

Mat-Su Taxpayers Association

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MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 06-101

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AN ORDINANCE ADOPTING MSB CHAPTER 1.47, PRIVATE PROPERTY
PROTECTION ACT.

[Mat-Su Absentee
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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. Adoption of chapter. MSB 1.47, Private Property Protection Act, is hereby adopted to read as follows:

The Matanuska-Susitna Borough Code is amended by adding a new chapter MSB 1.47 to read:

If a public entity enacts or enforces a new land use regulation that restricts the use of private real property or any interest therein for public use or benefit and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation. Just compensation shall be equal to the reduction in the fair market value of the affected property interest resulting from enactment or enforcement of the land use regulation as of the date the owner makes written demand for compensation under this act.

Subsection (1) of this act shall not apply to land use regulations:

(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law. This subsection shall be construed narrowly in favor of a finding of compensation under this act;

(B) Restricting or prohibiting activities for the protection of public health and

safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;

(C) To the extent the land use regulation is required to comply with federal law;

(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection; however, is intended to affect or alter rights provided by the Alaska or United States Constitutions.

(4) Procedures:

(A) Just compensation under subsection (1) of this act shall be due the owner of the property if the land use regulation continues to be enforced against the property 180 days after the owner of the property makes written demand for compensation under this section to the public entity enacting or enforcing the land use regulation.

(B) Written demand for compensation under subsection (4)(A) shall be made within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

(C) If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under this act, the present owner of the property, or any interest therein, shall have a cause of action for compensation under this act in the court in which the real property is located, and the present owner of the real property shall be entitled to reasonable attorney fees, expenses, costs, and other disbursements reasonably incurred to collect the compensation.

(D) A service district, city, borough, or other borough agency may adopt or apply procedures for the processing of claims under this act, but in no event shall these procedures act as a prerequisite to the filing of a compensation claim under subsection (4)(C) of this act, nor shall the failure of an owner of property to file an application for a land use permit with the local government serve as grounds for dismissal, abatement, or delay of a compensation claim under subsection (4)(C) of this act.

(E) Notwithstanding any other borough statute or ordinance or the availability of funds, in lieu of payment of just compensation under this act, the governing body responsible for enacting the land use regulation may modify, remove, or not to apply the land use regulation or land use regulations to allow the owner to use the property for a use permitted at the time the owner acquired the property.

(F) A service district, city, borough, or other borough agency shall have discretion to use available funds to pay claims or to modify, remove, or not

apply a land use regulation or land use regulations pursuant to subsection

(4)(C) of this act. If a claim has not been paid within two years from the date on which it accrues, the owner shall be allowed to use the property as permitted at the time the owner acquired the property.

(5) Definitions – for purposes of this section:

(A) “Family member” shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

(B) “Land use regulation” shall include:

(i) Any statute or ordinance regulating the use of land or any interest therein;

(ii) Administrative rules and goals of the Matanuska-Susitna Borough, its commissions and departments or its political subdivisions;

(iii) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;

(iv) Service district regional framework plans, functional plans, planning goals and objectives; and

(v) Statutes and administrative rules regulating agricultural, farming, and forest practices.

(C) “Owner” is the present owner of the property, or any interest therein. “Public entity” shall include a service district, a city, a borough agency, or a borough.

(D) “Public Benefit” includes (but is not limited to) actions taken by government not involving actual physical occupation of property such as creation of open space, green belts, view scapes, or increased tax revenue.

(E) “Public use” includes traditional government property actually used by the public or the Borough for such things such as schools, streets, highways, trails, hospitals, public utilities, government buildings, parks, water reservoirs, flood control, safety facilities to include prisons and jails, bridges, railroads, airports, and terminals.

(6) The remedy created by this act is in addition to any other remedy under the Alaska or United States Constitutions, and is not intended to modify or replace any other remedy.

(7) If any portion or portions of this act are declared invalid by a court of competent jurisdiction, the remaining portions of this act shall remain in full force and effect.

Section 3. Effective date. This ordinance shall become effective the date of Assembly certification of an affirmative majority vote of the voters at the October 3, 2006, election.

Paid for by Mat-Su Taxpayers Association
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