



MUNICIPALITY OF ANCHORAGE

ASSEMBLY INFORMATION MEMORANDUM

No. AIM 68-2024

Meeting Date: May 7, 2024

1 **FROM: MAYOR**

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3 **SUBJECT: TRANSMITTAL OF THE PLANNING DEPARTMENT'S INITIAL**
4 **REVIEW AND COMMENTS ON AO 2024-45.**

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7 This AIM transmits the Planning Department's initial review and comments on
8 AO 2024-45. The department appreciates the Assembly's intent to "*clarify the process*
9 *for making conforming amendments to the official zoning map recommended or*
10 *necessary due to a proposed amendment to the comprehensive plan or text of Title*
11 *21 of the Anchorage Municipal Code, "Land Use Planning."*"

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13 However, this AO may be unnecessary and how it should be implemented and applied
14 is unclear. AMC 21.01.050 establishes that "*changes made in zoning district*
15 *boundaries or other matters portrayed on the official zoning map shall be made only*
16 *in accordance with the provisions of section 21.03.160, Rezoning (Zoning Map*
17 *Amendments).*" If the Assembly were to undertake an initiative to amend the
18 comprehensive plan, amend all residential zoning districts by text amendment, and
19 rezone all residential property in accordance with a text amendment concurrently, Title
20 21 already has established processes for those actions.

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22 Attached are the department's initial comments on the specific amendments
23 AO 2024-45 proposes.

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25 Prepared by: Planning Department
26 Approved by: Craig H. Lyon, Planning Director
27 Concur: Lance Wilber, Community Development Director
28 Concur: Kent Kohlhase, P.E., Municipal Manager
29 Respectfully submitted: Dave Bronson, Mayor

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31 Attachment: Planning Department Comments
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MUNICIPALITY OF ANCHORAGE



Planning Department

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Mayor Dave Bronson

Planning Department's Initial Review of AO 2024-45

1) Suggested additions to the AO and general comments

- a) Add definitions for “conforming amendment” and “principal” to the AMC 21.15.040, the definitions portion of Title 21.
- b) As explained in Item 7 of this Memo, Section 6 of AO 2024-25 violates the municipal code by waiving Planning and Zoning Commission review and the 21-day published notice requirement of AMC 21.03.020H.4 because the procedures of Title 21 supplement the Assembly’s procedures¹ under Title 2 and the Assembly shall not take final action² on a Title 21 text amendment without first receiving and reviewing a recommendation from the PZC on the amendments.
- c) There are several amendments within this ordinance which intend to clarify how the Assembly may submit an item and present to a board or commission on it. This question is more appropriately addressed through an amendment to Title 1 as proposed in AO 2024-32. If AO 2024-32 is passed, then the corresponding amendments to Title 21 are unnecessary.

2) Section 1 – amending AMC 21.01.050 Official Zoning Map

- a) Under current code, when a rezoning under AMC 21.03.160 occurs, then amending the official zoning map under AMC 21.01.050 is required. Basically, the code prescribes, “If A, then do B.” This AO disrupts that simple, clear logic with an “If A, then B or maybe C or D,” a much murkier equation that does not leave future Assemblies or Planning Department staff with clear direction.

3) Section 2 – amending AMC 21.03.020 Common Procedures

- a) New section “J. Public Hearing.”
 - i) This new subsection may not be necessary. These procedures are already permitted.
 - ii) There is a concern about the Assembly being involved in or having influence on quasi-judicial decisions wherein the lower body has final decision-making authority.
 - iii) This proposed section of code does not belong in AMC 21.03.020 *Common Procedures* because, by its own words, it only applies to particular land use decisions – those that require a public hearing before a body other than the Assembly. Some types of land use decisions do not require a public hearing before bodies other than the Assembly, such as land use permits or administrative permits. Thus, a new section of code that only applies to certain kinds of decisions doesn’t belong in the Common Procedures section of code. The second sentence, again by its own words, only pertains to text amendments and therefore belongs in AMC 21.03.210, not here in Common Procedures.

¹ See AMC 21.02.090B.1.

² See AMC 21.02.090B.2, AMC 21.02.030A.

iv) In the first sentence, it is ambiguous to whom the applicant shall have a reasonable opportunity to present its case.

b) New section "L. *Concurrent Processing*."

i) Concurrent processing exists to reduce the number of different boards or commission meetings applicants and the public are required to attend. Concurrent processing allows the public and a single board or commission to take the totality of the project into consideration. While action must be taken on each entitlement separately, they are heard and considered at the same public meeting. As all pieces of the HOME Initiative can be considered concurrently, amending this process appears unnecessary.

ii) L.1 contradicts AMC 21.03.070C.3.b., which provides, "The assembly and planning and zoning commission shall consider the plan amendment proposal and rezoning request separately and shall act separately on the two items." AMC 21.030.070C.3.a. provides for concurrent consideration of rezonings and comprehensive plan map amendments, but code requires that the PZC issue separate recommendations on changes to the official zoning map and the changes to the comprehensive plan, and that the Assembly vote on them separately, because one application may comply with code, charter, and the comprehensive plan while the other may not. The proposed L.1 fails to account for the fact that a proposed amendment to the comp plan could be legal and meet all code criteria while a rezoning or text amendment does not satisfy the criteria, and the comp plan amendment can be enacted legally whereas the rezoning or text amendment could not be validly enacted.

iii) Change in M.3 is unnecessary. Notice is currently only required when postponement is for more than 30 days.

4) Section 3 – Amending AMC 21.03.070 Comprehensive plan Amendments.

a) Comment on change to C.1.a: Is it wise to allow a single member of an advisory board or the Assembly, without buy-in and a motion from their peers, to initiate amending the comprehensive plan, a process that requires significant municipal resources and time in the form of departmental review, PZC action, Assembly consideration, Department of Law consideration, and public engagement?

b) Comments on changes to AMC 21.03.070C.3.a-b:

i) Planning has several serious concerns about the changes proposed to C3.a and C3.b.

ii) First, the process for concurrent rezoning and comprehensive plan amendments is a necessary and frequently used process, as the Assembly should know because it votes on AOs to make rezonings and corresponding comprehensive plan amendments effective regularly. Thus, "requests for rezonings (zoning map amendments)" in the first sentence of 3.a and "rezoning case" from the end of the first sentence of 3.b should *not be replaced* by conforming amendments, instead it should be an "or": rezonings or conforming amendments. Stripping rezonings from concurrent consideration with comprehensive plan amendments will create procedural confusion, slow down future zoning changes, and create implementation hurdles that delay development.

iii) Based on the above 3.a should read, "Requests for rezonings (zoning map amendments) or conforming amendments to the zoning map may be considered concurrently with a comprehensive plan map amendment"

iv) Based on the above, the first sentence of 3.b should read, "The planning and zoning commission shall submit its report and recommendation regarding the comprehensive plan map amendment to the assembly at the same time it submits the report and recommendation on the rezoning case or conforming amendments to the zoning map...."

- v) The changes to C3.a and C3.b fail to grasp that our code requires separate recommendations from the PZC and separate Assembly ordinances on concurrently considered rezonings and comp plan amendments because one action may satisfy applicable criteria while the other may not. By having separate recommendations and separate ordinances, the bodies may recommend/approve only the action that is valid while rejecting the other (or sending it back for more work). The current code creates efficiency by allowing for concurrent consideration but then requires the bodies to vote separately on each land use action (rezoning vs. comp plan amendment) in case one does not satisfy the policies embedded in code. The same would work well for “conforming amendments”; they may be considered concurrently with an amendment to the comprehensive plan, but when it comes time for the PZC to make a recommendation or the Assembly to vote, the “conforming amendments” and the comprehensive plan amendments should be separate items so that the bodies can evaluate the merits of each under code criteria and the Comp Plan, and if one does not satisfy substantive policies, then reject it.
- vi) The root of the problem here is that a rezoning (or a “conforming amendment”) and a comprehensive plan amendment are two separate, albeit sometimes complementary, land use actions that should be evaluated under separate code criteria and through separate PZC cases and Assembly ordinances.
- vii) To resolve these problems immediately above with the last sentence of C3.a, the drafters write a new Section of 21.03 for “conforming amendments,” write substantive criteria for approval of conforming amendments, and then re-work 21.03.070C3.a to instruct that “conforming amendments shall meet all of the approval criteria of subsection [new section of 21.03 for “conforming amendments”]”.
- viii) For the HOME Initiative, the text amendment, the comp plan amendment, and the official zoning map change should be three separate cases and three separate ordinances with action being taken on each.
- ix) On 21.03.070C.3.b, changing “shall” to “may” is ambiguous and gives the Assembly maximum flexibility, while not giving the Planning Department and the public certainty about what procedures must be followed. Implementing and abiding by 3.b. would be difficult.

5) Section 4 – amending 21.03.160 Rezonings (zoning map amendments)

- a) Comments on AMC 21.03.160C in relation to changes proposed by this AO.
 - i) It does not make sense to strike rezoning from AMC 21.03.070C as Section 3 of this AO does if this section stays in place. The solution, however, is for rezoning to remain in both sections. For the reasons explained in comment above, it is necessary legally and practically for AMC 21.03.070C to apply to rezonings even if “conforming amendments” are added.
 - ii) Furthermore, the changes proposed to AMC 21.03.070C in Section 3 would violate the requirement found here in .160C, providing, “If an amendment to the comprehensive plan map is required, the zoning map amendment can only be made if the amendment to the comprehensive plan map is approved *first*. Both amendments may be processed concurrently, as provided in subsection 21.03.070C.3.” (emphasis added). The reason that comprehensive plan amendments must be passed before rezonings, or theoretically “conforming amendments,” is because consistency with the comprehensive plan must be achieved. First, decision making bodies must consider if the comprehensive plan amendment follows code and is internally consistent with other parts of the comprehensive plan. Only after finding those substantive standards achieved, may the body enact the comprehensive plan amendment. Then the decision makers can evaluate whether the proposed rezoning or “conforming amendment” is consistent with the newly updated comprehensive plan.
- b) Comments on newly inserted subsection D “*Conforming amendments to the official zoning map.*”

- i) Why would a change to the text of Title 21 require the official zoning map to be amended when the official zoning map, “designates the location and boundaries of the various zoning districts established in this title”?
 - ii) Why would a change to the comprehensive plan, a separate document, on its own require changing the official zoning map, particularly when zoning must flow from the comprehensive plan and not the other way around?
 - iii) Will a “conforming amendment” be evaluated according to the approval criteria for a rezoning, but it is hinted to that it is not a “rezoning” and shall not follow the procedures of a rezoning. Please clarify.
 - iv) Does “principal . . . amendments” mean the text amendment or the comp plan amendment? Please clarify the language and define “principal amendments” in Title 21’s definition section.
- c) Comments on new AMC 21.03.160E.7a
- i) Presentation from an applicant or proponent of a rezoning is already standard practice before the PZC. This amendment is unnecessary.

6) Section 5 – amending 21.03.210 Text amendments.

- a) Comments on changes to 21.03.210B.3
- i) It seems to call on the Planning Department to submit comments to the PZC and the proponent mid-way through the process, which thwarts public involvement and makes it very difficult for the public to keep up with what the Commission or Assembly is reviewing as it establishes a moving target.
 - ii) For example, Applicant submits an application, Planning provides feedback to the proponent, the proponent makes changes, then Planning has to route a new version to the PZC. This creates kind of a never-ending circle of submission, comments, new submission, new distribution.
- b) Planning believes establishing an informal review process of a proponent’s Text Amendment before it goes to PZC and departmental/agency review would be much more efficient than the proposal here. This could look something like a pre-application meeting.
- c) **Comments on changes to 21.03.210C**
- i) Planning is concerned about moving from finding the substantive criteria are met to merely requiring the Assembly to consider the criteria. Requiring the approval criteria to be met gives the Assembly members a measuring stick to hold Text Amendments up against to decide if they comply with code. It also gives the PZC, Planning, and potentially courts criteria to decide if a text amendment is lawful.
 - ii) As drafted, the inserted phrase “before taking action to approve” is superfluous.
- d) **Comments on newly added subsection AMC 21.03.210D**
- i) D.1 in sum says, “conforming amendments” are rezonings in substance because the approval criteria for rezonings apply to them, but conforming amendments are text amendments in procedure. This seems like a lot of twisting of process to avoid treating “conforming amendments” as rezonings. It would result in cleaner code to write a new section of Chapter 21.03 establishing a procedure for “conforming amendments,” than to contort the procedures for comp plan amendments and text amendments. The latter seems easier to implement, and more likely to result in clean, implementable code to the Planning Department.

- ii) A “conforming amendment” and a Title 21 text amendment should receive separate PZC recommendations and separate Assembly votes, even if consideration is concurrent, because one action could be lawful, and another could have legal problems or not satisfy substantive criteria.

7) Concerns with Section 6

- a) This Section of the AO violates two provisions of Title 21. First, “The land use review and approval procedures specified in Chapter 21.03, Review and Approval Procedures, *supplement the assembly’s procedures under Title 2.*”³ This code provision makes clear that when the Assembly undertakes land use legislation it must follow not only its typical procedures from Title 2 but also those of Chapter 21.03 of the land use code. This AO is a text amendment to Title 21, so the procedures of AMC 21.03.210 such as notice, departmental review, and PZC review must be followed for this AO. Waiving the Planning and Zoning Commission review affects public’s participation and trust.
- b) Next, it would violate the code for the Assembly to vote on AO 2024-25 without the PZC first reviewing the AO and making a recommendation to the Assembly. “Where a board or commission has authority under this title to review and comment on a land use matter, *the assembly shall not take final action* on the matter until it has received and taken notice of the review comments and recommendations of the board or commission.”⁴ The PZC has authority under Title 21 to review and make recommendations to the Assembly Title 21 text amendments such as this AO.⁵ The Assembly, therefore, is prohibited from taking final action a Title 21 Text amendment like AO 2024-45 without first receiving and taking notice of the PZC’s comments and recommendations on the text amendments.⁶

³ AMC 21.02.090B.1 (emphasis added).

⁴ AMC 21.02.090B.2 (emphasis added).

⁵ See AMC 21.02.030A.

⁶ See AMC 21.02.090B.2.