

CODE ORDINANCE

DRAFT 8/28/2024

Sponsored by:

Introduced:

Public Hearing:

Action:

MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. Choose an item. _____

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.55 - SETBACK AND SCREENING EASEMENTS AND MSB 17.02 - MANDATORY LAND USE PERMIT.

BE IT ENACTED:

WHEREAS, the intent and rationale of this ordinance are found in the accompanying Information Memorandum No. 24-XX.

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

Section 2. Amendment of chapter. MSB 17.55 is hereby amended to read as follows:

CHAPTER 17.55: SETBACKS [AND SCREENING EASEMENTS]

Section

17.55.004 DEFINITIONS
17.55.005 [GENERAL] PURPOSE AND INTENT
17.55.010 SETBACKS FROM RIGHT OF WAY AND LOT LINES
17.55.015 SHORELANDS; DEFINITION [REPEALED]
17.55.016 WATERBODY SETBACKS FOR POLLUTION SOURCES
17.55.020 Waterbody SETBACKS FOR STRUCTURES
17.55.025 EXISTING STRUCTURES WITHIN 75 FEET OF A
WATERBODY
17.55.040 VIOLATIONS, ENFORCEMENT, AND PENALTIES

17.55.004 DEFINITIONS.

(A) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- "Aircraft hangar" means a roofed structure which is used to completely or partially enclose and store aircraft and aircraft accessories.
- "Boathouse" means a roofed structure which is used to completely or partially enclose and store boats and boating accessories.
- **"Animal waste facilities" means any area or structure used to store, compost, or dispose of animal manure, animal byproducts, an animal carcass, or fish waste. The term does not include a dumpster or other closed container provided by a waste service provider.**
- "Building" means any structure intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind or nature.
- "Building line" means the line of that part of the building nearest the property line.
- **"Cleared area" means an area where existing vegetative cover and surficial soil layers,**

including organic matter or duff, is removed or altered by ground-disturbing activities including mechanized land clearing, grading, contouring, and fill placement.

• "Dedication" means the reservation of land to a public use by the owner manifesting the intention that it shall be accepted and used presently or in the future for such public purpose. A dedication by the owner under the terms of this section is a conveyance of an interest in property which shall be deemed to include the warranties of title listed in A.S. 34.15.030. The dedication of streets, alleys, sidewalks, or public open space shall convey a fee interest in the area dedicated. The dedication of all other public rights-of-way shall be deemed to create an easement in gross to perform the indicated function in the area depicted.

• "Engineer" means a registered professional civil engineer authorized to practice engineering in the state of Alaska.

• "Dock" means a pile-supported or floating, open structure without walls or roof that is

designed and used for access to and from the water rather than for storage, habitation, or other purposes. Unless otherwise specified, the term includes access ramps, gangways, ladders and steps.

• "Impervious area/surface" means the area of the subject site covered by impenetrable materials. This surface has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water.

• "Incidental" means subordinate and minor in significance and bearing a reasonable relationship to the primary use.

• "Kennels, stables, and animal yards" means any premises used for breeding, buying, selling, keeping, or boarding five or more dogs over the age of six months, whether for profit or not; any facility housing or holding more than three pigs, goats, or animals of similar size; and all facilities housing or holding large animals (e.g., horses, cattle, llamas).

• "Lake" means a standing body of open water that occurs in a natural depression fed by one or more

streams from which a stream may flow, that occurs due to the widening or natural blockage or cutoff of a river or stream, or that occurs in an isolated natural depression that is not a part of a surface river or stream. The term also includes artificial waterbodies created by excavation, as well as artificial blocking or restriction of the flow of a river, stream, or tidal area (e.g. by a dam).

- “Lot” means the least fractional part of subdivided lands having limited fixed boundaries and having an assigned number, or other name through which it may be identified.
- “Lot depth” means the average distance between front and rear lot lines.
- “Lot frontage” means all property abutting the right-of-way of a dedicated street or road easement, measured along the right-of-way between side lot lines of a lot.
- • “Lot width” means the average distance between side lot lines.
- “Ordinary high water mark” means the mark made by the action of water under natural conditions

on the shore or bank of a body of water which action has been so common and usual that it has created a difference between the character of the vegetation or soil on one side of the mark and character of the vegetation and soil on the other side of the mark.

- • "Parcel" means an unsubdivided plot of land.
- **"Private pond" means a natural or constructed waterbody less than five acres in size that lacks a surface connection to other waterbodies and is located entirely on property with a single owner.**
- **"Qualified professional" means a professional civil engineer or other professional registered with the state of Alaska under Alaska Statute 08.48 qualified to practice the type of work required by this chapter.**
- "Right-of-way" means a strip of land reserved, used, or to be used for a street, alley, walkway, airport, or other public or private purpose.
- "Riparian buffer" and "vegetated buffer" both mean an area of undisturbed native vegetation.
- **"Runoff" means the portion of rainfall, melted snow, irrigation water, and any other liquids**

that flows across the ground surface. (MSB 17.125)

- "Runoff pollution mitigation measure" means any combination of bioswales, rain gardens, riparian buffers, filter strips, or other features designed and intended to treat and/or retain stormwater runoff associated with a development.

- "Secondary containment" means an impermeable diked area or portable impermeable container capable of providing storage capacity for materials which may leak due to the failure, overflowing or improper draining of the primary storage container. Double-walled tanks do not qualify as secondary containment.

- "Stormwater runoff" means any surface flow consisting entirely of water from precipitation including from the melting of ice and snow. Runoff occurs when the water volume or surface gradient overcome the infiltrative capacity of the surface.

- "Structure" means anything that is constructed or created and located on or above the ground, or attached to something fixed to the ground. For purposes of minimum setbacks and building

separation requirements, the following are not considered structures unless specifically addressed by code: signs; fences; retaining walls; parking areas; roads, driveways, or walkways; window awnings; a temporary building when used for 30 days or less; utility boxes and other incidental structures related to utility services; utility poles and lines; guy wires; clotheslines; flagpoles; planters; incidental yard furnishings; water wells; monitoring wells; and/or tubes, patios, decks, or steps less than 18 inches above average grade.

- "Subdivision" means the division of a tract or parcel of land into two or more lots, sites, or other divisions, or the combining of two or more lots, tracts, or parcels into one lot, tract, or parcel for the purpose, whether immediate or future, of sale or lease for more than ten years, including any resubdivision and when appropriate to the context, the process of subdividing or the land actually subdivided.

- "Surveyor" means a professional land surveyor who is registered in the state of Alaska.

- "Treat and retain" means to manage stormwater on the parcel through any combination of detention, retention, infiltration, and evapotranspiration or other treatment method to mitigate a discharge of stormwater runoff to a water body or adjacent parcel.
- "Utility box" means electric transformers, switch boxes, telephone pedestals and telephone boxes, cable television boxes, traffic control boxes, and similar devices.
- "Utility services" means the generation, transmission, or distribution of electricity, gas, communications, and municipal water and sewer systems.
- "Water-dependent accessory structure" means a structure necessary to support access to or use of the water (e.g., a shed used to store boating accessories) or waterfront (e.g., a gazebo).

17.55.005 PURPOSE AND INTENT.

(A) The purpose of this chapter is to establish minimum structural setbacks from lot lines, water bodies, **and** rights-of-way in the Matanuska-Susitna

Borough except where otherwise specified in special land use district regulations within this title.

(1) Setbacks provide for light and air, fire protection, traffic safety, preservation of privacy, stormwater management, space for utility lines, and uphold neighborhood aesthetics; and

(2) Setbacks along flowing waters minimize risks to structures from lateral channel migration and flooding.

(B) The primary purpose of 17.55.016 to 17.55.020 is to protect human health, aquatic and riparian habitat, the ecologic function of waterbodies, the local economy and property values, recreation, viewshed, and quality of life.

(1) These sections establish requirements related to the development and management of lands adjacent to waterbodies.

(2) Standards will reduce and minimize the discharge of pollutants to waterbodies via surface runoff and subsurface leaching.

17.55.010 SETBACKS FROM RIGHTS-OF-WAY AND LOT LINES.

(A) No structure or building line shall be placed

within 25 feet from the right-of-way line of any public right-of-way, except no furthest protruding portion of any structure shall be placed within ten feet from the right-of-way line of any public right-of-way when the pre-existing lot:

(1) measures 60 feet or less in frontage on a public right-of-way, and is not located on a cul-de-sac bulb; or

(2) comprises a nonconforming structure erected prior to July 3, 1973. This setback shall be known as the structure or building line setback.

(B) Except where specifically provided otherwise by ordinance, no furthest protruding portion of any structure or building line shall be located nearer than ten feet from any side or rear lot line.

(C) Except as otherwise specified by code, eaves may project a maximum of three feet into required setback areas.

(D) The setback requirements of this section do not apply to property within the cities of Palmer and Wasilla.

(E) If a condemnation by a governmental agency reduces the building line setback of a structure below

25 feet, but there remains at least ten feet setback, and the setback reduced by the condemnation met the requirements of this section prior to the condemnation, the resulting setback shall be the setback requirements for the lot.

(F) For purposes of this chapter, commercial or industrial buildings on separate but adjacent parcels, which otherwise meet the setback requirements, may have connecting pedestrian walkways, enclosed or not. Pedestrian walkways:

(1) shall not contribute to the building area or the number of stories or height of connected buildings; and

(2) must comply with the current adopted edition of the International Building Code, except that the outside width of the walkway shall not exceed 30 feet in width, exclusive of eaves.

(G) No furthestmost protruding portion of any structure or building line shall be located nearer than ten feet from railroad rights-of-way, except that utilities and rail dependent structures may extend up to railroad rights-of-way.

17.55.016 WATERBODY SETBACKS FOR POLLUTION SOURCES

(A) No part of a subsurface sewage disposal system shall be closer than 100 feet from the ordinary high water mark of any body of water.

(B) Kennels, stables, animal yards and animal waste facilities shall not be located closer than 100 feet from the ordinary high water mark of any water body. Drainage from kennels, stables, animal yards and animal waste facilities shall not be concentrated and directed (e.g., such as by a ditch) towards a water body.

(1) This setback shall not apply to private ponds.

(C) All liquid hazardous substances, including petroleum fuels, oils, and lubricants, located or stored closer than 75 feet from the ordinary high water mark of any water body shall include ~~secondary containment equal to 110 percent of the storage volume~~ ~~the following measures~~ to minimize the risk of spills. ~~All piping and valves carrying hazardous liquids shall be within secondary containment.~~

~~(1) Gravity-fed or other fuel delivery systems with the potential for a full volume leak~~

~~shall have secondary containment equal to 110 percent of the storage volume. All piping and valves carrying hazardous liquids shall be within secondary containment.~~

~~(12) Pump-activated fuel-delivery systems where the potential spill volume is limited may shall have drip collection instead of secondary containment.~~

~~(2)-(3) The owners of pre-existing fixed storage facilities for petroleum fuels and other liquid hazardous substances (e.g., home heating oil tanks) shall be allowed five years from the effective date of this section to fully comply with the secondary containment requirement.~~

~~(D) The application of fertilizers and herbicides is prohibited within 25 feet of a waterbody.~~

~~(D) Vehicle parking areas shall not be located closer than 75 feet from the ordinary high water mark of any water body.~~

~~(E) The following activities are prohibited within 25 feet of the ordinary high water mark of any water body:~~

~~(1) Removal of native vegetation from more than 50 percent of the surface area.~~

(a) the riparian buffer area shall be left undisturbed except that dead, diseased, or fallen trees may be removed, and pruning for vegetation health is allowed.

(2) Alteration of original land contours via grading and filling, including the discharge of fill to wetlands, of more than 50 percent of the surface area.

(3) Storing or discharging solid or liquid waste, including debris, and animal and yard wastes.

(4) Stockpiling and storing snow.

(5) The application of fertilizers or herbicides.

17.55.020 WATERBODY SETBACKS FOR STRUCTURES.

(A) Except as provided in subsection (B) of this section, and 17.55.030, no structure or footing shall be located closer than 75 feet from the ordinary high water mark of a body of water. [EXCEPT AS PROVIDED OTHERWISE, E] Eaves may project three feet into the required setback area.

(B) Docks, piers, marinas, aircraft hangars,

boathouses and water-dependant accessory structures may be located closer than 75 feet and over the water, provided they meet all applicable regulatory standards and receive prior authorization via land use permit in accordance with MSB 17.02.

(1) A permit in accordance with MSB 17.02 is required prior to construction or placement of any building or structure, or any ground-disturbing activity that includes mechanized land clearing, grading, contouring, or placing fill within 75 feet of the ordinary high water mark of any waterbody.

~~([1]2) In addition to the land use permit requirements identified in MSB 17.02.035, docks, piers, marinas, aircraft hangars, boathouses and water-dependant accessory structures must meet the following standards. Boathouses or aircraft hangars which are exempt from a minimum shoreline setback for structures shall:~~

~~(a) The structure shall not be used for habitation or be usable as a garage or habitable structure without significant alteration. be built over, in, or immediately adjacent to a waterbody and used solely for storing boats and boating accessories;~~

(b) The structure shall not contain sanitary or petroleum fuel storage facilities. ~~be designed, constructed and oriented for primary access by boats or aircraft directly to a waterbody;~~

(c) Over-water structures shall not contain creosote or pentachlorophenol as wood preservatives. ~~not have more than incidental accessory access to a street or driveway; and~~

(d) Aircraft hangars and boathouses shall be designed, constructed, and oriented for primary access by aircraft or boats directly to a waterbody and shall not have more than incidental access to a street or driveway. ~~not be usable as a garage or habitable structure without significant alteration.~~

(e) Water-dependant accessory structures shall not exceed 400 square feet in size.

(C) In the event a person wishes to vary from the waterbody setback requirement in MSB 17.55.020, a variance application may be filed based on the procedures established in MSB 17.65. The following standards apply to an application for variance from the waterbody setback requirement in MSB 17.55.020.

(1) the required site plan shall demonstrate that the development standards identified in MSB 17.02.035(A) will be met.

(2) the variance application shall include the parcel-specific information identified in 17.02.035(B) demonstrating that the proposed development will include measures to effectively treat and retain stormwater runoff from the parcel.

(3) in no case shall a variance authorize the location of a structure closer than 45 feet from the ordinary high water mark of a water body.

(4) in no case shall a variance authorize the location of a structure in an area of known erosion hazard adjacent to a river, stream, or other flowing waters.

~~{(C) IN THE CITY OF WASILLA, THIS SECTION DOES NOT APPLY TO STRUCTURES WHERE CONSTRUCTION WAS COMPLETED PRIOR TO NOVEMBER 16, 1982. ELSEWHERE IN THE BOROUGH, THIS SECTION DOES NOT APPLY TO STRUCTURES WHERE CONSTRUCTION WAS COMPLETED PRIOR TO JANUARY 1, 1987, IF THE PRESENT OWNER OR OWNERS OF THE PROPERTY HAD NO PERSONAL KNOWLEDGE OF ANY VIOLATION OF THE REQUIREMENTS OF THIS SECTION PRIOR TO SUBSTANTIAL~~

~~COMPLETION OF THE STRUCTURES. THE DIRECTOR OF THE PLANNING DEPARTMENT SHALL, UPON APPLICATION BY A PROPERTY OWNER, DETERMINE WHETHER A PROPERTY QUALIFIES FOR AN EXCEPTION UNDER THIS SUBSECTION.~~

~~(1) AN APPLICATION FOR A SHORELINE SETBACK EXCEPTION SHALL INCLUDE A FILING FEE AS ESTABLISHED BY RESOLUTION OF THE ASSEMBLY.~~

~~(D) IN THIS SECTION, A "STRUCTURE" IS ANY DWELLING OR HABITABLE BUILDING OR GARAGE.~~

~~(E) NO PART OF A SUBSURFACE SEWAGE DISPOSAL SYSTEM SHALL BE CLOSER THAN 100 FEET FROM THE ORDINARY HIGH WATER MARK OF ANY BODY OF WATER. THE PLANNING COMMISSION SHALL REQUIRE THIS DISTANCE BE INCREASED WHERE NECESSARY TO PROTECT WATERS WITHIN THE BOROUGH.]~~

17.55.025 EXISTING STRUCTURES WITHIN 75 FEET OF A WATERBODY

(A) All structures that were constructed prior to adoption of the setback requirement on July 3, 1973, and have not subsequently been enlarged or altered, are legal nonconforming pursuant to MSB 17.80.020 (A) (1) .

(B) Structures other than habitable buildings and

garages (e.g., commercial and industrial buildings)
Non-habitable structures that were constructed between
September 16, 1988 and the effective date of this
section are legal nonconforming pursuant to MSB
17.80.020 (A) (1) .

(C) Structures that were completed between July
3, 1973, and January 1, 1987, and have not
subsequently been enlarged or altered, that are
located between 45 and 75 feet from the ordinary high
water mark of a water body are legal nonconforming
status pursuant to MSB 17.80.020 (A) (2) .

(D) Habitable buildings and garages Structures
that were constructed between 45 and 75 feet of the
ordinary high water mark of a lake, pond, or ponded or
emergent wetland between January 1, 1987, and the
effective date of this section may be granted legal
nonconforming status upon issuance of a mandatory land
use permit in accordance with MSB 17.02.

17.55.040 VIOLATIONS, ENFORCEMENT, AND PENALTIES.

(A) Except as otherwise specified in this chapter
violations of this chapter are infractions.

(B) Remedies, enforcement actions, and penalties

shall be consistent with the terms and provisions of MSB 1.45.

(C) Compliance with setbacks for structures adjacent to rivers, streams, and other flowing waters shall be based upon the location of the structure when it was constructed. Subsequent movement of a stream channel that reduces the setback distance does not create a nonconforming situation.

Section 4. Adoption of Paragraph. MSB 17.02.020(A) (76) is hereby amended as follows:

(76) construction or placement of any building or structure, or any ground-disturbing activity that includes mechanized land clearing, grading, contouring, or placing fill within 75 feet of the ordinary high water mark of any watercourse or water body[;].

Section 5. Amendment of Subparagraph. MSB 17.02.030(B) (2) (a) is hereby amended as follows:

(a) site plans are not required to be certified but shall clearly identify the following:

(i) north arrow;

- (ii) boundaries of parcel;
- (iii) size, location, and setback dimensions of proposed structures;
- (iv) names and location of adjacent roadways;
- (v) location of rights-of-way and public easements within and adjacent to the parcel;
- (vi) location and name of adjacent water bodies;
- (vii) location of subsurface sewage disposal systems; [AND]
- (viii) intended use of proposed structures[.]
- (ix) existing cleared areas, structures, and other impervious surfaces; and**
- (x) any areas of proposed ground disturbance.**

Section 5. Adoption of Section. MSB 17.02.035 is hereby adopted as follows:

17.02.035 STANDARDS FOR DEVELOPMENT WITHIN 75 FEET OF A WATERBODY

(A) The director may issue a land use permit only upon finding that the development meets the following standards:

(1) the site plan demonstrates compliance with the provisions of MSB 17.55.016;

(2) the total area of impervious surfaces within 75 feet of a waterbody will not exceed 20%;

(3) 50% of the area native vegetation within 25 feet of the ordinary high water mark shoreline of a waterbody shall be retained as a riparian buffer over at least 50% of the waterfront;

(a) the riparian buffer area shall be left undisturbed except that dead, diseased, or fallen trees may be removed, and pruning for vegetation health is allowed for the following:

(i) pruning for vegetation health

(ii) removal of dead, diseased, or fallen trees, and

(iii) minimal vegetation pruning in order to open up viewsheds.

(b) removal of tree root masses are prohibited within the riparian buffer area.

(4) In lieu of the requirement of MSB

17.02.035(A) (3), a land use permit may be issued where no riparian buffer exists or where the property owner proposes to remove the riparian buffer if the requirements of MSB 17.02.035(B) are met.

(2) impervious surfaces within 75 feet of a waterbody may not exceed 20%;

(3) unless specifically authorized under other sections of MSB code, the following activities are prohibited within 25 feet of a waterbody:

(a) storage or discharge of solid or liquid waste, including debris, animal, and yard wastes;

(b) stockpiling and storage of snow; and

(c) the application of fertilizers or herbicides.

(B) For existing structures seeking nonconforming status in accordance with MSB 17.55.025(D) 80.020(B) (4), those seeking a variance from the waterbody setback in accordance with MSB 17.55.025(C), or a land use permit application in accordance with MSB 17.02.035(A) (4), the following additional following requirements apply:

(1) runoff pollution mitigation measures shall be designed and installed under the supervision

~~of a qualified professional. Runoff pollution mitigation measures include any combination of bio-swales, rain gardens, riparian buffers, flow barriers, filter strips, or other features adequate to treat and retain all stormwater or snowmelt runoff associated with a development.~~

(12) In addition to the site plan requirements identified in MSB 17.02.030, applications for shall include the following information sufficient to demonstrate the following:

(a) existing and proposed drainage patterns to and from the parcel, known drainage problems such as flooding or erosion, and potential pollutant sources from current or proposed land use that may add pollutants to stormwater runoff;

(b) plans and specifications for proposed runoff pollution mitigation measures, including for necessary maintenance, with sufficient detail to support an engineering review;

(c) plans and specifications for infiltrative methods shall identify soil type and depth to the seasonal high water table, with a minimum of 2 feet from the bottom of any basin or swale to the

seasonal high water table; and

(d) site-specific analyses conducted by a qualified professional indicating that the required vegetated buffer and proposed runoff pollution mitigation measures will meet the criteria identified in MSB 17.02.035(B)(3) ~~effectively treat and retain all stormwater runoff from the parcel.~~

(2) runoff pollution mitigation measures shall be designed and installed under the supervision of a qualified professional.

(3) a land use permit may only be issued upon a finding that the applicant's proposed runoff pollution mitigation measures will meet the following criteria:

(a) Treat the initial 0.25 inch of post-developed runoff for each storm event.

(b) Provide (a minimum of) 12 ~~to 24~~ hours of detention for the post-development runoff in excess of pre-development runoff volumes for the 1-year, 24-hour storm.

(c) Maintain the post-development runoff peak flow from the 10-year, 24-hour storm to less than 1.10 times the pre-development runoff peak

flow at all project discharge points.

(d) Storm water conveyance and drainage ditches shall be sized to pass the 10-year, 24-hour storm event. Control flows in conveyance channels so that transport of particles will not occur for the post-development 10-year, 24-hour storm.

(e) In areas where wetlands are disturbed, drainage must be designed to preserve the pre-development function of the remaining wetlands.

~~(43) The use of native vegetative buffers is the preferred runoff pollution mitigation measure;~~

~~(4) Where practicable, the land use permit shall require the establishment and retention of native vegetation;~~

~~(5) infiltrative methods require a minimum 2 feet from the bottom of any basin or swale to the seasonal high groundwater levelwater table;~~

~~(6) design shall demonstrate compliance with the provisions of MSB 17.55.016;~~

~~(7) engineered plans and specifications shall be submitted for an engineering review;~~

~~(8) the development shall be designed and constructed in accordance with local, state, and~~

federal laws;

(59) upon completion of the project, an as-built survey shall be submitted showing the location of all pertinent structures and features associated with the development

(6) a revised stormwater runoff analysis will be required if future proposed development could reasonably result in increased stormwater runoff; and

(710) landowners are responsible for maintenance of approved runoff pollution mitigation measures specified in their permit ~~whileas long as~~ the structure permitted under this subsection remains within 75 feet of a lake, pond, or ponded or emergent wetland.

Section 3. Effective date. This ordinance shall take effect upon adoption.

ADOPTED by the Matanuska-Susitna Borough Assembly this - day of -, 2024.

EDNA DeVRIES, Borough Mayor

ATTEST:

LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)