

SUBJECT: AN ORDINANCE OF THE MATANUSKA- SUSITNA BOROUGH ASSEMBLY AMENDING MSB 17.80 NONCONFORMING STRUCTURES, TO REPEAL THE NOTIFICATION PROCESS AND FEE SECTION.

AGENDA OF: March 3, 2026

ASSEMBLY ACTION:

AGENDA ACTION REQUESTED: Refer to Planning Commission for 90 days.

Route To	Signatures
Originator	<div style="text-align: right; font-size: small;">2 / 6 / 2 0 2 6</div> <p>X A l e x S t r a w n</p> <hr/> <p><small>S i g n e d b y : A l e x</small></p>
Department Director	<div style="text-align: right; font-size: small;">2 / 6 / 2 0 2 6</div> <p>X A l e x S t r a w n</p> <hr/> <p><small>S i g n e d b y : A l e x</small></p>
Finance Director	<p>X C h e y e n n e H e i n d e l</p> <hr/> <p><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></p>
Borough Attorney	<div style="text-align: right; font-size: small;">2 / 1 7 / 2 0 2 6</div> <p>X N i c h o l a s S p i r o p o u l o s</p> <hr/> <p><small>S i g n e d b y : N i c h o l a s S p i r o p o u l o s</small></p>
Borough Manager	<div style="text-align: right; font-size: small;">2 / 1 7 / 2 0 2 6</div> <p>X M i c h a e l B r o w n</p> <hr/> <p><small>S i g n e d b y : M i k e B r o w n</small></p>
Borough Clerk	<div style="text-align: right; font-size: small;">2 / 1 8 / 2 0 2 6</div> <p>X L o n n i e M c K e c h n i e</p> <hr/> <p><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></p>

ATTACHMENT (S) : Ordinance Serial No. 26-028 (4 pp)
 MSB 17.80 (7 pp)
 Planning Commission Resolution No. 26-___ (pp)

SUMMARY STATEMENT: This ordinance is at the request of Assemblymember Sumner.

The determination of legal nonconforming status is ministerial in nature, meaning a structure either meets the standards or it does not. The public notice requirement is burdensome and costly, and it gives the false impression that public comments influence whether a structure qualifies for legal nonconforming status. Repealing this requirement eliminates that misunderstanding, reduces staff time and administrative costs, and shortens processing time by more than two weeks.

In 2019, the Assembly adopted a single fee rate for all nonconforming structure determinations. However, MSB 17.80.030 was not updated at that time and now conflicts with the adopted fee schedule. Repealing this section resolves that conflict.

The proposed ordinance supports the goals and objectives of the Borough Comprehensive Plan.

Matanuska-Susitna Borough Comprehensive Plan

Goal (LU-1): Protect and enhance the public safety, health, and welfare of Borough residents.

- Policy LU1-1: Provide for consistent, compatible, effective, and efficient development within the Borough.

RECOMMENDATION OF ADMINISTRATION: Refer to Planning Commission and then introduce and set for public hearing.

CHAPTER 17.80: NONCONFORMING STRUCTURES

Section

[17.80.010 Intent](#)[17.80.020 Legal nonconforming structures](#)[17.80.030 Fees](#)[17.80.040 Written determination required](#)[17.80.050 Nonconforming lots of record](#)[17.80.060 Standards for nonconforming structures](#)[17.80.070 Application for a determination of legal nonconforming status](#)[17.80.080 Repairs and maintenance](#)[17.80.090 Restoration of damaged property](#)[17.80.100 Termination of nonconformities](#)[17.80.110 Violations and enforcement](#)**17.80.010 INTENT.**

(A) Within the Matanuska-Susitna Borough there may exist lots, permanent structures, and uses of land and structures, which were lawful before the effective date of the applicable regulations but which would be prohibited, regulated or restricted under the terms of current regulations, or a future amendment. Except as otherwise provided by code, it is the intent of this chapter to permit nonconforming permanent structures to remain until they are removed or abandoned but not to encourage their perpetuation. It is not intended that this chapter replace or supersede nonconformity regulations in other chapters within this title. This ordinance is promulgated pursuant to AS 29.40.040(A)(2) "Land Use Regulations" and encourages the minimization of the unfavorable effects of the construction of structures that do not conform to code.

(B) Nothing in this chapter requires a change in the plans or construction of any building actually under construction or development prior to the effective date of adoption of this ordinance as long as the building was allowable under the code in effect at the start of development. Where excavation, demolition or removal of an existing building has begun in preparation of rebuilding, such excavation, demolition or removal shall be considered to be actual construction or development, provided that continuous progress is being made toward

completion of the project. Development is defined as any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

(Ord. 95-011(SUB1), § 3 (part), 1995)

17.80.020 LEGAL NONCONFORMING STRUCTURES.

(A) The following structures qualify as legal nonconforming structures without an administrative determination, however, an administrative determination may be issued if requested by the property owner:

- (1) structures built lawfully and made nonconforming by adoption of subsequent ordinances;
- (2) structures built in violation of the ordinance existing at the time of construction, then made legal by adoption of subsequent ordinance, and later made nonconforming by adoption of subsequent ordinances;
- (3) permanent structures which were constructed lawfully after the date of adoption of the Acknowledgement of Existing Regulations, Chapter 17.01, but which were made unlawful after the date of start of construction due to adoption of subsequent regulations.

(B) The following structures require an administrative determination in order to be granted legal nonconforming status;

- (1) structures granted a variance in accordance with Chapter 17.65;
- (2) structures built in violation of shoreline setback ordinances existing at the time of construction, and subsequently granted an exemption from shoreline setbacks in accordance with MSB 17.55.020(C);
- (3) permanent structures built in violation of ordinances existing at the time of construction, and subsequently granted legal nonconforming status in accordance with MSB [17.80.070](#).

(Ord. 95-011(SUB1), § 3 (part), 1995)

17.80.030 FEES.

(A) Applications for determination of legal nonconforming status, made pursuant to MSB [17.80.020](#)(A)(1), (2) and (3), and (B)(1) and (2), are not subject to fees set forth in MSB [17.80.070](#).

(B) Applications for determination of legal nonconforming status, made pursuant to MSB [17.80.020](#)(B)(3) are subject to fees as set forth in MSB [17.80.070](#).

(Ord. 95-011(SUB1), § 3 (part), 1995)

17.80.040 WRITTEN DETERMINATION REQUIRED.

Nonconforming structures, covered under MSB [17.80.020\(B\)\(3\)](#), shall not have legal nonconforming status for purposes of this chapter unless a written administrative determination of legal nonconforming status has been issued by the planning director, pursuant to MSB [17.80.070](#).

(Ord. 95-011(SUB1), § 3 (part), 1995)

17.80.050 NONCONFORMING LOTS OF RECORD.

Structures and accessory buildings may be erected on nonconforming lots of record as long as they meet all applicable provisions of code. This provision shall apply even though the lot fails to meet the requirements for area, or width, or both, currently applicable.

(Ord. 95-011(SUB1), § 3 (part), 1995)

17.80.060 STANDARDS FOR NONCONFORMING STRUCTURES.

(A) Where a permanent structure exists that could not be built under the terms of the current regulations, the structure may continue to exist as long as it remains lawful subject to subsections (1) through (4) of this subsection. However:

- (1) a nonconforming structure may not be enlarged or altered in any way unless the alteration or enlargement is otherwise specifically allowed by code. Any nonconforming structure or portion of a nonconforming structure may be altered to decrease its nonconformity.
- (2) a nonconforming structure may not be enlarged or altered vertically or horizontally in a way which would increase the height, width, depth, area, or volume of the structure except as specifically allowed by current code for similar new structures in that location. A nonconforming structure which straddles a required minimum setback line may be expanded vertically or horizontally only where the expansion is located outside the minimum setback distance.
- (3) the physical location of a nonconforming structure may be changed only to reduce or eliminate the nonconformity.
- (4) an existing structure devoted to a use not permitted by code shall not be enlarged, extended, moved, or structurally altered.

(B) Structures found in violation of any of the standards set forth in subsection (A) of this section, are not eligible for a determination of legal nonconforming status.

(C) Structures which are in trespass are not eligible for a legal nonconforming status determination.

(D) *[Repealed by Ord. 17-142, § 3, 2018]*

(E) The planning director may not grant legal nonconforming status, pursuant to MSB [17.80.070](#), unless the applicant provides evidence that the structure was erected prior to the adoption of the Acknowledgment of Existing Land Use Regulations, MSB 17.01.

(F) The planning director will consider public health, safety, and welfare concerns raised in comments received pursuant to MSB [17.80.070](#)(C) when making a determination whether to grant a legal nonconforming determination.

(Ord. 17-142, § 3, 2018; Ord. 01-016, § 2, 2001; Ord. 95-011(SUB1), § 3 (part), 1995)

17.80.070 APPLICATION FOR A DETERMINATION OF LEGAL NONCONFORMING STATUS.

(A) An application for a determination of legal nonconforming status may be initiated by the property owner or his authorized agent. The application shall be filed with the planning director on a form provided by the planning department. The application shall be accompanied by a nonrefundable application fee, established by the assembly, and made payable to the Matanuska-Susitna Borough. The planning director may not grant legal nonconforming status unless the applicant provides evidence that the structure was erected prior to the adoption of the Acknowledgment of Existing Land Use Regulations chapter except as noted herein.

(B) In addition to the completed application form, the submittal shall contain the following items:

- (1) description and photographs of the structure;
- (2) as-built drawing(s), prepared by a professional surveyor, registered in the state of Alaska, verifying the location(s) or the structure(s);
- (3) any other documentation the planning director may deem necessary to evaluate the application.

(C) When an application is submitted, the borough shall give notice of the application by publication in a newspaper of general circulation in the borough at least 15 calendar days before the earliest date the planning director may render a decision.

(D) Notice of the application shall be mailed to owners of all property within 600 feet of the lot lines of the property containing the nonconforming structure at least 10 calendar days prior to the earliest date upon which the planning director may make a final decision on the application. The notice shall contain the following:

- (1) the earliest date a decision may be rendered;
- (2) brief description of the application;
- (3) a vicinity map of the area surrounding the subject property;
- (4) legal description of the subject property;

- (5) the names of the applicants and owners of the subject property;
- (6) the planning department's telephone number; and
- (7) identify the location where the application and other supporting material will be available for public inspection.

(E) Prior to the date of the decision, the applicant shall pay the cost of all mailings or advertisements required by this section.

(Ord. 95-011(SUB1), § 3 (part), 1995)

17.80.080 REPAIRS AND MAINTENANCE.

Except as otherwise addressed by code, nothing in this chapter shall prevent keeping in good repair a nonconforming permanent building or a building in which a nonconforming use is conducted. However, any building that is declared by an authorized official to be unsafe or unlawful by reason of physical condition shall not be restored, repaired or rebuilt in violation of the standards set forth in MSB [17.80.060\(A\)](#).

(Ord. 95-011(SUB1), § 3 (part), 1995)

17.80.090 RESTORATION OF DAMAGED PROPERTY.

(A) Except as otherwise addressed by borough code, nothing in this ordinance shall prevent restoration and subsequent continued occupancy and use of a permanent building destroyed to up to 50 percent of its replacement value by fire, explosion, or other casualty or act of God.

(B) A dwelling made nonconforming through adoption or amendments to Title 17, Zoning, may be replaced or reconstructed within two years after accidental damage or accidental destruction by fire, explosion, or other casualty or act of God. Reconstruction or replacement not completed within two years of the date of the damage is prohibited except in compliance with current regulations. Replacement or reconstruction may be undertaken in the same three dimensional space that it occupied prior to damage or destruction even though the damage or destruction exceeded 50 percent of its replacement value provided it was a legal structure at the date of construction. Except as otherwise specifically allowed by code, reconstruction and replacement shall not increase the height, depth, area, or volume of the structure beyond that which existed on the date the structure became a pre-existing legal nonconforming structure.

- (1) The borough manager may grant a one time extension of the allowed time to complete rebuilding of a pre-existing legal nonconforming structure which is otherwise eligible for reconstruction under this section. To grant the time extension authorized under this section, the borough manager must find from evidence presented that:

- (a) the requirement to rebuild within two years from the date of destruction would result in undue hardship on the applicant;
- (b) the applicant diligently pursued reconstruction during the original two-year period; and
- (c) the need for an extension is caused by unforeseen and unavoidable circumstances beyond the control of the applicant.

(2) The extension shall be for a specific amount of time, not to exceed three years from the original two-year deadline.

(3) An application for the three-year extension of time to rebuild a pre-existing legal nonconforming structure shall be submitted in writing to the borough manager and shall provide sufficient detail to describe the proposed structure and its compliance with applicable borough code. The application must also contain the evidence required by MSB [17.80.090](#)(B)(1)(a-c).

(4) The borough manager will review the application and make a decision regarding the request. A public hearing is not required. Appeals of this decision are as prescribed in MSB 15.39.030.

(C) The percentage of loss, under MSB [17.80.090](#)(A) and (B) shall be determined by an independent adjuster or appraiser who is Financial Institutions Reform and Recovery Enforcement Act (FIRREA) certified or the appraisal must be accompanied by the appraiser's license number and certification of type of appraisal they are licensed to perform.

(Ord. 01-016, § 3, 2001; Ord. 99-197, § 2, 1999; Ord. 95-011(SUB1), § 3 (part), 1995)

17.80.100 TERMINATION OF NONCONFORMITIES.

When a legal nonconforming permanent structure is abandoned for a period of one year or more, the building shall not then be used except in compliance with this chapter. For the purposes of this chapter, abandonment means discontinuation or failure to complete construction and begin use, for a continuous period of more than one year. Whether the property owners intended to abandon the structure is not relevant to an abandonment determination. Reconstruction of a damaged nonconforming structure is not prohibited after the one-year period if the reconstruction was prohibited due to lawful orders issued by a court or in the course of an arson or criminal investigation.

(Ord. 95-011(SUB1), § 3 (part), 1995)

17.80.110 VIOLATIONS AND ENFORCEMENT.

Violations and enforcement of this chapter shall be consistent with the terms and provisions of Chapter 17.56.

(Ord. 95-011(SUB1), § 3 (part), 1995)

