

**DENALI BOROUGH, ALASKA
ORDINANCE NO. 20-16
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 – CONDITIONAL USE**

Sections:

- 9.15.010 Borough assembly finding.
- 9.15.020 Land zoned General use
- 9.15.030 Definitions
- 9.15.040 Conditional land use
- 9.15.050 Conditional use permit process
- 9.15.060 General standards
- 9.15.070 Permit Stipulations
- 9.15.080 Exemptions
- 9.15.090 Conditional use permit appeal
- 9.15.100 Enforcement
- 9.15.110 Suspension or revocation of conditional use permit
- 9.15.120 Notice of violation, permit suspension, or permit revocation appeal
- 9.15.130 Request for violation, permit suspension, permit revocation reconsideration

9.15.140 Appeal to superior court

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 registered 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" an entity registered 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 registered 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. "*Helipport, 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 use" means any activity, goods, or services that are offered for sale or rent.
- P. "Commercial hazardous material storage or processing facility" means a facility that stores, produces, processes or retails hazardous material.
- Q. "Commercial pipelines" this includes propane, natural gas, fuel, oil or water pipelines

9.15.040 Conditional Land Use

The conditional use approval procedure is intended for situations where a use may or may not be appropriate, depending on the specific location, the use characteristics, and potential conditions to decrease the adverse impacts of the use on surrounding properties and/or the community-at-large. It also provides a discretionary review process for uses with unique or widely varying operating characteristics or unusual site

development features. The procedure provides public review and evaluation of a use's operating characteristics and site development features through a public hearing process.

A. Any land use is permitted unless otherwise prohibited by ordinance or law. Some land uses require a conditional land use permit prior to use. It shall be unlawful for any person to use land, or to assist another to use land, within the Denali Borough for the following uses without first obtaining a permit from the Denali Borough in accordance with the terms of this ordinance. Conditional uses requiring a permit prior to use are:

1. Correctional facility
2. Correctional community residential center
3. Sexually oriented commercial business
4. Large scale commercial business
5. Marijuana cultivation, production, retail store, and onsite consumption
6. Commercial power generation
7. Microwave or cell tower facility and installations
8. Solid waste facility, including monofill
9. Public and private heliport or airport or aircraft landing field
10. Cemetery
11. Commercial hazardous material storage or processing facility
12. Commercial pipelines
13. Commercial gravel, peat and soil extraction on private property

9.15.050 Conditional use permit process

General. An application to the planning commission for a conditional use permit may be initiated by a property owner or the owners' authorized agent. An application for a conditional use permit shall be filed with the Mayor or designee on a form provided by the Denali Borough.

- A. The application for a conditional use permit shall be accompanied by an appropriate filing fee as established by the assembly, payable to the borough.
- B. *Site plan.* A detailed site plan showing the proposed location of all buildings and structures on the site, access points, buffering, drainage, vehicular and pedestrian circulation patterns, parking areas, and the specific location of the use or uses to be made of the development shall be submitted with the application.
- C. *Action by the Mayor or designee.* Within 30 calendar days, the mayor or designee will review the conditional use permit application to determine that the application is complete and in compliance with this chapter. All complete and compliant applications will be scheduled on the next regularly scheduled planning

commission meeting agenda. In the event that the application is found to be incomplete or not in compliance with this chapter, the application will be returned to the applicant with notice of the incomplete or non-compliant sections.

D. Action by planning commission.

1. The planning commission shall hold at least two (2) public hearings and hear all interested parties. The planning commission shall render a decision on the application for a conditional use permit within 30 calendar days from the date of final public hearing. In recommending the granting of a conditional use, the planning commission shall state in writing the conditions of approval of the permit which it finds necessary to carry out the intent of this chapter.
2. Public notice of the public hearings will be published in accordance with Denali Borough Charter, Article I, Section 1.05.
3. The administration shall incorporate any conditions or requirements stipulated by the commission in the conditional use permit including permit timeframe.

9.15.060 General standards

- A. A conditional use may be approved only if it meets the requirements of this section in addition to any other standards required by Denali Borough Code.
- B. In granting a conditional use permit, the planning commission must make the following findings:
 1. the conditional use will preserve or not detract from the value, character, and integrity of the surrounding area;
 2. that granting the conditional use permit will not be harmful to the public health, safety, and welfare;
 3. that sufficient setback, lot area, buffers, or other safeguards are being provided to meet the conditions listed in subsections (B)(1) and (B)(2) of this section; and
 4. that the applicant has submitted evidence that all applicable state and federal permits have been obtained; and
 5. the conditional use fulfills all other requirements of this chapter and is consistent with the Denali Borough Comprehensive Plan.

9.15.070 Permit Stipulations

The final permit will include details including, but not limited to:

- A. site plan details such as buildings and structures on the site, access points, buffering, drainage, vehicular and pedestrian circulation patterns, parking areas, and the specific location of the use or uses to be made of the development
- B. applicable setbacks or buffers

- C. permit timeframe
- D. any other conditions identified by the planning commission

9.15.080 Exemptions

Land owned by the State of Alaska, the federal government, and related entities, including but not limited to, the National Park Service, the University of Alaska, Alaska Mental Health Trust, and the Alaska Railroad Corporation, and including land that is leased from the State of Alaska, the federal government, and related entities, is not subject to conditional land use regulation as described in this chapter, and does not require a conditional use permit under section 9.15.040.

9.15.090 Conditional use permit appeal

Within 30 calendar days of the planning commission decision, an applicant or their agent may appeal the decision of the planning commission by filing a written statement with the Denali Borough Clerk asking the assembly to review the decision made by the planning commission.

9.15.100 Enforcement

The mayor or designee may inspect the permitted area, with notice, to ensure compliance with permit conditions. If the mayor or designee has received reasonable information identifying specific violation(s), the mayor or designee may inspect the permitted area without notice to ensure compliance with permit conditions.

In the event that a violation of the conditional use agreement is observed by the mayor or designee, a written notice of violation will be sent by certified mail to the permit holder within 5 business days of the observed violation. Written notice will include:

- A. A legal description, address or similar description of each property on which an alleged violation is located;
- B. A citation to each provision of the permit 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 consequence the borough can impose for the alleged violation, including but not limited to the suspension or revocation of a permit issued under this title; and
- F. The name and contact information of the borough representative to contact regarding the notice of violation.

9.15.110 Suspension or revocation of conditional use permit

In the event that the violation remains unresolved beyond the timeframe stated in the notice of violation, the Mayor or designee shall issue a notice of suspension with a compliance timeframe defined. If the violation remains unresolved beyond the compliance timeframe, the Mayor or designee shall issue a notice of revocation. Operating without a valid conditional use permit shall result in legal action.

9.15.120 Notice of violation, permit suspension, or permit revocation appeal

Upon receipt of a notice of violation, permit suspension, or permit revocation, the permit holder can request a hearing before the Planning Commission. The Planning 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 permit issuing body may ask questions and seek additional information under the direction of the Presiding Officer.
- C. The Presiding Officer will adjourn the hearing.
- D. Within 30 days of the hearing, the Planning Commission will conclude deliberation and issue a written decision to 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.

9.15.130 Request for violation, permit suspension, permit revocation reconsideration

Within 21 days of receipt 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 body 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 involve by the same method used for the initial written decision.
- E. The written decision of reconsideration will be considered final.

9.15.140 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 September, 2020.



Clay Walker, Mayor

ATTEST:



Amber Renshaw, Borough Clerk

VOTE: UNANIMOUS

