







**MUNICIPALITY OF ANCHORAGE  
ASSEMBLY MEMORANDUM**

No. AM 516-2021

Meeting Date: Month Day, 2021

1 **From: Assembly Member Weddleton**

2  
3 **Subject: AN ORDINANCE OF THE ANCHORAGE MUNICIPAL**  
4 **ASSEMBLY AMENDING ANCHORAGE MUNICIPAL CODE SECTIONS**  
5 **21.08.050, IMPROVEMENTS, AND 21.08.060, SUBDIVISION**  
6 **AGREEMENTS, TO ADOPT A CLEANUP STANDARD FOR**  
7 **CONTAMINATED SOILS SIMILAR TO THE STATE’S, FOR NEW**  
8 **SUBDIVISION APPLICATIONS.**

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10 Anchorage does not have a clear standard for cleanup of hydrocarbons found in  
11 Municipal rights of way or in locations that will be dedicated to the Municipality when a  
12 new subdivision or a resubdivision is completed. The rules for new subdivisions or  
13 resubdivisions are in Title 21, Chapter 8, of the Anchorage Municipal Code.

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15 This Ordinance focuses on soils and recommends a clear standard for cleanup in  
16 accordance with the standards identified by the State of Alaska regulations in 18 AAC  
17 75.341. The basic approach is to establish cleanup levels for the contaminated soil  
18 that are in line with the risk posed by contaminated soil to human health and the  
19 environment.

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21 Following Alaska Department of Environmental Conservation (ADEC) regulations, the  
22 proposed standard includes five factors to consider when coming up with a “matrix  
23 score” to determine a cleanup level. This matrix score leads to a second set of  
24 standards to establish a cleanup level for the different “ranges” of contamination:  
25 Gasoline Range Organics, Diesel Range Organics, and Residual Range Organics  
26 which are defined by their “Carbon Number.” These factors lead to a Risk Based  
27 Corrective Action approach to establishing cleanup levels, which considers  
28 various “pathways” of exposure such as ingestion, dermal contact and inhalation, and  
29 provide for four methods of cleanup.

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31 This process is fully explained in 18 AAC 75.340, Soil Cleanup Levels: General  
32 Requirements, and the tables in 18 AAC 75.341. These state requirements can be  
33 found starting on page.69 of the State Department of Environmental Conservation Oil  
34 and Other Hazardous Substances Pollution Control regulations, as amended through  
35 June 24, 2021, published at <https://dec.alaska.gov/media/1055/18-aac-75.pdf>.

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37 When water utilities run through an area with contaminated soil, the Anchorage Water  
38 Utility recognizes these standards for cleanup and have a process for determining the  
39 appropriate style of water pipe and gaskets for the level of contamination.

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41 If a site is cleaned up to ADEC cleanup standards or higher, a future project  
42 disturbing those soils may still require a hazardous waste assessment to identify  
43 those contaminants and require cleanup and disposal of any material at a higher cost

1 (e.g.: Anchorage Regional Landfill disposal at \$60/ton vs. Sand Lake disposal at  
2 \$10/ton). This acknowledges that there could be a cost liability passed on to the  
3 Municipality or AWWU. Cleaning up to 100% removal, above the ADEC cleanup  
4 standards, has been used as a way to mitigate that potential future liability, but it's  
5 questionable if that is effective, reasonable, or even necessary.  
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7 This Ordinance makes clear the Municipality would not accept a cleanup that requires  
8 institutional controls. Generally, less stringent cleanup levels are available under an  
9 alternative method if the developer demonstrates compliance with institutional  
10 controls. Institutional controls by law must be appurtenant to and run with the land,  
11 require the owner to enforce the prohibition of certain activities, may require deed or  
12 zoning restrictions, and include a grant to the ADEC of a perpetual right to enter for  
13 monitoring, testing soils, and inspection of the site and records. For those reasons, it  
14 is undesirable for the Municipality to receive by dedication in a subdivision plat some  
15 cleanup areas burdened with institutional controls and will not be allowed by the  
16 proposed Ordinance. Institutional control requirements are covered in 18 AAC  
17 75.375, which states in pertinent part:  
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19 **18 AAC 75.375. Institutional controls.** (a) The department will, after consultation  
20 with each landowner of the site, determine that the use of an institutional control is  
21 necessary, on a site-specific basis, if the department determines that controls are  
22 required to ensure

- 23 (1) compliance with an applicable cleanup level;  
24 (2) protection of human health, safety, or welfare, or the environment;  
25 or  
26 (3) the integrity of site cleanup activities or improvements.

27 (b) Institutional controls include

- 28 (1) the requirement for and maintenance of physical measures, such as  
29 fences and signs, to limit an activity that might interfere with cleanup  
30 or result in exposure to a hazardous substance at the site;  
31 (2) the requirement for and maintenance of engineering measures, such  
32 as liners and caps, to limit exposure to a hazardous substance;  
33 (3) restrictive covenants, easements, deed restrictions, or other  
34 measures that would be examined during a routine title search, and that  
35 limit site use or site conditions over time or provide notice of any  
36 residual contamination; and  
37 (4) a zoning restriction or land use plan by a local government with  
38 land use authority.

39 (c) The use of institutional controls must, to the maximum extent practicable,  
40 be

- 41 (1) appurtenant to and run with the land so that the control is binding  
42 on each future owner of the site; and  
43 (2) maintained by each responsible person or owner of the site.

44 (d) If the department determines any of the following are necessary to protect  
45 human health, safety, or welfare, or the environment, the department will  
46 require that institutional controls be designed to accomplish one or more of the  
47 following:

- 48 (1) prohibit activities on the site that might interfere with the site  
49 cleanup, operation and maintenance, monitoring, or other response  
50 actions;

- 1 (2) prohibit activities that might result in the release of a hazardous
- 2 substance that was contained as a part of the site cleanup activities;
- 3 (3) require written notice to the department of any proposal to use the
- 4 site in a manner that is inconsistent with a restrictive covenant or other
- 5 measure described in (b)(3) of this section; and
- 6 (4) grant the department and its designated representatives the right to
- 7 enter the property at reasonable times to evaluate compliance with the
- 8 institutional control, including the right to take samples, inspect any
- 9 cleanup actions taken at the site, and inspect records relating to the
- 10 operation and maintenance of the institutional control.

11 ...  
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13 There is no immediate or current economic cost resulting from the Ordinance, since it  
14 will only affect new applications for subdivisions or resubdivisions. It is anticipated  
15 some fee for service requirements of the Planning Department may be lessened as a  
16 result, and lower development costs for some locations.

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18 I request your support for the Ordinance.

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20 Reviewed by: Assembly Counsel

21 Respectfully submitted:

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23 John Weddleton  
24 Assembly Member, District 6 South Anchorage, Girdwood and Turnagain Arm

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**MUNICIPALITY OF ANCHORAGE**  
**ASSEMBLY INFORMATIONAL MEMORANDUM**  
No. AIM 130-2021

Meeting Date: August 10, 2021

8 **From: Assembly Member Weddleton**

10 **Subject: Community engagement information:**  
11 **AN ORDINANCE OF THE ANCHORAGE MUNICIPAL ASSEMBLY AMENDING**  
12 **ANCHORAGE MUNICIPAL CODE SECTIONS 21.08.050, IMPROVEMENTS, AND**  
13 **21.08.060, SUBDIVISION AGREEMENTS, TO ADOPT A CLEANUP STANDARD**  
14 **FOR CONTAMINATED SOILS SIMILAR TO THE STATE'S, FOR NEW**  
15 **SUBDIVISION APPLICATIONS.**

17 The Assembly sponsor provides the following additional information on this ordinance:

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- This ordinance will be sent to the Planning and Zoning Commission for their review and recommendation to the Assembly.
  - This AO was discussed briefly at a Rules Committee meeting.
  - The Assembly Committee(s) that reviewed preliminary drafts of the AO include the following:
    - Community and Economic Development Committee, June 17, 2021.
  - Community stakeholders on various sides of the issue reviewed preliminary drafts of this AO, including the following:
    - Anchorage Home Builders Association board at several meetings since 2019.
    - Alaska Community Action on Toxics. 6-2-21 emailed Pam Miller She offered to review but has not responded yet.
    - AWWU Mark Corsentino, Mark Schimscheimer, Brian Baus 4-12-21
    - Steve Bainbridge retired SOA AKDEC in charge of contaminated sites.
  - This AO will be sent to the community council(s) for the public hearing at the Planning and Zoning Commission and for the public hearing at the Assembly.
  - Adam Trombley, Director of the Office of Economic and Community Development, reviewed preliminary drafts of this AO and encouraged moving it to the Planning and Zoning Commission.
  - A Summary of Economic Effects (SEE) is required on proposed ordinances. AMC subsection 2.30.053A. For ordinances proposed by the Assembly, the department affected by the ordinance shall prepare the SEE within 10 working days of the assembly request. AMC subsection 2.30.053C. A Summary of Economic Effects was discussed and this AO does not have significant economic effects.