

CODE ORDINANCE

Sponsored by: Assemblymember Sumner  
Introduced: 02/02/21  
Public Hearing: 02/16/21  
Postponed Indefinitely: 02/16/21

**MATANUSKA-SUSITNA BOROUGH  
ORDINANCE SERIAL NO. 21-017**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.60 TO CHANGE THE APPLICABILITY AND STANDARDS FOR CULTIVATION FACILITIES AND ADDRESS ON-SITE CONSUMPTION OF MARIJUANA.

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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 title. The title of MSB 17.60 is hereby amended as follows:

Chapter 17.60: [CONDITIONAL USES] Junkyard/refuse areas, Correctional Community Residential Centers, and Marijuana Related Facilities

Section 3. Amendment of subsection. MSB 17.60.010(A) is hereby amended as follows:

- "marijuana consumption area" means a designated area where marijuana and marijuana products may be consumed within the licensed premises of a marijuana retail facility that holds a valid onsite consumption endorsement in accordance with 3 AAC 306.

- ["RECREATION OR YOUTH CENTER" MEANS A BUILDING, STRUCTURE, ATHLETIC PLAYING FIELD, OR PLAYGROUND WHICH IS: (A) RUN OR CREATED BY A LOCAL GOVERNMENT OR THE STATE

TO PROVIDE ATHLETIC, RECREATIONAL, OR LEISURE ACTIVITIES FOR MINORS; OR (B) OPERATED BY A PUBLIC OR PRIVATE ORGANIZATION LICENSED TO PROVIDE SHELTER, TRAINING, OR GUIDANCE FOR PERSONS UNDER 21 YEARS OF AGE.]

Section 4. Amendment of section. MSB 17.60.030 is hereby amended as follows:

(A) The following land uses are declared to be potentially damaging to the property values and usefulness of adjacent properties, or potentially harmful to the public health, safety, and welfare:

(1) junkyards and refuse areas;

(2) correctional community residential centers; and

(3) [Repealed by Ord. 16-003(SUB), § 3, 2016]

(4) marijuana retail facility as licensed under 3 AAC 306.[005; AND]

[(5) MARIJUANA CULTIVATION FACILITY LICENSED UNDER 3 AAC 306.005.

(A) A SINGLE CULTIVATION FACILITY WITH LESS THAN 500 SQUARE FEET UNDER CULTIVATION ON ANY ONE PARCEL IS EXEMPT UNDER THIS CHAPTER.]

(B) [SUCH USES] Uses under (A) of this section are permitted only upon the issuance of a conditional use permit, as provided in this chapter. Unless such uses

are maintained under and in accordance with a lawfully issued permit, such uses are declared to be public nuisances. Maintenance of such a land use without a permit is prohibited.

(C) An administrative permit in accordance with MSB 17.60.040(C) is required prior to operating marijuana cultivation facilities licensed under 3 AAC 306.

Section 5. Amendment of section. MSB 17.60.040 is hereby adopted to read as follows:

(A) *General.* An application [TO THE PLANNING COMMISSION FOR A CONDITIONAL USE] for a permit or modification of an existing [CONDITIONAL USE] permit under this chapter may be initiated by a property owner or the owners' authorized agent. An application for a permit [CONDITIONAL USE] shall be filed with the planning director on a form provided by the planning department.

(1) The application for a [CONDITIONAL USE] permit shall be accompanied by an appropriate filing fee as established by the assembly, payable to the borough.

(B) *Site plan* for conditional use permits. [A] For a conditional use permit, a detailed site plan, drawn to scale, showing the proposed location of all buildings and structures on the site, access points, buffering, drainage, vehicular and pedestrian circulation patterns,

parking areas, and the specific location of the use or uses to be made of the development shall be submitted with the application.

(C) Administrative permits.

(1) The director or designated staff shall determine whether an application for a marijuana cultivation facility is complete; and

(2) Public notification shall be in accordance with MSB 17.03; and

(3) The application shall include a drawing stamped by a professional land surveyor registered with the State of Alaska under A.S. 08.48. showing all structures, existing and proposed, associated with the proposed development.

(4) Within 45 calendar days of receipt of a complete application the director shall approve the permit upon determination that the standards of MSB 17.60.150 and MSB 17.60.160 have been met.

([C]D) Action by planning commission.

(1) The planning commission shall hear any interested parties and shall render a decision on the application for a conditional use permit within 30 calendar days from the date of public hearing. In recommending the granting of a conditional use, the

planning commission shall state in writing the conditions of approval of the permit which it finds necessary to carry out the intent of this chapter. These conditions may increase the required lot size, control the location and number of vehicular access points to the property, require screening and land filling where necessary to reduce noise and glare, and may require the reclamation of property to a character in keeping with surrounding lands. The commission may impose other conditions and safeguards designed to ensure the compatibility of the conditional use with other lawful uses.

(2) The planning director shall incorporate any conditions or requirements stipulated by the commission in the conditional use permit.

Section 6. Amendment of section. MSB 17.60.150 is hereby amended as follows:

[(A) IN ADDITION TO THE STANDARDS SET FORTH BY MSB 17.60.100, THE PLANNING COMMISSION SHALL WEIGH FACTORS WHICH CONTRIBUTE OR DETRACT FROM THE DEVELOPMENT OF A SAFE, CONVENIENT, AND ATTRACTIVE COMMUNITY, INCLUDING, BUT NOT LIMITED TO:

[(1) ANY POTENTIAL NEGATIVE EFFECT UPON OTHER PROPERTIES IN THE AREA DUE TO SUCH FACTORS AS NOISE AND

ODOR.

(2) THE EFFECTIVENESS OF MEASURES TO REDUCE NEGATIVE EFFECTS UPON ADJACENT PROPERTIES BY:

(A) INCREASED PROPERTY LINE AND RIGHT-OF-WAY BUFFERS;

(B) PLANTED BERMS AND LANDSCAPING;

(C) SITE AND BUILDING DESIGN FEATURES WHICH CONTRIBUTE TO THE CHARACTER OF THE SURROUNDING AREA.

(3) WHETHER THE USE IS COMPATIBLE WITH THE CHARACTER OF THE SURROUNDING AREA.]

(B) At the time of their establishment, marijuana related facilities [CONDITIONAL USES] shall meet the following requirements and not be located within:

(1) one thousand feet of school grounds;

(C) Separation distances referenced in subsection (B) of this section are measured in a direct line between the closest point of the facility within which the marijuana facility is located, and the closest point on the lot or parcel of land upon which any of the above itemized uses are located.

(D) Prior to final approval of the permit the applicant shall provide written documentation demonstrating that:

(1) all applicable licenses and endorsements have been obtained as required by 3 AAC 306.[005.]

(2) from the fire marshal having jurisdiction, that the proposed facility [CONDITIONAL USE] is in full compliance with applicable fire code, including but not limited to AS 18.70.010 through 18.70.160, Fire Protection, and 13 AAC 50.025 through 50.080, Fire Code.

Section 7. Amendment of Section. MSB 17.60.170 is hereby amended as follows:

(A) Marijuana retail facilities shall only be approved upon finding by the commission that the proposed facility is located on a parcel that is appropriate for commercial use. At a minimum, the commission shall consider:

(1) proximity of the proposed use to existing businesses;

(2) proximity to parcels developed for residential use; and

(3) whether roads associated with the proposed use have been, or will be, appropriate for commercial use.

(B) In addition to the standards set forth by MSB 17.60.100, the planning commission shall weigh factors which contribute or detract from the development of a safe, convenient, and attractive community, including, but not limited to:

(1) any potential negative effect upon other

properties in the area due to such factors as noise and odor.

(2) the effectiveness of measures to reduce negative effects upon adjacent properties by:

(a) increased property line and right-of-way buffers;

(b) planted berms and landscaping;

(c) site and building design features which contribute to the character of the surrounding area.

[[B]C) [THE MINIMUM NUMBER OF PARKING SPACES FOR RETAIL FACILITIES SHALL BE ONE SPACE PER 350 SQUARE FEET OF NET FLOOR AREA. EACH p]Parking spaces shall be at least[:] 20 feet in length, ten feet wide, and have a vertical clearance of at least seven feet. The number of required parking spaces shall be calculated as follows:

(1) one parking space per 350 square feet for areas that are not designated for marijuana consumption; and

(2) one parking space per 50 square feet for areas designated for marijuana consumption.

[[C]D) Parking spaces shall be provided to comply with current Americans with Disabilities Act guidelines.

(E) Marijuana retail facilities shall not be open to the public between 12:00 a.m. and 8:00 a.m. unless otherwise specified by the Planning Commission. Planning



Commission may only deviate from the standard hours of operation if unusual conditions exist that make it appropriate to loosen or further restrict the hours of operation.

(F) The applicant shall provide a security plan that includes policies to manage outdoor loitering and consumption of marijuana in unauthorized places.

(G) Setbacks for outdoor marijuana consumption areas shall be at least 100 feet from all property lines and public rights-of-way.

Section 8. Amendment of Section. MSB 17.60.180 is hereby amended as follows:

7.60.180 TRANSFER OF A [CONDITIONAL USE] PERMIT

(A) Except as otherwise specified by code, the privileges and requirements of a [CONDITIONAL USE] permit shall run with the land, subject to the following requirements:

(1) Within 90 days of recording the transfer of ownership of the subject land, the new owner must provide written notification and a signed acknowledgment that the new owner assumes responsibility for compliance with the requirements of the permit.

(2) The commission may limit the term of a conditional use permit or place conditions upon the

transfer of ownership of a conditional use permit.

(3) For junkyard/refuse area permits issued under this chapter, the commission shall hold a public hearing to review the suitability of the transferee(s) to operate the existing conditional use.

(a) The commission's review of suitability shall be in accordance with MSB 17.60.110(C).

Section 9. Amendment of subsection. MSB 17.60.190(A) is hereby amended as follows:

(A) Except as otherwise specified by code, a [CONDITIONAL USE] permit issued under this chapter will become null and void under the following conditions:

(1) notification of termination of the permit for failure to comply with an order to correct violations of a [CONDITIONAL USE] permit;

(2) failure to initiate the use for which the [CONDITIONAL USE] permit was issued within five years of the date of the permit issuance;

(3) cessation of the use for which the [CONDITIONAL] use was issued for a period exceeding five consecutive years.

Section 10. Adoption of subsection. MSB 17.60.200(E) is hereby adopted as follows:

(E) Marijuana cultivation facilities that exist or have initiated a license application with the State of Alaska in accordance with 3 AAC 306 on or before February 2, 2021 shall have pre-existing legal nonconforming status. Notwithstanding (C) of this section, such facilities are not required to obtain a permit or administrative determination of legal nonconforming status under this chapter. However, an administrative determination of pre-existing legal nonconforming status may be issued upon request by the licensee.

(1) Any expansion or modification to a pre-existing marijuana cultivation facility shall require a permit under this chapter.

Section 11. Amendment of section. MSB 17.60.220 is hereby amended as follows:

Appeals from a decision of the manager or the manager's authorized representative [OF AN ENFORCEMENT ACTION] or a decision of the commission granting or denying a permit under this chapter shall be filed and conducted in accordance with MSB 15.39.

Section 12. Approval of new regular full time position. The Planning Department is hereby authorized to hire a new regular full time Planner I in order to handle the additional permitting requirements associated with this ordinance.

Section 13. Effective date. This ordinance shall take effect upon adoption.

POSTPONED INDEFINITELY by the Matanuska-Susitna Borough Assembly this 16 day of February, 2021.

YES: Hale, Nowers, Yundt, and Boeve

NO: McKee, Tew, and Sumner