

(1) mayor; or

(2) member of the governing body or school board if candidates run for a designated seat.

(b) Unless otherwise provided by ordinance, if candidates for the governing body or school board run at large, a runoff election for a seat shall be held if no candidate receives a number of votes greater than 40 percent of the total votes cast for all candidates divided by the number of seats to be filled.

(c) Unless otherwise provided by ordinance, a runoff election shall be held within three weeks after the date of certification of the election for which a runoff is required, and notice of the runoff election shall be published at least five days before the election date. The runoff election shall be between the two candidates receiving the greatest number of votes for the seat. (§ 9 ch 74 SLA 1985)

Sec. 29.26.070. Election contest and appeal. (a) The governing body may provide by ordinance the time and procedure for the contest of an election.

(b) Unless otherwise provided by ordinance, an election may be contested only by a voter by filing a written affidavit with the municipal clerk specifying with particularity the grounds for the contest. An election may be contested before or during the first canvass of ballots by the governing body.

(c) Unless otherwise provided by ordinance, the governing body shall declare the election results at the first meeting to canvass the election, record the results in the minutes of that meeting, and authorize the results to be certified.

(d) A contestant shall pay all costs and expenses incurred in a recount of an election demanded by the contestant if the recount fails to reverse a result of the election, or the difference between the winning and losing vote on the result contested is more than two percent.

(e) A person may not appeal or seek judicial review of an election for any cause unless the person is a voter, has exhausted all administrative remedies before the governing body, and has commenced, within 10 days after the governing body has declared the election results, an action in the superior court in the judicial district in which the municipality is located. If court action is not commenced within the 10-day period, the election and election results are conclusive and valid. (§ 9 ch 74 SLA 1985)

Article 2. Initiative and Referendum

Section

- 100. Reservation of powers
- 110. Application for petition
- 120. Contents of petition
- 130. Signature requirements
- 140. Sufficiency of petition

Section

- 150. Protest
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- 170. Initiative election
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Referendum application rejected. — Application for a petition to hold a referendum on a borough's ordinance adopting a community comprehensive plan

was properly rejected because it did not select the proper pool of voters for the proposed referendum election. *Price v. Dahl*, 912 P.2d 541 (Alaska 1996).

Sec. 29.26.100. Reservation of powers. The powers of initiative and referendum are reserved to the residents of municipalities, except the powers do not extend to matters restricted by art. XI, § 7 of the Constitution of the State of Alaska. (§ 9 ch 74 SLA 1985)

Opinions of attorneys. particular legal problem to repeal all of a borough charter. However, there

Liberal construction of statutory provisions. referendum, the people referred to them by the state, and the constitution under which they proceeded. *Anchorage v. Frohne* (Decided under former, § 29.26.070)

Subject of initiative legislative body. — The body to which it is directed under former, similar to

Local or special legislation. enough ordinance imposing food items was not local government's proposed referendum ordinance, did not violate on applying referendum provision. *Price v. Kenai Peninsula Borough* (Alaska 2014).

The power of both is restricted to legislative. not extend to administrative State House, 514 decided under former, similar to

Restriction on referendum extends the referendum governments and similar legislative authorities to many statutes delegate assembly or other governments pursuant to such referendum would imposed restriction on the Kenai Peninsula Borough (Alaska 2014).

Express exemption from special legislation. — This section from referendum. *Wolf v. Alaska* P.2d 233 (Alaska 1973) (law)

Improper appropriation that made prior vote the borough to construct excess of a specified cost XI, § 7 and this section allowed the borough's ability to render it an approval of Concerned Talkeetna Borough, 273 P.3d :

Merged municipalities

Sec. 29.26.110. proposed by filing an resolution to be initiated address of a contact

Opinions of attorney general. — There are no particular legal problems with the use of an initiative to repeal all of a borough's taxes and amend the charter. However, there is concern that loss of all tax

revenues could affect the ability of the borough to provide basic services, particularly education. 1992 Inf. Op. Att'y Gen. (Apr. 2; 663-92-0447).

NOTES TO DECISIONS

Liberal construction of constitutional and statutory provisions. — In matters of initiative and referendum, the people are exercising a power reserved to them by the constitution and laws of the state, and the constitutional and statutory provisions under which they proceed should be liberally construed. *Anchorage v. Frohne*, 568 P.2d 3 (Alaska 1977) (Decided under former, similar law)

Subject of initiative must be within powers of legislative body. — The subject of the initiative must constitute such legislation as the legislative body to which it is directed has the power to enact. *Anchorage v. Frohne*, 568 P.2d 3 (Alaska 1977) (Decided under former, similar law)

Local or special legislation. — Because a borough ordinance imposing a sales tax on nonprepared food items was not local or special legislation, appellant's proposed referendum, which would repeal the ordinance, did not violate this section's prohibitions on applying referendums to local or special legislation. *Price v. Kenai Peninsula Borough*, 331 P.3d 356 (Alaska 2014).

The power of both initiative and referendum is restricted to legislative ordinances, and does not extend to administrative measures. *Wolf v. Alaska State Hous. Auth.*, 514 P.2d 233 (Alaska 1973) (Decided under former, similar law)

Restriction on referendum power. — This section extends the referendum power to the acts of local governments and similarly does not authorize local legislative authorities to restrict that power. Because many statutes delegate authority specifically to an assembly or other governing body, holding that enactments pursuant to such authority are not subject to referendum would impose a significant and unwarranted restriction on the referendum power. *Price v. Kenai Peninsula Borough*, 331 P.3d 356 (Alaska 2014).

Express exemption from initiative and referendum. — This section expressly exempts "local or special legislation" from both the initiative and the referendum. *Wolf v. Alaska State Hous. Auth.*, 514 P.2d 233 (Alaska 1973) (Decided under former, similar law)

Improper appropriation. — Initiative proposition that made prior voter approval a requirement for the borough to construct or acquire capital projects in excess of a specified cost violated Alaska Const. art. XI, § 7 and this section because it sufficiently narrowed the borough's ability to make allocation decisions to render it an appropriation of municipal funds. *Alliance of Concerned Taxpayers, Inc. v. Kenai Peninsula Borough*, 273 P.3d 1128 (Alaska 2012).

Merged municipality bound by statutory re-

quirements. — Municipality emerged as a new legal entity upon the merger of the Greater Anchorage Area Borough and the City of Anchorage in 1975, and so it was bound by statutory requirement that initiative provisions not exceed the limits set out in Alaska Const. art. XI, § 7; *Anchorage, Alaska, Municipal Charter* § 16.02 was void at its inception because it violated statute and Alaska Const. art. XI, § 7. *Staudenmaier v. Municipality of Anchorage*, 139 P.3d 1259 (Alaska 2006).

Applicability to local initiative. — When an initiative is local, and not statewide, the power to initiate it is directly derived from this section, not Alaska Const. art. XI, § 1. *Griswold v. City of Homer*, 186 P.3d 558 (Alaska 2008).

Ordinance subject to popular review is subject to popular initiative. — If the subject matter of an ordinance were properly subject to popular review, then it also would be a proper subject for popular initiative. *Wolf v. Alaska State Hous. Auth.*, 514 P.2d 233 (Alaska 1973) (Decided under former, similar law)

Clerk's refusal to certify initiative proposal upheld. — Pursuant to this section, AS 29.10.030(a), (c) and Alaska Const. art. XI, § 7 and art. XII, § 11, Anchorage, Alaska, municipal clerk was acting within her authority when she rejected the citizens' initiative, aimed at preserving much of the lower end of a valley as a park, on the ground that it proposed to make an appropriation and, furthermore, her determination was correct — by designating a particular tract of land as a park, the initiative would commit specific public assets to a specific purpose, making an appropriation, which was an action that could not be taken by initiative; without the impermissible park designation, the rest of the initiative could not go to the voters. *Alaska Action Ctr., Inc. v. Municipality of Anchorage*, 84 P.3d 989 (Alaska 2004).

Attorney fees. — Taxpayers' group was not a constitutional litigant and thus was not protected under AS 09.60.010(c)(2) from an award of attorney fees in litigation concerning the validity of a local initiative proposition under this section. Although an analysis of constitutional case law was necessary to resolve the matter, the local initiative power is statutory rather than constitutional. *Alliance of Concerned Taxpayers, Inc. v. Kenai Peninsula Borough*, 273 P.3d 1128 (Alaska 2012).

Quoted in Alaska Conservative Political Action Comm. v. Municipality of Anchorage, 745 P.2d 936 (Alaska 1987); *Carmony v. McKechnie*, 217 P.3d 818 (Alaska 2009).

Cited in Kodiak Island Borough v. Mahoney, 71 P.3d 896 (Alaska 2003); *Sitkans for Responsible Gov't v. City & Borough of Sitka*, 274 P.3d 486 (Alaska 2012).

Sec. 29.26.110. Application for petition. (a) An initiative or referendum is proposed by filing an application with the municipal clerk containing the ordinance or resolution to be initiated or the ordinance or resolution to be referred and the name and address of a contact person and an alternate to whom all correspondence relating to the

petition may be sent. An application shall be signed by at least 10 voters who will sponsor the petition. An additional sponsor may be added at any time before the petition is filed by submitting the name of the sponsor to the clerk. Within two weeks the clerk shall certify the application if the clerk finds that it is in proper form and, for an initiative petition, that the matter

- (1) is not restricted by AS 29.26.100;
- (2) includes only a single subject;
- (3) relates to a legislative rather than to an administrative matter; and
- (4) would be enforceable as a matter of law.

(b) A decision by the clerk on an application for petition is subject to judicial review. (§ 9 ch 74 SLA 1985; am § 9 ch 80 SLA 1989)

NOTES TO DECISIONS

Legally enforceable. — Borough clerk improperly refused to certify a resident's application for an initiative petition for mayoral term limits; because the constitutionality of the proposed ordinance had not yet been addressed the initiative was not legally unenforceable as a matter of law under AS 29.26.110(a)(4). *Kodiak Island Borough v. Mahoney*, 71 P.3d 896 (Alaska 2003).

Legislative enactment. — Proposed initiative to prevent city from selling electricity was legislative because it was permanent in nature rather than temporary, it declared a new policy, and dealt with an overall policy question rather than merely a small segment of a pre-established policy, and it established a new law rather than executing a law already in existence. For these reasons, the proposed initiative related to a legislative rather than an administrative enactment and did not violate this section. *Swetzof v. Philemonoff*, 203 P.3d 471 (Alaska 2009).

City clerk correctly refused to certify proposed initiative or application for petition which would prohibit

city from engaging in the sale or delivery of electric power to retail customers; application for petition failed the enforceable as a matter of law requirement of AS 29.26.110(a)(4) because city could not simply stop selling or delivering electrical power to retail customers within 120 days after certification of the election. *Swetzof v. Philemonoff*, 192 P.3d 992 (Alaska 2008).

Land use initiative held beyond power of initiative process. — Proposed initiative would enact sweeping changes to present and future land use ordinances, including zoning, by imposing termination dates without any involvement by the planning commission or any consideration of consistency with the comprehensive plan; such a divestiture is beyond the legislature's power, and beyond the power of initiative or referendum. *Carmony v. McKechnie*, 217 P.3d 818 (Alaska 2009).

Cited in *Sitkans for Responsible Gov't v. City & Borough of Sitka*, 274 P.3d 486 (Alaska 2012).

Sec. 29.26.120. Contents of petition. (a) Within two weeks after certification of an application for an initiative or referendum petition, a petition shall be prepared by the municipal clerk. Each copy of the petition must contain

- (1) a summary of the ordinance or resolution to be initiated or the ordinance or resolution to be referred;
- (2) the complete ordinance or resolution sought to be initiated or referred as submitted by the sponsors;
- (3) the date on which the petition is issued by the clerk;
- (4) notice that signatures must be secured within 90 days after the date the petition is issued;
- (5) spaces for each signature, the printed name of each signer, the date each signature is affixed, and the residence and mailing addresses of each signer;
- (6) a statement, with space for the sponsor's sworn signature and date of signing, that the sponsor personally circulated the petition, that all signatures were affixed in the presence of the sponsor, and that the sponsor believes the signatures to be those of the persons whose names they purport to be; and
- (7) space for indicating the total number of signatures on the petition.

(b) If a petition consists of more than one page, each page must contain the summary of the ordinance or resolution to be initiated or the ordinance or resolution to be referred.

(c) The clerk shall notify the contact person in writing when the petition is available. The contact person is responsible for notifying sponsors. Copies of the petition shall be

provided by the clerk petition, and the clerk petition be mailed. (§

Cited in *Kodiak Island P.3d 896 (Alaska 2003)*.

Sec. 29.26.130. Si referendum petition : The statement provi sponsor. Signatures s

(b) The clerk shall inform the contact pe shall be signed by a n election held before tl is available, equal to

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Sec. 29.26.140. S petition shall be ass the petition is filed,

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NOTES TO DECISIONS

Cited in Kodiak Island Borough v. Mahoney, 71
P.3d 896 (Alaska 2003).

Sec. 29.26.130. Signature requirements. (a) The signatures on an initiative or referendum petition shall be secured within 90 days after the clerk issues the petition. The statement provided under AS 29.26.120(a)(6) shall be signed and dated by the sponsor. Signatures shall be in ink or indelible pencil.

(b) The clerk shall determine the number of signatures required on a petition and inform the contact person in writing. Except as provided in (e) of this section, a petition shall be signed by a number of voters based on the number of votes cast at the last regular election held before the date written notice is given to the contact person that the petition is available, equal to

- (1) 25 percent of the votes cast if a municipality has fewer than 7,500 persons; or
- (2) 15 percent of the votes cast if a municipality has 7,500 persons or more.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw the signer's signature on written application to the clerk before certification of the petition.

(e) If the ordinance or resolution that is the subject of an initiative or referendum petition affects only an area that is less than the entire area of a municipality, only voters residing in the affected area may sign the petition. The clerk shall determine the number of signatures required on the petition and inform the contact person in writing. The petition shall be signed by a number of voters based on the number of votes cast in that area at the last regular election held before the date written notice is given to the contact person that the petition is available equal to

- (1) 25 percent of the votes cast if the area has fewer than 7,500 persons; or
- (2) 15 percent of the votes cast if the area has 7,500 persons or more. (§ 9 ch 74 SLA 1985; am §§ 11, 12 ch 80 SLA 1989)

NOTES TO DECISIONS

Ordinance conflicting with city charter. — An ordinance which required the signatures of 25 percent of the total number of voters on the referendum petition before a referendum election could be held conflicted with the city charter where the charter

incorporated state provisions on referendum in city elections. *City of Anchorage v. City of Anchorage*, 544 P.2d 1024 (Alaska 1976) (Decided under former, similar law)

Sec. 29.26.140. Sufficiency of petition. (a) All copies of an initiative or referendum petition shall be assembled and filed as a single instrument. Within 10 days after the date the petition is filed, the municipal clerk shall

- (1) certify on the petition whether it is sufficient; and
- (2) if the petition is insufficient, identify the insufficiency and notify the contact person by certified mail.

(b) A petition that is insufficient may be supplemented with additional signatures obtained and filed before the 11th day after the date on which the petition is rejected.

(c) A petition that is insufficient shall be rejected and filed as a public record unless it is supplemented under (b) of this section. Within 10 days after a supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed

as a public record. (§ 9 ch 74 SLA 1985; am § 13 ch 80 SLA 1989)

NOTES TO DECISIONS

Clerk's opinion as to constitutionality. — Borough clerk improperly refused to certify a resident's application for an initiative petition for mayoral term limits on the ground that she believed the proposed ordinance to be unenforceable, when the constitutionality of such term limits had not yet been addressed,

because a pre-election review should only have covered whether the initiative met the constitutional and statutory provisions regulating initiatives. *Kodiak Island Borough v. Mahoney*, 71 P.3d 896 (Alaska 2003).

Sec. 29.26.150. Protest. If the municipal clerk certifies that an initiative or referendum petition is insufficient, a signer of the petition may file a protest with the mayor within seven days after the certification. The mayor shall present the protest at the next regular meeting of the governing body. The governing body shall hear and decide the protest. (§ 9 ch 74 SLA 1985)

Sec. 29.26.160. New petition. Failure to secure sufficient signatures does not preclude the filing of a new initiative or referendum petition. However, a new petition on substantially the same matter may not be filed sooner than six months after a petition is rejected as insufficient. (§ 9 ch 74 SLA 1985)

Sec. 29.26.170. Initiative election. (a) Unless substantially the same measure is adopted, when a petition seeks an initiative vote, the clerk shall submit the matter to the voters at the next regular election or, if already scheduled, special election occurring not sooner than 60 days after certification of the petition. If no election is scheduled to occur within 75 days after the certification of a petition and the governing body determines it is in the best interest of the municipality, the governing body may by ordinance order a special election to be held on the matter before the next election that is already scheduled, but not sooner than 60 days after certification of the petition.

(b) If the governing body adopts substantially the same measure, the petition is void, and the matter initiated may not be placed before the voters.

(c) The ordinance or resolution initiated shall be published in full in the notice of the election, but may be summarized on the ballot to indicate clearly the proposal submitted.

(d) If a majority vote favors the ordinance or resolution, it becomes effective upon certification of the election, unless a different effective date is provided in the ordinance or resolution. (§ 9 ch 74 SLA 1985; am §§ 1, 2 ch 3 SLA 2005)

Sec. 29.26.180. Referendum election. (a) Unless the ordinance or resolution is repealed, when a petition seeks a referendum vote, the clerk shall submit the matter to the voters at the next regular election or, if already scheduled, special election occurring not sooner than 60 days after certification of the petition. If no election is scheduled to occur within 75 days after certification of a petition and the governing body determines it is in the best interest of the municipality, the governing body may by ordinance order a special election to be held on the matter before the next election that is already scheduled, but not sooner than 60 days after certification of the petition.

(b) If a petition is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote. During the period of suspension, the governing body may not enact an ordinance or resolution substantially similar to the suspended measure.

(c) If the governing body repeals the ordinance or resolution before the referendum election, the petition is void and the matter referred shall not be placed before the voters.

(d) If a majority vote favors the repeal of the matter referred, it is repealed. Otherwise, the matter referred remains in effect or, if it has been suspended, becomes effective on

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Section

240. Recall
250. Grounds for r
260. Application fo
270. Recall petition
280. Signature req
290. Sufficiency of
300. New recall pet

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certification of the election. (§ 9 ch 74 SLA 1985; am § 3 ch 3 SLA 2005)

Sec. 29.26.190. Effect. (a) The effect of an ordinance or resolution may not be modified or negated within two years after its effective date if adopted in an initiative election or if adopted after a petition that contains substantially the same measure has been filed.

(b) If an ordinance or resolution is repealed in a referendum election or by the governing body after a petition that contains substantially the same measure has been filed, substantially similar legislation may not be enacted by the governing body for a period of two years.

(c) If an initiative or referendum measure fails to receive voter approval, a new petition application for substantially the same measure may not be filed sooner than six months after the election results are certified. (§ 9 ch 74 SLA 1985)

Opinions of attorney general. — AS 29.26.190, which provides time limitations on modification, negation, or enactment of certain ordinances or resolutions and on certain new initiative or referendum petition applications, does not apply to local option elections. 1991 Inf. Op. Att'y Gen. (Oct. 23; 663-92-0070).

Where a borough voted on an ordinance to create a service area after a petition for consolidation with a city had been filed, the new home rule municipality

formed through consolidation would represent the citizens of the two municipalities and be specifically authorized to supercede the "ordinances, resolutions, regulations, procedures, and orders of the former municipalities" in order to provide for new ordinances, etc., as the representative government. Thus, the prohibition in this section against modifying or negating ordinances within two years of the effective date of adoption would not apply. 2002 Inf. Op. Att'y Gen. (Mar. 8; 663-02-0140).

Article 3. Recall

Section

- 240. Recall
- 250. Grounds for recall
- 260. Application for recall petition
- 270. Recall petition
- 280. Signature requirements
- 290. Sufficiency of petition
- 300. New recall petition application

Section

- 310. Submission
- 320. Election
- 330. Form of recall ballot
- 340. Effect
- 350. Successors
- 360. Application

Sec. 29.26.240. Recall. An official who is elected or appointed to an elective municipal office may be recalled by the voters after the official has served the first 120 days of the term for which elected or appointed. (§ 9 ch 74 SLA 1985)

Sec. 29.26.250. Grounds for recall. Grounds for recall are misconduct in office, incompetence, or failure to perform prescribed duties. (§ 9 ch 74 SLA 1985)

NOTES TO DECISIONS

Sufficiency of grounds. — Paragraph in petition to recall school board members which concerned the school board's failure to control the administrative practices of the superintendent alleged specific instances of failure to perform prescribed duties. *Meiners v. Bering Strait Sch. Dist.*, 687 P.2d 287 (Alaska 1984) (decided under former AS 29.28.140 and 29.28.150(a)(3)).

Paragraph in petition to recall school board members which cited the failure of the school board to provide full and open communication between themselves and the voters of the district and listed certain instances of conduct which appear to violate the state public records and public meetings law, AS 09.25.110

— 09.25.120 (now AS 40.25.110 — 40.25.120) and AS 44.62.310, alleged a failure to perform prescribed duties. *Meiners v. Bering Strait Sch. Dist.*, 687 P.2d 287 (Alaska 1984).

Sufficiency of application. — Reversal of the denial of the citizen's application for a petition to recall a member of the city assembly was proper because the clerk applied an inaccurate definition of "misconduct in office" in determining that the application was insufficient; requiring misconduct in office to be criminal would undermine the intent and effectiveness of the recall statutes and would deny the voters' right to effectively seek recall of their elected officials. *Jones v. Biggs*, 508 P.3d 1121 (Alaska 2022).