

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86/2

734 SCOM123: TITLE 29 POLICY REVISION ADVISORY COMM. 1980

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

October 2, 1980

SUBJECT: Proposed drafting change
TO: Policy Group
Title 29 Revision Commission
FROM: Tamara Brandt Cook
Legislative Counsel *TBC*

This is a proposed technical revision of AS 29.53.020 dealing with exemptions from property taxation but containing no important substantive legal changes. However, I wish to alert you to a change which may have some substantive impact.

AS 29.53.020(e) currently contains the language

Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall between or among themselves which shall receive the benefit of the exemption.

This sentence has been in subsection (e) since 1972, but its meaning is unclear. I checked with Mr. Lee Sharp, Municipal Attorney for Juneau, and Mr. Terry Early, State Assessor regarding the meaning of this provision. Both of them agreed with me that the section is unclear and Mr. Early advised me to check with an assessor to see how it has been applied in the field. I contacted Mr. Bob Howe, Juneau assessor, and he informed me that the sentence in question has been ignored as a practical matter. I also checked with the Department of Revenue and was informed that they rely upon information supplied by the boroughs in determining the amount of the state rebate, and therefore have not been interpreting this sentence themselves. Consequently, I have deleted this sentence from this draft.

Policy Advisory Group
Page 2
October 2, 1980

Please let me know of any changes which you would like me to make in this draft.

TBC:maf

Enclosure

Sec. 29.53.020. REQUIRED EXEMPTIONS. (a) The following property is exempt from the property tax:

(1) municipal, state, or federal property, except that a private leasehold, contract, or other interest in the property is taxable to the extent of the interest;

(2) property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes including the following property owned by a religious organization:

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

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

(C) a lot supporting and adjacent to a structure set out in (A) or (B) of this paragraph which is necessary to use of the structure;

(D) a lot required by ordinance for parking near a structure set in (A) of this paragraph;

(3) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of the organization;

(4) household furniture of the head of a family or householder not exceeding \$500 in value;

(5) money on deposit;

(6) inventories located within a foreign trade zone established under AS 45.77.010, before those inventories are cleared by the United States Customs Service and admitted into domestic commerce;

(7) the real property owned and occupied as a permanent place of abode by a resident 65 years of age or older, including a mobile home whether classified as real or personal property for municipal tax purposes; and

(8) a structure containing a fire protection system approved under AS 18.70.081, in operating condition, and incorporated as a fixture or part of the structure.

(b) Property described in (a) of this section from which income is derived is exempt only if that income is

solely from use of the property by a nonprofit religious, charitable, hospital, or educational group for classroom space.

(c) Property exempted from execution under the Code of Civil Procedure (AS 09) is not exempt from municipal taxes.

(d) An exemption may not be granted except upon written application on a form prescribed by the state assessor for use by local assessors. A claimant must file the application no later than January 15th of the assessment year for which the exemption is sought, but during that year the governing body of the municipality for good cause may waive the claimant's failure to make timely application for the exemption and authorize the assessor to accept the application. If an application is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If failure to file by January 15th of the assessment year is waived and the application is approved, the amount of tax which a claimant may have already paid for the assessment year for property exempted shall be refunded. The assessor may require proof at any time of the right to and amount of an exemption claimed. A claimant must file a separate application for each assessment year in which an exemption is sought.

(e) Real property which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption under (a)(7) of this section may not be exempted.

EXEMPTIONS
Tamara Brandt Cook

The determination of the assessor is appealable under AS 44.62.560 - 44.62.570. The state shall reimburse a borough or city for the real property tax revenues lost to it by the operation of (a)(7) of this section. However, reimbursement will be made only to the extent that revenue lost exceeds an exemption which was granted by the borough or city or which, upon application, would have been granted under AS 29.53.025(a).

(f) The exemption granted by (a)(8) of this section is limited to:

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

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

(g) Except as provided in (e) of this section, nothing affects similar exemptions from property taxes granted by municipalities on September 10, 1972.

and by Technical Staff 10/20/80

STATE OF ALASKA

THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

September 26, 1980

SUBJECT: Proposed drafting changes

TO: Advisory Policy Committee -
Title 29 Revision

FROM: Tamara Brandt Cook
Legislative Counsel *TBC*

As noted in several of the comments submitted to the Advisory Policy Committee, the status of an ordinance between the time of adoption and the time of veto is unclear in the current statutes. This draft contains several substantive legal changes which would clarify this situation.

1. An ordinance takes effect 30 days after adoption or at a later date specified in the ordinance. Currently the statutes are unclear as to when an ordinance is effective. The 30 day period, could, of course, be shortened or lengthened.
2. Copies of the ordinance are to be made available within five days. Currently, there is no time period designated and the statutes merely indicate that copies of an ordinance are to be made available. The five day period, could, of course, be lengthened or shortened.
3. In order to go along with the first two proposed substantive changes, I have added a requirement that ordinances be vetoed within 30 days. The existing law gives no time frame within which a veto must be exercised.
4. In the case of a veto, the mayor must immediately submit a statement advising of the veto and giving reasons. Under existing law, the mayor is required advise of a veto during the next regular meeting of the assembly or council. Since an assembly or council may not meet very often on a regular basis, I feel that the assembly or council ought to be

informed of a veto so that it can call a special session to attempt to override it.

5. An emergency ordinance is immediately effective after adoption, which appears to be the case under existing law. If vetoed, it ceases to be effective immediately and a veto may not be overridden. Since it takes a larger majority to pass an emergency ordinance than to override a veto, absent this provision, it appears that a veto could always be overridden. The assembly or council would still have the alternative of passing an ordinary ordinance, should an emergency ordinance be vetoed.

6. Copies of emergency ordinances are to be made available within 24 hours after adoption. The current law provides that copies be made available without specifying a time period for compliance.

In addition to the substantive changes mentioned above, this draft constitutes a complete technical revision of the sections. Section numbers match the numbers as they currently exist in Title 29.

Please let me know whether this approach appears satisfactory. I would be glad to make any desired changes to this draft.

TBC:ljb

Enclosure

Sec. 29.23.170. VETO. (a) Except as provided in (b) and (c) of this section, the borough mayor may within 30 days veto any ordinance, resolution, motion or other action of the assembly and may strike or reduce items in appropriation ordinances except for school budget items. He shall immediately submit to the assembly a written statement advising of his veto and giving his reasons. A veto may be overridden by two-thirds of all the votes to which the assembly is entitled on the question, except that a veto of an emergency ordinance may not be overridden.

(b) A borough mayor may not veto actions of the assembly taken under AS 29.23.130(d) or actions of the board of equalization and the board of adjustment.

(c) The mayor of a third class borough may not veto actions of the assembly taken in its capacity as school board.

Sec. 29.23.260. VETO. (a) The mayor of a first class city may veto within 30 days any ordinance resolution, motion, or other action of the council and may strike or reduce items in appropriation ordinances except, in a city outside an organized borough, for school budget items. He shall immediately submit to the council a written statement advising of his veto and giving his reasons. A veto may be overridden by two-thirds of all the votes to which the council is entitled on the question, except that a veto of an emergency ordinance may not be overridden.

(b) The mayor of a second class city has no veto power.

Sec. 29.48.130. ACTS REQUIRED TO BE BY ORDINANCE. In addition to other actions which, by law, are required to be by ordinance, the assembly or council of a municipality shall use ordinances to

- (1) designate the borough seat;
- (2) establish, alter or abolish a municipal department;
- (3) fix the compensation of members of the assembly or council;
- (4) approve the transfer of a power to a borough from a city;
- (5) provide for the levying of taxes;
- (6) provide for the retention or sale of tax-foreclosed property;
- (7) make an appropriation, make a supplemental appropriation or transfer an appropriation;
- (8) provide for a fine or other penalty;

(9) establish a regulation for violation of which a fine or penalty is imposed;

(10) regulate the rate charged by a public utility;

(11) adopt, modify or repeal the comprehensive plan, the official map, a land use regulation, and a building or housing code;

(12) grant, renew or extend a franchise;

(13) within the limitations set out in AS 36.25.025, exempt a contractor from compliance with requirements relating to payment and performance bonds in the construction or repair of a municipal public works project.

Sec. 29.48.140. FORM OF ORDINANCES. An ordinance shall be introduced in writing in the form required by the assembly or council.

Sec. 29.48.150. ORDINANCE PROCEDURE AND EFFECTIVE DATE.

(a) The following procedure governs the enactment of all ordinances except emergency ordinances:

(1) an ordinance may be introduced by a member or committee of the assembly or council or by the municipal executive or chief administrator;

(2) an ordinance shall be set for public hearing by the affirmative vote of a majority of the authorized votes;

(3) at least five days prior to the public hearing, a summary of the ordinance and available amendments shall be published with a notice of the time and place for the hearing;

(4) a copy of the ordinance and all amendments offered shall be made available to each person present at the public hearing, or the ordinance and amendments shall be read in full;

(5) during the public hearing, the assembly or council shall hear each person wishing to speak about the ordinance or amendments;

(6) after the hearing, the assembly or council shall consider the ordinance and may adopt it with or without amendment or reject it;

(7) within five days after adoption, copies of an ordinance shall be made available to the public.

(b) Unless vetoed, an ordinance takes effect 30 days after adoption or at a later date specified in the ordinance.

Sec. 29.48.160. EMERGENCY ORDINANCES. (a) The assembly or council may adopt, amend and adopt, or reject an emergency ordinance at the meeting at which it is introduced. Every emergency ordinance adopted shall

(1) receive the affirmative vote of all members present, or the affirmative vote of three-fourths of the total membership, whichever is less;

(2) contain a finding by the assembly or council that an emergency exists and a statement of the facts upon which the finding is based;

(3) be printed with copies made available to the public within 24 hours after adoption.

(b) An emergency ordinance is effective immediately after adoption. If an emergency ordinance is vetoed it shall cease to be effective and the veto may not be overridden by the assembly or council. Unless vetoed, an emergency ordinance is effective for 60 days.

(c) An emergency ordinance may not be used to levy taxes, to grant, renew or extend a franchise, or to regulate the rate charged by a public utility.

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

Section

- 10. Planning, platting, and land use regulation
- 20. Planning commission
- 30. Comprehensive plan
- 40. Land use regulations
- 50. Appeals from administrative decisions
- 60. Judicial review
- 70. Platting jurisdiction and power
- 80. Application to state and political subdivisions
- 90. Waiver in certain cases
- 100. Procedure
- 110. Information required
- 120. Alteration of replat petition
- 130. Notice of hearing
- 140. Hearing and determination
- 150. Recording
- 160. Title to vacate area
- 170. Penalties

Sec. 29.42.010. Planning, platting, and land use regulation. (a) First and second class boroughs shall provide for planning, platting, and land use regulation on an areawide basis.

(b) the assembly by ordinance may delegate any of its powers and responsibilities under (a) of this section to the council of a city of any class within the borough or a subordinate board or commission of a city, provided the city first consents by ordinance to that delegation. The Assembly, with or without the consent of the council may at any time revoke any or all powers or responsibilities delegated to a city council or subordinate body under this section.

EXPLANATION

This section is substantially similar to AS 29.33.070. A reference in subsection (a) to "zoning" has been changed to the more flexible term "land use regulation". Subsection (b) is a redrafted version of AS 29 33.070(b). The proposed language clarifies the issue of whether a city's consent is required before delegated powers are revoked by the Assembly.

(Alternate Section suggested by Joanne Shanley)

Sec. 29.42.010. Planning, platting and land use regulation. (a) First and second class boroughs shall provide for planning, platting and land use regulation on an areawide basis.

(b) the assembly by ordinance may delegate any of its powers and responsibilities under (a) of this section to the council of a city of any class within the borough or a subordinate board or commission of a city, provided the city first consents by ordinance to that delegation. The assembly, with or without the consent of the council may at any time revoke any or all powers or responsibilities delegated to a city council or subordinate body under this section.

(c) Notwithstanding the provisions of (b) of this section the functions of planning, platting, and land use regulation within a first class or home rule city located more than 25 miles from the boundary of the Borough seat may be assumed and exercised exclusively by that city upon ratification by the qualified voters residing in the city of an ordinance of the city council proposing exercise of those powers by the city.

Sec. 29.42.020. Planning commission. (a) By ordinance the assembly shall establish a planning commission consisting of not less than five persons appointed and confirmed as provided by law. The assembly by ordinance shall also prescribe the qualifications, terms, and compensation of planning commissioners.

(b) In addition to those responsibilities prescribed by law, the planning commission shall:

(1) Prepare and recommend to the assembly a comprehensive plan for the systematic and organized development of the borough, as defined in .030 of this chapter.

(2) Prepare, recommend, and as required by law to administer those measures necessary to implement the comprehensive plan.

EXPLANATION

This section is a shortened and revised version of AS 29.33.080. Major changes include: elimination of apportionment requirements based on residency of specified members within first class cities; elimination of specific language regarding appointments, terms, and compensation of planning commissioners and substitution of more general language requiring the Assembly to prescribe by ordinance the qualifications, terms and compensation of commissioners; elimination of detailed and unnecessary specifications of the commission's duties in favor of a general statement requiring the commission to prepare and recommend measures necessary to implement the comprehensive plan; and elimination of public meetings and public records requirements as redundant.

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

(b) The assembly shall adopt, or may modify the a comprehensive plan with the recommendations of the planning commission. The assembly shall, with the advice and recommendations of the planning commission, undertake an overall review of the plan and update the plan as necessary to ensure the continued validity and effectiveness of the plan.

EXPLANATION

This section is derived from AS 29.33.085. Subsection (a) is identical to AS 29.33.085(a). Subsection (b) is redrafted to eliminate the mandatory two year review requirement of AS 29.33.085(b) and contains a more flexible review requirement premised on a determination that the continued validity and effectiveness of the plan requires review.

Sec. 29.42.040. Land use regulation. In accordance with a comprehensive plan adopted under Section .030 of this chapter and in order to implement that plan, the assembly by ordinance and as a legislative act, may enact or amend regulatory measures governing the use and occupancy of land, including but not limited to:

(1) Zoning regulations which restrict or govern use of land and improvements by geographic districts;

(2) Construction, fire and life safety codes governing placement, erection and occupancy of structures;

(3) Land use permit systems designed to encourage specified uses and structures and to discourage others, or to minimize unfavorable externalities of certain uses and structures.

(4) Other regulatory measures reasonably necessary to further the goals and objectives of the comprehensive plan.

(5) Measures defining and regulating public nuisances.

EXPLANATION

The proposed Section 29.42.040 represents a substantial modification of AS 29.33.090. Present law requires implementation of the comprehensive plan through traditional zoning applicable to geographically defined districts, and allows so called "contract zoning." Although the present AS 29.33.090(b) contains a rather traditional enumeration of the purposes of zoning, the "including but not limited to" preface to that subsection renders the detailed laundry list legally meaningless. The suggested language of AS 29.42.040 preserves the requirement that all land use regulations comply with a comprehensive plan and recites the more important categories of land use regulations available to the Borough. Passage of AS 29.42.040 would clearly enable second class boroughs to enact building and fire codes and to regulate public nuisances.

Sec. 29.42.050. Appeals from administrative decisions. (a) By ordinance the assembly shall provide for appeals from administrative decisions of borough employees or boards and commissions made in the enforcement, administration, or application of land use regulations adopted by the borough under this chapter to a board of adjustment, hearing

officer, or other independent quasi-judicial body established by the borough.

(b) By ordinance the assembly shall provide for appointment of hearing officers, or the composition, appointment and terms of office of a board of adjustment or other quasi judicial body established to hear appeals from administrative actions specified in (a) of this section and the assembly may define proper parties, prescribe evidentiary rules and standards of review and define remedies available to such bodies or hearing officers.

EXPLANATION

This section consolidates provisions of existing Section 29.33.110 and Section 29.33.120. The specific enumeration of the kinds of decisions from which appeals may be taken is eliminated; in its place is a more general requirement allowing appeals from administrative decisions of borough employees or boards made in enforcing or administering land use regulations. New language allows appointment of hearing officers, eliminates redundant public records and meeting requirements, and allows the Assembly to define proper parties, evidentiary rules, and standards of review rather than follow more restrictive rules of the present AS 29.33.120.

Sec. 29.42.060. Judicial review. (a) The assembly shall provide by ordinance for appeals from decisions of the board of adjustment, hearing officer or other quasi-judicial board or others named under Sec. 050 of this chapter to the Superior Court by a municipal officer or person jointly or severally aggrieved.

(b) Appeals to the Superior Court under this section are administrative appeals and shall be governed by Rules of Court applicable to appeals from decisions of administrative agencies.

(c) Appeals are heard on the record established by the administrative agency, and the court may affirm, reverse, wholly or partly, the decision appealed from. Issues in proceedings under this section have preference over all other civil actions and proceedings.

EXPLANATION

Based on AS 29.33.130, the proposed section makes several important changes in procedures governing administrative appeals to Superior Court. The "automatic stay" requirement of AS 29.33.130(c) is eliminated, allowing parties to follow more customary appellate rules governing injunctions pending appeal; the language plainly makes land use appeals administrative appeals under the Appellate Rules, and eliminates procedural requirements already governed by the Rules of Court.

Sec. 29.42.070. Platting jurisdiction and power. (a) First and second class boroughs shall exercise the power to regulate platting and the subdivision of land on an areawide basis. By ordinance the assembly shall enact subdivision regulations:

(1) governing the form, size and other aspects of subdivision, dedications, and vacations of land;

(2) regulating dimensions and design features of lots or tracts;

(3) establishing strict width, arrangement, and right of way, including allowance for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvements.

(4) requiring dedication of streets, rights of way, public utility easements and other areas deemed by the platting authority necessary for future public use.

(b) The assembly by ordinance shall establish a platting board to administer subdivision regulations adopted by the borough and perform other duties prescribed by law. The platting board may, in whole or in part, consist of members of the planning commission or of other municipal bodies, boards and commissions.

EXPLANATION

This section is derived from AS 29.33.150 and, aside from stylistic changes, makes the following modifications to existing law: requires adoption of subdivision regulations by ordinance; clearly allows the platting authority to require dedications; allows the Assembly to determine the composition of the platting board; and eliminates the provisions of 85 SLA 1979 which allow the State of Alaska to ignore capital improvement requirements of local subdivision regulations.

Sec. 29.42.080. Application to state and political subdivisions. All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to the provisions of this chapter or home rule ordinances or regulations governing subdivisions, and shall comply with ordinances and other local regulations adopted under this chapter or under home rule authority, in the same manner and to the same extent as subdivisions made by private landowners.

EXPLANATION

This section contains the language of AS 40.15.200 and adds the word "private" preceeding the word "landowners" in the last line. It is believed that the provisions of AS 40.15.200 are more appropriately placed here rather than in AS 40.15.

Sec. 29.42.090. Waiver in certain cases. (a) The platting authority shall, in individual cases, waive the preparation, submission for approval, and recording of a plat upon satisfactory evidence that:

(1) each tract or parcel of land will have adequate legal and physical access by the public to a public highway or street;

(2) each parcel created is five acres in size or larger and that the land is divided into four or fewer parcels;

(3) the conveyance is not made for the purpose of, or in connection with, a present or projected subdivision development;

(4) no dedication of a street, alley, thoroughfare or other public area is involved or required.

(b) In other cases the platting authority may waive the preparation, submission for approval, and recording of a plat, if the transaction involved does not fall within the general intent of this chapter and AS 40.15 if it is not made for the purpose of, or in connection with, a present or projected subdivision development which constitutes an isolated transaction and no dedication of a street, alley, thoroughfare, park or other public area is involved or required.

EXPLANATION

This section contains one modification to its predecessor, AS 29.33.170. A reference to "adequate legal and physical access" is added to subsection (a)(1) which will guarantee public access to tracts or parcels created by waiver.

Sec. 29.42.095. Short plat procedure. (a) Notwithstanding the requirements of this chapter governing the submission, consideration, or approval of vacations, subdivisions, or resubdivisions, by ordinance the Assembly may establish a short or abbreviated plat procedure for plats which will only relocate or vacate lot lines, subdivide a single tract, parcel or lot into not more than four tracts or lots and will not:

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

(2) alter a dedicated street or right-of-way, or require any dedication except to match a half right-of-way;

(3) allow a change in the permitted use to which the lot or tract may be devoted under existing law;

(4) require the granting of a vacation or variance from the subdivision regulations enacted by the Borough.

(b) Consistent with this section, regulations governing the short plat procedure may allow an administrative official to review, consider, and approve abbreviated plats with such notice, hearing, and other procedural requirements established by the Assembly.

EXPLANATION

New section allowing short plat procedure under such expedited procedures as the Assembly may adopt.

Sec. 29.42.100. Procedure. (a) The platting board shall within 60 days of filing approve or disapprove the plat or shall return it to the applicant for modification or correction. If the board fails to act, the plat is considered approved and a certificate of approval shall be issued by the board on demand. The applicant for plat approval may consent to the extension of the period for action by the board. The board shall state on its record and in writing to the applicant its reason for disapproval of a plat.

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

EXPLANATION

Subsections (a) and (b) are identical to AS 29.33.160(a) and (b). The proposed section eliminates AS 29.33.160(c) relating to submission of preliminary plats for state disposals under AS 38.05 or 38.08, because the proposed changes in Sections 29.42.070 require full state compliance with local capital improvement requirements.

Sec. 29.42.110. Information required. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance.

EXPLANATION

Identical to AS 29.33.180.

Sec. 29.42.120. Alteration of replat petition. No recorded plat may be altered or replatted except upon petition of the owners of a majority of the land affected by the application of replat or by the platting board. No platted street may be vacated, except upon petition of the municipality or owners of the majority of the front feet of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting board. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

EXPLANATION

Identical to AS 29.33.200.

Sec. 29.42.130. Notice of hearing. The platting board shall fix a time for a hearing on the petition which shall not be more than 60 days after the filing. The board shall publish a notice stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice shall generally describe the alteration or replat sought. The notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the area. The board shall also mail a

copy of the notice to each affected property owner not signing the petition.

EXPLANATION

Identical to AS 29.33.210.

Sec. 29.42.140. Hearing and determination. At the hearing the platting board shall consider the alteration or replat and make its decision on the merits of the proposal. No vacation of a city street may be made without the consent of the city council. No vacation of a street in the borough area outside cities may be made without the consent of the borough assembly. The assembly or council shall have 30 days from the decision in which to veto the board decision. If no veto is received by the board within the 30-day period, the consent of the city or borough shall be considered to have been given to the vacation.

EXPLANATION

Identical to AS 29.33.220.

Sec. 29.42.150. Recording. If the alteration or replat is approved, the revised plat must be recorded by the platting board and is thereafter the lawful plat.

EXPLANATION

Identical to AS 29.33.240.

Sec. 29.42.160. Title to vacated area. (a) The title to the street or other public area vacated on a plat attaches to the lot or lands bordering

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

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

(c) Provisions of (a) of this section notwithstanding, the council of a second class city located outside an organized borough may vacate those streets, alleys, crossings, sidewalks or other public ways that may have been previously dedicated or established when the council, in its discretion, finds that the streets, alleys, crossings, sidewalks or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for

another public purpose does not vest as provided in (a) of this section but remains in the city.

EXPLANATION

Identical to AS 29.33.240.

Sec. 29.42.170. Remedies. (a) It shall be unlawful for the owner or agent of the owner of land located within a subdivision to transfer, sell, offer to sell, or to enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in accordance with applicable municipal subdivision regulations enacted under this chapter. It shall be unlawful for any person to file or record a subdivision plat or other instrument depicting subdivided land in any public recorder's office unless that plat or document bears the approval of the municipal platting authority. Every act prohibited by this chapter or the maintenance of any condition prohibited by municipal subdivision regulations adopted in accordance with this chapter is unlawful and the willful commission of such act or maintenance of such condition is a misdemeanor. Every person convicted of a violation of any provision of this title or any municipal subdivision regulation adopted under this title or the terms, conditions, or limitations imposed by a municipal platting authority in the exercise of its powers under this title is guilty of a misdemeanor and may be punished by a fine not to exceed \$500.

(b) If there is a violation of the terms of this chapter, municipal subdivision regulations adopted under this chapter, or any terms, conditions, or limitations imposed by a platting authority in the exercise of its powers under this chapter, the Borough or any aggrieved citizen may institute or cause to be instituted any appropriate civil action to

prevent, abate, enjoin, estop, remove or punish such violation and to obtain monetary damages suffered by that party. In addition to injunctive and compensatory relief each violation shall be subject to a civil penalty not to exceed \$1,000. An action to enjoin any violation to this title may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of an existing or threatened violation, the Superior Court shall grant injunctive relief to restrain that violation.

(c) Every day upon which an unlawful act or condition shall occur shall constitute a separate violation.

(d) The platting authority may enjoin any partition, lease, transfer, or sale of land which would result in an unlawful subdivision. Following an unlawful petition, transfer, lease or sale, the platting authority may enjoin any further transfer, sale of all unlawfully subdivided parcels until such time as the parcels are duly subdivided or returned to common ownership.

EXPLANATION

This section is derived in part from AS 29.33.190 and contains certain new provisions which strengthen remedies available to municipalities seeking to enforce subdivision regulations. The new section prohibits persons from offering to sell unsubdivided land in violation of local subdivision regulations; authorizes injunctive relief to restrain violations of subdivision regulations, allows imposition of civil penalties, and makes daily occurrences of unlawful acts separate violations.

Not adopted

ARTICLE ____ . CORRECTIONS, CANCELLATIONS AND REFUNDS OF TAXES.

Section 29.45.510 [new]. Corrections.

(a) Correction of Clerical Errors of Assessor.

(1) When it can be ascertained from an inspection of the property, the records of the assessee, or from the roll or any papers in the assessor's office what was intended, or what should have been assessed, defects in description or form or other errors of the assessor not involving the exercise of judgment as to value which result in the entry on the roll of assessed values other than those intended by the assessor, or which result in the assessment of nonexistent improvements or personal property which will not increase the amount of taxes due may be corrected as provided in this article at any time, and if such correction will result in an increase in the amount of taxes, at anytime prior to January 1 of the year following the year in which such error was made.

(b) Correction of Clerical Errors of Tax Collector.

Clerical errors of the tax collector on the roll or delinquent tax roll may be corrected by the tax collector at anytime in the manner provided in this article.

(c) Making of Corrections. Corrections authorized in this section which do not affect any property other than the property taxed or assessed, and do not result in a decrease, increase, refund or cancellation of taxes due may be made by the assessor or tax collector. All other corrections shall be made only upon order of the assembly and provided in this article.

(d) Notice and Hearing Where Tax Increase Necessitated.

If the correction will increase the amount of taxes due, the assembly, sitting as the board of equalization, shall give the assessee an opportunity for a hearing after not less than thirty (30) days notice at which the assessee may present any objections to the change. The decision of the board of equalization may be appealed to the Superior Court pursuant to section 29.45.220(f).

(e) Tax Rate Applicable to Increased Assessment: Roll Entries: Collection of Taxes in Event of Bona Fide Transfer or Encumbrance.

In the event any correction authorized under this article has the effect of increasing the assessment, the assembly shall apply a tax rate to such increase at whatever tax rate was in existence in the year in which the error was made. All increased amounts of taxes shall be entered on the roll prepared or being prepared for the current assessment year and shall thereafter be treated and collected like other taxes on said roll; provided, however, that if the correction affects taxes on the secured roll for any year and subsequent to the entry of the original assessment but prior to the date of such correction the real property on which such taxes constitute a lien has been transferred or conveyed to a bona fide purchaser for value or becomes subject to a bona fide encumbrance for value, such increased amount of taxes shall not create, impose or constitute a lien on such real property but shall be collected as follows:

(1) The assessor or tax collector may record with the recorder in any recording district a certificate which shall set forth the name of the person who was the assessee in the year for which such correction was made as shown on the certified assessment roll for that year and the amount or amounts of any such correction. From the date of the recording of such certificate, a lien shall be created and attach against any real property of such person which is in the recording district and which is owned by him at the time or is acquired by him afterward but before the lien expires, for the amount of such taxes, which lien shall have the force, effect, priority and duration of a judgment lien.

(2) Where, in the opinion of the assessor there is no real property sufficient to secure such taxes they shall be entered on the unsecured roll in the name of the assessee as shown on the certified assessment roll for the year for which such correction was made.

(f) Payment in Installments. The assembly may, by ordinance, provide for spreading of payments for taxes when such taxes have been increased by the discovery of an error under the provisions of this article.

Section 29.45.512 [new]. Correction of Payment or Credit on Wrong Property.

(a) If an assessee, or agent of the assessee, by mistake pays the tax on other than the property intended, or if through no fault of the assessee or agent of the assessee, a tax payment is credited to property other than the property intended and by substantial evidence the tax collector is convinced that the payment should have been credited to another property, the tax collector shall, upon order of the assembly, cancel the credit on the unintended property and transfer the payment to the property intended at any time before a guaranty or certificate of title issues respecting the unintended property and before one (1) year has elapsed since the date of the payment.

(b) If a credit is cancelled on unintended property, the tax collector shall notify the owner of the unintended property as shown on the current assessment records, by registered mail at his last known address respecting the proposed transfer. The notice shall state that the owner of the unintended property may, within ____ (____) days after the mailing demand a hearing by the assembly. If made, the demand shall be filed with the tax collector. The assembly shall set a time for the hearing and its decision on the transfer shall be final.

(c) Payment of Amount Outstanding. If the amount that was paid is less than the amount due on the property intended, the balance of the amount due shall be paid before the transfer is made.

(d) Refund of Excess. If the amount paid exceeds the amount due on the property intended, the applicant is entitled to a refund of the excess; provided however, no interest shall be paid thereon unless payment to the unintended property was the result of an error of the tax collector or other employees of the borough.

Section 29.45.514 [new]. Cancellations.

(a) All or any portion of any tax, interest, penalty, or costs heretofore or hereafter levied, may, on satisfactory proof, be canceled by the tax collector on order of the assembly if it was levied or charged:

(1) more than once;

(2) erroneously or illegally; provided however, no cancellation shall be made on tax exempt property by reason of such exempt status if there has not been compliance with the statutory procedure for claiming the exemption;

(3) on the portion of an assessment that has been decreased pursuant to a correction authorized in this article;

(4) on property which did not exist on the lien date;

(5) on property of the United States, the state or any borough, city, school district or other public entity and which, because of such public ownership, was not subject to the tax involved.

(b) If property is acquired by a negotiated purchase, sale, gift, devise or eminent domain proceedings by the United States of America, or by the state or by any borough, city, school district or other public entity, and because of such public ownership becomes exempt from taxation, taxes shall be canceled or paid as follows:

(1) If there are any delinquent taxes, interest or penalties, for other than the current tax year, no cancellation shall be made in respect of all or any portion of any such delinquent unpaid tax, or penalties or costs, but such tax, together with such penalties and costs as may have accrued thereon while on the secured roll, shall be paid, or if unpaid for any reason, they shall be transferred to the unsecured roll and collected like any other taxes on the unsecured roll.

(2) If such property is acquired after the lien date but prior to the commencement of the fiscal year for which current taxes are a lien on the property, the amount of such current taxes shall be canceled and neither the person from whom the property was acquired nor the acquiring public entity shall be liable for the payment of such taxes unless otherwise provided by law.

(3) If such property is so acquired after the commencement of the fiscal year for which the current taxes are a lien on the property, that portion only of such current taxes allocable to the property acquired,

together with any allocable penalties and costs thereon, which are properly allocable to that part of the fiscal year which ends on the day before the date of acquisition of the property shall be paid, or if unpaid for any reason, they, shall be transferred to the unsecured roll and shall be collectible from the person from whom the property was acquired. The portion of such taxes allocable to the property acquired, together with any penalties and costs thereon, which are allocable to that part of the fiscal year which begins on the date of the acquisition of the property, shall be canceled and shall not be collectible either from the person from whom the property was acquired nor from the public entity unless otherwise provided by law.

In no event shall any transfer or cancellation of unpaid taxes, penalties or costs be made with respect to property which has been transferred or tax deeded to a borough or a city for delinquency.

(4) For purposes of this subdivision, if proceedings for acquisition of the property by eminent domain have not been commenced, the date of acquisition shall be the date that the conveyance is accepted by the acquiring authority. If proceedings to acquire the property by eminent domain have been commenced the date of acquisition shall be the date title vests in the acquiring authority.

Section 29.45.516 [new]. Refunds.

On order of the assembly, any taxes paid before or after delinquency shall be refunded if they were:

(a) paid more than once or in excess of the amount due on the property as shown on the roll;

(b) erroneously or illegally collected; provided however, no refund shall be made on tax exempt property by reason of such exempt status if there has not been compliance with the statutory procedure for claiming the exemption;

(c) paid on an assessed value of the property by reason of the assessor's clerical error and a correction of such error has been made as provided in this article;

(d) paid on an assessment of improvements when the improvements did not exist on the lien date;

(e) paid on an assessment in excess of the equalized value of the property as determined by the board of equalization pursuant to section 29.45.220.

(f) paid on property later acquired by a public entity to the extent that taxes would have been subject to cancellation pursuant to Section 29.45.514 had such taxes not been paid prior to the date of acquisition.

No refunds under the provisions of this section shall be made because of any error involving the exercise of judgment as to valuation of property, except as authorized in subsection (e).

Section 29.45.518 [new]. Refund by Tax Collector in Event of Multi- or Overpayment. Notwithstanding the provisions of section 29.45.516 any taxes paid before or after delinquency may be refunded by the tax collector within ninety (90) days after the date of payment if:

(a) paid more than once;

(b) the amount exceeds the amount due on the property as shown on the roll.

Section 29.45.520 [new]. Refund Claims; Verification and Filing. No order for a refund under this article shall be made except on a written claim:

(a) verified by the person who paid the tax, his guardian, executor, or administrator stating the statutory grounds upon which the refund is claimed;

(b) filed within one (1) year after making of the payment sought to be refunded;

(c) interest shall be allowed on such refunds at the rate of eight percent (8%) per year from the date of payment.

Section 29.45.522 [new]. Action on rejected claim--Time for commencement. If the assembly rejects a claim, in whole or in part, or fails to act within six (6) months from the date of filing of a claim for refund the person who paid the taxes, his guardian, executor, or administrator may within two (2) years after the date of payment of the claimed refund amount commence an action in the superior court against the borough to recover the taxes which the assembly has refused

to refund. No action shall be commenced or maintained under this article unless a claim for refund shall have been filed in compliance with the provisions of this article, and no recovery of taxes shall be allowed in any such action upon a ground not asserted in the claim for refund.

Section 29.45.524 [new]. Uncollectible Accounts. The Assembly, by ordinance, may provide procedures for the writing off of taxes carried on the unsecured tax roll which are determined to be uncollectible at anytime after expiration of _____ years after the date such taxes were due, provided however, the write off of such taxes for such accounting purposes shall not operate as a release or discharge of liability of any person or property otherwise responsible for the payment of such taxes.

Section 29.45.526 [new]. Taxes Defined. As used in this article, "tax" or "taxes" includes penalties, interest and costs.

See State v. Wakefield Fisheries, Inc., 495 P.2d 166 (1972) [six (6) year statute of limitation provided for in AS 9.10.050 applies for action for refund of taxes.

Not adopted 12/6/80
Sec. 29.33.200 [29.48.260]

(e) A municipality, in order to make sites available for beneficial new industries, may acquire and hold real property, either inside or outside the corporate limits, and may sell, lease or otherwise dispose of such property to persons who agree to operate a beneficial new industry upon the terms and conditions the assembly or council considers advantageous to the municipality. A municipality may by ordinance exempt all or any specific sale, lease or other disposition of property under this paragraph (e) from the requirements of (c) of this section.

Formerly: AS 29.48.260

Addresses Libby v. City of Dillingham,
____ P.2d ____, Op. No. 2097 (1980)

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

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 29.12.240 the resolution or petition for unification is void and no election on the question shall be held.

EXPLANATION: Subsection (a) has been altered so that second class cities are included within the area outside cities for purposes of selecting representatives on the charter commission. This was done so that first class and home rule cities, with their greater concentrations of population, have less chance of overwhelming the rest of the borough. Subsection (b) has been added to avoid the expense and inconvenience of an election in the question of unification if not enough nominations of commission members are received. It is felt that failure to nominate a sufficient number of commission candidates indicates a general lack of interest in the question of unification.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

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.

EXPLANATION: Adds the provision that judges be appointed from among precinct voters in order to conform to the 1980 revision of AS 15.10.120. The following language was deleted as a duplication of AS 29.30.040: "The municipality may not alter voter qualification requirements of this title." Subsection (b), making this applicable to home rule municipalities, was deleted.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

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

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

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

EXPLANATION: Under existing law a runoff election is required if no candidate receives over 40 percent of the votes cast for his office. This requirement has been altered to apply to certain offices only and liberalized to allow a municipality to provide otherwise by ordinance. The provisions specifying when a runoff must be held and notice requirements are no longer mandatory. In addition, the procedure set out in (c), for the benefit of a municipality which desires specific procedural guidance, has been changed to provide three weeks before the runoff is held rather than two. The additional time would enable cities within boroughs to coordinate their runoff elections.

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

- (1) is not restricted by AS 29.30.090;
- (2) includes only a single subject;
- (3) relates to a legislative rather than to an administrative matter; and
- (4) would be enforceable as a matter of law.

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

EXPLANATION: This is a new section. The first part is modeled after section two of the initiative article in the state constitution. Sponsors of a petition would be required to register with the clerk. The clerk would review an initiative for substantive legality, with his decision subject to immediate appeal. This allows for a judicial determination of the legality of an initiative prior to incurring the expense of an election on it.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

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

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

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

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

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

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

(6) contain 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, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

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

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

EXPLANATION: This section would require the clerk to provide the petition forms to the petitioners to insure that they are complete and legible. This is similar to the requirement imposed upon the Lieutenant Governor in state initiative proceedings. The petition contents are essentially the same as those provided in present law, with a shortening of the petition circulation time from 90 to 60 days, some expansion of the information the signers must provide, and the addition of the circulator's affidavit.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.120. **REQUIRED SIGNATURES.** (a) The necessary signatures on a petition shall be secured within 60 days after the clerk issues the petition. The statement provided under AS 29.30.110(a)(6) shall be completed and signed by the sponsor. Signatures shall be ink or indelible pencil.

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

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

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

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

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

EXPLANATION: The 60 day signature gathering period is carried forward. While the possibility of an initiative or referendum on a matter which affects only a service area is not eliminated, such petitions contain the same number of signatures as a petition on an areawide matter. Permitting a service area to initiate a matter on a service area basis is contrary to the concept of the service area being under the control of the entire legislative body. Additional changes require rejection of a signature not accompanied by a legible residence address and allow a signer to withdraw his name up until the time the petition is certified, whereas now he must withdraw within seven days after the petition is filed.

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

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

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

EXPLANATION: The only significant change makes it clear that in providing supplementary signatures the sponsors have only 10 days to gather the signatures. They may not use signatures which were gathered prior to the first filing but not submitted, and they may not use signatures gathered during the period in which the clerk is checking the petition.

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. If no regular or special election occurs within 75 days after the certification of a petition, the assembly or council shall hold a special election within 75 days, but not sooner than 45 days after certification.

(b) If the assembly or council adopts substantially the same measure, the petition is void and the matter initiated shall not be placed before the voters.

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

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

EXPLANATION: The changes allow for the submission of an initiative measure to the voters within 75 days after certification of a petition rather than requiring that the vote be delayed until the next regular election. The 45 day requirement was added to insure that a petition certified after the legal notices of a regular election were published does not complicate the election. Since the clerk determines whether the subject is within the restrictions and since this determination is subject to judicial review, the assembly or council no longer may reject a petition. An areawide vote is required whether the matter initiated is areawide or nonareawide because a service area should not be allowed to become autonomous.

Sec. 29.30.170. PRESENTATION OF REFERENDUM. (a) Unless the ordinance or resolution is repealed, when a petition seeks a referendum 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. If no regular or special election occurs within 75 days of certification of a petition, the assembly or council shall hold a special election within 75 days, but not sooner than 45 days after certification.

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

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

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

EXPLANATION: The ability to suspend an ordinance or resolution which has taken effect when a petition is filed within 30 days of the passage of the ordinance or resolution has been deleted to avoid the apparent ability of a part of the voters to exercise a temporary repeal. The reference to amending a charter by initiative or referendum was deleted as that is covered under AS 29.13.080. All questions are submitted to an areawide vote.

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

(b) If an ordinance or resolution is repealed in a referendum election or by the assembly or council after a petition which contains substantially the same measure has been filed, substantially similar legislation may not be enacted by the assembly or council for a period of one year.

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

EXPLANATION: Technical revisions and a change in (c) to accommodate the petition process.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

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

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

EXPLANATION: The possibility of recalling an official who has been appointed to an elective position has been added. The date to be used in determining when the six month period has run has been clarified.

DELETED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

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 signature and residence addresses of at least 10 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.

EXPLANATION: This is a new section which describes the requirements for an application for recall petition.

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, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

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

EXPLANATION: This section sets out requirements similar to those relating to the content of initiative and referendum petitions. Requiring the clerk to prepare the petition and supply copies insures that each copy is complete and legible. A petition must be filed within 60 days after the petition is issued rather than 60 days after the date of the earliest signature on the petition.

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

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

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

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

EXPLANATION: Which election to be used as a standard for determining the number of signatures required is clarified. The number of signatures required has been increased as compared to the number required for initiative and referendum because it is felt that recall is an especially disruptive process which should be more difficult to initiate. However, the signature requirement is based on the number who voted in a municipal rather than a state election. It is expected that this number will reflect a relatively low turnout, and therefore that it is not as difficult a requirement as may appear.

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

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

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

EXPLANATION: Unlike the situation in initiative and recall, this section does not allow additional time for obtaining signatures when a petition is filed which does not have enough signatures even before any are disqualified. This keeps a petitioner from filing an insufficient petition to gain additional time to gather signatures. Once again, it is felt that in the case of a recall effort, the process ought not to be prolonged.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.260. NEW RECALL PETITION. The rejection of a recall petition for any reason does not preclude the filing of a new petition. However, a new application for a petition to recall the same official may not be filed sooner than six months after a petition is rejected.

EXPLANATION: Filing a new petition prior to the six month waiting period is prohibited even though the petition is rejected for a reason other than failure to obtain sufficient signatures. Under existing law, failure to obtain sufficient signatures alone triggers the waiting period.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.280. ELECTION. (a) If a regular election occurs within 75 days but not sooner than 45 days after submission of the petition to the assembly or council, the assembly or council shall submit the recall at that election.

(b) If no regular election occurs within 75 days the assembly or council shall hold a special election on the recall question within 75 days but not sooner than 45 days after a petition is submitted to the assembly or council.

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

EXPLANATION: The 45 day requirement was added to insure that a petition submitted after the legal notices of a regular election were published would not complicate the election. Added in section (c) is the prohibition against the appointment of an official who resigns after a sufficient recall petition is filed.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

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

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

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

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

EXPLANATION: This section makes reference to the fact that each statement is limited to 200 words or less and provides that the statement of the official if published before the election will appear on the ballot.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

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

EXPLANATION: This section was changed to provide for cases in which a recall election is held as a special election.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.330. SUCCESSORS. (a) If an official is recalled from the assembly or council, the assembly or council, by affirmative vote of a majority of the remaining members, may appoint a qualified person to fill a vacancy created by the recall.

(b) If all members of the assembly or council are recalled, the governor shall appoint at least three qualified persons to the assembly or council. The appointees shall, by an affirmative vote of the majority, appoint additional members to fill remaining vacancies.

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

(d) If all officials are recalled from a school board the assembly or council may appoint a qualified person to fill a vacancy created by the recall.

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

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

(g) 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: This section has been expanded to prevent a local government from having to attempt to operate without a quorum of elected officials. Subsections (f) and (g) were changed to take into account time periods required for election notice and nominations.

13/6/0
CLASSES AND POWERS OF MUNICIPALITIES

.010 Classes of Municipalities. A municipality shall be a home-rule or general law municipality.

.020 Power of General Law Municipalities (a). Powers of general law of municipalities are 1) regulatory powers enumerated in section ____ or 2) powers to provide services and facilities enumerated in section ____.

(b) General law municipalities may exercise powers assumed upon incorporation or acquired in accordance with section .030.

.030 Procedure for Acquiring Powers. A city within its jurisdiction and a borough on an area-wide or non-areawide basis may acquire additional regulatory powers or powers to provide public facilities or services by ordinance approved by a vote of two-thirds (2/3) of the membership of the assembly or council. A decision to acquire powers under this section is subject to referendum.

.040 Exercise within Cities. Except as provided in section .070, a borough may not exercise within a city in the borough a power which the city is then exercising if the city council by ordinance approved two-thirds vote of its membership states its opposition.

.050 Service Area. A borough may exercise a power to provide services and facilities on a service area basis only upon approval of a majority of those voting on the question in the area affected at a general or special election in accordance with section ____.

.060 Transfer of Powers. By vote of a majority of the membership of the council or by initiative, a city within a borough may transfer to the borough any power exercised by the city.

.070 Mandatory Areawide Borough Powers. Boroughs shall exercise on an area-wide basis the powers of 1) planning and zoning; 2) taxation and 3) education.

.080 Mandatory City Powers. A city in the area outside boroughs shall exercise the powers of 1) planning and zoning; 2) taxation.

.090 Education in City's Outside Borough's. A city in the area outside boroughs may assume the education power upon incorporation, by ordinance approved by two-thirds of the membership of its council, or by initiative.

Not adopted
12/6/80

November 18, 1980

TO: TITLE 29 TECHNICAL AND POLICY COMMITTEES
FROM: ALASKA ASSOCIATION OF MUNICIPAL CLERKS
SUBJECT: TITLE 29 REVISIONS

*John Stanley
V.P.*

We respectfully submit the following comments:

1) Sec. 29.30.040. We support the drafted changes as recommended by the Technical Committee, dated October 10, 1980, with the following amendment to (b):

"(b) Voter registration by the municipality may not be required, and a municipality may not alter voter qualification requirements except that a municipality may by ordinance require a person to be a resident of and registered in the precinct, district, or service area in which he votes."

Explanation: Those voting on the issue are residents of the specific area and thus will have to live with the outcome of the election; requiring registration in the precinct, district or service area will hopefully eliminate some of the problems and the time demanded in trying to prove residency; such a procedure will give the Canvass Board clearer direction.

2) Regarding new AS 29.30.110 and .230, the AAMC feels it is within the scope of responsibilities of the clerks to provide an acceptable petition format; however, we object to being burdened with any of the responsibility of composing any type of initiative, referendum or recall statement. We feel that the newly-proposed sections are unclear in this regard and request that clarification of our position be considered.

3) AAMC strongly supports the language as proposed in AS 29.30.050 regarding elections which gives the municipalities the option to provide for runoff elections by ordinance.

Mike Walker - Not adopted 10/1/60

APPENDIX A

A BILL

For an Act entitled: "An Act Relating to Native Village Governments."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. FINDINGS AND PURPOSE.

(a) The legislature has determined that,

(1) there exist within the state several communities which have Native village governments whose members are citizens of the state; and

(2) the law and customs of Native village governments include notions of democracy, liberty, and the exercise of personal rights consistent with the state and federal constitutions.

(b) It is the purpose of this Act to,

(1) extend recognition to Native village governments and encourage them in the administration of local government;

(2) provide for cooperative agreements between the state government and Native village governments to promote the equitable delivery of state services.

* Section 2. As 29 is amended by adding a new chapter to read:

CHAPTER ____ NATIVE VILLAGE GOVERNMENTS

Sec. 29 --. 010. NATIVE VILLAGE GOVERNMENTS. The State of Alaska hereby recognizes Native Villages as distinct, independent, political communities exercising original tribal sovereignty in

dependent association with the United States. Any Native village ordinance or custom heretofore or hereafter adopted by the duly constituted Native village government, in the exercise of any authority which it may possess shall, if not inconsistent with any applicable law or constitutional provision of the State of Alaska, be given full force and effect within the Alaska State Courts, provided that such Court shall have jurisdiction to hear such cause as a result of the withdrawal of federal jurisdiction pursuant to P.L. 83-280 (67 Stat. 588), as amended by P.L. 85-615 (72 Stat. 545).

Sec. 29.--. 020. ELIGIBILITY FOR STATE PROGRAMS. A Native village government, for a village which is not incorporated under this title, and is not located within an organized borough is,

- a) eligible to participate in all state programs to the same extent and in the same manner as a second-class city;
- b) entitled to notice concerning proposed actions by the state to the same extent as a government of a second-class city is entitled to notice; and
- c) entitled to consultation with the state on state actions and programs which affect the village to the same extent that the government of a second-class city is consulted on state actions and programs.

Sec. 29.--.030. AGREEMENTS.

(a) A Native village government or a group of Native village governments may negotiate agreements with the Commissioner regarding coordination of state and Native village facilities and services which may include judicial, law enforcement, and correction services.

(b) When the Commissioner negotiates an agreement under this section, he shall first consult with the head of each principal executive department which may be affected by the agreement. The

Commissioner shall next submit the proposed agreement to the Governor. The Governor may approve the agreement and upon approval of the agreement shall define the respective responsibilities of the state and of the Native village government during the period of time covered by the agreement.

Sec. 29.--.040. NONDISCRIMINATION.

(a) A Native village government which is a party to an agreement under AS 29.--.030 may not adopt a rule or operate a program which creates or extinguishes a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that a Native village government may participate in federally funded programs which provide services to persons or organizations because of their status as Native persons or Native organizations. Violation of this section renders an agreement entered into under AS 29.--020 void.

(b) The Governor may withdraw recognition of a Native village government authorized under AS 29.--.010 whenever he shall make a determination that the Native Village government has adopted a rule or operates a program which creates or extends a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that such determination may not be dependent on a Native village government's operation or participation in programs funded exclusively by federal or tribal funds which provide services to persons or organizations because of their status as Native persons or Native organizations.

(c) Actions and determinations made under this section shall be made in accordance with the Alaska Administrative Procedure Act (AS 44.62).

Sec. 29.--.050. LIMITATIONS. Nothing in this chapter authorizes the alienation, encumbrance, or taxation of real or personal property, including water rights, belonging to a Native person or

village that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or authorizes regulation of the use of property in a manner inconsistent with a federal treaty, agreement, statute, or regulation, or extends the jurisdiction of the state to adjudicate the ownership or right to possession of property. Nothing in this chapter deprives a Native person, Native village, or Native corporation of any right, privilege, or immunity afforded under federal or state treaty, agreement, or law, or alters the jurisdiction of the state, its political subdivisions, or a Native village government. Nothing in this chapter shall create in the state any trust obligation toward a Native person or Native organization because of their status as Native persons or Native organizations.

Sec. 29.--.060. DEFINITIONS. In this chapter,

(1) "Native person" means a person who meets the requirements for membership in a Native village or organization authorized, chartered or incorporated under the authority of a Native village government;

(2) "Native village government" means a local governing body organized by the authority of the Act of Congress of June 18, 1934, 25 USC, Sec. 476, or a traditional governing body of a Native village which meets the requirements of the Alaska Native Claims Settlement Act, 43 USC secs. 1601 et. seq.

(3) "Commissioner" means Commissioner of the Department of Community and Regional Affairs.

* Sec. 3. AS 29.48.010 (4) is amended to read:

(4) to enter into agreement, including those for cooperative or joint administration of any functions or powers with a local government, with the state, (OR) with the United States, or with a Native village government recognized under AS 29.--.010.

APPENDIX B

A BILL

For an Act entitled: "An Act Relating to Native Village Governments Establishing Third Class Cities."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. FINDINGS AND PURPOSE.

(a) The legislature has determined that,

(1) there exist within the state several communities which have Native village governments whose members are citizens of the state; and

(2) the law and customs of Native village governments include notions of democracy, liberty, and the exercise of personal rights consistent with the state and federal constitutions.

(b) It is the purpose of this Act to,

(1) extend recognition to Native village governments and encourage them in the administration of local government;

(2) Provide for incorporation of Native village.

(3) provide for cooperative agreements between the state government and Native village governments to promote the equitable delivery of state services.

* Section 2. As 29 is amended by adding a new chapter to read:

Not adopted 12/6/80

Sec. 29.33.200 MUNICIPAL PROPERTIES. (a) A municipality may acquire and hold real or personal property or interest in real or personal property. A municipality may sell lease or otherwise dispose of property no longer required for municipal purposes or to achieve a public purpose.

(b) Except as provided in (c) of this section, the assembly or council shall by ordinance establish a formal procedure for the sale, lease or disposition of real property or interest in real property. The ordinance shall require: (1) an estimated value of the property by a qualified appraiser or the assessor; (2) a notice of sale published in a newspaper of general circulation distributed within the municipality at least 30 days before the date of the sale, lease, or disposition, or if no such newspaper of general circulation exists, posted within that time in at least three public places in the municipality; (3) public auction or opening of sealed bids or lottery; and (4) other terms and conditions fixed by the assembly or council. However, no ordinance for the sale, lease, or disposition of real property or interest in real property valued at \$25,000 or more is valid unless ratified by a majority of the qualified voters voting at a regular or special election at which the question of the ratification of the ordinance is submitted. Thirty days notice shall be given of the election and during that period the assembly or council shall have published at least once a week in a newspaper of general circulation distributed within the municipality a notice stating the time of the election and the place of voting, describing the property to be sold, leased or disposed of, giving a brief statement of the terms and conditions of the sale and the consideration, if any, and stating the title and date of passage of the ordinance. Notice shall also be given by posting a copy of it in at least three public places in the municipality at least 30 days before the election. If no newspaper of general circulation is distributed within the municipality, the notice given by posting is sufficient for the purposes of this section.

(c) When in the judgment of the assembly or council it is advantageous to the municipality, a municipality may by ordinance:

- 1) sell, lease, donate or exchange with the United States, the state, a Native village government or political subdivisions thereof real estate or other property or interests in such property;
- 2) establish a formal procedure for acquisition of real property or interests in real property from the state, or a village corporation formed pursuant to the Alaska Native Claims Settlement Act (43 USC 1601 et. seq.); or
- 3) sell, lease or dispose of real property or interests in real property to persons who agree to operate a beneficial new industry upon the terms and conditions the assembly or council considers advantageous to the municipality.

The provisions of this section shall not apply to acquisitions and disposals of real property or interests in real property made pursuant to this subsection.

(d) A deed, contract of sale, lease, or other instrument evidencing disposition by a borough of land or interest in land classified by the borough as agricultural land shall include, among other terms, conditions and limitations which may be required by law or which the assembly may elect to include, a condition that the land is restricted to agricultural use. The assembly may not by subsequent action waive or abrogate the condition for a period of 50 years. An abrogation of the restriction to agricultural use after the 50-year period requires the consent of any party having an interest in the land. The assembly shall provide for enforcement by appropriate legal means, including but not limited to forfeiture of the purchaser's interest for violation of the condition.

(e) For the purposes of this section, a Native village government is a government organized under the Indian Reorganization Act (49 Stat. 1250 as amended) or a traditional Native government for a community eligible for benefits under the Alaska Native Claims Settlement Act. (43 USC 1601 et. seq.).

COMMENTS

This redraft of 29.48.260 solves several problems which occur under current law.

- 1) The new section is reorganized to state a general principle governing disposals (subsection b) and gathers together all the exceptions (subsection c). Under this version, the ambiguity which arose in the Libby case is eliminated and it becomes clear that the rule regarding disposals does not apply to any exception.
- 2) Adds disposals for public purposes to current authorization for surplus disposals.
- 3) Clarifies that posting notice is acceptable only when no newspapers of general circulation exists.
- 4) Clarifies that disposals accepted from the general rule must also be made pursuant to an ordinance.
- 5) Clarifies that disposals of land to a Native government is authorized in light of controversy as to whether a Native Government is a federal instrumentality.
- 6) Provides for exception for management of 14(c)(3) lands similar to municipal land grants. Currently existing and future cities for ANCSA communities will not receive municipal land grants. Instead they will receive 14(c)(3) reconveyances. There is no logical reason to distinguish the two types of municipal land grants.
- 7) Overrules Libby case.

ARTICLE 2. MUNICIPAL LEGISLATIVE BODIES

Sec. 29.24.050. GENERAL LEGISLATIVE POWER. The legislative power of a borough is vested in the assembly. The legislative power of a city is vested in the council.

EXPLANATION: The second sentence is added. Rather than dealing with assemblies in one article and councils in another, this article will deal with both legislative bodies. No substantive change.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.24.125. CITY COUNCIL COMPOSITION. Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

EXPLANATION: This section contains material now found in AS 29.23.200(a). The material currently in (b) has been moved to the section on qualifications. No substantive change.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.24.140. QUALIFICATIONS. (a) A borough voter is eligible to be a member of the assembly and a city voter is eligible to be a member of the council. A member of the assembly who ceases to be a qualified borough voter forfeits his office. A member of the council who ceases to be a qualified city voter forfeits his office.

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

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

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

EXPLANATION: The qualification for members of the council or assembly are combined since they are identical. Subsection (c) has been altered to allow a municipality the flexibility of providing otherwise by ordinance. Subsection (d) has been added to allow a municipality to impose additional district residency requirements.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.24.145. TERM OF OFFICE. (a) Assembly and council members are elected for three year terms and until their successors have qualified unless different terms are prescribed by charter or ordinance.

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

(c) The regular term of office begins on the first Monday following certification of the election, unless a different date is prescribed by charter or ordinance.

EXPLANATION: The term of both assembly and council members is combined into one section. Under existing law different terms not exceeding four years may be prescribed. The four year maximum has been eliminated for greater flexibility. The section is no longer mandatory for home rule municipalities.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.24.150. PROCEDURES OF LEGISLATIVE BODIES. (a) The assembly shall elect from among its members a presiding officer and a deputy presiding officer to serve at the pleasure of the members, except that in a borough which has adopted the manager form of government under AS 29.24.550, the mayor serves as presiding officer. In a city the mayor serves as presiding officer. If the presiding officer is not present or disqualifies himself, the deputy presiding officer shall preside.

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

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

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

(e) A legislative body shall maintain a journal of its official proceedings which shall be a public record.

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

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.24.150.

EXPLANATION: Combines the procedures to be followed by both assemblies and councils. Allows a special meeting to be held if a majority of members receive actual notice whereas existing law allows for a meeting only if all members receive notice and if an emergency exists. Reference to the fact that meetings are public is deleted because that requirement is contained in AS 29.24.020. A requirement that the journal maintained by the legislative body be public was added in (e). The material concerned with the expulsion of members for committing a corrupt practice was moved to AS 29.23.070.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.24.160. DEPARTMENTS. Repeal

EXPLANATION: The material contained in this section is placed in an article dealing with municipal departments and employees.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.24.170. VACANCIES. The legislative body shall 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 legislative body may declare an elective office 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 assembly or council, is absent for 90 days;
- (3) resigns and his resignation is accepted;
- (4) is physically or mentally unable to perform the duties of his office;
- (5) if a member of the assembly or council, misses three consecutive regular meetings unless 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 as a corrupt practice and two-thirds of the members concur in expelling him.

EXPLANATION: Allows the legislative body to provide the manner in which a vacancy occurs for all elected offices except for the office of mayor. If the body does not provide by ordinance situations which result in the vacancy of an office, the seven listed situations will result in a vacancy.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.24.175. FILLING A VACANCY. If a vacancy occurs in a legislative body, the remaining members shall within 30 days 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.

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

EXPLANATION: Contains material currently found in AS 29.23.080 and 29.23.220. Provides that no appointment shall be made where less than 30 days remain in a term. Subsection (b) was added to insure that a legislative body will be able to continue to function if the number of vacancies which occur destroys the possibility of achieving a quorum.

ARTICLE 3. MUNICIPAL EXECUTIVE

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

(b) The mayor shall act as ceremonial head of government, execute official documents upon authorization of the legislative body, and is responsible for additional duties and powers prescribed by ordinance.

EXPLANATION: Under current law the executive and administrator are dealt with in one article. It is proposed that one article deal with executive functions and a separate article deal with administrative functions. Therefore, this section eliminates the material dealing with administrative functions.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.24.205. ELECTION AND TERM OF MAYOR. (a) The mayor of a borough or first class city is elected at large. The mayor of a second class city is elected by and from the council.

(b) A mayor shall serve a term of three years unless by ordinance a different term not to exceed four years is provided, except that the current term of an incumbent mayor may not be altered. The regular term of a mayor commences on the first Monday following certification of his election. The council of a second class city shall meet on the first Monday after certification of the regular election and elect a mayor who takes office immediately.

EXPLANATION: This new section contains material currently found in AS 29.23.130(c) and 29.23.250. No substantive changes.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

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

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

EXPLANATION: This section contains material now appearing in AS 29.23.130(b) and 29.23.250. No substantive change.

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

(b) The mayor may take part in the discussion of all matters before the assembly or council.

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

EXPLANATION: This section contains material currently found in AS 29.23.130(a), AS 29.23.260, and AS 29.23.160. No substantive change.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

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

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

(c) The veto does not extend to

- (1) appropriation items in a school budget ordinance;
- (2) actions of the Board of Equalization or the Board of Adjustment;
- (3) adoption or repeal of the manager form of government.

(d) The mayor of a first class city has no veto power.

EXPLANATION: Contains material currently found in AS 29.23.170, 29.23.260, and 29.23.270. Adds a time period within which a veto must be overridden.

Sec. 29.24.250. VACANCY IN THE OFFICE OF MAYOR. (a) The assembly or council shall provide by ordinance the manner in which a vacancy occurs in the office of mayor. Unless otherwise provided by ordinance the legislative body may, upon two-thirds concurring vote, declare 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 assembly or council, is absent for 90 days;

(3) resigns and his resignation is accepted;

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

(5) if a member of the assembly or council, misses three consecutive regular meetings unless 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 as a corrupt practice.

(b) Except as provided in subsection (c), a vacancy in the office of mayor occurring six months before a regular election shall be filled by the legislative body. The person appointed shall serve until the next regular election and until a successor is elected and has qualified. If a member of the legislative body is chosen, he shall resign his seat on the assembly or council. If a vacancy occurs more than six months before a regular election, the legislative body shall call a special election to fill the unexpired term.

(c) In a second class city, the office of mayor is filled by and from the council.

EXPLANATION: This section is enlarged to deal with a vacancy occurring in the office of city as well as borough mayor. Allows the legislative body to establish the manner in which a vacancy occurs in the office of mayor and supplies situations which may result in vacancy if the body does not provide an alternative.

list
added to officials only are subject to recall to avoid
recall of service area
Recs

TITLE 29 REVISION

PROPOSAL FOR RECALL
(Formerly AS 29.28.130-250)

October 20, 1980

29.30.210 Recall. An application for a petition for the recall of an elected official of a home rule or general law municipality may be filed with the municipal clerk after the official has served six months of the term for which elected or appointed.

(This revision clarifies the dates to be used in determining when the six months period has run; it also adds officials who are appointed to elected positions.)

29.30.220 Grounds. Grounds for recall are
Failure to perform to the satisfaction of petitioners
(1) violation of an ordinance, law, or regulation made applicable to the official by his candidacy for or holding of such elected office,

(2) judicially declared incompetence arising out of a medical or mental condition, or

(3) failure to perform a duty of the office prescribed by ordinance, law, or regulation.

(This revision retains the present grounds but attempts to remove some of the ambiguities of the present language.)

29.30.230 Application for Petition. (a) An application for a petition to recall an elected official shall be filed with the municipal clerk.

(b) The application shall contain

(1) the signatures and resident addresses of at least ten qualified voters of the municipality as sponsors,

1 (2) the address to which all correspondence
2 relating to the application may be sent,

3 (3) a statement in 200 words or less of the
4 grounds of recall stated with particularity as to specific
5 instances, including reference to the pertinent ordinance,
6 law, regulation, or judicial decree.

7 (This section requires a submission of an
8 application to the clerk for a petition for recall. As
9 provided in a later section, the clerk will provide the
10 recall petition forms. The application procedure is necessary
11 as a part of a new, proposed procedure whereby the official
12 who is the subject of the petition will be given an opportunity
13 to have his statement answering the accusation placed upon
14 the petition before it is circulated.)

15 29.30.240 Petition. (a) If the municipal clerk
16 determines that the application meets the requirements of
17 §230, he shall submit a copy of the application to the
18 officer who is the subject of the application.

19 (b) The officer shall have ten days from receipt
20 of the application to provide the clerk with a statement of
21 200 words or less which shall be placed on the petition with
22 the statement of the grounds for recall.

23 (c) The municipal clerk shall prepare a recall
24 petition for circulation by the sponsors. A petition shall
25 contain

26 (1) the name of the officer sought to be
27 recalled,

(2) the statement of the grounds for recall
as set forth in the application,

(3) the statement of the officer sought to be

1 recalled, if provided,

2 (4) the date the petition is first issued by
3 the clerk,

4 (5) a statement ³⁰that the signatures on the
5 petition must be secured within ~~60~~ days of the date first
6 issued,

7 (6) spaces for the required signatures, the
8 printed name of each person signing the petition, the date
9 of each signature, and both the resident and mailing address
10 of each signer,

11 (7) a statement to be signed and sworn to by
12 the circulator stating the number of signatures on the
13 petition page or pages, that the circulator personally
14 circulated the page or pages, that all signatures were
15 affixed in his presence, that he believes them to be genuine
16 signatures of the persons whose names they purport to be,
17 that each signer had an opportunity before signing to read
18 the grounds for recall and the statement of the official
19 printed on the petition, and that he believes each signer to
20 be a qualified municipal voter.

21 (This section is part of the application-
22 petition procedure and sets forth requirements similar to
23 those proposed under the initiative and referendum procedures
as it relates to petition content.)

24 29.30.250 Required Signatures. (a) Every petition
25 shall be signed by a number of registered voters residing
26 within the territorial limits of the municipality equal to
27 ³⁰25 percent of the number of ^{voters voting} votes cast in the municipality
in district - if elected person represents district

last regular municipal

for that office.

1 at the last state general or primary election which was held
2 on or prior to the date of the first issuance of the petition.
3 The necessary signatures on the petition shall be secured
4 within 60 days of the date the clerk first issues the petition.

5 (b) Illegible signatures shall be rejected by the
6 clerk unless accompanied by a legible printed name. Signatures
7 not accompanied by a legible residence address shall be
8 rejected.

9 (c) A petition signer may withdraw his signature
10 upon written application to the clerk at any time prior to
11 certification of the petition by the clerk.

12 (d) The petition pages shall be assembled and
13 filed as a single instrument within ~~60~~ ³⁰ days of the date of
14 first issuance of the petition. *within time given to petitioners*

15 (This continues the current 60 day signature
16 gathering period. It also clarifies the election which is
17 to be used as a standard for determining the number of
18 signatures required. It is proposed that a state election
19 be used. Prior to the 1972 revision of Title 29, the last
20 gubernatorial election was the standard.)

21 29.30.260 Sufficiency of Petition. (a) Within ten
22 days of the date the petition is file, the municipal clerk
23 shall certify on the petition whether or not it is sufficient.

24 (b) If the petition is insufficient, it may be
25 supplemented within ten days with additional signatures
26 which are obtained within ten days after the date on which
27 the petition is rejected. If the petition is insufficient
for any other reason, it shall be rejected and filed as a
public record.

Add - No 10 days if petition invalid on its face