

1 By: Bryce J. Ward, Mayor
2 Referred to the
3 Platting Board: 01/10/2019
4 Introduced: 04/11/2019
5 Advanced: 04/11/2019
6 Amended: 04/25/2019
7 Adopted: 04/25/2019
8

9 FAIRBANKS NORTH STAR BOROUGH

10
11 ORDINANCE NO. 2019 - 01

12
13 AN ORDINANCE AMENDING FNSBC TITLE 17 REGARDING LEGAL AND CONSTRUCTED
14 ROAD ACCESS FOR SUBDIVISIONS
15

16 WHEREAS, State law authorizes the Borough, as part of its platting
17 powers, to implement road construction requirements, and the Assembly has the
18 discretion to decide whether road construction should be included in the Borough's
19 subdivision requirements; and
20

21 WHEREAS, Current FNSBC Title 17 subdivision regulations allow for
22 exemptions to road construction based on three ordinances adopted by the Assembly
23 between June 2012 and April 2013; and
24

25 WHEREAS, The current sections contained within FNSBC Title 17 allowing
26 for exemptions to road construction are contained in different sections of the Title,
27 making review and application very difficult for the public; and
28

29 WHEREAS, From the time the first road construction exemption was
30 adopted, approximately 13% of subdivision applications have used the exemption,
31 resulting in over 65 exempted roads; and
32

33 WHEREAS, Approximately 76% of the exempted roads are within a Fire
34 Service Area and approximately 27% are within a Road Service Area; and
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36 WHEREAS, An estimated 88% of the exempted roads have some type of
37 drivable surface, but do not meet current FNSBC Title 17 standards; and
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39 WHEREAS, The FNSB Regional Comprehensive Plan, Land Use Goal 1,
40 Strategy 3 states "To work to reduce to the fullest extent possible the natural conflict
41 that develops between private property right and community needs and interests"; and

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42 WHEREAS, The FNSB Regional Comprehensive Plan, Transportation and
43 Infrastructure Goal 1, Strategy 1, Action B is:

44 Revise Title 17 to:

- 45 • Improve road standards.
- 46 • Ensure access for emergency service vehicles to new developments.
- 47 • Include the pedestrian element in the subdivision platting process.
- 48 • Require public and private developers to provide adequate rights-of-way
49 and road construction in conformance with Borough road standards; and

50
51 WHEREAS, It is difficult to develop a constructed road system in line with
52 the FNSB Comprehensive Road Plan when sections can be exempted from construction;
53 and

54
55 WHEREAS, One of the stated purposes of FNSBC Title 17 is to “Promote
56 and provide for adequate and efficient street and road systems” and the existing
57 exemptions to road construction do not accomplish this purpose; and

58
59 WHEREAS, Subdivision plats utilizing one of the existing road construction
60 exemptions shall contain a plat note stating “Roads in and to this subdivision were not
61 required to and may not meet the borough’s minimum standards for materials and
62 construction. To the extent these road standards have not been met, fire protection,
63 ambulance and other public services may not be available year-around or their
64 availability may be severely limited”; and

65
66 WHEREAS, One consequence of the adopted road construction exemption
67 ordinances is that physical road access to the new subdivision boundary is not
68 necessarily located within legal access to the new subdivision boundary.

69
70 NOW, THEREFORE, BE IT ORDAINED by the Assembly of the Fairbanks
71 North Star Borough:

72
73 Section 1. Classification. This ordinance is of a general and permanent
74 nature and shall be codified.

75
76 Section 2. FNSBC 17.04.010, Definitions, is hereby amended to add the
77 following definition [the Clerk shall add the definition in alphabetical order]:
78 “Borough engineer” means the director of public works or designee.

79
80 Section 3. FNSBC 17.16.010(A), Quick Plat Criteria, is hereby amended
81 as follows:

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82 A. Subject to subsection (C) of this section, a hearing officer may, using the
83 procedures set forth in this division, consider and approve plat applications requesting
84 the following:

- 85 1. A movement or elimination of lot lines resulting in no more than four lots.
- 86 2. A subdivision resulting in four or fewer tracts or lots meeting the access
87 standards of Chapter 17.56 FNSBC[17.56.020].
- 88 3. A subdivision of a communication site or utility site which requires no legal
89 road access as defined in Chapter 17.56 FNSBC[17.56.020(E)].
- 90 4. Modification, elimination or reservation of a public utility easement.

91
92 Section 4. FNSBC 17.20.010, Subdivisions by waiver of a plat, is hereby
93 amended as follows:

94 A. The platting board shall approve the subdivision and waive the preparation,
95 approval, and recording of a final plat upon showing by the applicant that the
96 subdivision meets all the following requirements:

97 1. Each tract or parcel of land created will have [ADEQUATE]legal and
98 constructed access to a public highway or street;

99 2. Each parcel created is nominally five acres in size or larger and the land is
100 divided into four or fewer parcels;

101 3. No dedication of a street, alley, thoroughfare or other public area is
102 involved or required. [FOR THE PURPOSES OF THIS SUBSECTION, EASEMENTS FOR
103 TRAILS REQUIRED TO BE DEDICATED IN CONFORMANCE WITH THE ADOPTED
104 COMPREHENSIVE RECREATIONAL TRAIL PLAN MAY BE RESERVED BY A WRITTEN
105 DEED OF DEDICATION.

106 B. FOR THE PURPOSE OF SUBSECTION (A)(1) OF THIS SECTION, THE
107 REQUIREMENT OF "ADEQUATE ACCESS" TO A PUBLIC HIGHWAY OR STREET MAY BE
108 MET BY ACCESS MEETING THE STANDARDS SET FORTH IN FNSBC 17.56.020.

109 1. IF THE ACCESS IS PROVIDED BY AN EASEMENT AS DESCRIBED IN FNSBC
110 17.56.020(C)(5) OR (6) LYING WITHIN THE PARCEL BEING SUBDIVIDED, THE
111 ACREAGE OCCUPIED BY THE EASEMENT MAY BE INCLUDED IN THE ACREAGE OF THE
112 PARCEL FOR PURPOSES OF APPLYING SUBSECTION (A)(2) OF THIS SECTION.

113 2. RIGHT-OF-WAY WIDTH WITHIN THE SUBDIVISION BOUNDARY MUST
114 CONFORM TO STANDARDS PRESCRIBED IN FNSBC 17.56.080. IF THIS
115 QUALIFICATION IS NOT MET, A DEDICATION IS REQUIRED.]

116 [C]B. A waiver under this chapter is a waiver of the final plat only. All other
117 requirements of this title must be met.

118
119 Section 5. FNSBC 17.56.020 is hereby repealed and reenacted as
120 follows:

121 17.56.020 Legal Access.

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- 122 A. Except as otherwise allowed in this section, there shall be legal access originating
123 from a state-maintained roadway available for year-round public use to the boundary of
124 the subdivision.
- 125 B. The applicant shall show to the satisfaction of the platting authority that legal
126 access exists, providing for construction, improvements, and maintenance of a trafficway
127 up to a width and standard required by this title, to the boundary of the subdivision.
- 128 C. All lots within the subdivision shall have legal access.
- 129 1. All road rights-of-way within the subdivision shall be dedicated to the public.
130 2. Exterior boundary right-of-way width may be shared with the adjoining
131 property owner if the shared right-of-way is existing and public.
- 132 D. Communication sites and utility sites do not require legal access. At a minimum,
133 an easement allowing ingress and egress from legal access as defined in this section to
134 the communication site or utility site is required.
- 135 E. The platting board may accept alternate means of access to the subdivision in
136 lieu of road access upon an application and findings by the platting board that:
- 137 1. There is no practical means of providing usable road access to the
138 proposed subdivision.
- 139 2. Permanent public access by air, water, or railroad is both practical and
140 feasible.
- 141 3. The primary mode of access shall be noted on the plat.
- 142 F. "Legal access" may be established by one of the following means:
- 143 1. The applicant dedicates sufficient land to provide access between the
144 subdivision and the existing public road.
- 145 2. A dedicated right-of-way exists for access to the land.
146 3. Legal access is established by judicial decree.
147 4. An access easement exists which meets all the following requirements:
148 a. It is public.
149 b. It is perpetual and irrevocable.
150 c. It is recorded.
151 d. It prohibits the use of any interest retained by the grantor which
152 would be incompatible with its use as a road easement to the parcel being subdivided.
- 153 5. It is a verified section line easement.
154 6. A private access easement exists which meets all of the following
155 requirements:
156 a. It is an easement appurtenant without limits on transferability to
157 future subdivided parcels.
158 b. It is perpetual and irrevocable.
159 c. It is recorded.
160 d. It prohibits the use of any interest retained by the grantor which
161 would be incompatible with its use as a road easement to the parcel being subdivided.
162 e. It serves a subdivision not within a road service area and the
163 subdivision does not rely on roads maintained by a service area for its only access.

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164 Section 6. FNSBC 17.56.060 is hereby repealed and reenacted as
165 follows:

166 17.56.060 General road requirements.

167 A. There shall be constructed road access originating from a state-maintained
168 roadway or a roadway previously approved for access under criteria established by this
169 or prior titles to the boundary of the subdivision. The constructed road shall be within
170 legal access as defined in this chapter. For the purposes of this title, if an established
171 road exists and is proposed for access to the subdivision, it will be deemed constructed
172 if it is a state maintained roadway; if the roadway has been previously approved by the
173 borough engineer in accordance with this or former titles; or if it meets the
174 requirements of this subsection.

175 1. Roads originally approved as pioneer roads will be subject to upgrade to
176 the width of trafficway standards contained in this section.

177 2. If an established road exists and has not been previously approved by the
178 borough engineer, it will be deemed constructed if it meets all of the following;

179 a. In the professional opinion of the borough engineer, it is
180 adequately drained;

181 b. In the professional opinion of the borough engineer, the road bed
182 is of stable material;

183 c. All grades comply with FNSB 17.56.100(B)(1) and (B)(3);

184 d. The width of the trafficway and right-of-way comply with FNSBC
185 17.56.080(B) as follows:

186 i. Subdivisions with the potential for serving 10 or fewer
187 residential lots – meet local road 1 standards,

188 ii. Subdivisions with the potential for serving 11 to 40 lots –
189 meet local road 2 standards,

190 iii. Subdivisions with the potential for serving over 40 lots –
191 meet minor collector road standards;

192 3. If no constructed road exists to the subdivision or if the road to the
193 subdivision does not meet the requirements of this section, all new construction must
194 comply with the standards required in this chapter for minor collectors.

195 B. All lots within the subdivision shall have road access constructed to the standards
196 required by this title and shall be constructed within a public right-of-way or public
197 easement, unless exempted in this chapter.

198 C. The platting board may require higher minimum standards within Fairbanks
199 North Star Borough road service areas provided the higher standard is commensurate
200 with that of the majority of roads constructed within the service area in which the
201 subdivision is being developed.

202 D. Road construction must be built taking into account the
203 conclusions/recommendations based on the typical roadway cross-sections.

204 E. If the standards as contained herein are impractical because of terrain, soil
205 characteristics, or drainage, the borough engineer may recommend to the platting

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206 board alternate designs when substantiated by a design analysis prepared, signed and
207 sealed by the applicant's registered professional. Any alternate geometric design shall
208 be in accordance with sound engineering principles and meet AASHTO/ITE guidelines or
209 applicable federal, state or local standards.

210 F. Any certification documents of public improvements submitted by the applicant
211 shall be certified by a registered professional.

212 G. The owner shall warrant and guarantee that the required improvements will
213 remain within the specifications of this title for a period of two years after final plat
214 approval or approval by the borough engineer, whichever is later, and agrees to make
215 all repairs necessary to meet those requirements during that two-year period. This
216 guarantee shall be enforceable by municipal action or by private action by any lot
217 owner within the subdivision.

218 1. The warranty and guarantee required by this section include defects in
219 design, workmanship, materials, and any damage to required improvements caused by
220 the subdivider, or his or her agents.

221 2. The duration of the warranty period may be extended for up to one year
222 after completion of repairs or modifications made during the warranty period.

223 3. A surety in the amount of five percent of the borough engineer's cost
224 estimate of the required improvements shall be provided at the time of final plat and
225 shall be in effect through the warranty period, and, if necessary, for additional time for
226 repairs necessary to meet the specifications of this title.

227 4. If defects or damage are discovered during the two-year period beginning
228 from the date of final plat approval, or engineer approval as applicable, the borough
229 shall notify the subdivider of the deficiencies to be corrected. In the event the
230 subdivider fails to correct such deficiencies within 60 days or if the deficiencies constitute
231 a public health and safety hazard, the borough may take the following remedial actions:

232 a. Seek an equitable order requiring the subdivider to correct the
233 deficiencies;

234 b. Draw on the surety to correct the deficiencies, reserving the right
235 to proceed against the subdivider for any insufficiency in the amount of the surety;

236 c. Make any repairs or corrections deemed by the borough to be
237 essential to public health and safety and to proceed separately against the subdivider
238 and/or the surety for the cost of the repairs or corrections;

239 d. The remedies set forth in this subsection are cumulative; provided,
240 that it shall not be construed to allow the borough to recover more than the cost of
241 curing the deficiencies, together with such costs, attorneys' fees and penalties as may
242 be imposed through the court system.

243 5. If, at the end of the two-year warranty period, the borough has found no
244 deficiencies in the improvements, the borough shall release the surety. If at the
245 expiration of such period there are one or more outstanding notices to the subdivider,
246 the borough may retain the surety until the deficiencies identified in the notice(s) have
247 been corrected.

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248 Section 7. FNSBC 17.56.065 is hereby added as follows:
 249 17.56.065 Exemptions to road construction.
 250 A. Lots 20 acres or larger in size do not require constructed road access to or within
 251 the subdivision. The applicant is required to demonstrate to the borough engineer that
 252 the proposed access can be constructed practically and economically within the legal
 253 access.
 254 B. Communication sites and utility sites require no constructed road access.
 255 C. An applicant for a subdivision may apply for and may be exempted from the
 256 minimum road materials and construction standards of this title, provided all of the
 257 following are met:
 258 1. The proposed subdivision creates two or fewer lots and is not in the city
 259 of Fairbanks or the city of North Pole; or the proposed subdivision creates three to five
 260 lots and:
 261 a. Is not in the city of Fairbanks or the city of North Pole;
 262 b. Is not in a fire service area;
 263 c. Is not in a road service area;
 264 d. Does not rely on roads maintained by a service area for its only
 265 access; and,
 266 e. Does not rely on roads maintained by a service area for access that
 267 is required by the subdivision plat or by other regulation or ordinance.
 268 2. The applicant shall provide to the platting authority a road design which
 269 meets the requirements of Chapter 17.48 FNSBC and Chapter 17.56 FNSBC,
 270 demonstrating that the subdivision roads have been designed to allow future construction
 271 that meets the standards of this title in effect at the time of the preliminary approval.
 272 3. If an established road exists and does not meet the definition of constructed
 273 road and is proposed for access to or within the subdivision, the following shall apply:
 274 a. In the professional opinion of the borough engineer, the road is
 275 adequately drained and the roadbed is of stable material.
 276 b. The trafficway width meets or exceeds the minimum requirements
 277 of a pioneer access road.
 278 c. The road is within legal access.
 279 4. If no established road exists for access to or within the subdivision, a road
 280 or roads shall be constructed to meet or exceed the minimum requirements of pioneer
 281 access roads.
 282 5. A subdivision which is approved pursuant to this exemption is subject to
 283 all of the following requirements:
 284 a. It shall not be eligible for inclusion in a road service area until a
 285 registered professional certifies that the roads sought to be included meet the minimum
 286 design, materials and construction standards in effect when the subdivision was
 287 preliminarily approved; except that a subdivision creating two or fewer lots is not
 288 subject to this subsection.

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289 b. It shall contain a plat note with the disclosure containing essentially
290 the following language:

291 Roads in and to this subdivision were not required to and may not meet
292 the borough's minimum standards for materials and construction. To the extent these
293 road standards have not been met, fire protection, ambulance and other public services
294 may not be available year-around or their availability may be severely limited.

295 c. Where exempted roads intersect or connect with existing
296 constructed roadways, landings shall be constructed with a minimum of a 30-foot length
297 meeting the minimum standards for road materials and construction of this title unless
298 the landing is within a State right of way, the City of Fairbanks, or the City of North Pole,
299 in which case the landing shall meet the standards set forth by the managing authority.

300 d. A lot created under this subsection may not be further subdivided
301 until such time as legal, constructed road access meeting the standards of this title is
302 available to the boundary of the lot proposed to be further subdivided.
303

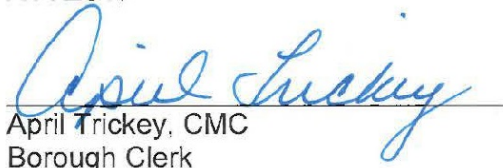
304 Section 8. Effective Date. This ordinance shall be effective at 5:00 p.m.
305 on December 31, 2019.

306
307 PASSED AND APPROVED THIS 25TH DAY OF APRIL, 2019.
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312
313
314 Matt Cooper
315 Presiding Officer

316 ATTEST:

317
318 
319
320 April Trickey, CMC
321 Borough Clerk

322
323 Yeses: Williams, Sanford, Gray, Tacke, Lyke, Major
324 Noes: Lojewski, Quist
325 Other: Cooper (Abstained)

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