

Sec. 29.35.450. Service areas.

(a) A service area to provide special services in a borough or unified municipality may be established, operated, altered, or abolished by ordinance, subject to (c) of this section. Special services include services not provided by the unified municipality or a higher or different level of services. Special services include services not provided by a borough on an areawide or nonareawide basis in the borough or a higher or different level of services than that provided on an areawide or nonareawide basis. A borough may include a city in a service area if

(1) the city agrees by ordinance; or

(2) approval is granted by a majority of voters residing in the city, and by a majority of voters residing inside the boundaries of the proposed service area but outside of the city.

(b) A new service area may not be established if, consistent with the purposes of Alaska Const., art. X, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

(c) If voters reside within a service area that provides road, fire protection, or parks and recreation services, abolishment of the service area is subject to approval by the majority of the voters residing in the service area who vote on the question. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be abolished and replaced by a larger service area unless that proposal is approved, separately, by a majority of the voters who vote on the question residing in the existing service area and by a majority of the voters who vote on the question residing in the area proposed to be included within the new service area but outside of the existing service area. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be altered or combined with another service area unless that proposal is approved, separately, by a majority of the voters who vote on the question and who reside in each of the service areas or in the area outside of service areas that is affected by the proposal. This subsection does not apply

(1) to a proposed change to a service area that provides fire protection services that would result in increasing the number of parcels of land in the service area or successor service area if the increase is not more than six percent and would add not more than 1,000 residents;

(2) in a second class borough to abolishment of a road service area or consolidation of two or more road service areas if

(A) taxes have not been levied in the service area for road maintenance or construction during the last 12 months and there is no balance in any account available to pay for these road services for the service area;

(B) during the last 12 months, the service area board has not met with a quorum present and in accordance with law; or

(C) there are no road maintenance contracts in effect for the service area or the existing road maintenance contracts fail to provide for minimum road standards required by law that are necessary to protect the borough from civil liability;

(3) to require approval by the voters residing in a subdivision or parcel proposed to be added to a road service area if roads maintained by the service area provide the only access to the subdivision or parcel or provide access to the subdivision or parcel that is required by the subdivision plat or by other regulation or ordinance;

(4) to a change in the boundaries of a road service area to exclude a subdivision or parcel that does not rely on the use of roads maintained by the service area for the subdivision's or parcel's only access or for access that is required by the subdivision plat or by other regulation or ordinance.

(d) This section applies to a home rule or general law municipality.

#### History -

(Sec. 10 ch 74 SLA 1985; am Sec. 2, 3 ch 31 SLA 2001; am Sec. 1 ch 29 SLA 2005; am Sec. 1 ch 21 SLA 2007)

#### Amendment Notes -

The 2005 amendment, effective May 27, 2005, in subsection (c) added the last sentence in the introductory language, added paragraphs (1) - (3), and made stylistic changes.

The 2007 amendment, effective September 4, 2007, inserted the paragraph (c)(1) and (c)(2) designations, making related changes, and added paragraphs (c)(3) and (c)(4).

#### AG Opinions -

While local emergency planning districts may have the same geographical boundaries as service areas, the districts and the LEPCs cannot take the form of service areas. May 29, 1992 Op. Att'y Gen.

#### Decisions -

AS 29.05.021(b) is not in conflict with either subsection (b) or Alaska Const., art X, Sec. 5; rather subsection (b), which follows the language of the Alaska Constitution is a limitation on the creation of new service areas and in contrast, AS 29.05.021(b) is a limitation on the incorporation of cities. *Keane v. Local Boundary Comm'n*, 893 P.2d 1239 (Alaska 1995).

Expansion of service area. - A municipality had the authority under its charter and ordinances to expand a police service area to include an area without a separate vote of that area's residents. *Area G Home & Landowners Org., Inc. v. Anchorage*, 927 P.2d 728 (Alaska 1996).

Preference for incorporation of cities. - It is reasonable to interpret subsection (b) and Alaska Const., art. X, Sec. 5 as preferring incorporation of a city over the creation of new service areas. *Keane v. Local Boundary Comm'n*, 893 P.2d 1239 (Alaska 1995).

An ordinance was valid without voter approval where it was merely an "alteration" of existing service areas. The governing board changed from elected to appointed, which was an alteration in the administration of the service area, and the ordinance consolidated four service areas into one, which allowed the same powers to be exercised within the same areas. *North Kenai Peninsula Rd. Maintenance Serv. Area v. Kenai Peninsula Borough*, 850 P.2d 636 (Alaska 1993).