

MATANUSKA-SUSITNA BOROUGH

350 E. Dahlia Ave., Palmer, Alaska 99645

CHAIRPERSON

Daniel Bowen

VICE CHAIR

Tayva Taylor



BOARD MEMBERS

Vicki Randolph

ETHICS BOARD AGENDA ASSEMBLY CHAMBERS 350 EAST DAHLIA AVENUE, PALMER

SPECIAL MEETING

5 P.M. WEDNESDAY, SEPTEMBER 18, 2019

I. CALL TO ORDER; ROLL CALL

II. APPROVAL OF AGENDA

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF MINUTES

A. June 12, 2019, special meeting minutes

V. AUDIENCE PARTICIPATION

VI. ITEMS OF BUSINESS

A. Review Of Assembly Ordinance Serial No. 19-088, An Ordinance Amending MSB 2.71.090 And MSB 3.08.230 To Prohibit Elected Officials From Employment, Holding Contracts, Or Having Any Interest In Contracts With The Borough While In Office And For Three Years After Leaving Office Unless The Assembly Waives The Restriction In Advance.

VII. BOARD COMMENTS

VIII. ADJOURNMENT

I. CALL TO ORDER; ROLL CALL

A meeting of the Matanuska-Susitna Borough Ethics Board was called to order at 1 P.m. Acting Chair Daniel Bowen for the purpose of reviewing the request for an advisory opinion 19-01.

Board members present and establishing a quorum were:

Mr. Daniel Bowen
Ms. Tayva Taylor
Ms. Vicki Randolph

Staff in attendance were:

Ms. Brenda J. Henry, CMC, Assistant Borough Clerk

II. APPROVAL OF AGENDA

Acting Chair Bowen queried if there were any changes to the agenda.

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

III. PLEDGE OF ALLEGIANCE

The pledge of allegiance was led by Mr. Daniel Bowen, Acting Chair of the Board of Ethics.

IV. APPROVAL OF MINUTES

There were no minutes to approve.

V. ITEMS OF BUSINESS

A. Elect Chair

Ms. Randolph nominated Mr. Daniel Bowen as Chair.

VOTE: The nomination passed without objection.

B. Elect Vice Chair

Mr. Daniel Bowen nominated Ms. Tayva Taylor as Vice Chair.

VOTE: The nomination passed without objection.

C. Request for Advisory Opinion – Case No. 19-01, Mr. Daniel Tucker, Requestor

Chair Bowen called Mr. Tucker to the podium to present his request for an advisory opinion.

Mr. Tucker provided a history of his position as a volunteer with Central Mat-Su Fire Service and his work as an employee of 1-800-BoardUp.

Ms. Taylor asked questions of Mr. Tucker.

Ms. Randolph asked questions of Mr. Tucker.

Ms. Taylor asked questions of Mr. Tucker.

Ms. Randolph asked questions of Mr. Tucker.

Chair Bowen queried if there were any additional questions for Mr. Tucker.

There were no questions noted.

Chair Bowen noted that the Clerk has a draft opinion prepared for the Board and requested that she speak to it.

Ms. Henry advised that a number of years ago, previous Ethics Boards had requested that Ms. Henry prepare a draft for the Board to work from so that the process is more efficient. Noted that the Board has not seen the draft prior to it being distributed today. Stated that it is always based in Borough code and that it belongs to the Ethics Board to amend or change in any way that they see fit.

Chair Bowen requested Ms. Henry read the draft opinion into the record.

Ms. Henry read the draft into the record.

Chair Bowen queried if there were any changes to the draft.

MOTION: Ms. Taylor moved to insert the following language to the Summary of Opinion:
Mr. Tucker agrees to take proactive steps to recuse himself in order to avoid any conflict of interest between his volunteer position and his employment, should one arise.

VOTE: The motion passed unanimously.

VI. AUDIENCE PARTICIPATION

There was no one present who wished to testify.

VII. BOARD COMMENTS

Ms. Randolph thanked Mr. Tucker for bringing his question to the Ethics Board. Commended him on doing the right thing.

Chair Bowen thanked Mr. Tucker for his many years of service on the Central Mat-Su Fire Service Area.

VIII. ADJOURNMENT

The meeting adjourned at 1:47 p.m.

DOCUMENT TRACKING REPORT

Document: AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 2.71.090 AND MSB 3.08.230 TO PROHIBIT ELECTED OFFICIALS FROM EMPLOYMENT, HOLDING CONTRACTS, OR HAVING ANY INTEREST IN CONTRACTS WITH THE BOROUGH WHILE IN OFFICE AND FOR THREE YEARS AFTER LEAVING OFFICE UNLESS THE ASSEMBLY WAIVES THE RESTRICTION IN ADVANCE.

IM 19-118

DATE	STATUS
6/11/19	Referred to Ethics Board
	+ due back by 10-15-19






SUBJECT: AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 2.71.090 and MSB 3.08.230 TO PROHIBIT ELECTED OFFICIALS FROM EMPLOYMENT, HOLDING CONTRACTS, OR HAVING ANY INTEREST IN CONTRACTS WITH THE BOROUGH WHILE IN OFFICE AND FOR THREE YEARS AFTER LEAVING OFFICE UNLESS THE ASSEMBLY WAIVES THE RESTRICTION IN ADVANCE.

AGENDA OF: June 11, 2019

ASSEMBLY ACTION:

MANAGER RECOMMENDATION: Introduce and set for public hearing.

APPROVED BY JOHN MOOSEY, BOROUGH MANAGER: _____

Route To:	Department/Individual	Initials	Remarks
	Originator	NS	For Assemblymember Sumner
	Purchasing Officer		
	Finance Director		
	Borough Attorney		
	Borough Clerk		6/4/19 

ATTACHMENT (S): Fiscal Note: YES ___ NO X
 Ordinance Serial No. 19-088 (5 pp)

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

Current Borough Code does not prohibit the Mayor or Assemblymembers from doing business with the Borough while the member is in office. A restriction currently applies in MSB 2.71.090 that any municipal official who leaves borough service may not, for one year after leaving borough service, represent, advise, or assist the borough for compensation in any manner. Under MSB 2.71.090, the Borough Assembly has the power to approve such a proposal in its sole and absolute discretion.

The proposed ordinance here would amend MSB 2.71.090 to make two changes and also amend the purchasing code at MSB 3.08.230. These changes are intended to promote the utmost transparency by the elected officials of the Borough while in office. Also, since the elected officials of the Borough deal with the top management officials, this ordinance ensures that no undue influence or favoritism for financial gain occurs for a full term's length of time after they leave office.

First, the proposed amendment would prohibit an elected official from being employed by, receiving any compensation, and/or holding any contractual relationship with the Matanuska-Susitna Borough while in office, apart from that applicable to performing their official duties (i.e. salary, benefits, expense reimbursements). This proposed ordinance is written very broadly and applies to the elected official themselves, an entity employing an elected official, or an entity in which the elected official exercises any control, management, or decision making.

Not covered by the prohibition are entities in which the elected official holds an interest, but has no decision making authority. The ordinance is written in this manner so that stock or mutual funds held in a corporation by an elected official would not trigger the restriction unless the interest is so large that the elected official has bona fide decision making authority for the entity. This restriction comports with other parts of the ethics code so that only those interests which are direct and substantial are addressed. Insubstantial interests or interests shared by the general public do not operate as a restriction.

The ability of the Borough Assembly to waive the prohibition is preserved and clarified. An elected official or entity prohibited may seek a waiver in advance of any contemplated action.

The second change to MSB 2.71.090 changes the time for which the prohibition applies after the elected official leaves office. Instead of the current one year prohibition, the proposal here would extend the prohibition to three years. This time period equals the length of a full term of the elected officials of the Borough. Again, the ability of the Borough Assembly to waive the prohibition is preserved and clarified.

As it applies to the purchasing code, the proposal here would amend MSB 3.08.230 to incorporate the restrictions of MSB 2.71.090 into the purchasing code. The purchasing code is amended to clarify that bids subject to the restrictions of MSB 2.71.090 are ineligible for consideration. The code is addressed in this manner to put the onus on the bidder to perform their due diligence before they submit. In the event a bidder submits a bid in violation of MSB 2.71.090, the terms, conditions, or costs will not be

considered and the bid will be rejected automatically.

The purchasing code is further amended to clarify that there is no right to administrative protest or administrative appeal if a bidder is rejected under this section. This restriction is present to prevent bidders who are subject to MSB 2.71.090 from trying to make their own administrative interpretations and arguments in the hopes of getting a bid approved without bringing it to the attention of the Assembly in advance. Even worse would be a situation where the Assembly rejects a waiver, a bidder submits a bid anyway, and then tries to protest and appeal to receive the award.

As always, if an elected official has concerns about whether they are subject to MSB 2.71.090, they may obtain an opinion from the Borough Attorney's Office or from the Ethics Board. See MSB 2.71.120.

Finally, Section 4 of the ordinance here clearly indicates that this ordinance is to apply prospectively to current and future Assemblymembers. Since this ordinance regulates the conduct of individuals and organizations, Section 4 satisfies any due process concerns. The ordinance here does not purport to regulate actions taken in the past, and does not change the rules as they apply to persons who are no longer in elected office on the day this ordinance is adopted.

RECOMMENDATION OF ADMINISTRATION: Adoption of Legislation.

CODE ORDINANCE

Sponsored by: Assemblymember Sumner

Introduced:

Public Hearing:

Action:

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 19-088**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 2.71.090 and MSB 3.08.230 TO PROHIBIT ELECTED OFFICIALS FROM EMPLOYMENT, HOLDING CONTRACTS, OR HAVING ANY INTEREST IN CONTRACTS WITH THE BOROUGH WHILE IN OFFICE AND FOR THREE YEARS AFTER LEAVING OFFICE UNLESS THE ASSEMBLY WAIVES THE RESTRICTION IN ADVANCE.

WHEREAS, the intent and rationale of this ordinance are in the accompanying Informational Memorandum No. 19-118.

BE IT ENACTED:

Section 1. Classification. Sections 2 and 3 of this ordinance are of a general and permanent nature and shall become a part of the Borough Code. All other sections are non-code.

Section 2. Amendment of section. MSB 2.71.090 is hereby amended to read as follows:

2.71.090 EMPLOYMENT OF MUNICIPAL OFFICIALS.

(A) An elected official of the borough shall not be eligible for employment with the borough while serving as an elected official or within [ONE YEAR] three years after leaving office.

(B) Except for salary, benefits, and expense reimbursement applicable to each elected official in the course of performing their duties of elected office, an elected official of the borough, an entity employing an elected official, or an entity in which the elected official exercises any control, management, or operational

decision making authority shall not be eligible to be employed, represent, advise, or assist the borough for compensation in any manner, or have any interest in a contract to provide services or supplies to the borough while the elected official is in office or within three years after leaving office. The borough assembly, in its sole and absolute discretion, may waive application of this section in advance of any bid, response, or offer being placed.

[(B)] (C) A school board member shall not be eligible for employment with the borough or school district while serving as an elected school board member or within one year after leaving office.

[(C)] (D) A municipal official who leaves borough service may not, for one year after leaving borough service, represent, advise or assist a person for compensation regarding the following:

- (1) a matter that was under consideration by the department served by that municipal official; or
- (2) a matter in which the official participated personally and substantially through the exercise of official action. For the purposes of this subsection, "matter" includes a case, proceeding, application, contract or determination, but does not include the proposal or consideration of legislative measures; or the proposal, consideration or adoption of administrative regulations or code.

(3) This restriction on employment or re-employment after leaving municipal service does not prohibit the municipality from contracting with a former municipal official to provide service on a matter on behalf of the municipality.

(4) The assembly may waive application of this restriction upon determination that a proposed action by a former municipal official is not adverse to the public interest. The waiver shall be by formal action and a copy shall be provided to the board of ethics.

[(D)] **(E)** A municipal official other than an elected official who leaves borough service may not, for one year after leaving borough service, represent, advise, or assist the borough for compensation in any manner unless the borough assembly, in its sole and absolute discretion, approves the compensation. This section does not apply where the official is re-hired, elected, or appointed into a position within the borough.

Section 3. Amendment of Section. MSB 3.08.230 is hereby amended to read as follows:

3.08.230 AWARD ONLY TO QUALIFIED RESPONSIVE AND RESPONSIBLE BIDDER; **INELIGIBLE BIDDERS**.

(A) A contract award under this chapter shall be made only to a qualified, responsive and responsible bidder. The purchasing officer shall determine whether a bidder is

qualified, responsive and responsible based on:

- (1) the skill and experience demonstrated by the bidder in performing contracts of a similar nature;
- (2) the bidder's record of honesty and integrity;
- (3) the bidder's capacity to perform in terms of facilities, personnel and financing;
- (4) whether the bidder has been debarred or suspended under MSB 3.08.235;
- (5) at all times the best interests of the borough shall be recognized in awarding bids.

(B) Bidders subject to the restrictions of MSB 2.71.090 are ineligible to be considered unless the provisions of MSB 2.71.090 are waived by Assembly action in advance of the bid being placed. Notwithstanding all other provisions of Borough code, a bidder rejected under this section may not file an administrative protest or administrative appeal.

Section 4. Application. This ordinance applies to all officials in office as of the date of its adoption and prospectively. Nothing in this ordinance is to apply retroactively.

Section 5. Effective date. This ordinance shall take effect upon adoption.

ADOPTED by the Matanuska-Susitna Borough Assembly this - day of -, 2019.

VERN HALTER, Borough Mayor

ATTEST:

LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)