

Presented by: The Manager
Introduced: 7/23/2018
Drafted by: A. G. Mead

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-28

An Ordinance Amending the Land Use Code Related to Mining.

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

Section 2. Amendment of Article. CBJ 49.65 Article I Exploration and Mining, is repealed in its entirety and reenacted to read:

ARTICLE I EXPLORATION AND MINING

49.65.110 Purpose.

(a) The purpose of this article is to foster the development of a safe, healthy, and environmentally sound mining industry while protecting the overall interests of public health, safety, and the general welfare and minimizing the environmental and surface effects of mining projects for which an exploration notice or mining permit is required. To the extent the City and Borough is not preempted from doing so under state or federal law, this article:

(1) Establishes the review and permit procedures necessary to conduct exploration, to gain approval to open a mine, to conduct mining operations, and to provide for final reclamation and financial warranty release at the conclusion of exploration and mining operations and reclamation of affected surface;

(2) Reasonably regulates areas of local concern, reserving to the City and Borough all regulatory powers not preempted by state or federal law;

(3) Authorizes the commission to condition a mining permit to the extent necessary to mitigate external adverse impacts and for the protection of the environment and public health, safety, and general welfare.

(b) This article does not regulate surface or subsurface water; geothermal resources; sand or gravel; common varieties of construction aggregate; or natural oil, gas, coal, or peat or their associated byproducts, except to the extent that such substances are developed or extracted as a mining byproduct in a mining operation of a large or small mine.

(c) The director may require a permit to be obtained or notice given for federally approved activities on federal lands, including unpatented mining claims, to allow for the director's review, so long as the purpose of the review process is not to deny use or expressly prohibit mining.

(d) To minimize the burden on the applicant to provide duplicative information required by this article, at the applicant's request, the director may rely on information provided in permit applications submitted to state or federal agencies for the proposed mining operation.

49.65.115 General applicability.

(a) For the purpose of identifying those areas within the City and Borough within which surface disturbance or subsidence in support of exploration or mining activities is prohibited, the Mining and Exploration Surface Activities Exclusion District Maps A—F, dated June 5, 2006, as may be amended by the assembly by ordinance, is adopted. Except as otherwise provided, mining and related activities may be conducted elsewhere within the City and Borough subject to the provisions of this article.

(b) This article does not regulate subsurface mining within or outside of the district except that subsidence within the district is prohibited. It is not the intent of this article to unreasonably limit or nullify private property rights.

(c) For the purpose of regulating exploration and mining activities within the City and Borough, the Urban/Rural Mining District Map, dated June 5, 2006, as may be amended by the assembly by ordinance, is adopted.

(d) Mines located in the Rural Mining District that will undergo environmental review by state agencies, federal agencies, or both, shall be permitted as allowable uses pursuant to CBJ 49.15.320 and shall not be subject to this article. In permitting such mines, the commission may impose conditions under CBJ 49.15.320(f)(1)—(8) and any additional conditions relating to traffic, lighting, safety, noise, dust, visual screening, surface subsidence, avalanches, landslides, and erosion deemed necessary by the commission.

(e) For the purposes of this article:

(1) *Exploration* means the process of advanced mineral commodity investigation subsequent to prospecting and prior to development.

(2) *Large mine* means a mining operation involving more than 20 acres of affected surface disturbance; or having 75 or more personnel employed at the mining operation in the City and Borough, whether direct employees or employees of independent contractors, in any consecutive three-month period; or a mining operation that a federal agency has determined would involve a major federal action significantly affecting the quality of the human environment so that the preparation of an environmental impact statement in accordance with NEPA is required.

(3) *Mining operation* means the development, construction or reclamation of a mine, including associated infrastructure, or the exploitation or extraction of a mineral commodity from its occurrence on or in the earth, or the operation of a mine. The term "mining operation" includes open pit mining, placer mining and underground mining, and the disposal of refuse, tailings or waste rock from any such operation. The term "mining operation" also includes transporting, concentrating, milling, evaporating and other on-site processing. The term "mining operation" does not include off-site smelting, refining, cleaning, preparing, transportation or other surface operations not conducted on the affected surface.

(4) *Small mine* means a mining operation other than a large mine.

49.65.120 Exploration notices and procedures.

(a) In order to ensure that mining exploration is conducted in accordance with the environmental, health, safety, and general welfare concerns of the City and Borough, mining exploration activities are prohibited except as provided in this section.

(b) Any applicant intending to conduct exploration operations must submit to the director a notice of mining exploration application, on a form specified by the director, and the processing fee specified in CBJ 49.85.100.

(c) A notice of mining exploration application must include the following information:

(1) A map identifying the area of the intended exploration activities on a scale no smaller than a scale of 1: 1,000, where one inch equals one mile;

(2) The proposed exploration schedule;

(3) The plan for reclamation of the area to be disturbed by the exploration activities, including information about the methodology and cost of such reclamation sufficient to enable the director to determine an appropriate financial warranty; and

(4) Copies of any prospecting permits, notices of intent to conduct exploration, or operating plans filed with any federal or state agency. An applicant shall supplement this information as needed with all modifications, revisions, and amendments to any permit application or plan submitted to any federal or state agency by the applicant, or with copies of any amended permits or plan approvals received by the applicant from any state or federal agency.

(d) Upon determining that the exploration application is complete and that the required processing fee has been paid, the director shall determine whether a financial warranty will be required in accordance with CBJ 49.65.140, unless preempted by state or federal law. The director shall notify the applicant within 20 days after receiving the applicant's notice of intent whether a

financial warranty will be required or waived. The requirement of a financial warranty may be waived if the director determines that a financial warranty is not necessary to ensure compliance with the requirements of this article. The waiver shall be in writing and shall set for the reasons for the waiver.

(e) When the applicant has either submitted the required financial warranty or the director has notified the applicant that the financial warranty requirement is waived or the CBJ preempted from requiring a warranty, the applicant shall be authorized to conduct exploration activities in accordance with the exploration notice. In conducting exploration operations, the applicant shall comply with all applicable federal, state and City and Borough laws, rules, and regulations.

(f) Upon completion of exploration activities and all necessary reclamation, the applicant shall notify the director that exploration and reclamation are complete and shall submit a map on a scale no smaller than a scale of 1: 1,000, where one inch equals one mile, showing the location of the exploration and reclamation activities.

(g) *Procedure for release of financial warranty.*

(1) Unless preempted by state or federal law, the director shall inspect the area of exploration to determine whether reclamation has been completed in accordance with CBJ 49.65.149. If the director finds that the reclamation satisfies the standards of CBJ 49.65.149(b), either by the director's own review or in reliance upon a state or federal reclamation inspection or both, the financial warranty shall be released. If the director finds that the standards have not been satisfied, the director shall notify the applicant of the additional steps necessary to achieve compliance with CBJ 49.65.149. The director shall give the applicant a reasonable time to complete reclamation and request another inspection. If the director, after re-inspection or review, is not satisfied that the standards of CBJ 49.65.149(b) have been met, the director may declare so much of the financial warranty as necessary forfeited and, after notice and an opportunity for the applicant to appeal pursuant to CBJ 49.65.176, apply the financial warranty to complete reclamation.

(2) Release of the financial warranty or notice to the applicant that the reclamation standards have not been met shall be given to the applicant no later than six months after the applicant has provided notice that exploration and reclamation are complete, as required by subsection (f) of this section.

49.65.125 Permit application requirements for all mines.

(a) Except as provided in CBJ 49.65.115(c), no new mine shall commence mining operations unless the applicant has obtained a conditional use permit pursuant to Chapter 49.15, Article III, as modified by this article.

(b) Applications, on a form specified by the director, shall be submitted to the director along with the fee required by CBJ 49.85.100, unless modified as provided in this section, and the following information:

- (1) Information establishing the right to use the affected surface;
- (2) A map showing the location of the mine site and the affected surface for that mine on a scale no smaller than a scale of 1: 1,000, where one inch equals one mile;
- (3) A description and timetable of the proposed mining operation, including:
 - (i) The anticipated duration of the mining operation;
 - (ii) A description of all roads, buildings, processing, and related facilities or proposed infrastructure;
 - (iii) The mining plan;
 - (iv) The plan for reclamation;
 - (v) The potential environmental, health, safety, and general welfare impacts of the proposed operation, including neighboring property impacts, and a description of the measures to be taken to mitigate the adverse effects of such impacts; and
 - (vi) A description of the methods to be used to control, treat, transport, and dispose of any hazardous substances, sewage, and solid waste;
- (4) Certification that there will be no affected surface or significant subsidence within the boundaries of the Mining and Exploration Surface Activities Exclusion District;
- (5) Any additional information determined by the director to be necessary to allow the director, after reviewing the application, to evaluate the proposed mining operation's compliance with CBJ 49.15.330 and 49.65.145;
- (6) Any other information requested by the director in relation to the pre-application conference held under CBJ 49.15.330(b); and
- (7) Copies of any state or federal permits issued in relation to the proposed mining operation, including the reclamation plan approved by the state under AS 27.19.030 and information related to any financial assurance required by the state under AS 27.19.040.

(c) In addition to the materials required by subsection (b), permit applications for large mines must include the following additional information:

- (1) The mining operations labor force characteristics and timing;
- (2) Payroll projections; and
- (3) Unless waived by the director, the socioeconomic impact assessment required by CBJ 49.65.130, and any additional information determined by the director to be necessary to complete the assessment.

(d) To the extent that the information required by this section has been provided by the applicant as part of any application submitted by the applicant to a state or federal agency, the applicant may rely on that application. The applicant shall provide the director with a copy of each state or federal application being relied upon, a cross-reference to the relevant portions of those applications, and a report on the current status of the applications.

(e) The requirement to provide information under this section is continuing throughout the duration of the application process, and supplemental information regarding any changes in the information reasonably requested must be provided to the director.

(f) *Processing fee.* The fee for processing the application shall be as specified in CBJ 49.85.100, and is in addition to any fee required by CBJ 49.65.130 for the socioeconomic impact assessment, or any fee for a professional consultant as provided by CBJ 49.65.135. While this fee is intended to cover the City and Borough's reasonable costs of review, after receipt of the application the director may determine that the cost of review is likely to substantially exceed the fee specified in CBJ 49.85.100. In that case, the director may, after consultation and discussion with the applicant, recommend an additional fee to the assembly. Such additional fee shall be approved by the assembly by motion and shall be set in an amount that will, as far as can be determined, cover the cost of reviewing the application, including reasonable administrative and overhead expenses. In recommending the additional fee, the director may consider any factors deemed relevant, including: the amount of staff effort required to adequately review the application; the involvement in the review process of other governmental agencies, either through a federal environmental review process or other procedure; the necessity for extraordinary travel and transportation costs that may be incurred by the director during review; the potential benefit of information generated by the application review to other mining operations or to the City and Borough; and the necessity for extraordinary communication, duplication, or publication costs arising from the review.

49.65.130 Socioeconomic impact assessment for large mines.

(a) A socioeconomic impact assessment evaluating the reasonable and foreseeable beneficial and adverse impacts, both direct and indirect, of the proposed mining operation on existing and future local conditions, facilities, and services shall be prepared by the director, or a consultant retained by the director for that purpose, unless waived. The director may waive all or part of the socioeconomic impact assessment when the director determines either that the information is not essential to evaluate the impacts the mining operation will have on the City and Borough, or that

the proposed mining operation will cause no meaningful or significant impacts. A waiver shall be in writing and shall set forth the reasons for the waiver.

(b) The impact assessment should include an evaluation of all reasonable, foreseeable, and demonstrable impacts of the proposed mining operation on transportation and traffic; sewer and water; solid waste; public safety and fire protection; education, native history and culture; health; recreation; housing; employment; local businesses; the rate, distribution, and demographic characteristics of any population changes induced by the mining operation; and the fiscal impacts of the mining operation on public facilities and services, including general government functions.

(c) If information necessary to conduct the assessment is contained in a final Environmental Impact Statement (EIS) prepared pursuant to the National Environmental Policy Act, the director shall rely on the EIS and may require the applicant to provide such supplemental information deemed necessary by the director to complete the assessment.

(d) All reasonable costs and expenses required to prepare the assessment shall be paid to the director by the applicant prior to the initiation of the assessment.

(e) The purpose of the impact assessment is to provide information to the director concerning possible beneficial and adverse impacts of the proposed mining operation for use in the preparation of the mitigation agreement required by CBJ 49.65.155.

49.65.135 Director's review procedures.

(a) The director shall review the application in accordance with CBJ 49.15.330(d), as modified by this article.

(b) The director's recommendation for approval or denial, with or without conditions, as required by CBJ 49.15.330(d)(3) or 49.65.145, shall be forwarded to the commission within the timelines specified below:

(1) *Small mines.* In the case of small mine applications, the recommendation shall be forwarded to the commission within thirty-five days after the application has been accepted as complete by the director.

(2) *Large mines.*

(A) The director shall conduct a preliminary review of an application for a large mine within 20 days of its submission to determine whether the application is complete. The director shall then promptly schedule a meeting with the applicant for the following purposes:

- (i) To notify the applicant if the application is complete, and if not, to notify the applicant what additional information is needed to make the application complete.
- (ii) The director and the applicant shall establish the procedures for coordinating the review of the application with any review being undertaken by other agencies as part of a state or federal permit process.

(B) Unless an Environmental Impact Statement (EIS) is required by the National Environmental Policy Act (NEPA), or unless the applicant agrees to an extension, the director shall complete the review of the application within 90 days after the director has determined that the application is complete. If an EIS is required, then the timing of the review of the application shall be in accordance with the provisions of subsection (C), below.

(C) If an EIS for the proposed mining operation is required under NEPA, then the application will not be considered complete until the draft environment impact statement (DEIS), the final environment impact statement (EIS), and all comments and testimony have been submitted to the director. The director may begin review of the application at any time after the filing of the DEIS with the director, but the recommendation may not be presented to the commission until the department has considered the final EIS. The applicant shall advise the department immediately at any time during the application process or thereafter if NEPA is involved so that the City and Borough may participate in the NEPA process.

(c) The director's recommendation must consider whether the proposed mining operation will mitigate adverse environmental, health, safety, and general welfare impacts. The director's recommendation must include consideration of the following:

- (1) Whether air and water quality standards will be maintained in accordance with federal, state, and local laws, rules, and regulations;
- (2) Whether sewage, solid waste, hazardous and toxic materials will be properly contained and disposed of in accordance with federal, state, and local laws, rules, and regulations;
- (3) Whether the mining operation will be conducted in such a way as to minimize safety hazards to the extent reasonably practicable and to mitigate adverse impacts on the public and on neighboring properties such as those from traffic, noise, dust, unsightly visual aspects, surface subsidence, avalanches, landslides, and erosion;
- (4) Whether historic sites designated by the City and Borough as significant will be protected; and

(5) The sufficiency of the proposed reclamation plan.

(d) In making the determinations under subsection (c), the director shall find that the proposed mining operation will comply with state and federal law as to any standard or subject addressed by an applicable state or federal permit issued to the applicant for the proposed mining operation. However, the issuance of a state or federal permit shall not prohibit the director from recommending more stringent conditions on the proposed operation to the extent the City and Borough is not preempted by state or federal law, or from making a recommendation for denial if the director deems it is warranted in accordance with this article.

(e) The director's recommendation for approval may include any conditions or stipulations the director deems to be reasonably necessary to mitigate adverse environmental, health, safety, or general welfare impacts that may result from the proposed mining operation. If the director makes a recommendation for approval, the director shall also make a recommendation on the amount of any financial warranty required by CBJ 49.65.150.

(f) If the director determines that the proposed mining operation does not meet the standards required by CBJ 49.65.145 and 49.15.330, the director shall notify the applicant. The applicant may then withdraw the application, amend and resubmit the application, or allow the director's recommendation to be forwarded to the commission as written. If the application is resubmitted within 180 days of the initial submission, no new application fee will be required but the applicant shall pay any additional processing fee determined by the director to be reasonably necessary to defray the cost of reviewing the revised application to the extent that it is different from the original submittal.

(g) If the director determines that proper review of the application will require the department to retain outside professional assistance, the director may, in the director's discretion, obtain an outside professional consultant. The fee for the consultant shall be borne by the applicant.

49.65.140 Commission review.

(a) Once complete, the director's recommendations shall be provided to the applicant and placed on the agenda for the next regularly scheduled meeting after public notice has been given as required by CBJ 49.15.230.

(b) The commission shall hear the application as a conditional use permit application as provided in chapter 49.15, article III, as modified by this article.

(c) If the commission determines that the application, with stipulations or conditions as appropriate, satisfies the standards of CBJ 49.65.145 and 49.15.330, it shall approve the application, including the reclamation plan or any cooperative management agreement with the state under 11 AAC 97.700, and set the amount of the financial warranty under CBJ 49.65.150. When the applicant has submitted a financial warranty in the amount set by the commission in a

form satisfactory to the municipal attorney, and executed any mitigation agreement required by CBJ 49.65.155, the permit shall be promptly issued by the director.

49.65.145 Required conditions for all conditional use mining permits.

(a) The commission shall impose as a condition of any permit issued by the commission the following requirements:

- (1) The mining operation must be conducted in accordance with this article, CBJ 49.15.330, and any other applicable provisions of the City and Borough Code in such a way as to mitigate adverse environmental, health, safety, and general welfare impacts;
- (2) Air and water quality must be maintained in accordance with any applicable federal, state, and local laws, rules and regulations, or permits;
- (3) Hazardous and toxic materials, sewage, and solid waste shall be properly contained and disposed of in accordance with applicable federal, state, and local laws, rules and regulations;
- (4) All mining operations shall be conducted according to the standards of the City and Borough as contained in this article, CBJ 49.15.330, the conditional use mining permit, and any other applicable provisions of the City and Borough Code, so as to minimize to the extent reasonably practicable safety hazards, and to control and mitigate adverse impacts on the public and neighboring properties, such as from traffic overloading, noise, dust, unsightly visual aspects, surface subsidence, avalanches, landslides and erosion;
- (5) Appropriate historic sites designated as significant by the City and Borough shall be protected;
- (6) Reclamation of all affected surfaces, imposed as part of a conditional use permit in accordance with CBJ 49.65.149 or as set by the state under AS 27.19.030, be completed as soon as is reasonable after affected surface areas are no longer being used in exploration and mining operations; and
- (7) In the case of large mines, that the applicant comply with the mitigation agreement required by CBJ 49.65.155;
- (8) The applicant will maintain the financial warranty in the amount approved by the director or the commission, including any amendments to the required financial warranty amount under CBJ 49.65.150(g);
- (9) The loss of any applicable state or federal permit may result in the revocation of the conditional use permit; and

(10) In the event mining operations violate or threaten to violate this article, CBJ 49.15.330, or a permit issued under this article, the applicant shall notify the director of such fact and of the steps to be taken to return to compliance, or to resolve the potential noncompliance.

49.65.149 Reclamation.

(a) As required by CBJ 49.65.145, and to the extent not preempted by state or federal law, it shall be a condition of all permits issued under this article that reclamation of all affected surfaces, imposed as part of a conditional use permit issued under this article or as set by the state under AS 27.19.030, be completed as soon as is practicable after affected surface areas are no longer being used in exploration and mining operations. The reclamation plan shall be submitted with the mining application, as required by CBJ 49.65.125(b)(3)(iv).

(b) If not addressed in a reclamation plan approved by the state under AS 27.19.030, and to the extent not preempted by state or federal law, reclamation required under this article shall include the following requirements:

- (1) Cleanup and disposal of dangerous, hazardous or toxic materials;
- (2) Regrading of steep slopes of unconsolidated material to create a stable slope;
- (3) Backfilling underground shafts and tunnels to the extent appropriate;
- (4) Adequate pillaring or other support to prevent subsidence or sloughing;
- (5) Plugging or sealing of abandoned shafts, tunnels, adits or other openings;
- (6) Adequate steps to control or avoid soil erosion or wind erosion;
- (7) Control of water runoff;
- (8) Revegetation of tailings and affected surface areas with plant materials that are capable of self-regeneration without continued dependence on irrigation and equipment where appropriate;
- (9) Rehabilitation of fisheries and wildlife habitat; and
- (10) Any other conditions imposed by the commission to prevent unnecessary or undue degradation of land and water resources. For the purposes of this subsection, “unnecessary and undue degradation” has the same meaning as defined by AS 27.19.100.

(c) Subsequent to the issuance of a permit or the grant of authority under an exploration notice, the applicant's compliance shall be measured against the requirements contained in that permit or the conditions of the exploration notice and the applicant's plans submitted with the permit application or the notice.

(d) If a reclamation plan has been required by the state under AS 27.19.030, and upon approval by the state, the City and Borough may enter into a cooperative management agreement as provided by 11 AAC 97.700 to coordinate oversight and implementation of reclamation activities required of the applicant with other agencies.

49.65.150 Financial warranty.

(a) The purpose of the financial warranty is to ensure that, if the applicant fails to comply with any obligation, requirement, or condition imposed by any permit or exploration notice issued under this article, there will be sufficient funds available to the City and Borough to enable it to complete the required work.

(b) To the extent not preempted by state or federal law, no permit shall be issued or exploration authorized pursuant to this article until any required financial warranty has been submitted by the applicant, approved by the municipal attorney, and accepted by the director.

(c) The director reserves the right to seek forfeiture of the financial warranty, in whole or in part, in the interest of protecting the environmental, health, safety and general welfare requirements of the City and Borough if the director determines that the applicant has violated the obligations, requirements, or conditions imposed by any permit or exploration notice issued under this article. The forfeiture shall be limited to the extent necessary to satisfy the obligations, requirements, or conditions that the applicant has violated.

(d) The amount of the financial warranty for an exploration notice shall be set by the director. The amount of the financial warranty for small mines and large mines shall be determined by the commission. The financial warranty shall be set in the amount necessary to ensure the completion of all work required by any permit or exploration notice issued under this chapter that the City and Borough may require to the extent not preempted by state or federal law. In recommending and setting the amount of the financial warranty, the director and the commission, respectively, shall take into consideration the amount and scope of any financial warranties that have been submitted to other agencies. When the performance of such obligations is guaranteed by financial warranties that have been submitted to other agencies, the applicant may be required to post a separate financial warranty with the City and Borough if the municipal attorney determines that the financial warranty submitted to another agency does not create a lien or interest sufficient to protect the interests of the City and Borough. Examples of obligations to be covered by the financial warranty required under this section may include but are not limited to:

- (1) Construction of berms, dikes, spillways, channels, or other facilities to control, detain, retain, or reduce runoff, soil erosion, and siltation, or to divert water around waste, tailings, stockpiles or other facilities or disturbed areas;
- (2) Installation and maintenance of landscaping, including berming, tree planting and other required grading or planting to provide visual and sound barriers and to eliminate or reduce the appearance of scarring;
- (3) Installation and maintenance of road or highway improvements to mitigate the impact of increased traffic or heavy trucking that is measurable and directly attributable to the mining operation; such facilities may include speed access ramps or lanes, turn lanes, intersection improvements, traffic-control devices or private haulage ways where necessary to avoid the use of public roads or highways. The cost of installation or maintenance described in this subsection shall be shared by the applicant and the City and Borough in relation to the proportion of the directly attributable and measurable impact on traffic of the applicant's activities or the facilities being maintained, installed or improved;
- (4) Reclamation of affected surfaces during and following exploration and mining operations;
- (5) Regrading of steep slopes of unconsolidated materials to create a stable slope;
- (6) Installation of facilities required to prevent or reduce degradation of air or water quality or to contain or control toxic or hazardous wastes;
- (7) Removal of buildings, structures or equipment where appropriate;
- (8) Any other obligations as necessary to conform to the commission's determinations under CBJ 49.15.330 and 49.65.145.

(d) The financial warranty required under this article for a large or small mine permit or an exploration notice may be in any one or a combination of the following forms at the option of the applicant, provided that the cumulative amount is equal to the amount provided in subsection (b) of this section:

- (1) Cash;
- (2) Certificate of deposit;
- (3) An irrevocable standby letter of credit from a United States bank; or

(4) A surety bond from a bonding company licensed to do business in Alaska that is satisfactory to the director for credit worthiness. Interest on cash deposits or certificates of deposit will accrue to the credit of the applicant.

(e) In addition to the forms of financial warranty set forth in this section, with respect to a small mine permit or an exploration notice, the applicant may elect to use a property bond as a form of financial warranty; provided, that at least ten percent of the total amount of the financial warranty shall be cash or a certificate of deposit; and provided further, that the commission determines that the value of the property is equivalent to the amount required to be generated for satisfaction of the obligation and the municipal attorney determines that the bond creates a lien with sufficient priority to permit its collection should such become necessary.

(f) The form of financial warranty shall provide that the funds may be used by the City and Borough to satisfy the obligations described in this section when there has been a determination by the director that the applicant has not completed its obligations in a timely manner or has otherwise violated the terms of its permit or conditions of its exploration notice, and after notice and opportunity to perform the obligation has been given to the applicant.

(g) The amount of the financial warranty shall be reviewed annually by the director, and a determination shall be made whether the amount should be increased or decreased, taking into account changes in the obligations of the applicant to be undertaken during the ensuing year, cost of current obligations of final reclamation, and changes due to inflation or deflation.

(h) If the amount of financial warranty is to be increased or decreased by the determination made in subsection (g) of this section, then the actual increase or decrease shall be made according to the procedure in subsection (d) of this section.

49.65.155 Mitigation agreements for large mines.

(a) With respect to a large mine permit application, the applicant shall negotiate and enter into a mitigation agreement with the City and Borough.

(b) The mitigation agreement shall establish responsibility for the mitigation of reasonably foreseeable and demonstrable adverse impacts of the mining operation not addressed by the reclamation plan, including direct impacts and indirect impacts. The applicant shall be responsible for mitigating the direct impacts. The City and Borough shall be responsible for mitigating indirect impacts except where the costs of mitigating specific indirect impacts are found by the manager to:

(1) Exceed the amount of any City and Borough nonproprietary revenue increase attributable to the mining operation; and

(2) Require a direct and significant increase in local taxes or fees to adequately mitigate the impact.

(c) Highly speculative impacts shall not be included in the mitigation agreement. Taxes and nonproprietary revenues generated as a result of the proposed mining operation shall be a factor considered in negotiating the mitigation agreement. This agreement shall be incorporated as part of the permit, as required by CBJ 49.65.145.

(d) This subsection does not limit or otherwise affect the authority of the director or the commission to condition or place stipulations on a permit pursuant to this article or the conditional use process as provided in chapter 49.15, article III.

49.65.160 Term of notices and permits; temporary cessation.

(a) Exploration notices and permits for mining operations shall remain in effect for the duration of the operation identified in the notice or in the application, subject to the conditions of this section and providing that the following conditions are met:

- (1) The financial warranty must remain in full force and effect;
- (2) The operator must not be found to be in substantial violation of this article; and
- (3) With respect to a large or small mine permit, mining operations must be continued in accordance with the plan contained in the application for at least 90 days in each year as to a large mine, and for at least 30 days in each year as to a small mine.

(b) During the term of any exploration notice or permit, the director may, pursuant to CBJ 49.65.150(g), revise the amount of the financial warranty. If the amount of the financial warranty is increased, the operator shall submit the appropriate amount of additional financial warranty within 60 days of the director's determination.

(c) The operator shall advise the director within ten days of the date upon which the applicant receives notice that a financial warranty that has been submitted to any other agency is reduced or released.

(d) If at any time during the term of a permit the operator determines that it will not conduct mining operations for the applicable time minimums established in CBJ 49.65.160(a)(3), the operator shall notify the director and request that the mining operation be placed in an inactive status. In conjunction with this notification, and as a condition to granting a request for inactive status, the operator shall advise the director of the measures it will employ to prevent hazardous or dangerous conditions, erosion, or other environmental damage that may result from the operator's activities, and the security measures it will employ at the mining operation during the inactive period. An applicant may continue in inactive status for a five-year period and may, with the permission of the director, obtain successive five-year extensions of that status. At the conclusion of inactive status, the operator shall either resume operations or commence final reclamation in accordance with the approved reclamation plans. If an operator ceases operations

for more than one year but does not request inactive status, the director may require the operator to commence final reclamation in accordance with its plans.

(e) Throughout the duration of a large mine permit, the operator of a large mine shall also notify the director not less than 60 days prior to requesting placement on inactive status. The operator and the City and Borough shall maintain a process to exchange information regarding the impact on the City and Borough that may result from a change in mining operations. In addition, the operator shall provide the director with copies of any notification it may be required to provide to federal agencies under federal law concerning proposed personnel layoffs at its mining operation. The director may waive any of these notification requirements in the event of an unforeseen act of God or disaster.

49.65.165 Annual reports; monitoring; monitoring fee.

(a) During the term of each exploration notice, the operator shall submit annual progress reports to the director on or before March 31 of each year. The progress report must describe the areas in which exploration was conducted during the preceding year, the amount of acreage that was disturbed by such exploration, and the nature and extent of associated reclamation activities.

(b) During the term of each small mine permit or large mine permit, including any inactive period, the operator shall submit an annual progress report to the director on or before March 31 of each year describing the status of the mining operation in relation to the approved mining plan and timetable, and describing reclamation activities during the year.

(c) The director shall have ongoing authority to monitor any mining operation for which a permit has been issued in order to ascertain whether the mining operation is in compliance with the requirements, terms, conditions and mitigation measures in the permit. The operator shall, upon reasonable notice, provide the director with access, at reasonable times, to the premises and to the records of the mining operation to the extent such access is necessary to ascertain whether the mining operation is in compliance.

(d) Throughout the duration of the term of a small mine permit or a large mine permit, the operator shall pay to the director an annual monitoring fee to defray the costs of inspecting and reviewing the affected surface and compliance with the permit. The annual monitoring fee shall be such amount as may be established by the commission as necessary to cover the reasonable costs of inspection and review.

49.65.170 Technical revisions, summary approval, and amendments.

(a) During the term of a permit, the operator shall notify the director of all technical revisions to its operations. As used in this section a "technical revision" is a change in operations that does not, in the judgment of the director, have more than a minor effect on reclamation and that does not change the total amount of disturbance or the overall environmental or socioeconomic impact of the mining operation. After the technical revision is submitted to the director, the director shall

within 30 days determine and notify the operator whether a permit amendment or summary approval of the change is necessary or whether the technical revisions may be accomplished under the operator's existing permit.

(b) If the operator or the director determines that the change to the mining operations are more than a technical revision, or if the changes will require preparation of a new or supplemental environmental impact statement, the permit shall be amended unless summary approval of the change is granted pursuant to (b)(2) of this section.

(1) Except as provided in subsection (2) of this section, the operator shall file with the director an application for amendment to its original permit, together with an application with the same content as required for an original application, except that no operator will be required to resubmit any information that duplicates applicable previous submittals. The permit amendment application shall be processed in accordance with the same procedure as established for processing permits under CBJ 49.65.125, 49.65.135 and 49.65.140. The operator shall not commence changes requested in its amendment application until the permit amendment has been approved and, if appropriate, additional financial warranties submitted.

(2) Summary approval.

(A) Upon request of the operator, the director may summarily approve a proposed change in mining operations not constituting a new land use or separate development upon a written determination that:

(i) The mine is located entirely outside the roaded service area established in CBJ 01.30.320;

(ii) The application is complete, providing all of the information necessary for the director to make the summary approval determinations set forth in subsections (i)—(iv);

(iii) The proposed change in mining operations will have no significant impact within the roaded service area on habitat, sound, screening, drainage, traffic, lighting, safety, dust, surface subsidence, avalanches, landslides, or erosion; and

(iv) The proposed change in mining operations has undergone or is undergoing environmental review and approval by one or more federal agencies, state agencies, or both.

(B) The director shall make the determination required by this subsection (2) within 45 days unless additional information is required. If the director requires additional information to make the determination, upon written notification to the

operator, the time for determination may be extended for up to 20 additional days after submittal by the operator of the additional information. If an environmental impact statement is required by one or more federal agencies, completion of the draft environmental impact statement is necessary for summary approval.

(C) Planning commission review.

(i) The director shall promptly forward the proposed summary approval to the planning commission after the determination is completed. The planning commission may ratify or reject the proposed summary approval.

(ii) If the commission rejects the proposed summary approval, it may:

(a) Return the matter to the director for further consideration of whether the director, in consultation with the operator, can address issues identified by the commission through imposition of conditions or changes in the proposed mining operation; or

(b) Direct that the proposed change be processed by the director as an application for an allowable use permit for which the commission may impose conditions under CBJ 49.15.320(f)(1)—(8) and such additional conditions as are necessary to reduce to non-significant any impacts in the roaded service area on habitat, sound, screening, drainage, traffic, lighting, safety, dust, surface subsidence, avalanches, landslides, or erosion.

49.65.175 Enforcement.

This article shall be enforced in accordance with chapter 49.10, article VI and CBJ 49.65.195.

49.65.176 Appeal.

Any person who is aggrieved by a decision of the director or the commission with respect to this article, other than one under CBJ 49.65.175, may appeal that decision to the commission or the assembly, as applicable, as provided in chapter 49.20, article I.

49.65.180 Release of warranties for mining operations.

(a) Upon completion of mining operations, the operator shall file a written notice of completion with the director when it believes it has completed any or all requirements of this article, CBJ 49.15.330 and its permit with respect to any or all of its affect surfaces. The director shall, within 90 days after receiving the notice, or as soon thereafter as weather conditions permit, inspect the lands and reclamation described in the notice to determine whether the operator has complied with all applicable requirements.

(b) If the director determines that the operator has successfully complied with all the requirements of this article, CBJ 49.15.330 and the permit, it shall release all financial warranties applicable to said requirements. Release shall be in writing and shall be delivered to the operator promptly after the date of such filing.

(c) If the director finds that the operator has not complied with the requirements of this article, CBJ 49.15.330 or the permit, it shall so advise the operator not more than 90 days after the date of the inspection. The operator shall be given a reasonable time to comply with requirements before a second inspection. If the operator does not complete the requirements, or if after reinspection the director is not satisfied that the operator has complied with all the requirements of this article, CBJ 49.15.330 or the permit, the financial warranty shall be subject to forfeiture to the extent necessary to satisfy any outstanding requirements.

49.65.185 Successor operators.

(a) Any operator desiring to transfer its rights under an exploration notice or a conditional use mining permit shall submit a request for transfer to the director, on a form specified by the director.

(b) The director may approve the request for transfer if the director finds:

(1) The proposed operator will conduct the operations covered by the notice or permit in accordance with the requirements of this article and any additional requirements set by the director;

(2) The proposed operator has submitted a financial warranty at least equivalent to the financial warranty of the original operator and such other amount as may be determined using the procedures in CBJ 49.65.140;

(3) The proposed operator will continue to conduct the operations involved in full compliance with the terms and conditions of the original notice or permit; and all obligations and responsibilities undertaken by the original operator shall be accepted and assumed by the proposed operator.

(c) The director may deny approval of the request for transfer if the original operator has any existing notice or permit violations at the time of the request until such time as the violations have been remedied. If the director approves the transfer, the financial warranty submitted by the original operator shall be released.

(d) Director decisions on transfer requests must be in writing.

49.65.190 Confidentiality.

Upon request of any applicant or operator, information in any application or report relating to the location, size, grade, geology or geochemistry of any ore deposit, proprietary process information, or information as to cost of mine construction or operation shall be kept confidential to the extent permitted by law. Information to be maintained as confidential must be separately presented to the director and must be marked "Confidential."

49.65.195 Suspension or revocation of notices and permits.

(a) Subject to the procedures of this section, the commission may suspend or revoke a permit issued under this article, or the authority to operate under an exploration notice pursuant to CBJ 49.65.120, upon a determination by the commission that:

- (1) The exploration of mining operations are not in material and substantial compliance with the requirements of the exploration notice or permit issued under this chapter or by any state or federal agency, and such material and substantial noncompliance remains unremedied after issuance of a compliance order issued pursuant to CBJ 49.10.620; or
- (2) The exploration of mining operations under the notice or permit have a history or pattern of intentional or grossly negligent noncompliance and compliance orders have previously been issued for such past events of noncompliance. Good faith efforts to remedy events of noncompliance shall create an inference that such noncompliance is not a cause for suspension or revocation.

(b) The director shall provide the operator with written notification that the director is recommending that the commission consider the entry of a suspension or revocation order under subsection (a) of this section. The written notification shall set forth the reasons for the director's recommendation and the operator's right to a hearing before the commission. The commission shall schedule a hearing within 30 days after the operator has received the written notification. At the hearing, the director shall have the burden of establishing that the operator is not in material and substantial compliance with the permit or authority to operate under an exploration notice, or that there is a past history or pattern on noncompliance sufficient to justify suspension or revocation.

(c) Upon written notification of the entry of a suspension or revocation order to the operator or to any person operating under the authority of the permit or exploration notice, all exploration or mining operations shall cease except those specifically authorized by the commission in the order or if the assembly stays the order pending appeal.

(d) A suspended notice or permit may be reinstated by the commission upon a determination that the exploration or mining operations have been brought into compliance with the conditions of the notice or permit. A notice or permit that has been revoked may not be reissued by the

commission until the commission determines that the exploration or mining operation has been brought into compliance with the terms and conditions of the notice or permit, and the operator has clearly and convincingly demonstrated that preventative measures have been taken to ensure that those conditions giving rise to the revocation will not reoccur.

(e) A suspension or revocation order may be appealed to the assembly in accordance with chapter 49.20, article I. Pending appeal, the assembly may in its discretion stay an order of suspension or revocation.

(f) The rights of suspension or revocation provided for in this section are in addition to any rights or powers vested in the City and Borough in CBJ 49.65.175 or chapter 49.10, article VI.

49.65.196 Effect of article on operations in annexed territory.

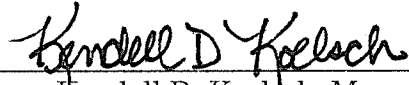
Large mine, small mine, and exploration operations occurring in territory annexed by the City and Borough that have been issued the federal and state permits or approvals necessary for the operation, including, if applicable, permits or approvals necessary to operate in accordance with the National Environmental Policy Act (NEPA) process, shall be deemed to have been issued a large mine permit, a small mine permit, or an exploration notice, as applicable, under this article and to otherwise be eligible to operate pursuant to this article upon the effective date of annexation; provided, that all such federal and state permits or approvals are currently valid. With the exception of the initial permit application and exploration notice filing requirements, the operator shall be subject to all of the requirements of this article in effect upon the effective date of annexation, including the technical revisions and permit amendment requirements, and the monitoring fee enforcement and revocation or suspension provisions, in the same manner as any other operator. The terms of the City and Borough permit or notice shall be deemed to be the terms of the state and federal permits or approvals, unless and until a permit amendment is required. The operator shall be required to execute documentation acknowledging that the permit or notice deemed to be issued under this article shall have the same terms as the federal and state permits or approvals unless and until a permit amendment is required, and that the operator, and the permit or notice deemed issued, shall be subject to all of the requirements of this article in effect upon the effective date of annexation with the exception of the initial permit application and exploration notice filing requirements.

49.65.197 Severability.

If any section, subsection, paragraph, sentence, clause or phrase of this article is for any reason held unlawful or otherwise invalid, such holding shall not affect the remaining portions of the article. The City and Borough declares that it would have enacted this article and each and every part thereof, irrespective of the fact that any one or more parts might be held unlawful or otherwise invalid.

Section 3. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this 13th day of August, 2018.



Kendell D. Koelsch, Mayor

Attest:



Elizabeth J. McEwen, Municipal Clerk