

Proposed by:	Administration
Attorney Review:	03/15/2014
Civic Affairs Review:	03/28/2014
First Reading:	04/03/2014
Second Reading:	04/17/2014
Vote:	5 Aye 1 Nay 0 Absent

**MUNICIPALITY OF SKAGWAY, ALASKA
ORDINANCE NO. 14-06**

AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA AMENDING TITLE 19 PLANNING AND ZONING BY AMENDING CHAPTER 19.04 ZONING REGULATIONS TO PROVIDE THAT VIOLATIONS OF THIS CHAPTER ARE SUBJECT TO A CIVIL FINE; AND ESTABLISHING AN ADMINISTRATIVE APPEAL PROCESS FOR VIOLATIONS OF THIS CHAPTER.

NOW THEREFORE BE IT ORDAINED AND ENACTED BY THE MUNICIPALITY OF SKAGWAY, ALASKA AS FOLLOWS:

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

Section 2. Purpose. To amend Chapter 19.04 Zoning Regulations to provide that violations of this chapter are subject to a civil fine; and establishing an administrative appeal process for violations of this chapter.

Section 3. Amendment. The Skagway Municipal Code is hereby amended; (~~strike through~~) indicates text to be deleted from and (**bold underscore**) indicates text added to the current code. Chapter 19.04 Zoning Regulations is hereby amended as follows:

Chapter 19.04

ZONING REGULATIONS

Sections:

- 19.04.010 Application of regulations.
- 19.04.020 General provisions.
- 19.04.030 Public uses.
- 19.04.040 Private use of public property.
- 19.04.050 Preexisting nonconforming uses.
- 19.04.060 Variances, and conditional use permits.
- 19.04.070 Board of Appeals.
- 19.04.080 Amendments.
- 19.04.090 Administration, enforcement and penalties.
- 19.04.100 Administrative appeal for civil fines.**

- 19.04.090 Administration, enforcement and penalties.
 - A. Administrative Official. An administrative official designated by the borough assembly shall administer and enforce this title. **The official** ~~He~~ may be provided with the assistance of such other persons as the borough assembly deems necessary. If the administrative official finds that any of the provisions of this title are being violated, he shall notify ~~in writing~~ **with a notice of violation or written warning** the person responsible for such violations, indicating the nature of the

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violation, and ordering the action necessary to correct it. He shall order discontinuance of illegal uses of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this title to insure compliance with or to prevent violation of its provisions, consistent with Section 19.04.050 on preexisting non-conforming uses.

B. Permits and Inspection – Permits Required.

1. No person, firm or corporation shall erect, construct, alter, enlarge, move, improve or convert any building in the municipality, or cause the same to be done, without obtaining a separate permit for each structure from the zoning official. The zoning official shall maintain a record of all permits, and copies shall be furnished upon request to any person. Failure to obtain a permit shall be a violation of this chapter, and punishable under this section.
2. All applications for permits shall be accompanied by plans in duplicate, drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and location on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the zoning official, including existing or proposed building or alteration; existing or proposed uses of the building and land; the number of families, housekeeping units or rental units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with and provide for the enforcement of this title.
3. The zoning official shall render his decision within thirty (30) **business** days of the filing of the application of a permit. However, this time limit may be extended by common consent and agreement signed by both the applicant and the zoning official. One (1) copy of the plans shall be returned to the applicant by the zoning official after he shall have either attached a permit, or marked the plans as disapproved, and attested to the same by his signature on such copy. The second copy of the plans, similarly marked, shall be retained by the zoning official.

C. Complaints Regarding Violations.

1. Whenever a violation **appears to be occurring or occurred** occurs, any person may file a complaint, ~~in regard thereto.~~ All such complaints shall be brought to the attention of the ~~zoning official~~ **community service officer**, who shall record such complaints and ~~immediately investigate and report thereon to the borough manager.~~
2. ~~Chapters 19.08, 19.10 and 19.12 regulating signs and structures within the Historic District. Official letters of non-compliance shall be sent out following historic district commission meetings requesting the removal or correction of the non-compliance within seven (7) days with copies sent to the police department for enforcement. After seven (7) days a ticketed fine of five hundred dollars (\$500.00) per day will be assessed until the offense is removed or corrected. Each and every day that such violation continues shall be deemed a separate and distinct violation. Application for approval is not sufficient to defer fine; offense must be corrected or removed.~~
3. ~~The following violations of 19.08, 19.10 and 19.12 are exempt from 19.04.090(C)(2):~~

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- a. Banners on the exterior of a building.
- b. Paper or plastic signs on the exterior of a building. These include paper or plastic signs on either side of out-swinging doors.
- c. Exterior display of merchandise. This includes merchandise in doorways that is placed so that it extends past the exterior door trim.
- d. Balloons or wind devices.
- e. Any sign erected that the historic district commission has reviewed and denied.
- f. Artificial plants, shrubs or flowers.
- g. "End of Season" sale signs displayed prior to Labor Day.
- h. Dry-erase boards.**
- i. Internally lighted signs.**
- j. Dolls or mannequins on public property.**
- k. Portable signs, including sandwich signs on public property.**
- l. Off premise signs.**

43. Violations specified in 19.04.090(C)(3) shall be subject to immediate citation.

54. The fine for violations of 19.04.090(C)(3) shall be \$100 per citation **established by resolution.** The violation will be cited each day and continues until the violation is remedied.

D. Penalties for Violations.

1. For any and every violation of the provisions of this title, the owner, agent or contractor of a building or premises where such violations have been committed or exist, or any other person who maintains any building or premises in which any violation exists, shall incur a civil penalty, ~~not to exceed three hundred dollars (\$300.00)~~ **established by resolution,** for each day of continuing violation, ~~except as otherwise provided. The fine amount may be increased up to five hundred dollars (\$500.00) for each day of continuing violation if there is evidence that the violation is willful and continuing.~~ Each and every day that such violation continues shall be deemed a separate and distinct violation. Any building or structure set up, erected, built, moved or maintained, or any use of property contrary to the provisions of this title shall be declared unlawful and a public nuisance, and the borough manager shall immediately cause to be commenced an action for the removal thereof, in the manner provided by law, and shall apply to such court or courts as may have jurisdiction to remove such buildings, structure or use. All remedies provided herein shall be cumulative and not exclusive.

2. **Failure to contact the Skagway Police Department within five (5) days of the date of notice of violation and arrange a payment schedule for the fine acceptable to the Police Department, or to pay the fine for the violation within five (5) days of the date of the notice of violation, or to file an appeal of a notice of violation within ten (10) days of the date of the notice of violation, will result in an additional fee in the amount of the civil fine.**

23. Chapters 19.08, 19.10 and 19.12 regulating signs and structures within the Historic District.

- a. Any changes to any structure or sign within the Historic District without a valid and approved permit ~~will be fined five hundred dollars (\$500.00)~~ **shall be subject to a civil fine, established by**

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resolution, per day from the day the change is initiated until the date final approval is given or until all changes are restored to the original. Each and every day that such violation continues shall be deemed a separate and distinct violation.

b. Any structures erected which vary from the approved permit will be required to be corrected within ~~6 months~~ **thirty (30) days**, or ~~will be fined at the rate of five hundred dollars (\$500.00)~~ **shall be subject to a civil fine, established by resolution**, per day from the date of occupancy to the date of final approval. Each and every day that such violation continues shall be deemed a separate and distinct violation.

c. Any structures within the Historic District removed or demolished without an approved permit ~~will be fined at five hundred dollars (\$500.00)~~ **shall be subject to a civil fine, established by resolution**, per day from the time of demolition to the date of final approval. Each and every day that such violation continues shall be deemed a separate and distinct violation.

34. Chapters 19.08, 19.10 and 19.12 regulating signs and structures within the Historic District.

a. Any signs erected within the Historic District from the date of passage, August 5, 1999 without a valid and approved permit ~~will be fined at a rate of five hundred dollars (\$500.00)~~ **shall be subject to a civil fine, established by resolution**, per day from the day raised through the date final approval is given. Each and every day that such violation continues shall be deemed a separate and distinct violation.

b. Any signs erected within the Historic District from the date of passage, August 5, 1999, which vary from the approved permit, must be corrected within thirty (30) days from date of notice, and ~~will be fined five hundred dollars (\$500.00)~~ **shall be subject to a civil fine, established by resolution**, per day after that period until corrected. Each and every day that such violation continues shall be deemed a separate and distinct violation.

c. Any signs which vary from the approved permit, enter the appeal process and are denied, must be immediately removed or masked from view until corrected.

E. Appeals to the Board of Appeals.

1. Any person or persons aggrieved by a decision of the administrative official or planning commission, including but not limited to a municipal official, may file with the board of appeals an appeal in writing stating detailed and specific allegations of error including reference to applicable provisions of the Skagway Municipal Code; and shall also include a statement of whether the action should be reversed, modified, remanded for further proceedings, or any other desired relief. All such appeals shall be filed with the borough clerk within ten (10) days of the date of such decision. If the final day to file an appeal falls on a week-end (Saturday or Sunday) or a borough-designated holiday, the final day to file an appeal shall be the next working day of the week. Any purported appeals filed after ten (10) days ~~shall~~ **may** not be considered by the board of appeals.

2. All appeals to the board of appeals shall follow, to the extent applicable, the procedure as set forth in Section 19.04.070 of this chapter.

19.04.100 Administrative appeal for civil fines.

- A. Right to Appeal and Time for Appeal. Any persons who have been issued a notice of violation may appeal the notice of violation by filing an appeal with the borough manager within ten (10) days of the date of the notice of violation. The borough manager shall prepare appeal forms which the appellant may use.**
- B. Hearing Officer. The borough manager or such person(s) as the borough manager may designate shall serve as hearing officer for notice of violation appeals and shall have authority to decide such appeals.**
- C. Contents of Appeal. An appeal must be in writing and contain the following information:**
 - 1. Name and mailing address of the appellant;**
 - 2. Number or other sufficient identification of the notice of violation;**
 - 3. Statement of the reasons for the appeal;**
 - 4. Any facts, documents, photographs, witness statements, or other evidence supporting the appeal; and**
 - 5. Statement as to whether the appellant requests a hearing before a hearing officer, or whether the appeal can be decided without a hearing. If the appellant waives hearing, the hearing officer may decide the appeal based on the written statements of the appellant, the issuing officers and any witnesses as contained in the notice or other written reports.**
- D. Administrative Hearing Procedures.**
 - 1. Date of Hearing. Unless otherwise agreed to by the appellant and the hearing officer, a hearing requested under this section shall be held no later than fifteen (15) days from the date the written notice of appeal is filed with the borough manager.**
 - 2. Procedure. The hearing shall be conducted informally and may be governed by such rules as the hearing officer may choose to establish, except that:**
 - a. Parties may appear in person or through counsel;**
 - b. Parties may present witnesses and evidence on their own behalf and witnesses may be cross-examined;**
 - c. The hearing is not governed by the formal rules of evidence. The hearing officer may consider evidence that the officer reasonably deems to be both relevant and material to the contested issues;**
 - d. All hearings shall be open to the public;**
 - e. The hearing shall be memorialized by electronic recording or stenographic record;**
 - f. Failure of the appellant to appear at a hearing requested by the appellant shall waive all right to a hearing and shall render the amount of the fine due and owing.**
 - 3. Scope of Review. The hearing officer's decision shall be based on the law and facts applicable to the case. The hearing officer may exercise independent judgment and reasonable discretion, applied in a**


consistent manner, in deciding appeals and may affirm, modify, or dismiss the notice of violation.

4. Decision. No later than ten (10) days following the hearing, the hearing officer shall issue a written decision setting out the hearing officer's findings and conclusions so as to provide a clear understanding of the reasons for the decision entered. The decision should also include the following statement: "This is the final decision of the Municipality of Skagway and a party disputing this decision has thirty (30) days from the date this decision was mailed or distributed to file an appeal with the Superior Court for the State of Alaska, First Judicial District at Juneau, Alaska, in accordance with the Alaska Rules of Appellate Procedure." The decision shall be mailed or otherwise distributed to all parties to the appeal.
5. Judicial Appeal. The decision of the hearing officer may be appealed to the Superior Court for the State of Alaska, First Judicial District at Juneau, Alaska, in accordance with the Alaska Rules of Appellate Procedure.


Section 4. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 5. Effective Date. This ordinance shall become effective immediately upon adoption.

PASSED AND APPROVED by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this 17th day of April, 2014.


Mark Schaefer, Mayor

ATTEST:


Emily A. Deach, Borough Clerk

(SEAL)

