

Sponsored by: Hale
Introduced:
Public Hearing:
Action:

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 25-073**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.02 MANDATORY LAND USE PERMIT, MSB 17.55 - SETBACK AND SCREENING EASEMENTS, MSB 17.65 VARIANCES, MSB 17.80 NONCONFORMING STRUCTURES AND MSB 17.125 DEFINITIONS.

BE IT ENACTED:

WHEREAS, the intent and rationale of this ordinance are found in the accompanying Information Memorandum No. 25-126.

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. The title and table of contents within 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] <u>PURPOSE AND INTENT</u>
17.55.010	SETBACKS <u>FROM RIGHTS-OF-WAY AND LOT LINES</u>
17.55.015	SHORELANDS; DEFINITION [REPEALED]
<u>17.55.016</u>	<u>WATER BODY SETBACKS FOR POLLUTION SOURCES</u>
17.55.020	<u>WATER BODY</u> SETBACKS FOR [SHORELANDS] <u>STRUCTURES</u>
17.55.040	VIOLATIONS, ENFORCEMENT, AND PENALTIES

Section 3. Amendment of Subsection. MSB 17.55.004(A) is hereby amended as follows:

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.

- "Animal waste facility" 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.

- "Hazardous substance" means (A) an element or compound that, when it enters into or on the surface or subsurface land or water of the state, presents a danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a substance defined as a hazardous substance under 42 U.S.C. §§ 9601 – 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980).

- "Ordinary high water mark" means the mark made by the action of water under natural conditions on the shore or bank of a water body [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.

- "Private pond" means a natural or constructed

water body less than five acres in size that lacks a surface connection to other waterbodies and is located entirely on property with the same ownership.

• "Pump activated fuel delivery systems" means those fuel tanks, such as for home heating oil or aviation fuel, where the tank outlet is located above the fluid level of a full tank.

• "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, overfilling or improper draining of the primary storage container. Double-walled tanks qualify as secondary containment only where the flow piping includes leak detection coupled to an automatic shutoff valve at the tank outlet.

• "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).

Section 4. Amendment of Section. MSB 17.55.005 is hereby amended as follows:

17.55.005 [GENERAL] PURPOSE AND INTENT.

(A) [THIS] The purpose of this chapter is to establish[ES] minimum structural setbacks from lot

lines, [WATER COURSES AND] water bodies, and rights-of-way [, AND SPECIFIC SCREENING EASEMENTS FOR CERTAIN LANDS WITHIN SUBDIVISIONS] 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 water bodies, 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 adjoining waterbodies.

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

Section 5. Amendment of Section. MSB 17.55.010 is hereby

amended as follows:

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 furthestmost 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 other[-]wise by ordinance, no furthestmost 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 **Houston,** 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] adjoining 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.

Section 6. Adoption of Section. MSB 17.55.016 is hereby adopted as follows:

17.55.016 WATER BODY 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 water body.

(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. This requirement does not apply to private ponds.

(C) Paved vehicle parking areas shall not be located closer than 25 feet from the ordinary high water mark of any water body.

(1) for commercial or industrial facilities, paved vehicle parking areas within 75 feet of a water body shall demonstrate that the development standards identified in MSB 17.02.035(B) regarding stormwater runoff are met.

(D) Except as provided in subparagraph (1), 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 of at least 110 percent of the storage volume to minimize the risk of spills. All piping and valves carrying liquid hazardous substances shall have secondary containment.

(1) Pump-activated fuel-delivery systems with leak detection and auto shutoff may have a drip collection system instead of secondary containment.

(2) Refined oil fuels such as gasoline, diesel fuel, small engine fuels, etc., with an aggregate total volume of 10 gallons or less do not require secondary containment.

(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.

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

(1) Removing riparian buffer from more than 50 percent of the surface area except as provided in MSB 17.02.035(A) (1) (a) .

(a) Dead, diseased, or fallen trees may be removed from the riparian buffer area, and pruning for vegetation health is allowed.

(2) Ground disturbing activities of more than 50 percent of the surface area.

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

(4) Stockpiling snow imported from an offsite location.

(5) The application of fertilizers or herbicides.

Section 7. Amendment of Section. MSB 17.55.020 is hereby amended as follows:

17.55.020 WATER BODY SETBACKS FOR [SHORELANDS] STRUCTURES.

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

(1) Compliance with setbacks for structures adjoining waterbodies shall be based upon the location of the structure in relation to the ordinary high water

mark at the time it was constructed. Subsequent movement of the ordinary high water mark that reduces the setback distance does not create a violation under this chapter.

(B) Docks, piers, marinas, aircraft hangars, boathouses and water-dependent accessory structures may be located closer than 75 feet of a water body and over the water body, provided they [ARE NOT USED FOR HABITATION AND DO NOT CONTAIN SANITARY OR PETROLEUM FUEL STORAGE FACILITIES. STRUCTURES PERMITTED OVER WATER UNDER THIS SUBSECTION SHALL CONFORM TO ALL APPLICABLE STATE AND FEDERAL STATUTES AND REGULATIONS] meet all borough regulatory standards and receive a land use permit prior to construction in accordance with MSB 17.02.

(1) Boathouses or aircraft hangars which are exempt from a minimum shoreline setback for structures shall:

(a) be built over, in, or [IMMEDIATELY ADJACENT TO] adjoining a water_body and used solely for storing boats and boating accessories;

(b) be designed, constructed and oriented for primary access by boats or aircraft directly to a water_body;

(c) not have more than incidental

accessory access to a street or driveway; and

(d) not be usable as a garage or habitable structure without significant alteration.

[(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.]

(F) A permit in accordance with MSB 17.02 is required prior to construction or placement of any structure, or any ground-disturbing activity within 75 feet of the ordinary high water mark of any water body.

(1) New structures may be located between 45 and 75 feet from the ordinary high water mark of a lake, pond, or wetland provided a land use permit in accordance with MSB 17.02 is obtained prior to commencement of construction.

(2) Existing habitable buildings and garages built between May 12, 1987, and the effective date of this paragraph that are between 45 and 75 feet of the ordinary high water mark of a lake, pond, or wetland may obtain a land use permit in accordance with MSB 17.02 to comply with this chapter.

Section 8. Amendment of Subsection. MSB 17.02.010(A) is hereby amended as follows:

(A) It is the intent of this chapter to improve the level of compliance with existing borough code by establishing a mandatory land use review process for activities within 75 feet of a water body and directly providing regulatory information to persons proposing [DEVELOPMENT] certain activities within the borough

outside of the cities of Houston, Palmer, and Wasilla.

Section 9. Amendment of Section. MSB 17.02.020 is hereby amended as follows:

17.02.020 LAND USE PERMIT **FOR ACTIVITIES WITHIN 75 FEET OF A WATER BODY.**

(A) The land owner or authorized agent shall obtain a land use permit from the Matanuska-Susitna Borough Planning Department prior to the commencement of:

(6) construction or placement of any [BUILDING] **structure** within 75 feet of **the ordinary high water mark of** any [WATERCOURSE OR] water body; **or**

(7) ground disturbing activities within 75 feet of the ordinary high water mark of any water body.

(B) A landowner or authorized agent may voluntarily request a land use permit for any structure or use not required to obtain a permit under this chapter.

(C) A permit is not required under this chapter when the proposed use is subject to another permit within this title.

Section 10. Amendment of Subsection. 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] adjoining roadways;
- (v) location of rights-of-way and public easements within and [ADJACENT TO] adjoining the parcel;
- (vi) location and name of [ADJACENT] adjoining water bodies;
- (vii) location of subsurface sewage disposal systems; [AND]
- (viii) intended use of proposed structures;[.]
- (ix) existing cleared areas, structures, and impervious surfaces; and
- (x) any areas of proposed ground disturbing activities.

Section 11. Adoption of Section. MSB 17.02.035 REQUIRED STANDARDS is adopted as follows:

17.02.035 REQUIRED STANDARDS

(A) The director may issue a land use permit pursuant to MSB 17.02.020 only upon finding that the development meets the following standards:

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

(a) notwithstanding the requirements of 17.55.016(E) (1), a land use permit may be issued where no riparian buffer exists if the requirements of MSB 17.02.050 are met.

(2) any proposed buildings or structures shall comply with MSB 17.55.020(B), as applicable; and

(3) the total area of impervious surfaces within 75 feet of a water body shall not exceed 20% of the area within 75 feet of the water body.

Section 12. Adoption of Section. MSB 17.02.050 ADDITIONAL REQUIRED STANDARDS FOR SPECIFIC CIRCUMSTANCES is adopted as follows:

17.02.050 ADDITIONAL REQUIRED STANDARDS FOR SPECIFIC CIRCUMSTANCES

(A) In addition to the site plan requirements identified in MSB 17.02.030, structures built between 45 and 75 feet as required by MSB 17.55.020(F) (1)-(2), or a land use permit application in accordance with MSB 17.02.035(A) (1) (a) or 17.02.035(A) (3), must submit the following additional information to obtain a land use permit:

(1) 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;

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

(3) current infiltrative methods or plans and specifications for infiltrative methods shall identify soil type and depth to the seasonal high water table providing:

(a) a minimum of 2 feet from the bottom of any basin or swale to the seasonal high water table;
or

(b) maintenance of existing undisturbed vegetated surface as the bottom of the basin or swale and no standing water during high-water periods of the year from April 1 - September 30; and

(4) site-specific analyses conducted by a qualified professional identifying the current or proposed runoff pollution mitigation measures.

(B) A land use permit may only be issued upon a finding that the applicant's runoff mitigation measures are sufficient as evidenced by:

(1) review and certification of existing runoff pollution mitigation measures by a qualified professional; or

(2) design and installation of proposed runoff pollution mitigation under the oversight of a qualified professional.

(C) Runoff mitigation measures shall meet the following criteria:

(1) Treat the initial 0.25 inch of post-development runoff for each storm event;

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

(3) 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;

(4) 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; and

(5) In areas where wetlands are disturbed,

drainage must be designed to preserve the pre-development function of the remaining wetlands.

(D) 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.

(E) A revised stormwater runoff analysis is required if future development could reasonably result in increased stormwater runoff.

(F) Landowners are responsible for maintenance of approved runoff pollution mitigation measures specified in their land use permit under this chapter.

Section 13. Adoption of Subsection. MSB 17.65.020 (B) is hereby adopted as follows:

(B) A variance from the water body setback requirement in MSB 17.55.020 (A) may not be granted if the location of the proposed structure is:

(1) closer than 45 feet from the ordinary high water mark of a water body.

(2) in an area of known erosion hazard adjacent to a river, stream, or other flowing waters.

Section 14. Amendment of Section. MSB 17.80.020 is hereby amended as follows:

17.80.020 LEGAL NONCONFORMING STRUCTURES

(A) The following structures qualify as legal nonconforming structures without an administrative determination, however, an administrative determination may be issued if requested by the property owner:

(1) structures built lawfully and made nonconforming by adoption of subsequent ordinances;

(a) all structures within 75 feet of a water body that were constructed prior to adoption of the setback requirement on July 3, 1973, and have not subsequently been enlarged or altered.

(b) Non-habitable structures within 75 feet of a water body that were constructed between September 16, 1988 and the effective date of this subparagraph.

(2) structures built in violation of the ordinance existing at the time of construction, then made legal by adoption of subsequent ordinance, and later made nonconforming by adoption of subsequent ordinances;

(a) habitable buildings and garages that were completed between July 3, 1973, and May 12, 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.

(3) permanent structures which were constructed lawfully after the date of adoption of the Acknowledgement of Existing Regulations, Chapter 17.01, but which were made unlawful after the date of start of construction due to adoption of subsequent regulations.

(B) The following structures require an administrative determination in order to be granted legal nonconforming status;

(1) structures granted a variance in accordance with Chapter 17.65;

[(2) STRUCTURES BUILT IN VIOLATION OF SHORELINE SETBACK ORDINANCES EXISTING AT THE TIME OF CONSTRUCTION, AND SUBSEQUENTLY GRANTED AN EXEMPTION FROM SHORELINE SETBACKS IN ACCORDANCE WITH MSB 17.55.020 (C);]

(3) permanent structures built in violation of ordinances existing at the time of construction, and subsequently granted legal nonconforming status in accordance with MSB 17.80.070.

Section 15. Amendment of Section. MSB 17.125.010 is hereby amended as follows:

• "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.

• "Ground disturbing activity" means an activity that includes the use of heavy equipment, such as a backhoe or bulldozer, that disturbs the soil layers, uproots woody vegetation, or alters preexisting land contours. Examples of such activities include mechanized land clearing, grading, contouring, or placing of fill. "Ground disturbing activity" does not include the cutting or removal of vegetation above the ground (i.e. use of hydro-axe, mowing, rotary cutting, and chain sawing) without disturbing the soil or root systems.

• "Kennel, stable, 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).

- "Qualified professional" means a professional [HYDROLOGIST, GEOLOGIST, OR REGISTERED ENGINEER THAT HAS SPECIFIC EDUCATION AND EXPERIENCE WITH GROUNDWATER HYDROLOGY] 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 title.

- "Riparian buffer" means native vegetation adjoining a water body that helps to protect the water body from the impact of activities conducted on adjoining land.

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

- "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.

• "Treat and retain" means to manage stormwater on the parcel through any combination of detention, retention, infiltration, evapotranspiration, or other treatment methods to mitigate a discharge of stormwater runoff to a water body or adjoining parcel.

Section 16. Effective date. This ordinance shall take effect upon adoption.

ADOPTED by the Matanuska-Susitna Borough Assembly this - day of -, 2025.

EDNA DeVRIES, Borough Mayor

ATTEST:

LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)