

CODE ORDINANCE

Sponsored by: Assemblymember Hale
Introduced: 09/05/23
Public Hearing: 09/26/23
Postponed to 01/02/24: 09/26/23
Postponed to 04/02/24: 01/02/24
Defeated: 04/02/24

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 23-080**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING
MSB 17.05 ESSENTIAL SERVICE UTILITIES BY PROVIDING ADDITIONAL
PROCESS AND STANDARDS FOR APPROVAL.

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 chapter. MSB 17.05 is hereby amended as follows:

17.05.010 PURPOSE.

(A) The purpose of this chapter is to provide for public participation in [THE] decisions affecting the installation of essential service utilities in such a manner that they enhance the health, safety and general welfare of borough residents and properties while minimizing negative impacts. This chapter recognizes the importance and benefits of essential services, while ensuring that all reasonable [FEASIBLE] mitigation measures are taken by the utilities to protect the public health, safety, welfare, and scenic qualities of the

Matanuska Susitna Borough. [ESSENTIAL SERVICES SHOULD BE INSTALLED IN COGNIZANCE OF EXISTING AND PROJECTED DEMANDS FOR SUCH SERVICES.]

(B) Essential service[S] **utilities** should be installed in cognizance [OF EXISTING AND PROJECTED DEMANDS FOR SUCH SERVICES] **of the goals and objectives of borough-adopted comprehensive plans.**

(C) **This chapter establishes the process for borough review and approval for essential service utilities to ensure all reasonable mitigation measures are incorporated to minimize negative impacts to the community and shared public assets.**

17.05.020 APPLICABILITY.

(A) This chapter applies to all areas of the borough except within the city boundaries of Houston, Palmer, Wasilla, and the Port MacKenzie special use district boundary. [THIS CHAPTER APPLIES TO MUNICIPAL UTILITIES THAT EXTEND BEYOND CITY BOUNDARIES AND THE PORT DISTRICT BOUNDARY INTO UNINCORPORATED BOROUGH LANDS.]

(B) **A conditional use permit in accordance with this chapter shall be obtained prior to construction of Type II Essential Service Utilities.**

(1) Minor relocation of Type II Essential Service Utilities that have been approved under this chapter is allowed without an additional permit to the extent that relocation:

(a) generally follows the approved route;

(b) is necessary due to reasons beyond control of the utility company.

17.05.030 TYPE I ESSENTIAL SERVICE UTILITY.

(A) All proposed Type I essential service utilities, when installed or extended in any public way or borough-owned land, shall require a permit issued by the borough in accordance with MSB 11.30.030.

[17.05.040 TYPE II ESSENTIAL SERVICE UTILITY.

(A) ALL PROPOSED TYPE II ESSENTIAL SERVICE UTILITIES SHALL REQUIRE A PUBLIC INVOLVEMENT PROGRAM IN ACCORDANCE WITH A PUBLIC PARTICIPATION PLAN AS SUBMITTED BY THE UTILITY IN ALL AREAS OF THE BOROUGH EXCLUDING THE CITIES OF HOUSTON, PALMER, WASILLA, AND THE PORT MACKENZIE SPECIAL USE DISTRICT BOUNDARY.

(B) WITHIN 20 CALENDAR DAYS OF RECEIPT OF THE PROPOSED PUBLIC PARTICIPATION PLAN, THE DIRECTOR SHALL PROVIDE THE APPLICANT WITH WRITTEN ACKNOWLEDGEMENT OF RECEIPT OF THE PLAN, ALONG WITH ANY RECOMMENDATIONS

CONCERNING THE PROPOSED PROCESS. THE PUBLIC INVOLVEMENT PROGRAM, AT A MINIMUM, MUST CONTAIN THE FOLLOWING:

(1) MINIMUM REQUIREMENTS.

(A) THE UTILITY'S PUBLIC INVOLVEMENT PROGRAM MUST COMPLY WITH ESTABLISHED STATE AND FEDERAL GUIDELINES GOVERNING THE UTILITY INCLUDING ADEQUATE PUBLIC NOTICE, PUBLIC PROCESS, PUBLIC MEETINGS, OR PUBLIC HEARINGS;

(B) IF NO ESTABLISHED STATE OR FEDERAL GUIDELINES APPLY TO THE PROPOSED ACTION, THE UTILITY SHALL FOLLOW ITS OWN UTILITY BOARD ADOPTED GUIDELINES FOR PUBLIC NOTIFICATION AND INVOLVEMENT;

(C) IF THERE ARE NO ESTABLISHED STATE, FEDERAL OR UTILITY BOARD ADOPTED GUIDELINES, THE PUBLIC INVOLVEMENT PROGRAM WILL CONSIST OF THE MINIMUM REQUIREMENTS OUTLINED IN SUBSECTION (B) (2) OF THIS SECTION, PUBLIC INVOLVEMENT; AND

(D) IF A STATE, FEDERAL OR UTILITY BOARD ADOPTED PUBLIC INVOLVEMENT PROGRAM IS USED, THEY MUST AT LEAST MEET OR EXCEED THE MINIMUM GUIDELINES IN SUBSECTION (B) (2) OF THIS SECTION, PUBLIC INVOLVEMENT.

(2) PUBLIC INVOLVEMENT.

(A) A MINIMUM OF ONE PUBLIC MEETING WILL BE HELD BY THE UTILITY AND SHALL BE HELD IN AN AREA CENTRAL TO THE AREA IMPACTED BY PROPOSED ACTION;

(B) A MINIMUM OF ONE FORMAL PUBLIC HEARING WILL BE HELD BY THE UTILITY LATER IN THE PROCESS TO ALLOW FOR FORMAL PUBLIC TESTIMONY. THE PUBLIC HEARING WILL BE HELD IN AN AREA CENTRAL TO THE AREA IMPACTED BY PROPOSED ACTION; AND

(C) NOTICE OF THE PUBLIC MEETING AND PUBLIC HEARING TO OCCUR A MINIMUM OF 15 DAYS IN ADVANCE OF THE PUBLIC MEETING OR PUBLIC HEARING. THE PUBLIC NOTICE WILL INCLUDE:

(I) THREE NOTICES IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE BOROUGH;

(II) PUBLIC POSTINGS IN LOCAL AREAS SUCH AS LIBRARIES, PUBLIC BUILDINGS, SCHOOLS, STORES, LAUNDROMATS, LODGES, ON THE UTILITY'S WEBSITE, AND ON THE MATANUSKA-SUSITNA BOROUGH'S WEBSITE, ETC.;

(III) PUBLIC SERVICE ANNOUNCEMENTS ON LOCAL RADIO STATIONS STARTING 15 DAYS BEFORE THE PUBLIC MEETING; AND

(IV) MAILINGS, AS APPROPRIATE, INCLUDING NOTIFICATION OF ALL AFFECTED COMMUNITY COUNCILS.

(C) IMPLEMENTATION OF THE PUBLIC INVOLVEMENT PROGRAM SHALL COMMENCE WITHIN 120 DAYS FROM THE ISSUANCE DATE OF WRITTEN ACKNOWLEDGEMENT.

(D) UPON COMPLETION OF THE PUBLIC INVOLVEMENT PROGRAM ELEMENTS, THE APPLICANT SHALL CREATE AND SUBMIT TO THE DIRECTOR A DECISIONAL DOCUMENT THAT DESCRIBES HOW THE PUBLIC INVOLVEMENT PROGRAM WAS IMPLEMENTED, THE NATURE OF PUBLIC COMMENT, THE CHOSEN COURSE OF ACTION, TIMELINE FOR CONSTRUCTION, AND THE PUBLIC'S APPEAL PROCESS. COPIES OF ALL WRITTEN PUBLIC COMMENTS AND AN AUDIO RECORD, IF AVAILABLE, SHALL BE INCLUDED IN THE DECISIONAL DOCUMENT.]

17.05.042 PRE-APPLICATION REQUIREMENTS FOR NEW TYPE II ESSENTIAL SERVICE UTILITIES.

(A) Prior to applying for a conditional use permit, the potential applicant shall hold at least two community meetings:

(1) The meetings shall be held at a facility capable of seating a minimum of 20 people, and is central

to the area or areas impacted by the proposed development;

(2) The meetings shall not start prior to 5 p.m. and no later than 7 p.m.;

(3) Notification of the meetings shall, at a minimum, include the following:

(a) map or description of the route or routes;

(b) description of the proposed development including type of utility, height, and basic design;

(c) date, time, and location of informational meeting;

(d) contact name, telephone number, and address of applicant; and

(e) comment form created by the borough that has a comment submittal deadline and provides options for submitting comments.

(f) how the public can review more information on the proposed project and provide feedback, such as a webpage and email address.

(4) At a minimum, notification for the meeting shall include the following:

(a) property owners within 600 feet of the centerline of the proposed route or routes; and

(b) any community council whose boundary is within 600 feet of the proposed route or routes.

(5) The mailing shall be made at least 15 calendar days prior to the pre-application meeting.

(B) A written report summarizing the results of the community meetings shall be prepared that includes the following information:

(1) dates and locations of all meetings where citizens were invited to discuss the potential applicant's proposal;

(2) content, dates mailed, and numbers of mailings, including letters, meeting notices, newsletters, and other publications;

(3) sign-in sheet(s) used at each meeting, that includes places for names of those in attendance with option to provide addresses, phone numbers, and other contact information such as email address;

(4) a list of residents, property owners, and interested parties who have requested in writing that they be kept informed of the proposed development

through notices, newsletters, or other written materials;

(5) the number of people who attended meetings;

(6) copies of written comments received at the meetings;

(7) a certificate of mailing identifying all who were notified of the meetings; and

(8) a written summary that addresses the following:

(a) the substance of the public's written concerns, issues, and problems;

(b) how the applicant has addressed, or intends to address, concerns, issues, and problems expressed during the process; and

(c) concerns, issues, and problems the applicant has not addressed or does not intend to address and why.

(C) The pre-application report shall be submitted to the director. Written approval or rejection of the report shall be issued by the director. If rejected, director shall specify why the report was rejected and

the applicant shall have the opportunity to rectify deficiencies and resubmit the report.

17.05.045 CONDITIONAL USE PERMIT PROCESS FOR TYPE II ESSENTIAL SERVICE UTILITIES.

(A) Incomplete Applications. For all permits under this chapter, the director may reject any application that fails to meet the requirements of this chapter. The rejection shall be issued, in writing, within 15 calendar days of receipt of an application under this chapter and shall state the deficient items.

(1) Notification. Upon determination of a complete application, the director shall notify surrounding property owners in accordance with MSB 17.03, except that:

(a) the notification area will be 600 feet from the centerline of the proposed route or routes; and

(b) the notification shall include all individuals who were notified of or submitted comments at the community meeting required by MSB 17.05.042.

(B) Determination. In granting or denying a permit for a Type II Essential Service Utility, the Planning Commission shall make written findings of fact and determinations of law and shall include conditions as

deemed appropriate to protect the public health, safety or general welfare.

(C) Process Time Frame. For conditional use permits reviewed by the commission:

(1) A public hearing shall be held by the commission within 90 calendar days of receipt of a complete application;

(2) The commission shall render a decision within 30 calendar days from the close of public hearing.

(D) Limitations of Planning Commission. The Commission may not impose conditions that requires the essential service utility to be installed underground.

17.05.048 STANDARDS FOR APPROVAL OF TYPE II ESSENTIAL SERVICE UTILITIES.

(A) A conditional use permit for a new Type II Essential Service Utility may only be approved if it meets the requirements of this chapter.

(B) In granting or denying a permit, the commission shall make findings on whether the applicant has demonstrated that:

(1) To the extent that is technically and reasonably feasible, the location of the Type II essential service utility is such that its impacts on

the visual and scenic resources of surrounding properties has been minimized.

(2) Adequate measures have been taken to minimize trespassing resulting from installation of the new Type II essential service utility;

(3) Utilities shall make reasonable adjustments to new Type II essential services to minimize the impact to public parks, trails recognized within adopted borough plans, and water bodies; and

(4) The Type II essential service utility shall not interfere with the approaches to any existing airport or airfield that are identified in the borough's regional aviation system plan or by the Alaska State Aviation System Plan;

17.05.050 DEFINITION..

• "Type I essential service utility" means any above or below ground structures or facilities used for utility distribution including:

(1) "Electricity distribution" means medium voltage (less than 50KV) power lines, low voltage electrical substations and pole-mounted transformers; and low voltage (less than 1,000V) distribution wiring to provide service to individual customers; and

(2) "Service pipeline" means a distribution line that transports gas, oil, water, or sewage from a common source of supply to the meter set assembly or distribution endpoint to provide service to individual customers.

• "Type II essential service utility" means any aboveground [OR BELOW GROUND] high-voltage (50KV or higher) power lines. [STRUCTURES OR FACILITIES USED FOR UTILITY TRANSMISSION INCLUDING:

(1) "ELECTRICITY TRANSMISSION" MEANS] HIGH-VOLTAGE (50KV OR HIGHER) POWER LINES., HIGH-VOLTAGE ELECTRICAL SUBSTATIONS AND POLE-MOUNTED TRANSFORMERS, AND HIGH-VOLTAGE DISTRIBUTION OR TRANSMISSION WIRING; AND]

[(2) "TRANSMISSION PIPELINE" MEANS PIPELINES INSTALLED FOR THE PURPOSE OF TRANSMITTING GAS, OIL, WATER, OR SEWAGE FROM A SOURCE OR SOURCES OF SUPPLY TO ONE OR MORE DISTRIBUTION CENTERS, TO ONE OR MORE LARGE VOLUME CUSTOMERS, OR A PIPELINE INSTALLED TO INTERCONNECT SOURCES OF SUPPLY. IN TYPICAL CASES, TRANSMISSION LINES DIFFER FROM DISTRIBUTION LINES IN THAT THEY OPERATE AT HIGHER PRESSURES, ARE LONGER, AND THE DISTANCE BETWEEN CONNECTIONS IS GREATER.]

17.05.100 APPEAL PROCEDURE.

(A) Appeals from a decision of the commission granting or denying a permit under this chapter shall be filed and conducted in accordance with MSB 15.39.

17.05.200 NONCONFORMING USES.

(A) Within the borough there may exist non-conforming uses as of the date of adoption of the ordinance codified in this chapter, or amendments thereto which were lawful before the effective date of applicable regulations, but which would otherwise be prohibited, regulated, or restricted under this chapter. Such existing nonconforming uses are permitted to continue subject to the provisions of this section, but shall not be expanded except as specifically provided in this chapter.

(B) Except as specifically provided for by code, this chapter does not require the relocation or removal of a nonconforming use existing or under construction at the time of adoption of the ordinance codified in this chapter if such use was lawful at the time of its construction. No nonconforming use shall be constructed or operated except in accordance with these regulations, except to the extent it was in existence or under actual

construction as of the effective date of the ordinance codified herein or amendment thereto. "Actual construction" is defined as the substantial placement of construction materials and performance of labor for construction of facilities which cannot reasonably be used except in a manner which does not conform with these regulations.

(C) Type II essential service utilities that have not been constructed but have successfully completed the minimum requirements and public involvement process outlined in Assembly Ordinance 07-076 are granted nonconforming status under this section.

17.05.300 VIOLATIONS, ENFORCEMENT, AND PENALTIES.

(A) Except as otherwise specified in this chapter violations of this chapter are infractions.

(B) Remedies, enforcement actions, and penalties shall be consistent with the terms and provisions of MSB 1.45.

(C) Failure to correct a violation of any permit condition is a violation of borough code.

(D) In addition to other applicable penalties, failure to correct the violation of code, after reasonable notice, may result in revocation of the

permit.

Section 3. Effective date. This ordinance shall take effect upon adoption.

DEFEATED by the Matanuska-Susitna Borough Assembly this 2 day of April, 2024.

YES: Hale

NO: Nowers, McKee, Yundt, Gamble, Fonov, and Bernier