

SUBJECT: AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 2.08.040 TO CLARIFY AND UPDATE THE MAYOR'S APPOINTMENT POWERS.

AGENDA OF: July 18, 2023

ASSEMBLY ACTION: Adopted with no objection 08/01/23 - SP

AGENDA ACTION REQUESTED: Introduce and set for public hearing.

Route To	Signatures
Originator	<div style="text-align: right;">6 / 15 / 2023</div> <div>X N S f o r M a y o r D e V r i e s</div> <div>Signed by: Nicholas Spiropoulos</div>
Finance Director	<div>X C h e y e n n e H e i n d e l</div> <div>Signed by: Cheyenne Heindel</div>
Borough Attorney	<div style="text-align: right;">6 / 23 / 2023</div> <div>X N i c h o l a s S p i r o p o u l o s</div> <div>Signed by: Nicholas Spiropoulos</div>
Borough Manager	<div>X M i c h a e l B r o w n</div> <div>Signed by: Michael Brown</div>
Borough Clerk	<div>X L o n n i e M c K e c h n i e</div> <div>Signed by: Lonnie McKechie</div>

ATTACHMENT (S): Ordinance Serial No. 23-067 (2 pp)

SUMMARY STATEMENT: This ordinance is sponsored by the Mayor to clarify MSB 2.08.040(A) regarding the Mayor's appointment powers. Specifically, MSB 2.08.040(A)(5) is grammatically incorrect and contradicts other portions of Borough code. The proposed ordinance here will address both issues.

MSB 2.08.040 provides for the duties of the Mayor and reads:

(A) The mayor shall:

- (1) preside at all assembly meetings. The mayor may take part in the discussion of matters before assembly, but may not vote, except that the mayor may vote in the case of a tie;
- (2) act as ceremonial head of the borough; and
- (3) sign documents on behalf of the borough upon assembly authorization.

(4) [Repealed by Ord. 94-001AM, § 3 (part), 1994 and recodified as MSB 2.08.040(B)]

(5) Members of boards and commissions, except for members of the board of adjustment and assembly members serving of the board of equalization, shall be appointed by the mayor and confirmed by the assembly.

(B) The mayor may veto any ordinance, resolution, motion or other action of the assembly, and may, by veto, strike or reduce items of appropriation ordinances. A veto shall be exercised before the next regular assembly meeting and shall be accompanied by written explanation of the reasons for the veto. A veto may be overridden by a two-thirds vote of the assembly within 21 calendar days following the veto, or at the next regular meeting, whichever is later. The veto does not extend to:

- (1) the manager plan of borough government;
- (2) the actions of the board of equalization;
- (3) the actions of the board of adjustment; or
- (4) the appropriation items in a school budget ordinance.

The first issue at hand is obvious - subsection (A)(5) is not grammatically structured to be included on the list of powers beginning with the phrase "The Mayor shall".

The second issue at hand is not as obvious. Subsection (5) reads that the Mayor does not make appointments to the board of adjustment and assembly members serving of the board of equalization. However, this conflicts with other portions of Matanuska-Susitna Borough code.

MSB 3.15.215(A) provides that "the board of equalization consists of a pool of not less than six and up to 15 members, not assembly members, appointed by the mayor and confirmed by the assembly." Furthermore, MSB 15.39.040(E) provides "The mayor shall appoint BOAA members subject to assembly approval."

It is suspected that this oversight in MSB 2.08.040(A)(5) is because that code section mirrors state law and was not updated over the years. By state law, the Borough Assembly automatically sits as the board of adjustment ("BOE") for tax assessment appeals. In this situation, it makes sense to have a code provision that the Mayor does not make appointments to the BOE. However, state law also allows the Borough to delegate that responsibility to a different board and this is what the Matanuska-Susitna Borough has done. Since that is what the Matanuska-Susitna Borough has done, MSB 2.08.040(A) should be amended to reflect the Borough's situation. It is much the same with the BOAA. In situations where the Assembly is sitting as the BOAA, the Mayor would not make appointments. However, just like the BOE, the Matanuska-Susitna

Borough has a separate appointed body for the BOAA with the Mayor making appointments subject to Assembly confirmation.

Finally it is also of note that the Mayor's veto power does not extend to matters of the BOE and BOAA. Again, this is because if the Assembly performs those functions those actions are not vetoable in municipalities where that happens.

RECOMMENDATION OF ADMINISTRATION: Adoption of ordinance.