

CODE ORDINANCE

Sponsored by: Assemblymember Bernier
Introduced: 10/17/23
Public Hearing: 11/21/23
Adopted: 11/21/23

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 23-086**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY ADOPTING MSB 2.29.110, PROCEDURES FOR APPEALS, REQUEST FOR CORRECTION, OR REQUEST FOR EXEMPTION UNDER MSB 17.11, SEX OFFENDERS; AND AMENDING MSB 17.11.080, APPEALS, TO REFERENCE THE APPEAL PROCEDURES FOR MSB 2.29.110.

WHEREAS the intent and rationale are described in accompanying Informational Memorandum No. 23-187.

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 section. MSB 2.29.110, is hereby adopted to read as follows:

2.29.110 SEX OFFENDER PROCEDURES FOR APPEALS,
REQUEST FOR CORRECTION, OR REQUEST FOR EXEMPTION UNDER
MSB 17.11

(A) Policy. The borough establishes notice of violation appeal, request for correction, or request for exemption procedures to promote the fair and efficient resolution of appeals or requests under MSB 17.11.

(1) The procedures for the appeal of notice of violations shall apply to requests for correction or requests for exemption, excepting the deadline

that appeals of a notice of violation must be filed by.

(B) Notice of appeal or Request. An appellant or petitioner may:

(1) appeal a notice of violation issued pursuant to MSB 17.11.050(C);

(2) file a request for correction pursuant to MSB 17.11.060(A) through (C); or

(3) file a request for exemption pursuant to MSB 17.11.070(A) through (C).

(C) Deadlines for filing Appeals. An appeal filed pursuant to MSB 17.11.050(C), shall be filed with the clerk's office within five business days after the issuance of the notice of violation. Acceptance or rejection of late filed appeals shall be determined by the Administrative Hearing Officer.

(1) An appellant or petitioner may file an expedited request for an emergency exemption pursuant to MSB 17.11.070(D). Expedited requests for emergency exemptions shall be decided by the Administrative Hearing Officer within 48 hours of filing. Expedited requests for emergency exemptions are temporary and do not negate the need for the formal hearing process.

(D) Procedure for filing. An appeal, request for correction, or request for exemption shall be filed on a form provided by the clerk's office. The form shall require the appellant or petitioner to provide the following information:

- (1) the name of the appellant or petitioner;
- (2) the physical address, mailing address, phone number, and email address of the appellant or petitioner;
- (3) a brief description of:
- (4) what is being appealed according to the notice of violation;
- (5) the correction being requested; or
- (6) the exemption being requested.

(F) if the appellant or petitioner is represented by an attorney, the attorney shall file an entry of appearance at the same time the appeal or request is filed. If the appellant or petitioner comes to be represented by an attorney after the appeal or request has been filed, the attorney shall file an entry of appearance as soon as possible and no later than five business days prior to the hearing.

(G) Administrative Hearing Officer review. An Administrative Hearing Officer appointed pursuant to MSB 2.29.020(A)(6) shall have original jurisdiction over appeals or requests under MSB 17.11. The clerk's office shall maintain a list of Administrative Hearing Officers and shall rotate appointments if possible. The first Administrative Hearing Officer contacted who is not available for service shall be the first contact for service at the next appeal or request as feasible.

(H) Clerk's notice. The clerk shall serve a notice of appeal, or the request for correction, or the request for exemption to the Administrative Hearing Officer, the law department, the Planning and Land Use Director, and the appellant or petitioner. This notice shall be served within two days of receipt of the notice of appeal or request for correction or exemption.

(I) Record. Within five business days of receiving the notice of appeal or request for correction or exemption, the Planning and Land Use Department shall provide a copy of the record to the clerk. The clerk shall serve the record on the Administrative Hearing Officer, the Law Department, and the appellant or petitioner within three business days of receipt.

(J) Hearing date and briefing schedule. The clerk shall set a hearing date at least 15 calendar days and no later than 20 calendar days from the date the record is served. The hearing date and briefing schedule shall be served at the same time the record is served. The notice of hearing and briefing schedule shall be set by the clerk as follows:

(1) Briefs. Briefs filed by an attorney on behalf of the appellant or petitioner shall be drafted to conform with the Alaska Rules of Civil Procedure and shall be filed no later than five calendar days prior to the hearing. Briefs filed by a pro se appellant or petitioner shall be accepted in a less formal format and shall be filed no later than five calendar days prior to the hearing.

(2) Exhibits. All exhibits shall be filed with the clerk no later than five calendar days prior to the hearing.

(3) Complex cases. If during the initial review of the record on appeal or request for correction or exemption, the Administrative Hearing Officer determines that the case is complex, they may extend the deadlines at their discretion.

(K) Hearing format. The Administrative Hearing Officer has the discretion to conduct the hearing so that the issues and facts can be presented in a manner which conforms to due process and preserves administrative economy. The Administrative Hearing Officer may conduct the hearing by referring to the Alaska Rules of Civil Procedure, such as Rule 46, Conduct of Trials, or others that might apply, and the Alaska Rules of Evidence. However, the Administrative Hearing Officer may in their discretion waive adherence to the Alaska Rules of Civil Procedure or Evidence. The Administrative Hearing Officer shall determine the order of the agenda in conjunction with the Clerk.

(1) Each party shall be entitled to present witnesses and evidence on their behalf.

(2) Each party has the right to cross-examine opposing witnesses and rebut evidence.

(3) All hearings shall be open to the public.

(4) All testimony shall be given under oath.

(5) The hearing shall be recorded.

(L) Findings and decision. The Administrative Hearing Officer has the discretion to make an oral finding at the conclusion of the hearing or to take the

matter under advisement. If the Administrative Hearing Officer takes the matter under advisement, a written decision shall be issued within ten business days of the hearing. If the Administrative Hearing Officer makes an oral finding at the conclusion of the hearing, the oral finding shall be supplemented with written findings within five business days of the hearing. The Administrative Hearing Officer shall support the decision through written findings of fact. The Administrative Hearing Officer shall provide the written decision to the clerk. The clerk shall serve the final written decision on the appellant or petitioner, the Law Department, and the Planning and Land Use Director in the most effective, efficient manner available within two days after receiving the decision.

(M) Appeal to superior court. The decision of the Administrative Hearing Officer is the final decision and may be appealed to the Superior Court within 30 days of the date of distribution of the decision pursuant to the Alaska Rules of Appellate Procedure, Part VI, Rules 601 through 612.

Section 3. Amendment of section. MSB 17.11.080 is hereby amended as follows:

(A) Appeals from a decision under this chapter shall be filed and conducted in accordance with MSB [2.29.080, APPEAL PROCEDURES] 2.29.110, Procedures for appeals, request for correction, or request for exemption under MSB 17.11

Section 4. Effective date. This ordinance shall take effect upon adoption.

ADOPTED by the Matanuska-Susitna Borough Assembly this 21 day of November, 2023.


EDNA DeVRIES, Borough Mayor

ATTEST:


LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)



PASSED UNANIMOUSLY: Hale, Nowers, McKee, Yundt, Tew, Fonov, and Bernier