



THE STATE  
of **ALASKA**  
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Conservation

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May 10, 2022

Chair Patkotak  
House Resources Committee

Chair Patkotak,

During the May 9, 2022, House Resources Committee hearing on SB 177 Microreactors, Reps. Fields and Hannan directed questions to the Legislature's Division of Legal and Research Services. The Department of Environmental Conservation (DEC) would also like to take the opportunity to weigh in on these questions. The answers below have been reviewed by the Department of Law.

***Representative Fields asked for legal confirmation that if SB 177 were to become law, the Anchorage Municipal Assembly would have siting oversight for a microreactor project in the Municipality of Anchorage?***

The current language in AS 18.45.025(c) includes the requirement "that a [DEC] permit may not be issued until the municipality with jurisdiction over the proposed facility site has approved the permit."

The Municipality of Anchorage must provide approval before DEC may issue a permit for a reactor within the Municipality. This would not change if SB 177 were adopted.

***Representative Hannan asked "when a municipality does not have planning and zoning authority, how would a project be sited?"***

As a side note, planning powers are either mandatory or optional for cities and boroughs. Thus, as a practical matter, all cities and boroughs (excluding the unorganized borough) either *must* exercise planning and zoning authority or *may* exercise planning and zoning authority. See attached handout regarding planning powers for Alaska municipalities.

As referenced above, the current language in AS 18.45.025(c) includes the requirement "that a [DEC] permit may not be issued until the municipality with jurisdiction over the proposed facility site has approved the permit." The statute does not require the municipality to have zoning authority, only that the municipality must provide approval before DEC may issue a permit for a reactor within that municipality. Arguably, the bill provides local governments with a specific grant of authority to approve these permits – outside the planning process.

As a practical matter, a municipality would be able to solicit assistance to review a permit before DEC if there is not the capability within the municipality. This might include state or federal agencies, in-state organizations, or contracted consultants. It should also be noted that the process for issuing a DEC permit would include a public comment period, which would allow residents within a municipality the opportunity to weigh in directly with DEC.

Respectfully,

A handwritten signature in blue ink that reads "Carpenter".

Christina Carpenter

Director, Environmental Health Division



## INTRODUCTION

Why should a community plan? What are the benefits today? First, many communities have a limited land base — only so much land can be settled, and only so much suitable land is available for roads, utilities and other improvements. Also, all communities have limited financial resources. In order to provide municipal services that are cost effective, development needs to be planned for and managed. Planning can allocate land for specific uses such as housing, gravel extraction or future roads, while permitting the most efficient use of a community's limited resources. Policies, such as those in a comprehensive plan, can act as the guides for this type of decision-making.

There are other benefits to planning, however, besides the efficient use of land and local funds. Planning can:

- establish ground rules for development for the whole community;
- promote safety by assuring that structures are set apart from one another;
- control development on lands that flood;
- be used to set aside land for important community uses such as landfills, gravel pits, harbors and airports;
- prevent industrial uses from locating near residential areas; and
- provide the means by which residents participate in important decisions about their community's future.

## WHICH ALASKA MUNICIPALITIES HAVE THE AUTHORITY TO PLAN AND CONTROL LAND USE?

Alaska Statutes (AS) 29.35 and 29.40 define the authority of cities and boroughs to provide for planning, platting and land use regulation. The planning powers are either mandatory (indicated by the word "SHALL") or optional (indicated by the word "MAY"). Following is a summary of the municipal authorities.



## THE STATUTORY BASIS OF ALASKA MUNICIPAL PLANNING POWERS

AS 29.40.010 - 29.40.200 define and direct how planning, platting and land use regulation powers are to be exercised primarily for municipalities that are not home rule municipalities. Only a few of the provisions in AS 29.40 apply to home rule municipalities. The section headings for AS 29.40.010 - 29.40.200 highlight the subjects covered.

Section		
010. Planning, platting and land use regulation	080. Platting authority	150. Recording
020. Planning commission	090. Abbreviated plats and waivers	160. Title to vacated area*
030. Comprehensive plan	100. Information required	170. Delegations
040. Land use regulation	110. Plat procedure	180. Violations
050. Appeals from administrative decisions	120. Alteration or replat petition	190. Remedies
060. Judicial review	130. Notice of hearing	200. Subdivisions of State land*
070. Platting regulation	140. Hearing and determination	*Applies to home rule municipalities

## MUNICIPAL EXTRATERRITORIAL JURISDICTION

AS 29.35.020 allows a municipality to go beyond its boundary to provide parks, playgrounds, cemeteries, emergency medical services, solid and septic waste disposal, utility services, airports, streets (including ice roads), trails, transportation facilities, wharves, harbors and other marine facilities and may regulate their use and operation to the extent that the jurisdiction in which they are located does not regulate them. A municipality may also adopt an ordinance to protect its water supply and watershed and enforce that ordinance outside its boundaries; but in order to exercise this power inside another municipality, approval by the other municipality must first be given by ordinance.

AS 29.35.020 applies to home rule and general law municipalities.

## JURISDICTION OVER STATE AGENCIES

AS 29.40, as well as other sections of the Alaska Statutes, also address the relationship between State agency activities and local planning authority. A summary of these provisions follows. Please refer to the appropriate statute for more detailed information on these provisions.

AS 09.55.275 prohibits State acquisition of property which results in a boundary change in a municipality exercising platting authority pursuant to AS 29.35.180 or AS 29.35.260(c) without prior approval of the replat by the municipality.

AS 29.40.200 provides that local platting regulations apply to the subdivision of undeveloped State land for disposal purposes.

AS 35.15.080 establishes a procedure whereby municipalities may be able to assume planning and construction responsibilities for State public works projects.

AS 35.30.010 - 030 requires that, before commencing construction of a public project, the State Department of Transportation and Public Facilities and the University of Alaska shall submit the plans for the project to the municipal planning commission for review and approval. Approval by the planning commission may not be required before construction of a highway or local service road under certain circumstances (for example, where the plans for the project are consistent with prior municipal transportation planning). The State Department of Transportation and Public Facilities and the University of Alaska shall also comply with local planning and zoning ordinances and other regulations in the same manner, and to the same extent, as other landowners. This chapter also provides, however, that the Governor may waive these requirements if the State Department of Transportation and Public Facilities and the University of Alaska demonstrate an overriding State interest.

AS 38.04.065 requires that local governments have the opportunity to participate in the State Department of Natural Resources planning process for State lands. Further, the State land plans shall be consistent with local government land plans to the maximum extent possible and still be consistent with State interests.

AS 40.15.010 - 020 requires that before lots of any subdivision or dedication may be sold or offered for sale, the subdivision or dedication shall be submitted for approval to the authority having jurisdiction. The recorder shall not accept a subdivision or dedication for filing unless it shows this approval. Also, a person filing a plat, map, subdivision or replat of property, or a petition to vacate any of these, shall also file a tax certificate showing that all taxes levied against the property at the date have been paid.

AS 40.15.075 states that the Division of Lands (within the State Department of Natural Resources) is the platting authority in areas outside organized boroughs and outside cities in the unorganized borough and in third class boroughs only for purposes of hearing and acting on petitions for the change or vacation of plats.

AS 46.40.100 provides that municipalities and State agencies shall administer land and water use regulations or controls in conformity with district coastal management programs that are in effect.

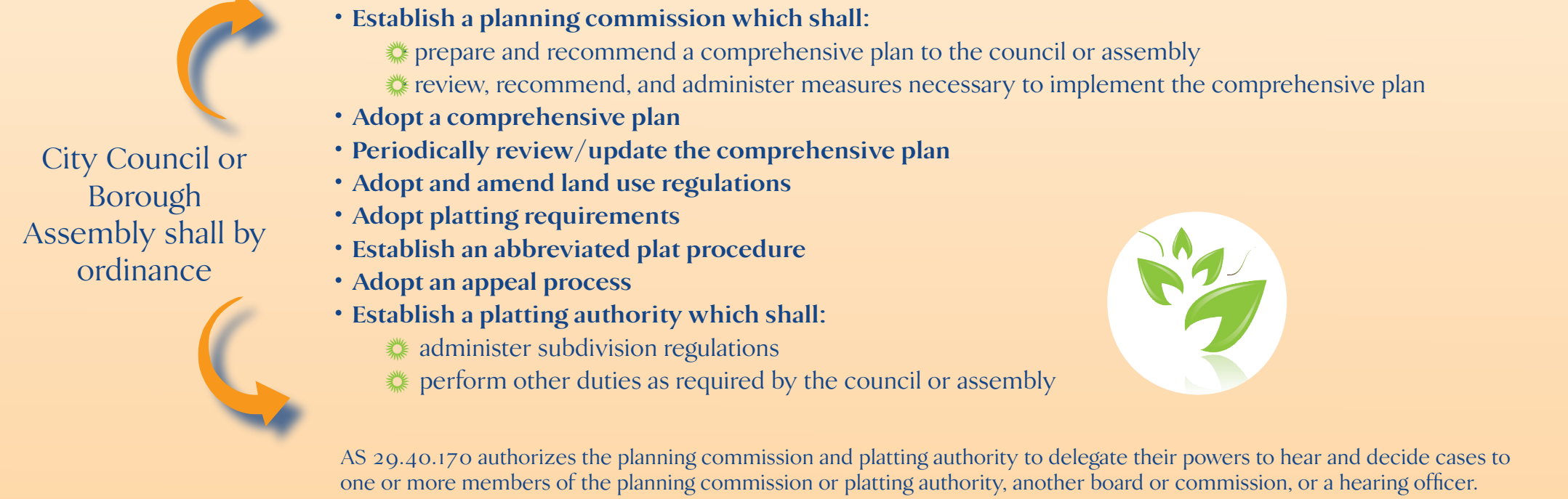
# Planning Powers for Alaska Communities

## EXERCISING PLANNING POWERS

The council or assembly has the primary responsibility for implementing planning powers; however, the city council or borough assembly, the planning commission, and the platting authority must all work together to perform the functions of planning, platting and land use regulation. The council or assembly must first pass an ordinance to create the planning commission and the platting authority. AS 29.40.020 directs the formation of the planning commission and AS 29.40.080 directs the establishment of a platting authority.

The responsibilities of the council or assembly, planning commission and platting authority can be summarized as follows:

### ROLES OF AUTHORITY IN THE LOCAL PLANNING PROCESS (FOR COMMUNITIES WITH PLANNING POWERS)



## PLANNING COMMISSION

### Membership

The mayor appoints a minimum of five residents to serve as members of the planning commission for a term of three years, subject to confirmation by the assembly or city council. Members first appointed draw lots for one, two, and three year terms. In first class and home rule cities the mayor appoints members of the planning commission from a list of candidates recommended by the city council. Within a borough commission membership shall be apportioned so that the number of members from first class and home rule cities reflects the proportion of the borough population residing in the respective home rule and first class cities. Appointments to fill vacancies are for the unexpired term. The compensation and expenses of the planning commission and its staff are paid as directed by the assembly or city council.

### Duties

The duties of the planning commission are prescribed by the assembly or council by ordinance. In addition to the duties prescribed by ordinance, the planning commission shall prepare and submit to the assembly or council a comprehensive plan. The commission shall also review, recommend and administer measures to implement the plan (AS 29.40.020).

## COMPREHENSIVE PLAN

According to AS 29.40.030, the comprehensive plan is a compilation of policy statements, goals, standards, and maps for guiding the physical, social, and economic development, both private and public. . . and may include, but is not limited to, the following:

- statements of policies, goals, and standards;
- a land use plan;
- a community facilities plan;
- a transportation plan; and
- recommendations for implementing the comprehensive plan.

The planning commission is responsible for preparing the comprehensive plan and recommending it to the assembly or council. In order for the plan to become an official policy statement, it shall be adopted by the assembly or council by ordinance. Also, after receiving the recommendations of the planning commission, the assembly or council shall perform a thorough review of the comprehensive plan and update the plan as necessary.

## LAND USE REGULATIONS

Land use regulations are measures used to implement the comprehensive plan. The regulations must be adopted by ordinance. According to AS 29.40.040, land use regulations, provisions governing the use and occupancy of land, may include but are not limited to:

- zoning regulations restricting the use of land and improvements by geographic districts;
- land use permit requirements designed to encourage or discourage specified uses or minimize unfavorable effects of uses; and
- measures to further the goals and objectives of the comprehensive plan.

AS 29.40.040(b) lists the conditions under which a VARIANCE from a land use regulation may be not be granted. A variance from a land use regulation (adopted under this section) may not be granted if:

- special conditions that require the variance are caused by the person seeking the variance;
- the variance will permit a land use in a district in which that use is prohibited; or
- the variance is sought solely to relieve financial hardship or inconvenience.

## PLATTING AUTHORITY

### Membership

According to AS 29.40.080, the assembly or council shall establish a platting authority by ordinance. The platting authority may consist of all members of the planning commission, a portion of the members of the planning commission, or other municipal residents. The assembly or council may also provide for an administrative official to act as the platting authority for abbreviated plats.

### Duties

The platting authority administers subdivision regulations and performs other duties as required by the assembly or council.

This publication was developed by the State of Alaska, Department of Commerce, Community, and Economic Development. This publication is not and should not be construed to be an official or complete statement of State law governing exercise of municipal planning powers. For an official statement of law governing exercise of planning powers by municipalities, please consult the official published version of the Alaska Statutes.

## PLATTING REGULATIONS

According to AS 29.40.070, the assembly or council shall adopt platting requirements by ordinance that may include, but are not limited to, the control of:

- form, size, and other aspects of subdivision, dedications, and vacations of land;
- dimensions and design of lots;
- street width, arrangement, and rights-of-way, including requirements for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvements; and
- dedication of streets, rights-of-way, public utility easements and areas considered necessary by the platting authority for other public uses.

### Abbreviated Plats and Waivers

According to AS 29.40.090, the assembly or council shall, by ordinance, also establish an abbreviated or "short" plat procedure for plats that will:

- subdivide a single lot into not more than four lots;
- provide legal and physical access to a public highway or street for each lot created;
- not contain or require a dedication of a street, right-of-way or other area; and
- not require a vacation of a public dedication of land or a variance from a subdivision regulation.

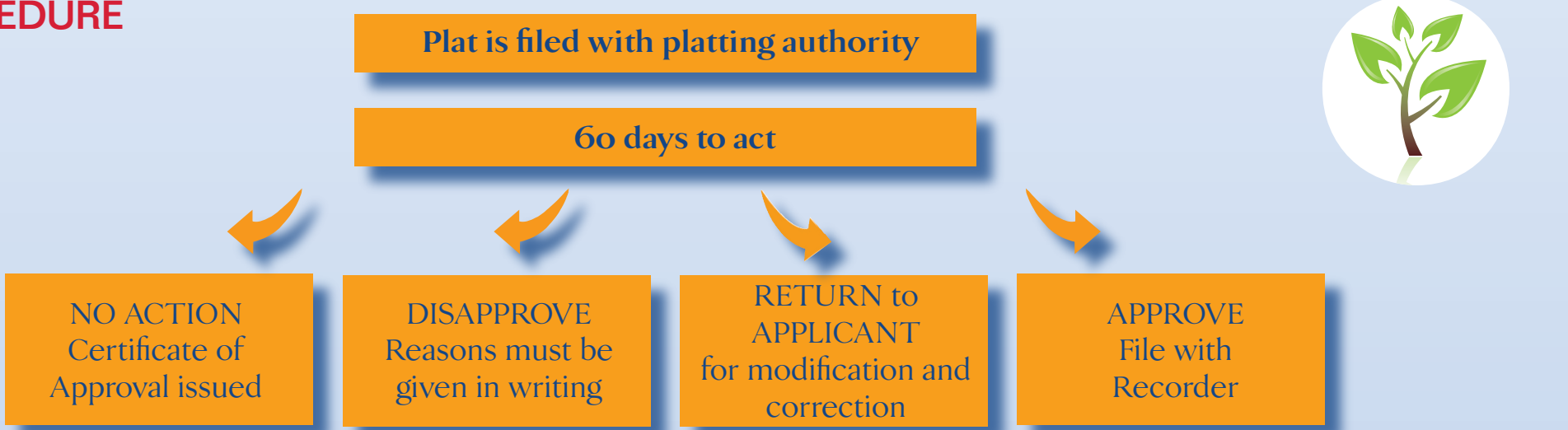
The platting authority shall waive the preparation, submission for approval, and recording of a plat if it meets the requirements listed above and each lot created by the subdivision is five acres or larger.

### Plat Procedures

Once a plat is filed with the platting authority, the platting authority shall approve, or disapprove, the plat within 60 days or return it to the applicant for modification or correction. Unless the applicant consents to a time extension, the plat is considered approved if the platting authority fails to act within the 60 days. If the plat is approved, it shall be acknowledged and filed with the recorder in accordance with AS 40.15.010 - 020, which requires proof of the platting authority's approval and a certificate showing taxes have been paid. If such approval is not shown, the recorder will not file the plat. If the plat is disapproved, the platting authority shall state in writing its reasons for disapproval.

The platting authority may change a recorded plat if petitioned by either the state, a public utility, the borough, or the owners of a majority of the land affected by the alteration or replat. After the petition is filed, the platting authority has 60 days in which to publicize and hold a public hearing. Notice shall also be given to each affected property owner who did not sign the petition. The platting authority shall consider the alteration or replat petition at the hearing and make its decision on the merits of the proposal.

## PLAT PROCEDURE



### Vacations

According to AS 29.40.120, a platted street may not be vacated except on petition of the State, the borough or city, a public utility, or owners of a majority of the land fronting the part of the street sought to be vacated. Vacation of a street in the borough area outside all cities may not be made without the consent of the assembly. Vacation of a city street may not be made without consent of the council. After the platting authority makes a decision to vacate a street, the assembly or council has 30 days in which to veto the action. Again, if a veto does not occur within the 30 days, the vacation is considered approved.

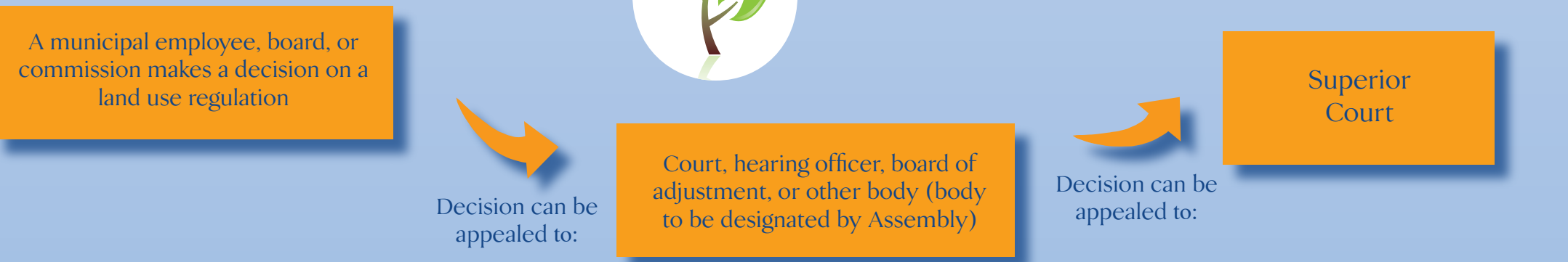
AS 29.40.160(d) allows the council of a second class city located outside a borough to vacate streets, alleys, crossings, sidewalks, or other public ways that may have been previously dedicated or established when the council finds that the public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation.

## APPEALS

According to AS 29.40.050, the assembly or council shall provide by ordinance for appeals from an administrative decision of a municipal employee, board, or commission made in the enforcement, administration, or application of a land use regulation. The assembly or council may provide for an appeal to a court, hearing officer, board of adjustment, or other body. The assembly or council may also provide for appointment of a hearing officer and for the composition, appointment, and terms of office of a board of adjustment, or other body established to hear the appeals. The assembly or council may define proper parties and prescribe evidentiary rules, standards of review, and remedies available to the hearing officer, board of adjustment or other body. Under AS 29.40.060, the appeals process adopted by the assembly or council must also provide for an appeal by a municipal officer or person aggrieved from a decision of a hearing officer, board of adjustment, or other body to the superior court.

## APPEALS PROCESS

Assembly or council shall provide for this process:



## GLOSSARY OF PLANNING TERMINOLOGY

**Board of Adjustment:** A board that hears appeals.

**Dedication:** A gift or donation of property by the owner to another party. Under subdivision regulations, the transfer of property from private to public ownership is referred to as dedication.

**Municipality:** A city or a borough.

**Plat:** A map, generally of a subdivision, showing the location, boundaries, and ownership of individual properties.

**Replat:** To alter a previously recorded plat to create or delete lots, alter lot lines, to change a note on the plat, etc.

**Subdivision:** As used in AS 29.40, a subdivision is the division of a parcel of land into two or more lots or other divisions for the purpose of sale or building development, includes resubdivision, and relates to the process of subdividing or to the land subdivided. It does not include cadastral plats, cadastral control plats, open-to-entry plats, or remote parcel plats created by or on behalf of, the State regardless of whether these plats include easements or other public dedications.

**Vacation:** The act of making legally void any right-of-way, easement, public area, or other public interest. For example, to cause a public right-of-way to revert back to private property.

**Variance:** Granting a property owner relief from requirements of a zoning or subdivision ordinance.

**Zoning:** A measure enacted by municipalities which establishes geographic districts (zones) within which permitted and special uses and regulations governing lot size, building bulk, placement, etc. are established. The zoning ordinance consists of a text and a map.

**For additional information, clarification, or assistance with community planning, please contact:**

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# Planning Powers for Alaska Communities

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## Planning Powers for Alaska Communities

Alaska State law gives incorporated municipalities (cities and boroughs) the authority for planning, platting, and land use regulation. The responsibility of "planning power" may be mandatory or voluntary, depending on the class of municipality and its organizational structure.

This poster provides an overview of the types of planning powers held by incorporated municipalities in Alaska with references to relevant sections of the Alaska Statutes. The poster covers issues such as:

- which Alaska municipalities have the authority to plan and control land use;
- the roles of the city council or borough assembly in the local planning process; and
- the relationship between State agency activities and local planning authority.

There are many reasons why planning is important at the local level. A community can realize tangible benefits from good planning decisions. For example, community infrastructure can be more efficiently constructed when planned in advance. Planning can identify and allocate land for specific uses such as housing, gravel extraction or future roads, while permitting the most costeffective use of a community's limited resources. In addition to providing for the orderly and efficient use of land and other resources, community planning can:

- establish ground rules for development for the whole community;
- promote safety by assuring that structures are set apart from one another;
- reduce personal property and/or environmental damage through the identification of areas where development may be inadvisable because of flood, erosion, landslide or other hazards;
- protect property and property values by separating potentially harmful or disagreeable land uses from surrounding residential and commercial uses; and
- provide the means by which residents participate in important decisions about their community's future.

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