Eliminate bullet point “5”.
- Explanation: Bullet point “5” is subjective, open to interpretation and not needed. In some cases, residential land needs to be “up zoned” which is contrary to this bullet point. Also, residential character in some neighborhoods should be changed or should be allowed to evolve over time.

### **Page 5: 21.04.020.A.6 General Purpose/Intent**

- Recommendation: Eliminate bullet point “6”.
- Explanation: This bullet overreaches and is subjective. Who decides what constitutes an adverse effect?

### **Page 6: 21.04.020.F R-2F Mixed Residential District 1**

- Recommendation: Eliminate R-2F residential zoning district.
- Explanation: The R-2F residential district is not needed. R2M is supposed to serve as the transitional zoning. Stratifying zoning districts creates micromanaging where the government dictates what land use goes where and dramatically impedes free market forces.

### **Page 7: 21.04.020.G.2.a-c R-2M Mixed Residential District 2/District Specific Standards**

- Recommendation: Eliminate District-Specific Standards for the R-2M residential zoning district.

- Explanation: District-Specific Standards over reach. Bullet “a” curbs market forces by dictating how many units per building should be constructed. Bullet “b” adds unnecessary subjective bureaucracy and time by requiring administrative site plan reviews. Bullet point “c”, “No more than 40 percent of the land area between any street facing building elevation and the street lot line may be paved or used for vehicle driveway or parking.”, is a common requirement throughout the Title 21 Rewrite and is not practical due to the many prevalent lots in the Anchorage Bowl that are only 50-55 feet wide. This leaves property owners seeking variances that are time consuming and expensive.

**Page 7: 21.04.020.I R-4 Multifamily Residential District 2/Purpose**

- Recommendation: Eliminate density limitation and height restrictions from paragraph.
- Explanation: The purpose of this section states that densities are intended to be greater than 35 dwelling units per acre, but it then goes on to limit height and density (FAR). This is a contradiction. A development cannot attain 35+ dwelling units per acre with height and density restrictions. Property owners currently do not have height and density limitations and this represents a property rights violation.

**Page 8: 21.04.020.J R-4A Multifamily Residential Mixed-Use District**

- Recommendation: Eliminate the R-4A residential zoning district.
- Explanation: The proposed restrictions on the commercial uses in the R-4A district leads to little incentive towards building mixed-use. This is especially true for lots that are small to medium in size, which is prevalent here in Anchorage. Also, this district is not needed. The current R-4 zoning designation is satisfactory.

**Page 10: 21.04.020.J.2.c&d Incentives for FAR and Height**

- Recommendation: Eliminate Bullet “c” (Floor Area Ratio Incentives) and Bullet “d” (Building Height Increase).
- Explanation: Currently, property owners do not have restrictions on FAR and height. Taking away these rights and then proposing that they can have a little of them back by jumping through additional costly hoops (“incentives”) is not right.

**Page 13: 21.04.030.A.1, 3, 4 & 5 General Purpose/Intent of Commercial Districts**

- Recommendation: Eliminate bullet points “1”, “3”, “4” and “5”.
- Explanation: Bullet points “1”, “3”, “4” & “5” over reach in that they are subjective and lead to adverse policy later in the chapter.

**Page 14: 21.04.030.B.1.a,b,c B1-A District-Specific Standards**

- Recommendation: Eliminate all proposed District-Specific Standards for B1-A commercial zoning district.
- Explanation: Bullet point “a” dictates what is built on the ground floor. Bullet “b” dictates when a drive-through is appropriate and when businesses are open. Bullet point “c” dictates what the gross floor area is. Property rights should be preserved and market forces should dictate what is constructed.

**Page 15: 21.04.030.B.2.a & b B1-A District Location Standards**

- Recommendation: Eliminate bullet point “a” and bullet point “b”.
- Explanation: Bullet points “a” and “b” over-reach and are too restrictive in nature. There may be instances where a B-1A zoning designation is appropriate for a lot that is less than 20,000sf (the proposed minimum) or greater than 2.00 acres (the proposed maximum).

**Page 15: 21.04.030.C.1 B-3: General Business District**

- Recommendation: Eliminate the following two sentences: “They are subject to the public view and should provide an attractive appearance with landscaping, sufficient parking, and controlled traffic movement.” and “Planning and design shall accommodate pedestrians and bicyclists.”
- Explanation: Purpose statement over reaches. Specifically the sentences: “They are subject to the public view and should provide an attractive appearance with landscaping, sufficient parking, and controlled traffic movement.” and “Planning and design shall accommodate pedestrians and bicyclists.”

**Page 15: 21.04.030.D RO: Residential Office District**

- Recommendation: Eliminate the Residential Office (RO) commercial zoning designation.
- Explanation: The RO district has rarely worked as desired. Therefore, the RO district should not be found in the new code. Rather, these areas should be rezoned to B-3 with special limitations as needed.

**Page 16: 21.04.040.A,B,C Downtown Districts**

- Recommendation: Eliminate the DT-1, DT-2, and DT-3 commercial zoning designations, and reestablish the current downtown commercial zoning designations.
- Explanation: DT-1, DT-2 and DT-3 introduce more restrictive zoning than currently exists. Leave the current zoning as is.

**Page 17: 21.04.050 Mixed-Use Districts**

- Recommendation: Eliminate the 21.040.050 Mixed-Use Districts section that proposes five new commercial zoning designations (NMU, CMU, RMU, MT-1, & MT-2) that are all more restrictive than the current B-3 zoning designation.
- Explanation: Mixed-use development most successfully occurs over time as market forces dictate that it is needed. This section’s attempt to force mixed-use on Anchorage does not account for the need for time, nor market forces. Additionally, the eight new “mixed-use” zoning districts are all “down zones” from the current B-3 zoning designation. That means almost every commercial land owner in Anchorage will be “down-zoned”. These new zoning districts should be eliminated.

**Page 20: 21.04.050.G Mixed-Use District Development Standards**

- Recommendation: Eliminate entire Mixed-Use District Development Standards section.
- Explanation: All new design requirements and FAR limitations should not be adopted. They unnecessarily restrict property rights that are currently enjoyed.

**Page 21: 21.04.060.A.2 General Purpose for Industrial Districts**

- Recommendation: Eliminate bullet point “2”.
- Explanation: Down zoning industrial zoned land so that certain areas are “reserved” for future industrial purposes represents a “taking” that will dramatically reduce property values and in the end will not provide the land needed for industrial uses.

**Page 22: 21.04.060.B.1 I-1: Light Industrial District**

- Recommendation: Eliminate proposed Purpose Statement and reinstate the current Purpose Statement found in the current Title 21.
- Explanation: Down zoning I-1 land so that only “limited commercial uses” are allowable represents a “taking” that will lead to much lower property values and an inefficient use of land in Anchorage.

**Page 27: 21.04.080.D FHO: Flood Overlay District**

- Recommendation: Perform an “impact analysis” on the ramifications of the proposed Flood Overlay District.
- Explanation: What effects will this overlay district have on the existing built environment? This section prescribes many new restrictions and obligations that need to be fully understood before implementation.

**Page 34: 21.04.080.D.9 Flood Overlay District Nonconforming Uses**

- Recommendation: Perform an “impact analysis” on the effects of the proposed “Nonconforming Uses” section.
- Explanation: What effects will the nonconforming section for this overlay district have on the existing built environment? This section prescribes difficult new restrictions that need to be understood. What structures would be nonconforming per this section?

**Chapter 5: Use Regulations**

**Page 4: 21.05.010.B Table of Allowed Uses/Table Organization**

- Recommendation: Give greater clarification of this paragraph.
- Explanation: The last sentence of the paragraph states that the “use categories are intended merely as an indexing tool and are not regulatory.” What does this mean? If the table is not regulatory then why do the spaces within the table have regulatory meaning? Spaces marked P, S, C, M or are “blank” each have a regulatory meaning.

**Page 5: 21.05.010.E Table of Allowed Uses – Residential Districts**

- Recommendation: Eliminate residential zoning districts R-2D, R-2F, & R-4A.
- Explanation: The further stratification of residential zoning districts is not needed and constitutes micromanaging.

**Page 9: 21.05.010.E Table of Allowed Uses – Commercial, Industrial, Mixed-Use, and Other Districts**

- Recommendation:
  - Eliminate commercial zoning districts DT-1, DT-2, DT-3, RO, NMU, CMU, RMU, MT-1, and MT-2.
  - Put back in commercial zoning districts B-1B, B-2A, B-2B, and B-2C.

- Explanation: The new proposed commercial districts are all more restrictive than the current B3 zoning designation. The implementation of these commercial zoning districts will significantly lower property values and significantly take property rights from property owners.

**Page 9-19: 21.05.010.E Table of Allowed Uses – Commercial, Industrial, Mixed-Use, and Other Districts**

- Recommendation:
  - Retain all **permitted or conditional uses** for all commercial zoning districts currently allowed in Title 21.
  - Retain all **permitted or conditional uses** for all industrial zoning districts currently allowed in Title 21.
  - Allow warehousing in the B3 zoning district as is allowed currently in Title 21.
  - Allow office/warehouse in commercial zoning districts.
  - Allow self storage in commercial zoning districts. Self storage is a retail use in today's age.
- Explanation:
  - All of the recommendations above represent preserving current property rights currently enjoyed by property owners.
  - Also, there are many areas within Anchorage that are commercially zoned but do not lend themselves to a retail or office use but are much better suited for a warehouse or office/warehouse use. This can be seen in many parts of Anchorage, but is especially prevalent in the area between Midtown and South Anchorage.

**Page 32: 21.05.040.A.3.g Adult Care Facilities**

- Recommendation: Eliminate bullet point "g" (Snow Storage).
- Explanation: Additional snow storage area is not needed and only makes parking lots bigger.

**Page 34: 21.05.040.B.1.b.vi Child Care Use-Specific Standards**

- Recommendation: Eliminate bullet point "vi" (Snow Storage).
- Explanation: Additional snow storage area is not needed and only makes parking lots bigger.

**Page 67: 21.05.050.F.2.b.i,ii Financial Institution Use-Specific Standards**

- Recommendation: Eliminate bullet point "i" and bullet point "ii".
- Explanation: Primary office and support services with few walk-in customers is entirely appropriate for B-1A, NMU (which should be eliminated) and B-3 commercial zoning districts. Also, having financial institutions in the B-3 district with a gross floor area of greater than 5,000sf is entirely appropriate. There is no reason to eliminate these property rights in the new Rewrite.

**Page 69: 21.05.050.H.2 Building Materials Store**

- Recommendation: Entirely eliminate the Building Materials Store category.
- Explanation: The intent of creating a lone "use category" of Building Materials Store is to limit the locations where "big box" stores like Home Depot and

Lowe's can be located. The problem is that these stores are regular "retail" stores and should have the ability to locate where market forces dictate, not where city planners want them.

**Page 74: 21.05.050.J.4.b Hotel/Motel - Use Specific Standards**

- Recommendation: Eliminate bullet points "ii", "iii" and "iv".
- Explanation: All three bullets are not necessary, invasive, and should be eliminated. Let market forces dictate how they are built.

**Page 81: 21.05.060.D Warehouse and Storage**

- Recommendation: Specifically allow warehousing and storage as a by right use in commercial districts (as is currently allowed in the B-3 zoning district).
- Explanation: Many times businesses need warehousing and/or storage areas to operate their businesses. There are many such buildings constructed in Anchorage on B-3 land and it is entirely appropriate to have such businesses located in commercial districts.

**Page 82-84: 21.05.060.D.4 Warehouse and Storage/ Self-Storage Facility**

- Recommendation: Allow self storage businesses to operate in commercial districts as a permitted use.
- Explanation: Self Storage should be allowed in commercial districts and industrial districts. It is widely known that Self-Storage is considered a "retail" use and should be made available in convenient commercial districts. Because housing is expensive and people have smaller homes with little storage, Anchorage residents need convenient self storage locations to access their belongings. It is entirely appropriate to have self storage in commercial districts. This routinely occurs throughout the nation.

**Page 82-84: 21.05.060.D.4 Warehouse and Storage/ Self-Storage Facility / Use-Specific Standards**

- Recommendation: Eliminate bullet points "b.iii", "b.iv", "b.viii", "x", and "xi".
- Explanation: These additional "use-specific standards" are not required for any of the other uses found in the industrial districts, and therefore are not needed for self storage in the industrial districts. For self storage in commercial districts, these "use-specific" should also be eliminated.

**Page 95: 21.05.060.D.7.b Snow Disposal Site / Use-Specific Standards**

- Recommendation: Eliminate bullet point "ii".
- Explanation: The "dimensional standards" proposed here are not needed and only make the storing of snow more expensive, thereby making commercial property owners that haul snow to these sites incur even greater expense.

**Page 99: 21.05.070 Table 21.05-4 Table of Accessory Uses**

- Recommendation:
  - Eliminate commercial zoning districts DT-1, DT-2, DT-3, RO, NMU, CMU, RMU, MT-1, and MT-2.
  - Put back in commercial zoning districts B-1B, B-2A, B-2B, and B-2C.
  - Retain all permitted or conditional accessory uses for all commercial zoning districts currently allowed in Title 21.

- Retain all permitted or conditional accessory uses for all industrial zoning districts currently allowed in Title 21.
- Explanation: Accessory uses should not be limited as proposed in the Rewrite. Instead retain the permitted and condition uses allowed in the current Title 21.

**Chapter 6: Dimensional Standards and Measurements**

**Page 3: 21.06.010.A.2,3,4,5,&6 Dimensional Standards and Measurements Purpose**

- Recommendation: Eliminate bullet points "3", "4", "5", and "6".
- Explanation: Bullet points "3", "4", "5", & "6" over reach, are not needed, create less efficient buildings, and violate property owner rights.

**Page 6: 21.06.020.A Table 21:06-1 R-4 Multifamily Residential District 2**

- Recommendation: Eliminate height limits on townhouses and multifamily.
- Explanation: Height is limited to 35' for townhouses, and 45' for multifamily and all other uses. Height used to be unlimited for this zoning designation. This represents a property rights taking. It is entirely appropriate for the R-4 zoning district to be more than 45 feet in height. The R-4 zoning district is supposed to encourage compact high density housing.

**Page 7: 21.06.020.A Table 21:06-1 R-4A Multifamily Residential Mixed-use District**

- Recommendation: Eliminate the R-4A zoning district.
- Explanation: As mentioned before, this zoning designation is not needed. Additionally, there should not be a maximum front set back, the rear setback should stay 10', and the maximum height should stay unrestricted instead of the proposed 35-45'.

**Page 10: 21.06.020.A Table 21:06-1 B-3 General Business**

- Recommendation: Eliminate height restriction in B-3 zoning district.
- Explanation: Height is proposed to be limited to 45' maximum. Height is currently unlimited for this zoning designation. This represents a property rights taking, encourages less efficient, less dense buildings.

**Page 10: 21.06.020.A Table 21:06-1 I-1 Light Industrial District**

- Recommendation: Eliminate height restriction.
- Explanation: Height is limited to 50' maximum. Height is currently unlimited for this zoning designation. This represents a property rights taking. Additionally, it is entirely appropriate for buildings in the industrial district to be greater than 50ft in height.

**Page 12: 21.06.020.A Table 21:06-1 NMU: Neighborhood Mixed-Use District**

- Recommendation: Eliminate the proposed NMU District.
- Explanation: As mentioned before, the NMU zoning designation is not needed. Leave the current B-3 zoning in place. Additionally, there should not be a maximum front set back, the maximum height should stay unrestricted instead of the proposed 45', and the density of the building should stay unrestricted instead of limiting it to a FAR of 0.5. This represents a taking of

property rights. Additionally, they lower the value of the land and encourage less dense development (contrary to the Anchorage 2020 Comp Plan).

**Page 12: 21.06.020.A Table 21:06-1 CMU: Community Mixed-Use District**

- Recommendation: Eliminate the proposed CMU District.
- Explanation: As mentioned before the CMU zoning designation is not needed. Leave the current B-3 zoning in place. Additionally, there should not be a maximum front set back, the maximum height should stay unrestricted instead of the proposed 35' & 60', and the density of the building should stay unrestricted instead of limiting it to a FAR of 1.0. This represents a taking of property rights. Additionally, they lower the value of the land and encourage less dense development (contrary to the Anchorage 2020 Comp Plan).

**Page 12: 21.06.020.A Table 21:06-1 RMU: Regional Mixed-Use District**

- Recommendation: Eliminate the proposed RMU District.
- Explanation: As mentioned before, this zoning designation is not needed. Leave the current B-3 zoning in place. Additionally, there should not be a maximum front set back, the maximum height should stay unrestricted instead of the proposed 35' & 60', and the density of the building should stay unrestricted instead of limiting it to a FAR of 1.0. This represents a taking of property rights. Additionally, they lower the value of the land and encourage less dense development (contrary to the Anchorage 2020 Comp Plan).

**Page 12: 21.06.020.A Table 21:06-1 MT-1 Midtown District Core & MT-2 Midtown District General**

- Recommendation: Eliminate the proposed MT-1 and MT-2 districts.
- Explanation: Although these two zoning designations have been reserved for later, it is assumed that they will be similar to the NMU, CMU and RMU zoning designations. As mentioned before, these zoning designations are not needed. Leave the current B-3 zoning in place. Additionally, there should not be a maximum front set back, the maximum height should stay unrestricted, and the density of the building should stay unrestricted instead of limiting it to some Floor Area Ratio (FAR). This represents a taking of property rights. Additionally, they lower the value of the land and encourage less dense development (contrary to the Anchorage 2020 Comp Plan).

**Page 16: 21.06.030.C.4.c,d Corner Lots with Two or More Frontages and Double-Frontage Lots**

- Recommendation: Eliminate bullet point "c" and bullet point "d".
- Explanation: The proposed code makes this way too complicated. It gives the director full authority to determine the setbacks, and in some cases requires the concurrence of the traffic engineer. This is not needed and only adds subjectivity, time and money to the property owner.

**Page 16: 21.06.030.C.5 Maximum Setbacks**

- Recommendation: Eliminate entire section on "Maximum Setbacks".
- Explanation: The goal for maximum setbacks is to create a more inviting pedestrian environment and more active streetscape by placing buildings close to the street. The problem is "downtown" streetscape is not appropriate for the vast majority of land in the Anchorage Bowl. People do not want the "downtown" feeling everywhere. Maximum setbacks should be eliminated completely.

**Page 20: 21.06.030.C.7.b Setbacks from Projected Rights-of-Way / Permitted Uses within Setback**

- Recommendation: Include on the list of “Permitted Uses Within Setback”: fences, sign, and retaining walls.
- Explanation: All three of these items are included in the current code. All three of these should be on this list as well.

**Page 22: 21.06.030.D.5.b Establishment of Grade**

- Recommendation: Take out the first sentence, “In a case where existing grade or finished grade is, in the judgment of the director, inappropriate or unworkable for the purposes of measuring height, the director shall establish grade in such a way as to be consistent with this section.” Create definitive parameters for measuring grade for the purpose of measuring height.
- Explanation: Way too much power is given to the director. Leaving this decision to the director leads to subjective decisions, longer time to development and a more costly development for the property owner.

**Page 24: 21.06.030.D.8 Height Transitions for Neighborhood Compatibility**

- Recommendation: Eliminate entire section on “Height Transitions for Neighborhood Compatibility”.
- Explanation: There are many instances where residential and commercial properties are close or adjoining. Requiring height transitions will greatly affect the usability of properties and hence its value and ability to develop or redevelop.

**Page 25: 21.06.030.E Floor Area Ratio**

- Recommendation: Eliminate entire section on “Floor Area Ratio”.
- Explanation: Anchorage already has a lack of supply of commercial land in the Bowl. Artificially limiting the height and the bulk (FARs) of buildings will further exacerbate the supply. Not to mention the property rights violations that are created. Let property owners, their hired professionals, and market forces dictate the height and density of buildings, not government.

**Chapter 7: Development and Design Standards**

**Page 3-5: 21.07.010 General Provision**

- Recommendation: Completely revise section to better align property owner rights and the Municipality.
- Explanation: Chapter 7 clearly ignores the increased cost of development despite statements that these are ‘balanced’ against the ‘better quality of life’ that is somehow presumed to come from these onerous standards through better development.

Property rights are usurped throughout Chapter 7. It requires more land than the current Title 21 for:

- ‘Water courses’
- Stream and wetlands setbacks
- Wildlife corridors
- Private open space
- Natural vegetation preservation
- Dedicated walkways

- Landscaping
- Easements taken without plats
- Special amenities
- Sloped portions of the site
- 'Site disturbance envelopes'
- Heights of retaining walls
- Limits on grading
- Limits on changing natural grading patterns (you currently cannot let water drain across adjacent property)
- Parking lot design which decrease the number of spaces
- And other design elements which limit the use of land.

All of these mean less building than under the current Title 21, a defacto condemnation of private property without compensation. The decrease in 'capacity' of the land also results in lost economic opportunity for the property owner. Ironically, it also means the loss of tax base and a loss of tax revenue for the MOA. At the very least, it shifts the tax burden because the mil rate will necessarily need to adjust to meet the tax revenue required.

**Page 5: 21.07.020 Natural Resource Protection**

- Recommendation: Re-evaluate entire section as to its impact on property rights.
- Explanation: This section clearly decreases the amount of sites that can be developed. Taken to extremes, this section can make some sites unusable, a defacto condemnation without compensation.

**Page 18: 21.07.030 Private Open Space**

- Recommendation: Delete entire section.

Explanation: This section is also a de-facto land taking due to the areas not credited. This section dictates spaces that must be provided when the market may not want them. Clearly this adds cost and decreases density. Incentives for high quality space sounds good but are meaningless, and how do you design, review and get credit for this?

**Page 20: 21.07.040 Drainage, Storm Water Treatment, Erosion Control, and Prohibited Discharges**

- Recommendation: Reference State and Federal Law.
- Explanation: Current Title 21 standards virtually eliminates development of some sites, so they are clearly adequate. Why re-state what is State or Federal Law?

**Page 35: 21.07.060.C.3 Traffic Mitigation Measures**

- Recommendation: Rework section to ensure that one person does not have control over the scope of the development.
- Explanation: The following is indicative of T21:

"Mitigation measures shall be acceptable to the traffic engineer and may include, without limitation: an access management plan; transportation demand management measures; a reduction in the intensity or size of the development; street improvements on or off the site; phasing of the proposed development to coincide with, and not outpace, the necessary upgrades to off-site infrastructure; placement of pedestrian, bicycle or transit facilities on

or off the site; or other capital improvement projects such as traffic calming infrastructure or capacity improvements.”

This basically says that one person has control over the scope of the development, including private funding of public improvements, ultimate control of the design and imposition of requirements that may be in conflict with the desires of the owner or the market. This is a theme of the new Title 21.

**Page 35: 21.07.060.D.3 Street Connectivity**

- Recommendation: Delete section.
- Explanation: This paragraph depicts a convoluted concept that again usurps the developer’s control of the design. The only thing that should be a consideration is the ability of public safety vehicles having more than one access. The review process already allows for this.

Requiring a developer to provide streets connecting to undeveloped property requires a crystal ball; further, it again requires that the design be ‘as determined by the director’. How is it that the governing authority constantly has ultimate say in the way property is developed?

**Page 38: 21.07.060.E.3 Through Block Connections**

- Recommendation: Delete section.
- Explanation: Do not implement a requirement and then state that it may be waived in the review process.

**Page 38: 21.07.060.E.4.b On-Site Pedestrian Connections**

- Recommendation: Delete section.
- Explanation: This section requires a five foot wide, dedicated pedestrian walkway from the street to a commercial building. This is a taking of land. (See comments under landscaping). Who will police the maintenance and snow removal requirements? This will SEVERELY impact small lot development.

**Page 40: 21.07.060.F Pedestrian Amenities**

- Recommendation: Clarify when pedestrian amenities are required and when they are only part of a menu of choices under commercial design standards.
- Explanation: It is not clear when these are required and when they are only part of a menu of choices under commercial design standards.

**Page 45: 21.07.070 Neighborhood Protection Standards**

- Recommendation: Delete section.
- Explanation: It would appear that any non-residential property within 300 feet of a residential property could now only be done under a conditional use. The approval of such development is subject to the whims of the ‘decision making body’ and includes the design of the site, lighting, hours of operation, additional landscaping or screening (beyond the new standards one must assume) and height restrictions to preserve light and privacy.

This section again gives the ultimate say on the design to some commission rather than the developer and his design team. And how much light and privacy is one ‘entitled’ to in a locale where the sun only gets 5-1/2 degrees above the horizon in the middle of winter?

**Page 46: 21.07.080 Landscaping, Screening, and Fences**

- Recommendation: Keep current standards for landscaping, screening, and fences in place for the new Title 21 Rewrite.

Explanation: General Comments:

The current landscaping requirements were put into Title 21 in 1985 in reaction to the rapid pace of development from 1979 to 1985. The development community was virtually wiped out by the depression from 1985 through 1989 so the impact of the newly added requirements were not evident until the recovery began in 1989. Those requirements effectively reduced the amount of building that was able to be developed by about 33%. The new Title 21 will have a similar effect, reducing the capacity of land another 15 to 35 percent. How ironic that if passed, they will not be noticed until the economy comes out of its current slump.

The current landscape requirements are simple, adequate and effective as anyone can see by driving around Anchorage. It just has not been implemented on older properties so there is this notion that there is not enough landscape being required.

There is no need to change it.

The new approach of "Awarding" 'Landscape Units' is a convoluted way to determine the acceptable amount and type of landscaping. It makes design extremely complicated and review nearly impossible. Rather than simply counting bushes and trees, you will need elaborate spreadsheets.

There are also overlapping requirements which are difficult to understand.

Another irony is that one of the main reasons the Rewrite was undertaken was to consolidate landscape requirements into one section for ease of understanding. The consolidation of the landscaping requirements and the tables is an improvement, but they should be consistent with current requirements. Sadly, 'additional landscaping', including subjective reviews, are still scattered elsewhere throughout the ordinance, so those requirements are still not consolidated.

The landscaping requirements have increased significantly from the current Title 21. They should be reverted to the current level. The amount of landscaping has increased in the following ways, all of which take more land and cost significantly more:

1. The landscape units approach (21.07.080.E.4) will require about 20 to 30 percent more plantings.
2. The amount of landscaping will be calculated on the length of the frontage rather than the length of the planting bed as now, a 10 to 25 percent increase (21.07.080.E.5.c).
3. Planting beds will be measured from the back of the curb or landscape header rather than the edge of pavement, another half foot increase (21.07.080.E.5.g.i).
4. Vehicle overhangs (21.07.080.E.5.g.ii) will not be allowed in required planting beds, thus increasing them from 8 to 10 feet to account for the overhang.

5. Landscaping will be required in some zones where it is not currently required. For example where I1 is adjacent to B3 (Table 21.07-2).
6. Fences must be on the inside of the landscaping bed so the landscaping is visible from without rather than from within (21.07.080.E.5.g.iv).
7. More evergreen trees will be required (21.07.080.E.5.g.vii and viii).
8. Parking lot landscaping will apply to lots with 6 spaces, down from 15 spaces now (21.07.080.E.6.b).
9. Parking lot interior landscaping will apply to lots with 20 spaces (21.07.080.E.6.b), down from 60 spaces now. (This number is inconsistent with 21.07.080.6.d.i which requires it at 40 spaces.)

It could be argued that with a single aisle (one driveway and parking on either side), there is no 'interior' but the intent of the Rewrite is that even single aisle lots have interior landscaping. A definition is needed.

10. A new 'Continuous Low Visual Buffer and Edge' is required on street frontages (21.07.080.E.6.c.ii). This conflicts with vision triangles and visibility pulling into traffic.
11. Landscape will be required on lot lines inside a parking lot even when shared with a neighbor (21.07.080.E.6.c.iii). Why require a waiver?
12. Interior landscaping ramps up to 10 percent from the current 5 percent (21.07.080.E.6.d).
13. Minimum size will apply to interior landscape (21.07.080.E.6.d.ii).
14. You cannot have more than 25 parking spaces in a row (21.07.080.E.6.d.iii).
15. Additional islands are required in large lots (21.07.080.E.6.d.iv).
16. Landscaping must be separated from traffic areas (21.07.080.F.3.a). This will affect drainage so the landscaping cannot filter the run-off.
17. Surety requirements are beyond the scope of Title 21. Who enforces this? At what cost? Who will profit from this? And how is the money returned (21.07.080.F.4.c)?
18. 'Corners' of parking lots will no longer be counted for interior landscaping (comment from plan reviewer).
19. 'Natural Surveillance and Safety' requirements are in direct conflict with the screening and beautification requirements of the landscaping which cannot be reconciled (21.07.080.E.6.d.vi).
20. Site enhancement landscaping (21.07.080.E.7) shall apparently apply to all sites not otherwise developed or landscaped. Does this apply to industrial land with gravel yards?
21. Evergreens are required in buffering and screening landscaping to the extent that they will obstruct view of the 'obtrusive' elements (21.07.080.E.5.g.vii and viii). What constitutes an obtrusive element?
22. Snow storage 21.07.080.F.5 should be permitted in landscaping as it will be done anyway.

Other new requirements are tucked away in other sections.

Some Analysis:

Under the current Title 21, the minimum width lot which can be developed is 58 feet (8' planting bed + 18' parking + 24' drive aisle + 8' planting bed). Under the new Title 21, the minimum lot width is 65'-6" (8' planting bed + 5' dedicated walk + 20' parking + 24' driveway + 6" curb + 8' planting bed). That is an increase of 7.5 feet or 13%.

Every additional square foot of land taken for landscaping, dedicated walks, private open space, incentives, site grading and drainage, snow storage and the like reduces the number of parking spaces you can fit on a lot. It is axiomatic that if you reduce the number of parking spaces, you reduce the amount of building you can construct. This is lost economic opportunity, economic development and lost tax base.

An argument has been made that parking requirements have been reduced to account for the above. However, this has been proven to be categorically false.

**Page 60: 21.07.080.H Screening**

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

**Page 61: 21.07.080.H.3 Services and Off Street Loading Areas**

- Recommendation: Delete section.
- Explanation: No fence is going to screen loading docks from view considering trucks are 14 feet high (21.07.080.G.3.b.i).

Additional landscaping is not defined (21.07.080.G.3.b.ii).

What exactly is a fence of "debris, junk or waste materials... unless such materials have been recycled..." (21.07.080.H.5)?

**Page 63: 21.07.090 Off-Street Parking and Loading**

- Recommendation: This section is too complicated, convoluted, and difficult to read and understand. The section needs to be completely redone.
- Explanation: Clearly T21 has a bias against the automobile and parking lots. To quote from the purpose statement, "It is the intent of this section to attenuate the adverse visual, environment and economic impacts of parking areas..." Surely businesses and their customers do not view parking lots as having adverse economic impacts. On the contrary, Anchorage is a city that REQUIRES a car and parking lots. Further, there is a goal to not let developers build more than the amount of parking deemed fit by T21, another instance of taking property rights.

There are many examples of how this type of thinking has killed downtown areas around the country which are just now, redeveloping them to accommodate the automobile to re-vitalize them.

Many people will simply not go downtown unless they have no choice even though parking is adequate, albeit in garages that are inconvenient and costly. Downtown Anchorage has no parking requirements so would it not be "Fair" to require parking downtown as well as midtown. Why should other areas of town be required to pay for parking garages which must be built to keep downtown vital?

Table 21.07-5 Off Street Parking Spaces Required:

1. The table tries to anticipate every type of use, but will still not address every one. Why not keep it the way it is and use the administrative review for uses not specified (21.07.090.E.3).
2. The definitions of some of the uses are not clear.
3. Many uses are so unique as to never be referenced.
4. Many uses are redundant and could be consolidated.
5. Does it really say that a 1-bedroom apartment only requires 1 parking space? This can't be right.

T21 must not restrict the number of spaces that can be provided! (21.07.090.4.c.) Uses change!

Once again, more landscaping is required (21.07.090.4.c.) . Why is this not in the landscape section? The whole complaint with the current Title 21 is that this type of requirement is scattered around and there is no single place you can go to know what the requirements are. And what happens when the extra parking becomes required parking? Do you tear out the landscaping?

All 23 incentives to reduce parking, except for joint use or shared parking, should be eliminated (21.07.090.F.3). This will be totally unmanageable over time unless the MOA intends to have full time staff to track this. Further, the reductions are ill advised as they are in conflict with the stated minimum parking in the tables. Options exist today for special cases.

This entire section assumes greater urban density than there is, or ever will be, in Anchorage. It is unrealistic thinking and you cannot apply the things that claim to work in a metropolitan area to Anchorage. When people drive to get their mail from their mailbox, you cannot reasonably expect to change the nature of life in Anchorage.

Street parking should not be counted for required parking. It currently is used as overflow for those occasions when the uses exceed the required parking. It is also a matter of fairness as some streets have parking one side and not another which gives an unfair advantage to the ones with greater street parking. And, what happens when the MOA widens the street, adds a bus stop or loading zone.

In summary, this entire section is so complicated it will be impossible for anyone to have confidence in their design and equally complicated to explain to the traffic engineer. ALL of this could be accomplished with a mechanism to deviate from the most basic of parking standards. As it is, that mechanism will end up being the only way to get a design validated. (21.07.f.23).

**Page 82: 21.07.090.G Off-Street Loading Requirements**

- Recommendation: Delete section.
- Explanation: Off Street loading berths sound like a good idea, but the very nature of the loading process is such that loading berths are never used except in warehouse projects where that is the building's function. The loading berth must, by definition, be screened from view and thus it will be placed 'out of the way' and will be used for anything but active loading. Like so many requirements in Title 21, it assumes you can manipulate behavior by legislation. The fact is, a moving van will park right next to the door of the building which provides the closest access to whatever is being loaded or unloaded, usually the main entry by the elevator. It will block pedestrian and vehicle traffic and generally clog up the whole parking lot for a few hours, and no one will really care.

It would be logical that a particular business or function will provide the appropriate number of loading berths based on the needs of the business. Table 21.07-8 will require too many or too few so it is unnecessary.

The landscaping and screening section (21/07/090.H.3) should be part of the landscaping section.

**Page 84: 21.07.090.H Parking and Loading Facility Design Standards**

- Recommendation: Rework entire section.
- Explanation: Section 21.07.090.H.9 states, '...curbed end islands shall be required at the end of each row of parking spaces.' Another taking of land as this is equivalent to a loss of at least two spaces out of each row. This can become a significant loss as some lots can only get small rows to begin with. A particularly harsh penalty for small lots.

Special sections (21.07.090.H.9c for example) which re-state that site plans are subject to review by the traffic engineer are clearly redundant as every section basically covers this.

Who will enforce the parking lot, storm drain and oil/water separator cleaning provisions of 21.07.090.H.11? The MOA cannot even require junk cars to be removed.

In addition to the required parking, passenger loading zones "May" be required by the traffic engineer (21.07.090.I.1). How would a designer know when the traffic engineer WILL require them?

The traffic engineer must have a lot of spare time as he will be making a large number of decisions on every project that is presented for building permits.

Table 21.07.07.10 is redundant as accessible parking is defined in federal law. This table is close, but not the same as federal law and it should be replaced by a reference to the ADA in the event federal law changes. The MOA can have a 'handout' they can update in lieu of codifying this. The same is true of much of the balance of section 21.07.090.J.

**Page 94: 21.07.090.K Bicycle Parking Spaces**

- Recommendation: Delete section.
- Explanation: This section represents another land taking, requiring bicycle parking in addition to vehicle parking. It also makes the parking lot larger and thus reduces the size of the building.

**Page 94: 21.07.090.L Vehicle Queuing Space**

- Recommendation: Rework section.
- Explanation: While this is a good idea, I dare say some drive through restaurants are not as fast as others so this is of dubious value. What about multiple lanes such as banks? Why have an 'exceptions' section if you are required to use the table?

**Page 95: 21.07.090.M Parking Structure Design Standards**

- Recommendation: Delete significant sections of this section. Rework the rest.
- Explanation: Section 21.07.090.M.2 REQUIRES 25 foot deep habitable space on the ground floor of parking garages! This space must be along the entire street frontage. This is ill-advised and not practical. Two prime examples of why this requirement doesn't work in Alaska are:
  - 5<sup>th</sup> Avenue Garage: For 25 years, the 5th Avenue Garage, in downtown, has had much of this type of space vacant, with a majority of the rented space not being by private companies but rather governmental agencies. Is the MOA going to pay the rent on all this vacant retail space?
  - 188 Northern Lights: The new 188 Northern Lights building located on the corner of C Street and Benson Blvd. has had its bottom floor retail space be 100% vacant since construction completion.

Facade treatment (21.07.090.M.3) dictates the appearance of the building. It forces jogs into the building which make the building non-functional inside.

Screening (21.07.090.M.4) is another attempt to hide automobiles from view. In this case, the lights are to be concealed as well. Wouldn't people feel safer with a well lighted, more open garage?

Landscaping (21.07.090.M.5) is another requirement that should be in the landscaping section.

Ingress and egress (21.07.090.M.7) should be covered under parking lot design which addresses queuing.

Maximum gradients (21.07.090.M.8): All references to ADA are redundant. Once again, everything in the section may be waived by the traffic engineer.

Layout and Internal Circulation (21.07.090.H.9) references three standards. Which applies?

**Page 97: 21.07.100 Residential Design Standards**

- Recommendation: Rework section.
- Explanation: In general, design standards of any kind may prevent really bad design, but they NEVER inspire good design; they become defacto design criteria, often times in conflict with what the market wants or is capable of supporting.

It is not the role of government to say what a residential (or commercial) development should be or look like unless they are paying for it. If people want three car garages, they should be permitted to have them. If they want to pay for more complicated and expensive designs, they will seek them out. How ironic, that the goal of this section is to promote better design when the

chapter's requirements make the end product more expensive, making it less attainable.

Every added window, jog, concealed meter, landscape strip, sidewalk, undulation, roof change, etc, uses up land and costs money, costs which must be borne by the end user. At some point, the project becomes economically infeasible and dies, taking the jobs and living units with it. At the very least, it pushes it into a higher income marketplace.

Clearly, if there are life safety issues such as a fire truck not being able to reach a fire hydrant or get within minimal fire-fighting range, standards are appropriate. Other than that, that is the extent to which Title 21 should dictate design.

**Page 108: 21.07.110 Public/Institutional and Commercial Design Standards**

- Recommendation: Delete section.
- Explanation: Good design may overcome these standards, but why should it have to. And, what arrogance to try to define good design in the first place.

Commercial design is the realm of the professional architect and this entire section is an affront to the profession and should be removed from the ordinance.

Design and materials evolve, yet these de-facto design criteria are locked to the time of passage. The terms, like mansard, used to state what is good design may be considered blight to others.

And what about free expression. Who is the arbiter of what is attractive, and further, who cares. Can you imagine telling an artist what his art must look like? The same must surely apply to architecture. This alone should be adequate cause for omitting this section from the new Title 21.

The design of commercial buildings is ALWAYS based on the needs of the client, not a 'menu of choices'. That is not to say choices are a bad thing as we make choices all the time. It just should not be limited to 'one from column A and two from column B'. It should be an infinite list, and therefore unnecessary.

Architects are trained to design solutions with consideration for solar orientation, views, weather, access and so on. That being the case, who is the target of these design standards, the non-architect?

It is not customary to place a building at the front of a lot so you don't have to look at the cars. If this is the best all round solution, fine.

It is a clear taking of property rights to require a building to be designed so as to not cast shadows on adjacent properties. There will be no more buildings over 75 feet in Anchorage.

**Page 116: 21.07.120 Large Commercial Establishments**

- Recommendation: Delete this section and retain current 'big box ordinance'.
- Explanation: Notwithstanding the 'big box ordinance,' which has already addressed the concerns of that type of development, the government or its appointed boards and commissions should not have any say in what a commercial building looks like.

## Chapter 12: Nonconformities

### **Page 1: 21.12 Nonconformities**

- Recommendation: As part of any “impact analysis” of the proposed Title 12 Rewrite include the impact that Chapter 12 “Nonconformities” will have on the Municipality and Anchorage land owners.
- Explanation: The significant amount of down zoning, new over lay districts, and permitted use changes within zoning designations in the proposed Title 21 Rewrite is going to create thousands and thousands of nonconforming uses within the Anchorage Bowl. Yet, no analysis has been done to determine who would be in nonconformance if the Title 21 Rewrite is passed “as is”. This analysis is critical so that an understanding of the ramifications of the proposed Title 21 Rewrite by the Municipality and Anchorage land owners can be complete.

### **Page 3: 21.12.010.C Determination of Nonconforming Status**

- Recommendation: Change Section C “Determination of Nonconforming Status” first sentence, so that it reads, “In all cases, the burden of establishing the existence of a legal nonconformity shall be solely upon the municipality, not the owner.”
- Explanation: Since it is the municipality that is creating thousands and thousands of nonconforming properties, via the new Title 21 Rewrite, it should be the municipality’s burden of establishing the existence of a legal nonconformity.

### **Page 3: 21.12.010.D Government Agency Property Acquisitions**

- Recommendation: Rewrite the paragraph so that it is legible.
- Explanation: This paragraph is very poorly written and confusing. It would appear that if a government agency buys property that is nonconforming, it gets to change the nonconforming property to conforming as long as the use is for “public” purposes. Why does the government not have to abide by the same rules as the private land owners?

### **Page 3: 21.12.010.F.1.b Maintenance and Repair**

- Recommendation: Change 50% to 100% in bullet point “b”.
- Explanation: Why is 50% of the replacement cost the deciding number? Why not 90% or 100%? This number should be increased. The only reason the property is nonconforming is because of the new government regulations not because the owner built the building nonconforming.

### **Page 4: 21.12.010.G Replacement Cost**

- Recommendation: Change first sentence so that it reads, “When the term “replacement cost” is used in this chapter, it shall be determined by the property owner.”
- Explanation: Replacement cost is proposed to be determined by a building official. Replacement cost should be determined by a professional such as an architect, engineer, general contractor or appraiser. A building official adds subjectivity and greater time to this process.

### **Page 5: 21.12.030.A.2 Limitations on Continuation of Nonconforming Uses of land or Structures**

- Recommendations: Eliminate bullet point “2”.

- Explanation: Nonconforming uses might have a good reason to locate on another portion of the lot. Bullet point "2" restricts this.

**Page 5: 21.12.030.A.4 Limitations on Continuation of Nonconforming Uses of land or Structures**

- Recommendation: Rewrite this paragraph. Ensure that a nonconforming warehouse is able to release its nonconforming space if part of its building goes vacant.
- Explanation: Currently, this bullet point states, "If a nonconforming use is moved to another part of the building, the space vacated shall not be filled with another nonconforming use." This means, that if part of a nonconforming warehouse (which there will be plenty of if this Rewrite is enacted) goes vacant, the owner would be unable to release it to another warehouse tenant because the new tenant would be a nonconforming use. This is a poorly written paragraph.

**Page 5: 21.12.030.B.1,2 Change of Use**

- Recommendation: Rewrite this paragraph. Too confusing, perhaps better off eliminating the paragraph all together. Section starts to really get into micromanagement.
- Explanation: This section is problematic. The proposed Title 21 Rewrite has stratified the zoning designations so much that there will be thousands of nonconforming uses which very well might fluctuate between permitted uses and nonconforming uses. An example of this is office/warehouse facilities. At times a small office/warehouse facility might have a retail user (like a carpet retailer) or they might have a warehouse user (like a carpet provider that does not have a retail center). So, per this code, if a office/warehouse facility leased to a permitted retail user they would lose their legal nonconforming status and never be able to release that unit to a warehouse type user later.

**Page 6: 21.12.030.D.1.d Abandonment or Cessation of Use**

- Recommendation: Eliminate entire section.
- Explanation: This section is problematic. Many times large warehousing facilities will go vacant for longer than one year. For example in 2009 only one (1) warehouse space leased up that was over 10,000sf. Yet, there are currently 18 warehouse spaces for lease over 10,000sf. If 2010 is similar to 2009 (which everyone is not the case because it is expected that 2010 will be worse) then if any of the remaining 17 warehouse facilities are legal nonconforming structures they would lose that status and need to come into conformance. Abandonment or cessation of use should not trigger the extinction of nonconforming rights.

**Page 7: 21.12.030.E Overcoming Presumption of Abandonment**

- Recommendation: Eliminate entire section.
- Explanation: This section puts the onus on the property owner to prove that they did not abandon their legal nonconforming property. Great expense and time will be unnecessarily inflicted on property owners and yet they will still be at the mercy of the zoning board of examiners and appeals. This section is not needed and should be eliminated.

**Page 7: 21.12.040.A.1,2 Nonconforming Structures / Continuation of Nonconforming Structures Generally**

- Recommendation: Eliminate entire section.
- Explanation: The proposed Title 21 Rewrite is going to create thousands of nonconforming structures due to new unnecessary requirements. The structure could be nonconforming due to: building setbacks (not maximum setback), building design, landscaping, parking, building density, building height, building use, etc.
- But, because this section does not allow a property owner to do much to the existing structure without tripping the “any structure or portion thereof may be altered to decrease its nonconformity” hurdle, redevelopment/renovation is discouraged. The majority of the time property owners will not be able to alter, enlarge, or renovate their buildings and not increase their nonconformity. This is because there are so many new requirements that property owners must come into compliance with.
- This section encourages property owners to leave their properties “as is” or completely demolish their structures and “start over”. Property Owners realizing that “starting over” means that they are going to incur much greater construction costs, less options of use, and less efficient developments and are therefore going to be disincentivized to do anything. This is not what this code was meant to do.

**Page 7: 21.12.040.B Nonconforming Structures / Overheight Buildings**

- Recommendation: Eliminate entire section.
- Explanation: As mentioned earlier, height should not be restricted in the residential, commercial, and interstitial districts and therefore this section is not needed.

**Page 8: 21.12.040.C Nonconforming Structures / Building Exceeding Maximum Setback**

- Recommendation: Eliminate entire section.
- Explanation: As mentioned earlier, maximum setbacks should not be enacted and therefore this section is not needed.

**Page 8: 21.12.040.D Nonconforming Structures / Damage or Destruction**

- Recommendation: Eliminate entire section.
- Explanation: As mentioned earlier (Page 3: 21.12.010.F.1.b) property owners who wish to replicate a nonconforming structure that has been damaged, should be able to do so “by right” up to 100% of the replacement cost of the structure. Property owners should not have to go through a long, expensive, subjective approval process to recreate a structure that is currently legal.

**Page 9: 21.12.040.E.1,2,3,4 Legalization of Nonconforming Dimensional setback Encroachments**

- Recommendation: Eliminate bullet point “a” and bullet point “b” in Section 1, and change the introductory sentence to read, “Structures that encroach into required setbacks and were built before January 1, 1986, may continue in existence.” Delete “Provided the following requirements are met:” Eliminate Section 2, 3, and 4.

- Explanation: Structures that encroach into required setbacks that were built before January 1, 1986 should be allowed to continue (as they are currently allowed to do now) without having to go through a long, expensive, subjective registration process. This registration process should not be required.

**Page 9: 21.12.040.E Legalization of Nonconforming Dimensional setback Encroachments**

- Recommendation: Reword paragraph so that it addresses structures that encroach into require setbacks and were built after January 1, 1986 to present.
- Explanation: This paragraph only speaks to pre January 1, 1986 structures and does not address post January 1, 1986 structures. What is their status?

**Page 12: 21.12.060.A.2 Developments Are Conforming**

- Recommendation: Eliminate bullet point "2".
- Explanation: The term "in the direction of conformity" is a very subjective term. Paragraph discourages redevelopment and renovation.

**Page 12: 21.12.060.C Bringing Characteristics into Compliance**

- Recommendation: Eliminate the entire Section C "Bringing Characteristics into compliance".
- Explanation: District-specific standards in chapter 21.04, use-specific standards of chapter 21.05, and the design and development standards of chapter 21.07 are not needed, over reach and should be eliminated. Therefore, this section should not be needed.
- Furthermore, this section is at best confusing, adds much more time to development, costly and subjective with regard to uses that are currently legally conforming and only went into nonconformance due to the new Rewrite.

**Chapter 13: Enforcement**

**Page 2: 21.13.010.E Continuing Violations**

- Recommendation: Change sentence to read, "Each day that a violation occurs or remains uncorrected shall *not* constitute a separate and distinct violation of this title." (Italics added for emphasis.) Delete the remaining portion of the sentence that says, "provided however the director has the authority to enter into a civil compromise as to the amount of the fine."
- Explanation: Each day that a violation occurs or remains uncorrected should not constitute a separate and distinct violation. This is too severe; many times it takes a while to get personnel in place to fix violations. Additionally, the director should not be given the power to "enter into a civil compromise", this is very subjective.

**Page 5: 21.13.040.A.4 Civil Penalties**

- Recommendation: Change fine to \$50 for each violation.
- Explanation: The civil penalties put forth in this section are too onerous. Per this section, a property owner could be fined \$300 per day that their property is not in compliance with the proposed Title 21 Rewrite, even if the noncompliance is minor.

Chapter 14: Rules of Construction and Definitions

**Page 2: 21.14.010.A Interpretations / General**

- Recommendation: Instead of the director having the final “authority to determine the interpretation or usage of terms in this title”, this should reside with a third party.
- Explanation: Allowing the director to have “final authority” allows for absolute power. It would be much more impartial to have a third party resolve differences in interpretation.