

SCOMM

#23:20

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

DRAFT NO. 3
FOR DISCUSSION ONLY

CHAPTER 03. THE UNORGANIZED BOROUGH.

Sec. 29.03.010. ESTABLISHMENT. Areas of the state which are not within the boundaries of an organized borough constitute a single unorganized borough.

Sec. 29.03.020. SERVICE AREAS. Allowing for maximum local participation, the legislature may establish, alter, or abolish service areas within the unorganized borough to provide special services, which may include but are not limited to schools, utilities, land use regulations and fire protection. A new service area may not be established if the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city.

With change made by the Policy Group
Jan. 17, 18, 1981

Tam Cook

1 CHAPTER 06. CLASSIFICATION OF MUNICIPALITIES.

2 ****Sec. 29.06.010. HOME RULE. A home rule municipality is a municipal
3 corporation and political subdivision. It is a city of the first class or
4 an organized borough which has adopted a home rule charter, or it is a
5 municipality unified in accordance with AS 29.12.190 - 29.12.350. A home
6 rule municipality has all legislative powers not prohibited by law or charter.

7 Sec. 29.06.020. GENERAL LAW. A general law municipality is a municipa
8 corporation and political subdivision and is an unchartered borough or city.
9 It has legislative powers conferred by law.

10 Sec 29.06.030. CLASSES OF GENERAL LAW. General law municipalities
11 are of five classes:

- 12 (1) first class boroughs;
13 (2) second class boroughs;
14 (3) third class boroughs;
15 (4) first class cities;
16 (5) second class cities.

17 Sec. 29.06.040. RECLASSIFICATION. (a) A second class city may be
18 reclassified as a first class city by holding an election on the question as
19 provided in this subsection, if the Department of Community and Regional
20 Affairs determines from the best figures available that the population of
21 the city has reached 400 permanent residents.

22 (b) An election on the question of reclassification may be initiated
23 in two ways:

24 (1) a number of voters equal to 15 percent of the number of
25 votes cast in the city at the preceding regular election may file a petition
26 with the council; or

27 (2) the council may propose reclassification.

28 (c) The council shall hold at least one public hearing within the
29

1 city on the question. The council shall then evaluate the ability of the
2 city to assume first class status and make its findings public.

3 (d) The council shall, within 30 days after its findings have
4 been made public, order an election to be held on the question. The election
5 shall be held at least 30 days after the order and not later than the next
6 regular election occurring after the 30-day period.

7 (e) If more than one question is to be voted on at the election,
8 each appears separately on the ballot.

9 (f) The council shall certify the election results to the Depart-
10 ment of Community and Regional Affairs. If the majority of votes cast on
11 the question is favorable, the city shall be considered reclassified to
12 first class status 30 days after certification of the election results.

13 (g) A second class borough may reclassify as a first class or
14 third class borough, and a third class borough may reclassify as a first
15 class or second class borough, in the manner provided by AS 29.36.110
16 -29.36.130 for the addition of powers by boroughs,
17 except the petition or proposal requests reclassification instead of
18 requesting addition of powers.

19 (h) At the time of voting on reclassification of a second class
20 borough to third class status, borough voters in conformity with AS 29.36.
21 shall elect an assembly to serve as the combined assembly and
22 school board of the third class borough if reclassification is approved.

23 (i) At the time of voting on reclassification of a third class
24 borough to second class or first class status, borough voters shall vote
25 also on the question whether the borough shall upon reclassification retain
26 a combined assembly and school board or a separate assembly and board as
27 otherwise provided for first and second class boroughs. If the majority of
28 votes cast on the question favors retention of the combined assembly and
29 board, the assembly serving at the time of the reclassification election

1 continues to serve as the assembly and board upon voter approval of reclas-
2 sification and until terms of assemblymen expire as provided before reclas-
3 sification. If a separate board and assembly are approved at the reclas-
4 sification election, a school board shall be elected in conformity with AS
5 14.12 at the next regular municipal election, if it occurs within 90 days of
6 the date of the reclassification election, or otherwise at a special
7 election within that time called by the assembly with expiration dates of
8 terms of members elected at the special election to coincide with the date
9 of the regular municipal election. Until a board is elected and qualified,
10 the assembly continues to serve as the board.

11 (j) The effective date of reclassification of a borough for which
12 reclassification is approved under (h) of this section is the first day of
13 the borough's fiscal year which begins at least six months after the date on
14 which the reclassification proposition has been approved by the voters.

15 ****Sec. 29.06.050. TRANSITION. Repeal.

1 CHAPTER 09. INCORPORATION.

2 ARTICLE 1. REQUIREMENTS.

3 Sec. 29.09.010. INCORPORATION OF CITIES. (a) A community which meets
4 the following standards may incorporate as a first class city:

5 (1) the community has 400 or more permanent residents;

6 (2) the boundaries of the proposed city include all areas
7 necessary to provide municipal services on an efficient scale;

8 (3) the economy of the community includes the human and
9 financial resources necessary to provide local services; in considering the
10 economy of the community, the Local Boundary Commission shall consider
11 property valuations, economic base, personal income, resource and commercial
12 development, anticipated functions, and the expenses and income of the
13 proposed city, including the ability of the community to generate local
14 revenue;

15 (4) the population of the community is stable enough to
16 support local government;

17 (5) there is a demonstrated need for local government.

18 (b) A community which meets all the standards established in (a)
19 of this section except (a)(1) may incorporate as a second class city.

20 Sec. 29.09.020. LIMITATIONS ON INCORPORATION OF CITIES. (a) A com-
21 munity within the unorganized borough may not incorporate as a city if the
22 services may be provided by annexation to an existing city.

23 (b) A community within an organized borough may not incorporate
24 as a city if the services could be provided on an areawide or nonareawide
25 basis by the borough in which it is located or by annexation to an existing
26 city.

27 Sec. 29.09.030. ORGANIZED BOROUGHES. An area may incorporate as an
28 organized borough if it conforms to the following standards:
29

1 (1) the population of the area is interrelated and integrated
2 as to its social, cultural, and economic activities, and is large and stable
3 enough to support organized borough government;

4 (2) the boundaries of the proposed borough conform generally
5 to natural geography and include all areas necessary for full development of
6 local services;

7 (3) the economy of the area includes the human and financial
8 resources capable of providing local services; evaluation of an area's
9 economy includes land use, property valuations, total economic base, total
10 personal income, resource and commercial development, anticipated functions,
11 expenses, and income of the proposed borough;

12 (4) land, water, and air transportation facilities allow the
13 communication and exchange necessary for the development of integrated local
14 government.

15 ARTICLE 2. PROCEDURES.

16 Sec. 29.09.060. PETITION. Municipal incorporation is proposed by
17 filing a petition with the Department of Community and Regional Affairs.
18 The petition shall include the following information about the proposed
19 municipality:

20 (1) class;

21 (2) name;

22 (3) boundaries;

23 *(4) [Effective January 1, 1981] composition and appor-
24 tionment of the assembly or council;

25 (5) for a first class borough, a designation of areawide
26 powers to be exercised;

27 (6) for a second class borough, a designation of
28 areawide and nonareawide powers to be exercised;
29

1 (7) maps, documents, and other information required by
2 the Department of Community and Regional Affairs;

3 (8) for first class city incorporation, the signatures
4 and resident address of 50 permanent resident voters or of 15 percent of the
5 permanent resident voters within the proposed municipality, whichever is
6 greater, based on the number who voted in the area in the last general elec-
7 tion;

8 (9) for second class city incorporation, the signature
9 and resident address of 25 permanent resident voters or of 15 percent of the
10 permanent resident voters within the proposed municipality, whichever is
11 greater, based on the number who voted in the area in the last general elec-
12 tion;

13 (10) for borough incorporation, the signature and resi-
14 dent address of 15 percent of the permanent resident voters in each first
15 class city and 15 percent of voters in the area outside first class cities
16 based on the number who voted in the respective areas in the last general
17 election;

18 (11) for a city, a designation of the powers proposed by
19 the petitioners to be exercised;

20 (12) a proposed operating budget for the municipality
21 projecting sources of income and items of expenditure through the first full
22 fiscal year of operation.

23 Sec. 29.09.070. REVIEW. The Department of Community and Regional
24 Affairs shall review petitions for content and signatures and shall return
25 deficient petitions for correction and completion.

26 Sec. 29.09.080. INVESTIGATION. (a) If the petition contains the
27 required information and signatures, the Department of Community and Regional
28 Affairs shall investigate the proposal.
29

1 (b) The department may combine petitions for incorporation from
2 the same general area.

3 (c) The department shall hold at least one public hearing in the
4 area proposed for incorporation.

5 Sec. 29.09.090. REPORT AND HEARING. (a) The Department of Community
6 and Regional Affairs shall report its findings to the Local Boundary Commission
7 with its recommendations regarding the incorporation.

8 (b) The Local Boundary Commission shall hold at least one public
9 hearing in the area proposed to be incorporated for the purpose of receiving
10 testimony and evidence on the proposal.

11 Sec. 29.09.100. DECISION ON BOROUGH INCORPORATION. (a) If the Local
12 Boundary Commission determines that a proposed municipality fails to meet
13 the standards for incorporation, it shall reject the petition. If the
14 commission determines that the proposed municipality meets the standards, it
15 shall accept the petition. If the commission determines that the proposed
16 boundaries can be altered to meet the standards, it may alter the boundaries
17 and accept the petition.

18 (b) A commission decision under this section may be appealed
19 under the Administrative Procedure Act (AS 44.62).

20 Sec. 29.09.110. INCORPORATION ELECTION. (a) The Local Boundary Com-
21 mission shall immediately notify the lieutenant governor of its acceptance
22 of an incorporation petition. Within 30 days after notification, the
23 lieutenant governor shall order an election in the proposed municipality to
24 determine whether the voters desire incorporation and, if so, to elect the
25 initial officers in the same election. If incorporation is rejected, no
26 officers are elected. The election is held not less than 30 nor more than
27 90 days after the date of the election order. The election order must
28 specify the dates during which nomination petitions for election of initial
29 officers may be filed.

1 (b) An Alaska voter who has been a resident of the area within
2 the proposed municipality for 30 days before the date of the election order
3 may vote.

4 (c) Areawide borough powers included in the incorporation petition
5 are considered to be part of the incorporation question. In an election for
6 the incorporation of a second class borough, each power to be exercised
7 outside cities only is placed separately on the ballot. Adoption of a
8 nonareawide power requires a majority of the votes cast on the question, and
9 the vote is limited to the voters residing outside cities.

10 (d) The lieutenant governor shall supervise the election in the
11 general manner prescribed by the Alaska Election Code (AS 15.05 - 15.60). The
12 state shall pay all election costs under this section.

13 Sec.29.09.120. ELECTION OF INITIAL OFFICERS (a) Repealed by Sec. 4 ch.
14 23 SLA 1976.

15 (b) Nominations for initial officers are made by petition. The
16 petition is in the form prescribed by the lieutenant governor and includes
17 the name and address of the nominee and a statement of the nominee that he
18 is qualified under the provisions of this title for the office that he
19 seeks. A person may file for and occupy more than one office, but he may not
20 serve simultaneously as borough mayor and as a member of the borough assembly
21 or as mayor and as a member of the council of a home rule or first class
22 city. Petitions to nominate officers of a second class city must include the
23 signature and resident address of 10 voters in the area of the proposed
24 city. Petitions to nominate elected municipal officers must include the
25 signature and resident address of 50 voters in the area of the proposed
26 municipality, or that area of the proposed municipality from which the
27 officers are to be elected under the composition and apportionment set out
28 in the accepted incorporation petition.
29

1 (c) The lieutenant governor shall supervise the election in the
2 general manner prescribed by the Alaska Election Code (AS 15.05 - 15.60).
3 The state shall pay all election costs under (a) - (c) of this section.

4 (d) The initial elected municipal officials take office on the
5 first Monday following certification of their election.

6 (e) The initial elected borough assembly and city council members
7 shall determine by lot the length of their terms of office so that a pro-
8 portionate number of terms expire each year, resulting in staggered terms of
9 office for members subsequently elected.

10 Sec. 29.09.130. INTEGRATION OF SPECIAL DISTRICTS AND SERVICE AREAS.

11 Service areas in a newly incorporated borough or city shall be integrated
12 into the borough or city within two years after the date of incorporation.
13 On integration the borough or city succeeds to all the rights, powers,
14 duties, assets and liabilities of the service areas. After integration, the
15 borough assembly or city council may exercise within a former service area
16 all of the rights and powers exercised by the service area at the time of
17 integration, and may levy and collect special charges, taxes, or assessments
18 to amortize bonded indebtedness incurred by the service area or by a borough
19 or city as successor to the service area. Upon integration no less than all
20 property in the service area at the time of integration remains subject to
21 taxation to pay the principal of and interest on the bonds. The provisions
22 of this section apply to all organized boroughs whether incorporated or
23 organized before or after September 10, 1972.

24 Sec. 29.09.140. TRANSITION. (a) The powers and functions exercised by
25 home rule or general law cities and service areas which are succeeded to by
26 a newly incorporated borough or city are exercised by them until the new
27 borough or city assumes the powers and functions, which may not exceed two
28 years after the date of incorporation. Ordinances, rules, resolutions,
29 procedures, and orders in effect before the transfer remain in effect until
superseded by the action of the new borough or city.

1 (b) The borough or city shall give written notice of its assump-
2 tion of the powers, duties and other items enumerated in Secs. 130-140 of
3 this chapter, to the city, and service area concerned before the assumption.
4 Borough or city officials shall consult with the officials of the city and
5 service area concerned, and arrange an orderly transfer.

6 (c) After the incorporation of a new borough or city, no service
7 area within it may assume new bonded indebtedness, make any contract, or
8 transfer any assets without the consent of the assembly or council.

9 Sec. 29.09.150. CHALLENGE OF LEGALITY. No person may challenge the
10 formation of a municipality except within six months of the date of its
11 incorporation.

12 ARTICLE 03. TRANSITIONAL ASSISTANCE.

13 Sec. 29.09.180. ORGANIZATION GRANTS. (a) For the purpose of defraying
14 the cost of transition to borough or city government and in order to provide
15 for development and interim governmental operations, each borough and city
16 incorporated after January 1, 1968, or, in the case of a second class city,
17 incorporated or reclassified after January 1, 1968, other than a unified
18 municipality incorporated under the provisions of (AS 29.85), or a munici-
19 pality otherwise incorporated by consolidation, is entitled to an organization
20 grant equal to \$10 for every voter who voted in the borough or city incor-
21 poration election. However, each incorporated borough and each first class
22 city incorporated or established by reclassification outside an organized
23 borough is entitled to at least \$25,000.

24 (b) Within 30 days after the date of incorporation of a borough
25 or city after September 10, 1972, the Department of Community and Regional
26 Affairs shall determine the number of voters in the borough or city who
27 voted in the incorporation election.
28
29

1 (c) Within 30 days after the completion of its findings, or as
2 soon thereafter as money is appropriated to it for the purpose, the Depart-
3 ment of Community and Regional Affairs shall transmit to the borough or city
4 the total amount of money to which the borough or city is entitled.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

1 CHAPTER 12. ALTERATION OF MUNICIPALITIES.

2 ARTICLE 1. CHANGE OF NAME.

3 Sec. 29.12.010. CHANGE OF MUNICIPAL NAME. (a) The governing body of a
4 home rule or general law municipality may change the official municipal name
5 by adopting an ordinance for the purpose and filing the ordinance with the
6 office of the lieutenant governor. Upon receipt of a legally adopted ordin-
7 ance ratified by the qualified voters voting on the question at a regular or
8 special election, the lieutenant governor shall issue an appropriate order
9 to the municipality changing its existing name. The name change shall
10 become effective on a date fixed in the order and occurring within 45 days
11 of receipt of the ordinance. A copy of the order shall be transmitted to
12 the Department of Community and Regional Affairs.

13 (b) If an ordinance adopted under (a) of this section which
14 results in an order changing the municipal name is subsequently repealed,
15 the lieutenant governor shall issue a further order reinstating the former
16 municipal name within 45 days of the date of the order, unless a different
17 municipal name is adopted by ordinance transmitted to the lieutenant
18 governor for implementation as provided in (a) of this section.

19 (c) When a municipal name change takes effect by means of an
20 order issued under (a) or (b) of this section, civil or criminal suits,
21 applications, petitions, hearings and other proceedings to which the munici-
22 pality is a party and pending at or brought after the date the name change
23 takes effect shall proceed in the name of the municipality as changed by the
24 order.

25 ARTICLE 2. ANNEXATION AND EXCLUSION.

26 Sec. 29.12.040. LOCAL BOUNDARY COMMISSION. (a) The Local Boundary
27 Commission may consider any proposed local government boundary change. It
28 may present proposed changes to the legislature during the first 10 days of
29 any regular session. The change shall become effective 45 days after presen-

1 tation or at the end of the session, whichever is earlier, unless disap-
2 proved by a resolution concurred in by a majority of the members of each
3 house.

4 (b) In addition to the regulations governing annexation by local
5 action adopted under AS 44.19.260, the Local Boundary Commission shall,
6 within 90 days of September 10, 1972, establish procedures for annexation
7 and exclusion of territory by cities and boroughs by local action. The pro-
8 cedures established under this subsection shall include

9 (1) a provision requiring that a proposed annexation and
10 exclusion must be approved by a majority of the voters voting on the question
11 residing within the area proposed to be annexed or excluded;

12 (2) provisions that municipally-owned property adjoining the
13 municipality may be annexed by ordinance without voter approval; and

14 (3) provisions that an area adjoining the municipality may
15 be annexed by ordinance without an election if all property owners and
16 voters within the area petition the assembly or council.

17 (c) A boundary change effected under (a) of this section prevails
18 over a boundary change initiated by local action, without regard to priority
19 in time.

20 Sec. 29.12.050. ANNEXATION OF MILITARY RESERVATIONS. A military
21 reservation may be annexed to a city or borough in the same manner as pre-
22 scribed for any other territory under Sec. 040 of this chapter. If
23 a city within an organized borough annexes a military reservation under this
24 section, the territory encompassing the military reservation automatically
25 is annexed to the borough of which the city is a part.

26 ARTICLE 3. MERGER AND CONSOLIDATION.

27 Sec. 29.12.080. METHODS OF MERGER AND CONSOLIDATION. Two methods may
28 be used to initiate merger or consolidation of home rule and general law
29 municipalities:

1 (1) petition to the Local Boundary Commission under regulations
2 adopted by the commission, or

3 (2) the local option method specified in Secs. 090-160 of this
4 chapter .

5 Sec. 29.12.090. PETITION. (a) Residents of two or more municipalities
6 may file a merger or consolidation petition with the Department of Community
7 and Regional Affairs. The petition must be signed by a number of municipal
8 voters of each municipality equal to at least 25 percent of the number of
9 votes cast in its last regular election.

10 (b) The petition includes

11 (1) the name and class of each municipality;

12 (2) the name and class of the proposed municipality;

13 (3) the proposed composition and apportionment of the assem-
14 bly or council;

15 (4) maps, documents, and other information which show that
16 the proposed municipality meets the standards for municipal incorporation .

17 Sec. 29.12.100. REVIEW. The Department of Community and Regional
18 Affairs shall review a petition for content and signatures and shall return
19 a deficient petition for correction or completion.

20 Sec. 29.12.110. INVESTIGATION. If the petition contains the required
21 information and signatures, the Department of Community and Regional Affairs
22 shall investigate the proposal.

23 Sec. 29.12.120. REPORT AND HEARING. (a) The Department of Community
24 and Regional Affairs shall report its findings to the Local Boundary Commission
25 with its recommendations regarding the merger or consolidation.

26 (b) The Local Boundary Commission shall hold at least one public
27 hearing in each of the municipalities included in the merger or consolida-
28 tion petition, unless officials of the municipalities agree to a single
29 hearing.

1 Sec. 29.12.130. DECISION. If the Local Boundary Commission determines
2 that the proposed municipality fails to meet the standards for incorporation,
3 it shall reject the petition. If the commission determines that the proposed
4 municipality meets these standards, it shall accept the petition. If the
5 commission determines that the proposed boundaries or the composition and
6 apportionment of the assembly or council can be altered to meet the standards,
7 it may change the proposal and accept the petition. The decision may be
8 appealed under the Administrative Procedure Act (AS 44.62).

9 Sec. 29.12.140. ELECTION. (a) The Local Boundary Commission shall
10 immediately notify the lieutenant governor of its acceptance of a merger or
11 consolidation petition. Within 30 days after notification, the lieutenant
12 governor shall order an election within the area to be included in the new
13 municipality to determine whether the voters desire merger or consolidation.
14 The election is held not less than 30 nor more than 90 days after the election
15 order.

16 (b) A voter who is a resident of the area to be included within
17 the proposed municipality may vote.

18 (c) The lieutenant governor shall supervise the election in the
19 general manner prescribed by the Alaska Election Code (AS 15.05 -15.60).
20 The state shall pay all election costs.

21 (d) The lieutenant governor shall certify the election results.
22 If merger or consolidation is approved, he shall, within 10 days, set a date
23 for election of officers of the new municipality under AS 29.09.120. The
24 election date is not less than 60 nor more than 90 days after the election
25 order. This date is the effective date for the merger or consolidation.

26 Sec. 29.12.150. ASSETS AND LIABILITIES. (a) When two or more munici-
27 palities merge, one municipality succeeds to the rights, powers, duties,
28 assets and liabilities of the others.
29

(b) When two or more municipalities consolidate, the newly incorporated municipality succeeds to the rights, powers, duties, assets and liabilities of the consolidated municipalities.

Sec. 29.12.160. ORDINANCES. The ordinances, resolutions, rules, regulations, procedures and orders of the former municipalities remain in force within their respective territories until superseded by the action of the successor municipality.

ARTICLE 4. UNIFICATION OF LOCAL GOVERNMENTS.

Sec. 29.12.190. UNIFICATION OF LOCAL GOVERNMENTS AUTHORIZED. An organized borough and all cities within the borough may unite to form a single unit of home rule local government by complying with this chapter.

Sec. 29.12.200. UNIFICATION TO BE PROPOSED BY PETITION. (a) Formation of a charter commission to propose a unification charter shall be proposed by resolution of the assembly or by petition. An assembly resolution for the purpose may be adopted not more often than once every 12 months.

(b) The borough assembly, a city council, or a person living within the area of proposed unification may initiate the petition.

Sec. 29.12.210. PETITION REQUIREMENTS. (a) The petition shall read:
"PETITION FOR ELECTION OF CHARTER COMMISSION TO PROPOSE UNIFICATION CHARTER
We, the undersigned, qualified voters of the Borough do hereby petition that the following proposition be placed before the voters as provided by law:
'Shall a charter commission be formed (and charter commission members be elected as elsewhere provided on this ballot) to prepare, adopt and submit to the voters for their approval or rejection a proposed charter uniting the Borough and all cities within it as a single unit of home rule government having the powers, duties and functions of a unified government as authorized by law? Yes ☐ No ☐

Inside First Class	Outside First Class
or	or

Signature

Address

Home Rule City

Home Rule City

1 (b) The petition shall be signed by at least

2 (1) that number of qualified voters of the borough living
3 outside all first class and home rule cities in the borough equal to 25
4 percent of the qualified voters who voted in the last regular borough elec-
5 tion; and

6 (2) that number of qualified voters residing in each first
7 class and home rule city located in the borough equal to 25 percent of the
8 qualified voters who voted in the last regular borough election in each
9 city.

10 Sec. 29.12.220. REVIEW OF PETITION. Upon receipt of a petition, the
11 borough assembly shall review the petition within 15 days after its receipt
12 to determine whether it complies with Sec. 200 of this chapter.

13 If the petition does not meet the designated requirements, it shall be
14 immediately returned to the person who initiated the petition with a statement
15 indicating which requirements have not been satisfied.

16 Sec. 29.12.230 CALL FOR CHARTER COMMISSION NOMINATIONS. Once it is
17 determined by the borough assembly that a petition meets the requirements of
18 Sec. 200 of this chapter, or the assembly by its resolution proposes an
19 election on formation of a charter commission to propose a unification
20 charter, the assembly shall issue a call for the nomination of charter
21 commission candidates, specifying the filing deadline and outlining the
22 procedure described for making nominations under Sec. 240 of this
23 chapter.

24 Sec. 29.12.240. NOMINATION OF CHARTER COMMISSION CANDIDATES. (a)
25 Charter commission candidates shall be nominated by petition signed by at
26 least 50 qualified voters of the area from which the candidate seeks election
27 or by a number of qualified voters from that area equal to at least 10
28 percent of the number of votes cast from that area in the last regular
29 borough election, whichever is less.

(b) Nomination petitions shall be filed with the borough clerk on or before the date fixed by the borough assembly, which date shall not be less than 30 days after notice of the call for nominations has been given through the borough.

Sec. 29.12.250. QUALIFICATIONS OF CHARTER COMMISSION CANDIDATES. A person is eligible to be nominated as a candidate for the charter commission if he has been a qualified voter of the area from which he seeks election for at least one year immediately preceding the date his nomination petition is filed with the borough clerk.

****Sec. 29.12.260. COMPOSITION OF CHARTER COMMISSION. (a) The charter commission shall consist of 11 voters, three of whom shall be residents elected at large from the area of the borough and eight of whom, proportionate to the population as determined by the Department of Community and Regional Affairs, shall be

(1) residents of and elected from the area outside a home rule or first class city in the borough; or,

(2) residents of and elected from a home rule or first class city in the borough.

(b) If at least one nomination of a qualified charter commission candidate for each available seat is not filed in accordance with AS 29.12.140 the resolution or petition for unification is void and no election on the question shall be held.

Sec. 29.12.270. ELECTION. (a) After receipt of a valid petition or adoption of an assembly resolution for the purpose, the borough assembly shall submit to the voters the question of whether that borough and all cities within it shall unite to form a single unit of home rule government. The vote shall be held at the next regular borough election scheduled at least 90 days after receipt of the valid petition or adoption of the resolution

1 (b) The ballot on the question of unification shall be worded
2 exactly as in Sec. 210(a) of this chapter.

3 (c) The election of charter commission members shall take place
4 at the same time as the election on the question of unification.

5 (d) All costs incurred in conducting an election under this chap-
6 ter shall be paid by the borough.

7 Sec. 29.12.280. REQUIREMENTS FOR APPROVAL OF UNIFICATION AND ELECTION
8 OF CHARTER COMMISSION. (a) The votes on unification shall be tabulated in
9 two separate classifications. One classification shall consist of all votes
10 cast in the first class and home rule cities of the borough. The other
11 classification shall consist of all votes cast in the remaining areas of the
12 borough. In order for unification to be approved, it is necessary that a
13 majority of the votes in each classification favor unification.

14 (b) If unification is approved, those charter commission can-
15 didates who received the highest number of votes from their respective areas
16 shall serve as members of the commission.

17 Sec. 29.12.290. CHARTER COMMISSION ORGANIZATION AND PROCEDURE. (a)
18 The charter commission authorized by this chapter shall hold its first
19 meeting within 30 days of the date of certification of its election. The
20 commission shall elect from among its members a chairman and a deputy chairman

21 (b) A majority of the total membership of the charter commission
22 constitutes a quorum. No decision of the commission is valid or binding
23 unless approved by that number of members necessary to constitute a quorum.

24 (c) The charter commission may elect other officers from among
25 its membership, adopt rules governing its procedures and hire and discharge
26 commission employees. Rules adopted must conform with the provisions of
27 this chapter.

28 (d) Meetings of the charter commission shall be open to the
29 public at all times. A journal of commission proceedings shall be kept and
shall be available for public inspection at the borough office.

1 (e) Except as provided in AS 29.12.340(e), vacancies on the
2 charter commission shall be filled by a majority vote of the commission .
3 The person appointed to fill a vacancy must be a qualified voter of the same
4 area as the person whom he succeeds and must have been a qualified voter of
5 that area for at least one year immediately preceding the date of his appoint-
6 ment.

7 (f) The borough assembly may grant a per diem allowance to the
8 commission members and may reimburse the members for travel expenses incurred
9 in carrying out the duties prescribed by this chapter.

10 (g) Costs, fees, and other expenses incurred by the charter com-
11 mission are a debt of the borough and shall be paid upon proper verification.

12 Sec. 29.12.300. CHARTER PREPARATION. (a) A charter commission
13 established under this chapter shall prepare, adopt and submit a proposed
14 home rule charter for the area to be unified to the voters for approval or
15 rejection at a regular or special borough election called by the borough
16 assembly held within 60 days of the date of publication and posting of the
17 proposed charter as required in AS 29.12.380. The charter shall include
18 among its provisions:

19 (1) provisions for adjustment of existing bonded indebtedness
20 and other obligations in a manner which will reserve a fair and equitable
21 burden of taxation for debt service, subject to AS 29.12.360;

22 (2) provisions for

23 (A) the establishment of service areas; and

24 (B) the establishment of districts or sections for
25 the election of members of the legislative body of the unified
26 municipality, if election of members of the legislative body is
27 not areawide, and procedures by which to reapportion the election
28 districts or sections;
29

1 (C) reapportionment of the sections, if established;

2 (3) provision for nonpartisan government and provision for
3 the selection, organization, authority and responsibilities of the governing
4 body and its executive and administrator;

5 (4) the transfer or other disposition of property and other
6 rights, claims, assets and franchises of the local government to be unified
7 under the charter;

8 (5) provision for exercise of the rights of initiative and
9 referendum as required by AS 29.15.050;

10 (6) a method of amending the charter;

11 (7) the date on which the charter, if approved at the charter
12 election required by AS 29.12.340, is effective;

13 (8) designation of the new municipality's official name,
14 subject to the provisions of (b) of this section;

15 (9) other charter provisions which the charter commission
16 elects to include and which may be included in a home rule charter under
17 this chapter and the state constitution.

18 (b) The area to be unified shall be known as a borough or a city
19 or by some other designation consistent with existing law.

20 Sec. 29.12.310. PUBLIC HEARINGS. Both before and after drafting the
21 proposed charter, the charter commission shall hold a public hearing in each
22 area of the borough represented on the borough assembly. Other public
23 hearings may be held by the charter commission whenever and wherever it
24 believes necessary and appropriate.

25 Sec. 29.12.320. FILING OF PROPOSED CHARTER. Upon the adoption of a
26 proposed home rule charter by the charter commission, the charter shall be
27 signed by at least a majority of the total membership of the commission and
28 shall be filed with the borough clerk. A copy with signatures affixed shall
29 also be filed with the clerk of each city within the borough.

1 Sec. 29.12.330. PUBLICATION AND POSTING OF PROPOSED CHARTER. Within
2 10 days after filing the proposed charter, the borough clerk shall have it
3 published once in at least one newspaper having general circulation distri-
4 buted within the borough, if there is a newspaper having general circulation
5 distributed within the borough. In addition, the clerk shall have a copy of
6 the proposed charter posted in at least three public places within each city
7 of the borough and each area outside cities. Copies of the proposed charter
8 shall be made available by the borough assembly to the public at both the
9 office of the borough clerk and the office of the clerk of each city within
10 the borough. The clerk shall publish notice by radio and television of the
11 publication, posting, and availability of the proposed charter in a manner
12 intended to apprise the entire borough population of the existence of the
13 proposed charter.

14 Sec. 29.12.340. ELECTION ON CHARTER. (a) The proposed charter adopted
15 by the charter commission shall be submitted to the voters for ratification
16 or rejection at the borough election specified in AS 29.12.300. The borough
17 clerk shall prepare the ballots for use in the election and shall give
18 published notice of and otherwise conduct the election in the manner in
19 which regular municipal elections are conducted. In addition, the clerk
20 shall publish notice of the election by radio and television in a manner
21 intended to apprise the entire borough population of the election.

22 (b) A person who is a qualified voter of the borough may vote in
23 the election on the proposed charter.

24 (c) If a majority of the votes cast in the area of the borough
25 outside all first class and home rule cities and a majority of the votes
26 cast in the remaining area of the borough, composed of all first class and
27 home rule cities, are cast in favor of the proposed charter, the charter is
28 ratified. If the charter is ratified, two copies of the charter shall be
29 filed with each of the following authorities:

1 (1) lieutenant governor;

2 (2) commissioner of the Department of Community and Regional
3 Affairs;

4 (3) district recorder for the area of the borough;

5 (4) clerk of the borough;

6 (5) clerk of each city in the borough.

7 (d) If a proposed charter is rejected, the charter commission
8 shall prepare, adopt and submit a proposed charter to the voters at a general
9 or special borough election called by the borough and held within one year
10 of the date of the first charter election. If the second proposed charter
11 is also rejected, the charter commission shall be dissolved and the question
12 of unification shall be treated as if it had never been proposed or approved.

13 (e) If after the rejection of the first proposed charter, more
14 than one-half of the charter commission members resign from the commission ,
15 the borough assembly shall appoint new members to fill the vacancies in
16 accordance with AS 29.12.160(e).

17 Sec. 29.12.350. EFFECT OF THE CHARTER AFTER RATIFICATION. Upon ratifi-
18 cation, the charter of a unified municipality organized under AS 29.12.190 -
19 390 operates to dissolve all local governments within the area of unification
20 in accordance with the charter.

21 Sec. 29.12.360. ASSETS AND LIABILITIES. A municipality created by
22 unification shall succeed to all the assets and liabilities of the local
23 governments it unified. A bonded indebtedness or other debt incurred before
24 unification shall remain the tax obligation of the area which contracted the
25 debt, except that the tax obligation may be spread over a larger area by
26 ordinance if the governing body determines that the asset for which the
27 bonded indebtedness or other debt was incurred was used for the benefit of
28 the larger area before unification, or is so used after unification.

29 However, preunification bonded indebtedness or other debt for sewage col-

lection systems, water distribution systems, and streets, even if determined to be used for the benefit of a larger area than that which incurred the debt, shall remain the tax obligation of the area which incurred the debt.

Sec. 29.12.370. ORDINANCES. Within two years after ratification of the charter, the governing body of the unified municipality shall revise, repeal, or reaffirm all borough and city ordinances, resolutions and orders in force within the borough at the time of unification. Each ordinance, resolution, regulation, or order in force at the time of unification shall remain in force until superseded by action of the new governing body.

Sec. 29.12.380. RIGHT TO STATE AND FEDERAL FUNDS PRESERVED. All provisions of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to boroughs and cities shall remain in full force and effect with respect to a unified municipality organized under AS 29.12.190 - 29.12.390.

Sec. 29.12.390. POWERS OF A UNIFIED MUNICIPALITY. A municipality organized under AS 29.12.190 - 29.12.390 shall have all powers

(1) not prohibited by law or charter;

(2) granted to organized boroughs and first class cities.

ARTICLE 5. DISSOLUTION.

Sec. 29.12.420. METHODS OF DISSOLUTION. (a) Two petition methods may be used to initiate dissolution of home rule and general law municipalities:

(1) petition to the Local Boundary Commission under regulations adopted by the commission; or

(2) the local option method specified in AS 29.12.430 - 29.12.500

(b) A home rule or general law borough is dissolved when its entire territory is included within a home rule or first class city or cities. A city is dissolved when all its powers become areawide borough powers.

(c) The Department of Community and Regional Affairs shall investigate a municipality which it considers to be inactive and shall report to the

1 Local Boundary Commission on the status of the municipality. The commission
2 may submit its recommendation to the legislature that the municipality be
3 dissolved in the manner provided for submission of boundary changes in Sec.
4 12, art. X of the state constitution.

5 Sec. 29.12.430. PETITION. (a) Municipal residents may file a dissolution
6 petition with the Department of Community and Regional Affairs in the form
7 prescribed by the department. The petition must be signed by a number of
8 municipal voters equal to at least 25 percent of the number of votes cast in
9 the last regular municipal election.

10 (b) The petition includes

11 (1) the name of the municipality;

12 (2) maps, documents, and other information showing that the
13 municipality meets the standards for dissolution.

14 Sec. 29.12.440. STANDARDS. (a) Except as provided in (b) of this
15 section, a municipality may petition for dissolution when

16 (1) it is free of debt, or if in debt, each of its creditors
17 is satisfied with a method of repayment; and

18 (2) either it no longer meets the minimum standards prescribed
19 for incorporation by ch. 09 of this title, or it ceases to use each and
20 every one of its mandatory powers.

21 (b) A home rule or general law city in a borough may petition for
22 dissolution if the borough consents to assume the city's rights, powers,
23 duties, assets and liabilities. The consent must be ratified by a majority
24 of borough voters voting on the question.

25 Sec. 29.12.450. REVIEW. The Department of Community and Regional
26 Affairs shall review a petition for content and signatures and shall return
27 a deficient petition for correction or completion.

28 Sec. 29.12.460. INVESTIGATION. If the petition contains the required
29 information and signatures, the Department of Community and Regional Affairs
shall investigate the proposal.

1 Sec. 29.12.470. REPORT AND HEARING. (a) The Department of Community
2 and Regional Affairs shall report its findings to the Local Boundary Com-
3 mission with its recommendation regarding the dissolution.

4 (b) The Local Boundary Commission shall hold at least one public
5 hearing in the area proposed to be dissolved.

6 Sec. 29.12.480. DECISION. If the Local Boundary Commission determines
7 that the municipality fails to meet the standards for dissolution, it shall
8 reject the petition. If the commission determines that the municipality
9 meets the standards, it shall accept the petition.

10 Sec. 29.12.490. ELECTION. (a) The Local Boundary Commission shall
11 immediately notify the lieutenant governor of its acceptance of a dis-
12 solution petition. Within 30 days after notification, the lieutenant
13 governor shall order an election within the municipality to determine
14 whether the voters desire dissolution. The election is at least 30 and not
15 more than 90 days after the election order.

16 (b) A person who is a qualified voter of the municipality may
17 vote in the dissolution election.

18 (c) The lieutenant governor shall supervise the election in the
19 general manner prescribed by the Alaska Election Code (AS 15.05-15.60). The
20 state shall pay all election costs.

21 (d) The lieutenant governor shall certify the election results.
22 If dissolution is approved, he shall declare that the municipality is dis-
23 solved effective on the date of certification.

24 Sec. 29.12.500. SUCCESSION. The government succeeding to a dissolved
25 municipality succeeds to all its rights, powers, duties, assets, and
26 liabilities as provided in AS 29.09.130-29.09.140.
27
28
29

CHAPTER 15. HOME RULE MUNICIPALITIES.

ARTICLE 1. CHARTERS.

* Sec. 29.15.010. MUNICIPAL CHARTER ADOPTION. A first or second class municipality may adopt a charter for its own government. A home rule municipality may amend its charter or adopt a new one. A charter is framed by a charter commission of seven members chosen by the municipal voters at a regular or special election. A candidate for the commission shall be a qualified voter of the municipality and a resident of the municipality for three years immediately preceding the election. A charter commission election is called by filing a petition with the borough assembly or the city council, or by resolution of the borough assembly or city council. The petition shall be signed by a number of municipal voters equal to 15 percent of the votes cast in the last regular election of the municipality.

Sec 29.15.020. NOMINATION. (a) Charter commission candidates are nominated by petitions signed by 50 voters or the number of qualified municipal voters equal to 10 percent of the number of votes cast in the last regular election, whichever is less.

**** (b) A nomination petition shall be filed with the borough or city clerk on or before a date to be fixed by the borough assembly or council. If at least seven nominations for qualified charter commission candidates are not filed, the petition or resolution calling for a charter commission is void and no election on the question shall be held.

Sec. 29.15.030. ELECTION. At the charter commission election the voters shall consider the question "Shall a charter commission be elected to frame a proposed new charter?" and shall select the members of the commission. If the question is approved, the seven candidates receiving the highest number of votes shall immediately organize as a charter commission.

Sec. 29.15.040. PREPARATION OF CHARTER. The charter commission shall, within one year, prepare a municipal charter. The proposed charter shall be

1 signed by a majority of the charter commissioners and filed in the office of
2 the municipal clerk. Within 15 days, the borough assembly or city council
3 shall have the charter published once in a newspaper of general circulation
4 if distributed within the municipality. The clerk shall post copies of the
5 proposed charter in at least three public places and make copies available
6 at the office of the clerk. The commission shall give published notice of
7 and hold at least one public hearing on the proposed charter before the
8 signing and filing of the charter.

9 Sec. 29.15.050 INITIATIVE AND REFERENDUM. ****(a) A municipal charter
10 shall provide procedures for initiative and referendum.

11 (b) A charter may not require an initiative or referendum petition
12 to have a number of signatures greater than 25 percent of the total votes
13 cast at the last regular municipal election.

14 (c) A charter may not permit the initiative and referendum to be
15 used for a purpose prohibited by Sec. 7, art. XI of the state constitution.

16 Sec. 29.15.060. CHARTER ELECTION. The charter shall be submitted to
17 the municipal voters at a regular or special election held not less than 30
18 days nor more than 90 days from the publication of the charter.

19 Sec. 29.15.070. CHARTER ADOPTION. (a) If a majority of those voting
20 on the question favor the proposed charter, it becomes the organic law of
21 the municipality. Thereafter, the court shall take judicial notice of the
22 charter. The municipality shall file the indicated number of copies of the
23 charter with the

- 24 (1) lieutenant governor - two copies;
25 (2) Department of Community and Regional Affairs - two
26 copies;
27 (3) district recorder - one copy;
28 (4) municipal clerk - one copy.
29

(b) If a proposed charter is rejected, the charter commission shall prepare another proposed charter to be submitted to the voters at a regular or special election to be held within one year after the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of adoption of a charter shall be treated as if it had never been proposed or approved.

* Sec. 29.15.080. CHARTER AMENDMENT. A municipal charter may be amended as provided in the charter except that no amendment shall be effective unless ratified by the voters.

ARTICLE 2. HOME RULE LIMITATIONS.

Sec. 29.15.110. LIMITATION OF HOME RULE POWERS. Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise as provided. They supersede existing and prohibit future home rule enactments which provide otherwise:

- (1) AS 29.09.140 Borough Transition
- (2) AS 29.12.010 Municipal Name Change
- (3) AS 29.12.040 Annexation and Exclusion
- (4) AS 29.12.080 - 29.12.160 Merger and Consolidation
- (5) AS 29.12.420 - 29.12.500 Dissolution
- (6) AS 29.15.080 Charter Amendment
- (7) AS 29.24.010 Conflict of Interest
- (8) AS 29.24.020 Meetings Public
- * (9) (Effective January 1, 1981) AS 29.24.060; 29.24.080 -
29.24.140 Borough assembly composition and Apportionment;
Borough Assembly Members

- 1 (10) AS 29.24.150(c) Expulsion of Borough Assemblymen
2 (11) AS 29.24.200(f) Removal of Borough Mayor from
3 Office
4 (12) AS 29.24.290(b) Expulsion of City Councilman
5 from Office
6 **** (13) AS 29.24.340(a) Repeal
7 (14) AS 29.24.350 Removal of Mayor from Office
8 (15) AS 29.24.680 Prohibitions Respecting Appointment
9 and Removal of Personnel
10 (16) AS 29.24.700 Municipal Reports
11 (17) AS 29.27.010(a)(12) Municipal Exemption
12 on Contractor Bond Requirements
13 (18) AS 29.27.060 Codification
14 (19) AS 29.30.010, 29.30.030(b) - 29.30.040 Municipal Elections
15 (20) AS 29.30.060(f) Expulsion, Removal from Office
16 (21) AS 29.30.210 - 29.30.330 Recall
17 (22) AS 29.33.020 Extraterritorial Jurisdiction
18 (23) AS 29.33.030 Eminent Domain
19 (24) AS 29.33.080 Garbage and Solid Waste Services
20 (25) AS 29.33.090(b) Effect of Areawide Exercise
21 of Borough Power
22 (26) AS 29.33.090(c) Borough Building Code
23 Jurisdiction within Cities
24 (27) AS 29.33.100 - 29.33.160 Utilities
25 **** (28) AS 29.33.220 Repeal
26 (29) AS 29.33.230 Post Audit
27 (30) AS 29.36.010(b) Areawide Borough Powers
28 (31) AS 29.36.040, AS 29.36.230(d), AS 14.12.020(a) Responsibility
29 for education on Military Reservations

- 1 (32) AS 29.36.130(c) Acquisition of Additional
2 Areawide Powers
- 3 (33) AS 29.39.020 - 29.39.060 Powers of Cities Outside Boroughs
- 4 (34) AS 29.42.040(d) Zoning of State Land for
5 Homesite Entry
- 6 (35) AS 29.42.080(b) Applicability of Local
7 Platting Regulations to State Land in a Municipality
- 8 (36) AS 29.45.010 - 29.45.530 Borough
9 and City Property Taxes
- 10 (37) AS 29.45.020 Taxpayer Notice
- 11 (38) AS 29.45.580(d) Interest on Sales
12 Tax
- 13 (39) AS 29.48.090 Exemption from Special Assessment
- 14 (40) AS 29.51.420 - 29.51.430 Bonded Debt for
15 School Construction
- 16 (41) AS 29.51.210(b) Security for Bonds
- 17 (42) AS 29.51.390 Bond attorneys, Bond and Financial
18 Consultants
- 19 (43) AS 29.62. Municipal Tax Resource Equalization
- 20 (44) AS 29.62. State Aid for Miscellaneous Municipal
21 Services
- 22 (45) AS 29.71.010 Adverse Possession
- 23 (46) AS 29.71.020 Taxation of Municipalities
- 24
- 25
- 26
- 27
- 28
- 29

CHAPTER 18. DEVELOPMENT CITIES

**** Repeal.

CHAPTER 21. CAPITAL CITY.

Sec. 29.21.010. INCORPORATION. There is created and incorporated a city of the state as the capital city of Alaska which is a city of the first class. The capital city has all the powers of a first class city.

Sec. 29.21.020. BOUNDARIES. The boundaries of the capital city shall include all of that area of land designated by the voters of Alaska as the new capital site of the state.

Sec. 29.21.030. CITY COUNCIL. (a) Until council members elected by the residents of the capital city take office as provided in AS 29.21.060 the council of the capital city shall have five members, four of whom shall be appointed by the governor and shall serve at the pleasure of the governor. The development corporation shall designate one person to serve as a member of the council. The council members appointed by the governor or designated by the development corporation shall serve an initial term which expires on the Monday following the first Tuesday in October of the calendar year following the calendar year of initial appointment or designation. Council members may be reappointed by the governor or redesignated by the development corporation. Except as provided in AS 29.21.160 the successors of the initial appointees and designee shall serve for a term of two years commencing on the date the initial appointments and designation expire. Each appointee and designee shall hold office for the term of his appointment and until his successor has been appointed or designated and has qualified.

(b) Council members appointed by the governor or designated by the development corporation need not be residents of the capital city.

(c) The council shall elect a chairman from among its membership. The chairman presides at council meetings, determines the agenda for council meetings, and carries out the other duties specified by ordinance.

Sec. 29.21.040. FILLING A VACANCY. If a vacancy occurs among the members appointed by the governor, the governor shall designate the replacement who shall serve for the unexpired portion of the term.

1 Sec. 29.21.050. APPOINTMENT OF CITY OFFICIALS. Until a mayor is
2 elected in accordance with AS 29.21.060, the council shall appoint a city
3 manager for the capital city to serve at the pleasure of the council. The
4 city manager may not be a council member.

5 Sec. 29.21.060. TRANSITION. (a) When the capital city attains a
6 population of 400 permanent residents, as certified by the lieutenant governor
7 based on the best information available, the lieutenant governor shall
8 notify the council of this determination. The lieutenant governor shall
9 specify an election date which shall be the first Tuesday of October following
10 the notification, except that if it is less than six months from the date of
11 the certification to the first Tuesday of October then the election date
12 shall be the first Tuesday of October of the year following. The elected
13 members shall take office on the Monday following the election.

14 (b) After the lieutenant governor has specified the election date,
15 the council shall make arrangements for an election at which five council
16 members and a mayor shall be elected in the manner prescribed by ordinance
17 and law. The expenses of the election shall be borne by the state. The
18 council of the capital city shall have six members. The governor shall
19 designate one council member holding office on the date of the election to
20 remain a member of the council for a single three-year term commencing on
21 the date the elected council members take office. The successors to the
22 appointed council members shall be elected by the residents, except that if
23 the appointed council member leaves office during the three years, the
24 governor may appoint a successor. The terms of all other appointed or
25 designated council members expire when the elected council members take
26 office. The term of elected council members is as provided in AS 29.24.280
27 except that three of the members are elected for an initial term of one
28 year.
29

1 *Sec. 29.21.070. PLANNING AND LAND USE REGULATION AUTHORITY. The
2 general development plan and specific development plans constitute the land
3 use plan for the capital city area. When a parcel of land has been developed
4 in accordance with the applicable specific development plan, that parcel
5 becomes subject to all planning, zoning, subdivision, building code or other
6 similar ordinances of the Matanuska-Susitna Borough.

7 Sec. 29.21.080. TRANSFER OF UTILITIES TO THE CAPITAL CITY. The
8 development corporation, in cooperation with the capital city, shall arrange
9 for and agree to an orderly schedule for transferring to the capital city
10 ownership of, and financial and operational responsibility for utilities and
11 any other facilities which the development corporation considers to be
12 integral parts of the capital city infrastructure. Before January 1, 1985,
13 the development corporation and the council of the capital city shall jointly
14 retain independent consultants to study and determine an orderly schedule
15 for transfer of these utilities and facilities to the capital city. The
16 study shall consider the capabilities of the capital city and its existing
17 and anticipated residents to finance the cost of these utilities and other
18 facilities and their operating expenses. The consultants shall propose a
19 recommended schedule for and terms of transfer which are commensurate with
20 the capital city's existing and anticipated population, tax base and any
21 other factors relating to its capability to finance and operate these
22 facilities as they consider appropriate. The development corporation shall,
23 after considering the consultants' report, propose a schedule of and terms
24 and conditions of the transfer to the capital city, which shall, upon review
25 and approval by the council, be included in an agreement between the
26 development corporation and the capital city. If the development corporation
27 and the capital city are unable to agree within six months after the
28 development corporation submits its proposal, the development corporation
29 shall submit the proposal to the Legislative Budget and Audit Committee

1 which shall consider the proposal, and if the committee considers it approp-
2 riate to do so, shall recommend to the legislature legislation it considers
3 desirable for the disposition of the utilities and other facilities. If the
4 legislature does not enact legislation regarding the disposition within one
5 year after the proposal is submitted to the Legislative Budget and Audit
6 Committee, the development corporation may at any time thereafter sell or
7 dispose of the utilities and facilities or any of them to a private person
8 or entity or government body, or continue to operate them.

9 Sec. 29.21.090. DEFINITIONS. In AS 29.21.010 - 29.21.090, unless
10 the context requires otherwise,

11 (1) "capital city area" means the area described in AS
12 29.21.020

13 (2) "capital city " means the municipality incorporated by
14 this chapter;

15 (3) "development corporation" means the Alaska Capital City
16 Development Corporation;

17 (4) "general development plan" has the same meaning as
18 provided in AS 44.07.360 and includes amendments to the general development
19 plan;

20 (5) "specific development plan" has the same meaning as
21 provided in AS 44.07.360 and includes amendments to each specific development
22 plan.

23 Sec. 29.21.100. SHORT TITLE. AS 29.21.010 - 100 of this chapter may
24 be cited as the Capital City Incorporation Act.
25
26
27
28
29

1 CHAPTER 24. MUNICIPAL OFFICERS AND EMPLOYEES.

2 ARTICLE 1. CONFLICTS OF INTEREST, PUBLIC MEETINGS.

3 ****Sec. 29.24.010. CONFLICTS OF INTEREST. Each home rule and general law
4 municipality shall adopt a conflicts of interest ordinance which provides
5 that a member of ^{the} governing body shall declare a substantial financial
6 interest he has in an official action and ask to be excused from a vote on
7 the matter. The presiding officer shall rule on the question. His decision
8 may be overridden by the majority vote of the governing body.

9 Sec. 29.24.020. MEETINGS PUBLIC. Meetings of all municipal bodies
10 shall be public as provided in AS 44.62.310. The assembly and council shall
11 provide reasonable opportunity for the public to be heard at regular and
12 special meetings. This section applies to home rule and general law munici-
13 palities.

14 ARTICLE 2. GOVERNING BODIES.

15 ****Sec. 29.24.050. (Sec. 29.23.010.) GENERAL POWER. The legislative
16 power of a borough is vested in the assembly. The legislative power of a
17 city is vested in the council.

18 Sec. 29.24.060. ASSEMBLY COMPOSITION AND APPORTIONMENT. [Effective
19 January 1, 1981].

20 (a) Assembly composition and apportionment shall be consistent
21 with the equal representation standards of the Constitution of the United
22 States.

23 (b) The assembly of a newly incorporated borough is, after incor-
24 poration and until the adoption of an ordinance providing for a change in
25 composition or apportionment, composed of the number of members and appor-
26 tioned as set out in the incorporation petition approved by the voters. If
27 the borough is already incorporated, the assembly shall be composed and
28 apportioned in a manner that is consistent with the requirements of this
29 section and prescribed by charter or ordinance.

1 (c) An assembly may not provide for weighted voting.

2 (d) A member of the assembly of a borough may not be elected or
3 appointed by and from the council of a city in the borough.

4 Sec.29.24.070. COMPOSITION AND FORM OF REPRESENTATION. (a) The
5 borough assembly shall provide for its composition and for the form of its
6 representation.

7 (b) Not later than the first regular election which occurs after
8 the report of a federal decennial census, the assembly shall propose and
9 submit to the voters of the borough, at that regular election or at a special
10 election called for the purpose, one or more forms of borough assembly
11 representation. The forms of representation which the assembly may submit
12 to the voters are:

13 (1) election of members of the borough assembly at large by
14 the qualified voters throughout the borough;

15 (2) election of members of the borough assembly by district,
16 including

17 (A) election at large by the qualified voters throughout
18 the borough, but with a requirement that a candidate live within
19 an election district established by the borough for election of
20 assembly members; or

21 (B) election from election districts established by the
22 borough for the election of assembly members by the qualified
23 voters of a district;

24 (3) election of members of the borough assembly both at
25 large and by district.

26 (c) A form of borough assembly representation which includes
27 election of borough assembly members under (b)(2) or (b)(3) of this section
28 shall be submitted to the voters of the borough with a plan of apportionment
29 as required by AS 29.24.080.

1 (d) The borough assembly shall, within 30 days of certification
2 of the results of the election held on a proposed form of representation
3 under this section, adopt an ordinance providing for its composition and the
4 form of assembly representation, and, if applicable, the apportionment of
5 assembly seats which corresponds to the proposed form of representation
6 which received the most votes at the election.

7 (e) This section does not apply

8 (1) to a unified municipality incorporated under
9 AS 29.12.190 - 29.12.390;

10 (2) to a home rule borough if the borough charter contains
11 procedures for changing assembly composition and form of representation.

12 Sec. 29.24.080. ASSEMBLY RECOMPOSITION AND REAPPORTIONMENT. (a) Not
13 later than two months after the official report of a federal decennial
14 census, the borough assembly shall determine and declare by resolution
15 whether the existing apportionment of the borough assembly meets the standards
16 of AS 29.24.060. If the borough assembly submits to the voters a form of
17 representation which includes election of borough assembly members under
18 AS 29.24.070(b)(2) or (b)(3) the assembly shall submit with the proposition
19 of a proposed plan of apportionment which corresponds to the form of represen-
20 tation proposed. The assembly shall describe the plan of apportionment in
21 the ballot proposition, and may present the plan in any manner which it
22 believes accurately describes the apportionment which is proposed under the
23 form of representation. If the borough assembly determines that its existing
24 apportionment meets the standards of AS 29.24.060 the assembly may include
25 the existing apportionment as a proposed plan of apportionment of assembly
26 seats which corresponds to a form of representation which is proposed.

27 (b) The borough assembly shall provide, by ordinance, for a
28 change in an existing apportionment of the borough assembly whenever it
29 determines that the apportionment does not meet the standards of AS 29.24.060.

1 (d) The borough assembly shall, within 30 days of certification
2 of the results of the election held on a proposed form of representation
3 under this section, adopt an ordinance providing for its composition and the
4 form of assembly representation, and, if applicable, the apportionment of
5 assembly seats which corresponds to the proposed form of representation
6 which received the most votes at the election.

7 (e) This section does not apply

8 (1) to a unified municipality incorporated under AS 29.12.190
9 - 29.12.390

10 (2) to a home rule borough if the borough charter contains
11 procedures for changing assembly composition and form of representation.

12 Sec. 29.24.080. ASSEMBLY RECOMPOSITION AND REAPPORTIONMENT. (a) Not
13 later than two months after the official report of a federal decennial
14 census, the borough assembly shall determine and declare by resolution
15 whether the existing apportionment of the borough assembly meets the standards
16 of AS 29.24.060. If the borough assembly submits to the voters a form of
17 representation which includes election of borough assembly members under
18 AS 29.24.070(b)(2) or (b)(3) the assembly shall submit with the proposition
19 of a proposed plan of apportionment which corresponds to the form of represen-
20 tation proposed. The assembly shall describe the plan of apportionment in
21 the ballot proposition, and may present the plan in any manner which it
22 believes accurately describes the apportionment which is proposed under the
23 form of representation. If the borough assembly determines that its existing
24 apportionment meets the standards of AS 29.24.060 the assembly may include
25 the existing apportionment as a proposed plan of apportionment of assembly
26 seats which corresponds to a form of representation which is proposed.

27 (b) The borough assembly shall provide, by ordinance, for a
28 change in an existing apportionment of the borough assembly whenever it
29 determines that the apportionment does not meet the standards of AS 29.24.060.

1 At the same time, the borough assembly may, by ordinance, change the com-
2 position of the assembly.

3 (c) If a petition signed by not less than 50 registered voters who
4 are residents of the borough request the borough assembly to determine
5 whether the existing apportionment meets the standards for apportionment in
6 AS 29.24.060, and the petition contains evidence that the existing apportion-
7 ment does not meet those standards, the assembly may make the determination
8 requested. The borough assembly shall make a determination required by this
9 subsection within two months of receipt of a petition which meets the require-
10 ments of this subsection.

11 (d) An ordinance adopted by the assembly under (b) or (c) of this
12 section shall be submitted to the voters for approval. In order for the
13 ordinance to be approved it must receive the approval of a majority of the
14 votes cast.

15 (e) Within six months of a determination by the borough assembly
16 under (b) or (c) of this section that the current apportionment does not
17 meet the standards of AS 29.24.060 the borough assembly shall adopt an
18 ordinance providing for reapportionment, and submit the ordinance to the
19 voters. If, at the end of the six-month time period, an ordinance providing
20 for reapportionment has not been approved by the voters, the commissioner of
21 the Department of Community and Regional Affairs shall provide for the
22 reapportionment in accordance with the standards of AS 29.24.060 by preparing
23 an order of reapportionment and delivering the order to the borough mayor.

24 Sec. 29.24.090. APPORTIONMENT APPEALS. (a) A reapportionment ordinance
25 approved by the voters, or a decision of the borough assembly that the
26 standards of AS 29.24.060 do not require a change in apportionment, may be
27 appealed to the commissioner of the Department of Community and Regional
28 Affairs. Fifty registered voters who are residents of the borough may
29 submit a petition to the commissioner of community and regional affairs

1 requesting the commissioner to determine whether the proposed reapportionment ordinance approved by the voters meets the standards of AS 29.24.060
2 or whether a decision of the borough assembly that the standards of AS
3 29.24.060 do not require a change of apportionment is correct. If the
4 petition asks the commissioner of community and regional affairs to review
5 an ordinance approved by the voters under AS 29.24.080(e), the petition
6 shall be delivered to the commissioner not later than 20 days after certification of the election. If the petition asks the commissioner of community
7 and regional affairs to review a decision of the borough assembly under AS
8 29.24.080(c), the petition shall be delivered to the commissioner within 20
9 days of the decision of the borough assembly.

10
11 (b) The commissioner of community and regional affairs shall
12 review the petition and may make the determination requested. The commissioner shall provide copies of his determination to the persons petitioning
13 for appeal and to borough officials not later than 60 days after he receives
14 the petition.

15
16 (c) If the commissioner of community and regional affairs determines that the proposed reapportionment ordinance approved by the voters
17 does not meet the standards of AS 29.24.060, or if he determines that the
18 decision of the borough assembly that the standards of AS 29.24.060 do not
19 require a change of apportionment is not correct, the commissioner shall, by
20 order, direct the borough assembly to prepare a reapportionment ordinance
21 which meets the standards of AS 29.24.060 and submit the ordinance to the
22 voters.

23
24 (d) When the borough assembly has been directed by the commissioner of community and regional affairs to prepare reapportionment
25 ordinance under (c) of this section, the borough assembly shall, within two
26 months of its receipt of the commissioner's order, adopt an ordinance
27 providing for reapportionment. The borough assembly shall submit an
28
29

1 ordinance adopted under this subsection to the voters at a regular election
2 or special election held within 60 days of the date of adoption of the
3 reapportionment ordinance.

4 (e) If at the end of the time period provided under (d) of this
5 section an ordinance providing for reapportionment has not been approved by
6 the voters, the commissioner of community and regional affairs shall provide
7 for the reapportionment of the borough assembly in accordance with the
8 standards of AS 29.24.060 by preparing an order of reapportionment and
9 delivering the order to the borough mayor.

10 Sec. 29.24.100. JUDICIAL REVIEW AND RELIEF. (a) The commissioner of
11 community and regional affairs may request the superior court to enforce a
12 reapportionment order issued under AS 29.24.090(e).

13 (b) Each of the following is subject to judicial review:

14 (1) a plan of reapportionment approved by the voters under
15 AS 29.24.080(a);

16 (2) a determination by the borough assembly under AS 29.24.080
17 that the standards of AS 29.24.060 do not require a change in apportionment;

18 (3) a reapportionment ordinance approved by the voters under
19 AS 29.24.080(d);

20 (4) a reapportionment order of the commissioner of community
21 and regional affairs made under AS 29.24.090(c);

22 (5) a reapportionment ordinance approved by the voters under
23 AS 29.24.090(d); and

24 (6) a reapportionment order of the commissioner of community
25 and regional affairs made under AS 29.24.090(e);

26 Sec. 29.24.110 EFFECTIVE DATE OF APPORTIONMENT. (a) A change in
27 assembly apportionment or composition under AS 29.23.080 or AS 29.24.090 is
28 effective beginning with the first regular election for members of the
29 assembly which is held more than 60 days after the later of:

1 (1) approval of a reapportionment ordinance by the voters
2 under AS 29.24.080(a), AS 29.24.080(e), or AS 29.24.090(d); or

3 (2) the delivery to the mayor of a reapportionment order of
4 the commissioner of community and regional affairs under AS 29.24.090(d).

5 (b) The provisions of (a) of this section do not apply to a
6 borough in which a change in assembly composition or apportionment is subject
7 to review and approval or determination of nonobjection by the Attorney
8 General of the United States under the Voting Rights Act of 1965, as amended,
9 (42 U.S.C. 1971 - 1974). A change in assembly composition or apportionment
10 subject to review under the Voting Rights Act of 1965, as amended, is effec-
11 tive beginning with the first regular election for members of the assembly
12 which is held more than 60 days after

13 (1) receipt by the borough assembly of approval by the
14 Attorney General of the United States of the proposed change in the composi-
15 tion or apportionment of the assembly; or

16 (2) the delivery to the mayor of a reapportionment order of
17 the commissioner of community and regional affairs under AS 29.24.090(e).

18 (3) the last day on which the Attorney General of the United
19 States may review a proposed change in the composition or apportionment of
20 the assembly.

21 Sec. 29.24.120. APPLICABILITY OF APPORTIONMENT PROVISIONS. The
22 provisions of AS 29.24.080-29.24.110 do not apply

23 (1) to a unified municipality incorporated under AS 29.12.190 -
24 29.12.390;

25 (2) to a home rule borough if the borough, by charter,
26 provides for reapportionment of the borough assembly.

27 ****Sec. 29.24.125. CITY COUNCIL COMPOSITION. Each first class city has a
28 council of six members elected by the voters at large. Each second class
29 city has a council of seven members elected by the voters at large. The

1 council of a first or second class city may by ordinance provide for election
2 of members other than on an at-large basis for all members.

3 ****Sec. 29.24.130. REGULAR TERM OF OFFICE. Repeal.

4 ****Sec. 29.24.140 QUALIFICATIONS. (a) A borough voter is eligible to be
5 a member of the assembly and a city voter is eligible to be a member of the
6 council. A member of the assembly who ceases to be a qualified voter im-
7 mediately forfeits his office. A member of the council who ceases to be a
8 qualified city voter immediately forfeits his office.

9 (b) A governing body may by ordinance establish a durational
10 residency requirement for its members not to exceed three years.

11 (c) An assembly or council member who represents an area less
12 than that of the total borough or city and who becomes a resident of another
13 area within the municipality may continue to serve until the next regular
14 election unless provided otherwise by ordinance.

15 (d) A municipality may by ordinance establish district residency
16 requirements for members of its governing body.

17 ****Sec. 29.24.145. TERM OF OFFICE. (a) Assembly and council members are
18 elected for three-year terms and until their successors have qualified
19 unless different terms not exceeding four years are prescribed by charter or
20 ordinance.

21 (b) Except when otherwise required by a change in composition or
22 apportionment, if the term of a member of a governing body is changed by
23 charter or ordinance the term of an official holding office at the time the
24 change becomes effective is not affected.

25 (c) The regular term of office begins on the first Monday fol-
26 lowing certification of the election, unless a different date is prescribed
27 by charter or ordinance.

28 ****Sec. 29.24.150. PROCEDURES OF GOVERNING BODIES. (a) The assembly
29 shall elect from among its members a presiding officer and a deputy presiding

1 officer to serve at the pleasure of the members, except that in a borough
2 which has adopted the manager form of government under AS 29.24.550, the
3 mayor serves as presiding officer. In a city the mayor serves as presiding
4 officer. If the presiding officer is not present or disqualifies himself,
5 the deputy presiding officer shall preside.

6 (b) A municipal governing body shall hold at least one regular
7 meeting every month, unless otherwise provided by ordinance. A special
8 meeting may be held at the call of the presiding officer or at least
9 one-third of the members provided a majority of the members are given at
10 least 24 hours oral or written notice and reasonable efforts are made to
11 notify all members. A special meeting may be conducted with less than 24
12 hours notice if all members are present or if absent members have waived in
13 writing the required notice. Waiver of notice can be made before or after
14 the special meeting is held. A waiver shall be made a part of the journal
15 for the meeting.

16 (c) A majority of the total membership of a governing body
17 authorized by law shall constitute a quorum. A member disqualified by law
18 from voting on a question may be considered present for purposes of
19 constituting a quorum. In the absence of a quorum, any number of members
20 may recess or adjourn the meeting to a later date.

21 (d) Actions of a governing body are adopted by a majority of the
22 total membership of the body. All members present shall vote on every
23 question unless they are required to abstain from voting on a question by
24 law. The final vote on every ordinance, resolution or substantive motion
25 shall be recorded "yes" or "no", except that if the vote is unanimous it is
26 necessary only to so state.

27 (e) A governing body shall maintain a journal of its official
28 proceedings which shall be a public record.
29

(f) A governing body may, consistent with law or charter, determine by ordinance its own rules of procedure and order of business.

****Sec. 29.24.160. DEPARTMENTS. Repeal.

****Sec. 29.24.170. VACANCIES. The governing body may provide by ordinance the manner in which a vacancy occurs in any elected office except the office of mayor. Unless otherwise provided by ordinance the governing body shall declare an elective office, other than the office of mayor, vacant when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) unless excused by the governing body, is physically absent from the municipality for 90 consecutive days;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office as determined by two-thirds vote of the governing body;

(5) if a member of the governing body, misses three consecutive regular meetings and is not excused;

(6) is convicted of a felony or of an offense involving a violation of his oath of office; or

(7) is convicted of a felony or misdemeanor described in AS 15.56 and two-thirds of the members of the governing body concur in expelling him;

(8) no longer physically resides in the municipality and the governing body by two-thirds vote declares the seat vacant.

****Sec. 29.24.175. FILLING A VACANCY. (a) If a vacancy occurs in a governing body, the remaining members shall within 30 days, unless a different period is provided by ordinance, appoint a qualified person to fill the vacancy. The person shall serve until the next regular election, at which time a successor shall be elected to serve the balance of the term. If less than 30 days remain in a term, a vacancy shall not be filled.

1 (b) Notwithstanding subsection (a), if the membership is reduced
2 to fewer than the number required to constitute a quorum, the remaining
3 members shall within seven days appoint a number of qualified persons to
4 constitute a quorum.

5 ARTICLE 3. BOROUGH EXECUTIVE AND ADMINISTRATOR.

6 ****Sec. 29.24.200. EXECUTIVE POWER. (a) The executive power within a
7 municipality is vested in a mayor elected by the voters or by the governing
8 body as provided in this article.

9 (b) The mayor shall act as ceremonial head of government, execute
10 official documents upon authorization of the governing body, and is respon-
11 sible for additional duties and powers prescribed by this chapter.

12 ****Sec. 29.24.205. ELECTION AND TERM OF MAYOR. (a) The mayor of a
13 borough or first class city is elected at large. The mayor of a borough or
14 first class city shall serve a term of three years unless by ordinance a
15 different term not to exceed four years is provided, except that the current
16 term of an incumbent mayor may not be altered. The regular term of a mayor
17 of a borough or first class city begins on the first Monday following certi-
18 fication of his election.

19 (b) The mayor of a second class city is elected by and from the
20 council and serves until a successor is elected and has qualified. The
21 council of a second class city shall meet on the first Monday after certifi-
22 cation of the regular election and elect a mayor who takes office immediately.
23 The mayor of a second class city shall serve a one-year term unless a longer
24 term is provided by ordinance, except that the mayor of a second class city
25 may serve only while he is a member of the council regardless of the term
26 established for the office of mayor.

27 (c) The governing body may not limit the number of terms a mayor
28 may serve.
29

1 ****Sec. 29.24.206. QUALIFICATIONS FOR THE OFFICE OF MAYOR. (a) A voter
2 of a borough or first class city is eligible to hold the office of mayor. A
3 member of a city council for a second class city is eligible to hold the
4 office of mayor in that city.

5 (b) Residency requirements for the office of mayor not exceeding
6 three years may be prescribed by ordinance.

7 ****Sec. 29.24.210. POWERS AND DUTIES OF MAYOR. (a) If a municipality
8 has not adopted the manager form of government, the administrative power is
9 vested in the mayor and the mayor has the same powers and duties as those of
10 the manager.

11 (b) The mayor may take part in the discussion of all matters
12 before the governing body.

13 (c) The mayor may not vote on any matter before the governing
14 body, except that the mayor of a first class city may vote in the case of a
15 tie and the mayor of a second class city may vote on all matters as a council
16 member.

17 Sec. 29.24.220. EXECUTIVE ABSENCE. The borough mayor, subject to
18 assembly approval, shall designate a person to act as mayor during the
19 mayor's temporary absence or disability. If a manager plan has been adopted,
20 the assembly shall designate by resolution a borough administrative officer
21 to act as manager during his absence or disability.

22 ****Sec. 29.24.230. ASSEMBLY PARTICIPATION. Repeal.

23 ****Sec. 29.24.240. VETO. (a) Except as provided in subsections (c) and
24 (d), the mayor may veto any ordinance, resolution, motion, or other action
25 of the governing body and may strike or reduce appropriation items.

26 (b) A veto must be exercised before the next regular meeting of
27 the governing body and must be accompanied by a written explanation of the
28 reasons for that action. A veto may be overridden by vote of two-thirds of
29 the authorized membership of the governing body within 21 days following
exercise of the veto or at the next regular meeting, whichever is later.

1 (c) The veto does not extend to

2 (1) appropriation items in a school budget ordinance;

3 * (2) actions of the governing body sitting as board of
4 equalization or the board of adjustment;

5 (3) adoption or repeal of the manager form of government.

6 (d) The mayor of a third class borough and the mayor of a second
7 class city has no veto power.

8 ****Sec. 29.24.250. VACANCY IN THE OFFICE OF MAYOR. (a) The governing
9 body shall, upon two-thirds concurring vote, declare the office of mayor
10 vacant only when the person elected

11 (1) fails to qualify or take office within 30 days after his
12 election or appointment;

13 (2) unless excused by the governing body, is physically
14 absent for 90 consecutive days;

15 (3) resigns and his resignation is accepted;

16 (4) is physically or mentally unable to perform the duties
17 of his office;

18 (5) if, as a member of the assembly or council, he misses
19 three consecutive regular meetings and is not excused;

20 (6) is convicted of a felony or of an offense involving a
21 violation of his oath of office;

22 (7) is convicted of a felony or misdemeanor described in AS
23 15.56; or

24 (8) no longer physically resides in the municipality.

25 (b) Except as provided in subsection (c), a vacancy in the office
26 of mayor occurring six months before a regular election shall be filled by
27 the governing body. The person appointed shall serve until the next regular
28 election and until a successor is elected and has qualified. If a member of
29 the governing body is chosen, he shall resign his seat on the assembly or

1 council. If a vacancy occurs more than six months before a regular election,
2 the governing body shall call a special election to fill the unexpired term.

3 (c) Notwithstanding (b) of this section, in a second class city,
4 the office of mayor is filled by and from the council and retains his seat
5 on the council.

6 ARTICLE 4. CITY COUNCIL.

7 ****Sec. 29.24.280. COMPOSITION, ELIGIBILITY, ELECTION AND TERM. Repeal.

8 ****Sec. 29.24.290. PROCEDURE. Repeal.

9 ****Sec. 29.24.300. FILLING A VACANCY. Repeal.

10 ARTICLE 5. CITY EXECUTIVE AND ADMINISTRATOR.

11 ****Sec. 29.24.330. Repeal

12 ****Sec. 29.24.340. Repeal.

13 ****Sec. 29.24.350. Repeal

14 ****Sec. 29.24.360. Repeal.

15 ****Sec. 29.24.370. Repeal.

16 ****Sec. 29.24.380. Repeal.

17 ****Sec. 29.24.390. Repeal.

18 ARTICLE 6. SCHOOL BOARDS.

19 ****Sec. 29.24.⁴²⁰~~340~~. SCHOOL BOARDS. (a) Each municipal school district
20 has a school board. Members are elected at the regular election held
21 annually on the first Tuesday of October, unless a different election date
22 or interval of years is provided by ordinance. Members are elected for
23 three-year terms and until their successors take office. All board members
24 are elected at large unless a different method of election has been approved
25 by the voters in a regular election.

26 (b) Notwithstanding (a) of this section, assembly members in a
27 third class borough serve as the school board and the mayor is president of
28 the school board.
29

1 ****Sec. 29.24.430. OTHER BOARDS AND COMMISSIONS. (a) The governing
2 body may, by ordinance, establish advisory, administrative, technical, or
3 quasi-judicial boards and commissions.

4 (b) Members of boards and commissions, except for members of the
5 board of adjustment and assembly members serving on the board of equalization,
6 are appointed by the mayor and confirmed by the governing body.

7 ARTICLE 7. UTILITY BOARDS.

8 * Sec. 29.24.450. UTILITY BOARDS. (a) The governing body of a munici-
9 pality operating a public utility may provide by ordinance for a managing
10 board of five members and define the board's powers and duties.

11 (b) As determined by ordinance, members of the board are appointed
12 by the municipal executive and confirmed by the governing body or are elected
13 at the regular election held annually on the first Tuesday of October,
14 unless a different election date or interval of years is provided by ordin-
15 ance. The term of a utility board member is two years and until a successor
16 is selected and has qualified. However, the governing body may by ordinance
17 provide for a different term not to exceed four years and not altering the
18 current term of an elected incumbent.

19 (c) Vacancies in the board are filled by the municipal executive.
20 Executive appointments shall be confirmed by the governing body. A person
21 selected to fill a vacancy on a utility board serves until the expiration of
22 the term and until a successor is elected and has qualified.

23 (d) Unless otherwise provided by ordinance, the board shall

24 (1) choose its chairman and secretary;

25 (2) appoint the manager of the public utility for a term not
26 longer than five years and set his salary;

27 (3) formulate and enforce the general rules and policies of
28 the utility.
29

ARTICLE 8. OTHER OFFICERS AND EMPLOYEES.

****Sec. 29.24.480. APPOINTMENT OF OFFICERS. Unless otherwise provided by ordinance, the municipal clerk, attorney, treasurer, and police chief are appointed by the chief administrative official. Unless otherwise provided by ordinance, officials described in this section serve at the pleasure of their appointing authority and, if appointed by the chief administrative official, must be confirmed by the governing body.

Sec. 29.24.490. MUNICIPAL ATTORNEY. The municipal attorney is the legal advisor of the council or assembly, the school board, and the other officers of the municipality. He represents the municipality as attorney in civil and criminal proceedings. The school board has the right to hire independent counsel when in its judgment independent counsel is needed.

* Sec. 29.24.500. MUNICIPAL CLERK. (a) The municipal clerk shall

- (1) give notice of the time and place of meetings to the governing body and to the public;
- (2) attend meetings and keep the journal;
- (3) arrange publication of notices, ordinances, and resolutions;
- (4) maintain and make available for public inspection an indexed file including the municipal ordinances, resolutions, rules, regulations, and codes;
- (5) attest deeds and other documents;
- (6) perform other duties specified in this title or prescribed by the chief executive or by the governing body.

(b) The governing body may combine the office of clerk with that of treasurer. If the offices are combined, the clerk shall, as required of the treasurer, give his bond to the municipality for the faithful performance of his duties as clerk-treasurer.

1 ****Sec. 29.24.510. MUNICIPAL TREASURER. (a) Except as provided in
2 AS 14.14.060, the treasurer is the custodian of all municipal funds. He
3 shall keep an itemized account of money received and disbursed. He shall
4 pay money on vouchers drawn against appropriations.

5 (b) The treasurer shall give bond to the municipality in a sum
6 which the governing body directs.

7 ****Sec. 29.24.515. DEPARTMENTS. (a) The governing body of a municipality
8 may establish departments and distribute functions among them.

9 (b) Each department is administered by a department head. With
10 the consent of the governing body, the mayor may serve as head of one or
11 more departments or a single administrator may serve as head of two or more
12 departments.

13 ****Sec. 29.24.520. APPOINTMENT TO MUNICIPAL BOARDS AND COMMISSIONS.
14 Repeal.

15 ****Sec. 29.24.530. PERSONNEL SYSTEM. (a) Except as provided by (b) of
16 this section, all appointments and promotions of municipal employees are
17 made on the basis of merit. The governing body may provide for a personnel
18 system and classified service.

19 (b) By ordinance the governing body may designate confidential or
20 managerial positions which are wholly or partially exempt from the classified
21 service filled by persons who serve at the pleasure of their appointing
22 authority and whose terms of employment are determined by their appointing
23 authority.

24 ARTICLE 9. ADOPTION OR REPEAL OF MANAGER PLAN.

25 Sec. 29.24.550. APPLICATION. A municipality may adopt a manager plan
26 of government.

27 * Sec. 29.24.560. PETITION. Adoption of a manager plan may be initiated
28 either by petition or upon motion of the governing body. A petition for the
29 adoption of a manager plan is submitted to the governing body.

1 The petition must be signed by a number of municipal voters equal to the
2 following percent of the votes cast at the preceding regular election:

3 (1) 25 percent when the municipality has fewer than 7,500 persons;

4 (2) 15 percent when the municipality has 7,500 persons or more.

5 ****Sec. 29.24.570. ELECTION. Upon receipt of the petition or upon its
6 own motion, the governing body shall provide by ordinance or resolution for
7 a vote on the question at the next regular or special election.

8 * Sec. 29.24.580. ADOPTION. (a) If the manager plan is approved, the
9 governing body shall, within 60 days, adopt the plan by ordinance or reso-
10 lution.

11 (b) The governing body shall notify the Department of Community
12 and Regional Affairs of the adoption of the manager plan.

13 ****Sec. 29.24.590. APPOINTMENT. The governing body shall appoint a
14 manager by a majority vote of its membership. He is chosen on the basis of
15 his administrative qualifications and receives the compensation set by the
16 governing body. An elected municipal official may not be appointed manager
17 of the municipality sooner than one year after leaving office, except that,
18 by a vote of three-fourths of its authorized membership, the governing body
19 may at any time appoint one of its members or other elected municipal o
20 fficial as manager.

21 * Sec. 29.24.600. TERM. Subject to the contract of employment, the
22 manager holds office at the pleasure of the governing body.

23 ****Sec. 29.24.610. APPOINTMENT OF TEMPORARY OR NEW MANAGER. Repeal.

24 ****Sec. 29.24.620. REPEAL. A municipality may repeal the manager plan in
25 the same manner used for its adoption. Within 60 days after repeal, the
26 governing body shall enact provisions for the reorganization of the
27 municipal executive and administrative functions.

28 ****Sec. 29.24.630. POWERS AND DUTIES OF A MANAGER. As chief administrator
29 the manager shall

1 (1) appoint, suspend, or remove municipal employees and
2 administrative officials, except as provided otherwise in this title and AS
3 14.14.065; he may hire necessary administrative assistants and may authorize
4 an administrative official to appoint suspend, or remove subordinates;

5 (2) supervise the enforcement of municipal law and carry out
6 the directives of the governing body;

7 (3) prepare and submit an annual budget and capital improve-
8 ment program for consideration by the governing body and execute the budget
9 and capital improvement program adopted;

10 (4) make monthly financial reports and other reports on
11 municipal finances and operations as required by the governing body;

12 (5) exercise care and custody over all real and personal
13 property of the municipality except as provided otherwise in AS 29.36.040;

14 (6) perform other duties required by law or by action of the
15 governing body; and

16 (7) serve as personnel officer unless the governing body
17 authorizes him to appoint a personnel officer.

18 ****Sec. 29.24.640. INTERGOVERNMENT APPOINTMENTS. A borough adopting a
19 manager plan, may by agreement with a city, enter into a contract providing
20 for the manager of a city located within the borough to serve also as borough
21 manager. A city adopting a manager plan, may by agreement with a borough,
22 enter into a contract providing for the manager of a borough within which
23 the city is located to serve also as city manager. Appointment and service
24 of the manager shall be as otherwise provided for managers in this chapter.
25 Nothing in this section affects the authority of the governing body to
26 provide for other dual officeholding if the dual offices held are compatible,
27 or otherwise to appoint officials and employees in accordance with law.
28
29

ARTICLE 10. MISCELLANEOUS PROVISIONS.

*Sec. 29.24.650. OATHS OF OFFICE. Municipal officials, before taking office, shall affirm in writing that they will honestly, faithfully, and impartially perform their duties. The oath is filed with the municipal clerk.

*Sec. 29.24.660. BONDING. The administrator and the other municipal officials or employees which the governing body may designate shall give bond in the amount and with the surety prescribed by the governing body. Premiums on bonds are paid by the municipality.

****Sec. 29.24.670. SALARIES OF ELECTED OFFICIALS. The governing body shall by ordinance provide a method of determining the salaries of elected officials. The salary of the mayor may not be reduced during his term of office unless during his term a manager plan is adopted. An elected official may not receive any other compensation for service to the municipality unless otherwise provided by ordinance. Per diem payments or reimbursements for expenses are not compensation under this section.

****Sec. 29.24.680. PROHIBITIONS. (a) Repeal.

(b) Repeal. *Subject to 14.14.140,*

(c) *1* No state employee or school district employee may be denied the right to serve as an elected municipal official because of his employment by the state or a school district, ~~unless specifically prohibited by charter or ordinance of a municipality, adopted at a special or general election.~~ However, no school district employee may serve on a school district board in the school district where he is employed. *(This in 14 file cross-reference to 14.14.40)*

(d) For purposes of this section a school district employee is not a municipal employee.

****Sec. 29.24.690. PERSONNEL SYSTEM. Repeal.

Sec. 29.24.700. REPORTS. (a) Home rule and general law municipalities shall file with the Department of Community and Regional Affairs:

amended

1 (1) maps and descriptions of all annexed or excluded ter-
2 ritory;

3 (2) a copy of the annual audit or in the case of second
4 class cities an audit or statement of annual income and expenditures;

5 (3) tax assessment and tax levy figures as requested;

6 (4) repealed.

7 (5) a copy of the current annual budget of the municipality;

8 (6) a summary of the optional property tax exemptions autho-
9 rized in the municipality, together with the municipality's estimate of the
10 revenues lost to it by operation of each of the exemptions.

11 (b) Compliance with the provisions of this section is a prerequi-
12 site to receipt of municipal tax resource equalization assistance under AS
13 29.62 and state aid for miscellaneous municipal services under AS 29.62.
14 The Department of Community and Regional Affairs shall withhold annual
15 allocations under those chapters in the event of noncompliance until such
16 time as the report requirements are met.

17 ****Sec. 29.24.710. VACANCIES. Repeal.

CHAPTER 27. MUNICIPAL ENACTMENTS.

* Sec. 29.27.010. ACTS REQUIRED TO BE BY ORDINANCES. (a) In addition to other actions which this title requires to be by ordinance, the governing body of a municipality shall use ordinances to

(1) establish, alter or abolish municipal departments;

**** (2) Repeal.

(3) provide for a fine or other penalty, or establish rules or regulations for violation of which a fine or other penalty is imposed;

(4) provide for the levying of taxes;

**** (5) make appropriations except supplemental appropriations or transfer of appropriations;

(6) grant, renew, or extend a franchise;

**** (7) Repeal.

**** (8) adopt, modify or repeal the comprehensive plan, land use and subdivision regulations, building and housing codes, and the official map;

(9) approve the transfer of a power to a borough from a city;

(10) designate the borough seat;

(11) provide for the retention or sale of tax-foreclosed property.

(12) exempt contractors from compliance with general requirements relating to payment and performance bonds in the construction or repair of municipal public works projects within the limitations set out in AS 36.25.025.

(b) This section grants no authority but requires the governing body to use ordinances in exercising certain of its powers.

Sec. 29.27.020. FORM OF ORDINANCES. Repeal.

****Sec. 29.27.030. ORDINANCE PROCEDURE. (a) Ordinances are introduced in writing in the form required by the governing body.

1 (b) The following procedure governs the enactment of all ordin-
2 ances except emergency ordinances. An ordinance may be introduced by a
3 member or committee of the governing body or by the municipal executive or
4 chief administrator. An ordinance shall be set for hearing by the affirma-
5 tive vote of a majority of the votes authorized on the question. A summary
6 of the ordinance is published together with a notice of time and place for
7 public hearing. The hearing follows publication by at least five days.
8 Copies of the ordinance must be available to all persons present or the
9 ordinance must be read in full. The governing body shall hear all interested
10 persons wishing to be heard. After the hearing, the governing body shall
11 consider the ordinance and may adopt it with or without amendment. The
12 governing body shall print and make available copies of adopted ordinances.

13 (c) Ordinances take effect upon adoption or at a later date
14 specified in the ordinance.

15 * Sec. 29.27.040. EMERGENCY ORDINANCES. (a) To meet a public emergency
16 the governing body may adopt ordinances effective on adoption. Every
17 emergency ordinance must contain a finding by the assembly or council that
18 an emergency exists and a statement of the facts upon which the finding is
19 based. The ordinance may be adopted, amended and adopted, or rejected at
20 the meeting at which it is introduced. The affirmative vote of all members
21 present, or the affirmative vote of three-fourths of the total membership,
22 whichever is less, is required for adoption. The governing body must print
23 and make available copies of adopted emergency ordinances.

24 (b) An emergency ordinance may not be used to levy taxes, to
25 grant, renew or extend a franchise, or to regulate the rate charged by a
26 public utility for its services.

27 (c) Emergency ordinances are effective for 60 days.

28 ****Sec. 29.27.050. CODES OF REGULATION. The governing body may in a
29 single ordinance adopt or amend by reference provisions of a standard

1 published code of regulations. The regular ordinance procedure applies
2 except that neither the ordinance nor its amendments need be distributed to
3 the public or read in full at the hearings. For a period of 15 days before
4 adoption at least five copies of the code must be made available for public
5 inspection at a time and place set out in the hearing notice. Only the
6 adopting ordinance need be printed after adoption. The governing body shall
7 provide for the adopted code to be sold or ^{made} available at no charge to the
8 public.

9 Sec. 29.27.060. CODIFICATION. (a) Each ordinance after adoption
10 shall be codified.

11 **** (b) Within three years after incorporation of the municipality,
12 the municipal clerk or his designee shall have prepared a general codifi-
13 cation of all municipal ordinances of general applicability having the force
14 and effect of law. The municipal code shall be revised and printed at least
15 every five years, unless the code is kept current by regular supplements.

16 (c) In (a) of this section, "codified" means

17 (1) the ordinance has been given a serial number or other
18 permanent identifying number and, bearing a notation of the date of adoption
19 and the designation of the adopting authority, it has been entered by the
20 municipal clerk in a properly indexed book maintained for the purposes of
21 organizing and recording the ordinances; or

22 (2) the ordinance is a provision which establishes a rule of
23 conduct or behavior and which is included, or to be included, in a code of
24 ordinances or other complete system of law enacted and kept current at
25 reasonable intervals.

26 (d) This section applies to general law and home rule munici-
27 palities.

28 * Sec. 29.27.070. RESOLUTIONS. The governing body shall provide for the
29 maintenance of a permanent file of resolutions that have been adopted.

1 ****Sec. 29.27.080. PENALTIES. (a) For the violation of an ordinance,
2 the governing body may prescribe punishment not to exceed the penalty
3 imposed for a class B misdemeanor. By ordinance mandatory nonsuspendable
4 imprisonment not to exceed five days may be imposed for violation of an
5 ordinance.

6 (b) The municipality or an aggrieved person may institute a civil
7 action against a person who violates an ordinance. In addition to injunctive
8 and compensatory relief, a civil penalty not to exceed \$1,000 may be imposed
9 for each violation. An action to enjoin a violation may be brought notwith-
10 standing the availability of any other remedy upon application for injunctive
11 relief and a finding of a violation or a threatened violation, the injunction
12 shall be granted. Every day upon which a violation of an ordinance continues
13 shall constitute a separate violation.

14 (c) The punishment authorized under this section may be
15 imposed only if copies of the ordinance are made available for distribution
16 to the public at cost, or at no charge.
17
18
19
20
21
22
23
24
25
26
27
28
29

CHAPTER 30. ELECTIONS.

ARTICLE 1. REGULAR AND SPECIAL ELECTIONS.

****Sec. 29.30.010. ADMINISTRATION. The borough assembly or city council shall prescribe the rules for conducting a municipal election and shall appoint an election board composed of at least three judges for each precinct. Unless no qualified voter is willing to serve, a judge shall be a voter of the precinct for which he is appointed.

Sec. 29.30.020. NOMINATIONS. (a) The assembly or council shall provide by ordinance for nominations of elected officers by providing for declaration of candidacy, or petition requiring the signatures of not more than 10 voters, or both.

(b) A person may be nominated for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a first class city.

Sec. 29.30.030. ELECTION DATES. (a) The date of a regular municipal election is the first Tuesday of October annually, or on a date of election or at an interval of years provided by ordinance.

* (b) The governing body may call a special election upon at least 20 days notice.

Sec. 29.30.040. VOTER QUALIFICATION. A person may vote only if he is a United States citizen who is qualified to vote in state elections and has been a resident of the municipality for 30 days immediately preceding the election and who ^{has} ~~is~~ registered to vote in state elections ^{at least 30 days before the municipal election} and is not disqualified under art. V of the state constitution. Voter registration by the municipality may not be required. This section applies to home rule and general law municipalities.

provided, however, that a municipality ~~but the municipality~~ may require by registered in ordinance that a person be ~~a~~ registered ~~resident~~ ~~resident~~ of the precinct in which he seeks to vote.

(re-draft so that registration is permitted in state election)

1 ****Sec 29.30.050. MAJORITY ELECTIONS. (a) Unless otherwise provided by
2 ordinance, there shall be a runoff election if no candidate receives over 40
3 percent of the votes cast for the office of mayor or member of the assembly,
4 council or school board.

5 (b) A municipality may by ordinance require a majority vote for
6 the election of a municipal official.

7 (c) Unless otherwise provided by ordinance, a runoff election
8 shall be held within three weeks after the date of certification of the
9 election for which a runoff is required and notice of the runoff election
10 shall be published at least five days prior to the election date.

11 * Sec. 29.30.060. ELECTION CONTEST AND APPEAL. (a) The governing body
12 may provide by ordinance the time and procedure for the contest of an
13 election.

14 (b) Unless otherwise provided by ordinance, an election may be
15 contested only upon the filing, before or at the time of the first canvass
16 of ballots by the governing body by a person qualified to vote in the
17 municipality of his written affidavit specifying with particularity the
18 grounds for the contest or invalidity of the election.

19 (c) Unless otherwise provided by ordinance, the governing body
20 shall declare the election results at the first meeting to canvass the
21 election and record the results in the minutes of that meeting *and authorize*
22 *the results to be certified.*
23 (d) The contestant shall pay all costs and expenses incurred in a
24 recount of an election demanded by the contestant if the recount fails to
25 reverse any result of the election or the difference between the winning and
26 a losing vote on the result contested is more than two percent.

27 (e) No person may appeal or seek judicial review of a city or
28 borough election for any cause or reason unless the person is qualified to
29 vote in the municipality, has exhausted his administrative remedies before
the governing body and has commenced, within 10 days after the governing
body has finally declared the election results, an action in the

1 superior court in the judicial district in which the municipality is located.
2 If no such action is commenced within the 10-day period, the election and
3 election results shall be conclusive, final and valid in all respects.

4 (f) Notwithstanding the provisions of (e) of this section,
5 the expulsion of a member of a borough assembly under AS 29.24.150(c), of a
6 member of a city council under AS 29.24.290(b) of a borough mayor under AS
7 29.24.200(f) or of a city mayor under AS 29.24.350 is final and is not
8 subject to judicial review.

9 ARTICLE 2. INITIATIVE AND REFERENDUM.

10 Sec. 29.30.090. RESERVATION OF POWERS. The powers of initiative and
11 referendum are reserved to the residents of municipalities except the powers
12 do not extend to matters restricted by Sec. 7, art. XI, of the state constitu-
13 tion.

14 ****Sec. 29.30.095. APPLICATION FOR PETITION. (a) An initiative or
15 referendum is proposed by filing an application with the municipal clerk
16 containing the bill to be initiated or the act to be referred and the address
17 to which all correspondence relating to the application may be sent. An
18 application shall be signed by at least ten municipal voters who will sponsor
19 the petition. Other sponsors may be added at any time prior to filing the
20 petition by submitting their names to the clerk. Within two weeks the clerk
21 shall certify the application if he finds that it is in proper form and, for
22 an initiative petition, that the matter

23 (1) is not restricted by AS 29.30.090;

24 (2) includes only a single subject;

25 (3) relates to a legislative rather than to an administra-
26 tive matter; and

27 (4) would be enforceable as a matter of law.

28 (b) A decision by the clerk on an application for petition shall
29 be subject to judicial review.

1 Sec. 29.30.100. PETITION. A petition for initiative or referendum is
2 filed with the municipal clerk and an initiative petition must be filed not
3 less than 90 days before the next regular election. ~~the governing body may~~

4 ****Sec. 29.30.110. CONTENTS OF PETITION. (a) Within two weeks after
5 certification of an application for petition, a petition shall be prepared
6 by the municipal clerk. Each copy of the petition shall

7 (1) contain a summary of the bill to be initiated or the act
8 to be referred;

9 (2) set out fully the ordinance or resolution sought to be
10 initiated or referred;

11 (3) state the date on which the petition is issued by the
12 clerk;

13 (4) contain notice that signatures must be secured within 60
14 days after the date the petition is issued;

15 (5) contain spaces for each signature, the printed name of
16 each signer, the date each signature is affixed, and the residence and
17 mailing addresses of each signer;

18 (6) contain a statement that the sponsor personally circu-
19 lated the petition, that all signatures were affixed in his presence, that
20 he believes the signatures to be those of the persons whose names they
21 purport to be;

22 (7) space for indicating the number of signatures on the
23 petition, and space for the sponsor's sworn signature.

24 (b) If a petition is composed of more than one page, each page
25 shall contain the summary of the bill to be initiated or the act to be
26 referred.

27 (c) Copies of the petition shall be provided to each sponsor by
28 the clerk.
29

1 ****Sec. 29.30.120. REQUIRED SIGNATURES. (a) The necessary signatures on
2 a petition shall be secured within 60 days after the clerk issues the peti-
3 tion. The statement provided under AS 29.30.110(a)(7) shall be completed and
4 signed by the sponsor. Signatures shall be ink or indelible pencil.

5 (b) A petition shall be signed by a number of voters residing
6 within the municipality based on the number of votes cast at the last regular
7 election held on or prior to the date the petition was issued equal to

8 (1) 25 percent, when a municipality has fewer than 7,500
9 persons; or

10 (2) 15 percent, when a municipality has 7,500 persons or
11 more.

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

15 (d) A petition signer may withdraw his signature upon written
16 application to the clerk prior to certification of the petition.

17 ****Sec. 29.30.130. SUFFICIENCY OF PETITION. (a) All copies of a
18 petition shall be assembled and filed as a single instrument. Within 10
19 days after the date the petition is filed, the municipal clerk shall certify
20 on the petition whether it is sufficient.

21 (b) If a petition is insufficient, it may be supplemented with
22 additional signatures obtained within 10 days after the date on which the
23 petition is rejected.

24 (c) Within 10 days after a supplementary filing the clerk shall
25 recertify the petition. If it is still insufficient, the petition is rejected
26 and filed as a public record.

27 * Sec. 29.30.140. PROTEST. If the municipal clerk certifies the petition
28 is insufficient, a signer of the petition may file a protest with the
29 municipal executive within seven days after the certification and the

1 municipal executive shall present the protest at the next regular meeting to
2 the governing body which shall hear and decide the protest.

3 Sec. 29.30.150. NEW PETITION. Failure to secure sufficient signatures
4 does not preclude the filing of a new initiative or referendum petition.
5 However, a new petition may not be filed sooner than six months after a
6 petition is rejected.

7 ****Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) Unless substantially
8 the same measure is adopted, when a petition seeks an initiative vote the
9 clerk shall submit the matter to all of the municipal voters at the next
10 regular or special election occurring no sooner than 45 days after certifi-
11 cation of the petition. If no regular or special election occurs within 75
12 days after the certification of a petition, the governing body shall hold a
13 special election within 75 days, but not sooner than 45 days after certifi-
14 cation.

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

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

21 (d) If a majority vote favors the ordinance or resolution it
22 becomes effective upon certification of the election unless a different
23 effective date is provided in the ordinance or resolution approved by the
24 voters.

25 ****Sec. 29.30.170. PRESENTATION OF REFERENDUM. (a) Unless the ordinance
26 or resolution is repealed, when a petition seeks a referendum vote the clerk
27 shall submit the matter to all of the municipal voters at the next regular
28 or special election occurring no sooner than 45 days after certification of
29 the petition. If no regular or special election occurs within 75 days of

1 certification of a petition, the governing body shall hold a special election
2 within 75 days, but not sooner than 45 days after certification.

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

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

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

14 ****Sec. 29.30.180. EFFECT. (a) An ordinance or resolution may not be
15 repealed within one year of its effective date if adopted in an initiative
16 election or adopted after a petition which contains substantially the same
17 measure has been filed. The ordinance or resolution may be amended at any
18 time.

19 (b) If an ordinance or resolution is repealed in a referendum
20 election or by the governing body after a petition which contains substan-
21 tially the same measure has been filed, substantially similar legislation
22 may not be enacted by the governing body for a period of one year.

23 (c) An unsuccessful initiative or referendum precludes the filing
24 of a new petition application for substantially the same measure sooner than
25 six months after the election results are certified.

26 ARTICLE 3. RECALL.

27 ****Sec. 29.30.210. RECALL. (a) An official who is elected or appointed
28 to an elective municipal office may be recalled by the voters after he has
29 served six months of the term for which elected or appointed.

(b) This section applies to home rule and general law municipalities.

Sec. 29.30.220. GROUNDS. Grounds for recall are misconduct in office, incompetence, or failure to perform prescribed duties.

****Sec. 29.30.225. APPLICATION FOR RECALL PETITION. (a) An application for a recall petition shall be filed with the municipal clerk and shall contain

(1) the signatures and residence addresses of at least ten municipal voters who will sponsor the petition;

(2) The address to which all correspondence relating to the application may be sent;

(3) a statement in 200 words or less of the grounds of the recall stated with particularity.

(b) Additional sponsors may be added at any time prior to filing the petition by submitting their names to the clerk.

****Sec. 29.30.230. PETITION. (a) If the municipal clerk determines that an application for a recall petition meets the requirements of AS 29.30.225, he shall prepare a recall petition. All copies of the petition shall contain

(1) The name of the official sought to be recalled;

(2) The statement of the grounds for recall as set forth in the application for petition;

(3) the date the petition is issued by the clerk;

(4) notice that signatures must be secured within 60 days after the date the petition is issued;

(5) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing addresses of each signer;

(6) a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be;

1 (7) space for indicating the number of signatures on the
2 petition, and space for the sponsor's sworn signature.

3 (b) Copies of the petition shall be provided to each sponsor by
4 the clerk.

5 ****Sec. 29.30.240. REQUIRED SIGNATURES. (a) The necessary signatures on
6 a recall petition shall be secured within 60 days after the date the clerk
7 issues the petition. The statement provided under AS 29.30.230(a)(6) shall
8 be completed and signed by the sponsor. Signatures shall be ink or indelible
9 pencil.

10 (b) If a petition seeks to recall an official who represents the
11 municipality at large, the petition shall be signed by a number of voters
12 residing within the municipality equal to 35 percent of the number of votes
13 cast at the last regular election for that office held prior to the issuance
14 of the petition. If a petition seeks to recall an official who represents a
15 district, the petition shall be signed by a number of the voters residing
16 within the district equal to 35 percent of the number of votes cast in the
17 district at the last regular election for that office held prior to the
18 issuance of the petition. The clerk shall determine the number of signatures
19 required on a petition and shall inform each sponsor.

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

23 (d) A petition signer may withdraw his signature upon written
24 application to the clerk prior to certification of the petition.

25 ****Sec. 29.30.250. SUFFICIENCY OF PETITION. (a) The copies of a petition
26 shall be assembled and filed as a single instrument. Within ten days after
27 the date the petition is filed, the municipal clerk shall certify on the
28 petition whether it is sufficient.
29

1 (b) If a petition is insufficient, it may be supplemented with
2 additional signatures obtained within ten days after the date on which the
3 petition is rejected, except that a petition which does not contain an
4 adequate number of signatures, both valid and invalid, may not be supple-
5 mented and shall be rejected and filed as a public record.

6 (c) Within ten days after the supplementary filing the clerk
7 shall recertify the petition. If it is still insufficient, the petition is
8 rejected and filed as a public record.

9 ****Sec. 29.30.260. NEW RECALL PETITION APPLICATION. A new application
10 for a petition to recall the same official may not be filed sooner than six
11 months after a petition is rejected.

12 * Sec. 29.30.270. SUBMISSION. If a recall petition is sufficient, the
13 clerk shall immediately submit it to the governing body.

14 ****Sec. 29.30.280. ELECTION. (a) If a regular election occurs within 75
15 days but not sooner than 45 days after submission of the petition to the
16 governing body, the governing body shall submit the recall at that election.

17 (b) If no regular election occurs within 75 days the governing
18 body shall hold a special election on the recall question within 75 days but
19 not sooner than 45 days after a petition is submitted to the governing body.

20 (c) If a vacancy occurs in the office after a sufficient recall
21 petition is filed with the clerk, the recall question shall not be submitted
22 to the voters. The governing body may not appoint to the same office an
23 official who resigns after a sufficient recall petition is filed naming him.

24 ****Sec. 29.30.290. FORM OF RECALL BALLOT. A recall ballot shall contain

25 (1) the grounds as stated in 200 words or less on the recall
26 petition;

27 (2) a statement by the official named on the recall petition
28 of 200 words or less if the statement is filed with the clerk for publication
29 and public inspection within 20 days before the election;

1 (3) the following question: "Shall (name of person) be
2 recalled from the office of (office)? YES () NO ()".

3 ****Sec. 29.30.300. ELECTION PROCEDURE. Procedures for conducting a
4 recall election are those of a regular municipal election if the question is
5 submitted at a regular election. Procedures for conducting a recall election
6 are those of a special election if the question is submitted at a special
7 election, except that at least 20 days notice shall be given notwithstanding
8 an ordinance or charter provisions to the contrary.

9 Sec. 29.30.310. MAJORITY REQUIRED. A majority vote on the question is
10 required to recall an officer.

11 * Sec. 29.30.320. EFFECT. If an incumbent is not recalled at the recall
12 election, an application for a petition to recall the same incumbent may
13 not be filed sooner than six months after the recall election.

14 ****Sec. 29.30.330. SUCCESSORS. (a) If an official is recalled from the
15 governing body, the governing body, by affirmative vote of a majority of the
16 remaining members, may appoint a qualified person to fill a vacancy created
17 by the recall.

18 (b) If all members of the governing body are recalled, the gover-
19 nor shall appoint at least three qualified persons to the governing body.
20 The appointees shall, by an affirmative vote of the majority, appoint
21 additional members to fill remaining vacancies.

22 (c) If all but two members of the governing body are recalled,
23 each remaining member shall appoint a qualified person to fill a vacancy
24 created by the recall. Additional persons may be appointed to fill
25 vacancies by the affirmative vote of a majority of the remaining members and
26 their appointees.

27 (d) If all officials are recalled from a school board the
28 governing body may appoint a qualified person to fill a vacancy created by
29 the recall.

1 (e) A person appointed under (a) - (d) of this section shall
2 serve until a successor is elected and takes office.

3 (f) If an official is recalled the clerk, without further action
4 by the governing body, shall conduct an election for a successor to fill the
5 unexpired portion of the term. The election shall be held at least ten but
6 not more than 60 days from the date the recall election is certified, except
7 that if a regular or special election occurs within 75 days after certifi-
8 cation and the certification occurs at least 20 days prior to the last date
9 upon which a first notice of the election must be published, the successor
10 shall be chosen at that election.

11 (g) Nominations for a successor may be filed until seven days
12 prior to the last date upon which a first notice of the election must be
13 published. Nominations may not be filed before the certification of the
14 recall election.
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

1 CHAPTER 33. POWERS AND DUTIES APPLICABLE TO.

2 HOME RULE AND GENERAL LAW MUNICIPALITIES.

3 ARTICLE 1. GENERAL POWERS.

4 Sec. 29.33.010. GENERAL POWERS. ^{All}~~Municipalities~~ have the following
5 general powers, subject to other provisions of law:

6 (1) to establish and prescribe the functions of municipal depart-
7 ments, offices or agencies;

8 (2) to establish and prescribe salaries for the elected and ap-
9 pointed municipal officers and employees;

10 (3) to make investigations of the affairs of the municipality and
11 make inquiries into the conduct of a municipal department;

12 (4) to enter into agreements, including those for cooperative or
13 joint administration of any functions or powers with a local government,
14 with the state, or with the United States;

15 (5) to require periodic and special reports from a municipal
16 department to be submitted through the municipal executive;

17 (6) to sue and be sued;

18 **** (7) to levy taxes and special assessments, and impose liens for
19 their enforcement;

20 (8) to enforce ordinances and to prescribe penalties for violations;

21 **** (9) to acquire, manage, control, use and dispose of real and per-
22 sonal property, irrespective of whether or not the property is situated
23 within or outside the municipal boundaries; this power includes the power of
24 a borough to expend, for any purpose authorized by law, money received from
25 the disposal of land in a service area created under AS 29.36.270(f).

26 (10) to acquire membership in organizations which promote legis-
27 lation for the good of the municipality;

28 (11) to expend funds for ~~public~~ ^{leave} ~~community~~ ^{as is.} purposes for the good of the
29 municipality;

(12) to borrow money and issue evidences of indebtedness.

Sec. 29.33.010(1) COMBINING OFFICES. ^{Repeal.} The assembly or council may

combine two or more appointive or administrative offices.

* Sec. 29.33.020. EXTRATERRITORIAL JURISIDITION. ****(a) A municipality

may provide, to the extent otherwise authorized by law, parks, roads (including ice roads), trails, playgrounds, emergency medical services, cemeteries, transportation facilities, airports, utility services, solid and septic waste disposal, and wharves, harbors and other marine facilities outside its boundaries, subject to AS 29.36.010 and may regulate their use and operation to the extent that the jurisdiction in which they are located does not regulate them. A regulation adopted under this section must state that it applies outside the municipality.

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities.

.... Sec. 29.33.030. EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250 - 09.55.460.

Sec. 29.33.040. EMERGENCY DISASTER POWERS. (a) A municipality which is wholly or partially within an area which is declared by the President or Governor to be a disaster area may participate in and provide for housing and urban renewal and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough is limited to the area outside a city in the borough.

(b) A borough may exercise the powers for a housing or urban renewal and redevelopment project transferred to it by a city located in the borough as provided by AS 29.36.100.

Repeal
(c) AS 29.36.170 - 29.36.200 are not applicable to the housing and urban renewal and redevelopment powers granted by this section.

..... (d) Powers granted by this section must be initiated within a period of not more than five years from the date of declaration of a natural disaster by the President or Governor, but these powers may be extended for an additional period of not more than three years.

ARTICLE 2. FACILITIES, SERVICES AND REGULATION.

Sec. 29.33.070. MUNICIPAL FACILITIES AND SERVICES.

****(a) To the extent that a municipality may exercise the powers necessary to provide the service or facility and subject to other provisions of law a municipality may exercise the powers necessary to provide the following:

- (1) streets and sidewalks;
- (2) sewers and sewage treatment facilities;
- (3) harbors, wharves, and other marine facilities;
- (4) watercourse and flood control facilities;
- (5) health services and hospital facilities;
- (6) cemeteries;
- (7) police protection and jail facilities;
- (8) cold storage plants;
- (9) telephone systems;
- (10) light, power and heat;
- (11) water;
- (12) transportation systems;
- (13) community centers;
- (14) libraries, visual or performing arts centers, or museums;
- (15) recreation facilities;
- (16) airport and aviation facilities;
- (17) garbage and solid-waste collection and disposal service and facilities subject to Sec. 080 of this chapter;

1 (18) fire protection service and facilities, not in conflict
2 with AS 18.70.075, but not limited to AS 18.70.075;

3 (19) parking and parking facilities;

4 (20) housing and urban renewal, rehabilitation and development;

5 (21) preservation, maintenance and protection of historic
6 sites, buildings and monuments;

7 **** (22) Repeal.

8 (23) emergency medical services and facilities.

9 **** (24) provide any other facility or service necessary to
10 carry out a public purpose.

11 (b) First and second class boroughs may exercise the powers
12 conferred by (a) of this section only after they have been assumed in the
13 manner required under AS 29.36.090 - 29.36.130 for areawide exercise or in
14 the manner required under AS 29.36.160 - 29.36.200 for exercise in the
15 borough area outside cities or are conferred by (Sec.20) of this chapter for
16 exercise in the borough area outside cities. However, as to powers conferred
17 under (a)(5), (17) and (20), in the borough area outside cities is at the
18 option of the borough and is not subject to those restrictions on acquisition
19 of additional borough powers. Upon adoption of a borough ordinance to
20 provide for areawide exercise of the powers specified, no home rule or
21 general law city within the borough may exercise the powers, unless the
22 borough ordinance provides otherwise or the borough by subsequent ordinance
23 ceases to exercise the power.

24 Sec. 29.33.080. GARBAGE AND SOLID WASTE SERVICES. (a) A municipality
25 may by ordinance provide for the establishment, maintenance and operation of
26 a system of garbage and solid waste collection and disposal for the entire
27 municipality or for districts or portions of it; require all persons within
28 the municipality or district to use the system and to dispose of their
29 garbage and solid wastes as provided in the ordinance; award contracts for

1 collection and disposal, or provide for the collection and disposal of
2 garbage and solid waste by municipal officials and employees; pay for garbage
3 and solid waste collection and disposal from available funds; require prop-
4 erty owners or occupants of premises to use the garbage and solid waste
5 collection and disposal system provided by the municipality and fix charges
6 against the property owners or occupants of premises for the collection and
7 disposal; provide that charges for collection and disposal shall be paid by
8 the property owner or occupants of the premises; and provide penalties for
9 violations of the ordinances.

10 (b) The council or governing body of any political subdivision
11 may not prohibit a person holding a valid certificate from the Alaska Public
12 Utilities Commission from continuing to collect and dispose of garbage,
13 refuse, trash, waste material, or other related services in any area in the
14 political subdivision if the certificate authorizes the collection and
15 disposal of garbage, refuse, trash or other waste material and providing of
16 other services in the area, and the certificate was originally issued before
17 the political subdivision provided like or similar services. A political
18 subdivision may not provide for a garbage, refuse, trash or other waste
19 material collection and disposal service in any area to the extent it lies
20 within an area granted to a garbage, refuse, trash or other waste material
21 carrier by a certificate issued by the commission to the carrier until it
22 has purchased the certificate, equipment and facilities of the carrier or
23 that portion of the certificate which would be affected at fair market value
24 and may exercise the right of eminent domain to determine fair market value.

25 (c) Repealed by Sec. 6 ch 76 SLA 1973.

26 (d) This section applies to home rule and general law municipal-
27 ities.

28 Sec. 29.33.090. REGULATORY POWERS. (a) A municipality may regulate
29 the operation and use of its public rights-of-way, public facilities and
services. It may also regulate the following:

1 (1) vehicle, pedestrian, and other traffic, and licensing
2 and operation of motor vehicles, including snow vehicles and off-highway
3 vehicles, and operators not inconsistent with AS 28.01.010;

4 (2) licensing of drivers of taxicabs, for-hire automobiles,
5 motor buses, or other vehicles for the transportation of passengers or
6 baggage not inconsistent with AS 28.01.010;

7 (3) vehicle parking not inconsistent with AS 28.01.010;

8 **** (4) Repeal.

9 (5) licensing, impounding and disposition of animals;

10 **** (6) Repeal.

11 **** (7) Repeal.

12 **** (8) Repeal.

13 **** (9) Repeal.

14 (10) alcoholic beverages as provided by AS 04.15.070;

15 (11) recreational devices as provided by AS 05.20.100;

16 **** (12) Repeal.

17 **** (13) Repeal.

18 **** (14) building, housing and related codes, which may be
19 provided by cities within boroughs or, in the manner required in (b) of this
20 section, by first or second class boroughs in the area outside cities or
21 areawide;

22 (15) condemnation and abatement of public nuisances and
23 hazards;

24 **** (16) Repeal.

25 (17) water pollution control;

26 (18) air pollution control as provided in AS 46.03.140 -
27 46.03.230;

28 **** (19) to the extent not otherwise prohibited, any activity
29 affecting the general health, safety, well-being and welfare of its inhabi-
tants;

1 (20) licensing of day care facilities.

2 **** (21) municipally owned utilities to the extent not pro-
3 hibited by AS 42.05.

4 (b) First and second class boroughs may exercise the powers
5 conferred by (a) of this section only after they have been assumed in the
6 manner required under AS 29.36.090 - 29.36.130 for areawide exercise or in
7 the manner required under AS 29.36.160 - 29.36.200 for exercise in the
8 borough area outside cities or are conferred by (Sec. 20) of this chapter
9 for exercise in the borough area outside cities. However, as to powers
10 conferred under (a)(5), (17), (18) and (20) of this section, exercise of the
11 powers areawide or, as to (a)(5), (15), (17) and (20), in the borough area
12 outside cities is at the option of the borough and is not subject to those
13 restrictions on acquisition of additional borough powers. Upon adoption of
14 a borough ordinance to provide for areawide exercise of the powers specified,
15 no home rule or general law city within the borough may exercise the powers,
16 unless the borough ordinance provides otherwise or the borough by subsequent
17 ordinance ceases to exercise the power.

18 ****Sec. 29.33.100. MUNICIPALLY-OWNED UTILITIES. Repeal.

19 Sec. 29.33.110. FRANCHISES AND PERMITS. ****(a) The assembly acting
20 for the area outside cities and the council acting for the area within a
21 city may grant franchises, including exclusive franchise privileges, and may
22 permit them the use of streets and other public places under regulations
23 prescribed by ordinance.

24 **** (b) No franchise is valid until it has been submitted to the
25 qualified voters of the city or borough area outside cities in which it
26 applies, and at least a majority of the votes cast are in favor of the
27 franchise. At least 30 days notice of a franchise referendum election shall
28 be given in the same manner as is provided for notice of regular municipal
29 elections, and the notice shall specify the purpose of the election. The

1 ordinance granting a franchise shall provide for its submission for ratifica-
2 tion to the qualified voters of the city or borough area outside cities at
3 either a regular or special election, and the result of the election shall
4 be canvassed publicly by the council or assembly and spread upon the records
5 of the minutes and the result declared and certified in the same manner as
6 in a regular election.

7 (c) Public utilities regulated under AS 42.05 have the right to
8 use the streets and other public places, upon payment of a reasonable permit
9 fee and on reasonable terms and conditions and with reasonable exceptions
10 the assembly or council requires. A dispute as to whether fees, terms,
11 conditions, or exceptions are reasonable shall be decided by the Alaska
12 Public Utilities Commission.

13 Sec. 29.33.120. PUBLIC UTILITIES RATES. The assembly acting for the
14 area outside cities and the council acting for the area within a city may
15 regulate, fix, establish and change, as it considers proper, the rates and
16 charges imposed for utilities services given to the municipality or its
17 inhabitants by a municipally owned utility not regulated under AS. 42.05 and
18 may regulate and provide what is a reasonable deposit for meters and security
19 for service to be given, provided that interest is paid on the deposit. All
20 rates, charges and regulations shall be reasonable and shall permit a fair
21 and reasonable return on invested capital.

22 ****Sec. 29.33.130. HEARING FOR REGULATION OF UTILITIES RATES. Repeal.

23 ****Sec. 29.33.140. RIGHT TO PARTICIPATE AND COMPEL TESTIMONY. Repeal.

24 ****Sec. 29.33.150. FURTHER PROCEEDINGS. Repeal.

25 ****Sec. 29.33.160. APPLICATION. Repeal.

26 ARTICLE 3. FISCAL DUTIES.

27 ****Sec. 29.33.190. CENTRALIZED PURCHASING. Repeal.

28 Sec. 29.33.200. MUNICIPAL PROPERTIES. ****(a) Repeal.

1 **** (b) Repeal.

2 **** (c) Repeal.

3 **** (d) The governing body shall by ordinance establish a formal
4 procedure for acquisition and disposal of land and interests in land by the
5 municipality. Each transaction disposing of land or an interest in land
6 which is not subject to a competitive process shall be by ordinance.

7 **** (e) Repeal.

8 **** (f) Repeal.

9 Sec. 29.33.210. BUDGET AND CAPITAL PROGRAM. (a) The ^{governing body}~~assembly or~~
10 ~~council~~ shall establish the manner for the preparation and submission of the
11 budgets and capital programs by the executive. After public hearing, the
12 assembly or council may approve the budgets with or without amendments and
13 shall appropriate the funds required for the approved budgets.

14 **** (b) Repeal.

15 (c) The governing body may make supplemental and emergency appro-
16 priations. No payment may be authorized or made and no obligation incurred
17 except in accordance with appropriations.

18 **** (d) Repeal.

19 ****Sec. 29.33.220. EXPENDITURE OF BOROUGH REVENUES. Borough revenues
20 received through taxes collected on an areawide basis by a home rule or
21 general law borough may be expended on general administrative costs and on
22 areawide functions only. Borough revenues received through taxes collected
23 in the area outside cities only may be expended on general administrative
24 costs and functions which render service to the area outside cities only.
25 This section does not apply to a unified municipality.

26 Sec. 29.33.230. POST AUDIT. The governing body shall provide for an
27 annual independent audit of the accounts and financial transactions of the
28 municipality or in the case of a second class city an audit or statement of
29 annual income and expenditures. To make the audit the governing body

1 shall designate a public accountant who has no personal interest, direct or
2 indirect, in the fiscal affairs of the municipality. Copies of the audit
3 shall be available to the public upon request. This section applies to home
4 rule and general law municipalities.

5 ARTICLE 4. CONSTRUCTION OF POWERS.

6 Sec. 29.33.260. GENERAL CONSTRUCTION. A liberal construction shall be
7 given to all powers and functions of boroughs and cities conferred in this
8 title.

9 Sec. 29.33.270. EXTENT OF POWERS. Unless otherwise limited by law,
10 boroughs and cities have and may exercise all powers and functions neces-
11 sarily or fairly implied in or incident to the object or purpose of all
12 powers and functions conferred in this title.

13 Sec. 29.33.280. ENUMERATION OF POWERS. Specific examples within an
14 enumerated power or function conferred upon boroughs or cities in this title
15 are illustrative of the object and not a limitation on or exclusion from the
16 exercise of the power or function.

CHAPTER 36. AREAWIDE BOROUGH POWERS AND DUTIES.

ARTICLE 1. SCOPE.

Sec. 29.36.010. SCOPE OF AREAWIDE POWERS. (a) First and second class boroughs shall exercise the powers as specified and in the manner specified in this chapter on an areawide basis, both inside and outside cities within their boundaries.

(b) No city, whether home rule or not, may exercise an areawide power once that power is being exercised by a borough.

ARTICLE 2. MANDATORY AREAWIDE POWERS AND DUTIES.

Sec. 29.36.040. EDUCATION. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on military reservation transfers to the borough school district in which the military reservation is located.

.... Sec. 29.36.050. ASSESSMENT AND COLLECTION OF TAXES. Boroughs shall assess ~~and collect~~ ^{and may collect} property, sales, and use taxes levied within their boundaries, subject to ch. 45 of this title. Taxes levied by a city ~~and~~ ^{shall be} collected by a borough ~~are~~ ^{and} returned in full to the levying city.

****Sec. 29.36.060. PLANNING, PLATTING, AND LAND USE REGULATION.

ARTICLE 3. ACQUISITION OF ADDITIONAL AREAWIDE POWERS.

1 Sec. 29.36.090. ADDITIONAL AREAWIDE POWERS. First and second class
2 boroughs acquire additional areawide municipal powers by transfer from a
3 city or by holding an areawide election on the question, except as provided
4 otherwise in AS 29.33.080 and 29.33.090.

5 Sec. 29.36.100. TRANSFER BY CITY. (a) A city may transfer to the
6 first or second class borough in which it is located any of its powers or
7 functions, subject to the approval of the borough assembly.

8 (b) First and second class boroughs shall exercise all powers
9 transferred to them by cities.

10 Sec. 29.36.110. PETITION FOR POWER. An election on the question of
11 adding an areawide power may be initiated in two ways:

12 (1) a number of voters equal to 15 percent of the number of votes
13 cast in the borough at the preceding regular election may file a petition
14 with the assembly, or

15 (2) the assembly may propose the acquisition of the power.

16 Sec. 29.36.120. INVESTIGATION. The assembly shall hold at least one
17 public hearing in the borough on the question. The assembly shall then
18 evaluate the ability of the borough to exercise the powers and make its
19 findings public.

20 Sec. 29.36.130. ELECTION. (a) The assembly shall, within 30 days
21 after its findings have been made public, order an election to be held on
22 the question. The election shall be held at least 30 days after the order
23 and not later than the next regular election occurring after the 30-day
24 period.

25 (b) If more than one power is proposed, each appears separately
26 on the ballot.

27 (c) The borough mayor shall certify the election results to the
28 Department of Community and Regional Affairs. The vote on the question of
29 adding an areawide power shall be tabulated in two separate classifications.

1 One shall consist of all votes cast in the home rule and first class cities
2 of the borough. The other shall consist of all votes cast in the remaining
3 borough area. If the majority of the votes cast in each classification is
4 favorable, the borough shall assume the added power within 30 days of certifi-
5 cation of the election results. Upon acquisition of an areawide power the
6 borough succeeds to all of the rights, powers and duties of any city or
7 service area with respect to that power. The borough succeeds to claims,
8 franchises and other contractual obligations, liability for bonded and all
9 other indebtedness and to all of the right, title and interest in the real
10 and personal property held by the city or service area for the exercise of
11 the power. The borough assembly may levy and collect special charges, taxes
12 or assessments including interest for the purpose of amortizing bonded in-
13 debtedness previously incurred by the city or service area for continuing
14 services in the area. When a city or service area had previously incurred
15 bonded indebtedness, no less than all property that was within the city or
16 service area at the time the bonds were issued shall remain subject to
17 taxation to pay the principal of and interest on the bond for as long as
18 they remain outstanding. Upon acquisition of additional areawide powers the
19 borough, in consultation with the city or service area personnel, shall
20 arrange for an orderly and equitable transfer of rights, assets, liabilities,
21 powers, duties and other matters related to acquisition of the areawide
22 powers. This section applies to home rule and general law cities.

23 ARTICLE 4. BOROUGH POWERS AND DUTIES IN THE AREA

24 OUTSIDE CITIES.

25 Sec. 29.36.160. FIRST CLASS BOROUGH. The first class borough may
26 exercise in the area outside cities any general law municipal power. Before
27 exercising a power outside cities only, the borough shall seek to have the
28 identical power transferred from cities within the borough or propose joint
29 borough-city exercise of the power.

1 Sec. 29.36.170. SECOND CLASS BOROUGH. (a) The second class borough
2 may exercise in the area outside cities municipal powers approved at incorpora-
3 tion, conferred by AS 29.36.170 or added as provided in this chapter.
4 Before exercising a power outside cities only, the borough shall seek to
5 have the identical power transferred from cities within the borough or
6 propose joint borough-city exercise of the power.

7 ****(b) A second class borough may, in the area outside cities,

8 (1) regulate or prohibit the offering for sale, exposure for
9 sale, sale, use, or explosion of fireworks;

10 (2) provide for the licensing, impounding, and disposition of
11 animals;

12 (3) regulate the licensing and operation of motor vehicles and
13 operators;

14 (4) regulate snow vehicles as provided in AS 05.30.070;

15 (5) provide for garbage and solid waste collection and disposal
16 subject to AS 29.33.080;

17 (6) provide for water pollution control;

18 (7) establish or participate in federal and state government loan
19 programs for housing rehabilitation and improvement for conservation of
20 energy.

21 **** (8) Tax, spend, and regulate for the purpose of promoting economic
22 development.

23 Sec. 29.36.180. ADDITIONAL POWERS. The second class borough may
24 initiate the acquisition of additional powers outside cities in either of
25 two ways:

26 (1) a number of voters equal to 15 percent of the number of votes
27 cast in the area outside cities at the preceding regular election may file a
28 petition with the assembly, or
29

(2) the assembly may place the question on the ballot.

Sec. 29.36.190. INVESTIGATION. The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public.

Sec. 29.36.200. ELECTION. (a) The assembly shall, within 30 days after its findings have been made public, order an election on the question in the borough area outside cities. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

(b) If more than one power is proposed, each appears separately on the ballot.

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. If the majority of the votes cast on the question is favorable, the borough shall assume the added power within 30 days of certification of election results.

ARTICLE 5. POWERS OF THIRD CLASS BOROUGHES.

Sec. 29.36.230. POWERS OF THIRD CLASS BOROUGHES. (a) A third class borough shall exercise the areawide powers of education and tax assessment and collection in the manner provided for second class boroughs. Areawide exercise of powers other than education and tax assessment and collection is not authorized.

* (b) A third class borough may by a majority vote of the voters in a general or special election provide for planning, platting and land use regulation in accordance with AS 29.42.010 - 29.42.150 for boroughs and may exercise any general law municipal power which a second class borough is authorized to assume by this title. Powers assumed by a third class borough under this section may be exercised only within service areas. A third class borough may establish, operate, alter or abolish service areas in the

manner provided by AS 29.63.090 for second class boroughs. The acquisition of additional powers on a service area basis may be initiated in either of two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the proposed service area at the preceding regular election may file a petition with the assembly; or

(2) the assembly may place the question on the ballot.

(c) A third class borough may borrow money and issue negotiable general obligation, revenue or refunding bonds and other evidences of indebtedness as provided for first and second class boroughs in AS 29.51.200 - 29.51.510

(d) A military reservation within a third class borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on the military reservation transfers to the borough school district in which the military reservation is located.

****Sec. 29.36.240. ASSEMBLY TO SERVE AS SCHOOL BOARD. Repeal.

ARTICLE 6. SERVICE AREAS.

****Sec. 29.36.270. SERVICE AREAS. (a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. ^{Addition} Special services include services not provided on an areawide basis within the borough or the borough area outside cities or a higher or different level of service than that provided on an areawide basis or in the borough area outside cities. In a first class borough the

1 assembly may exercise within a service area any power granted a first class
2 city by general law. Except as provided in (f) of this section, a second
3 class borough may exercise the powers granted a first class city by general
4 law but the exercise of the powers must be approved by a majority of the
5 qualified voters residing within the service area and voting on the question
6 at a regular or special election, or if no voters reside within the area,
7 all owners of real property within the service area must consent in writing
8 to the exercise of the power.

9 (b) The assembly may levy or authorize the levying of taxes,
10 charges, or assessments in service areas to finance the special services.

11 (c) The assembly may provide for appointed or elected boards to
12 supervise the furnishing of special services in service areas.

13 (d) A new service area may not be established if, consistent with
14 the purposes of art. X of the state constitution, the new service can be
15 provided by an existing service area, by annexation to a city, or by incor-
16 poration as a city.

17 (e) The assembly may exercise or delegate to a service area any
18 powers which may be exercised by a first class borough in the area outside
19 cities. In a second class borough, each exercised or delegated power must
20 be approved by a majority vote at a regular or special election held within
21 the service area. The rate of taxation and the issuance of bonds are subject
22 to assembly approval.

23 (f) A second class borough may establish a service area by
24 ordinance which may include only vacant, unappropriated and unreserved land
25 owned by the municipality. A second class borough may establish a service
26 area, with the concurrence of the commissioner of natural resources, which
27 may include only vacant, unappropriated and unreserved land owned by the
28 state and classified for disposal to individuals. A second class borough
29 may provide those services in a service area established under this

1 subsection necessary to develop state or municipal land as required by the
2 planning and platting ordinances of the borough. Exercise of the powers
3 authorized by this subsection shall be by ordinance.

1 CHAPTER 39. POWERS OF CITIES OUTSIDE BOROUGHS.

2 Sec. 29.39.010. ADDITIONAL POWERS. In addition to the powers granted
3 by ch. 48 of this title, cities outside boroughs are granted the powers
4 specified in this chapter. Powers of this chapter which are incorporated by
5 reference to laws governing boroughs apply to home rule cities outside
6 boroughs only in those cases in which they are made applicable to home rule
7 boroughs in the provisions incorporated.

8 Sec. 29.39.020. ASSESSMENT AND TAX COLLECTION. Home rule and first
9 class cities outside boroughs may assess, levy and collect a general property
10 tax. A property tax if levied must be assessed, levied and collected as
11 provided by ch. 45 of this title for boroughs. Cities outside boroughs may
12 levy and collect sales and use taxes as provided by ch. 45 of this title for
13 boroughs.

14 Sec. 29.39.030. DIFFERENTIAL TAX ZONES. Moved to 29.45.535.

15 Sec. 29.39.040. EDUCATION. Home rule and first class cities outside
16 boroughs constitute city school districts and establish, maintain, and
17 operate a system of public schools as provided by AS 29.36.040 for boroughs.

18 ****Sec. 29.39.050. PLANNING AND LAND USE REGULATION. (a) Home rule and
19 first class cities outside boroughs shall, and second class cities outside
20 boroughs may, provide for planning, platting and land use regulation within
21 their boundaries as provided by AS 29.42.010 - 29.42.245 for boroughs.

22 (b) Home rule and first class cities within third class boroughs
23 shall, and second class cities within third class boroughs may provide for
24 planning, platting and land use regulation, as provided by AS 29.42.010 -
25 29.42.150 for boroughs.

26 ****Sec. 29.39.060. EXTENSION OF CURFEWS OUTSIDE CITIES. Repeal.

27 ****Sec. 29.39.070. ENFORCEMENT OF CURFEWS. Repeal.

28 ****Sec. 29.39.080. PENALTY FOR VIOLATION OF CURFEW. Repeal.

29

1 CHAPTER 42. PLANNING, PLATTING, AND LAND USE REGULATION

2
3 ****Sec. 29.42.010. PLANNING, PLATTING, AND LAND USE REGULATION. (a)
4 First and second class boroughs shall provide for planning, platting, and
5 land use regulation on an areawide basis.

6 (b) The assembly by ordinance may delegate any of its powers and
7 responsibilities under this chapter to a city within the borough, or to a
8 city board or commission, provided the city first consents by ordinance to
9 the delegation. The assembly may, without first obtaining the consent of
10 the city, revoke any power or responsibility delegated under this section.

11 Sec. 29.42.020. PLANNING COMMISSION. (a) The borough planning com-
12 mission consists of five residents unless a greater number is otherwise
13 provided by ordinance. Commission membership shall be apportioned so that
14 the number of members from first class cities reflects the proportion of
15 borough population residing within those cities. Members shall be appointed
16 by the borough executive for a term of three years subject to confirmation
17 by the assembly, except that appointments of members from first class cities
18 are selected from a list of recommendations submitted by the city council.
19 Members first appointed shall draw lots for one, two-and three-year terms.
20 Appointments to fill vacancies are for the unexpired term. The compensation
21 and expenses of the planning commission and its staff are paid as directed
22 by the assembly.

23 **** (b) In addition to the responsibilities prescribed by ordinance,
24 the planning commission shall

25 (1) prepare and recommend to the assembly a comprehensive
26 plan in accordance with AS 29.42.030 for the systematic and organized develop-
27 ment of the borough;

28 (2) prepare, recommend, and administer measures necessary to
29 implement the comprehensive plan, including measures provided under
AS 29.42.040.

1 Sec. 29.42.030. COMPREHENSIVE PLAN. (a) The comprehensive plan is a
2 compilation of policy statements, goals, standards and maps for guiding the
3 physical, social and economic development, both private and public, of the
4 borough, and may include, but is not limited to, the following: statements
5 of policies, goals, standards, a land use plan, a community facilities plan,
6 a transportation plan, and recommendations for plan implementation.

7 **** (b) With the recommendations of the planning commission, the
8 assembly shall adopt by ordinance a comprehensive plan. The assembly shall,
9 after receiving the recommendations of the planning commission, periodically
10 undertake an overall review of the plan and update the plan as necessary.

11 ****Sec. 29.42.040. LAND USE REGULATION. (a) In accordance with a com-
12 prehensive plan adopted under AS 29.42.030 and in order to implement the
13 plan, the assembly by ordinance as a legislative act, shall adopt or amend
14 provisions governing the use and occupancy of land which may include but are
15 not limited to

16 (1) zoning regulations restricting the use of land and
17 improvements by geographic districts;

18 (2) land use permit requirements designed to encourage or
19 discourage specified uses and construction of specified structures, or to
20 minimize unfavorable effects of uses and the construction of structures;

21 (3) measures to further the goals and objectives of the
22 comprehensive plan.

23 (b) A variance from a land use regulation adopted under this
24 section shall not be granted if

25 (1) special conditions which require the variance are caused
26 by the person seeking the variance;

27 (2) the variance will permit a land use in a district in
28 which that use is prohibited; or
29

1 (3) the variance is sought solely to relieve pecuniary
2 hardship or inconvenience.

3 ****Sec. 29.42.050. APPEALS FROM ADMINISTRATIVE DECISIONS. (a) By
4 ordinance the assembly shall provide for an appeal from an administrative
5 decision of a municipal employee, board, or commission made in the
6 enforcement, administration, or application of a land use regulation adopted
7 under this chapter. The assembly may provide for an appeal to a court,
8 board of adjustment, hearing officer, or other body. The assembly shall
9 provide for an appeal from a decision on a request for a variance from the
10 terms of a land use regulation when literal enforcement would deprive a
11 property owner of rights commonly enjoyed by other properties in the
12 district.

13 (b) By ordinance the assembly may provide for appointment of
14 hearing officers, or for the composition, appointment and terms of office of
15 a board of adjustment or other body established to hear appeals from
16 administrative actions specified in (a) of this section. The assembly may
17 define proper parties, prescribe evidentiary rules, standards of review, and
18 remedies available to the hearing officers, board of adjustment or other
19 body.

20 ****Sec. 29.42.060. ADJUSTMENT PROCEDURE. Repeal

21 ****Sec. 29.42.070. JUDICIAL REVIEW. (a) The assembly shall provide by
22 ordinance for an appeal by a municipal officer or person aggrieved from a
23 decision of the board of adjustment, hearing officer or other body to the
24 superior court.

25 (b) An appeal to the superior court under this section is an
26 administrative appeal and the appeal is heard solely on the record
27 established by the board of adjustment, hearing officer or other body. A
28 proceeding under this section has preference over all other civil actions
29 and proceedings.

1 ****Sec. 29.42.080. PLATTING JURISDICTION AND POWER. (a) By ordinance
2 the assembly shall adopt subdivision requirements which may include but are
3 not limited to the control of

4 (1) form, size and other aspects of subdivision, dedications,
5 and vacations of land;

6 (2) dimensions and design of lots or tracts;

7 (3) street width, arrangement, and rights-of-way, including
8 requirements for public access to lots and installation of street paving,
9 curbs, gutters, sidewalks, sewers, water lines, drainage and other public
10 utility facilities and improvements;

11 (4) dedication of streets, rights-of-way, public utility
12 easements and areas deemed by the platting board necessary for other public
13 uses.

14 (b) The assembly by ordinance shall establish a platting authority
15 to administer subdivision regulations adopted by the borough and perform
16 other duties. The platting authority may consist of members of the planning
17 commission or of other municipal residents.

18 ****Sec. 29.42.085. APPLICATION TO STATE AND POLITICAL SUBDIVISIONS. All
19 subdivisions of land made by the state, its agencies, instrumentalities and
20 political subdivisions are subject to this chapter and AS 40.15.200. The
21 platting authority in the area outside cities in the unorganized borough and
22 in third class boroughs is subject to this chapter and to AS 40.15.075.

23 ****Sec. 29.42.090. PROCEDURE. (a) The platting authority shall approve
24 or disapprove the plat within 60 days of filing or shall return it to the
25 applicant for modification or correction. If the platting authority fails
26 to act, the plat is considered approved and a certificate of approval shall
27 be issued by the platting authority on demand. The applicant for plat
28 approval may consent to the extension of the period for action by the plat-
29 ting authority. The platting authority shall state on its record and in
writing to the applicant its reason for disapproval of a plat.

1 (b) The platting authority shall submit an approved plat to the
2 district recorder in compliance with AS 40.15.010 - 40.15.020.

3 ****Sec. 29.42.100. WAIVER IN CERTAIN CASES. Repeal

4 Sec. 29.42.110. INFORMATION REQUIRED. A plat shall show initial point
5 of survey, original or reestablished corners and their descriptions, and
6 actual traverse showing area of closure and all distances, angles and calcu-
7 lations required to determine initial point, corners and distances of the
8 plat, as well as other information which may be required by ordinance.

9 ****Sec. 29.42.115. SHORT PLAT PROCEDURE. (a) Notwithstanding other
10 provisions of this chapter the assembly may by ordinance establish a short
11 or abbreviated plat filing procedure for a plat which will only relocate or
12 vacate lot lines, or subdivide a single tract or lot into not more than four
13 tracts or lots and which will not:

14 (1) deny legal and physical public access to all lots or
15 tracts created or adjacent to the subdivision, or require construction or
16 improvements necessary for access;

17 (2) alter a dedicated street or right-of-way, or require any
18 dedication other than a dedication needed for an existing right-of-way;

19 (3) allow a change in the permitted use to which the lot or
20 tract may be devoted;

21 (4) require the granting of a vacation or a variance from a
22 subdivision regulation.

23 (b) Regulations may provide for an administrative official to
24 review, consider, and approve short plats with notice, hearing, and other
25 procedure requirements established by the assembly.

26 ****Sec. 29.42.120. PENALTIES. Repeal.

27 ****Sec. 29.42.130. ALTERATION OR REPLAT PETITION. No recorded plat may
28 be altered or replatted except by the platting authority upon petition of
29 the state, the municipality, a public utility, or the owners of a majority

1 of the land affected by the alteration or replat. No platted street may be
2 vacated, except upon petition of the state, municipality, or a public utility,
3 or owners of the majority of the land fronting the part of the street sought
4 to be vacated. The petition shall be filed with the platting authority. It
5 shall be accompanied by a copy of the existing plat showing the proposed
6 alteration or replat.

7 *Sec. 29.42.140. NOTICE OF HEARING. The platting authority shall fix
8 a time for a hearing on the petition which shall not be more than 60 days
9 after the filing. The platting authority shall publish a notice stating
10 when and by whom the petition was filed, its purpose, and the time and place
11 of the hearing. The notice shall generally describe the alteration or
12 replat sought. The notice shall be published once a week for two consecutive
13 weeks in a newspaper of general circulation in the area. The platting
14 authority shall also mail a copy of the notice to each affected property
15 owner not signing the petition.

16 *Sec. 29.42.150. HEARING AND DETERMINATION. At the hearing the platting
17 authority shall consider the alteration or replat and make its decision on
18 the merits of the proposal. No vacation of a city street may be made without
19 the consent of the city council. No vacation of a street in the borough area
20 outside cities may be made without the consent of the borough assembly. The
21 assembly or council shall have 30 days from the decision in which to veto
22 the board decision. If no veto is received by the board within the 30-day
23 period, the consent of the city or borough shall be considered to have been
24 given to the vacation.

25 *Sec. 29.42.160. RECORDING. If the alteration or replat is approved,
26 the revised plat must be recorded by the platting authority and is thereafter
27 the lawful plat.

28 Sec. 29.42.170. TITLE TO VACATED AREA. (a) The title to the street
29 or other public area vacated on a plat attaches to the lot or lands bordering

1 on the area in equal proportions, except that if the area was originally
2 dedicated by different persons, original boundary lines shall be adhered to
3 so that the street area which lies on one side of the boundary line shall
4 attach to the abutting property on that side, and the street area which lies
5 on the other side of the boundary line shall attach to the property on that
6 side. The portion of a vacated street which lies within the limits of a
7 platted addition attaches to the lots of the platted addition bordering on
8 the area. If a public square is vacated, the title to it vests in the city
9 if it lies within the city and to the borough if it lies within the borough
10 outside a city. If the property vacated is a lot or tract, title vests in
11 the rightful owner.

12 (b) If the borough or city acquired the street or other public
13 area vacated for legal consideration or by express dedication to and accep-
14 tance by the borough or city other than required subdivision platting,
15 before the final act of vacation the fair market value of the street or
16 public area shall be deposited with the platting authority to be paid over
17 to the borough or city on final vacation.

18 (c) Provisions of (a) of this section notwithstanding, the council
19 of a second class city located outside an organized borough may vacate those
20 streets, alleys, crossings, sidewalks or other public ways that may have
21 been previously dedicated or established when the council, in its discretion,
22 finds that the streets, alleys, crossings, sidewalks or other public ways
23 are no longer necessary for the public welfare, or when the public welfare
24 will be enhanced by the vacation. If the council determines that all or a
25 portion of the area vacated under this subsection should be devoted to
26 another public purpose, title to the area vacated and held for another
27 public purpose does not vest as provided in (a) of this section but remains
28 in the city.
29

1 ****Sec. 29.42.180. DELEGATIONS. Repeal.

2 ****Sec. 29.42.190. REMEDIES. (a) It shall be unlawful for the owner of
3 land located within a subdivision to transfer, sell, offer to sell, or enter
4 into a contract to sell land in a subdivision before a plat of the sub-
5 division has been prepared, approved and recorded in accordance with this
6 chapter or with an ordinance adopted under this chapter. It shall be unlaw-
7 ful for a person to record a plat or other document depicting subdivided
8 land in any public recorder's office unless the plat or document has been
9 approved by the municipal authority. A person convicted of violating a
10 provision of this chapter, a municipal subdivision regulation adopted under
11 this chapter, or a term, condition, or limitation imposed by a municipal
12 platting authority in the exercise of its powers under this chapter is
13 guilty of a class B misdemeanor.

14 (b) The municipality or an aggrieved person may institute civil
15 action against a person who violates a provision of this chapter, a municipal
16 subdivision regulation adopted under this chapter, or a term, condition, or
17 limitation imposed by a municipal platting authority. In addition to
18 injunctive and compensatory relief, a civil penalty not to exceed \$1,000 may
19 be imposed for each violation. An action to enjoin a violation may be
20 brought notwithstanding the availability of any other remedy. Upon
21 application for injunctive relief and a finding of a violation or threatened
22 violation, the superior court shall grant the injunction.

23 (c) Every day upon which an unlawful act or condition continues
24 shall constitute a separate violation.
25
26
27
28
29

CHAPTER 45. MUNICIPAL TAXATION

Article 1. MUNICIPAL PROPERTY TAX

****Sec. 29.45.010. GENERAL PROPERTY TAX. A general law or home rule borough other than a unified municipality, may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A tax if levied on real property, personal property, or both, must be assessed, levied and collected as provided in this chapter.

****Sec. 29.45.020. TAXPAYER NOTICE. (a) If a municipality levies and collects real or personal property taxes, or both, the governing body shall provide the following notice:

"NOTICE TO TAXPAYER"

For the current fiscal year the (city)(borough) has been allocated the following amount of state aid for school and municipal purposes under the applicable financial assistance Acts:

PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE

(AS 14.17) \$

STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT (AS 43.18.100)

\$

MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE

(AS 29.88) \$

STATE AID FOR MISCELLANEOUS MUNICIPAL

SERVICES (AS 29.89) \$

TOTAL AID \$

The millage equivalent of this state aid, based on the dollar value of a mill in the municipality during the current assessment year and for the preceding assessment year, is:

MILLAGE EQUIVALENT

	PREVIOUS YEAR	THIS YEAR
--	---------------	-----------

PUBLIC SCHOOL FOUNDATION PROGRAM		
----------------------------------	--	--

ASSISTANCE	MILLS	MILLS
------------	-----------	-----------

STATE AID FOR RETIREMENT OF		
-----------------------------	--	--

SCHOOL CONSTRUCTION DEBT	MILLS	MILLS
--------------------------	-----------	-----------

MUNICIPAL TAX RESOURCE EQUALI-		
--------------------------------	--	--

ZATION ASSISTANCE	MILLS	MILLS
-------------------	-----------	-----------

STATE AID FOR MISCELLANEOUS		
-----------------------------	--	--

MUNICIPAL SERVICES	MILLS	MILLS
--------------------	-----------	-----------

TOTAL MILLAGE EQUIVALENT	MILLS	MILLS
--------------------------	-----------	-----------

Notice shall be provided

(1) by furnishing a copy of the notice with tax statements mailed for the fiscal year for which aid is received; or

(2) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget.

(b) If the municipality levies and collects only a sales tax, the governing body shall provide a notice substantially in the form set out in (a) of this section. In providing notice under this subsection, the council or assembly shall substitute for the millage equivalency its estimate of the equivalent sales tax rate for each of the categories of financial assistance set out in (a) of this section. Notice shall be provided

(1) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget; or

1 (2) if there is no newspaper of general circulation in the
2 municipality, by posting a copy of the notice for at least 20 days in at
3 least two public places within the municipality, with posting to occur not
4 later than 45 days after the final adoption of the municipality's budget.

5 (c) Compliance with the provisions of this section is a prerequi-
6 site to receipt of municipal tax resource equalization assistance under AS
7 29.62 and state aid for miscellaneous municipal services under AS 29.62.
8 The Department of Community and Regional Affairs shall withhold annual
9 allocations under those chapters until municipal officials demonstrate that
10 the requirements of this section have been met.

11 Sec. 29.45.030. REQUIRED EXEMPTIONS. (a) The following property is
12 exempt from general taxation:

13 **** (1) municipal, state or federally owned property, except
14 that a private leasehold, contract or other interest in the property shall
15 be taxable to the extent of those interests;

16 **** (2) household furniture of the head of a family or house-
17 hold;

18 (3) property used exclusively for nonprofit religious,
19 charitable, cemetery, hospital or educational purposes;

20 **** (4) property of a nonbusiness organization or its auxiliary
21 composed entirely of persons with 90 days or more of active service in the
22 armed forces of the United States whose conditions of service and separation
23 were other than dishonorable, or the property of the auxiliary of such
24 organization;

25 (5) money on deposit;

26 (6) the real property of certain residents of the state to
27 the extent and subject to the conditions provided in (e) of this section.

28 (b) "Property used exclusively for religious purposes" includes
29 the following property owned by a religious organization:

1 (1) the residence of a bishop, pastor, priest, rabbi,
2 minister or religious order of a recognized religious organization;

3 (2) a structure, its furniture and its fixtures used
4 solely for public worship, charitable purposes, religious administrative
5 offices, religious education or a nonprofit hospital;

6 **** (3) Repeal.

7 (4) lots required by local ordinance for parking near a
8 structure defined in (2) of this subsection.

9 (c) Property described in (a) or (b) of this section from which
10 income is derived is exempt only if that income is solely from use of the
11 property by nonprofit religious, charitable, hospital, or educational groups.
12 If used by nonprofit educational groups, the property is exempt only if used
13 exclusively for classroom space.

14 (d) Laws exempting certain property from execution under the
15 Code of Civil Procedure (AS 09) do not exempt the property from taxes levied
16 and collected by municipalities.

17 (e) The real property owned and occupied as a permanent place
18 of abode by a resident 65 years of age or over is exempt from taxation of
19 the assessed value of the real property. Only one exemption may be granted
20 with respect to the same property and, if two or more persons are eligible
21 for an exemption with respect to the same property, the parties shall decide
22 between or among themselves which shall receive the benefit of the exemption.
23 No real property may be exempted under this subsection which the assessor
24 determines, after notice and hearing to the parties concerned, has been
25 conveyed to the applicant primarily for the purpose of obtaining the exemption.
26 The determination of the assessor is appealable under AS 44.62.560 and
27 44.62.570.

28 **** (f) No exemption may be granted under (e) of this section except
29 upon written application

1 for the exemption on a form prescribed by the state assessor for use by
2 local assessors. The claimant must file the application no later than
3 January 15 or a date provided by ordinance which is not later than March 31,
4 of the assessment year for which the exemption is sought, but during the
5 same year the governing body of the municipality for good cause shown may
6 waive the claimant's failure to make timely application for exemption for
7 that year and authorize the assessor to accept the application as if timely
8 filed. The claimant must file a separate application for each assessment
9 year in which the exemption is sought. If an application is filed within
10 the required time and is approved by the assessor, he shall allow an exemption
11 in accordance with the provisions of this section. If a claimant whose
12 failure to file by January 15 or a date provided by ordinance which is not
13 later than March 31, of the assessment year has been waived as provided in
14 this subsection and the application for exemption is approved, the amount of
15 tax which the claimant may have already paid for the assessment year with
16 respect to the property exempted shall be refunded to him. The assessor may
17 at any time require proof in the form he considers necessary of the right
18 and amount of an exemption claimed under (e) of this section.

19 (g) The state shall reimburse a borough or city, as appropriate,
20 for the real property tax revenues lost to it by the operation of (e) of
21 this section. However, reimbursement will be made to a borough or city for
22 revenue lost to it only to the extent that the loss exceeds an exemption
23 which was granted by the borough or city, or which upon proper application
24 by an individual would have been granted by the borough or city, under AS
25 29.53.025(a).

26 (h) Except as provided in (g) of this section, nothing in (e) -
27 (i) of this section affects similar exemptions from property taxes granted
28 by municipalities on September 10, 1972 or prevents municipalities from
29 granting similar exemptions by ordinance as provided in AS 29.53.025.

1 (i) In (e) - (i) of this section the term "real property"
2 includes but is not limited to mobile homes, whether classified as real or
3 personal property for municipal tax purposes.

4 (j) Two percent of the assessed value of a structure is exempt
5 from taxation if the structure contains a fire protection system approved
6 under AS 19.70.081, in operating condition, and incorporated as a fixture or
7 part of the structure. The exemption granted by this subsection is limited
8 to

9 (1) an amount equal to two percent of the value of the
10 structure based on the assessment for 1981, if the fire protection system is
11 a fixture of the structure on January 1, 1981; or

12 (2) an amount equal to two percent of the value of the
13 structure based on the assessment as of January 1 of the year immediately
14 following the installation of the fire protection system if the fire protec-
15 tion system becomes a fixture of the structure after January 1, 1981.

16 Sec. 29.45.040. PROPERTY TAX EQUIVALENCY PAYMENTS. (a) A resident of
17 the state 65 years of age or older who rents a permanent place of abode is
18 eligible for tax equivalency payments from the state through the Department
19 of Community and Regional Affairs.

20 (b) For purposes of determining payments to eligible persons, the
21 department shall calculate a property tax equivalent percentage for each
22 home rule or general law municipality which levies a general property tax at
23 the rate of one percent per mil. The property tax equivalent percentage
24 applied to the annual rent charged to the applicant equals the property tax
25 equivalency payment payable under this section.

26 (c) To obtain tax equivalency payments the eligible resident must
27 apply to the department for payment for the preceding year by January 15 of
28 each year on forms and in the manner prescribed by the department. Each
29 applicant shall submit with the application rental receipts or, if rental

1 receipts are not available, other evidence satisfactory to the department
2 for determination of the fact of payment of rent and the amount paid.

3 (d) If two or more persons occupy a residence as tenants, not all
4 of whom are eligible for tax equivalency payments under this section, the
5 assessor shall determine equitable partial payments to be made to the eligible
6 tenants. However, tax equivalency payments to an eligible applicant may not
7 be reduced because the spouse is less than 65 years of age. If all occupants
8 in a residence are eligible for tax equivalency payments under this section,
9 the occupants shall decide between and among themselves which shall receive
10 payment.

11 Sec. 29.45.050. (Sec. 29.53.025.) OPTIONAL EXEMPTIONS AND EXCLUSIONS.

12 (a) Municipalities may exclude or exempt or partially exempt residential
13 property from taxation by ordinance ratified by the voters at a regular or
14 special election. An exclusion or exemption authorized by this section may
15 not exceed \$10,000 for any one residence.

16 (b) Municipalities may by ordinance

17 ***** (1) classify boats and vessels for the purposes of taxation
18 and may establish the assessed valuation of boats and vessels on the basis
19 of their registered or certificated net tonnage.

20 (2) classify and exempt from taxation

21 ***** (A) Repeal.

22 (B) the property of an organization not organized for
23 business or profit-making purposes and used exclusively for community
24 purposes, provided that income derived from rental of such property
25 does not exceed the actual cost to the owner of the use by the renter;
26 and

27 (C) historic sites, buildings and monuments;

28 (D) land of a nonprofit organization used for agricultural purposes
29 if rights to subdivide the land are conveyed to the state and the

1 conveyance includes a covenant restricting use of the land to agricul-
2 tural purposes only; rights conveyed to the state under this sub-
3 paragraph may be conveyed by the state only in accordance with AS
4 38.05.069(c).

5 (c) The provisions of (a) of this section notwithstanding,

6 (1) a home rule or first or second class borough may, by
7 ordinance, adjust its property tax structure in whole or in part to the
8 property tax structure of a city within it, including but not limited to,
9 excluding personal property from taxation, establishing exemptions, and
10 extending the redemption period;

11 (2) a home rule or first class city shall have the same
12 power to grant exemptions or exclude property from borough taxes that it has
13 as to city taxes, provided that the exemptions or exclusions have been
14 adopted as to city taxes and further provided that the city appropriate to
15 the borough sufficient money to equal revenues lost by the borough because
16 of the exemptions or exclusions, the amount to be determined annually by the
17 assembly without weighted voting.

18 (3) a home rule or general law city within an organized
19 borough may, by ordinance, adjust its property tax structure in whole or in
20 part to the property tax structure of the borough, including but not limited
21 to exempting or partially exempting property from taxation.

22 (d) Exemptions or exclusions from property tax which have been
23 granted by home rule municipalities in addition to exemptions authorized or
24 required by law, and which are in effect on September 10, 1972 and not later
25 withdrawn, are not affected by this Act.

26 (e) Municipalities may by ordinance classify and exempt or par-
27 tially exempt from taxation privately owned land, wet land and water areas
28 for which a scenic, conservation, or public recreation use easement is
29 granted to a governmental body. To be eligible for a tax exemption, or

1 partial exemption, the easement must be in perpetuity. However, the easement
2 is automatically terminated before an eminent domain taking of fee simple
3 title or less than fee simple title to the property so that the property
4 owner is compensated at a rate which does not reflect the easement grant.

5 (f) A municipality may by ordinance exempt from taxation all or
6 any part of the increase in assessed value of improvements to real property
7 if an increase in assessed value is directly attributable to alteration of
8 the natural features of the land or new maintenance, repair or renovation of
9 an existing structure and if the alteration, maintenance, repair or renovation
10 when completed, enhances the exterior appearance or aesthetic quality of the
11 land or structure. No exemption may be allowed under this subsection for
12 the construction of an improvement to a structure if the principal purpose
13 of the improvement is to increase the amount of space for occupancy or
14 nonresidential use within the structure or for the alteration of land as a
15 consequence of construction activity. An exemption provided in this sub-
16 section may continue for up to four years from the date the improvement is
17 completed or from the date of approval for the exemption by the local assessor
18 whichever is later.

19 (g) A municipality may by ordinance exempt from taxation all or
20 any part of the increase in assessed value of improvements to a single
21 family dwelling if the principal purpose of the improvement is to increase
22 the amount of space for occupancy. An exemption provided in this subsection
23 may continue for up to two years from the date the improvement is completed
24 or from the date of approval of an application for the exemption by the
25 local assessor, whichever is later.

26 ****Sec. 29.45.060. MINING CLAIMS. Repeal.

27 Sec. 29.45.070. FARM OR AGRICULTURAL LANDS. (a) Farm use lands included
28 in a farm unit and not dedicated or being used for nonfarm purposes shall be
29 assessed on the basis of full and true value for farm use, and shall not be

1 assessed as if subdivided or used for some other nonfarm purpose. The
2 assessor shall maintain records valuing the farm use land for both full and
3 true value and farm use value. Should the farm use land be sold, leased, or
4 otherwise disposed of for uses incompatible with farm use or be converted to
5 a use incompatible with farm use by the owner, the owner is liable to pay an
6 amount equal to the additional tax at the current mill levy together with
7 eight percent interest for the preceding seven years, as though the land had
8 not been assessed for farm use purposes. Payment by the owner shall be made
9 to the state to the extent of its reimbursement for revenue loss under (e)
10 of this section for the preceding seven years. The balance of the payment
11 shall be made to the city or borough.

12 (b) An owner of farm use land must, to secure the assessment,
13 make application to the assessor before May 15 of each year in which the
14 assessment is desired. The application shall be made upon forms prescribed
15 by the state assessor for the use of the local assessor and shall include
16 information which may reasonably be required to determine the entitlement of
17 the applicant. If the farm use land is leased for farm use purposes, the
18 applicant shall furnish to the assessor a copy of the lease bearing the
19 signatures of both lessee and lessor along with the completed application.
20 The applicant shall furnish the assessor a copy of the lease covering the
21 period for which the exemption is requested.

22 (c) In this section "farm use" means the use of land for raising
23 and harvesting crops or for the feeding, breeding and management of livestock
24 or for dairying or another agricultural use for profit or any combination
25 thereof. To be farm use land, the owner or the lessee must be actively
26 engaged in farming the land, and derive at least 10 per cent of his yearly
27 gross income from the farm use land. The provisions of this section do not
28 apply to land respecting which the owner has granted, and has outstanding, a
29 lease or option to buy the surface rights. A property owner wishing to file

1 assessed as if subdivided or used for some other nonfarm purpose. The
2 assessor shall maintain records valuing the farm use land for both full and
3 true value and farm use value. Should the farm use land be sold, leased, or
4 otherwise disposed of for uses incompatible with farm use or be converted to
5 a use incompatible with farm use by the owner, the owner is liable to pay an
6 amount equal to the additional tax at the current mill levy together with
7 eight percent interest for the preceding seven years, as though the land had
8 not been assessed for farm use purposes. Payment by the owner shall be made
9 to the state to the extent of its reimbursement for revenue loss under (e)
10 of this section for the preceding seven years. The balance of the payment
11 shall be made to the city or borough.

12 (b) An owner of farm use land must, to secure the assessment,
13 make application to the assessor before May 15 of each year in which the
14 assessment is desired. The application shall be made upon forms prescribed
15 by the state assessor for the use of the local assessor and shall include
16 information which may reasonably be required to determine the entitlement of
17 the applicant. If the farm use land is leased for farm use purposes, the
18 applicant shall furnish to the assessor a copy of the lease bearing the
19 signatures of both lessee and lessor along with the completed application.
20 The applicant shall furnish the assessor a copy of the lease covering the
21 period for which the exemption is requested.

22 (c) In this section "farm use" means the use of land for raising
23 and harvesting crops or for the feeding, breeding and management of livestock
24 or for dairying or another agricultural use for profit or any combination
25 thereof. To be farm use land, the owner or the lessee must be actively
26 engaged in farming the land, and derive at least 10 per cent of his yearly
27 gross income from the farm use land. The provisions of this section do not
28 apply to land respecting which the owner has granted, and has outstanding, a
29 lease or option to buy the surface rights. A property owner wishing to file

for farm use classification having no history of farm-related income may submit a declaration of intent at the time of filing the application with the assessor setting out the intended use of the land and the anticipated percentage of income. An applicant using this procedure shall file with the assessor before February 1 of the following year a notarized statement of the percentage of gross income attributable to the farm use land. Failure to make the filing required in this subsection forfeits the exemption.

(d) In the event of a crop failure by an act of God the previous year, the owner or lessee may submit an affidavit affirming that 10 percent of his gross income for the past three years was from farming.

(e) Subject to legislative appropriations for the purpose, the state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of this section.

Sec. 29.45.080. MOBILE HOMES. Mobile homes, trailers, house trailers, trailer coaches and similar property used or intended to be used for residential office or commercial purposes and attached to the land or connected to water, gas, electric or sewage facilities are classed as real property for tax purposes except where expressly classified as personal property by ordinance. This section does not apply to house trailers and mobile homes which are unoccupied and held for sale by persons engaged in the business of selling mobile homes.

Sec. 29.45.090. TAX ON OIL AND GAS PRODUCTION AND PIPELINE PROPERTY.

(a) A municipality may levy and collect taxes on taxable property taxable under AS 43.56 only by using one of the methods set out in (b) or (c) of this section.

(b) A municipality may levy and collect a tax on the full and true value of taxable property taxable under AS 43.56 as valued by the Department of Revenue at a rate not to exceed that which produces an amount

1 of revenue from the total municipal property tax equivalent to \$1,500 a year
2 for each person residing within its boundaries.

3 (c) A municipality may levy and collect a tax on the full and
4 true value of that portion of taxable property taxable under AS 43.56 as
5 assessed by the Department of Revenue which value, when combined with the
6 value of property otherwise taxable by the municipality, does not exceed the
7 product of 225 percent of the average per capita assessed full and true
8 value of property in the state multiplied by the number of residents of the
9 taxing municipality. For purposes of this subsection the average per capita
10 assessed full and true value of property in the state shall be calculated
11 without regard to the assessed value of taxable property under AS 43.58.

12 (d) By February 1 of each assessment year a taxing municipality
13 must inform the Department of Revenue which method of taxation the municipality
14 will use.

15 (e) For purposes of this section, population shall be determined
16 by the commissioner of community and regional affairs based on the latest
17 statistics of the United States Bureau of the Census or on other reliable
18 population data, and shall advise each municipality of its population as so
19 determined by January 15 of each year.

20 Sec. 29.45.100. TAX LIMITATION. (a) No municipality may levy and tax
21 for any purpose in excess of three percent of the assessed valuation of
22 property within the municipality in any one year.

*All property - real/personal
to be taxed at same
rate.*

23 **** (b) No municipality, or combination of municipalities occupying
24 the same geographical area, in whole or in part, may levy taxes (1) which
25 will result in tax revenues from all sources exceeding \$1,500 a year for
26 each person residing within their boundaries or (2) upon values which, when
27 combined with the value of property otherwise taxable by the municipality,
28 exceed the product of 225 percent of the average per capita assessed full
29 and true value of property in the state multiplied by the number of

1 residents of the taxing municipality. If two or more municipalities occupying
2 the same geographical area, in whole or in part, attempt to levy a tax (1)
3 the combined levy of which would result in tax revenues from all sources
4 exceeding \$1,500 a year for each person residing within their boundaries or
5 (2) upon value which, when combined with the value of property otherwise
6 taxable by the municipality, exceed the product of 225 per cent of the
7 average per capita assessed full and true value of property in the state
8 multiplied by the number of residents of the taxing municipality, the commis-
9 sioner of community and regional affairs shall apportion the lawful levy and
10 equitably divide these revenues on the basis of need, services performed and
11 other considerations in the public interest. For the purpose of this subsection
12 population shall be determined by the commissioner of community and regional
13 affairs based on the latest statistics of the United States Bureau of the
14 Census or on other reliable population data. For purposes of this subsection
15 the average per capita assessed full and true value of property in the state
16 shall be calculated without regard to the assessed value of taxable property
17 under AS 43.58.

18 Sec. 29.45.110. NO LIMITATIONS ON TAXES TO PAY BONDS. The limitations
19 provided for in Sec. 45 or 50 of this chapter do not apply to taxes levied
20 or pledged to pay or secure the payment of the principal and interest on
21 bonds. Taxes to pay or secure the payment of principal and interest on
22 bonds may be levied without limitation as to rate or amount, regardless of
23 whether the bonds are in default or in danger of default.

24 Sec. 29.45.120. FULL AND TRUE VALUE. (a) The assessor shall assess
25 property at its full and true value as of January 1 of the assessment year,
26 except as provided in this section and Secs. 30, 35 and 160 of this chapter.
27 The full and true value is the estimated price which the property would
28 bring in an open market and under the then prevailing
29

1 market conditions in a sale between a willing seller and a willing buyer
2 both conversant with the property and with prevailing general price levels.

3 (b) Assessment of business inventories may be based on the average
4 monthly method of assessment rather than the value existing on January 1.
5 The method used to assess business inventories shall be prescribed by the
6 borough assembly.

7 (c) In the case of cessation of business during the tax year, the
8 assembly may provide for reassessment of business inventories using the
9 average monthly method of assessment for the tax year rather than the value
10 existing on January 1 of the tax year, and for reduction and refund of
11 taxes. In enacting an ordinance authorized by this section, the assembly
12 may prescribe procedures, restrictions, and conditions of assessing or
13 reassessing business inventories and of remitting or refunding taxes.

14 Sec. 29.45.130. RETURNS. (a) The assembly may require every person
15 having ownership or control of or an interest in property to submit a return
16 in the form prescribed by the assessor, based on property values existing on
17 January 1, except as otherwise provided in this chapter.

18 (b) The assessor may, by written notice, require a person to
19 provide additional information within 30 days.

20 Sec. 29.45.140. INDEPENDENT INVESTIGATION. (a) The assessor is not
21 bound to accept a return as correct. He may make an independent investigation
22 of property returned or of taxable property upon which no return has been
23 filed. In either case, the assessor may make his own valuation of the
24 taxable property, which is prima facie evidence.

25 **** (b) For investigation, the assessor or his agent may enter any
26 premise during reasonable hours and may examine property on the premises.
27 He may examine all property records involved. A person shall, upon request,
28 furnish to the assessor or his agent every facility and assistance for the
29 investigation. The assessor may seek a court order to compel entry and
production of records.

1 (c) An assessor may examine a person on oath. Upon request, the
2 person shall present himself for examination by the assessor.

3 ****Sec. 29.45.150. STATEMENT. A person who knowingly fails to file a
4 statement required by ordinance or who knowingly makes a false affidavit to
5 a statement required by a tax ordinance relative to the amount, location,
6 kind or value of property subject to taxation with intent to evade the
7 taxation, is guilty of a class B misdemeanor.

8 Sec. 29.45.160. REEVALUATION. A systematic reevaluation of taxable
9 real and personal property undertaken by the assessor, whether of specific
10 areas in which real property is located or of specific classes of real or
11 personal property to be assessed, shall be made only in accordance with a
12 resolution or other act of the assembly directing a systematic reevaluation
13 of all taxable property within the borough over the shortest period of time
14 practicable, as determined by the assembly and fixed in the resolution or
15 other act of the assembly.

16 Sec. 29.45.170. ASSESSMENT ROLL. (a) The assessor shall prepare an
17 annual assessment roll. The roll contains

- 18 (1) a description of all taxable property;
19 (2) the assessed value of all taxable property;
20 (3) the names and addresses of persons with property subject
21 to assessment and taxation.

22 (b) The assessor may list real property by any description that
23 may be made certain. Real property is assessed to the owner of record as
24 shown in the records of the district recorder, who shall at least monthly
25 provide the assessor a copy of each recorded change of ownership showing the
26 name and mailing address of the owner and the name and mailing address of
27 the party recording the change of ownership. Other persons having an interest
28 in the property may be listed on the assessment records with the owner. The
29 person in whose name property is listed as owner is conclusively presumed to

1 be the legal owner of record. If the property owner is unknown, the property
2 may be assessed to "unknown owner." No assessment is invalidated by a mistake
3 omission or error in the name of the owner, if the property is correctly
4 described.

5 Sec. 29.45.180. ASSESSMENT NOTICE. (a) The assessor shall give every
6 person named in the assessment roll a notice of assessment, showing the
7 assessed value of his property. On each notice is printed a brief summary
8 of the dates when taxes are payable, delinquent and subject to penalty and
9 interest, and the dates when the board of equalization will sit.

10 (b) Sufficient assessment notice is given if mailed by first
11 class mail 30 days before the equalization hearings. If the address is not
12 known to the assessor, the notice may be addressed to the person at the post
13 office nearest the property. Notice is effective on the date of mailing.

14 Sec. 29.45.190. CORRECTIONS. (a) A person receiving an assessment
15 notice shall advise the assessor of errors or omissions in the assessment
16 of his property. The assessor may correct errors or omissions in the roll
17 before the board of equalization hearing.

18 (b) If errors found in the preparation of the assessment roll are
19 adjusted, the assessor shall mail a corrected notice allowing 30 days for
20 appeal to the board.

21 Sec. 29.45.200. APPEAL. (a) A person whose name appears on the assessment
22 roll or his agent or assigns may appeal to the board of equalization for
23 relief from an alleged error in valuation not adjusted by the assessor to
24 the taxpayer's satisfaction.

25 (b) The appellant shall, within 30 days from the date of mailing
26 of notice of assessment, submit to the assessor a written appeal specifying
27 grounds in the form which the board may require. Otherwise, the right of
28 appeal ceases unless the board finds that the taxpayer was unable to comply.

1 (c) The assessor shall notify appellants by mail of the time and
2 place of their hearing.

3 (d) The assessor shall prepare for use by the board a summary of
4 assessment data relating to each assessment which is appealed.

5 (e) A city may appeal an assessment to the board of equalization
6 in the same manner as a taxpayer. Within five days after receipt of the
7 appeal, the assessor shall notify the person whose property assessment is
8 being appealed by the city.

9 ****Sec. 29.45.210. BOARD OF EQUALIZATION. (a) The assembly sits as a
10 board of equalization for the purpose of hearing an appeal from a determination
11 of the assessor, or it may delegate this authority to one or more boards
12 appointed by it. An appointed board may be composed of not less than three
13 persons, who may be members of the assembly, municipal residents, or a
14 combination of assembly members and residents. The assembly shall be ordinance
15 establish the qualifications for membership.

16 (b) The board is governed in its proceedings by rules adopted by
17 ordinance which are consistent with general rules of administrative procedure.
18 The board may alter an assessment of a lot or parcel only pursuant to an
19 appeal filed as the the particular lot or parcel.

20 (c) Notwithstanding other provisions in this section, a determina-
21 tion of the assessor as to whether property is taxable under law shall be
22 appealed directly to the superior court.

23 Sec. 29.45.220. HEARING. (a) If an appellant fails to appear the
24 board of equalization may proceed with the hearing in his absence.

25 (b) The appellant bears the burden of proof.

26 **** (c) The only grounds for adjustment are proof of unequal, excessive,
27 improper, or undervaluation based on facts which are stated in a valid
28 written appeal or proven at the appeal hearing. If a valuation is found to
29 be too low, the board of equalization may raise the assessment.

1 (d) The board shall certify its actions to the assessor within
2 seven days.

3 **** (e) Except as to supplementary assessments, the assessor shall
4 enter the changes and certify the final assessment roll by June 1.

5 **** (f) An appellant or the assessor may appeal the board's deter-
6 mination to the superior court as provided by rules of court applicable to
7 appeals from the decisions of administrative agencies. Appeals are heard on
8 the record established at the hearing before the board of equalization.

9 Sec. 29.45.230. SUPPLEMENTARY ASSESSMENT ROLLS. The assessor shall
10 include property omitted from the assessment roll on a supplementary roll,
11 using the procedures set out in this chapter for the original roll.

12 Sec. 29.45.240. TAX ADJUSTMENTS ON PROPERTY AFFECTED BY A NATURAL
13 DISASTER. (a) The assembly may provide for reassessment and reduction of
14 taxes for property destroyed, damaged, or otherwise reduced in value as a
15 result of a natural disaster.

16 (b) A reassessment may be made by the assessor only upon the
17 receipt of a sworn statement of the taxpayer that his losses exceed \$1,000.
18 A reduction of taxes may be made only on losses in excess of \$1,000 for the
19 remainder of the year following the disaster. Upon reassessment, the borough
20 shall recompute this tax and refund taxes which have already been paid.

21 (c) The borough shall make notice of assessment or reassessment
22 and shall hold an equalization hearing as provided in this chapter, except
23 that a notice of appeal is filed with the board of equalization within 10
24 days after notice of assessment is given to the person appealing. Otherwise,
25 the right of appeal ceases unless the board finds that the taxpayer is
26 unable to comply.

27 (d) In enacting an ordinance or resolution authorized by this
28 section, the assembly may, consistent with this section, prescribe
29

1 procedures, restrictions and conditions of assessing or reassessing property
2 and of remitting, refunding or forgiving taxes.

3 **** (e) In this section "disaster" means a major disaster declared by
4 the President of the United States under the provisions of the Federal
5 Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g, or
6 other federal law, or a disaster declared by the governor under AS 26.23.010
7 26.23.110.

8 Sec. 29.45.250. TAX LEVY AND RATE. ****(a) The power granted to the
9 assembly to assess, levy and collect a general property tax shall be exercised
10 by means of a general ordinance. The rate of levy, the date of equalization
11 and the date when taxes become delinquent shall be fixed by resolution.

12 (b) The assembly shall annually determine the rate of levy before
13 June 15. By July 1 the tax collector shall mail tax statements setting out
14 the levy, dates when taxes are payable and delinquent, and penalties and
15 interest.

16 Sec. 29.45.260. RATES OF PENALTY AND INTEREST. ****(a) If the taxpayer
17 is required to pay the entire tax on the due date set by the assembly, a
18 penalty not to exceed 20 percent may be added to all delinquent taxes, and
19 interest at the rate of 15 percent a year shall accrue upon all unpaid
20 taxes, not including penalty, from the due date until paid in full. If the
21 taxpayer is given the right to pay the tax in two installments penalty and
22 interest on an unpaid installment accrues from the date the installment
23 becomes due.

24 *Repeal* (b) If the assembly imposes a penalty for the nonpayment of property
25 taxes when due, or the late return of personal property assessment forms,
26 the rate of penalty or combined rates of penalty may not exceed 10 percent
27 of the tax due on the property concerned. *the amount*

28 **** (c) *change* Repeal.
29 *Repeal (b) ?*
repeal accepted

ARTICLE 2. ENFORCEMENT OF TAX LIENS

1
2 Sec. 29.45.290. VALIDITY. Certified assessment and tax rolls are
3 valid and binding on all persons, notwithstanding any defect, error, omission
4 or invalidity in the assessment rolls or proceedings pertaining to the
5 assessment roll.

6 Sec. 29.45.300. TAX LIABILITY. (a) The owner of personal property
7 assessed is personally liable for the amount of taxes assessed against his
8 property. The tax, together with penalty and interest, may be collected in
9 a personal action brought in the name of the borough.

10 **** (b) Property taxes, together with penalty and interest, are a
11 lien upon the property assessed, and the lien is prior and paramount to all
12 other liens or encumbrances against the property.

13 Sec. 29.45.310. ENFORCEMENT OF PERSONAL PROPERTY TAX LIENS BY DISTRAINT
14 AND SALE. The lien of personal property taxes may be enforced by distraint
15 and sale of the property. The assembly shall provide the procedure for
16 distraint and sale by ordinance. No seizure, levy or distraint is legal
17 unless demand is first made of the person assessed for the amount of the
18 tax, penalty and interest, and no sale is valid unless made at public auction
19 after 15 days notice is given by posting or publication. The seizure is
20 made by virtue of a warrant issued by the borough clerk to a peace officer.
21 If the property sold is not sufficient to satisfy the tax, penalty and
22 interest, and costs of sale, the warrant may authorize the seizure of other
23 personal property sufficient to satisfy the tax, penalty, interest and costs
24 of sale. If the property is sold for more money than is needed to satisfy
25 the tax, upon presentation of a proper claim, the municipality shall remit
26 the excess to the former record owner. A claim for the excess filed after
27 six months of the date of sale is forever barred.

28
29

1 Sec. 29.45.320. REAL PROPERTY TAX COLLECTION. (a) The borough shall
2 enforce delinquent real property tax liens by annual foreclosure, unless
3 otherwise provided by ordinance.

4 **** (b) If the tax on property described in AS 29.45.080 or on a
5 taxable interest in tax exempt property is not paid when due, a borough may
6 enforce the tax by a personal action against the delinquent taxpayer brought
7 in the district or superior court, in addition to other remedies available
8 to the borough to enforce the lien.

9 Sec. 29.45.330. FORECLOSURE LIST. (a) The borough shall

10 (1) annually present a petition for judgment and a certified
11 copy of the foreclosure list for the previous year's delinquent taxes in the
12 superior court for judgment;

13 (2) publish the foreclosure list for four consecutive weeks
14 in a newspaper of general circulation distributed within the borough or, if
15 there is no newspaper of general circulation distributed within the borough,
16 post the list at three public places for at least 30 days;

17 (3) within 10 days after the first publication or posting,
18 mail to the last known owner of each property as his name and address appear
19 on the list a notice advising of the foreclosure proceeding in which a
20 petition for judgment of foreclosure has been filed and describing the
21 property and the amount due as stated on the list.

22 (b) The list shall be arranged in alphabetical order as to the
23 last name and shall include

- 24 (1) the last known owner;
25 (2) the property description as stated on the assessment
26 roll;
27 (3) years and amounts of delinquency;
28 (4) penalty and interest due;

1 (5) a statement that the list is available for public inspection
2 at the clerk's office;

3 (6) a statement that the list has been presented to the
4 superior court with a petition for judgment and decree.

5 (c) Completion of the requirements of (a) of this section constitutes
6 and has the same force and effect as the filing of an individual and separate
7 complaint and service of summons to foreclose a lien against each property
8 described on the foreclosure list.

9 Sec. 29.45.340. CLEARING DELINQUENCIES. During the publication or
10 posting of the foreclosure list and up to the time of transfer to the borough
11 a person may pay the taxes, together with the penalty, interest and costs.
12 The collector shall note payment on the foreclosure list.

13 Sec. 29.45.350. LIST TO LIENHOLDER. A holder of a mortgage or other
14 lien on real property may request the clerk to send by certified mail notice
15 of a foreclosure list which includes such real property.

16 Sec. 29.45.360. GENERAL FORECLOSURE. The borough shall bring one
17 general foreclosure proceeding in rem against the properties included in the
18 list. If the owner is unknown, the property is proceeded against as belonging
19 to "unknown owner." Tax foreclosure proceedings have priority over all other
20 civil proceedings except board of adjustment appeals as provided in AS
21 29.33.130(e).

22 Sec. 29.45.370. ANSWER AND OBJECTION. A person having an interest in
23 a tract on the foreclosure list may file an answer within 30 days of the
24 date of last publication, specifying his objection. The court shall make
25 its decision in summary proceedings. The foreclosure list is prima facie
26 evidence that the assessment and levy of the tax is valid and that the tax
27 is unpaid.

28 Sec. 29.45.380. JUDGEMENT. The court shall in a proper case give
29 judgment and decree that the tax liens be foreclosed. It is a several
judgment against and a lien on each parcel.

1 Sec. 29.45.390. TRANSFER AND APPEAL. (a) Foreclosed properties are
2 transferred to the borough for the lien amount. When answers are filed the
3 court may enter judgment against and order the transfer to the borough of
4 all other properties on the list pending determination of the matters in
5 controversy. The court shall hear and determine the issues raised by the
6 complaint and answers in the same manner and under the same rules as it
7 hears and determines other actions.

8 (b) The court clerk shall deliver a certified copy of the judgment
9 and decree to the borough clerk. The certified judgment and decree consti-
10 tutes a transfer to the borough.

11 (c) The judgment and decree stops objections to it which could
12 have been presented before judgment and decree.

13 (d) Appeal from a judgment and decree of foreclosure, or from a
14 final order in the proceeding, may be taken in the manner provided for
15 appeals in civil actions.

16 Sec. 29.45.400. REDEMPTION PERIOD. (a) Properties transferred to the
17 borough are held by the borough for at least one year. During the redemption
18 period a party having an interest in the property may redeem it by paying
19 the lien amount plus penalties, interest and costs, including all costs
20 incurred under Sec. 350(a) of this chapter. Property redeemed is subject to
21 all taxes, assessments, liens and claims as though it had continued in
22 private ownership. Only the amount applicable under the judgment and decree
23 must be paid in order to redeem the property.

24 **** (b) Repeal.

25 ****Sec. 29.45.410. EFFECT. Receipt of redemption money by the borough
26 releases the judgment obtained under AS 29.45.380. The clerk or his designee
27 shall record the redemption and issue a certificate containing a property
28 description, the redemption amount, and the dates of judgment and decree of
29 foreclosure. The clerk or his designee shall collect the recording fee at

1 the time or redemption and shall file the certificate with the record as
2 part of the judgment roll.

3 Sec. 29.45.420. ADDITIONAL LIENS. If a property included in a fore-
4 closure list is removed after payment of delinquencies or redemption by
5 another lienholder, the payment represented by receipt for payment constitutes
6 an additional lien on the property, collectible by the lienholder in the
7 same manner as the original lien.

8 Sec. 29.45.430. POSSESSION DURING REDEMPTION PERIOD. Foreclosure
9 does not affect the former owner's right to possession during the redemption
10 period. In the event that waste is committed by the former owner, or by
11 anyone acting under his permission or control, the borough may declare an
12 immediate forfeiture of the right to possession.

13 Sec. 29.45.440. EXPIRATION. ****(a) At least 30 days before the
14 expiration of the redemption period the clerk or his designee shall publish
15 a redemption period expiration notice. The notice shall contain the date of
16 judgment, the date of expiration of the period of redemption and a warning
17 to the effect that all properties ordered sold under the judgment, unless
18 redeemed, shall be deeded to the borough or city immediately on expiration
19 of the period of redemption and that every right or interest of any person
20 in the properties will be forfeited forever to the borough or city. The
21 notice is published once a week for four consecutive weeks in a newspaper of
22 general circulation distributed within the borough. If there is no newspaper
23 of general circulation distributed within the borough, the notice is posted
24 in three public places for at least four consecutive weeks. The clerk shall
25 send a copy of the published notice by certified mail to each record owner
26 of property against which a judgment of foreclosure has been taken and, if
27 the assessed value of the property is more than \$100,000, to all holders of
28 mortgages or other liens of record on the property. The notice shall be
29 mailed within five days of the first publication. The mailing shall be

1 sufficient if mailed to the property owner and to the holder of a mortgage
2 or recorded lien at the last address of record. The right of redemption
3 shall expire 30 days after the date of the first publication notice.

4 (b) Costs incurred in the determination of holders of mortgages
5 and other liens of record and costs of publication of notice incurred by a
6 municipality under (a) of this section are a lien on the property and may be
7 recovered by the municipality.

8 Sec. 29.45.450. DEED TO BOROUGH OR CITY. (a) Unredeemed properties
9 in the area of the borough outside cities are deeded to the borough by the
10 clerk of the court. Unredeemed properties within a city are deeded to the
11 city subject to the payment by the city of unpaid borough taxes and costs of
12 foreclosure levied against the property before foreclosure. The deeds shall
13 be recorded in the recording district in which the property is located.

14 **** (b) Conveyance gives the borough or the city clear title except
15 for prior recorded tax liens of the United States and the state.

16 (c) If unredeemed property lies within a city and if the city has
17 no immediate public use for the property but the borough does have an immediate
18 public use, the city shall deed the property to the borough. If unredeemed
19 property lies within the borough outside a city and if the borough does not
20 have an immediate public use for the property but the city does have an
21 immediate public use, the borough shall deed the property to the city.

22 **** (d) No deed is invalid for irregularities, omissions or defects
23 in the proceedings under this chapter unless the former owner has been
24 misled to his injury. After two years from the date of the deed, its validity
25 is conclusively presumed and any claim of the former owner or other person
26 having an interest in the property is forever barred.

27 Sec. 29.45.460. DISPOSITION AND SALE OF FORECLOSED PROPERTIES. (a)
28 The assembly of a borough or council of a city shall determine by ordinance
29 whether foreclosed property deeded to the municipality under Sec. 360 of

1 this chapter shall be retained by the municipality for a public purpose.
2 The ordinance shall contain the legal description of the property, the
3 address or a general description of the property sufficient to provide the
4 public with notice of its location, and the name of the last record owner of
5 the property as his name appears on the assessment rolls of the municipality.

6 (b) Tax-foreclosed properties conveyed to a borough or city by
7 tax foreclosure and not required for a public purpose may be sold. Before
8 the sale of tax-foreclosed property held for a public purpose, the assembly
9 or council, by ordinance, shall determine that a public need does not exist.
10 The ordinance shall contain the information required in (a) of this section.

11 **** (c) The clerk or his designee shall send a copy of the published
12 notice of hearing of an ordinance to consider a determination required by
13 (a) or (b) of this section by certified mail to the former record owner of
14 the parcel of property which is the subject of the ordinance. The notice
15 shall be mailed within five days of its first publication and shall be
16 sufficient if mailed to the last record owner of the property as his name
17 appears on the assessment rolls of the municipality.

18 (d) The provisions of (c) of this section do not apply with
19 respect to property which has been held by the municipality for a period of
20 more than 10 years after the close of the redemption period.

21 Sec. 29.45.470. REPURCHASE BY RECORD OWNER. (a) The record owner at
22 the time of tax foreclosure of property acquired by a borough or city, or
23 his assigns, may, at any time before the sale or contract of sale of the
24 tax-foreclosed property by the borough or city, repurchase the property.
25 The borough or city shall sell the property for the full amount applicable
26 to the property under the judgment and decree, with interest at the rate of
27 eight percent a year from the date of entry of the judgment of foreclosure
28 to the date of repurchase, delinquent taxes assessed and levied as though it
29 had continued in private ownership, and costs of foreclosure and sale,

1 Sec. 29.45.490. PAYMENT OF TAXES UPON PUBLIC UTILIZATION. If a city
2 or borough holds or takes title to tax-foreclosed property for a public
3 purpose, the city or borough shall satisfy unpaid taxes and assessments
4 against the property held by other municipalities, with accrued interest but
5 without penalty. If the amount required to satisfy the unpaid taxes and
6 assessments exceeds the assessed valuation of the property, the city or
7 borough shall pay the other municipalities the assessed valuation, which
8 shall be divided between the other municipalities in proportion to their
9 respective taxes and assessments against the property at the time of fore-
10 closure.

11 ****Sec. 29.45.510. REFUND OF TAXES. (a) If a taxpayer pays taxes under
12 protest, he may bring suit in the superior court against the borough for
13 recovery of the taxes. If judgment for recovery is given against the borough
14 or, if in the absence of suit, it becomes obvious to the assembly that
15 judgment for recovery of the taxes would be obtained if legal proceedings
16 were brought, the borough shall refund the amount of the taxes to the taxpayer
17 with interest at eight percent from the date of payment plus costs.

18 (b) If, in payment of taxes legally imposed, a remittance by a
19 taxpayer through error or otherwise exceeds the amount due, and the borough,
20 on audit of the account in question, is satisfied that this is the case, the
21 borough shall refund the excess to the taxpayer with interest at ^{eight}~~15~~ percent
22 from the date of payment. A claim for refund filed after one year of the
23 due date of the tax is forever barred.

24 (c) The assembly may correct manifest clerical errors at anytime.

25 ARTICLE 3. CITY PROPERTY TAX.

26 Sec. 29.45.530. POWER OF LEVY. Home rule and first class cities
27 within boroughs may levy a general property tax. A property tax, if levied,
28 shall be levied in the manner provided for borough levies in Sec. 170(a) of
29 this chapter and is subject to Secs. 10-25, 50-55 and 310-350 of this chapter.

1 The council shall by June 15 of each year present to the borough assembly a
2 statement of the city's rate of levy, unless a different date is agreed upon
3 by the borough and city.

4 Sec. 29.45.535. DIFFERENTIAL TAX ZONING. Cities may by ordinance
5 establish, alter and abolish differential tax zones to provide and levy
6 property taxes for services not provided generally within the city or a
7 different level of service than that provided generally within the city.

8 Sec. 29.45.540. LIMITED PROPERTY TAXING POWER FOR SECOND CLASS CITIES.
9 A second class city may by referendum levy real and personal property taxes
10 as provided for first class cities. However, levy by a second class city
11 may not exceed one-half of one percent of the assessed valuation of the
12 property taxed, except that the limit does not apply to a levy necessary to
13 avoid a default upon payment of principal and interest of bonded or other
14 indebtedness which is secured by a pledge to levy ad valorem or other taxes
15 without limit to meet debt payments.

16 **** Sec. 29.45.545. COMBINING PROPERTY TAX WITH INCORPORATION. A petition
17 for second class city incorporation may request that a property tax proposal
18 be placed in the same ballot. The petition must state the proposed tax
19 rate. The petition may request that incorporation be dependent upon the
20 passage of the property tax proposition. If so, the incorporation proposi-
21 tion fails if the property tax fails.

22 ARTICLE 4. BOROUGH SALES AND USE TAX

23 Sec. 29.45.570. SALES AND USE TAX. ****(a) A borough may levy and
24 collect a sales tax not exceeding six percent on sales, rents, and on services
25 made within the borough. The sales tax may apply to any or all of these
26 sources. Exemptions may be granted by ordinance.

27 (b) A borough levying a sales tax may also by ordinance levy a
28 use tax on the storage, use or consumption of tangible personal property
29 within the borough. The use tax rate must equal the sales tax rate and the
use tax shall be levied only upon buyers.

1 (c) A person who furnishes proof, in the form required by the
2 borough tax collector, that he has paid a sales tax on the source on which a
3 use tax is levied by the borough is required to pay the use tax only to the
4 extent of the difference between the amount of the sales tax paid and the
5 amount of the use tax levied by the borough. This subsection applies to a
6 sales tax levied in any taxing jurisdiction whether in or outside the state.

7 **** (d) If the assembly of a home rule or general law borough charges
8 interest on sales taxes not paid when due, the rate of interest may not
9 exceed 15 percent a year upon the delinquent taxes and shall be charged from
10 the due date until paid in full.

11 **** (e) A borough may provide for the creation, recording, and notice
12 of a lien on real or personal property to secure the payment of a sales or
13 use tax, and for interest, penalties and administration costs in the event
14 of delinquencies. A lien established under this section has the force,
15 priority and duration of a judgment lien.

16 Sec. 29.45.590. REFERENDUM, ADOPTION AND MODIFICATION. ****(a) A new
17 sales tax or an increase in the rate of levy of a sales tax approved by the
18 assembly by ordinance shall not take effect until ratified by a majority of
19 the voters voting on the question at a regular or special election.

20 (b) If the proposition receives a majority of the votes cast, the
21 assembly may enact the sales tax or increase the rate of the sales tax as a
22 levy upon buyers, sellers, or both. The sales tax is collected at the time
23 of sale or at the time of payment in credit transactions and transmitted to
24 the borough.

25 ARTICLE 5. CITY SALES AND USE TAXES

26 Sec. 29.45.610. POWER OF LEVY. Cities within a borough which levies
27 and collects sales or use taxes for areawide borough functions may levy
28 sales or use taxes upon all sources taxed by the borough in the manner
29 provided for boroughs.

1 Sec. 29.45.620. POWER OF LEVY AND COLLECTION. Cities within a borough
2 which does not levy and collect sales or use taxes for areawide borough
3 functions may levy and collect sales or use taxes in the manner provided for
4 boroughs.

5 Sec. 29.45.630. COMBINING SALES TAX WITH INCORPORATION. A petition
6 for second class city incorporation may request that a sales tax proposal be
7 placed on the same ballot. The petition must state the proposed tax rate.
8 The petition may request that incorporation be dependent upon the passage of
9 the sales tax proposition. If so, the incorporation proposition fails if
10 the sales tax fails.

CHAPTER 48. SPECIAL ASSESSMENTS

****Sec. 29.48.010. ASSESSMENT AND PROPOSAL. The governing body may assess against the property of a state or federal governmental unit and private real property benefited all or a portion of the cost of acquiring, installing or constructing capital improvements. The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under AS 29.48.020(a)(8). If a governmental unit other than the state benefited by an improvement refuses to pay the assessment, it shall be denied the benefit of the improvement. An improvement proposal may be initiated by

(1) petition to the governing body of the owners of one-half in value of the property to be benefited or

(2) the governing body.

Sec. 29.48.020. PROCEDURE. ****(a) The governing body may prescribe by ordinance the procedures relating to creating special assessment districts, making local improvements, levying and collecting assessments and financing of the improvements, including and subject to the following:

**** (1) a procedure for filing petitions;

(2) a survey and report by the borough or city executive concerning the need for, desirable extent of, and estimated cost of each proposed local improvement;

(3) a public hearing on the necessity for the local improvement;

**** (4) a resolution or ordinance of the governing body determining to proceed or not to proceed with the proposed local improvement;

(5) a public hearing by the assembly or council on the special assessment roll for the local improvement;

**** (6) published notice of each public hearing required by this section and mailing notice to each record owner of real property within the special assessment district;

1 **** (7) a resolution or ordinance confirming the special asses-
2 sment roll for the local improvement;

3 * (8) if protests as to the necessity of a local improvement
4 are made by owners of property which will bear 50 percent or more of the
5 estimated cost of the improvement, the assembly or council may not proceed
6 with the improvement until the objections have been reduced to less than 50
7 percent, except upon approval of not fewer than three-fourths of the govern-
8 ing body.

9 **** (b) To the extent that the governing body does not prescribe a
10 procedure for special assessments as permitted by this section, the govern-
11 ing body shall comply with the special assessment procedures set out in
12 AS 29.48.030 - 29.48.100.

13 Sec. 29.48.030. CREATION OF DISTRICT. **** (a) When an improvement
14 proposal has been filed with the municipal clerk and presented to the
15 governing body, it shall find by resolution or ordinance whether (1) the
16 improvement requested is necessary and should be made, and (2) if by petition
17 the request has sufficient and proper petitioners. The findings of the
18 governing body are conclusive.

19 (b) If the governing body approves an improvement proposal with
20 the necessary findings, it shall develop a proposed improvement plan
21 including the cost estimate and the percentage of the improvement plan cost
22 to be assessed against the property benefited. This plan is to be filed with
23 the municipal clerk.

24 (c) The governing body shall set a time for public hearing on the
25 improvement plan and the period for filing objections to the plan. The
26 governing body shall publish a notice of the hearing and of the period
27 during which objections may be filed at least once a week for four consecutive
28 weeks in a newspaper of general circulation if distributed within the
29 municipality and shall send notice by mail to every record owner of property
within the special assessment district.

1 ****Sec. 29.48.040. RECORD OWNER. The person in whose name property is
2 listed on the municipal property tax roll as owner is conclusively presumed
3 to be the legal owner of record. If the owner is unknown, the assessment
4 roll may designate "unknown owner."

5 ****Sec. 29.48.050. OBJECTIONS AND REVISION. (a) Objections to the improve-
6 ment plan may be filed during a period of 60 days after publication of
7 notice. The governing body may by resolution or ordinance approve the plan
8 and order the improvement subject to the limitation of (b) of this section.

9 (b) If objections are made in writing during the period set for
10 objections by the owners of property bearing one-half or more of the
11 estimated cost of the improvement, the governing body may not proceed with
12 the improvement unless it revises the plan to meet the objections and the
13 objections are reduced to less than 50 percent. A revised plan shall be
14 approved and adopted as an original plan in accordance with AS 29.48.030.

15 Sec. 29.48.060. ASSESSMENT ROLL. ****(a) At any time after project
16 approval, the governing body shall assess the authorized percentage of the
17 cost against property within the district in proportion to benefit received.

18 **** (b) The special assessment roll shall contain property descriptions,
19 names of record owners and assessment amounts.

20 (c) The assembly or council shall fix a time to hear objections
21 to the roll. The municipal clerk shall send an assessment and hearing
22 notice by mail to each record owner of an assessed tract not less than 15
23 days before the hearing.

24 ****Sec. 29.48.070. HEARING AND SETTLEMENT. After the public hearing, the
25 governing body shall correct errors and any inequalities in the roll. If an
26 assessment is increased, a new hearing shall be set and notice mailed,
27 except that a new hearing and notice is not required of all record owners of
28 property subject to the increased assessment consent in writing to the
29 increase. Objections to the increased assessment shall be limited to record

1 two or more persons are eligible for an exemption with respect to the same
2 property, the parties shall decide between or among themselves which shall
3 receive the benefit of the exemption. No real property may be exempted
4 under this subsection which the municipality determines, after notice and
5 hearing to the parties concerned, has been conveyed to the applicant primarily
6 for the purpose of obtaining the exemption. The determination of the
7 municipality is appealable under AS 44.62.560-44.62.570.

8 **** (b) No exemption may be granted under this section except upon
9 written application for the exemption on a form prescribed by the state
10 assessor for use by local assessors and in accordance with the following
11 requirements:

12 **** (1) the claimant must file the initial application during
13 the period of time between the date the assessment roll is confirmed and the
14 time of payment fixed by the governing body. Within one year of the date
15 the assessment roll is confirmed the governing body for good cause shown may
16 waive the claimant's failure to make timely initial application for the
17 exemption and authorize the assessor to accept the application as if timely
18 filed.

19 (2) a claimant receiving the exemption must file with the
20 department by March 15 of each subsequent year a separate application proving
21 eligibility as of January 1 in order to retain the exemption. Within the
22 same year the department for good cause shown may waive the claimant's
23 failure to make timely application and approve the application as if timely
24 filed.

25 (3) if an application is filed within the required time
26 under this subsection and is approved by the assembly or council, the
27 exemption shall be allowed in accordance with the provisions of this
28 section. If a waiver under this subsection is granted and the application
29 for exemption approved, the amount of any assessment, penalty or interest

1 which the claimant may have already paid on the assessment shall be refunded
2 to him. The municipality may at any time require proof in the form considered
3 necessary of the right and amount of an exemption claimed under this section.

4 (c) The state shall reimburse a home rule or general law municipali
5 for the sewer and water assessment revenues which it would receive but for
6 the operation of this section. Reimbursement under this subsection is a
7 lien in favor of the state against the property exempted to the extent of
8 the assessment against the property exempted. Upon recordation in the
9 recording office of the district in which the property exempted is located
10 the lien is prior and superior to other liens against the property except
11 for general taxes or other special assessments and may be enforced by lien
12 foreclosure as provided in AS 34.10.070-34.10.220. The lien becomes immediate
13 due and payable

14 (1) upon sale or other transfer of the property except to a
15 spouse, widow, widower, or minor heir; however, if the property is transferred
16 to a minor heir the lien becomes due and payable on the date the minor heir
17 reaches the age of 25 years; or

18 (2) when property exempted under (a)(1) or (2) of this
19 section receives more than one sewer connection or more than one water
20 connection; or

21 (3) when the claimant fails to prove eligibility under
22 (b)(2) of this section.

23 (d) In this section

24 (1) "resident" means a person who for 12 consecutive months
25 has maintained his permanent place of abode in the state;

26 (2) "real property" includes, but is not limited to, mobile
27 homes, whether classified as real or personal property for municipal tax
28 purposes.

1 (3) "minor heir" means a person who, at the time of transfer
2 of the property, has not attained the age of 19 years or who, if he has not
3 attained the age of 22 years, is a full-time student at an educational
4 institution or a member of the armed forces of the United States.

5 Sec. 29.48.100. REASSESSMENT. (a) The assembly or council shall
6 within one year correct any deficiency in a special assessment found by a
7 court.

8 (b) Notice and hearing must conform to the initial assessment
9 procedures.

10 (c) Payments on the initial assessment are credited to the property
11 upon reassessment.

12 (d) The reassessment becomes a charge upon the property notwith-
13 standing failure to comply with any provision of the assessment procedure.

14 ****Sec. 29.48.105. ALLOWABLE COSTS. (a) Whenever a special assessment
15 district is created, there may be included in the assessments

16 (1) all of the cost of acquiring, installing, making or
17 constructing the local improvement;

18 (2) the costs of all engineering and surveying to be done in
19 connection with creating the district or improvement;

20 (3) the cost of mailing and publishing of notices;

21 (4) interest on interim financing;

22 (5) the cost of legal services and other expenses incurred
23 in the formation of the special assessment district;

24 (6) the cost of completing the improvement and financing the
25 improvement, including the issuance of any bonds.

26 (b) The total amount of the assessment roll may not exceed actual
27 costs but actual costs may include reasonable estimates of the costs to be
28 incurred in connection with issuance of any bonds.

1 Sec. 29.48.110. OBJECTION AND APPEAL. (a) The regularity or validity
2 of an assessment may not be contested by a person who did not file with the
3 municipal clerk a written objection to the assessment roll before its confir-
4 mation.

5 (b) The decision of the assembly or council upon an objection may
6 be appealed to the superior court within 30 days of the date of confirmation
7 of the assessment roll.

8 (c) If no objection is filed or an appeal taken within the time
9 provided in this section, the assessment procedure shall be considered
10 regular and valid in all respects.

11 ****Sec. 29.48.115. INTERIM FINANCING. (a) The governing body may provide
12 by resolution or ordinance for the issuance of notes in payment of the costs
13 of any local improvement project, payable out of special assessments for the
14 improvement. The notes shall bear interest at a rate or rates authorized by
15 the resolution or ordinance and shall be redeemed either in cash or bonds
16 for the improvement project.

17 (b) All notes issued against assessments shall be claims against
18 the assessments which are prior and superior to a right, lien or claim of a
19 surety upon the bond given to the municipality to secure the performance of
20 its contract for a local improvement project or to secure the payment of
21 persons who have performed work or furnished materials under the contract.

22 (c) The municipal treasurer may accept notes against special
23 assessments upon conditions prescribed by the governing body in payment of

24 (1) assessments against which the notes were issued in order
25 of priority;

26 (2) judgments rendered against property owners who have
27 become delinquent in the payment of assessments; and

28 (3) certificates of purchase when property has been sold
29 under execution or at tax sale for failure to pay the assessments.

1 Sec. 29.48.120. SPECIAL ASSESSMENT BONDS. (a) The assembly or
2 council may by ordinance authorize the issuance and sale of special
3 assessment bonds to pay all or part of the cost of an improvement in a
4 special assessment district. The principal and interest of bonds issued
5 shall be payable solely from the levy of special assessments against the
6 property to be benefited. The assessments shall constitute a sinking fund
7 for the payment of principal and interest on the bonds. The property
8 benefited may be pledged by the assembly or council to secure a payment.

9 (b) Upon default in a payment due on a special assessment bond, a
10 bondholder may enforce payment of principal and interest and costs of
11 collection in a civil action in the same manner and with the same effect as
12 actions for the foreclosure of mortgages on real property. Foreclosure
13 shall be against all property on which assessments are in default. The
14 period for redemption shall be the same as in the case of a mortgage
15 foreclosure on real property.

16 **** (c) Before the governing body may issue special assessment bonds,
17 it shall establish a guarantee fund and appropriate to the fund annually a
18 sum adequate to cover any deficiency in meeting payments of principal and
19 interest of bonds issued by reason of nonpayment of assessments when due.
20 Money received from actions taken against property for nonpayment of
21 assessments shall be credited to the guarantee fund.

22
23
24
25
26
27
28
29

1 CHAPTER 51. MUNICIPAL DEBT.

2 ARTICLE 1. REVENUE ANTICIPATION NOTES.

3 Sec. 29.51.010. BORROWING IN ANTICIPATION OF REVENUE. A municipality
4 of the state which is authorized to incur indebtedness may borrow money to
5 meet appropriations for any fiscal year in anticipation of the collection of
6 the revenues for that year but all debt so contracted shall be paid before
7 the end of the next fiscal year. Revenue anticipation notes may be issued
8 as evidence of the borrowing.

9 Sec. 29.51.020. ISSUANCE OF NOTES. The governing body of a munici-
10 pality may, by ordinance or resolution, authorize the issuance of revenue
11 anticipation notes and prescribe the form and details of the notes and the
12 manner of their execution. The governing body of the municipality may
13 delegate to its chief fiscal officer the power to issue the notes from time
14 to time under the terms and conditions of the ordinance or resolution which
15 provides for the manner of their sale.

16 Sec. 29.51.030. ISSUANCE OF NOTES IN ANTICIPATION OF STATE, FEDERAL
17 GRANTS. (a) The governing body of a municipality, upon adoption of a
18 long-range capital improvement budget by ordinance or resolution, may by
19 resolution provide for revenue anticipation notes in an amount not to exceed
20 the total amount of any state or federal grants finally committed for these
21 projects. The notes mature no later than the end of the next fiscal year.
22 The notes may be for single or multiple projects outlined in the adopted
23 capital improvement budget.

24 (b) If the state or federal grants for capital improvement
25 projects have not been paid to the municipality before maturity of the notes
26 issued in anticipation of the receipt of the revenue, the governing body of
27 the municipality may issue new notes in order to meet payment of the notes
28 then maturing or may renew the outstanding revenue anticipation notes. New
29

1 notes issued or renewals of outstanding revenue anticipation notes shall
2 mature not later than the end of the next fiscal year.

3 Sec. 29.51.040. PRIORITY OF REPAYMENT. The payment of the principal
4 and interest on revenue anticipation notes shall be payable from revenues,
5 and their payment additionally shall be secured by a pledge of the full
6 faith, credit and unlimited taxing power of the municipality issuing them.

7 ****Sec. 29.51.050. Repeal.

8 ARTICLE 2. BOND ANTICIPATION NOTES.

9 Sec. 29.51.080. BOND ANTICIPATION BORROWING. A municipality may
10 borrow money in anticipation of the sale of general obligation and revenue
11 bonds if

12 (1) the general obligation bonds to be sold have been auth-
13 orized by the assembly or council and ratified by a majority vote at a
14 regular or special election;

15 (2) the revenue bonds to be sold have been authorized by
16 ordinance.

17 Sec. 29.51.090. ISSUANCE OF NOTES. The assembly or council shall
18 issue negotiable or nonnegotiable notes for the amounts borrowed with a
19 maturity date not to exceed one year from the date of issue. All notes and
20 the interest on them are payable at fixed places on or before a fixed time,
21 from the proceeds of the sale of bonds in anticipation of which the original
22 note or notes were issued, unless the bonds have not been sold by the
23 maturity date of the notes.

24 Sec. 29.51.100. ISSUANCE OF NEW NOTES. If the sale of the bonds has
25 not occurred before the maturity of the notes issued in anticipation of the
26 sale, the assembly or council shall issue new notes in order to meet payment
27 of the notes then maturing or shall renew the outstanding bond anticipation
28 notes. New notes issued or renewals of outstanding bond anticipation notes
29 shall bear a maturity date not to exceed one year from the date of issue.

1 Notes, new notes, and renewals of notes shall not be outstanding for a total
2 elapsed time of more than three years.

3 Sec. 29.51.110. REPAYMENT OF NOTES. Every note is payable from the
4 proceeds of the sale of bonds which the notes anticipated or from the pro-
5 ceeds of the sale of new bond anticipation notes.

6 Sec. 29.51.120. SECURITY. (a) Notwithstanding any other provisions of
7 this chapter as to payment of notes, notes issued in anticipation of the
8 sale of general obligation bonds and the interest on them are secured by the
9 full faith, credit, taxing power and resources of the municipality. The
10 municipality may levy ad valorem taxes for payment without limitation of
11 rate or amount.

12 (b) Notes issued in anticipation of the sale of revenue bonds and
13 the interest on them are secured in the same manner as are the revenue bonds
14 in anticipation of which the notes are issued.

15 Sec. 29.51.130. LIMITATION. The total amount of notes issued and
16 outstanding shall at no time exceed the total amount of bonds authorized to
17 be issued.

18 Sec. 29.51.140. USE OF PROCEEDS. The proceeds from the sale of notes
19 shall be used only for the purposes for which the proceeds from the sale of
20 bonds may be used or to meet payment of outstanding bond anticipation notes.

21 ****Sec. 29.51.150. Repeal.

22 ARTICLE 3. GENERAL OBLIGATION BONDS.

23 Sec. 29.51.180. GENERAL OBLIGATION BONDS. A municipality may acquire,
24 construct, improve and equip capital improvements and issue negotiable or
25 nonnegotiable general obligation bonds for these purposes.

26 Sec. 29.51.190. VOTE AND NOTICE OF EXISTING INDEBTEDNESS REQUIRED.

27 (a) A municipality may incur general obligation bond debt only after a bond
28 authorization ordinance is approved by a majority of those voting on the
29 question at a regular or special election. Any municipal voter may vote in
the bond election, except as otherwise provided by charter or law.

1 (b) Before a general obligation bond issue election, the assembly
2 or council shall have published a notice of the municipality's total existing
3 bond indebtedness at least once a week for three consecutive weeks. The
4 first notice shall be published at least 20 days before the date of the
5 election. A notice shall include

6 (1) the current total general obligation bonded indebtedness,
7 including authorized but unsold bonds of the municipality;

8 (2) the cost of the debt service on the current indebtedness;

9 (3) the total assessed valuation within the municipality.

10 ****Sec. 29.51.200. Repeal.

11 Sec. 29.51.210. PAYMENT. (a) The full faith and credit of a munici-
12 pality are pledged for the payment of principal and interest on general
13 obligation bonds. The municipality may levy ad valorem taxes for payment
14 without limitation of rate or amount to pay or secure the payment of the
15 principal and interest on bonds, regardless of whether the bonds are in
16 default or in danger of default.

17 (b) General obligation bonds issued for acquiring, constructing,
18 improving and equipping a municipally-owned utility or other revenue-
19 generating enterprise may be additionally secured by a pledge of the revenue
20 derived from operation. Bonds so secured are not subject to a debt
21 limitation imposed by a borough or city home rule charter.

22 ARTICLE 4. REVENUE BONDS.

23 Sec. 29.51.240. REVENUE BONDS. ****(a) A municipality may issue
24 revenue bonds for a public enterprise or public corporation of the munici-
25 pality where the only security is the revenue of the public enterprise or
26 corporation.

27 (b) A municipality may issue its revenue bonds to finance the
28 purchase of residential mortgage loans. The revenue bonds issued under this
29 subsection are payable solely from the principal and interest of the mortgage

1 loans and from any other amounts pledged by the municipality, except the
2 pledge of revenues derived from taxes. Revenue bonds issued under this
3 subsection do not constitute a general obligation of the municipality.

4 **** (c) Repeal.

5 Sec. 29.51.250. NO ELECTION REQUIRED. No election is required to
6 authorize the issuance and sale of revenue bonds, unless otherwise provided
7 by ordinance.

8 Sec. 29.51.260. FORMS AND TERMS. The assembly or council shall fix
9 the date of the bonds, denominations, maturities, rate or rates of interest,
10 place and manner of payment, redemption terms, registration privileges,
11 manner of execution, signatures required, and other details of the bonds.
12 If an officer whose signature appears on the bonds or coupons ceases to be
13 an officer before delivery of the bonds, his signature is valid as if he had
14 remained in office until delivery.

15 ****Sec. 29.51.270. Repeal.

16 ****Sec. 29.51.280. CONSTRUCTION. The prohibitions of AS 37.10.085 shall
17 not apply to the issuance of revenue bonds or the use of proceeds from
18 revenue bonds by a home rule or general law municipality.

19 ARTICLE 5. REFUNDING BONDS.

20 Sec. 29.51.300. AUTHORIZATION. If a municipality has outstanding
21 general obligation or revenue bonds and the assembly or council determines
22 that it would be financially advantageous to refund the bonds, the assembly
23 or council may provide by ordinance for the issuance of general obligation
24 or revenue refunding bonds.

25 Sec. 29.51.310. EFFECT OF BONDS. The refunding bonds may take up and
26 refund all or any part of outstanding bonds at or before their maturity or
27 redemption date. The assembly or council may include various series and
28 issues of bonds in a single issue of refunding bonds.

1 Sec. 29.51.320. NO ELECTION REQUIRED. No election is required to
2 authorize the issuance and sale of refunding bonds. Their issuance may be
3 authorized and all proceedings with reference to them prescribed by ordinance
4 of the assembly or council. However, when it is desirable to use general
5 obligation bonds to refund a revenue bond issue, the governing body shall
6 call an election on the question.

7 Sec. 29.51.330. PAYMENT OF REFUNDING BONDS. General obligation
8 refunding bonds are payable according to Sec. 180 of this chapter. Revenue
9 refunding bonds are payable according to Sec. 220 of this chapter.

10 ****Sec. 29.51.340. SALE OF REFUNDING BONDS. General obligation or revenue
11 refunding bonds may, at the discretion of the governing body, be exchanged
12 for the bonds being refunded, or may be sold at public or private sale.
13 They may be issued and delivered at any time before the date of maturity or
14 redemption of the refunded bonds.

15 ****Sec. 29.51.350. OTHER MUNICIPAL FINANCING. (a) A municipality may
16 authorize by ordinance or resolution the issuance of revenue bonds to finance
17 any project which serves a public purpose, and the bonds shall be secured
18 and payable solely from the revenue and property of the project.

19 (b) Bonds issued under this section are not a debt or liability
20 of the municipality and do not create or constitute an indebtedness,
21 liability or obligation of the municipality nor do they constitute a pledge
22 of faith, credit or taxing power of the municipality. Each bond must contain
23 on its face a statement that the principal and interest on the bond are
24 payable solely from the revenues and property of the project being financed,
25 that the municipality is not obligated to pay the principal or the interest
26 on the bonds except from those sources, and that neither the faith and
27 credit nor the taxing power of the municipality is pledged to the payment of
28 principal or interest on the bond.

1 (c) A municipality may

2 (1) loan the proceeds of the bonds issued under this section;

3 (2) pledge, mortgage or assign money, leases, agreements,
4 property or other assets of the project being financed;

5 (3) enter into covenants and agreements concerning bonds
6 issued under this section which the municipality determines to be desirable;

7 (4) provide for any matter which effects the security of the
8 bonds.

9 (d) In this section

10 (1) "bonds" means bonds, notes, or other evidence of indebt-
11 edness;

12 (2) "project" includes but is not limited to commercial,
13 manufacturing, agricultural, industrial, residential housing, recreation,
14 tourism, and medical projects and programs.

15 ARTICLE 6. MISCELLANEOUS PROVISIONS.

16 ****Sec. 29.51.370. SALE. Bonds and notes issued under this chapter may
17 be sold at either public or private sale by the municipality in the manner
18 and at the price it determines.

19 ****Sec. 29.51.375. FORMS AND TERMS. The governing body may by ordinance
20 or resolution fix the date, denominations, maturities, rate or rates of
21 interest, redemption terms, registration privileges, manner of execution,
22 signatures required, purchase price, manner of sale, and other requirements
23 for issuing bonds or notes. If an official whose signature appears on the
24 bonds or coupons ceases to be an official before delivery of the bonds, his
25 signature is valid as if he had remained in office until delivery.

26 ****Sec. 29.51.380. INTEREST RATE. The interest rate payable on a bond or
27 note shall be determined by the governing body and is not subject to the
28 usury rate limitations of AS 45.45.010.

1 ****Sec. 29.51.390. Repeal.

2 Sec. 29.51.400. REDEMPTION BEFORE MATURITY. A bond or note may be
3 made subject to redemption before maturity as stated in the authorization or
4 in the bond or note.

5 ****Sec. 29.51.410. BOROUGH INDEBTEDNESS. (a) A borough may incur indebted-
6 ness

7 (1) on an areawide basis for areawide functions; or

8 (2) on a nonareawide basis for functions performed in the
9 area outside cities only; or

10 (3) on a service area basis for functions performed in a
11 service area only.

12 (b) Payment of debt principal and interest as well as other costs
13 shall be derived from the area incurring the debt under (a)(2) or (a)(3) of
14 this section, except that the full faith and credit of the entire borough
15 may be pledged to guarantee payment of principal and interest.

16 (c) If the bonded debt to be incurred by a borough is an areawide
17 debt, the vote is areawide; if the full faith and credit of the entire
18 borough is pledged for the payment of the debt of the area outside cities or
19 of a service area, an areawide election is held and the proposition must
20 pass both areawide and in the area which will benefit from the improvement;
21 if the bonded indebtedness to be incurred is limited to areas outside cities
22 only or to service areas, the vote is limited to voters in those areas and
23 only the full faith and credit of the area voting on the indebtedness is
24 pledged for the payment of the debt.

25 (d) The indebtedness of a municipality reclassified under
26 AS 29.08.040 is not affected by reclassification. Not less than all property
27 within a municipality which is reclassified remains subject to taxation to
28 amortize bonded or other indebtedness affecting the municipality and auth-
29 orized on the effective date of reclassification.

1 ****Sec. 29.51.420. Repeal.

2 ****Sec. 29.51.430. Repeal.

3 ****Sec. 29.51.440. SERVICE AREA DEBT. The indebtedness of a service area
4 acquired under AS 29.51.410 shall remain the indebtedness of the area which
5 incurred the debt notwithstanding a subsequent court determination that the
6 service area was not validly formed under law or by virtue of a defect in
7 the proceedings creating the service area. All the property within the
8 service area remains subject to taxation to pay the bonded indebtedness.

1 CHAPTER 62. STATE PROGRAMS

2 No change.

3
4 CHAPTER 65. GENERAL GRANT LAND5
6 No change.7
8 CHAPTER 68. MUNICIPAL PROGRAMS9
10 ARTICLE 1. INVOLVEMENT OF YOUNG PEOPLE IN LOCAL GOVERNMENT
11 Repeal.12
13 ARTICLE 2. HISTORICAL DISTRICTS.14
15 No change.16
17 CHAPTER 71. GENERAL PROVISIONS18
19 No change.
20
21
22
23
24
25
26
27
28
29

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

Municipality of Anchorage



POUCH 6-680
ANCHORAGE, ALASKA 99502
(907) 264-4545

GEORGE M. SULLIVAN,
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

January 7, 1981

TO: Title 29 Policy Committee Members

Re: Proposed Draft on Municipal Powers & Duties

Attached please find a proposed draft of a new Title 29 chapter on Municipal Powers and Duties. This draft was prepared and reviewed by the Technical Committee in response to numerous complaints that the present law on this subject is extremely confusing and overly restrictive for municipal governments. The proposed draft attempts to consolidate in one place all provisions dealing with the powers of various classes of local government, including all provisions for the assumption of new municipal powers.

Since this work represents a major reorganization of the present statutes, a section by section comparison of old and new provisions will be difficult. For reference, the proposed material would replace the following provisions in present law:

AS 29.33.010 - .050
AS 29.33.250 - .290
AS 29.38.010 - .050
AS 29.41.010 - .020
AS 29.43.010 - .110
AS 29.48.010 - .110
AS 29.48.190; .210; .220; .270;
AS 29.48.310 - .330

Hopefully, you will find the proposed organization a bit easier to follow and understand than the rather confusing collection of present statutes listed above.

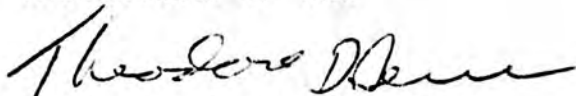
Aside from reorganization, the primary change in the proposed draft is to eliminate the "laundry list" approach to describing permissible municipal powers. The proposed statutes would identify those powers that can be exercised by the assembly or council for various classes of governments and would then allow exercise of any other general law power provided such powers are assumed by vote of the people or transferred as required under present law.

Given the short time before the January 17 Policy meeting, Tam Cook and I agreed to mail the proposed draft to the Policy Committee members so that there would be a chance to review it prior to the Juneau meeting. There is certainly no pride of authorship on my part, and your comments and criticisms will be most welcome.

If you have questions on the proposed draft prior to the January 17 meeting, please feel free to contact me at 264-4236, and I will do my best to answer them.

Sincerely yours,

DEPARTMENT OF LAW



Theodore D. Berns
Municipal Attorney

TDB:gml
Attachments
cc: Tam Cook

29.33.110 (b)

The non-competitive grant of the exclusive right
to use a public street or right of way for more
than 5 years to a utility ^{for a transportation system} not certificated by the APUC

or ATC shall be valid only if approved by a majority

^{qualified}
of the voters, ¹ voting on the question at a regular
or special municipal election.

approved

Prepared by: Theodore D. Berns
Title 29 Technical Committee
January 2, 1981

CHAPTER 33. MUNICIPAL POWERS AND DUTIES

(CHAPTER 48. POWERS APPLICABLE TO ALL MUNICIPALITIES)

Article 1. GENERAL POWERS

OK
Sec. 29.33.010. (Sec. 29.48.010.) GENERAL POWERS.

All 1 Municipalities have the following general powers, subject to other provisions of law:

(1) to establish and prescribe the functions of municipal departments, offices or agencies;

(2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;

(3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;

(5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;

(6) to sue and be sued;

(7) to levy taxes and special assessments and to impose liens for the enforcement thereof;

(8) to enforce ordinances and to prescribe penalties for violations;

(9) to acquire, manage, control, use and dispose of real and personal property, and interests in such property whether or not the property is situated within or outside the municipal boundaries; this power includes the power of a borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area created under [AS 29.63.090(f)];

(10) to acquire membership in organizations which promote legislation for the good of the municipality;

(11) to expend funds for ~~public~~ ^{& leave as is} community purposes for the good of the municipality;

(12) to borrow money and issue evidences of indebtedness.

(13) to regulate the operation and use of its public rights of way, public facilities and services.

Repeal Combining Offices 29.33.010(1) in Draft #3
Sec. 29.33.020. (Sec. 29.48.037.) EXTRATERRITORIAL

ok
JURISDICTION. (a) A municipality may, to the extent otherwise authorized ~~or permitted~~ by law, provide parks, roads (including ice roads), trails, playgrounds, solid and septic waste disposal, wharves, harbors and other marine facilities, emergency medical services, cemeteries, airports, transportation systems and utility services outside its boundaries, and may regulate their use and operation to the extent that the jurisdiction in which they are located does not regulate them. A regulation adopted under this section must state that it applies outside the municipality.

No change

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities.

No Change
Sec. 29.33.030 (Sec. 29.73.02.) EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250-09.55.460.

Sec. 29.33.040. (Sec. 29.48.270.) EMERGENCY DISASTER POWERS. (a) A municipality which is wholly or partially within an area declared by the President or Governor to be a disaster area may participate in and provide for housing and urban renewal and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough is limited to the area outside cities in the borough.

(b) A borough may exercise the powers for a housing or urban renewal and redevelopment project transferred to it by a city located in the borough as provided by AS _____.

(c) Powers granted by this section must be initiated within a period of not more than five years from the date of declaration of a natural disaster by the President or Governor, but these powers may be extended for an additional period of not more than three years.

What if borough has road power can it grant franchises in a city?

OK

Sec. 29.33.050. FRANCHISES AND PERMITS. (a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges and may grant permits for use of streets and other public places.

use Lee's
No (b) No exclusive franchise is valid until it has been ratified by a majority of the qualified voters voting on the question at a regular or special municipal election.

retain existing (c)

Sec. 29.33.060. (Sec. 29.48.060.) PUBLIC UTILITIES RATES.

should city set rates utility being operated on an areawide basis by the borough?

OK with changes

The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a utility to the extent that the utility is not regulated under AS 42.05, *and may provide what is a reasonable deposit for meters and security for service to be given*, provided that interest must be paid on any deposit required by the utility. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return in invested capital.

Sec. 29.33.070. MUNICIPAL PROPERTY.

HOOD

The assembly or council shall by ordinance establish a formal procedure for acquisition and disposal of land and interests in land of the municipality. ~~unless otherwise provided by ordinance~~
~~Each disposal of land or an interest in land shall be by ordinance unless the assembly or council finds by resolution that the land or interest in land is without substantial value to the municipality.~~

No Change
Sec. 29.33.080. (Sec. 29.48.190.) BUDGET AND CAPITAL PROGRAM. (a) The assembly or council shall establish the manner for the preparation and submission of the budgets and capital programs by the executive. After public hearing, the assembly or council may approve the budgets with or without amendments and shall appropriate the funds required for the approved budgets.

(b) The assembly or council may make supplemental and emergency appropriations. No payment may be authorized or made and no obligation incurred except in accordance with appropriations.

No Change
Sec. 29.33.090. (Sec. 29.48.210.) EXPENDITURE OF BOROUGH REVENUES. Borough revenues received through taxes collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs and on areawide functions only. Borough revenues received through taxes and levied and collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only. This section does not apply to ~~unified municipalities.~~ unified municipalities.

No Change
Sec. 29.33.100. (Sec. 29.48.220.) POST AUDIT. The assembly or council shall provide for an annual independent audit of the accounts and financial transactions of the municipality or in the case of a second class city an audit or statement of annual income and expenditures. To make the audit the assembly or council shall designate a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the municipality. Copies of

the audit shall be available to the public upon request. This section applies to home rule and general law municipalities.

Article 2. MANDATORY AREAWIDE POWERS

Sec. 29.33.110. (Sec. 29.33.010.) SCOPE OF AREAWIDE POWERS.

No change
(a) First and second class boroughs shall exercise the powers as specified and in the manner specified in this article on an areawide basis, both inside and outside cities within their boundaries.

(b) No city may exercise an areawide power once that power is being exercised by a borough.

No change
Sec. 29.33.120. (Sec. 29.33.050.) EDUCATION. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on military reservation transfers to the borough school district in which the military reservation is located. *? existing law*

~~Hold the home rule application~~ (16) ~~applies to home rule and state~~
Sec. 29.33.130. (Sec. 29.33.030.) ASSESSMENT AND COLLECTION

changed
also change
OF TAXES. (ASSESSMENT AND COLLECTION) Boroughs shall assess ~~and~~ ^{and may collect} collect property, sales and use taxes levied within their boundaries, subject to ch. 45 (ch. 53) of this title. Taxes levied by a city ^{shall be} and collected by a borough ^{and} are returned in full to the levying city. (29.36.060)

Accepted
Sec. 29.33.140. LAND USE REGULATION. *planning, platting and*

First and second class boroughs shall provide for land use regulation in accordance with AS 29.42._____.

accepted
Article 3. ADDITIONAL CITY AND BOROUGH POWERS

Sec. 29.33.150. FIRST CLASS BOROUGH POWERS. (a) In addition to the powers granted by Sec. .010 through .140, a first class borough in the areas outside cities, may exercise any power not otherwise prohibited by law.

(b) A first class borough may, by ordinance, exercise the following ^{additional} powers on an areawide basis:

1. ^{provide} ~~providing~~ transportation systems
2. ^{provide} Water pollution control
3. ^{provide} Air pollution control as provided in AS 46.03.140-.240
4. Licens~~ing~~ of day care facilities
5. Regulation of animals (*use existing lang.*)

(c) In addition to powers conferred by (b) of this section, a first class borough may, on an areawide basis, exercise any other power not otherwise prohibited by law provided that such power has been transferred by a city and approved by the borough

assembly or has been acquired pursuant to sec. .190 of this chapter.

Sec. 29.33.160. SECOND CLASS BOROUGH POWERS. (a) In addition to the powers granted by Sec. .010 through ⁴⁰.150, a second class borough, in the area outside cities, may, by ordinance, exercise the following powers:

1. Providing transportation systems
2. Regulation of fireworks (use existing lang.)
3. Regulation of animals (use existing lang.)
4. Regulation of drivers and motor vehicles, including snow vehicles and off highway vehicles, to the extent allowed under AS 28.01.010.
5. Provision of garbage and solid waste collection and disposal. add storage of "septic waste" use lang. from extrajurisdictional Sec.
6. Air pollution control as provided in AS 46.03.140-.240
7. Water pollution control
8. Participation in federal or state loan programs for housing rehabilitation and improvement for energy conservation.
9. Economic development programs and activities.

(b) A second class borough may, by ordinance, exercise ^{additional} the following powers on an areawide basis:

1. Providing transportation systems
2. Regulation of animals (use existing lang.)

10) the power to receive and expend grants for public purposes.

3. Air pollution control as provided in AS 46.03.140-.240

4. Water pollution control

5. Licensing of day care facilities

re-draft
(c) In addition to powers conferred by (b) of this section, a second class borough may, on an areawide basis or in the area outside cities, exercise any other power and may provide other services or facilities not otherwise prohibited by law on an areawide basis provided that such power has been transferred by a city and approved by the borough assembly for exercise within the city or has been acquired by election under Sec. .190 of this chapter, or in the area outside cities, provided it has been acquired by election under Sec. .190.

ok
Sec. 29.33.170. CITIES WITHIN ORGANIZED BOROUGHES. (a) In addition to the power conferred under Sec. .010, a first or second class city within an organized borough may exercise any power not otherwise prohibited by law. In accordance with Sec. .110, a city may not exercise a power once that power is being exercised by a borough.

ok
Sec. 29.33.180. CITIES OUTSIDE ORGANIZED BOROUGHES. (a) Cities outside an organized borough may exercise any power not otherwise prohibited by law. *should this include 2nd class?*

ok 29.39.020
(b) (Cities) outside an organized borough may assess, levy and collect a general property tax and a sales or use tax. A property, sales or use tax if levied must be assessed, levied and collected as provided by Chapter 45 of this title for boroughs.

Cities may, by ordinance, establish, alter and abolish differential tax zones for property taxes for services not provided in the entire city or provided at a different level than provided generally within the city.

(c) Home rule and first class cities outside an organized borough ~~shall~~ constitute city school districts and shall establish, operate and maintain a system of public schools as provided by AS 29.36.040 for boroughs.

(d) Home rule and first class cities outside an organized borough shall, and second class cities outside an organized borough may, provide for land use regulation as provided by AS 29.42.010-.245 for boroughs.

(Amw 29.36.100 am)
Sec. 29.33.190. ACQUISITION OF ADDITIONAL POWERS. (a) A borough acquires additional powers by holding an election on the question as provided by this section. For acquisition of areawide powers, the election shall be held areawide. For acquisition of powers in the area outside cities the election shall be held in the area outside cities only.

(b) An election under this section may be initiated by a petition signed by a number of voters equal to 15% of the number of votes cast at the preceeding regular election in the area in which the election is to be held or by the assembly. A petition under this section shall be filed with the borough clerk who shall certify to the assembly whether the petition contains sufficient signatures. Upon certification, the assembly shall, at the next regular meeting, order an election on the question to be held

within 60 days of the order. If more than one power, service or facility is proposed, each shall appear separately on the ballot.

*identical
present
law*

(c) In the case of acquisition of additional areawide borough powers, the borough mayor shall certify the election results to the Department of Community and Regional Affairs. The vote on the question of adding an areawide power shall be tabulated in two separate classifications. One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of the votes cast in each classification is favorable, the borough shall assume the added power within 30 days of certification of the election results. Upon acquisition of an areawide power the borough succeeds to all of the rights, powers and duties of any city or service area with respect to that power. The borough succeeds to claims, franchises and other contractual obligations, liability for bonded and all other indebtedness and to all of the right, title and interest in the real and personal property held by the city or service area for the exercise of the power. The borough assembly may levy and collect special charges, taxes or assessments including interest for the purpose of amortizing bonded indebtedness previously incurred by the city or service area for continuing services in the area. When a city or service area had previously incurred bonded indebtedness, no less than all property that was within the city or service area at the time the bonds were issued shall remain subject to taxation to pay the principal of and interest on the

Rechart

bond for as long as they remain outstanding. Upon acquisition of additional areawide powers the borough, in consultation with the city or service area personnel, shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties and other matters related to acquisition of the areawide powers. This subsection applies to home rule and general law cities.

Article 4. CONSTRUCTION OF POWERS

(Chapter 48. Article 5. CONSTRUCTION OF POWERS)

Sec. 29.33.200. (Sec. 29.48.310.) GENERAL CONSTRUCTION. A liberal construction shall be given to all powers and functions of boroughs and cities conferred in this title.

Sec. 29.33.210. (Sec. 29.48.320.) EXTENT OF POWERS. Unless otherwise limited by law, boroughs and cities have and may exercise all powers and functions necessarily or fairly implied in or incident to the object or purpose of all powers and functions conferred in this title.

Sec. 29.33.220. (Sec. 29.48.330.) ENUMERATION OF POWERS. Specific examples within an enumerated power or function conferred upon boroughs or cities in this title area illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

*Note
Garbage
in final
report
29.33.080*

STATE OF ALASKA

THE LEGISLATURE

1980

Source

CSSCR 66

Legislative
Resolve No.

39



Directing the Alaska Legislative Council to revise AS 29
(Municipal Government).

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS Alaska has a system of local government that differs uniquely in constitutional concept and in law from traditional local government; and

WHEREAS the law governing municipalities in Alaska was last reviewed completely in 1972 at which time significant elements of the local government structures were still in a formative stage; and

WHEREAS numerous amendments to the municipal code have been made since its adoption which have not been fully integrated into the code; and

WHEREAS much experience in the Alaska system of local government has been gained since adoption of the municipal code; and

WHEREAS there is a need for a comprehensive revision of the municipal code which will consider the 1972 code, amendments to it, and the experience gained since its adoption;

BE IT RESOLVED by the Alaska State Legislature that under the provisions of AS 24.20.090 and Uniform Rule 48(c) the Alaska Legislative Council is directed to prepare a revision of Title 29 of the Alaska Statutes (Municipal Government) by directing the legal services division of the Legislative Affairs Agency to prepare the revision with the assistance of a policy advisory group representative of the concerned public from all areas of the state and persons experienced in the application of AS 29, and soliciting the advice of the Alaska Code Revision Commission; and be it

FURTHER RESOLVED that the policy advisory group consist of two members of each house of the legislature appointed by the presiding officer of each house; public members of the policy advisory group shall be selected by the presiding officer of each house from persons recommended by legislative members, by the Department of Community and Regional Affairs, the Alaska Municipal League, the Rural Alaska Community Action Program, Inc., the Department of Law, and by the legal services division; and be it

FURTHER RESOLVED that a proposed revision of AS 29 be presented to the legislature during the first 30 days of the First Session of the Twelfth Legislature.

CHANGE RECOMMENDED BY TECHNICAL COMMITTEE - Jan. 6, 7, 1981

Sec. 29.36.270. SERVICE AREAS. (a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. [The borough may include a city within a service area if the city council agrees by ordinance or if approval is granted by a majority of voters residing within the city and by a majority of voters residing within the boundaries of the proposed service area, but outside of the city.]

(The rest of the section is the same).

EXPLANATION: Makes it clear that a city may be included within a service area if the council or voters agree.

Approved

ISSUES TO BE IDENTIFIED IN A POLICY ADVISORY GROUP REPORT

1. How to provide representation for people living outside municipal boundaries, but within a municipal service area (as when a city extends utility service beyond its boundaries).
2. Should a uniform provision on executive sessions be included in Title 29 delineating specific occasions when it is appropriate to call for an executive session of a municipal governing body?
3. Should there be only two classes of borough -- home rule and general law?
4. Should there be only two classes of city -- home rule and general law?
5. Should villages which are currently unincorporated be recognized as municipal corporations under state law? Should IRA councils be recognized as municipal governing bodies?
6. Should the state or local government be primarily responsible for providing the following services: water system and sewage disposal inspections; subdivision review of on-site sanitation capabilities; sanitation inspections of restaurants, hotels, etc; clean-up of small oil spills; the issuing of oily waste burn permits and surface oiling permits; litter control; vehicular emissions control? If local governments should have more control in these areas, how may the state delegate these functions while insuring the programs continue to meet applicable standards to qualify for federal funding and to avoid state liability if the programs are not properly carried out by the local governments?
7. Should the state or local government be primarily responsible for the provision of health services? If local governments should have more control in these areas, how may the state delegate these functions while insuring the programs continue to qualify for federal funding?
8. How to insure that local issues are dealt with in the unorganized borough, since the legislature rarely meets as the assembly for the unorganized borough.
9. How to avoid establishing multiple governmental and administrative bodies with duplicate functions in small communities which suffer from a lack of people to fill the positions.
10. Should there be a regionally elected body in the unorganized borough to manage local service programs and to deal with the state?

11) Merged to H.R.

12) Note

13) CRA Handbook

14) Provision of services and government in merged through

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

Sec. 29.06.010. HOME RULE. A home rule municipality is a municipal corporation and political subdivision. It is a city or an organized borough which has adopted a home rule charter, or it is a municipality unified in accordance with AS 29.12.190 - 29.12.350. A home rule municipality has all the legislative powers not prohibited by law or charter.

Sec. 29.06.030. CLASSES OF GENERAL LAW. General law municipalities are of four classes:

- (1) first class boroughs;
- (2) second class boroughs;
- (3) repeal
- (4) first class cities;
- (5) second class cities.

Sec. 29.06.040. RECLASSIFICATION. Section unchanged to:

(g) A second class borough may reclassify as a first class borough in the manner provided by AS 29.36.110 - 29.36.130 for the addition of powers by boroughs, except that the petition or proposal requests reclassification instead of requesting addition of powers.

- (h) repeal.
- (i) repeal.
- (j) repeal.

Sec. 29.06.050. TRANSITION. (a) A third class borough existing on the effective date of this act shall continue as a third class borough under the conditions established by law prior to the effective date of this act until it becomes reclassified in accordance with this section.

(b) A third class borough may reclassify as a first or second class borough in the manner provided by AS 29.36.110 - 29.36.130 for the addition of powers by boroughs, except the petition or proposal requests reclassification instead of requesting addition of powers. If reclassification is approved, a school board shall be elected in conformity with AS 14.12 at the next regular election if it occurs within 90 days of the date of the

*at 3rd class borough go directly to Home Rule.
Haines to exist as it was on effective date of this Act.*

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

reclassification election, or at a special election within 90 days of the date of the reclassification election. Expiration dates of terms of members elected at a special election must coincide with the date of the regular election. Until a board is elected and qualified, the assembly continues to serve as the board.

EXPLANATION; Third class boroughs are eliminated. A transition section provides that the existing third class borough retain its status until it is reclassified. The option of allowing the assembly to continue to serve as school board of a borough which is reclassified from third to first or second class currently contained in AS 29.06.030(i) has been eliminated, so that if the third class borough changes its classification it must elect a school board. (NOTE: This was prepared as a request of the Policy Group to eliminate third class boroughs. If it is approved upon reconsideration, additional technical drafting changes will be required to eliminate references to third class boroughs in other sections.)

Note: ~~2nd~~ class cities which go H.R. will become school districts. If in the unorganized borough or 3rd class borough will have to providing planning, platting, and land use regulation under
29.39.050 (old) 29.43.040 (H.R. Amendment 33)

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

Sec. 29.09.180. ORGANIZATIONAL GRANTS. (a) For the purpose of defraying the cost of transition to a municipal form of government and in order to provide for initial government operations, each municipality incorporated after January 1, 1981, or for a second class city reclassified after January 1, 1981, is entitled to an organizational grant of \$150,000, except that a municipality which is merged, consolidated, or unified under AS 29.12. is not entitled to an organizational grant.

EXPLANATION: This section is being resubmitted as the recommendation of the Technical Group after considering legislation on the matter proposed by Community and Regional Affairs.

rejected

use Palmer's
Bill

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

Sec. 29.12.390. POWERS OF A UNIFIED MUNICIPALITY. A municipality organized under AS 29.12.190 29.12.390 shall have all the powers

- (1) not prohibited it by law or charter;
- (2) granted to home rule boroughs.

EXPLANATION: Existing language in (2) is confusing in that the reference to cities may imply a limitation of some sort on the powers of a unified municipality. This is a clearer statement of existing law.

o/c

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

Sec. 29.24.010. CONFLICTS OF INTEREST. Each home rule and general law municipality shall adopt a conflicts of interest ordinance which other provisions of this chapter notwithstanding, includes provision that an officer or employee shall disqualify himself from participating in any official action in which he has a substantial financial interest.

EXPLANATION: The second sentence is deleted as redundant. After considering the alternative proposed by the Policy Group, the Technical Group reasserts its original recommendation. It is felt that a person should not vote on a matter in which he has a substantial financial interest and that disclosure of the interest is not adequate protection for the public.

rejected
use 29.24.010
as previously approved

TECHNICAL GROJP RECOMMENDATIONS - 05 JAN 81

Sec. 29.24.170. VACANCIES. The governing body may provide by ordinance the manner in which a vacancy occurs in any elected office except the office of mayor and member of the school board. Unless otherwise provided by ordinance the governing body shall declare an elective office, other than the office of mayor or member of the school board, vacant when the person elected.

(The rest of the section was previously approved by the Policy Group).

EXPLANATION: The Technical Group upon reconsideration recommends that the governing body not be allowed to declare the office of a school board member vacant. Current law allows the members to determine vacancy on the school board.

approved

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

Sec. 29.24.430. OTHER BOARDS AND COMMISSIONS. The governing body may, by ordinance, establish advisory or quasi-judicial boards and commissions.

EXPLANATION: Upon reconsideration, the Technical Committee would like to limit specific authority to set up boards to exclude administrative boards. In addition, subsection (b) is deleted from the draft which was originally approved by the Policy Group because it is felt that appointment power is adequately included under general separation of powers principles and ought not to be further restricted in an inflexible statute applying to every type of board.

rejected
use previous section

Sec. 29.24.590. APPOINTMENT. The governing body shall appoint a manager by a majority vote of its membership. He is chosen on the basis of his administrative qualifications and receives the compensation set by the governing body. A member of the governing body may not be appointed manager of the municipality sooner than one year after leaving office except by a vote of three-fourths of the authorized membership of the governing body.

EXPLANATION: Upon reconsideration, it is felt that the prohibition against serving as manager ought not to apply to officials other than members of the legislative body. This change would allow the governing body to appoint a municipal official to the office of manager without the one year or super majority restriction.

accepted

Sec. 29.24.680. PROHIBITIONS. Repeal.

EXPLANATION: (a) and (b) have been approved for repeal by the Policy Group. Upon reconsideration it is felt that the rest of the section should also be repealed. (c) and (d) were adopted for a specific Juneau problem which no longer exists according to Mr. Lee Sharp.

~~rejected~~
use as amended
P. 67

OK P. 67
Title 14

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

Sec. 29.27.010. ACTS REQUIRED TO BE BY ORDINANCE. (a)
(12) repeal.

The rest of the section is unchanged.

EXPLANATION: It is felt that (12) should be repealed as redundant because the provision is contained in AS 36.25. (Note: changes to (2), (5), (7), and (8) were previously approved by the Policy Group and the Technical Committee makes no further recommendation with regard to those paragraphs.)

~~held~~
p 69

~~rejected~~
~~use~~

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

Sec. 29.27.050. CODES OF REGULATION. The governing body may in a single ordinance adopt or amend by reference provisions of a standard published code of regulations. The regular ordinance procedure applies except that neither the ordinance nor its amendments need be distributed to the public or read in full at the hearings. For a period of 15 days before adoption at least five copies of the code must be made available for public inspection at a time and place set out in the hearing notice. Only the adopted ordinance need be printed after adoption. The governing body shall provide for the adopted code to be made available to the public at no more than cost.

EXPLANATION: The Policy Group previously approved changes made to the last line of this section - "The governing body shall provide for the adopted code to be sold or made available at no charge to the public." It is felt that this would be more flexible in that a municipality would also have the option of collecting a fee which represents only a part of the cost.

Approved

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

Sec. 29.27.080. PENALTIES. (a) For the violation of an ordinance the governing body may prescribe penalties not to exceed those imposed for a class B misdemeanor and may require mandatory, nonsuspendable imprisonment not to exceed five days.

(b) The municipality or an aggrieved person may institute a civil action against a person who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed \$1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction. Every day upon which a violation of an ordinance continues shall constitute a separate violation.

(c) The penalties authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at no more than cost.

EXPLANATION: Technical drafting changes with no substantive impact on the section as previously approved by the Policy Group in (a) and (b). Subsection (c) has been changed from the language previously approved so that a municipality has the option of charging less than full cost.

Approved

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

Sec. 29.30.030. ELECTION DATES. (a) ~~The governing body shall give~~ ^{shall be} _{given.} ~~At~~ least 20 days notice of a regular or special election.

(b) The date of a regular election is the first Tuesday of each October unless a different date or interval of years is provided by ordinance.

EXPLANATION: Technical changes. The notice requirement is applied to the regular election as well as the special election.

accepted

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

29.30.040. Voter Qualification. See amendment.

Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) Unless substantially the same measure is adopted, when a petition seeks an initiative vote the clerk shall submit the matter to all of the municipal voters at the next regular (or special election) occurring no sooner than 45 days after certification of the petition.

Other subsections as previously approved.

EXPLANATION: The Technical Committee wishes to reassert its first recommendation that no special election be required in the initiative process. In rejecting this suggestion, the Policy Group appears to have felt that the initiative process should be treated the same as the recall and referendum processes, both of which require a special election if a regular election is not held within a given time period. The Technical committee feels that the initiative process, seeking to establish new law, is not as much of an emergency situation as the recall of an official or the repeal of an unpopular law, and therefore that the expense and inconvenience of holding a special election on an initiative ought not to be placed on municipalities.

accepted

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

Sec. 29.30.300. ELECTION NOTICE. At least 20 days notice of an election to recall an official shall be given notwithstanding an ordinance or charter provision to the contrary.

EXPLANATION: It is felt that since a recall must be done at a regular or special election, procedural requirements dealing with election apply so most of this section is eliminated as redundant. The notice provision is necessary to bind home rule municipalities.

OK
(Note
requirement already
in 29.30.030)

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

Sec. 29.30.330. SUCCESSORS. (a) If an official is recalled from the governing body his office becomes vacant and is filled in accordance with AS 29.24.175.

(b) Notwithstanding subsection (a), if all members of the governing body are recalled, the governor shall appoint three qualified persons to the governing body. The appointees shall appoint additional members to fill remaining vacancies in accordance with AS 29.24.175.

(c) If all officials are recalled from a school board the governor shall appoint three qualified persons to the school board. The appointees shall appoint additional members to fill remaining vacancies.

(d) A person appointed under (a) - (c) of this section shall serve until a successor is elected and takes office.

(e) If an official is recalled the clerk, without further action by the governing body, shall conduct an election for a successor to fill the unexpired portion of the term. The election shall be held not more than 60 days from the date the recall election is certified, except that if a regular election occurs within 75 days after certification the successor shall be chosen at that election.

(f) Nominations for a successor may be filed until seven days prior to the last date upon which a first notice of the election must be published. Nominations may not be filed before the certification of the recall election.

EXPLANATION: Redrafted at the request of the Policy Group. This would provide that vacancies in a governing body resulting from recall would be filled as any other vacancy, unless all members of the body are recalled, in which case the governor shall appoint members so that local government can continue to function. If all members of a school board are recalled, the governor would have the same power of appointment to that board.

accepted

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

Sec. 29.42.¹⁸⁰~~150~~. DELEGATIONS. The assembly may by ordinance authorize the planning commission and the platting authority to delegate powers to hear and decide cases under this chapter in a manner authorized by the ordinance, including but not limited to delegations to one or more members of the planning commission or platting authority, to other boards or commissions or to a hearing officer designated by the planning commission or platting authority.

EXPLANATION: The Technical Committee originally recommended repeal of this section. Upon reconsideration, it is recommended that it be retained in a slightly redrafted form to insure that there is no question that hearing officers may be used by the planning commission and platting authority to hear individual cases.

accepted

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

Sec. 29.45.610. POWER OF LEVY. (a) A city within a borough which levies and collects areawide sales or use taxes may levy sales or use taxes on all sources taxed by the borough in the manner provided for boroughs, except that the assembly may by ordinance authorize a city to levy and collect sales or use taxes on other sources.

use existing language of 29.620 (b) A city within a borough which does not levy and collect areawide sales or use taxes may levy and collect sales or use taxes in the manner provided for boroughs.

Sec. 29.45.620. POWER OF LEVY AND COLLECTION. Repeal.

EXPLANATION: Subsection (a) is altered to allow a city to levy taxes on other sources if authorized by a borough. It is felt that borough authorization should be required since the borough does the collecting and would experience added administrative difficulties if the city and borough tax differ. Subsection (b) contains the material formerly in AS 29.45.620

Hold
OK with change

Sec. 29.33.200. MUNICIPAL PROPERTIES. (Section as previously approved by the Policy Group with the following new subsection:)

(g) Dedication of streets, rights of way, easements or other areas for public use shall not be construed to require the municipality to maintain, improve or provide for municipal services in the area dedicated and the dedication shall not impose any liability on the municipality for the condition of the area dedicated.

EXPLANATION: Since the municipality may be the recipient of land deeded over by a private person without the municipality's approval, it is felt that the municipality should not be liable for the condition of property just as the result of dedication. This would not affect the liability of a municipality for the condition of land which it undertakes to improve or maintain.

accepted

p. 10
Palmer's
Bill

HOUSE BILL 13
A BILL

Accepted
by Policy Group
Jan 17, 1981

For an Act entitled: "An Act providing organizational grants to newly incorporated cities and boroughs, providing transitional assistance to newly incorporated boroughs; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*Section 1. AS 29.18.180 is amended to read:

Sec. 29.18.180. Organization grants to cities. (a) For the purpose of defraying the cost of transition to [BOROUGH OR] city government and in order to provide for development and interim government operations, each [BOROUGH AND] city incorporated after January 1, 1968, or, in the case of a second class city, incorporated or reclassified after January 1, 1968, [OTHER THAN A UNITED MUNICIPALITY INCORPORATED UNDER THE PROVISIONS OF AS 29.85, OR A MUNICIPALITY INCORPORATED BY CONSOLIDATION], is entitled to a first year organization grant equal to \$50,000. [\$10 FOR EVERY VOTER WHO VOTED IN THE BOROUGH OR CITY INCORPORATION ELECTION. HOWEVER, EACH INCORPORATED BOROUGH AND EACH FIRST CLASS CITY INCORPORATED OR ESTABLISHED BY RECLASSIFICATION OUTSIDE AN ORGANIZED BOROUGH IS ENTITLED TO AT LEAST \$25,000.]

(b) Within 30 days after certification of the incorporation election favoring incorporation or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the city the total amount of first year organization money to which the city is entitled.

(c) A city eligible for and receiving a first year organization grant under subsections (a) and (b) of this section is entitled to a second year organization grant of \$25,000. Within 30 days after the beginning of the city's second fiscal year, or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the city the total amount of second year organizational grant money to which the city is entitled.

*Sec. 2. AS 29.18 is amended by adding a new section to read:

Sec. 29.18.185. Organization grants to boroughs. (a) For the purpose of defraying the cost of transition to borough government and in order to provide for development and interim governmental operations, each borough incorporated after January 1, 1981, other than a unified municipality incorporated under the provisions of AS 29.68.030 - 440, or a municipality otherwise incorporated by consolidation, is entitled to organization grants for the first three full years of incorporation according to the following schedule: First year of incorporation the borough is entitled to \$300,000; second year of incorporation, the borough is entitled to \$200,000; third year of incorporation, the borough is entitled to \$100,000. In addition to state support provided in this section, the borough is also entitled to regular State Aid to Local Governments payment under AS 29.88.010 - 29.95.030.

(b) Within 30 days after the date of incorporation of a borough after January 1, 1981, the Department of Community and Regional Affairs shall determine the population of the borough.

(c) Within 30 days after completion of its findings, or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the borough the total amount of money under this section to which the borough is entitled for the first year of incorporation. The second and third entitlements will be transmitted within 30 days after the beginning of the subsequent borough fiscal years, or as soon thereafter as money is appropriated to it for the purpose.

*Sec. 3. AS 29.18 is amended by adding a new section to read:

Sec. 29.18.186. Transitional Assistance to boroughs. Each borough incorporated after January 1, 1981, other than a unified municipality incorporated under the provisions of AS 29.68.030 -- 440, or a municipality otherwise incorporated by consolidation, is entitled to transitional assistance provided in (a) and (b) of this section. (a) The Department of Community and Regional Affairs shall provide assistance with establishment of the initial assessment and collection department for a borough that has adopted a sales tax.

(b) The department shall establish the initial assessment roll for a borough that has adopted a property tax. The initial assessment roll shall contain all the information required by AS 29.53.100(a). In the preparation of the initial assessment roll, the department may contract for the services of appraisers and others whose services are required to complete and report the initial assessment. ~~When completed, the initial assessment roll shall be certified by the commissioner, and the completed roll, together with all supporting information and materials prepared~~

~~roll, the department may contract for the services of appraisers and others whose services are required to complete and report the initial assessment.~~ When completed, the initial assessment roll shall be certified by the commissioner, and the completed roll, together with all supporting information and materials prepared by the department, shall be transmitted to the borough assembly. The department, to the extent appropriations are available for the purpose, shall continue to fund the assessment function and related staff for a period of three years after the completion of the initial roll.

(c) There is established in the Department of Community and Regional Affairs the transitional assistance to boroughs fund. The fund shall be administered by the Commissioner and shall be used to pay for transitional assistance under (a) and (b) of this section.

(d) An appropriation made for transitional assistance to a borough is valid for the three years of required assistance and the unexpended balance shall be carried forward to subsequent fiscal years for those years. Between July 1 and August 31 of each fiscal year, a statement supporting the amount of the unexpended balance required to complete transitional assistance projects for which the initial appropriations was made and the amount that may be lapsed shall be recorded with the Department of Administration.

*Sec. 4. AS 29.18 is amended by adding a new section in article 3 to read:

Sec. 29.18.187. Definitions.

(1) "assessment functions" include discovering and describing taxable property; appraising that property; and preparing an Assessment roll.

*Sec. 5. This Act takes effect immediately in accordance with AS 01.10.070(c).

9.48.020

§ 29.48.030

MUNICIPAL GOVERNMENT

§ 29.48.033

Sec. 29.48.030. Municipal facilities and services. (a) A municipality may exercise the powers necessary to provide the following public facilities and services:

- (1) streets and sidewalks;
- (2) sewers and sewage treatment facilities;
- (3) harbors, wharves, and other marine facilities;
- (4) watercourse and flood control facilities;
- (5) health services and hospital facilities;
- (6) cemeteries;
- (7) police protection and jail facilities;
- (8) cold storage plants;
- (9) telephone systems;
- (10) light, power and heat;
- (11) water;
- (12) transportation systems;
- (13) community centers;
- (14) libraries, visual or performing arts centers, or museums;
- (15) recreation facilities;
- (16) airport and aviation facilities;
- (17) garbage and solid-waste collection and disposal service and facilities subject to AS 29.48.033;
- (18) fire protection service and facilities, not in conflict with AS 18.70.075, but not limited to AS 18.70.075;
- (19) parking and parking facilities;
- (20) housing and urban renewal, rehabilitation and development;
- (21) preservation, maintenance and protection of historic sites, buildings and monuments;
- (22) consumer protection;
- (23) emergency medical services and facilities

(am § 3 ch 215 SLA 1975; am § 4 ch 78 SLA 1978; am § 5 ch 62 SLA 1979)

Cross reference. — As to emergency medical services, see AS 18.08

Effect of amendments. — The 1975 amendment added, not in conflict with AS 18.70.075, but not limited to AS 18.70.075" to the end of paragraph (18) of subsection (a).

The 1978 amendment added paragraph (23) to subsection (a).

The 1979 amendment added, visual or

performing arts centers, or museums" to the end of paragraph (14).

As the rest of the section was not affected by the amendments, it is not set out.

Applied in *Lobby v. City of Dillingham*, Sup. Ct. Op. No. 2097, File No. 3861-612 P.2d 3, 1980.

Cited in *Graves v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1168, File No. 2016-506 P.2d 1221 (1975).

Sec. 29.48.033. Garbage and solid waste services.

(b) The council or governing body of any political subdivision may not prohibit a person holding a valid certificate from the Alaska Public Utilities Commission from continuing to collect and dispose of garbage, refuse, trash, waste material, or other related services in any area in

language to allow municipalities to install transfer sites instead of landfills, and operate them in lieu of landfills exempt from APUC regulations or transfer

the political subdivision if the certificate authorizes the collection and disposal of garbage, refuse, trash or other waste material and providing of other services in the area, and the certificate was originally issued before the political subdivision provided like or similar services. A political subdivision may not provide for a garbage, refuse, trash or other waste material collection and disposal service in any area to the extent it lies within an area granted to a garbage, refuse, trash or other waste material carrier by a certificate issued by the commission to the carrier until it has purchased the certificate, equipment and facilities of the carrier or that portion of the certificate which would be affected at fair market value and may exercise the right of eminent domain to determine fair market value.

(c) Repealed by § 6 ch 76 SLA 1973.
(am §§ 5, 6 ch 76 SLA 1973)

Effect of amendment. — The 1973 amendment rewrote subsection (b) and repealed subsection (c).

As the rest of the section was not affected by the amendment, it is not set out.

Definition of collect. — Collect is defined as the "bringing together into one body or place." *McClellan v. Kenai Peninsula Borough* Sup Ct Op No 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

Definition of disposal. — Disposal means the act of passing over the control of solid waste to the operators of a disposal site. *McClellan v. Kenai Peninsula Borough*, Sup Ct Op No 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

Dumpsters are garbage containers. — Drop-boxes and dumpsters, which are used as intermediate disposal facilities, are garbage and refuse containers. *McClellan v. Kenai Peninsula Borough*, Sup Ct Op No 1440 (File Nos. 2493,

2543, 565 P.2d 175 (1977).

And are not equivalent of final landfill sites. — Interpretation that dumpsters serving as intermediate dump sites qualify as the functional equivalent of final landfill sites is not reasonable in that it would allow the Borough to place dumpsters in such a pervasive fashion as to completely vitiate the requirement of subsection (b) of this section and AS 42.05.221(f) that certificate holders be compensated for their interests. *McClellan v. Kenai Peninsula Borough*, Sup Ct Op No 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

Operation of garbage disposal sites does not constitute a utility service; it is only the passing over of control of solid waste to the disposal site operator which is regulated as a utility function. *McClellan v. Kenai Peninsula Borough*, Sup Ct Op No 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

Sec. 29.48.035. Regulatory powers. (a) A municipality may regulate the operation and use of its public rights-of-way, public facilities and services. It may also regulate the following:

(1) vehicle, pedestrian, and other traffic, and licensing and operation of motor vehicles, including snow vehicles and off-highway vehicles, and operators not inconsistent with AS 28.01.010;

(2) licensing of drivers of taxicabs, for hire automobiles, motor buses, or other vehicles for the transportation of passengers or baggage not inconsistent with AS 28.01.010;

(3) vehicle parking not inconsistent with AS 28.01.010;

(4) transportation fares;

(5) licensing
(6) selling o
(7) selling o
(8) abandon
(9) dangerou
(10) alcohol
(11) recreat
(12) control
(13) offering
fireworks;

(14) building
cities within ci
by first or seco
areawide, subj

(A) exceptio
among other
maintenance
monuments.

(B) codes ma
use of solar or
the developme
health or safet

(15) condemi
(16) garbage
(17) water po
(18) air pollu

(19) other po
well-being and

(20) licensin
(b) First and

conferred by (a)
manner requir
exercise or in th

exercise in the
this chapter for
as to powers co

exercise of the
borough area or
subject to thos

powers. Upon al
exercise of the p
the borough ma
provides otherw
exercise the pov
(am § 44 ch 53
SLA 1976, am 1

John W. McCLELLAN, d/b/a Alpine
Refuse, and Homer Transfer Co.,
Inc., Appellants,

v.

KENAI PENINSULA BOROUGH, R. F.
Miller Enterprises, Inc., d/b/a Peninsula
Sanitation Co., and Burton Carver & Co.,
Inc., Appellees.

KENAI PENINSULA BOROUGH, R. F.
Miller Enterprises, Inc., d/b/a Peninsula
Sanitation Co., and Burton Carver & Co.,
Inc., Cross-Appellants.

v.

John W. McCLELLAN, d/b/a Alpine
Refuse, and Homer Transfer Co.,
Inc., Cross-Appellees.

Nos. 2493, 2543.

Supreme Court of Alaska

June 8, 1977

Holders of certificates issued by Alaska Public Utilities Commission allowing them to provide garbage and refuse collection and disposal utility service in borough filed suit against borough praying for injunctive relief and declaratory judgment after borough awarded to others contracts covering all hauling of refuse to sanitary landfills and maintenance and operation of transfer sites. The Superior Court, Third Judicial District, Anchorage, Eben H. Lewis, J. granted borough's motion for summary judgment and the plaintiffs appealed. The Supreme Court, Burke, J. held that: (1) borough was liable to appellants for fair market value of certificates of public convenience and necessity or that portion of certificate that would be affected; (2) defendant's motion for change of venue should have been granted; and (3) costs should have been awarded defendants.

Reversed and remanded.

1. Municipal Corporations — 607

Contracts which were awarded by city and which covered all hauling of refuse to

sanitary landfills and maintenance and operation of transfer sites pertained to "collection and disposal," within statute precluding political subdivision from providing for waste collection and disposal service in any area, to extent it lies within area granted to waste carrier by certificate issued by Public Utilities Commission, until subdivision has purchased certificate, equipment and facilities of carrier or that portion which would be affected at fair market value; thus city was liable for fair market value of certificate of public convenience and necessity issued by Commission or that portion of certificate that would be affected. AS 29.48.033(h), 42.05.221(f).

See publication Words and Phrases for other judicial constructions and definitions.

2. Venue — 37, 52(1)

Proceeding on motion for summary judgment qualifies as "preliminary or antecedent" hearing within statute providing that any preliminary or antecedent hearings or action shall be conducted in senate district within judicial district of location which would best serve convenience of parties and witnesses; thus defendants' motion for change of venue from Anchorage to Kenai should have been granted, where controversy arose in Kenai Peninsula Borough. Three defendants were located approximately 11 miles from courthouse in Kenai and one of plaintiffs had his principal place of business in Homer, approximately 95 miles from courthouse in Kenai. AS 22.10.030(d).

3. Venue — 46

Where party has brought action in improper locality and refuses upon request of other party to stipulate to change of venue to proper locality, venue statute is circumvented if, for even a hearing disposing of entire matter, court assumes venue. AS 22.10.030(d).

4. Costs — 155

To deny protest defendants from having their right to proper venue denied, motion for costs for having to make change of venue motion is proper. AS 22.10.030(d).

5. Costs — 155

Where plaintiffs' refusal to stipulate to change of venue to proper locality forced counsel for defendants to travel to improper locality for hearings on continued motions for summary judgment and change of venue, defendants who moved for costs for having to make change of venue motion were entitled to such. AS 22.06.050(d).

John R. Strachan, Anchorage, for appellant.

John M. Stern, Jr., Anchorage, for appellant/inter-appellants.

Charles K. Cranston, Gallagher, Cranston & Snow, Anchorage, for appellees/inter-appellants.

Before BROCKHEVER, C. J. and BABINOWITZ, CONNOR, ERWIN, and BURKE, JJ.

OPINION

BURKE, Justice.

This is an appeal by John W. McChesney, d/b/a Alpine Refuse, and Homer Transfer Co., Inc. from an order granting summary judgment to Kenai Peninsula Borough, R. F. Miller Enterprises, Inc. d/b/a Peninsula Sanitation Co., and Burton Carver & Co., Inc. The controversy centers on the power of the Borough of Kenai to set up intermediate sites for the disposal of solid waste products and to contract with private refuse companies to transfer the solid waste to final landfill areas. The dispute requires us to construe AS 29.48.033(b) and AS 42.05.221(f).

1. AS 42.05.221(f) includes the words "of the state" whereas AS 29.48.033(b) does not.
2. Transfer sites are distinguishable from the final disposal points in that the former serve as intermediate facilities where trash may be left off by private citizens rather than collected door to door.

The transfer sites were located at:
a) Ninilchik and Anchor Point, Project E-74-11;
b) Kaslof, North Kenai and Sterling, Project E-74-12;
c) Cooper Landing, Hope and Moose Pass, Project E-74-13.

05.221(f), both of which provide in pertinent part:

"A political subdivision of the state¹ may not provide for a garbage, refuse, trash or other waste material collection and disposal service in any area to the extent it lies within an area granted to a garbage, refuse, trash or other waste material carrier by a certificate issued by the [Alaska Public Utilities] commission to the carrier until it has purchased the certificate, equipment and facilities of the carrier or that portion of the certificate which would be affected at fair market value.

On June 20 and June 27, 1974, the Borough allowed contractors to bid on one year contracts covering all hauling of refuse to sanitary landfills and maintenance and operation of transfer sites.² Pursuant to these bids, contracts were awarded to Peninsula Sanitation and Burton Carver & Co.

Appellants, holders of certificates issued by the Alaska Public Utilities Commission allowing them to provide garbage and refuse collection and disposal utility service in the Kenai Peninsula Borough,³ filed suit in the superior court against the Borough praying for injunctive relief and a declaratory judgment. The Borough made a cross-motion for summary judgment, establishing substantial agreement as to the facts. Judge Eben Lewis, in an order handed down March 10, 1975, granted the Borough's motion and held that

the system of disposition of solid waste of the Borough utilizing large boxes as intermediate disposal

The Alpine appeal only has reference to the hauling, collection and disposal of solid wastes in Project E-74-13, whereas the Homer Transfer Co. appeal deals with E-74-11 and E-74-12.

3. AS 42.05.701(2)(b) includes within the definition of a public utility the "collecting [off] collection and disposal of refuse, garbage, refuse, trash or other waste material."

This court in *Homer Electric Association, Inc. v. City of Kenai*, 423 P.2d 285, 286 (Alaska 1967), stated that a certificate of public convenience and necessity is a property right and as such is entitled to protection.

facilities to permit forces of through does not the regular customer solid wa

The question of its commercial anyone pollution would idea that meaning w tentation of t enacted? able to find would mean

[1] In it may be certain phrase "collect AS 29.48.033 been stated

It is constructive given a get should be meaning, under reveals otherwise

Given this pre Seventh New defines collect collecting" or lect is defined into one body presented is c was gathered sites and was

To accept th that dumpster dump sites qual lent of final la Borough to pla

4. Record on A

5. E. Bracken Law Southern 4 at 41 (4th ed

facilities to be subsequently transported to permanent disposition sites by its own forces or through a contractor employed through normal contracting procedures does not preempt without compensation the regulated utility function of going to customers for the immediate collection of solid waste.

The question presented to this court is one of statutory interpretation. As one commentator has stated, "[i]t seems that anyone looking for principles of interpretation would first hit upon the rather obvious idea that the statute should be given the meaning which will express the actual intention of the legislator when the law was enacted." ⁵ In this case we have been unable to find any legislative guidance which would illuminate our path.

[1] In the situation at bar the dispute may be centered on the meaning of the phrase "collection and disposal" as used in AS 29.48.033(h) and AS 42.05.221(f). As has been stated, *the best rule of*

It is a basic rule of statutory construction that general words should be given a strict construction, that is, they should be given their fair and natural meaning, unless the statute in some manner reveals that the legislative intent was otherwise.⁶

Given this principle we note that Webster's Seventh New Collegiate Dictionary (1963) defines *collection* as "the act or process of collecting" or "something collected." *Collect* is defined as the "bringing together into one body or place." The fact pattern presented is clear on the point that refuse was gathered at the various intermediate sites and was hence collected.

To accept the lower court's interpretation that dumpsters serving as intermediate dump sites qualify as the functional equivalent of final landfill sites would allow the Borough to place dumpsters in such a per-

vasive fashion as to completely vitiate the requirement of AS 29.48.033(h) and AS 42.05.221(f) that certificate holders be compensated for their interests. Such a result is not a reasonable reading of the statute.

In awarding Alpine Refuse and Homer Transfer their certificates of public convenience and necessity for the collection of refuse, the Alaska Public Utilities Commission, in an order dated February 26, 1974, endeavored to clarify the confusion generated by the legislature's failure to define "disposal," (AS 29.48.033(h) and AS 42.05.221(f)). The Commission found

that disposal in this instance means the act of passing over the control of solid waste to the operators of a disposal site. Hence, the operation of garbage disposal does not constitute a utility service. It is only the passing over of control of solid waste to the disposal site operator which is regulated as a utility function. (emphasis added)

The Commission's apparent anticipation of the Borough's actions went on to state that they considered

drop-boxes and dumpsters which are used as intermediate disposal facilities to be garbage and refuse containers. Thus, in the future the Borough program includes the placement of drop-boxes, large disposal dumpsters, or large disposal containers as intermediate disposal facilities, the Commission is of the opinion that suitable arrangements can be made for the certificated utility in that area to service those facilities.

We agree with the interpretation of AS 29.48.033(h) and AS 42.05.221(f). Therefore, we hold that the borough of Kenai is liable to the appellants for the fair market value of their certificates of public convenience and necessity or that portion of the certificate that would be affected and remand to the superior court for findings as to such value.

4. Record on Appeal, 145.

5. F. Farnsworth, *Interpretation of the Law*, Southern Statutory Codes, 2d ed. 4 at 41, 14th ed. 1970, 150 (Sands 1970).

6. F. Crawford, *The Construction of Statutes*, 34 (1940).

7. Record on Appeal, 145.

8. *Id.* at 26.

CROSS APPEAL

"At the hearing on the parties' cross-motions for summary judgment, cross-appellant Borough made an additional motion for change of venue. Judge Lewis ruled that if both motions for summary judgment were denied, venue for trial would be changed from Anchorage to Kenai. Thus, he denied the motion for change of venue for the purpose of hearing the motions for summary judgment.

[2] Cross-appellants urge that the court erred in failing to grant their motion for change of venue prior to a hearing on the summary judgment motions. Their argument is predicated on AS 22.10.030(d) which states in pertinent part:

Subject to § 49 of this chapter, a trial and any precedent or antecedent hearings in an action shall be conducted in a senate district within the judicial district at a location which would best serve the convenience of the parties and witnesses. However, if there is any part of more than one senate district within the boundaries of a borough, the trial and related hearings shall be conducted within the borough's boundaries at a location which would best serve the convenience of the parties and witnesses. (emphasis added)

That the word "shall" is generally considered to signal a mandate from the legislature is buttressed by its definition in *Balentine's Law Dictionary* (3rd ed. at 1171) that it is

[o]rdinarily, a word of mandate in a statute, the equivalent of "must" where appearing in a statute.

A motion for summary judgment as Professor Wright has written:

9. C. A. Wright, *Law Of Federal Courts*, 441 (2d ed. 1970).

10. Rule 56(c), Alaska Rules of Civil Procedure provides in pertinent part:

Judgment shall be rendered forthwith if the pleadings, depositions and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact, and that any party is entitled to a judgment as a matter of law.

[p]ermits any party to a civil action to move for a summary judgment upon a claim, counterclaim, or cross-claim as to which there is no genuine issue of material fact and upon which the moving party is entitled to prevail as a matter of law. The motion may be made as to all or part of a claim of defense. It may be made on the pleadings or the record or it may be supported by affidavits. The motion strikes at the heart of the claim. In effect it argues that as a matter of law upon admitted or established facts the moving party is entitled to prevail.

It is noted that such a proceeding carries with it the potential final disposition¹¹ of an action; it would appear to clearly qualify as a "precedent or antecedent" hearing as set out in AS 22.10.030(d). As such it should have been conducted in the senate district¹² within the judicial district at a location which would best serve the convenience of the parties and witnesses. In the case presented, the controversy arose in the Kenai Peninsula Borough, the three defendants are all located approximately 11 miles from the courthouse in Kenai and one of the plaintiffs, Homer Transfer Co., Inc. has its principal place of business in Homer, Alaska, which is approximately 90 miles from the courthouse in Kenai.¹³

As we have previously stated with respect to AS 22.10.030(d):

In enacting this provision, the legislature made explicit the fact that its purpose was "to make the administration of justice more accessible to the people of rural areas of the state."¹⁴

Given this legislative intent it follows that AS 22.10.030(d) should be read so as to effectuate its avowed purpose. Therefore, we find that the lower court erred in failing

11. It should be noted that Senate District K and a portion of Senate District S lie within the Kenai Peninsula Borough. Appellants' Brief at 7-8.

12. Record on Appeal 65-66.

13. *Alvaredo v. State*, 480 P.2d 841, 205 n. 40 (Alaska, 1971).

to grant the defendants' motion for change of venue.

[3-5] Prior to the motions for summary judgment, appellants offered to stipulate to venue. However, the court refused. This refusal forced appellants to travel to Anchorage for the hearing on the motions for summary judgment. Appellants brought an action for change of venue and refused upon request to stipulate to change of venue or locality. AS 22.10.030(d) provides that if, for every hearing in a matter, the court is to protect defendants from the expense of traveling to proper venue for having to make a motion is proper. In the present case, appellants made such a motion and the court's failure to grant it is also error. We reverse the lower court's matter to the superior court and award the defendants' costs.

REVERSED and set aside.

ROBIN CURTIS BLAIR, J.

STATE OF ALASKA

No. 17-12-010

Supreme Court

June 1, 1971

By a judgment of the Third Judicial District

1. AS 17.12.010 provides that any person who manufactures or sells a product which is defective or dangerous to the public health or safety shall be liable for damages.

to grant the defendant's motion for change of venue.

[3-5] Prior to the hearing on the motions for summary judgment the defendants offered to stipulate to a change of venue. However, the plaintiffs refused. This refusal forced counsel for the defendants to travel to Anchorage for the combined motions for summary judgment and change of venue. Where a party has brought an action in an improper locality, and refuses upon request of the other party to stipulate to change of venue to the proper locality, AS 22.10.030(d) is circumvented if, for even a hearing disposing of the entire matter, the court assumes venue. To help protect defendants from having their right to proper venue denied, a motion for costs for having to raise a change of venue motion is proper. In the case presented the defendants made such a motion. Given the violation of AS 22.10.030(d), the lower courts failed to grant costs to the defendant as an error. We therefore remand this matter to the superior court for a determination of what costs should have been awarded the defendants.

REVERSED and REMANDED.



Robin Curtis BROWN, Appellant,

v.

STATE of Alaska, Appellee

No. 2522

Supreme Court of Alaska

June 13, 1977

By a judgment of the Superior Court,
Third Judicial District Anchorage P. J. Ka-

1 AS 17.12.010 provides:

"It is prohibited, except as otherwise provided in law, for any person to possess, manufacture, compound, or distribute

lamarides, J., the defendant was convicted, on his plea of guilty to indictment charging unlawful sale and distribution of marijuana and he appealed challenging constitutionality of statute. The Supreme Court held that while prohibition of possession of marijuana in the home for personal use could not be justified, there was no constitutional protection against the buying or selling of marijuana.

Affirmed.

Drugs and Narcotics — 76

While problems caused by marijuana do not present a sufficiently close and substantial relationship to public welfare as to justify prohibition of its possession in the home for personal use, plaintiff could be properly convicted of aiding in the sale of a substantial quantity of marijuana, since neither the Federal nor Alaska Constitutions affords protection for buying or selling the marijuana. AS 17.12.010.

Philip P. Wedner, Drathman & Wedner, Anchorage, and Brian Stortell, Public Defender, Anchorage, for appellant.

Glen C. Anderson, Asst. Dist. Atty. Joseph A. Balfe, Dist. Atty., Anchorage, and Avram Gross, Atty. Gen., Juneau, for appellee.

Before BOOCHEVER, C. J., RABINOWITZ, COSNOR and BURKE, JJ., and DIMOND, J. Pro Tem.

OPINION

PER CURIAM

Robin Curtis Brown pled guilty to an indictment charging him with the unlawful sale and distribution of marijuana. Brown reserved the right to appeal the constitutionality of AS 17.12.010¹. Brown arranged for the sale of two pounds of marijuana by

possess, manufacture, compound, sell, prescribe, administer, dispense, give, transfer, supply or distribute in any manner, a depressant, hallucinogen, potent stimulant drug,

Memorandum

Alaska Court System

TO: Legislative Affairs Agency
Att: Melissa Fouse

DATE : January 7, 1981

FROM: Jeanne R. Martin *JRM*
Secretary to Area Court
Administrator

SUBJECT: Use of Court Facilities

Attached is a form entitled Conditions of Use of Court Facilities, which should be signed and returned to me, at Mail Stop 4100, or Room 241 of the Alaska Court and Office Building. The copy should be retained for your files.

If you have any questions, please do not hesitate to call me at 465-3434.

Please stop at Room 241 on Friday, January 16, to get the key to Room 320.

CONDITIONS OF USE OF COURT FACILITIES

1. No smoking material is permitted in the Courtroom.
2. No food or beverage is allowed in the Courtroom.
3. If borrowed, Courtroom key is to be returned to the Superior Court, Room 241 (or Building Security if after 4:30 p.m.)
4. Lights are to be turned off and all doors locked.
5. Furniture that has been rearranged is to be placed in its original position.
6. No use of Court System recording equipment.
7. Any writing materials, visual aids, or other equipment brought into the Courtroom must be removed.

I have reserved Room 320, Third Floor Grand Jury Room
for government use
(type of activity)

on January 17 and 18, 1981 (Saturday and Sunday)
(date and hours)

I agree to the conditions stated above. I acknowledge
that if one or more of the above described conditions are not
met, I may be denied further use of Court facilities.

Melissa Abur Foure
Name

Legislative Affairs Agency
Title Revision Commission
Organization

Pouch Y
Address

08 JAN 80
Date Signed

Phone Number: 465-3809 (Melissa)

Room capacity: 20 - with large conference table.

Coffee Pot available for your use.



THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT (907) 586-3300

December 9, 1980

The Honorable Arliss Sturgulewski, Senator
Chairman, Title 29 Revision Policy Committee
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

File: Title 29 Revisions

Subject: Recall

Dear Senator Sturgulewski:

At the meeting held by your committee in Fairbanks just before the Alaska Municipal League meeting, a great deal of debate focused on the question of whether the grounds for the recall of a local official should be narrowly or broadly drawn. Mayor Larson requested from me a defense of narrowly drawn grounds and other procedures designed to provide the elected official with some measure of protection. Please consider this letter as that defense.

Many features of our democratic system of government are accepted as basic and necessary to the system. These ascertions are seldom examined critically as it is unpopular and distasteful for any one to seriously undertake criticism of what is popularly perceived to be the underpinnings of our democratic form of government. Recall is one such uncritically examined element of our democratic system of government.

First, we should note that our system of government is not a pure democracy but it is rather a democratic republic. Article IV, Section 4 of the U.S. Constitution guarantees to each state a republican form of government, not a democracy. That Constitution provides for neither an initiative or recall. Throughout the history of the United States, the states themselves have not universally provided for recall.

The upsurge of recall provisions came about during the government reform movement. While recall may be viewed as a procedure which strengthens democratic principles, it clearly accentuates one of the greatest weaknesses of the democratic system - its vulnerability to popular but ill-conceived whims of the public and its manipulation by a minority.

The Greek philosopher who first categorized the various forms which government could take, and who gave democracy its name, rated

democracy rather low as a form of government which would best serve the needs of its subjects. Being subject to the whims of a relatively uninformed populace made a democracy ill suited to consistently serve the needs of the public. The Federalist Papers and the U. S. Constitution clearly show that the thoughtful leaders of our country who drafted our Constitution had severe reservations about the democratic form of government and sought to overcome those perceived deficiencies. They provided us with an electoral college which, they hoped, would have the collective wisdom necessary to select a statesman worthy and capable of discharging the duties of President of the United States. They did not provide for his direct election by the populace as would have been the more "democratic" method. They provided us with two houses of Congress, one of which would be based upon population and which might reflect popular sentiment and a second house which would provide equal representation to all the states. This second house, it was hoped, would provide the mechanism for preventing the enactment of popular but ill-conceived measures. A further check upon both of these houses was given to the President who could veto measures he believed were inappropriate. The drafters of our Constitution believed that these and other checks, along with the probability that various interest groups would form different coalitions on different measures, would combine to overcome one of the more serious defects of the democratic form of government. They apparently did not feel that recall was either necessary or desirable. In fact, I suggest that the "open season" type of recall which has been proposed for Title 29 is contrary to the very principles which are reflected in our Constitution and the philosophy of those who drafted it.

Under our republican form of government, an elected official does not serve as a mere extension or agent of those who elected him. The elected official is expected to exercise his informed and considered judgment in providing for the public good. If it were reasonable to believe that the public could become adequately informed on all the public issues which face a legislative body, then it might also be reasonable to assume that the general public could also function in the manner of a town meeting and decide all public issues. Because few of us are able to devote the time necessary to become so informed, we delegate to our elected officials the responsibility to become adequately informed and to make decisions as to the public needs. If the public is dissatisfied with a policy decision made by public officials, the initiative and referendum may be used to correct what are perceived to be errors of decision making. When recall is used in such cases, it is not corrective in nature, it is vindictive and punitive.

As already noted, recall was a concept which became popular during the reform era. It was aimed not at governmental bodies which had

made decisions which were unpopular with various segments of populace but was aimed at corrupt individuals. The public good demands that persons be removed from office who are corrupt or dishonest in office, who fail to perform prescribed duties of the office or who are physically unable to perform the duties of the office. If there is no administrative or judicial procedure for removing such persons from office, it would be appropriate to provide a method for the electorate to effect such a removal. However, any such system should be strictly limited to removals for corruption, dishonesty affecting the public good, and inability or refusal to perform the duties of the office. It would be an abuse of the recall mechanism to permit recall of an elected official merely because the official had participated in making a decision which was unpopular with a large segment of the public. Any controversial matter is likely to be unpopular with a large segment of the public and public officials should not have the threat of recall hanging over their heads whenever their honestly held convictions compel them to vote in a certain manner. Unfortunately, a review of recall efforts will reveal that most, if not all recall efforts, are actually based upon an action taken by the entire body and have little or nothing to do with any of the legitimate grounds for recall. To make matters worse, the proponents of the recall often resort to slander or grossly exaggerated accusations in their recall petition.

It cannot be denied that there is currently a movement in the direction of single issue politics. When there are groups about which openly flaunt their "hit list," it behooves us to examine the elements of our political system in light of this new phenomenon. A recall provision which requires merely that someone be dissatisfied with an elected official's performance amounts to a declaration of open season on all elected officials. If the recall mechanism can be called into play for essentially no reason at all, the quality of persons who will run for public office will suffer as will the basic decision making process itself. At the municipal level, once a recall petition has been placed in circulation, and even more so after it has been filed, the proponents of the recall often become very forceful and vocal in airing their belief that the governing body should cease making important decisions until after the recall matter has been settled. As local elected officials are not insensitive to public demands, such demands do have an impact on the elected body. Unnecessary delay in decision making coupled with an overemphasis on the recall petitioners' position on matters before the body may combine to produce results which are not in the best interest of the public. The tension and turmoil which a recall petition creates within the elected body and the community is an undesirable but, nevertheless unavoidable, effect of a recall attempt. Therefore, every effort should be made to minimize the unnecessary exposure of a municipality to these effects. The "open season" type of recall will serve to maximize the number of occasions upon

which the local government will experience these effects. These negative effects can be minimized without destroying the right of recall if the grounds for recall are narrowly drawn to limit them to matters such as corruption in office and inability or refusal to perform the functions of the office. Not only does this narrow the grounds to those which are truly relevant to the purpose of recall but it also would reduce the ease with which a recall effort could be mounted against several members of a governing body based upon the way the body had voted.

Not only must the grounds be drawn narrowly to insure that the recall mechanism is not abused but the recall system should clearly provide for judicial review of the grounds stated. Failure to provide a clear right of judicial review renders the requirement for clear and narrow grounds a nullity.

Before any group should be permitted to force the public to undergo the expense of an election, there should be a very substantial showing that the public is indeed interested in voting on the proposed issue. Therefore, there should be a substantial signature requirement. Under state law, those seeking a recall petition for a state official must first submit an application containing the signatures of at least 10% of those who voted in the last election in the relevant district. If the Lieutenant Governor determines that the application is sufficient, a petition is issued and the petitioners must then obtain signatures equal to at least 25% of those who voted in the last general election in the relevant district. Thus, at the state level the legislature has provided for a recall system which places a significant burden upon the petitioners and thus may well filter out most of those recall efforts which would be unsuccessful. In addition, the grounds for recall (lack of fitness, incompetence, neglect of duties, and corruption) are all narrow enough that the political philosophy or the way a person voted would not be a sufficient basis for a recall. Further, the legislature has clearly provided for a mechanism for judicial review of a determination by the Lieutenant Governor.

Recall is not a matter to be taken lightly and is not one which should be easily initiated or carried out. A political system which provides for the relatively easy recall of an elected official for reason of the way that official voted on a particular matter is a system which has lost one of the essential characteristics of our republican form of government. We should not cater to the fickleness of the electorate if to do so would tend to reduce the effectiveness of local government without some significant, compensating good. Our system of government will function most smoothly, most effectively and for the benefit of the general good if we provide for a recall system with narrowly drawn grounds and with other mechanisms which are designed to prevent the abuse of the recall system. The "open season" system brings with it disruptions

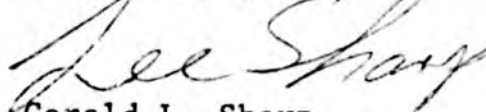
Senator Sturgulewski

-5-

December 9, 1980

which serve no legitimate or public purpose. The "open season" approach should be abandoned.

Very truly yours,



Gerald L. Sharp
City-Borough Attorney

GLS:jr

cc: Mayor Ron Larson
Mat-Su Borough

✓ Tam Cook, Esq.
Legislative Affairs



THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT (907) 586-3300

December 9, 1980

The Honorable Arliss Sturgulewski
Senator, State of Alaska
Chairman, Title 29 Revision Policy
Committee
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

FILE: Title 29 Revisions

SUBJECT: Initiative and Recall

Dear Senator Sturgulewski:

In reviewing the changes which the Policy Committee made to the proposed initiative and referendum proceedings, I note that a municipality will now be required to hold special elections for initiatives. Present law requires that initiatives be filed within 90 days of the next regular municipal election. This requirement eliminates the need for the municipality to ever have to hold a special election on an initiative. However, there seems to be little reason not to allow petitioners to file an initiative at any time they please so long as the municipality is not required to undergo the expense of special elections. It was this approach which the Technical Committee suggested.

The Legislature has seen fit to provide an initiative procedure at the state level which does not permit the filing of an initiative petition to generate the requirement for a special election. Further, an initiative petition could be filed with the State and not be placed on the ballot for almost two years. Municipalities have elections each year. If they are required to place initiatives on the next occurring regular or special election, initiatives at the local level will be voted on, in all cases, much more quickly than at the State level. If the State cannot be put to the expense of a special election for an initiative, it seems inappropriate to force municipalities to undergo the expense of special elections for initiatives.

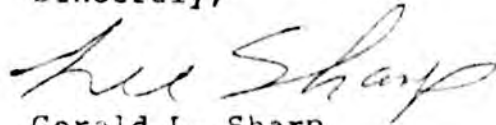
I also believe that if a referendum is filed, no special election should be held unless the referendum has been filed in such a

December 9, 1980

manner that the effect of the measure to be referred is suspended.

For the foregoing reasons, I strongly suggest that the Committee consider changing the election requirements for initiative and referendum to provide that initiatives are placed on the first regular or special municipal election held not sooner than 75 or 90 (or some other reasonable time) days after the initiative is submitted to the Legislative body. I would suggest that a referendum be treated in the same manner unless the filing of the referendum operates to effect a suspension of the matter to be referred. In such cases, a special election should be held if required.

Sincerely,



Gerald L. Sharp
City-Borough Attorney

GLS:phl

cc: ✓ Tam Cook, Esq.
Legislative Affairs

Approved w changes - Jan 11-18 meeting, Policy Group

TITLE 29 REVISION COMMISSION
Policy Advisory Group Meeting

Minutes of December 15, 16, & 17, 1980

The fourth meeting of the Policy Advisory Group - Title 29 Revision Commission was held December 15, 16, & 17, 1980 in the Adventure Room of the Captain Cook Hotel, Anchorage, Alaska. The meeting was called to order by Senator Arliss Sturgulewski, Chairman, at 9:00 a.m.

Present as members of the Policy Advisory Group were: Senator Arliss Sturgulewski, Senator-elect Charles Parr, Representative Margaret Branson, Ted Berns, Terry Cook, Marilyn Dimmick, Ronald Larson, Gene Moore, Russell Walker, James Kohler and Jonathan Solomon. Present substituting for Ex-Officio members were Patrick Poland for Palmer McCarter and Marilyn Miller for Ginny Chitwood. The Technical Committee was represented by Ted Berns and Russell Walker as members of both groups. Present from the staff of Legal Services was Tamara Brandt Cook, Legislative Counsel.

Guests and members of the public attending were: Stephanie Scott, Haines Borough; Cris Fowler, AOGA; Robert Walker, Exxon; Carl Mogli, Napakiak; David Dye, Community Planning, Department of Community and Regional Affairs; and Jim Gottstein.

There were no presentations by guests or members of the public.

Chairman Sturgulewski reported on attending the meeting of the Rural Development Council. She says they are concerned with the definitions of "rural" and the relationship of rural communities with Title 29.

The chair requested copies of the Alaska Municipal League Policy Statement issued as a result of its November convention in Fairbanks.

The minutes of the previous meetings were approved as distributed with no corrections or additions.

Under Old Business, Patrick Poland reported that the news release prepared by Legal Services had been distributed and was expected to appear in the December issue of the RuralCAP newsletter. The newsletter distributed by the University of Alaska at Fairbanks was not expected to be published in December but the news release would be included when it was published.

The subcommittee report regarding AS 29.09.180 (Organization Grants) as postponed due to Marilyn Dimmick not being present.

The subcommittee report on AS 29.30.040 (Voter Qualification) was postponed to 17 December.

Title 29 Revision Commission
Minutes of Meeting
15, 16, & 17 Dec 80

Ted Berns reported on the Technical Committee's three day meeting saying they had covered a great deal of material in those three days and he hoped that the Policy Group would be able to review all the material produced by that meeting.

Tamara Brandt Cook reported on the format of the presentation of the bill. She said that a draft would be prepared, going first to the revisor of statutes, then to the legal editor and would then be put into final form for presentation to the rules committee for introduction into the legislature.

Turning to the proposed drafting changes submitted by the Technical Committee, it was agreed that the original motion to approve all changes unless otherwise noted would be held in force.

Approved by the Policy Group without changes were: AS 29.24.050, 29.24.125, 29.24.160, 29.24.206, 29.24.210, 29.24.240. Approved with minor wording changes were: AS 29.24.140, 29.24.145, 29.24.150, 29.24.175, 29.24.200, 29.24.250. Sections with substantive changes made by the Policy Group were: AS 29.24.170 and 29.24.205.

The meeting was recessed at 4:30 p.m. until 8:30 a.m. 16 December.

At 8:30 a.m. the meeting was called to order at the Captain Cook Hotel in the Quarterdeck 19 conference room. Policy Advisory Group members attending were: Senator Arliss Sturgulewski, Senator-elect Charles Parr, Representative Margaret Branson, Ted Berns, Terry Cook, Marilyn Dimmick, Ronald Larson, Gene Moore, Russell Walker, and Jonathan Solomon. Representing Ex-Officio members were Patrick Poland for Palmer McCarter and Marilyn Miller for Ginny Chitwood. Guests and members of the public attending were Stephanie Scott, Haines Borough; Robert Walker, Exxon; Cris Fowler, AOGA; David Dye, Community Planning, Department of Community and Regional Affairs, and Carl Mogli, Napakiak.

There were no presentations by guests or members of the public.

Approved by the Policy Group without changes were: AS 29.24.160, 29.24.200(e), 29.24.210, 29.24.390, 29.24.430, 29.24.450, 29.24.480, 29.24.510, 29.24.515, 29.24.570, 29.24.620, 29.24.630, 29.24.640, 29.24.670, 29.33.030, 29.33.190, 29.33.210, 29.33.220, 29.42.020, 29.42.030, 29.42.060, 29.42.070, 29.42.085, 29.42.090, 29.42.100, 29.42.115, 29.42.120, 29.42.130, 29.42.150. Accepted by the Policy Group with wording changes were: AS 29.24.010, 29.24.530, 29.24.680, 29.24.690, 29.33.090, 29.42.010, 29.42.050, 29.42.080, 29.42.160. Sections with substantive changes made by the Policy Group were: 29.24.420, 29.33.010, 29.33.020, 29.33.070, 29.33.130, 29.33.140, 29.33.150, 29.33.160, 29.33.200, 29.29.060, 29.42.040. A drafted section sent back to the Technical Committee for further review was 29.42.040. Drafted changes not accepted by the Policy Group were AS 29.33.120 and 29.33.110.

Title 29 Revision Commission
Minutes of Meeting
15, 16, & 17 Dec 80

Section 29.39.060 (Planning & Land Use Regulation) was earmarked as a policy issue to be reviewed later.

The meeting was recessed at 4:30 p.m. due to lack of a quorum.

At 8:30 a.m. 17 December 1980 the Policy Advisory Group meeting was again called to order in the Captain Cook Hotel, Quarterdeck 19 conference room. Members attending were: Senator Arliss Sturgulewski, Representative Margaret Eranson, Ted Berns, Terry Cook, Marilyn Dimmick, Ronald Larson, Gene Moore, Russell Walker, and Jonathan Solomon. Representing Ex-Officio members were Patrick Poland for Palmer McCarter and Marilyn Miller for Ginny Chitwood. Guests and members of the public attending were Stephanie Scott, Haines Borough; Robert Walker, Exxon; Cris Fowler, AOGA; Carl Mogli, Napakiak; David Dye, Community Planning, Department of Community and Regional Affairs; and Timothy Troll, City Manager of St. Mary's. John Messenger represented the Technical Committee briefly, explaining the changes to the sections regarding bonding.

Sections accepted without changes by the Policy Advisory Group were: AS 29.39.060, 29.39.070, 29.39.080, 29.45.010, 29.45.020, 29.45.050, 29.45.100, 29.45.140, 29.45.150, 29.45.220, 29.45.240, 29.45.250, 29.45.260, 29.45.300, 29.45.310, 29.45.320, 29.45.400, 29.45.410, 29.45.440, 29.45.450, 29.45.460, 29.45.570, 29.45.590, 29.48.010, 29.48.020, 29.48.030, 29.48.040, 29.48.050, 29.48.060, 29.48.070, 29.48.080, 29.48.090, 29.48.105, 29.48.115, 29.48.120, 29.51.280, 29.51.340, 29.51.370, 29.51.390, 29.51.420, 29.51.430, 29.51.440, 29.51.250, 29.51.380, 29.51.370, 29.51.050, 29.51.150, 29.51.305, 29.51.240, 29.51.350, 37.30.100. Sections accepted with wording changes were: AS 29.27.080, 29.36.170, 29.36.270, 29.45.210, 29.51.410. Sections accepted with substantive changes made by the Policy Group were: AS 29.45.030, 29.45.545. Sections not accepted were AS 29.45.030 and 29.48.090. A section sent back to the Technical Committee for new language was 29.45.610. The Policy Group moved to repeal AS 29.45.060.

The chair directed the Technical Committee to review the following: Can a city be inside/a part of a service area? Staff is to review service area language throughout the Title. The Technical Committee is to bring back wording to allow the transition from any class of ~~city~~ ^{municipality} to Home Rule.

Stephanie Scott representing the Haines Borough spoke in defense of third class boroughs. The Haines Borough objects to the recommendation that third class boroughs be eliminated. She distributed a letter from the mayor of the Haines Borough asking what the basis for the recommendation was. The Haines borough wants a list of the reasons for the elimination of the third class borough. Marilyn Miller said that the Alaska Municipal League concurred with the elimination of third class boroughs, or at least opposed the formation of any more third class boroughs. The City of Haines also concurs with the elimination of third

Title 29 Revision Commission
Minutes of Meeting
15,16, & 17 Dec 80

class boroughs. Ted Berns made a motion that the Policy Group go on the record as concurring with the Alaska Municipal League's position that third class boroughs be eliminated. The motion carried. The chair directed the Technical Committee to draft language which eliminates the formation of third class boroughs but which does not alter the status of the Haines Borough.

The question of Organization Grants is to be held for the next meeting of the Policy Group.

The chair directed the Department of Community and Regional Affairs to look into dissemination of information regarding non-taxable property to state assessors.

Tim Troll says the 14c3 negotiations are affected by the current municipal properties statute and approves of the recommended change.

The dates of the next Policy Advisory Group meeting were set for the 17th and 18th of January, 1981 in Juneau. The Technical ~~Group~~ will have one more meeting as well.

Committee

The meeting was adjourned at 4:30 p.m. 17 December 1980.

*No
change*

Respectfully submitted,



Melissa Aber Fouse
Secretary, Title 29 Revision Commission

AGENDA

TITLE 29 REVISION COMMISSION Policy Group Meeting

January 17th:

1. Introduction of guests and members of the public attending.
2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.
 - a. Presentation by Larry Kimball, Director, Division of Community Planning, Department of Community and Regional Affairs: "Planning for Small Communities."
3. Old Business:
 - a. Approval of Minutes.
 - b. Report by subcommittee chairman on AS 29.09.180. (Organizational Grants).
 - c. Report by subcommittee chairman on AS 29.30.040 (Voter Qualifications).
 - d. Presentation of proposed drafts by the Technical Committee.
 - e. Other Old Business.
4. New Business:
 - a. Presentation of proposed items for consideration by members of the Policy Advisory Group.
 - b. Presentation of proposed items for consideration by Ex-Officio Members.
 - c. Presentation of proposed items for consideration by the Technical Revision Committee.
 - d. Other new business.

January 18th:

1. Introduction of guests and members of the public attending.
2. Presentations by guests and members of the public of areas of concern or proposed items for consideration.
3. Old Business.
4. New Business.

HAINES BOROUGH

P.O. BOX H
HAINES, ALASKA 99827
(907) 766-2711

January 5, 1980

Tamara Cook
Legislative Affairs
Pouch Y
Juneau, Alaska 99811

RE: Title 29 Revisions with respect to a third class borough

Dear Tam:

Now that the Commission has agreed to "grandfather" the Haines Borough we need to look at the statutes and revisions to the statutes which are a problem for the third class borough and which, in some cases, just forget the third class borough.

First of all, we suggest that you simplify 29.41.020 Assembly to Serve as School Board by striking the sentence "Where applicable weighted voting shall apply to board decisions." This sentence is profoundly misleading because weighted voting is prohibited by AS 29.23.021(c).

In order to assert the applicability of 29.48.010 General Powers to the third class borough, we suggest that a sub-section (e) be added to 29.41.010 stating that the general powers conferred by 29.48.010 apply to the third class borough. This would clarify the question posed by Marie Matsuno in her letter of 9/4/80 to Jon Halliwill, Mayor, City of Haines, as to whether the general powers are applicable to the third class borough area-wide or only on a specifically granted service area basis. We believe that our interpretation of 29.48.010 as applicable to the third class borough carte blanche is in line with the interpretation provided in Femmer v. City of Juneau 9 Alaska 175(1937) as foot noted in the present Title 29.

During the revision process I noticed that the third class borough seems to be at odds with 29.33.310 (new section 29.23.420) School Boards. This section states that all board members are elected at large. As you know, the third class borough assembly is the school board. The assembly may elect to be composed other than at large as outlined in 29.23.023 Composition and Form of Representation. It seems that neither the existing 29.23.310 nor the revised version recognize the special relationship between the third class borough assembly and the school board. Does the statement in 29.41.020 that the third class borough assembly is the school board supercede 29.23.310 which mandates an at large election

Tamara Cook

January 5, 1980

of school board members or is it necessary to write a clarifying subsection to 29.23.310 indicating that the members of the third class borough school board are the members of the assembly and are elected and composed in accordance with 29.23.023 for assemblies. I would appreciate it if you would take a look at this situation.

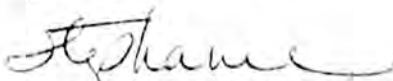
For ease of use, new section 29.24.240 Veto should contain a subsection (e) stating that the mayor of a third class borough has no veto power. The mayor is denied the veto power in 29.41.020 (old section number).

Similarly, in new section 29.24.150 Procedures of Legislative Bodies the first sentence should read

...except that in a borough which has adopted the manager form of government under AS 29.25.550, or in the third class borough, the mayor serves as presiding officer.

Thank you for looking at these four items. See you in Juneau on the 17th.

Sincerely yours,


Stephanie K. Scott
Administrative Secretary

Received 7/10
cc Policy Group

WINGREN ENTERPRISES

(907) 225-4365
P.O. BOX 5197
KETCHIKAN, ALASKA 99901

10 January, 1981

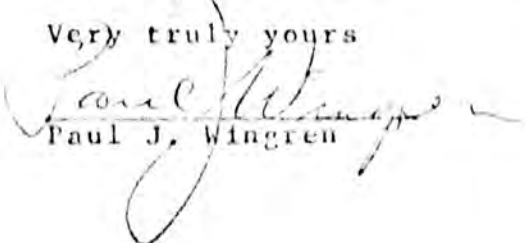
Senator Arliss Sturgulewski
Alaska State Senate
Pouch V, State Capitol Building
Juneau, Alaska 99811

Dear Senator Sturgulewski

I quote Alaska Statute 29.53.025. It reads, in part as follows:
(b) Municipalities may by ordinance
(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certified net tonnage; a tax based upon a tonnage valuation shall not exceed \$5 a year for a boat or vessel of less than five net tons and shall not exceed \$15 a year for a boat or vessel of more than five net tons;

The City of Ketchikan and the Ketchikan Gateway Borough has chosen to listen to the hue and cry from boat owners that if their taxes are increased, they will take their boats and their business elsewhere. I, along with numerous other taxpayers feel that boats should be taxed on assessed valuation, the same as other real property, including airplanes. It is very unlikely that our local government will change to assessed valuation, as long as they have another option. It is also very unlikely that our local state legislators will ever push to amend the state law to make taxation on assessed valuation mandatory. I therefore appeal to you, whom I understand has given this matter some study, to introduce such legislation.

Very truly yours


Paul J. Wingren

Received 7/14 cc Policy Group

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

**DEPT. OF COMMUNITY &
REGIONAL AFFAIRS**
DIVISION OF LOCAL GOVERNMENT ASSISTANCE

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4707

July 15, 1980

Haines Borough Assembly
Box H
Haines, Alaska 99827

Dear Assembly Members:

Title 29, which contains the Alaska Statutes on municipal government, specifies that the mayor of a third class borough must be elected at-large for that position. An assemblyman cannot assume the position of mayor since the assemblyman was elected as a voting member of the borough's governing body and the mayor cannot vote. Each assembly member elected to that position has an obligation to vote.

As the mayor of a third class borough cannot vote or exercise the veto power, the assembly need not be concerned about affecting the present borough apportionment by the election of a mayor in addition to the assembly members. There would be no change to the present apportionment.

These comments are offered for your consideration as the Haines Borough prepares for its regular election this fall.

Sincerely,


Palmer McCarter
Director

PMc:MF:jh

cc: Stephanie Scott, Haines Borough
Thomas Flanton, Borough Attorney

Received 7/17/80 SKS

10-1-

MEMORANDUM

FROM: FOLTA & ASPER, Borough Attorneys

TO: HAINES BOROUGH ASSEMBLY

RE: Voting By Borough Mayor

DATE: September 18, 1973

A question has come up under the new municipal code regarding the vote of the Borough Mayor in a Third-class Borough. Third-class Borough questions are difficult to resolve because Chapter 41 of Title 29, which refers to them, only briefly indicates what they can and cannot do. For questions not answered in Chapter 41 we assume that provisions governing First and Second class boroughs apply. The fact that Haines is the only Third class Borough in the state means that no guidance can be had on these questions from the experience of other municipalities in Alaska.

At the present time the assembly has chosen a mayor from among its members and the mayor is following section 29.23.160 which says that the mayor shall participate in assembly decisions but may not vote. Since Mr. Olerud, the present mayor, is a representative of the city of Haines he carries a weighted vote which is lost to city voters by his seeming inability to use it. Although to date the Mayors' non-voting has not affected the outcome of borough consideration on any matter, it is quite possible that this could happen in the future.

After reading the statutes it seems apparant that the problem lies in the fact that the mayor is also a member of the assembly. We have concluded, and our conclusion is agreed on by attorneys in the Local Affairs Agency, that the new municipal code

-

requires that there be a borough mayor, even in Third-class Boroughs, but that the mayor be a separately elected official, who is not a member of the assembly (Section 29.23.130). This official would be elected at large in the Borough and would be the chief administrator for the Borough, but would not vote. In a first or second class Borough the Mayor has a veto power to overrule the assembly, but this power is specifically denied the mayor in a third class Borough. (Section 29.41.020) The Assembly would continue in its present form but would choose a presiding officer to manage assembly meetings. (Section 29.23.060 (b))

Our recommendation at this time is that a Borough Mayor be elected in the Haines Borough whenever possible and in the meantime that Mr. Olerud resume voting with the understanding that his office is really that of Presiding Officer of the Assembly rather than the Borough Mayor as contemplated by the municipal code.

We would point out that the Borough Mayor scheme was primarily written into the municipal code for the use of the larger First and Second class Boroughs and may be too much government for this Third Class Borough, which is operating in good order now without a separately elected mayor. If the Borough must elect a mayor, as the statute seems to require then perhaps this presents a good opportunity to once again consider alternate forms of government for this area. The third class Borough has some very good points but this question and others indicate that it is a sort of Legislative afterthought which will continue to present problems which were never considered by the lawmakers when they enacted the municipal code.



received Jan 14/1981
cc: Policy Group

City and Borough of Sitka

P.O. BOX 79 · SITKA, ALASKA · 99835

January 13, 1981

Mr. Steve Van Sant, President
Alaska Assoc. of Assessing Officers
c/o Matanuska-Susitna Borough
Box B
Palmer, Alaska 99645

Re: Chapter 45
Municipal Taxation

Dear Steve:

I have reviewed the above draft and had our Municipal Attorney review it also. The following comments are submitted for your review and pass through to the legislative committee.

- P. 119 - Line 13 - "Exclusive for classroom space" - Amongst the various exempted uses, the above single use of any space appears unworkable.
- P. 129 - Line 29-30 - Assessor seek production of records? What records?
- P. 132 - Line 17 - "Which are consistent with general rules of administrative procedure." It appears to us that this ambiguous wording opens the door to suit by claim of "rules". This section should be specific.
- P. 134 - Line 18 - 20%
Line 26 - 10% Should these not be the same?
- P. 141 - Line 23 - "His assigns". We have had problems with this one where a person pays \$1.00 or \$2 for releases from old, old property foreclosed against then claims the property for only \$80 - \$60 back taxes. We feel this will specifically create problems unless a definite time period placed in this section. It has happened to us in Sitka. It could certainly happen elsewhere! Perhaps the way to handle it would be to add a paragraph "c" between lines 6 & 7 on page 142, to read;

January 13, 1981

- (c) the right of the former owner and his assigns to repurchase the property ceases 10 years after the end of the redemption period.

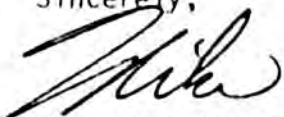
Page 143 - Line 21 - 15% interest. Paragraph (b) states if a remittance is made by a taxpayer even through error, the Borough must refund at 15% interest. Doesn't this open the door to allow deliberate over-payment to get 15% - that's better than any bank, time C.D., etc. Maybe I'm getting paranoid, but that seems like opening Pandora's Box. We need some sort of limitation clause.

Page 145 - Lines 4-7. Should also include a late filing penalty the same as real/personal property taxes.

Page 145 - Line 10 - Should include a statement--on that or any other property or item owned by the same person. This would make it clear a lien would not be just on specific property taxes not paid on, but could hamper other property. We have had instances where persons specifically attempt to apply taxes to only partial holdings rather than the total obligations.

Thank you for the opportunity to comment.

Sincerely,



Michael Schmidt
Planning Director/Assessor

cc: Fermin Gutierrez
Peter Hallgren
Earley - State Assessor
Tom Cook, Leg. Affairs
MIKE WORLEY

— Real/Personal prop near during back sessions - how they differ

— relationship between H.R. boroughs and cities - should they be limitations.

Femmes v City of Juncos 9 AK 315

3rd class borough veto problem

Letters from Stephanie Scott, Palmer McCarter

29.24.240. VETO. (p. 60 wk Draft)

(a) the borough mayor may veto any ordinance, resolution or other action of the assembly

"borough" subsequently defined to include 3rd class, making this apply.

29.36.240. ASSEMBLY TO SERVE AS SCHOOL BOARD.

(p 106) "The borough executive has all powers of a borough executive except on the veto power."

Does this apply only when executive is acting as president of the school board?

Home Rule limitations - Rogers MacLain, City Manager, Barrow
Should more sections bind home rule boroughs in their relationship with cities?

per Ted
yes
no
no
no

29.33.030 - 29.36.050, 100 - Assessment & Collection.

29.33.110 29.42.050 Board of Adjustment

29.53.520 29.45.450 Rent & Borough of City

city should have authority to bind H.R.

Taxes

29.45.010. General property tax. "A tax if levied on real and personal property must be assessed, levied and collected as provided in this chapter."

Changes H.R. 3 Approved Change...

"A tax if levied on real property, personal property or both must be assessed, levied and collected as provided in this chapter." This may be a substantive change.

29.45.010.29.45.020

29.45.010.29.45.020
personal property