DENALI BOROUGH, ALASKA
ORDINANCE NO. 06-14
VERSION J
INTRODUCED BY: Mayor Talerico

AN ORDINANCE OF THE DENALI BOROUGH REPLACING DENALI BOROUGH CODE OF ORDINANCES 9.15 TITLED ZONING.

BE IT ENACTED by the Assembly of the Denali Borough, Alaska that:

Section 1. Classification. This ordinance is of a general and permanent nature.

Section 2. DBC Chapter 9 shall be replaced as follows:

Chapter 9.15
LOCAL OPTION ZONING

Sections:

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9.15.010 Borough assembly finding.

The assembly of the Denali Borough being charged by the legislature for the provision of planning, platting and land use regulation; and whereas, the maintenance of a rural lifestyle is of utmost importance to borough residents; and whereas, the borough consist of distinct communities with differing interests, the borough assembly finds that it is in the best interest of the Denali Borough to make land use decisions as much as possible on a local or community basis.

9.15.020 Land zoned unrestricted.

All land in the borough is zoned unrestricted unless otherwise provided by ordinance. There are no prohibitions on land zoned unrestricted.

9.15.030 Purpose.

The purpose of this chapter is to provide property owners in the borough an opportunity to petition the assembly for greater restrictions on land use than otherwise provided. This chapter shall:

1) control building sites, placement of structures and land uses through:
   a) separating conflicting land uses,
   b) regulating certain uses detrimental to residential areas,
   c) setting minimum lot sizes, widths and setback standards,
   d) setting standards for the number and type of structures developed on a parcel;

2) preserve open space; and
3) provide consistency with the goals and objectives of the Denali Borough Comprehensive Plan.

9.15.040 State and federal agencies regulated.

Unless specifically exempted by law, all state and federal agencies are required to comply with this ordinance and obtain all necessary permits.

9.15.050 Initiation procedures.

A) The record owners of **<u>two-thirds</u>** [the majority] [at least three-fourths] of the parcels within a described area may petition the assembly for a greater restriction on land uses and development standards than otherwise provided. Each parcel is entitled to one vote regarding formation of a district. If there are multiple record owners of a parcel, the majority vote of the record owners will determine the parcel's vote. In the event of a tie vote regarding a parcel with multiple record owners, the vote shall be counted against formation. Failure to sign the petition constitutes a no vote.

B) Local option zoning districts may be proposed at the time of preliminary or final plat approval. Recommendations for a specific local option zoning district must be in concurrence with the current owners of the property subject to the plat. The planning commission shall make a recommendation to the assembly regarding the formation of the local option zoning district. Plats must be of 12 contiguous lots or more, separated only by a street, alley, right-of-way, or easement. If a local option zoning district is initiated under this procedure, then the requirements of Section 9.15.60, Area and Petition Requirements, are not required.

9.15.060 Area and petition requirements.

A) Except as otherwise provided, the minimum area that may be included in a local option zoning district is 12 lots. The minimum area that may be included in a local option zoning district in a mixed use (M-U) or Industrial (I) district as described in DBC 9.15. 392 and DBC 9.15. 394 is six lots. Two-thirds of the parcels within the proposed district must be of the average size prevailing within the proposed district and none shall be more than five-times of the average prevailing size within the district. However, districts with disparate parcel sizes may be formed where 100 percent of the parcels **<u>sign</u>** [vote] in favor of the district. Lots and parcels in a petition area must be contiguous or separated only by a street, alley, right-of-way, or easement. Petitioners shall coordinate with the planning department to designate appropriate districts.

B) Owners of large parcels of property, **<u>forty (40)</u>** [eighty (80)]acres or larger may petition for their own Local Option Zoning following the requirements of DBC 9.15.060.C.

C) The petition shall:
1) show opposite each signature, an adequate legal description of the property owned,
2) set forth whether the district will form a R1, RR, RC, MU or I zone including a copy of the standards for the applicable zone, and
3) include a map of the proposed local option zoning district.
4) Include a nonrefundable three hundred ($300) dollar application fee.

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D) Petition forms for local option zoning districts are available from, and shall be submitted to the borough planning department. The planning department shall process an application for a local option zoning district petition and may meet with the sponsors prior to planning department approval of the petition for circulation to the property owners within the proposed district. The citizen sponsors for a local option zoning district shall have 60 days from approval of the petition by the planning department to gather the required signatures to form a local option zoning district. The date of introduction for assembly consideration of the local option zoning district shall be within 60 days of filing the completed petition with the planning department.

9.15.070 Public hearings and notification requirements.

The planning commission shall hold at least one public hearing on local option zoning petitions. Public notice of the hearing shall comply with DBC 9.15.070. A. The planning commission shall recommend to the assembly approval, disapproval, or modifications of the proposed local option zoning district.

A) Public hearing notice.

1) Notice of the public hearing shall be posted at least twice.
2) The notice shall contain at least the following information:
    a) A brief description of the proposal on which the public body is to act;
    b) A legal and common description of the property involved;
    c) Date, time and place of the public hearing;
    d) Person and place to contact for more detailed information.

9.15.080 Assembly action.

<u>The assembly shall hold at least one public hearing on local option zoning recommendations.</u> The assembly shall approve, disapprove, or modify the proposed local option zoning district. The assembly reserves the right to disapprove a local option zoning district in its legislative capacity notwithstanding the district's meeting the criteria of this chapter.

9.15.090 Variances.

Variances may be granted pursuant to the terms of DBC 9.15.150 through DBC 9.15.190.

9.15.100 Procedures for variance from Title 9 DBC - Purpose.

The purpose is to grant relief from the literal application of this title where unusual individualized institutions result in more stringent burdens being placed on some parcels of land than others and to prevent special hardships to individual landowners or deprivation of rights commonly enjoyed by other properties in a district.

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9.15.110 Burden of proof.

The situations justifying variances are rare and the burden of proof that an application meets the standards of this ordinance is on the applicant.

9.15.120 Application--Public hearing.

A. An application for a variance shall be made on a form provided by the planning department and shall contain:

1) The legal description of the parcel for which the variance is requested;

2) A statement of the facts justifying the variance; and

3) The required nonrefundable two-hundred ($200) dollar fee; and

4) The applicant's certification that:

a) The variance is not being sought by the person causing the conditions requiring the variance,

b) That the variance will not permit a land use in a district where the use is prohibited, and

c) That the variance is not sought solely to relieve pecuniary hardship or inconvenience.

B. The planning department may require additional information from the applicant helpful to the variance determination, including but not limited to, an as-built or certificate from a licensed land surveyor or professional engineer when necessary to the determination.

C. The planning department shall process the variance application within 45 days of receipt, place it on the planning commission agenda, and make recommendations to the planning commission regarding approval, denial, and conditions, if any, to be placed on the variance.

D. A public hearing shall be held before the planning commission regarding all variance applications. The public hearing notice requirements set forth in DBC 9.15.070 shall be followed. Variances within local option zoning districts require notice to all property owners within the district.

9.15.130 Standards.

A. Pursuant to AS 29.40.040(b) a variance from a land use regulation adopted under DBC Title 9 may not be granted if:

1) Special conditions that require the variance are caused by the person seeking the variance;

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2) The variance will permit a land use in a district in which that use is prohibited; or

3) The variance is solely to relieve pecuniary hardship or inconvenience.

B. The planning commission shall also consider the following standards:

1) Whether a lesser variance than that applied for would do substantial justice to the applicant as well as surrounding property owners;

2) Whether a lesser variance than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to the surrounding property owners;

3) Whether relief can be granted in such a fashion that the spirit of the ordinance will be observed and public health, safety, and welfare secured; and

4) Whether the authorization of a variance will not be materially detrimental to the public welfare or injurious to nearby property;

C. Consistent with the public health, safety, and welfare, the planning commission may attach conditions to an authorized variance regarding location, character, and other features of the proposed structures or uses as it finds necessary to carry out the spirit and purposes of this ordinance and the ordinance from which the variance is requested.

9.15.140 Variances--Expiration--Extension.

If the variance allowed requires further action of the property owner to be effective, and such action is not taken within two years of granting the variance, the variance shall expire. The planning department may prepare and record an expiration document; however, failure to prepare or record an expiration document does not extend the length of variance authorization. The planning commission may extend the period of variance authorization without a public hearing upon a finding that there has been no basic change in pertinent conditions surrounding the property at the time of original approval as long as the request for extension is submitted before the two-year period of authorization expires. If the period of authorization expires without an extension application being filed with the planning department the applicant must again file an original application for variance.

9.15.150 Findings of fact.

A written decision in resolution form shall be rendered by the planning commission granting, denying, or modifying the variance application with findings of fact based on the substantial evidence in the record.

9.15.160 Recordation.

Variances, extensions, and expirations may be recorded in the state of Alaska recording district in which the affected parcel is located. A recording fee not to exceed the administrative costs of preparing and recording the variance document may be charged as a condition of a

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variance or variance extension. If the recording fee is charged the borough shall be responsible for the recording. Failure to record a variance, expiration, or extension will not affect its validity.

9.15.170 Appeal.

Pursuant to AS 29.40.050 an appeal of the planning commission decision to the borough assembly may be taken from the grant or denial of a variance pursuant to the provisions of DBC 9.15 by the applicant, a government entity, or an aggrieved party. An "aggrieved party" means a party adversely impacted by the decision and who has participated in a particular variance determination at the planning commission level either by filing written comments or in person.

A. Time; Fees. Any party of record may file an appeal of a decision of the planning commission within 15 days of the date of the notice of the decision with the borough clerk on the forms provided, and by paying the filing and records preparation fee of $300.

9.15.180 Exemptions.

Chapters within Title 9 which set forth variance provisions, unless otherwise provided in such chapters, are exempt from the provisions of this chapter.

9.15.190 Application.

A. The standards of the local option zoning district shall be effective within 30 days of approval by the assembly. The regulations set by this chapter shall apply uniformly to the district.

B. This ordinance does not repeal, abrogate or impair any existing deed restrictions, covenants or easements. The borough will not enforce private covenants, easements, or deed restrictions.

C. All local option zoning districts must comply with DBC 9.15.200, Conditional Land Use Permits; however, application of other ordinances may not result in allowing a use not otherwise permitted in a district formed under this ordinance.

D. The provisions of this chapter shall apply to local option zoning districts predating adoption of this chapter.

9.15.200 Conditional land use permits (CLUP)

A. Within 21 days of receiving an application, the planning director or designee shall review the submitted application for completeness and compliance with this chapter. If it is incomplete or does not include the required nonrefundable two-hundred ($200) dollar fee or fails to meet the requirements of this chapter, the planning director shall notify the applicant in writing. The planning director shall thereafter either return the application to the applicant or schedule the application to be considered by the planning commission at the next appropriate scheduled meeting.

B. When the application is scheduled to be considered, the planning commission shall conduct a public hearing to consider the permit application, and shall either approve, modify or disapprove the permit application. Those wishing to contest issuance of the permit may submit

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evidence and be heard at the hearing. Planning commission approval of these conditional land use permits shall be by resolution. Permits shall be conditioned upon continued compliance with this chapter and other applicable code provisions.

C. There shall be written findings supporting the planning commission's decision on the permit application. The decision shall be distributed to the parties of record before the planning commission, with a notice of right to appeal to the board of adjustment.

9.15.210 Notice- CLUP.

Notice of the pending application shall follow DBC 9.15.070. The notice shall contain a description of the proposed location, the type of proposed land use, the applicant's name, where written comments may be submitted, the last date for which written comments may be submitted, and the date, time and location of the public hearing.

9.15.220 Compliance with other laws.

Applicants' land use operations shall comply with all applicable federal, state and local laws.

9.15.230 Permit revocation.

A permit issued pursuant to this chapter may be revoked by the planning commission if the applicant fails to comply with the provisions of this chapter. The planning director shall provide at least thirty (30) days written notice to the permit tee of a revocation hearing before the planning commission. The notice shall provide specific grounds for the proposed revocation. If the applicant provides written evidence to the planning director demonstrating reasonable compliance with this chapter within the thirty day period then the revocation hearing may be canceled, at the discretion of the planning director.

9.15.240 Penalty for violation.

Violations of this chapter and other CLUP provisions adopted in accordance with this chapter are infractions and are subject to civil fines. Enforcement of the provisions of this chapter shall be done in accordance with the remedies set forth in DBC 9.15.362.

9.15.250 Appeals.

An aggrieved party may appeal the denial, modification, approval or revocation of a permit by filing an appeal to the assembly within fifteen (15) days of the date of notice of the decision. Appeals from actions taken under this chapter shall be conducted in accordance with the appellate procedures established in Chapter 9.15.170 of this code. The same fee applies.

9.15.260 Conflict with local option zoning districts.

Except as otherwise specifically provided by another provision of this chapter, the restrictions on use of land activity established by this chapter shall be in addition to any other restrictions adopted by any state, federal or local authority including local option districts established pursuant to Chapter 9.15 of the DBC.

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9.15.270 Policies and procedures.

The mayor is authorized to adopt policies and procedures implementing this chapter.

9.15.280 Prior existing uses.

This chapter shall not apply to uses commencing before the effective date of this ordinance provided that the subject use continues in the same location and such use is not expanded beyond the smaller of the lot, block, or tract lines as they exist on the effective date of this ordinance.

9.15.290 CLUP Variances.

Variances from the requirements for conditional land use permits may be requested pursuant to DBC 9.15.090.

9.15.300 Local option zoning map.

Within 30 days of assembly approval, a map of the boundaries of the adopted local option zoning district shall be developed by the planning department and adopted as the official zoning map for the designated local option zone. The map shall be at a scale of 1:500, and show the boundaries and labels of the zones into which the parcels and districts have been designated.

9.15.310 Pre-existing structures.

Any structure, which existed prior to the adoption of this chapter but does not meet the provisions of this chapter, shall be allowed to continue subject to the following conditions:

A. No alterations may be made which increase the nonconformity;

B. Any pre-existing building which has been destroyed or damaged to the extent of 50 percent or more of the assessed value shall thereafter conform to the provisions of this chapter. The right to reconstruct in nonconformity with this chapter is forever lost if

1) the application for reconstruction is not made within six months of the date of damage or

2) if the application for reconstruction is approved but the structure is not reconstructed within two years of the date the damage occurred.

C. Nothing in this section prohibits reconstruction at any time in conformity with this chapter.

9.15.320 Nonconforming uses.

A. Determination. Nonconforming uses in effect on the date of initial adoption of the local option zoning district are permitted to continue operation. The burden of proof that the nonconforming use existed before adoption of this chapter is on the applicant. If the planning director denies nonconforming use status, the applicant must qualify for any permit required by the zone in order to continue the use. Failure to apply for a nonconforming use determination within one year from the date of adoption of a local option zoning district ordinance shall result in termination of all right to continued operation as a nonconforming use and require full conformance with all provisions of this chapter. Written notice of the nonconforming use application requirements shall be given by certified mail or personal

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delivery to the property owner or operator of the nonconforming use. If notice cannot effectively be given by these methods, the planning director may post the subject property.

B. *Decision.* The planning director shall give notice of the application for a nonconforming use determination to property owners within the district. The notice shall include a summary of the application, a vicinity map, and a deadline for submitting written comments or evidence regarding the existence of the use prior to making a determination. The planning director shall issue a decision regarding the nonconforming status based on the written application, written comments, or evidence regarding the existence of the use prior to the adoption of this chapter. The planning director's decision may be appealed to the planning commission within 30 days of distribution of the decision.

C. Discontinuance. Any nonconforming use of land or building which has ceased by discontinuance for an uninterrupted period of 365 days shall thereafter conform to the provisions of this chapter. Lack of intent to cease use or abandon the use does not suspend the 365-day time period. If a nonconforming use of a temporary structure is discontinued, it shall not be recommenced.

D. *Expansion Prohibited.* A nonconforming use of a building or land may not be increased, intensified, or expanded or moved to any other part of the lot, tract, or parcel it occupies after the ordinance forming the district is adopted, nor may the use be moved to a parcel, lot or tract which is subject to this chapter.

E. *Change of Use.* The use of a nonconforming building may be changed only to a use conforming to this chapter.

F. *Standards.* In order to qualify as an allowed nonconforming use, the use must meet the following standards on the date the assembly approves formation of the district:

1) A use must have been legally established under prior law.
2) A use must be operational in accordance with the type of use.
3) The purchase, clearing, or improvement of land preparatory to the use is inadequate to qualify the parcel for nonconforming use status, unless the site has been prepared or construction completed to the extent that it is no longer feasible to use the property for a conforming use.

G. Conditions may be placed on nonconforming uses by the planning [director] <u>commission</u> to protect the safety or health of residents of the local option zoning district.

9.15.330 Nonconforming lots.

An undeveloped lot which is nonconforming as to lot dimension or area may be used for any use permitted in the district in which it is located provided:

A. It was legally created and of record prior to the date of original adoption of the local option zoning district;

B. Development complies with all other ordinance requirements.

9.15.340 Home occupations.

A. Purpose. It is the purpose of this section to promote peace, quiet, and domestic tranquility within residential local option zoning districts, and to limit excessive noise, excessive traffic, diminished property values, fire hazard, threats to safety and health, and other possible negative effects of commercial uses conducted in residential areas.

B. *Application.* Home occupations may be operated in R1, RR or RC zones subject to the

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provisions of this section without a permit:

C. *Standards.*

1) There shall be no changes in the outside appearance of a building or parcel or other visible evidence of the conduct of the home occupation.

2) The home occupation shall not generate traffic, parking, sewage or water use in excess of what is normal in a residential subdivision. Not more than fifteen vehicle trips per day on average may be drawn to the parcel as a result of the home occupation.

3) The home occupation shall not create a hazard to person or property.

4) The home occupation shall not result in outside storage or display of anything related to the home occupation.

5) The home occupation shall not result in noise, vibration, glare, fumes, heat, odors, smoke, or commercial electrical interference detectable to the normal senses off the parcel. No equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the parcel.

6) No sign greater than four feet square may be used to advertise a home occupation. Signs must be non-illuminated.

7) Retail sales which generate traffic of customers, deliveries, or suppliers to the parcel are not permitted on the parcel, except as allowed by an administrative conditional use permit or as incidental to home occupations operated in accordance with these standards under DBC 9.15.340(E)(1), (4), (6), (7), and (8).

8) The use of a dwelling unit for home occupations shall be conducted solely within the confines of the main dwelling and accessory buildings, shall be clearly incidental and within the main dwelling subordinate to its residential use, and shall not exceed more than 30 percent of the floor area.

9) The storage of toxic, explosive, or other dangerous or hazardous materials, substances, or chemicals for commercial purposes is not permitted on the premises.

D. *Conditions.* The standards set forth in DBC 9.15.340 must be met on a continuing basis and are mandatory conditions of the administrative conditional use permit. The planning director may impose additional conditions consistent with the provisions of DBC 9.15.340 (A) and (C) and the applicable zone.

E. The following are allowed home occupations in the R1, RR or RC districts:

Beauty parlor or salon/barber shop;

1) Computer programming, software instruction, web page development, and related computer services;

2) Consulting services;

3) Dressmaking, sewing, millinery and tailoring;

4) Family child care home;

5) Home cooking and preserving;

6) Home crafts, such as model making, rug weaving, lapidary work and cabinet making;

7) Painting, sculpting or writing;

8) Telephone answering, telecommuting, secretarial and administrative services;

9) Tutoring and musical instruction.

F. *Permit required.* All home occupations not specifically listed in DBC 9.15.340 (E) require

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an administrative conditional use permit, unless otherwise allowed by DBC 9.15.380 or DBC 9.15.390. An applicant for a home occupation may obtain an administrative conditional use permit application from the planning department. The application shall include at a minimum the name, physical and mailing address, and phone number of the applicant; a nonrefundable two-hundred ($200) dollar fee; the type of home occupation; equipment or machinery used in the occupation; a parking and traffic circulation plan; a drawn site plan; photographs of the premises, any requested variances, and additional information required to aid the planning director's review. Staff may perform a site inspection as part of the application and compliance processes. An applicant who is a resident, but not the owner, of the premises must have the owner's notarized permission to proceed with the home occupation. An application fee may be established by planning commission resolution.

G. Time frame/notice. The planning director may issue administrative conditional use permits, within 60 days of application that comply with the provision of this title, and may require additional terms and conditions considered necessary to assure compliance with the standards of the applicable zone. All property owners within the local option zoning district shall be notified of home occupation permit applications, and written comments shall become part of the official record.

H. *Appeal.* Decisions approving or denying a home occupation permit may be appealed to the planning commission within 30 days of a denial. A public hearing shall be held by the planning commission as part of the appeal process. A public notice of the public hearing shall be given in compliance with DBC 9.15.070 The property owners who submitted written comments or testified to the planning department are entitled to written notice of the appeal. Only persons who submit written comments or testify before the planning commission may appeal the approval or denial of a home occupation permit.

I. *Renewal.* Every five years a home occupation permittee shall apply for a renewal permit, or the permit will expire. If the planning director determines that the permittee continues to meet the standards set forth in DBC 9.15.340, the renewal permit shall be granted. If it appears the permittee no longer meets the standards set forth in DBC 9.15.340, the planning director may deny or place additional conditions on renewal of the permit. The planning director may conduct a site inspection and an investigation, including a hearing if necessary, on permit renewal, and shall establish procedures for any such investigation or hearing. A decision regarding permit renewal may be appealed pursuant to DBC 9.15.340 (H).

J. Change in use. Any change in the type of use or any change in the extent or volume of use, area of the dwelling unit being used, or mechanical or electrical equipment being used that differs from that allowed by the permit or his chapter must be approved by the planning [director] **<u>commission</u>** after complying with the provisions of DBC 9.15.340 Noncompliance with this provision shall subject the permittee to the enforcement, revocation, and remedy provisions of DBC 9.15.360

9.15.350 Rezoning.

A. Amendments to local option zoning districts may be initiated to repeal a zone, change the type of zone or modify the boundaries of the zoning district by:

1) Any resident of the district may request an amendment to a zoning district provided that a petition is submitted bearing signatures of [more than three-fourths] **<u>the majority</u>** of the property owners within the area being rezoned;

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2) A landowner of property contiguous with the boundaries of the local option district may request an amendment to the district to include his or her property. Contiguous property owners are not required to meet the Area and Petition requirements (DBC 9.15.060) of this title.

B. The borough planning department will provide petition forms.

C. The rezoning process must meet the notification and public hearing requirements of DBC 9.15.070

D. The planning commission shall make a recommendation to the assembly regarding the repeal or change in zone or modification of boundaries. All rezone petitions are subject to assembly approval and a nonrefundable tree-hundred ($300) application fee.

9.15.360 Violations and enforcement.

Violations of DBC Title 9 are infractions and are subject to civil fines. Enforcement of the provisions of this chapter shall be in accordance with the remedies set forth in DBC 9.15.361 through DBC 9.15.367. Each day which the violation exists shall constitute a separate offense.

9.15.361. Administration of provisions--Borough mayor contract authority.

The mayor, with the approval of the assembly, may enter into contractual agreement with municipal bodies for the joint administration of Chapters 9.15, as necessary.

9.15.362. Infraction.

A. *Fine.* For violations of the provisions of Title 9 the owner, agent or contractor, lessee or tenant of a building or premises, or part of a building or businesses, where such violations have been committed or exist, or any other person who commits, takes part or assists in such violations is guilty of an infraction and upon conviction shall be fined not more than $300.00. Each and every day that such violation continues shall be deemed a separate and distinct violation.

B. *Citation.* The charging document for an infraction shall be a citation and shall be filed in the District Court of Alaska. The citation shall state the time within which the defendant must respond to the citation, that the defendant is entitled to a trial, to engage counsel, to confront and question witnesses, to testify, and to subpoena witnesses on plaintiff's behalf. The citation shall also state that a mandatory court appearance may be waived by payment of the minimum fine stated on the citation. The citation shall state that the defendant has ten days to respond from the date of the service of the citation, and shall state where defendant must respond.

C. *Fine Schedule.* The following fines are the scheduled fines for violations. The scheduled fine for an offense may not be judicially reduced.

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TABLE INSET:

Code Chapter Section Citation	Chapter/Section Title	Scheduled Fine
DBC 9.15	Violation of nonconforming use/structure provisions	$100.00
DBC 9.15	Prohibited use	$100.00
DBC 9.15	Violation of home occupation standards	$100.00
DBC 9.15	Prohibited home occupations	$100.00
DBC 9.15	Failure to obtain a conditional use permit	$200.00
DBC 9.15	Violation of nonconforming use/structure provisions	$100.00
DBC 9.15	Failure to obtain a home occupation permit	$200.00

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9.15.363 Statutory injunction.

In addition to other lawful remedies, a violation of DBC Title 9 may be enjoined or abated. Pursuant to AS 29.25.070(b), upon application for injunctive relief and a finding that a person is committing a violation or threatening to commit a violation, the superior court shall enjoin the violation.

9.15.364 Enforcement orders.

A. The borough land office may issue an enforcement order which describes the violation, specifies the code section being violated, and orders:

1. The discontinuation of a use, activity, development, or occupancy that is in violation;
2. The abatement, or removal of development, structures, material, vehicles, equipment, or things that are in violation;
3. The discontinuation of activity preparatory to occupancy, use, development or activity that is in violation;
4. The suspension or revocation of an entitlement issued under this chapter, which is being used as authority for a violation;
5. Any restoration, repair, or replacement necessary as a result of a violation or to eliminate a violation; or
6. Any other lawful action considered necessary by the borough to prevent, abate, or discontinue a violation and to bring a violation into compliance with this chapter.

B. An enforcement order may require a time frame for compliance.

C. When an enforcement order is posted or lawfully served, all activity contrary to the terms of the order shall cease until the order is rescinded and removed by the borough, or continuance is authorized in writing by the borough.

D. Unless otherwise specified in the enforcement order, an enforcement order which is posted at the violation site, or at the property owner's residence or office, or that is served personally or by certified mail, is final if not appealed to the planning commission pursuant to the procedures set forth in DBC 9.15.170

E. When necessary to avoid or abate an imminent or existing nuisance, noxious use, or hazard to public health, safety, and welfare an enforcement order need not be issued before any other remedy available at law or equity is pursued.

F. Issuance of an enforcement order does not stay or preclude any other action at law or equity related to the violation.

G. Enforcement orders may be appealed to the planning commission pursuant to the terms of DBC 9.15.170 Appeals from the planning commission shall not be taken to the board of adjustment, but shall proceed to superior court pursuant to the provisions of the Alaska Rules of Appellate Procedure, Part 6.

H. Removing an enforcement order or violating an enforcement order is a separate violation of this code.

I. The provisions of this section are applicable to cease and desist orders issued pursuant to DBC Title 9.

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9.15.365. Permit revocation.

A. Violations of enforcement orders or conditions of permits issued pursuant to the provisions of Title 9 may result in permit revocation. Where the process for permit revocation is not set forth in the chapter governing issuance of the permit the procedures set forth in this section shall govern.

B. A permit issued pursuant to this title may be revoked by the Planning Commission if the applicant fails to comply with the provisions of this title. The Planning Director shall provide at least thirty (30) days' written notice to the permittee of a revocation hearing before the planning commission. The notice shall provide specific grounds for the proposed revocation. If the applicant provides written evidence to the planning director demonstrating reasonable compliance with this title within the thirty-day period then the revocation hearing may be canceled, at the discretion of the planning director.

C. Permit revocations are appeal able to the planning commission, and ultimately to the borough assembly.

D. Notwithstanding the provisions of DBC 9.15.369(B), the borough may seek a statutory injunction as provided by DBC 9.15.367.

9.15.366. Civil fine.

The borough land office may assess a civil fine for each violation of this chapter. Notice of a fine shall be served personally or by certified mail on the property owner, lessee, operator, or occupant of the parcel upon which the violation occurs. The fine may be appealed to the planning commission pursuant to the terms of DBC 9.15.170. Each day a violation occurs is a separate violation. Citations for fines may be included in an enforcement order. Appeals from the planning commission's determination shall not be taken to the board of adjustment, but shall proceed to the superior court pursuant to the Alaska Rules of Appellate Procedure, Part 6.

9.15.367 Remedies cumulative.

The remedies set forth in this chapter are cumulative, any or all of which may be pursued for a particular violation.

9.15.370 Single-family residential district (R-1).

A. *Permitted Principal Use.* Only single-family residential (R-1) dwelling units are permitted in this district.

B. Permitted Secondary Uses. Secondary uses allowed in the R-1 zone are parks, playgrounds, schools, community centers, libraries, churches, and home occupations.

C. Development Standards. Development standards apply to principle and accessory structures.

1) *Setbacks.* Setbacks shall be 30 feet from the front yard line, 20 feet from the rear yard line, 15 feet from the side yard lines.

3) *Maximum building height.* Maximum building height shall be 2 1/2 stories above ground or 35 feet above average grade, whichever is less

4) *Minimum lot* size. Minimum lot size shall be less then 40,000 square feet.

5) *Drainage Ways.* Existing natural drainage ways shall be retained.

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6) *Buffers.* A forested buffer of at least 20 feet shall be retained between the building site and the roadway. Dead and diseased trees which are a safety hazard or which threaten structures may be removed. This section does not require re-vegetation of a buffer area that was cleared before the formation date of the local option zoning district.

7) Accessory *structures.* Accessory structures commonly associated with residential dwellings, i.e., garages, storage sheds, greenhouses, workshops, and a single, noncommercial guesthouse per parcel, are allowed within the district.

8) Dog Lots: Dog lots and kennels are prohibited.

9.15.380 Rural residential district (R-R).

A. Permitted Principal Use. Single (R-R)- and multi-family (MF) residential (no more than 4 units) dwelling units are permitted in this district.

B. *Permitted Secondary* Uses. Permitted secondary uses allowed in the R-R zone are parks, playgrounds, schools, community centers, libraries, churches, and home occupations.

C. Development Standards. Development standards apply to principle and accessory structures:

1) *Setbacks.* Setbacks shall be 60 feet from the front yard line, 40 feet from the rear yard line, 25 feet from the side yard lines.

2) *Minimum lot size.* Minimum lot size shall be 40,000 square feet or larger.

3) *Drainage ways.* Existing natural drainage ways shall be retained.

4) *Buffers.* To provide for screening, aesthetics, and the reduction of surface water runoff, no lot shall be clear-cut more than 50 percent of the total lot area except that trees may be selectively pruned and thinned, and dead and diseased trees which are a safety hazard or which threaten structures may be removed. Undergrowth may be removed provided that the area is promptly re-seeded or sodded. A forested buffer of at least 30 feet shall be retained between the building site and the common drive or roadway. This section does not require re-vegetation of a buffer area that was cleared before the formation date of the local option zoning district.

5) Accessory Structures. Accessory structures commonly associated with residential dwellings, i.e. garages, storage sheds, greenhouses, workshops, and a single, noncommercial guesthouse per parcel, are allowed within the district.

D. *Home Occupations:* In addition to the home occupation uses listed in DBC 9.15.340, the following home occupations are allowed provided they do not violate any of the provisions of this title:

1) Bed and breakfast;

2) Guide and guide services.

9.15.390 Residential conservation district (R-C).

A. Purpose. The purpose of this district is to retain community rural character, reduce development costs, allow greater flexibility and variety in the creation of residential subdivisions, conserve environmentally sensitive lands, and to increase the tax base. This is accomplished by clustering residential units on areas of a project site that are best suited for development, and by protecting the remaining land as open space. This may permit equal or greater densities of development than would otherwise be allowed, and conserve wetlands, wildlife and fisheries habitat.

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B. *Permitted Principal Use.* Single- and multi-family (up to two units) residential dwelling units are permitted in this district.

C. *Secondary* Uses. Parks, playgrounds, schools, community centers, libraries, churches, and home occupations.

D. *Development Standards.* Development standards apply to principle and accessory structures:

1) *Setbacks.* Setbacks shall be 30 feet from the front yard line, 10 feet from the rear yard line, 5 feet from the side yard lines.

2) Maximum building height. Maximum building height shall be 2 1/2 stories or 35 feet above average grade, whichever is less.

3) Minimum area. Minimum area shall be 20 contiguous acres of gross project area in size.

4) *Minimum lot* size: Minimum lot size shall be 10,000 square feet (provided that an ADEC approved community sewer and water system is utilized.

5) Drainage ways. Existing natural drainage ways shall be retained.

6) Pollution control. The location and nature of the septic systems which will serve the home sites individually or collectively will assure that effluent from the septic systems will not reach the ground or surface waters in a condition which would contribute to health hazards, taste, odor, turbidity, fertility or impair the aesthetic character of navigable waters.

7) *Buffers.* To provide for screening, aesthetics, and the reduction of surface water runoff, no lot shall be clear-cut more than fifty (50) percent of the total lot area except that trees may be selectively pruned and thinned, and dead and diseased trees which are a safety hazard or which threaten structures may be removed. Undergrowth may be removed provided that the area is promptly re-seeded or sodded. A forested buffer of at least 20 feet shall be retained between the building site and the common drive or roadway. This section does not require re-vegetation of a buffer area that was cleared before the formation date of the local option zoning district.

8) Open Space.

a) at least 50% of the gross project area shall be dedicated as permanent open space. Open space shall be restricted to prohibit development and may be:

i) dedicated to the public;

ii) retained by the former owner;

iii) held in common by the residents of the residential conservation district; or

iv) held as out lots by individual owners of the conservation district

b) Lands dedicated to the public must be accepted by the planning commission as part of the platting process.

c) open space shall be deed restricted to forestry, recreational and environmental protection uses. However, a sanitary waste disposal system may be located in the area provided no suitable site is available on the lot served by the system. Open space shall be contiguous.

9) *Accessory Structures.* Accessory structures commonly associated with residential dwellings, i.e. garages, storage sheds, greenhouses, and workshops are allowed within the

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district.

10) *Dog Lots.* Dog lots and kennels are prohibited.

11) *Density.* The number of platted home sites shall not exceed 150% of what would have been possible if the same land were platted in accordance with the minimum lot sizes and setbacks provided by the applicable provisions of DBC codes and ordinances. The maximum number of home sites shall be determined by dividing the gross project area of the subdivision, excluding streets, by the minimum lot size of 20,000 square feet, plus 50 percent of that number.

12) *Design Standards.*

a) Roadways, lots and building envelopes shall be located in areas where they will have the least effect on wetlands, rivers, streams and other environmentally sensitive areas, cropland, pasture, meadow, and historic structures, and where they will retain or enhance the visual character of the rural landscape. However, in resolving conflicts between these interests, priority shall be given to protection of waterways and their buffers, steep slopes, regulated floodplains and avoidance of a fragmented landscape.

b) Consideration of the design of the subdivision and the open space provisions shall include the Borough Comprehensive Plan, Trails Plan and community plans, as well as recommendations from Alaska Department of Fish and Game and other permitting authorities.

c) *Building* Sites. The following standards apply to building sites.

i) Building sites shall include at least 2,500 square feet of build able area excluding sites designated for sanitary systems and all areas where construction of buildings and related infrastructure is precluded by the provisions of the Borough's ordinances.

ii) Buildings and roads shall be located as to minimize conflicts with uses of adjacent lands.

iii) Building sites shall not include wetlands or floodplains.

d) *Roadways and Infrastructure.* The following standards apply to roadways and infrastructure:

i). Roadways and, where practicable, infrastructure shall not be located in open fields but shall be sited along forest edges and shall be designed to maximize the amount of forest in the conservation district which is contiguous with adjacent forested lands.

ii). Roadways shall follow existing contours to minimize the extent of cuts and fills.

iii). Roadways shall be located to minimize the amount of wetland fill.

iv).Where sites include linear features such as existing access roads, tree lines and fence rows, roadways shall, where practicable, follow these features to minimize their visual impact.

v).Road and utility crossings of anadromous streams shall be minimized and consolidated at a single location to minimize impacts to both individual stream channels and watersheds.

vi).Bridges and culverts shall be large enough to provide free passage to anadromous fish and shall be positioned to minimize changes in direction or

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velocity of stream flow.

vii).All driveways shall serve a minimum of two units.

viii).The maximum number of units served by a common driveway shall be four unless the applicant demonstrates that a greater number will promote the objectives of the residential conservation district.

a) Maximum length of common driveways shall be 1,000 feet.

ix) .All roads must be constructed to State of Alaska road construction standards.

a)Site Development and Land Disturbing Activities. Existing natural vegetation shall be preserved in areas where disturbance outside the building envelope is not essential.

13) *Procedure for Establishing a Residential Conservation District.* The procedure for establishing a residential conservation district shall be as follows:

a. *Petition.* A petition in compliance with DBC 9.15.390 shall be submitted to the planning director.

b. *Review and Hearing.* The petition shall be submitted to the planning commission, which shall give notice and hold a public hearing. The planning commission decision shall reflect the recommendations of any federal, state or local agency with which the borough planning department consults.

c. *Findings and Conditions of Approval.* The planning commission shall make written findings as to the compliance or noncompliance of the proposed residential conservation district with each of the applicable requirements set forth in DBC 9.15.390. If the plat is granted in whole or part, the planning commission shall attach such written conditions to the approval as are required by and consistent with DBC 9.15.390. The conditions and approval shall in all cases establish the specific restrictions applicable with regard to minimum lot sizes, setbacks, location of septic systems and the preservation of ground cover and open space.

d. *Planning Studies.* A landowner or petitioner may at his own expense develop the facts required to establish compliance with the provision of DBC 9.15.390 or may be required to contribute funds to the borough to defray all or part of the cost of such studies being undertaken by the borough or any agency or person with whom the borough contracts for such work.

9.15.392 Mixed use district (M-U).

A. *Permitted Principal Uses:* Commercial, business, residential, institutional and public uses are permitted in this district.

B. *Permitted Secondary Uses:* Secondary uses allowed in the M-U zone are uses permitted in R-1 and R-R districts.

C. *Development Standards.* Development standards apply to principle and accessory structures.

1. *Setbacks.* Setbacks shall be 30 feet from the front yard line, 20 feet from the rear yard line, 15 feet from the side yard lines.
2. *Minimum lot size.* Minimum lot size shall be 40,000 square feet.
3. *Drainage ways.* Existing natural drainage ways shall be retained.
4. *Buffers.* A forested buffer of at least 20 feet shall be retained between the building

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site and the roadway. This section does not require re-vegetation of a buffer area that was cleared before the formation date of the local option zoning district.

9.15.394 Industrial district (I).

A. *Permitted Principal and Secondary Uses:* Light and/or heavy industrial land uses, and utility/transportation land uses are permitted in this district.

B. *Development Standards:*

1. *Setbacks.* Setbacks shall be 40 feet from the front yard line, 20 feet from the rear yard line, 25 feet from the side yard lines.

2. *Minimum lot size.* Minimum lot size shall be 40,000 square feet.

3. *Drainage ways.* Existing natural drainage ways shall be retained.

4. *Buffers.* To provide for screening, aesthetics, and the reduction of surface water run-off, no lot shall be clear-cut more than 75 percent of the total lot area except that trees may be selectively pruned and thinned, and dead and diseased trees which are a safety hazard or which threaten structures may be removed. Undergrowth may be removed provided that the area is promptly re-seeded or sodded. A forested buffer of at least 30 feet shall be retained between the building site and the common drive or roadway, and a forested buffer of at least 50 feet shall be retained between the Industrial and other local option zoning districts. This section does not require re-vegetation of a buffer area that was cleared before the formation date of the local option zoning district.

9.15.400 Record notice of local option zoning district.

A notice of local option zoning district shall be recorded in the state of Alaska district recorder's office where the parcels subject to the local option zoning district are located. The notice shall provide a legal description of the parcels within the district and the type of zone. The notice shall be in a form approved by the borough attorney's office. The petitioners for a local option zoning district or rezone shall pay the recording fees. Notice of rezones under DBC 9.15.350 shall also be recorded.

9.15.410 Definitions

Adequate legal description means a written description of real property by government survey, metes and bounds, or lot number of a recorded plat or by aliquot part in a conveyance document such that the parcel can be identified, located, and distinguished from other parcels.

Accessory structure means a structure on the same lot and of a nature customarily incidental and subordinate to the principal structure.

Average size means the mathematical mean of the lot sizes within the proposed local option zoning district. For a lot to qualify as average size, it must be within 50 percent, plus or minus, of the mathematical mean of all lots within the proposed local option zoning district.

Beauty parlor or *salon/barber* shop means a commercial establishment providing services such as haircuts and hair treatment, manicure, and facials.

Bed and Breakfast means a transient occupancy commercial establishment with no more than 12 bedrooms or guest cabins or 24 guests that provides a continental or cook-and-serve breakfast as part of the purchase price of the overnight accommodations. The

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owner or operator of the establishment must live on the parcel in order for such a transient occupancy establishment to be considered as a bed and breakfast as opposed to a hotel, motel or other type of transient accommodation.

Consulting services means professional advice given in one's field of special expertise on a commercial basis.

Dog lot means the keeping or raising of five or more dogs over the age of six months on a parcel.

Dwelling means a building designed or used as living quarters or private residence for people.

Family child care home means a private residence where care, protection, and supervision are provided for a fee at least twice a week to no more than five children at one time excluding children of the adult provider.

Forested buffer means the use of native and natural tree and shrub layers to sufficiently screen development from view of adjoining properties and roadways.

Front yard means that portion of a lot which is bounded by a dedicated public right-of-way.

Guide service means commercial activities related to the hunting, catching, and processing of fish and game and providing overnight accommodation or meals for fishing and hunting clientele, and may also include, but not be limited to guided tours such as hiking, biking, skiing, sled dog tours, and snow machining.

Habitable means that portion of a structure that is used for actual and daily living space. It does not include basements, attics, crawl spaces, storage sheds, garages or other portions of a structure that have not been improved or meet building and sanitary codes. -

Hazardous chemical means a chemical that is a physical hazard or a health hazard.

Hazardous substance means substances defined at AS 46.08.900(6) and AS 46.09.900(4) as amended.

Hazardous waste means all waste substances defined by AS 29.35.590(8), and 18 AAC 63.900 as amended.

Home occupation is that accessory use of a dwelling that shall constitute either entirely or partly the livelihood of a person living in the dwelling unit.

Hotel means commercial operation offering transient lodging which may provide additional services such as restaurants, meeting rooms, and recreation facilities.

Kennel means a premise where a person owns or keeps five or more dogs over the age of six months in the operation of a business, which includes buying, selling, training, boarding, [grooming], or breeding.

Lodging means overnight accommodations or sleeping quarters.

***Lot* means a piece of land having specific boundaries.**

Motel means a group of attached buildings, containing individual sleeping or living units offered as temporary lodging for compensation and providing at least one parking space for each unit located on the same premises and convenient to each unit. *Motel* includes auto courts and motor lodges (see hotels).

Multi-family dwelling unit means a building with multiple dwelling units, each with self-contained bathroom and kitchen facilities.

Nonconforming use means a lawful use of land that does not comply with the use regulations for its zoning district but which complied with applicable regulations at the

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time the use was established.

Normal traffic, parking, sewage *and water use* means the average estimated number of vehicle trips, parking spaces, and water use for a development type as proposed in the petition for a local option zoning district.

Open Space means land used for recreation, resource protection, amenity, and/or buffers. In no event shall any area of a lot constituting the minimum lot area nor any part of an existing or future road or right-of-way be counted as constituting open space.

***Parcel* means a plot of land, usually a division of a larger area.**

Planning Director means the planning director of the Denali Borough or the planning director's designee.

Rear yard means that portion of a lot bounded by the lot line which is opposite and most distant from the front yard lot line.

***Residential* is a dwelling or area of which the main purpose is a private residence.**

Retail sales are sales made to the ultimate consumer, often in small quantities.

Secondary use means a use allowed in a zone without a permit which is not the principal permitted use in the zone.

Side yard means that portion of a lot bounded by a line which is neither a front yard nor a rear yard lot line.

Sign means any device, structure, fixture, or placard using graphics, symbols, and/or written copy designed primarily for the purpose of advertising or identifying any establishment, products, goods or services.

Structure means anything that is constructed or erected and located on or under the ground. For purposes of minimum setback requirements under DBC 9.15 the following items are not considered structures: fences; retaining walls; parking areas; roads, driveways or walkways; window awnings; a temporary building when used for 30 days or less; utility poles and lines; guy wires; clothes lines; flag poles; planters; incidental yard furnishings; water wells; monitoring wells and tubes; patios, decks, or steps less than 18 inches above average grade.

***Subdivision* means an area of real estate composed of subdivision lots.**

Telecommuting means working in the home by using a computer terminal connected by a telephone line to a central office or central computer.

Temporary structure means a transportable structure for one-time use not to exceed six consecutive months.

Toxic means those substances or substance combinations, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through the food chains, will, on the basis of information available, cause death, disease, behavioral or physiological abnormalities, malignance, genetic mutation, or physical deformations, in affected organisms or their offspring.

Tutoring means offering lessons or instruction to no more than four pupils in the same session on a commercial basis.

Section 3. Effective Date. This ordinance becomes effective upon adoption by the Denali Borough Assembly and signature of the Mayor.

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DATE INTRODUCED: April 12, 2006
FIRST READING: May 10, 2006
PUBLIC HEARING: May 10, 2006

PASSED and APPROVED by the DENALI BOROUGH ASSEMBLY this _____day of _____, 2006.

_____
BOROUGH MAYOR

ATTEST:_____
BOROUGH CLERK

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