

CODE ORDINANCE

Sponsored by: Assemblymember Yundt
Referred: 02/06/24
Introduced: 06/04/24
Public Hearing: 06/18/24
Amended: 06/18/24
Adopted: 06/18/24

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 24-031**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING
MSB 8.40 REGARDING TRANSFERS OF ALCOHOLIC BEVERAGE LICENSES FROM
THE BOROUGH INTO THE CITIES.

WHEREAS, the intent and rationale of this ordinance are found
in the accompanying Information Memorandum No. 24-049

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 8.40 is hereby amended
to read as follows:

CHAPTER 8.40: [LIQUOR LICENSE] ALCOHOLIC BEVERAGE
LICENSE REFERRALS

8.40.010 Review of [LIQUOR] alcoholic beverage license
referrals

8.40.020 Waiver

8.40.030 Borough protest; resident objection

8.40.040 Resident objection to operating facilities

[8.40.050 ASSEMBLY HEARINGS OF RESIDENT OBJECTIONS]

8.40.060 Review of [LIQUOR] alcoholic beverage license
referral for relocation

8.40.070 Application process

8.40.080 Notice

8.40.090 Application review

8.40.010 REVIEW OF [LIQUOR] ALCOHOLIC BEVERAGE LICENSE REFERRALS.

(A) Upon notice from the Alaska Alcoholic Beverage Control Board of an application within the borough for the issuance, renewal, or transfer of location or transfer to another person of any alcoholic beverage[S] license, endorsement, or permit, as defined in [A.S. 04.11.080] AS 04.09, the planning and land use department shall:

(1) review the application for compliance with MSB 17.70 to determine that no borough permit is required, or that the applicant has obtained any borough permits required and no violations to a borough permit exist;

(2) determine, through finance department review, whether the applicant has delinquent debts or taxes owing to the borough arising from conduct of the business making the application; and

(3) determine whether there is any current or pending [ASSEMBLY] borough protest to the application.

8.40.030 BOROUGH PROTEST; RESIDENT OBJECTION.

(A) If the planning and land use department determines

that any of the requirements of MSB 8.40.010 are not satisfied, the department shall, within 30 calendar days of receipt of the notice of the application, notify the Alaska Alcoholic Beverage Control Board that the borough protests the application. The protest shall state the reasons for the protest.

(B) In addition to protests generated by the department, a borough resident may generate [A PROTEST] an objection to the application for the issuance, renewal, or transfer of location, or transfer to another person of any alcoholic beverage license, endorsement, or permit, as defined in [A.S. 04.11.480] AS 04.09, by:

(1) notifying [THE ASSEMBLY OR] the planning and land use department of the [PROTEST] objection; or

(2) [PROTESTING] objecting directly[, UNDER A.S. 04.11.070,] to the Alaska Alcoholic Beverage Control Board.

(C) The department shall provide the applicant with a copy of any protest and/or objection.

(D) The department shall withdraw the borough protest when the basis for the protest is eliminated.

8.40.040 RESIDENT OBJECTION TO OPERATING FACILITIES.

(A) Any borough resident may object to the operation of any alcoholic beverages entity or facility currently

licensed or permitted under [A.S. 04.11.080] **AS 04.09.**
The statement of objection shall be filed with the
planning and land use department **or to the Alaska**
Alcoholic Beverage Control Board.

(B) The department shall investigate all objections to
determine validity and whether they constitute violation
of MSB 17.70. If a code violation exists, the department
shall take all steps necessary to cure the violation. If
no violation exists, but the objection presents a valid
grievance, the department shall work with the licensee
and the objecting resident to resolve the grievance. Any
decision, agreement or solution, or failure to resolve
the grievance shall be reported in writing to the
objecting resident and the licensee. If the department
determines that the objection does not present a valid
grievance, it shall so report to the objecting resident
and the licensee.

[8.40.050 ASSEMBLY HEARINGS OF RESIDENT OBJECTIONS.

(A) IF THE OBJECTING RESIDENT FINDS THE DEPARTMENT
RESOLUTION INADEQUATE, THE RESIDENT MAY FILE WITH THE
CLERK A REQUEST FOR HEARING BEFORE THE ASSEMBLY. THE
CLERK SHALL FORWARD THE REQUEST TO THE ASSEMBLY, ALONG
WITH A REPORT FROM THE PLANNING AND LAND USE DEPARTMENT.

(B) THE ASSEMBLY SHALL DETERMINE WHETHER THE REQUEST

FILED PRESENTS A VALID GRIEVANCE AND WHETHER A HEARING IS NECESSARY. IF NECESSARY, A HEARING SHALL BE SCHEDULED, WITH WRITTEN NOTIFICATION STATING THE DATE, TIME, AND PURPOSE OF THE HEARING PROVIDED TO ALL PARTIES. NOTICE SHALL BE PUBLISHED AT LEAST FIVE DAYS IN ADVANCE OF THE HEARING.

(C) THE ASSEMBLY HEARING SHALL BE CONDUCTED IN ACCORDANCE WITH THE PROCEDURES ADOPTED BY THE ASSEMBLY, AND MAY BE CONTINUED AS NECESSARY. DECISIONS OF THE ASSEMBLY SHALL BE GUIDED BY THE STANDARDS IN MSB 17.70.100(A)(2) AND 17.70.110(B). WITHIN 30 DAYS OF THE HEARING, THE ASSEMBLY SHALL SUBMIT A WRITTEN DECISION SETTING OUT ITS FINDINGS AND THE REASONS FOR THE FINDINGS TO THE DEPARTMENT, THE OBJECTING RESIDENT, THE LICENSEE, AND OTHER PARTIES AS NEEDED.

(D) IF THE ASSEMBLY CONCLUDES THAT THE RESIDENT'S OBJECTION PRESENTS A PROBLEM SUFFICIENTLY DETRIMENTAL TO THE INTERESTS OF THE BOROUGH, IT MAY FIND:

(1) THAT THE MATTERS COMPLAINED OF CREATE AN UNNECESSARY OR INAPPROPRIATE ADVERSE IMPACT ON THE NEIGHBORHOOD AND THEREFORE WARRANT A PROTEST OF LICENSE RENEWAL TO BE MADE TO THE ALASKA ALCOHOLIC BEVERAGE CONTROL BOARD UPON RECEIPT OF NOTICE OF AN APPLICATION FOR LICENSE RENEWAL; OR

(2) THAT THE MATTERS COMPLAINED OF WARRANT AN IMMEDIATE BOROUGH PETITION TO THE ALASKA ALCOHOLIC BEVERAGE CONTROL BOARD SEEKING REVOCATION OR SUSPENSION OF THE LICENSE AT ISSUE.

(E) AT ANY TIME AFTER THE ASSEMBLY HAS DETERMINED EITHER TO PROTEST RENEWAL OF THE LICENSE, OR TO SEEK REVOCATION OR SUSPENSION OF THE LICENSE, THE LICENSEE MAY REQUEST A NEW HEARING BEFORE THE ASSEMBLY. THE REQUEST SHALL SET OUT WITH SPECIFICITY ALL ACTIONS THE LICENSEE HAS TAKEN TO CURE THE ORIGINAL PROBLEM AND ANY MATERIAL CHANGE IN CIRCUMSTANCES JUSTIFYING A NEW DECISION BY THE ASSEMBLY. THE ASSEMBLY SHALL CONSIDER THE REQUEST FOR A HEARING, NOTIFY THE PARTIES, PUBLISH NOTICE OF THE HEARING, CONDUCT THE HEARINGS, AND MAKE FINDINGS UNDER THE SAME RULES USED FOR INITIAL OBJECTION HEARINGS UNDER THIS SECTION.

(F) IF THE ASSEMBLY FINDS THE BASIS FOR THE ORIGINAL PROTEST, SUSPENSION, OR REVOCATION DECISION NO LONGER EXISTS, IT MAY RESCIND THE PRIOR DECISION. THE CLERK SHALL PROVIDE IMMEDIATE NOTICE OF THE RESCISSION TO THE ALASKA ALCOHOLIC BEVERAGE CONTROL BOARD.]

8.40.060 REVIEW OF [LIQUOR] ALCOHOLIC BEVERAGE LICENSE REFERRAL FOR RELOCATION.

(A) In accordance with [AS 04.11.400(m)] AS

04.11.400(k), the [MSB] borough [A] assembly shall consider a request for the relocation of a license specified in AS 04.11.400(k) [AN EXISTING BEVERAGE DISPENSARY LICENSE] to or from an [UNINCORPORATED] area within the borough to or from an incorporated city within the borough upon notice from the Alaska Alcoholic Beverage Control Board and as provided by this chapter.

(1) The assembly's decision to approve or disapprove an application shall be based on review of the application for the proposed relocation, the planning director's best interest finding, staff recommendation, public testimony, and other information the assembly, in its discretion, deems relevant.

(2) Assembly decision on this matter is a final legislative decision and is not subject to appeal.

8.40.070 APPLICATION PROCESS.

(A) An applicant under this chapter shall submit a complete [LIQUOR] alcoholic beverage license relocation application to the planning director on a form provided by the planning department.

(1) Not more than [ONE] three relocations of [AN EXISTING BEVERAGE DISPENSARY LICENSE] licenses eligible for transfer under AS 04.11.400(k) from an unincorporated area to [a particular] each incorporated

city shall occur each decade. "Decade" means each ten-year period beginning April 1st in a year ending in zero. [IN ACCORDANCE WITH AS 04.11.400(M) THE FIRST DECADE SHALL EXTEND FROM JUNE 25, 2007, THROUGH MARCH 31, 2010.]

(2) The application will be considered incomplete and not acceptable for further action if, through finance department review, it is determined that the existing [BEVERAGE DISPENSARY] alcoholic beverage licensed facility or the applicant has delinquent debts or taxes owing to the borough arising from the conduct of the existing business or the business making the application. An application shall be considered incomplete if the required fee is not included at the time the application is submitted.

(3) The planning director will review the application for completeness. The director may reject any application which is incomplete or fails to meet the requirements of this section. An incomplete application shall be sent to the applicant with a written explanation of application deficiencies within [TEN WORKING] thirty calendar days of the date the application is received in the planning department. Once the deficiencies have been corrected, the complete application will be considered received and will be processed.

(4) Applications determined to be complete will be considered in the order in which the complete applications are received.

(B) A complete application will contain the following:

(1) a nonrefundable application fee as established by the assembly, payable to the Matanuska-Susitna Borough[, SHALL BE SUBMITTED WITH THE APPLICATION];

(2) a complete copy of the material required by the Alcoholic Beverage Control Board for the relocation including any additional material required by the subject incorporated city;

(3) proof of the incorporated city governing body approval of the relocation;

(4) a map with the application illustrating existing operational [BEVERAGE DISPENSARY] alcoholic beverage licensed facilities in a radius of ten miles of the existing licensed facility. If no [BEVERAGE DISPENSARY] alcoholic beverage licensed facilities exist within ten miles of the existing licensed facility, the applicant shall provide a map showing the nearest similar operational licensed facility;

(5) proof that the applicant is:

(a) the owner of the license that is to be transferred into the incorporated city; or

(b) the purchaser under a contract to purchase the license that is to be transferred into the city under which the obligations of the purchaser to purchase, and the seller to sell, the license are unconditional except for the following:

(i) approval of the transfer of location of the license by the incorporated city;

(ii) approval of the transfer of location of the license by the Matanuska-Susitna Borough;

(iii) approval of the transfer of location of the license, and transfer of ownership of the license to the applicant, by the Alcoholic Beverage Control Board; and

[(IV) A STATEMENT OF FINANCIAL INTEREST (SIGNED BY THE APPROPRIATE CORPORATE OFFICERS AND NOTARIZED)];

(6) the following information about the existing alcoholic beverage licensed facility and the facility to which the license is proposed to be relocated:

(a) location;

(b) days and hours of operation;

(c) seating capacity at the bar, tables and chairs;

(d) average number of employees; and

(e) characteristics of the neighborhood within one mile to include the existence and location of other [LIQUOR] alcoholic beverage licensed facilities, commercial establishments, schools, churches, and community councils:

- (i) percent residential;
- (ii) percent commercial; and
- (iii) percent rural.

8.40.080 NOTICE.

(A) When a complete application is received, the borough shall give notice of the application by publication in the newspaper of general circulation in the borough within [TEN WORKING] thirty calendar days. Notice of the application shall also be mailed to owners of all property within one-half mile from the exterior boundary of the property of the existing alcoholic beverage licensed facility and one-half mile from the exterior boundary of the proposed relocation property. Notice of the application shall also be posted at the existing alcoholic beverage licensed facility for the duration of the review process.

(B) A copy of the material submitted to the borough shall be sent to the community council(s) in which the existing alcoholic beverage licensed facility is located or

within one mile thereof.

(C) A copy of the material submitted to the borough shall be sent to the community council(s) if the proposed location within an incorporated city is within one mile from the boundary of a community council(s).

(D) A copy of the material submitted to the borough shall be sent to the other incorporated cities in the borough.

(E) The applicant shall pay the cost of all mailings and advertisements as required by MSB 8.40.060 in addition to application fees.

(F) Members of the public and active community council(s) notified in accordance with this section shall have 30 calendar days from the date [THE COMPLETE APPLICATION] notice is sent [RECEIVED] by the borough to provide a written comment concerning the proposed relocation to the planning director.

8.40.090 APPLICATION REVIEW.

(A) The planning director shall evaluate the application for relocation in consideration of its possible effects on the borough, the area from where the license is coming, and the area to where it is proposed to be relocated. The planning director will consider the following criteria:

- (1) potential economic effects;

(2) potential future need of a license in an unincorporated area of the borough;

(a) the impact of the transfer on the availability of licenses in the unincorporated area;

(3) impact to access to similar licensed facilities;

(4) community council(s) comment;

(5) decision of the affected city;

(6) public comment; and

(7) other relevant information.

(B) Within 30 calendar days of [RECEIPT OF A COMPLETE APPLICATION] the end of the comment period, the planning director shall prepare a best interest finding and a resolution recommending assembly approval or denial of the relocation application. The matter will be placed on the agenda for the next regular meeting of the assembly.

(C) After notice and public hearing, the assembly shall approve or disapprove the application, taking into consideration the best interest finding, staff recommendation, public testimony, and other relevant information.

(D) The planning director shall notify the applicant, the owner of the existing licensed alcoholic beverage [DISPENSARY] facility, the affected incorporated city, and the Alcoholic Beverage Control Board of the assembly decision.

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

ADOPTED by the Matanuska-Susitna Borough Assembly this 18 day of June, 2024.


EDNA DeVRIES, Borough Mayor

ATTEST:


LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)

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