

Proposed by:	Mayor Cremata
Attorney Review:	05/28/2021
First Reading:	06/03/2021
Second Reading:	06/17/2021
Vote: 5 Aye	0 Nay 0 Absent 1 Vacant

MUNICIPALITY OF SKAGWAY, ALASKA ORDINANCE NO. 21-07

AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA ENACTING A NEW SMC CHAPTER 8.12 SOIL AND SEDIMENT MANAGEMENT STANDARDS, TO IMPLEMENT LOCAL STANDARDS FOR THE MANAGEMENT OF SOIL AND SEDIMENT CONTAMINATION.

WHEREAS, the Municipality of Skagway would like to encourage the environmentally responsible use and development of its lands and tidewaters along the waterfront; and

WHEREAS, the State of Alaska has not established clear sediment management standards with regard to the remediation of sediment contamination, particularly, a lack of remedial action objectives by which the environmentally responsible use and development of the Municipality's lands and tidewaters may be quantitatively evaluated; and

WHEREAS, the Municipality seeks to ensure the clear and consistent application of management standards to both the soils and sediments in its lands and tidewaters; and

WHEREAS, the Municipality is empowered to enact appropriate local requirements to ensure the environmentally responsible use and development of its lands and tidewaters along the waterfront that are in addition to those implemented by the State of Alaska, without conflict and preemption by State law; and

WHEREAS, the Municipality has engaged with experts regarding remediation issues, who have recommended the use of soil and sediment management standards contained herein; and

WHEREAS, the Municipality of Skagway recognizes a need to implement such local requirements for soil and sediment management to better protect the health and safety of its citizens.

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

Section 1. Classification. Section 3 of this Ordinance No. 21-07 is of a general and permanent nature and shall become a part of the Skagway Municipal Code.

Section 2. Purpose. To enact SMC Chapter 8.12 Soil and Sediment Management Standards to implement soil and sediment management standards for the Municipality of Skagway.

Section 3. Amendment. The Skagway Municipal Code is hereby amended to enact and add new Chapter 12 Soil and Sediment Management Standards under Title 8 Health and Safety:

**CHAPTER 8.12
SOIL AND SEDIMENT MANAGEMENT STANDARDS**

Sections:

- 8.12.010 Purpose.
- 8.12.020 Soil and sediment cleanup objectives.
- 8.12.030 Enforcement of management standards.
- 8.12.040 Enforcement of penalty.
- 8.12.050 Regulations.

8.12.010 Purpose.

- A. The purpose of this chapter is to reduce and ultimately eliminate adverse effects of biological resources and significant health threats to humans from soil and sediment contamination by (1) adopting the established Alaska standards for the quality of soils as local management standards, (2) establishing local management standards for the quality of marine and freshwater sediments – defined as “settled particulate matter located at or below the ordinary high water mark, where the water is present for a minimum of six consecutive weeks, to which biota (including benthic infauna) or humans may potentially be exposed, including that exposed by human activity (e.g., dredging)” – and (3) applying these standards as the basis for the cleanup of contaminated soils and sediments within the lands and tidewaters of the Municipality.
- B. The soil and sediment management standards provided and adopted in this chapter identify contaminants with potentially adverse effects on biological resources and significant health risk to humans. The management standards provide a regulatory and management goal for the quality of soils and sediments for the Municipality’s land and tidewaters owned or leased currently or in the future to others.

8.12.020 Soil and sediment cleanup objectives.

- A. The tables promulgated by the State of Alaska under 18 AAC 75.341(a) for petroleum hydrocarbons and under 18 AAC 75.341(c) for chemicals other than petroleum hydrocarbons are adopted and incorporated herein as the soil cleanup objectives for the Municipality’s land and tidewaters owned or leased to others currently or in the future.
- B. The following tables in SMC 8.12.020(C) establish the marine and freshwater sediment cleanup objectives for the Municipality’s land and tidewaters owned or leased to others currently or in the future. Wherever there is conflict between the incorporated provisions and Alaska law, the latter shall prevail, but, in such event, the affected provisions shall be curtailed and limited only to the extent necessary to bring it within legal requirements.

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C. Table I – Marine Sediment Cleanup Objectives

Chemical Parameter	Mg/kg Dry Weight (Parts per Million (ppm) Dry Weight) Sediment Cleanup Objective
Arsenic	57
Cadmium	5.1
Chromium	260
Copper	390
Lead	450
Mercury	0.41
Silver	6.1
Zinc	410
	Mg/kg Organic Carbon (ppm carbon)* Sediment Cleanup Objective
LPAH	370
Naphthalene	99
Acenaphthylene	66
Acenaphthene	16
Fluorene	23
Phenanthrene	100
Anthracene	220
2-Methylnaphthalene	38
HPAH	960
Fluoranthene	160
Pyrene	1000
Benz(a)anthracene	110
Chrysene	110
Total Benzofluoranthenes	230
Benzo(a)pyrene	99
Indeno(1,2,3 c,d)pyrene	34
Dibenzo(a,h)anthracene	12
Benzo(g,h,i)perylene	31
1,2 Dichlorobenzene	2.3
1,4 Dichlorobenzene	3.1
1,2,4 Trichlorobenzene	0.81
Hexachlorobenzene	0.38
Dimethyl phthalate	53
Diethyl phthalate	61
Di-n-butyl phthalate	220
Butyl benzyl phthalate	4.9
Bis (2-ethylhexyl) phthalate	47
Di-n-octyl phthalate	58
Dibenzofuran	15

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Hexachlorobutadiene	3.9
N-Nitrosodiphenylamine	11
Total PCBs	12
	ug/kg Dry Weight (Parts per Billion (ppb) Dry Weight) Sediment Cleanup Objective
Phenol	420
2-Methylphenol	63
4-Methylphenol	670
2,4 Dimethylphenol	29
Pentachlorophenol	360
Benzyl Alcohol	57
Benzoic Acid	650

* - Some chemical criteria represent concentrations in parts per million “normalized” or expressed on a total organic carbon basis. To normalize to total organic carbon, the dry weight concentration for each parameter is divided by the decimal fraction representing the percent total organic carbon content (e.g., 0.01 means 1 percent) of the sediment per the equation: ppm OC = (ppb dry weight)/(percent total organic carbon x 1000).

Table II – Freshwater Sediment Cleanup Objectives

Chemical Parameter	Dry Weight Sediment Cleanup Objective
Conventional chemicals (mg/kg)	
Ammonia	230
Total sulfides	39
Metals (mg/kg)	
Cadmium	2.1
Chromium	72
Copper	400
Lead	360
Mercury	0.66
Nickel	26
Selenium	11
Silver	0.57
Zinc	3200
Organic chemicals (µg/kg)	
4-Methylphenol	260
Benzoic acid	2900
Beta-Hexachlorocyclohexane	7.2
Bis(2-ethylhexyl) phthalate	500
Carbazole	900
Dibenzofuran	200
Dibutyltin	910
Dieldrin	4.9

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Di-n-butyl phthalate	380
Di-n-octyl phthalate	39
Endrin Ketone	8.5
Monobutyltin	540
Pentachlorophenol	1200
Total Benzofluoranthenes	230
Phenol	120
Tetrabutyltin	97
Total PCB Aroclors	110
Total DDDs	310
Total DDEs	21
Total DDTs	100
Total PAHs	17000
Tributyltin	47
Bulk Petroleum Hydrocarbons (mg/kg)	
Total Petroleum Hydrocarbon (TPH) - Diesel	340
Total Petroleum Hydrocarbon (TPH) - Residual	3600

D. In the discretion of the borough manager, to be reported to and approved by the borough assembly, the specific soil or sediment cleanup objectives may be waived or modified as may be practically necessary, including the alternative use of biological criteria to be specified by regulation promulgated under SMC 8.12.050.

8.12.030 Enforcement of management standards.

- A. Inspections. The borough manager or his/her designee is hereby empowered, to the maximum extent consistent with constitutional law, to enter any and all owned or leased lands, buildings, and premises at any reasonable hour for the purpose of making inspections and to serve written notice upon the lessee, occupant, or agent thereof to abate, within a reasonable specified time, any and all violations of the soil and sediment management standards that may be found.
- B. Notice to Remediate. The borough manager or his/her designee is authorized to notify the lessee or occupant of lands, buildings, and premises owned or leased by the Municipality, or the agent of such, to properly remediate any violations of the soil and sediment management standards located on such property by a date certain. Such notice shall be by certified mail or by hand delivery, addressed to the lessee or occupant at his/her last known address.
- C. Action Upon Noncompliance. Upon the failure, neglect, or refusal of any person so notified to properly remediate the violation within the time period of the written notice provided for in subsection B, or within a reasonable time period mutually agreed upon by the notified person and the Municipality, the agent designated by the Municipality is authorized and empowered to implement or pay for the remediation necessary to end the violation of the soil and sediment management

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standards or take any other legal action in law or in equity. In an action under this section there may be a judgment for treble damages.

- D. Payment of Costs. When the Municipality has remediated a violation of the soil and sediment management standards, or has paid for such remediation, the actual cost shall include, without limitation, actual, reasonable attorneys' fees and costs necessary for enforcement, plus accrued interest at the rate of ten percent (10%) per year from the date of the completion of the work, if not paid by the previously notified person prior thereto, and shall be charged to such person for payment thereof.

8.12.040 Enforcement of penalty.

For violations of this chapter, refer to Chapter 1.20, General Penalty. Violations of this chapter are subject to the following civil fine: \$500 for each day of violation past the applicable time period established under SMC 8.12.030(C).

8.12.050 Regulations.

The borough manager or his/her designee may promulgate regulations to implement, interpret, or make specific the provisions of this chapter, to be reported to and approved by the borough assembly.


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 June, 2021.


Andrew Cremata, Mayor

ATTEST:


Emily A. Deach, CMC
Borough Clerk

(SEAL)

