

**SUBJECT:** AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 11.10 UNAUTHORIZED ENCROACHMENTS IN ORDER TO REDUCE MAILING COSTS.

**AGENDA OF:** September 26, 2023

**ASSEMBLY ACTION:** Adopted without objection 10/03/23 - BJH

**AGENDA ACTION REQUESTED:** Introduce and set for public hearing.

Route To	Signatures
Originator: Jason Ortiz for Manager Mike Brown	<div style="text-align: center;"> <small>9 / 1 2 / 2 0 2 3</small>                      X     J a s o n   O r t i z  <hr/> <small>S i g n e d   b y :   J a s o n   O r t i z</small> </div>
Planning and Land Use Director	<div style="text-align: center;"> <small>9 / 1 2 / 2 0 2 3</small>                      X     A l e x   S t r a w n  <hr/> <small>S i g n e d   b y :   A l e x</small> </div>
Borough Attorney	<div style="text-align: center;"> <small>9 / 1 3 / 2 0 2 3</small>                      X     C h e y e n n e   H e i n d e l  <hr/> <small>S i g n e d   b y :   C h e y e n n e   H e i n d e l</small> </div>
Borough Manager	<div style="text-align: center;"> <small>9 / 1 3 / 2 0 2 3</small>                      X     M i c h a e l   B r o w n  <hr/> <small>S i g n e d   b y :   M i c h a e l   B r o w n</small> </div>
Borough Clerk	<div style="text-align: center;"> <small>9 / 1 3 / 2 0 2 3</small>                      X     L o n n i e   M c K e c h n i e  <hr/> <small>S i g n e d   b y :   L o n n i e   M c K e c h n i e</small> </div>

**ATTACHMENT (S):** Ordinance Serial No. 23-091 (2 pp)  
 MSB 11.10: Encroachment Permits (4 PP)

**SUMMARY STATEMENT:** This legislation is coming forward at the Manager's request.

Presently, MSB 11.10 requires that the Borough mail all letters via a certified mailing or hand delivery to members of the public who are causing illegal encroachments. The development of the Problem Reporter application has resulted in a dramatic increase in complaints of illegal encroachments, requiring an increase in notification to alleged violators.

This legislation changes the delivery method so members of the public will receive their first notice via first class mail. The present-day costs for certified mail, return receipt, with postage for first class mail is \$8.53. With this change it will simply be

the cost of a stamp (\$.066), saving \$7.87 per letter.

**RECOMMENDATION OF ADMINISTRATION:** Adoption of legislation.

**CHAPTER 11.10: ENCROACHMENT PERMITS**

Section

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*11.10.080 Encroachment without a permit deemed a nuisance [Repealed]*

*11.10.090 Obstruction prohibited [Repealed]*

*11.10.100 Damage prohibited [Repealed]*

[11.10.110 Repairs](#)

[11.10.120 Violations, enforcement, and penalties](#)

**11.10.010 DEFINITIONS.**

(A) "Encroachment" means

(1) any structure, object, material or physical disturbance of materials, including but not limited to, driveways, culverts, road repairs, wells, septic systems, drainage, and all types of structural improvements within, extending over or under:

- (a) the borough's public right-of-way;
- (b) a public easement;
- (c) property dedicated to a public use which is operated or maintained by the borough; or
- (d) land owned by the borough.

(2) any snow storage, soil removal, debris or any other obstruction, any road, ditch, drain, gutter, or

culvert which hinders or restricts:

- (a) public traffic;
- (b) maintenance or the flow of water in or along any:
  - (i) public right-of-way;
  - (ii) public easement;
  - (iii) public dedication; or
  - (iv) borough land.

(Ord. 94-001AM, § 11 (part), 1994; Ord. 84-67, § 2 (part), 1984)

#### **11.10.020 ENCROACHMENT PERMITS.**

(A) Any person desiring to construct or cause an encroachment shall apply for an encroachment permit to the public works director.

(B) A public utility or person who is issued a permit for utility facilities under MSB 11.30 is not required to apply for an encroachment permit.

(C) No permit is required for construction in accordance with an approved subdivision plan.

(Ord. 84-67, § 2 (part), 1984)

#### **11.10.030 UNAUTHORIZED ENCROACHMENTS.**

(A) Unauthorized encroachments shall be subject to immediate removal by the borough, at the owner's expense.

(B) At the borough's option, the borough may require the person causing the encroachment or the owner of the underlying property upon which the encroachment lies to remove the unauthorized encroachment. The removal of the encroachment shall be done at the expense of the underlying property owner or the person causing the encroachment. Notice shall be given to the underlying property owner or the person causing the encroachment, that the encroachment must be removed at the expense of the underlying property owner or the person causing the encroachment. Notice shall consist of a written letter, sent by certified mail, return receipt requested, or personally delivered, explaining the violation and stating the time period in which the encroachment must be removed. If the person receiving notice does not remove the encroachment, the borough may remove the encroachment and the person receiving notice shall be liable to the borough for all costs incurred in removing the encroachment and attempting to have the encroachment removed.

(C) Unauthorized encroachments shall be deemed a public nuisance and are subject to all legal proceedings authorized by law.

(Ord. 94-001AM, § 11 (part), 1994; Ord. 84-67, § 2 (part), 1984)

#### **11.10.040 APPROVAL OF EXISTING ENCROACHMENTS.**

(A) Any encroachment of a private nature without a permit may be removed in accordance with MSB [11.10.030](#), or may be granted a permit allowing the encroachment to remain if the encroachment meets the approval of the public works director. The owner, upon signing the permit, agrees to defend and indemnify the borough against any and all claims to persons or property which may arise from the encroachment.

(B) A person may not be denied a reasonable means of access to the person's property solely by the requirements of this chapter. An encroachment permit shall not grant the permittee exclusive right to use the area encroached upon.

(Ord. 94-001AM, § 11 (part), 1994; Ord. 84-67, § 2 (part), 1984)

#### **11.10.050 RIGHT TO RECONSIDERATION.**

Any revocation, suspension, or denial of an encroachment permit may be reconsidered by the manager by filing a written notice of reconsideration with the manager and stating the grounds for the reconsideration. The reconsideration notice shall be filed within ten days after the effective date of the revocation, suspension, or denial from which the reconsideration is taken. The manager shall issue a written decision on the reconsideration request within 30 calendar days after the date the notice of reconsideration was filed.

(Ord. 94-001AM, § 11 (part), 1994; Ord. 84-67, § 2 (part), 1984)

#### **11.10.070 COMPLETION OF WORK.**

An encroachment permit for construction shall have an expiration date. The permittee shall file a written notice of completion with the public works director within ten days after completion of construction. No work shall be performed after the expiration date unless an extension is approved.

(Ord. 84-67, § 2 (part), 1984)

**11.10.080 Encroachment Without a Permit Deemed a Nuisance. [Repealed by Ord. 94-001AM, § 11 (part), 1994 and recodified at MSB 11.10.030]**

**11.10.090 Obstruction Prohibited. [Repealed by Ord. 94-001AM, § 11 (part), 1994 and recodified at MSB 11.10.010(A)(2)]**

**11.10.100 Damage Prohibited. [Repealed by Ord. 94-001AM, § 11 (part), 1994 and recodified at MSB 11.10.110]**

#### **11.10.110 REPAIRS.**

Any damages to a public right-of-way, dedication, easement or borough land which is caused by an

encroachment, authorized or unauthorized, are subject to immediate repair by the borough, at the owner's expense. The borough may require the owner to repair the damage if notice is given to the owner. Notice shall consist of a written letter sent by certified mail, return receipt requested, or posted on the encroachment in a conspicuous place explaining the damages and stating the time to repair the damages. If the owner does not repair the damages after being given proper notice, the borough may repair the damages and the owner shall be liable to the borough for all costs incurred by the borough from the repair, including overhead costs.

(Ord. 94-001AM, § 11 (part), 1994; Ord. 84-67, § 2 (part), 1984)

**11.10.120 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.

(Ord. 95-088(SUB)(am), § 22 (part), 1995)