

I. CALL TO ORDER

The special meeting of the Matanuska-Susitna Borough Assembly was held on August 16, 2011, at the Borough Assembly Chambers, 350 E. Dahlia Avenue, Palmer, Alaska. The meeting was called to order at 4 p.m. by Mayor DeVilbiss for the purpose of discussing Ordinance Serial Nos. 11-022 and 11-060.

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*) (*attended telephonically*)
Mr. Mark Ewing, Assembly District No. 4 (*attended telephonically*)
Ms. Cindy L. Bettine, Assembly District No. 5 (*entered at 4:06 p.m.*)
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. Tammy Clayton, Finance Director

III. APPROVAL OF AGENDA

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

MOTION: Assemblymember Keogh moved to amend the agenda to take up the executive session as the first item of business.

Assemblymember Keogh opined that the executive session would be brief.

VOTE: The motion failed with Assemblymembers Woods and Keogh in support.

IV. PLEDGE OF ALLEGIANCE

The pledge of allegiance was led by Ms. Helen Munoz, a member of the audience.

V. ITEMS OF BUSINESS

A. ETHICS CODE AMENDMENTS (*Ordinance Serial Nos. 11-022 and 11-060*)

Assemblymember Keogh requested that the Clerk provide direction as to how the ethics legislation could be dealt with at the regular meeting at 6 p.m.

Ms. McKechnie:

- advised that there is a motion on the floor for Ordinance Serial No. 11-060, which is the legislation the Assembly requested the Attorney draft;
- stated that there is no motion on the floor for Ordinance Serial No. 11-022;
- noted that the Assembly had requested that both pieces come before the body at the same time;
- further added that the Assembly had decided to make amendments to Ordinance Serial No. 11-022;
- stated that should the Assembly still want to move forward in that manner, that the least confusing way to take action on Ordinance Serial No. 11-060, would be to vote it down immediately following the public hearing and then move to adopt Ordinance Serial No. 11-022; and
- noted that in this way, there would only be one piece of legislation before the body.

Assemblymember Halter spoke to concerns with how the body would proceed.

Discussion ensued regarding:

- the Assembly's decision to move forward with only one piece of legislation;
- which piece of legislation the Assembly would like to work with;
- how the Assembly could identify where the amendments are within the legislation;
- the fact that the Board of Ethics had made so many changes to the Ethics Code, that they decided to repeal MSB 2.70 and enact MSB 2.71;
- the possibility of conducting an additional public hearing;
- the desire of the body to ensure that the public has copies of the proposed amendments;
- the format of the amendments the Assembly requested the Attorney draft;
- the desire to retain the Ethics Board name as it is;
- recommendations that have been provided to the Assembly by the former chair of the Ethics Board;
- the possibility of an attorney from the Office of Administrative Hearings acting as a hearing officer in ethics cases;
- the importance of determining probable cause and how it impacts ethics complaints;
- the possibility of having an attorney acting as a hearing officer to make the determination of probable cause;
- the possibility of creating a pool of ethics members to choose from;
- what role the chair would play in ethics complaints;
- the fact that the role of the chair and the role of the hearing officer would be separate;
- that the five member board would be acting in a capacity similar to a jury;
- concerns that members would be changed from hearing to hearing with a pool;
- the misconception of the public that the Attorney brought forward Ordinance Serial No. 11-060 on his own;
- the possibility of enacting a filing fee for ethics complaints;
- how ethics complaints can quickly become political and the possibility of eliminating that;

- the number of ethics complaints within the last six years;
- the result of those ethics complaints;
- the cost of those ethics complaints to the tax payers and the respondent;
- how ethics complaints are currently screened;
- how probable cause is currently determined;
- what occurs after probable cause has been determined;
- the Alaska State Executive Branch Ethics Code;
- the fact that the State has no board of ethics and that the Attorney General investigates ethics complaints;
- how hearing officers are selected within the Office of Administrative Hearings;
- how the state of Alaska selects hearing officers for their administrative hearings;
- the desire of the body to ensure that costs for ethics cases are kept down;
- the possibility of creating an attorney resource panel to act in a pro bono capacity to assist the Board of Ethics;
- the possibility of handling ethics complaints as the State does;
- the desire of the body to ensure the ethics process does not become convoluted;
- the desire for someone experienced in law to determine probable cause;
- the need to ensure confidentiality and integrity in the ethics complaint process;
- how long confidentiality should be maintained;
- the desire of the body to ensure a balanced process;
- how ethics training would be provided to all those covered by the ethics code;
- the need to ensure that ethics hearings are conducted properly so that they are not subject to future challenges;
- the impracticality of training Ethics Board members to act in a judicial capacity;
- how substantial financial interest is determined;
- that there should be a standard by which substantial financial interest can be measured;
- that the Board should not be able to bring forward ethics complaints on their own;
- the suggested increase of the value of a gift amount being raised;
- how gifts could be perceived to influence a decision;
- the prohibition of elected officials and former employees from coming back to the Borough for employment;
- limiting the time for filing for ethics complaints from five years to one year;
- the need for the Attorney to be able to provide advice regarding conflicts of interest during Assembly meetings;
- the fact that the Ethics Board cannot override advice of the Attorney when said advice is provided to the Assembly; and
- the possibility of defeating the ordinance and bringing forward alternative legislation.

Assemblymember Keogh noted that there are many people in attendance who would like to speak under audience participation regarding the ethics amendments.

Mayor DeVilbiss stated that 10 minutes could be set aside at the end of the meeting for audience participation.

Assemblymember Bettine opined that 10 minutes would not be sufficient.

MOTION: Assemblymember Bettine moved to suspend the rules and to conduct audience participation prior to the body entering executive session.

VOTE: The motion failed with Assemblymembers Keogh, Bettine, and Woods in support (requires five votes).

B. EXECUTIVE SESSION *(for subjects that tend to prejudice the reputation and character of any person provided the person may request a public discussion.)*

1. EVALUATION OF THE BOROUGH MANAGER

MOTION: Assemblymember Woods moved to enter into executive session for subjects that tend to prejudice the reputation and character of any person provided the person may request a public discussion. In particular, to conduct an evaluation of the Borough Manager. Those present during executive session were the Mayor, members of the Assembly, and the Borough Manager.

Mayor DeVilbiss queried if Mr. Moosey would like the evaluation conducted in executive session.

Mr. Moosey affirmed the query.

VOTE: The motion passed without objection and the Assembly entered into executive session at 5:14 p.m.

MOTION: Assemblymember Woods moved to exit executive session.

VOTE: The motion passed without objection and the Assembly exited executive session at 5:48 p.m.

VI. AUDIENCE PARTICIPATION

The following person spoke to his support of the Borough Manager: Mr. Graydon Murphy, Executive Director of Valley Community for Recycling Solutions.

The following person spoke in support of citizen boards and overall concerns with revisions to the ethics code: Mr. Bob Vroman, former member of the Assembly.

The following person spoke to his disappointment that the Ethics Board was not included in the ethics code work session with the Assembly, to proposed amendments he would like to provide for Assembly review, and to concerns that the Assembly is misconstruing ethics as a political matter: Mr. Jim Sykes, former Ethics Board Chair.

The following person spoke to concerns with comments that only business people should be on the Board of Ethics, concerns with doing away with the Board of Ethics and replacing them with an officer with the Office of Administrative Hearings, the difficulty of ensuring a full Board of Ethics, and concerns with some of the amendments proposed by the Assembly: Ms. Charissa Cherry.

There being no others present who wished to testify Mayor DeVilbiss closed audience participation.

Mayor DeVilbiss inquired of the Assembly if there was any objection to continuing the evaluation of the Manager until after the regular meeting.

There was no objection noted.

VII. MAYOR, ASSEMBLY, AND STAFF COMMENTS

(There were no comments provided.)

VIII. ADJOURNMENT

The special meeting recessed at 6 p.m.


LARRY DEVILBISS, Borough Mayor

ATTEST:


LONNIE R. McKECHNIE, CMC, Borough Clerk

Minutes approved: 09/20/11