

CODE ORDINANCE

Sponsored by: Assemblymember Tew

Referred to the Planning Commission: 12/07/21

Introduced: 03/01/22

Public Hearing: 03/15/22

Defeated: 03/15/21

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 22-002**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.30 CONDITIONAL USE PERMIT FOR EARTH MATERIALS EXTRACTION ACTIVITIES TO ALLOW FOR AN EXEMPTION OF 20,000 CUBIC YARDS ANNUALLY WITHOUT A PERMIT.

WHEREAS, the intent and rationale for this ordinance are found in the accompanying Informational Memorandum No. 22-003.

BE IT ENACTED:

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 section. MSB 17.30.020 is hereby amended to read as follows:

17.30.020 APPLICABILITY.

(A) This chapter applies to all private and public lands in the borough except where the use is prohibited by ordinance within a special land use district. Where a special land use district regulates earth materials extraction as a conditional use, the granting of a conditional use permit shall require compliance with this chapter. Where this chapter is in conflict with the conditional use permit conditions of the special land use district, the more restrictive conditions shall

apply.

(B) This chapter does not apply within the cities of Houston, Palmer, or Wasilla, or the Port MacKenzie Special Use District.

(C) This chapter applies to commercial earth materials extraction activities where the principal activity of use of the property is the extraction of earth materials.

(D) This chapter does not apply when earth material extraction activity is not intended for sale or barter.

(E) Annual extraction of more than [2,000] 20,000 cubic yards of earth materials on property that has not been granted a permit or pre-existing legal nonconforming status as of the date of the enactment of this chapter is required to obtain a conditional use permit [OR ADMINISTRATIVE PERMIT].

(F) [Repealed by Ord. 11-153, § 13, 2011]

(G) Extraction of [2,000] 20,000 cubic yards or less annually on any one parcel does not require [AN ADMINISTRATIVE OR] a conditional use permit. Where a site is exempt under this subsection the exemption is revoked if operations proceed within four feet of the seasonal high water table.

(H) This chapter shall not apply to earth material extraction activities on land owned by the state of Alaska that are in existence as of the date of adoption of the ordinance codified in this chapter except for such operations that extract materials within four feet of the water table. Where a site is exempt under this subsection the exemption is revoked if operations proceed to within four feet of the water table.

Section 3. Amendment of section. MSB 17.30.030 is repealed as follows:

[17.30.030 TYPES OF PERMITS AVAILABLE.

(A) THERE ARE TWO TYPES OF PERMITS AVAILABLE FOR EARTH MATERIALS EXTRACTION:

(1) ADMINISTRATIVE PERMIT - A USE PERMIT APPROVED BY THE DIRECTOR WITH PUBLIC NOTIFICATION MAY BE ISSUED IF THE PROPOSED DEVELOPMENT MEETS THE MINIMUM THRESHOLDS FOR AN ADMINISTRATIVE DECISION.

(2) CONDITIONAL USE PERMIT - A CONDITIONAL USE PERMIT GRANTED BY THE PLANNING COMMISSION AFTER A PUBLIC HEARING, WHEN THE PROPOSED DEVELOPMENT GOES BEYOND THE MINIMUM THRESHOLD FOR AN ADMINISTRATIVE PERMIT.]

Section 4. Amendment of section. MSB 17.30.035 is amended as follows:

17.30.035 APPLICATION PROCEDURES.

(A) For all permits required under this chapter, the following shall be submitted to the department:

(1) a completed application form provided by the department;

(2) a site development plan in accordance with MSB 17.28.050 and 17.28.060;

(3) the fee in the amount designated in MSB 17.99; and

(4) reclamation plan in accordance with MSB 17.28.063.

(B) The director may reject any application which is incomplete or fails to meet the requirements of this section. The rejection shall be in writing and shall state the deficient items. Once the deficiencies have been corrected, the complete application will be processed.

[(C) IF THE MINIMUM CRITERIA FOR AN ADMINISTRATIVE PERMIT CAN BE MET, THE DIRECTOR WILL NOTIFY SURROUNDING PROPERTY OWNERS IN ACCORDANCE WITH MSB 17.03, PUBLIC NOTIFICATION, EXCEPT THAT THE NOTIFICATION AREA WILL BE ONE-HALF MILE. WITHIN 30 DAYS OF ACCEPTANCE OF THE

APPLICATION, THE ADMINISTRATIVE PERMIT WILL BE ISSUED WITH CONDITIONS TO ADDRESS CONCERNS RAISED BY NEIGHBORING PROPERTY OWNERS, AND AS DEEMED APPROPRIATE BY THE DIRECTOR, TO PROTECT THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE.]

(D) [Repealed by Ord. 11-153, § 15, 2011]

(E) [IF THE PROPOSED DEVELOPMENT EXCEEDS THE MINIMUM CRITERIA FOR AN ADMINISTRATIVE PERMIT, A] A public hearing before the planning commission shall be conducted within 45 calendar days of the acceptance of a complete application in accordance with MSB 17.03, public notification, except that the notification area will be one-half mile. The applicant may waive the 45-day limit.

(F) The planning commission shall hear any interested parties and shall render a decision on the application for a conditional use permit within 30 calendar days from the date of public hearing, unless the applicant agrees to a time extension. In the granting of a conditional use permit, the planning commission shall state in writing the conditions of approval of the permit.

Section 5. Amendment of section. MSB 17.30.040 is repealed as follows:

[17.30.040 CRITERIA TO QUALIFY FOR AN ADMINISTRATIVE PERMIT.

(A) TO QUALIFY FOR AN ADMINISTRATIVE PERMIT, ALL OF THE FOLLOWING CRITERIA MUST BE MET:

(1) [REPEALED BY ORD. 16-102, § 11, 2016]

(2) EXTRACTION ACTIVITIES SUBJECT TO THE PERMIT SHALL NOT EXCEED:

(A) TWENTY-FOUR MONTHS. A ONE-TIME EXTENSION OF SIX MONTHS MAY BE GRANTED ADMINISTRATIVELY UPON WRITTEN REQUEST FROM THE APPLICANT; PROVIDED, THAT ALL CONDITIONS OF THE PERMIT HAVE BEEN MET; OR

(B) ANNUAL VOLUME OF 7,000 CUBIC YARDS (ONE CUBIC YARD EQUALS ONE AND ONE-HALF TONS) OR LESS; AND

(3) ANY PROPOSED BATCH PLANT USE SHALL NOT EXCEED 24 MONTHS.

(B) THE DIRECTOR MAY ALSO SET BASIC CONDITIONS OF APPROVAL FOR ISSUANCE OF THE ADMINISTRATIVE PERMIT, AS APPROPRIATE FOR THE AREA IN WHICH THE DEVELOPMENT IS SITED, FOR THE FOLLOWING:

(1) SETBACKS (NO LESS THAN MINIMUM SETBACK REQUIREMENTS AS ESTABLISHED IN MSB 17.55; HOWEVER, MAY BE INCREASED AS APPROPRIATE FOR EXISTING SURROUNDING DEVELOPMENT);

(2) VISUAL SCREENING, NOISE MITIGATION, LIGHTING

RESTRICTIONS AND ROADS/ACCESS RESTRICTIONS AS APPROPRIATE FOR SURROUNDING DEVELOPMENT AND IN ACCORDANCE WITH DEVELOPMENT STANDARDS REFERENCED IN MSB 17.28.060, SITE DEVELOPMENT STANDARDS; AND

(3) ROAD MAINTENANCE MAY BE REQUIRED BY PERMITTEE.]

Section 6. Amendment of section. MSB 17.30.060 is amended as follows:

17.30.060 GENERAL STANDARDS FOR APPROVAL.

(A) In granting [AN ADMINISTRATIVE PERMIT OR] a conditional use permit, the [DIRECTOR OR] commission must make the following findings:

(1) that the use is not inconsistent with the applicable comprehensive plan;

(2) that the use will preserve the value, spirit, character, and integrity of the surrounding area;

(3) that the applicant has met all other requirements of this chapter pertaining to the use in question;

(4) that granting the permit will not be harmful to the public health, safety and general welfare; and

(5) that the sufficient setbacks, lot area, buffers or other safeguards are being provided to meet the conditions listed in MSB 17.30.050(B).

Section 7. Amendment of section. MSB 17.30.150 is amended as follows:

17.30.150 APPEAL PROCEDURES.

(A) The provisions of MSB 15.39 govern appeals from a decision of the planning commission granting, denying, modifying, or revoking a conditional use permit under this chapter. [THE PROVISIONS OF MSB 15.39 GOVERN AN APPEAL OF A PLANNING DEPARTMENT ENFORCEMENT ACTION OR DECISION.]

Section 8. Effective date. This ordinance shall take effect upon adoption.

DEFEATED by the Matanuska-Susitna Borough Assembly this 15 day of March, 2022.

YES: Yundt and Tew

NO: Hale, Nowers, McKee, Sumner, and Bernier