

SUBJECT: AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.60 TO CHANGE THE APPLICABILITY AND STANDARDS FOR CULTIVATION FACILITIES.

AGENDA OF: December 8, 2022

ASSEMBLY ACTION:

Defeated with Assembly members
Hale & Sumner in support 12-20-22
(B)H

MANAGER RECOMMENDATION: Introduce and set for public hearing.

APPROVED BY GEORGE HAYS, ACTING BOROUGH MANAGER: WZ

Route To:	Department/Individual	Initials	Remarks
	Originator - A. Strawn Planning and Land Use Director	(B)	
	Borough Attorney	AS	
	Borough Clerk	Gym 11/28/22 (B)H	

ATTACHMENT(S): Fiscal Note: YES ☐ NO ☒
Planning Commission Resolution No. 22-37 (2 pp)
MSB 17.60 (16 pp)
Ordinance Serial No. 22-137 (10 pp)

SUMMARY STATEMENT:

This ordinance is at the request of Assembly Member Hale. The intent of this ordinance is to streamline the permitting process for new cultivation facilities.

This ordinance creates an administrative permit process for cultivation facilities. It also eliminates subjective standards such as whether or not the use will preserve or not detract from the value, character, and integrity of the surrounding area. The ordinance also reduces setbacks for cultivation facilities from lot lines and public rights-of-way.

This ordinance is not adding any standards for retail facilities. Rather, section 7 of this ordinance preserves the standards for

retail facilities that currently exist for all marijuana facilities.

RECOMMENDATION OF ADMINISTRATION:

Introduce and set for public hearing.

By: A. Strawn
Introduced: Oct 17, 2022
Public Hearing: Nov 21, 2022
Action: Adopted

**MATANUSKA-SUSITNA BOROUGH
PLANNING COMMISSION RESOLUTION NO. PC 22-37**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH PLANNING COMMISSION RECOMMENDING APPROVAL OF AN ORDINANCE AMENDING MSB 17.60 TO CREATE AN ADMINISTRATIVE PERMIT PROCESS FOR MARIJUANA CULTIVATION FACILITIES.

WHEREAS, land use impacts associated with cultivation facilities are minor enough that they do not tend to be incompatible with or detract from the surrounding area; and

WHEREAS, all cultivation facilities, regardless of size, should have basic standards associated with them to ensure proper setbacks from schools and adjacent properties; and

WHEREAS, objective standards such as setbacks can be objectively evaluated by MSB planning staff and do not require Planning Commission review.

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Planning Commission hereby recommends approval an Ordinance creating an administrative permit process for cultivation facilities.

IM 22-245
OR 22-137

ADOPTED by the Matanuska-Susitna Borough Planning Commission
this 21 day of November, 2022.



STAFFORD GLASHAN, Chair

ATTEST



KAROL RIESE, Planning Clerk

(SEAL)

Yes: (7) Commissioner Chesbro, Allen, Kendig, Rubeo,
Seeggin, Glashan, Glenn

No: (4)

CHAPTER 17.60: CONDITIONAL USES

Section

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17.60.130 Standards for race tracks [Repealed]

17.60.135 Standards for race tracks [Repealed]

17.60.140 *Tall structures, including but not limited to, towers, tower farms, tower routes, and tower service area grids [Repealed]*

17.60.145 Tall structures, including but not limited to towers, tower farms, tower routes, and tower service area grids [Repealed]

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(A) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(0.5) *[Repealed by Ord. 11-074, § 4, 2011]*

(0.7) *[Repealed by Ord. 11-074, § 4, 2011]*

- “Automobile wrecking” means the dismantling or wrecking of automobiles or other motor vehicles and the storage or keeping for commercial sale of dismantled or wrecked automobiles or the parts resulting from such activity.
- “Automobile wrecking yard” means the location within which the activity of automobile wrecking for commercial or public use is present.
- “Commercial” means any activity where goods or services are offered or provided for sale or profit.
- “Commission” means the planning commission of the Matanuska-Susitna Borough.
- “Correctional community residential center (CCRC)” means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or 24-hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or 24-hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U.S. Director of Bureau of Prisons for federal prisoners.
- “Correctional institution” means a facility other than a correctional community residential center providing for the imprisonment or physical confinement or detention of prisoners under guard or 24-hour physical supervision, such as prisons, prison farms, jails, reformatories, penitentiaries, houses of detention, detention centers, honor camps, and similar facilities.
- “Federal prisoners” means offenders in the custody or control or under the care or supervision of the United States Attorney General or the Bureau of Prisons.

- "Industrial hemp" means all parts and varieties of the genus Cannabis plant containing not more than 0.3 percent delta-9-tetrahydrocannabinol.
- "Junk" means any secondhand and used machinery, scrap iron, copper, lead, zinc, aluminum, or other metals; it also includes wrecked automobiles, tools, implements, rags, used building materials, rubber, and paper. The above listed materials are not intended to be exclusive; "junk" may include any other materials that cannot, without further alteration and reconditioning, be used for their original purposes.
- "Junkyard/refuse area" means a location which is commercially used for the purpose of the outdoor storage, handling, dismantling, wrecking, keeping or sale of used, discarded, wrecked or abandoned airplanes, appliances, vehicles, boats, building and building materials, machinery, equipment, or parts thereof, including but not limited to, scrap metals, wood, lumber, plastic, fiber, or other tangible materials.
- "Marijuana" means all parts of the plant of the genus Cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate. "Marijuana" does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination, the weight of any other ingredient combined with marijuana to prepare topical or oral administration, food, drink, industrial hemp, or other products.
- "Marijuana cultivation facility" means an entity licensed to cultivate, prepare, package and sell marijuana to marijuana dispensaries, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.
- "Marijuana product manufacturing facility" means an entity registered to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.
- "Marijuana products" means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.
- "Marijuana retail facility" means an entity licensed to purchase marijuana or a marijuana product from a marijuana cultivation facility or marijuana product manufacturing facility and to sell marijuana and any approved marijuana product to a consumer.
- "Neighborhood" means an area of a community with characteristics which distinguish it from other community areas and which may include distinct economic characteristics, use patterns, schools, or

boundaries defined by physical barriers such as major highways, railroads, or natural features such as rivers.

- “Net floor area” means the total of all floor areas of a building or lease area, excluding stairwells and elevator shafts, equipment rooms, interior vehicular parking, or loading.
- “Prisoner” means:
 - (a) a person held under authority of state law in official detention as defined in AS 11.81.900;
 - (b) includes a juvenile committed to the custody of the Alaska Department of Corrections Commissioner when the juvenile has been charged, prosecuted, or convicted as an adult.
- “Recreation or youth center” means a building, structure, athletic playing field, or playground which is: (a) run or created by a local government or the state to provide athletic, recreational, or leisure activities for minors; or (b) operated by a public or private organization licensed to provide shelter, training, or guidance for persons under 21 years of age.
- “School grounds” means a lot or parcel with facilities primarily used for the academic education of children or young people, usually under 18 years of age. For the purpose of setback requirements under this chapter, universities, vocational trade schools, and residential structures where children receive homeschooling are not considered schools.

(Ord. 18-027, § 2, 2018; Ord. 16-003(SUB), § 2, 2016; Ord. 15-016, § 4, 2015; Ord. 12-157(SUB), § 3, 2013; Ord. 11-074, § 4, 2011; Ord. 99-093(AM), § 1, 1999; Ord. 97-084(AM), § 2, 1997; Ord. 96-003(SUB)(AM), § 2, 1996; Ord. 84-27, § 2 (part), 1984)

17.60.020 APPLICABILITY.

- (A) This chapter applies in all areas of the borough including special land use districts and residential land use districts. Where this chapter is in conflict with the conditions of a special land use district or residential land use district, the most restrictive conditions shall apply.
- (B) The requirements of this chapter apply to CCRCs within special land use districts, residential land use districts, and other areas outside the cities, which allow correctional group homes as a permitted or conditional use.
- (C) This chapter does not apply to correctional residential supervision where only one person is required to remain during specified periods of every day for a specified term at his or her regular private residence or the private residence of another person into whose custody the supervised person has been placed by a judge or magistrate as in “house arrest” or as a condition of release while awaiting trial.

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(D) This chapter does not apply within the cities of Houston, Palmer, or Wasilla.

(E) This chapter does not apply to state approved noncorrectional facilities such as substance abuse treatment programs, hospitals, or job training centers which are incidentally providing residential treatment, rehabilitative care, or training to persons in the custody of local, state, or federal corrections authorities. For purposes of this chapter "incidental" means 10 percent or less of the facility's authorized population, but allows one corrections custody resident if the facility is designed to provide residence for less than ten persons.

(F) This chapter does not regulate the cultivation, manufacture or sale of plants or products of the genus Cannabis which contain less than 0.3 percent delta-9-tetrahydrocannabinol.

(G) This chapter does not apply within the boundaries of the Port MacKenzie special use district.

(Ord. 18-030, § 2, 2018; Ord. 18-027, § 3, 2018; Ord. 16-136, § 2, 2017; Ord. 96-003(SUB)(AM), § 3, 1996; Ord. 84-27, § 2 (part), 1984)

17.60.030 PERMIT REQUIRED.

(A) The following land uses are declared to be potentially damaging to the property values and usefulness of adjacent properties, or potentially harmful to the public health, safety, and welfare:

- (1) junkyards and refuse areas;
- (2) correctional community residential centers;
- (3) *[Repealed by Ord. 16-003(SUB), § 3, 2016]*
- (4) marijuana retail facility as licensed under 3 AAC 306.005; and
- (5) marijuana cultivation facility licensed under 3 AAC 306.005.

(a) A single cultivation facility with less than 500 square feet under cultivation on any one parcel is exempt under this chapter.

(B) Such uses are permitted only upon the issuance of a conditional use permit, as provided in this chapter. Unless such uses are maintained under and in accordance with a lawfully issued permit, such uses are declared to be public nuisances. Maintenance of such a land use without a permit is prohibited.

(Ord. 16-136, § 3, 2017; Ord. 16-003(SUB), § 3, 2016; Ord. 15-016, § 5, 2015; Ord. 12-157(SUB), § 4, 2013; Ord. 11-074, § 6, 2011; Ord. 06-215, § 2, 2006; Ord. 99-093(AM), § 3, 1999; Ord. 97-084 (AM), § 3, 1997; Ord. 96-003(SUB)(AM), § 4, 1996; Ord. 84-27, § 2 (part), 1984)

17.60.040 APPLICATION PROCEDURES.

(A) *General.* An application to the planning commission for a conditional use or modification of an existing conditional use may be initiated by a property owner or the owners' authorized agent. An application for a conditional use shall be filed with the planning director on a form provided by the planning department.

(1) The application for a conditional use permit shall be accompanied by an appropriate filing fee as established by the assembly, payable to the borough.

(B) *Site plan.* A detailed site plan showing the proposed location of all buildings and structures on the site, access points, buffering, drainage, vehicular and pedestrian circulation patterns, parking areas, and the specific location of the use or uses to be made of the development shall be submitted with the application.

(C) *Action by planning commission.*

(1) The planning commission shall hear any interested parties and shall render a decision on the application for a conditional use permit within 30 calendar days from the date of public hearing. In recommending the granting of a conditional use, the planning commission shall state in writing the conditions of approval of the permit which it finds necessary to carry out the intent of this chapter. These conditions may increase the required lot size, control the location and number of vehicular access points to the property, require screening and land filling where necessary to reduce noise and glare, and may require the reclamation of property to a character in keeping with surrounding lands. The commission may impose other conditions and safeguards designed to ensure the compatibility of the conditional use with other lawful uses.

(2) The planning director shall incorporate any conditions or requirements stipulated by the commission in the conditional use permit.

(Ord. 99-093(AM), § 4, 1999; Ord. 93-045, § 2, 1993; Ord. 91-106, 1991)

17.60.100 GENERAL STANDARDS.

(A) A conditional use may be approved only if it meets with the requirements of this section in addition to any other standards required by this chapter.

(B) In granting a conditional use permit, the planning commission must make the following findings:

(1) the conditional use will preserve or not detract from the value, character, and integrity of the surrounding area;

- (2) that granting the conditional use permit will not be harmful to the public health, safety, convenience, and welfare;
- (3) that sufficient setback, lot area, buffers, or other safeguards are being provided to meet the conditions listed in subsections (B)(1) through (3) of this section; and
- (4) the conditional use fulfills all other requirements of this chapter pertaining to the conditional use in this section.

(Ord. 84-27, § 2 (part), 1984)

17.60.110 JUNKYARDS AND REFUSE AREA STANDARDS.

(A) No junkyard or auto wrecking yard shall be established or operated unless the wrecking yard is completely obscured from the view of any traveled or public right-of-way. The permit may require the junkyard or auto wrecking yard not within a building to be contained within a continuous solid fence no less than eight feet in height, if such requirement is necessary to prevent the unsightly display of the yard or for public safety purposes. Fencing may be of one or a combination of the following:

- (1) conventional solid wood or metal fencing;
- (2) evergreen or other natural planting sufficient to provide year-round screening; and
- (3) earthen berm or topography.

(B) In all cases, fencing provided shall be continuous and of sufficient density to provide visual screening required by this chapter on a year-round basis.

(C) The commission shall evaluate whether the applicant is suitable to establish, maintain, or operate the proposed use under the requirements of this chapter.

(1) Suitability of the applicant shall be based upon the applicant's history of compliance with relevant local, state, and federal laws.

(2) Review for suitability shall be limited to no more than five years preceding the application.

(D) The commission shall consider whether adequate controls are in place to prevent contamination of soil, surface water and groundwater.

(Ord. 18-030, § 6, 2018; Ord. 84-27, § 2 (part), 1984)

17.60.120 STANDARDS FOR CORRECTIONAL COMMUNITY RESIDENTIAL CENTERS.

(A) These standards may not be implemented in a way that compromises the required security of a facility. CCRCs established after the effective date of the ordinance codified in this section must be in accordance with the standards of this chapter.

(B) In addition to all other applicable laws, rules, and standards, CCRCs are subject to the following standards:

(1) A CCRC may not be located within one-half mile of a pre-existing public or licensed private school, a pre-existing licensed day care facility, or 750 feet from a pre-existing alcohol beverage dispensary or package store.

(2) CCRCs may not generate traffic, light, glare, noise, odor, smoke, electrical interference, vibration, or dust and may not have an appearance, scale of operation, size, residential density, or use that is not allowed in the district within which it is located, that is out of character with the surrounding neighborhood, or that causes a nuisance off the permitted site.

(3) CCRC dwelling units may be attached or detached in keeping with the character of the surrounding area and requirements of the district within which the facility is located.

(4) CCRCs providing single-family style, dormitory, or hotel-style living arrangements, in keeping with the character of the surrounding neighborhood, may be approved subject to the provision of equivalent facilities and living space per resident.

(5) A CCRC must be the principal use on the parcel of land upon which it is located.

(6) All other types of facilities and categories of land use on the site of a CCRC are subject to the approval of the borough in accordance with this chapter for the purpose of regulating land use impacts. Such uses and facilities include, but are not limited to, organizational administration, vocational training, staff training, and activities which generate revenue to the facility or its sponsor organization such as manufacturing, remanufacturing, repair, sales, process, service, agriculture, or animal husbandry.

(7) The minimum lot size for CCRCs shall be:

(a) one to 24 beds, 40,000 square feet;

(b) for each additional 12 beds or fraction thereof 20,000 additional square feet; and

(c) the planning commission may increase the allowed density if community water and sewage is available to the facility.

(8) New construction shall be in character with the neighborhood and reflect sensitivity and respect for the surrounding environment.

- (9) The maximum lot coverage by buildings must be in accordance with the district in which the facility is located to a maximum of 25 percent.
- (10) The maximum height of structures shall be that which is permitted in the district, and in character with the surrounding neighborhood in which the facility is located to a maximum of three stories not to exceed 40 feet.
- (11) The minimum separation between buildings, walled structures, or fences shall be ten feet.
- (12) All CCRCs will provide appropriate on-site residential facilities, common areas, recreational areas, educational areas, laundry areas, emergency medical service, and food service areas to provide for the needs of the residents who are restricted to the premises.
- (13) The land use standard to establish maximum resident occupancy at a CCRC is a minimum of 150 square feet of building area per resident, calculated by including all bedroom, kitchen, bathroom, living, recreation, and other areas within the facility intended for common use by the residents.
- (14) Landscaping must meet the following criteria:
- (a) All areas not occupied by authorized buildings, structures, storage, driveways, parking, walkways, or other approved development must have maintained visual enhancement buffer landscaping. Where approved by the planning commission, maintaining existing natural vegetation shall be acceptable as a buffer.
 - (b) Buffer landscaping must be maintained along the length of each lot line of the permitted site which abuts a lot within a residential district or a lot containing a residential use.
 - (c) Buffer landscaping must be maintained along the length of all streets and roads upon which the permitted site has frontage.
 - (d) Surface water, storm water, and other runoff must be managed to avoid pollution and damage in accordance with an approved plan.
- (15) Lighting must be provided at all developed pedestrian and vehicular access points for the permitted site. Additional lighting sufficient to enhance public safety may be provided as required by the planning commission.
- (16) All parking and loading areas required for the permitted use must be provided on site and shall be paved with gravel, chip seal, asphalt, or concrete. Adequate parking and on-site vehicular maneuvering room, as determined by the planning commission, must be provided to

accommodate staff, residents, visitors, and services associated with the permitted use. Parking spaces meeting national handicapped parking space requirements shall be provided.

(17) Signs, excluding warning and official notification of rules signs, which are intended to be visible from off site, must be limited to that allowed within the district within which the facility is located except as follows:

(a) Unless otherwise regulated the maximum combined area shall be 32 square feet for all regulated signs.

(b) Signs must be below the roof line of the lowest residential structure on site or the structure upon which it is mounted, whichever is lower.

(c) Signs must be unlighted or be lit so as to avoid glare off site.

(18) Loading facilities, refuse containers, and outdoor storage of equipment and material shall be visually screened from adjacent developed public access rights-of-way, residential lots, and residential uses.

(19) All CCRCs must be maintained in a safe, clean condition. Except as specifically authorized under this section, the storage, keeping, or disposal of junk and trash at a CCRC site is prohibited except for incidental amounts kept for no more than 30 consecutive days to facilitate recycling and proper disposal at an approved disposal site. As approved by the planning commission, the temporary storage of junk that is not visible from off site may be allowed. Storage of junk must be determined to be necessary to the operation of an approved use, such as a repair shop, within a CCRC and must be subject to a removal schedule.

(C) As part of the application, the applicant shall provide the following supporting information:

(1) as-built or proposed site plan of the application site, drawn to scale and certified by a registered land surveyor, depicting all boundaries, topography, structures, landscaping, drainage management, and other development;

(2) design drawings, drawn to scale, for all buildings, and structures, and elevations. Design drawings for new construction must be certified by a registered engineer or architect; and

(3) a plan of operations describing the proposed use in detail sufficient to demonstrate compliance with all applicable borough ordinances, standards, and conditions. This submittal shall also include:

(a) evidence of compliance with all other applicable local, state, and federal laws by the applicant(s) and their authorized agent(s) regarding the proposed use;

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- (b) a proposed organization chart of the operation identifying the lines of responsibility and general function of the owners and staff of the organizations that will own and operate the facility including job descriptions;
- (c) a description of the number and types of residents proposed;
- (d) descriptions of all major activity types proposed to occur on site; and
- (e) general description of the security measures proposed to protect the public safety.

(D) The property owner and the permittee shall be responsible for maintaining all aspects of the operation, improvements, development, and site in compliance with the terms and conditions of the permit and all applicable local, state, and federal requirements. Failure to correct any violation of any permit condition is a violation of borough code.

(1) A pattern of crimes committed by residents of a permitted facility, which are determined by the planning commission to be creating an unreasonable degree of risk to public safety, may be grounds for revocation of the permit.

(2) In addition to other applicable penalties, failure to correct a violation of code after reasonable notice may result in revocation of the permit.

(3) Upon issuance of a permit under this chapter the permittee shall provide all necessary documentation to maintain current information sufficient to demonstrate continued compliance with permit conditions. The permittee shall also provide the borough the following information:

- (a) name, title, and 24-hour contact telephone numbers for the person(s) in charge of the operation and security of the institution or facility;
- (b) immediate notification of escapes; and
- (c) immediate notification of any formal notice of violation issued by a government agency indicating an unacceptable level of security exists or has been allowed to exist at the facility.

(4) Authorized representatives of the borough will be allowed to inspect the permitted site and related records at reasonable times for the purpose of monitoring compliance with all permit conditions. Upon reasonable notice from the borough, the permittee shall provide necessary assistance and security to facilitate authorized inspections by borough representatives.

(5) A permit may be transferred to another individual subcontractor with planning commission notification and approval.

17.60.130 Standards for race tracks. [Repealed by Ord. 99-154(AM), § 2, 1999 and recodified at MSB 17.60.135]

17.60.135 Standards for race tracks. [Repealed by Ord. 01-118 (AM by SUB 2), § 1, 2001]

17.60.140 Tall structures, including but not limited to, towers, tower farms, tower routes, and tower service area grids. [Repealed by Ord. 11-074, § 2, 2011]

17.60.145 Tall structures, including but not limited to towers, tower farms, tower routes, and tower service area grids. [Repealed by Ord. 15-016, § 6, 2015]

17.60.150 GENERAL STANDARDS FOR MARIJUANA RELATED FACILITIES.

(A) In addition to the standards set forth by MSB 17.60.100, the planning commission shall weigh factors which contribute or detract from the development of a safe, convenient, and attractive community, including, but not limited to:

- (1) any potential negative effect upon other properties in the area due to such factors as noise and odor.
- (2) the effectiveness of measures to reduce negative effects upon adjacent properties by:
 - (a) increased property line and right-of-way buffers;
 - (b) planted berms and landscaping;
 - (c) site and building design features which contribute to the character of the surrounding area.
- (3) whether the use is compatible with the character of the surrounding area.

(B) At the time of their establishment, marijuana related conditional uses shall meet the following requirements and not be located within:

- (1) one thousand feet of school grounds;

(C) Separation distances referenced in subsection (B) of this section are measured in a direct line between the closest point of the facility within which the marijuana facility is located, and the closest

point on the lot or parcel of land upon which any of the above itemized uses are located.

(D) Prior to final approval of the permit the applicant shall provide written documentation demonstrating that:

- (1) all applicable licenses have been obtained as required by 3 AAC 306.005.
- (2) from the fire marshal having jurisdiction, that the proposed conditional use is in full compliance with applicable fire code, including but not limited to AS 18.70.010 through 18.70.160, Fire Protection, and 13 AAC 50.025 through 50.080, Fire Code.

(Ord. 16-136, § 4, 2017; Ord. 16-003(SUB), § 4 (part), 2016)

17.60.160 STANDARDS FOR MARIJUANA CULTIVATION FACILITIES.

(A) *Wastewater and waste material disposal plan.* A wastewater and waste material disposal plan shall be submitted which demonstrates that wastewater and waste material associated with the cultivation facility is disposed of in compliance with the Alaska State Department of Environmental Conservation.

(B) *Odor mitigation and ventilation plan.* The applicant shall provide an odor mitigation plan detailing the effective mitigation of any odors of the proposed uses. Such plan shall demonstrate that the design for the purification of air prevents odors from materially impacting adjoining properties.

(C) *Hazardous chemicals.* Storage and disposal of fertilizers, pesticides, herbicides, and any other hazardous chemicals associated with the cultivation of marijuana shall comply with all local, state, and federal laws.

(D) *Security.* The applicant shall provide a security plan. The plan shall include, but not be limited to, education for employees on security measures.

(E) Marijuana cultivation facilities shall be set back 50 feet from public rights-of-way, and 100 feet from side or rear lot lines.

(Ord. 16-003(SUB), § 4 (part), 2016)

17.60.170 STANDARDS FOR MARIJUANA RETAIL FACILITIES.

(A) Marijuana retail facilities shall only be approved upon finding by the commission that the proposed facility is located on a parcel that is appropriate for commercial use. At a minimum, the commission shall consider:

- (1) proximity of the proposed use to existing businesses;
- (2) proximity to parcels developed for residential use; and
- (3) whether roads associated with the proposed use have been, or will be, appropriate for commercial use.

(B) The minimum number of parking spaces for retail facilities shall be one space per 350 square feet of net floor area. Each parking space shall be at least: 20 feet in length, ten feet wide, and have a vertical clearance of at least seven feet.

(C) Parking spaces shall be provided to comply with current Americans with Disabilities Act guidelines.

(Ord. 16-003(SUB), § 4 (part), 2016)

17.60.180 TRANSFER OF A CONDITIONAL USE PERMIT.

(A) Except as otherwise specified by code, the privileges and requirements of a conditional use permit shall run with the land, subject to the following requirements:

- (1) Within 90 days of recording the transfer of ownership of the subject land, the new owner must provide written notification and a signed acknowledgment that the new owner assumes responsibility for compliance with the requirements of the permit.
- (2) The commission may limit the term of a permit or place conditions upon the transfer of ownership of a permit.
- (3) For junkyard/refuse area permits issued under this chapter, the commission shall hold a public hearing to review the suitability of the transferee(s) to operate the existing conditional use.

(a) The commission's review of suitability shall be in accordance with MSB 17.60.110(C).

(Ord. 18-030, § 7, 2018; Ord. 99-093(AM), § 6, 1999; Ord. 97-084(AM), § 5, 1997)

17.60.190 TERMINATION OF CONDITIONAL USE PERMITS.

(A) Except as otherwise specified by code, a conditional use permit issued under this chapter will become null and void under the following conditions:

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- (1) notification of termination of the permit for failure to comply with an order to correct violations of a conditional use permit;
- (2) failure to initiate the use for which the conditional use permit was issued within five years of the date of the permit issuance;
- (3) cessation of the use for which the conditional use was issued for a period exceeding five consecutive years.

(B) For good cause the planning commission may grant a one-time one-year extension of a conditional use permit. The planning commission must find that the request is reasonable and the proposed use is still appropriate under the standards for consideration under the subject use. An application for extension shall be subject to the same application fee as a conditional use permit and shall require public notice and public hearing in accordance with the requirements of MSB 17.03.

(Ord. 97-084(AM), § 6, 1997)

17.60.200 NONCONFORMING USES.

(A) Within the borough there may exist non-conforming uses as of the date of adoption of the ordinance codified in this chapter, or amendments thereto which were lawful before the effective date of applicable regulations, but which would otherwise be prohibited, regulated, or restricted under this chapter. Such existing nonconforming uses are permitted to continue subject to the provisions of this section, but shall not be expanded except as specifically provided in this chapter.

(B) Except as specifically provided for by code, this chapter does not require the relocation or removal of a nonconforming use existing or under construction at the time of adoption of the ordinance codified in this chapter if such use was lawful at the time of its construction. No nonconforming use shall be constructed or operated except in accordance with these regulations, except to the extent it was in existence or under actual construction as of the effective date of the ordinance codified herein or amendment thereto. "Actual construction" is defined as the substantial placement of construction materials and performance of labor for construction of facilities which cannot reasonably be used except in a manner which does not conform with these regulations.

(C) Nonconforming uses under construction or in existence as of the date of the ordinance codified in this chapter shall apply for approval of their use within 90 days of the effective date of such ordinance or of a later amendment which makes the use nonconforming. The planning director shall grant approval of the nonconforming use if it complies with the requirements of this chapter excepting only those facilities and improvements which were under construction or in existence prior to the effective date of the respective regulation. The nonconforming use shall meet all other

requirements of this chapter within 12 months which are not in conflict with the pre-existing use or construction.

(D) No existing nonconforming use shall be expanded to include an adjacent parcel or parcels unless the area of expansion meets the requirements of this chapter, except that contiguous, unplatted tracts constituting a block of land in the same ownership held for the same purpose on April 17, 1984, and containing a nonconforming use permitted under subsection (C) of this section shall be considered one parcel. No nonconforming use which is abandoned shall be used until it meets the requirements of this chapter. "Abandonment" is defined as a discontinuation of use of a nonconforming use, or a discrete portion or parcel thereof, or the failure to complete construction and begin use, for a continuous period of more than one year. If abandoned, the land shall not thereafter be used except in conformity with the requirements of this chapter.

(Ord. 97-084(AM), § 7, 1997; Ord. 84-27, § 2 (part), 1984)

17.60.210 Violations and enforcement. [Repealed by Ord. 95-088(SUB)(am), § 13 (part), 1995. For current provisions, see MSB 17.60.215]

17.60.215 VIOLATIONS, ENFORCEMENT, AND PENALTIES.

(A) Except as otherwise specified in this chapter violations of this chapter are infractions.

(B) Remedies, enforcement actions, and penalties shall be consistent with the terms and provisions of MSB 1.45.

(C) Failure to correct a violation of any permit condition is a violation of borough code.

(D) In addition to other applicable penalties, failure to correct the violation of code, after reasonable notice, may result in revocation of the permit.

(Ord. 99-093(AM), § 7, 1999; Ord. 95-088(SUB)(am), § 29 (part), 1995)

17.60.220 APPEAL PROCEDURE.

Appeals from a decision of the manager or the manager's authorized representative of an enforcement action or a decision of the commission granting or denying a permit under this chapter shall be filed and conducted in accordance with MSB 15.39.

(IM 96-013, page 1 (part), presented 3-19-96; Ord. 84-27, § 2 (part), 1984)

IM 22-245
OR 22-137