

**I. CALL TO ORDER**

The special meeting of the Matanuska-Susitna Borough Assembly was held on February 16, 2012, at the Borough Assembly Chambers, 350 E. Dahlia Avenue, Palmer, Alaska. The meeting was called to order at 4 p.m. by Mayor Larry DeVilbiss for the purpose of discussing Ordinance Serial No. 11-022.

**II. ROLL CALL**

Assembly members present and establishing a quorum were:

- Mr. Warren Keogh, Assembly District No. 1
- Mr. Noel Woods, Assembly District No. 2
- Mr. Ronald Arvin, Assembly District No. 3 (*Deputy Mayor*)
- Mr. Steve Colligan, Assembly District No. 4
- Mr. Darcie K. Salmon, Assembly District No. 5
- Mr. Jim Colver, Assembly District No. 6
- Mr. Vern Halter, Assembly District No. 7

Staff in attendance were:

- Ms. Lonnie R. McKechnie, Borough Clerk
- Mr. John Moosey, Borough Manager
- Mr. Nicholas Spiropoulos, Borough Attorney
- Ms. Brenda J. Henry, Executive Assistant to the Borough Clerk

**III. APPROVAL OF AGENDA**

Mayor DeVilbiss inquired if there were any changes to the agenda.

GENERAL CONSENT: The agenda was approved as presented without objection.

**IV. PLEDGE OF ALLEGIANCE**

The pledge of allegiance was led by Mr. Dan Kennedy, a member of the Ethics Board.

**V. ITEMS OF BUSINESS**

- A. Ordinance Serial No. 11-022: AN ORDINANCE REPEALING MSB 2.70, CODE OF ETHICS; AND ADOPTING MSB 2.71, CODE OF ETHICS.
  - 1. IM No. 11-036

MOTION PENDING: Assemblymember Arvin moved to adopt Ordinance Serial No. 11-022.

Mr. Spiropoulos:

- spoke to structural items within the current draft that need to be addressed;
- noted that the new draft speaks to cases going to the Office of Administrative Hearings; so changes need to be made to that area of the code;
- related that there needs to be a statement of intent, which was originally included with his suggested amendments at a prior date;
- spoke to sections in the definitions, which needs to have two subparagraphs that need to be connected with a conjunction; and
- advised that he had drafted amendments that would remedy the issues, if that is something that the body chooses to do.

Mayor DeVilbiss queried if the body would like to set a timeframe for the meeting.

Assemblymember Colver:

- stated that he would like to adjourn by 6 p.m.;
- opined that the body is ready to move forward with amendments; and
- noted that he has another meeting that he would like to attend after 6 p.m.

Mayor DeVilbiss inquired if there was any objection to adjourning the meeting at 6 p.m.

There was no objection noted.

Assemblymember Arvin:

- noted that he had commented at a previous meeting that it may be possible to form a committee, other than the Ethics Board to review the ethics code revisions; and
- stated that he would like to know how the body feels about that possibility.

Assemblymember Colligan

- stated that he is in favor of the body moving forward on the legislation this evening; and
- opined that it should not be postponed or referred to yet another committee.

Assemblymember Keogh:

- agreed that the Assembly needs to take action this evening;
- noted that the revision has been going on for five years;
- spoke to the many changes that have been made to the legislation; and
- opined that the body could make amendments as they see fit this evening, including the suggestions provided by the Attorney.

**MOTION:** Assemblymember Halter moved a primary amendment to Ordinance Serial No. 11-022 to MSB 2.29.020, by inserting paragraph (4) to read: “duties as hearing officer regarding the ethics code under MSB 2.71;”

- to insert the following “whereas” clauses to the preamble to read:
  - “Whereas, under AS 29.20.010 and any other powers given to the Matanuska-Susitna Borough, the Assembly finds that it is in the interests of the Borough to rely solely upon this ordinance to guide the conduct of

those subject to the code so that all the applicable standard principles are well known and published in code; and

- Whereas, it is the intent of the Assembly to abrogate any and all common-law rules which may apply;” and
- MSB 2.71.005(4)(a) and (b), definition of “Special Consideration, treatment, or advantage”, by inserting the word “and” between subparagraphs (a) and (b) to read: “(4) includes meetings with or other forms of access to a municipal official if: (a) the person gaining access to the municipal official has the relationship described in subparagraphs (2) (a) through (b); **and** (b) the access allows that person to gain information, make a presentation, or receive other consideration, treatment, or advantage that results in an unfair advantage in applying for a borough contract or job that would normally be procured or filled by a competitive process.”

VOTE: The primary amendment passed without objection.

Assemblymember Arvin:

- spoke to difficulties of attempting to define conflict of interest and personal financial interest and what the threshold should be so that it is not subjective;
- stated that financial interest and its threshold was also not well defined;
- noted that the threshold for substantial financial interest is currently set at \$200; and
- stated that he has an amendment, which would remove the confusion as to personal interest and substantial financial interest.

MOTION: Assemblymember Arvin moved a primary amendment to Ordinance Serial No. 11-022, MSB 2.71, as follows:

- MSB 2.71.020(C), by striking the words “personal or” in the first sentence and inserting in its place “substantial” to read: “Scope of code. Any effort to benefit a substantial financial interest through official action is a violation of the public trust;
- MSB 2.71.020(D)(1), by striking the first words “personal or” to read: “Financial interest in the matter is insubstantial, or of a type that is possessed generally by the public or a large class of persons to which the municipal officer belongs;”
- MSB 2.71.070(A)(2)(c), by striking the words “personal or” and inserting in their place “substantial” to read: “use Borough time, property, equipment or other facilities to benefit substantial financial interests;”
- MSB 2.71.070(A)(2)(d), by striking the words “personal or” and inserting in its place “substantial” to read: “take or withhold official action in order to affect a matter in which the municipal officer has a substantial financial interest;” and
- MSB 2.71.070(C)(1), by striking the words “benefit” and inserting in its place “substantial financial interest” and by striking the words “personal financial interest” to read: “(1) A municipal officer or a member of the officer’s immediate family may not solicit, accept, or receive, directly or indirectly, a gift in any form, that is a substantial financial interest to the officer under

circumstances in which it could reasonably be inferred that the gift is intended to influence the performance of official duties, actions, or judgment, or constitute a benefit for past performance of official duties, actions, or judgment. Going away parties, parting gifts, social activities, and other events of this type are exempt.”

Assemblymember Colver spoke in support of the amendment.

Assemblymember Arvin:

- opined that “personal interest” has been the most difficult to define;
- spoke to the many ways that one could violate the code as it is currently written; and
- opined that there is language in the ethics code that has prevented people from applying for Borough boards and commissions.

Assemblymember Keogh:

- spoke to the Assembly requesting from the Ethics Board further definitions;
- noted that the Ethics Board had recommended retaining the current definition of “personal interest,” as it is important to keep the definition broad to protect the public interest; and
- stated that he is against amendment.

Discussion ensued regarding:

- that the definition of “personal interest” is unclear;
- keeping the ethics code understandable so that it is not violated;
- that the ethics code does not cover only elected officials, but employees and board members as well;
- that there are bound to be conflicts when the language is subjective;
- that the ethics code is not the only code of conduct that applies;
- that criminal misconduct may not always result in ethics violations; and
- that under the current definition of “personal interest,” participation in any organization other than the Borough could be construed as a violation of the ethics code.

VOTE: The primary amendment passed with Assemblymember Keogh opposed.

MOTION: Assemblymember Colver moved a primary amendment to Ordinance Serial No. 11-022, MSB 2.71.005(A), Financial Interest definition by inserting the words “in an amount over \$200,” to read: “Financial interest” means:

- an interest held by a person subject to this code or an immediate family member, which includes an involvement or ownership of an interest in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit in an amount over \$1,000; or
- (2) holding a position in a business, such as an officer, director, trustee, partner, employee, or the like, or holding a position of management.”

MOTION: Assemblymember Colligan moved a secondary amendment by striking “\$200” and inserting in its place “\$1,000.”

Assemblymember Colligan:

- stated that he is in favor of aligning Borough reporting requirements with those of the State; and
- opined that there should not be so many different standards for reporting.

Assemblymember Keogh queried if it is possible that the Borough have a more stringent reporting requirement than the State.

Mr. Spiropoulos stated that it is possible.

Assemblymember Keogh noted that public testimony has been in favor of a lower amount.

Assemblymember Colligan queried if that would mean that every municipal official would need to submit a conflict of interest report regarding anything over the amount of \$200.

Mr. Spiropoulos:

- stated that State law requires the Planning Commission, the Manager, the Assembly, the Mayor, and the School Board to file Alaska Public Office Commission (APOC) reports;
- related that the Borough has their own requirements that the Clerk, the Attorney, department heads, paid members of boards and commissions, and anyone who can obligate the Borough to expend funds, such as the Purchasing Officer, have to file Borough conflict of interest statement;
- noted that the conflict of interest reporting requirements are different for different items; and
- spoke to the items that may trigger reporting.

Discussion ensued regarding:

- how to define “substantial financial interest;”
- the current APOC and Borough conflict of interest reporting standards;
- whether or not the definition of “substantial financial interest” is too subjective;
- that a lower amount could have a larger impact on employees than it could on appointed or elected officials; and
- the possibility of being consistent with APOC reporting requirements.

VOTE: The secondary amendment passed with Assemblymembers Colver, Keogh, and Arvin opposed.

VOTE: The primary amendment passed with Assemblymember Keogh opposed.

MOTION: Assemblymember Colver moved a primary amendment to Ordinance Serial No. 11-022, MSB 2.71.070, by inserting a new subsection (K) to read: “Release of confidential information is a violation of the ethics code.”

Assemblymember Colver:

- stated that the respondent has the ability to waive confidentiality; and
- opined that should someone else breach confidentiality before probable cause, that the complaint should be dismissed.

Assemblymember Keogh:

- spoke in support of the amendment;
- opined that using the term “knowingly” as suggested by the Ethics Board, is problematic; and
- stated that he is glad that it was not included in the amendment.

Discussion ensued regarding:

- who has the ability to waive confidentiality and at what point in the process;
- that the amendment may not only apply to ethics complaints, but could also apply to internal confidential memorandums;
- in what context the Assembly wants to apply the releasing of confidential information;
- penalties and remedies for violating the ethics code;
- whether or not the amendment could impact public records requests;
- what information is strictly confidential, such as health information;
- types of information that could be classified by the Manager as confidential;
- what information can be considered confidential at the legislative level;
- that confidentiality can be a normal function of job duties; and
- the intent of the suggested language provided by the Ethics Board.

**MOTION:** Assemblymember Halter moved secondary amendment by striking “Release of confidential information is a violation of the ethics code” and inserting in its place “Release of confidential information during an ethics case is a violation of the ethics code until probable cause has been found and is moving forward to the hearing process.”

**VOTE:** The secondary amendment passed with Assemblymembers Colver and Colligan opposed.

Assemblymember Colver opined that the language was inserted into the wrong portion of the ethics code.

**MOTION:** Assemblymember Salmon moved to reconsider the secondary amendment.

**VOTE:** The motion passed without objection.

**VOTE:** The secondary amendment failed with Assemblymember Keogh in support.

**VOTE:** The primary amendment passed with Assemblymembers Salmon, Halter and Arvin opposed.

MOTION: Assemblymember Colver moved a primary amendment to Ordinance Serial No. 11-022, MSB 2.71.130, by inserting a new subsection (F) to read: “(F) Prior to a determination of probable cause, if confidential provisions of this chapter are violated by anyone other than the respondent, the complaint shall be dismissed with prejudice.

VOTE: The primary amendment passed without objection.

*(The meeting recessed at 5:29 p.m. and reconvened at 5:34 p.m.)*

MOTION: Assemblymember Colver moved a primary amendment to Ordinance Serial No. 11-022, MSB 2.71.040(F), by striking subsection (F) in its entirety.

VOTE: The primary amendment passed with Assemblymembers Woods and Keogh opposed.

MOTION: Assemblymember Halter moved a primary amendment to Ordinance Serial No. 11-022, MSB 2.71.070(C)(2), by striking “\$50” and inserting in its place “\$150,” to read: “A municipal official subject to this code shall notify the official’s designated supervisor of a gift with a value in excess of \$150, including the name of the giver and a description of the gift and its approximate value, within 30 days after the date of its receipt, if the municipal official may take or withhold (or took or withheld) official action that affects the giver.”

VOTE: The primary amendment passed without objection.

MOTION: Assemblymember Keogh moved a primary amendment to Ordinance Serial No. 11-022, MSB 2.71.005, Definitions, to insert “conflict of interest” to read: “Conflict of interest occurs when you have a personal or financial interest in any matter which you participate or have job responsibilities as a municipal official.”

VOTE: The primary amendment failed with Assemblymember Keogh in support.

MOTION: Assemblymember Keogh moved a primary amendment to Ordinance Serial No. 11-022, MSB 2.71.170, by inserting a new subsection (B) to read: “to assist in determining probable cause the hearing officer may request information from third parties. Any information received that is the subject of such request shall be provided to the complainant and the respondent.”

Assemblymember Arvin:

- opined that the ethics code rewrite is largely a legal issue;
- spoke to the process for civil complaints filed with the court; and
- spoke in opposition to the primary amendment.

Discussion ensued regarding:

- the probable cause process currently in code;
- the process for civil complaints with the court; and
- the probable cause process for criminal complaints.

VOTE: The primary amendment failed with Assemblymembers Keogh and Halter in support.

Assemblymember Keogh:

- opined that the legislation is greatly flawed;
- acknowledged that there is a need to update the ethics code;
- noted he questions if what is being proposed is better than what is currently in place;
- spoke to concerns that the public who have provided testimony would not be in support of the legislation as amended; and
- stated that he will be voting in opposition to the legislation.

Assemblymember Colver:

- spoke in support of the legislation;
- noted that the body has taken a lot of time deliberating the topics of concern;
- spoke to there being substantial changes suggested by the Ethics Board;
- acknowledged that the public has stated that they like serving on the Ethics Board;
- spoke to the changes made in order to keep the cost of ethics complaints lower than they have been in the past;
- opined that a former ethics case had gotten quite costly and out of control;
- noted that there is always the opportunity come back and address the ethics code should issues arise at a later date; and
- noted that the legislation may not be perfect but that it is at least more up-to-date.

Assemblymember Salmon noted his agreement with Assemblymember Colver.

Assemblymember Halter:

- opined that procedurally, the proposed processes are superior to what was in place before; and
- noted that the standards could be debated endlessly.

Assemblymember Arvin:

- opined that it may not be a perfect document, but that this has not been an easy issue to resolve;
- spoke to the length of time involved to get this far; and
- stated that he is ready to vote on the legislation.

VOTE: The main motion passed as amended with Assemblymember Keogh opposed.

## VI. AUDIENCE PARTICIPATION

The following persons spoke to concerns with the amendments that were made to Ordinance Serial No. 11-022: Ms. Charissa Cherry and Ms. Patricia Rosnel.

The following person spoke in support of Ordinance Serial No. 11-022 as amended: Mr. Dan Kennedy, a member of the Ethics Board.

## VII. MAYOR, ASSEMBLY, AND STAFF COMMENTS

Mayor DeVilbiss opined that when the legislation is codified, that it will be more easily understood.

## VIII. ADJOURNMENT

The meeting adjourned at 6:11 p.m.

  
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LARRY DEVILBISS, Borough Mayor

ATTEST:

  
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LONNIE R. McKECHNIE, CMC, Borough Clerk

Minutes Approved: 03/06/12