

Presented by: The Manager
Introduced:
Drafted by: A. G. Mead

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2018-_____

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 CBJ 49.65 Article I Exploration and Mining, is repealed in its entirety and reenacted to read: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

No changes to the original purpose section (49.65.110) except reorganizing for clarity, and adding the language at subsection (d) requested by the committee on 2/8.

(a) It is the purpose of this article 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. 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

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2 reclamation and financial warranty release at the conclusion of exploration and mining
3 operations and reclamation of affected surface;

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

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

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

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

18 (d) To minimize the burden on the applicant to provide duplicative information required by
19 this article, at the applicant's request, the director may rely on information provided in permit
20 applications submitted to state or federal agencies for the proposed mining operation.
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22 **49.65.115 General applicability.**

23 **Edited for clarity; nothing substantively removed from original 49.65.115.**

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

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8 (b) This article does not regulate subsurface mining within or without the district except
9 that subsidence within the district is prohibited. It is not the intent of this article to
10 unreasonably limit or nullify private property rights.

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

14 (d) Mines located in the Rural Mining District that will undergo environmental review by
15 state agencies, federal agencies, or both, as determined by the director, shall not be subject to
16 Article 49.65, and shall be permitted as allowable uses pursuant to CBJ 49.15.320. In
17 permitting such mines in the Rural Mining District, the commission may impose conditions
18 under CBJ 49.15.320(f)(1)—(8) and any additional conditions relating to traffic, lighting, safety,
19 noise, dust, visual screening, surface subsidence, avalanches, landslides, and erosion deemed
20 necessary by the commission.
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22 **49.65.120 Exploration notices and procedures.**

23 **Clarified original 49.65.120 in the following ways:**

- 24 **1. Reorganized section.**
25 **2. Added statement in subsection (a) making clear that compliance with this section is required in order to conduct exploration.**

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- 2 **3. Added requirement that form specified by director be used consistent with**
3 **current CDD practice (form is already posted on CDD website).**
4 **4. Added language to this section requiring operator to supplement information**
5 **as necessary (this is a condition in existing code; added here for clarity purposes.)**

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

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

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

- 13 (1) A map identifying the area of the intended exploration activities on a scale of at
14 least 1:63,360;
- 15 (2) The proposed exploration schedule;
- 16 (3) The plan for reclamation of the area to be disturbed by the exploration activities,
17 including information as to the methodology and cost of such reclamation sufficient to
18 enable the director to determine an appropriate financial warranty; and
- 19 (4) Copies of any prospecting permits, notice of intent to conduct exploration, or
20 operating plans filed with any federal or state agency. An applicant shall supplement this
21 information as needed with all modifications, revisions, and amendments to any permit
22 application or plan submitted to any federal or state agency by the applicant, or with
23 copies of any amended permits or plan approvals received by the applicant from any state
24 or federal agency.
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2 (d) Upon determining the exploration application is complete and that the required
3 processing fee has been paid, the director shall determine whether a financial warranty will be
4 required, in accordance with section 49.65.140. The director shall notify the applicant within
5 20 days after receiving the applicant's notice of intent whether a financial warranty will be
6 required or if it is waived. The requirement of a financial warranty may be waived if the
7 director determines that a financial warranty is not necessary to ensure compliance with the
8 requirements of this article. The waiver shall be in writing and shall set for the reasons for the
9 waiver.
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11 (e) When the applicant has either submitted the required financial warrant or the director
12 has notified the applicant that the financial warranty requirement is waived, the applicant
13 shall be authorized to conduct exploration activities in accordance with the notice. In
14 conducting exploration operations, the applicant shall comply with all applicable federal, state
15 and City and Borough laws, rules and regulations.
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17 (f) Upon completion of exploration activities and all necessary reclamation, the applicant
18 shall notify the director that exploration and reclamation are complete and shall submit a map
19 on a scale of at least 1:63,360, showing the location of the exploration and reclamation
20 activities.
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22 (g) *Procedure for release of financial warranty.* The director may inspect the area of
23 exploration to determine whether reclamation has been completed in accordance with section
24 49.65.145 within 60 days of receiving notification of completion, or as soon as weather
25 conditions permit. If the director finds that the reclamation satisfies the standards of
subsection 49.65.145(b), either by the director's own review or in reliance upon a state or

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2 federal reclamation inspection or both, the financial warranty shall be promptly released. If the
3 director finds that the standards have not been satisfied, the director shall notify the applicant
4 within 30 days of the additional steps necessary to achieve compliance with section 49.65.145.

5 The director shall give the applicant a reasonable time to complete reclamation and request
6 another inspection. If the director, after re-inspection or review, is not satisfied that the
7 standards of subsection 49.65.145(b) have been met, the director may declare so much of the
8 financial warranty as necessary forfeited and, after notice and an opportunity for the applicant
9 to appeal pursuant to section 49.65.165, apply the financial warranty to complete reclamation.
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11 **While no substantive changes were made to the following sections, I did do some**
12 **major reorganization of current code. Current code has one ordinance addressing**
13 **the process (application, review, commission procedure) for small mines, and a**
14 **separate code section addressing the process for large mines that, in large part,**
15 **repeats the same information (application, review, commission procedure). I revised**
16 **these sections using the same organizational structure used in the article addressing**
17 **cell towers. First, I organized the current requirements into three new code sections**
18 **that apply to both large and small mines: a general application section; a general**
19 **review section; and a general section on commission process. I then added new code**
20 **sections to cover those specific additional requirements imposed under current code**
21 **for large mines.**

17 **Other changes:**

18 **I specified that the application should be on a CBJ form – which already exists and is**
19 **consistent with CDD practice for all other permits.**

20 **I adding language specifying how the CBJ uses permit or application information**
21 **from other agencies (underlined language in 49.65.125(d)).**

22 **Lastly: the following paragraph is from current code – 49.65.130(b), middle of**
23 **paragraph – and requires large mine applicants to provide information normally**
24 **provided as part of a mining plan or “feasibility” study. My notations in red explain**
25 **where these requirements are now found:**

The application shall also contain additional information normally prepared by the operator for its feasibility studies and mining plans, including information establishing the right to use the affected surface (this was information that was actually required of both small and large mines so is now in the general application subsection (b)), labor force characteristics and timing, payroll projections (see subsection (c) identifying additional information required of large mines), anticipated duration of the mining operation,

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2 construction schedules, infrastructure description, and other information reasonably
3 requested by the department in the preapplication conference held pursuant to subsection
4 49.15.330(b). (this was information that was actually required of both small and large
5 mines so is now in the general application subsection (b))

6 **49.65.125 Permit application requirements for all mines.**

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

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

- 13 (1) Information establishing the right to use the affected surface;
- 14 (2) A map showing the location of the mine site and the affected surface for that
15 mine on a scale of at least 1:63,360;
- 16 (3) A description and timetable of the proposed mining operation, including:
- 17 (i) The anticipated duration of the mining operation;
- 18 (ii) A description of all roads, buildings, processing and related facilities or
19 proposed infrastructure;
- 20 (iii) The mining plan;
- 21 (iv) The plan for reclamation;
- 22 (v) The potential environmental, health, safety and general welfare impacts
23 of the proposed operation and a description of the measures to be taken to mitigate
24 the adverse effects of such impacts; and
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(vi) A description of the methods to be used to control, treat, transport and dispose of any hazardous substances, sewage and solid waste;

(6) Certification that there will be no affected surface or significant subsidence within the boundary of the Mining and Exploration Surface Activities Exclusion;

(7) 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 sections 49.15.330 and 49.65.145;

(8) Any other information requested by the director in relation to the preapplication conference held under section 49.15.330(b); and

(9) Copies of any state or federal permits issued in relation to the proposed mining operation, including the mine reclamation plan approved by the state under AS 27.19.030.

Current code recognizes reclamation plans from the state; this citation to the state code section was added for clarity.

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

(1) A description of the proposal for the sealing of open shafts, adits, and tunnels upon the completion or temporary cessation of mining operations;

(2) The mining operations labor force characteristics and timing;

(3) Payroll projections; and

(4) Unless waived by the director, the socioeconomic impact assessment required by section 49.65.130, and any additional information determined by the director to be necessary to complete the assessment.

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

7 **Clarifying that operator can rely on permits or applications submitted**
8 **to other agencies.**

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

12 (f) *Processing fee.* The fee for processing the application shall be as specified in section
13 49.85.100, and is in addition to any fee required by 49.65.130 for the socioeconomic impact
14 assessment or any fee for a professional consultant as provided by 49.65.135. While this fee
15 is intended to cover the City and Borough's reasonable costs of review, it may be after receipt of
16 the application, that the director determines that the cost of review is likely to substantially
17 exceed the fee specified in 49.85.100. In that case, the director may, after consultation and
18 discussion with the applicant, recommend an additional fee to the assembly. Such additional
19 fee shall be approved by the assembly by motion and shall be set in an amount that will, as far
20 as can be determined, cover the cost of reviewing the application, including reasonable
21 administrative and overhead expenses. In recommending the additional fee, the director may
22 consider, among other factors: the amount of staff effort required to adequately review the
23 application; the involvement in the review process of other governmental agencies, either
24 through a federal environmental review process or other procedure; the necessity for
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2 extraordinary travel and transportation costs that may be incurred by the director during
3 review; the potential benefit of information generated by the application review to other mining
4 operations or to the City and Borough; and the necessity for extraordinary communication,
5 duplication or publication costs arising from the review.

6 **This next section is from the current code section on large mines (49.65.130(c)). No**
7 **substantive changes made; just amended for readability and reorganized.**

8 **49.65.130 Socioeconomic impact assessment for large mines.**

9 (a) A socioeconomic impact assessment evaluating the reasonable and foreseeable beneficial
10 and adverse impacts, both direct and indirect, of the proposed mining operation on existing and
11 future local conditions, facilities, and services shall be prepared by the director, or a consultant
12 retained by the director for that purpose, unless waived. The director may waive all or part of
13 the socioeconomic impact assessment when the director determines that the information is not
14 essential to evaluate what impact the mining
15 operation will have on the City and Borough. The waiver shall be in writing and shall set forth
16 the reasons for the waiver.

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18 (b) The impact assessment should include an evaluation of all reasonable, foreseeable, and
19 demonstrable impacts of the proposed mining operation on transportation and traffic; sewer
20 and water; solid waste; public safety and fire protection; education, native history and culture;
21 health; recreation; housing; employment; local businesses; the rate, distribution, and
22 demographic characteristics of any population changes induced by the mining operation; and
23 the fiscal impacts of the mining operation on public facilities and services, including general
24 government functions. Highly speculative impacts need not be studied.
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2 (c) All reasonable costs and expenses required to prepare the assessment shall be paid to
3 the director by the applicant prior to the initiation of the assessment.

4 (d) The purpose of the impact assessment is to provide information to the director
5 concerning possible beneficial and adverse impacts of the proposed mining operation for use in
6 the preparation of the mitigation agreement required by section 49.65.155.
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8 **49.65.135 Director's review procedures.**

9 **Current code uses "director" and "department" interchangeably. I use director**
10 **exclusively in this rewrite. Current code defines "director" at 49.80.100 to mean**
11 **either the director or the director's designee, which includes staff or the**
12 **"department."**

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

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

18 (1) *Small mines.* In the case of small mine applications, within thirty-five days after
19 the application has been accepted as complete by the director.

20 (2) *Large mines.*

21 (A) The director shall conduct a preliminary review of an application for a
22 large mine within 20 days of its submission to determine whether the application is
23 complete. The director shall then promptly schedule a meeting with the applicant
24 for the following purposes:
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(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 operator 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 operator agrees to an extension, the director shall complete the review of the application within 90 days after the initial meeting described in subsection (A) above. 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 of 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, however, the recommendation shall not be presented to the commission until the department has considered the final environment impact statement. 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.

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

5 (1) Whether air and water quality standards will be maintained in accordance with
6 federal, state, and city borough laws, rules and regulations;

7 (2) Whether sewage, solid waste, hazardous and toxic materials will be properly
8 contained and disposed of in accordance with federal, state, and City and Borough laws,
9 rules and regulations;

10 (3) Whether the mining operation will be conducted in such a way as to minimize
11 safety hazards to the extent reasonably practicable and to mitigate adverse impacts on the
12 public and on neighboring properties such as those from traffic, noise, dust, unsightly
13 visual aspects, surface subsidence, avalanches, landslides, and erosion; and

14 (4) Whether historic sites designated by the City and Borough as significant will be
15 protected; and

16 (5) The sufficiency of the proposed reclamation plan.
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19 **The following subsection was added to clarify that if a state or federal permit has**
20 **been granted to the applicant, the CBJ will accept the permit as a statement of the**
21 **state/federal law requirements the mining operator must comply with for purposes**
22 **of state/federal law. I read current code language to say the same thing, but this says**
23 **it more directly. (See for example, current code section 49.65.130(b) - last third of**
24 **paragraph.)**

25 (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

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2 mining operation. The issuance of a state or federal permit, however, shall not prohibit the
3 director from proposing more stringent conditions on the proposed operation to the extent the
4 City and Borough is not preempted by state or federal law, or from making a recommendation
5 for denial if the director deems warranted in accordance with this article.

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

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

19 **The following concept is already in current code but with one change. Because the**
20 **group proposing changes to the code have stated they agree that obtaining outside**
21 **consultants at the cost of the applicant should be available to the CBJ, I removed the**
22 **requirement that approval for that process go through a code process. (See current**
23 **code section 49.65.130(e).)**

24 (g) If the director determines that proper review of the application will require the
25 department to retain outside professional assistance, the director may, in the director's

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2 discretion, obtain an outside professional consultant. The fee for the consultant shall be borne
3 by the applicant.
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5 **49.65.140 Commission review.**

6 (a) Once complete, the director's recommendations shall be provided to the applicant and
7 placed on the agenda for the next regularly scheduled meeting after public notice has been
8 given as required by section 49.15.230.
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10 (b) The commission shall hear the application as a conditional use permit application as
11 provided in chapter 49.15, article III, as modified by this article.

12 (c) If the commission determines that the application, with stipulations or conditions as
13 appropriate, satisfies the standards of sections 49.65.145 and 49.15.330, it shall approve the
14 application and set the amount of the financial warranty under 49.65.150. When the applicant
15 has submitted a financial warranty in the amount set by the commission and in a form
16 satisfactory to the municipal attorney, the permit shall be promptly issued by the director.
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18 **The next section addresses permit requirements. Current code section addressing**
19 **permit requirements is at 49.65.135. I amended the language to clarify that these are**
20 **required permit conditions, and then in the sections above on director and**
21 **commission review, clarified that in evaluating applications, these concepts have to**
22 **be considered.**

23 **49.65.145 Required conditions for all conditional use mining permits.**

24 (a) The commission shall impose as a condition of any permit issued by the commission
25 under this title the following requirements:

- (1) The mining operations must be conducted in accordance with this article, section
49.15.330, and any other applicable provisions of the City and Borough Code in such a way

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2 as to mitigate adverse environmental, health, safety and general welfare impacts;

3 (2) Air and water quality must be maintained in accordance with any applicable
4 federal, state, and City and Borough laws, rules and regulations, or permits;

5 (3) Hazardous and toxic materials, sewage, and solid waste shall be properly
6 contained and disposed of in accordance with applicable federal, state, and City and
7 Borough laws, rules and regulations;

8 (4) All mining operations shall be conducted according to the standards of the City
9 and Borough as contained in this article, section 49.15.330, the conditional use mining
10 permit, and any other applicable provisions of the City and Borough Code, so as to
11 minimize to the extent reasonably practicable safety hazards and to control and mitigate
12 adverse impacts on the public and neighboring properties, such as from traffic overloading,
13 noise, dust, unsightly visual aspects, surface subsidence, avalanches, landslides and
14 erosion;
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16 (5) Appropriate historic sites designated as significant by the City and Borough shall
17 be protected;

18 (6) Reclamation of all affected surfaces, imposed as part of a conditional use permit
19 in accordance with section 49.65.149 or as set by the state under AS 27.19.030, be
20 completed as soon as is reasonable after affected surface areas are no long being used in
21 exploration and mining operations; and
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23 (7) In the case of large mines, that the applicant comply with the mitigation
24 agreement required by CBJ 49.65.155;
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2 (8) The applicant will maintain the financial warranty in the amount approved by
3 the director or the commission, including any amendments to the required financial
4 warranty amount under section 49.65.145(f) and (g); and

5 (9) That the loss of any applicable state or federal permit result in the revocation of
6 the conditional use permit.

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8 **The following language is now clearly incorporated as a condition to be specified
in the permit. It currently resides in 49.65.135(c).**

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

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14 **Reclamation is now its own code section. It's currently found in 49.65.135, which
15 combines permit requirements and staff review requirements. I've separated those
issues for clarity in this draft.**

16 **49.65.149 Reclamation.**

17 (a) As required by 49.65.145, it shall be a condition of all permits issued under this
18 article that reclamation of all affected surfaces, imposed as part of a conditional use permit
19 issued under this article or as set by the state under AS 27.19.030, be completed as soon as is
20 reasonable after affected surface areas are no long being used in exploration and mining
21 operations.

22 (b) If not addressed in a reclamation plan approved by the state under AS 27.19.030, or to
23 the extent not preempted by state or federal law, reclamation required under this article shall
24 include:
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- (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 of irrigation and equipment where appropriate;
- (9) Rehabilitation of fisheries and wildlife habitat; and
- (10) Any other conditions imposed by the commission.

(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.

49.65.150 Financial warranty.

(a) 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 city attorney, and accepted by the director.

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2 (b) The purpose of the financial warranty is to ensure that if the applicant fails to comply
3 with any obligation, requirement, or condition imposed by the permit or exploration notice
4 there will be sufficient funds available to the City and Borough to enable it to complete the
5 necessary work, taking into account the financial warranties which the applicant must submit
6 to other agencies. The director reserves the right to seek forfeiture of the financial warranty, in
7 whole or in part, in the interest of protecting the environmental, health, safety and general
8 welfare requirements of the City and Borough if the director determines that the applicant has
9 violated the obligations, requirements, or conditions imposed by the permit or exploration
10 notice. The forfeiture shall be limited to the extent necessary to satisfy the obligations,
11 requirements, or conditions that the applicant has violated.
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13 (c) The amount of the financial warranty for an exploration notice shall be set by the director.
14 The amount of the financial warranty for small mines and large mines shall be determined by
15 the commission. The financial warranty shall be set in the amount necessary to enable the
16 work required by any obligation, requirement, or condition of any permit or
17 exploration notice issued under this article be completed. In recommending and setting the
18 amount of the financial warranty, the director and the commission, respectively, shall take into
19 consideration the amount and scope of any financial warranties which have been submitted to
20 other agencies. When the performance of such obligations is guaranteed by financial
21 warranties that have been submitted to other agencies, the applicant may be required to post a
22 separate financial warranty with the City and Borough if the city attorney determines that the
23 financial warranty submitted to another agency does not create a lien or interest sufficient to
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2 protect the interests of the City and Borough. Examples of obligations to be covered by the
3 financial warranty required under this section include but are not limited to:

- 4 (1) Construction of berms, dikes, spillways, channels or other facilities to control,
5 detain, retain or reduce runoff, soil erosion and siltation, or to divert water around waste,
6 tailings, stockpiles or other facilities or disturbed areas;
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8 (2) Installation and maintenance of landscaping, including berming, tree planting
9 and other required grading or planting to provide visual and sound barriers and to
10 eliminate or reduce the appearance of scarring;
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12 (3) Installation and maintenance of road or highway improvements to mitigate the
13 impact of increased traffic or heavy trucking that is measurable and directly attributable
14 to the mining operation; such facilities may include speed access ramps or lanes, turn
15 lanes, intersection improvements, traffic-control devices or private haulage ways where
16 necessary to avoid the use of public roads or highways. The cost of installation or
17 maintenance described in this subsection shall be shared by the applicant and the City and
18 Borough in relation to the proportion of the directly attributable and measurable impact on
19 traffic of the applicant's activities or the facilities being maintained, installed or improved;
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21 (4) Reclamation of affected surfaces during and following exploration and mining
22 operations;
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24 (5) Regrading of steep slopes of unconsolidated materials to create a stable slope;
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26 (6) Installation of facilities required to prevent or reduce degradation of air or water
27 quality or to contain or control toxic or hazardous wastes;
28
29 (7) Removal of buildings, structures or equipment where appropriate;

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2 (8) Any other obligations as necessary to conform with the commission's
3 determinations under subsection 49.15.330 and subsection 49.65.145.

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

8 (1) Cash;

9 (2) Certificate of deposit;

10 (3) An irrevocable standby letter of credit from a United States bank; or

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

14
15 (e) In addition to the forms of financial warranty set forth in this section, with respect to a
16 small mine permit or an exploration notice, the applicant may elect to use a property bond as a
17 form of financial warranty; provided, that at least ten percent of the total amount of the
18 financial warrant shall be cash or a certificate of deposit; and provided further, that the
19 commission determines that the value of the property is equivalent to the amount required to
20 be generated for satisfaction of the obligation and the city attorney determines that the bond
21 creates a lien with sufficient priority to permit its collection should such become necessary.

22
23 (f) The form of financial warranty shall provide that the funds may be used by the City and
24 Borough to satisfy the obligations described in this section when there has been a
25 determination by the director that the applicant has not completed its obligations in a timely

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2 manner or has otherwise violated the terms of its permit or conditions of its exploration notice,
3 and after notice and opportunity to perform the obligation has been given to the applicant.

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

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

11
12 **This section is currently found at 49.65.130, the section on large mines.**

13 **49.65.155 Mitigation agreements for large mines.**

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

16 (b) The mitigation agreement shall establish responsibility for the mitigation of reasonably
17 foreseeable and demonstrable adverse impacts of the mining operation, including direct
18 impacts and indirect impacts. The applicant shall be responsible for mitigating the direct
19 impacts. The City and Borough shall be responsible for mitigating indirect impacts except
20 where the costs of mitigating specific indirect impacts are found by the manager to:
21

- 22 (1) Exceed the amount of any City and Borough nonproprietary revenue increase
23 attributable to the mining operation; and
24 (2) Require a direct and significant increase in local taxes or fees to adequately mitigate
25 the impact.

1
2 (c) Highly speculative impacts shall not be included in the mitigation agreement. Taxes
3 and nonproprietary revenues generated as a result of the proposed mining operation shall be a
4 factor considered in negotiating the mitigation agreement. This agreement shall be
5 incorporated as part of the permit, as required by section 49.65.145.

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

9
10 **No substantive changes.**

11 **49.65.160 Term of notices and permits; temporary cessation.**

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

- 15
16 (1) The financial warranty must remain in full force and effect;
17 (2) The operator must not be found to be in substantial violation of this article; and
18 (3) With respect to a large or small mine permit, mining operations must be
19 continued in accordance with the plan contained in the application for at least 90 days in
20 each year as to a large mine, and for at least 30 days in each year as to a small mine.

21 (b) During the term of any exploration notice or permit, the director may, pursuant to
22 subsection 49.65.150(f), revise the amount of the financial warranty. If the amount of financial
23 warrant is increased, the operator shall submit the appropriate amount of additional financial
24 warranty within 60 days of the director's determination.
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2 (c) The operator shall advise the director within ten days of the date upon which the
3 applicant receives notice that a financial warranty which has been submitted to any other
4 agency is reduced or released.

5 (d) If at any time during the term of a permit the operator determines that it will not
6 conduct mining operations for the applicable time minimums established in subsection
7 49.65.160(a)(3), the operator shall notify the director and request that the mining operation be
8 placed in an inactive status. In conjunction with this notification, and as a condition to
9 granting a request for inactive status, the operator shall advise the director of the measures it
10 will employ to prevent hazardous or dangerous conditions, erosion, or other environmental
11 damage which may result from the operator's activities, and the security measures it will
12 employ at the mining operation during the inactive period. An applicant may continue in
13 inactive status for a five-year period and may, with the permission of the director, obtain
14 successive five-year extensions of that status. At the conclusion of inactive status, the operator
15 shall either resume operations or commence final reclamation in accordance with the approved
16 reclamation plans. If an operator ceases operations for more than one year but does not request
17 inactive status, the director may require the operator to commence final reclamation in
18 accordance with its plans.

19 (e) Throughout the duration of a large mine permit, the operator of a large mine shall also
20 notify the director not less than 60 days prior to requesting placement on inactive status. The
21 operator and the City and Borough shall maintain a process to exchange information regarding
22 the impact on the City and Borough that may result from a change in mining operations. In
23 addition, the operator shall provide the director with copies of any notification it may be
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2 required to provide to federal agencies under federal law concerning proposed personnel layoffs
3 at its mining operation. The director may waive any of these notification requirements in the
4 event of an unforeseen act of God or disaster.
5

6 **No substantive changes.**

7
8 **49.65.165 Annual reports; monitoring; monitoring fee.**

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

14 (b) During the term of each small mine permit or large mine permit, including any inactive
15 period, the operator shall submit an annual progress report to the director on or before March
16 31 of each year describing the status of the mining operation in relation to the approved mining
17 plan and timetable, and describing reclamation activities during the year.

18 (c) The director shall have ongoing authority to monitor any mining operation for which a
19 permit has been issued in order to ascertain whether the mining operation is in compliance
20 with the requirements, terms, conditions and mitigation measures in the permit. The operator
21 shall, upon reasonable notice, provide the director with access, at reasonable times, to the
22 premises and to the records of the mining operation to the extent such access is necessary to
23 ascertain whether the mining operation is in compliance.
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2 (d) Throughout the duration of the term of a small mine permit or a large mine permit, the
3 operator shall pay to the director an annual monitoring fee to defray the costs of inspecting and
4 reviewing the affected surface and compliance with the permit. The annual monitoring fee shall
5 be such amount as may be established by the commission as necessary to cover the reasonable
6 costs of inspection and review.
7

8 **No substantive changes.**

9 **49.65.170 Technical revisions, summary approval, and amendments.**

10 (a) During the term of a permit, the operator shall notify the director of all technical
11 revisions to its operations. As used in this section a "technical revision" is a change in
12 operations which does not, in the judgment of the director, have more than a minor effect on
13 reclamation and which does not change the total amount of disturbance or the overall
14 environmental or socioeconomic impact of the mining operation. After the technical revision is
15 submitted to the director, the director shall within 30 days determine and notify the operator
16 whether a permit amendment or summary approval of the change is necessary or whether the
17 technical revisions may be accomplished under the operator's existing permit.
18

19 (b) If the operator or the director determines that the change to the mining operations will
20 require preparation of a new or supplemental environmental impact statement, or will increase
21 the acreage of affected surface or otherwise have a significant effect on reclamation or the
22 environmental or socioeconomic impact of the mining operation, the permit shall be amended,
23 unless summary approval of the change is granted pursuant to (b)(2) of this section.
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2 (1) Except as provided in subsection (2) of this section, the operator shall file with
3 the director an application for amendment to its original permit, together with an
4 application with the same content as required for an original application, except that no
5 operator will be required to resubmit any information which duplicates applicable previous
6 submittals. The permit amendment application shall be processed in accordance with the
7 same procedure as established for processing permits under sections 49.65.125, 49.65.135
8 and 49.65.140. The operator shall not commence changes requested in its amendment
9 application until the permit amendment has been approved and, if appropriate, additional
10 financial warranties submitted.
11

12 (2) Summary approval.

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

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

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

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

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2 additional conditions as are necessary to reduce to non-significant
3 any impacts in the roaded service area on habitat, sound, screening,
4 drainage, traffic, lighting, safety, dust, surface subsidence,
5 avalanches, landslides, or erosion.
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8 **No substantive changes.**

9 **49.65.175 Enforcement.**

10 This article shall be enforced in accordance with chapter 49.10, article VI and section
11 49.65.195.
12

13 **No substantive changes.**

14 **49.65.176 Appeal.**

15 Any person who is aggrieved by a decision of the director or the commission with respect to this
16 article, other than one under section 49.65.175, may appeal that decision to the commission or
17 the assembly, as applicable, as provided in chapter 49.20, article I.
18

19
20 **No substantive changes.**

21 **49.65.180 Release of warranties for mining operations.**

22 (a) Upon completion of mining operations, the applicant shall file a written notice of
23 completion with the director when it believes it has completed any or all requirements of this
24 article, section 49.15.330 and its permit with respect to any or all of its affect surfaces. The
25 director shall, within 90 days after receiving the notice, or as soon thereafter as weather

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2 conditions permit, inspect the lands and reclamation described in the notice to determine
3 whether the applicant has complied with all applicable requirements.

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

8
9 (c) If the director finds that the applicant has not complied with the requirements of this
10 article, section 49.15.330 or the permit, it shall so advise the applicant not more than 90 days
11 after the date of the inspection. The applicant shall be given a reasonable time to comply with
12 requirements before a second inspection. If the applicant does not complete the requirements,
13 or if after reinspection the director is not satisfied that the applicant has complied with all the
14 requirements of this article, section 49.15.330 or the permit, the financial warranty shall be
15 subject to forfeiture to the extent necessary to satisfy any outstanding requirements.

16
17 **No substantive changes.**

18 **49.65.185 Successor applicants.**

19 Any applicant desiring to transfer its rights under an exploration notice or a conditional use
20 mining permit shall submit a request for transfer to the director. This request shall identify the
21 name and address of the proposed new applicant. The director may approve the request for
22 transfer if it finds that: the proposed applicant will conduct the operations covered by the notice
23 or permit in accordance with the requirements of this article and any additional requirements
24 set by the director; the proposed applicant has submitted a financial warranty at least
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2 equivalent to the financial warranty of the original applicant such other amount as may be
3 determined using the procedures in section 49.65.140; the proposed applicant will continue to
4 conduct the operations involved in full compliance with the terms and conditions of the original
5 notice or permit; and all obligations and responsibilities undertaken by the original applicant
6 shall be accepted and assumed by the proposed applicant. The director may deny approval of
7 the request for transfer if the original applicant has any existing notice or permit violations at
8 the time of the request until such time as the violations have been remedied. If the director
9 approves the transfer the financial warranty submitted by the original applicant shall be
10 released. Director decisions on transfer requests must be in writing.
11

12 **No substantive changes.**

13 **49.65.190 Confidentiality.**

14 Upon request of any applicant, information in any application or report relating to the location,
15 size, grade, geology or geochemistry of any ore deposit, proprietary process information, or
16 information as to cost of mine construction or operation shall be kept confidential by the
17 director to the extent permitted by law. Information to be maintained as confidential must be
18 separately presented to the director and must be marked "Confidential."
19
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21 **No substantive changes.**

22 **49.65.195 Suspension or revocation of notices and permits.**

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

3 (1) The exploration of mining operations are not in material and substantial
4 compliance with the requirements of the exploration notice or permit issued under this
5 chapter or by any state or federal agency, and such material and substantial
6 noncompliance remains unremedied after issuance of a compliance order issued pursuant
7 to section 49.10.620; or (2) The exploration of mining operations under the notice or
8 permit have a history or pattern of intentional or grossly negligent noncompliance and
9 compliance orders have previously been issued for such past events of noncompliance.
10 Good faith efforts to remedy events of noncompliance shall create an inference that such
11 noncompliance is not a cause for suspension or revocation.
12

13 (b) The director shall provide the applicant with written notification that it is
14 recommending that the commission consider the entry of a suspension or revocation order
15 under subsection (a) of this section. The written notification shall set forth the reasons for the
16 director's recommendation and the applicant's right to a hearing before the commission. The
17 commission shall schedule a hearing within 30 days after the applicant has received the
18 written notification. At the hearing, the director shall have the burden of establishing that the
19 applicant is not in material and substantial compliance with the permit or authority to operate
20 under an exploration notice, or that there is a past history or pattern on noncompliance
21 sufficient to justify suspension or revocation.
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23 (c) Upon written notification of the entry of a suspension or revocation order to the
24 applicant or to any person operating under the authority of the permit or exploration notice, all
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2 exploration or mining operations shall cease except those specifically authorized by the
3 commission in the order or if the assembly stays the order pending appeal.

4 (d) A suspended notice or permit may be reinstated by the commission upon a
5 determination that the exploration or mining operations have been brought into compliance
6 with the conditions of the notice or permit. A notice or permit which has been revoked may not
7 be reissued by the commission until the commission determines that the exploration or mining
8 operation has been brought into compliance with the terms and conditions of the notice or
9 permit, and the applicant has clearly and convincingly demonstrated that preventative
10 measures have been taken to ensure that those conditions which gave rise to the revocation
11 will not reoccur.

12
13 (e) A suspension or revocation order may be appealed to the assembly in accordance with
14 chapter 49.20, article I. Pending appeal, the assembly may in its discretion stay an order of
15 suspension or revocation.

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

19
20 **No substantive changes.**

21 **49.65.196 Effect of article on operations in annexed territory.**

22 Large mine, small mine and exploration operations occurring in territory annexed by the City
23 and Borough which have been issued the federal and state permits or approvals necessary for
24 the operation, including, if applicable, permits or approvals necessary to operate in accordance
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2 with the National Environmental Policy Act (NEPA) process, shall be deemed to have been
3 issued a large mine permit, a small mine permit, or an exploration notice, as applicable, under
4 this article and to otherwise be eligible to operate pursuant to this article upon the effective
5 date of annexation; provided, that all such federal and state permits or approvals are currently
6 valid. With the exception of the initial permit application and exploration notice filing
7 requirements, the applicant shall be subject to all of the requirements, of this article in effect
8 upon the effective date of annexation, including the technical revisions and permit amendment
9 requirements, and the monitoring fee enforcement and revocation or suspension provisions, in
10 the same manner as any other applicant. The terms of the City and Borough permit or notice
11 shall be deemed to be the terms of the state and federal permits or approvals, unless and until
12 a permit amendment is required. The applicant shall be required to execute documentation
13 acknowledging that the permit or notice deemed to be issued under this article shall have the
14 same terms as the federal and state permits or approvals unless and until a permit amendment
15 is required, and that the applicant, and the permit or notice deemed issued, shall be subject to
16 all of the requirements of this article in effect upon the effective date of annexation with the
17 exception of the initial permit application and exploration notice filing requirements.
18
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20 **No substantive changes.**

21 **49.65.197 Severability.**

22 If any section, subsection, paragraph, sentence, clause or phrase of this article is for any reason
23 held unlawful or otherwise invalid, such holding shall not affect the remaining portions of the
24 article. The City and Borough declares that it would have enacted this article and each and
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2 every part thereof, irrespective of the fact that any one or more parts might be held unlawful or
3 otherwise invalid.
4

5 **Section 3. Effective Date.** This ordinance shall be effective 30 days after its
6 adoption.
7

8 Adopted this _____ day of _____, 2018.
9

10 _____
11 Kendell D. Koelsch, Mayor

12 Attest:

13 _____
14 Laurie J. Sica, Municipal Clerk
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