

Municipality of Anchorage

MEMORANDUM

DATE: January 13, 2016

TO: Planning and Zoning Commission

THRU: *gm for* Hal H. Hart, AICP, Planning Department Director

FROM: *FM* Francis McLaughlin, Current Planning Section

SUBJECT: Case 2016-0014, Amendments to AMC 21.03.050B., 21.03240J., 21.05.030B., and 21.14.040, and Tables 21.05-1 and 21.10-4, to modify land use regulations regarding assisted living facilities and habilitative care facilities, in accordance with the conciliation agreement and voluntary compliance agreement between HUD and the MOA regarding the Fair Housing Act and other federal laws.

Background

On May 5, 2014, the U.S. Assistant Secretary for Fair Housing and Equal Opportunity filed a complaint against the Municipality alleging that zoning and land use ordinances discriminate against disabled populations. Since then, the Municipality has negotiated a Conciliation Agreement and Voluntary Compliance Agreement with the U.S. Department of Housing and Urban Development (HUD). As part of that Agreement, the Municipality committed to retaining an independent expert consultant to review Title 21 and make recommendations for affirmative compliance with Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the Fair Housing Act. The Municipality retained Clarion and Associates as the consultant. They provided a report with recommendations on August 3, 2015.

The agreement with HUD committed the Municipality to presenting to the Assembly an ordinance in substantial accordance with the consultant's recommendations and, furthermore:

Within 90 days or the next available voting opportunity from the date of the presentation of the Ordinance, whichever occurs later, the Assembly shall approve, adopt, and implement the Ordinance. The Assembly may make amendments to the Ordinance as long as the final Ordinance adopted by the Assembly repeals, amends, supplements, or otherwise modifies the relevant provisions consistent with the recommendations of the Consultant, to the extent necessary to achieve compliance with Title VI, the ADA, Section 504 and the Act.

AO 2015-133 was introduced at the December 8, 2015, Assembly meeting as required by the agreement with HUD. The Assembly scheduled a public hearing for February 23, 2016, in order to allow for the Planning and Zoning Commission to review the ordinance.

Initiated by the agreement with HUD, the Assembly also approved AO 2015-045, which removed fees for applications for administrative variances from occupancy limits for residential care/assisted living facilities. Additionally, this ordinance removed the fees for applications for conditional uses for habilitative care facilities for up to eight residents.

Agency and Public Comments

Reviewing agencies had no objection to AO 2015-133. No comments from community councils or the public were received.

Discussion

The Clarion report makes several recommended changes and some optional changes to Title 21. AO 2015-133 incorporates all of the recommended changes and most of the optional changes as well. AO 2015-133 changes the definitions of “family” and “household” to limit the number unrelated persons to five. The definition of “habilitative care facility” is changed to include the size distinctions for small, medium, and large habilitative care facilities. Small habilitative care facilities change from a maximum of six residents to a maximum of eight residents. Medium habilitative care facilities change from seven through 25 to nine through 25 residents. Large habilitative care facilities remain the same with 26 or more residents.

AO 2015-133 changes Table 21.05-1: *Table of Allowed Uses* (Anchorage Bowl) and 21.10-4: *Table of Allowed Uses* (Chugiak – Eagle River) to increase the districts where assisted living facilities and habilitative care facilities are permitted. Assisted living facilities of three to eight residents become permitted in the B1-A, B-1B, B-3, CE-B-3, and CE-RC districts. Assisted living facilities of nine or more residents become permitted in B-1A, B-1B, and CE-RC districts. Assisted living facilities of nine or more residents also become conditional uses in the MC district. Small habilitative care facilities become permitted in the CE-B-3 and CE-DO districts. Both medium and large habilitative care facilities become permitted in the R-3, R-4, R-4A, B-1B, B-3, RO, CE-R-3, CE-B-3, CE-RO, CE-RC, and CE-DO districts. Medium habilitative care facilities also become conditional uses in the CE-EVO district.

There is an error in AO 2015-133 as it was introduced to the Assembly on December 8, 2015. The use type “Severe alcohol dependent housing” needs to be deleted from Exhibit “A” of the ordinance. This use type was repealed by AO 2014-058 on May 20, 2014. It was simply a mistake to show it in the Exhibit “A” table. This will be corrected before adoption by the Assembly.

AO 2015-133 changes the use-specific standards for assisted living facilities and habilitative care facilities. New standards for assisted living facilities and habilitative care facilities are to:

- 1) Occupy the type of household living structure that is permitted in the zoning district;
- 2) Comply with Table 21.06-1: Table of Dimensional Standards – Residential Districts (Anchorage) of the applicable residential structure type;

- 3) Comply with section 21.07.110, *Residential Design Standards*, if constructed after January 1, 2016; and
- 4) Obtain conditional use approval if more than 20 percent of the total gross floor area not directly related to residential uses.

AO 2015-133 does not include Tables 21.06-2, 21.10-6, and 21.10-7 in #2 above. These tables should be added so that assisted living facilities and habilitative care facilities are subject to the dimensional standards of the applicable residential structure type. Therefore, Tables 21.06-2, 21.10-6, and 21.10-7 should be listed in AMC 21.05.030B.1.b.iii. and B.3.b.iii.

AO 2015-133 changes the administrative variance section to rename “occupancy limits for assisted living facilities” to “reasonable accommodation.” This allows the section to be used to evaluate any sort of request for reasonable accommodation under federal law. The approval criteria for administrative variances for reasonable accommodation are also revised to more closely reflect the federal Fair Housing Act. Finally, the reviewing authority for appeals of administrative variances is the Urban Design Commission. Therefore, the ordinance deletes reference to the Zoning Board of Examiners and Appeals in AMC 21.03.050B.1.k.

Recommendation

The Department recommends approval of the amendments proposed in AO 2015-133, subject to the following changes:

1. Delete the “Severe alcohol dependent housing” use type from Exhibit “A.”
2. Add Tables 21.06-2, 21.10-6, and 21.10-7 to the use specific standards in AMC 21.05.030B.1.b.iii. and -B.3.b.iii.

Attachments:

1. AO 2015-133, Exhibits “A” and “B,” AM 735-2015, and the Summary of Economic Effects
2. United States Department of Housing and Urban Development, Conciliation Agreement and Voluntary Compliance Agreement
3. Clarion – Fair Housing Report and Recommendation
4. Departmental and Public Comments
5. Historical Information - AO 2015-045 and AO 2014-058

AO 2015-133
Exhibits A and B
AM 735-2015
and
Summary of Economic
Effects

Submitted by: Chair of the Assembly at the
Request of the Mayor
Prepared by: Community Development Dept.
Reviewed by: Dept. of Law
For reading: December 8, 2015

ANCHORAGE, ALASKA
AO No. 2015-133

1 **AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE (NEW CODE)**
2 **SECTIONS 21.03.050B., 21.03.240J., 21.05.030B., AND 21.14.040, AND TABLES**
3 **21.05-1 AND 21.10-4, TO MODIFY LAND USE REGULATIONS REGARDING**
4 **ASSISTED LIVING FACILITIES AND HABILITATIVE CARE FACILITIES IN**
5 **ACCORDANCE WITH THE CONCILIATION AGREEMENT AND VOLUNTARY**
6 **COMPLIANCE AGREEMENT BETWEEN THE U.S. DEPARTMENT OF HOUSING**
7 **AND URBAN DEVELOPMENT (HUD) AND THE MUNICIPALITY OF ANCHORAGE**
8 **REGARDING FAIR HOUSING ACT AND OTHER FEDERAL LAWS COMPLIANCE**
9 **IN TITLE 21.**

10
11
12 **WHEREAS**, on May 5, 2014, the Assistant Secretary of HUD's Office of Fair Housing
13 and Equal Opportunity filed a complaint against the Municipality alleging violations of
14 the Fair Housing Act (the "Act") in the Municipality's land use regulations. Specifically,
15 the Assistant Secretary alleged the Municipality violated Sections 804(f)(1) and
16 804(f)(2) of the Act by discriminating against persons with disabilities. Alleged
17 violations included: the exclusion of group homes for disabled persons from
18 residential districts where other similar residential uses are allowed, restrictions based
19 on particular disabilities (alcoholism), and spacing and procedural requirements
20 (including conditional use permits and administrative variances) imposed upon group
21 homes for persons with disabilities that are not imposed on similar residences for
22 persons who are not disabled; and

23
24 **WHEREAS**, the Municipality denied having violated the Act, but in the best interests
25 of the city the Municipality agreed to settle the claims in the complaint by entering into
26 a conciliation and voluntary compliance agreement, without admitting to any
27 culpability or violations of the Act or other federal laws; and

28
29 **WHEREAS**, the conciliation and voluntary compliance agreement was signed by the
30 Municipal Manager and the Assistant Secretary of HUD's Fair Housing and Equal
31 Opportunity, and became effective on April 15, 2015; and

32
33 **WHEREAS**, as part of the agreement, the Municipality agreed to retain an
34 independent expert consultant to review the Municipality's land use regulations with
35 respect to Assisted Living Facility and Habilitative Care uses in Title 21 of the
36 Anchorage Municipal Code, and to make recommendations for affirmative compliance
37 with Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, the
38 Americans with Disabilities Act, and the Fair Housing Act; and

39
40 **WHEREAS**, as part of the agreement, the Municipality agreed to present an
41 ordinance to the Assembly to implement the recommendations of the consultant, and
42 to approve, adopt, and implement the ordinance; the agreement notes that "the

Assembly may make amendments to the ordinance as long as the final ordinance repeals, amends, supplements, or otherwise modifies the relevant provisions consistent with the recommendations of the consultant, to the extent necessary to achieve compliance with Title VI, the ADA, Section 504, and the Fair Housing Act"; now, therefore,

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code (new code) section 21.03.050 is hereby amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

21.03.050 Appeals

*** *** ***

B. Appeals to Zoning Board of Examiners and Appeals

1. Jurisdiction of Board

The zoning board of examiners and appeals shall hear appeals from decisions of the municipal staff regarding:

*** *** ***

j. Determination of use classification under Section 21.03.220.

k. [ADMINISTRATIVE VARIANCE FOR OCCUPANCY LIMITS IN ASSISTED LIVING FACILITIES UNDER SUBSECTION 21.03.240 J.

L.] Denial of a verification of legal nonconforming status under Section 21.03.250.

[[m]. Alleging an error in the enforcement or interpretation of the flood hazard area under subsection 21.07.020 E.

*** *** ***

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

Section 2. Anchorage Municipal Code (new code) section 21.03.240 is hereby amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

21.03.240 Variances

*** *** ***

J. Administrative Variances

1. Process

a. Application Submittal

Applications for an administrative variance shall contain

the information specified in the title 21 user's guide, and shall be submitted to the director on a form provided by the department.

b. Notice

Notice shall be provided in accordance with subsection 21.03.020H.

c. Time for Approval

The director shall make a determination on an application within 45 days of submittal, and shall provide written findings of the decision. Notification of approval or denial shall be posted electronically on the department's municipal web site and furnished in writing to the applicant by mail or delivered by electronic means.

d. Appeals

If the request for an administrative variance is denied, the applicant may apply for a public hearing variance before the urban design commission under this section 21.03.240. Additionally, denial of requests for reasonable accommodation [ADMINISTRATIVE VARIANCE FROM OCCUPANCY LIMITS FOR ASSISTED LIVING FACILITIES] may be appealed by any person with standing to request reasonable accommodation under the Fair Housing Act, 42 U.S.C. § 3604(f).

2. Reasonable Accommodation [FROM OCCUPANCY LIMITS FOR ASSISTED LIVING FACILITIES]

a. Intent

The intent of this section is to provide a procedure to allow persons with disabilities and assisted living providers to request reasonable accommodation from the department in accordance with 42 USC 3604(f)(3)(B). [WHEN ACCESS TO DECENT SAFE, ACCESSIBLE AND AFFORDABLE HOUSING WITH ASSISTED LIVING WOULD NOT BE AVAILABLE ABSENT A REASONABLE ACCOMMODATION. THIS ADMINISTRATIVE VARIANCE PROCEDURE IS AVAILABLE TO ADDRESS APPLICATION FOR MINOR VARIANCE IN DIMENSIONAL AND SETBACK REQUIREMENTS TO ACCOMMODATE SPECIAL NEEDS OF PERSONS WITH DISABILITIES AND TO ADDRESS APPLICATION FOR VARIANCE IN OCCUPANCY LIMITS OF NO MORE THAN THREE PERSONS.]

b. Standards

In deciding to approve or deny an application, the

department shall review the application and written comments addressing factors relevant to the request for reasonable accommodation, including but not limited to, the extent to which the application demonstrates the following, as related to the particular request of the applicant:

i. [FOR ADMINISTRATIVE VARIANCE APPLICATIONS TO INCREASE OCCUPANCY LIMITS IN R-1, R-1A, R-2A AND R-2D DISTRICTS, THE EXTENT TO WHICH THE ACCOMMODATION AND THE ASSISTED LIVING PROVIDER SEEK TO PROTECT AND PRESERVE THE PRIMARILY RESIDENTIAL CHARACTER OF THE DISTRICT. FACTORS MAY INCLUDE TRAFFIC PATTERNS, ON-STREET PARKING PATTERNS, THE CONTROL EXERCISED BY THE ASSISTED LIVING PROVIDER TO MITIGATE ENVIRONMENTAL DISTURBANCE ASSOCIATED WITH INGRESS AND EGRESS OF FACILITY STAFF WORKERS AT SHIFT CHANGE, AND ANY OTHER MEASURES TAKEN BY THE ASSISTED LIVING PROVIDER TO ENSURE THE COMMERCIAL ASPECTS OF THE FACILITY DO NOT DETRACT FROM ITS RESIDENTIAL PURPOSE AND THE PRIMARILY RESIDENTIAL CHARACTER OF THE DISTRICT. AN EXAMPLE OF A COMMERCIAL ASPECT IS IF RESIDENTIAL TRASH CONTAINERS WERE STANDARD IN THE NEIGHBORHOOD AND THE ASSISTED LIVING PROVIDER USED ONE OR MORE DUMPSTERS DUE TO VOLUME. AN EXAMPLE OF A MITIGATION MEASURE FOR THIS ASPECT THE ASSISTED LIVING PROVIDER MIGHT TAKE IS TO SCREEN THE DUMPSTER.]

[ii. FOR ADMINISTRATIVE VARIANCE APPLICATIONS TO INCREASE OCCUPANCY LIMITS, ECONOMIC HARDSHIP ON THE INTENDED OCCUPANTS IF THE VARIANCE IS DENIED. COST AND AVAILABILITY OF OTHER HOUSING ALTERNATIVES MAY BE ADDRESSED IN PREPARATION AND REVIEW OF THE APPLICATION.]

[iii. Whether the requested accommodation is [AND THE ASSISTED LIVING PROVIDER ARE] implementing [ACCIDENT PREVENTION AND] safety measures specific to the needs of the

residents, including but not limited to safety measures in state law and regulation, and in municipal fire code adopted under Title 23.

ii[v]. Whether the accommodation requested is advancing housing opportunities for disabled individuals in a residential community without jeopardizing residential aspects of the neighborhood [WITH COMMERCIAL ASPECTS OF OPERATION].

iii[v]. Whether the requested accommodation is necessary to comply with the provisions of the federal Fair Housing Act. [FOR ADMINISTRATIVE VARIANCE APPLICATIONS TO INCREASE OCCUPANCY LIMITS, WHETHER THE PROPOSED SIZE OF THE FACILITY IS NECESSARY FOR THE FACILITY'S FINANCIAL VIABILITY.]

iv[i]. External characteristics and impacts of the proposed accommodation [FACILITY], including without limitation appearance, projected contribution to traffic volumes and on-street parking within the neighborhood, available street lighting, and sidewalks.

v[iii]. Quantifiable risks to the health, safety, and quality of life of area residents and users.

vi[ii]. Administrative and economic burden on the municipality, in either approval or denial of the variance.

vii[ix]. Other factors deemed relevant to the applicant or the department in review of the application.

c. Conditions

In approving a variance, the department may impose reasonable conditions designed to address the standards in subsection J.2.b.[5.] or mitigate impacts created by the variance.

*** *** ***

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

Section 3. Anchorage Municipal Code (new code) table 21.05-1 is hereby amended to read as set out in Exhibit A (*the remainder of the table is not affected and therefore not set out*).

Section 4. Anchorage Municipal Code (new code) section 21.05.030 is hereby amended to read as follows (*the remainder of the section is not affected and therefore not set out*):

21.05.030 Residential Uses: Definitions and Use-Specific Standards

*** *** ***

B. Group Living

*** *** ***

1. Assisted Living Facility

a. Definition

A facility that provides housing and ancillary care services on a residential basis to three or more adults, and adolescents in appropriate cases as allowed by exception. A small assisted living facility is defined as a group of three to eight residents. A large assisted living facility is defined as a group of nine or more residents.

b. Use-Specific Standards for [SMALL] Assisted Living Facilities

i. [HOUSEKEEPING UNIT]

An assisted living facility may only occupy a type of household living structure that is permitted in the zoning district. [A SMALL ASSISTED LIVING FACILITY SERVING FIVE OR FEWER RESIDENTS SHALL BE CONSIDERED A SINGLE HOUSEKEEPING UNIT.]

ii. All construction after January 1, 2016, shall comply with the applicable residential design standards in section 21.07.110, Residential Design Standards.

iii. Assisted living facilities shall comply with the dimensional standards in table 21.06-1 of the applicable residential structure type.

iv. If the elements of the facility that are not directly related to residential uses, such as administrative offices, classrooms, auditoriums, and the like, exceed 20 percent of the total gross floor area of the assisted living facility, then the facility shall require conditional use approval.

[ii. ADMINISTRATIVE VARIANCE NEEDED IN THE R-1, R-1A, R-2A, AND R-2D ZONES, A SMALL ASSISTED LIVING FACILITY SERVING

FIVE OR FEWER RESIDENTS IS PERMITTED BY RIGHT. AN ADMINISTRATIVE VARIANCE PURSUANT TO SECTION 21.03.240J. IS REQUIRED TO SERVE SIX TO EIGHT RESIDENTS.]

- [c. USE-SPECIFIC STANDARDS FOR LARGE ASSISTED LIVING FACILITIES
LARGE ASSISTED LIVING FACILITIES SHALL COMPLY WITH THE USE-SPECIFIC STANDARDS SET FORTH FOR "ADULT CARE FACILITIES WITH NINE OR MORE PERSONS" BELOW.]

*** *** ***

3. Habilitative Care Facility

a. Definition

A residential facility, other than a correctional center or transitional living facility, the principal use or goal of which is to serve as a place for persons seeking rehabilitation or recovery from any physical, mental, or emotional infirmity, or any combination thereof, [IN A FAMILY SETTING] as part of a group rehabilitation and/or recovery program utilizing counseling, self-help, or other treatment or assistance, including, but not limited to, substance abuse rehabilitation. Such care for persons age 18 and under, who are under the jurisdiction of the state division of juvenile justice, shall be considered habilitative care, and not a correctional community residential center. A small habilitative care facility shall provide housing for no more than eight residents, including any support staff living at the facility. A medium habilitative care facility shall provide housing for nine to 25 residents, including any support staff living at the facility. A large habilitative care facility shall provide housing for 26 or more residents, including any support staff living at the facility.

b. Use-Specific Standards

- i. An habilitative care facility may only occupy a type of household living structure that is permitted in the zoning district.
- ii. Habilitative care facilities constructed after January 1, 2016, shall comply with the applicable residential design standards in section 21.07.110, Residential Design Standards.
- iii. Habilitative care facilities shall comply with the dimensional standards in table 21.06-1 of the

1 applicable residential structure type.

- 2
3 iv. If the elements of the facility that are not directly
4 related to residential uses, such as administrative
5 offices, classrooms, auditoriums, and the like,
6 exceed 20 percent of the total gross floor area of
7 the habilitative care facility, then the facility shall
8 require conditional use approval.
9

10 [A SMALL HABILITATIVE CARE FACILITY SHALL
11 PROVIDE HOUSING FOR NO MORE THAN SIX
12 RESIDENTS, INCLUDING ANY SUPPORT STAFF
13 LIVING AT THE FACILITY. A MEDIUM HABILITATIVE
14 CARE FACILITY SHALL PROVIDE HOUSING FOR
15 SEVEN TO 25 RESIDENTS, INCLUDING ANY
16 SUPPORT STAFF LIVING AT THE FACILITY. A LARGE
17 HABILITATIVE CARE FACILITY SHALL PROVIDE
18 HOUSING FOR 26 OR MORE RESIDENTS, INCLUDING
19 ANY SUPPORT STAFF LIVING AT THE FACILITY.]
20

21 *** *** ***

22 (AO 2012-124(S), 2-26-13; AO 2013-117, 12-3-13; AO No. 2014-58, § 1, 5-20-
23 14)
24

25 **Section 5.** Anchorage Municipal Code (new code) table 21.10-4 is hereby
26 amended to read as set out in Exhibit B (*the remainder of the table is not affected and*
27 *therefore not set out*).
28

29 **Section 6** Anchorage Municipal Code (new code) section 21.14.040 is hereby
30 amended to read as follows (*the remainder of the section is not affected and therefore*
31 *not set out*):
32

33 **21.14.040 Definitions**

34 *** *** ***

35 **Family**

36
37 Any number of [ONE OR MORE] persons related by blood, adoption, or
38 marriage, or no more than five unrelated persons occupying premises and
39 living as a single housekeeping unit, as distinguished from a group occupying
40 a roominghouse, club, fraternity house, or hotel.
41

42 *** *** ***

43 **Household**

44
45 A domestic unit consisting of any number of [A] persons related by blood,
46 adoption, or marriage, or no more than five unrelated persons [GROUP OF
47 PEOPLE] who share living arrangements. Members of a household have
48 common access to, and common use of, all living areas and all facilities within
49 the dwelling unit. A household occupies a single dwelling unit, so that its
50

members live and eat separately from any other persons in the building, and have access to the outside of the building either directly or through a common hall.

*** *** ***

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

Section 7. This ordinance shall be effective immediately upon passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 20____.

Chair of the Assembly

ATTEST:

Municipal Clerk

AO Implementing HUD Conciliation Agreement EXHIBIT A

TABLE 21.05-1: TABLE OF ALLOWED USES – RESIDENTIAL, COMMERCIAL, INDUSTRIAL, AND OTHER DISTRICTS
P = Permitted Use S = Administrative Site Plan Review C = Conditional Use M = Major Site Plan Review
For uses allowed in the A, TA, and TR districts, see section 21.04.050.
All other uses not shown are prohibited.

Use Category		RESIDENTIAL														COMMERCIAL					INDUST.		OTHER					Definitions and Use-Specific Standards			
Use Type		R-1	R-1A	R-2A	R-2D	R-2M	R-3	R-4	R-4A	R-5	R-6	R-7	R-8	R-9	R-10	B-1A	B-1B	B-3	RO	MC	I-1	I-2	MI	AF	DR	PR	PL	W			
RESIDENTIAL USES																															
Group Living	Assisted living facility (3-8 residents)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P											21.05.030B.1.	
	Assisted living facility (9 or more residents)	C	C	C	C	P	P	P	P	P	C	C				P	P	P	P	C							C			21.05.030B.1.	
	Correctional community residential center																C	C				C	C				C			21.05.030B.2.	
	Habilitative care facility, small (up to 8[6] residents)	P	P	P	P	P	P	P	P	P	P	P					P	P	P	P							P			21.05.030B.3.	
	Habilitative care facility, medium (9[7]-25 residents)	C	C	C	C	C	C	P	P	C	C	C					P	P	P	P							C			21.05.030B.3.	
	Habilitative care facility, large (26+ residents)						P	P	P								P	P	P	P							C			21.05.030B.3.	
	Roominghouse					C	P	P	P	P	C	C	C	C	C		P	P	P	P											21.05.030B.4.
Severe alcohol dependent housing																		C	C		C						C			21.05.030B.5.	
Transitional living facility						P	P	P	P								P	P	P								C			21.05.030B.6.	
*** *** ***																															

(AO 2012-124(S), 2-26-13; AO 2013-117, 12-3-13; AO 2013-139, 01-28-14)

AO Implementing HUD Conciliation Agreement EXHIBIT B

TABLE 21.10-4: TABLE OF ALLOWED USES – CHUGIAK-EAGLE RIVER RESIDENTIAL, COMMERCIAL, INDUSTRIAL, AND OTHER DISTRICTS
P = Permitted Use S = Administrative Site Plan Review C = Conditional Use M = Major Site Plan Review T = Special Land Use Permit for Marijuana
For uses allowed in the CE-TR and CE-AD districts, see section 21.10.040.
All other uses not shown are prohibited.

Use Category		RESIDENTIAL												COMMERCIAL			INDUSTRIAL			OTHER			OV		Definitions and Use-Specific Standards		
		CE-R-1	CE-R-1A	CE-R-2A	CE-R-2D	CE-R-2M	CE-R-3	CE-R-5	CE-R-5A	CE-R-6	CE-R-7	CE-R-8	CE-R-9	CE-R-10	CE-B-3	CE-R-0	CE-R-C	CE-I-1	CE-I-2	CE-I-3	CE-DR	CE-PR	CE-PLI	CE-DO ¹		CE-EVO	
COMMERCIAL USES																											
*** *** ***																											
Group Living	Assisted living facility (3-8 residents)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P							P ¹	P	21.05.030B. 1.
	Assisted living facility (9 or more residents)	C	C	C	C	P	P	C	C	C					P	P	P	P							P	C	21.05.030B. 1.
	Correctional community residential center														C		C	C	C	C				C	C ¹	B	21.10.050C. 3. 21.05.030B. 2.
	Habilitative care facility, small (up to 8[6] residents)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P						P	P	21.05.030B. 3.
	Habilitative care facility, medium (9[7]-25 residents)	C	C	C	C	C	P[C]	C	C	C	C				P	P[C]	P[C]	P[C]						C	P[C]	C	21.05.030B. 3.
	Habilitative care facility, large (26+ residents)						P[C]								P	P[C]	P[C]	P[C]							P	P	21.05.030B. 3.
*** *** ***																											

¹ For uses allowed in the CE-DO (Downtown Eagle River Overlay District), when the abbreviation of the approval process is followed by a "R", that indicates the use is allowed only in the portion of the overlay district where the underlying zoning is RO. When the abbreviation of the approval process is followed by a "B", that indicates the use is allowed only in the portion of the overlay district where the underlying zoning is B-3. If the abbreviation of the approval process has no suffix, then the use is allowed anywhere in the overlay district. For example, "P-R" means that the use is permitted only in the portion of the overlay district where RO is the underlying district.

² Uses with structures with a gross floor area over 20,000 square feet require a major site plan review through subsection 21.07.120A., Large Commercial Establishments.

(AO 2012-124(S), 2-26-13; AO 2013-117, 12-3-13; AO 2013-139, § 2, 1-28-14; AO No. 2014-40(S), §§ 2(Att. A), 3, 4, 5-20-14; AO No. 2014-58, § 4(Att. C), 5-20-14)



MUNICIPALITY OF ANCHORAGE

Assembly Memorandum

No. AM 735-2015

Meeting Date: December 8, 2015

1 **From:** MAYOR

2
3 **Subject:** AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE
4 (NEW CODE) SECTIONS 21.03.050B., 21.03.240J., 21.05.030B.,
5 AND 21.14.040, AND TABLES 21.05-1 AND 21.10-4, TO MODIFY
6 LAND USE REGULATIONS REGARDING ASSISTED LIVING
7 FACILITIES AND HABILITATIVE CARE FACILITIES IN
8 ACCORDANCE WITH THE CONCILIATION AGREEMENT AND
9 VOLUNTARY COMPLIANCE AGREEMENT BETWEEN THE U.S.
10 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)
11 AND THE MUNICIPALITY OF ANCHORAGE REGARDING FAIR
12 HOUSING ACT AND OTHER FEDERAL LAWS COMPLIANCE IN
13 TITLE 21.
14
15

16 In April 2014, the U.S. Department of Housing and Urban Development initiated a
17 review of the Municipality's land use regulations. Thereafter, in May 2014. The
18 Assistant Secretary for Fair Housing and Equal Opportunity filed a complaint against
19 the Municipality of Anchorage alleging that the city is using or will use zoning or land
20 use ordinances to discriminate against disabled populations.
21

22 Over the next year the Municipality negotiated a Conciliation Agreement and
23 Voluntary Compliance Agreement ("Agreement") with HUD - attached hereto. As
24 part of that Agreement, the Municipality committed to retaining an independent
25 expert consultant to review the Anchorage Municipal Code and make
26 recommendations for affirmative compliance with Title VI of the Civil Rights Act,
27 Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the
28 Fair Housing Act. The Municipality retained Clarion and Associates, who provided
29 its Report and Recommendations on August 3, 2015.
30

31 The Agreement commits the Municipality to presenting to the Assembly an
32 ordinance in substantial accordance with the Consultant's recommendations and,
33 furthermore:
34

35 Within 90 days or the next available voting opportunity from the date
36 of the presentation of the Ordinance, whichever occurs later, the
37 Assembly shall approve, adopt, and implement the Ordinance. The
38 Assembly may make amendments to the Ordinance as long as the
39 final Ordinance adopted by the Assembly repeals, amends,

1 supplements, or otherwise modifies the relevant provisions consistent
2 with the recommendations of the Consultant, to the extent necessary
3 to achieve compliance with Title VI, the ADA, Section 504 and the
4 Act.

5
6 This ordinance proposes the following changes:

- 7
- 8 • Revisions to the definitions of “family” and “household” to limit the number of
9 unrelated persons and revision to the definition of “habilitative care facility” to
10 include the size distinctions in the definition.
 - 11
 - 12 • Revisions to Tables 21.05-1 and 21.10-4 to increase the districts where
13 assisted living and habilitative care facilities are permitted.
 - 14
 - 15 • Revisions and additions of use-specific standards for Assisted Living
16 Facilities and Habilitative Care Facilities in AMC (new code) 21.05.030B.1.
17 and B.3.
 - 18
 - 19 • Clarification that the dimensional standards are the same dimensional
20 standard applicable to the type of structure being occupied or constructed.
 - 21
 - 22 • Changes to the development approval procedures and criteria, including the
23 elimination of administrative variance from the jurisdiction of the Zoning
24 Board of Examiners and Appeals, including “reasonable accommodations” as
25 applications to be decided under the administrative variance procedure, and
26 changes to the standards for consideration of such requests.
 - 27

28 The proposed changes are all consistent with the recommendations offered by the
29 Consultant in the Report, and with the terms of the Agreement.

30
31
32 **THE ADMINISTRATION RECOMMENDS APPROVAL.**

33

34 Prepared by:	Erika McConnell, Current Planning Supervisor
	Community Development Department
36 Approved by:	Hal H. Hart, Planning Director
37 Concur:	Lance R. Wilber, Director
	Office of Management and Budget
39 Concur:	Christopher M. Schutte, Executive Director
	Office of Economic and Community Development
41 Concur:	William D. Falsey, Municipal Attorney
42 Concur:	Michael K. Abbott, Municipal Manager
43 Respectfully submitted:	Ethan A. Berkowitz, Mayor
44	

MUNICIPALITY OF ANCHORAGE
Summary of Economic Effects -- General Government

AO Number: 2015-133 Title: **AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE (NEW CODE) SECTIONS 21.03.050B., 21.03.240J., 21.05.030B., AND 21.14.040, AND TABLES 21.05-1 AND 21.10-4, TO MODIFY LAND USE REGULATIONS REGARDING ASSISTED LIVING FACILITIES AND HABILITATIVE CARE FACILITIES IN ACCORDANCE WITH THE CONCILIATION AGREEMENT AND VOLUNTARY COMPLIANCE AGREEMENT BETWEEN THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) AND THE MUNICIPALITY OF ANCHORAGE REGARDING FAIR HOUSING ACT AND OTHER FEDERAL LAWS COMPLIANCE IN TITLE 21.**

Sponsor: Mayor
 Preparing Agency: Community Development Department
 Others Impacted:

CHANGES IN EXPENDITURES AND REVENUES:		(In Thousands of Dollars)			
	<u>FY16</u>	<u>FY17</u>	<u>FY18</u>	<u>FY19</u>	<u>FY20</u>
Operating Expenditures					
1000 Personal Services					
2000 Non-Labor					
3900 Contributions					
4000 Debt Service					
TOTAL DIRECT COSTS:	\$ -	\$ -	\$ -	\$ -	\$ -
Add: 6000 Charges from Others					
Less: 7000 Charges to Others					
FUNCTION COST:	\$ -	\$ -	\$ -	\$ -	\$ -
REVENUES:					
CAPITAL:					
POSITIONS: FT/PT and Temp					

PUBLIC SECTOR ECONOMIC EFFECTS:

Approval of this ordinance should have no significant impact on the public sector. No additional public expenditures are required.

PRIVATE SECTOR ECONOMIC EFFECTS:

Approval of this ordinance should have no significant impact on the private sector. No private expenditures are required.

Prepared by: Erika McConnell Telephone: 343-7917

United State Department of
Housing and Urban
Development, Conciliation
Agreement and Voluntary
Compliance Agreement



U.S. Department Of Housing and Urban Development
Northwest/Alaska Area
Office of Fair Housing and Equal Opportunity
Seattle Region
Program Center, Enforcement/Intake Branch
909 First Avenue, Suite 205
Seattle, Washington 98104-1000

Pam Weiss
Assistant Municipal Attorney
Municipality of Anchorage
632 W. 6th Avenue Suite 700
Anchorage, AK 99501

APR 16 2015

Dear Representative (of Municipality of Anchorage):

Subject: Housing Discrimination Complaint
Assistant Secretary for FHEO v. Municipality of Anchorage, AK
Inquiry No.: 380017
HUD Case No.: 101402008
ADA Compliance Review No.: 10-14-R001-D
Section 504 Compliance Review No.: 10-14-R001-4
Title VI Compliance Review No.: 10-14-R001-6

Attached is a copy of a closure document sent to your client, relating to the subject housing discrimination complaint.

Sincerely,

A handwritten signature in cursive script, appearing to read "Calvin Low", is written over a horizontal line.

Calvin Low, Acting Regional Director
FHEO, Region X-Seattle

Enclosures



UNITED STATES DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT

CONCILIATION AGREEMENT AND VOLUNTARY COMPLIANCE
AGREEMENT

Between

U.S. Department of Housing and Urban Development
Assistant Secretary for the Office of Fair Housing and Equal Opportunity

(Complainant)

and

The Municipality of Anchorage

(Respondent/Recipient)

TITLE VIII CASE NAME: Assistant Secretary for FHEO v. Municipality of
Anchorage

TITLE VIII CASE NUMBER: 10-14-0200-8

DATE FILED: May 5, 2014

ADA COMPLIANCE REVIEW NUMBER: 10-14-R001-D

SECTION 504 COMPLIANCE REVIEW NUMBER: 10-14-R001-4

TITLE VI COMPLIANCE REVIEW NUMBER: 10-14-R001-6

A. PARTIES

1. The U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity (“HUD” or the “Department”) conducted a Multi-jurisdictional Compliance Review (“Review”) of the Municipality of Anchorage (“Municipality”), a recipient of HUD funds through the Community Development Block Grant (CDBG), HOME Investment Partnership (HOME) and Emergency Solutions Grant (ESG) Programs. The Review was conducted under the following authorities:
 - a. Title II of the Americans with Disabilities Act of 1990, as amended (ADA), which prohibits discrimination on the basis of disability in all activities, services and programs of public entities. 28 C.F.R. § 35.190 identifies HUD as the designated federal agency for ensuring the ADA compliance of state and local governments that administer housing assistance and referral or public housing programs.
 - b. Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), which prohibits discrimination on the basis of disability in programs or activities that receive federal financial assistance. 24 CFR 8.56(a) of the Department’s regulations implementing Section 504 provides for the conduct of periodic reviews of the practices of HUD recipients to ascertain their compliance with Section 504.
 - c. Title VI of the Civil Rights Act of 1964, as amended (Title VI), which prohibits discrimination on the basis of race, color, and national origin in programs or activities that receive federal financial assistance. 24 CFR 1.7(a) of the Department’s regulations implementing Title VI provides for the periodic review of the practices of HUD recipients to determine whether they are in compliance with Title VI.
2. Complainant in Fair Housing Equal Opportunity (“FHEO”) Case Number 10-14-0200-8 (the “Complaint”) is the Assistant Secretary for Fair Housing and Equal Opportunity (the “Assistant Secretary”) of the U.S. Department of Housing and Urban Development. The Assistant Secretary will be executing this conciliation agreement and voluntary compliance agreement (the “Agreement”).
3. Respondent to the above cited FHEO Case Number is the Municipality of Anchorage. The Municipality was represented by the Municipal Attorney’s Office. An authorized representative will execute the Agreement for the Municipality.

B. STATEMENT OF FACTS

4. On April 4, 2014, the Department initiated the Review of the Municipality to investigate the Municipality's land use regulations in relation to the ADA, Section 504, and Title VI.
5. On May 5, 2014, the Assistant Secretary filed the Complaint against the Municipality alleging violations of the Fair Housing Act (the "Act") in the Municipality's land use regulations. Specifically, the Assistant Secretary alleged the Municipality violated Sections 804(f)(1) and 804(f)(2) of the Act by discriminating against persons with disabilities. Alleged violations included: the exclusion of group homes for disabled persons from residential districts where other similar residential uses are allowed, restrictions based on particular disabilities (alcoholism), and spacing and procedural requirements (including conditional use permits and administrative variances) imposed upon group homes for persons with disabilities that are not imposed on similar residences for persons who are not disabled.
6. The Municipality denied having violated the Act. The Municipality agrees to settle the claims in the underlying action by entering into this Agreement. It is understood that this Agreement does not constitute an admission by the Municipality of any violation of the Act, the ADA, Section 504, Title VI or any other law.

C. TERM OF AGREEMENT

7. For the purposes of this Agreement, "days" refers to calendar days. If the date of compliance with this Agreement should fall on a weekend or federally recognized holiday, the date of compliance shall be the next business day after the weekend or federally recognized holiday.

D. EFFECTIVE DATE

8. The parties expressly agree this Agreement constitutes neither a binding contract under state or federal law, nor a Conciliation Agreement pursuant to the Act, nor a Voluntary Compliance Agreement under the ADA, Section 504, or Title VI unless and until such time as it is executed by the Municipality and the Department through the Assistant Secretary.
9. The Agreement shall become effective on the date that it is approved and executed by the Assistant Secretary.

E. GENERAL PROVISIONS

10. The parties acknowledge that this Agreement is a voluntary and full settlement of the Complaint and the Compliance Review. The parties affirm they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement.
11. The Municipality acknowledges it has an affirmative duty not to discriminate under the Act, the ADA, Section 504, and Title VI, and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted or participated in any manner in a proceeding under the Act. The Municipality further acknowledges that any subsequent retaliation or discrimination constitutes both a material breach of this Agreement, and a statutory violation of the Act, the ADA, Section 504, and Title VI.
12. This Agreement, after it has been approved by the Assistant Secretary, or his or her designee, is binding upon the Municipality, its employees, heirs, board members, successors and assigns and all others in active concert. In addition, this Agreement applies to the Municipality's projects, related facilities, programs, services, benefits and activities funded in whole or in part with CDBG funds, and shall be binding upon the Municipality, its officers, trustees, directors, agents, successors, assignees, sub-recipients, contractors, and sub-contractors who own, control, operate or sponsor said projects, facilities, programs, services, benefits and activities.
13. It is understood that pursuant to Section 810(b)(4) of the Act, upon approval of this Agreement by the Assistant Secretary or his or her designee, it is a public document.
14. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaint involving the Municipality made pursuant to the Act, the ADA, Section 504, Title VI or any other complaint within the Department's jurisdiction.
15. This Agreement does not in any way limit or restrict the Municipality's ability to effectuate changes to its land use provisions subsequent to compliance with all the terms of this Agreement, if the Municipality determines that it is necessary to do so and does so in accordance with the Act, the ADA, Section 504, Title VI, or other required provisions.
16. This Agreement does not increase or diminish the ability of any person or class of persons to exercise their rights under the Act, the ADA, Section 504, or Title VI.
17. This Agreement does not create any private right of action for any person or class of persons not a party to this Agreement.

18. This Agreement does not supersede or in any manner change the rights, obligations, and responsibilities of the parties under any and all court orders or settlements of other controversies involving compliance with federal or state civil rights statutes.
19. This Agreement contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter contained in the Agreement. Any and all prior discussions, negotiations, commitments, or understandings related to the Agreement, if any, are hereby merged in this Agreement. No representations, oral or otherwise, have been made by any party to this Agreement. No other agreements not specifically contained in this Agreement, oral or otherwise, shall be deemed to exist or to bind any of the parties to this Agreement.
20. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all signatories or their successors to the Agreement agree in writing to the amendment, modification or waiver; (b) the amendment, modification or waiver is in writing; and (c) the amendment, modification or waiver is approved and signed by the Assistant Secretary, or his or her designee.
21. The parties agree that the execution of this Agreement may be accomplished by separate execution of consents to this Agreement, and that the original executed signature pages attached to the body of the Agreement constitute one document.
22. The parties agree to accept scanned or faxed copies of executed signature pages as true, official, and original executions of this Agreement.
23. The Department hereby forever waives, releases, and covenants not to sue the Municipality, its executors, assigns, agents, representatives, officials, employees, board members and attorneys with regard to any and all claims, damages and injuries of whatever nature, whether presently known or unknown, arising out of the subject matter of the above-referenced Complaint and Compliance Review which could have been filed in any action or suit arising from said subject matter.
24. The Municipality hereby forever waives, releases, and covenants not to sue the Department, their board members, heirs, executors, assigns, agents, representatives, officials, employees and attorneys with regard to any and all claims, damages and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of the above-referenced Complaint and Compliance Review which could have been filed in any action or suit arising from said subject matter.

F. RELIEF IN THE PUBLIC INTEREST

25. The Municipality acknowledges that it is unlawful to discriminate by denying or otherwise making unavailable housing to persons with disabilities.

26. The Municipality acknowledges that it is unlawful to discriminate in the terms, conditions, or privileges offered to persons on the basis of their disability.
27. Within 60 days of the effective date of this Agreement, the Municipality shall retain an independent expert consultant ("Consultant") to review the Municipality's regulations with respect to Assisted Living Facility and Habilitative Care uses contained in Title 21 of the Municipality's Code of Ordinances. The Consultant shall set forth recommendations for affirmative compliance with Title VI, Section 504, the ADA, and the Act.
- a. The Consultant shall be an independent third party, not an employee of the Municipality, and shall be qualified to evaluate land use regulations for compliance with fair housing law pertaining to disability and group homes.
 - b. The Consultant shall review and provide recommendations for any changes to Title 21 of the Anchorage Municipal Code to ensure that any restrictions on housing for persons with disabilities are equivalent to restrictions on housing for an equal or greater number of persons without disabilities.
 - c. The Consultant shall also review and provide recommendations for any changes to the provisions of Title 21 of the Anchorage Municipal Code, in the following areas:
 - i. Occupancy Limits: The Consultant shall evaluate the Municipality's occupancy limits for approval by right of assisted living facilities and habilitative care facilities under Title 21.
 - ii. Administrative Variance Procedures: The Consultant shall evaluate the Municipality's administrative variance requirements and procedures for assisted living facilities in the R-1, R-1A, R-2A, R-2D, and R-2M zones under Title 21 and determine whether any changes are needed.
 - iii. Conditional Use Permit Requirements: The Consultant shall evaluate the Municipality's conditional use permit requirements and procedures applicable to assisted living facilities and habilitative care facilities under Title 21.
 - d. All costs and expenses associated with the Consultant shall be borne by the Municipality.
 - e. Within 90 days from the date the Consultant is retained by the Municipality, the Consultant shall present the recommendations described above to the Municipality in writing.

- f. Within 120 days from the date the Consultant provides written recommendations to the Municipality, the Municipality shall present to the Assembly an Ordinance to repeal, amend, supplement and/or otherwise modify the provisions of Title 21 of the Anchorage Municipal Code, in substantial accordance with the Consultant's recommendations and to the extent necessary to achieve compliance with Title VI, the ADA, Section 504, and the Act.
- g. Within 90 days or the next available voting opportunity from the date of the presentation of the Ordinance, whichever occurs later, the Assembly shall approve, adopt, and implement the Ordinance. The Assembly may make amendments to the Ordinance as long as the final Ordinance adopted by the Assembly repeals, amends, supplements, or otherwise modifies the relevant provisions consistent with the recommendations of the Consultant, to the extent necessary to achieve compliance with Title VI, the ADA, Section 504, and the Act.

28. Refund and Waiver of Administrative Variance and Conditional Use Permit Fees:

- a. The Municipality agrees to allocate a sum of up to \$5,000 to provide refunds of permit fees to those individuals described in the subsections below.
- b. Within 60 days of the effective date of this Agreement, the Municipality shall conduct a thorough review of its records to identify and provide permit fee refunds to all permit applicants who meet the following criteria:
 - i. The applicant submitted his or her permit application on or after January 1, 2012.
 - ii. The applicant sought an administrative variance or conditional use permit.
 - iii. The applicant sought a land use permit for Severe Alcohol Dependent Housing (SADH), an assisted living facility housing up to eight residents, or a habilitative care facility housing up to eight residents.
- c. Refunds shall be delivered to qualifying applicants with a certified delivery receipt.
- d. A list of fee refunds will be provided to HUD within 10 days of completion of the refunds.
- e. Within fourteen (14) days after execution of this Agreement, the Municipality shall prepare, present, recommend, and advance an ordinance for prompt adoption by the Assembly to eliminate fees for applications for administrative variances and conditional use permits for assisted living or habilitative care

7

facilities for up to 8 residents, pending the adoption of the Ordinance described in Paragraph 27.

G. MONITORING

29. If HUD believes the Municipality is in violation at any time with the terms of this Agreement, HUD shall advise the Municipality in writing of the alleged violation, the reasons for its reasonable belief there has been a violation, and advise the Municipality what steps it should take to correct the alleged violation.
30. Prior to the expiration of any timeframe in this Agreement, the Municipality may submit to the Department a reasonable request for an extension of that time frame. The Department shall not refuse such an extension unless it establishes that the Municipality is requesting the extension for purposes of delay.

H. REPORTING AND RECORDKEEPING

31. Within 10 days of retention of the Consultant, as described in Paragraph 27, the Municipality shall certify its compliance in writing to the Department. The written certification shall include the name of the Consultant and a copy of any contract or agreement entered into to retain said Consultant.
32. Within 10 days of the presentation of recommendations to the Municipality by the Consultant, as described in Paragraph 27, the Municipality shall provide a copy of the written recommendations to the Department.
33. Within 10 days of presenting an ordinance to repeal, amend, supplement and/or otherwise modify the Assisted Living Facility and Habilitative Care Facility provisions of Title 21 of the Code of Ordinances to the Assembly, as described in Paragraph 27, the Municipality shall provide a copy of the proposed ordinance to the Department.
34. Within 10 days of the Assembly's approval of any Ordinance to amend or modify the relevant code provisions in accordance with Paragraph 27 in this Agreement, the Municipality shall certify its compliance in writing to the Department. The written certification shall include a copy of the new ordinance, and any policies or procedures adopted by the Municipality in conjunction with the ordinance.
35. Within 10 days of refunding any fees and adopting any ordinances in accordance with Paragraph 28, the Municipality shall certify its compliance in writing to the Department. The written certification shall include a copy of the new ordinances, the identities of parties who received refunds, an accounting of the original charges

assessed against the applicants, the amount of the refunds, copies of payment checks, and certified mail delivery receipts demonstrating delivery of the refunds.


All required certifications and documentation of compliance must be submitted to:

Region X Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
Attn: Conciliation Monitoring
909 First Avenue, Suite 200
Seattle, WA 98104

I. CONSEQUENCES OF BREACH

36. Whenever the Department has reasonable cause to believe that the Municipality has breached this Agreement, and after providing notification required in Paragraph 31 and providing an opportunity for the Municipality to correct the alleged breach, and if the Municipality refuses to implement the corrections set forth by the Department in its notice, the matter may be referred to the Attorney General of the United States, to commence a civil action in the appropriate U. S. District Court, pursuant to §§ 810(c) and 814(b)(2) of the Act.
37. If the Municipality is found to have breached the Agreement, said breach may lead the Department to reactivate the ADA, Section 504 and/or Title VI compliance reviews. If those reviews are concluded and result in supported findings of non-compliance and the findings cannot be resolved by informal means, the Department may seek to effect compliance with these authorities by means of a referral of the matter to the Department of Justice for appropriate enforcement proceedings, the termination of or refusal to grant or continue federal financial assistance, the initiation of debarment proceedings, or any other means authorized by law.
38. If the Municipality is found to have breached the agreement, said breach may also provide evidence indicating that the Municipality is not in compliance with its civil rights related program requirements under the CDBG, HOME and ESG programs, and may lead the Department to question the Municipality's affirmatively furthering fair housing certifications and other civil rights certifications submitted pursuant to regulations at 24 C.F.R. §§ 91.225(a)(1), 91.225(b)(6) and 570.601.


RESPONDENT SIGNATURE



The Municipality of Anchorage
By: George Vakalis
Title: Municipal Mgr

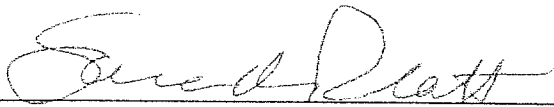
4/14/15
Date

COMPLAINANT SIGNATURE



Gustavo Velasquez
Assistant Secretary
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development

4/15/15
Date



Sara Pratt, Deputy Assistant Secretary for Enforcement and Programs
On behalf of the Department of Housing and Urban Development

4/15/15
Date

Clarion – Fair Housing Report and Recommendation



ANCHORAGE, ALASKA

August 2015

Fair Housing Report and Recommendations

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1. Introduction

1.1. History of Complaint

In May, 2014, the Municipality of Anchorage, Alaska, (the Municipality) received a complaint from the U.S. Department of Housing and Urban Development (the Department) alleging that the city had violated various provisions of the federal Fair Housing Act (U.S. Code Sections 3601-3619). That complaint resulted in ADA compliance review number 10-14-R001-D, Section 504 Compliance Review Number 10-14-R001-4, Title VI Compliance Review Number 10-14-R001-6, and triggered communications about the alleged violations between U.S. HUD and the Municipality of Anchorage over the next several months. In 2015, those communications resulted in the drafting and execution of a Conciliation Agreement and Voluntary Compliance Agreement (the Agreement) between the Department and the Municipality. The alleged violations of the Fair Housing Act were summarized in Section B.5 of that Agreement as follows:

“Alleged violations included: The exclusion of group homes for disabled persons from residential districts where other similar residential uses are allowed, restrictions based on particular disabilities (alcoholism), and spacing and procedural requirements (including conditional use permits and administrative variances) imposed on group homes for persons with disabilities that are not imposed on similar residences for persons who are not disabled.”

1.2. Consultant's Assignment

As part of the resolution of the dispute described above, the Municipality has retained Clarion Associates to provide the following services, as described in the sections of the Agreement identified below:

Sections F.27.b: “The consultant shall review and provide recommendations for any changes to the Anchorage Municipal Code to ensure that any restrictions on housing for persons with disabilities are equivalent to restrictions on housing for an equal or greater number of persons without disabilities.”

Section F.27.c:

“The consultant shall also review and provide recommendations for any changes to the provisions of Title 21 of the Anchorage Municipal Code, in the following areas:

- i. Occupancy Limits: The consultant shall evaluate the Municipality's occupancy limit for approval by right of assisted living facilities and habilitative care facilities under Title 21.
- ii. Administrative Variance Procedure: The consultant shall evaluate the Municipality's administrative variance requirements and procedures for assisted living facilities in the R-1, R-1A, R-2A, R-2D, and R-2M zones under Title 21 and determine whether any changes are needed.
- iii. Conditional Use Permit Requirements. The consultant shall evaluate the Municipality's conditional use permit requirements and procedures applicable to assisted living facilities and habilitative care facilities under Title 21.”

1.3. Consultant's Qualifications

Section 27.a. of the Agreement states that “The Consultant shall be an independent third party, not an employee of the Municipality, and shall be qualified to evaluate land use regulations for compliance with fair housing law pertaining to disability and group homes.” Consultant Clarion Associates is a

national land use consulting firm founded in 1992 with experience reviewing and revising land use regulations in over 140 municipalities across the United States. Consultant regularly reviews and recommends amendments to local zoning, subdivision, and land development codes in order to bring them into compliance with federal legislation related to fair housing, persons with disabilities, telecommunications, manufactured housing, and First Amendment protections of free speech and the free exercise of religion. Consultant has completed zoning and land use regulatory reviews to identify barriers to fair housing for the States of Idaho, Texas, Oregon, and Nevada, as well as the cities of Boise, Idaho, Indianapolis, Indiana, and numerous others. Clarion Associates is not a law firm, and the information provided in this report does not constitute a legal opinion. Rather, it reflects our analysis and review of the Anchorage Municipal Code, based on our experience, for review and action by the Municipality of Anchorage Legal Department.

1.4. Three Contexts

The crux of the Fair Housing Act is that no person or entity act to “make unavailable” housing for those categories of individuals protected by the Act. Although the Act addresses discrimination among individuals or households based on race, color, national origin, religion, sex, familial status, or handicap, the alleged violations addressed by this Report focus on how the Municipality’s zoning controls address persons with disabilities (handicaps). In evaluating the impacts of the Anchorage zoning ordinance on these persons and households, it is important to consider three distinct scenarios in which an applicant may seek to provide housing for persons with disabilities.

First: Occupancy or conversion of an existing attached or detached single-family dwelling to provide a relatively small assisted living or habilitative care facility in a low-density neighborhood setting. Most disputes over fair housing arise in this context. The question in this case is whether the Municipality imposes burdens on the reuse of the existing dwelling for occupancy by these uses that it does not impose on occupancy by an equal number of residents in the Household Living category.

Second: Occupancy or conversion of an existing multifamily building, or conversion of a mixed use or non-residential building, to provide a larger assisted living or habilitative care facility, generally in a multifamily or mixed use area. Again, the question is whether the Municipality imposes burdens on the reuse of the existing buildings for occupancy by these uses that it does not impose on occupancy by an equal number of residents in the Household Living category.

Third: The construction of a new building to provide a small or large assisted living or habilitative care facility. In this case, the question is whether the Municipality imposes burdens on the construction or occupancy of new buildings for these uses that it does not impose on the construction or occupancy of a new building by an equal number of residents in the Household Living category.

1.5. Structure of this Report

Following this Introduction, this Report is organized into two parts. Part 2 includes a section-by-section review of portions of Title 21 (Zoning) of the Anchorage Municipal Code, including but not limited to those provisions addressing Assisted Living Facilities and Habilitative Care Facilities. Part 3 of this Report sets forth Consultant’s recommendations for revisions to the Anchorage Municipal Code to address issues identified in Part 2.

1.6. Summary of Recommendations

Key Definitions

- Revise definitions of “Family” and “Household” to clarify that an unlimited number of unrelated persons cannot occupy a dwelling unit in the Household Living category.
- Revise the definition of “Habilitative Care Facility” to include size distinctions now located in Use-specific Standards, and to match the size limit for small facilities to match that for Assisted Living Facilities.

Permitted and Conditional Uses and Use-Specific Standards

- Adopt minor revisions to Table 21.05-1 (the Permitted Use Table) to permit Assisted Living Facilities and Habilitative Care Facilities available as permitted uses in those districts where similarly sized Household Living uses.
- Clarify that the Use-specific Standards applicable to Assisted Living Facilities located in single-family, two-family, and townhouse structures are based on the type of structure occupied, and not whether a Household Living or Group Living Use is occupying the structure.

Dimensional, Development, and Design Standards

- Clarify that the Dimensional, Development, and Design Standards applicable to Assisted Living Facilities and Habilitative Care Facilities located in single-family, two-family, and townhouse structures are based on the type of structure occupied, and not whether a Household Living or Group Living Use is occupying the structure.

Development Approval Procedures and Criteria

- Remove the requirement for an Administrative Variance for an Assisted Living Facility with 6-8 residents in those districts where a similar variance is not required for a Household Living use of the same use.
- Revise the criteria for approving requests for “reasonable accommodation” under the Variance process, or allow all such requests to be approved through the Administrative Variance process.

2. Review of Anchorage Municipal Code

2.1. Key Definitions

Key definitions and use-specific standards from Chapters 5 and 14 of the Anchorage Municipal Code relevant to this Report are listed below.

Family (21.04.040)

One or more persons occupying premises and living as a single housekeeping unit, as distinguished from a group occupying a roominghouse, club, fraternity house, or hotel.

Household (21.04.040)

A domestic unit consisting of a person or group of people who share living arrangements. Members of a household have common access to, and common use of, all living areas and all

facilities within the dwelling unit. A household occupies a single dwelling unit, so that its members live and eat separately from any other persons in the building, and have access to the outside of the building either directly or through a common hall.

DISCUSSION:

- The definition of “Family” is unusual in that it does not distinguish between members of a housekeeping unit related by blood or marriage and those that are unrelated by blood or marriage. Many zoning ordinances define “Family” to include any number of persons related by blood or marriage (subject only to building code occupancy limits to prevent overcrowding), following the guidance of the U.S. Supreme Court in Village of Belle Terre v. Boraas, 416 U.S. 1 (1974) and Moore v. City of East Cleveland, 431 U.S. 494 (1977). However, many zoning ordinances also limit the number of unrelated adults that can occupy a dwelling unit as a family, with the maximum number ranging from three in some college towns to four or five in other cities. The objective for having a cap on unrelated individuals is not only to avoid the use of Household Living units for larger de facto “rooming house” facilities where the occupants are not functioning as a family or household, but also to place a reasonable limit on those Household Living uses made up of some related persons (often 2 or 3) plus unrelated roomers, renters, or friends occupying a single dwelling unit. The Anchorage Municipal Code definition does not limit the number of unrelated persons who can live together as a “Family” or “Household.” This creates a situation in which any number of unrelated individuals may occupy a dwelling in the “Household Living” category (subject only to building code occupancy limits), while the number of persons that can occupy similar facilities in the “Group Living” category – particularly Assisted Living Facilities and Habilitative Care Facilities – is limited.

Group Living (21.05.030.B)

This category is characterized by residential occupancy of a structure by a group of people who do not meet the definition of “Household Living.” The size of the group may be larger than a family. Generally, structures have a common eating area for residents. The residents may receive care, training, or treatment, and caregivers may or may not also reside at the site. Accessory uses commonly include recreational facilities and vehicle parking for occupants and staff. Specific use types include:

1. Assisted Living Facility

a. Definition

A facility that provides housing and ancillary care services on a residential basis to three or more adults, and adolescents in appropriate cases as allowed by exception. A small assisted living facility is defined as a group of three to eight residents. A large assisted living facility is defined as a group of nine or more residents.

b. Use-Specific Standards for Small Assisted Living Facilities

i. Housekeeping Unit

A small assisted living facility serving five or fewer residents shall be considered a single housekeeping unit.

ii. Administrative Variance Needed

In the R-1, R-1A, R-2A, and R-2D zones, a small assisted living facility serving five or fewer residents is permitted by right. An administrative variance pursuant to section 21.03.240J. is required to serve six to eight residents.

DISCUSSION:

- Although labeled as use-specific standards, paragraph b.i above actually operates as part of the definition of this use. This creates three size categories of Assisted Living Facilities (3-5, 6-8, and 9 or more residents) that are addressed differently through other zoning controls. Paragraph b.ii is included because it is necessary to understand the permitted use analysis below. The definition does not reference the Fair Housing Act, but residents of these facilities could include persons with disabilities or the “handicapped,” as defined in the Fair Housing Act.
- Additional Use-specific Standards applicable to large Assisted Living Facilities are discussed in section 2.2 of this report below.
- The procedures used to review facilities in each size category are discussed in section 2.4 of this report below.

3. Habilitative Care Facility

a. Definition

A residential facility, other than a correctional center or transitional living facility, the principal use or goal of which is to serve as a place for persons seeking rehabilitation or recovery from any physical, mental, or emotional infirmity, or any combination thereof, in a family setting as part of a group rehabilitation and/or recovery program utilizing counseling, self-help, or other treatment or assistance, including, but not limited to, substance abuse rehabilitation. Such care for persons age 18 and under, who are under the jurisdiction of the state division of juvenile justice, shall be considered habilitative care, and not a correctional community residential center.

b. Use-Specific Standard

A small habilitative care facility shall provide housing for no more than six residents, including any support staff living at the facility. A medium habilitative care facility shall provide housing for seven to 25 residents, including any support staff living at the facility. A large habilitative care facility shall provide housing for 26 or more residents, including any support staff living at the facility.

DISCUSSION:

- Although labeled as use-specific standards, the above paragraph is actually part of the definition of this use. As with Assisted Living Facilities, this creates three size categories of Habilitative Care Facilities (fewer than 6, 7-25, 26 or more) that are addressed differently through other zoning controls. The definition does not reference the Fair Housing Act, but residents of these facilities could include persons with disabilities or the “handicapped,” as defined in the Fair Housing Act.
- The limitation of small facilities to 6 residents including caregivers is fairly restrictive, as some low-density Household Living uses could contain more than that number of residents.

2.2. Permitted and Conditional Uses and Use-Specific Standards

Like many zoning ordinances, Anchorage uses a permitted use table (Table 21.05-1) to summarize where listed land uses are permitted (subject to compliance with other ordinance standards), where they require conditional use approval, and where they are not permitted. In addition, the Anchorage code identifies where listed uses require either administrative or major site plan review. In addition, this table cross-references “use-specific standards” that apply to some uses, and those use-specific standards appear immediately following the table. The portions of the Municipality’s permitted use table relevant to this Report – the portions addressing Residential land uses) – are shown below, with key provisions highlighted.

As noted earlier, the use-specific standards for Small Assisted Living Facilities distinguish between those with 3-5 residents (which do not require additional approval), and those with 6-8 residents, which require an Administrative Variance pursuant to Section 21.03.240J. To reflect this distinction, we have divided the table row for Assisted Living Facility (3-8 Residents) into two lines based on the number of residents. In addition, we have used the abbreviation “AV” to reflect the fact that facilities with 6-8 residents require an Administrative Variance.

To highlight some of the comparisons, yellow highlighting is used to identify smaller, neighborhood scale uses and structures in the Household Living and Group Living categories, and green highlighting is used to show larger scale residential uses and structures in those categories. As the table illustrates, in some zoning districts Assisted Living and Habilitative Care Facilities are treated more restrictively than comparably sized Household Living structures, but in other districts they are treated more permissively.

2.2.1. Permitted and Conditional Uses

TABLE 21.05-1: TABLE OF ALLOWED USES – RESIDENTIAL, COMMERCIAL, INDUSTRIAL, AND OTHER DISTRICT
P = Permitted Use S = Administrative Site Plan Review C = Conditional Use M = Major Site Plan Review
For uses allowed in the A, TA, and TR districts, see section 21.04.050.
All other uses not shown are prohibited.

		RESIDENTIAL														COMMERCIAL					INDUST.					
Use Category	Use Type	R-1	R-1A	R-2A	R-2D	R-2M	R-3	R-4	R-4A	R-5	R-6	R-7	R-8	R-9	R-10	B-1A	B-1B	B-3	RO	MC	I-1	I-2'	MI	AF	DR	
RESIDENTIAL USES																										
Household Living	Dwelling, mixed-use							P	P								P	P	P	P	C					
	Dwelling, multifamily					P/S	P	P	P									P	P	P						
	Dwelling, single-family, attached			P	P	P	P	P																		
	Dwelling, single-family, detached	P	P	P	P	P	P	P		P	P	P	P	P	P										P	
	Dwelling, townhouse					S	S	S	S									S	S							
	Dwelling, two-family			P	P	P	P			P	P	P	P	P												
	Dwelling, mobile home									P																
	Manufactured home community					C	C	C		C																
Group Living	Assisted living facility (3-5 residents)	P	P	P	P	P	P	P	P	P	P	P	P	P	P				P							
	Assisted living facility (6-8 residents)	AV	AV	AV	AV	P	P	P	P	P	P	P	P	P	P				P							
	Assisted living facility (9 or more residents)	C	C	C	C	P	P	P	P	P	C	C					C	P	P							
	Correctional community residential center																C	C			C	C				
	Habilitative care facility, small (up to 6 residents)	P	P	P	P	P	P	P	P	P	P	P					P	P	P							
	Habilitative care facility, medium (7-25 residents)	C	C	C	C	C	C	C	C	C	C	C					C	C	C							
	Habilitative care facility, large (26+ residents)						C	C	C								C	C	C							
	Roominghouse					C	P	P	P	C	C	C	C	C		P	P	P	P							
	Transitional living facility						P	P	P								P	P								

DISCUSSION OF USE DESIGNATIONS: The table shows several differences in treatment between Assisted Living Facilities and Habilitative Care Facilities and similarly sized facilities containing Household Living Uses. In some cases, those differences are more restrictive, while in other cases the Group Living uses are treated more permissively. Recommendations related to these comparisons are contained in Part 3 of this report.

1. Smaller Assisted Living Facilities compared to Household Living uses

- An Assisted Living Facility with 3-5 residents is a permitted use in all residential zone districts where single-family detached houses are a permitted use except the DR district. In addition, Assisted Living Facilities with 3-5 residents are permitted uses in the R-4A and RO districts where single-family detached homes are neither permitted nor conditional uses.
- An Assisted Living Facility with 3-5 residents is a permitted use in a single-family attached dwelling structure in those districts where single-family attached dwellings are permitted uses (R-2A, R-2D, R-2M, R-3, and R-4) and in addition can occupy an existing single-family attached structure in several residential districts (R-1, R-1A, R-4A, R-5, R-6, R-7, R-8, R-9, and R-10) even though new single-family attached structures cannot be constructed in those districts.
- An Assisted Living Facility with 3-5 residents is a permitted use in a townhouse dwelling in almost all those districts where townhouse dwellings are permitted uses subject to site plan approval (R-2M, R-3, R-4, R-4A, and RO) and in addition can occupy an existing townhouse dwelling structure in several districts (R-1, R-1A, R-2A, R-2D, R-5, R-6, R-7, R-8, R-9, and R-10) even though new townhouse dwellings structures cannot be constructed in those districts. There is only one district – B-3 – where a townhouse dwelling is permitted with site plan approval but an Assisted Living Facility with 3-5 residents would not be permitted to occupy that structure.
- An Assisted Living Facility with 3-5 residents is a permitted use in a two-family dwelling structure in those districts where two-family dwellings occupancy is a permitted use (R-2A, R-2D, R-2M, R-3, R-5, R-6, R-7, R-8, and R-9) and in addition can occupy an existing two-family dwelling structure in several residential districts (R-1, R-1A, R-4, R-4A, R-10 and RO) even though new two-family dwelling structures cannot be constructed in those districts.
- In the R-1, R-1A, R-2A, and R-2D districts, where an Assisted Living Facility with 3-5 residents is a permitted use, a larger Assisted Living Facility with 6-8 residents is only permitted if an Administrative Variance is approved, even though a similarly sized Household Living residential use with 6-8 residents is not required to obtain a similar variance.

2. Small Habilitative Care Facilities compared to Household Living uses

- A Habilitative Care Facility with up to 6 residents is a permitted use in each district where a single-family detached dwelling is a permitted use except the R-8, R-9, R-10 and DR districts. On the other hand, these types of facilities are permitted in the B-1B, B-3, RO, and PLI districts even though single-family detached structures are not permitted in those districts.
- A Habilitative Care Facility with up to 6 residents is a permitted use in a single-family attached dwelling in those districts where single-family attached dwellings are permitted uses (R-2A, R-2D, R-2M, R-3, and R-4) and in addition can occupy an existing single-family attached structure

in several residential districts (R-1, R-1A, R-4A, R-5, R-6, R-7, B-1B, B-3, RO, and PLI) even though new single-family attached structures cannot be constructed in those districts.

- An Habilitative Care Facility with up to 6 residents is a permitted use in a townhouse dwelling in almost all those districts where townhouse dwellings are permitted uses subject to site plan approval (R-2M, R-3, R-4, R-4A, B-3, and RO) and in addition can occupy an existing townhouse dwelling structure in several districts (R-1, R-1A, R-2A, R-2D, R-5, R-6, R-7, B-1B, and PLI) even though new townhouse dwellings structures cannot be constructed in those districts.
- A Habilitative Care Facility with up to 6 residents is a permitted use in a two-family dwelling structure in most of those districts where two-family dwelling are a permitted use (R-2A, R-2D, R-2M, R-3, R-5, R-6, and R-7) and in addition can occupy an existing two-family dwelling structure in several residential districts (R-1, R-1A, R-4, R-4A, RO, B-1B, B-3, and RO) even though new two-family dwelling structures cannot be constructed in those districts. However, a Small Habilitative Care Facility cannot occupy a two-family dwelling structure in two districts – R-8 and R-9 – where two-family Housing Living is a permitted use.

3. Larger Assisted Living Facilities compared to Household Living uses

- An Assisted Living Facility for 9 or more persons is a permitted use in all of those zone districts where multifamily dwellings are permitted or permitted with site plan approval (R-2M, R-3, R-4, R-4A, B-3, and RO except B-1B, where the Assisted Living Facility would require conditional use approval. In addition, an Assisted Living Facility for 9 or more persons is a permitted use in the R-5 district, and can be approved as a conditional use of existing multifamily structures in several other zone districts (R-1, R-1A, R-2A, R-2D, R-6, R-7, and PLI) even though new multifamily uses are not permitted in those districts.
- An Assisted Living Facility for 9 or more persons is a permitted use in four of those zone districts where mixed-use dwellings are permitted (R-4, R-4A, B-3, and RO) but are not permitted in the B-1A district (where mixed-use dwellings are permitted), or the MC district (where mixed-use dwellings are permitted with conditional use approval), and require conditional use approval in the B-1B district (where mixed-use dwellings do not require that additional level of approval). On the other hand, an Assisted Living Facility for 9 or more persons is a permitted use in the R-2M, R-3 and R-5 districts, and a conditional use in many districts (R-1, R-1A, R-2A, R-2D, R-6, R-7, and PLI) where mixed-use dwellings are not permitted.

4. Larger Habilitative Care Facilities compared to Household Living Facilities

- A Habilitative Care Facility with 7-25 residents requires conditional use approval in several districts (R-2M, R-3, R-4, R-4A, B-1B, B-3, and RO) where a similarly sized multifamily Household Living is a permitted use. On the other hand, a Habilitative Care Facility with 7-25 residents is available with conditional use approval in many districts (R-1, R-1A, R-2A, R-2D, R-5, R-6, R-7, and PLI) where multifamily Household Living uses are not permitted.
- A Habilitative Care Facility with 26 or more residents requires conditional use approval all six districts where multifamily Household Living uses of the same size are permitted by right (R-3, R-4, R-4A, B-1B, B-3, and RO). In the one district (R-2M) where multifamily Household Living use with 26 or more residents is permitted with site plan approval, a Habilitative Care Facility with the same number of residents is not listed as either a permitted or conditional use. On the other hand, a Habilitative Care Facility with 26 or more residents is available with conditional use approval in the PLI district, where multifamily Household Living uses are not permitted.

- A Habilitative Care Facility with 7-25 residents requires conditional use approval in five districts (R-4, R-4A, B-1B, B-3, and RO) where a similarly sized mixed-use dwelling is a permitted use. In addition, a Habilitative Care Facility of this size is not permitted in the B-1B district (where a mixed use dwelling use is permitted) or in the MC district (where a mixed use dwelling use is available with conditional use approval). On the other hand, a Habilitative Care Facility with 7-25 residents is available with conditional use approval in many districts (R-1, R-1A, R-2A, R-2D, R-2M, R-3, R-5, R-6, R-7, and PLI) where mixed-use dwelling Household Living uses are not permitted.
- A Habilitative Care Facility with 26 or more residents requires conditional use approval in five districts where mixed-use dwelling Household Living uses of the same size are permitted by right (R-4, R-4A, B-1B, B-3, and ROO). In addition, a Habilitative Care Facility of this size is not permitted in the B-1B district (where a mixed-use dwelling use is permitted) or in the MC district (where a mixed-use dwelling use is available with conditional use approval). On the other hand, a Habilitative Care Facility with 26 or more residents is available with conditional use approval in the PLI district, where multifamily Household Living uses are not permitted.

2.2.2. Use-specific Standards

Use-specific Standards for Household Living uses appear in section 21.05.030.A, while those for Group Living uses appear in section 21.05.030.B. Those use-specific standards are shown below.

A. Household Living

1. Dwelling, Mixed-Use

b. Use-Specific Standards

- Two or more mixed-use dwellings in the same building with a non-residential use constitute a mixed-use development.
- Two or more mixed-use dwellings shall comply with the applicable design standards of section 21.07.110, *Residential Design Standards*, as determined by the building style.

2. Dwelling, Multifamily

b. Use-Specific Standards

- Multifamily developments that consist of three or more units in one building shall comply with section 21.07.110C, *Standards for Multifamily Residential*, except as provided in subsection b.iii. below.
- Dwellings with single-family style and two-family style construction in multifamily developments shall comply with the residential design standards in subsections 21.07.110E.
- Dwellings with townhouse style construction in multifamily developments shall comply with section 21.07.110D, *Standards for Townhouse Residential*.

3. Dwelling, Single-Family Attached

b. Use-Specific Standards

- Residential Design Standards*

Single-family attached dwellings constructed after January 1, 2014 shall comply with the applicable residential design standards in section 21.07.110, *Residential Design Standards*.

ii. *Common Party Wall Agreement*

A common party wall agreement shall be recorded. The agreement shall provide for maintenance of the structure and other improvements in good condition, and for maintenance of the uniformity and common appearance of the exterior of all structures and landscaping.

iii. *Access; No Vertical Stacking*

Each unit shall have its own access to the outside, and no unit may be located over another unit in whole or in part.

iv. *Side Setback Requirement*

Detached accessory structures shall comply with the side setback requirement of the underlying zoning district on the common lot line between attached residential units.

4. Dwelling, Single-Family Detached

b. Use-Specific Standard

Single-family detached dwellings constructed after January 1, 2014 shall comply with the applicable residential design standards in section 21.07.110, *Residential Design Standards*.

5. Dwelling, Townhouse

b. Use-Specific Standard

[Same as for Dwelling, Single-family attached].

6. Dwelling, Two-Family

b. Use-Specific Standard

Two-family dwellings constructed after January 1, 2014 shall comply with the applicable residential design standards in section 21.07.110, *Residential Design Standards*.

B. Group Living

1. Assisted Living Facilities

[As noted above, the Use-specific standards for small Assisted Living Facilities establish the need for an Administrative Variance for facilities with 6-8 residents. They are not repeated here. The use-specific standards for large Assisted Living Facilities (9 residents or more) cross-reference those for Health Facilities with 9 or more residents listed in section 21.05.040.A.3 and 4 and shown below.]

a. Access

The site shall provide for direct access from a street constructed to class A improvement area standards.

b. Minimum Lot Size

- i. Unless otherwise authorized by the planning and zoning commission, the minimum lot size for a nursing facility shall be:
 - (A) Six to 10 beds: 15,000 square feet.
 - (B) Eleven or more beds: 20,000 square feet.
- ii. The minimum lot size for adult care facilities with nine or more persons, and for large assisted living facilities shall be:
 - (A) Nine to 16 beds: the minimum lot size of the underlying district.
 - (B) Seventeen or more beds: 20,000 square feet.
- c. Vegetated Open Space

A minimum of 15 percent (25 percent in the RO district) of the lot shall remain as a planted open area, landscaped area, or natural vegetation area, to exclude buildings, driveways, parking lots, sidewalks, etc., unless the decision-making body determines that retention of less than 15 percent (25 percent in the RO district) allows for sufficient buffering of adjacent uses.
- d. Parking and Setbacks

In residential zoning districts, no parking or loading areas shall be placed in any setback, except in approved driveways.
- e. Adjacent Residential

A facility in a non-residential district that is adjacent to a residential use or district shall provide L2 buffer landscaping along the lot line dividing the two.
- f. Ambulance and Delivery Areas

Ambulance and delivery areas shall be screened from adjacent residential areas by L2 buffer landscaping or a fence no less than six feet high.
- g. Snow Storage

Snow storage space adjacent to surface parking lots and pathways shall be identified on the site plan. In residential districts, to facilitate snow removal, snow storage areas equal to at least 15 percent of the total area of the site used for parking, access drives, walkways, and other surfaces that need to be kept clear of snow, shall be designated on the site plan. Such areas designated for snow storage shall be landscaped only with grasses and flowers and shall have positive drainage away from structures and pavements. Except for facilities in single-family or two-family structures, storage of snow is not allowed in the front setback. Storage of snow may be in 50 percent of the side and rear setbacks, if trees and other vegetation designated for preservation will not be damaged. If snow is to be hauled off-site, temporary snow storage areas shall be shown on the site plan.
- h. Continuing Conditional Uses

These standards shall not apply to any use continuing as a lawful conditional use on April 18, 2006.

Additional Standards for Conditional Uses

a. Use-Specific Standards Apply

These uses shall meet the use-specific standards above in addition to any requirements imposed by a conditional use approval.

b. Vegetated Open Space

A minimum of 25 percent of the lot shall remain as open area, to include landscaping or natural vegetation. The open area shall not include buildings, driveways, parking lots, sidewalks, or similar structures, unless the planning and zoning commission determines retention of less than 25 percent of the lot as open area allows for sufficient buffering of adjacent uses.

c. Factors for Consideration

When a conditional use permit is required for these uses, the following factors shall be considered, as well as the approval criteria for conditional uses in subsection 21.03.080C.

- i. The extent to which the facility and the applicant seek to protect and preserve the primarily residential character of the district. Factors may include traffic patterns, on-street parking patterns, the control exercised by the provider to mitigate environmental disturbance associated with ingress and egress of facility staff at shift change, and any other measures taken by the provider to ensure commercial aspects of the facility do not detract from its residential purpose (if applicable) and the primarily residential character of the district.
- ii. Economic hardship on the intended occupants of the facility if the conditional use is denied. Cost and availability of other housing alternatives, including whether a shortage of other facilities exists, may be addressed in preparation and review of the application.
- iii. Whether the requested facility and the applicant are implementing accident prevention and safety measures specific to the needs of the residents, including but not limited to safety measures in state law and regulation, and in municipal fire code adopted under title 23.
- iv. Whether the conditional use advances housing opportunities for disabled individuals in a residential community without jeopardizing residential aspects of the neighborhood with commercial aspects of operation.
- v. Whether the proposed size of the facility is necessary for the financial viability of the facility.
- vi. External characteristics and impacts of the proposed facility, including without limitation appearance, projected contribution to traffic volumes and on-street parking within the neighborhood, available street lighting, and sidewalks.
- vii. Quantifiable risks to the health, safety, and quality of life of area residents and users.

viii. Administrative and economic burden on the municipality, in either approval or denial of the conditional use.

ix. Other factors deemed relevant to the applicant or the planning and zoning commission in review of the application.

3. Habilitative Care Facility

[As noted above, the Use-specific standards for Habilitative Care Facilities simply divide that use into three size categories. They are not repeated here.]

DISCUSSION OF USE-SPECIFIC STANDARDS: The use-specific standards cross-referenced in the right hand column of Table 21.05-1 also reflect several differences between the treatment of Assisted Living Facilities and Habilitative Care Facilities and similarly sized Household Living uses.

1. Standards for Household Living Uses

- Single-family detached dwellings, single-family attached dwellings, two-family dwellings, multifamily, and mixed use Household Living structures constructed after January 1, 2014, are subject to Residential Design Standards in section 21.07.110, depending on the style and form of the building.
- Single-family attached dwellings and townhouse dwellings are subject to additional requirements (a) requiring a common party wall agreement, (b) prohibiting the vertical stacking of dwelling unit, and (c) requiring accessory structures to comply with side setback lines on the common lot lines.

2. Standards for Group Living Uses

- As noted above, the use-specific standards for small Assisted Living Facilities (3-8 residents) divide that category into two sub-categories and require an Administrative Variance for facilities with 6-8 residents in the R-1, R-1A, R-2A, and R-2D districts. The Administrative Variance requirement is discussed in more detail in section 2.4 of this report below. Although the structure may be of the same type, the Residential Design Standards of section 27.07.110 do not apply to new structures created for this use, or to reuse of existing Household Living structures for Assisted Living purposes.
- As noted earlier, the use-specific standards for Habilitative Care Facilities are actually parts of the definition of those facilities (dividing them into three size categories). No other substantive use-specific standards apply.

2.3. Dimensional and Development Standards

In addition to permitting Assisted Living Facilities and Habilitative Care Facilities in different zone districts, and with different approval requirements and use-specific standards compared to similarly sized Household Living uses, the Anchorage Municipal Code applies different site development standards Household and Group Living uses. These differences are discussed in the paragraphs below.

Because the purpose of this report is to identify areas where the Code imposes barriers to Assisted Living Facilities, Habilitative Care Facilities, or other types of housing in ways that are or may be prohibited by the Fair Housing Act, this discussion does not highlight some areas where the dimensional,

development or design standards imposed on Assisted Living or Habilitative Care Facilities are lower or more lenient than those imposed on Household Living uses in the same size and type of structure.

2.3.1. Dimensional Standards

Relevant portions of the dimensional requirements for lots and buildings from Chapter 6 of the Anchorage Municipal Code are shown below. The residential districts are presented first, and relevant rows of that Table 21.06-1 have been highlighted. The residential dimensional table includes the term “all other uses” for those uses permitted in the individual zone districts but not listed in the table, it is unclear whether those standards actually apply to uses or structures. For example, if the “all other uses” standard applies to Assisted Living Facilities or Habilitative Care Facilities in buildings originally constructed (or newly constructed) as single-family attached dwellings, then the Code applies different dimensional standards to the same structure depending on whether it contains Household Living or Group Living uses. On the other hand, if (despite its text) Anchorage applies the “all other uses” standards to “all other structures”, and would apply the dimensional standards to a single-family attached structure even if it contained a Group Living use, then the Code does not apply different standards based on the type of occupancy. The table includes several instances in which it would be difficult to apply the “all other use” standards to Group Living uses occupying structures designed as single-family detached or attached, two-family, townhouse, or multifamily dwellings, so the Municipality may be applying these standards based on the type of structure rather than the use occupying the structure. For purposes of this review, however, the discussion below assumes that the “all other uses” means what it says and that those standards are applied based on the use in the structure and not based on the type of structure itself.

There are no differences in the dimensional standards applicable to “all other uses” and “Household Living” uses of the same size in the R-1, R-1A, R-5, R-6, R-7, R-8, and R-9, so those rows of the table are not presented. In addition, in the R-10 district all uses are subject to the same dimensional standards, so those rows of the table are not presented.

TABLE 21.06-1: TABLE OF DIMENSIONAL STANDARDS - RESIDENTIAL DISTRICTS (Additional standards may apply. See district-specific standards in chapter 21.04 and use-specific standards in chapter 21.05.)								
Use	Minimum lot dimensions ¹		Max lot coverage (%)	Minimum Setback Requirements (ft)			Max number of principal structures per lot or tract ²	Maximum height of structures (ft)
	Area (sq ft)	Width (ft)		Front	Side	Rear		
R-2A: Two-Family Residential District (larger lot)								
Dwelling, single-family detached	7,200	60	40	20	5	10	1	Principal: 30, not to exceed two and one-half stories Accessory garages/carp orts: 25 Other accessory: 12
Dwelling, two-family	8,400	70	40	20	5	10	1	
Dwelling, single-family attached	3,500	35 (40 on corner lots)	40	20	N/A on common lot line; otherwise 5	10	1	
All other uses	7,200	60	40	20	5	10	N/A	
R-2D: Two-Family Residential District								
Dwelling, single-family detached	6,000	50	40	20	5	10	1	Principal: 30, not to exceed two

TABLE 21.06-1: TABLE OF DIMENSIONAL STANDARDS - RESIDENTIAL DISTRICTS (Additional standards may apply. See district-specific standards in chapter 21.04 and use-specific standards in chapter 21.05.)								
Use	Minimum lot dimensions ¹		Max lot coverage (%)	Minimum Setback Requirements (ft)			Max number of principal structures per lot or tract ²	Maximum height of structures (ft)
	Area (sq ft)	Width (ft)		Front	Side	Rear		
Dwelling, two-family	6,000	50	40	20	5	10	1	and one-half stories Accessory garages/carp orts: 25 Other accessory: 12
Dwelling, single-family attached	3,500	35 (40 on corner lots)	40	20	N/A on common lot line; otherwise 5	10	1	
All other uses	6,000	50	40	20	5	10	N/A	
R-2M: Mixed Residential District								
Dwelling, single-family detached	6,000	50	40	20	5	10	1	Principal: 30, not to exceed two and one-half stories Accessory garages/carp orts: 25 Other accessory: 12
Dwelling, two-family	6,000	50	40	20	5	10	1	
Dwelling, single-family attached	3,000	35 (40 on corner lots)	40	20	N/A on common lot line; otherwise 5	10	1	
Dwelling, townhouse	2,400	24 (30 on corner lots)	60	20		10	1	
Dwelling, multifamily (up to 8 units permitted per building)	8,500 + 2,300 for every unit over 3	50	40	20	10	10	More than one principal structure may be allowed on any lot or tract in accordance with subsection 21.07.110G.2.	
Dwelling, multifamily, with single- or two-family style construction of multiple buildings on a lot	3,000 per unit	50	40	20	10	10		
All other uses	6,000	50	40	20	5	10		
R-3: Mixed Residential District								
Dwelling, single-family attached	3,000	35 (40 on corner lots)	40	20	N/A on common lot line; otherwise 5	10	1	35
Dwelling, single-family detached	6,000	50	40	20	5	10	1	35
Dwelling, townhouse	2,000	20 (30 on corner lots)	60	20	N/A on common lot line; otherwise 5	10	1	35
Dwelling, two-family	6,000	50	40	20	5	10	1	
Dwelling, multifamily, three or four units	6,000	50	40	20	10	20	More than one principal structure may be allowed on any lot or tract in accordance with subsection 21.07.110G.2.	
Dwelling, multifamily, five or six units	8,500							
Dwelling, multifamily, seven or more units	9,000 +1,000 for every unit over 7 units							
All other uses	6,000	50	40	20	10	20		

TABLE 21.06-1: TABLE OF DIMENSIONAL STANDARDS - RESIDENTIAL DISTRICTS (Additional standards may apply. See district-specific standards in chapter 21.04 and use-specific standards in chapter 21.05.)								
Use	Minimum lot dimensions ¹		Max lot coverage (%)	Minimum Setback Requirements (ft)			Max number of principal structures per lot or tract ²	Maximum height of structures (ft)
	Area (sq ft)	Width (ft)		Front	Side	Rear		
R-4: Multifamily Residential District								
Dwelling, single-family, attached	3,000	35 (40 on corner lots)	40	20	N/A on common lot line; otherwise 5	10	1	35
Dwelling, single-family detached	6,000	50	40		5	10		
Dwelling, townhouse	2,000	20 (30 on corner lots)	60	10	N/A on common lot line; otherwise 5	10	More than one principal structure may be allowed on any lot or tract in accordance with subsection 21.07.110G.2.	35
Dwelling, multi-family	6,000	50	50		5 plus one foot for each 5 feet in height exceeding 35 feet	10		45 ⁴
All other uses	6,000	50	50			10		45
R-4A: Multifamily Residential Mixed-Use District								
Dwelling, townhouse	2,000	20 (30 on corner lots)	60	Min: 10 Max: 20 ⁵ A minimum of 50% of the front building elevation shall be within the maximum front setback (see 21.06.030C.5.)	N/A on common lot line; otherwise 5	15 if adjacent to a residential district (except R-4 or R-4A); otherwise 10	More than one principal structure may be allowed on any lot or tract in accordance with subsection 21.07.110G.2.	35
Dwelling, mixed-use	6,000	50	65		10 if adjacent to a residential district (except for R-4 or R-4A); otherwise 5			45 ⁶
Dwelling, multi-family	6,000	50	65					
All other uses	6,000	50	65					45
Dwelling, two-family	87,120	200	30	50	25	50	1	
All other uses	43,560	150	30	50	25	50	N/A	
Dwelling, two-family	130,680	180	5	25	15	25	1	
All other uses	87,120	180	5	25	15	25	N/A	
R-10: Low-Density Residential Alpine/Slope District								
All uses	(See section 21.04.020P.2.)			10	25 feet; 50 feet if average slope exceeds 30 percent	10	1	Principal: 30 Accessory garages/carports: 25 Other accessory: 18

¹ For other lot dimensional standards, see section 21.08.030K.

² For those residential uses where only one principal structure is allowed on a lot, no additional nonresidential principal structures are allowed.

³ On lots less than 10,000 square feet, lot coverage may be increased to 40 percent when the entire principal structure is less than 16 feet in height, measured in accordance with subsection 21.06.030D.3.

⁴ See subsection 21.04.020H.2.d. for information regarding possible height increases.

⁵ See subsection 21.06.030C.5. for information regarding possible increases and exceptions to the maximum front setback.

⁶ See subsection 21.04.020I.2.e. for information regarding possible height increases.

¹ For other lot dimensional standards, see section 21.08.030K.

² For those residential uses where only one principal structure is allowed on a lot, no additional nonresidential principal structures are allowed.

³ On lots less than 10,000 square feet, lot coverage may be increased to 40 percent when the entire principal structure is less than 16 feet in height, measured in accordance with subsection 21.06.030D.3.

⁴ See subsection 21.04.020H.2.d. for information regarding possible height increases.

⁵ See subsection 21.06.030C.5. for information regarding possible increases and exceptions to the maximum front setback.

⁶ See subsection 21.04.020I.2.e. for information regarding possible height increases.

DISCUSSION OF DIMENSIONAL STANDARDS IN RESIDENTIAL DISTRICTS

- There are no differences between the dimensional standards applicable to Household Living and Group Living uses in the R-1 and R-1A districts.

- In the R-2A and R-2D districts, Assisted Living Facilities and Habilitative Care Facilities are categorized within “all other uses,” and are subject to the dimensional standards applicable to single-family detached dwellings (with the exception of the maximum number of structures on a lot, which is 1 for single-family detached dwellings and N/A for the permitted Group Living uses). A single-family attached dwelling use with a Household Living use has a minimum lot size of 3,500 square feet, a minimum lot width of 35 feet (40 on corner lots), and a side setback of 5 feet, with exceptions for common lot lines. The comparable requirements for “All other uses” are a minimum lot size of 7,200 square feet, minimum of 60 foot lot width, and minimum 5 feet side setbacks, with no exception for common lot lines (which could prohibit the operator of an Assisted Living Facility or Habilitative Care Facility from constructing or occupying a single-family attached structure).
- A similar situation exists in the R-2D district, where the dimensional standards for single-family attached dwellings match those in the R-2A district, but those for “all other uses” include a minimum lot size of 6,000 square feet, minimum lot width of 50 feet, and no exception from the 5 foot side lot line requirement.
- In the R-2M district, the dimensional standards applied to “all other uses” are identical to those applicable to single-family detached or two-family dwellings, except that “all other uses” may have more than one primary building on a lot. However, the minimum lot size for “all other uses” is larger than that required for a single-family attached dwelling or a townhouse dwelling. Interestingly, the minimum lot size for “all other uses” is smaller than what would be required for a multifamily building complex of single- or two-family structures on a single lot if that complex contained more than two units (6,000 square feet versus 3,000 square feet per unit), and is also smaller than the minimum lot size for any other multifamily building (6,000 square feet versus 8,400 square feet plus 2,300 square feet for every unit over three).
- A similar situation exists in the R-3 district, where “all other uses” have many of the same dimensional standards as single-family attached dwellings and two-family dwellings (except for larger side and rear setbacks). However, “all other uses” have larger minimum lot sizes and some larger setbacks than single-family detached dwellings and townhouse dwellings. But “all other uses” have a smaller minimum lot size than any multifamily dwelling containing more than four units.
- In the R-4 district, “all other uses” have the same dimensional standards as multifamily dwellings, except that multifamily dwellings may apply for height increases under section 21.04.020H.2.d while other uses cannot. The dimensional standards for “all other uses” are very similar to those for single-family detached dwellings, except that the latter have a 10 foot lower height limit and no requirements for additional setbacks associated with buildings above that height limit. However, the minimum lot size and width applicable to “all other uses” are higher than those for single-family attached dwellings and two-family dwellings.
- In the R-4A district, “all other uses” are subject to the same dimensional standards applicable to multifamily dwellings and mixed-use dwellings, but higher minimum lot sizes and wider lot widths and side setbacks than single-family dwellings in the same district. Again, multifamily dwellings may apply for height increases under section 21.04.020H.2.d while other uses cannot.

- In the R-5 through R-9 zone districts, the dimensional standards for “all other uses” are the same as those for single-family dwellings, which are the least restrictive standards in those districts.

In addition, both Household Living and Group Living uses are permitted in some of the Commercial, Industrial, and other zone districts. Portions of those dimensional tables are shown below, and relevant rows have been highlighted. In the MC, I-1, I-2, M-1, AF, DR, PR, PLI, and W districts, the dimensional standards applicable to all uses (or to all Household Living and Group Living uses) are the same, so those rows of the table are not shown.

TABLE 21.06-2: TABLE OF DIMENSIONAL STANDARDS – COMMERCIAL AND INDUSTRIAL DISTRICTS (Additional Standards May Apply. See district specific standards in chapter 21.04 and use-specific standards in chapter 21.05.)							
Use	Minimum lot dimensions ⁷			Minimum setback requirement (ft)			Maximum height (ft)
	Area (sq ft)	Width (ft)	Max lot coverage (%)	Front	Side	Rear	
B-1A: Local and Neighborhood Business							
Mixed-use development	6,000	50	50	Min: 0 Max: 20 ⁸ A minimum of 30% of the street-facing building elevation shall be within the maximum front setback	10 if adjacent to a residential district; otherwise 0 or at least 5	15 if abutting a residential district; otherwise 10	30 ⁹ , not to exceed two stories
All other uses				10			30, not to exceed two stories
B-1B: Community Business							
Mixed-use development	6,000	50	50	Min: 0 Max: 20 ⁸ A minimum of 30% of the street-facing building elevation shall be within the maximum front setback	15 if adjacent to a residential district; otherwise 0 or at least 5	15 if abutting a residential district; otherwise 10	40 ⁹ , not to exceed three stories
All other uses				10			40, not to exceed three stories
B-3: General Business							
Residential household living uses	6,000	50	50	10	5 plus one foot for each 5 feet in height exceeding 35 feet	10	45 ¹⁰
Mixed-use development	6,000	50	Unrestricted	Min: 0 Max: 20 ⁸ A minimum of 50% of the street-facing building elevation shall be within the maximum front setback	15 if adjacent to a residential district; otherwise 0 or at least 10	15 if adjacent to a residential district; otherwise 0 or at least 5	45 ¹¹ , except in the Midtown area bounded by the Seward Highway, Tudor Road, Arctic Boulevard, and Fireweed Lane, where there is no maximum height
All other uses				10			
DT-1, DT-2, and DT-3: Downtown Districts (RESERVED)							

TABLE 21.06-2: TABLE OF DIMENSIONAL STANDARDS – COMMERCIAL AND INDUSTRIAL DISTRICTS
(Additional Standards May Apply. See district specific standards in chapter 21.04 and use-specific standards in chapter 21.05.)

Use	Minimum lot dimensions ⁷			Minimum setback requirement (ft)			Maximum height (ft)
	Area (sq ft)	Width (ft)	Max lot coverage (%)	Front	Side	Rear	
RO: Residential Office District							
Allowed residential household living uses	6,000	50	50	10	5 plus one foot for each 5 feet in height exceeding 35 feet	10	45 ¹⁰
All other uses	6,000	50	50	10	10 if adjacent to a residential district; otherwise 5	15 if adjacent to a residential district; otherwise 10	45, not to exceed three stories of nonresidential use ¹²
⁷ For other lot dimensional standards, see section 21.08.030K. ⁸ See subsection 21.06.050C.5. for information regarding possible increases and exceptions to the maximum front setback. ⁹ See subsection 21.04.030G.4. for information regarding possible height increases for mixed-use development. ¹⁰ See subsection 21.04.020H.2.d. for information regarding possible height increases. ¹¹ See subsection 21.04.030D.2. for information regarding possible height increases. ¹² See subsection 21.04.030E.2.d. for information regarding possible height increases. ¹³ Non-building industrial structures and industrial appurtenances are exempt from the maximum allowed height.							

DISCUSSION OF DIMENSIONAL STANDARDS IN COMMERCIAL, INDUSTRIAL AND OTHER DISTRICTS

- In the B-1A and B-1B districts, Group Living uses (and all other uses) are subject to a 10 minimum front setback, rather than the 0 minimum and 20 foot maximum front setback applicable to mixed-use development. In addition, although the height limits applicable to all uses in each district are the same, mixed-use development can apply for increased height pursuant to sections 21.04.030G.4 while other uses may not.
- In the B-3 district, “all other uses” are not subject to the 50% lot coverage applicable to Household Living uses, and are subject to a 10 foot front setback (like Household Living uses), rather than the 0 foot minimum/20 foot maximum front setback (with exceptions available) applicable to mixed-use development. Side and rear setbacks for “all other uses” and mixed-use development also differ from those applicable to Household Living uses, and include an increased setback for properties adjacent to residential districts. Maximum height limits for all uses are 45 feet, and all uses can apply for exceptions, but “all other uses” and mixed-use development are automatically exempt from the 45 foot limit along streets, and that exception does not apply to Household Living uses.
- In the RO district, side and rear setbacks for “all other uses” are the same as those for Household Living uses, except that “all other uses” have slightly higher requirements if adjacent to residential districts and are not subject to increased side setbacks for buildings above 35 feet in height. Maximum heights of 45 (with exceptions available) apply to both Household Living and Group Living uses.

2.3.2. Private Open Space Requirements

The requirements for private open space are listed in section 21.07.030 of the Anchorage Municipal Code. These, too, differ between Household Living and Group Living uses. The relevant portions of subsections B and C are shown below.

B. Applicability and Open Space Requirement

Development shall be required to set aside private open space according to the following minimum requirements.

1. R-2M districts: 480 square feet of private open space per dwelling unit, or an area equal to five percent of the gross floor area of group living uses or nonresidential development.
2. R-3 district: 400 square feet of private open space per dwelling unit. At least half of the private open space shall be shared in common among the units. Group living uses and nonresidential development shall provide an area equal to five percent of the gross floor area for open space.
3. R-4 and R-4A districts: 120 square feet of private open space per dwelling unit, and at least half of the private open space shall be shared in common among the units. Group living uses and nonresidential development shall provide an area equal to five percent of the gross floor area for open space.

C. Exemptions

The following are exempt from the private open space requirement:

1. Single-family, two-family, mobile home, and townhouse residential uses;

DISCUSSION

- Single-family (detached and attached), two-family, and townhouse developments are exempt from the private open space requirement, while Assisted Living Facilities and Habilitative Care Facilities that occupy or construct the same types of structures are subject to a 5% open space requirement.
- For other Household Living uses (namely multifamily and mixed-use dwelling), private open space requirements are expressed in square feet per dwelling, while for Group Living uses they are expressed as a percentage of gross floor area. However, in many cases, the Group Living requirement could be less than for a Household Living (e.g. in the R-2M, 480 square feet for a unit that might only contain 2,000 square feet of dwelling unit area, and perhaps another 1,000 square feet of common area converts to about 16% of gross floor area, while the Group Living use would have a 5% requirement), so this distinction may not be harmful to potential developers of Group Living structures or uses.

2.3.3. Drainage, Storm Water Treatment, Erosion Control, and Prohibited Discharges

Anchorage's development standards in this area are described in section 21.07.040. Subsection D.3.a of those standards require the submission of a Drainage Plan for conditional uses and for those uses that require administrative or major site plan review.

DISCUSSION

- The drainage plan requirement appears to require that Assisted Living Facilities for 9 or more residents must submit a drainage plan for development in the B-1B district at the conditional use approval stage when a similarly sized multifamily or mixed-use dwelling development would not. However, we understand that as part of the building code review process, all residential structures with 3 or more units are required to submit a drainage plan, so there is no significant difference in treatment as administered by the Municipality.

- In addition, the text suggests that a Habilitative Care Facility with 7-25 residents must submit a drainage plan for development in the R-4, R-4A, B-1B, B-3, or RO district at the conditional use approval stage when a similarly sized mixed-use dwelling development would not, and would need to submit a drainage plan for development in the R-3, R-4, R-4A, B-1B, B-3, or RO districts when a similarly sized multifamily development would not. However, we understand that as part of the building code review process, all residential structures with 3 or more units are required to submit a drainage plan, so there is no significant difference in treatment as administered by the Municipality.
- Finally, the text suggests that a Habilitative Care Facility for 26 or more residents must submit a drainage plan for development in the R-4, R-4A, B-1B, B-3, or RO districts at the conditional use approval stage when a similar sized mixed-use dwelling project would not, and would also have to submit a drainage plan for development in the R-3, R-3, R-4A, B-1B, B-3, or RO districts when a similar sized multifamily dwelling development would not have to submit a plan. However, we understand that as part of the building code review process, all residential structures with 3 or more units are required to submit a drainage plan, so there is no significant difference in treatment as administered by the Municipality.
- As noted above, however, the Anchorage Municipal Code also allows larger Assisted Living Facilities and larger Habilitative Care Facilities as conditional uses in some zone districts where mixed-use dwellings and multifamily dwellings are not listed as either permitted or conditional uses.

2.3.4. Snow Storage and Disposal

The Anchorage development standards for snow storage and disposal are listed in section 21.07.040.F. Subsection 1 provides that “all existing and new uses with on-site surface areas to be plowed for motorized vehicle access or parking shall comply with this section,” but subsection 1.a exempts single-family, two-family, three unit multifamily, townhouse, and mobile home dwellings on individual lots.

DISCUSSION

- The exemption is worded as applying to specific uses, so an Assisted Living Facility or Habilitative Care Facility constructing or occupying these types of structures would need to comply with the standards of this section when Household Living uses in the same structures would not. As discussed above, if the Municipality is applying this requirement based on the type of structure being built or occupied, rather than the use occupying that structure, then this may not constitute a difference between treatment of Group Living and Household Living uses.

2.3.5. Transportation and Connectivity

The Municipality’s standards for transportation and connectivity are described in section 21.07.060, and relevant portions of those requirements are shown below.

E. Standards for Pedestrian Facilities

4. On-Site Pedestrian Walkways

a. Continuous Pedestrian Access

Pedestrian walkways are intended to form a convenient on-site circulation system that minimizes conflict between pedestrians and traffic at all points of pedestrian access to

on-site parking and building entrances. This subsection E.4. does not apply to single- and two-family development, or to industrial and utility facility uses in the I-1 and I-2 zoning districts.

d. Walkways and Parking

- i. Where an on-site pedestrian walkway system or required pedestrian area abuts a parking lot or internal street or driveway, the pedestrian facility shall be clearly marked and physically separated from the parking lot or drive, through the use of an upright curb of six inches in height, bollards spaced a maximum of six feet apart, or other physical buffer approved by the traffic engineer; and a change of paving materials distinguished by color, texture, textured edge, or other edge, or striping.
- ii. The vehicle overhang established in table 21.07-7, *Parking Angle, Stall and Aisle Dimensions*, shall not encroach into the minimum required walkway width or area.
- iii. Where an on-site pedestrian walkway crosses an internal street or driveway, the crosswalk shall be clearly marked and delineated through a change in paving materials distinguished by color, texture, textured edge, other edge, or striping, and shall meet the requirements of the Americans with Disabilities Act.
- iv. Multifamily or townhouse developments may provide a parking courtyard in lieu of required walkways, where specifically allowed in section 21.07.110 and in conformance with subsection 21.07.060F.18.

F. Pedestrian Amenities

7. Housing Courtyard

A housing courtyard may be created when a multifamily building or buildings are arranged or configured to enclose and frame a common private open space. To receive credit as a housing courtyard, the space shall achieve the following:

- a. The residential building(s) shall enclose a clearly defined courtyard open space. The structure(s) surrounding the housing courtyard may, for example, form an O, L, or U shaped enclosure.
- b. A courtyard shall comply with the plaza requirement for pedestrian features, and with the common private open space standards of section 21.07.030.
- c. All individual dwelling units around the perimeter of a courtyard shall have windows, entrances, and/or transitional spaces such as porches or balconies that face the courtyard.
- d. A courtyard shall have a solar orientation as defined by this title in terms of openings in the courtyard and the lower height of surrounding buildings.

DISCUSSION

- The exemption of single-family and two-family development from all of the continuous pedestrian access requirements of subsection 21.07.060.E.4 suggests that a Household Living use in these types of structures would not need to provide walkways, while an Assisted Living or Habilitative Care Facility constructing or occupying the same facility would need to meet the requirements of that section of the Code.

- In subsection 21.07.060.E.4.d.iv, the allowance for multifamily or townhouse developments to provide a parking court in lieu of walkways may mean that Group Living uses constructing or occupying those types of structures would not have the same option.
- In subsection 21.07.060.F.7, the option for multifamily building or buildings to provide a housing courtyard that earns credit towards required Pedestrian Amenities may mean that Group Living uses constructing or occupying those types of structures would not have the same option.
- In this case however, the Code's use of the terms "single- and two-family development," "multifamily or townhouse development," and "multifamily building or buildings" may suggest that the Municipality applies these standards based on the type of structure being constructed or occupied, rather than the specific use in that structure, in which case the provisions cited above would not constitute different treatment of Household Living and Group Living uses in similar structures.

2.3.6. Landscaping, Screening and Fences

Section 21.07.080 of the Anchorage Municipal Code contains the city's standards for landscaping, screening, and fences. Relevant sections of those standards are set forth below.

C. Landscape Plan

Except for lots where there is a single principal structure containing between one and four dwelling units and any development of a single principal structure where the sum of the required perimeter and parking lot landscaping is less than 1,000 square feet, all development shall have a landscape plan prepared by a licensed landscape architect registered by the state of Alaska consistent with AS 08.48 and 12 AAC 36, for review and approval by the decision-making body.

E. Types of Landscaping

1. Site Perimeter Landscaping Requirements

a. Applicability

Site perimeter landscaping shall be provided along the perimeter property line of development sites in accordance with table 21.07-2, except for the following:

- At approved points of pedestrian or vehicle access;
- On individual single-family and two-family lots that are not being developed as part of a subdivision, unless required elsewhere in this title; and
- Along alleys.

2. Parking Lot Landscaping Requirements

b. Parking Lot Perimeter Landscaping

- Parking lot perimeter landscaping is required for all parking lots with 10 or more parking spaces that are associated with any multifamily or nonresidential use, and for parking lots that are a principal use on a site.
- Parking lot perimeter landscaping shall be placed on all perimeters of a parking lot, which includes appurtenant driveways, where the parking lot abuts a property line.

L2 buffer landscaping shall be used where a nonresidential district abuts a residential district, or is adjacent to a residential district across an alley, and where a multifamily district abuts a single-family residential district. All other sides of the parking lot perimeter shall have L1 visual enhancement landscaping.

iii. Exceptions include:

(A) At approved points of pedestrian and vehicle access; and

(B) Adjacent to lots being developed under a common development plan, where the director waives the requirement.

3. Site Enhancement Landscaping

b. *Applicability and Requirements*

Development sites shall provide site enhancement landscaping, except that single-family or mobile home dwellings on individual lots are exempt. Site enhancement landscaping requirements, including required area and planting materials, are provided in table 21.07-1.

G. Screening

2. Refuse Collection

In order to improve the appearance of the municipality's streets and neighborhoods, refuse collection receptacles shall be screened and set back from abutting streets in a location where they can be conveniently and safely accessed by the intended users and by refuse collection vehicles, as provided in this section.

c. *Residential Dwellings*

- i. In class A districts, single-family, two-family, townhouse, and three-unit multifamily dwellings on lots less than 40,000 square feet shall not have dumpsters, except where serviced from an alley.
- ii. Where dumpsters are not provided, multifamily developments shall provide covered storage for trash receptacles. Such storage shall not be located between any building and the primary adjacent street frontage.

DISCUSSION:

- The Code requires exempts structures containing between 1-4 dwelling units from the requirement to submit a landscaping plan, but may not exempt similarly sized small Assisted Living Facilities or Habilitative Care Facilities, because their occupancy is sometimes not measured in dwelling units.
- Subsection E.1.b.ii exempts "single-family and two-family lots that are not being developed as part of a subdivision" from the duty to provide perimeter landscaping, but it is not clear whether this applies to Group Living uses located on those types of lots.
- The Code requires parking lot perimeter landscaping for multifamily residential uses containing 10 or more lots, but does not apply the same requirement to Group Living uses of a similar size located in similar structures.

- Subsection E.3.b exempts single-family dwellings from the requirement for site enhancement landscaping, but may not extend the same exemption to Group Living uses in attached or detached single-family dwellings.
- Subsection G.2.c.i prohibits the use of dumpsters for single-family, two-family, townhouse, and three-unit multifamily dwellings, but may not apply the same ban to Assisted Living Facilities and Habilitative Care Facilities occupying those types of structures.
- Subsection G.2.c.ii. requires multifamily dwellings without dumpsters to provide covered trash receptacles, but it is not clear that the same requirement applies to Group Living uses of the same sizes in similar structures.
- Similar to the situation with the Municipality's Transportation and Connectivity regulations, the Code's use of the terms "single- and two-family lots," "structure containing between one and four dwelling units", and "multifamily developments" may suggest that the Municipality applies these standards based on the type of structure being constructed or occupied, rather than the specific use in that structure, in which case the provisions cited above would not constitute different treatment of Household Living and Group Living uses in similar structures.

2.3.7. Off-Street Parking and Loading

The Municipality's regulations on off-street parking and loading are found in section 21.07.090. Portions of those regulations applicable to Assisted Living Facilities, Habilitative Care Facilities, and Household Living Facilities of similar size are shown below, with relevant portions highlighted.

E. Parking Lot Layout and Design Plan

1. Applicability

For all commercial, mixed-use, industrial, community, multifamily, and townhouse residential developments, the applicant shall submit a parking facility layout, circulation, and design plan for review and approval by the traffic engineer. The plan shall contain sufficient detail to enable the traffic engineer and the director to verify compliance with this section 21.07.090. Subject to approval of the traffic engineer, the parking layout and design plan may be combined with other plans required under this title, such as the landscaping plan required in 21.07.080, *Landscaping, Screening, and Fences*.

F. Off-Street Parking Requirements

2. Minimum of Three Parking Spaces

Where a use is required to provide off-street parking and the amount specified in table 21.07-4 would result in fewer than three spaces being required for the use, the use shall provide at least three parking spaces including one van-accessible parking space pursuant to subsection 21.07.090J. Where there are multiple uses located on a site, the uses may share the accessible space as long as the requirements of subsection 21.07.090J.1. are met. Parking reductions in subsection 21.07.090F. shall also comply with this subsection E.2. The minimum of three parking spaces shall not apply to residential household living uses, community gardens, parks and open space, utility substations, or fueling stations and food and beverage kiosks that are exclusively for drive-through customers.

TABLE 21.07-4: OFF-STREET PARKING SPACES REQUIRED ("du" = dwelling unit; "sf" = square feet; "gfa" = gross floor area)			
Use Category	Use Type	Minimum Spaces Required	See Loading Subsection 21.07.090G.
RESIDENTIAL USES			
Household Living	Dwelling, mixed-use, multifamily, single-family attached, two-family, and townhouse	1 per studio or efficiency or one bedroom du Add 0.5 spaces for each additional bedroom Add 0.25 guest parking spaces for each multifamily du with single-family or two-family style construction Add 0.15 guest parking spaces for each multifamily du with townhouse style construction Add 0.10 guest parking spaces for each multifamily du, with a minimum of 1 guest space Add 0.10 guest parking spaces for each mixed-use du, with a minimum of 1 guest space	X
	Dwelling, single-family detached	2 per du up to 2,400 square feet; 3 per du over 2,400 square feet, including any unfinished area which may be converted to living area	
	Accessory dwelling unit (ADU)	See subsection 21.05.070D.	
	All other household living uses	2 per du	
Group Living	Assisted living facility (9+ client capacity)	1 per 4 beds plus 1 per 350 sf of office area plus requirement for dwelling, if located in a dwelling	X
	Habilitative care facility	1 per 400 sf gfa, and 1 passenger loading space, reserved for pickup and delivery of adults, per 800 sf gfa	X

G. Off-Street Parking Requirements

7. Residences in Center City Neighborhoods

- a. Residential household uses located in center city neighborhoods are eligible for a reduction of up to 10 percent of the minimum number of required parking spaces.

20. Stacked and Tandem Parking

d. Residential Uses

Two required parking spaces for any residential dwelling may be arranged in tandem or stacked one above the other using a car stacker, so long as parking required for the dwelling unit is arranged independently from parking serving any other dwelling unit, with unobstructed vehicle access for at least one of the spaces required for each dwelling unit, and the owner assigns the two spaces toward the same dwelling and enforces their assigned use.

H. Off-street Loading Requirements

2. Number of Spaces

TABLE 21.07-6: OFF-STREET LOADING BERTHS			
Use	Aggregate Gross Floor Area (square feet) or Number of Dwelling Units	Berths Required	Type
Residential Uses			
Multifamily and mixed-use dwellings	50-149 dwelling units in a structure	1	B
	150-249 dwelling units in a structure	2	B
	Each additional 100 dwelling units or portion thereof	1 additional	B
Group housing	Same as for health care facilities		
Community Uses			
Health care facilities	25,000--100,000	1	B
	Over 100,000	2	B

J. Accessible Parking Spaces

1. Required Number of Accessible Parking Spaces

A portion of the total number of parking spaces provided in each parking facility for commercial, industrial, community, multifamily, and mixed-use residential uses shall be accessible parking spaces. However, buildings in multifamily or mixed-use developments that are single-family, two-family, or townhouse style structures are not subject to the accessible parking space requirement. The number of accessible parking spaces shall be determined based on the total number of parking spaces provided, in accordance with table 21.07-8, *Accessible Parking Spaces*, except where otherwise stated in this section.

3. Multifamily and Mixed-Use Residential

Two percent, but not less than one space, of the parking spaces provided for a multifamily or mixed-use residential development with type A and type B dwelling units as defined in AMC title 23 shall be accessible.

I. Bicycle Parking Spaces

All nonresidential, multifamily, and mixed-use dwelling developments with more than 40 parking spaces required in table 21.07-4 shall provide at least four bicycle parking spaces, or a number of bicycle parking spaces equal to three percent of the number of required automobile parking spaces, whichever is greater. This requirement shall not apply to buildings in multifamily or mixed-use developments that are single-family, two-family, or townhouse style structures. Bicycle parking spaces shall meet the standards of subsection 21.07.060F.15.

DISCUSSION:

- Subsection D.1 requires that townhouse and multifamily dwelling developments submit a parking plan with their applications, but does not apply the same requirement to Assisted Living Facilities or Habilitative Care Facilities of the same size in the same types of structures.
- Subsection E.2 exempts Household Living uses from the 3 parking space minimum requirement, but does not exempt similar sized Assisted Living Facilities or Habilitative Care Facilities from that requirement.

- Table 21.07-4 applies different off-street parking standards to mixed-use, multifamily, single-family attached, two-family, and townhouse dwellings than it does to Assisted Living Facilities with 9 or more residents. However, it is difficult to tell if the different calculation methods (dwelling units versus beds and office area) will require more or less off-street parking in many circumstances. The exception is that if an Assisted Living Facility is located in a dwelling, the Table requires both the parking applicable to the dwelling and additional parking, so the resulting requirement will always be higher than for the dwelling alone. It is not clear if the reference to “dwelling” was intended to apply only to single-family detached or other low density dwellings. As worded, “dwelling” could apply to almost all living areas in the Household Living category; if that is the case, then the Assisted Living Facility parking requirements will always be higher than the Household Living parking requirements for the same structure.
- Table 21.07-4 applies different off-street parking standards to mixed-use, multifamily, single-family attached, two-family, and townhouse dwellings than it does to all Habilitative Care Facilities (regardless of size). While it is difficult to tell if the different calculation methods (dwelling units versus gross floor area) will require more or less off-street parking in each circumstance, it appears that an equivalently sized Habilitative Care Facility will often be required to provide more spaces. For example, the highest off-street parking requirement for a single-family detached dwelling (i.e. one with over 2,400 square feet of gross floor area) is three spaces, while a Habilitative Care Facility in a single-family detached structure with 2,400 square feet of gross floor area will be required to provide 9 spaces.
- Subsection F.7 provides residential household uses in center city neighborhoods with a 10% reduction in required off-street parking, but does not extend that reduction to Assisted Living Facilities or Habilitative Care Facilities in the same size and type of structure.
- Subsection F.20 permits residential dwellings to use tandem parking, but it is not clear whether this extends to Group Living uses constructing or occupying a residential dwelling structure.
- Table 21.07-6 applies different loading space standards to mixed use and multifamily dwelling uses and Group Living uses of the same size and in the same type of structure. Assuming an average multifamily dwelling unit size (with pro-rata common areas) of 1,000 square feet, a 140 unit multifamily or mixed use dwelling must provide 1 loading space, while a similarly sized Group Living use must provide 2. On the other hand, under the same assumptions, a large multifamily or mixed development of 500 units would need to provide 5 parking spaces, while a similarly sized group living use would only have to provide 2.
- Subsection J.1 requires that multifamily and mixed-use dwelling uses provide accessible parking, but does not extend the same requirement to Assisted Living Facility or Habilitative Care Facilities in the same type of structure. On the other hand, it exempts mixed use and multifamily uses that are in single-family, two-family, and townhouse structures from the accessible housing requirements but does not extend that same exemption to Group Living uses in the same type and size of structure. It appears that these low density Group Living facilities would be required to provide accessible spaces, but larger Group Living facilities in multifamily and mixed use structures would not.
- Similarly, subsection J.3 requires that 2 percent of the units in multifamily and mixed-use residential development be accessible but does not extend this requirement to Assisted Living

or Habilitative Care uses in the same types and sizes of structures. However, because the phrase “residential development” is used, it is not clear whether the Municipality applies this provision based on the structure or the specific use occupying the structure.

- Subsection K requires that bicycle parking spaces be provided by multifamily and mixed-use dwelling developments, but does not apply that requirement to Group Living uses in the same type and size of structure. Again, because the phrase “dwelling development” is used, it is not clear whether the Municipality applies this provision based on the structure or the specific use occupying the structure.

2.3.8. Residential Design Standards

Residential design standards are addressed in section 21.07.110 of the Anchorage Municipal Code. Relevant portions of those standards are set forth below.

C. Standards for Multifamily Residential

2. Applicability

These standards apply to any multifamily structure (three or more units) or residential portion of a mixed-use structure. This section does not apply in Girdwood.

5. Relationship to Pedestrian Access Requirements

Walkway connections from primary entrances to the street are required in accordance with subsection 21.07.060E.4, except that multifamily developments may provide one of the following alternatives instead:

- a. Primary entrances for individual dwellings may connect to the street by the dwelling unit’s individual driveway if such is provided; or
- b. A parking courtyard may be provided in conformance with subsection 21.07.060F.18.

10. Accessory Elements

a. Storage

A multifamily project shall provide at least 30 square feet of covered, enclosed, and secure bulk storage area per dwelling unit for bicycles, winter tires, and other belongings that typically cannot be accommodated within individual dwelling units. Storage areas shall not include closets accessed from within the dwelling, but may include garage floor area not required for vehicle maneuvering or parking. Storage and other accessory buildings shall be designed with materials and/or architectural elements that are related to the principal building(s).

b. Garages

i. Attached or Detached Garages

To the maximum extent feasible, garage entries and carports shall not be located between a principal multifamily building and a required street frontage, but shall instead be internalized in building groups so that they are not visible from adjacent streets.

ii. *Size*

Street-facing detached garages and carports shall be limited to six spaces per structure to avoid a continuous row of garages or carports. No more than six garage doors may appear on any multifamily building elevation facing a street, and the plane of each garage door shall be offset at least two feet from the plane of the garage door adjacent to it.

E. Standards for Some Single-Family and Two-Family Residential Structures

11. Applicability

The standards of this subsection E. apply to the developments listed below that are constructed after January 1, 2014. This section does not apply to dwellings constructed prior to January 1, 2014, accessory dwelling unit uses, or in Girdwood.

- a. Any single-family use except for single-family residential uses on lots of 20,000 square feet or greater.
- b. Any two-family use that is not constructed in townhouse-style and is on a lot less than 20,000 square feet.
- c. Any multifamily use with single-family or two-family style construction.

G. Site Design

3. Driveway Width

c. Percent of Lot Frontage

The total width of driveway entrances to a residential lot from a street shall not exceed 40 percent of the frontage of the lot, or 33 percent of the frontage if the platting authority or traffic engineer finds that conditions warrant it.

- i. A driveway for multifamily dwellings, mixed-use dwellings, or a group living use may always be at least 14 feet wide.
- ii. A driveway for a single-family, two-family, or townhouse dwelling may always be at least ten feet wide, provided the traffic engineer determines snow storage, traffic flow and safety, and the urban context are addressed, and provided townhouse driveways are attached in pairs to the maximum extent feasible.

DISCUSSION:

- Subsection C.2 provides that multifamily dwelling standards apply to multifamily structures and residential portions of mixed-use structures, but it is not clear whether they also apply to these types of structures if they contain Group Living uses. The use of the term “structure” indicates that the Municipality may apply these based on the type of structure rather than the specific use in the structure.
- Subsection C.5. requires walkways from primary entrances to the street, and provides alternatives for “multifamily developments”, but it is not clear whether either the requirement or the availability of alternatives extends to Assisted Living Facilities or Habilitative Care Facilities of similar sizes in similar type structures.

- Subsection C.10.a requires that “multifamily projects” must provide covered, enclosed, and secure bulk storage areas, but it is unclear whether the requirement extends to Assisted Living Facilities or Habilitative Care Facilities of similar sizes in similar type structures.
- Subsection C.10.b requires that garage entries and carports not be located between a “multifamily building” and a required street frontage, and that no more than 6 garage doors may appear on any multifamily building elevation facing a street. It is not clear whether either requirement applies to Group Living uses occupying a similar size and type of structure.
- Subsection E.2 provides that the single-family residential development standards apply to certain single-family uses and two-family uses, and to some multifamily uses constructed in single-family or two-family style structures. It does not apply those standards to Assisted Living Facilities or Group Living Facilities occupying or constructed in a similar building style.
- Subsection G.3c.i requires a minimum driveway width for multifamily dwellings, mixed-use dwellings, or Group Living. It appears that the minimum width requirement applies to smaller Assisted Living Facilities (3-8 residents) and smaller Habilitative Care Facilities (less than 6 residents) even though they would not apply to Household Living uses in similar structures. In addition, it is not clear whether the minimum width requirement is applied to Group Living uses constructing or occupying similar multifamily or mixed-use style structures.
- Similarly, subsection G.3.c.ii appears to establish a minimum driveway width for single-family, two-family, and townhouse dwellings, but it is not clear whether these are applied based on the type of structure or the use occupying the structure.
- Although the Americans with Disabilities Act imposes some requirements for site design for multifamily uses and “places of public accommodation”, these are not referenced in the Municipality’s Site Design regulations, the authority of the Municipality to adopt regulations to implement act appear in other portions of the Code (for example, sections 21.07.060.E.4.d.iii, 21.07.090.H.11, 21.07.090.J.11, and 21.07.090.M.7).

2.4. Development Approval Procedures and Criteria

As noted above, there are some instances in which Assisted Living Facilities and Group Living Facilities are required to obtain types of development approval that do not apply to Household Living uses of the same size in the same size in the same type of structure. These differences are discussed below.

2.4.1. Administrative Variances

In the R-1, R-1A, R-2A, and R-2D districts, Assisted Living Facilities with 6-8 residents are required to obtain an Administrative Variance while Household Living uses with the same number of residents are not. The general procedure for obtaining an Administrative Variance is listed in subsection 21.03.240.J and shown below.

1. Process

a. Application Submittal

Applications for an administrative variance shall contain the information specified in the title 21 user’s guide, and shall be submitted to the director on a form provided by the department.

b. Notice

Notice shall be provided in accordance with section 21.03.020H.

c. Time For Approval

The director shall make a determination on an application within 45 days of submittal, and shall provide written findings of the decision. Notification of approval or denial shall be posted electronically on the department's municipal web site and furnished in writing to the applicant by mail or delivered by electronic means.

d. Appeals

If the request for an administrative variance is denied, the applicant may apply for a public hearing variance before the urban design commission under this section 21.03.240. Additionally, denial of requests for administrative variance from occupancy limits for assisted living facilities may be appealed by any person with standing to request reasonable accommodation under the Fair Housing Act, 42 U.S.C. § 3604(f).

2. From Occupancy Limits For Assisted Living Facilities

a. Intent

The intent of this section is to provide a procedure to allow persons with disabilities and assisted living providers to request reasonable accommodation from the department when access to decent safe, accessible and affordable housing with assisted living would not be available absent a reasonable accommodation. This administrative variance procedure is available to address application for minor variance in dimensional and setback requirements to accommodate special needs of persons with disabilities and to address application for variance in occupancy limits of no more than three persons.

b. Standards

In deciding to approve or deny an application, the department shall review the application and written comments addressing factors relevant to the request for reasonable accommodation, including but not limited to, the extent to which the application demonstrates the following, as related to the particular request of the applicant:

- i. For administrative variance applications to increase occupancy limits in R-1, R-1A, R-2A and R-2D districts, the extent to which the accommodation and the assisted living provider seek to protect and preserve the primarily residential character of the district. Factors may include traffic patterns, on-street parking patterns, the control exercised by the assisted living provider to mitigate environmental disturbance associated with ingress and egress of facility staff workers at shift change, and any other measures taken by the assisted living provider to ensure the commercial aspects of the facility do not detract from its residential purpose and the primarily residential character of the district. An example of a commercial aspect is if residential trash containers were standard in the neighborhood and the assisted living provider used one or more dumpsters due to volume. An example of a mitigation measure for this aspect the assisted living provider might take is to screen the dumpster.

- ii. For administrative variance applications to increase occupancy limits, economic hardship on the intended occupants if the variance is denied. Cost and availability of other housing alternatives may be addressed in preparation and review of the application.
- iii. Whether the requested accommodation and the assisted living provider are implementing accident prevention and safety measures specific to the needs of the residents, including but not limited to safety measures in state law and regulation, and in municipal fire code adopted under title 23.
- iv. Whether the accommodation requested is advancing housing opportunities for disabled individuals in a residential community without jeopardizing residential aspects of the neighborhood with commercial aspects of operation.
- v. For administrative variance applications to increase occupancy limits, whether the proposed size of the facility is necessary for the facility's financial viability.
- vi. External characteristics and impacts of the proposed facility, including without limitation appearance, projected contribution to traffic volumes and on-street parking within the neighborhood, available street lighting and sidewalks.
- vii. Quantifiable risks to the health, safety, and quality of life of area residents and users.
- viii. Administrative and economic burden on the municipality, in either approval or denial of the variance.
- ix. Other factors deemed relevant to the applicant or the department in review of the application.

c. Conditions

In approving a variance, the department may impose reasonable conditions designed to address the standards in subsection J.5. or mitigate impacts created by the variance.

In contrast to the provisions of subsection 21.03.240.J.1.d quoted above, subsection 21.03.050.B (Appeals to Zoning Board of Examiners and Appeals) appears to establish a different procedure for hearing appeals. The relevant text is shown below.

1. Jurisdiction of Board

The zoning board of examiners and appeals shall hear appeals from decisions of the municipal staff regarding:

- k. Administrative variance for occupancy limits in assisted living facilities under subsection 21.03.240J.

DISCUSSION:

- The requirement for an Administrative Variance for an Assisted Living Facility of 6-8 persons in the R-1, R-1A, R-2A, and R-2D districts is inconsistent with the intent of the Fair Housing Act that smaller Group Living uses (i.e. those with no more residents than a single-family dwelling) not be subject to barriers to construction or occupancy that do not apply to those Household Living uses.

- It is unclear whether a request to approve an Assisted Living Facility with 6-8 residents in R-1, R-1A, R-2A, and R-2D districts is reviewed under subsection 21.03.240.J.1 or J.2. One possible interpretation is that requests for a facility of 6-8 residents are approved under J.1, while a request for more than 8 residents is reviewed as a request for “reasonable accommodation” under J.2. Another possible interpretation is that all requests for facilities with 6-8 residents are treated as requests for “reasonable accommodation” and reviewed under J.2. The fact that subsection J.2.a references the use of that section to approve occupancy increases of up to three persons suggests that this applies to requests for facilities of 6-8 residents (not more).
- Although the title of subsection 21.03.240.J.2 suggests that it is available for minor variations to dimensional standards, the text of J.2 indicates that minor dimensional variances are also permitted.
- The additional standards applicable to review of an Administrative Variances for Assisted Living Facilities of 6-8 persons are very detailed and offer many opportunities for the director to deny a variance for a facility that would have few if any residents more than single-family residents in these four zoning districts.
- The apparent inconsistency between the provisions of subsections 21.03.050.B and 21.03.240.J.1 regarding which body decides which types of appeals of denials of administrative variances to occupancy limits needs to be clarified. It may be that the second sentence of 21.03.050.B.1.d addresses standing to file an appeal, rather than being linked to the statement in the first sentence giving the Urban Design Commission authority hear appeals. If so, then the second sentence might be better located in section 21.03.240.J.2 or in a portion of the Code addressing standing to file appeals.

2.4.2. Conditional Uses

As noted above, in several of the Anchorage zoning districts, Assisted Living Facilities and Habilitative Care Facilities with a specific number of residents are required to obtain a conditional use approval and Household Living Uses of the same size and in the same kind of structure are permitted uses. The procedures and criteria for review and approval of a conditional use are shown in section 21.03.080. Subsection C describes the several steps involved in conditional use approval, including a pre-application meeting (subsection C.2), community meeting (subsection C.3), public notice of a hearing (subsection C.5) and a public hearing on the application before the Planning and Zoning Commission (subsection C.7). Subsection C.8 provides that the decision of that Commission may be appealed to the Board of Adjustment. The criteria to be used by the Planning and Zoning Commission in reviewing and deciding on a conditional use application are listed in subsection 21.03.080.D, and are shown below.

D. Approval Criteria

The Planning and Zoning Commission may approve a conditional use application if, in the judgment of the Commission, all of the following criteria have been met in all material matters:

1. The proposed use is consistent with the comprehensive plan and all applicable provisions of this title and applicable state and federal regulations;
2. The proposed use is consistent with the purpose and intent of the zoning district in which it is located, including any district-specific standards set forth in chapter 21.04;

3. The proposed use is consistent with any applicable use-specific standards set forth in Chapter 21.05;
4. The site size, dimensions, shape, location, and topography are adequate for the needs of the proposed use and any mitigation needed to address potential impacts;
5. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district;
6. The proposed use is compatible with uses allowed on adjacent properties, in terms of its scale, site design, operating characteristics (hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts);
7. Any significant adverse impacts anticipated to result from the use will be mitigated or offset to the maximum extent feasible;
8. The proposed use is appropriately located with respect to the transportation system, including but not limited to existing and/or planned street designations and improvements, street capacity, access to collectors or arterials, connectivity, off-site parking impacts, transit availability, impacts on pedestrian, bicycle, and transit circulation, and safety for all modes; and
9. The proposed use is appropriately located with respect to existing and/or planned water supply, fire and police protection, wastewater disposal, storm water disposal, and similar facilities and services.

DISCUSSION:

- These criteria are similar to those listed in many other large city zoning ordinances, in that they focus on the similarity in character of the proposed use to those in the same zoning district, review of potential impacts, and mitigation of those impacts if possible.
- While it might be helpful to have an additional or alternative criteria requiring the Planning and Zoning Commission to review whether the conditional use approval is necessary so that the Municipality not “make unavailable” Assisted Living Facilities or Habilitative Care Facilities in a particular area of the city, this is not required by the Fair Housing Act.
- If smaller Assisted Living Facilities (8 or fewer residents) and Habilitative Care Facilities (fewer than 6 residents) were subject to conditional use approval when Household Living uses of the same size and in the same type of structure were permitted uses, this procedure could have the effect of “making unavailable” those types of Group Living uses in broad areas of the Municipality. However, that is not the case. Smaller Assisted Living Facilities and Habilitative Care Facilities are permitted uses in many zoning districts.
- The same is largely true for larger Assisted Living Facilities (9 or more residents). Those are permitted in almost all of the zoning districts where mixed-use dwellings and multifamily dwelling Household Living facilities are permitted (the only exception is the B-1B district). In addition, larger Assisted Living Facilities are conditional uses in many zoning districts where similarly sized mixed-use dwellings or multifamily dwellings are neither permitted nor conditional uses.

- The same is not true, however, for larger Habilitative Care Facilities (those with 7 or more residents). These types of facilities are conditional uses in every zoning district where they can exist – including 8 districts in which a similarly sized mixed-use dwelling use or a multifamily dwelling use in a similar structure would be a permitted use or a permitted use subject to administrative site plan review.

2.4.3. Reasonable Accommodation Procedures and Criteria

In Section 42 USC 3604(f)(3)(B), the Fair Housing Act requires that the local government make reasonable accommodations in rules, policies, practices, or services necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling. The only place where “reasonable accommodation” is mentioned in the Anchorage Municipal Code is in section 21.03.240.J.2, discussed above. That subsection authorizes the director to approve Administrative Variances to both the occupancy limits (to allow 6 to 8 residents) and minor dimensional requirements applicable to a small Assisted Living Facility in the R-1, R-1A, R-2A, and R-2D zone districts. The Code does not appear to have “reasonable accommodation” provisions for small Assisted Living Facilities in other zoning districts, or for larger Assisted Living Facilities (9 or more residents) in any zoning districts, or for Habilitative Care Facilities in any zoning districts. Instead, it appears that requests for reasonable accommodation in these additional situations are processed as requests for Variances under section 21.03.240.

Except where Administrative Variances are permitted, section 21.03.240.B clarifies that authority to review and approve Variances is split between the Urban Design Commission and the Zoning Board of Examiners and Appeals. The Urban Design Commission has authority to approve Variances to Use-specific Standards (chapter 21.05), Girdwood Use Regulations (section 21.09.050), most Development and Design Standards (chapter 21.07), and Girdwood Building Design Standards (section 21.09.080). The Zoning Board or Examiners and Appeals has authority to approve Variances to most Dimensional Standards and Measurements (chapter 21.06) and the Girdwood Dimensional Standards (section 21.09.060). As in many large city zoning ordinances, no Municipal body has authority to grant variances from the definitions of different land uses in chapter 21.14, so the maximum resident limits assigned to different categories of Assisted Living Facilities and Habilitative Care Facilities in chapter 21.14 cannot be altered except by amending the Code.

Unlike the procedure for approval of a conditional uses (discussed above), approval of a Variance does not require a pre-application meeting or a community meeting, but it does require public notice and hearing under section 21.03.240.D and F. The criteria to be applied by the decision-making body in reviewing the application are listed in subsection G and shown below.

G. Approval Criteria

The application must state with particularity the relief sought and must specify the facts or circumstances that are alleged to show that the application substantially meets the following standards:

2. Variances from the District-Specific Standards of Chapter 21.04, *Zoning Districts*, the Use-Specific Standards of Chapter 21.05, *Use Regulations*, Chapter 21.07, *Development And Design Standards* (except for subsections 21.07.020C., *Steep Slope Development*; subsection 21.07.050, *Utility Distribution Facilities*; and subsection 21.07.060, *Transportation and Connectivity*), Section 21.09.040, Section 21.09.050, Section 21.09.070, Section 21.09.080, and Chapter 21.11, *Signs*

- a. The proposed alternative achieves the intent of the subject design standard to the same or better degree than the subject standard;
 - b. The proposed alternative achieves the goals and policies of the comprehensive plan to the same or better degree than the subject standard;
 - c. The proposed alternative results in benefits to the community that are equivalent to or better than compliance with the subject standard;
 - d. The variance, if granted, will not adversely affect the use of adjacent property as permitted under this code;
 - e. The variance, if granted, does not change the character of the zoning district where the property is located, is in keeping with the intent of the code, and does not permit a use not otherwise permitted in the district in which the property lies;
 - f. Persons with disabilities are provided with access as required by the Americans with Disabilities Act (ADA) and reasonable accommodation; and
 - g. The variance, if granted, does not adversely affect the health, safety, and welfare of the people of the municipality.
3. Variances from Subsection 21.05.040K., Telecommunication Facilities; Chapter 21.06, *Dimensional Standards and Measurements*; Section 21.07.050, *Utility Distribution Facilities*; and from Section 21.09.060 (Girdwood)
- a. There exist exceptional or extraordinary physical circumstances of the subject property including, but not limited to, streams, wetlands, or slope, and those circumstances are not applicable to other land in the same zoning district;
 - b. Because of these physical circumstances, the strict application of the code creates an exceptional or undue hardship upon the property owner, and would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the zoning ordinance;
 - c. The hardship is not self-imposed, special conditions and circumstances do not result from the actions of the applicant, and such conditions and circumstances do not merely constitute inconvenience;
 - d. The variance, if granted, will not adversely affect the use of adjacent property as permitted under this code;
 - e. The variance, if granted, does not change the character of the zoning district where the property is located, is in keeping with the intent of the code, and does not permit a use not otherwise permitted in the district in which the property lies;
 - f. The variance, if granted, does not adversely affect the health, safety, and welfare of the people of the municipality;
 - g. Persons with disabilities are provided with access as required by the Americans with Disabilities Act (ADA) and reasonable accommodation; and
 - h. The variance granted is the minimum variance that will make possible a reasonable use of the land.

DISCUSSION:

- Approval criteria 2.f and 3.g reflect an understanding that changes in Use-specific Standards, Dimensional Standards, and Development and Design Standards may be needed to comply with the requirements of the ADA and the Fair Housing Act. However, these are listed as additional – not alternative – criteria for the granting of a Variance. The applicant must apparently meet all other criteria for a variance (which are fairly standard “hardship” conditions) and also demonstrate that “persons with disabilities are provided with access as required by the Americans with Disabilities Act (ADA) and reasonable accommodation.” The requirements of the Fair Housing Act for reasonable accommodation are not limited to those situations in which the applicant can also meet standard “hardship” criteria.
- The wording of criteria 2.f and 3.g do not that a Variance must be approved if necessary to provided ADA-required access or to provide reasonable accommodation under the Fair Housing Act.

3. Recommendations for Amendments to Title 21

This section of the report sets forth our recommendations for amendments to Title 21 of the Anchorage Municipal Code that respond to the discussions above concerning compliance with the federal Fair Housing Act and Americans with Disabilities Act. In some cases, recommendations are marked as “optional” where the proposed change would comply with the spirit of these Acts in making housing available to all Americans whose rights are protected by these Acts on the same basis they are made available to other Americans, but where it is unclear (or court decisions have been split) as to whether the change is necessary in order to comply with either act.

3.1. Key Definitions

- Revise the definitions of “Family” and “Household” to include any number of persons related by blood or marriage to, but to limit the number of unrelated persons to no more than four or five unrelated adults. This will avoid the current situation, where an unlimited number of persons can occupy a dwelling unit with a Household Living use, but the number of persons who can occupy an Assisted Living Facility or Habilitative Care Facility in the same type and size of residential structure is limited.
- Revise the definition of “Habilitative Care Facility to include the provisions of section 21.05.030.B.3.b (establishing the three size categories of facilities), so the size distinctions appear in the definition, as they do for Assisted Living Facilities. In addition, revise the definition to provide that small facility includes no more than 8 residents, including any support staff living at the facility, and that a medium facility includes those with 9 to 25 residents. In addition, remove the phrase “in a family setting” since this does not apply to larger facilities within this definition.

3.2. Permitted and Conditional Uses and Use-Specific Standards

3.2.1. Permitted and Conditional Uses

Assisted Living Facilities

- Revise Table 21.05-1 to make small Assisted Living Facilities a Permitted use in the B-3 zoning district.
- Revise Table 25.05-1 to make large Assisted Living Facilities a permitted use in the B-1A and B-1B zoning districts and a conditional use in the MC zoning district.

Habilitative Care Facilities

- Revise Table 25.05-1 to make medium Habilitative Care Facilities a permitted use in the R-4, R-4A, B-1B, B-3, and RO zoning districts. Although the Code allows these facilities as conditional uses in several districts in which multifamily and mixed-use dwelling uses of similar size would not be permitted, the fact that these facilities are not a permitted use in any zoning district could create a significant barrier to their establishment. They should be permitted in at least some of the zoning districts where similar sized multifamily and mixed-use dwellings would be permitted by right (despite the fact that they are available as conditional uses in several additional districts).
- (Optional) Revise the same table to make medium Habilitative Care Facilities a permitted use in the R-2M and R-3 zoning districts.
- Revise Table 23.05-1 to make large Habilitative Care Facilities a permitted use in the R-4A, B-1B, B-3, and RO zoning districts. An Optional change would be to make this same change in the R-2M, R-3 and R-4 zoning districts. The reasoning for this change is the same as for medium Habilitative Care Facilities described above.
- (Optional) Revise Table 21.05-1 to make small Habilitative Care Facilities a permitted use in the R-8, R-9, and R-10 zoning districts. Although this change would make small Habilitative Care Facilities a permitted use in each district where single-family detached, single-family attached, two-family, and townhouse Household Living uses are a permitted use, it is optional change because small Habilitative Care Facilities are permitted uses in several zoning districts where those types of Household Living uses are not permitted. In light of the wide availability of small Habilitative Care Facilities in many residential zoning districts, the minor discrepancy in treatment in these three large-lot residential districts does not “make unavailable” this type of Group Living facility.

3.2.2. Use-specific Standards

Assisted Living Facilities

- Revise section 21.05.030.B.1 (Use-specific Standards for small Assisted Living Facilities) by deleting the current content of subsection b, which establishes the distinction between facilities for 3-5 residents and those with 6-8 residents and requires an Administrative Variance for those with 6-8 residents.
- (Optional) Revise section 21.05.030.B.1 to clarify that small Assisted Living Facilities may occupy only those types of Household Living structures permitted by right in the zone district where the use is located.
- (Optional) Revise section 21.05.030.B.1 (Use-specific Standards for small Assisted Living Facilities) to add a requirement that new construction and additions to existing primary structures comply with the same Residential Design Standards in section in section 21.07.110, and the same Use-specific Standards regarding side setbacks for accessory

structures that would apply if the same action were occurring on the same type and size of structure occupied by a Household Living use. While not necessary to comply with the Fair Housing Act or the Americans with Disabilities Act, these standards were established to address potential impacts of residential and mixed use structures on their surrounding areas when occupied by Household Living uses, and those same impacts are likely to occur when the same size and type of structure is occupied by an Assisted Living Facility use.

- Delete the text of current section 21.05.030.B.1.c (Use-specific Standards for large Assisted Living Facilities), which cross-references section 21.05.040.A.3 and 4 (Use-specific Standards for Health Care Facilities for 9 or more residents). Most of the Use-specific Standards for Health Care Facilities assume a facility with many more services, deliveries, and activity than the essentially residential activities in an Assisted Living Facilities. The application of these Use-specific standards to Assisted Living Facilities raises the question as to why the same standards do not apply to larger Habilitative Care Facilities, which provide a level of services intermediate between Assisted Living and Health Care Facilities.
- Replace the text of section 21.05.030.B.1.c with a provision requiring that large Assisted Living Facilities meet the same zoning requirements applicable to the type of structure being constructed or occupied (i.e. single-family attached, two-family, townhouse, multifamily, or mixed-use dwelling structure). This may require separating the Use-specific Standards for large Assisted Living Facilities from those for Health Care Facilities, because the Municipality may want the current provisions of 21.05.040.A.3 to apply to Health Care Facilities with 9 or more residents.
- (Optional) Revise section 21.05.040.A.4.c.i to clarify that preservation of residential character is only relevant in residential districts. Large Assisted Living Facilities are conditional uses in one Commercial district and one “Other” zoning district where preservation of residential character should not be an applicable criterion for approval.
- (Optional) Revise the Use-specific Standards for small and large Assisted Living Facilities to provide that areas designed for related non-residential uses, such as assembly rooms or administrative support areas, that do not exceed 20% of the gross floor area of residential use areas are permitted by right, and that larger areas designed for related non-residential uses may be approved through the Conditional Use approval process.
- (Optional) Any other revisions to the Use-specific Standards for small and large Assisted Living Facilities necessary to implement the recommendations in this report.

Habilitative Care Facilities

- (Optional) Revise section 21.05.030.B.3 to clarify that small Habilitative Care Facilities may occupy only those types of Household Living structures permitted by right in the zone district where the use is located.
- (Optional) Revise section 21.05.030.B.3 (Use-specific Standards for small Habilitative Care Facilities) to add a requirement that new construction and additions to existing primary structures comply with the same Residential Design Standards in section in section 21.07.110, and the same Use-specific Standards regarding side setbacks for accessory structures that would apply if the same action were occurring on the same type and size of structure occupied by a Household Living use. While not necessary to comply with the Fair

Housing Act or the Americans with Disabilities Act, these standards were established to address potential impacts of residential and mixed use structures on their surrounding areas when occupied by Household Living uses, and those same impacts are likely to occur when the same size and type of structure is occupied by a Habilitative Care Facility use.

- (Optional) Amend the use-specific standards for small and large Habilitative Care Facilities to provide that areas designed for related non-residential uses, such as assembly rooms or administrative support areas, that do not exceed 20% of the gross floor area of residential use areas are permitted by right, and that larger areas designed for related non-residential uses may be approved through the Conditional Use approval process.
- (Optional) Any other revisions to the Use-specific Standards for small and large Assisted Living Facilities necessary to implement the recommendations in this report.

3.3. Dimensional, Development, and Design Standards

Assisted Living Facilities and Habilitative Care Facilities

- Amend the zoning ordinance to clarify that in those zoning districts where Assisted Living Facilities or Habilitative Care Facilities are permitted uses, the dimensional standards applicable to the facility occupied by or constructed for those uses are not those indicated for “all other uses” but are the same dimensional standards applicable to the type of structure being constructed or occupied (i.e. single-family attached, two-family, townhouse, multifamily, or mixed-use dwelling structure).
- Amend the zoning ordinance to clarify that, notwithstanding other provisions of chapter 21.07.010, in those zoning districts where Assisted Living Facilities or Habilitative Care Facilities are permitted uses, the development and design standards and plan submittal requirements applicable to the facility occupied by or constructed for those uses are the same development and design standards applicable to the type of structure being constructed or occupied (i.e. single-family attached, two-family, townhouse, multifamily, or mixed-use dwelling structure). In addition, this text should clarify that any exemption from a design or development standard applicable to a single-family detached, single-family attached, two-family townhouse, multifamily, or mixed-use dwelling when occupied by a Household Living use, is also applicable to those types of residential structures when occupied an Assisted Living Facility or a Habilitative Care Facility that is a permitted use in that zoning district.

3.4. Development Approval Procedures and Criteria

Administrative Variance

- Delete subsection 21.03.240.J.2.b.i as no longer relevant after deletion of the Administrative Variance requirement for Assisted Living Facilities with 6-8 residents in the R-1, R-1A, R-2A, and R-2D districts discussed above.

Conditional Use Approvals

- No recommended changes to this procedure or the related approval criteria if the changes to Use Definitions, permitted and conditional use, Use-specific Standards, and Dimensional and Development Standards recommended in this report are made.

Reasonable Accommodation

- (Optional) Revise the text of section 21.03.240.J.2 to provide that the Administrative Variance procedure may be used to review and decide all application for “reasonable accommodation” under section 42 USC 3604(f)(3)(B) – not just those involving minor changes to dimensional standards or increases in occupancy limits. This change should also include the following:
 - Revise the wording of the title of subsection 21.03.240.J.2 and standards ii. and v. so that they apply to all requests for reasonable accommodation, not just those for increases in occupancy.
 - Add a standard within section 21.03.240.J.2 permitting the director to approve the application if the Administrative Variance is necessary to comply with the provisions of the federal Fair Housing Act.

Although not explicitly required by the Fair Housing Act, this approach provides the Municipality the widest flexibility to make those adjustments necessary to comply with the requirements of the Fair Housing Act without drawing attention to the characteristics of the potential residents of an Assisted Living or Habilitative Care Facility or requiring a public hearing on the impacts of the requested change, both of which tend to undermine the intent of the Fair Housing Act for equal treatment of housing for the populations protected by the Act. If this change is made, section 21.03.240.B.5 should be revised to provide that an Administrative Variance may adjust the maximum number of residents in an Assisted Living Facility or Habilitative Care Facility if necessary to comply with the federal Fair Housing Act.

- If the Municipality decides not to make the optional change described above to hear all requests for reasonable accommodation through the Administrative Variance process, then the standards for hearing certain requests through the Variance process should be clarified. More specifically:
 - The Variance criteria in subsections 21.03.240.G.2.f and 21.03.240.G.3.g should be restated as alternative (not additional) criteria for approval of a Variance even if the application does not meet the remainder of the (largely traditional) “hardship” criteria listed in 21.03.240.G.2 and G.3.
 - Criteria 2.f and 3.g should also be reworded to state that “the Variance is necessary to comply with the requirements of the Americans with Disabilities Act or the Fair Housing Act Amendments of 1988,” or similar wording.

Requiring that the applicant demonstrate that the application meet both the traditional “hardship” criteria and the need for reasonable accommodation is inconsistent with the intent of the Fair Housing Act, which is that local governments be ready to grant adjustments to their rules, policies, practices or services necessary to afford a person with a disability an equal opportunity to enjoy a dwelling even if that adjustment does not meet the local government’s standards for other types of adjustments for other reasons.

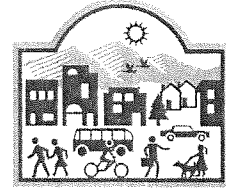
Other

- Resolve the apparent inconsistency between the second sentence in section 21.03.240.J.1.d and 21.03.050.B regarding which body hears appeals of requests for Administrative Variances regarding requests for reasonable accommodation.

Departmental and Public Comments



Municipality of Anchorage
Community Development Department
Planning Division



MEMORANDUM

Date: December 15, 2015
To: Erika McConnell, Manager, Current Planning Section
From: Carol Wong, Manager, Long-Range Planning Section
Subject: Case 2016-0014, Ordinance Amending Title 21 regarding assisted living facilities and habilitative care facilities (AMC 21.05.030) in accordance with conciliation agreement between MOA and US Department of Housing and Urban Development (HUD).

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DEC 17 2015

MUNICIPALITY OF ANCHORAGE
ZONING DIVISION

The proposed amendment to new Title 21 seeks to modify land use regulations to regarding assisted living facilities and habilitative care facilities in accordance with the conciliation agreement and voluntary compliance agreement between the US Department of Housing and Urban Development (HUD) and the MOA regarding the Fair Housing Act and other Federal laws. The intent of the ordinance is for affirmative compliance with Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act and the Fair Housing Act.

The applicable policy from *Anchorage 2020 Comprehensive Plan* is policy 61 which states:

“Promote the availability of supportive housing opportunities for the homeless and for people with special needs.”

The proposed amendments will:

1. Clarify the definitions for “family”, “households” and “habilitative care facility” in future land use reviews;
2. Identify additional zoning districts where assisted living and habilitative care facilities are permitted;
3. Clarify the use-specific and dimensional standards for assisted living and habilitative care facilities; and
4. Makes clearer the development approval and appeal procedures.

Based on the policy direction provided by Comprehensive Plan policy 61, and review of the intent of the proposed amendment, the Long-Range Planning section has no objection to the proposed amendment. Thank you for the opportunity to comment.



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Transportation and
Public Facilities

CENTRAL REGION
Planning & Administrative Services

4111 Aviation Avenue
P.O. Box 196900
Anchorage, Alaska 99519-6900
Main Phone: (907)269-0520
Fax: (907)269-0521
Web site: dot.state.ak.us

December 16, 2015

Erika McConnell, Planning Section Manager
MOA, Community Development Department
Planning Division
P.O. Box 196650
Anchorage, Alaska 99519-6650

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DEC 16 2015

**MUNICIPALITY OF ANCHORAGE
ZONING DIVISION**

RE: MOA Zoning Review

Dear Ms. McConnell:

The Alaska Department of Transportation and Public Facilities (DOT&PF), Central Region
Platting Review Board has no comments on the following zoning applications:

- **2016-0005: 7001 Cranberry Street**
- **2016-0014: Amendment for Title 21 re: assisted living facilities & habilitative care facilities**

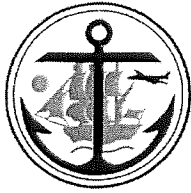
The DOT&PF Central Region Platting Review Board has a comment on the following zoning applications:

- **2015-0114: Tract 11 & 12, The Village Subdivision**
 - We support the planned access from Creekside Center Drive. No access will be granted from Muldoon Road. Ensure landscaping does not impact sightlines at Muldoon Road and Creekside Center Drive intersection.
- **2016-0008: 3680 Barrow Street**
 - Show engineering drawings that illustrate how sight distance is still adequate for use of A Street access by freight. Modify access with DOT&PF as needed.

Sincerely,

Aaron Jongenelen
AMATS Transportation Planner

Cc: Tucker Hurn, Right of Way Agent, Right of Way, DOT&PF
Morris Beckwith, Right of Way Agent II, Right of Way, DOT&PF
Scott Thomas, P.E., Regional Traffic Engineer, Traffic Safety and Utilities, DOT&PF
Jim Amundsen, P.E., Highway Design Group Chief, DOT&PF



MUNICIPALITY OF ANCHORAGE

Traffic Engineering Department



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DEC 14 2015

MUNICIPALITY OF ANCHORAGE
ZONING DIVISION

MEMORANDUM

DATE: December 14, 2015

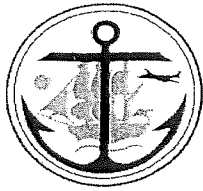
TO: Erika B. McConnell, Current Planning Section Supervisor.
Zoning and Platting Division

FROM: Kristen A. Langley, Traffic Safety Section Supervisor,
Traffic Engineering Department

SUBJECT: Traffic Engineering Comments

2016-0014 An ordinance Amending Title 21 regarding assisted living facilities and habilitative care facilities (AMC 21.05.030 and related sections) in accordance with conciliation agreement between MOA and US Department of Housing and Urban Development (HUD)

Traffic Engineering has no comments on the proposed Amendment



MUNICIPALITY OF ANCHORAGE

Development Services Division

Right of Way Section

Phone: (907) 343-8240 Fax: (907) 343-8250

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DEC 14 2015

MUNICIPALITY OF ANCHORAGE
ZONING DIVISION

DATE: December 14, 2015
TO: Planning Division, Current Planning Section
THRU: Jack L. Frost, Jr., Right of Way Supervisor
FROM: Lynn McGee, Senior Plan Reviewer
SUBJ: Comments on Planning and Zoning Commission case(s) for January 11, 2016.

Right of Way Section has reviewed the following case(s) due December 14, 2015.

2016-0001 **Section 25, T13N R4W, West 135' of the East 953' of the North 350' of the NE4 NW4, portion, grid SW1628 (Rezone from R-O to B-3)**

Right of Way Section has no comments as no work is planned which would affect the rights of way or easements.
Review time 15 minutes.

2016-0002 **Section 25, T13N R4W, West 135' of the East 953' of the North 350' of the NE4 NW4, portion, grid SW1628 (Amendment to an Element of the Comprehensive Plan to Add Additional B-3 Land)**

Right of Way Section has no comments as no work is planned which would affect the rights of way or easements.
Review time 15 minutes.

2016-0007 **"New" Title 21 Amendment (Ordinance Amending Title 21 Sections, 21.09.040C.2.j and Table 21.09-2 to add "manufacturing general" and allow it in the GC-10 District by Conditional Use and in the G-1 and G-2 Districts as a Permitted Use.)**

Right of Way Section has no comments at this time.
Review time 15 minutes.

2016-0014 **"New" Title 21 Amendment (Ordinance Amending Title 21, Sections 21.05.030, Rehabilitative Care Facilities)**

Right of Way Section has no comments as no work is planned which would affect the rights of way or easements.
Review time 15 minutes.

Municipality Of Anchorage
ANCHORAGE WATER & WASTEWATER UTILITY

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DEC 11 2015

MEMORANDUM

MUNICIPALITY OF ANCHORAGE
ZONING DIVISION

DATE: December 11, 2015

TO: Erika McConnell, Supervisor, Planning Section, Planning Division

FROM: Paul Hatcher, Engineering Technician III, AWWU Planning

SUBJECT: Zoning Case Comments
Hearing Date: January 11, 2016
Agency Comments Due: December 14, 2015

AWWU has reviewed the materials and has the following comments.

2016-0014 TITLE 21, An ordinance amending Title 21 regarding assisted living facilities and habilitative care facilities (AMC 21.05.030 and related sections) in accordance with conciliation agreement between MOA and US Department of Housing and Urban Development (HUD), Grid N/A

1. AWWU has no objection to this Title 21 amendment.

If you have any questions pertinent to public water and sanitary sewer, you may call me at 564-2721 or the AWWU planning section at 564-2739, or e-mail paul.hatcher@awwu.biz

MUNICIPALITY OF ANCHORAGE



Community Development Department
Development Services Division

Private Development Section

Mayor Ethan Berkowitz

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DEC 11 2015

MEMORANDUM

Comments to Planning and Zoning Commission Applications/Petitions

MUNICIPALITY OF ANCHORAGE
ZONING DIVISION

DATE: December 11, 2015
TO: Erika McConnell, Current Planning Section Supervisor
FROM: Brandon Telford, Plan Review Engineer
SUBJECT: Comments for Planning and Zoning Commission
Public Hearing date: January 11, 2016

Case 2016-0001 – Rezone request from RO (Residential Office) District to B-3 (General Business) District.

Department Recommendations:

The Private Development Section has no comment on the rezone.

Case 2016-0014 – An ordinance amending Title 21 regarding assisted living facilities and habilitative care facilities (AMC 21.05.030 and related sections) in accordance with conciliation agreement between MOA and US Department of Housing and Urban Development (HUD)

Department Recommendations:

The Private Development Section has no comment on the ordinance.

MUNICIPALITY OF ANCHORAGE



Planning & Development Services Dept.
Development Services Division

Building Safety

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DEC 10 2015

MUNICIPALITY OF ANCHORAGE
ZONING DIVISION

MEMORANDUM

Comments to Miscellaneous Planning and Zoning Applications

DATE: December 10, 2015

TO: Erika McConnell, Manager, Zoning and Platting

FROM: Ron Wilde, P.E.
Building Safety
343-8371

SUBJECT: Comments for Case 2016-0014
Title 21 – Assisted Living

No Comment

Historical Information
AO 2015-045
and
AO 2014-058

CLERK'S OFFICE
APPROVED
Date: 5-14-15

Submitted by: Chair of the Assembly at the
Request of the Mayor
Prepared by: Community Development Dept.
For reading: April 28, 2015

ANCHORAGE, ALASKA
AO No. 2015-45

**AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE OF
REGULATIONS SECTION 21.20.002, SCHEDULE OF FEES—ZONING, TO
EXEMPT CERTAIN ZONING APPLICATIONS FROM CERTAIN FEES, AND
WAIVING PLANNING AND ZONING COMMISSION REVIEW.**

WHEREAS, the U.S. Department of Housing and Urban Development, Office
of Fair Housing and Equal Opportunity (HUD) conducted a multi-jurisdictional
compliance review of the Municipality of Anchorage; and

WHEREAS, the Assistant Secretary of HUD filed a complaint against the
Municipality alleging violations of the Fair Housing Act; and

WHEREAS, the Municipality disputes the allegations contained in the
complaint; and

WHEREAS, the Municipality and HUD have entered into a conciliation
agreement and voluntary compliance agreement in lieu of litigation; and

WHEREAS, the amendments enacted by this ordinance are a requirement of
the aforementioned conciliation agreement and voluntary compliance agreement;
now, therefore,

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. Anchorage Municipal Code of Regulations section 21.20.002 is
amended as follows (*the remainder of the section is not affected and therefore not set
out*):

21.20.002 Schedule of fees—Zoning.

The following fees shall be paid for the services described:

*** **

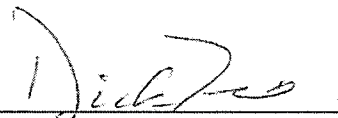
14.	Restaurant or eating place alcoholic beverage license use— Administrative site plan review	\$1,125.00 plus \$0.67/sf, not to exceed \$4,500.00 total
15.	<u>Administrative variance from occupancy limits for residential care/assisted living facilities</u>	<u>No fee</u>
16.	<u>Conditional use for a habilitative care facility for up to 8 residents</u>	<u>Notwithstanding 2. above, no fee</u>

(GAAB 21.05.090; AO No. 77-407; AR No. 78-12; AR No. 79-55; AO No. 82-49; AR No. 83-96; AR No. 83-289(S); AR No. 86-63; AR No. 86-99; AR No. 86-263; AR No. 90-151; AO No. 2001-116, § 1, 7-10-01; AO No. 2001-145(S-1), § 23, 12-11-01; AO No. 2003-152S, § 20, 1-1-04; AO No. 2004-23, § 1, 1-1-04; AO No. 2004-151, § 13, 1-1-05; AO No. 2005-18, § 1, 2-15-05; AO No. 2006-35, § 2, 3-14-06; AR No. 2006-112, § 1, 5-16-06; AO No. 2007-119, § 1, 11-13-07; AO No. 2007-121(S-1), § 16, 10-23-07; AR No. 2008-134, § 1, 7-29-08; AO No. 2010-81(S-1), § 40, 12-7-10, eff. 1-1-11; AO No. 2013-100, § 11, 1-1-14)

Section 2. Notwithstanding the requirements of Anchorage Municipal Code (Old Code) section 21.10.015A.3., this ordinance and the amendments herein shall not require review by the Planning and Zoning Commission.

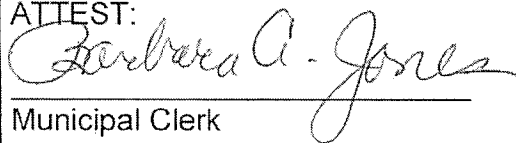
Section 3. This ordinance shall be effective immediately upon passage and approval by the Assembly.

PASSED AND APPROVED by the Anchorage Assembly this 14th day of May, 2015.



Chair of the Assembly

ATTEST:



Municipal Clerk

MUNICIPALITY OF ANCHORAGE

ASSEMBLY MEMORANDUM

No. AM 254-2015

Meeting Date: April 28, 2015

From: MAYOR

Subject: AN ORDINANCE AMENDING ANCHORAGE MUNICIPAL CODE OF REGULATIONS SECTION 21.20.002, SCHEDULE OF FEES—ZONING, TO EXEMPT CERTAIN ZONING APPLICATIONS FROM CERTAIN FEES, AND WAIVING PLANNING AND ZONING COMMISSION REVIEW.

In May 2014, the U.S. Department of Housing and Urban Development Assistant Secretary for Fair Housing and Equal Opportunity filed a complaint against the Municipality of Anchorage alleging that the city is using or will use zoning or land use ordinances to discriminate against disabled populations.

Over the last year, the Department of Law has negotiated a conciliation agreement and voluntary compliance agreement with HUD. One stipulation of the agreement is that until such time as the Municipality adopts changes to the regulations for assisted living and habilitative care, based on recommendations for affirmative compliance with federal law from an independent expert consultant, the Planning Division shall not charge application fees for requests for administrative variance from occupancy limits for residential care facilities under Anchorage Municipal Code (Old Code) section 21.15.013 or assisted living facilities under AMC (New Code) section 21.03.240J.2., or for requests for conditional use approval for habilitative care facilities for up to 8 residents under AMC (Old Code) section 21.15.030 or AMC (New Code) section 21.03.080.

The fee for an administrative variance from occupancy limits for residential care is \$675. The fee for a conditional use varies by site size. If the proposal was for habilitative care for up to 8 residents in a single family home, the fee would be \$1,687.50. Since January 1, 2012, the Planning Division has received three applications for administrative variance from occupancy limits for residential care, and no applications for conditional use for habilitative care for up to 8 residents.

In order to comply with agreed-upon deadlines, this ordinance proposes to omit review by the Planning and Zoning Commission.

THE ADMINISTRATION RECOMMENDS APPROVAL.

Prepared by:	Erika McConnell, Current Planning Section Supervisor
Approved by:	Jerry T. Weaver, Jr., Director Community Development Department
Concur:	Dennis A. Wheeler, Municipal Attorney
Concur:	George J. Vakalis, Municipal Manager
Respectfully submitted:	Daniel A. Sullivan, Mayor

Submitted by: Chair of the Assembly at the
Request of the Mayor
Prepared by: Depts. of Law and Community
Development
For reading: April 22, 2014

CLERK'S OFFICE

APPROVED

Date: 5-20-14

ANCHORAGE, ALASKA
AO No. 2014-58

1 AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING
2 ANCHORAGE MUNICIPAL CODE TITLE 21, *LAND USE PLANNING* (NEW
3 CODE – EFFECTIVE JANUARY 1, 2014), TO REMOVE THE GROUP LIVING
4 USE “SEVERE ALCOHOL DEPENDENT HOUSING”; AND AMENDING
5 ANCHORAGE MUNICIPAL CODE TITLE 21, *LAND USE PLANNING* (OLD
6 CODE – EXPIRES DECEMBER 31, 2014), TO REMOVE THE USE “SEVERE
7 ALCOHOL DEPENDENT HOUSING”.
8

9 (Planning and Zoning Commission Case 2014-029)
10

11 THE ANCHORAGE ASSEMBLY ORDAINS:
12

13 **Section 1.** Anchorage Municipal Code (new code) subsection 21.05.030B.5.,
14 *Severe Alcohol Dependent Housing*, is hereby deleted. AMC subsection
15 21.05.030B.6. shall be renumbered to B.5.
16

17 **Section 2.** Anchorage Municipal Code (new code) Table 21.05-1: *Table of*
18 *Allowed Uses-Residential, Commercial, Industrial and Other Districts* is amended
19 as provided in the Attachment A.
20

21 **Section 3.** Anchorage Municipal Code (new code) Table 21.07-4: *Off-Street*
22 *Parking Spaces Required* is amended as provided in Attachment B.
23

24 **Section 4.** Anchorage Municipal Code (new code) Table 21.10-4: *Table of*
25 *Allowed Uses-Chugiak-Eagle River Residential, Commercial, Industrial, and Other*
26 *Districts* is amended as provided in Attachment C.
27

28 **Section 5.** Anchorage Municipal Code (old code) Section 21.35.020 is amended
29 to read as follows (*the remaining portions of section 21.35.020 are not affected*
30 *and are not included*):
31

32 **21.35.020 Definitions and rules of construction.**
33

34 *** *** ***

35 B. The following words, terms and phrases, when used in this title, shall
36 have the meanings ascribed to them in this section, except where
37 the context clearly indicates a different meaning:
38

39 *** *** ***

40 [SEVERE ALCOHOL DEPENDENT HOUSING MEANS A FACILITY THAT
41 PROVIDES HOUSING 24 HOURS PER DAY, OTHER THAN ON A
42 TEMPORARY BASIS, TO SEVEN OR MORE PERSONS WHO ARE
43 SEVERELY ALCOHOL DEPENDENT. PERSONS UNDER THE

JURISDICTION OF THE COURTS MAY RESIDE IN AN SEVERE ALCOHOL DEPENDENT HOUSING FACILITY. IT DOES NOT INCLUDE ANY FACILITY WHICH IS A CORRECTIONAL COMMUNITY RESIDENTIAL CENTER, RESIDENTIAL CARE FACILITY, OR HABILITATIVE CARE FACILITY. THE FACILITY MAY PROVIDE SERVICES ACCESSORY TO THE HOUSING SUCH AS AN ON-SITE RESIDENT MANAGER RESPONSIBLE FOR SAFETY MONITORING, PROPERTY MAINTENANCE AND MONITORING, AND HOUSE RULES MANAGEMENT, AS WELL AS RESIDENTIAL SUPPORT STAFF TASKED TO PROVIDE ASSISTANCE WITH DAILY/INDEPENDENT LIVING SKILLS TRAINING AND TO PROVIDE REFERRALS FOR SERVICES SUCH AS MENTAL HEALTH, REHABILITATION, MEDICAL, AND OTHER SIMILAR SERVICES. FOOD SERVICE, LAUNDRY, COMMUNITY RECREATION ROOM, AND OTHER SUCH RESIDENTIAL-RELATED SERVICES AND FACILITIES MAY BE PROVIDED ON-SITE TO RESIDENTS OF THE FACILITY ONLY. GROUP REHABILITATION SHALL NOT BE PROVIDED WITHIN THE FACILITY AS A PRIMARY USE, BUT MAY BE PROVIDED ON AN OCCASIONAL BASIS, ONLY TO RESIDENTS OF THE FACILITY, IF IT IS NOT A REQUIREMENT OF RESIDING IN THE FACILITY. CASE MANAGEMENT MAY OCCUR ON AN INDIVIDUAL BASIS IN A COMMUNITY ROOM OR PRIVATE DWELLING UNIT OR SLEEPING ROOM.]

*** *** ***

(GAAB 21.05.020; AO No. 77-355; AO No. 78-16; AO No. 78-28; AO No. 78-171; AO No. 78-231; AO No. 79-214; AO No. 80-42; AO No. 81-67(S); AO No. 81-97; AO No. 81-180; AO No. 82-54; AO No. 82-167; AO No. 83-91(S); AO No. 84-14; AO No. 84-52; AO No. 85-58; AO No. 85-159; AO No. 85-91, 10-1-85; AO No. 85-216; AO No. 86-19; AO No. 86-78; AO No. 86-90; AO No. 86-171; AO No. 88-172; AO No. 88-171(S-1), 12-31-88; AO No. 89-35, 4-7-89; AO No. 88-147(S-2); AO No. 90-50(S); AO No. 91-35; AO No. 90-152(S); AO No. 91-90(S); AO No. 91-184; AO No. 92-7(S-2); AO No. 92-26; AO No. 92-93; AO No. 92-128(S); AO No. 92-129(S); AO No. 93-58; AO No. 93-148, § 1, 11-16-93; AO No. 94-62, § 2, 4-12-94; AO No. 95-68(S-1), §§ 2, 3, 8-8-95; AO No. 95-173, § 1, 11-14-95; AO No. 96-41, § 1, 3-5-96; AO No. 96-131(S), § 1, 10-22-96; AO No. 98-106, § 1, 7-21-98; AO No. 98-160, § 3, 12-8-98; AO No. 99-62, § 2, 5-11-99; AO No. 2000-119(S), § 8, 2-20-01; AO No. 2001-79(S), § 1, 5-8-01; AO No. 2001-80, § 1, 5-8-01; AO No. 2001-101(S), § 2, 4-9-02; AO No. 2002-109, § 2, 9-10-02; AO No. 2002-117, § 4, 1-28-03; AO No. 2003-62(S-1), § 3, 10-1-03; AO No. 2003-97, § 1, 9-30-03; AO No. 2003-132, § 1, 10-7-03; AO No. 2003-124(S), § 1, 1-20-04; AO No. 2004-108(S), § 2, 10-26-04; AO No. 2005-9, § 1, 3-1-05; AO No. 2005-150(S-1), § 1, 2-28-06; AO No. 2005-185(S), § 1, 2-28-06; AO No. 2005-124(S-1A), § 4, 4-18-06; AO No. 2006-121, § 1, 9-26-06; AO No. 2006-64(S-1), § 1, 12-12-06; AO No. 2007-62, § 1, 5-15-07; AO No. 2008-80, § 1, 9-16-08; AO No. 2009-22, § 1, 4-14-09; AO No. 2010-3, § 1, 3-23-10; AO No. 2010-50(S), § 1, 8-31-10; AO No. 2011-93(S), § 1, 9-27-11)

Section 6. Anchorage Municipal Code (old code) section 21.40.020, *PLI (public*

lands and institutions) district, is hereby amended to read as follows (*the remaining portions of section 21.40.020 are not affected and are not included*):

21.40.020 PLI public lands and institutions district.

*** *** ***

D. *Conditional uses.* Subject to the requirements of the conditional use standards and procedures of this title, the following uses may be permitted:

*** *** ***

[25. SEVERE ALCOHOL DEPENDENT HOUSING.]

*** *** ***

(GAAB 21.05.050.A; AO No. 77-355; AO No. 79-25; AO No. 81-67(S); AO No. 81-178(S); AO No. 82-24; AO No. 83-78; AO No. 84-34; AO No. 85-18; AO No. 85-28; AO No. 85-78; AO No. 85-23; AO No. 85-91, 10-1-85; AO No. 86-19; AO No. 86-90; AO No. 88-7(S), 7-4-88; AO No. 90-152(S); AO No. 92-93; AO No. 93-148, § 3, 11-16-93; AO No. 95-68(S-1), § 4, 8-8-95; AO No. 96-131(S), § 3, 10-22-96; AO No. 99-62, § 3, 5-11-99; AO No. 99-131, § 6, 10-26-99; AO No. 99-149, § 1, 12-14-99; AO No. 2002-109, § 3, 9-12-02; AO No. 2003-132, § 2, 10-7-03; AO No. 2005-9, § 2, 3-1-05; AO No. 2005-42(S), § 1, 5-31-05; AO No. 2005-150(S-1), § 2, 2-28-06; AO No. 2005-185(S), § 2, 2-28-06; AO No. 2005-124(S-1A), § 5, 4-18-06; AO No. 2006-64(S-1), §§ 2, 3, 12-12-06; AO No. 2007-141(S), § 1, 12-11-07; AO No. 2008-80, § 2, 9-16-08; AO No. 2009-22, § 2, 4-14-09; AO No. 2010-3, § 2, 3-23-10; AO No. 2010-50(S), § 2, 8-31-10)

Section 7. Anchorage Municipal Code Section 21.40.130, *R-O (residential-office) district*, is hereby amended to read as follows (*the remaining portions of section 21.40.130 are not affected and are not included*):

21.40.130 R-O residential-office district.

*** *** ***

D. *Conditional uses.* Subject to the requirements of the conditional use standards and procedures of this title, the following uses may be permitted:

*** *** ***

[12. SEVERE ALCOHOL DEPENDENT HOUSING.]

*** *** ***

(GAAB 21.05.050.I; AO No. 77-219; AO No. 77-355; AO No. 78-199; AO No. 80-57; AO No. 81-67(S); AO No. 83-226; AO No. 85-18; AO No. 85-23; AO No. 85-69; AO No. 85-91, 10-1-85; AO No. 86-90; AO No. 86-171; AO No. 88-171(S-1), 12-31-88; AO No. 88-147(S-2); AO No. 91-97; AO No. 92-114; AO No. 96-131(S), § 3, 10-22-96; AO No. 99-62, § 16, 5-11-99; AO No. 2003-124(S), § 3, 1-20-04; AO No. 2005-175, § 13, 1-10-06; AO No. 2005-178, § 14, 1-24-06; AO No. 2005-185(S), § 15, 2-28-06; AO No. 2005-

124(S-1A), § 18, 4-18-06; AO No. 2006-64(S-1), §§ 2, 3, 12-12-06; AO No. 2007-121(S-1), § 2, 10-23-07; AO No. 2009-22, § 5, 4-14-09; AO No. 2009-23, § 1, 4-14-09; AO No. 2010-3, § 3, 3-23-10; AO No. 2010-50(S), § 15, 8-31-10)

Section 8. Anchorage Municipal Code (old code) section 21.40.150, *B-2A (central business—core) district*, is hereby amended to read as follows (*the remaining portions of section 21.40.150 are not affected and are not included*):

21.40.150 B-2A central business district core.

*** *** ***

D. *Conditional uses.* Subject to the requirements of the conditional use standards and procedures of this title, the following uses may be permitted:

*** *** ***

[17. SEVERE ALCOHOL DEPENDENT HOUSING.]

*** *** ***

(GAAB 21.05.050.W; AO No. 77-20; AO No. 77-355; AO No. 80-57; AO No. 81-67(S); AO No. 81-72; AO No. 82-49; AO No. 85-173, 3-17-86; AO No. 85-91, 10-1-85; AO No. 86-90; AO No. 87-62; AO No. 87-148; AO No. 88-171(S-1), 12-31-88; AO No. 88-147(S-2); AO No. 90-124; AO No. 91-1; AO No. 91-39; AO No. 91-144; AO No. 92-57; AO No. 95-68(S-1), § 6, 8-8-95; AO No. 98-160, § 4, 12-8-98; AO No. 98-188, §§ 1--3, 1-12-99; AO No. 99-62, § 19, 5-11-99; AO No. 99-131, § 7, 10-26-99; AO No. 2001-80, § 3, 5-8-01; AO No. 2005-185(S), § 18, 2-28-06; AO No. 2005-124(S-1A), § 21, 4-18-06; AO No. 2006-49, § 1, 5-16-06; AO No. 2006-64(S-1), §§ 2, 3, 12-12-06; AO No. 2007-121(S-1), § 5, 10-23-07; AO No. 2008-35(S), § 1, 3-18-08; AO No. 2010-3, § 4, 3-23-10; AO No. 2010-50(S), § 17, 8-31-10)

Section 9. Anchorage Municipal Code (old code) section 21.40.160, *B-2B (central business-intermediate) district*, is hereby amended to read as follows (*the remaining portions of section 21.40.160 are not affected and are not included*):

21.40.160 B-2B central business district, intermediate.

*** *** ***

D. *Conditional uses.* Subject to the requirements of the conditional use standards and procedures of this title, the following uses may be permitted:

*** *** ***

[17. SEVERE ALCOHOL DEPENDENT HOUSING.]

*** *** ***

(GAAB 21.05.050.Y; AO No. 77-20; AO No. 77-355; AO No. 80-57; AO No. 81-67(S); AO No. 81-72; AO No. 82-49; AO No. 85-173, 3-17-86; AO No. 85-91, 10-1-85; AO No. 86-90; AO No. 87-62; AO No. 88-171(S-1), 12-31-

88; AO No. 88-147(S-2); AO No. 90-124; AO No. 91-1; AO No. 91-39; AO No. 91-144; AO No. 92-57; AO No. 95-68(S-1), § 7, 8-8-95; AO No. 96-131(S), § 3, 10-22-96; AO No. 98-160, § 5, 12-8-98; AO No. 98-188, §§ 4--6, 1-12-99; AO No. 99-62, § 20, 5-11-99; AO No. 99-131, § 8, 10-26-99; AO No. 99-149, § 2, 12-14-99; AO No. 2001-80, § 4, 5-8-01; AO No. 2005-185(S), § 19, 2-28-06; AO No. 2005-124(S-1A), § 22, 4-18-06; AO No. 2006-49, § 2, 5-16-06; AO No. 2006-64(S-1), §§ 2, 3, 12-12-06; AO No. 2007-121(S-1), § 6, 10-23-07; AO No. 2008-35(S), § 2, 3-18-08; AO No. 2009-22, § 8, 4-14-09; AO No. 2010-3, § 5, 3-23-10; AO No. 2010-50(S), § 18, 8-31-10)

Section 10. Anchorage Municipal Code (old code) section 21.40.170, *B-2C (central business—periphery) district*, is hereby amended to read as follows (*the remaining portions of section 21.40.170 are not affected and are not included*):

21.40.170 B-2C central business district, periphery.

*** *** ***

D. *Conditional uses.* Subject to the requirements of the conditional use standards and procedures of this title, the following uses may be permitted:

*** *** ***

[21. SEVERE ALCOHOL DEPENDENT HOUSING.]

*** *** ***

(GAAB 21.05.050.X; AO No. 77-20; AO No. 77-355; AO No. 80-57; AO No. 81-67(S); AO No. 82-49; AO No. 85-173, 3-17-86; AO No. 85-91, 10-1-85; AO No. 86-90; AO No. 87-62; AO No. 88-171(S-1), 12-31-88; AO No. 88-147(S-2); AO No. 90-124; AO No. 91-1; AO No. 91-39; AO No. 91-144; AO No. 92-57; AO No. 95-68(S-1), § 8, 8-8-95; AO No. 96-131(S), § 3, 10-22-96; AO No. 98-160, § 6, 12-8-98; AO No. 98-173, § 4, 11-3-98; AO No. 98-188, §§ 7--9, 1-12-99; AO No. 99-62, § 21, 5-11-99; AO No. 99-131, § 9, 10-26-99; AO No. 99-149, § 3, 12-14-99; AO No. 2001-80, § 5, 5-8-01; AO No. 2005-185(S), § 20, 2-28-06; AO No. 2005-124(S-1A), § 23, 4-18-06; AO No. 2006-49, § 3, 5-16-06; AO No. 2006-64(S-1), §§ 2, 3, 12-12-06; AO No. 2007-121(S-1), § 7, 10-23-07; AO No. 2008-35(S), § 3, 3-18-08; AO No. 2009-22, § 9, 4-14-09; AO No. 2010-3, § 6, 3-23-10; AO No. 2010-50(S), § 19, 8-31-10)

Section 11. Anchorage Municipal Code (old code) section 21.40.180, *B-3 (general business) district*, is hereby amended to read as follows (*the remaining portions of section 21.40.180 are not affected and are not included*):

21.40.180 B-3 general business district.

*** *** ***

D. *Conditional uses.* Subject to the requirements of the conditional use and site plan standards and procedures of this title, the following uses may be permitted:

*** *** ***

[14. SEVERE ALCOHOL DEPENDENT HOUSING.]

*** *** ***

(GAAB 21.05.050.M; AO No. 77-355; AO No. 78-28; AO No. 80-57; AO No. 80-132; AO No. 81-67(S); AO No. 83-209; AO No. 85-18; AO No. 85-91, 10-1-85; AO No. 85-173, 3-17-86; AO No. 86-90; AO No. 86-182; AO No. 87-32; AO No. 87-62; AO No. 88-171(S-1), 12-31-88; AO No. 88-147(S-2); AO No. 92-26; AO No. 92-114; AO No. 95-68(S-1), § 9, 8-8-95; AO No. 96-107, § 1, 7-30-96; AO No. 96-131(S), § 3, 10-22-96; AO No. 98-160, § 7, 12-8-98; AO No. 99-62, § 22, 5-11-99; AO No. 2001-80, § 6, 5-8-01; AO No. 2004-108(S), § 3, 10-26-04; AO No. 2005-185(S), § 21, 2-28-06; AO No. 2005-124(S-1A), § 24, 4-18-06; AO No. 2006-64(S-1), §§ 2, 3, 12-12-06; AO No. 2007-7, § 1, 5-1-07; AO No. 2007-121(S-1), § 7, 10-23-07; AO No. 2007-156, § 1, 12-11-07; AO No. 2009-22, § 10, 4-14-09; AO No. 2010-3, § 7, 3-23-10; AO No. 2010-50(S), § 20, 8-31-10)

Section 12. Anchorage Municipal Code (old code) section 21.40.200, *I-1 (light industrial) district*, is hereby amended to read as follows (*the remaining portions of section 21.40.200 are not affected and are not included*):

21.40.200 I-1 light industrial district. —

*** *** ***

D. *Conditional uses.* Subject to the requirements of the conditional use standards and procedures of this title, the following uses may be permitted:

*** *** ***

17. [SEVERE ALCOHOL DEPENDENT HOUSING.

18.] Two or three free-standing small wind energy conversion systems, subject to the requirements of Section 21.50.470.

*** *** ***

(GAAB 21.05.050.O; AO No. 77-355; AO No. 79-95; AO No. 81-67(S); AO No. 82-105; AO No. 84-57; AO No. 85-91, 10-1-85; AO No. 85-95; AO No. 86-50; AO No. 86-90; AO No. 87-32; AO No. 88-147(S-2); AO No. 90-50(S); AO No. 92-114; AO No. 95-68(S-1), § 11, 8-8-95; AO No. 95-76, § 1, 4-4-95; AO No. 95-194, § 1, 1-2-96; AO No. 98-160, § 9, 12-8-98; AO No. 98-173, § 5, 11-3-98; AO No. 99-62, § 24, 5-11-99; AO No. 2001-80, § 8, 5-8-01; AO No. 2004-5, § 1, 1-20-04; AO No. 2004-108(S), § 5, 10-26-04; AO No. 2004-178(am), § 1, 1-25-05; AO No. 2005-9, § 3, 3-1-05; AO No. 2005-185(S), § 23, 2-28-06; AO No. 2006-64(S-1), §§ 2, 3, 12-12-06; AO No. 2007-121(S-1), § 10, 10-23-07; AO No. 2010-3, § 8, 3-23-10; AO No. 2010-50(S), § 21, 8-31-10)

Section 13. Anchorage Municipal Code (old code) section 21.50.510, *Conditional*

1 use standards—*Severe alcohol dependent housing*, is hereby repealed in its
2 entirety.

3
4 **Section 14.** This ordinance shall be effective immediately upon passage and
5 approval by the Assembly.


6
7
8 PASSED AND APPROVED by the Anchorage Assembly this 20th day of
9 May, 2014.

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21



Chair of the Assembly

ATTEST:


Municipal Clerk

MUNICIPALITY OF ANCHORAGE
Summary of Economic Effects -- General Government

AO Number: 2014-58

Title: AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE TITLE 21, *LAND USE PLANNING* (NEW CODE – EFFECTIVE JANUARY 1, 2014), TO REMOVE THE GROUP LIVING USE “SEVERE ALCOHOL DEPENDENT HOUSING”; AND AMENDING ANCHORAGE MUNICIPAL CODE TITLE 21, *LAND USE PLANNING* (OLD CODE – EXPIRES DECEMBER 31, 2014), TO REMOVE THE USE “SEVERE ALCOHOL DEPENDENT HOUSING”.

Sponsor: MAYOR

Preparing Agency: Department of Community Development

Others Impacted:

CHANGES IN EXPENDITURES AND REVENUES:		(In Thousands of Dollars)				
	<u>FY14</u>	<u>FY15</u>	<u>FY16</u>	<u>FY17</u>	<u>FY18</u>	
Operating Expenditures						
1000 Personal Services						
2000 Non-Labor						
3900 Contributions						
4000 Debt Service						
TOTAL DIRECT COSTS:	\$ -	\$ -	\$ -	\$ -	\$ -	
Add: 6000 Charges from Others						
Less: 7000 Charges to Others						
FUNCTION COST:	\$ -	\$ -	\$ -	\$ -	\$ -	
REVENUES:						
CAPITAL:						
POSITIONS: FT/PT and Temp						

PUBLIC SECTOR ECONOMIC EFFECTS:

No public sector economic effects are anticipated.

PRIVATE SECTOR ECONOMIC EFFECTS:

No private sector economic effects are anticipated.

Prepared by: Erika McConnell, Current Planning Section
Department of Community Development

Telephone: 343-7917

MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM

No. AM 236-2014

Meeting Date: April 22, 2014

1 **From:** MAYOR

2
3 **Subject:** AN ORDINANCE OF THE ANCHORAGE ASSEMBLY
4 AMENDING ANCHORAGE MUNICIPAL CODE TITLE 21, *LAND*
5 *USE PLANNING* (NEW CODE – EFFECTIVE JANUARY 1, 2014),
6 TO REMOVE THE GROUP LIVING USE “SEVERE ALCOHOL
7 DEPENDENT HOUSING”; AND AMENDING ANCHORAGE
8 MUNICIPAL CODE TITLE 21, *LAND USE PLANNING* (OLD
9 CODE – EXPIRES DECEMBER 31, 2014), TO REMOVE THE
10 USE “SEVERE ALCOHOL DEPENDENT HOUSING”.
11

12 This proposed ordinance amends both the “old” and “new” versions of Title 21 to
13 remove the use “Severe Alcohol Dependent Housing.” The ordinance that
14 created this use was adopted by AO 2010-3 on March 23, 2010. Since that time,
15 there has been only one Severe Alcohol Dependent Housing (SADH) facility
16 created: Karluk Manor located at 5th Avenue and Karluk Street.
17

18 In early 2012, three plaintiffs filed suit against the Municipality (*Gesulga et al v*
19 *MOA*), alleging the ordinance discriminates against alcoholics and that
20 alcoholism is a disability under state and federal law. By joint agreement of the
21 parties, the state law claims in the lawsuit have been stayed while the Municipal
22 Departments of Community Development and Law develop code amendments.
23

24 While attempting to draft code amendments to replace the SADH use, it became
25 clear that further research and analysis was necessary. Land use provisions
26 relating to supportive and/or group housing is an evolving area in both Planning
27 and Law. The intent of Planning Division and Law Department staff is to
28 continue research and development of new code provisions. The goal is to get
29 this right the first time and be able to convincingly explain to the Planning and
30 Zoning Commission, the Assembly, and the public both what we are doing and
31 why we are doing it, so as to achieve passage of the legislation.
32

33 In light of the time frame provided by the stay, it is necessary to proceed with the
34 removal of the SADH provisions.
35

36
37 The Planning and Zoning Commission opened a public hearing on this ordinance
38 on April 14, 2014 and continued the hearing until May 5, 2014 to give community
39 councils more time to comment.
40

THE ADMINISTRATION RECOMMENDS APPROVAL.

Prepared by: Erika McConnell, Current Planning
Section Manager
Approved by: Jerry T. Weaver, Jr., Director
Community Development
Department
Concur: Dennis A. Wheeler, Municipal Attorney
Concur: George J. Vakalis, Municipal Manager
Respectfully submitted: Daniel A. Sullivan, Mayor

(Planning and Zoning Commission Case 2014-029)