

CODE ORDINANCE

Sponsored by: Assemblymember Bernier
Introduced: 06/20/23
Public Hearing: 07/18/23
Amended: 07/18/23
Adopted: 07/18/23

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 23-048**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB TITLE 17: ZONING ADDING A CHAPTER 17.11, SEX OFFENDERS, TO PROHIBIT REGISTERED SEX OFFENDERS FROM ESTABLISHING PERMANENT RESIDENCY WITHIN 1,000 FEET OF SCHOOLS, CHILD CARE CENTERS, AND PUBLIC PARKS AFTER THE EFFECTIVE DATE OF THIS ORDINANCE AND AN ORDINANCE AMENDING MSB CHAPTER 2.29: OFFICE OF ADMINISTRATIVE HEARINGS.

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. Adoption of Chapter. MSB Chapter 17.11 Sex Offenders is hereby adopted to read as follows:

Chapter 17.11 SEX OFFENDERS

- 17.11.010 Definitions.
- 17.11.020 Prohibited residences of sexual offenders within the Borough.
- 17.11.030 Applicability.
- 17.11.040 Measurement of distance in prohibited areas.
- 17.11.050 Notice.
- 17.11.060 Request for correction.
- 17.11.070 Request for exemption.
- 17.11.080 APPEALS.

17.11.010 DEFINITIONS.

(A) When used in this chapter, the following words and phrases shall have the following meanings set forth in this section:

• "Child Care Center" means any family or child care center licensed by the State of Alaska. This definition includes the parking lot, playgrounds, accessory buildings and all outdoor areas of the facility.

• "Permanent residence" means a place a person resides or intends to reside as their primary residence or, if a secondary residence, for a period of more than three months.

• "Prohibited area" means an area within 1,000 feet of any school, Child Care Center or public park within the boundaries of the Borough.

• "Public park" means a municipal-owned playground, playing field, or community recreation center, but does not include Alaska State Parks or National Parks, including, but not limited to, Chugach National Park, Chugach State Park, or State of Alaska recreation sites.

• "Rules of behavioral conduct" means rules that regulate otherwise lawful conduct of an adult, including, but not limited to, the imposition of requirements regarding curfews, drug and alcohol use, job training, employment, therapy, medical treatment or community service. Rules of behavioral conduct do not include rules regarding uses permitted on a premises,

rent or utility payments, maintenance or repair requirements, or drug or alcohol use on that premises.

- "School" means a public or private facility or outside grounds associated with that facility operated or used for the education and extracurricular activities of a group of students. This definition does not include facilities dedicated exclusively to the education of adults or dwelling units in which students residing in the dwelling participate in a home school program.

- "Sex offender" means a person required by the State of Alaska to register as a sex offender under AS 12.63.020.

- "State of Alaska recreation sites" means land or real property owned or managed by the State of Alaska for public use, recreation, conservation, or preservation.

- "Supervised housing program" means a program, business or person that provides housing to individuals in exchange for consideration and requires the individuals receiving housing to comply with behavioral rules of conduct or to agree to supervision of that person's behavioral conduct.

**17.11.020 PROHIBITED RESIDENCES OF SEXUAL OFFENDERS
WITHIN THE BOROUGH.**

(A) Except as otherwise allowed in this chapter, no sex offender may permanently reside in an area within 1,000 feet of any school, Child Care Center or public park.

(1) This restriction applies to schools, child care centers, and public parks located within cities, but only applies to sex offenders living outside of the three cities.

(B) Sex offenders who reside in a prohibited area on or before the date this chapter becomes effective may continue to reside in that location but may not purchase or lease a new permanent residence within the prohibited area after this chapter becomes effective.

(C) This section does not apply to sex offenders who are under 18 years old or are a dependent of a resident in the prohibited area.

(D) This section does not prohibit a sex offender from maintaining a permanent residence in an area if the sex offender established permanent residence in that area before it became prohibited under this chapter.

17.11.030 APPLICABILITY.

(A) This chapter is applicable within all areas of the Matanuska-Susitna Borough outside of the cities of Houston, Palmer, and Wasilla.

17.11.040 MEASUREMENT OF DISTANCE TO PROHIBITED AREAS.

(A) For purposes of measuring separation distance of a residence from a school, Child Care Center or public park, all distances shall be measured from the outermost property line of the parcel upon which the residence is located running in a direct line to the outermost property line of the school, Child Care Center or public park.

17.11.050 NOTICE.

(A) The Borough shall provide all sex offenders within a prohibited area notice of the adoption of this provision within 60 days of its adoption. This notice shall include a map showing the schools, licensed child care centers, and public parks within the Borough.

(B) Failure to receive notice under subsection (A) or failure to identify a particular school, Child Care Center or public park on the map shall not be defenses to a violation of this chapter.

(C) Notice of violation shall be sent to the sex offender's permanent residence address notifying the sex

offender of the violation and the appeal process under this chapter.

17.11.060 REQUEST FOR CORRECTION.

(A) A person or a supervised housing program which is subject to this chapter may file a request for correction with the Office of Administrative Hearings. The Borough Clerk shall provide a request for correction form upon request.

(B) A request for correction filed by a person shall be granted when a person proves, by a preponderance of the evidence, that the person is not a registered sex offender as defined under this chapter or that the person does not reside in a prohibited area.

(C) A request for correction filed by a supervised housing program shall be granted if it proves, by a preponderance of the evidence, that it is not a supervised housing program as defined in this chapter or is not housing a registered sex offender(s) in violation of this chapter.

17.11.070 REQUEST FOR EXEMPTION.

(A) A person subject to this chapter may file a request for exemption with the Office of Administrative Hearings. See Chapter 2.29: Office of Administrative Hearings. The Clerk shall provide a request for

exemption form upon request. The request for exemption form must be completed, signed, dated, and filed with the Office of Administrative Hearings as instructed on the form before it will be considered.

(B) When requests for exemption are filed under this chapter, a Hearing Officer with the Office of Administrative Hearings shall hold a hearing that provides the person requesting the exemption an opportunity to be heard and to present evidence in support of the exemption. Except as otherwise provided by this section or by law, the Hearing Officer shall determine the appropriate administrative procedures for addressing the request for exemption.

(C) A request for exemption shall be granted if the Hearing Officer finds that enforcement of the provisions of this chapter would violate the person's constitutional or statutory rights under federal or state law.

(D) A person may file an expedited request for an emergency exemption with that person's request for exemption if substantial and irreparable harm to that person's health and safety or the health or safety of another is more likely than not to result if the exemption is not immediately granted. An expedited

request for an emergency exemption is temporary and, if granted, remains in effect until a hearing is held as required under this section and a final decision is issued granting or denying the exemption.

(E) An expedited request for emergency exemption shall be decided within 48 hours after it is filed with the OClerk's Office.

17.11.080 APPEALS.

(A) Appeals from a decision under this chapter shall be filed and conducted in accordance with MSB 2.29.080 Appeal Procedures.

Section 3. Amendment of subsection. Section 2.29.020 DUTIES is hereby amended as follows:

2.29.020 DUTIES.

(A) Administrative Hearing Officers shall have jurisdiction over the following:

- (1) Borough contract bid awards appeals;
- (2) appellate jurisdiction over forfeiture of animals pursuant to MSB 24.40.030;
- (3) relocation benefits and services appeals;
- (4) duties as a hearing officer regarding the ethics code under MSB 2.71; [AND]
- (5) original jurisdiction over Level 5 animal classifications under MSB 24.26[.]; and

(6) original jurisdiction over decisions under MSB

17.11, Sex Offenders.

Section 4. Amendment of subsection. MSB 1.45.100(C) is hereby amended by adding the following to the schedule of fines:

(C) The following schedule of minimum fines shall apply to the violation of the specified codes and may not be judicially reduced:

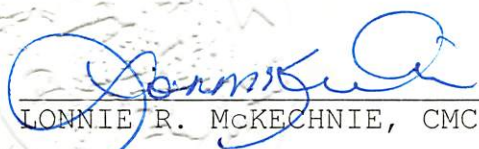
Code	Description	Fine Amount
<u>17.11.020</u>	<u>Sex offender residing within Prohibited area</u>	<u>\$500</u>

Section 5. Effective date. This ordinance shall take effect upon adoption.

ADOPTED by the Matanuska-Susitna Borough Assembly this 18 day of July, 2023


EDNA DeVRIES, Borough Mayor

ATTEST:


LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)

YES: Yundt, Tew, and Bernier

NO: Nowers, McKee, and Fonov

Mayor DeVries broke the tie in the affirmative