

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86 / 2

735 SCOMM23: TITLE 29 POLICY REVISION ADVISORY COMM. 1980

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

5 (The only significant change to the corresponding
6 section of the present law is that the proposed section
7 makes it clear that signatures for the supplementary filing
must be those which are gathered during the ten day period
after the petition is first rejected.)

8 29.30.270 New Application. The rejection of a
9 petition for failure to contain sufficient signatures or for
10 any other reason does not preclude the filing of a new
11 application for a recall petition. However, a new application
12 may not be filed sooner than six months after a petition is
13 rejected.

14 (The only significant change is to prohibit a
15 new petition if the prior petition was rejected for any
reason in addition to rejection for insufficient signatures.)

16 29.30.280 Submission. If a recall petition is
17 sufficient, the clerk shall submit it to the assembly or
18 council at its next regular meeting.

19 (No significant change.)

20 29.30.290 Challenge of Petition. (a) The officer
21 who is the subject of a recall petition submitted to the
22 assembly or council may, within 30 days of the date the
23 petition is filed with the assembly or council, file an
24 action in the superior court for a determination of any of
25 the following questions:

26 (1) Whether any of the grounds for recall
27 stated are not grounds under §220.

Anyone can do this -

1 (2) Whether any of the acts alleged do not
2 constitute one or more of the permitted and alleged grounds.

3 (3) Whether one or more of the accepted
4 signatures should be rejected.

5 (b) Upon a finding that any of the acts alleged do
6 not constitute a permissible and alleged ground or that any
7 grounds alleged are not grounds set forth in §220 or that
8 sufficient accepted signatures should have been rejected to
9 cause the petition to be insufficient, or for any other
10 reason which the court finds appropriate, the court shall
11 order the petition rejected and shall order the name of the
12 officer subject to the rejected petition to be removed from
13 the ballot.

14 (c) If an officer who is the subject of a recall
15 petition submitted to the assembly or council files suit
16 under this section, no recall election may be held for the
17 officer who has filed the suit nor for any other officer who
18 is the subject of a recall petition until after the time for
19 appeal of the superior court judgment has passed.

20 (I believe the foregoing is relatively clear on
21 its face.)

22 29.30.300 Election. (a) If a regular election
23 occurs within 75 days, but not sooner than 40 days of the
24 later of either the submission ^{to the assembly} of a certified petition or
25 the passage of the time for appeal of a judgment in a suit
26 filed under §290, the assembly or council shall submit the
27 recall at that election.

1 (b) If no regular election will occur within such
2 time, the assembly or council shall hold a special election
3 within 75 days, but not sooner than 40 days after, the later
4 of the submission of a certified petition or the expiration
5 of the time for the appeal of a judgment of a suit brought
6 under §290.

7 (c) If a vacancy occurs in the office after a
8 sufficient recall petition is filed with the clerk, the
9 petition shall not be submitted to the voters. However, the
10 assembly or council may not appoint to such a vacancy the
11 officer who resigns from that office after a sufficient
12 recall petition is filed.

13 (The 40 day minimum was added to insure that a
14 petition submitted after the legal notices of the election
15 were published would not complicate the election and that
16 the election would not be held before the 30 days during
which the official has to file suit. Added in section (c)
is the prohibition against the appointment of an officer who
resigns after a sufficient recall petition is filed.)

17 29.30.310 Form of Recall Ballot. A recall ballot *de*
18 shall contain:

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

21 (2) the officer's statement of 200 words or
22 less if the statement is filed with the clerk for publication
23 and public inspection within 20 days before the election,
24 otherwise the statement of the officer, if any, which appeared
25 in the recall petition;

26 (3) the following question: "Shall (name of person)
27 be recalled from the office of (office)? Yes [] No []".

1 (The only significant change is to make reference
2 to the fact that the statement of the grounds is limited to
3 200 words and also to provide that the statement of the
4 officer which was used in the recall petition will appear on
5 the ballot unless the officer provides a different statement.)

6 29.30.320 Election Procedure. Procedures for
7 conducting a recall election are those of a regular municipal
8 election if the question is submitted at a regular election;
9 otherwise, the procedures shall be those applicable to a
10 special municipal election. *[Except that 20 days notice will be required notwithstanding procedure to the contrary]*

11 (This section was changed to make reference to
12 special election procedures if the election is a special
13 election.)

14 29.30.330 Majority Required. A majority of those
15 voting on the question must vote in favor of recall to
16 recall an officer. Only those voters in the district or
17 area which elects the officer may vote on the recall of the
18 officer.

19 (This merely restates in different language the
20 majority vote requirement. The section also adds a new
21 sentence which makes it clear that if the officer is elected
22 by the voters of a district, then only the voters in that
23 district will vote on the recall question.)

24 29.30.340 Effect. If a majority of those voting
25 on the question vote to recall the officer, the officer's
26 seat shall become vacant immediately upon certification of
27 the result of the election on the question. If an incumbent
is not recalled at the recall election, a new application
for a recall petition on the same incumbent may not be filed
sooner than six months after the date of the certification
of the recall election.

(The first sentence is added to this section to

1 make it clear precisely when a recalled officer loses his
2 seat. The second sentence has been slightly changed to peg
3 the commencement of the six month period as the date of
certification of the election results.)

4 29.30.350 Successors. (a) If one or more officers
5 are recalled from an assembly or council, the assembly or
6 council, by the affirmative vote of a majority of the remaining
7 members, may appoint qualified persons to fill any vacancy
8 created by the recall.

9 (b) If all members of the assembly or council are
10 recalled, the governor shall appoint at least three
11 qualified persons to the assembly or council. Such appointees,
12 by an affirmative vote of a majority of the appointees,
13 shall appoint such additional members as are required to
14 fill any remaining vacancies.

15 (c) If one or more officers are recalled from a
16 school board or from a body created by the assembly or
17 council, then the assembly or council may appoint such
18 qualified persons as it deems necessary to fill any vacancy
19 created by the recall.

20 (d) A person appointed to fill a vacancy under
21 sections (a) through (c) shall serve until a successor is
22 elected, qualified, and takes office.

23 (e) If the voters recall an officer, the clerk
24 shall conduct an election for a successor to fill the unexpired
25 term. The election shall be held at least ten but not more
26 than 60 days from the date of the certification of the recall
27 election. However, if a regular or special election occurs

1 within 75 days of the certification of the recall election
2 and the certification occurs at least 20 days prior to the
3 latest date upon which first notice of the election must be
4 published, the successor to the recalled official shall be
5 chosen at that regular or special election. The procedures
6 and requirements for the regular election for the office
7 from which the incumbent is recalled apply to the election
8 conducted under this section; provided, nominations may be
9 filed until the later of seven days before the latest date upon
10 which first notice of the election must be published or the
11 deadline for the filing of nominations for regular elections.
12 Nominations may not be filed before the certification of
13 the recall election.

14 (Sections (a) through (d) are new and are
15 submitted to prevent a local government from having to
16 attempt to operate without a quorum of elected officers.
17 Section (e) was changed to take into account times required
18 for election notice and nominations.)
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TITLE 29 REVISION

PROPOSAL FOR INITIATIVE AND REFERENDUM
(Formerly AS 29.28.060-110)

October 20, 1980

29.30.090 Reservation of Powers. The powers of initiative and referendum are reserved to the residents of municipalities except the powers do not extend to matters restricted by §7, art. XI of the State Constitution.

(Unchanged.) Add - Unless provided otherwise by ordinance ratified by voters, initiative & referendum procedures apply.

is proposed by an application containing the legislative measure ~~use this terminology all the way thro.~~ matter to be initiated or referred. The application shall

be signed by not less than ten qualified voters as sponsors, shall contain the address to which all correspondence relating to the application may be sent, and shall be filed with the clerk. ^{within 2 weeks} The clerk shall certify the application if he finds that the application is in proper form, and in addition, if the application is for an initiative, that the matter to be initiated is not restricted by §90, embraces only a single subject, and as to each part, would not be unenforceable as a matter of law. The clerk's certification or denial of certification shall be subject to judicial review.

(This section is new. The first part is modeled after §2 of the initiative article in the state constitution. As drafted, this section would also make it clear that the clerk is to review initiatives for substantive legality and that the clerk's decision is subject to appeal. This procedure will allow for a judicial determination of the legality of an initiative prior to the expense of an election.)

or resolution "appears" use matter referred or initiated.

(some support)

policy group for consideration but not recommended

for 11/500 state constitution language

legislation laws of general application.

Within 2 weeks
1 29.30.110 Petition. After certification of the
2 application, a petition, containing a summary of the subject
3 matter shall be prepared by the clerk for circulation by the
4 sponsors. The petition shall

5 (1) set out fully the ordinance or resolution
6 sought to be initiated or referred by the petition;

7 (2) state upon the petition the date first
8 issued by by the clerk;

9 (3) contain the statement, when circulated,
10 that the signatures on the petition must be secured within
11 60 days of the date first issued;

12 (4) contain spaces for the required signatures,
13 the printed name of each person signing the petition, the
14 date of each signature, and both the resident and the mailing
15 address of each signer;

16 (5) contain a statement to be signed and
17 sworn to by the circulator stating the number of signatures
18 on the petition page or pages, that the circulator personally
19 circulated the page or pages, that all signatures were
20 affixed in his presence, that he believes them to be genuine
21 signatures of the persons whose names they purport to be,
22 that each signer had an opportunity before signing to read
23 the full text of the proposed initiative or referred measure,
24 and that he believes each signer to be a qualified municipal
25 voter.

26 (This section would require the clerk to provide
27 the petition forms to the petitioners. This is similar to
the requirement levied upon the Lieutenant Governor in state

1 initiative proceedings. The petition contents are essentially
2 the same as present law (AS 29.28.065) with a shortening of
3 the petition circulation time from 90 to 60 days, some
4 expansion of the information the petition signers must
5 provide, and the addition of the circulator's affidavit in
6 (5) of the section.)

7 29.30.120 Required Signatures. (a) The necessary
8 signatures on a petition shall be secured within 60 days of
9 the date the clerk first issues the petition. The petition
10 shall be signed in ink or indelible pencil.

11 (b) Every petition, whether dealing with an areawide
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1 or a non-areawide matter, shall be signed by a number of
2 registered voters residing within the territorial limits of
3 the municipality equal to ^{20 leave as is 15 big places 25 small if voted} ~~25~~ percent of the number of votes
4 cast at the last regular municipal election in the municipality
5 which was held on or prior to the date of the first issuance
6 of the petition.

7 (c) Illegible signatures shall be rejected by the
8 clerk unless accompanied by a legible printed name. Signa-
9 tures not accompanied by a legible residence address shall
10 be rejected.

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

14 (e) The petition pages shall be assembled and
15 filed as a single instrument.

16 (This section carries forward the 60 day signature
17 gathering period. Although it does not eliminate the
18 possibility of an initiative or referendum on a matter which
19 affects only a service area, it does require that such
20 petitions contain the same number of signatures as a petition
21 on an areawide matter. Permitting a service area to initiate
22 and vote upon a matter on a service area basis is contrary
23 to the concept of the service area being under the control
24 of the entire legislative body. If service areas are permitted
25 to initiate and vote upon service area only initiatives,
26 service areas will have the authority to become essentially
27 autonomous units of government without a governing body.
Other minor changes were made to require rejection of signatures
which were illegible or failed to have additional legible
information accompanying the signature.)

29.30.130 Sufficiency of Petition. (a) Within
ten days of the date the petition is filed, the municipal
clerk shall certify on the petition whether or not it is
sufficient.

1 (b) If the petition is insufficient, it may be
2 amended or supplemented with additional signatures which are
3 obtained within ten days after the date on which the petition
4 is rejected as insufficient.

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

9 (The only significant change is to make it
10 clear that in providing supplementary signatures, the petitioners
11 have only ten days to gather the signatures and may not use
12 petition signatures which were gathered prior to the first
filing but not submitted, and that they may not use signatures
gathered during the period in which the clerk is checking
the petition.)

13 *out* 29.30.140 Protest. If the clerk certifies the
14 petition is insufficient, a signer of the petition may file
15 a protest with the municipal executive within seven days
16 after the certification and the municipal executive shall
17 present the protest at the next regular meeting of the
18 assembly or council which shall hear and decide the protest.

19 (No change.)

20 29.30.150 New Petition. Failure to secure sufficient
21 signatures does not preclude the filing of a new application for
22 an initiative or referendum petition. However, a new application
23 for a petition *on same subject* may not be filed sooner than six months after
24 the petition is rejected by the clerk.

25 (This section was changed slightly to take into
26 account the application procedure and to indicate that the
27 rejection from which the six months is counted is a rejection
by the clerk, not a rejection which might be deemed to have
occurred if the matter is appealed to the assembly and the
assembly sustains the clerk's rejection.)

determined by clerk as

29.30.160 Presentation of Initiative. (a) When a petition seeks enactment of an ordinance or resolution within the powers of the assembly or council and not otherwise restricted by §90 of this chapter, the clerk shall ^{with or} present it to the assembly or council at its next ^{regular or special meeting called for the purpose} meeting after certification. The assembly or council may reject the petition if it determines the subject matter of the initiative or referendum is within the restrictions of §90 of this chapter or is unlawful.

(b) An initiative measure presented to the assembly or council and not rejected under section (a) shall be submitted to all the voters of the municipality at the next regular municipal election held more than 45 days after submission of the petition to the assembly or council, unless the assembly or council adopts substantially the same measure. If the assembly or council adopts substantially the same measure, ^{and if this is not vetoed} the petition shall be void and the question shall not be submitted to the voters.

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

(The changes here allow for the submission of an initiative measure at any time during the year, but it would be placed before the voters at the first regular municipal election occurring 45 days after submission to the assembly or council, unless rejected for cause or adopted in substantially the same form as presented. It also requires an areawide vote whether the matter is areawide or non-areawide for reasons outlined above.)

29.30.170 Presentation of referendum. (a) When a

1 petition seeks a referendum vote on a legislative ordinance
2 or resolution, the clerk shall submit the ordinance or
3 resolution to all the voters of the municipality at the next
4 regular or special election unless the assembly or council
5 repeals the ordinance or resolution to be referred. If no
6 regular or special election occurs within 75 days of the
7 certification of a sufficient petition by the clerk, the
8 assembly or council shall hold a special election within 75
9 days of filing.

10 *OK* → (b) If a sufficient petition for referendum is
11 certified before the effective date of the ordinance or
12 resolution, the ordinance or resolution against which the
13 petition is filed ~~which is not in effect~~ shall be suspended pending the referendum
14 on the matter. During the period of suspension, the assembly
15 or council may not enact an ordinance or resolution substantially
16 similar to the suspended measure but may repeal the suspended
17 ordinance or resolution.

18 (c) If the assembly repeals the ordinance or
19 resolution before the election, the petition shall be void
20 and the referred measure shall not be placed before the
21 voters.

22 (d) If a majority of those voting favor the repeal
23 of the referred measure, it is repealed; otherwise, it
24 remains in effect or, if suspended under section (b), it
25 shall become effective upon certification of the election
26 results by the assembly or council. *leave immediate effective date*

27 (The ability to suspend an ordinance or resolution
which had taken effect if a referendum petition was filed

1 within 30 days of the passage of the ordinance or resolution
2 has been deleted to avoid the apparent ability of a part of
3 the voters to be able to exercise a temporary repeal of the
4 measure. The reference to amending a charter by initiative
or referendum was deleted as it 's already covered under
AS 29.13.080. This also requires submission of the question
to the areawide voters for reasons outlined above.)

5 29.30.180 Effect. (a) The assembly or council may
6 not, within two years of its effective date, repeal an
7 ordinance or resolution adopted through the initiative
8 process nor may it amend such an ordinance or resolution in
9 a way to substantially modify or negate the effect of the
10 successful initiative.

11 (b) If an ordinance or resolution against which a
12 referendum is directed has been repealed by the assembly
13 or council after a petition has been filed but before the
14 referendum election, or if an ordinance or resolution is
15 repealed by the voters in a referendum election, the council
16 or assembly may not enact substantially similar legislation
17 for a period of one year after the repeal. A measure which
18 is repealed in a referendum election shall be repealed
19 effective upon the certification of the election results by
20 the assembly or council.

21 (c) An unsuccessful initiative or referendum
22 precludes the filing of a new application for the same or
23 substantially the same purpose sooner than six months after
24 the initiative or referendum election results are certified
25 by the assembly or council.

26 (Minor changes to make dates more certain and
27 to accommodate the petition application process.)

* * * * *

THEODORE D. BERNIS - 10/13/80

1. 29.08.010 - Add reference to unified municipalities created under AS 29.68.
2. 29.08.050 - Repeal. (The omnibus bill should have a section preserving status quo of existing local governments.)
3. 29.18.180(a)

For the purpose of defraying the cost of transition to borough or city government and in order to provide for [;DEVELOPMENT AND INTERIM] initial government operations, each borough and city incorporated after January 1, [1968] 1981, or, in the case of a second class city, incorporated or reclassified after January 1, [1968] 1981, other than [UNIFIED MUNICIPALITIES INCORPORATED UNDER THE PROVISIONS OF AS 29.85, OR A MUNICIPALITY OTHERWISE INCORPORATED BY CONSOLIDATION] municipalities merged, consolidated, or unified under AS 29, is entitled to an organization grant equal to _____ for every voter who voted in the borough or city incorporation election[.] [HOWEVER, EACH INCORPORATED BOROUGH AND EACH FIRST CLASS CITY INCORPORATED OR ESTABLISHED BY RECLASSIFICATION OUTSIDE AN ORGANIZED BOROUGH IS ENTITLED TO AT LEAST \$25,000.] ; provided that such grant shall not be less than

4. AS 29.68.310 - add a subsection (b) to read:

(b) If at least 11 nominations for qualified charter commission candidates are not received on or before the date fixed pursuant to Section 290 of this chapter, the resolution or petition for unification shall be deemed void and an election shall not be held.

5. AS 29.13.020 - add subsections (b) and (c) to read:

(b) Nomination petitions shall be filed with the borough or city clerk on or before the date fixed by the borough assembly or city council, which date shall be not less than ~~30 days prior to the election of the charter commission.~~ 5-6 12-6 12-7 12-8 12-9 12-10

Follow Ted's suggestion

(c) If at least 7 nominations for qualified charter commission candidates are not received on or before the date fixed pursuant to this section, the petition or resolution calling for a charter commission shall be deemed void, and an election shall not be held.

*city - has appointed
appointment - ~~there~~ write in problems*

6. AS 29.13.050(a) - Municipal charters shall provide [THE] procedures for initiative and referendum.

7. AS 29.13.100 - delete the following items from the list of statutes as indicated:

[(4) AS 29.23.250(a) (ELECTION AND TERM OF MAYOR)]

[(8) AS 29.28.010, 29.28.020(g) - 28.25.030 (MUNICIPAL ELECTIONS)]

← [(17) AS 29.48.040 [-29.48.100] (utilities) ← *leave on list*

[(20) AS 29.48.210 (EXPENDITURE OF BOROUGH REVENUE)]

8. AS 29.18.205 - add (j):

(j) Any other provision of sections 201-213 of this chapter notwithstanding, a municipality which is unable to satisfy its entitlement because of a shortage of vacant, unreserved and unappropriated general grant land suitable for residential, commercial or industrial purposes may fulfill its remaining entitlement by selection of any other state land which is otherwise vacant, unappropriated or unreserved.

*deals with
municipality with
paper entitlement
& no ~~where~~ to
fill it. (For
average \$ which
no compensation
provided)*

*21.28030 Does
apply to
home rule*



Matanuska-Susitna Borough

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BOROUGH ATTORNEY'S OFFICE

October 14, 1980

To: Members of AS 29 Technical Committee

Dear Member:

Enclosed please find drafts of AS 42 and 23 relating to planning, platting, and land use regulations and municipal officers and employees.

I would appreciate and welcome your comments on these drafts before or during the next meeting of the Technical Committee, scheduled for October 20, 1980.

Cordially,

A handwritten signature in cursive script, appearing to read "Allan E. Tesche".

Allan E. Tesche
Borough Attorney

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Enclosure

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 vacated 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 (except as otherwise provided in this chapter) 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.

[adapted from AS 29.33.070]

(Alternate section suggested by Joanne Shannley)

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 (except as otherwise provided in this chapter) 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.

[adapted from AS 29.33.070]

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.

[adapted from AS 29.33.080]

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 a comprehensive plan based upon 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.

[adapted from AS 29.33.085]

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.

[adapted from AS 29.33.090]

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.

[adapted from AS 29.33.110 and .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 established 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.

[adapted from AS 29.33.130]

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 street 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.

[adapted from AS 29.33.150]

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 and AS

29.42.080 -- 29.42.170, or home rule ordinances or regulations governing subdivisions, and shall comply with ordinances and other local regulations adopted under this chapter and AS 29.42.080 -- 29.42.170, or under home rule authority, in the same manner and to the same extent as subdivisions made by private landowners.

[AS 40.15.200]

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 29.42.080 -- 29.42.170 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.

[AS 29.33.170]

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.

[AS 29.33.160]

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.

[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 or 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.

[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.

[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.

[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.

[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.

[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 dully subdivided or returned to common ownership.

[new]

Chapter 23. Municipal Officers and Employees.

Article

1. Municipal legislative bodies
2. Municipal executive.
3. Chief administrative officers.
4. Municipal departments and employees.
5. Municipal boards and commissions.
6. Miscellaneous provisions.

Article 1. Municipal Legislative Bodies

Section

10. General legislative power
15. Assembly composition and apportionment
20. Composition and form of representation
25. Assembly recomposition and reapportionment
30. Apportionment appeals
35. Judicial review and relief
40. Effective date of apportionment
45. Applicability of apportionment provisions
50. City councils - composition and form of representation
55. Qualifications
60. Term of office
65. Procedures of municipal legislative bodies
70. Vacancies
75. Filling a vacancy

Sec. 29.23.010. General legislative power. The legislative power of a Borough is vested in the assembly, and of a city, in the council.

[AS 29.23.021]

Sec. 29.23.015. Assembly composition and apportionment. (a) Assembly composition and apportionment shall be consistent with the equal representation standards of the Constitution of the United States.

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

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

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

[AS 29.23.015]

Sec. 29.23.020. Composition and form of representation. (a) The borough assembly shall provide for its composition and for the form of its representation.

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

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

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

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

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

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

(c) A form of borough assembly representation which includes election of borough assembly members under (b)(2) or (b)(3) of this section shall be

submitted to the voters of the borough with a plan of apportionment as required by AS 29.23.025(a).

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

(e) This section does not apply

(1) to a unified municipality incorporated under AS 29.60.240 - 29.68.440;

(2) to a home rule borough if the borough charter contains procedures for changing assembly composition and form of representation.
[AS 29.23.021]

Sec. 29.23.025. Assembly recomposition and reapportionment. (a) Not later than two months after the official report of a federal decennial census, the borough assembly shall determine and declare by resolution whether the existing apportionment of the borough assembly meets the standards of AS 29.23.015. If the borough assembly submits to the voters a form of representation which includes election of borough assembly members under AS 29.23.020(b)(2) or (b)(3), the assembly shall submit with the proposition a proposed plan of apportionment which corresponds to the form of representation proposed. The assembly shall describe the plan of apportionment in the ballot proposition, and may present the plan in any manner which it believes accurately describes the apportionment which is proposed under the form of representation. If the borough assembly determines that its existing apportionment meets the standards of AS 29.23.015, the

assembly may include the existing apportionment as a proposed plan of apportionment of assembly seats which corresponds to a form of representation which is proposed.

(b) The Borough assembly shall provide, by ordinance, for a change in an existing apportionment of the borough assembly whenever it determines that the apportionment does not meet the standards of AS 29.23.015. At the same time, the borough assembly may, by ordinance, change the composition of the assembly.

(c) If a petition signed by not less than 50 registered voters who are residents of the borough requests the borough assembly to determine whether the existing apportionment meets the standards for apportionment in AS 29.23.015, and the petition contains evidence that the existing apportionment does not meet those standards, the assembly may make the determination requested. The borough assembly shall make a determination required by this subsection within two months of receipt of a petition which meets the requirements of this subsection.

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

(e) Within six months of a determination by the borough assembly under (b) or (c) of this section that the current apportionment does not meet the standards of AS 29.23.015, the borough assembly shall adopt an ordinance providing for reapportionment, and submit the ordinance to the voters. If, at the end of the six month time period, an ordinance providing for reapportionment has not been approved by the voters, the commissioner of the Department of Community and Regional Affairs shall provide for the reapportionment in accordance with the standards of AS 29.23.015 by preparing an order of reapportionment and delivering the order to the borough mayor.

[AS 29.23.025]

Sec. 29.23.030. Apportionment appeals. (a) A reapportionment ordinance approved by the voters, or a decision of the borough assembly that the standards of AS 29.23.015 do not require a change in apportionment, may be appealed to the commissioner of the Department of Community and Regional Affairs. Fifty registered voters who are residents of the borough may submit a petition to the commissioner of the Department of Community and Regional Affairs requesting the commissioner to determine whether the proposed reapportionment ordinance approved by the voters meets the standards of AS 29.23.015, or whether a decision of the borough assembly that the standards of AS 29.23.015 do not require a change of apportionment is correct. If the petition asks the commissioner of the Department of Community and Regional Affairs to review an ordinance approved by the voters under AS 29.23.025(e), the petition shall be delivered to the commissioner not later than 20 days after certification of the election. If the petition asks the commissioner of the Department of Community and Regional Affairs to review a decision of the borough assembly under AS 29.23.025(c), the petition shall be delivered to the commissioner within 20 days of the decision of the borough assembly.

(b) The commissioner of the Department of Community and Regional Affairs shall review the petition and may make the determination requested. The commissioner shall provide copies of his determination to the persons petitioning for appeal and to borough officials not later than 60 days after he receives the petition.

(c) If the commissioner of the Department of Community and Regional Affairs determines that the proposed reapportionment ordinance approved by the voters does not meet the standards of AS 29.23.015, or if he determines that the decision of the borough assembly that the standards of AS 29.23.015 do not require a change of reapportionment is not correct, the

commissioner shall, by order, direct the borough assembly to prepare a reapportionment ordinance which meets the standards of AS 29.23.021 and submit the ordinance to the voters.

(d) When the borough assembly has been directed by the commissioner of the Department of Community and Regional Affairs to prepare a reapportionment ordinance under (c) of this section, the borough assembly shall, within two months of its receipt of the commissioner's order, adopt an ordinance providing for reapportionment. The borough assembly shall submit an ordinance adopted under this subsection to the voters at a regular election or special election held within 60 days of the date of adoption of the reapportionment ordinance.

(e) If at the end of the time period provided under (d) of this section an ordinance providing for reapportionment has not been approved by the voters, the commissioner of the Department of Community and Regional Affairs shall provide for the reapportionment of the borough assembly in accordance with the standards of AS 29.23.015 by preparing an order of reapportionment and delivering the order to the borough mayor.

[AS 29.23.027]

Sec. 29.23.035. Judicial review and relief. (a) The commissioner of the Department of Community and Regional Affairs may request the superior court to enforce a reapportionment order issued under AS 29.23.030(e).

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

(1) a plan of reapportionment approved by the voters under AS 29.23.025(a);

(2) a determination by the borough assembly under AS 29.23.025(c) that the standards of AS 29.23.015 do not require a change in apportionment;

(3) a reapportionment ordinance approved by the voters under AS 29.23.025(d);

(4) a reapportionment order of the commissioner of the Department of Community and Regional Affairs made under AS 29.23.030(c);

(5) a reapportionment ordinance approved by the voters under AS 29.23.030(d); and

(b) a reapportionment order of the commissioner of the Department of Community and Regional Affairs made under AS 29.23.030(e).

[AS 29.23.029]

Sec. 29.23.040. Effective date of apportionment. (a) A change in assembly apportionment or composition under AS 29.23.025 or 29.23.030 is effective beginning with the first regular election for members of the assembly which is held more than 60 days after the later of:

(1) approval of a reapportionment ordinance by the voters under AS 29.23.025(a), 29.23.025(e), or 29.23.050(d); or

(2) the delivery to the mayor of a reapportionment order of the commission of the Department of Community and Regional Affairs under AS 29.23.027(e).

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

(1) receipt by the borough assembly of approval by the Attorney General of the United States of the proposed change in the composition or apportionment of the assembly;

(2) receipt by the borough assembly of a statement of non-objection from the Attorney General of the United States to the proposed change in the composition or apportionment of the assembly; or

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

[AS 29.23.031]

Sec. 29.33.045. Applicability of apportionment provisions. The provisions of S 29.23.025 - 29.33.035 do not apply;

(1) to a unified municipality incorporated under AS 29.68.240 - 29.68.440;

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

[AS 29.23.033]

Sec. 29.23.050. City councils--composition and form of representation. 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.

[AS 29.23.200]

A borough voter is eligible to

Sec. 29.23.055. Qualifications. (a) A person registered to vote *be a member of assembly and a city voter is eligible to* within the borough is eligible to be an assemblyman and a person registered *be a council member.* to vote within a city is eligible to be a member of the council. An assemblyman or council member who ceases to be a qualified borough or city voter respectively forfeits that office.

(b) The assembly and council by ordinance may establish durational residency requirements for their members not to exceed *3 years* ~~one year~~.

(c) An assemblyman or council member elected from or selected to represent an area less than the borough or city area at large and who becomes a resident of another area within the municipality, may continue to serve until the next regular election unless the assembly or council by ordinance provides otherwise.

[AS 29.23.050, 29.23.200(b) and (c)]

(d) City & borough may establish district residency requirements.

Sec. 29.23.060. Term of office. (a) Assemblymen and members of the council are selected 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 reapportionment, if the term of an *members of assembly or council* assemblyman or member of a council is changed by charter or ordinance, the term of that official holding office at the time such change becomes effective is not affected by that change.

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

(d) This section applies to home rule and general law municipalities.
[AS 29.23.040, 29.23.200(b)]

delete from 29.13.100

But back in reference to charter &

over transition from general law to home rule

4 year maximum deleted to provide flexibility. Put back in

Sec. 29.23.065. Procedures of municipal legislative bodies. (a) The borough assembly ~~and city council~~^{its} shall elect from among their 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 29.23.115 - .155, ^{and 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) Municipal legislative bodies shall hold at least one regular meeting every month, unless otherwise provided by ordinance. Special meetings may be held at the call of the presiding officer or at least one third of the members provided at least 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. The waiver shall be made a part of the journal for each meeting. *Waiver can be before or after meeting*

(c) Meetings of all municipal legislative bodies shall be public as provided in AS 44.62.310. The assembly and council shall provide reasonable opportunity for the public to be heard at regular and special meetings. This ^{sub} section applies to home rule and general law municipalities. *public meetings statute*

(d) A majority of the total membership authorized by law shall constitute a quorum. Members disqualified by law from voting on particular questions may nevertheless 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. *Quorum for voting*

(e) Actions of the body are adopted by a majority of ^{members} ~~voters~~ authorized *by law* on the question. All members present shall vote on every question unless

by law ~~or charter~~ they are required to abstain from voting on any particular question. 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.

(f) Municipal legislative bodies shall maintain a journal of their official proceedings which, as a public record, shall be available to the public.

(g) Municipal legislative bodies may, consistent with law or charter, determine by ordinance their own rules of procedure and order of business.

[AS 29.23.060, 29.23.210, 29.23.580]

Sec. 29.23.070. Vacancies. (a) ~~An elected municipal office is vacated~~ *The assembly shall provide by ordinance the manner in which a vacancy occurs in any elected office* ~~under the following conditions and upon the declaration of vacancy by the assembly or council.~~ *Unless otherwise provided by ordinance* the assembly or council ~~shall~~ *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) is physically absent from the municipality for a 90-day period, unless excused by the assembly or council;

(3) resigns and his resignation is accepted;

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

~~(5) is removed from office;~~

(6) ~~misses~~ *is missed by council/borough members only* three consecutive regular meetings unless excused;

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

(8) is convicted of a felony or misdemeanor described in AS 15.56 as a corrupt practice and two thirds of the members concur in expulsion of the member for commission of a corrupt practice.

(b) Upon occurrence of any of the grounds stated in (a) of this section for expulsion of a member, the assembly or council shall take action authorized in this section at its next regular meeting or as soon thereafter as practical.

[AS 29.23.570, 29.23.060, 29.23.130, 29.23.210]

Sec. 29.23.075. Filling a vacancy. (a) ~~Unless otherwise provided by ordinance, a vacancy on the assembly or council shall be filled as provided~~ in (b) of this section.

(b) If a vacancy occurs on the assembly or council, the remaining members shall appoint a qualified person to fill the vacancy within 30 days. The person appointed 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 when a vacancy occurs, the vacancy shall not be filled. If, however, at any time the membership is reduced to fewer than a quorum, the remaining members shall, within 7 days appoint a number of qualified persons to constitute a quorum.

[AS 29.23.080, 29.23.220]

Article 2. Municipal Executive

Section

- 80. Executive power
- 85. Election and term of the mayor
- 90. Qualifications for the office of mayor
- 95. Duties and responsibilities of the mayor
- 100. Veto
- 105. Executive absence
- 110. Vacancy in the office of mayor

Sec. 29.23.080. Executive power. (a) The executive power within a borough or city is vested in a mayor elected by the voters or the governing body as provided in this article.

leave in
↓

(b) The mayor, as executive shall act as ceremonial head of government, ~~execute official documents upon authorization from the governing body~~ and is responsible for those additional duties and functions prescribed by law ^{ordinance} or charter.

[AS 29.23.130, 29.23.140]

Put 4 years
↓
limit back in

Sec. 29.23.085. Election and term of the mayor. (a) The mayor of a ~~home rule municipality~~, borough of ~~any class~~, and first class city is elected at large by the voters. The mayor of a second class city is elected by and from the council.

(b) A mayor shall serve a term of 3 years unless by ordinance a different term ^{year in} ~~not to exceed 4 years~~ is provided, except that the current term of an incumbent mayor may not be altered. The mayor's regular term 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.

[AS 29.23.130, 29.23.250]

Sec. 29.23.090. Qualifications for office of mayor. (a) A voter of a ~~home rule municipality~~, borough of ~~any class~~, 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 for that city.

(b) Residency requirements for the office of mayor not exceeding ¹~~one~~ year may be prescribed by ordinance.

[AS 29.23.130, 29.23.250]

Sec. 29.23.095. Duties and responsibilities of the mayor. (a) If a city or borough has not adopted the manager form of government, the administrative power is vested in the mayor and the mayor has the same functions as those of manager under Sec. .155 of this chapter.

(b) The mayor shall preside over meetings of the council or assembly of a municipality which has adopted the manager form of government.

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

(b) The mayor may not vote in 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, as a council member, may vote on all matters.

[AS 29.23.130, 29.23.260, 29.23.160]

Sec. 29.23.100. Veto. (a) Except as provided by (b) and (c) below, the mayor may veto any ordinance, resolution, motion, or other action of the governing body of the borough or city, and reduce appropriation items.

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

(c) The veto does not extend to:

(1) appropriation items in school budget ordinances;

(2) actions of the Board of Equalization and the Board of Adjustment;

(3) adoption or repeal of the manager form of government under Sec. 29.23.115 - .150 of this chapter; or

~~(4) motions relating solely to the internal legislative functions of the assembly or council.~~ *procedural out*

(d) The veto must be *submitted before the next reg. bus meeting* submitted to the assembly or council before its next regular meeting and must be accompanied by a written explanation of

the reasons for that action. A veto may be overridden only by vote of two thirds of the authorized membership of the assembly or council, taken ^{or the next meeting whichever is later} within 21 days following exercise of the veto.

[AS 29.23.170, 29.23.260, 29.23.270]

leave as is 29.23.150

Sec. 29.23.105. Executive absence. (In the temporary absence or disability of the mayor,) the governing body of a borough or city shall by resolution, designate a person to serve as acting mayor.

[AS 29.23.150]

*mayor designate except 2nd class cities
delete assembly approval requirement*

Sec. 29.23.110. Vacancy in the office of mayor. (a) The office of mayor may become vacant as provided in .070 of this chapter. *except by 2/3 votes*

(b) Except as provided in (c) below, a vacancy in the office of mayor occurring ^{6 months before} ~~within six months~~ of a regular election shall be filled by the assembly or council. The person appointed shall, serve until the next regular election and until a successor is elected and has qualified. If a member of the assembly or council is chosen, he shall resign his seat. If a vacancy occurs more than six months before a regular election, the assembly shall call a special election to fill the expired term.

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

[AS 29.23.180, 29.23.280]

Article 3. Chief Administrative Officers

Section

- 115. Application
- 120. Petition
- 125. Election
- 130. Adoption
- 135. Appointment
- 140. Term
- 145. Appointment of temporary or new manager
- 150. Repeal
- 155. Powers and duties of the manager
- 160. Intergovernmental appointments

Sec. 29.23.115. Application. A municipality may adopt a manager plan of government.

[AS 29.23.410]

Sec. 29.23.120. Petition. Adoption of a manager plan may be initiated either by petition or upon motion of the assembly or council. A petition for the adoption of a manager plan is submitted to the assembly or council. The petition must be signed by a number of municipal voters equal to the following per cent of the votes cast at the preceding regular municipal election:

(1) 25 per cent when the municipality has fewer than 7,500 persons;

(2) 15 per cent when the municipality has 7,500 persons or more.

[AS 29.23.420]

Sec. 29.23.125. Election. Upon receipt of the petition or upon its motion, the assembly or council shall provide by ordinance or resolution for a vote on the question at the next regular or special election. Notice of the election shall be published at least 30 days before the election.

[AS 29.23.430]

Sec. 29.23.130. Adoption. (a) If the manager plan is approved, the assembly or council shall, within 60 days, adopt the plan by ordinance or resolution.

(b) The assembly or council shall notify the Department of Community and Regional Affairs of the adoption of the manager plan.

[AS 29.23.440]

Sec. 29.23.135. Appointment. The assembly or council shall appoint a manager by a majority vote of its membership. He is chosen solely on the basis of his executive and administrative qualifications and receives the compensation set by the assembly or council. An elected municipal official may not be appointed manager of the municipality sooner than one year after leaving office, except that, by a vote of three-fourths of its authorized membership, the assembly or council may at any time appoint one of its members or other elected municipal officials as manager.

[AS 29.23.450]

Sec. 29.23.140. Term. Subject to the contract of employment, the manager holds office at the pleasure of the assembly or council.

[AS 29.23.460]

Sec. 29.23.145. Appointment of temporary or new manager. In the absence or disability of the manager, the assembly or council shall appoint a temporary manager. If the office become vacant, the assembly or council shall appoint a new manager.

[AS 29.23.470]

Sec. 29.23.150. Repeal. A municipality may repeal the manager plan in the same manner used for its adoption. At its first meeting after repeal, the assembly or council shall enact provisions for the reorganization of the municipal executive and chief administrator.

[AS 29.23.480]

Sec. 29.23.155. Powers and duties of the manager. As chief administrative officer the manager shall:

- (1) appoint, supervise, and discipline all municipal employees except those who are appointed and supervised directly by the governing body;
- (2) supervise the enforcement of municipal law and carry out the directives of the governing body;
- (3) prepare and submit an annual budget and capital improvement program for consideration by the governing body and execute the budget and capital improvement program as adopted;
- (4) make such monthly financial reports and such other periodic reports on municipal finances and operations as the governing body may direct;
- (5) exercise care and custody over all real and personal property of the borough except as provided otherwise in AS 29.33.050; and
- (6) perform other powers and duties provided by law or by action of the governing body.

[AS 29.23.140, 29.23.290]

Sec. 29.23.160. Intergovernment appointments. A borough adopting a manager plan may, by agreement with a city, enter into a contract providing for the manager of a city located within the borough to serve also as borough manager. A city adopting a manager plan, may by agreement with a borough, enter into a contract providing for the manager of a borough

within which the city is located to serve also as city manager. Appointment and service of the manager shall be as otherwise provided for managers in §§ 115-155 of this chapter. Nothing in this subsection affects the authority of the assembly or council to provide for other dual office-holding if the dual offices held are compatible or otherwise to appoint officers and employees in accordance with law.

[AS 29.23.130(e)]

Article 4. Municipal Departments and Employees

Section

- 165. Appointment of Officers
- 170. Municipal Attorney
- 175. Municipal Clerk
- 180. Municipal Treasurer
- 185. Departments
- 190. Personnel system

Sec. 29.33.165. Appointment of Officers. The municipal clerk, attorney, treasurer, and police chief are appointed by the chief administrative officer unless otherwise provided by ordinance. Officers described in this section serve at the pleasure of their appointing authority and, if appointed by the chief administrative officer must be confirmed by the governing body.

[AS 29.23.360]

Sec. 29.23.170. Municipal attorney. The municipal attorney is the legal advisor of the council or assembly, the school board, and the other officers of the municipality. He represents the municipality as attorney in civil and criminal proceedings. The school board has the right to hire independent counsel when in its judgment independent counsel is needed.

[AS 29.23.370]

Sec. 29.23.175. Municipal clerk. (a) The municipal clerk shall

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

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

[AS 29.23.380]

Sec. 29.23.180. Municipal treasurer. (a) The treasurer is the custodian of all municipal funds. He shall keep an itemized account of money received and disbursed. He shall pay money on vouchers drawn against appropriations.

(b) The treasurer shall give bond to the municipality in a sum which the assembly or council directs.

[AS 29.23.390]

Sec. 29.23.185. Departments. (a) The governing body of a municipality may establish departments and distribute functions among them.

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

[AS 29.23.070]

Sec. 29.23.190. Personnel system. (a) Except as provided by (b) below, all appointments and promotions of municipal officers and employees are made on the basis of merit. The assembly or council may provide for a personnel system.

(b) By ordinance the governing body may designate executive positions filled by persons who serve at the pleasure of their appointing authority and which are wholly or partially exempt from the classified service.
[AS 29.23.550]

Article 5. Municipal Boards and Commissions

Section

195. School Boards

200. Other Boards and Commissions

Sec. 29.23.195. School boards. Each borough and city school district has a school board. Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance, for three-year terms and until their successors take office. All board members are elected at large, but school zones for the election of borough school boards may be established, altered, or abolished as provided by § 100 of this chapter.
[AS 29.23.310]

Sec. 29.23.200. Other boards and commissions. (a) The assembly or council of a municipality may, by ordinance, establish such advisory, administrative, technical, or quasi judicial boards and commissions it deems necessary.

(b) Members of boards and commissions, except for the Board of Adjustment and assembly members serving on the Board of Equalization are appointed by the mayor and confirmed by the assembly or council.

[new]

Article 6. Miscellaneous Provisions

Section

- 205. Salaries of elected officials
- 210. Prohibitions
- 215. Conflict of Interest
- 220. Reports

Sec. 29.23.205. Salaries of elected officers. The assembly or council shall fix by ordinance the salaries of elected officers. The salary of the mayor may not be reduced during his term of office. An elected officer may not receive any other compensation for service to the municipality. Per diem payments or reimbursements for expenses are not compensation under this section.

[AS 29.23.530]

Sec. 29.23.210. Prohibitions. (a) No person may be appointed to or removed from municipal office or in any way favored or discriminated against with respect to a municipal position because of his race, color, sex, creed, national origin or, unless otherwise contrary to law, because of his political opinions or affiliations.

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

(c) No state employee or school district employee may be denied the right to serve as an elected municipal official because of his employment by the state or a school district unless specifically prohibited by charter or ordinance of a municipality, adopted at a special or general election. However, no school district employee may serve on a school district board in the school district where he is employed. Provisions of this section do not apply to term of office in effect on August 24, 1976.

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

[AS 29.23.540]

Sec. 29.23.215. Conflict of interests. Each home rule and general law municipality shall adopt a conflict-of-interests ordinance which, other provisions of this chapter notwithstanding, includes provision that an officer or employee shall disqualify himself from participating in any official action in which he has a substantial financial interest. If a home rule or general law municipality fails to adopt such a conflict-of-interests ordinance within 90 days from September 10, 1972, the conflict-of-interests provision of this section is automatically applicable to and binding upon that municipality.

[AS 29.23.555]

Sec. 29.23.220. Reports. (a) Home rule and general law municipalities shall file with the Department of Community and Regional Affairs:

- (1) maps and descriptions of all annexed or excluded territory;
- (2) a copy of the annual audit or in the case of second class cities an audit or statement of annual income and expenditures;

(3) tax assessment and tax levy figures as requested;
(4) reports relating to long-term debt as provided in AS 44.19
.205.

(5) a copy of the current annual budget of the municipality;
(6) a summary of the optional property tax exemptions authorized
in the municipality, together with the municipality's estimate of the
revenues lost to it by operation of each of the exemptions.

(b) Compliance with the provisions of this section is a prerequisite to
receipt of municipal tax resource equalization assistance under AS 29.88
and state aid for miscellaneous municipal services under AS 29.89 The
Department of Community and Regional Affairs shall withhold annual
allocations under those chapters in the event of noncompliance until such
time as the report requirements are met.

[AS 29.23.555]

OFFICE OF THE MUNICIPAL ATTORNEY

KETCHIKAN GATEWAY BOROUGH

AND

CITY OF KETCHIKAN

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KETCHIKAN, ALASKA 99901

(907) 225-3111, EX. 327

November 4, 1980

John Messenger, Esq.
Preston, Thorgrimson, Ellis
and Holman
420 L Street, Suite 404
Anchorage, Alaska 99501

Re: Title 29 Review - Proposed Revisions
to Chapter 53 "Municipal Assessment
and Taxation"

Dear John.

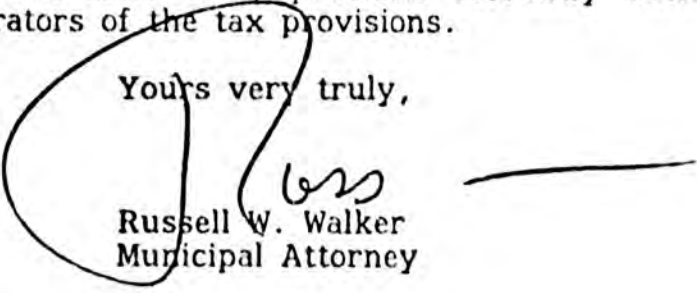
In furtherance of our discussion this date, please find enclosed herewith the following:

- (1) Draft of proposed revisions to existing chapter 53 (Assessments). Comments to each section indicate the purpose of each proposed change.
- (2) Copy of mark-up of chapter 53 prepared by the Alaska Association of Assessing Officers.
- (3) Tamara Cock's rewrite under date October 2, 1980, of the required exemptions provisions of existing section 29.53.020.

I would appreciate any observations or comments you may have regarding these proposed or other amendments to chapter 53.

As we also discussed, the major remaining area which I intend to address is the area relating to corrections, cancellations and refund of taxes which I believe will solve many problems currently confronting assessors and administrators of the tax provisions.

Yours very truly,


Russell W. Walker
Municipal Attorney

Enclosures

Sec. 29.45.030. Required exemptions. (a) The following property is exempt from general taxation:

(1) municipal, state or federally owned property, except that private leaseholds, contracts or other interest in the property shall be taxable to the extent of those interests;

(2) household furniture of the head of a family or a household [not exceeding \$500 in value];

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

(4) 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 such organization;

(5) money on deposit;

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

(7) real property to the extent and subject to the conditions provided in (j) of this section.

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

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

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

(3) lots supporting and adjacent to a structure or residence mentioned in (1) or (2) of this subsection which are necessary to convenient use;

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

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

(e) The real property owned and occupied as a permanent place of abode by a resident 65 years of age or over is exempt from taxation of the assessed value of the real property. 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 decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection 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. The determination of the assessor is appealable under AS 44.62.560-44.62.570.

(f) No exemption may be granted under (e) of this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 of the assessment year for which the exemption is sought, but during the same year the governing body of the municipality for good cause shown may waive the claimant's failure to make timely application for the exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by January 15 of the assessment year has been waived as provided in this subsection and the application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year with respect to the property exempted shall be refunded to him. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under this section.

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

(h) Except as provided in (g) of this section, nothing in (e)-(i) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in sec. 25 of this chapter.

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

(j) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 19.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection 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 1 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.

Formerly: AS 19.53.020

Comments: Based on Alaska Association of Assessing Officers (AAAO) recommendation:

(1) Para. (a)(2): deletes \$500 limit on exemption of household furniture;

(2) Para. (c): clarifies that "exclusively for classroom space" limitations on rental income under (c) only applies to rental use by an "educational group" and does not preclude the exemption when the income is derived from use by nonprofit religious, charitable, or hospital groups.

(3) Para. (f): clarifies filing of a claim for exemption is a requirement for only the senior citizen exemption under (e), and not for the other exemptions addressed in the section.

Sec. 29.45.050. Optional exemptions and exclusions.

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

(b) Municipalities may by ordinance

(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage; a tax based upon a tonnage valuation shall not exceed \$5 a year for a boat or vessel of less than five net tons and shall not exceed \$15 a year for a boat or vessel of more than five net tons;

(2) classify and exempt from taxation

(A) All or any portion of the household goods and furnishings in actual use by the owner thereof in equipping and outfitting his or her residence or place of abode and not for sale or commercial use, and all personal effects held by any person for his or her exclusive use and benefit and not for sale or commercial use. "Personal effects" shall be construed to mean and include such tangible property as usually and ordinarily attends the person such as wearing apparel, jewelry, toilet articles, and the like [the household furniture over \$500 in value and the effects of the head of a family or a householder]; and

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

Formerly: AS 29.53.025

Comments: modifies and expands existing (a)(2)(A) relating to optional exemption of household furniture and effects. Based upon recommendation of AAAO since assessors currently do not include household furnishings and personal effects of family members.

Sec. 29.45.060. Mining claims. The assessed value of an unimproved unpatented mining claim which is not producing, and a nonproducing patented mining claim upon which the improvements originally required for patent have become useless and valueless through depreciation, removal or otherwise, is exempt [fixed at \$200 for each 20 acres or fraction of 20 acres]. If the surface ground of a claim has a separate and independent value for nonmining uses, the real and personal property is assessed at its full and true value.

Formerly: AS 29.53.030

Comments: Deletes \$200 valuation figure. AAAO recommends deletion since administrative costs exceed taxes to be realized in carrying property at \$200 figure on roll.

Sec. 29.45.100. Tax limitations.

(a) No municipality may levy and tax for any purpose in excess of three percent of the assessed valuation of property within the municipality in any one year.

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding \$1,500 [\$1,000] a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding \$1,500 [\$1,000] a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

Formerly: AS 29.53.050

Comments: Technical change requested by AAAO to conform with provisions of AS 29.53.045 (SLA 80)

Sec. 29.45.120. Full and true value.

(a) The assessor shall value [assess] property at its full and true value as of January 1 of the assessment year, except as provided in this section and sections 60 [30], 70 [35] and 240 [160] of this chapter. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

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

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

Formerly: AS 29.53.060

Comments: Requested by AAAO

Sec. 29.45.180. Assessment notice.

(a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest. [and the dates when the board of equalization will sit.]

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing.

Formerly: AS 29.53.110

Deletes requirement that assessor include in the assessment notice the date the board of equalization will meet since many times assessors at that time do not know the dates at the time the notices are mailed. Based on the recommendation of AAAO.

Sec. 29.45.210. Board of Equalization. The assembly sits as a board of equalization for the purpose of hearing any appeal from determinations of the borough assessor, however, may delegate this authority to one or more boards appointed by it for that purpose. An appointed board may be composed of not less than three (3) persons, who may be members of the assembly, private individuals, or a combination thereof. [The board of equalization shall consist of at least that number of members of the assembly over and above the number required for a quorum to transact business.] The board is governed in its proceedings by such procedures consistent with general rules of administrative law and the laws governing equalization proceedings as may be adopted by ordinance, including but not limited to quorum and voting requirements. The assembly shall by ordinance establish the qualifications for membership and adopt rules of conduct of the board.

Formerly: AS 29.53.135

Comments: Change would clarify authority to establish boards of equalization composed of other than assembly members and by ordinance to establish qualifications. Deletion required to allow appointment of boards of three members or more which number may be less than number required for quorum of assembly.

Sec. 29.45.220. Hearing.

(a) If an appellant fails to appear, the board of equalization may proceed with the hearing in his absence.

(b) The appellant bears the burden of proof.

(c) The only grounds for adjustment is proof of unequal, excessive or improper valuation based on facts which are stated in a valid written appeal timely filed and [or] proved at the hearing.

(d) The board shall certify its actions to the assessor within seven days.

(e) The assessor shall enter the changes and certify the final assessment roll by June 1 except as to supplementary assessments.

(f) [an] The appellant and the assessor may appeal the board's action to the superior court as provided by rules of court applicable to appeals from the decisions of administrative agencies. Appeals are heard on and limited to the record established at the hearing before the board of equalization. [for, and is entitled to, trial de novo of the board's action. Either party to the appeal may demand a jury trial].

Formerly: AS 29.53.140

Comments:

(1) Para. (c): Based on recommendation of AAAO, substitutes and for or to assure must set forth factual grounds in written appeal and prove at hearing;

(2) para. (e): Based on recommendation of AAAO, clarifies that there may be further proceedings after June 1 in event there are supplementary assessments per former section 29.53.150;

(3) para. (f): deletes provisions regarding trial de novo and jury trial and limits scope of review to substantial evidence rule and clarifies confusion created by Winegardner v. Greater Anchorage Area Borough (534 P.2d 541)

Sec. 29.45.230. Supplementary assessment rolls. The assessor shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll. Any supplementary roll must be finalized and certified on or before September 1 of the assessment year.

Formerly: AS 29.53.150

Comments: Recommended by AAAO. State assessor requires for his purposes all proceedings to be completed not later than September 1, including any supplemental assessments.

Sec. 29.45.440. Expiration.

(a) At least 30 days before the expiration of the redemption period the clerk shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration or the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately in expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgment of foreclosure has been taken and, if the assessed value of the property is more than \$100,000 [\$10,000], to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) Costs incurred in the determination of holders of mortgages and other liens of record and costs of publication of notice incurred by a municipality under (a) of this section are a lien on the property and may be recovered by the municipality.

Formerly: AS 29.53.350

Comments: Based on recommendation of AAAO; raises assessed value of property which triggers duty of clerk to advise holders of security of judgment of foreclosure.

Article 1. Regular and Special Elections

<u>New Sec. No.</u>	<u>Old Sec. No.</u>	<u>Sec. Title</u>
29.30.010	29.28.010	Administration
29.30.020	29.28.015	Nominations
29.30.030	29.28.020	Election dates
29.30.040	29.28.030	Voter qualifications
29.30.050	29.28.040	Majority elections
29.30.060	29.28.050	Election contest and appeal

Article 2. Initiative and Referendum

29.30.090	29.28.060	Reservation of powers
29.30.100	29.28.062	Petition <u>filing</u>
29.30.110	29.28.062	Contents of petition
29.30.120	29.28.070	Required signatures
29.30.130	NEW SEC.	<u>Petition circulation and certification</u>
29.30.140	29.28.073	<u>Petition--Sufficient, Insufficient, Supplemental</u>
29.30.150	29.28.075	<u>Protest</u>
29.30.160	29.28.077	New petition
29.30.170	29.28.080	Presentation of initiative
29.30.180	29.28.090	Presentation of referendum
	29.28.110	Effect (reworded and moved to 30.180)
29.30.190	29.28.110(b)	<u>Unsuccessful initiatives or referendums</u>
29.30.200	29.28.090(c)	<u>Municipal charter amendment</u>

Article 3. Recall

29.30.210	29.28.130	<u>Scope of Recall</u>
29.30.220	29.28.140	<u>Grounds for recall</u>
29.30.230	29.28.150	<u>Contents of petition</u>
29.30.240	NEW SEC.	<u>Petition circulation and certification</u>
29.30.250	29.28.160	<u>Petition--Sufficient, Insufficient, Supplemental</u>
	29.28.170	
29.30.260	NEW SEC.	<u>Protest</u>
29.30.270	29.28.180	New petition
29.30.280	29.28.190	Submission
29.30.290	29.28.200	<u>Recall election</u>
29.30.300	29.28.210	Form of recall ballots
29.30.310	29.28.220	Election procedure
29.30.320	29.28.230	Majority required
29.30.330	29.28.240	Effect
29.30.340	NEW SEC.	<u>Certification of election results</u>
29.30.350	29.28.250	<u>Election or appointment of successor</u>

29.28 ELECTIONS

Article 1. Regular and Special ElectionsSec. 29.28.010. Administration. ok

(a) The borough assembly or city council shall prescribe the general rules for conducting municipal elections and [APPOINT AT LEAST THREE JUDGES FOR EACH POLLING PLACE.] shall appoint election boards, composed of at least three judges, for each precinct. The judges shall, to the extent possible, be appointed from among the qualified voters of each of the precincts for which they are appointed. [See AK 15.10.120] [The municipality may not alter voter qualification requirements of this title.]

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

Attempted to clarify election board appointment and referenced '80 revised AK 15.10.120 for consistency. Deleted "The municipality may not alter . . ." because issue is addressed at Sec. 29.28.030.

29.28 ELECTIONS

Sec. 29.28.015. Nominations.

(a) The assembly or council shall provide by ordinance the procedure for the nomination of elected officers by [PROVIDING FOR] declaration of candidacy, or petition requiring the signatures of not more than 10 [VOTERS] ~~qualified electors~~ ^{qualified voters}, or both.

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

Lee Sharp suggests that it should be left to local option as to whether the mayor in a manager-type municipality should be permitted to be a member of the legislative body so long as he does not have the veto power. If the Committee supports this suggestion, (b) should be amended.

29.30.030

29.28 ELECTIONS

Sec. 29.28.020. Election dates.

(a) [THE DATE OF A] Regular municipal elections [IS THE] shall be held
on the first Tuesday of October annually [, OR ON A DATE OF ELECTION] or at
an interval of years as provided by ordinance.

(b) The assembly or council may call a special election upon at least
20 days' notice.

rewrite
but no change

29.28 ELECTIONS

Sec. 29.28.030 Voter qualification.

(a) A person may vote at any election who meets the requirements of AS 15.05.010 - .040, who is registered to vote in State elections and is not disqualified under Article V of the State Constitution, who has been ^{registered to vote in the} a ~~resident~~ of the municipality for 30 days immediately preceding the election, and ~~who is registered in the precinct in which he presents himself to vote~~ ^{whose name appears on the official registration list for the} precinct in which he presents himself to vote. (See AS 15.07.010 - '80)

(b) Voter registration by the municipality may not be required, and a municipality may not alter voter qualification requirements. ^{except that} a municipality may require ^{by ordinance} ~~that a voter vote in the precinct in which he is registered.~~

(c) This section applies to home rule and general law municipalities. ^{which he} require a person ^{is registered.} to be a resident of the ~~precinct~~ ^{municipal election} district or service area in which he votes.

Incorporates Municipal League recommendation.

Does apply to
Home Rule

29.28 ELECTIONS

← Limit to assembly, council, mayor & school board

Alternate A

Sec. 29.28.040 Majority elections

(a) An assembly or council may by ordinance provide the requirement for a runoff election if no one candidate receives in excess of 40 percent of the votes cast for a respective office.

(b) An assembly or council may by ordinance require a majority vote for the election of officials. A runoff election or other means of obtaining a majority may be used.

This amendment would require municipalities to enact an ordinance providing for runoffs; otherwise, all municipalities would be exempt from this present requirement

A municipality may provide by ordinance for run-off elections for the offices of assembly, council, mayor, school bd.
Alternate B

(a) If in a municipal election no candidate receives in excess of 40 percent of the votes cast for his respective office, the assembly or council shall hold a runoff election between the two candidates receiving the greatest number of votes for the office. The runoff election shall be held within three weeks from the date of certification of the election for which the runoff is required and notice of the runoff election shall be published at least five days prior to the election date. An assembly or council may by ordinance exempt its elections from the requirements of this section.

(b) An assembly or council may by ordinance require a majority vote for the election of officials. A runoff election or other means of obtaining a majority may be used.

26)
89.30.050 (cont'd)
Sec. 29.28.040 cont'd
Alternate B

This amendment would allow municipalities to enact an ordinance which would exempt them from the runoff requirement. The change to three weeks (from two weeks) for the date of the runoff allows the additional time necessary so cities within boroughs can coordinate their runoffs and hold them at the same time.

Sec. 29.28.040 Majority elections

Alternate C

(a) If in a municipal election no candidate receives in excess of 40 percent of the votes cast for his respective office, the assembly or council shall hold a runoff election between the two candidates receiving the greatest number of votes for the office. The runoff election shall be held within three weeks from the date of certification of the election for which the runoff is required and notice of the runoff election shall be published at least five days prior to the election date. A municipality may exempt itself from the requirement of this section if a majority of the voters voting on the question at any regular election or a special municipality-wide election called for that purpose, vote to exempt its municipal elections from the requirements of this section.

(b) An assembly or council may by ordinance require a majority vote for the election of officials. A runoff election or other means of obtaining a majority may be used.

This amendment would allow municipalities to exempt itself from the runoff requirement by means of voter ratification. Incorporates Municipal League recommendation.

AS 29.28 ELECTIONS

Sec. 29.28.050 Election contest and appeal.

UNCHANGED

§ 29.28.050 ALASKA STATUTES § 29.28.062

Sec. 29.28.050. Election contest and appeal. (a) The assembly or council may provide by ordinance the time and procedure for the contest of an election.

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

(c) Unless otherwise provided by ordinance, the assembly or council shall declare the election results at the first meeting to canvass the election and record the results in the minutes of that meeting.

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

(e) No person may appeal or seek judicial review of a city or borough election for any cause or reason unless the person is qualified to vote in the municipality, has exhausted his administrative remedies before the assembly or council and has commenced, within 10 days after the assembly or council has finally declared the election results, an action in the superior court in the judicial district in which the municipality is located. If no such action is commenced within the 10-day period, the election and election results shall be conclusive, final and valid in all respects. (§ 2 ch 118 SLA 1972)

(f) Notwithstanding the provisions of (e) of this section, the expulsion of a member of a borough assembly under AS 29.23.060 (c), of a member of a city council under AS 29.23.210(b), of a borough mayor under AS 29.23.130(f), or of a city mayor under AS 29.23.255 is final and is not subject to judicial review.

'80 addition

29.28 ELECTIONS

Article 2. Initiative and Referendum.

Sec. 29.28.060. Reservation of powers.

Unchanged

Sec. 29.28.060. Reservation of powers. The powers of initiative and referendum are reserved to the residents of municipalities except the powers do not extend to matters restricted by § 7, art. XI, of the state constitution. (§ 2 ch 118 SLA 1972)

Borough voters may use an initiative to acquire an areawide power for transfer. 1965 Op. Att'y Gen., No. 6.

Sec. 29.28.062 Petition filing.

Unchanged

Sec. 29.28.062. Petition. A petition for initiative or referendum is filed with the municipal clerk and an initiative petition must be filed not less than 90 days before the next regular election. (§ 2 ch 118 SLA 1972)

Sec. 29.28.065 Contents of petition.

Unchanged

Sec. 29.28.065. Contents of petition. A petition for an initiative or referendum shall

- (1) embrace only a single comprehensive subject;
- (2) set out fully the ordinance or resolution sought by the petition;
- (3) state upon the petition, when circulated, the date of first circulation of the petition;
- (4) contain the statement, when circulated, that the signatures on the petition must be secured within 90 days from the date of the first circulation;
- (5) have the required signatures, dates of signatures and resident addresses of the signers. (§ 2 ch 118 SLA 1972)

29.28 ELECTIONS

Sec. 29.28.070. Required signatures.

(a) The necessary signatures on a petition shall be secured within 90 days from the date of the first circulation of the petition. The petition shall be signed in ink or indelible pencil.

(b) Every municipal initiative or referendum petition [FOR EITHER THE INITIATIVE OR REFERENDUM IN THE GOVERNMENT OF A MUNICIPALITY] shall be signed by a number of qualified voters residing within the territorial limits of the municipality, or, if the act sought to be initiated or referred pertains exclusively to the area outside cities, to a service area, or to a district, by a number of qualified voters residing within the respective area [OUTSIDE CITIES OR WITHIN THE SERVICE AREA, AS THE CASE MAY BE, EQUAL TO THE FOLLOWING] equal to 25/30 percent of the total number of votes cast at the last [GENERAL] regular election preceding the date of first circulation of the petition [IN THE CITY OR BOROUGH OR BOROUGH AREA CONCERNED OR SPECIAL ELECTION CALLED FOR THE PURPOSE OF ELECTING CITY OR BOROUGH OFFICERS:] in the respective area concerned.

[(1) 25 PERCENT, WHEN A CITY OR BOROUGH HAS FEWER THAN 7,500 PERSONS, OR

(2) 15 PERCENT, WHEN A CITY OR BOROUGH AS 7,500 PERSONS OR MORE.]

(c) When signing a petition each voter shall write or print after his signature the date of signing the petition and his resident and mailing address.

(d) Illegible signatures unless accompanied by a legible printed name may be rejected by the municipal clerk.

(e) A petition signer may withdraw his signature upon written application to the clerk within seven days after the petition has been filed with the clerk.

Amendment does not address Richard Garnett III's concern regarding service area petitions. *In (b) Municipal League supports 30 percent, Clerks support 25 percent.

29.28 ELECTIONS

NEW SECTION

Sec. 29.28.071 Petition circulation and certification.

(a) Petitions shall be circulated only by a sponsor and only in person. If more than one sponsor is circulating copies of a petition, one spokesman shall be appointed by the sponsors for purposes of receiving notification of petition sufficiency, and the clerk shall receive written notice of the spokesman's name and mailing address.

(b) Before being filed, each petition shall be certified by an affidavit by the sponsor who personally circulated the petition. The affidavit shall state:

- (1) the person signing the affidavit was the only circulator of the petition;
- (2) the signatures were made in his actual presence; and
- (3) to the best of his knowledge, the signatures are those of the persons whose names they purport to be.

Has the effect of requiring a witness to the signatures on a petition; conforms to State law.

29.28 ELECTIONS

Sec. 29.28.073. Petition--Sufficient, Insufficient, Supplemental.

(a) Within 10 days from the date of filing, the municipal clerk shall certify the petition as to its sufficiency and shall so notify the sponsor or spokesman.

(b) The clerk shall notify the sponsor or spokesman that the petition is insufficient if he determines that the petition does not meet the requirements as set forth in this article.

(c) Upon receipt of notice that the filing of the petition was improper, the sponsor/s may amend and correct the petition by circulating and filing a corrected or supplementary petition within 10 days of the date that notice was given if 90 days from the petition's first circulation have not yet expired.

(d) Within 10 days from the date of filing of a corrected or supplementary petition, the municipal clerk shall recertify the petition. If the petition is still insufficient, the petition shall be rejected and filed as a public record and the sponsor or spokesman shall be so notified.

(e) For the purposes of this article, all notices required of the clerk to be given to the sponsor or spokesman shall be by certified mail.

29.28 ELECTIONS**Sec. 29.28.075. Protest****Unchanged**

Sec. 29.28.075. Protest. If the municipal clerk certifies the petition is insufficient, a signer of the petition may file a protest with the municipal executive within seven days after the certification and the municipal executive shall present the protest at the next regular meeting to the assembly or council which shall hear and decide the protest. (§ 2 ch 118 SLA 1972)

SEc. 29.28.077. New petition**Unchanged**

Sec. 29.28.077. New petition. Failure to secure sufficient signatures does not preclude the filing of a new initiative or referendum petition. However, a new petition may not be filed sooner than six months after a petition is rejected. (§ 2 ch 118 SLA 1972)

29.28 ELECTIONS

Sec. 29.28.080. Presentation of initiative.

(a) When a petition seeks enactment of an ordinance or resolution within the powers of the assembly or council, excepting powers of an administrative nature and not otherwise restricted by §60 of this chapter, the clerk shall present it to the assembly or council at its next regular meeting following [AFTER] certification. The assembly or council may reject the petition if the subject matter of the initiative [OR REFERENDUM] is within the restrictions of §60 of this chapter or is determined to be of an administrative nature.

(b) Unless the petition is granted within 30 days of its submission to the assembly or council, the clerk shall, with the assistance of the municipal attorney, prepare an ordinance or resolution to implement the petition and shall submit it to the voters at the next regular election. The ordinance or resolution shall be published in full in the notice of election but may be summarized on the ballot to indicate clearly the proposal submitted.

(c) If a majority of those qualified electors voting favor the proposal, it becomes effective [WHEN THE ELECTION RESULTS ARE OFFICIALLY DECLARED] 30 days following certification of the election results, is not subject to veto, and may not be repealed within two years of its effective date. It may be amended at any time.

(d) The assembly or council may at any time not less than 10 days from the date of election adopt an ordinance or resolution to implement the petition. In that event an election shall not be held. The adopted resolution or ordinance *is not subject to veto(?)* may not be repealed within two years of its effective date. It may be amended at any time.

29.28 ELECTIONS

Sec. 29.28.090 Presentation of referendum.

(a) When a petition seeks a referendum vote on an ordinance or resolution, excepting legislation determined to be of an administrative nature, the clerk shall submit the ordinance or resolution to the voters of the municipality at the next regular or special election. If no regular or special election [OCCURS] is scheduled to occur within 75 days of the filing of a sufficient petition with the clerk, the assembly or council shall schedule and hold a special election within 75 days of filing. If the clerk determines that the subject of the petition is of an administrative nature, he shall present the petition to the assembly or council at its next regular meeting following certification of the petition. The assembly or council may reject the petition if the subject matter is determined to be of an administrative nature.

(b) If a sufficient petition for referendum is filed within 30 days after final passage of the ordinance, or before the effective date of the ordinance, [THE ORDINANCE AGAINST WHICH THE PETITION IS FILED SHALL BE SUSPENDED PENDING THE REFERENDUM ON THE ORDINANCE. DURING THE PERIOD OF SUSPENSION] the assembly or council may [NOT ENACT AN ORDINANCE SUBSTANTIALLY SIMILAR TO THE SUSPENDED ORDINANCE BUT MAY] repeal the [SUSPENDED] ordinance. If an ordinance against which a referendum is directed has been repealed by the assembly or council after a petition has been filed but before the referendum, the council or assembly may not enact substantially similar legislation for a period of [ONE YEAR] two years after repeal.

(c) If a majority of those voting favor the referendum legislation, it remains in effect. If a majority rejects the legislation, it is repealed and becomes void 30 days after certification of the election results, and the assembly or council may not, within two years, act in any way to modify or negate the effect of a successful [INITIATIVE OR] referendum.

29.28 ELECTIONS

Sec. 29.28.090 cont'd

29.30.170

(explanatory notes)

(a) incorporates recommendations of Lee Sharp and Richard Garnett III and Wolf v. Alaska State Housing Authority re: legislation of an administrative nature

(b) reflects ruling in Walters v. Cease (referred to in State Constitution XI § 6) re: suspension of legislation

(c) conforms to State Constitution XI § 6 re: when legislation becomes void

DRAFT

29.30.180 → .18-
(new title) (new section)

29.28 ELECTIONS

Sec. 29.28.110 Effect

Deleted - (a) reworded and moved to 29.28.090

Sec. 29.28.110 Unsuccessful initiatives or referendums (NEW TITLE)

(a) An unsuccessful initiative or referendum precludes the filing of a new petition for the same purpose sooner than six months after voter disapproval of the initiative or referendum.

this is previous Sec. 29.28.110 (b)

Sec. 29.28.120 Municipal charter amendment (NEW SECTION)

(a) A municipal charter may be amended as provided in the charter or by initiative and referendum as provided in Article 2 of this chapter.

this is a portion of previous Sec. 29.28.090 (c)

29.28 ELECTIONS

Article 3. Recall.Sec. 29.28.130 Scope of Recall (NEW TITLE)

(a) All [AN] elected officials [OF A HOME RULE OR GENERAL LAW MUNICIPALITY MAY BE RECALLED] are subject to recall [BY THE VOTERS] after [HE HAS SERVED] having served six months in office.

Sec. 29.28.140 Grounds for recall (NEW TITLE)

The grounds for recall are misconduct in office, incompetence, failure to perform prescribed duties and to uphold the laws and ordinances of the municipality, and corruption.

Alternate: Delete 29.28.140, 29.28.150 (2) + 29.28.210 (1)
 B No grounds

Alternate: Leave in 29.28.140 but provide for
 C more stringent petition requirements if
 official is subject to recall w/out
 grounds being specified.

29.28 ELECTIONS

29.30, 230

Sec. 29.28.150

Contents of
Petition.

(a) A petition seeking the recall of [ONE OR MORE] an elected municipal official[S] is filed with the municipal clerk. The petition shall contain:

(1) the name and office of the person to be recalled;

(2) a statement of the grounds for recall stated with particularity as to specific instances, limited to 200 words;

(3) the signatures, [AND] resident addresses and mailing addresses and date of signing of [A NUMBER OF VOTERS AS PRESCRIBED IN §70(b) OF THIS CHAPTER FOR INITIATIVE AND REFERENDUM] a number of qualified voters residing within the territorial limits of the area from which the elected official was elected equal to 25/30? percent of the total number of votes cast at the last regular election preceding the date of first circulation of the petition.

(4) a statement of the date of first circulation of the petition and a statement that the signatures on the petition must be secured within 60 days from the date of the first circulation.

(b) If more than one elected municipal officer is being considered for recall simultaneously, a separate petition shall be filed for each official.

(c) A petition for recall must be filed with the clerk within 60 days after the date of the earliest signature on the petition.

Yes we (d) No recall petition shall be filed within ^{6 mo.} ~~90 days~~ of the termination of the term of office of the public official who is the subject of the recall petition.

29.28 ELECTIONS

Sec. 29.28.155 Petition circulation and certification (NEW SECTION)

(a) Recall petitions are subject to the requirements for initiative and referendum petition circulation and certification as prescribed in AS 29.28.071.

Sec. 29.28.160 Petition--Sufficient, Insufficient, Supplemental (NEW TITLE)

*Revised
29.28.170*
(a) Within 10 days from the date of filing, the municipal clerk shall certify the petition as to its sufficiency and shall so notify the sponsor or spokesman. Until the petition is accepted as sufficient, a petition signer may withdraw his signature upon written application to the clerk.

(b) The clerk shall notify the sponsor or spokesman that the petition is insufficient if he determines that the petition does not meet the requirements as set forth in this article.

(c) If a petition is rejected because of insufficient signatures, it may be supplemented by additional signatures within 10 days after the date of rejection if 60 days from the petition's first circulation have not yet expired. Within 10 days after the supplementary filing, the clerk shall recertify the petition as to its sufficiency and so notify the sponsor or spokesman. If the petition is still insufficient it shall be rejected and filed as a public record.

(d) A petition found insufficient for any reason other than the lack of sufficient signatures shall be rejected and filed as a public record.

(e) For the purposes of this article, all notices required of the clerk to be given to the sponsor or spokesman shall be by certified mail.

(Also includes provisions of previously numbered
Sec. 29.28.170 - Supplemental Petition.)