

DENALI BOROUGH, ALASKA
ORDINANCE 07-15
VERSION A

AN ORDINANCE TO AMEND CHAPTER 9.15 OF THE DENALI BOROUGH CODE OF ORDINANCE,
TITLED ZONING

INTRODUCED BY: MAYOR DAVID TALERICO

BE IT ENACTED by the Assembly of the Denali Borough, Alaska.

Section 1. Classification. The ordinance is of a permanent nature. This ordinance terminates two-years from the date of adoption, unless substituted or repealed by an ordinance sooner.

Section 2. Purpose. The purpose of this ordinance is to amend DBC Chapter 9.15 as follows:

Chapter 9.15
ZONING

Sections:

- 9.15.005 Definitions
- 9.15.010 Borough assembly finding.
- 9.15.020 Expires (sunset clause)
- 9.15.030 Repeals.
- 9.15.040 Application.
- 9.15.050 State and federal agencies regulated.
- 9.15.060 Conflict.
- 9.15.080 Land zoned residential - mixed (R-M).
- 9.15.090 Residential mixed district (R-M).
- 9.15.100 Home occupations
- 9.15.110 Nonconforming uses.
- 9.15.120 Nonconforming structures.
- 9.15.120 Nonconforming lots.
- 9.15.130 Conditional land use permits (CLUP)
- 9.15.140 Compliance with other laws.
- 9.15.150 Permit revocation.
- 9.15.160 Penalty for violation.
- 9.15.170 CLUP Appeals.
- 9.15.180 CLUP Variances.

Denali Borough Ordinance 07-15

Version A

Underline = add

Bracket = [delete]

Page 1 of 20

- 9.15.190 Variances.
- 9.15.200 Procedures for variance from Title 9.15 DBC - Purpose.
- 9.15.210 Burden of proof.
- 9.15.220 Application--Public hearing.
- 9.15.230 Standards.
- 9.15.240 Variances--Expiration--Extension.
- 9.15.250 Recordation.
- 9.15.260 Variance Appeals.
- 9.15.270 Violations and enforcement.
- 9.15.280 Infraction
- 9.15.290 Statutory injunction.
- 9.15.300 Enforcement orders.
- 9.15.310 Permit revocation.
- 9.15.320 Civil fine.
- 9.15.330 Remedies cumulative.
- 9.15.340 Administration, enforcement, and penalties.
- 9.15.350 Policies and procedures.
- 9.15.360 Administration of provisions--Borough mayor contract authority.
- 9.15.370 Quasi-judicial hearings and notifications.
- 9.15.380 Appeals—Board of adjustment.
- 9.15.390 Appeal to superior court.
- 9.15.400 Severability.
- 9.15.410 Record notice of zoning district.

9.15.005. Definitions.

A. General Interpretation.

1. Words used in the present tense include the future tense.
2. The singular number includes the plural.
3. The term “shall” is always mandatory.
4. The word “used” or “occupied” as applied to any land or building shall

be construed to include the words “intended,” “arranged” or “designed to be used or occupied.”

B. 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/ building means a detached building, the use of which is appropriate, subordinate, and customarily incidental to that of the main building or to the main use of the land and which is located on the same lot as the main building or use. An accessory building shall be considered to be a part of the main

building when joined to the main building by a common wall or when any accessory building and the main building are connected by a breezeway.

Administrative official means the person charged with the administration and enforcement of this chapter.

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.

Alterations mean any change, addition, or modification in construction, location, or use classification.

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 twelve (12) bedrooms or guest cabins or twenty-four (24) guests that provides a continental or cook-and-serve breakfast as part of the purchase price of the overnight accommodations. The 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.

Board of Adjustment is the legal body to hear planning commission decision appeals, except as superseded by state or federal law. In the Denali Borough the borough assembly sits as the board.

Borough means the Denali Borough.

Building means any structure built for the support, shelter, or enclosure of persons, animals, or property of any kind.

Building height means the vertical distance from the "grade," as defined herein, to the highest point of the roof.

Building, principal or main means a building in which is conducted the principal or main use of the lot on which said building is situated.

Conditional use means a use which is permitted under the terms of this chapter provided that under the specified procedures, the Commission finds that certain conditions, specified in this chapter are fulfilled.

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

Coverage means that percentage of the total lot area covered by the building area.

Dwelling means a building or any portion thereof designed or used exclusively for residential occupancy including one (1) family, two (2) family and multiple-family (4) dwellings, but not including any other building wherein human beings may be housed.

Dwelling unit means one (1) or more rooms and a single kitchen in a dwelling designed as a unit for occupancy by not more than one (1) family for living or sleeping purposes.

Dwelling, one-family means any detached building containing only one (1) dwelling

unit.

Dwelling, two-family means any building containing only two (2) dwelling units.

Dwelling, multiple family means any building containing four (4) dwelling units.

Family means any number of individuals living together as a single housekeeping unit in a dwelling unit.

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.

Frontage means all the property fronting on one side of a street between intersection streets.

Garage, private means an accessory building or any portion of a main building used in connection with residential purposes for the storage of passenger motor vehicles.

Grade (ground level) means the average level of the finished ground at the center of all walls to a building. In case walls are parallel to and within five (5) feet of a public sidewalk, the ground level shall be measured at the sidewalk.

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.

Judicial means relating to a judgment, the function of judging.

Lot means a piece of land having specific boundaries.

Lot coverage means that portion of the lot covered by buildings or structures that require a building permit.

Lot depth means the horizontal distance separating the front and rear lot lines of a lot and at right angles to its width.

Lot line, rear means a line that is opposite and most distant from the front lot line, and in the case of irregular, triangular, or gore shaped lot, a line not less than ten feet (10') in length, within a lot, parallel to and at the maximum distance from the front lot line.

Lot line, side means any lot boundary line not a front lot line or a rear lot line.

Lot width means the mean horizontal distance separating the side lot lines of a lot and at right angles to its depth.

Non-conforming lot means a lot lawfully existing at the time this ordinance became effective, which by reason of area or dimensions, does not meet the development requirements for the zone in which it is located.

Non-conforming structure means a structure or portion thereof, lawfully existing at the time this ordinance became effective, which by reason of its yards, coverage, height, or other aspects of design, does not meet the development requirements of this zone.

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 time the use was established.

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.

Person means a natural person, his heirs, executors, administrators, or assigns, and also including firm, partnership, or corporation, its or their successors and/or assigns or the agent of any of the aforesaid.

Planner means Denali Borough Planner.

Planning Commission means the Denali Borough Planning Commission.

Planning Director means the Denali Borough Planner or designee.

Plot means a parcel of land, usually a division of a larger area.

Principal use means the major or predominant use of a lot or parcel of land.

Property owner means the legal owner of the property.

Quasi-judicial means having a partly judicial charter by possession of the right to hold hearings on and conduct investigations into disputed claims and alleged infractions of rules and regulations and to make decisions in the general manner of courts

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.

Street means a public right-of-way used as a thoroughfare and which is designed and intended to provide the primary means of access to property abutting thereon.

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 thirty-days (30) 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 eighteen (18) inches above average grade.

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 is the act of offering lessons or instruction to no more than four pupils in the same session on a commercial basis.

Use means the purpose for which land or a building is arranged, designed, or intended, or for which either land or a building is or may be occupied or maintained.

Variance means the relaxation of the development requirements of this chapter to provide relief when the literal enforcement would deprive a property owner of the reasonable use of his real property.

Yard means an open, unoccupied space, other than a court, unobstructed from the ground to the sky, except where specifically provided by this ordinance, on the same lot on which a building is situated.

Yard, front means a yard extending across the full width of the lot between the front lot line of the lot and the nearest exterior wall of the building which is the nearest to the front lot line.

Yard, rear means a yard extending across the full width of the lot between the most rear main building and the rear lot line.

Yard, side means a yard on each side of a main building and extending from the front lot line to the rear lot line. The width of the required side yard shall be measured horizontally from the nearest point of a side lot line to the nearest part of the main building.

Zoning ordinance or ordinances means the zoning ordinance of the Denali Borough.

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; and whereas, the borough is in the process of updating its comprehensive plan, therefore the borough assembly finds that it is in the best interests of the residents of the Denali Borough to have a two-year building moratorium on all construction except for residential-mixed (R-M) allowing the completion of the borough's comprehensive plan which will allow for orderly, planned future land use decisions.

9.15.020. Expires (sunset clause)

This ordinance expires at midnight June 30, 2009, unless substituted, amended or repealed by ordinance sooner.

9.15.030. Repeals.

This ordinance upon adoption repeals the following ordinances: 96-04, 96-12, 01-05 and 02-05.

9.15.040. Application.

- A. The regulations set forth by this chapter shall apply uniformly to the entire borough.
- B. This ordinance does not repeal, abrogate or impair any existing deed restrictions, covenants or easements.
- C. The borough will not enforce private covenants, easements, or deed restrictions.

9.15.050. 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.

9.15.060. Conflict.

The restrictions on use of land activity established by this chapter shall be in addition to any other restrictions adopted by state or federal law established pursuant to Chapter 9.15 of the DBC.

9.15.070. Land zoned residential-mixed (R-M).

All land in the Denali Borough is zoned residential-mixed (R-M) unless otherwise provided by ordinance.

9.15.080. Residential - Mixed district (R-M).

A. Permitted Principal Use: Single-family (S-F) and multi-family (M-F) residential (no more than four (4) units) dwelling units are permitted in this district.

B. Permitted Secondary Uses: Secondary uses allowed in the R-M 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 for M-F units, 40 feet from the front yard line for S-F units, 40 feet from the rear yard line for M-F units, 20 feet from the rear yard line for S-F units, 25 feet from the side yard lines for M-F units, 15 feet from the side yard lines for S-F units.
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 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 thirty (30') feet shall be retained between the building site and the common drive or roadway. This section does not require revegetation of a buffer area that was cleared before this ordinance went into effect.
5. Accessory Structures. Accessory structures commonly associated with residential dwellings, i.e., garages, storage sheds, greenhouses, and a noncommercial workshop, are allowed within the district.

9.15.090. Home occupations.

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

B. Application. Home occupations may be operated in a R-M zone subject to the provisions of this section without a conditional use 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 or parking, 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 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 power line voltage off the parcel.
6. No sign greater than four-feet square (4' X 4' or sixteen (16) square feet) 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 may be allowed by a conditional use permit or as incidental to home occupations operated in accordance with these standards.
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 thirty (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 9.15.090.C must be met on a continuing basis and are mandatory conditions of a conditional use permit.

E. The following are allowed home occupations in the M-R district:

1. Beauty parlor or salon/barber shop;
2. Computer programming, software instruction, web page development, and related computer services;
3. Consulting services;
4. Dressmaking, sewing, millinery and tailoring;

5. Family child care home;
6. Home cooking and preserving;
7. Home crafts, such as model making, rug weaving, lapidary work and cabinet making;
8. Painting, sculpting or writing;
9. Telephone answering, telecommuting, secretarial and administrative services;
10. Tutoring and musical instruction.
11. Massage/physical therapy
12. Bed and breakfast;
13. Guide and guide services.

F. Permit required. All home occupations not specifically listed in DBC 9.15.090.E require a conditional use permit.

9.15.100. Nonconforming 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.

9.15.110. Nonconforming 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 fifty (50) percent or more of the market 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.

9.15.120. 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.

9.15.130. Conditional land use permits (CLUP)

A. Within thirty (30) 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 and state the facts for not accepting the application and return the application. The planning director, upon receiving the require fee, a complete application, complying with this chapter, thereafter, shall 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 quasi-judicial 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 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. All quasi-judicial hearings of the planning commission shall be open to the public and shall follow the procedures set fought in DBC 9.15.370.

9.15.140. Compliance with other laws.

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

9.15.150. 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 permittee of a revocation (quasi-judicial) 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.

9.15.160. 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 9.15.320.

9.15.170. CLUP 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 9.15.380 of this code. The same fee applies.

9.15.180. CLUP Variances.

Variances from the requirements for conditional land use permits may be requested pursuant to DBC 9.15.190.

9.15.190. Variances.

Variances may be granted pursuant to the terms of DBC 9.15.200 through DBC 9.15.260.

9.15.200. Procedures for variance from Title 9.15 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.

9.15.210. 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.

9.15.220. Variance Application – Quasi-judicial 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 at the next appropriate opportunity, and make recommendations to the planning commission regarding approval, denial, and conditions, if any, to be placed on the variance.

D. A quasi-judicial hearing shall be held before the planning commission regarding all variance applications.

9.15.230. Standards.

A. Pursuant to AS 29.40.040(b) a variance from a land use regulation adopted under DBC Title 9.15 may not be granted if:

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

9.15.240. 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 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.

9.15.250. Recordation.

Variances, extensions, and expirations may be recorded, by the applicant, in the State of Alaska Record's office. Failure to record a variance, expiration, or extension will not affect its validity.

9.15.260. Variance Appeals.

A. 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.

B. 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.

9.15.270. Violations and enforcement.

Violations of DBC Title 9.15 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 9.15.280 through DBC 9.15.330. Each day which the violation exists shall constitute a separate offense.

9.15.280. Infraction.

A. Fine. For violations of the provisions of Title 9.15 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.

TABLE INSET:

Code Chapter Section Citation	Chapter/Section Title	Scheduled Fine
DBC 9.15100 & 9.15.110	Violation of nonconforming use/structure provisions	\$100.00
DBC 9.15.130	Prohibited use	\$100.00
DBC 9.15.130	Violation of home occupation standards	\$100.00
DBC 9.15.	Prohibited home occupations	\$100.00
DBC 9.15.130F	Failure to obtain a home occupation permit	\$200.00

9.15.290. Statutory injunction.

In addition to other lawful remedies, a violation of DBC Title 9.15 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.

9.15.300. 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 9.15.380 (quasi-judicial hearings).
- 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 9.15.370 (quasi-judicial hearings). Enforcement order 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 9.15.

9.15.310. Permit revocation.

- A. Violations of enforcement orders or conditions of permits issued pursuant to the provisions of Title 9.15 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 9.15.310.B, the borough may seek a statutory injunction as provided by DBC 9.15.290.

9.15.320. Civil fine.

The planning department 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 9.15.370 (quasi-judicial hearings). 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.

9.15.330. Remedies cumulative.

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

9.15.340. Administration, enforcement, and penalties.

A. The Denali Borough mayor or his designee is hereby named as the administrative official for the purpose of administering and enforcing the provisions of this chapter.

B. If the administrative official or planning department finds that any of the provisions of this chapter are being violated, they shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal uses of land, building, or structures; removal of illegal buildings, or structures or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this chapter to insure compliance with or to prevent violations of its provisions.

C. Complaints Regarding Violations. Any person may file a complaint regarding an alleged violation thereto. All such complaints shall be brought to the attention of the planning department who shall record such complaint and immediately investigate and report thereon to the Commission and take any action required by this section.

D. Penalties for Violations. For any and every violation of the provisions of this chapter, the owner, agent, or contractor of a building or premise where such violations have been committed or shall exist, or any other person who maintains any building or premises in which any violation exists, shall be subject to a civil penalty in an amount as provided in DBC 9.15.280.C. Each and every day that such violation continues shall be deemed a separate and distinct violation. All remedies provided for herein shall be cumulative and not exclusive.

9.15.350. Policies and procedures.

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

9.15.360. 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 Chapter 9.15, as necessary.

9.15.370. Quasi-judicial hearings and notifications.

A. Intent. This section governs all quasi-judicial hearings held by the planning commission and Board of Adjustment as required by this chapter.

B. Quasi-judicial Hearing Notice. Notice of the hearing shall be published per the Denali Borough Charter Section 1.05. Furthermore, notice must be sent by certified mail, return receipt requested to the appellant and/or applicant for the hearing. The notice shall contain at least the following information:

1. A brief description of the proposal on which the public body is to act;
2. A legal and common description of the property involved;
3. Date, time, and place of the public hearing;
4. Person and place to contact for more detailed information.

C. Public Posting. The applicant shall post the property subject to the application with public notices as provided by the borough at least ten (10) days before the date of the required public hearing. Such notices shall be placed so as to be visible from each improved street adjacent to the property. The applicant is responsible for removing the posted notices within five (5) days after the hearing is completed. Failure to properly post notices shall be grounds for deferral or denial of the application. No one except the applicant or an agent of the applicant shall remove or tamper with any such required posted notice during the period it is required to be maintained under this paragraph.

D. Proof of Posting. Before the hearing, the applicant shall submit to the planning department an affidavit signed by the person who posted the notice stating that the notice was posted as required by this section.

E. The borough judicial body conducting the quasi-judicial hearing shall issue written findings, stating its decision, the reasons for its decision, and the vote of each member upon each question. The planning commission shall undertake deliberations immediately upon the conclusion of the hearing. An electronic recording shall be made of the hearings and shall be reduced to written minutes and a verbatim transcript. The minutes and verbatim transcript shall be made a public record. Copies of the decision shall be promptly posted on the borough's official web site and mailed to all parties participating in the hearing. The decision shall be distributed to the parties of record.

9.15.380. Appeals—Board of adjustment.

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 quasi-judicial hearing

pursuant to the provisions of DBC 9.15 by the applicant, a government entity, or an aggrieved party.

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.

B. Appeals shall be in writing and must contain:

1. The name and address of the appellant;
2. A description of the action or determination from which the appeal is sought;
3. The reason for the appeal, which must include a description of harm to the appellant.

C. Procedure.

1. The Denali Borough Assembly acting as the Board of Adjustment shall ordinarily set a date for and hold a hearing on all appeals within forty-five (45) days of the filing of the appeal. Notices to the appellant and/or applicant for the action or determination must be sent by certified mail, return receipt requested. Plus all who testified at hearing.

2. Consideration shall be given only to the evidence and findings of fact heard by the commission. No new evidence or issues shall be presented on appeal to the assembly.

3. The Board of Adjustment shall render a decision reference the appeal based on the facts of record. In exercising the above-mentioned powers, the Board of Adjustment may reverse, remand or affirm, wholly or partly, or may modify the order, requirement, decision or determination, based on facts, as ought to be made, and to that end shall have all the powers of the body from whom the appeal is taken.

4. All hearings of the Board shall be open to the public.

5. The Board shall issue findings of fact as per DBC 9.15.370E.

9.15.390. Appeal to superior court.

An appeal from any action or decision of the Board of Adjustment may be taken by any person to the Superior Court as provided by state law and applicable ordinances.

9.15.400. Severability.

In the event any portion, section, subsection, clause, sentence, or phrase of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter.

9.15.410. Record notice of zoning district.

A notice of borough zoning shall be recorded in the state of Alaska district recorder's office in Fairbanks, Alaska. The notice shall be in a form approved by the borough attorney's office.

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

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

PASSED and APPROVED by the DENALI BOROUGH ASSEMBLY this XXX day of XXX, 2007.

David M. Talerico, Borough Mayor

ATTEST: _____
Gail Pieknik, Borough Clerk

(SEAL)

Ayes:
Noes:
Excused:

FAILED TO BE INTRODUCED