



MUNICIPALITY OF ANCHORAGE  
OFFICE OF THE MUNICIPAL ATTORNEY

MEMORANDUM

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**DATE:** FEBRUARY 4, 2025

**TO:** ANCHORAGE ASSEMBLY

**FROM:** EVA GARDNER, MUNICIPAL ATTORNEY

**SUBJECT:** RABBIT CREEK COMMUNITY COUNCIL'S COMMENTS REGARDING AO 2024-104(S): AN ORDINANCE OF THE ANCHORAGE ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE TITLE 21 TO REDUCE THE COSTS AND BURDEN OF MULTIFAMILY RESIDENTIAL DEVELOPMENTS BY SUSPENDING THE RESIDENTIAL DESIGN STANDARDS FOR DEVELOPMENT APPLICATIONS SUBMITTED WITHIN A TIME CERTAIN.

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**QUESTION:** What legal barriers exist, if any, to implementing a waiver of residential design standards for the first four applicants seeking a land use permit to build residential structures?

**BACKGROUND:** Rabbit Creek Community Council provided comments in opposition to AO 2024-104(S): an ordinance of the Anchorage Assembly amending Anchorage Municipal Code Title 21 to reduce the costs and burden of multifamily residential developments by suspending the residential design standards for development applications submitted within a time certain.

The RCCC suggested an alternative. Rather than exempting all applications from residential design standards for three years, RCCC proposed an exemption for the first four permit applicants who proposed building multi-family housing of five or more units which would be located within a transit corridor identified in the 2040 Land Use Plan, and which would be completed before October 1, 2027. The first four applicants to meet the criteria would receive an exemption from Title 21's residential design standards.

**DISCUSSION:** There are legal concerns about this proposal in light of the Alaska Supreme Court's disapproval of "spot zoning" in *Griswold v. City of Homer*, 925 P.2d 1015 (Alaska 1996). Spot zoning was defined therein as "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for

the benefit of the owner of such property and to the detriment of other owners....”<sup>1</sup> While AO 2024-104(S) and the Rabbit Creek Community Council’s alternative scheme are targeted at residential design standards and not rezoning, changes to restrictions in a zoning district could be subject to the same legal challenges as rezoning.

The approach suggested by RCCC could also lead to arbitrary decision-making, which could create inequality among applicants, and potentially conflict with Anchorage’s Comprehensive Plan. The Constitution protects against arbitrary zoning decisions not based on rational policy. If the Municipality approves a select few developments for a waiver of residential design standards, while forcing all other property owners to comply, that undermines the case that the Municipality is using zoning for the benefit of the overall community.

There are additional concerns related to implementation, as well. From the Planning Department’s perspective, if the Municipality were to approach the design moratorium in the manner suggested by RCCC, it would cause complications for the department in tracking entitlements in the future. An approach like this is also contrary to planning best practices in that it reduces the predictability of zoning - zoning entitlements and restrictions should be fairly and evenly applied across the entire zoning district.

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<sup>1</sup> *Griswold v. City of Homer*, 925 P.2d 1015, 1020 (Alaska 1996).