

**DENALI BOROUGH, ALASKA
ORDINANCE NO. 20-15
INTRODUCED BY: MAYOR CLAY WALKER**

**AN ORDINANCE ESTABLISHING AMENDING DENALI BOROUGH
CODE CHAPTER 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. Purpose.

The purpose of this ordinance is to amend the Denali Borough Code of Ordinances Chapter 9.15 titled Zoning, as follows.

Section 3. Effective Date.

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

**DENALI BOROUGH CODE CHAPTER 9.15
ZONING – LOCAL OPTION**

Sections:

- 9.15.010 Borough assembly finding.
- 9.15.020 Land zoned general use
- 9.15.030 Definitions
- 9.15.150 Formation of a local option zoning district
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- 9.15.180 Effective date
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- 9.15.230 Request for violation hearing reconsideration
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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 consists of distinct communities with differing interests, the borough assembly finds that it is in the best interests of the residents of the Denali Borough to make land use decisions as much as possible on a local or community basis.

9.15.020 Land zoned general use.

All land in the borough is zoned general use unless designated within a local option zoning district. Some land uses may be restricted and therefore may require a conditional use permit.

9.15.030 DEFINITIONS

- A. "*General use*" means any type of land use is permitted.
- B. "*Lot*" means a measured parcel of land having fixed boundaries and designated on a plot or survey
- C. "*Correctional facility*" means a prison, jail, camp, prison farm, halfway house, or other placement designated by the Commissioner of Department of Corrections for custody, care, and discipline of prisoners.
- D. "*Correctional community residential center (CCRC)*" means a community residential center, other than a correctional facility, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity.
- E. "*Sexually oriented commercial business*" means any commercial operation that includes the sale, rent, lease, inspection or viewing of books, films, video, magazine, periodicals or any other media whose dominant theme is actual or simulated sexual activities, display or exhibition of human genital or female breast anatomical areas, or featuring live or broadcast removal of articles of clothing, topless dancers or models, or total nudity of any gender.
- F. "*Large scale commercial business*" means a commercial operation whose total ground floor gross area, including buildings, display area and parking is equal to or exceeds 40,000 square feet, requires a class A or B waste disposal system, and/or requires an Alaska water permit for more than 2500 gallons per day. Large-scale commercial does not include agricultural uses.
- G. "*Marijuana cultivation facility*" means an entity licensed to cultivate, prepare, and package marijuana and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

- H. "Marijuana product manufacturing facility" means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.
- I. "Marijuana retail store" means an entity licensed to purchase marijuana from marijuana cultivation facilities, to purchase marijuana and marijuana products from marijuana product manufacturing facilities, and to sell marijuana and marijuana products to consumers.
- J. "Marijuana retail store onsite consumption" means the act of ingesting, inhaling, or otherwise introducing marijuana into the human body within or inside a licensed marijuana retail store facility
- K. "Commercial power generation" means the generation of electricity with the main purpose to sell the electric power or to operate as a public utility.
- L. "Solid waste facility" means any facility or operation that accepts drilling wastes, garbage, refuse, sludge, building material, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, or agricultural operations, or from community activities.
- M. "*Heliport, airport or aircraft landing fields*" means a tract of land or a *structure*, and requisite clear zone, used or intended for *use* for the landing and take-off of private and *commercial* aircraft, together with all *buildings* and *structures* normally associated with such *use* including, but not limited to, accessory hangars, control towers and accommodations for passengers and cargo
- N. "*Cemetery*" means a parcel of land, used in whole or in part, for four or more interred bodies of deceased persons and for the erection of customary markers, monuments and mausoleums
- O. "Commercial hazardous material storage or processing facility" means a facility that stores, produces, processes or retails hazardous material.
- P. "Commercial pipelines" this includes propane, natural gas, fuel, oil or water pipelines

9.15.150 Formation of a local option zoning district

Should any of the residents of an area desire further zoning or land use regulation, they shall initiate it by first meeting with Denali Borough staff to discuss formation requirements, procedures, and district boundaries.

9.15.160 Local option zoning district formation requirements

- A. The minimum area to be included in a local option zoning district (LOZD) for lots not included in an identified subdivision is 20 lots or 20 acres. The minimum area to be included in a local option zoning district for lots located with an identified subdivision is 20 lots or the subdivision as a whole. Lots in a LOZD must be

contiguous or separated only by a street, alley, right-of-way, or easement and must share continuity of general lot size and use.

- B. The landowners proposing the formation of the LOZD will help borough staff develop a map of the proposed district. The map will identify current land uses, access, topography, utilities, easements, encumbrances, and any use permits within the proposed district. This map will be included in the application.
- C. All local option zoning districts must select one or more from the following list of zoning district designations:
- Residential: The residential zoning district is intended to provide for areas appropriate for a range of detached, single family residential dwelling units and accessory dwelling units.
 - Multi-family residential: The multi-family residential zoning district is to provide for medium- to high-density housing in multiple-family structures and their directly related complementary and accessory uses.
 - Commercial: A commercial district is intended to provide for areas appropriate for the primary land use to be commercial activities including but not limited to hotels, restaurants, bars/pub, theaters, gift shops, and activity tour operation.
 - Industrial: An industrial zoning district is intended to provide for areas appropriate for a wide range of moderate to low intensity industrial uses including but not limited to manufacturing, assembly, warehousing, distribution, research and development, and limited accessory commercial and office uses.
- D. An application provided by the borough, must be completed with at least 60%, signatures of land owners of record for lots included in the proposed LOZD. In addition to the signatures, a physical address or legal description of the lot owned by each of the signers must be included next to or below their signature.

9.15.170 Local option zoning district formation procedures and approval

- A. Once determined by borough staff that the LOZD requirements have been met, the local option zoning district proposal, along with the complete application and map, will be forwarded to the planning commission on the next regularly scheduled meeting agenda. The planning commission will hold two public hearings on the LOZD proposal, with one of the public hearings held in the community closest to the proposed LOZD.
- B. Public notice of the public hearings will be published in accordance with Denali Borough Charter, Article I, Section 1.05.
- C. Upon completion of the planning commission public hearings, the planning commission will recommend approval, disapproval, or approve with modification(s) and forward the LOZD proposal, application and planning

commission recommendation to the assembly to be placed on the next regularly scheduled assembly meeting agenda.

- D. The assembly will hold a minimum of two public hearings on the proposed LOZD with the second public hearing being held in the community closest to the proposed LOZD.
- E. Public notice of the public hearings will be published in accordance with Denali Borough Charter, Article I, Section 1.05.
- F. During the second public hearing, an election of land owners and residents of the proposed LOZD will be held. Any person participating in the election must first show proof of land ownership or residency within the proposed LOZD. If the election results in 70% or more approval, the assembly will approve the LOZD without further discussion. If the election results in less than 70% approval, the assembly will continue discussion and vote on the proposed LOZD according to regular assembly procedures.

9.15.180 Effective date

The regulations and standards approved for the LOZD will be effective 30 days after assembly approval.

9.15.185 Dissolution of a local option zoning district

To dissolve a local option zoning district or change a local option zoning district designation, the same procedures shall be followed as described in Denali Borough Code Chapter 9.15.160 and Denali Borough Code Chapter 9.15.170. The effective date for any change of local option zoning district designation or dissolution of any local option zoning district will be defined by the assembly at the time of approval.

9.15.190 Prior existing structures and uses

Any structure, commercial operation, or land use that existed prior to the formation of an LOZD shall be allowed to continue subject to the following conditions:

- A. No additions, alterations or modifications can be made that would increase the nonconformity.
- B. Any prior existing, nonconforming structure that becomes damaged to the extent of 50% or more of the estimated value, shall be reconstructed according to the standards and regulations of the LOZD. Any loss or damage that is caused by criminal activity or by fire of undetermined origin or suspicious causes, which is not the doing of the owner, shall be exempt from this rule.
- C. Any prior existing, nonconforming commercial operation or land use will lose prior existing rights upon the day of the final store front closure or stoppage of use, activity or operation.

9.15.200 Nonconforming uses

- A. Nonconforming uses in effect on the date of initial adoption of the LOZD are allowed to continue operation. A determination letter providing prior existing use rights for nonconforming structures, uses and activities can be obtained from the Denali Borough. The burden of proof that the nonconforming use existed before adoption of an LOZD is on the applicant. Failure to apply for a nonconforming use determination letter within one-year (12 months) from the date of adoption of an LOZD ordinance may result in termination of all right to continued operation as a nonconforming use and require full compliance with all provisions of this chapter.
- B. Any nonconforming land use or commercial activity which has ceased by discontinuance for an uninterrupted period of 24 months forfeit prior existing nonconforming use rights and shall not be recommenced as a nonconforming use or activity.
- C. A nonconforming use of a building or land may not be increased, intensified, changed, or expanded after the ordinance forming the district is adopted. A nonconforming building may be moved in response to a natural disaster with approval from the Planning Commission.
- D. Conditions may be placed on nonconforming uses or activities by the borough to protect the character of the LOZD based on excessive noise, excessive traffic, fire hazards, etc., and to provide appropriate screening, lighting, and hours of operation. Such conditions shall be identified through the LOZD ordinance.

9.15.210 Enforcement

Suspected violations may be reported to the Denali Borough Mayor. By discretion, the mayor or designee may investigate the alleged violation.

In the event that the alleged violation observed by the mayor or designee, a written notice of violation will be sent by certified mail within 5 business days of the observed violation to the land owner. Written notice will include:

- A. A legal description, address or similar description of each property on which an alleged violations is located;
- B. A citation to each provision that is alleged to have been violated, and a statement of the facts that constitute each alleged violation in sufficient detail to provide the recipient with a reasonable opportunity to respond to the allegations;
- C. A description of the action, if any, that is required to correct or abate the alleged violation and the time frame within which the correction or abatement must occur.

- D. Notification of the right and timeframe to respond to the allegations in writing;
- E. The consequences the borough may impose for the alleged violation, including but not limited to the initiation of fines according to the Denali Borough Fee Schedule; and
- F. The name and contact information of the borough representative to contact regarding the notice of violation.

9.15.220 Notice of violation hearing

In the event that the violation remains unresolved beyond the timeframe stated in the written notice of violation, or upon the land owner's request, the matter will proceed to a hearing before the Denali Borough Planning Commission. The commission will:

- A. Schedule and publicly notice the hearing date, time and location.
- B. Hold a public hearing in which all parties may appear in person, or through counsel, to present evidence and testimony on their own behalf, call witnesses, and cross examine other parties' witnesses to the extent the Presiding Officer determines to be reasonable and necessary, and provide closing arguments. The commission may ask questions and seek additional information under the direction of the Presiding Officer.
- C. The Presiding Officer will adjourn the hearing and set a time, date and location for the commission to deliberate and issue a written decision.
- D. Deliberation will conclude within 30 days of the hearing and the written decision will be distributed by the Borough Clerk to all parties involved by certified mail. Any involved party may request a different contact method other than, or in addition to, certified mail by contacting the Borough Clerk.

9.15.230 Request for violation hearing reconsideration

Within 30 days of issuance of the written decision, any party that participated in the notice of violation hearing may request reconsideration of the decision by submitting a written request for reconsideration to the Borough Clerk. The clerk will forward the request for reconsideration to the Denali Borough Assembly. The assembly will:

- A. Schedule and publicly notice the reconsideration hearing date, time and location.
- B. Hold a public reconsideration hearing in which all parties may appear in person, or through counsel, to present any new or additional, witnesses, and closing arguments. The assembly may ask questions and seek additional information under the direction of the Presiding Officer.
- C. The Presiding Officer will adjourn the reconsideration hearing and set a time, date and location for the assembly to deliberate and issue a written decision.
- D. Deliberation will conclude within 30 days of the reconsideration hearing and the written decision of reconsideration will be distributed by the Borough Clerk to all parties involved by the same method used for the initial written decision.

E. The written decision of reconsideration will be considered final.

9.15.240 Appeal to superior court

Any party that participated in the request for reconsideration hearing may appeal the decision of the assembly to superior court.

Section 5. Effective Date.

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

DATE INTRODUCED: July 8, 2020
FIRST READING: August 5, 2020
PUBLIC HEARING: August 5, 2020

PASSED and APPROVED by the Denali Borough Assembly this 9th day of December, 2020.



Clay Walker, Mayor

ATTEST: 

Amber Renshaw, Borough Clerk

VOTE: UNANIMOUS

