

CODE ORDINANCE

Sponsored by: Borough Manager
Introduced: 11/07/17
Public Hearing: 11/21/17
Amended: 11/21/17
Adopted: 11/21/17

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 17-103**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 1.45.100, SCHEDULE OF FINES FOR INFRACTIONS; CHANGING REFERENCE FROM MISDEMEANORS TO MINOR INFRACTIONS WITHIN MSB CHAPTERS 1.45, 3.15, 8.55, 17.23, AND 17.62; AND AMENDING LANGUAGE WITHIN MSB 1.45, VIOLATIONS, ENFORCEMENT, AND PENALTIES TO MATCH ALASKA STATUTE AND COURT RULES.

WHEREAS, the rationale and intent of this ordinance are found in Informational Memorandum No. 17-138 which accompanies this ordinance; and

WHEREAS, the fine table listed within MSB 1.45.100, is incomplete; and

WHEREAS, MSB 1.10.010(A)(8), enables the Borough to enforce ordinances and to prescribe penalties for violations; and

WHEREAS, the Borough does not currently prosecute misdemeanor crimes; and

WHEREAS, in the event the Borough does start prosecuting misdemeanor crimes, the Borough will need to set up an administrative agreement with the Alaska State Courts and the Alaska State Department of Public Safety; and

WHEREAS, in the event the Borough does start prosecuting misdemeanor crimes, the Borough would have to allow for a jury

trial and pay for the defendant's representation if they could not afford it; and

WHEREAS, language in MSB 1.45.080, is inconstant with the current Alaska Statutes and court rules; and

WHEREAS, within Borough code there are provisions that have the potential to be violated which are not listed in the fine table.

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 subsection. MSB 1.45.040(B), is hereby amended to read:

(B) Violation of this section is a [MISDEMEANOR] **minor infraction**.

Section 3. Amendment of section. MSB 1.45.070, is hereby repealed in its entirety:

[1.45.070 BOROUGH MISDEMEANORS.

(A) THE SUMMONS AND COMPLAINT FOR BOROUGH MISDEMEANORS SHALL BE FILED BY THE BOROUGH ATTORNEY.

(B) ANY PERSON DEEMED GUILTY OF A BOROUGH MISDEMEANOR SHALL UPON CONVICTION BE SUBJECT TO A PENALTY OF NOT MORE THAN \$1,000 AND/OR IMPRISONMENT OF NOT MORE THAN 90 DAYS FOR EACH OFFENSE.]

Section 4. Amendment of section. MSB 1.45.080, is hereby amended to read:

1.45.080 [BOROUGH INFRACTIONS] **GENERAL PENALTY.**

(A) A Borough infraction is a minor offense that carries no jail sentence or penalty other than a fine not to exceed [\$500] **\$1,000.** A person charged with a Borough infraction is not entitled to a trial by jury or a public defender or other counsel appointed at public expense.

(B) **Unless another penalty is provided in this code,** [A]any person deemed guilty of a violation that is classified as a Borough infraction shall, upon conviction, be subject to a fine **in accordance with MSB 1.45.100.** [OF NOT LESS THAN \$75 NOR GREATER THAN \$500.]

(C) Every act in violation of a provision of this code is a Borough infraction unless specifically classified as a Borough misdemeanor.

Section 5. Amendment of section. MSB 1.45.090, is hereby amended as follows:

[(B) THE CITATION ISSUED FOR VIOLATION OF THE PROVISIONS OF THIS CODE SHALL BE IN WRITING, STATE THE NATURE OF THE VIOLATION, NAME THE ALLEGED VIOLATOR, SPECIFY THE DATE, TIME AND LOCATION OF THE VIOLATION, AND CONTAIN A NOTICE TO ANSWER TO THE CHARGES IN THE

ALASKA STATE DISTRICT COURT FOR THE THIRD JUDICIAL DISTRICT AT PALMER, ALASKA. THE CITATION SHALL FURTHER STATE THE DEFENDANT IS ENTITLED TO A TRIAL, TO ENGAGE COUNSEL, TO CONFRONT AND QUESTION WITNESSES, TO TESTIFY, AND TO SUBPOENA WITNESSES IN THE DEFENDANT'S BEHALF. THE CITATION SHALL ALSO INDICATE WHETHER A COURT APPEARANCE IS MANDATORY OR CAN BE WAIVED, SHALL STATE THE FINE ESTABLISHED BY BOROUGH CODE, THE PROCEDURE THE DEFENDANT MUST FOLLOW IN RESPONDING TO THE CITATION, AND THE CONSEQUENCES FOR FAILURE TO RESPOND.

(C) DISPOSITION. A PERSON ISSUED A CITATION PURSUANT TO THIS CODE HAS THE OPTION OF PAYING THE APPLICABLE MANDATORY MINIMUM FINE TO THE DISTRICT COURT CLERK UPON ENTERING THE PLEA OF "NO CONTEST" AND WAIVING APPEARANCE IN COURT. THE DEFENDANT MAY ENTER A PLEA OF "NOT GUILTY" AND REQUEST A TRIAL.

(D) NO CONTEST. PERSONS WHO DO NOT CONTEST THE CITATION, OR WHO CHANGE THEIR ORIGINAL PLEA OF "NOT GUILTY" TO "NO CONTEST" TO THE OFFENSE CHARGED, SHALL BE FINED ACCORDING TO THE MANDATORY MINIMUM FINE SCHEDULE.

(E) CONVICTION. PERSONS CONVICTED OF THE OFFENSE CHARGED SHALL BE FINED NOT LESS THAN THE ESTABLISHED MINIMUM FINE AND NOT MORE THAN \$500.]

(F) In accordance with AS 29.25.070(a), citations

for the offenses listed within MSB 1.45.100 may be disposed of as provided in AS 12.25.195-230, without a court appearance, upon payment of the fine amounts listed within MSB 1.45.100, plus the state surcharge required by AS 12.55.039, and AS 29.25.074. Fines must be paid to the court. The Rules of Minor Offense Procedure in the Alaska Rules of Court apply to all offenses listed within MSB 1.45.100. Citations charging these offenses must meet the requirements of Minor Offense Rule 3. If a person charged with one of these offenses appears in court and is found guilty, the penalty imposed for the offense may not exceed the fine amount for that offense listed within MSB 1.45.100. If an offense is not listed within MSB 1.45.100, the defendant must appear in court to answer to the charges. Fines within MSB 1.45.100 may not be judicially reduced.

Section 6. Amendment of subsection. MSB 1.45.100(C), is hereby amended by adding the following to the schedule of fines:

Ordinance Number	Description	Fine Amount
<u>1.45.010(B)</u>	<u>Violation of term, condition, or requirement</u>	
	<u>1st Offense</u>	<u>\$300</u>
	<u>2nd & Subsequent Offenses</u>	<u>\$500</u>
<u>8.07.030</u>	<u>Land application of biosolids prohibited</u>	<u>\$500</u>
<u>8.25.030</u>	<u>Improper sewage disposal</u>	<u>\$500</u>
<u>8.25.040</u>	<u>Improper Use and Location of Facilities</u>	

	<u>1st Offense</u>	<u>\$150</u>
	<u>2nd Offense</u>	<u>\$300</u>
	<u>3rd & Subsequent Offenses</u>	<u>\$500</u>
<u>8.25.050</u>	<u>Pollution of waterbody</u>	<u>\$500</u>
<u>8.55.030</u>	<u>Failure to obtain Special Events Permit</u>	<u>\$500</u>
<u>8.55.100 (A)</u>	<u>Special Events Prohibited Acts or Conditions</u>	
	<u>1st Offense</u>	<u>\$300</u>
	<u>2nd & Subsequent Offenses</u>	<u>\$500</u>
<u>17.06.030 (B)</u>	<u>Failure to obtain Electrical Generation Facility Permit</u>	
	<u>1st Offense</u>	<u>\$150</u>
	<u>2nd Offense</u>	<u>\$300</u>
	<u>3rd & Subsequent Offenses</u>	<u>\$500</u>
17.48.020	Mobile Home Park Ordinance— Development Prohibition	[\$150]
	<u>1st Offense</u>	<u>\$150</u>
	<u>2nd Offense</u>	<u>\$300</u>
	<u>3rd & Subsequent Offenses</u>	<u>\$500</u>
<u>17.67.020 (D)</u>	<u>Tall Structure - Permit Required</u>	
	<u>1st Offense</u>	<u>\$150</u>
	<u>2nd Offense</u>	<u>\$300</u>
	<u>3rd & Subsequent Offenses</u>	<u>\$500</u>

Section 7. Amendment of section. MSB 3.15.120, is hereby amended to read as follows:

It shall be the responsibility of every director and principal officer of a corporation owning or controlling business personal property or inventory to ensure that timely and proper filings are made on behalf of corporations for each tax year. Failure on the part of any director or officer of a corporation to file a timely and proper tax return is punishable as a [MISDEMEANOR] minor infraction under this title.

Section 8. Amendment of section. MSB 8.55.100, is hereby amended to read as follows:

(A) Every act or condition prohibited by this chapter is unlawful and is a violation of borough code.

(B) Failure to obtain the required special events permit is a violation of MSB 8.55.030, and is a [MISDEMEANOR] minor infraction [WHICH IS PUNISHABLE BY A FINE NOT TO EXCEED \$1,000 AND IMPRISONMENT FOR 90 DAYS].

[(C) FAILURE TO COMPLY WITH THE TERMS OF A SPECIAL EVENTS PERMIT IS A VIOLATION OF MSB 8.55.030, AND IS A MISDEMEANOR WHICH IS PUNISHABLE BY A FINE NOT TO EXCEED \$1,000 AND IMPRISONMENT FOR 90 DAYS.]

(D) The remedies provided in this section are not exclusive, but are cumulative of all other remedies available at law or in equity.

Section 9. Amendment of Section. MSB 17.23.230, is hereby amended to read as follows:

(A) Unless specified otherwise, any violation of this chapter is an infraction.

[(B) WILLFUL FAILURE TO COMPLY WITH A LAWFUL ENFORCEMENT ORDER IS A MISDEMEANOR.]

(C) Enforcement of the provisions of this chapter and associated penalties shall be consistent with the

terms and conditions of MSB 1.45.

[(D) FAILURE TO COMPLY WITH AN ENFORCEMENT ORDER
ISSUED UNDER THIS CHAPTER IS A MISDEMEANOR.]

Section 10. Amendment of subsection. MSB 17.62.080(A), is
hereby amended to read as follows:

(A) Any person, firm, corporation or legal entity
which owns, leases or operates a coal bed methane
facility, and which constructs, installs or uses, or
which causes to be constructed, installed or used
without first receiving approval from the planning
commission shall be guilty of a minor infraction
[MISDEMEANOR AND, UPON CONVICTION, SHALL BE PUNISHED BY
A FINE OF NOT MORE THAN \$500 PER DAY FOR EACH DAY, PER
FACILITY OPERATED IN NONCOMPLIANCE WITH THIS CHAPTER].

Section 11. Effective date. This ordinance shall take effect
upon adoption.

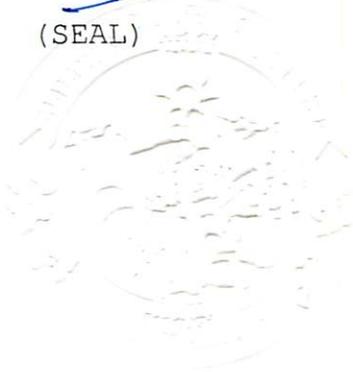
ADOPTED by the Matanuska-Susitna Borough Assembly this 21 day
of November, 2017.


VERN HALTER, Borough Mayor

ATTEST:


LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)



PASSED UNANIMOUSLY: Sykes, Beck, McKee, Leonard, Mayfield, Doty,
and Kowalke