

**Minutes of Public Hearing
Held on August 28, 2012**

Mayor Jeremy Maxand called the public hearing to order at 6:00 p.m., August 28, 2012, in the Assembly Chambers. Assembly Members Privett, McConachie, McCloskey and Stokes were present. Assembly Member Jack was absent. Borough Manager Timothy Rooney and Borough Clerk Kim Flores were also in attendance.

Public Hearing Item:

PROPOSED ORDINANCE: AN ORDINANCE OF THE ASSEMBLY OF THE CITY AND BOROUGH OF WRANGELL, ALASKA, AMENDING TITLE 3, CHAPTER 3.32 OF THE WRANGELL MUNICIPAL CODE RELATING TO THE WRANGELL MEDICAL CENTER AND LONG-TERM CARE FACILITY BOARD
(second reading)

Written Testimony – written documentation was included in the agenda packet.

Oral Testimony –

Janet Buness, 113 Reed Street, referenced page 6 – Personal Property, of the Proposed Ordinance and asked if a long term care resident were to purchase a personal item and place it in their room, or if she were to keep a personal item in her office, would those items now belong to the City? Her concern was that the Proposed Ordinance did not define “personal property”.

Buness also referenced page 8 – Personnel Policy, of the Proposed Ordinance and asked what the intent of this section was. She said that her concern was that the Borough Personnel Policy stated that City workers worked an eight (8) hour day and that some hospital employees often work (ten) 10 to (twelve) 12 hour days. She also said that hospital employees are excluded from the state retirement program and that City employees are not. She expressed that it appeared that hospital employees were being penalized for past events of the hospital administrator and the past hospital board actions.

Alice Rooney, 510 Wrangell Avenue, written testimony submitted and inserted into the minutes as follows:

Public Testimony given August 28, 2012

I have been employed part-time by Wrangell Medical Center as a social worker since 2008 and provided the facility with social work services as an employee of AICS for some 18 years prior to that.

Alice Rooney, PO Box 737, Wrangell

**Title 3, Section 3.32.030
Hospital Board General Powers and Duties**

G. C. The board shall determine, charge and collect such fees and charges for the services rendered and furnished by the hospital. as it shall deem advisable. The rates as determined by the board shall be in full compliance with federal and state laws. The rates as determined by the board Said rates, however, shall be subject to modification by the borough assembly, which may change the rates at any time. No rates, however, will be changed by the borough assembly without the board being advised of a proposal to review such rates and until the board has an opportunity to be present and be heard with respect thereto.

Comments about this subsection:

Medicare and Medicaid funds provide the bulk of revenue for Wrangell Medical Center. It makes me extremely nervous to contemplate the borough assembly modifying hospital rates without a process that ensures maximum input into meeting the complex network of regulatory requirements that govern rate-setting actions. Why would you not value input from the hospital board regarding any proposed modification of rates?

There is a risk of significant financial loss to the facility without a recognition that, in practice, rates are not controlled by local desires, but are controlled by the need to comply with Medicaid and Medicare regulations. This ordinance needs to ensure that future borough assemblypersons and hospital board members will work together to not jeopardize the hospital's primary funding sources.

I urge you to strengthen this section by taking two actions:

1. Leave in the following sentence proposed for deletion:
No rates, however, will be changed by the borough assembly without the board being advised of a proposal to review such rates and until the board has an opportunity to be present and be heard with respect thereto.
2. Add one additional sentence to ensure that we don't run afoul of our primary funding sources:
"It is the intention of this provision that the rates set under this section will continue to qualify services for Medicaid or Medicare reimbursement or partial Medicaid or Medicare reimbursement."

Steven Ruks, 11 Mile Zimovia Highway, expressed that current Ordinance in place would have prevented the events that occurred with the hospital board; City didn't have enough oversight over the hospital board; asked how much more would the Proposed Ordinance mean if the hospital board wasn't being held accountable; concerned that the Proposed Ordinance section 3.32.020 – Purchasing, \$25,000 spending limit was not realistic; asked if

the assembly would be approving all purchases by the hospital over \$25,000; concerned that the Proposed Ordinance section on Consulting, limit of \$5,000 was too low.

Woody Wilson, 1003 Case Avenue, written testimony submitted and inserted into the minutes as follows:

Honorable Mayor Maxand and Borough Assembly Members:

Regarding the proposed action of the Borough Assembly to amend Title 3, Chapter 3.32 of The Wrangell Municipal Code I make the following comments and suggestions.

Section 3.32.020 A. Facility Ownership and Maintenance

First of all I would complement the Assembly for providing clarification on how facility modifications and proposed construction is to be managed for the WMC. Different municipalities handle and manage construction of facilities in different ways. It is only prudent that this is clear for the hospital. I would hope that your intent is to generalize these clarifications throughout the ordinances.

Section 3.32.020 B. Disposal of Property

I would submit that to require the hospital to follow the current ordinance for property disposal may not be in the best interest of the Borough. The ordinance was created in consideration of rolling stock, street equipment, and other such Borough purchases that may have some value and interest by the general public of Wrangell. The hospital may from time to time have X-ray equipment and other specialized equipment that will not be of interest to the general public of Wrangell. With today's advantages of electronic sales through E bay and other online sale opportunities this ordinance could perhaps be revised to allow for this means of disposal of all surplus property. I would encourage you to review this policy in ways that would allow this type of disposal of surplus property.

**Section 3.32.030 and Throughout the Remaining Document
Borough Attorney Requirement Wasteful and Unnecessary**

I noticed numerous times throughout this proposed ordinance where it is required that actions of the WMC "must" be reviewed by both the borough manager and the borough attorney. Having been a superintendent of schools I recognize the expense of such a requirement. It is my belief that your borough manager should be given the option of employing assistance of the attorney at his/her discretion. To require inclusion of the attorney each and every time, as this ordinance does, would be wasteful and unnecessarily. Your borough manager should be given this option.

I would doubt the borough attorney has been allowed to make a suggestion like this one since it would be self-serving guarantees business. Therefore it must be an oversight.

Please consider its removal of the numerous times where the borough attorney is required, by ordinance, to be inserted in these deliberations and replace it as an option for the borough manager to request attorney assistance as necessary.

Section 3.32.030 C. Grants and Monetary Solicitations

My concern in this section centers around the definition of a grants or solicitation of funds. The WMC solicits funds from the federal and state governments on an ongoing basis through many of its entitlement programs. To require reporting of each of these solicitations in writing to the Borough Manager would be, in my opinion, unnecessary and a burden on both administrative systems. Clarification of this section seems to be in order.

Section 3.32.030 D. Personnel Policies

I understand the Assembly's concerns over the personnel policies of the WMC. There are some questions that I believe need to be answered prior to requiring that the personnel policies of the WMC be ".....consistent with the personnel rules and regulations of the borough, and shall be subject to modification by the assembly." Is it the

intent of the Assembly that employees of the WMC are to become members of the Alaska Personnel Retirement System? To be consistent with the Borough's "personnel rules and regulations" this would have to become reality. Regardless of whether this is a move in the right direction or not the topic should be thoroughly discussed and deliberated upon before taking such action.

Also, the WMC has different classes of employees than are currently under the Borough's Personnel Policies. Considerable investigation of such an overarching requirement should be completed before making such a move in ordinance.

I do not believe the Assembly intends to offend the employees of the WMC, but to make such a grand change in the personnel oversight without specifically discussing the reasons for the changes and the results or outcomes of such changes with the personnel who will be affected seems on its face to be dictatorial and inconsiderate.

Concerns of the Assembly might be alleviated with such an ordinance but the unintended consequences of such a change could become very expensive and cause unnecessary disruption to the WMC employees and what they have been accustomed to expect.

I would recommend an organized discussion with all classes of WMC employees by the Borough Manager prior to any change of this nature in personnel policy. Their input and concerns should be addressed prior to action by this ordinance.

Section 3.32.030 E. Borough Attorney Required Approval

This section discusses the contract of the WMC COO/CEO. I believe there is an error in the verbiage of this section, "No administrator may be employed without a contract approved by the borough manger and the borough attorney." The borough attorney should never have administrative authority over a matter such as this. It is appropriate for the borough manager or the Borough Assembly, if the Assembly so chose, to have approval authority. The borough attorney, on the other hand, is not an elected official nor a direct employee of the Assembly. Again, in my opinion, it is inappropriate for the Assembly to become subservient to their attorney's approval.

Furthermore, if the contract from one administrator to the next is for all practical purposes the same it may be unnecessary and cause additional expense to require attorney involvement. In my opinion this should again be at the discretion of the borough manager.

Section 3.32.030 J. Rules and Regulations of WMC

I am sure this section is well intended but I do not believe the Assembly realizes the volume of rules and regulations that will be subject to review and approval. Also as I have previously mentioned some of the personnel classes are different from those found in the city and to change what the WMC employees currently have without their input and consideration is inappropriate. I believe this section, if it is to be retained, needs to have more work and input from WMC employees about what rules and regulations are to be considered or changed.

3.32.030 K. Budget, Audit, Expenditures and Assembly Approval

I understand the concerns of the Assembly but believe this section of the ordinance as written is awkward in the least and poorly written. The language needs to be amended with input from the current acting CEO and former CFO of WMC. I believe clarifications can be made that will satisfy the Assembly and be workable for WMC daily operations. Please consider input and revision of this section.

Section 3.32.040 A. Borough Manager's Oversight of WMC CEO

Again, I understand where the Assembly is on this matter. The language of this section would, however, imply that the CEO is a Wrangell Department Head. There may be unintended consequences of this language. Does this mean the CEO is an employee of the Borough? What is the direct line authority of this action in the staff personnel chart? Is the CEO entitled to PERS and all other benefits of borough employees? Does this action infer that the school superintendent is also to become a department head? What does this section mean in relation to the other employees of WMC? Perhaps the Assembly has had all these and other questions answered to their

satisfaction but I have not seen this reported. Again, proceeding with caution is recommended because of possible unintended consequences and the need for more answers.

Section 3.32.040 B (5) Hire and Discharge of Employees

This section again speaks to personnel rules and regulations of the Borough. I would suggest that this could become an impediment to the employment or discharge of employees because of the differences in the classes of employees the WMC deals with. There may be codes of ethics and other documents of importance that are not found in law, regulation or ordinance but add significant structure and guidelines to the performance and behavior of certain employees. Having left these professional ethics out of this section and again requiring borough code to be followed, which does not include these professional ethics statements, could become an impediment management of personnel. The intention again may be good but the result could have unfortunate consequences. More work needs to be completed on this section if it is to be included.

Section 3.32.040 B (6) Needs Clarification or Definition

This section includes a group of people who are unidentified in definition or explanation. The paragraph begins with, "To work with professional staff and with those concerned with the rendering of professional services at the hospital.....". Who are "those concerned with the rendering of professional services?" This section needs to be explained since it is new and has no previous history through which to explain it meaning. Clarity is needed.

Section 3.32.090 Hospital Board Liaison, Meetings Ordinance and Alaska Statute Contradict Proposed Ordinance

It is my belief that much more communication is necessary for trust to be regained between board, the Assembly, and the community. This being said I welcome a WMC Board Liaison to meet on a regular basis with the WMC board. This liaison can be crucial to building this trust and sharing action and information of the WMC Board with the Assembly. It will also give the media two opportunities to report on any information or action of the WMC Board. The proposed ordinance would seem to be inappropriate and possibly illegal in one respect.

It appears, based on the Borough's own ordinance and by the Open Meetings Act of Alaska, inserting an Assembly liaison into a WMC executive session is precluded. The forced insertion this liaison into an executive session of another body, namely the WMC Board, without proper invitation or purpose is not spoken to in either ordinance or Alaska Statute. If the Borough forces this action upon the WMC Board it should do so with the full understanding that it may be challenged at some future time. It would also seem prudent for the Assembly, if they do force the WMC Board in this direction, that the Borough would willingly and in advance indemnify the WMC Board, WMC board members individually and collectively, and the WMC from any such challenges and furthermore fully accept all consequences and the financial responsibility of any action that results from this ordinance.

Lawsuits are brought under this section through Alaska's Superior Court. The following excerpts from the Open Meetings Statute spell out only two of the reasons for which a complaining party might prevail in such a lawsuit under the proposed ordinance.

"(8) the degree to which violations of this section were willful, flagrant, or obvious;

(9) the degree to which the governing body failed to adhere to the policy under AS 44.62.312 (a)."

Obviously, if the Borough forces this action upon the WMC Board through ordinance section (8) above would be violated and action taken would be considered willful, flagrant, and obvious. Furthermore, in section (9) the governing body (which in this case according to law is the WMC Board) would be obviously failing to adhere to policy under AS 44.62.312 (a). There is no provision anywhere in any of the open meetings statute for one body to forcibly insert a member of its body into an executive session of another body for any purpose.

I believe this section of the Assembly's ordinance is on its face illegal, could be costly, and I do not recommend it. I understand the Assembly's desire to amend the ordinance to allow this action but I do not it to be possible under current law.

Your current ordinance, **3.04.120 Executive session**, and the Alaska Statute are below for your review and consideration in this matter.

I have not made these remarks to be contrary to the Assembly's desires or wishes. I have made them to offer assistance. Such a large change in policy in such a short time could have many unintended consequences and not be in the Borough's best interest or, in the language of the proposed ordinance, ".....be in accordance with sound business practices."

I believe you have made a good attempt at changes that need to be made in the governance of the Borough and the WMC. I also understand the concern of the Assembly and the need for promptness in this matter. However, to make such sweeping changes as are suggested without formal conversation with the newly elected WMC Board appears intentional and rushed.

There still appears to be many areas in the proposed ordinance where clarification, wording, or consequences have not been thoroughly thought through, the ramifications of which could be significant. I would encourage the Assembly to form a committee that would work with a committee of the newly elected WMC Board and both the administration of the Borough and the Hospital to clarify and perfect this ordinance.

This is a complicated issue. As always I appreciate the time and effort each of you put into the operation of the Borough. Again, thank you for your consideration as you deliberate on this and other matters.

Respectfully submitted,

Woody Wilson
PO Box 830, 1003 Case Avenue
Wrangell AK 99929

Attachments: **3.04.120 Executive session (Borough) and AS 44.62.310. Government Meetings Public**

**City and Borough of Wrangell Ordinance
3.04.120 Executive session.**

The assembly may, after its agenda is otherwise completed, recess for the purpose of discussing, in a closed or executive session, any questions permitted by law (Alaska Statute Section 44.62.310, as amended) which is expressed in the motion calling for the executive session. The public may be excluded from the session, but final action shall not be taken by the assembly on any matter discussed in executive session until brought back into the regular session. In all cases, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the authorized exceptions to public agency meetings shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. [Ord. 296 § 5, 1974; prior code § 27.10.110.]

Alaska Statutes.

Title 44. State Government

Chapter 62. Administrative Procedure Act

Section 310. Government Meetings Public.

previous: Section 305. Judicial Relief in Administrative Matters.

next: Section 312. State Policy Regarding Meetings.

AS 44.62.310. Government Meetings Public.

(a) All meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law. Attendance and participation at meetings by members of the public or by members of a governmental body may be by teleconferencing. Agency materials that are to be considered at the meeting shall be made available at teleconference locations if practicable. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. The vote at a meeting held by teleconference shall be taken by roll call. This section does not apply to any votes required to be taken to organize a governmental body described in this subsection.

(b) If permitted subjects are to be discussed at a meeting in executive session, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that are listed in (c) of this section shall be determined by a majority vote of the governmental body. The motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private. Subjects may not be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. Action may not be taken at an executive session, except to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations.

(c) The following subjects may be considered in an executive session:

- (1)** matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the public entity;
 - (2)** subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
 - (3)** matters which by law, municipal charter, or ordinance are required to be confidential;
 - (4)** matters involving consideration of government records that by law are not subject to public disclosure.
- (d)** This section does not apply to
- (1)** a governmental body performing a judicial or quasi-judicial function when holding a meeting solely to make a decision in an adjudicatory proceeding;

- (2)** juries;
- (3)** parole or pardon boards;
- (4)** meetings of a hospital medical staff;
- (5)** meetings of the governmental body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline;
- (6)** staff meetings or other gatherings of the employees of a public entity, including meetings of an employee group established by policy of the Board of Regents of the University of Alaska or held while acting in an advisory capacity to the Board of Regents; or
- (7)** meetings held for the purpose of participating in or attending a gathering of a national, state, or regional organization of which the public entity, governmental body, or member of the governmental body is a member, but only if no action is taken and no business of the governmental body is conducted at the meetings.

(e) Reasonable public notice shall be given for all meetings required to be open under this section. The notice must include the date, time, and place of the meeting and if, the meeting is by teleconference, the location of any teleconferencing facilities that will be used. Subject to posting notice of a meeting on the Alaska Online Public Notice System as required by AS 44.62.175 (a), the notice may be given using print or broadcast media. The notice shall be posted at the principal office of the public entity or, if the public entity has no principal office, at a place designated by the governmental body. The governmental body shall provide notice in a consistent fashion for all its meetings.

(f) Action taken contrary to this section is voidable. A lawsuit to void an action taken in violation of this section must be filed in superior court within 180 days after the date of the action. A member of a governmental body may not be named in an action to enforce this section in the member's personal capacity. A governmental body that violates or is alleged to have violated this section may cure the violation or alleged violation by holding another meeting in compliance with notice and other requirements of this section and conducting a substantial and public reconsideration of the matters considered at the original meeting. If the court finds that an action is void, the governmental body may discuss and act on the matter at another meeting held in compliance with this section. A court may hold that an action taken at a meeting held in violation of this section is void only if the court finds that, considering all of the circumstances, the public interest in compliance with this section

outweighs the harm that would be caused to the public interest and to the public entity by voiding the action. In making this determination, the court shall consider at least the following:

(1) the expense that may be incurred by the public entity, other governmental bodies, and individuals if the action is voided;

(2) the disruption that may be caused to the affairs of the public entity, other governmental bodies, and individuals if the action is voided;

(3) the degree to which the public entity, other governmental bodies, and individuals may be exposed to additional litigation if the action is voided;

(4) the extent to which the governing body, in meetings held in compliance with this section, has previously considered the subject;

(5) the amount of time that has passed since the action was taken;

(6) the degree to which the public entity, other governmental bodies, or individuals have come to rely on the action;

(7) whether and to what extent the governmental body has, before or after the lawsuit was filed to void the action, engaged in or attempted to engage in the public reconsideration of matters originally considered in violation of this section;

(8) the degree to which violations of this section were wilful, flagrant, or obvious;

(9) the degree to which the governing body failed to adhere to the policy under AS 44.62.312 (a).

(g) Subsection (f) of this section does not apply to a governmental body that has only authority to advise or make recommendations to a public entity and has no authority to establish policies or make decisions for the public entity.

(h) In this section,

(1) "governmental body" means an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the public entity or with the authority to advise or make recommendations to the public entity; "governmental body" includes the members of a subcommittee or other subordinate unit of a governmental body if the subordinate unit consists of two or more members;

(2) "meeting" means a gathering of members of a governmental body when

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;

(3) "public entity" means an entity of the state or of a political subdivision of the state including an agency, a board or commission, the University of Alaska, a public authority or corporation, a municipality, a school district, and other governmental units of the state or a political subdivision of the state; it does not include the court system or the legislative branch of state government.

Robert Maxand, 319 Church Street, said that he had attended the hospital board meetings for going on 30 years. He also said that there was a Proposed Ordinance brought to the borough assembly some years back and that Proposed Ordinance did not pass. Maxand expressed that he was in favor of the Proposed Ordinance and said that this Proposed Ordinance was a starting point.

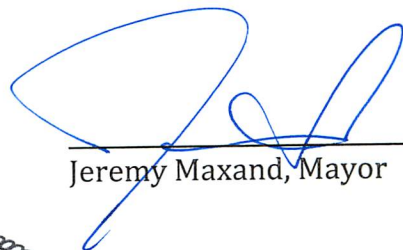
Bill Messmer, 11 Crest Drive, said that the timing of this Proposed Ordinance was unfair to the candidates who ran for the hospital board. Messmer added that the candidates ran for the hospital board based on an existing set of guidelines.

Laura Salard, 3 ½ Mile Zimovia Highway, said that she had attended all hospital board meetings unless she was out of town. Salard said that money used for consulting services


was money wasted and did very little to help the hospital. The other issue Salard addressed was that she believed with the existing Ordinance, the City was ultimately responsible with no authority. Salard said that she was in favor of the Proposed Ordinance and that the City needed to have the authority and oversight over the hospital; believed this was a starting point to move forward.

Mayor Maxand thanked everyone for their comments and concerns.

Adjourned at: 6:32 p.m.



Jeremy Maxand, Mayor

Attest: 

Kim Flores, Borough Clerk

