

Agenda

**Planning Commission - Title 49 Committee
City and Borough of Juneau
Nicole Grewe, Chairman**

June 12, 2015

Marine View Buidling 230 S. Franklin Street, 4th Floor Conference Room

11:30 AM

I. ROLL CALL

II. APPROVAL OF AGENDA

III. APPROVAL OF MINUTES

A. May 26, 2015 Draft Meeting Minutes, Title 49 Committee

IV. AGENDA TOPICS

A. AME2015 0008: Memorandum to Title 49 Committee regarding Transitional Housing June 9 2015

V. COMMITTEE MEMBER COMMENTS AND QUESTIONS

VI. ADJOURNMENT

TITLE 49 COMMITTEE

PLANNING COMMISSION, CITY AND BOROUGH OF JUNEAU

MAY 26, 2015 MEETING, 5:00 PM – 6:35 PM

MARINE VIEW BUILDING, 4TH FLOOR

MEETING MINUTES



Committee Members Present

Nicole Grewe (Chair)

Paul Voelckers

Michael Levine

Bill Peters

Assembly Members Present

Jesse Kiehl, District 1 Assembly Member

Loren Jones, District 1 Assembly Member

Staff Members Present

Beth McKibben, Planning Manager

Allison Eddins, Planner I

Reading of Agenda

- Motion by Voelckers to approve the agenda for May 26, 2015 meeting was seconded by Levine.
- The motion passed and the May 26th Agenda was approved.

Approval of Minutes

- Motion by Peters to approve the minutes with amendments was seconded by Levine.
- The motion passed and the May 6, 2015 minutes were approved.

Agenda Item – Childcare Facilities

- It was decided unanimously that this would be the last Title 49 meeting about child care facilities before the issue goes to the full Planning Commission.
- Following the May 6, 2015 meeting, CBJ Law Department amended slightly the definitions of *child care center* and *child care home*. Special use regulations and use specific standards related to child care will also be reviewed by Law.
- The Committee discussed at length the proposed amendments to the Table of Permissible Uses:
 - It was decided to leave *1,540 Adult; 9 to 12 people, 12 years and older* in the TPU.
 - Voelckers expressed concern about *7,300 Day Care Centers*.

7,300	Child and day care centers for children and adults	3	3	3	3	3	3	3	3	1,3	1,3	1,3	1,3			
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It was suggested by Voelckers to separate child care centers and adult care centers in the TPU. The Committee agreed unanimously and the following was recommended:

7.300	<u>Adult</u> Day Care Centers	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	3	3	3	3	3	3	3			
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7.350	<u>Child</u> care centers	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	<u>3</u>	3	3	3	3	3	3	3			
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- Levine expressed a strong preference to focus on child care centers and reserve further discussion on adult care centers until the Committee gets clarification on State licensing issues regarding adult care.
- Levine moved to adopt changes to 1.51 and 1.52 as drafted by CDD Staff. The motion was seconded by Peters. Grewe offered an amendment that would require Conditional Use Permits for child care homes in residential districts, stating the importance of public notice and public comment. The motion passed without Grewe's amendments. The Committee recommends the following:

1.500	<u>Child and</u> Day care homes															
	1.510 Child; <u>12</u> 8-or fewer under the age of 12	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
	1.520 Child; 9 to 12 children under the age of 12	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3

- The Committee then discussed use specific standards related to child care centers:
 - The CUP process for child care centers will ensure that standards like fencing, parking, lighting and vegetative buffers are reviewed for neighborhood harmony and consistency.
 - The Committee would like to encourage child care centers in churches to operate five (5) days a week. Requiring these centers to go through the CUP process would allow Staff to analyze the impact of the surrounding neighborhood.

Meeting adjourned at 6:35 pm

Next Meeting will be June 12, 2015 at 11:30 am



Community Development

City & Borough of Juneau • Community Development
155 S. Seward Street • Juneau, AK 99801
(907) 586-0715 Phone • (907) 586-4529 Fax

Date: June 9, 2015

From: Rob Palmer, Assistant City Attorney
Beth McKibben, Planning Manager

To: Title 49 Committee, Planning Commission

Re: Transitional Housing

The following proposal simplifies the Table of Permissible Uses (TPU), eliminates redundant uses, and modifies uses as a result of the Board of Adjustments decision in USE2014-0001 (transitional housing) and the Assembly's decision on appeal.

This memo is divided into two sections: existing code and staff's proposed amendments. The existing code section simply describes the current definitions and correlating categories in the TPU. The staff proposal section starts with the proposed TPU amendments, proposed definitions, and then includes a policy discussion describing the definitions and the TPU amendments.

This memorandum includes the following attachments:

- June 1, 2015 Staff Memorandum to Planning Commission regarding Transitional Housing
- October 13, 2014 Department of Corrections Letter
- August 26, 2014 Unlisted Use Notice of Decision regarding Transitional Housing
- August 14, 2014 Memorandum from CBJ Law Department
- Anchorage Municipal Code definitions (AMC 21.05.040)

I. Existing Code

Single family, TPU 1.100: *"Dwelling, single-family, means a detached dwelling which is designed for and occupied by not more than one family."*

Family, see TPU 1.100: *"Family means one or more persons living as a single housekeeping unit, as distinguished from a group occupying a group home."*

Multifamily Dwelling, TPU 1.300: *"Dwelling, multifamily, means a building designed for or occupied by three or more families."*

Halfway House, TPU 1.450 & 7.400: *“Halfway house means a single-family dwelling for not more than nine persons over the age of 12, together with not more than two persons providing supervision and other services to such persons, all of whom live together as a single housekeeping unit. Residents may be serving a sentence for a criminal act. Uses with ten or more residents shall be regulated as institutional correction facilities.”* 49.80.120 (halfway house).

Group Home, TPU 1.400: *“Group home means a residential use such as a roominghouse or dwelling for at least six but not more than nine persons of any age seeking extended healthcare, rehabilitation or recovery from any physical, mental, or emotional disability, or any combination thereof, in a family setting. Residents must not be serving a sentence for a criminal act. One to two supervisors/caregivers must live on site. Residents and supervisors/caregivers live together as a single housekeeping unit. Additional non-residential support may be provided but shall not constitute the primary method of supervision or care supplied. Similar uses with five residents or less shall be regulated as single-family residences. Uses with ten or more residents shall be regulated as institutional residential or healthcare facilities.”* 49.80.120 (Group home)

Correctional Facility, TPU 7.500: Not defined in Title 49. (Ord. 2010-22 slightly modified TPU 7.500)

Nursing Care, TPU 7.200: Not defined in Title 49. (pre-existed Ord. 2010-22).

Assisted living, TPU 7.200: Not defined in Title 49. (pre-existed Ord. 2010-22).

Sheltered care, TPU 7.200: Not defined in Title 49 (pre-existed and modified by Ord. 2010-22)

Handicapped or infirm institution, no TPU: *“Handicapped or infirm institution means an institutional facility housing and providing care or assistance but no significant medical treatment for more than nine persons who are physically or mentally handicapped or infirm.”* (Prior to 2010-22, this use was listed in TPU 7.200, nursing care...).

Handicapped or infirm home, no TPU: *“Handicapped or infirm home means a single-family dwelling providing residential area but no significant medical treatment for at least six but not more than nine persons who are physically or mentally handicapped or infirm, together with not more than two persons providing care or assistance to such persons, all living together as a single housekeeping unit.”* (Prior to 2010-22, this use was listed in TPU 1.400, group home).

Intermediate care home, no TPU: *“Intermediate care home means a group home maintained for the purpose of providing accommodations for not more than seven occupants needing medical care and supervision at a lower level than that provided in a nursing care institution, but at a higher level than that provided in a handicapped or infirm institution.”* (Prior to 2010-22, this use was listed in TPU 1.400, group home).

Intermediate care institution, no TPU: *“Intermediate care institution means a building maintained for the purpose of providing accommodations for more than seven persons needing medical care and*

supervision at a lower level than that provided in a nursing care institution, but at a higher level than that provided in a handicapped or infirm institution.” (Prior to 2010-22, this use was listed in TPU 7.200, nursing care...).

Existing CBJ 49.25.300, Table of Permissible Uses

Code	Use description	RR	D1	D3	D5	D10 SF	D10	D15	D18	LC	GC	MU	MU2	WC	WI	I
1.110	Single Family	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
1.300	Multifamily dwelling						1,3	1,3	1,3	1,3	1,3	1,3	1,3	3		
1.400	Group Homes	1	1	1	1	1	1	1	1	1	1					
1.450	Halfway Houses	3								3	3	3	3			
1.610	Rooming, boarding, bed and breakfasts, single room occupancies with shared facilities, and temporary residences. Owner or manager must live on site.	3	3	3	3	3	1,3	1,3	1,3	1,3	1,3	1	1	3 ^N		
7.200	Nursing care, assisted living, sheltered care		3	3	3	3	3	3	3	3	1,3	1,3	1,3			
7.400	Halfway Houses									3	3	3	3			
7.500	Correctional Facilities	3	3	3	3	3	3	3	3	3	3	3	3			3

II. Comprehensive Title 49 review re Transitional Housing

The following proposals amend the Table of Permissible Uses (49.25.300) and the land use definitions to make Title 49.

Stylistic note:

Words with underlining are additions to current code, i.e. Transitional Housing.

Words with strikethrough are deletions to current code, i.e. ~~Halfway House~~.

A. Amend the TPU

Staff proposes amending 49.25.300 as follows, which eliminates the inconsistent and redundant uses and inserts the transitional housing use consistent with this memo:

Code	Use description	RR	D1	D3	D5	D10 SF	D10	D15	D18	LC	GC	MU	MU2	WC	WI	I
1.110	Single Family	1	1	1	1	1	1	1	1	1	1	1	1	1	1 ^A	1 ^A
1.300	Multifamily dwelling						1,3	1,3	1,3	1,3	1,3	1,3	1,3	3		
1.400	Group Homes	1	1	1	1	1	1	1	1	1	1					
1.450	Halfway Houses	3								3	3	3	3			
1.610	Rooming, boarding, bed and breakfasts, single room occupancies with shared facilities, <u>transitional housing</u> , and temporary residences. Owner or manager must live on site.	3	3	3	3	3	1,3	1,3	1,3	1,3	1,3	1	1	3 ^N		
7.200	Nursing care, Assisted living, sheltered care		3	3	3	3	3	3	3	3	1,3	1,3	1,3			
7.400	Halfway Houses									3	3	3	3			
7.500	Correctional Facilities	3	3	3	3	3	3	3	3	3	3	3	3			3

B. Transitional Housing

1. Transitional Housing Proposed Definition

Staff proposes amending 49.80.120 to include the following:

Transitional Housing: *“transitional housing means a residential use for people released from a correctional facility or similar facility. Residents may be on probation and parole. An owner or manager must live on site.”*

2. Transitional Housing Policy Discussion

In light of the recent decision by the Assembly to uphold the Board of Adjustment Decision on the Use Not Listed case, UNL2014 0001, that determined transitional housing for people coming out of prison is of the same general character as those listed in category 1.610 of the Table of Permissible Uses, Title 49 needs to be amended to reflect that decision.

The UNL2014 0001 Notice of Decision (NOD) stated:

The Board concludes that transitional housing for people coming out of prison is of the same general character as those uses listed in category 1.610, miscellaneous rooms for rent of CBJ 49.25.300, the Table of Permissible Uses.

The transitional housing use is deemed as listed in category 1.610 of the table of permissible uses for the purpose of determining whether a Conditional Use permit should be issued to Haven House. The Board recommends that Title 49 be amended to include a definition and a specific subcategory in the Table of Permissible Uses for Transitional Housing in the D-5 zoning district with an approved Conditional Use permit.

The NOD specifically stated that the TPU should be amended for the D-5 zoning district. However, staff recommends adding “transitional housing” to 1.610, with rooming, boarding, bed and breakfast, single room occupancies with shared facilities and temporary residents.

This proposal provides for transitional housing in all zoning districts where the similar miscellaneous rooms for rent are permitted with the same permitting requirements. As described by the Board of Adjustment, transitional housing is similar to 1.610 uses and also slightly different.

- The proposed use of transitional housing for people coming out of prison does not exactly fit within any existing definitions or land use categories. Nonetheless, there are many similarities. The use is residential, in that the residents would be eating, sleeping and recreating there, and living together in a family setting. However, there will be onsite supervision, rules of conduct, ancillary services etc. Still, there may be impacts beyond those normally associated with uses permitted outright in the D-5 zoning district.
- A number of people have bedrooms and share common space.

- There is a sense of transient occupancy that is a little different from a typical living situation.
- Residents of transitional housing would not be serving a sentence and would not fall under the halfway house definition.
- Transitional housing is not a listed use but it is of the same general character as those uses listed in category 1.610.
- The characteristics of transitional housing met all the elements of the rooming and boarding house definition except the transitional care element, which would categorize transitional housing as a separate category in 1.610.

Consistent with those conclusions, staff defined transitional housing and proposed amendments to the TPU that continues the conditional use requirement like the other 1.610 uses.

C. Correctional Facility and Halfway House

1. Proposed definitions for Correctional Facility and Halfway House

Staff proposes amending 49.80.120 as follows:

Correctional Facility, TPU 7.500: “Correctional facility means a facility providing for the imprisonment or physical confinement of prisoners under guard or 24-hours physical supervision such as a prison, jail, detention center, halfway house, and similar facilities.”

Halfway House, TPU 1.450 & 7.400: ~~“Halfway house means a single family dwelling for not more than nine persons over the age of 12, together with not more than two persons providing supervision and other services to such persons, all of whom live together as a single housekeeping unit. Residents may be serving a sentence for a criminal act. Uses with ten or more residents shall be regulated as institutional correction facilities.”~~

2. Correctional Facility and Halfway House Policy Discussion

The term correctional facility is located at TPU 7.500, but it isn’t defined in Title 49. Additionally, during the deliberations of UNL 2014-0001 and expressed by the different parties, the Title 49 definition of halfway house did not accurately capture the intended use, namely people ordered to serve pretrial detention in or ordered imprisonment in a facility like Gastineau Human Services. The proposed definition of correctional facility includes those facilities owned and operated by a government agency, like Lemon Creek Correctional Center, or those facilities under a contract managed by a government agency, like Gastineau Human Services. Also, a correctional facility—including a halfway house—is not the same as transitional housing because of the following:

1. People that live in a correctional facility are in the custody of the Department of Corrections.
2. People are ordered to live in the correctional facility.

3. A person is guilty of the crime of escape if that person is absent without authority from a correctional facility.
4. You receive credit for time served when living in a correctional facility.
5. People would be in prison if they were not in a halfway house.

By defining correctional facility to include halfway house, there is no need to have a definition for halfway house, because a halfway house is just another form of a correctional facility. For clarity, a person released from a correctional facility but on probation or parole could live in many types of housing, including transitional housing.

By deleting halfway house (1.450 and 1.700) from the TPU and keeping correctional facilities as a conditional use, there are no changes to the TPU for where or how correctional facilities are approved and located.

D. Single Family and Group Home

1. Proposed definitions for Family and Group Home

Staff proposes amending 49.80.120 as follows:

Family, see TPU 1.100: *"Family means one or more persons living as a single housekeeping unit, as distinguished from a group occupying a group home."*

Group Home, TPU 1.400: *~~"Group home means a residential use such as a roominghouse or dwelling for at least six but not more than nine persons of any age seeking extended healthcare, rehabilitation or recovery from any physical, mental, or emotional disability, or any combination thereof, in a family setting. Residents must not be serving a sentence for a criminal act. One to two supervisors/caregivers must live on site. Residents and supervisors/caregivers live together as a single housekeeping unit. Additional non-residential support may be provided but shall not constitute the primary method of supervision or care supplied. Similar uses with five residents or less shall be regulated as single-family residences. Uses with ten or more residents shall be regulated as institutional residential or healthcare facilities."~~*

2. Family and Group Home Policy Discussion

The CBJ defined group homes since at least 1987, but the term is likely unnecessary in Title 49 today. From 1987 to 1993, the definition of group home included child care homes, halfway houses, handicapped and infirmed homes, intermediate care home and nursing care homes.¹ In 1993, the group home definition was amended to capture homes for persons with disabilities instead of

¹ Ord. 87-49 at 235; Ord. 93-46 at 2.

handicapped or infirm homes.² Then in 2010, the group home definition was substantially amended and it prohibited residents from “serving a sentence for a criminal act.”³

The purpose for the 2010 amendments was to alleviate restrictions that discriminated against federally protected individuals seeking group housing. As described before the Planning Commission:

The definition of *Group Homes* is proposed to be modified by removing *Halfway Houses* from the definition of *Group Homes*. Now *Halfway*

Houses for people serving a sentence for a criminal act would be regulated separately from living situations for people with disabilities in a family setting with caregivers who live on site.

People who require the services of a *Group Home* as proposed in the revised definition above are a federally protected class and may not be subject to any greater restriction than is imposed on [similarly situated uses]. Therefore, staff proposes to list *Group Homes* with the same restrictions as single-family residences. The advantage of keeping a distinct definition for *Group Homes* is that these facilities will be clearly distinguished from *Halfway Houses* and will have a defined maximum number of clients.

On line 1.400 superscript note D appears to be superfluous since the term “*Group Homes*” is more clearly addressed in the Definitions section of the Land Use Code. Therefore Note D is to be removed from the Table of Permissible Uses.⁴

According to CDD records, since the 2010 amendments, CDD has not received an application for a group home use. Additionally, because people with federally recognized disabilities cannot be treated differently than those without disabilities, the Group Home term is redundant because people with federally recognized disabilities could live in a variety of residential and institutional uses, like single family dwellings, multifamily dwellings, and nursing care facilities. For example, the Planning Commission recently reviewed a conditional use permit for a mixed use including single room occupancy of multifamily housing, USE2015-0001 (Housing First in Lemon Creek), in which all of the residents will likely have some type of federally recognized disability.⁵ Despite the likelihood of the residents being a federally protected class, the Planning Commission properly evaluated the Housing

² Ord. 93-46 at 2.

³ CBJ 49.80.120; Ord. 2010-22; Ord. 2010-22 Line Item Changes at 8.

⁴ Memo from Greg Chaney, Planning Manager, to the Assembly and Planning Commission Committee of the Whole, Re: TXT2009-00004 (April 7, 2010).

⁵ Current illegal use of a controlled substance is not impairment, but people with mental impairments and recovering alcoholics and drug addicts are a federally protected people. 42 U.S.C. 3602(h)(3); *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 803 (9th Cir. 1994) *aff'd sub nom. City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995); *United States v. S. Mgmt. Corp.*, 955 F.2d 914, 923 (4th Cir. 1992) (former drug addicts and recovering drug addicts are protected under the Fair Housing Act).

First project based on legitimate governmental interests like parking, traffic, noise, lighting, and public health/safety without treating the potential residents different than people without federally recognized disabilities. Thus, the Housing First project demonstrates that the term group home is no longer needed in Title 49 because the term is redundant as other uses more accurately regulate uses that currently fall under the group home definition.

E. Nursing Care, Assisted Living, Sheltered Care

1. Proposed definitions for Assisted Living

Staff proposes amending 49.80.120 as follows:

Assisted living, TPU 7.200: “Assisted living means a facility providing housing and institutional care for people unable to live independently or without assistance. Assisted living includes facilities that provide nursing care services that are not located in a single family dwelling.”

2. Assisted Living, Nursing Care, and Sheltered Care Policy Discussion

Staff proposes deleting the nursing care and sheltered care uses from the TPU 7.200 and defining assisted living to capture those two uses. Staff believes that as defined, assisted living captures those facilities like Wildflower Court (USE1998-0069, USE2003-0043), but assisted living would not capture a single family dwelling where members of that family received assistance and higher level care.

Although assisted living and transitional housing are similar, they are also different in that assisted living is intended for longer term care and less turnover than transitional housing. Additionally, transitional housing requires an owner or manager to live on site to provide supervision and accountability of the property (i.e. garbage), which staff at an assisted living facility would likely provide.

Assisted living is different than adult day care because assisted living is intended for long term residence where traffic is expected to be less than a day care facility.

Additionally, there could also be some ambiguity between multifamily and assisted living. However, staff believes that with a history of uses like Housing First and Wildflower Court, staff can assist an applicant and the Planning Commission find the appropriate use.

F. Handicapped, infirm, and intermediate care

Staff proposes deleting the following definitions because they are not listed in the TPU and do not need to be listed in the TPU because they fall within the proposed definition of assisted living, 7.200.

Handicapped or infirm institution, no TPU: ~~“Handicapped or infirm institution means an institutional facility housing and providing care or assistance but no significant medical treatment for more than nine persons who are physically or mentally handicapped or infirm.”~~

Handicapped or infirm home, no TPU: ~~“Handicapped or infirm home means a single family dwelling providing residential area but no significant medical treatment for at least six but not more than nine persons who are physically or mentally handicapped or infirm, together with not more than two persons providing care or assistance to such persons, all living together as a single housekeeping unit.”~~

Intermediate care home, no TPU: ~~“Intermediate care home means a group home maintained for the purpose of providing accommodations for not more than seven occupants needing medical care and supervision at a lower level than that provided in a nursing care institution, but at a higher level than that provided in a handicapped or infirm institution.”~~


Intermediate care institution, no TPU: ~~“Intermediate care institution means a building maintained for the purpose of providing accommodations for more than seven persons needing medical care and supervision at a lower level than that provided in a nursing care institution, but at a higher level than that provided in a handicapped or infirm institution.”~~



MEMORANDUM

Date: June 1, 2015

To: Planning Commission

From: Beth McKibben, AICP 
Planning Manager
Community Development Department

Re: Title 49 Amendments in regard to Transitional Housing

Summary:

Staff will be working with the Title 49 Committee and the Planning Commission to promptly present amendments to Title 49 regarding transitional housing and related uses. Staff intends to present a comprehensive amendment proposal to the Title 49 Committee on June 12. If the Title 49 Committee needs more than one meeting to make the policy recommendations, then staff intends to present the following amendments to the Assembly in an ordinance for introduction on June 29.

Discussion:

In light of the recent decision by the Assembly to uphold the Board of Adjustment Decision on the Use Not Listed case, UNL2014 0001, that determined transitional housing for people coming out of prison is of the same general character as those listed in category 1.610 of the Table of Permissible Uses, Title 49 needs to be amended to reflect that decision.

The UNL2014 0001 Notice of Decision (NOD) stated:

“The Board concludes that transitional housing for people coming out of prison is of the same general character as those uses listed in category 1.610, miscellaneous rooms for rent of CBJ 49.25.300, the Table of Permissible Uses.

The transitional housing use is deemed as listed in category 1.610 of the table of permissible uses for the purpose of determining whether a Conditional Use permit should be issued to Haven House.

The Board recommends that Title 49 be amended to include a definition and a specific subcategory in the Table of Permissible Uses for Transitional Housing in the D-5 zoning district with an approved Conditional Use permit. “

The NOD does specifically state that the TPU is to be amended for the D-5 zoning district. However, staff intends to recommend to the Assembly the following amendments, which is to add “Transitional Housing” to 1.610, with rooming, boarding, bed and breakfast, single room occupancies with shared facilities and temporary residents as shown below.

TPU:

	Use description	RR	D1	D3	D5	D10 SF	D10	D15	D18	LC	GC	MU	MU2	WC	WI	I
1.610	Rooming, boarding, bed and breakfasts, single room occupancies with shared facilities, <u>transitional housing</u> , and temporary residences. Owner or manager must live on site.	3	3	3	3	3	1,3	1,3	1,3	1,3	1,3	1	1	3 ^N		

This proposal provides for “transitional housing” in all zoning districts where the similar miscellaneous rooms for rent are permitted, with the same permitting requirements. As described by the Board of Adjustment, transitional housing is similar to 1.610 uses and also slightly different.

- The proposed use of transitional housing for people coming out of prison does not exactly fit within any existing definitions or land use categories. Nonetheless, there are many similarities. The use is residential, in that the residents would be eating, sleeping

and recreating there, and living together in a family setting. However, there will be on-site supervision, rules of conduct, ancillary services etc. Still, there may be impacts beyond those normally associated with uses permitted outright in the D-5 zoning district.

- A number of people have bedrooms and share common space.
- There is a sense of transient occupancy that is a little different from a typical living situation.
- Residents of transitional housing would not be serving a sentence and would not fall under the halfway house definition.
- Transitional housing is not a listed use but it is of the same general character as those uses listed in category 1.610.
- The characteristics of transitional housing met all the elements of the rooming and boarding house definition except the transitional care element, which would categorize transitional housing as a separate category in 1.610.

Consistent with those conclusions, the following definition has been proposed to be added to Title 49.

Definition:

Transitional Housing: “*transitional housing* means a residential use for people released from a correctional facility or similar facility. Residents may be on probation and parole. An owner or manager must live on site.”

Because the proposed amendment to the Table of Permissible Uses is a little different than what the Board decided with the Use Not Listed case, staff wanted to give the Commission an opportunity to review it in the event the Title 49 Committee needs more than one meeting to discuss a more comprehensive amendment to Title 49 related to transitional housing.

Staff intends to present a more comprehensive amendment to the Title 49 Committee on June 12 that amends the Table of Permissible Uses and 49.80.120 (definitions) regarding the following uses: transitional housing (as described above), halfway house, group home, correctional facility, handicapped or infirmed homes and institutions, and intermediate care homes and institutions.



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

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Department of Corrections
OFFICE OF THE COMMISSIONER

550 West 7th Avenue, Ste 601
Anchorage, Alaska 99501
Main: 907.269.7397
Fax: 907.269.7390

October 13, 2014

Mary Alice McKeen
Haven House
Box 20875
Juneau, Alaska 99802-0875

sent via email to ottokeen@gmail.com

Dear Ms. McKeen,

This letter is to provide clarification that Haven House is not considered a "halfway house" or community residential centers (CRC). The CRCs throughout the state are operated under contract with the Department of Corrections (DOC), rather than operated directly by the DOC.

In Juneau, Gastineau Human Services (GHS) operates as the only "halfway house" or CRC on 5597 Aisek Street. Additionally, the only correctional facility operated by the Department of Corrections is the Lemon Creek Correctional Center (LCCC). A person ordered to reside either at GHS or LCCC is serving a sentence that has been imposed by the court or the parole board. Any person who leaves a LCCC or GHS without lawful authority is guilty of the crime of escape within Alaska criminal statutes.

A person on DOC probation/parole is no longer in the care and custody of the Department of Corrections. They must receive the approval from their probation/parole officer for their residence, and are responsible for locating their own residence.

While the Department supports the development of housing for persons who are on probation or parole, and has stated its support for the missions and goals of Haven House, Haven House would not be a "halfway house" or CRC. A woman on probation or parole could choose to live at Haven House, just as she could choose to live at any other residence in Juneau. Additional information on the Department's strategies for assisting prisoners reentering society can be found at the Department of Correction's website, in particular, the Five-Year Prisoner Reentry Strategic Plan, 2011-2016 (March 2011) prepared by the Governor's Prisoner Reentry Task Force. It is located at

www.correct.state.ak.us/TskForce/documents/Five-Year%20Prisoner%20Reentry%20Plan.pdf

Sincerely,

A handwritten signature in blue ink that reads "Ronald F. Taylor".

Ronald F. Taylor

Deputy Commissioner for Reentry and Population Management



**BOARD OF ADJUSTMENT
NOTICE OF DECISION**

Date: August 26, 2014

File No.: UNL2014 0001

Haven House, Inc.
Attn.: June Degnan
PO Box 20875
Juneau, AK 99802

Application For: Use Not Listed determination for re-entry housing for women coming out of prison in the D5 zoning district per CBJ 49.20.320

Legal Description: Tall Timbers 1 Block G Lot 3

Property Address: 3202 Malissa Drive

Parcel Code No.: 5-B21-0-142-003-0

Hearing Date: August 21, 2014

The Board of Adjustment ("Board"), at its special public meeting, considered a request for a similar use determination. CBJ 49.10.210(3); 49.20.320; 49.25.300(a)(2). The Board reviewed the staff report with attachments; reviewed public comments presented prior to the hearing, and considered the public comments at the hearing.

The Board adopts the findings and analysis listed in the attached memorandum dated August 13, 2014, and approves the Similar Use Determination. The Board concludes that transitional housing for people coming out of prison is of the same general character as those uses listed in category 1.610, miscellaneous rooms for rent of CBJ 49.25.300, the Table of Permissible Uses. The transitional housing use is deemed as listed in category 1.610 of the table of permissible uses for the purpose of determining whether a Conditional Use permit should be issued to Haven House.

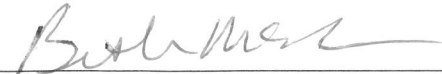
The Board recommends that Title 49 be amended to include a definition and a specific subcategory in the Table of Permissible Uses for Transitional Housing in the D-5 zoning district with an approved conditional use permit.

Attachments: August 13, 2014 memorandum from Beth McKibben Community Development, to the CBJ Planning Commission regarding UNL2014 0001.


This Notice of Decision is not appealable until the Planning Commission makes a final decision on the Conditional Use permit requested for this transitional housing use. CBJ 01.50.020(b).

Haven House, Inc.
File No.: UNL2014 0001
August 26, 2014
Page 2 of 2

Project Planner:


Beth McKibben, Planner
Community Development Department


Michael Satre, Chair
Board of Adjustment


Filed With City Clerk

Date

8/27/14

cc: Plan Review

NOTE: The Americans with Disabilities Act (ADA) is a federal civil rights law that may affect this development project. ADA regulations have access requirements above and beyond CBJ-adopted regulations. Owners and designers are responsible for compliance with ADA. Contact an ADA - trained architect or other ADA trained personnel with questions about the ADA: Department of Justice (202) 272-5434, or fax (202) 272-5447, NW Disability Business Technical Center (800) 949-4232, or fax (360) 438-3208.

21.05.040 - Community uses: Definitions and use-specific standards.

This section defines the general community use categories and specific community use types listed in Table 21.05-1. This section also contains use-specific standards that apply to specific use types. The use-specific standards apply regardless of whether the use type is permitted as a matter of right, subject to an administrative or major site plan review process, or subject to the conditional use process.

A. Adult care.

1. Definition. A non-residential facility providing assistance with activities of daily living as described in AS 47.33.990(1) for three or more adults or a combination of three or more adults and adolescents.
2. Use-specific standards for adult care facilities with three through eight persons.
 - a. These facilities are intended to be minor commercial activities, shall not detract from the principal use allowed in the district, and shall not place an undue burden on any private or public infrastructure greater than anticipated from a permitted development.
 - b. In all residential districts these facilities shall be located only in a single family detached structure, excluding detached condominium units. These facilities shall be prohibited if the only direct street access is from a private street.
 - c. These standards shall not apply to any use continuing as a lawful conditional use on April 18, 2006.
3. Use-specific standards for adult care facilities with nine or more persons (also apply to "large assisted living facilities" and "nursing facility").
 - 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.
- 4. Additional standards for conditional uses (also apply to "nursing facility" and "large assisted living facility").
 - 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 21.03.080 C.
 - 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.

B. Child care.

1. Child care center.

- a. Definition. Child care center has the same meaning as set forth in AMC Chapter 16.55 for child care and educational center, and may care for nine or more children. Operation of a child care center is not a home occupation pursuant to subsection 21.05.070 D.11. This use includes pre-schools that are not associated or co-located with an elementary, middle, or high school.
- b. Use-specific standards.
 - i. Access. The site shall have direct access from a street constructed to municipal standards.
 - ii. Usable outdoor space. Usable outdoor space shall be provided pursuant to AMC Section 16.55.450. Exempt child care centers, as per Chapter 16.55, are not required to meet the usable outdoor space requirement.
 - iii. Vegetated open space in residential districts. In residential zoning districts where a child care center requires conditional use approval, a minimum of 25 percent of the lot shall remain as planted open area, landscaped area, or natural vegetation area, to exclude buildings, driveways, parking lots, sidewalks, etc., unless the planning and zoning commission determines that retention of less than 25 percent allows for sufficient buffering of adjacent uses. In all other residential zoning districts where a child care center is allowed, a minimum of 15 percent of the lot area shall remain as required above, unless the decision-making body determines that retention of less than 15 percent allows for sufficient buffering of adjacent uses.
 - iv. Parking and setbacks. In residential zoning districts, no parking or loading areas shall be placed in any setback, except in approved driveways.
 - v. Adjacent residential. L1 visual enhancement landscaping shall be provided along each lot line that abuts a lot within a residential district. A child care center in a nonresidential district, that is adjacent to a residential use or district, shall provide L2 buffer landscaping along the adjacent lot line. If the child care center is on a site where it is not a primary use, the director may determine that an alternative landscaping or fencing plan allows for sufficient buffering of adjacent uses, or that landscaping is unnecessary because the lot size is sufficiently large in relation to the use and that it will not create a high impact at the lot perimeter abutting the residential district.
 - vi. Snow storage. In residential districts, snow storage areas equal to at least 15 percent of the total area of the site used for parking, 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 flat or concave ground surface with positive drainage away from structures and pavements. Snow storage is not allowed in front setbacks except in association with single-family or two-family structures. Snow storage is allowed in 50 percent of 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.

- vii. Continuing conditional uses. This section shall not apply to any use continuing as a lawful conditional use on February 28, 2006.
 - c. Additional standards for conditional uses.
 - i. Use-specific standards apply. These uses shall meet the use-specific standards above in addition to any requirements imposed by a conditional use approval.
 - ii. Additional standards. Additional restrictions as to the size of the use, hours of operation, or other restrictions necessary to ensure compatibility with the neighborhood and minimize offside impacts, may be imposed by the planning and zoning commission.
- 2. Child care home.
 - a. Definition. Child care home has the same meaning as set forth in AMC Chapter 16.55 and may care for up to eight children. Operation of a child care home is not a home occupation pursuant to subsection 21.05.070 D.11. This use includes pre-schools that are not associated or co-located with an elementary, middle, or high-school.
 - b. Use-specific standards.
 - i. Minor commercial activity. Licensed child care homes are intended to be minor commercial activities, shall not detract from the principal use allowed in the district, and shall not place an undue burden on any private or public infrastructure greater than anticipated from a permitted development.
 - ii. Usable outdoor space. Licensed child care homes shall provide usable outdoor space as required by Section 16.55.450.
 - iii. Continuing conditional uses. This section shall not apply to any use continuing as a lawful conditional use on February 28, 2006.
- C. Community service. This category includes uses of a public, non-profit, or charitable nature providing a local service to people of the community. Generally, such uses provide the service on-site or have employees at the site on a regular basis. The service is ongoing, not just for special events. The use may provide special counseling, education, or training. Accessory uses may include offices, meeting, food preparation, parking, therapy areas, and athletic facilities. Specific use types include:
 - 1. Cemetery or mausoleum.
 - a. Definition. A graveyard, burial ground, mausoleum, or other place of interment, entombment, or sepulture of one or more human bodies or remains. Crematoria are not permitted unless specifically allowed under this title as a separate principal use.
 - b. Use-specific standards.
 - i. Burial of human remains in other areas prohibited. Human remains, other than cremated remains, may not be buried, entombed, or interred, above or below ground, except in an approved cemetery.
 - ii. Platting of burial plots. Burial plots shall be platted in accordance with subsection 21.03.200 D., abbreviated plat procedure.
 - iii. Density of burial plots. Notwithstanding the minimum lot area for any zoning district, there shall be no more than 1,500 burial plots per gross acre.
 - iv. Interment below groundwater table prohibited. No burial plots shall be established where interment would occur below the groundwater table.

- v. Traffic access. A cemetery or mausoleum shall have direct access to a street designated as a collector or greater capacity.
 - vi. Dimensional standards. Notwithstanding the general dimensional standards in chapter 21.06, the following standards shall apply to all cemeteries and mausoleums.
 - (A) Minimum site area. Five acres.
 - (B) Minimum setbacks.
 - (1) Front setback: 10 feet.
 - (2) Side setback: 10 feet.
 - (3) Rear setback: 10 feet.
 - (C) Maximum height of structures. 35 feet.
 - vii. Setbacks. Graves and burial plots shall not be allowed within setback areas.
 - viii. Parking, driveways, and streets. Parking shall be provided according to Section 21.07.090, Off-Street Parking and Loading, except that the traffic engineer may authorize a pavement surface of gravel for drives and streets that provide direct access to graves and burial plots. Internal driveways and streets providing direct access to a public right-of-way or connecting to principal structures shall be paved with asphalt or concrete.
2. Community center.
- a. Definition. A facility that is intended primarily to serve the meeting, cultural, social services, administrative, athletic, or entertainment needs of the community as a whole, operated by the government or as a non-profit facility, and generally open to the public.
 - b. Use-specific standards (also apply to "religious assembly").
 - i. Applicability. The standards of this subsection shall apply to all community centers and religious assemblies within a residential zoning district.
 - ii. Minimum lot area and width. Notwithstanding any smaller minimum lot area required by Tables 21.06-1 and 21.06-2, community centers and religious assemblies subject to this subsection shall have a minimum lot area of 14,000 square feet and a minimum lot width of 100 feet.
 - iii. Traffic access. Community centers and religious assemblies shall have at least one property line of the site that is at least 50 feet in length, and it shall abut a street designated as a collector or greater on the Official Streets and Highways Plan. All ingress and egress traffic shall be directly onto such street.
 - iv. Buffering standards. L2 buffer landscaping is required along all property lines where the community center or religious assembly site abuts a residential use in a residential zone.
 - v. Vegetated open space. In residential and PLI zoning districts a minimum of 25 percent of the lot area shall remain as 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 25 percent allows for sufficient buffering of adjacent uses.
 - vi. Parking and setbacks. In residential zoning districts, no parking or loading areas shall be placed in any setback, except in approved driveways.
3. Crematorium.

- a. Definition. A furnace or establishment for the cremation of corpses, human and animal. A crematorium is never an accessory use.
 - b. Use-specific standards.
 - i. All facilities shall be maintained within a completely enclosed building, and shall be sufficiently insulated so that, to the maximum extent feasible, no noise or odor can be detected off-premises.
 - ii. Crematoria shall be located at least 200 feet from any residential use or zoning district.
4. Governmental administration and civic facility.
 - a. Definition. An office of a governmental agency or foreign government that provides administrative and/or direct services to the public, such as, but not limited to, employment offices, public assistance offices, or motor vehicle licensing and registration services.
 - b. Use-specific standards.
 - i. Unless otherwise indicated in Table 21.05-1, Table 21.09.050-1, and Table 21.10-4, government administration and civic facilities or additions to existing government administration and civic facilities shall have the following review process:
 - (A) Construction of less than 7,000 square feet is permitted.
 - (B) Construction of 7,000 to 25,000 square feet is subject to an administrative site plan review.
 - (C) Construction over 25,000 square feet is subject to a major site plan review.
 - (D) Lease of existing space is permitted.
 - ii. The priority location for major federal, state, and municipal administrative offices and civic facilities is in the central business district. Satellite government offices and civic functions are intended to be located in other regional centers, mixed-use centers, or town centers designated in the comprehensive plan. When a government administrative and civic facility use is proposed at another location, approval is contingent on a finding by the planning and zoning commission, using the approval criteria of a public facility site selection process (21.03.140), that locating the major use in the central business district or a satellite use in a designated center would not be feasible, would not be compatible with the urban center, or would not serve the public interest.
5. Homeless and transient shelter.
 - a. Definition. A facility designed to provide minimum necessities of life, including overnight accommodation, on a limited, short-term basis for individuals and families during periods of dislocation or emergency pending formulation of longer-term planning. Facility elements may include providing the physical care required, including shelter, food, and necessary medical and clothing needs, directly or by referral to appropriate agency; and planning for more permanent housing and employment, including contact with community resources.
6. Neighborhood recreation center.
 - a. Definition. A facility providing recreation/pool facilities and/or meeting rooms, and typically oriented to the recreational needs of the residents of a particular subdivision or housing project.
7. Religious assembly.

- a. Definition. A building or structure, or group of buildings or structures, intended primarily for the conducting of organized religious services. Accessory uses may include, but are not limited to, parsonages, meeting rooms, child care provided for persons while they are attending religious functions, broadcast ministries, bookstores, vehicle service and repair facilities (for bus ministries and staff vehicles), lawn and garden sheds, warehouse and storage buildings, community service centers, gymnasiums, food distribution ministries. Schools associated with religious assemblies are not an accessory use.
 - b. Use-specific standards.
 - i. Standards. Religious assembly uses shall comply with the use-specific standards set forth above under "community center."
 - ii. Columbaria. Columbaria, which are structures having recesses in the walls to receive urns containing ashes of the dead, or columbarium walls, are permitted accessory uses with religious assemblies.
 - iii. Maximum height. Except for those elements excepted in subsection 21.06.030 D.6., a religious assembly may not exceed the height permitted in the zoning district in which it is located. However, in districts where the maximum height is less than 40 feet, the maximum height for a religious assembly may increase to 40 feet, so long as the building is setback from any point on the property line at least twice the maximum actual height.
 - iv. Religious assembly in industrial districts. Religious assembly uses in the I-1 and I-2 districts shall have a maximum gross floor area of 20,000 square feet.
- 8. Social service facility.
 - a. Definition. A facility operated by a government or a non-profit social service agency which provides services or undertakes activities to advance the welfare of citizens in need, such as food or clothing distribution, job or life skills counseling or training, and the like. This use does not include retail facilities, medical care, behavioral health counseling, or overnight accommodations. This use may include supporting offices, but stand-alone offices of a social service agency are not considered a social service facility.
 - b. Use-specific standards.
 - i. In the R-3, R-4, and B-1A districts, social service facilities shall not exceed 3,000 square feet of gross floor area.
 - ii. L2 buffer landscaping shall be provided along lot lines adjacent to a residential use or district.
 - iii. When allowed by conditional use approval, the applicant shall submit along with their conditional use application, a copy of the state licensing application, a description of the program including the services offered, and the professional certification or licenses required to operate.
- D. Cultural facility. This category includes public or nonprofit facilities open to the public that display or preserve objects of interest or provide facilities for one or more of the arts or sciences or provision of government services. Accessory uses may include parking, offices, storage areas, and gift shops. Specific use types include:
 - 1. Aquarium.
 - a. Definition. An establishment where collections of living aquatic organisms are kept and exhibited.
 - 2. Botanical gardens.

- a. Definition. A facility for the demonstration and observation of the cultivation of flowers, fruits, vegetables, native, and/or ornamental plants.
3. Library.
 - a. Definition. A facility for the use of literary, musical, artistic, and/or reference materials.
4. Museum or cultural center.
 - a. Definition. A building or place serving as a repository for a collection of natural, scientific, cultural, historic, or literary curiosities or objects of interest, or works of art, or sites and buildings, and arranged, intended, and designed to be used by members of the public for viewing, and which may include demonstrations and teaching. This use includes planetariums.
5. Zoo.
 - a. Definition. An area, building, or structures that contain wild animals on exhibition for viewing by the public.
- E. Educational facility. This category includes any public and private school at the elementary, middle, junior high, or high school level. This category also includes colleges and other institutions of higher learning that offer courses of general or specialized study leading to a degree. This category also includes vocational or trade schools. Accessory uses at schools may include play areas, meeting areas, cafeterias, recreational and sport facilities, auditoriums, parking, and before- or after-school day care. Accessory uses at colleges may include offices, food service, laboratories, health and sports facilities, theaters, meeting areas, parking, maintenance facilities, and ancillary supporting commercial activities. Specific use types include:
 1. Boarding school.
 - a. Definition. A school where students are provided with on-site meals and lodging.
 - b. Use-specific standard. Boarding schools shall comply with the use-specific standards set forth below for "elementary school." Any associated dormitories shall comply with the use-specific standards for "dormitory" in Section 21.05.070, Accessory Uses and Structures.
 2. College or university.
 - a. Definition. A degree-granting institution, other than a vocational or trade school, that provides education beyond the high school level. The use includes, but is not limited to, classroom buildings, offices, laboratories, lecture halls, athletic facilities, and dormitories. Colleges tend to be in campus-like settings or on multiple blocks.
 - b. Use-specific standard. In accordance with Section 21.03.110, colleges or universities with an approved institutional master plan are exempt from the review and approval procedures required by Table 21.05-1 for projects developed under the auspices of the approved institutional master plan.
 3. Elementary or middle school.
 - a. Definition. A public, private, parochial, or charter school offering academic instruction during the majority of the days of the week for at least two consecutive hours, for students typically between the kindergarten and eighth grade levels, but not higher than the ninth grade. This classification includes the terms "junior high school" and "intermediate school." Pre-schools that are associated and co-located with elementary, middle, or high schools are considered to be part of the elementary, middle, or high school. Pre-schools without such association and co-location are categorized in this title as "child care facility."
 - b. Use-specific standards (also apply to "boarding school" and "high school").

- i. Purpose. The standards of this subsection are intended to ensure the compatibility of schools with surrounding neighborhoods and to minimize the impacts of school uses on adjacent properties.
- ii. Approval process. Schools with fewer than ten students are permitted by-right in accordance with Table 21.05-1, Table 21.09.050-1, and Table 21.10-4. Schools with ten or more students are permitted by major site plan review in accordance with Table 21.05-1.
- iii. Site size. Except where established site size criteria are approved by local or state governmental authority, minimum lot size in residential districts for schools with capacity of 100 or more students shall be one acre per 100 students.
- iv. Setbacks.
 - (A) In residential districts, setbacks for schools with capacity for 25 or more students shall be as follows:
 - (1) The front setback of the underlying district shall apply.
 - (2) Any structure or portion of structure equal to or less than 15 feet high and equal to or less than 50 feet in length shall be set back at least 15 feet from any side or rear lot line. Any portion of such structure longer than 50 feet in length shall be set back at least 20 feet from any side or rear lot line.
 - (3) Any structure or portion of structure that is greater than 15 feet in height shall be set back at least 25 feet from any side or rear lot line.
 - (B) In nonresidential districts, the setbacks of the underlying district shall apply.
- v. Outdoor play space for elementary and middle schools.
 - (A) Elementary and middle schools with capacity for 50 or more students, where students remain for more than four consecutive hours, shall provide two square feet of outdoor open space play area for every one square foot of total combined classroom space.
 - (B) The minimum dimension of any required outdoor open space play area is 20 feet.
 - (C) If the school is in close proximity to a park with usable open space, the park may count as the required outdoor open space play area. The decision-making body shall determine whether the nearby park is appropriate in terms of play space and access, using the following conditions as a guide:
 - (1) The park is between an eighth and a quarter mile from the school.
 - (2) The school and park are not separated by a street of arterial classification or greater on the Official Streets and Highways Plan, except that in the Downtown area (as defined by the Anchorage Downtown Comprehensive Plan - 2007) but excluding the area north of 2nd Avenue, the school and park may be separated by a street classified as an arterial if a signalized pedestrian crosswalk and adult crossing guard supervision are provided.
 - (D) The decision-making authority may reduce or waive the outdoor play space requirement if the applicant provides sufficient rationale.
- vi. Vehicle and pedestrian access.
 - (A) In all residential districts, all middle and high schools, and schools without an Anchorage school district attendance boundary shall have at least 100

feet of frontage on a collector or greater classification street, if such schools have capacity of 100 or more students.

- (B) In all districts, all schools with capacity for 100 or more students shall provide a passenger loading zone in accordance with subsection 21.07.090 I.
- (C) Paved pedestrian walkways and trails, exclusive of driveways, shall be provided between the principal buildings and each abutting public right-of-way or trail.
- vii. Temporary structures for school expansion space (relocatables). Temporary structures serving as expansion space for schools are allowed in all districts in which schools are allowed, subject to the following standards:
 - (A) Temporary structures shall not be placed in traffic circulation routes, in required parking, or in required landscaping areas.
 - (B) The temporary structures are exempt from the general requirements for all temporary uses contained in Section 21.05.080, Temporary Uses and Structures.

The decision-making body may grant relief from these standards on a case-by-case basis.

- viii. Landscaping. L1 visual enhancement landscaping is required along all property lines where the school site abuts a residential use in a residential zone.

4. High school.

- a. Definition. A public, private, parochial, or charter school offering academic instruction during the majority of the days of the week for at least two consecutive hours, for students typically in the ninth through twelfth grades, but may include lower grades.
- b. Use-specific standards. High schools shall comply with the applicable use-specific standards set forth for "elementary or middle school" above.

5. Instructional services.

- a. Definition. A specialized instructional establishment that provides on-site training of business, artistic, or commercial skills. Examples include, but are not limited to, driving schools for personal vehicles, fine arts schools, dance, music, and computer instructional services. This use does not include establishments that teach skills that prepare students for jobs in a trade (e.g., carpentry), which are classified under "vocational or trade schools."
- b. Use-specific standard. A conditional use approval is required for instructional services in the I-1 district that are proposed to occupy more than 20,000 square feet of gross floor area.

6. Vocational or trade school.

- a. Definition. A secondary or higher education facility teaching skills that prepare students for jobs in a trade to be pursued as an occupation, such as carpentry, welding, heavy equipment operation, piloting boats or aircraft, repair and service of appliances, motor vehicles, boats, aircraft, light or heavy equipment, and computer repair. Incidental instructional services in conjunction with another primary use shall not be considered a vocational or trade school.
- b. Use-specific standard. This use excludes establishments providing training in an activity that is not otherwise permitted in the zoning district.

F. Health care facility. This category includes uses that provide medical or surgical care to patients. Accessory uses may include offices, laboratories, teaching facilities, meeting areas, cafeterias, parking, maintenance facilities, and housing for staff or trainees. Specific uses types include:

1. Health services.

- a. Definition. Establishments primarily engaged in furnishing, on an outpatient basis, chiropractic, dental, medical, surgical, or other services to individuals, including the offices of chiropractors, physicians, dentists, and other licensed medical practitioners, medical and dental laboratories, outpatient care and outpatient care facilities, pharmacies, home health care agencies, and blood banks.
- b. Use-specific standard. Applicable health service establishments shall comply with the medical facility accessible parking requirements; see subsection 21.07.090 J.4.

2. Hospital/health care facility.

- a. Definition. A facility or institution, whether public or private, principally engaged in providing inpatient services for medical, surgical, or psychiatric care, and the treatment and housing of persons under the care of doctors and nurses. Examples include general or specialty hospitals, but exclude habilitative care facilities, assisted living facilities, and nursing facilities. Training, rehabilitation services, and health services may be permitted as accessory uses, if integral to the facility's function. Other accessory uses may include pharmacies and central services facilities, such as kitchens and laboratories which serve the health care facility.
- b. Use-specific standards.
 - i. Minimum lot size. Unless otherwise authorized by the planning and zoning commission, the minimum lot size for a hospital/health care facility shall be as follows:
 - (A) Six to ten beds: 21,780 square feet.
 - (B) Eleven to 20 beds: 43,560 square feet.
 - (C) Every ten beds (or fraction thereof) over 20 beds: 21,780 square feet.
 - ii. Vegetated open space. A minimum of 15 percent of the lot shall remain as a planted open area, landscaped area, natural vegetation area, or usable yard, to exclude buildings, driveways, parking lots, sidewalks, etc., unless the decision-making body determines that retention of less than 15 percent of the lot as open area, etc., allows for sufficient buffering of adjacent uses.
 - iii. Landscaping buffer. L2 buffer landscaping shall be provided along all lot lines adjacent to a residential use or district.
 - iv. Institutional master plan. In accordance with Section 21.03.110, hospitals with an approved institutional master plan are exempt from the review and approval procedures required by Table 21.05-1, Table 21.09.050-1, or Table 21.10-4, for projects developed under the auspices of the approved institutional master plan.
 - v. Accessible parking. Hospital/health care facilities shall comply with the medical facility accessible parking requirements of subsection 21.07.090 J.4.

3. Nursing facility.

- a. Definition. A facility providing housing and nursing care for aged or chronically or incurably ill persons who are unable to function independently or with only limited assistance.
- b. Use-specific standards.

- i. Nursing facilities allowed by right or by site plan review shall comply with the use-specific standards set forth for "adult care facilities with nine or more persons" above. Facilities allowed by conditional use shall comply with the additional standards for conditional uses set forth in "adult care facilities" above.
 - ii. Nursing facilities shall be subject to the multi-family building development and design standards in subsection 21.07.110 C.
 - iii. Nursing facilities shall comply with the medical facility accessible parking requirements of subsection 21.07.090 J.4.
- G. Parks and open areas. This category includes uses of land focusing on natural areas, large areas consisting mostly of vegetative landscaping or outdoor recreation, community gardens, or public squares. Such lands tend to have few structures. Accessory uses may include clubhouses, playgrounds, maintenance facilities, concessions, caretaker's quarters, and parking. Specific use types include:
 - 1. Community garden.
 - a. Definition. A private or public facility for the cultivation of fruits, flowers, vegetables, or ornamental plants by more than one individual or family, for personal use and not for commercial gain.
 - 2. Park, public or private.
 - a. Definition. An area that is predominately open space, reserved for and designed to be used principally for active and/or passive recreation, and/or to serve ecological and aesthetic functions; any area designated as park by the assembly.
 - b. Use-specific standards in the Anchorage Bowl.
 - i. Any master plan created for a municipal park shall be reviewed and approved as follows:
 - (A) For all park master plan proposals, the parks and recreation commission shall hold a public meeting, which shall include the opportunity for oral public comment.
 - (B) Master plans for parks classified by the Anchorage Bowl Park, Natural Resource, and Recreation Facility Plan as community use area, special use area, or natural resource use area (over 30 acres) shall be approved by the planning and zoning commission.
 - (C) Master plans for parks classified by the Anchorage Bowl Park, Natural Resource, and Recreation Facility Plan as neighborhood use area or natural resource use area (30 acres or fewer) shall be approved administratively by the director.
 - ii. All development projects in municipal parks require a site plan review, as follows:
 - (A) For all development projects in municipal parks, the parks and recreation commission shall hold a public meeting, which shall include the opportunity for oral public comments.
 - (B) Any minor discrepancies with an approved park master plan shall be described and justified. Significant discrepancies, as determined by the parks and recreation commission, require a change in the master plan.
 - (C) All development projects costing more than \$500,000.00 or disturbing more than one acre of land and in parks classified by the Anchorage Bowl Park, Natural Resource, and Recreation Facility Plan as community use area, special use area, or natural resource use area (over 30 acres) shall be approved by major site plan review in accordance with 21.03.180 D. For the

purposes of this subsection, vegetation removal for public safety, natural resource protection and enhancement (such as invasive species removal and reforestation), ecosystem health, and general routine maintenance is not considered land disturbance.

- (D) All development projects costing \$500,000.00 or less and disturbing one acre or less of land, and all development projects in parks classified by the Anchorage Bowl Park, Natural Resource, and Recreation Facility Plan as neighborhood use area or natural resource use area (30 acres or fewer) shall be approved by administrative site plan review in accordance with 21.03.180 C. Trails that are reviewed under Section 21.03.190, Street and Trail Review, are exempt from this administrative site plan review. For the purposes of this subsection, vegetation removal for public safety, natural resource protection and enhancement (such as invasive species removal and reforestation), ecosystem health, and general routine maintenance is not considered land disturbance.
- (E) The decision-making body shall determine whether standards of this title relating to paving of parking lots and lighting of parking lots shall be applied to a development project, considering the location and surrounding area of the project, and the anticipated level of use. If determined by the decision-making body, the paving and lighting standards for parking lots may be reduced or waived.

c. Use-specific standards in turnagain arm.

- i. All master plans, and any development projects costing more than \$500,000.00 in municipal parks identified in the Anchorage Park, Greenbelt and Recreation Facility Plan Volume 3: "Turnagain Arm" shall be approved by major site plan review in accordance with 21.03.180 D.
- ii. All development projects costing \$500,000.00 or less in municipal parks identified in the Anchorage Park, Greenbelt and Recreation Facility Plan Volume 3: "Turnagain Arm" shall be approved by administrative site plan review in accordance with subsection 21.03.180 C.
- iii. The decision-making body shall determine whether standards of this title relating to paving of parking lots and lighting of parking lots shall be applied to a development project, considering the location and surrounding area of the project, and the anticipated level of use. If determined by the decision-making body, the paving and lighting standards for parking lots may be reduced or waived.

d. Director's discretion. Notwithstanding the various requirements above, the director shall require a park master plan or development project that would normally be approved administratively, to be approved by the appropriate commission if, in his or her judgment:

- i. The plan or project is likely to generate significant public interest;
- ii. The project is a significant deviation from an approved master plan;
- iii. The project will have a significant impact on neighboring uses; or
- iv. The plan or project significantly increases the intensity of development of the park.

H. Public safety facility. This category includes buildings, storage areas, and other facilities for the public safety operations of local, state, or federal government. Accessory uses may include maintenance, storage, fueling facilities, satellite offices, holding cells, and parking lots. Specific use types include:

1. Community or police substation.
 - a. Definition. A subsidiary community services or police station providing public services primarily intended for the immediate geographic area in which the station is located.
 - b. Use-specific standard. In residential districts, community or police substations shall be no larger than 3,500 square feet in gross floor area, and shall be architecturally compatible with the surrounding residential neighborhood in terms of building and roofing design and materials and lot placement.
2. Correctional institution.
 - a. Definition. A facility, other than a correctional community residential center, providing for the imprisonment or physical confinement of prisoners under guard or 24-hour physical supervision, such as prisons, prison farms, jails, reformatories, penitentiaries, houses of detention, detention centers, honor camps, and similar facilities.
 - b. Use-specific standards.
 - i. Traffic access. A site more than one-half acre in size shall provide for direct access from a street of collector or greater capacity.
 - ii. Screening or buffering. The planning and zoning commission may require fencing and landscaping.
3. Fire station.
 - a. Definition. A station housing fire and rescue personnel including indoor and outdoor space for administrative offices, storage of equipment, and associated vehicles and servicing facilities.
4. Public safety facility.
 - a. Definition. A facility operated by a government agency for the purpose of providing public safety and emergency services, training for public safety and emergency personnel, and related administrative and support services. Examples include, but are not limited to, a police station, an emergency operations center, or a fire or police training center.
- I. Transportation facility. This category includes facilities that receive and discharge passengers and freight. Accessory uses may include freight handling areas, concessions, offices, parking and maintenance, and fueling facilities. Specific use types include:
 1. Airport.
 - a. Definition. A publicly owned area of land or water that is used or intended for use for the landing and take-off of aircraft, and includes its buildings and facilities, if any.
 2. Airstrip, private.
 - a. Definition. Privately owned land or water maintained as a runway for fixed-wing aircraft.
 - b. Use-specific standards.
 - i. Private airstrips are allowed conditionally in residential districts only if approach and noise buffer areas are provided.
 - ii. Applications for private airstrips shall be accompanied by a determination letter from the Federal Aviation Administration.
 3. Heliport.

- a. Definition. An area designed to be used for the landing or takeoff of helicopters, which may include all necessary passenger and cargo facilities, fueling, and emergency service facilities.
 - b. Use-specific standards.
 - i. Heliports are not accessory uses unless they are accessory to an airport. A heliport associated with a principal use other than an airport shall be considered an additional principal use on the property and shall meet these use-specific standards.
 - ii. Applications for heliports shall be accompanied by a determination letter from the Federal Aviation Administration (FAA).
 - iii. In addition to the conditional use approval criteria at subsection 21.03.080 D., the planning and zoning commission shall consider the following issues when reviewing a conditional use application for a heliport, in order to minimize impacts of a heliport on nearby uses:
 - (A) Proximity to residential zoning districts, schools, and parks.
 - (B) Arrival and departure, as established by the FAA.
 - (C) Hours of operation and projected number of takeoffs and landings.
- 4. Rail yard.
 - a. Definition. Lands reserved for typical railroad activities including, but not limited to, repair, maintenance, and servicing of rolling stock and railroad support equipment; fueling; inventory of equipment, tools, parts, and supplies in support of railroad activities; loading/unloading and transfer of freight; switching and classifying rail cars in support of train operations and intermodal activities; storage of rail cars and equipment supporting railroad activities; and crew operations, training, and other administrative support functions in support of railroad activities.
- 5. Railroad freight terminal.
 - a. Definition. A rail facility for the loading and unloading of goods, merchandise, substances, materials, and commodities.
- 6. Railroad passenger terminal.
 - a. Definition. A railroad facility for the boarding of passengers, but not including freight terminal operations. Accessory uses may include ticketing sales and offices, restaurants, and stores.
- 7. Transit center.
 - a. Definition. Any premises, located at the confluence of multiple established routes (of the same or different types of transit), for the loading and unloading of passengers on public transit. Accessory uses may include ticket purchase facilities, food and beverage kiosks, and convenience stores.
- J. Utility facility. This category includes major utilities, which are infrastructure services providing regional or community-wide service, and minor utilities, which are infrastructure services that need to be located in or near the neighborhood where the service is provided. Services may be publicly or privately provided. Accessory uses may include parking and control, monitoring, or data transmission equipment. Specific uses types include:
 - 1. Tower, high voltage transmission.
 - a. Definition. A structure used to support transmission conductors transmitting electric power over relatively long distances, usually from the central generating station to main substations, or from one substation to another for load sharing or system

reliability. High voltage transmission towers are designed to be capable of supporting transmission lines carrying in excess of 138 kilovolts.

b. Use-specific standards.

- i. Approval process. If the average tower height is 70 or less above ground level, the high voltage transmission tower is a permitted use. If the average tower height exceeds 70 feet, the high voltage transmission tower requires a conditional use approval, except as follows:
 - (A) Towers exceeding the maximum average height of 70 feet may be replaced with a like tower, or a shorter tower, without the requirement for a conditional use.
 - (B) When a road project or other public works project causes a utility to modify its existing facilities to accommodate the design of the public works project, a maximum of four towers supporting an existing transmission line may be replaced with towers exceeding the maximum average height of 70 feet without the requirement for a conditional use.
- ii. Location. The location of new transmission towers shall be in compliance with, and within existing or proposed transmission alignments or corridors identified in the latest version of the Utility Corridor Plan. Deviations from the Utility Corridor Plan shall require amendment to the plan before installation of any tower.
- iii. Easement or right-of-way clearing. Clearing and/or grubbing of vegetation within the easement or right-of-way for transmission tower installation shall be limited to minimum amount to allow for the safe installation of each transmission tower.
- iv. Landscaping. All areas cleared in conjunction with the installation of a tower, except for the area within ten feet of the tower, shall be replanted with vegetation as follows:
 - (A) Cleared areas originally planted by a public or private agency as part of an approved building permit, land use permit, or public facility project landscaping plan, shall be replaced in accordance with the plan, except as modified by the tower location(s). Other landscaped areas that have been cleared shall be replaced with landscaping equivalent to that which was removed. Approval of the revised landscape plan shall be by the director, except in cases where the planning and zoning commission is the approving authority.
 - (B) Cleared areas not previously landscaped shall be landscaped in accordance with the buffer landscaping standards. The director may approve alternative landscaping to meet the intent and intensity of buffer landscaping, except in cases where the planning and zoning commission is the approving authority.
- v. Exemptions from landscaping. Exemptions for the landscaping requirements may be granted by the director, if the utility shows there is a safety concern, the property owner does not grant authorization in which landscaping can be placed by the utility, or for other engineering or related issues.
- vi. Structure design. The color of the transmission tower structures shall be as neutral to the immediate surroundings as possible. The director shall approve the utility's proposed structure color, except in cases where the planning and zoning commission is the approving authority.
- vii. Conditional use standards. When a high voltage transmission tower requires a conditional use approval, the application shall:
 - (A) Determine proposed height of the tower(s) is the minimum required to meet safety requirements, future load projections, or terrain. It is understood,

however, utilities must construct facilities in compliance with the National Electric Safety Code;

- (B) Identify the impact on any scenic view sheds and, if necessary, apply mitigation measures through changes to tower design, tower color, and landscaping at the tower location to reduce negative impacts; and
- (C) Identify the aesthetic impact and relation of scale of the tower to abutting development and, if necessary, apply mitigation measures through changes to tower design, tower color, and landscaping at the tower location to reduce negative impacts.

2. Utility facility.

- a. Definition. A service of a regional nature that normally entails the construction of new buildings or structures, and that typically has employees at the site. Examples include water works, water or sewage treatment plants, power or heating plants, or steam generating plants.

3. Utility substation.

- a. Definition. A service that is necessary to support development within the immediate vicinity, and is typically not staffed. Examples include, but are not limited to, electric transformer stations; gas regulator stations; water reservoirs; telephone exchange facilities; and water and sewage collection or pumping stations.
- b. Use-specific standard. The facility shall be designed and constructed to ensure visual and aesthetic compatibility with the surrounding neighborhood. Compatibility may be achieved either by using similar architectural design and materials as building(s) in the surrounding neighborhood, or by screening the facility with L2 buffer landscaping.

4. Wind energy conversion system (WECS), utility.

- a. Definition. Any device or assemblage which directly converts wind energy into usable thermal, mechanical, or electrical energy, including such devices as windmills and wind turbines, towers and supporting structures and such directly connected facilities as generators, alternators, inverters, batteries, and associated control equipment. A utility WECS has one or more WECS units with a rated capacity greater than 25 kW, and is intended primarily to provide distributed electric power as a public or private utility.
- b. Use-specific standards.
 - i. Additional submittal requirements. In addition to the minimum application information set forth in the Title 21 User's Guide, the following shall be provided:
 - (A) For each WECS model proposed, the make, model, an illustrative photograph or brochure, manufacturer's specifications including noise decibels data for the proposed WECS, and drawings of the support structure stamped by a structural engineer registered in the State of Alaska.
 - (B) Elevation drawing of each WECS model showing total height, turbine dimensions, tower and turbine colors, distance between ground and lowest point of any blade, and if proposed, the location of ladders, climbing pegs, and access doors.
 - (C) An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems and other wireless communication.
 - (D) An analysis of impacts on local wildlife shall be prepared, regarding impacts anticipated during construction, reconstruction, modification or operation of

WECS. Wildlife impacts to be considered shall include, at a minimum, anticipated impacts on birds.

- (E) If any habitable building is located within 1,300 feet of any proposed utility WECS unit, then the applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECS and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with habitable buildings and describe measures that shall be taken to eliminate or mitigate the problems. The applicant has the burden of proving that shadow flicker will not negatively impact neighboring uses.
 - (F) Applications shall include a visual impact analysis of the proposed WECS as installed, which may include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
 - (G) A noise analysis by a competent acoustical consultant documenting the noise levels associated with the proposed WECS. The study shall document projected noise levels at property lines. The noise analysis shall include low frequency noise.
- ii. Height. The height as measured from grade to the highest point of the fully operational system, including the turbine vane(s), shall not exceed 450 feet in the AF, WS, TR, and PLI zoning districts, or 200 feet in any other district in which a utility WECS may be approved. A utility WECS shall not interfere with Federal Aviation Administration Regulations in the vicinity of an airport. In no case shall the height exceed manufacturer's specifications.
 - iii. Blade or vane clearance. Lowest point of moving elements, such as blades or vanes, shall be at least 30 feet above grade.
 - iv. Setbacks.
 - (A) All WECS shall setback from all residential property lines at least 3.0 times the height of system, and from all nonresidential property lines a minimum of 2.0 times the height of the system.
 - (B) All systems shall be at least 325 feet from any telecommunications towers.
 - (C) The tower shall maintain a minimum separation distance equal to 1.1 times the height of system from all overhead power and telecommunication lines.
 - v. Design standards.
 - (A) Except for short-term high wind speed events such as storms, operational noise shall not exceed 50 dBH at any property line adjacent to a residential zoning district, and 60 dBH at any property line adjacent to a nonresidential zoning district.
 - (B) The rotating turbine shall not produce vibrations that are humanly perceptible beyond the property lines of the site.
 - (C) Lattice type towers and towers using guy wires are prohibited.
 - (D) All power transmission and telemetry lines from the tower to any building or other structure shall be placed underground, unless otherwise allowed by the planning and zoning commission.

- (E) No tower shall be illuminated unless required by a state or federal agency, such as the FAA.
 - (F) All structures in a project shall be finished in a single, non-reflective, matte finished, neutral color.
 - (G) No commercial or noncommercial advertisements, signs, or other messages shall be placed or painted on the tower, rotor, generator or tail vane, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner, as approved by the planning and zoning commission.
 - (H) WECS structure shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked. No climbing pegs or tower ladders shall be located closer than 12 feet to the ground level at the base of the structure. A fence with a locking portal may be required by the planning and zoning commission to enclose the entire WECS tower site.
- vi. Abandoned or unsafe wind energy conversion systems. Any system that is not operated for a continuous period of 12 months shall be considered abandoned and shall be dismantled and removed from the property at the expense of the property owner.
- K. Telecommunication facilities. Telecommunication facilities transmit signals between or among points using electromagnetic waves. The facilities may include towers, antennas, buildings, transformers, transmitters, receivers, equipment cabinets, and parking lots.
 - 1. Definitions.
 - a. Type 1 tower. A freestanding vertical support structure of cylindrical, conical, or rectangular cross section constructed of composite, wood, concrete, or metal employed primarily for the purpose of supporting an antenna array and commonly called a monopole.
 - b. Type 2 tower. A freestanding vertical support structure of open frame skeletal design employed primarily for the purpose of supporting an antenna array and commonly called a lattice tower. This tower type includes lateral arrays.
 - c. Type 3 tower. A guyed vertical support structure of open frame, skeletal design, or solid pole design employed primarily for the purpose of supporting an antenna array and commonly called a guyed tower.
 - d. Type 4 tower. A support structure, such as an existing building, steeple, spire, or utility pole that is not a type 1, 2, or 3 and is used for supporting a disguised, camouflaged, or hidden antenna array so that its principal or secondary function as an antenna and antenna support structure is imperceptible to an uneducated eye. The antennas are mounted on the support structure so that they are located and designed to minimize visual and aesthetic impacts to surrounding land uses and structures and shall, to the greatest extent practical, blend into the existing environment. This definition shall include any antenna or antenna array complying with the objective of definition whether it is mounted on tower structure or not.
 - 2. Use-specific standards.
 - a. Setbacks.
 - i. The minimum distance from any lot line to the vertical axis of the tower structure shall be as follows:
 - (A) Types 1: Equal to or greater than the setbacks of the underlying zoning district.

- (B) Type 2: Equal to or greater than the distance measured from grade to the first taper transition.
 - (C) Type 3: Equal to or greater than the distance measured from the tower structure axis to the outermost guy wire anchor. The guy wire levels and anchor radius must match manufacturer's criteria for the proposed application.
 - (D) Type 4: None.
- ii. That portion of guy wire anchor structure that is above grade shall be set back from any property line in accordance with the following:
 - (A) Guy wire with a nominal diameter of 0.25 inches or less—25 feet, provided the setback may be reduced to 0 feet if the anchor structure is enclosed within a sight obscuring fence.
 - (B) Guy wire with a nominal diameter greater than 0.25 inches but less than 0.625 inches—25 feet, provided the setback may be reduced to five feet if the anchor structure is enclosed within a sight obscuring fence.
 - (C) Guy wire with a nominal diameter equal to or greater than 0.625 inches—25 feet.
- b. Minimum separation distance from protected land uses.
 - i. The minimum separation distance between the base of the tower and any principal structure on PLI or residentially-zoned land, or any school or licensed child care center, shall be two times the allowable tower height.
 - ii. After giving due consideration to the comments of the applicant, the property owner, and the local community council, the director may reduce or eliminate the minimum separation distance set forth in the paragraph b.i. above.
- c. Tower structure height.
 - i. Height for a tower structure directly fixed to the ground shall be determined by measurement from grade to the highest point on the tower structure, including any installed antennas and lighting and supporting structures.
 - ii. Height for a tower structure not directly affixed to the ground shall be determined by measurement from the grade of the building to the highest point on the tower structure, including any installed antennas and lighting and supporting structures. At no time shall the height of a tower installed on a building as measured from grade to the highest point on the tower structure as set forth above exceed the height of the building multiplied by two or the base height, whichever is greater. Tower structures shall not exceed the height limits set forth in subsection 21.04.060C. of this title nor interfere with Federal Aviation Administration Regulations on airport approaches.
 - iii. Base height shall be as set forth below:
 - (A) Residential districts—65 feet.
 - (B) Commercial districts—130 feet.
 - (C) Industrial districts—150 feet.
 - (D) AF district—200 feet.
 - (E) All other districts—100 feet.
 - iv. Co-location shall grant an additional 15 feet above the base height for each qualifying antenna to a maximum of 30 feet of additional height. Increases in

tower structure height by operation of this paragraph shall not reclassify a tower structure from a local interest tower to a community interest tower.

- d. Residential zoning districts, RO district, and AF district.
 - i. In all residential districts and in the RO district, type 1 and 3 towers, antennas without tower structures, and type 4 tower structures and antennas are permitted as a secondary and subordinate use with a permitted nonresidential use.
 - ii. In the R-3, R-4, R-4A, R-5, and RO districts, type 1 and 3 towers, antennas without tower structures, and type 4 tower structures are also permitted as a secondary and subordinate use with a residential use of six dwelling units or more.
 - iii. In the AF district, three towers per lot are permitted. More than three towers per lot require conditional use approval.
- e. Notice of site selection and site plan review.
 - i. B-1A and watershed zoning districts.
 - (A) Prior to issuance of a building or land use permit for a type 1, 2, and 3 tower structures within B-1A and W zoning districts, property owners of residential-zoned land within 500 feet of the selected tower site and the local community council shall be notified in writing of the issuance of a building or land use permit. The effective date of the permit shall be no earlier than 30 days after the date of mailing of the notification.
 - (B) A decision to issue a building or land use permit is final unless appealed within the 30-day notice period to the planning and zoning commission. An appeal may be filed by the applicant or by a petition of at least one-third of the owners (excluding rights-of-way) of the privately owned land within 500 feet of the outer boundary of the tower site. In the event of appeal, the planning and zoning commission shall hold a public hearing at its next available meeting and apply the standards of this section. An appeal from a decision of the planning and zoning commission may be brought in accordance with subsection 21.03.050 A.
 - ii. PLI and residential districts. All type 1, 2, and 3 tower structures within a residential district, as allowed by Table 21.05-1, or PLI district shall be subject to a site plan review as set forth in this section, except when a conditional use permit is required.
 - iii. Other zoning districts. All zoning districts not referenced in subsection e.i. or e.ii. above are exempt from the notification requirements, the minimum separation distances from protected land uses, and the site plan review requirements set forth in this chapter.
- f. Co-location.
 - i. The co-location tower structure, pole, monopole or any other similar facility, must be designed to accommodate no less than the following communications equipment: 12 antennas with a flat plate wind loading of not less than four square feet per antenna; a standard mounting structure, stand off arms, platform or other similar structure that is sufficient to hold the antennas; cable ports at the base and antenna levels of the tower structure; and, sufficient room within or on the tower structure for 12 runs of 7/8" coaxial cable from the base of the tower structure to the antennas.
 - ii. Applicants for co-location shall provide proof in a form found acceptable to the municipal attorney that more than one service provider is using the co-location facility.

- iii. All community and local interest towers shall, for a reasonable compensation, be made available for use by as many other licensed carriers as can be technically co-located thereon when the use will not result in substantial injury to the owner, or in substantial detriment to the service to the customers of the owners. All licensed carriers shall cooperate with each other in co-locating additional facilities upon such towers. All licensed carriers shall exercise good faith in co-locating with other licensed carriers and in the sharing of towers, including the sharing of technical information to evaluate the feasibility of co-location.
- g. General standards.
 - i. Installation. All transmitting antennas shall be installed in a manner as set forth by the manufacturer and by the Federal Communications Commission (FCC) as meeting the current American National Standards Institute (ANSI) standard for nonionizing electromagnetic radiation (NIER).
 - ii. Tower lighting. Tower structures shall not be lighted unless the Federal Aviation Administration requires or recommends that obstruction lighting be installed. To prevent direct light reflection on other property, tower structure lighting shall be shielded to the extent permitted by the Federal Aviation Administration.
 - iii. Tower color. The tower structure and any other structure(s) directly related to the operation of any antenna mounted on the tower structure shall be neutral in color and, to the extent possible, shall be compatible with the appearance and character of the neighborhood or location unless obstruction marking is required by the Federal Aviation Administration.
 - iv. Notice and interference. An operator proposing to install or modify an antenna shall provide notice to all property owners within 500 feet of the date of activation of the new or modified antenna. Within 90 days of activation the antenna, the operator shall resolve all reported occurrences of interference.
- v. Identification placard. An identification placard shall be attached to the tower structure or the security fencing in a location clearly visible at eye level. The placard shall provide the following information:
 - (A) The name and address of the tower structure owner;
 - (B) The name and address of the tower structure manager, if different from the owner;
 - (C) The date of erection of the tower structure; and
 - (D) The owner's name and address of each antenna on the tower structure.
- h. Administrative permit required. An administrative permit shall be obtained from the director. The application shall identify the antenna(s) on the tower, the legal description of the site, its zoning and its street address, if any. This permit shall certify that, when granted, the antenna, or tower structure was in compliance with this section. This permit shall remain valid so long as that antenna or tower structure remains in continuous operation or is revoked according to this title.
- i. Administrative permit revocation.
 - i. Unless cured, an administrative tower permit shall be revoked after notice and the opportunity to cure, for any of the following:
 - (A) Construction, maintenance, and/or operation of a tower at an unauthorized location;
 - (B) Construction or operation of a tower in violation of any of the terms and conditions of this chapter or the conditions attached to the permit;

- (C) Material misrepresentation by or on behalf of an applicant or permittee in any application or written statement upon which the administrative official substantially relies in making the decision to grant, review, or amend any permit pursuant to this section and which materially changes the application of the standards of approval of the permit;
 - (D) Abandonment of a tower as set forth in this section; or
 - (E) Failure to relocate or remove facilities as required in this section.
- ii. After having a tower permit revoked, no tower shall be re-permitted for that property or by that tower owner on any property within the municipality for a period of one year except through a conditional use permit. This subsection shall apply only with respect to community and local interest tower revocations pursuant to this title after the effective date of this ordinance.
- j. Annual inventory. By January 31 of each year, each tower owner who is regulated by this section shall provide the municipality with an inventory of all additions and deletions of said provider's existing towers or approved sites for such facilities that are within the municipality or within one mile of the border thereof as of December 31 of the previous year. The first inventory from each provider shall be a comprehensive current list of their existing towers and approved sites.
- k. Time period for construction. Construction of a tower shall commence within one year from the date of the permit's approval, with opportunity for a six-month extension. If not used within one year, or within the extension period, the permit shall become null and void.
- l. Administrative site plan review.
 - i. Applicability. When an administrative site plan is required by Table 21.05-1, Table 21.09.050-1, or Table 21.10-4, this subsection shall apply. A site plan review is required of all such towers since they have aesthetic and visual impacts on their neighbors, and the public interest is best served by allowing these neighbors and the public at large a chance to comment on and provide input concerning the location and design of these towers. All such towers shall conform to the requirements of this section and to the requirements of the zoning district in which the tower is located.
 - ii. General.
 - (A) In approving a site plan, the director may impose conditions to the extent that he or she concludes are necessary to minimize any adverse effect of the proposed tower structure, including all associated structures and landscaping, on adjoining properties.
 - (B) Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.
 - iii. Submittal information. Applicants for an administrative site plan review for a tower structure shall submit the information required in the user's guide.
 - iv. Public participation process. Notwithstanding Table 21.03-1, at least 35 days before acting on a tower site plan application under this section, the director shall publish notice of the application in a newspaper of general circulation in the municipality. The notice shall state the name(s) of the applicant(s), a clear and concise description of the project, the street address, if any, and the legal description of the land subject to the application. The notice, including a map of the vicinity, shall also be provided to any officially recognized community council whose boundary encompasses the tower site and to owners of property within

500 feet of the proposed site. The applicant shall reimburse the municipality for the expense of advertising and mailing such notice. The applicant shall also post the property with a notice pursuant to subsection 21.03.020 H.5. Following notice of the site plan, the community council has 35 days from the date of the letter to respond.

- v. Approval period. The director shall take action on the site plan within 50 days of the site plan application submittal. Upon action, the applicant will mail to all addressees on the original notice list, the written action of the director. The applicant shall document their public process including a list of who was notified, with what, and when as part of their permit application process.
- vi. Factors considered in granting site plan approval for tower structures. In addition to the general standards for site plan approval at subsection 21.03.180 F., the director shall also consider the factors for conditional uses for tower structures in subsection p.iii. below.
- vii. Appeals. Notwithstanding section 21.03.050, a decision of the director under the authority set forth in this subsection is final unless appealed within 15 days to the planning and zoning commission. An appeal may be filed by the applicant or by a petition of at least one-third of the owners (excluding rights-of-way) of the privately owned land within 500 feet of the tower site. In the event of appeal, the planning and zoning commission shall hold a public hearing at its next available meeting and apply the standards of this section. An appeal from a decision of the planning and zoning commission may be brought in Superior Court.
- m. Qualification of type 4 tower structure and antenna. Each type 4 tower structure and antenna shall be qualified as meeting the design standard by the planning and zoning commission. A proponent of a type 4 tower structure and antenna design shall provide the commission with evidence in the form of construction drawings, photographs, renderings, or other data sufficient for the commission to find the design standard is satisfied. At completion of the construction of the first tower structure and antenna under a newly qualified design, it shall be reviewed by the commission to confirm the installation complies with the design standards. If the installation fails to comply, subsequent tower structure and antenna design and installation shall be amended or redesigned as directed by the commission.
- n. Community interest and local interest towers. Community interest and local interest towers as a permitted principal use shall be subject to the following:
 - i. Parking. Off-street parking space is not required, however if it is provided, parking spaces may be shared with other principal uses on the site. The parking spaces shall be paved with concrete or asphalt compound or shall be covered with a layer of crushed rock of no more than one inch in diameter to a minimum depth of three inches. Parking space illumination shall be provided only to extent that the area is illuminated when the parking space is in use. The illumination shall be the lowest possible intensity level to provide parking space lighting for safe working conditions.
 - ii. Security. The tower structure and support structures shall be secured to prevent unauthorized access.
 - iii. Separation distance. If any community interest tower on a site exceeds 200 feet in height, the tower site shall be separated from any other principal or conditional use community interest or local interest tower site with tower(s) exceeding 200 feet in height by at least 5,280 feet (one mile).
- o. Abandonment. Any antenna or tower structure that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such antenna or tower structure shall remove the same within 180 days of receipt of notice from the

director notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower structure within said 180 days shall be grounds for the municipality to remove the tower structure or antenna at the owner's expense. If there are two or more users of a single tower structure, then this provision shall not become effective until all users cease using the tower structure.

p. Conditional use standards.

- i. General and applicability of conditional use requirement. The following provisions shall govern the issuance of conditional use permits for tower structures or antennas by the planning and zoning commission:
 - (A) If the community interest or local interest tower or antenna fails to meet the conditions of subsections 2.a. through 2.c and/or 2.e. through 2.o. above, then a conditional use permit shall be required for the construction of a tower structure or the placement of an antenna.
 - (B) Applications for conditional use permits under this section shall be subject to the conditional use procedures and general standards, except as modified in this section.
 - (C) In granting a conditional use permit, the planning and zoning commission may impose conditions to the extent the commission concludes such conditions are necessary to minimize any adverse effect of the proposed tower structure or antenna on adjoining properties.
 - (D) Any information of an engineering nature that the applicant submits, whether civil, mechanical, or electrical, shall be certified by a licensed professional engineer.
- ii. Submittal information. Applicants for conditional use for a tower structure shall submit the information required in the user's guide and a non-refundable fee to reimburse the municipality for the costs of reviewing the application.
- iii. Factors considered in granting conditional use permits for antennas and tower structures. In addition to the general standards for a conditional use in subsection 21.03.080 D., the planning and zoning commission shall consider the following factors in determining whether to issue a conditional use permit, although the commission may waive or reduce the burden on the applicant of one or more of these criteria if the commission concludes that the goals of this ordinance are better served thereby:
 - (A) Height of the proposed tower structure;
 - (B) Proximity of the tower structure to residential structures and residential district boundaries;
 - (C) Nature of uses on adjacent and nearby properties;
 - (D) Surrounding topography;
 - (E) Surrounding tree coverage and foliage;
 - (F) Design of the tower structure, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
 - (G) Proposed ingress and egress; and
 - (H) Availability of suitable existing tower structures, other structures, or alternative technologies not requiring the use of tower structures or structures.

- iv. Availability of suitable existing tower structures, other structures, or alternative technology. No new tower structure shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the planning and zoning commission that no existing tower structure, structure, or alternative technology that does not require the use of tower structures, or alternative technology can accommodate or replace the applicant's proposed antenna. An applicant shall submit any additional information requested by the planning and zoning commission related to the availability of suitable existing tower structures, other structures, or alternative technology. Evidence submitted to demonstrate that no existing tower structure, structure, or alternative technology can accommodate the applicant's proposed antenna will consist of the following:
 - (A) No existing tower structures or structures are located within the geographic area which meet applicant's engineering requirements.
 - (B) Existing tower structures or structures are not of sufficient height to meet applicant's engineering requirements.
 - (C) Existing tower structures or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - (D) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing tower structures or structures, or the antenna on the existing tower structures or structures would cause interference with the applicant's proposed antenna.
 - (E) The fees, costs, or contractual provisions required by the owner in order to share an existing tower structure or structure or to adapt an existing tower structure or structure for sharing are unreasonable. Costs exceeding new tower structure development are presumed to be unreasonable.
 - (F) The applicant demonstrates that there are other limiting factors that render existing tower structures and structures unsuitable.
 - (G) The applicant demonstrates that an alternative technology that does not require the use of tower structures or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline system, is unsuitable. Costs of alternative technology that exceed new tower structure or antenna development shall not be presumed to render the technology unsuitable.
- v. Modifications. Standards for modifications to community interest and local interest towers allowed as a conditional use are as follows:
 - (A) Repairs and maintenance to the tower structure may be performed consistent with subsection 21.12.010 F.
 - (B) The replacement, repair or addition of antennas, dishes and other transmitting or receiving devices to a tower shall not be considered a modification of final approval as set forth in subsection 21.03.080 D. and shall be considered a use contemplated within the original approved or de facto conditional use where the replacement, repair, or addition of antennas, dishes, and other transmitting or receiving devices:
 - (1) Will serve the same user or successor entity under the original conditional use;
 - (2) Will serve the same general purpose as was served under the original conditional use;
 - (3) Is consistent with the original conditional use.

- q. Amateur radio stations and receive only antennas.
 - i. Amateur radio stations are exempt from the location, tower type, and height limitations contained in this title provided:
 - (A) The antenna and tower structure are part of a federally-licensed amateur radio station; and
 - (B) In residential zoning districts there is no use of the tower structure by a third party commercial antenna operator.
 - ii. The following are exempt from this title:
 - (A) Installation and use of antenna(s) for use by a dwelling unit occupant for personal, home occupation, or utility telemetry purposes, or by an electric or gas utility on an existing power pole or cabinet to monitor or control equipment thereon; and
 - (B) Noncommercial receive only antennas.
 - iii. Notwithstanding the above, any antenna or tower structure that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such antenna or tower structure shall remove the same within 180 days of receipt of notice from the director notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower structure within said 180 days shall be grounds for the municipality to remove the tower structure or antenna at the owner's expense.
 - iv. Any antenna or tower structure erected under this subsection 2.n. shall not exceed the height limits set forth in subsection 21.04.070 C. nor interfere with Federal Aviation Administration Regulations on airport approaches.

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